APPENDIX C - DECISION REPORT

COMMONS ACT 2006 – SECTIONS 15(1) AND (3)

APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – LAND ADJACENT TO VOWLEY VIEW AND HIGHFOLD, ROYAL WOOTTON BASSETT

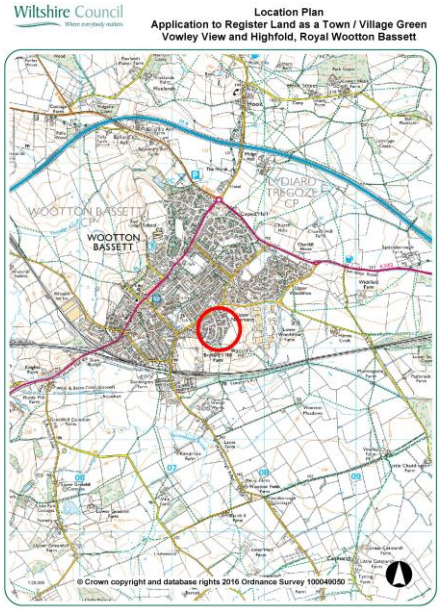
1. Purpose of Report

1.1. To consider the evidence submitted with an application made under Sections 15(1) and (3) of the Commons Act 2006, to register land adjacent to Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green, in order to determine the application.

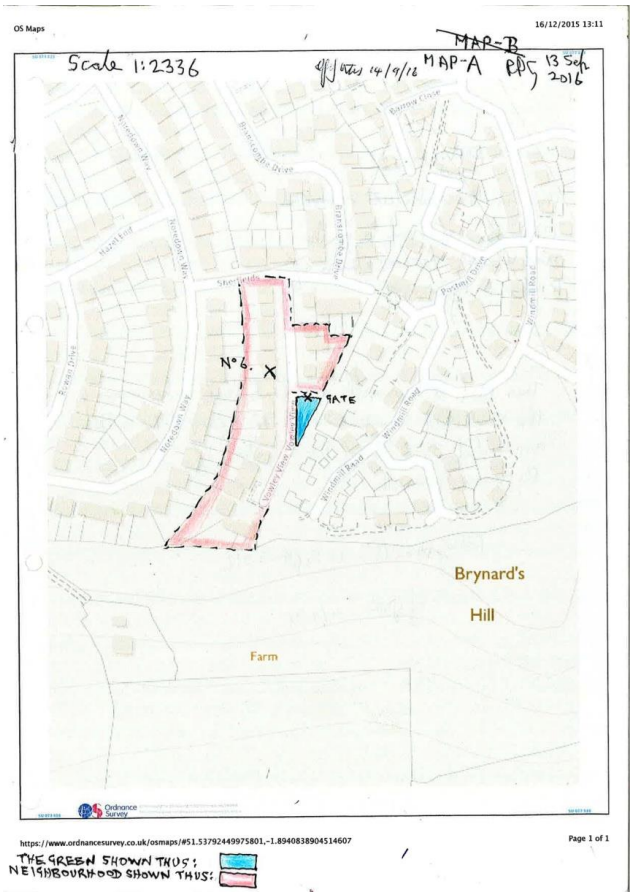
2. Relevance to the Council's Business Plan

2.1. Working with the local community to provide a countryside access network fit for purpose, making Wiltshire an even better place to live, work and visit.

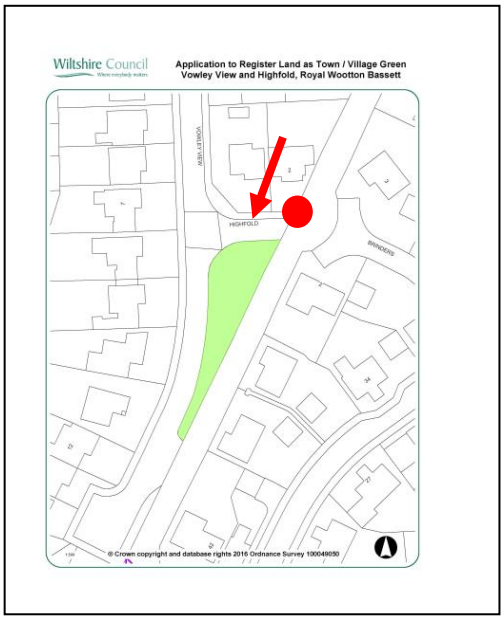
3. Location Plan

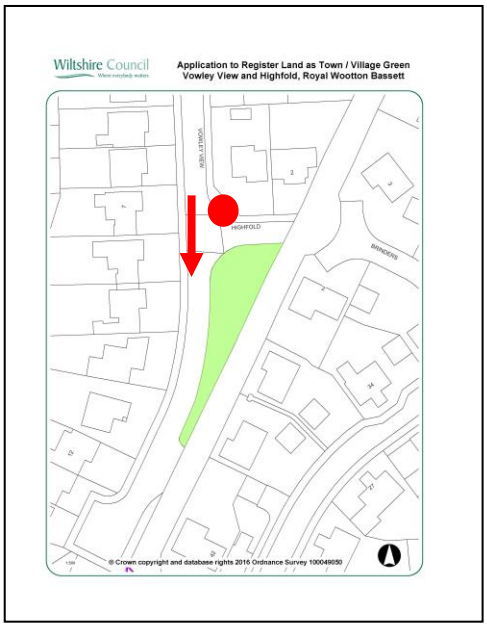


4. Application Plan



5. Photographs




Wiltshire Council
Application to Register Land as Town / Village Green
Vowley View and Highfold, Royal Wootton Bassett
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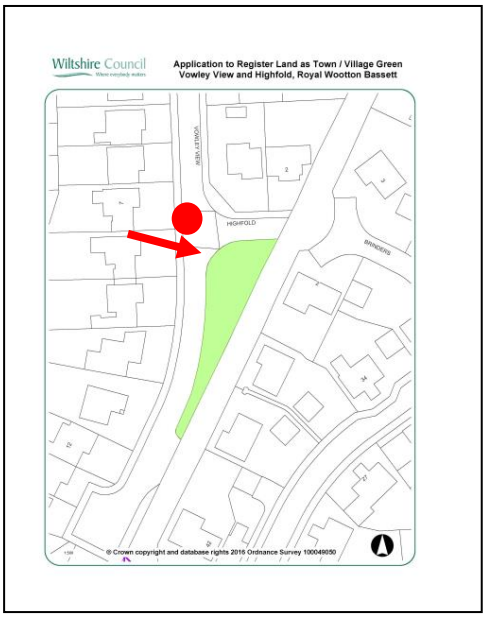
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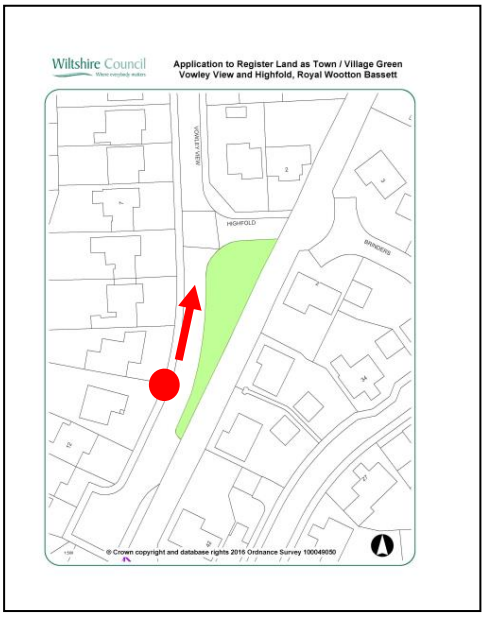
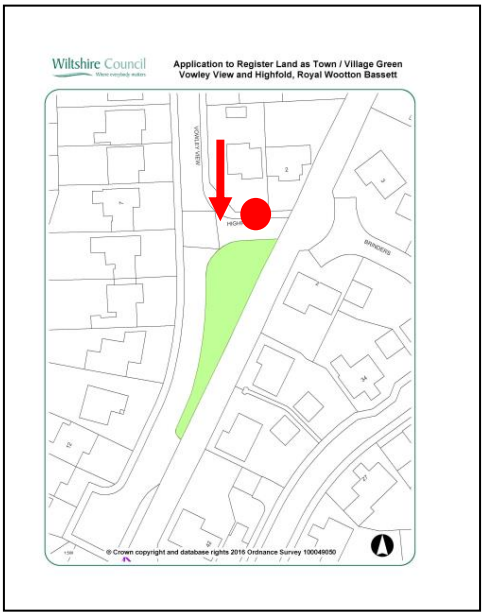




6. Applicant

6.1. Mr Richard Patrick Gosnell
6 Vowley View
Royal Wootton Bassett
Swindon
Wiltshire, SN4 8HT

7. Registered Landowners

7.1. Cooper Estates Ltd
Claremont House
65C Main Road
Longfield
Kent
DA3 7QT

Agent:
Mr G McGruer
Blake Morgan LLP
Seacourt Tower
West Way
Oxford
OX2 0FB

8. Legal Empowerment

8.1. Under the Commons Registration Act 1965, Wiltshire Council is charged with maintaining the register of Town and Village Greens and determining applications to register new Greens. The application to register land at Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green, has been made under Sections 15(1) and (3) of the Commons Act 2006, which amends the criteria for the registration of greens, and states:

"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...

(3) This subsection applies where-

(a) a significant number of inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

(b) they ceased to do so before the time of the application but after the commencement of this section; and

(c) the application is made within the relevant period.

(3A) In subsection (3), "the relevant period" means –

(a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);

(b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation…

(6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment."

9. Background

9.1. Wiltshire Council are in receipt of an application dated 30th March 2016, made under Section 15(1) of the Commons Act 2006, to register land adjacent to Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green.

9.2. The application is also made under Section 15(3) of the Act, i.e. where use of the land for recreational purposes has ceased and the application is made within one year of the cessation of use.

9.3. Part 7 of the application form requires the applicant to provide a summary of the case for registration. The applicant includes the following comments:

"The Green was being mowed 3 or more times per year by Council staff from at least 1975 (likely 1969), up to 2006. This on its own suggests the land was intended as public open space. The Council by their own written admission thought they owned it up to end – 2002. Then the actual owner came to light as a result of Council enquiries, and the owner commenced a series of 3 plans for a house, lasting 13 years. However, the Council mowing continued 2003-2006. The owner in 2006 placed a wicket fence along the Green's roadside edge, and an unlocked gate in the fence. The Council stopped mowing the Green at the same time as they found the fence/gate prevented their mowing access.

This fence periodically broke over the years, due to high winds, and was repaired by residents with bits of wire etc. In response to the lack of mowing, residents took up the mowing in 2006 and also planted daffodils and shrubs, and attempted to grow vegetables and flowers on the thin southern end. Trimming of the bushes was also done. The Horse Chestnut had been outplanted from a pot onto the Green around 1983 but was cut down by the agents of the owner in May 2015.

The owner has never to my knowledge done any repairs or other maintenance throughout the period under review except to send theodolite survey teams ahead of each planning application from 2003 onwards.

"The Green" has been often used by local residents since 1975 by my own observation, and possibly since 1969 when the local housing estate was built. The use was without let or hindrance as of right. Use was by residents or their children for the following activities:- BBQs, street parties, cricket, football, tree-climbing, and occasional blackberry or sloe picking. Two seats were placed therein by a resident about 20 years ago and are still there. The main users were from Vowley View and Highfold. Children unknown to some or all Vowley View residents, as well as some Vowley View children, have been seen climbing the chestnut tree as it grew big enough.

All the above activities were voluntarily stopped after the summer of 2015 while awaiting the outcome of planning and appeal procedures, and of this Green application. Entry to the Green for the 2015 BBQ and 1 or 2 mows, after the locking, was via the gaps in the fence mentioned above and through missing wooden slats which had broken off over the years.

To my knowledge no-one has been verbally told not to use the land, or told they were trespassing. No signs saying the same have ever been affixed to the site.

BBQ dates from my old diaries. Not exhaustive.
2003 Sept 13 1700 hrs onwards
2006 July 16 1300 hrs onwards
2007 July 15 1300 hrs onwards

2008 20 July
2009 July 19 1400 hrs onwards
2010 July 11 1400 hrs onwards
2011 July 2 1400 hrs onwards
2015 Aug 16"

9.4. The application was received by Wiltshire Council on 12th April 2016 and accepted as a complete and correct application (i.e. duly made) on 15th September 2016. The application was accompanied by 27 completed witness evidence questionnaires, (please see witness evidence summary at **Appendix 1**). Following notice of the application being posted on site; advertisement in a local newspaper and service upon the landowners, one objection and two representations regarding the application, were received.

9.5. The application land is located to the east of Vowley View and the south of Highfold, Royal Wootton Bassett and occupies an area of approximately 380m^2, laid to grass and bushes, with a fence along its north and western boundaries with Vowley View and Highfold, with a gate (now padlocked) at its northern end.

10. Right to apply

10.1. The Growth and Infrastructure Act of 2013 introduced a series of provisions to make it more difficult to register land as a town or village green. This included at Section 16 the removal of the "right to apply" to register land where specified planning "trigger events" have occurred, for example, where an application for planning permission in relation to the land which would be determined under section 70 of the Town and Country Planning Act 1990 ('The 1990 Act'), is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act, the right to apply to register land as a town or village green no longer exists.

10.2. The right to apply is revived where a corresponding “terminating event” has taken place, for example, the withdrawal of the planning application; a decision to decline to determine the application is made under section 70A of the 1990 Act; where planning permission is refused and all means of challenging the refusal by legal proceedings in the UK are exhausted and the decision is upheld; or where planning permission is granted and the period within which the development to which the permission relates must be started, expires without the development having begun, (a full list of trigger and terminating events is included at Schedule 1A of the Commons Act 2006 as added by Section 16 of the Growth and Infrastructure Act 2013 and amended by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014, which extends the list of trigger and terminating events).

10.3. This amendment to the legislation alters the way in which the Registration Authority deals with new applications to register land as a town or village green. DEFRA has issued Interim Guidance to Registration Authorities which recommends that upon receipt of an application the authority should write to the local planning authority and the Planning Inspectorate, enclosing the application map and requesting information on whether or not there are trigger and terminating events in place in relation to all or part of the application land.

10.4. As per the guidance the Registration Authority wrote to the Planning Inspectorate and the Spatial Planning and Development Control Departments at Wiltshire Council on 15th April 2016, using the template letter as set out within DEFRA guidance and including links to trigger and terminating events (as amended), to request further details of any planning trigger or terminating events in place over the land. In this case, the local planning authority and the Planning Inspectorate confirmed to the Registration Authority that there were no trigger or terminating events in place over the whole of the application land or any part of it, as follows:

1) 27th April 2016 – Wiltshire Council Spatial Planning:
"I confirm that no trigger or terminating event has occurred on the land"
In an e-mail dated 27th April 2016, the Senior Planning Officer confirms that the adopted Wiltshire Core Strategy (January 2015) and the emerging Royal Wootton Bassett Neighbourhood Development Plan had been considered in confirming that no planning trigger or terminating events had occurred.

2) 10th May 2016 – Planning Inspectorate:
"I confirm that no trigger or terminating event has occurred on the land."

3) 15th June 2016 – Wiltshire Council Development Control:
"I can confirm that the following applications have been submitted on the land in question:
Application N/02/02965/FUL – Erection of 1 dwelling – Application withdrawn
Application N/03/00817/FUL – Two storey detached dwelling – Refused planning permission by the Council and dismissed at appeal
Application 14/12039/FUL – Detached Dwelling – Refused planning permission by the Council on 01/07/2015. The application was appealed and dismissed at appeal.
If my understanding is correct the submissions were both Trigger Events and Terminating Events."

10.5. The Council as the Registration Authority must rely upon the information provided by the planning authorities in relation to planning trigger and terminating events in place over the application land.

11. Validity of application

11.1. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 at parts 3 and 10, set out the requirements of a valid application. Regulation 5 (4) states that 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 without first giving the applicant a reasonable opportunity of putting their application in order. In this case, upon examination of the application, it was found to be incomplete in 3 areas:

1) Although not included as part of the regulations, the statutory declaration attached to the application Form 44, states:

   "REMINDER TO OFFICER TAKING DECLARATION:
   Please initial all alterations and mark any map as an exhibit".

   It was noted that whilst the applicant Mr Richard Gosnell had signed the maps included as Exhibits A and B, the notary had not.

2) The map of the relevant "neighbourhood within a locality" had no scale attached. The required scale of all maps is not less than 1:2,500 as per regulation 10(3)(a).

3) The regulations require that all maps are Ordnance maps, the applicant was therefore requested to confirm the source of Exhibit A as an Ordnance map. Unfortunately, the applicant was unable to confirm the source of Exhibit A as an Ordnance map and therefore Exhibit B was substituted for Exhibit A in the amended application, as it was at an acceptable scale and its source as an Ordnance map could be confirmed.

11.2. The Registration Authority returned Form 44; the Statutory Declaration and map Exhibits A and B, to the applicant on 25th July 2016 inviting the applicant to put their application in order. The application was returned to the Registration Authority on 15th September 2016 and found to be in order. Wiltshire Council as the Registration Authority is now placed under a duty to

process the application in a fair and reasonable manner, as set out in the case of R (on the application of Whitmey) v Commons Commissioners [2004] EWCA Civ 951, where it was held that:

"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 (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 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 offences 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…"

12. Public Consultation

12.1. Wiltshire Council served notice of the application upon the landowner, applicant and other interested parties on 30th September 2016. Notice was also posted on site and placed in the Wilts Gazette and Herald on Thursday 6th October 2016. The application, including the supporting evidence submitted, was placed on public deposit in Wiltshire Council offices and at the offices of Royal Wootton Bassett Town Council. All parties were given 6

weeks to make representations or objections regarding the application, by Friday 18th November 2016

12.2. Following notice of the application, one objection and 2 representations of support for the application were received. The consultation replies are summarised below, (please note that full copies of all correspondence are available to be viewed with the Rights of Way and Countryside Team, Ascot Court, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA):

12.3. **Letter of objection dated 18th November 2016 from Blake Morgan LLP, acting on behalf of their client Cooper Estates Ltd** (the landowners) and enclosing Opinion of Gregory Jones QC, also dated 18th November 2016. The Opinion is as follows (**Appendix 2**):

"1. I refer to the letter received from Wiltshire Council, notifying Cooper Estates that a Village Green claim has been made against land at Vowley View which is owned by Cooper Estates ("the site"). The letter is dated 30 September 2016. The letter was received on 3 October 2016. It relates to an application to register land as a village green. The covering letter and notice of application refers to a claim of use by local residents for sports and pastimes since 1975 and possibly since 1969 and last used in May 2015. The letter does not state when the application was made, nor explain the reason for the long delay notifying the owners of the land. However, the application itself is dated 30 March 2016 is date stamped by the registration authority as 12 April 2016.

2. I do note that [the] *application form has amendments dated 11 September 2016 and the plan accompanying the letter has also been modified and dated both 13 and 14 September 2016.*

3. I pause to observe that it is unsatisfactory that Wiltshire Council's letter does not state the date upon which it considers the application validly to have been made. The date of a valid application for a village green is highly relevant for a number of reasons.

4. Since 1 October 2013. S.14 of the Growth and Infrastructure Act 2013 amended s.15(3) of the Commons Act 2006 so that an application for a village green had to be validly made one year after the last date the land was used for recognised sports and pastimes. In this case, no specified date is given as the end date in May 2015 and the letter and notice does not record when the application was validly made and whether that is only when the application was amended in September 2016. Thus, the application may well be out of time for this reason alone.

5. However, the exact date of the application is largely of academic importance in this particular case for the reasons set out below.

Trigger Events

6. One of the fundamental changes made by the Growth and Infrastructure Act 2013 to the Commons Act 2006 was to exclude the right for anyone to apply for registration of land in certain specified circumstances.

7. Section 16, which came into force on 25 April 2013, inserted section 15C and Schedule 1A into the 2006 Act to exclude the right to apply for registration of land under section 15 when a "trigger event" has occurred in relation to that land. Such trigger events all relate to events within the planning system. When such a trigger event has occurred, then unless and until a corresponding "terminating event" has occurred in relation to the land, a commons registration authority cannot accept any application to register that land as a town or village green and is bound to refuse to consider it.

8. The full list of 14 trigger events is set out in the first column in schedule 1A. They include:-
a. the publication for consultation in accordance with regulations by the local planning authority of a draft local plan or neighbourhood plan proposal which identifies the land for potential development; and
b. the adoption or making by the local planning authority of a local plan or neighbourhood plan which "identifies the land for potential development".

9. For each trigger event, there are a number of corresponding terminating events, specified in the second column of schedule 1A. Where the right to apply for registration has been excluded because a trigger event has occurred, if and when one of the corresponding terminating events occurs, the right to apply again becomes exercisable. The right to apply to register a new green is not lost for all time by such provisions. Hence, for example, the corresponding terminating events in relation to inclusion of the land for potential development in a draft plan, terminating events include the withdrawal of the plan, the adoption of the plan (but that triggers a new trigger event if the land is identified for development in the adopted plan), and the expiry of a two year period beginning with the day on which the document is first published for consultation.

10. In the present case, the site in question is subject to the adopted Wiltshire Core Strategy ("CS"). The CS was adopted in January 2015. Policy CP 1 of the CS provides:

"Core Policy 1

Settlement Strategy

The Settlement Strategy identifies the settlements where sustainable development will take place to improve the lives of all those who live and work in Wiltshire.

The area strategies in Chapter 5 list the specific settlements which fall within each category.

Principal Settlements

Wiltshire's Principal settlements are strategically important centres and the primary focus for development. This will safeguard and enhance their strategic roles as employment and service centres. They will provide significant levels of jobs and homes, together with supporting community facilities and infrastructure, meeting their economic potential in the most sustainable way to support better self containment. The Principal Settlements are: Chippenham, Trowbridge and Salisbury.

Market Towns

Outside the Principal Settlements, Market Towns are defined as settlements that have the ability to support sustainable patterns of living in Wiltshire through their current levels of facilities, services and employment opportunities. Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self containment and viable sustainable communities.

The Market Towns are: Amesbury, Bradford on Avon, Calne, Corsham, Devizes, Malmesbury, Marlborough, Melksham, Tidworth and Ludgershall, Warminster, Westbury, and Royal Wooton Bassett." [Underlining added]

CP2 states inter alia

"Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages." [Underlining added]

11. The current site is within the limits for development of Royal Wootton Bassett. Wiltshire Council having considered these policies has previously accepted that the "location of the site is therefore considered appropriate for development in principle…

Conclusion

12. It is clear from the wording of the policy that the site in question was identified as land for "potential development" before the application to register the site as a village green was made. The trigger event had thus been triggered before the application was made. Accordingly, the application is invalid and must be rejected."

12.4. **Letter of support from Mr Jonathan Bourne, Town Clerk on behalf of Royal Wootton Bassett Town Council, dated 14th November 2016**, enclosing copy letter to Councillor Chris Hurst and the Planning Committee resolution, confirming the Town Council's position (**Appendix 3**):

"…Residents from Highfold and Vowley View first approached the Town Council's Planning Committee about this piece of land at a meeting held on Thursday 29th January 2015, at which Members suggested that a village green application may be worthwhile investigating.

Wiltshire Councillor Chris Hurst attended a meeting of the Town Council Planning Committee on 7th January 2016 to inform Members that residents of Vowley View and Highfold intended to pursue an application for village green status. At this meeting, the Planning Committee resolved to support any forthcoming application and wrote to Councillor Chris Hurst to this effect once the application process formally commenced in April 2016. Copies of this letter together with the Planning Committee's resolution of support are enclosed for information.

The Town Council fully supports the residents in their application to secure village green status for the land identified in line with the Planning Committee resolution of Thursday 7th January 2016…"

12.5. **Representations of support from Councillor Chris Hurst: e-mail dated 5th October 2016 and subsequent letter of support dated 13th November 2016 (Appendix 4):**

E-mail dated 5th October 2016:
"I remain very supportive of the application and will likely write a few paragraphs in support of the application in the next few weeks…"

Letter dated 13th November 2016:

"One of Wiltshire Council's stated aims is to build strong and resilient communities. This can be done in many ways. But clearly one-way is to defend and protect our open spaces where possible.

Royal Wootton Bassett has seen very significant housing development in recent years. Whilst it is understandable that places change in character over time, the effect of such rapid change and urbanization has meant the loss of green spaces. It

is therefore crucial that we, as a Council, continue to protect what spaces we can, for the enjoyment of the Royal Wootton Bassett community. The application to formally make the green at Vowley View a community space is an excellent opportunity to do just that.

In my time as a Unitary Councillor I have had the great privilege to represent the community who live at Vowley View. I have seen the community spirit of the residents and the care and attention they take in looking after their street.

I have also seen the community use the green for social events and gatherings. On one such occasion I happened to be walking along Vowley View and the majority of resident's were out on the green enjoying a community get-together. I was struck then, how important this space is and what a vital community asset this green space is and has been for many decades.

By recognizing this open space as a town/village green, it would ensure that the green will continue to be enjoyed by the residents of Vowley View and the generations to come; a lasting legacy Wiltshire Council can be proud of."

12.6. As part of the statutory procedure (Regulation 6(3) and (4)), any objections received, must be forwarded to the applicant allowing reasonable opportunity for dealing with matters raised. Therefore on 22nd November 2016, the applicant was forwarded all of the above-mentioned correspondence, as received within the formal objection period.

12.7. Officers allowed the applicant a reasonable opportunity to respond to the objections with comments to be received, in writing, not later than 5:00 pm on Thursday 22nd December 2016. Comments on the objections were received from Mr Richard Gosnell, the applicant on 9th December 2016, as follows (**Appendix 5**):

"I refer to the Opinion document written by Gregory Jones, Q.C., acting for Cooper Estate, using his paragraph numbering.

1. "When the Application is made…" is the date it was submitted, 12 April 2016. The regulations state that the date of reception of the acceptable Application is the only relevant date even if later revisions are needed. It inevitably took time after that date to address the issues on the documents which needed rectifying.

"Long delay in notifying the owners…" There is no obligation to provide what would amount to a running commentary on the Application's evolution between April and October 2016. If the Application had been unsuccessful I would have been informed and there would have been no need for Cooper Estates to be informed of anything.

2. "The spread of dated documents between 11th and 14th September…" is due partly to my withdrawal of one or two maps originally submitted, and procuring new J.P signatures on the front and back of the renamed remaining map. Obviously the date of the simultaneous availability of the J.P. and myself for signing causes delay. The withdrawn map was issued with the Evidence Questionnaires, where there is no stipulation as to a map's provenance, and the map was used by all respondents to indicate the items required in the Questionnaire.

3. "Date of Application validity…" Presumably this is 6th October as shown on the Notice of Application, Form 45.

4. "Date the land was last used…" I took the date on which the gate became locked as being the date on which the owner indicated that residents' access was not intended. I am not aware of the exact date on which the gate became locked. I took May 2015 as being the start of the 12 month period within which the Application had to be made, so I ensured that it was submitted no later than April 2016. On my entry for section 7 of Form 44, 5th para down, I said use had voluntarily stopped during summer 2015. I should add that that was true at the date of the Application (April 2016) but since then mowing and a BBQ occurred in summer 2016. A resident was told, around September 2016, by Cooper Estates representative "Thank you for keeping it tidy for us". This suggests they knew about our use, and did not think we were trespassing even though access would have to be via broken fence places.

6-9. "Trigger/Terminating Events". The Registering Authority made due checks and ascertained that there were no events hindering the Application under this heading.

10-11. "Core Strategy". It is arguable that the Core Strategy referred to does not apply to existing developments, rather being aimed at new green field sites adjacent to the types of settlement referred to in 10-11. The site in question is an amenity forming part and parcel of a long-standing residential estate, therefore I suggest it is not a target for development under the Core Strategy provisions.

Other points.
The Open Spaces and Rights of Way legislation with the "20-year unhindered use as of right" at their heart, have a long history within English law. I suggest none of it is unpicked, reduced, modified or annulled by Core Strategy legislation."

12.8. The applicant's comments were then forwarded to the objectors for further response, which was received on 2nd March 2017 (**Appendix 6**):

E-mail from Blake Morgan LLP – 2 March 2017:

"As a matter of fact, the trigger events have occurred before the making of the application and that matter is not in any dispute. Section 15C(1) of the Commons Act 2006 excludes the right to apply when a trigger event has occurred within the planning system in relation to that land. I would also refer you to the Guidance to Commons Registration Authorities in England and Sections 15A to 15C of the Commons Act 2006 published by the Department for Environment Food and Rural Affairs in December 2016. Paragraph 60 confirms that at any time when the right to apply is excluded in respect of land, a commons registration authority cannot accept any application to register that land as a green. This rule applies whether or not the trigger event occurred prior to the commencement of Section 15C (para 67).
As a result, the Council must now reject the application…"

Further Opinion from Gregory Jones QC dated 27th February 2017:

"1. I have read the consultation responses from Mr Richard Gosnell, dated 9 December 2016, Royal Wootton Bassett Town Council 14 November, 2016; and Cllr Chris Hurst, 5 October, 2016.

2. It is only Richard Gosnell's letter which purports to deal with elements contained to my Opinion. The key issue is whether a trigger event occurred before the submission of the application to register a village green. Nothing in Mr Gosnell's letter seriously challenges anything in my Opinion. I do not know whether the Council purported to check whether any trigger events had occurred. It does not matter whether or not it did. The key question is whether a trigger event has in fact occurred prior to the application having been made. For the reasons set out in my opinion the trigger events have occurred before the making of the application.

3. Mr Gosnell states that it is "arguable that the Core Strategy referred to [in my Opinion] does not apply to existing developments, rather than being aimed at new green field sites adjacent to the types of settlement referred to in 10-11 [of my Opinion]. The site in question is an amenity formation part and parcel of a long-existing residential estate, therefore I suggest it is not a target for development under the core strategy provision."

4. I do not accept that the site is part of an existing residential estate. However the question is irrelevant. The key question as I identified is whether the local plan "identifies the land for <u>potential</u> development." [Underlining added]. Consistent with paragraphs 154 and 157 bullet point 7 of the NPPF, CP" states inter alia "<u>Within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development</u> at the Principal Settlements, <u>Market Towns</u>, Local Service Centres and Large Villages." [Underlining added]

5. The site is within the limits of development in the policy as defined and indeed goes even further than simply identifying a "potential" site for development but carries within it a presumption in favour of development of the site for sustainable development."

12.9. These comments would only need to be returned to the applicant again for further comment, where further clarification is required and it has been concluded that the documents already submitted, provide sufficient evidence to enable the authority to determine the application.

12.10. Unlike rights of way claims, Wiltshire Council as the Registration Authority in this case, has no investigative powers and now relies upon the following evidence it has received in its determination of this application:

1) Application to register land as a town or village green from Mr R.P. Gosnell, date stamped by the Registration Authority on 12th April 2016, validly made on 15th September 2016.

2) 27 completed user evidence forms, with maps, submitted with the application (summary of evidence included at **Appendix 1**).

3) Objections from Blake Morgan LLP dated 18th November 2016 (including Opinion of Gregory Jones QC dated 18th November 2016), on behalf of the landowners Cooper Estates Ltd (**Appendix 2**).

4) Representation of support from Royal Wootton Bassett Town Council, dated 14th November 2016, enclosing letter of support for the application to register the land as a Town/Village Green dated 1st April 2016 from Royal Wootton Bassett Town Council to Councillor Chris Hurst, Wiltshire Councillor for Royal Wootton Bassett South and Minutes of the Royal Wootton Bassett Town Council Planning Committee meeting dated 29th January 2015 (**Appendix 3**).

5) Representations of support from Councillor Chris Hurst, Councillor for Royal Wootton Bassett South, dated 5th October 2016 and 13th November 2016 (**Appendix 4**).

6) Further comments on the objections from Mr R.P Gosnell, dated 9th December 2016 (**Appendix 5**).

7) Further comments from Blake Morgan LLP dated 2nd March 2017 (including Further Opinion of Gregory Jones QC dated 27th February 2017) on behalf of the landowners Cooper Estates Ltd (**Appendix 6**).

13. Main Considerations for the Council

13.1. Under Section 15(1) of the Commons Act 2006, it is possible (where the right to apply is not extinguished), to apply for land to be registered as a Town or Village Green where a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of 20 years or more and in this particular case, under Section 15(3) of the Act, where use of the land has ceased not more than one year prior to the application date.

13.2. The applicant has submitted evidence that the application land was left when the houses in Vowley View and Highfold were built in around 1969. He provides evidence that when he moved to Wootton Bassett in 1975, the area was being mowed by North Wiltshire District Council and assumed that the plot was Council owned and maintained. The Council even temporarily stored building materials there for a few weeks in the 1980's or 1990's whilst working nearby. Mr Gosnell enquired about purchasing the land in 2002, only to discover that the land was in the ownership of Cooper Estates Ltd. A letter to Mr Gosnell from North Wiltshire District Council, dated 14th August 2002, states that the Council intended this plot to be amenity land and they would be contacting the landowners to ask them to formally transfer the title of the land to the Council, however it would appear that this either did not take place, or was unsuccessful.

13.3. There have been 4 planning applications on the land in question, as follows:

(i) December 2002 – Planning Application no. N/02/02965/FUL for erection of 1 no. dwelling – application withdrawn.

(ii) March 2003 – Planning Application no. N/03/00817/FUL for erection of 2 storey detached dwelling and garage – refused, dismissed at appeal (no documents available – information provided by Development Control, Wiltshire Council).

(iii) January 2015 – Planning Application no. 14/12039/FUL for erection of dwelling with internal garage – refused on the grounds that its proximity to the neighbouring property in Brinders Close, would have an overbearing impact on the amenity of the neighbouring property. Appeal dismissed.

(iv) October 2016 – Planning Application no. 16/10012/FUL for erection of 3 bed dwelling – refused on the grounds that its proximity to the neighbouring property in Brinders Close, would have an overbearing impact on the amenity of the neighbouring property. (This application was received by Wiltshire Council as the Planning Authority, after the submission of the Town/Village Green application on 12th April 2016).

13.4. In 2006, a picket fence appears to have been erected around the northern and western boundaries of the site (against Vowley View and Highfold), with an unlocked gate in the northern boundary fence. The landowners have made no comments regarding why a fence was erected and in evidence Mr David Pope states: "*A picket fence was erected in 2006 or 2007, but there was never any suggestion that this was other than to denote ownership of the land, as an unbolted and unlocked gate was provided, with a latch and a handle on both sides of the gate."* Mowing by the Council continued from 2002 (when the true landowner was identified) – 2006, but ceased when the fencing and gate prevented access with the Council mower. From 2006 onwards the applicant and other

residents mowed the land about 3 times per year (summer) and maintained the bushes etc. In 2010 – 11 an attempt was made by the residents to grow vegetables and flowers on the southern tip of the land and c.2012 daffodils and shrubs were planted on the land. Residents also repaired the fence. There are two benches present on the land which evidence suggests were put in by local residents about 20 years ago. Mrs Laurette Pope confirms in evidence that she has observed neighbours *"sitting and talking on the benches that those in the road put on The Green. The benches are still there today locked in and unable to be used."* In May 2015 the gate was padlocked.

13.5. The legal tests set out under Sections 15(1) and (3) of the Commons Act 2006 can be broken down into a number of components, each of which must be satisfied in order for the application to succeed. The burden of proving that each of the statutory qualifying requirements are met, lies with the applicant and there is no duty placed upon the Registration Authority to further investigate the claim. The standard of proof is the balance of probabilities.

Significant number of inhabitants

13.6. The meaning of the word "significant" has never been defined, but was considered at the High Court in R (McAlpine) v Staffordshire County Council (2002). It was held that this did not mean a considerable or substantial number, as a small locality or neighbourhood may only have a very small population, but that the number of people using the land must be sufficient to show that the land was in general use, by the local community, for informal recreation, rather than just occasional use by individuals as trespassers.

13.7. The requirement is that the users include a significant number of inhabitants of the claimed locality or neighbourhood in order to establish a clear link between the locality or neighbourhood and the proposed green, even if these inhabitants do not comprise most of the users. In this case the Council has received 27 completed witness evidence questionnaires from individuals who

claim to have used the land. 17 of the witnesses are currently residents of Vowley View and Highfold, 10 being former residents of Vowley View and Highfold, which represents a significant number of residents of Vowley View and Highfold.

13.8. As well as their own use of the land, all but one of the witnesses refer to others using the land:

Witness	Use of the land by family	Others seen using the land
1	2 sons and husband – social; meeting friends; playing as children	Yes, daily – social activities; wild fruit picking; children playing; grass cutting
2	All 4 members of family – BBQ's and sports acivities	Yes, weekly – sports activities
3	Daughters and partner – Party BBQs, photography	Yes, daily – community events
4	All members of family (Mother/Father/Brother/Sister/ Grandaughter) – Play and parties	Yes – Children playing and communal gatherings
5	My parents – Adult garden parties	Yes
6	Mother, father, brother, sister – playing and street events	Yes, most days – children playing and community events
7	Parents and children – Leisure activities, national events	Yes, frequently – playing / nature
8	All our family - recreational	Yes, weekly – football
9	All family - recreational	Yes, weekly – playing football, tree climbing
10	Family, grandchildren – meetings; get togethers; BBQ's	Yes, frequently – meetings
11	Family, grandchildren, friends	Gardening – vegetables, grass cutting
12	Mother, father, brothers and their children – Social event	Yes, warmer weather – social event
13	Husband – gardening, maintenance, blackberrying, veg patch	Yes, all the time until 5/15 – chatting
14	Wife – BBQ's, gardening, trimming bushes	Yes, 3-4 times per year – BBQ's, helping with maintenance and repairs

15	Mum, dad and sister – social events, national celebrations, meeting point, grass cutting	Yes, frequently – golf, cricket, football, tree climbing, dog walking
16	All of us – football, BBQ with residents, blackberry picking	Yes, weekly – same activities as me
17	Parents and children – Games, BBQ's and picnics, social activities	Yes, as required – recreation
18	Whole family (4 people) – social events and pleasure	Yes, daily – games and walking, leisure
19	Dad, mum, sister – national celebrations, social events, meeting friends, grass cutting.	Yes, frequently – Climbing tree, football, walking dogs, childrens parties
20	Husband and two daughters – Children played and met friends there, social activities	Yes, weather permitting daily – dog walkers, blackberrying and sloe picking, football, cricket, tea parties
21	My wife and 2 daughters – Social activities and child meeting area and play	Yes, daily weather permitting – Country walking, dog walkers, blackberry picking, limited sporting activities
22	Wife and children since 1980 – childrens games on a safe grassed area, picnic and BBQ's	Yes, children playing daily – football, cricket, tree climbing, children's games
23	Myself, husband and 3 children – playing, BBQ's, picnics	Yes, daily – football practice, cricket practice, putting, maintenance, gardening, playing, talking, sitting on benches. Moved to 13 Vowley View in Sept 1980, there were a number of children living in the street at that time and I would often see them kicking a football, sitting chatting or playing with friends on the green. I didn't know their names then but later learnt they were the Causleys from no.14; the Withams from no.16, the Princes from no.18 and the Batterhams from 1 Highfold.
24	Parents, sisters – sports, games, street parties, BBQ's	Yes, daily – Sports, street parties, BBQ's

25	The whole family, 2 adults, 2 children – Games and social events	Yes, daily - childrens games
26	No	No information given
27	Parents and sister – play and street parties	Yes, weekly – Play or parties

13.9. Mrs Pope, (witness no.23 above), provides further evidence that generations of children from Vowley View and Highfold have used the land: *"…many children have used The Green to play on. As each group became older a new one arrived to take their place. After the original group that I used to see when we first moved into the road, came the Hirsts (2 Highfold), the Hooper-Smiths (no 10 Vowley View – the previous owner to us. We moved 3 doors down to No.10 in 1985) and the Thornhills from No.18.*

After that our children were old enough to play there along with the Coles (No.14) and the Palmers (No.8). Together with friends from Branscombe Drive they formed the 'Vowley Venturers' and used to play regularly on the green during the evenings, weekends and school holidays. They have been followed by various other children up to and including the children who now live in numbers 1, 2, 5, 16 and 17 until the gate was locked last year."

13.10. Additionally the witnesses refer to community activities taking place on the land. These are listed within the application form, at part 7, by Mr R Gosnell:

"BBQ dates from my old diaries. Not exhaustive.
2003 Sept 13 1700 hrs onwards
2006 July 16 1300 hrs onwards
2007 July 15 1300hrs onwards
2008 20 July
2009 July 19 1400 hrs onwards
2010 July 11 1400 hrs onwards
2011 July 2 1400 hrs onwards
2015 Aug 16"

13.11. Mr Gosnell confirms that access to the land for the 2015 BBQ, was gained via gaps in the fence, as a result of no maintenance of the fence being undertaken by the landowners: *"The owner in 2006 placed a wicket fence along the Green's roadside edge and an unlocked gate in the fence…This fence periodically broke over the years, due to high winds, and was repaired by residents with bits of wire etc…The owner has never to my knowledge done any repairs or other maintenance throughout the period under review…Entry to the Green for the 2015 BBQ and 1 or 2 mows, after the locking, was via the gaps in the fence mentioned above and through missing wooden slats which had broken off over the years."*

13.12. The witnesses also refer to community events taking place on the land on a regular basis:

Witness	**Community Events**	**Frequency**
1	Celebration events, BBQ	43 years (photographs included)
2	No	No information given
3	BBQ's, parties, meetings, fireworks (5th November)	1970's and 1980's
4	Queens Jubilee parties, BBQ's	Since 1980's
5	Residents have been tending this piece of land and growing vegetables. Parties, fetes etc.	No information given (years of user 1969/70 – 2010) Since fence it was hard to hold parties and BBQ's
6	BBQ's, picnics, celebrations (e.g. Royal Wedding)	Since early 1980's (when I was a child), until last year
7	Gardening, play, BBQ's (annually), national events	About 30 years before May 2015 (photographs included)
8	Street BBQ	4-5 years (annually)
9	Street BBQ	4-5 years (annually)
10	BBQ's etc, (music, meetings)	34+ years (yearly, monthly as required)
11	Family gathering	30+ years
12	Children playing (warmer weather), BBQ's (annually), Royal weddings, jubilees	40 years
13	BBQ's, street parties, Royal Jubilees	Since 1977 – 1977, 1982, 2003, 2006,

		2007, 2008, 2009, 2010, 2011, 2012, 2015 (photographs included)
14	BBQ's and Street parties	1977 – 2015 (mainly annually), (photographs included)
15	BBQ's, national celebrations	Certainly annually since left by previous developer as green space. Used for this purpose since my birth in 1975 so assume before this also. (photographs included)
16	BBQ (at least annually), Queens Golden Jubilee	30+ years
17	National holidays etc, social gatherings, picnic, BBQ's, maintenance of area	Since 1984 (32 years), as required, annually and maintenance of land (photographs included)
18	Royal National Celebrations, BBQ's, grass cutting	Since 1984, 35 years (annually / regularly / monthly (photographs included)
19	National celebrations, BBQ	Since land left as a green space by previous developer (annually sometimes more frequently). Land used for this purpose since I was born in 1980 and before that. (photographs included)
20	Celebration BBQ, children playing, grass cutting	35 years (annually and when required) (photographs included)
21	Celebration BBQ or similar, Childrens Leisure activities, grass cutting	35 years approx. (annually and when required) (photographs included)
22	Picnics and BBQ's	At least since 1980, when I moved to Vowley View (annual summer BBQ) (photographs included)
23	BBQ's and picnics	Since at least 1981 to my knowledge, 35 years (annually). 1981 BBQ was for the wedding of Prince Charles and Princess Diana and was such a success that we continued to meet each year. (photographs included)

24	Street Parties, BBQ's	Since I can remember, every few years
25	National celebrations, Royal Weddings / Anniversaries	Since mid 1970's (annual community BBQ) (photographs included)
26	Parties, BBQ's, Childrens play area	Since 1985 (annually, but children played daily – weekly).
27	Street parties, often Royal celebrations (Royal jubilees, Royal weddings)	Over 30 years (photographs included).

13.13. Many of the witnesses have included photographs of the local community attending the events, such as BBQ's on the land (the photographs are considered further at paragraphs 13.48.and 13.49 of this report). From the photographs the land is identifiable as the application land and the events appear to be very well attended, adding evidence to support use of the land by a significant number of inhabitants of the locality or neighbourhood within a locality.

13.14. This evidence is also supported by Cllr Chris Hurst who states (please see **Appendix 4**):

"…On one such occasion I happened to be walking along Vowley View and the majority of resident's were out on the green enjoying a community get together…"

13.15. Officers consider that given the size of the locality or neighbourhood identified as Vowley View and Highfold, 21 households over an area of approximately 1.06 hectares, the number of witnesses and their evidence of use with family members; others seen using the land and use by generations of children for lawful sports and pastimes, including photographs, are sufficient to suggest general use by the local community for informal recreation, rather than just occasional use by individuals as trespassers.

13.16. The objectors do not challenge the evidence regarding use of the land by a significant number of inhabitants of the locality or neighbourhood within a locality.

Of any locality or of any neighbourhood within a locality

13.17. A town or village green is subject to the rights of local inhabitants to enjoy general recreational activities over it. The "locality" or "neighbourhood within a locality" is the identified area inhabited by the people on whose evidence the application relies, (although it is acknowledged that there is no requirement for most of the recreational users to inhabit the chosen "locality" or "neighbourhood within a locality", as long as a "significant number" do, other users may come from other localities and/or neighbourhoods), however, it is the people living within the identified locality or neighbourhood who will have legal rights of recreation over the land if the application is successful.

13.18. The definition of "locality" and "neighbourhood within a locality" were reiterated in the recent case of Paddico (267) Ltd. v Kirklees Metropolitan Council (2011) as follows: a "locality" being an administrative district or an area with legally significant boundaries, such as a borough or parish, whilst a "neighbourhood" does not need to be an area known to law, but must be a cohesive area which is capable of meaningful description, such as a housing estate. So, for example, a housing estate can be a neighbourhood, but not just a line drawn around the addresses of the people who have used the claimed green.

13.19. In the Royal Wootton Bassett case, the applicant has identified Vowley View and Highfold, as the relevant "neighbourhood within a locality" as identified on Exhibit A included with the Application Form 44 and Statutory Declaration. Although no locality is expressly identified within the application form at part 6, there is no requirement for the applicant to do so where the applicant may *"…show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or attaching a map on which the area is clearly marked."* The applicant does not need to do both and Exhibit A clearly shows the neighbourhood within the

locality, as outlined in red. Officers consider the locality to be Royal Wootton Bassett.

13.20. Although there is no known Housing Association for Vowley View and Highfold, the area pre-dates the recent development of Brynard's Hill to the east of Vowley View. In the Trap Grounds case Lord Hoffman pointed out the "deliberate imprecision" of the expression neighbourhood within a locality *"…and that contrasts with the insistence of the old law upon a locality defined by legally significant boundaries."*

13.21. This identified neighbourhood is supported by the witnesses. 24 of the 27 witnesses consider themselves to be local inhabitants in respect of the land (one of these states *"previously yes"*, Mrs Laurette Churchill, (formerly of 10 and 13 Vowley View), having moved away from the area in 2010, using the land from 1980 – 2010). Only 2 users do not consider themselves to be local inhabitants – Mrs Pamela Batterham confirms that she moved away from No.1 Highfold in 2008 and Mr M J Engley answers this question in the negative, although the address given in his witness evidence form, is Vowley View. Mr Ian Dowse gives no reply to this question although he does confirm that the land is opposite his house and his address is Highfold.

13.22. All witnesses now reside at Vowley View or Highfold, or have previously lived there. In his own evidence Mr Nigel Brewer confirms that whilst using the land, he lived at Rowan Drive 1978-1985; Vowley View 1985-1987 and Sheridan Drive 1987-2010, all in Royal Wootton Bassett, and whilst he still visits his mother regularly, he states that his own use ended in 2010, where he now resides in Malmesbury, (he is still aware of the land). Mrs Joan Roe lived in Vowley View 1971-1977 and then from 1979 to the present day at Longleaze, which is about half a mile away, but still uses the land. Mrs Maxwell-Lindsley confirms that she lived at 8 Vowley View until 2006 and moved away to Swindon, with use continuing after that date when visiting her parents. Emma Hoekman, (also formerly of 8 Vowley View), moved away in

2000, but still uses the land to the present day when visiting family. Mrs Charman moved away and ceased using the land in 2010, having lived opposite the land, but now visits her mother 3 times a week and is aware of the land. Mrs Sally Thornhill, (formerly of 19 Vowley View), now lives at Middle Ground in Wootton Bassett and used the land until 1999, she is still aware of the land. Mr Mike Brewer, (formerly of 11 Vowely View), now lives in High Street, Royal Wootton Bassett, last using the land in 1995.

13.23. Witnesses are also asked if the neighbourhood or locality has an identifiable name: 14 witnesses agree that the area is known as “Vowley View”; 5 witnesses agree that it is known as “The Green” plus one variation on this as “Vowley View Green”. Mr Richard Pope considers that *“Its part of the Noremarsh Estate”*. 3 witnesses have given no reply to this question and 3 witnesses have replied that there is no identifiable name for the locality or neighbourhood. Where Vowley View is identified as the neighbourhood, Highfold forms only 2 houses, surrounded by properties in Vowley View.

13.24. Witnesses are also asked where people using the land come from, with varying replies:

Immediate locality; Vowley View and Highfold; Vowley View and surrounding area; Vowley View and surrounding roads; Vowley View residents; Vowley View, Highfold and Neighbouring streets; Local residents; Residents and visiting families/friends; Vowley View, Highfold, Others unknown; Neighbourhood and walkers; Locally to Vowley View, Highfold, Sherfields, ex residents invited; Vowley View and rest of estate; Vowley View, Highfold, Sherfields and locality; Neighbourhood local community; Neighbourhood; Neighbourhood/locality; Vowley View, Highfold and some surrounding streets; Mainly from the street, but also some neighbouring streets; Local neighbourhood; They live in the residential area close to the land; Mostly

Vowley View residents and surrounding streets; Residents of Vowley View and other nearby streets. One witness confirms that this is *"Not Applicable"*.

13.25. Two of the witnesses, when asked to list the activities they have undertaken on the land and the purpose for which they have gone onto the land, state that the community events have fostered good neighbourhood relations and many of the witnesses refer to the "Street BBQ" and "Street parties".

13.26. The Noremarsh Estate which Mr Richard Pope refers to, appears to be a reference to "Noremarsh" which is a historical settlement area within the parish of Wootton Bassett, originating as settlement around the common of Nore Marsh. Nore Marsh Common along with others in the south part of the parish survived long after the parish was enclosed, until 1821 when the commons were enclosed by an Act of Parliament. Where rights in them were so small, no allotments were made and the land was added to adjoining farms. The existing farm house was surrounded by the 1967 housing development on the south side of the town, (Victoria County History, Volume 9).

13.27. "Noremarsh" is a suburb of Royal Wootton Bassett with a Manor House and junior school (Noremarsh Junior School). Officers consider that Vowley View and Highfold form part of the Noremarsh Estate, but the neighbourhood within a locality indentified in this application, does not extend that far and appears to be limited to Vowley View and Highfold, as evidenced by witnesses.

13.28. Within the evidence forms, a number of witnesses include on the map the extent of the neighbourhood which they consider to form the application neighbourhood. The witnesses are not required to record the locality/neighbourhood on the map attached to the witness evidence form, however, 20 witness do outline the area: 6 outline the neighbourhood as per the application, i.e. Vowley View and Highfold only; 11 record Vowley View,

Highfold and properties 5-8 Sherfields; 3 record Vowley View, Highfold and 5 Sherfields.

13.29. Cllr Chris Hurst, in his letter of support for the application dated 13th November 2016 states (please see **Appendix 4**):

"In my time as Unitary Councillor I have had the great privilege to represent the community who live at Vowley View. I have seen the community spirit of the residents and the care and attention they take in looking after their street." (Underlining added).

13.30. The witness evidence supports the neighbourhood of Vowley View and Highfold (Highfold forming only 2 houses surrounded by houses in Vowley View), within the locality of Royal Wootton Bassett, where a housing estate can meet the criteria of "Neighbourhood within a locality". There appear to be others coming from outside this identified neighbourhood, i.e. from Sherfields and other neighbouring streets, but this is acceptable where a significant number of inhabitants come from the identified neighbourhood within a locality, (24 of the 27 witnesses consider themselves to be inhabitants of the neighbourhood within a locality, but all are residents or former residents of Vowley View and Highfold). Officers therefore consider that the applicant has successfully discharged the burden of proof with regard to identifying a "neighbourhood within a locality", as Vowley View and Highfold, Royal Wootton Bassett.

13.31. The objectors make no submissions regarding the identified locality or neighbourhood within a locality.

Have indulged as of right

13.32. Use "as of right" means use without force, without secrecy and without permission. In the Town/Village Green case of R v Oxfordshire County

Council Ex p Sunningwell Parish Council (2000), Lord Hoffman commented on use as of right:

"It became established that such user had to be, in the Latin phrase, nec vi, nec clam, nec precario: not by force, nor stealth, nor the licence of the owner…The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right – in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited time."

Permission

13.33. The witness evidence questionnaire asks users if they have ever been given permission to use the land, or requested permission to use the land during their period of use. The following responses are given:

User	Period of User	Permission
1	1971 – 2015	No
2	1979 – 2008	No
3	1969 – 1995	No
4	1969 – 2010	No
5	1970 - 2010	No permission needed as no one other than the residents looked after the land, no one to ask for permission as it had been left for the residents to look after it
6	1980 – 2010	No
7	1985 - May 2015	No
8	2002 – 2015	No
9	2002 – 2015	No
10	34+ years	No
11	1982 – 2016	No
12	1970's – 2015	No
13	1975 – 2016	No
14	1975 – 2015	No

15	Feb 1975 – 2000 and 2000 – present if visiting	No
16	Aug 1999 to present day	No
17	1980 – May 2015	No
18	1980 – May 2015	No
19	Dec 1980 – 2006 and 2006 – present if visiting	No
20	Dec 1982 – May 2015 when fenced and locked	No
21	Dec 1982 – May 2015 (yr of the locked fencing)	No
22	1980 – May 2015	No
23	Summer 1985 – May 2015	No
24	1980(ish) – 2015	No, I always believed it to be owned by the Council
25	1971 – 1977 frequently, 1979 – present returning to join friends for social occasions	No
26	1985 – 2015	No – Tacit permission by virtue of it having been an open, free area
27	1979 – 1999	No

13.34. None of the witnesses claim to have requested or been given permission during their relevant user periods. Mrs Charman states that there was no one to ask for permission as the land was looked after by the residents and it had been left to the residents to look after. Mr Richard Pope suggests that no permission was required as he considered that the land was owned by the Council.

13.35. The evidence suggests that there was a period of time within the relevant user period, where the North Wiltshire District Council were maintaining the land, from at least 1975, (likely to be 1967/1969 around the time the houses were built), up until 2006 when the fence was erected around the land and it was no longer accessible for the Council mower. In a letter to Mr Gosnell dated 14th August 2002, Peter Jeremiah, Solicitor for North Wiltshire District Council,

confirms that the land is in the registered ownership of Cooper Estates Ltd, but that it has been treated by the Council as amenity land for some considerable time and the Council had cut the grass and maintained the site. The Council wished the land to be retained in the public domain as an amenity for the neighbourhood and it was his intention to write to the registered landowner requesting that the land be transferred to the ownership of the Council. This process appears to have not been undertaken or failed and Mr Gosnell's evidence suggests that even where the Council were aware that the land was in private ownership in 2002, they continued to maintain the land until 2006 and then only ceased to do so because they were unable to access the land as a result of the fencing erected at that time. After that, the maintenance of the land was undertaken by residents.

13.36. In this case, there is no issue of implied permission being granted over the land where the District Council maintained the land only and were not the owners of the land. There is a private landowner, whom, the evidence suggests, did not grant permission to use the land.

Without force

13.37. None of the users claim to have used force to enter upon the land, for instance breaking locks or damaging fences to gain access and this is not challenged by the landowners. From the evidence before the Council it would appear that the application land was not fenced until 2006 and an unlocked gate was provided at this time. The gate was locked shut in May 2015, at which time the majority of witnesses ceased using the land. There is no evidence of gates and fences etc. on the land prior to 2006 and it follows that the public were not required to use force to enter the land, where it was open and freely accessible.

13.38. Use by force does not just mean by physical force, but also where use is deemed contentious, for example by erecting prohibitory notices or signs in relation to the use in question. In the Supreme Court Judgement R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents) (2010), Lord Rodger commented that:

"The opposite of "peaceable" user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is "vi" only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi."

13.39. The witnesses do not refer to any acts carried out by the landowners to make user contentious, i.e. the erection of notices prohibiting use of the land and the landowners produce no evidence that they did so.

Without Secrecy

13.40. Only two of the witnesses, Mr and Mrs Doyle, claim to have been seen by the landowner during their user period. When asked what the landowner said when they saw them, both reply *"N/A"*, which suggests that the landowners made no comment. Mrs Judith Gosnell confirms that when she and her husband moved to Vowley View in 1975, she soon realised that North Wiltshire District Council were maintaining this area of land, with routine grass cutting and occasional tidying up. This continued every year until about 2006 and until 2002 it was believed that the Council owned the land. Mr R Gosnell supports that the land was being mowed by Council staff 2 or 3 times per summer, from 1975. The landowners, Cooper Estates Ltd, provide no evidence that they were aware of the use, however, in evidence Mr David Pope states: *"Since the erection of the fence maintenance of the Green has been*

performed by residents, including cutting the grass each summer and repairing the fence when it blew down in high winds. This maintenance must have been obvious to the owners, as they did not perform any maintenance to the property themselves, and no objection to this has ever been raised."

13.41. In his letter dated 9th December 2016 (please see **Appendix 5**), Mr R Gosnell states*: "…A resident was told, around September 2016, by a Cooper Estates representative "Thank you for keeping it tidy for us". This suggests they knew of our use, and did not think we were trespassing even through access would have been via broken fence places."* Although this acknowledgment was made outside the relevant user period, in this case of May 1995 – May 2015, it suggests that the landowners were aware of past use of the land and the residents' activities to keep the land tidy prior to that date. When a fence was erected in 2006 the gate was not locked, which suggests that the landowners were aware of use of the land at that time, but did not take sufficient actions to prevent it. In evidence Mr David Pope states: "*A picket fence was erected in 2006 or 2007, but there was never any suggestion that this was other than to denote ownership of the land, as an unbolted and unlocked gate was provided, with a latch and a handle on both sides of the gate."* Mrs Laurette Pope provides photographic evidence of *"…our gatherings in 2010 and 2014 after the fencing had been erected, showing we were still able to use The Green by utilising the open gate."* She also states that *"…in some respects the fencing did us a favour – the Green became more private and it stopped dog walkers, on their way to the fields, from allowing their dogs to defecate on the grass, thus making it safer for children to play on it."*

13.42. In conclusion, Officers are satisfied that, based on the evidence before the Council, user of the land has been "as of right", on the balance of probabilities.

Have indulged in lawful sports and pastimes

13.43. Witnesses claim to have undertaken the following activities on the land:

Witness	Lawful sports and pastimes undertaken on the land	Seasonal activities
1	Normal recreation activities, social gatherings, picnics, BBQ's, collecting wild fruit	Grass cutting, childrens activities, social meeting. Mostly summers or special occasions, annually and when decided. 43 years
2	BBQ's for local residents, athletics by my son	Street BBQ August/June/July since 2003
3	BBQ's, parties, photography	Fireworks party in the past
4	Recreational, parties, play, general access/recreation	No
5	Parking my brothers jeep (1980), garden parties, fetes, played on the piece of land from 1969/70 – 1980 as a child. Parties, games, blackberry picking, social events for all the children in the road, planting vegetables	Parties and BBQ's but since the fence it was hard to hold them
6	To play as a child and for community events; BBQ's, picnics etc	BBQs, picnics Summer, at least annually since early 1980's
7	Neighbourhood gatherings and safe play area, picnics, BBQ's, play area	Before May 2015 – BBQ's and National events Mainly summer months Annual BBQ pre-May 2015 About 30 years
8	Recreational, playing football, BBQ	Street BBQ 4-5 years, annually
9	Recreational, playing with children, community get together for 'street BBQ'	'Street BBQ' 4-5 years, annually
10	Meetings, family BBQ's, music concerts,	BBQ's etc.

	residents meeting place	34+ years, yearly/monthly as required
11	Annual street BBQ gathering, music recitals	Family gathering 30+ years, regularly, dependent on climate
12	Social event, BBQ	BBQ's Summer, once a year, 40+ yrs
13	Celebrations, maintenance, tree planting and plants, BBQ's, picnics, street parties, garden maintenance	Blackberry, sloe picking Autumn every year
14	BBQ's, mowing, planting bushes and flowers, 2 trees, vegetables, trimming bushes talking to NWDC mower before 2005 One BBQ in 2015, 1-2 mowing sessions in 2015, none since	No
15	Playing as a child, meeting friends, street BBQ, picnics, street parties, blackberry picking	Social Road BBQ Summer annually, since my birth in 1975 so assume before this also
16	Blackberry and sloe picking, children used to play football and climb tree, annual Vowley BBQ	Annual BBQ Summer, annually, 30+ yrs
17	Communal activities, i.e. BBQ's and picnics with family, games etc. National celebrations i.e. Queens birthday etc	Picnics, BBQ's plus maintenance of area Summer time and spring, annually and maintenance of land, since 1984 (32 years)
18	Vowley View picnics and BBQ's, childrens games, Royal celebrations	BBQ, grass cutting In the summer annually and monthly for 35 years
19	Playing when I was a child, picnics, tea parties with friends, street BBQ, picking blackberries.	Road BBQ Summer, annually since I was born in 1980 and before that
20	Pre May 2015 annual BBQ, national events, grass cutting all making for good neighbourhood relations. Royal weddings, jubilees, social events, childrens parties, fireworks.	Children playing, BBQ, cutting grass Summer usually, annually but when needed, 35 years
21	Pre-May 2015 – foster good neighbourhood	BBQ events, childrens leisure

	relations by annual BBQ's, celebrate national events, nature activities, grass maintenance, social events, royal weddings, jubilees, general husbandry.	activities, grass cutting Mostly summer, annually and selectively, 35 yrs approx.
22	Neighbourhood BBQ's, picnics, celebration of royal events (weddings, jubilees) to cut the grass after fence erected and to mend the fence	Summer picnic/BBQ June – August, annually since before we moved here in 1980
23	For street BBQ's, to collect blackberries, to play with my children, to talk to neighbours, to plant shrubs, gardening, social events.	Street BBQ/picnic Summer (date depends on weather and/or peoples vacations), annually, 35 years
24	I played on the land daily as a child, especially during summer months, football, tag, hide and seek etc. The last time was a street BBQ afew years ago (prior to fence).	BBQ's, street parties Summer, every year or two as long as I can remember
25	For childrens games, the community BBQ and other celebrations, games, street parties.	BBQ July each year, annually for more than 30 years
26	Social and community gatherings, BBQ's, assist with general maintenance, celebratory parties	No
27	Regularly played as a child, street parties – royal wedding, street BBQ's, football, general play	No information given

13.44. Witness evidence suggests that these activities stopped when the gate was locked in May 2015. Mr R Gosnell refers to a BBQ held after that date and mowing of the land by residents on one or two occasions, where access to the land had been gained using gaps in the fence which had naturally appeared since its erection in 2006 and where the landowners had carried out no maintenance of the fence.

13.45. In order for the land to be successfully registered as a town or village green, it must be established that there is use of the land generally rather than use being concentrated on a linear route/s across the land, which could give rise to a claim for public rights of way rather than a town or village green. There are no recorded public rights of way over the land and in this case, there is a

distinct lack of evidence of use of the land for the purposes of walking or dog walking. More, the evidence suggests that inhabitants of the neighbourhood, have used all of the land for social events and gatherings and play, which is supported by the photographs of these events included by witnesses. Additionally activities such as blackberry picking and playing would have required users to stray off a linear route and use the land more widely.

13.46. In this case the witness evidence suggests that the land was used regularly as a social gathering point for many years. The witnesses refer to periods of 30 years plus. Cllr Chris Hurst supports this in his letter dated 13th November 2016 (please see **Appendix 4**):

"I have also seen the community use the green for social events and gatherings. On one such occasion I happened to be walking along Vowley View and the majority of resident's were out on the green enjoying a community get-together. I was struck then, how important this space is and what a vital community asset this green space is and has been for many decades."

13.47. This is also supported by the minutes of the Royal Wootton Bassett Planning Committee, 29th January 2015, in its consideration of Planning Application no. 14/12039/FUL, erection of new dwelling with integral garage on land opposite no's 8-10 Vowley View, Royal Wootton Bassett, as follows (please see **Appendix 3**):

"Subsection 6.59 (Wiltshire Core Strategy) *on the delivery of this objective* (to build resilient communities) *highlights the need to 'foster a sense of community belonging, social inclusion and self sufficiency'. This space has been able to provide all these benefits to the local community since the 1970's through informal leisure activities and use of the site for street parties and celebrations."*

13.48. The witnesses have provided photographic evidence of use of the land for community and social events, as follows:

Witness	Details of photographs provided
1	3 Photographs of at least 2 social gatherings on the land. The land can be identified from the houses in Vowley View. No dates are given, but two of the photographs show that user pre-dates the erection of the fence in 2006 and the development of the houses to the east of the application land. The horse-chestnut tree, felled in 2015, is present and mature (outplanted from a pot onto the green in 1983). Looking at the persons present at the event it is possible that the photographs may be dated 2005, when considered alongside dated photographs provided by witness 21. The final photograph provided shows the fencing erected in 2006 and the horse chestnut, dating the photograph between 2006 and May 2015, when the tree was felled, during the relevant user period of 1995 – 2015.
3	3 photographs of a jeep parked on the land. The land can be identified from the Vowley View houses. No dates are given but the photographs pre-date the development to the east of the application land.
7	2 photographs of social gatherings on the land, which may be identified by the houses in Highfold. No dates are given, but the horse chestnut tree is present (planted 1983, felled 2015). Looking at the persons present at the event it is possible that at least one of the photographs may be dated 2005, when considered alongside dated photographs provided by witness 21. This falls within the relevant user period.
13	4 photographs of “Vowley View BBQ – 20 July 2008”. The fence has now been erected and the land may be identified by the houses in Vowley View and Highfold.
14	4 photographs of “Green BBQ 2003-09-13”. The land is identified by the properties in Vowley View and Highfold and the “Highfold” street sign. 3 further photographs of another social event on the land are provided. Again the land can be identified by the houses in Vowley View and Highfold. There are no dates provided for these photographs, but no fence is present and the horse chestnut tree is visible and mature (planted as a sapling in 1983 and felled in May 2015). Looking at the persons present at the event it is possible that these photographs may be dated to 2004, when considered alongside dated photographs provided by witness 21.
15	3 photographs of at least 2 social events taking place on the land, which may be identified by the houses in Vowley View. There are no dates provided for the photographs, but two of them pre-date the development to the east of the application land and the horse chestnut is present and mature. There is no fence present and looking at the persons present at the event it is possible that the photographs may be dated to 2005, when considered alongside dated photographs provided by witness 21. The final photograph provided shows the fencing erected in 2006 and the horse

	chestnut, dating the photograph from 2006 - May 2015, when the tree was felled, within the relevant user period of 1995-2015.
17	3 photographs of social gatherings on the land, which may be identified by the houses in Vowley View. There are no dates provided, but the photographs pre-date the development to the east of the land and there is no perimeter fence. Looking at the persons present at the event, it is possible that at least one of the photographs may be dated 2005, when considered alongside dated photographs provided by witness 21.
18	5 photographs of at least two separate social events taking place on the land, which may be identified by the properties in Highfold. There are no dates given for the photographs, but they pre-date the development to the east of the application land and the horse chestnut tree is present and mature, there is no fencing around the land. Looking at the persons present at the event, it is possible that at least one of the photographs may be dated 2005, when considered alongside dated photographs provided by witness 21.
19	3 photographs provided of at least 2 social events taking place on the land, which may be identified by the houses in Vowley View. Two of the photographs do not show the fencing and may be dated between 1980 and 2006 (given the witnesses period of user from December 1980 – present day). The other photograph may be dated after 2006 where the fencing is present but it is not possible to ascertain whether or not the tree, which was felled in May 2015 is present, where Officers are aware that there was an additional BBQ on the land in 2016, outside the relevant user period of 1995-2015. It is claimed that after May 2015 and the locking of the gate, users accessed the land via gaps in the broken fence (where no maintenance of the fence had been carried out by the landowners) and gaps in the fence can clearly be seen.
20	As per 15.
21	4 photographs are provided of social events taking place on the land in 2004 and 2005. The land may be identified by the houses in Vowley View and Highfold. There is no fencing of the land and the horse chestnut tree is present.
22	Photographs are provided of 2 cattle grazing the land in 1997; Royal Wedding celebrations on 29th July 1981; social gathering in summer 1982 and a BBQ on the green on 16th July 2006, attended by “Residents from Vowley View and Highfold”. The land may be identified by the houses in Highfold and Vowley View, there is no fencing present and the horse chestnut tree is visible in the 2006 photographs.
23	The same photographs as above are provided for social gatherings in Summer 1981, 1982 and 2006. In addition 2 photographs are provided of a social gatherings on 11th

	July 2010 (with the fencing and the horse chestnut visible) and 2014? (after the erection of the fencing). However, Officers would query the date given for this photograph, where the horse chestnut tree is not visible and the new development to the east of the application land may be seen. This would suggest that this photograph is more likely to be taken after May 2015 when the tree was felled and is more likely to show the summer 2015 BBQ. The land may be identified by the horse chestnut tree (2010), the fencing and the houses in Highfold and Vowley View.
25	Photographs of at least 2 separate community events taking place on the land which may be identified by the properties in Vowley View and Highfold. In two of the photographs there is no fencing of the land, the horse chestnut is present and the development to the east of the application land is not yet commenced. Looking at the persons present at the event, it is possible that the photographs may be dated to 2005, when considered alongside dated photographs provided by witness 21. The final photograph is dated post 2006, where the fence is present and pre-May 2015, when the horse chestnut tree was felled.
27	4 photographs provided of a social event taking place in 1982. The land may be identified by the houses in Highfold and Vowley View.

13.49. The photographs do provide evidence of use for the purposes of community events and social gatherings, within the relevant user evidence period of 1995-2015. There is also photographic evidence of use for these purposes outside the user period in question, the earliest dating from 1982, which suggests a long history of use of the land for these purposes.

13.50. The witnesses refer to their maintenance of the land following the construction of a perimeter fence around the site in 2006, (prior to this date there is evidence to suggest that the land had been maintained by North Wiltshire District Council and it was believed that the Council owned the land, until 2002). Locals have also planted the site and erected benches, although the land is in private ownership.

On the land

13.51. All witnesses who have completed evidence questionnaires have confirmed their use of the land by attaching and signing a plan outlining the area in question. All witnesses have themselves annotated the map to include the area of land which they have used. The majority of witnesses have also included what they consider to be the relevant neighbourhood within the locality, or where the main users of the land are coming from to use the land.

13.52. There is no evidence that users have used only part of the land and the objectors do not suggest that this is the case. In fact use of the land for social events and celebrations and the supporting photographs, suggest use of the whole of the application land.

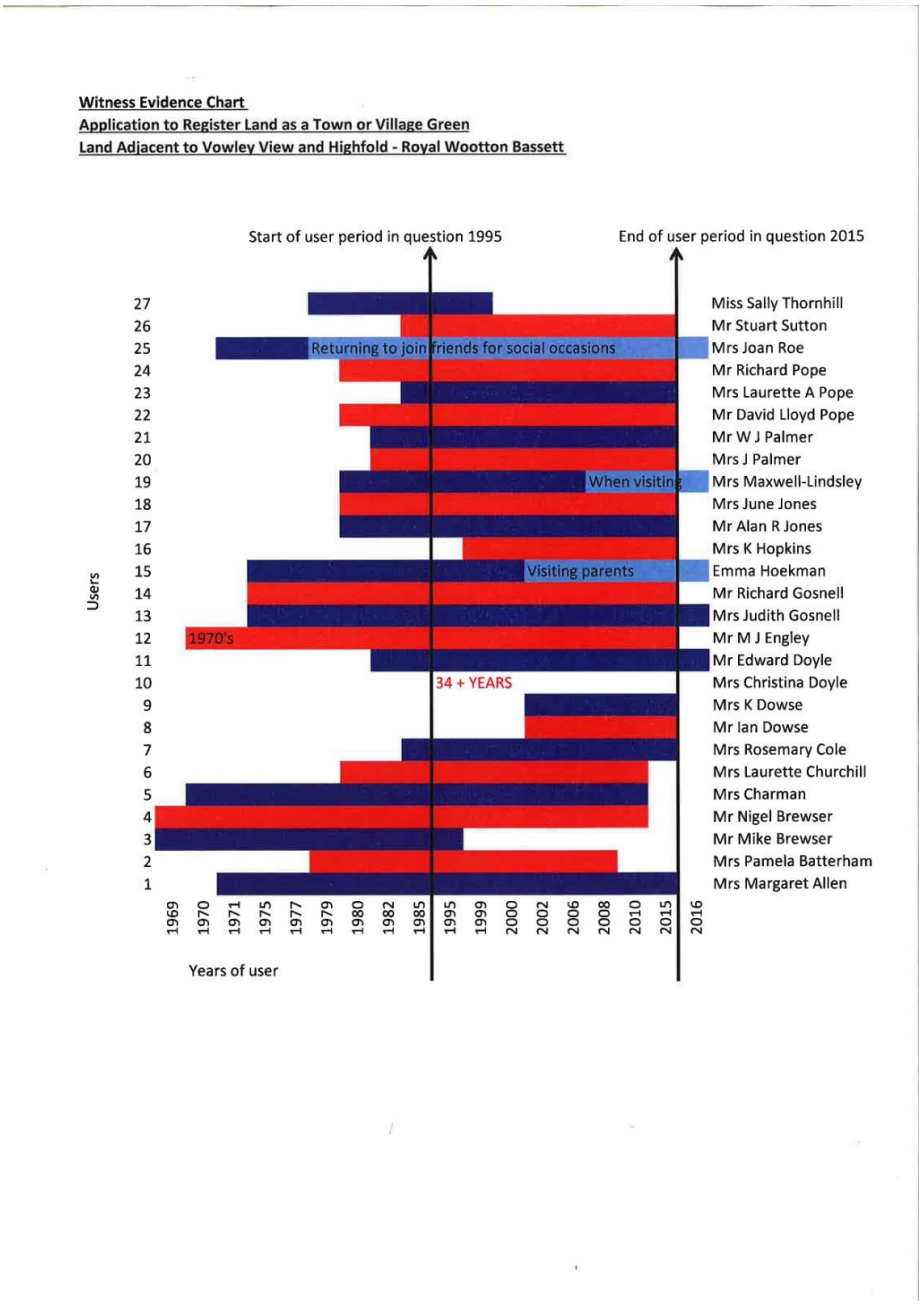
13.53. This application is made under Section 15(1) of the Commons Act 2006 and also Section 15(3) which applies where use of the land has ceased but application is made within one year of the cessation of use. From the evidence before the Council it would appear that the land was fenced in 2006, but it was still accessible via the unlocked gate at its northern end. This gate was padlocked in May 2015, preventing access and the majority of witnesses ceased their use of the land at that time.

13.54. The objectors provide no additional evidence regarding use of the application land.

For a period of at least 20 years

13.55. To satisfy the 20 year user test, with use ending in May 2015 when the gate in the fence was padlocked, the period of user in question is May 1995 – May 2015, with the application made no later than one year of the cessation of

use, (in this case the application is received by the Registration Authority on 12th April 2016). Please see user evidence chart below:



13.56. There is no requirement for all of the witnesses to have used the land for a period of 20 years, rather the evidence may have a cumulative effect to demonstrate public user for a period of 20 years. In this case the user period in question is identified as 1995 – 2015 (when the gate was locked). 17 of the witnesses have used the land for the full 20 year user period in question, (3 of

those being former residents of the identified neighbourhood of Vowley View and Highfold, returning to use the land when visiting family or friends). 9 users have not used the land for the full period, but have used the land at some point within the relevant user period. Mrs Christina Doyle does not give any dates within her evidence form, but states that she used the land for 34 years plus. This is likely to be within the relevant user period at some point, also given her husband's use of the land between 1982 and 2016, where both Mr and Mrs Doyle claim to have used the land with family and grandchildren, (Mr Doyle has completed a separate witness evidence form). Even if Mrs Doyle's evidence of 20 year user is removed, where no specific dates of user are given, there remain 26 witnesses who have used the land within the relevant user period and Mrs Doyle's evidence still provides useful supporting evidence of the use of the land by inhabitants of a locality or neighbourhood within a locality, as of right, for lawful sports and pastimes.

13.57. Many of the witnesses refer to use of the land for a period of 30 plus years. This is supported by the minutes of the Royal Wootton Bassett Planning Committee, dated 29th January 2017, in their consideration of Planning Application no.14/12039/FUL, erection of new dwelling with integral garage on land opposite no's 8-10 Vowley View, Royal Wootton Bassett, as follows:

"Subsection 6.59 (Wiltshire Core Strategy) *on the delivery of this objective* (to build resilient communities) *highlights the need to 'foster a sense of community belonging, social inclusion and self sufficiency'. This space has been able to provide all these benefits to the local community since the 1970's through informal leisure activities and used of the site for street parties and celebrations."*

13.58. Officers consider that the applicant has successfully discharged the burden of proof with regard to 20 year user of the land and the objectors produce no evidence to dispute user of the land by local inhabitants, for a period of 20 years.

Use has Ceased

13.59. The application is made under Sections 15(1) and (3) of the 2006 Act, where use has ceased and the application to register the land as a town/village green is made within 1 year of the cessation of use. It is claimed in the application that use of the land ended in May 2015, upon the locking of the gate and the application, being received by Wiltshire Council on 12th April 2016, is therefore a valid application made within 1 year of the cessation of use.

13.60. However, it has been brought to the attention of the Registration Authority that a BBQ was held on the land in August 2015 and residents entered the land for the purposes of mowing on 1 or 2 occasions in the summer of 2015, after the gate was locked and the applicant further states that users "voluntarily" ceased using the land *"during the summer 2015"* or *"after the summer of 2015"* (late 2015). When stating their period of user, 5 users claim to have used the land until 2016 or the "present", (completing witness evidence forms between March and April 2016). E Hoekman and Mrs Maxwell-Lindsley claim to have used the land until the present day, however when giving further details in the evidence forms, both witnesses suggest that their use ended in May 2015 on the locking of the gate and when asked how often they use the land now, both reply *"occasionally when visiting"*. Mr E Doyle claims to have used the land from 1982-2016, but when asked how often do you use the land now, he replies *"gate locked No access"*. Mrs Roe claims use from 1971 to the present day, but confirms in her evidence that the when the fence was erected in 2006, whilst access was still possible through the unlocked gate, the gate is now locked and she used the land up until May 2015, (a former resident of Vowley View, Mrs Roe now lives elsewhere in Royal Wootton Bassett and from 1979 - present day, she has returned to join friends for social occasions). Mrs J Gosnell now only uses the land for essential maintenance where access is still possible as the fence is not maintained.

13.61. 5 witnesses (including Mrs Gosnell who claims a period of user until 2016, as above), confirm that use of the land continued after the locking of the gate in May 2015, specifically referring to the locked gate as an event which restricted/prevented use of the land, (5 other witnesses confirm that their use continued following a restriction, but make no reference to the event which restricted/prevented access, or refer to their use continuing after the erection of the fence in 2006). Mrs Margaret Allen confirms that use after May 2015 was for limited husbandry and Mr and Mrs Palmer, (who have completed separate witness evidence forms), confirm use after May 2015 was not social, but for limited husbandry of the land.

13.62. There is evidence that entry to the land after May 2015 was gained via gaps in the fence which had occurred naturally where the landowner had not carried out any maintenance to the fence since its erection in 2006. 4 of the 5 witnesses who claim that user continued after the locking of the gate in May 2015, confirm that access was gained via the broken/damaged fence, with 4 references to a lack of maintenance of the fence. The applicant also confirms in the application that *"the fence periodically broke over the years, due to high winds...Entry to the Green for the 2015 BBQ and 1 or 2 mows, after the locking, was via the gaps in the fence mentioned above and through missing wooden slats which had broken off over the years."*

13.63. The applicant states that the activities on the land were voluntarily stopped after the summer of 2015, whilst awaiting the outcome of the planning and planning appeal procedures and in order to await the outcome of the town/village green application. This is supported by 4 of the witnesses who claim that use continued after the locking of the gate in May 2015, who state 2015 as the end of their own period of user. Therefore, even where the cessation of user is moved forward several months to late 2015, the application is still compliant with Section 15(3) of the Commons Act 2006, where use has ceased and the application is made within 1 year of the cessation of use. In the application Form 44 the applicant is asked "*If section*

15(3) or (4) applies, please indicate the date on which you consider that use as of right ended", to which the applicant has replied *"May 2015"*. The wording of the application, i.e. using the term *"which you consider"* suggests that this reference is not "set in stone" and where a different user period is discovered upon examination of the available evidence, the application is still "in order", as long as the application is made with 1 year of the cessation of use.

13.64. Additionally, there may be an element of user by "force" after May 2015, where the landowners had locked the gate as a clear indication that access to the land was not permitted. In evidence, at question 13 of the evidence form, 21 users confirm that their use of the land has been prevented or restricted; 6 of those users refer to the erection of the fence as the restriction/prevention and 12 users refer to the locked gate as preventing or restricting use and 4 users include the fence and the gate. As Mrs Joan Roe points out, it is likely that *"since the fence was erected in 2006 access has been hindered and since May 2015 padlocked gate has prevented access".*

13.65. The landowners erected the fence in 2006, but included an unlocked gate in the fence, which permitted access, (although perhaps hindered when considering the previous open access to the unenclosed land). User continued after 2006 and the inclusion of the unlocked gate did not indicate to those using the land that they were not permitted to do so. The action of locking the gate and denying access sends a message to users, that they were not permitted to use the land and 16 users refer to this event. Although access through the broken fence, is not necessarily use by force, where the damage has been caused through a lack of maintenance of the fence, it may be user by force where the landowner has implied that access is prohibited by the locking of the gate. Where it is considered that use after May 2015 is not "as of right" and therefore not qualifying user, the cessation of use occurs in May 2015, but the application is still valid and correctly made under Section 15(3) of the Act, i.e. within 1 year of the cessation of use.

13.66. The landowners do make representations where *"no specified date is given as the end dated in May 2015…"* The end date does affect the validity of the application where, under Section 15(3) of the Commons Act 2006, the application must be made within one year of the cessation of use. In this case the application was received by Wiltshire Council on 12th April 2016, (the reasoning for this date being taken as the application date, not when it was put in order on 15th September, are explored at paragraphs 13.75 – 13.85 of this report), and whether use as of right ended in May 2015 when the gate was locked, or it is taken that the use after this date, is user "as of right" and the end period is the voluntary cessation of use "after the summer of 2015", the application is still correctly made and it serves simply to push the relevant user period forward to late 1995 - late 2015. There is sufficient user evidence to suggest that a significant number of inhabitants of a locality or neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of 20 years or more, in either of these periods.

Planning Applications

13.67. The planning applications affecting the site have been open to public consultation and the replies support the use of the land by inhabitants of a neighbourhood within a locality, for lawful sports and pastimes for a period of 20 years or more. Please note that the planning consultation replies have not been submitted as evidence by any party and Wiltshire Council as the Registration Authority is not relying upon these documents in its determination of the town/village green application, where the planning system is an entirely separate process and planning issues cannot be taken into consideration when determining an application made under the Commons Act 2006.

13.68. Planning Application no.14/12039/FUL (January 2015) – erection of new dwelling with integral garage on land opposite numbers 8-10 Vowley View,

Royal Wootton Bassett, Wiltshire, SN4 8HT: The majority of consultation replies are received from residents of Vowley View and Highfold, as expected and Royal Wootton Bassett Town Council, in objection to the development. They support use of the land by local residents for a period since the houses in Vowley View and Highfold were built in the 1970's, including use of the land for community activities; informal leisure activities and recreation; street parties and celebrations; annual summer BBQs; jubilee and royal wedding celebrations; a central gathering point for residents and young children; ball games; den making; observing flora and fauna and as a safe place for children to play.

13.69. They also support that the District Council and (after the fence was erected), the local community/residents, have maintained/planted the land and repaired the fence, whilst the landowners have taken no action to maintain the land.

13.70. There is a claim that the land formed half of a roundabout intended to be built, which was never completed and in her witness evidence form submitted in support of the town/village green application Mrs Charman states *"The original builders owned it and it was going to be a roundabout but my understanding was that they went bankrupt and so couldn't complete the build and the land was rejected from then on."* Other representations suggest that the land, now subject of the town/village green application, was provided as a green area for the local community as part of the original development of the Gough Cooper Estate in the early 1970's. This reflects the comments made in the town/village green application, e.g. Mrs Margaret Allen considers that the land was *"Open Space gifted by original house builder"*.

13.71. It is clear that respondents consider the land to have been a valued amenity for the community for several decades and as such the objectors to the planning application submit that the development of this site would be contrary to the North Wilts Plan 2011 – C3iii, where the development would be an unacceptable loss of existing amenity to the residents and CF3 –

inappropriate to look to financial contribution where the area is now unique. The Town Council also claim that the development contravenes Core Policy 52 of the Wiltshire Core Strategy, on green infrastructure, which states that *"development shall make provision for the retention and enhancement of Wiltshire's Green Infrastructure".* Retaining the area as a green space for use by the local community also assists with the delivery of Strategic Objective 4 of the Core Strategy which aims to build resilient communities. Subsection 6.58 on the delivery of this objective highlights the need to *"foster a sense of community belonging, social inclusion and self sufficiency".*

13.72. These comments in relation to the January 2015 planning application, show that even before the town/village application was made in 2016, residents were making reference to their use of the land for a long period before that date and these comments would have made the landowners aware of the use of the land, (perhaps leading to the locking of the gate in May 2015).

13.73. Planning Application no.16/100127/FUL (October 2016) - erection of detached single three bedroomed dwelling at land opposite no.s 8 and 10 Vowley View, Royal Wootton Bassett, SN4 8HT: This application was received after the making of the town/village Green application (12th April 2016). The respondents repeat the comments made in 2015, regarding longstanding use of the land for lawful sports and pastimes, by local residents.

13.74. The planning application responses with regards to both applications, are consistent with the evidence submitted in support of the town/village green application.

Comments on the objections

13.75. The landowner, Cooper Estates Ltd, have objected on a number of grounds including the timing and validity of the application (please see correspondence at paragraphs 12.3 and 12.8 of this report and **Appendices 2** and **6**).

13.76. The issues of timing and validity of an application are dealt with in a very detailed manner in case law, in the Court of Appeal before Lady Justice Arden, Lord Justice Richards and Lord Justice Vos – R (Church Commissioners for England) v Hampshire County Council and Anr and Barbara Guthrie [2014] EWCA Civ 643. It concerns a case where Mrs Barbara Guthrie filed an application with the registration authority on 30th June 2008, however, the application was defective in several respects, finally complying with all the requirements of the regulations on 20th July 2009.

13.77. Lady Justice Arden states that:

"The primary rule in section 15 is that the recreational use must be continuing at the date of the application: see section 15(2). In some cases, however, of which this is said to be one, that use will have ceased before the TVGA [Town Village Green Application]. Sections 15(3) and (4) deal differently with cessation before and after commencement of CA [Commons Act] 2006. Lewison LJ explained in R(Newhaven Port & Properties Ltd) v East Sussex County Council (No.2) EWCA Civ 673, [2013] 3 WLR 1433 at [62] to [63] that this is because it was easier for a landowner to cause the use to cease before that date than afterwards since before that date he simply had to give notice that he consented to the use and not physically prevent use of the land.

13.78. Section 14(3) of the Growth and Infrastructure Act 2013, inserted Section 15(3A) into the Commons Act 2006, which reduced the relevant period in England after cessation of use for the purposes of Section 15(3) of the Act, from 2 years to 1 year.

13.79. The Wootton Bassett application is made under Section 15(3) of the Commons Act 2006 which states:

"(3) This subsection applies where –

(a) a significant number of inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;

(b) they ceased to do so before the time of the application but after the commencement of this section; and

(c) the application is made within the relevant period.

(3A) In subsection (3), "the relevant period" means –

(a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);

(b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation."

13.80. In the objection, Gregory Jones QC correctly states that the application for a village green must be made within one year of the date of cessation of user, so the date at which the registration authority accepts the application is highly relevant here. Is the application "made" when it is received and date stamped by the Authority, (in this case 12th April 2016), or the date on which a defective application is put in order to meet all the requirements contained in the regulations of the Act, (in the Royal Wootton Bassett case 15th September 2016)?

13.81. The Hampshire case goes on to discuss this. Lady Justice Arden sets out the requirements of an application and states:

"Form 44 refers to guidance notes, which are published separately. They are thus non-statutory and do not form part of the Regulations. They state in relation to a TVGA that the stamp which the registration authority gives to the application as the date of receipt "may be important, because it is the date against which the time limits on applications in section 15(3) and 15(4) apply"."

13.82. Mrs Guthrie's application was filed on 30th June 2008 and was defective in 3 parts, parallels may be drawn here between the Hampshire case and the Royal Wootton Bassett case. There is no requirement within the regulations for the registration authority to serve notice of the application upon the landowner, until it is put in order as Lady Justice Arden states:

"34. The limited possibility for correction to which I referred in paragraph 1 of this judgement is to be found in Regulation 5(4) of the Regulations. This suspends the registration authority's right to reject a non-compliant application and thus its obligation to give notice of application to persons interested in the land and to the public, until the applicant has been given a reasonable opportunity to put her application in order:

"(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."

13.83. Therefore, the registration authority was correct in not notifying the landowner that the application was made until it was put in order and when it did so, it attached notice as per the wording of Form 45, which is set out within the regulations and advised that the application had been made publicly available for inspection as required. The authority has acted correctly in this case.

13.84. Lady Justice Arden continues:

"35. Mr Karas contends that Regulation 5(4) is not retrospective so that any corrected application only takes effect from the date of filing of the corrected application. But this argument runs up against this point, pressed by Mr Hobson, that under Regulation 4 (set out in the Annex to this judgement) the Registration Authority must stamp every application on receipt. Regulation 5(4) does not suspend this obligation

nor is there any provision for altering that date. In response to this difficulty, Mr Karas argues that the expression "made" in Regulation 5(1), which starts with the words "where an application is made under section 15(1)" of the CA 2006, means "duly made in accordance with the regulations": see sections 15 and 24(1). But if that were so, Regulation 5(4) would not have to suspend that obligation…"

"…If within the reasonable opportunity so given the applicant corrects the errors, the original application has full force and effect and therefore the Regulation must be retrospective.

I reach this conclusion on the basis that the Regulations throughout refer to one and the same application. In addition, the application is given a date on the receipt. Dating the application must be for some purpose…"

"…The point remains that it would be wholly misleading for the application to be dated with the date of its receipt it that were not its effective date.

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

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

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

13.85. Where the Hampshire judgement is applied in the Royal Wootton Bassett case, the date of the application should be taken as 12th April 2016 when the Registration Authority date stamped the application upon receipt and

therefore the application is correctly made within one year of the cessation of use at the end of May 2015, or late 2015.

13.86. The landowners also object on the ground that there is a planning "trigger event" in place over the land, which would effectively extinguish the right to apply to register land as a town/village green, where *"the site in question is subject to the adopted Core Strategy"* and *"The current site is within limits for development of Royal Wootton Bassett. Wiltshire Council having considered these policies has previously accepted that the "location of the site is therefore considered appropriate for development in principle…"*

"It is clear from the wording of the policy that the site in question was identified as land for "potential development" before the application to register the site as a village green was made. The trigger event had thus been triggered before the application was made. Accordingly, the application is invalid and must be rejected."

13.87. Upon receipt of the town/village green application Wiltshire Council, in its capacity as the Registration Authority, wrote to the planning authorities on 15th April 2016, including a list of trigger and terminating events and requesting details of any trigger/terminating events in place over the land at this time. Correspondence was addressed to Spatial Planning – Wiltshire Council; Development Control – Wiltshire Council and the Planning Inspectorate, all of whom identified that there were no "trigger events" in place over the land at that time, (without corresponding terminating events), which would extinguish the right to apply (please see paragraph 10.4).

13.88. Wiltshire Council as the Registration Authority must rely upon the responses given by the planning authorities. In this case the objectors' representations regarding trigger events in place over the land, were forwarded to Spatial Planning at Wiltshire Council. The Head of Spatial Planning made the following comments regarding the objectors' representation:

"I have considered the objector's assertions that there is a trigger event in place. However, I can confirm that in our opinion no trigger event has occurred in relation to the land in question, as the land/site (subject of the application) is not specifically identified for potential development, although strategic policy for the area exists as set out in the Wiltshire Core Strategy (adopted January 2015)."

13.89. The Council's Core Strategy identifies broad locations in Wiltshire for future development to provide a framework and identify areas of growth where development could be focused and provides the basis for future decision on potential development in identified settlements (such as the Market Towns). In effect this means that a policy for a strategic area may exist without having identified specific sites for potential development. Therefore although Royal Wotton Basset has been identified as an area for growth through its designation as a Market Town, the Council's Core Strategy does not identify land for development as this would be for the neighbourhood planning process or the sites development plan. As land has not been identified for development at Royal Wootton Bassett within the neighbourhood planning process or sites development plan, the Council has concluded that no trigger event has taken place in this case.

13.90. Therefore, the right to apply is not extinguished and the Registration Authority must continue to determine the Town/Village Green application, based upon the available evidence, which is not disputed by the objectors.

13.91. In correspondence Royal Wootton Bassett Town Council have submitted the minutes of their Planning Committee meeting held on Thursday 29th January 2015 (please see **Appendix 3**). At this meeting the Parish Council considers Planning Application no.14/12039/FUL, erection of new dwelling with integral garage on land opposite numbers 8-10 Vowley View, Royal Wootton Bassett and concludes that the development of this land would contravene Core Policies 51 and 52 of the Wiltshire Core Strategy.

13.92. There have been 4 planning applications over the land. Application no.16/10012/FUL is dated October 2016, after the receipt of the Town/Village Green application (12th April 2016) and therefore cannot be a valid trigger event. Applications N/02/02965/FUL (December 2002); N/03/00817/FUL (March 2003) and 14/12039/FUL (January 2015), each have corresponding terminating events which mean that they are no longer valid trigger events, however, Officers have considered whether these events may be considered as an interruption to user as of right, for a period of at least 20 years. On this point Officers have taken into account the DEFRA "Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006" and have concluded that the guidance makes clear that it is only the right to apply which is suspended by the trigger event and that there is no further effect. The Growth and Infrastructure Act 2013 introduces Section 15A into the Commons Act 2006 and landowner statements which may be deposited with the authority and which serve to bring to an end any period of recreational use "as of right" over land, rather than the occurrence of a planning trigger or terminating event.

13.93. At paragraph 60 of the guidance it is stated that: *"At any time when the right to apply is excluded in respect of land, a commons registration authority cannot accept any application to register the land as a green. The right to apply remains excluded until and if a corresponding 'terminating event' occurs in respect of the land."* It is not stated that the trigger event may also suspend user "as of right".

13.94. At paragraph 86, of the guidance it is stated that "*You* (the Registration Authority) *can consider an application as normal where either:*
a) no trigger event has occurred; or
b) a trigger event has occurred but a corresponding terminating event has also occurred in relation to the land, which has therefore caused the exclusion of the right to apply to lift."
There is again no mention of user "as of right" being interrupted by the trigger/terminating event.

13.95. In the Royal Wootton Bassett case there is evidence that user was still taking place, despite the trigger events being in place. The trigger events did not prevent use of the land or bring home to local inhabitants that their right to use the land was being challenged and therefore cannot give rise to an interruption in the user.

14. Overview and Scrutiny Engagement

14.1. Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory procedures which are set out under "The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (2007 SI no.457)".

15. Safeguarding Considerations

15.1. Considerations relating to safeguarding anyone affected by the registration of the land as a town or village green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

16. Public Health Implications

16.1. Considerations relating to the public health implications of the registration of the land as a town or village green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

17. Corporate Procurement Implications

17.1. Where land is registered as a Town or Village Green, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 21.1. – 21.3. of this report.

18. Environmental and Climate Change Impact of the Proposal

18.1 Considerations relating to the environmental or climate change impact of the registration of the land as a town or village green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

19. Equalities Impact of the Proposal

19.1. Considerations relating to the equalities impact of the registration of the land as a town or village green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

20. Risk Assessment

20.1. Wiltshire Council has a duty to process applications made under Section 15(1) of the Commons Act 2006 to register land as a town or village green, in a fair and reasonable manner. If the Council fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Local Government Ombudsman. Ultimately, the Council's decision could be challenged through an application to judicially review the decision with the risk of a significant costs order being made against the Council if the Court found the Council had acted unlawfully.

21. Financial Implications

21.1. Presently there is no mechanism by which a Registration Authority may charge the applicant for processing an application to register land as a town or village green and all costs are borne by the Council.

21.2. It is possible for the registration authority to hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to produce a report and recommendation to the determining authority. There is no clear guidance available to authorities regarding when it is appropriate to hold an inquiry, however, it is the authority's duty to determine the application in a fair and reasonable manner and it's decision is open to legal challenge, therefore a public inquiry should be held in cases where there is serious dispute, or the matter is of great local interest, (please see R (on the application of Whitmey) v Commons Commissioners [2004] EWCA Civ 951, at paragraph 11.2). Even where a non-statutory public inquiry is held, there is no obligation upon the authority to follow the recommendation made.

21.3. The cost of a 3 day public inquiry is estimated to be in the region of £8,000, (based on figures obtained in March 2017 from 3 Paper Buildings Barristers Chambers, to appoint a Barrister experienced in town/village green matters, to preside over a public inquiry and to make a recommendation to the registration authority, at £1,000 per day to include 3 day inquiry, 2 days preparation and 3 days report writing). In the Royal Wootton Bassett case it is not considered that a non-statutory public inquiry is necessary, where there is sufficient evidence provided to enable the Registration Authority to determine the application; the objectors do not dispute the evidence and the main point of objection relating to trigger events in place over the land, is unlikely to be resolved by hearing the witnesses give evidence in chief and through the process of cross-examination of the witnesses at a public inquiry.

22. Legal Implications

22.1. If the land is successfully registered as a town or village green, the landowner is able to challenge the Registration Authority's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965, which applies where Section(1) of the Commons Act 2006 is not yet in place, i.e. outside the pilot areas (Wiltshire is not a pilot area). Importantly an appeal under Section 14(1)(b) of the 1965 Act is not just an appeal, but enables the High Court to hold a complete re-hearing of the application and the facts of law. There is no time limit in bringing these proceedings following the registration of the land, it may be years after the decision and could lead to the de-registration of the land.

22.2. Alternatively where the Registration Authority determines not to register the land as a town or village green, there is no right of appeal for the applicant, however, the decision of the Council may be challenged through judicial review, for which permission of the court is required and application must be made within three months of the decision. Likewise, judicial review proceedings are also open to a landowner where the land is registered as a town or village green.

23. Options Considered

23.1. The options available to the Registration Authority are as follows:

(i) Based on the available evidence to grant the application to register the land as a town or village green where it is considered that the legal tests for the registration of the land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over the whole of the application land, or

(ii) Based on the available evidence, to grant the application in part, where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over only part of the application land, or

(iii) Based on the available evidence to refuse the application where it is considered that the legal tests for the registration of the land, as set out under Section 15(1) of the Commons Act 2006, have not been met in full, or

(iv) Where after consideration of the available evidence, it has not been possible for the Council to determine the application, to hold a non-statutory public inquiry, appointing an independent Inspector to hold the inquiry and examine the evidence, including the oral evidence and cross-examination of witnesses and to provide a report and recommendation to the determining authority.

24. Reason for Proposal

24.1. In the Royal Wootton Bassett application, it is considered that a non-statutory public inquiry is not required because the evidence on the facts provided is not disputed by the objectors and the Registration Authority considers there is now sufficient evidence provided by all relevant parties to enable the Registration Authority to determine the application.

24.2. In its determination of the application Wiltshire Council has relied upon the evidence listed at paragraph 12.10. The available evidence, examined by the Registration Authority, supports use of the whole of the application land by inhabitants of the neighbourhood of Vowley View and Highfold, within the locality of Royal Wootton Bassett, for the purposes of lawful sports and pastimes for a period of at least 20 years, as of right, with use of the land

ending in May 2015 or late 2015, the relevant user period being 1995 – 2015, on the balance of probabilities. The applicant has successfully discharged the burden of proof and the objectors do not challenge this evidence.

24.3. With regard to the objectors comments on the timescales and validity of the application and notice given to the landowners, the application of the Hampshire case law, shows that the effective date of the application is the date of its receipt by the Registration Authority (12th April 2016), therefore the application is correctly made within 1 year of the cessation of use in May 2015 or late 2015. It was correct to allow the applicant opportunity to put the application in order and there was no requirement for the authority to notify the landowners until after this process was completed on 15th September 2016. The Registration Authority has acted correctly.

24.4. Where the objectors state that there is a trigger event in place over the land, i.e. where there is a presumption in favour of development by the inclusion of Royal Wootton Bassett as a Market Town within the Wiltshire Core Strategy (adopted January 2015), the Registration Authority must rely upon the information given by the Planning Authorities, who have informed the Registration Authority that there are no trigger to terminating events in place over the land. Therefore, the right to apply to register the land as a Town or Village Green is not extinguished and the Registration Authority must continue to determine the application based on the available evidence, which is not disputed by the objectors. The main point of objection relating to trigger events in place over the land, is unlikely to be resolved by hearing the witnesses give evidence in chief and through the process of cross-examination of the witnesses, at a public inquiry.

25. Proposal

25.1. That the application to register land at Vowley View and Highfold, Royal Wootton Bassett, as a Town or Village Green, be accepted and the application land be registered in full under Sections 15(1) and (3) of the Commons Act 2006.

Janice Green
Rights of Way Officer, Wiltshire Council
Date of Report: 28th June 2017

Appendices:

Appendix 1 – Witness Evidence Summary

Appendix 2 – Objections from Blake Morgan LLP, 18th November 2016 (including Opinion of Gregory Jones QC) on behalf of Cooper Estates Ltd

Appendix 3 – Representations of support from Royal Wootton Bassett Town Council, 14th November 2016

Appendix 4 – Representations of support from Councillor Chris Hurst, Councillor for Royal Wootton Bassett South, 5th October 2016 and 13th November 2016

Appendix 5 – Further comments on the objections from Mr R P Gosnell, 9th December 2016

Appendix 6 – Further comments from Blake Morgan LLP, 2nd March 2017 (including Further Opinion from Gregory Jones QC, 27th February 2017) on behalf of Cooper Estates Ltd