APPENDIX A – DECISION REPORT – 25 MAY 2022

Decision Report

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

Applications to Register Land as a Town or Village Green – Land off Seagry Road, Lower Stanton St Quintin – Application No's 2018/01 & 2019/01

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Cooper Estates determined (High Court)	05/07/2018
Second trigger event consultation (2018/01)	04/12/2018
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Second TVG application received (2019/01)	26/04/2019
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Commons Act 2006 – Sections 15(1) and (2)
Applications to Register Land as a Town or Village Green – Land off Seagry Road, Lower Stanton St Quintin – Application No's 2018/01 & 2019/01

1. Purpose of Report

1.1. To consider the evidence submitted regarding two applications made under Sections 15(1) and (2) of the Commons Act 2006, to register land off Seagry Road, Lower Stanton St Quintin, as Town or Village Green (TVG) - Application no's 2018/01 and 2019/01. A detailed decision report was considered necessary for this agenda item due to the complex evidential issues raised by the parties concerning property, planning (trigger events) and highway issues in respect of these applications.

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

3.1. Please see **Appendix 1**.

4. Application Plans

4.1. Please see **Appendix 2**.

5. Photographs

5.1. Please see **Appendix 3**.

6. Aerial Photographs

6.1. Please see **Appendix 4**.

7. Applicant

7.1. Both applications are made by Stanton St Quintin Parish Council:

2018/01

Stanton St Quintin Parish Council
C/O Councillor Nick Greene
(Chair – April 2018)
[redacted] Rectory Close
Stanton St Quintin
Wiltshire
SN14 [redacted]

2019/01

Stanton St Quintin Parish Council
C/O Councillor Adrian Andrews
(Chair – April 2019)
[redacted]
Avils Lane
Lower Stanton St Quintin
Chippenham
Wiltshire SN14 [redacted]

8. Registered Landowners

8.1. According to Land Registry, the whole of the application land is unregistered. Notice of Application dated 13th August 2020 was placed on the land, (12th August 2020), addressed to all owners and occupiers of the land - no additional parties with an interest in the land have come forward.

9. Legal Empowerment

9.1. Under the Commons Registration Act 1965, Wiltshire Council is now charged with maintaining the register of TVG's and determining applications to register new greens. The applications to register land off Seagry Road, Lower Stanton St Quintin, as TVG, have been made under Sections 15(1) and (2) of the Commons Act 2006, which amended the criteria for the registration of greens. (please see Section 15 of the Commons Act 2006 attached at **Appendix 5**). Also attached at **Appendix 5** are the relevant regulations for the processing of applications - The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 and DEFRA Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – December 2016, (Section 15C – planning trigger and terminating events which will be considered later in this report).

10. Background

10.1. Wiltshire Council, as the Commons Registration Authority (CRA), were in receipt of an application to register the whole of the application land, a horseshoe shaped area adjacent to Seagry Road, Lower Stanton St Quintin, under section 15(1) of the Commons Act 2006, dated 18th April 2018, (received by the CRA 30th April 2018). Upon consultation with the planning authorities regarding planning trigger events in place on the land, (the full effect of planning trigger and terminating events will be discussed later in this report), it was found that there was an undetermined planning application in place over part of the land forming a valid trigger event, which had the effect of extinguishing the right to apply to register part of the land as a TVG. Therefore, the application was accepted only in part, excluding the land affected by the planning application, on 15th March 2019 - application no.2018/01.

10.2. In the meantime, a compatible terminating event had taken place on the excluded section of the land, i.e. the planning application was refused and all means of appeal exhausted. Therefore, the applicants submitted a second application to register the excluded area of land dated 18th April 2019, (received by the CRA 26th April 2019). Following another planning trigger event consultation in relation to that application, there were found to be no trigger events in place over this area of land and the second application was accepted 14th June 2019 - application no.2019/01. Both applications are based upon the same evidence and they are considered in this report together.

10.3. The applications are also made under Section 15(2) of the Act, i.e. where it is claimed that a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and continue to do so at the time of application.

10.4. Part 7 of the application form requires the applicant to provide a summary of the case for registration:

2018/01 – *"The land has been used as a village green for the past 50 years by local residents and has been maintained by the Parish Council throughout this period.*
Regular maintenance of the land has been undertaken by the Parish Council on behalf of the residents, including grass cutting, works to trees, bench installation and planting of flowers.
A further seat has been sited on the green as a memorial to a former resident and a commemorative tree was planted in memory of a former Chairman of the Parish Council and a plaque on the green confirms this.
Throughout this period the village green has provided a focal point for the community and is home to the parish notice board and has been the site of many community events and celebrations.

It is therefore clear that the land is of community value, it being used both now and in the past to further the social well being and cultural interests of the local community.
The Parish Council fully intends to continue to maintain and enhance the village green for the benefit of all residents and has plans for community celebrations on the green in 2018 which will bring people together and encourage neighbourliness and community cohesion."

2019/01 – *"An application to register the whole of the land known as a village green was made in April 2018 and has been allocated application number 2018/01.*
However, that application has only been registered in part, excluding a small section of the land which was, at the time of the application subject to a planning trigger event (application 18/01108/FUL) which extinguished the right to apply to register land as a village green over that part of the land as shown on the attached plan.
The Parish Council has been advised that it is now possible to apply to register that excluded section of land and this application is for that part of the land, excluded from the original application to be registered as a village green as shown on the attached plan.
The justification for this is as stated in application no.2018/01."

10.5. The applications were received by Wiltshire Council, as the CRA, on 30th April 2018 and 26th April 2019 respectively and accepted by Wiltshire Council as complete and correct on 30th July 2020. Application no.2018/01 was accompanied by a statement from Mrs Hilary Creasy:

"The Pond Not the Village Green
The village green is on the other side of the road, with the pole in the middle – in front of Spider Cottage.

The POND was dug out by the Farmers (maybe JONES') so their Cattle and Horses could drink.
They also put their Carts through the water to swell the spokes on the wheels, so the metal bands wouldn't fall off.
When we were children (the pond had been filled in then) we used to have fetes on the pond. There were Fancy Dress Competitions and Picnics.
Where the wall is now there were trees, weeping willows and smaller trees.
There was a Reading Room to the right of the pond, near the access to the bungalow, and house. Here our Parents and Grandparents played games – Cards – Dominoes – Whist Crib etc.
There has been Church Services there as well. Also other Celebrations.
The Reading Room has gone.
The Methodist Chapel has gone.
The Shop has gone.
All of the Farm Yards have gone.
The POND is the only original Landmark of the village that is left.
There are two Benches on the Pond, one was in memory of a Villager, People sit there in the summer months.
If there was an access to the house onto the road it would be dangerous for cars coming from the Seagry Road."

10.6. Following notice of the application (Form 45) being posted on site, advertised in a local newspaper and served upon all interested parties, 8 objections were received (included at **Appendix 6**) and 23 representations were received (included at **Appendix 7**), (please note that correspondence from Wessex Water dated 22nd September 2020, was originally included as a representation, where they stated *"In submitting these observations, we would like to make it clear that Wessex Water does not object to the use of the Land for sports and pastimes. Wessex Water simply wishes to record the need for careful consideration of Wessex Water's statutory obligations in deciding how to approach the future designation of the Land."*, however, they

have subsequently requested that their representation is treated as an objection). Mr M Reeves also made objections prior to the service of Form 45, these are included at **Appendix 8**.

10.7. The regulations require that the objections are sent to the Applicant for comment. The Parish Council were forwarded the correspondence attached at **Appendices 6** and **7** and made the (revised) comments on the objections, attached at **Appendix 9**. The Objector's comments regarding the Applicant's comments on the objections are attached at **Appendix 10**. The applicants have since submitted additional evidence in support of the application, attached at **Appendix 11.**

10.8. The application land is located off Seagry Road, Lower Stanton St Quintin and occupies an area of approximately 408 square metres, presently being planted with trees and laid to grass with two commemorative wooden benches; a picnic table and benches; the "Wee Free Library"; Stanton St Quintin Parish Council notice board and a commemorative tree, present on the land. The southern boundary of the site is formed by a low stone and concrete capped wall. This forms the boundary between the application land and the properties [redacted] and [redacted] Lower Stanton St Quintin, located to the south of the application land. The application land is semi-circular is shape, the north; east and west boundaries being the recorded highway Seagry Road, without gates or other limitations upon access. Part of the application land is recorded highway, which will be discussed later in this report. Please see photographs at **Appendix 3**.

10.9. The property [redacted] Lower Stanton St Quintin is owned by Mr M Reeves, but he is not the registered owner of the application land. He has previously applied for planning permission for a vehicular access over the application land to form a direct link between his property and the Seagry Road highway: Planning Application no.18/01108/FUL for a new direct access to

highway for vehicles and pedestrians over verge to class C road in 30mph limit.

Application registered – 1st February 2018

Decision – 7th March 2018 Refused

Appeal Decision – 3rd October 2018 Dismissed

10.10. As pointed out by Mr Reeves, there are services to his property located within the application land, i.e. Wessex Water; Wales and West Utilities and BT Openreach, (please note that Gigaclear Ltd have moved equipment previously present on the application land, at the request of the Parish Council, please see representations at **Appendix 7**). It is believed that services have been present in the land since 1986/87, with the exception of gas installed in 2016.

11. Right to Apply

11.1. The Growth and Infrastructure Act 2013 introduced a series of provisions to make it more difficult to register land as a TVG. This includes, at Section 16, the removal of the "right to apply" to register land as a TVG where specific planning "trigger events" have occurred in relation to the land, e.g. where an application for planning permission which would be determined under Section 70 of the 1990 Act is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act.

11.2. 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 event is included at Schedule 1A of the Commons Act 2006 (as amended).

11.3. This alters the way in which the CRA deals with new applications to register land as a TVG. DEFRA has issued interim guidance to Registration Authorities and has recommended that upon receipt of an application the authority should write to the local planning authorities and the Planning Inspectorate, enclosing the application map, to seek confirmation of whether or not there are planning trigger/terminating events in place in relation to all or part of the application land, (DEFRA Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – December 2016 – see **Appendix 5**).

11.4. In the Stanton St Quintin case, as per the guidance, the CRA wrote to the Planning Inspectorate; Spatial Planning and Development Control at Wiltshire Council on receipt of Application no.2018/01, on 8th May 2018 and on receipt of application no.2019/01, on 30th April 2019, (additionally before acceptance of Application no.2018/01 a second consultation was undertaken on 4th December 2018, where it had been some time since receipt of the application, however, it is now considered that this second consultation was unnecessary where only the position with regard to planning trigger events at the time the application is received, is relevant). The CRA used the letter template as set out within the DEFRA guidance, including a map of the application land and links to the list of trigger and terminating events and amendments to the list. Please see **Appendix 12** for trigger/terminating events consultation replies from the Planning Authorities.

11.5. When the first application was received by Wiltshire Council as the CRA on 30th April 2018, a planning application had been lodged with Wiltshire Council as the Planning Authority - Application no.18/01108/FUL for a vehicular access over the land to the property owned by Mr M Reeves.

11.6. This planning application formed a valid planning trigger event over part of the land and therefore the application was accepted only in part by the CRA on 15th March 2019 (Form 6). The DEFRA guidance states that where the right to apply to register the land is extinguished over only part of the land: *"96. For the portion of land not subject to the exclusion, the application should proceed as usual."* The delay between receipt of the application and acceptance of the application was due to the CRA awaiting the outcome of a Court of Appeal case on the subject of planning trigger events, which Wiltshire Council was already involved with: The Queen on the Application of Cooper Strategic Land Limited v Wiltshire Council and (1) Richard Gosnell (2) Royal Wootton Bassett Town Council" [5th July 2018] EWHC 1704 (Admin) and the subsequent appeal: Lord Justice Lewison, Lord Justice Floyd and Lord Justice Henderson Between Wiltshire Council (Appellant) and Cooper Estates Strategic Land Ltd (Respondent) and Richard Gosnell, Royal Wootton Bassett Town Council [16th May 2019] EWCA Civ 840. In these cases the question of whether inclusion of the application land within a settlement boundary in the Wiltshire Core Strategy (WCS) document sufficiently identified the land to form a valid planning trigger event under paragraph 4 of Schedule 1A of the Commons Act 2006, was examined. The Court of Appeal held that it did, however, Stanton St Quintin is listed within the WCS as a settlement where there is no longer a settlement boundary, therefore the caselaw, of a very specific nature, could not be applied to the Stanton St Quintin case.

11.7. The applicants then submitted a second application to register the previously excluded area of land, when a corresponding planning trigger event had taken place, i.e. the planning application for a vehicular access was refused and all forms of challenge were exhausted. The trigger event consultation presented no reason to the CRA to refuse to accept the application and therefore this application was accepted on 14th June 2019 (Form 6).

11.8. Mr M Reeves in objection, considers that the Wiltshire Council, as the CRA, should not have continued to consider the TVG application (2019/01), given the Planning Inspectorate reply dated 17th May 2019, (application no.2019/01, consultation dated 30th April 2019):

"I confirm that a trigger event has occurred, but no corresponding terminating event has occurred on the land

The land is part of a site allocation plan which is with our Local Plans/Development Plans Team and still under consideration as part of the Wiltshire Council Local Plan.

I would suggest discussing with the relevant Team/Programme Officer at Wiltshire but I think the Trigger Event might be para 3 of Schedule 1A of the Commons Act 2006."

11.9 Mr Reeves has carried out a Freedom of Information request amongst other CRA's as to whether they have continued to determine an application in the light of the Planning Inspectorate advice that a trigger event has occurred in relation to the land:

"Paragraph 79 of the guidance clearly states that the reason for contacting the Planning Inspectorate is for confirmation that it is ok to proceed and accept the application. The Planning Inspectorate did not provide such confirmation, and instead told Wiltshire Council that TVG applications were excluded…Wiltshire Council is acting in contravention to these guidelines and exceeding its authority in ignoring the Planning Inspectorate's response. To see how common or not such behaviour was I have made FOI requests to all similar authorities in England, that is to all the Unitary Councils and to all County Councils as Wiltshire Council used to be, but excluding the pioneer authorities and the 2014 Act authorities who operate under different rules and of course Wiltshire since I know Wiltshire Council has ignored the Planning Inspectorate without the need for an FOI request. This was a total

of 72 requests. So far 60 (83%) have replied with data on 544 TVG applications. Exactly zero of these authorities have ignored a Planning Inspectorate response that an exclusion applies and continued to process an application. Wiltshire Council is clearly acting outside of its lawful authority and its actions are without precedent or any justification.

The raw data behind the above summary can be found on the What Do They Know site at:

https:www.whatdotheyknow.com/

Just search for "TVGs processed against Planning Inspectorate opinion" which will return 73 hits as it includes a request to Defra who unfortunately do not collect centralised data on this."

11.10. Officers consider that the nature of the FOI request made of other CRA's in England does not assist in the determination of whether or not a planning trigger event applies over the land in this case and each of those 544 applications referred to, must be considered on their own merits. Wiltshire Council has not ignored the advice of the Planning Inspectorate, but as invited to do by the Planning Inspectorate in their reply, has carried out further investigations regarding the plan to which they refer and found that it is most likely to refer to the Wiltshire Housing Sites Allocation Plan (WHSAP), which does not allocate sites in Lower Stanton St Quintin and is therefore not a relevant trigger event. Spatial Planning Officer's replied on 7th June 2019 when asked to clarify the plan referred to by the Planning Inspectorate:

"I think PINS must be referring to the Wiltshire Housing Site Allocations Plan (WHSAP) which was submitted for examination on 31st July 2018. The WHSAP is a site specific plan and does not propose any allocations for development at Lower Stanton St Quintin. As far as I understand it, this means no trigger event in relation to the land has occurred."

11.11. The advice given in the Planning Inspectorate response is vague and they do not identify the plan to which they refer and invite the CRA to clarify with Wiltshire Council's own Officer's, which of course it has done. Officers therefore viewed the FOI request sent to other CRA's and without the specific detail of the Planning Inspectorate reply dated 17th May 2019 and the subsequent Wiltshire Council Spatial Planning reply, the FOI request is out of context, not site specific and does not assist this case. It is not correct to consider the Planning Inspectorate reply in isolation in this case without reference to the subsequent reply from Wiltshire Council Spatial Planning Officers.

11.12. Mr Reeves continues, in his correspondence dated 23rd September 2020, to compare this case to the Royal Wootton Bassett case in the Court of Appeal, where Wiltshire Council lost its case regarding the trigger event point, i.e. land included within the settlement boundary for Royal Wootton Bassett as a market town within the WCS document. He suggests that the land in the Stanton St Quintin case is comparable where the land is included within a draft plan under paragraph 3 of Schedule 1A to the Commons Act 2006, as the land at Royal Wootton Bassett came under paragraph 4 for a full plan. Officers do not agree that the two cases are comparable, where unlike Royal Wootton Bassett, Stanton St Quintin does not have an identified settlement boundary within the WCS document. Officers disagree that a trigger event is in place on the land, given the consistent replies of the Planning Authorities. In the Planning Inspectorate reply dated 17th May 2019 they suggested that the CRA should seek further advice from local planners, who confirmed no trigger event where the draft WHSAP is not site specific and does not identify the land.

Right to Apply - Wiltshire Council, as the CRA, have, based upon all replies from the relevant Planning Authorities, determined that there is no trigger event in place on both of the areas of land subject to the applications and has continued to

accept and consider the applications (2018/01 and 2019/01).
The Cooper Estates caselaw is not applicable in the Stanton St Quintin case, where the land is not included within a settlement boundary in the WCS and the WHSAP is not site specific.
If this case is referred to a non-statutory public inquiry, the independent Inspector may take an alternative view on the trigger event point.

12. Validity of Application

12.1. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007, (see **Appendix 5**), at parts 3 and 10, set out the requirements of a valid application. Where an application is found not to be in order, under Regulation 5(4) the CRA must not reject the application without allowing the applicant reasonable opportunity to put the applications in order:

"…but 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."

12.2. In this case upon examination of the applications, they were found to be flawed but the CRA considered that the Applicant should be given a reasonable opportunity to put their applications in order, the CRA therefore returned Form 44; the statutory declaration and map exhibit, to the applicant on 8th July 2019:

2018/01 –

1) Statutory declaration not adapted to reflect the application.

2) Map – distinctive colouring does not extend to whole of the area intended to be the subject of the application.
3) Map not marked as an Exhibit to the statutory declaration.
4) Locality or neighbourhood identified as *"The land is within the Parish of Stanton St Quintin, within the Chippenham Community Area of Wiltshire"* requires clarification as Stanton St Quintin parish or Chippenham Community area.

2019/01 –

1) Statutory declaration not adapted to reflect the application.
2) Map – Area of application land excluded from the distinctive colouring.
3) Locality or neighbourhood identified as *"The land is within the Parish of Stanton St Quintin, within the Chippenham Community Area of Wiltshire"* requires clarification as Stanton St Quintin parish or Chippenham Community area.
4) Supporting documentation upon which the application relies is not set out.

12.3. Confirmation of receipt of the revised applications was sent on 1st October 2019, however, re-examination of the documents found them still to be flawed for the following reasons and they were again returned to the applicant to be put in order on 9th October 2019:

2018/01 -

1) Statutory declaration not amended to reflect that this application is not voluntary registration.
2) Map Exhibit A and new map Exhibit B not referred to in Form 44 application.

2019/01 -

1) Statutory declaration not amended to reflect that this application is not voluntary registration.
2) Exhibits labelled as *"First of two Exhibits"* and *"Second of two Exhibits"*, may be preferable to refer to these as Exhibits A and B.
3) Map Exhibits not referred to in Form 44 application.
4) On map area of land subject to application is shaded as per the adjoining land subject to application no.2018/01. Preferable to shade the area of land subject to application no.2019/01 by different colouring to differentiate it from the other land and clearly show the land subject to this application.
5) Application ticked to say that map of locality/neighbourhood is included. No map included, either include map or untick box.
6) At section 10, no information regarding supporting documentation is given, either refer to section 7 or state "None" where the supporting documentation is included with application no.2018/01.

12.4. Wiltshire Council acknowledged receipt of the revised applications on 20th July 2020. It was noted that in application no.2018/01, 3 pages were missing from the amended application. It was considered that the most sensible course of action in this matter, where pages were lost, was to import these pages from the original application, (a copy of which was retained by the CRA), if the applicant confirmed that there were no changes to these pages as part of the amended application and they were satisfied that they could be included in their original form. The applicant agreed this and the application was checked with the imported pages. Both applications were found to be in order on 30th July 2020 and Wiltshire Council as the CRA is now placed under a duty, at common law, to process the applications in a fair and reasonable manner.

12.5. 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.

12.6. Lady Justice Arden states 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"."

"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."

"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 if that were not its effective date.

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

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."

12.7. It is therefore correct to take the date on which the applications were received and stamped by the CRA as the relevant dates in these applications:
2018/01 – 30/04/2018
2019/01 – 26/04/2019

13. Public Consultation

13.1. Wiltshire Council served notice of the applications, Form 45 dated 13th August 2020, upon interested parties and the Applicant on 31st July 2020. Notice was also posted on site and placed in the Wilts Gazette and Herald on Thursday 13th August 2020. The applications, including the supporting evidence, were placed on public deposit at the Offices of Wiltshire Council at County Hall, Trowbridge and Monkton Park, Chippenham. All parties were given at least 6 weeks to make representation or objection regarding the applications, (i.e. by 5pm on Monday 28th September 2020).

13.2. Following notice of the application, 8 objections were received, please see **Appendix 6** and 23 other representations were received, please see **Appendix 7**. Please note that Mr M Reeves made a number of objections regarding the applications prior to the formal notice period, attached at **Appendix 8**. In the interests of fairness, these representations are also considered in this report and form part of the decision making process.

13.3. As required under Regulation 6(3) of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007, (see **Appendix 5**), the CRA are required to send the applicant a copy of every

written statement in objection and the application must not be rejected without first giving the applicant a reasonable opportunity of dealing with the matters contained in the statement of objection. All correspondence attached at **Appendices 6** and **7** was forwarded to the applicants for comment on 9th October 2020. The applicants made the revised comments on the objections at **Appendix 9**.

13.4. These comments were forwarded to the objectors in the interests of fairness on 18th December 2020 with opportunity to comment until 15th February 2021. The original comments of the Parish Council were withdrawn and re-submitted to the Objectors on 20th January 2021 with opportunity to comment until 8th March 2021. The Objectors representations on the applicant's comments on the objections are included at **Appendix 10**. The Parish Council also submitted some additional evidence in April 2021, included at **Appendix 11.**

13.5. In summary, in its consideration of the applications to register land off Seagry Road, Lower Stanton St Quintin as Town or Village Green, the CRA have considered the documents listed at **Appendix 13**. A useful chronology of the application is included here for reference:

Action	**Date**
TVG Application received (2018/01)	30/04/2018
Trigger and terminating event consultations (2018/01)	08/05/2018
Cooper Estates v Wiltshire Council – High Court Judgment	05/07/2018
Second trigger event consultation (2018/01)	04/12/2018
TVG Application accepted in part - allotted no.2018/01	15/03/2019

Second TVG application received (2019/01)	26/04/2019
Trigger and terminating event consultations (Application 2019/01)	30/04/2019
Cooper Estates v Wiltshire Council – Court of Appeal Judgement	16/05/2019
Second TVG application accepted – allotted no.2019/01	14/06/2019
Applications returned to applicant for putting in order	08/07/2019
Amended applications received	01/10/2019
Applications returned to applicant for putting in order for second time	09/10/2019
Applications received	20/07/2020
Applications found to be in order	30/07/2020
Notice of application	13/08/2020
Objections forwarded to applicant for comment	09/10/2020 (deadline for comments: 25/11/2020)
Applicants comments on objections received	10/12/2020
Applicants comments on objections forwarded to objectors for comment	18/12/2020 and 21/12/2020 (deadline for comments: 15/02/2021)
Revised applicants comments on objections received	18/01/2021
Revised applicants comments on objections forwarded to objectors for comment	19/01/2021 and 20/01/2021 (deadline for comments 08/03/2021)

14. Main Considerations for the Council

14.1. Under section 15(1) of the Commons Act 2006, it is possible, (where the right to apply is not extinguished), for any person to apply to the CRA to register land as a TVG and under section 15(2) 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 they continue to do so at the time of application, (please see legislation attached at **Appendix 5**).

14.2. The legal tests set out under Sections 15(1) and (2) 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, where it is no trivial matter for a landowner to have land registered as a green. 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 CRA to further investigate the claim. The standard of proof lies in the balance of probabilities, i.e. that it is more likely than not that recreational rights for local inhabitants have been acquired.

Significant number of inhabitants

14.3. The meaning of the word “significant” has never been defined, but was considered at the High Court in R v Staffordshire County Council, ex parte Alfred McAlpine Homes Ltd [2002] EWHC 76 (Admin). 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.

14.4. The requirement is that users should 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.

14.5. 21 statements are received in support of the application, including 4 completed jointly, (the number of individuals rises to 25). 18 individuals are identified as residents of Lower Stanton St Quintin and 3 individuals reside within Stanton St Quintin.

14.6. The Victoria County History suggests that from the early 13th century the parish of Stanton St Quintin has contained markedly different villages, in 1223 known as Stanton and Nether Stanton. Stanton later became Upper Stanton and Nether Stanton became Lower Stanton. In 1989 they were called Stanton St Quintin and Lower Stanton St Quintin.

14.7. The Victoria County History states that neither Upper Stanton nor Lower Stanton was populous until the 20th century, the population rising sharply after RAF Hullavington was opened in 1937. The RAF station closed in 1992, when it was transferred to the British Army as Hullavington Barracks, later renamed Buckley Barracks.

14.8. Estimated population figures for Stanton St Quintin show the following population, (wiltshireintelligence.org.uk/population/small-area-populations/), (information is extracted from the 'Parish Population estimates for mid-2002 to mid-2017' file produced by the Office for National Statistics):

Year	Population		Year	Population
2002	754		2010	884
2003	775		2011	907
2004	802		2012	852
2005	805		2013	815

2006	841	[redacted]	2014	779
2007	836		2015	766
2008	862		2016	754
2009	847		2017	763

These figures do not differentiate between Stanton St Quintin and Lower Stanton St Quintin.

14.9. Within the 21 statements submitted in support of the application, 21 individuals are identified as residents of Stanton St Quintin Parish, having a consistently low population. This would, on the face of it, form a significant number, particularly given their own use of the land and their knowledge of others using the land, e.g. community events and village amenities present on the land, (evidence of which is examined later in this report).

14.10. Mr M Reeves, in objection, refers to the most frequent use of the land being use of benches present on the land, which he has observed by walkers passing through, utility workers and cyclists from outside the area and also use by those viewing the notice board. Mr and Mrs Reeves (05/01/2021) state: *"Benches – these face the road so wouldn't qualify as a tranquil space under NPPF not the pastime of admiring the view. Again, as mentioned in the representations they are used primarily by walkers or cyclists passing through so do not meet 15(2)."* There is some agreement amongst witnesses in support of the application too, that there is use of the land by those from outside, passing through the village - Mr P Cullen states that benches on the green are used daily at least in summer by residents and also walkers and cyclists passing through the village and Mr G Pattison agrees that the facility is appreciated and frequently used by a wide range of people passing through the village as a resting point and/or to take refreshment such as lunch or coffee.

14.11. In order to satisfy the significant number test, inhabitants of the identified locality do not need to comprise most of the users, the requirement is only

that users should include a significant number of inhabitants in order to establish a link between the locality or neighbourhood and the application land and therefore evidence of use by others outside the identified locality, is not necessarily fatal to the application.

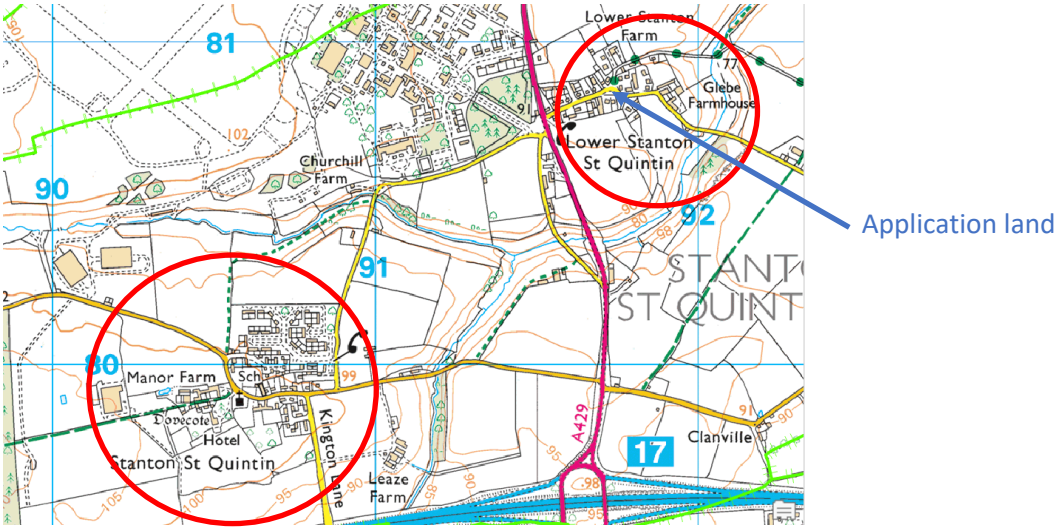
Significant number of inhabitants – Officers conclude that 21 individuals giving evidence as inhabitants of the parish of Stanton St Quintin, being a small rural area with a relatively low population and witness evidence of: i) use of the land by others and with others; ii) the presence of local amenities on the land, and iii) community events taking place on the land, is 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.
Additionally, maintenance by the Parish Council of a piece of land which did not have local benefit, was unlikely to have persisted.
The objectors dispute that the land has been used by a significant number of inhabitants, they claim the main use being from outside the locality.

Of any locality or neighbourhood within a locality

14.12. 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 applications are successful.

14.13. The definition of “locality” and “neighbourhood within a locality” were reiterated in the case of Paddico (267) Ltd v Kirklees Metropolitan Council & Ors [2011] EWHC 1606 (Ch) (23 June 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.

14.14. The identified locality in this application is Stanton St Quintin parish, however, as seen above, Stanton St Quintin has two very distinct parts and it is noted that the two parts are separated by the main A429 road, (Stanton St Quintin to the west and Lower Stanton St Quintin to the east). However, in this case, the application is made by Stanton St Quintin Parish Council as a whole and the identified locality in the application forms is *“Stanton St Quintin”*.



14.15. The statements from witnesses infer that Stanton St Quintin and Lower Stanton St Quintin do not have many other surviving amenities available to them and that this piece of land should be preserved as:
Focal point for village where people can gather for fun.
Geographical centre of Lower Stanton St Quintin for many.
Pond is the only original landmark of village.
Community asset.
Valuable asset and focus of enjoyment for the local community and others.
Space has played a part in bringing the village together on many occasions.
Living memorial for a number of families who have dedication benches installed.
Essential part of community.
Identified as green space in draft neighbourhood plan which contributes to the wellbeing of all.
Deserves to be protected.
Protect the site for current residents of the village as well as providing an opportunity for future residents.
This is the only village green in the Stanton Villages, there is no other suitable space to hold village events.

14.16. At **Appendix 16** is attached a map showing the spread of witnesses submitting evidence in support of the application, mostly residents of Lower Stanton St Quintin, but also 3 residents of Stanton St Quintin. In the two statements from residents of Stanton St Quintin, Mr and Mrs Stephens state that they are in favour of registration to protect the land for current and future residents and Cllr Parker refers to use of the land as a village green for many years, Parish Council maintenance and the land being the only village green in the Stanton villages. However, neither party makes direct reference to their own use of the land as resident/s of Stanton St Quintin rather than Lower Stanton St Quintin. Officers are not convinced that residents of Stanton St Quintin would cross the A429 road to use the land and its

amenities, the land is likely to have more value as a place of recreation to the residents of Lower Stanton St Quintin, however, there are links between the land and the whole of the parish.

14.17. The application land has a notice board which states *"Stanton St Quintin Parish Council"* and includes notices relevant to the whole parish, e.g. events at St Giles Church, Stanton St Quintin (located west of the A429). There is also a bench *"Donated by Jubilee Fund 2002"* and a tree and plaque in memory of a member of the Parish Council. There is also a memorial bench, but it is not clear if this family remain in the village or were residents of Stanton St Quintin or Lower Stanton St Quintin. There are amenities located on the land which are relevant to the whole of Stanton St Quintin parish. D Pattison in evidence considers that for the small but spread out community, the village green is point of connection.

14.18. The local facilities and amenities such as the Stanton St Quintin Parish Council notice board; lending library and benches present on the land, would suggest use by the wider local community of Stanton St Quintin and assist in establishing a link between this locality and the proposed green. From the Stanton St Quintin Parish Council minutes dated 19th May 1988, it would appear that the notice board originates from that date, with proposals to restore the village pond being rejected: *"The sub-committee had however indicated their willingness to improve the area with the addition of a number of trees and shrubs and a new notice board. The members discussed the matter in depth and agreed to support the scheme and to provide an initial sum of £100 towards the costs. The sub-committee were instructed to present their plans for approval at the Parish Council meeting in September/October 1988."*

14.19. The Parish Council and witnesses refer to Parish Council maintenance of the land for 50 years. The minutes show the Parish Council could not prove ownership of the land in April 1983 and considered proposals to reinstate the

pond between January – May 1988, resolving not to proceed with these plans at their meeting dated 19th May 1988. At the same time the Parish Council began to consider other plans to improve the area by adding trees and shrubs and a new notice board. The first recorded instance of grass cutting by the Parish Council is seen at the meeting dated 2nd October 1989 – *"Grass cutting The Clerk reported that the grassed area on the former pond site at Lower Stanton St Quintin had been cut once during the summer, and would need another cut before the end of the season."*

14.20. Mr and Mrs Reeves observe that: *"Maintenance of the land by parish council – not a sport of pastime and claimed time range is overstated too as the minutes prove. According to the minutes. Mr Heredge of* [redacted] *was mowing the grass in 1986 and the parish council would not even contribute to the costs of that. The claim of 50yrs maintenance is thus clearly untrue, belied by the parish council's own Minutes Book. I also find it strange that Mr Seale repeats the 50yrs claim as we recall him telling us that it was only in recent years that the grass had been kept in a decent state. In any case, the parish council have the Minutes Book going back to 1966 so they could prove exactly when they maintained the land from that, if they feel it is relevant. Unsubstantiated repeating of the 50 yrs claim by people who have not been resident in the village long enough to attest to even a fraction of that time is pointless unless they can provide evidence to support their statement."* Certainly, the minutes dated 16th October 1986, reflect that Mr Heredge, owner of the adjacent property was himself mowing the grass.

14.21. Whilst the maintenance of a village green by the Parish Council does not in itself demonstrate the legal tests as set out at paragraph 15(2) of the Commons Act 2006, it can assist in the locality test in forming a link between the identified locality and the land. Officers would suggest that the first evidence of management of the green by Stanton St Quintin Parish Council is found within the minutes dated 1988 where they considered the reinstatement of the pond, followed by the proposed improvement of the land

in 1988 and then grass cutting in 1989, perhaps not evidence of 50 years maintenance by the Parish Council, but certainly a long period of time. Cllr Andrews writes in support of the application, (e-mail dated 7th April 2021)

"The green space in Lower Stanton St Quintin is part of the Neighbourhood plan (The Parish Council fully endorse this) which is in for audit with Wiltshire Council. Areas like this are very important for well being and health reasons as open space (present restrictions being adhered to).

The Parish Council has spent well over £7000 pounds maintaining the grass regularly being cut and also pruning of the trees regularly by a qualified Tree surgeon (over a period of about 15 years)…

Members of the Parish want this area to be preserved either as a Village Green ideally, but if not as a green space area in the Parish name.

The Parish has maintained this area for nearly 40 years (see extracts from Minute book)."

14.22. The objector Mr M Reeves agrees that there must be a significant number of users out of the whole of Stanton St Quintin parish and where it is claimed that villagers use the benches on the land, he states: *"the most frequent use I have observed before Covid was by walkers passing through, utility workers taking their lunch and cyclists taking a break."*

Locality – The claimed use of the application land appears to be mainly by residents of Lower Stanton St Quintin, rather than the entire parish of Stanton St Quintin, as the identified locality in this case. However, there are clear links identified between the land and the whole of the parish, through Parish Council maintenance and amenities relevant to the whole of the parish on the land and as a focal/connection point of the village. Additional evidence obtained through the means of an inquiry on this matter would assist the CRA in reaching a conclusion on this point.

Additionally, the objectors claim that the majority of use of the land is from those living outside the locality of Stanton St Quintin altogether and that maintenance of

the land by the Parish Council for 50 years is not sufficiently demonstrated and is irrelevant in any case.

Have indulged as of right

14.23. 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] 1 AC 335, 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."

Without permission

14.24. There is no evidence that the inhabitants sought or were given permission to use the land for lawful sports and pastimes.

14.25. Mr M Reeves, in objection, claims that the application fails on the "as of right test" since the application land is already highway and thus any use of the land is not "as of right", but "as a right", given by the Highways Act ("as of right" means using the land as though you had a right to do so but in fact didn't). Officers would agree that, (as will be explored later in this report), part of the application land is in fact recorded public highway and as such cannot be recorded as TVG and should be excluded from the application,

however, Officer's do not agree that the central section of the application land is public highway which is supported by the highway record held by Wiltshire Council as the local highway authority and therefore the argument regarding use being "by right" does not follow.

Without Force

14.26. In the Planning Inspectorate publication "Wildlife and Countryside Act 1981 - Definitive Map Orders Consistency Guidelines", (updated 16 March 2021) it is stated that *"force would include breaking of locks, cutting of wire or passing over, through or around an intentional blockage such as a locked gate."*

14.27. The application land at Stanton St Quintin is open to the public highway, (Seagry Road), on three sides, giving unhindered access from the highway. It is therefore considered that users of the land would not have been required to use force to enter the land.

14.28. Use by force does not refer just to physical force, but also where use is deemed contentious, for example by erecting prohibitory notices 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."

14.29. There is no evidence of notices ever having been erected on the land which would have deemed use of the land contentious and thus use by force.

Without Secrecy

14.30. There is no evidence that users of the land did so in secrecy and there are photographs of events taking place on the land in an open manner, (see **Appendix 17**).

As of Right – Officers conclude that the land has been used "as of right", i.e. without force, without secrecy and without permission. The objectors dispute user "as of right" and consider that use of the land is "by right" where they contend that the application land is highway.

Lawful sports and pastimes

14.31. The statements of witnesses make reference to a number of activities taking place on the land (please see photographs of events taking place on the land at **Appendix 17**):

- VE day 2020 celebrations (with WW2 jeep and 3 motorcycles displayed on this land and the land opposite)
- Picnic site
- Fetes on the pond (pond filled in) as children – fancy dress competitions and picnics.
- Church services
- Other celebrations
- National celebrations with bring and share food and drink – e.g. Queens jubilee, royal weddings, VE day

- May 2018 group of adults helped children plant wildflower seeds and establish small community garden (photo)
- June 2019 book sale to raise funds for “wee free library” (photo)
- Library opening (photo), library used at least daily.
- Street parties
- Benches on green used daily at least in summer by residents and also walkers and cyclists passing through village. Resting point or to have lunch/drink.
- A place to sit and enjoy the peace and tranquillity.
- A place to meet and chat with local community.
- Christmas lights
- Only open space for children to play
- Small but spread out community – village green is point of connection
- Social gatherings and informal events

14.32. Mrs Cullen, in an e-mail to Cllr Andrews dated 10th April 2021, provides evidence of open-air church services for Pentecost, as follows:

Date	**Evidence**
3rd June 2001	Minutes of 12th June 2001
19th May 2002	Finance report to AGM in March 2003
8th June 2003	Finance report to AGM in March 2004
15th May 2005	Advert in The Net May 2005
4th June 2006	Sidesman and readers rota Apr-Jun06
27th May 2007	Advert in The Net May 2007

“…evidence of Church services planned to be held on the village green. (see attachment with a record of where the evidence is located) We had to cancel one or two because of the weather, but the service in 2001 definitely took place (I was there too)

We had a road closure and a party on the Green for William and Kate’s wedding in April 2011. We also had a celebration of the Queen’s Jubilee in 2012.

The Wee Library is in constant use since being set up in 2019. The benches are often used for picnics and coffee with neighbours.
Hope this will add to the bank of evidence that proves the Green has been used over many years for gatherings and celebrations."

14.33. There is limited photographic evidence of events taking place on the land and as Mr and Mrs Reeves (05/01/2021) observe *"Why is it then that nobody can produce a photo of their child or family at even one of these events that are claimed to have taken place?* [pre-application events]*"*. Officers would agree that the photographs relate mainly to more recent events taking place on the land (see **Appendix 17**), however it is accepted by officers that village inhabitants may have been potentially reluctant to agree to allow publication of photographs of their children:

Source	**Photographs of activities taking place on the land**
Liz Cullen – with e-mail 17/08/20	*"In May 2018, a group of adults helped village children plant wildflower seeds, to establish a small Community garden."*
As above	*"In June 2019, a book sale was held to raise funds to provide a 'Wee Free Library' where people could exchange books."*
As above	*"Opening of the library by local poet…"* No date of photograph given but believed to be June 2019.
In "Parish Council Comments of Objections & Additional Evidence (10th December 2020) – with e-mail from Liz Cullen 15/11/20	*"Opening of Wee Free Library June 2019 (something that has been very well used in both Lockdowns and I have a letter thanking us for it from some visitors)."*
E-mail from Cllr A Andrews 07/04/21 (13:47) – forwarding e-mail from Mary Haines 07/04/21	Cllr Andrews: *"The Village green today"* M Haines: *"Pictures of the green for you…"* 4 x photographs of the application land showing current condition of the land including notice board and benches

	present on the land – April 2021.
E-mail for Cllr A Andrews 08/04/21 (15:40) – forwarding e-mail from Liz Cullen 08/04/21 (15:33)	L Cullen: *"Book sale June 2019 to raise funds for Wee Free Library"*
E-mail from Cllr A Andrews 08/04/21 (15:39) – forwarding e-mail from Liz Cullen 08/04/21 (15:32)	L Cullen: *"Seed planting on the Village Green May 2018"*
Mr M Reeves Correspondence 23/09/20	*"Figure 25 – Bench 1 – 21 Nov 2017"* *"Figure 26 – Bench 2 – 21 Nov 2017"* *"…as the pictures below show, at the end of 2017 these benches were in a very poor state, covered in mould and lichen. You would only use these benches if you had something to sit on or were already in dirty working clothes. These pictures belie the claim that these benches were regularly used in the years leading up to 2018. If they were then the mould and lichen would not have got established."*
Mr M Reeves & Mrs K Reeves Correspondence 05/01/21	*"Figure 1 – VE 75 Celebrations – 8 May 2020"* *"…the 8 May 2020 is after the TVG application was submitted so is outside of the 20yr period, plus the VE 75 celebration did not actually use the TVG claimed land as the photo in figure 1 shows. If anything this proves that highway verge can be used for events as we have stated, and therefore the TVG is not needed to "protect" the land."*

14.34. The objector Mr Reeves suggests that there is no proof provided to support the claim that the land has been the site of many community events and celebrations, with not even a list of these events and celebrations; when they occurred and the number of attendees, submitted in evidence. He also confirms that the annual Stanton Village Fete and Novelty Dog Show has never been held on this land, which belies the Parish Council's claim,

particularly as they call this land Stanton St Quintin Village Green. The objectors in this case, dispute that activities have taken place on the land and that if events have taken place, they have been poorly attended:

Objector	**Comments**
Mrs J Cowley	Born in 1991, I have visited the house all through my childhood (house owned by grandmother and then parents), at various dates and times over the year – New Years Day, Easter Sunday, birthdays, weekends and very regularly during summer as my grandmother had a pool, at lunchtimes on the weekend, after school in the week and some sleepovers. I often played in front driveway area which looked directly onto the land. I still regularly visit. At no point since 1991 (or as early as I can realistically remember) has the land ever been used to host village green events, no fetes, no fayres, no recreational events, nothing. As a child I loved going to village fetes and often Nana took me. If there was a fete directly outside her garden I would have known and attended. She absolutely would have mentioned it. At no point throughout childhood up to TVG application do I recall seeing events or recreational activities advertised. Only ever saw the odd person walk over it on a dog walk or gentle stroll. False claims that the land has been used as a village green for past 50 years by local residents.
Olwyn & John Kelly	To our knowledge, claim that the land has been used as a village green for years is not true and it would be wrong to let this application go on based on this false statement. My husband, children and I regularly stayed with the owner of [redacted] Lower Stanton at various times of year, 1987 – 2010. My mother and father also visited at other times, as did my two brothers. At no time during these visits, which were often for a week at a time, did any of us witness anyone using the land for lawful sports and pastimes. In the earlier years the grass was always long and overgrown, so that the one bench that was there at the time could not be used and I

	remember us commenting on it. We enjoy visiting fetes in the area we would certainly be aware of any events taking place directly in front of the house. It was a rough area of open long grass with many trees which grew thickly over the years and never an open space which invited anyone to use it for sports and pastimes.
James Reeves	My grandmother moved into [redacted] in 1987 when I was very young. Until 2006 when I moved away, I visited her often for Sunday roasts, bbq's, birthdays and to swim in her pool during summer. My brother and I would sometimes bike over and stay the weekend. Not one recollection of the verge in front of her house ever being used for sports, pastimes or events of any sort, nor did my grandmother ever mention any such activities. It makes no sense that anyone could use the land for this purpose, it is far too narrow for athletic activities, cluttered with trees and slopes towards the road making ball games impractical even if there were space. Whilst I was growing up the land was often long (grass) and unkempt. The claim that this space has been a vibrant village green for years is not credible.
Jonathan Reeves	The adjacent property was, since very early childhood, the home of my grandmother, only a short distance from our home we made many trips to visit her by car and, when older, by bicycle. She had a swimming pool and we went frequently during summer months. Also regular visits for easter egg hunt, birthday parties and more. At no point did I ever notice land being used for sports and recreation. In fact more aware of how empty it was. Surely some sort of event or gathering would have attracted my attention. I had several overnight stays in a room with window facing the ground and cannot recall ever seeing anything happening. Regular visits 1990 to 2010 when I moved away from the area. Even after that, kept in contact with Nana, she never once remarked about the land being used for any sort of group activity which would be a noteworthy event. My family who stayed in the area and continued to

	make regular visits, none of them mentioned it.
Josephine Reeves	My grandmother lived in the property adjacent to the land, I visited regularly throughout childhood for Sunday lunches, sleepovers and to use her pool. As an adult I continued to visit frequently, the total time period was 1988-2014. During this time and since then I have never seen this land used for any events, sports or activities. Visiting so frequently on weekends and school holidays when most events likely to have taken place, impossible not to have noticed anything. My grandmother never mentioned events or activities on the land, I went to many fetes and social events in my own village and surrounding villages when younger, some of which my grandmother drove me to, it seems odd that she would not have mentioned something right outside her house. In 30 years never seen a board or poster advertising any events on this land, yet I notice them in my own village and villages I drive through on my way to work. As a child I walked along the wall at the front of my grandmothers property, I had to jump down several times to avoid the low and overgrown trees on the land. Almost impossible to play on the land, trees prevented sports and games that involved running around. The grass was weedy and overgrown. If the land was suitable for games I would have used it as a convenient space to play with friends, siblings or children from the village, but the area was always deserted. Google Street View May 2009 and October 2011, abundance of trees and 2009 image shows only one bench and a notice board at the time, the grass is so long it would prevent ball games.
Kathryn Reeves	Known the land for over 34 years since mother-in-law purchased the building plot. It has not been used for regular sports and pastimes and anyone claiming this is not telling the truth. Up until recently the grass was not even mown. When we took possession of the property in 2015, no one was able to use the older bench because of the state it was in and the other one was also very neglected.

	May have been odd time when village gathering occurred but given my extensive knowledge of this land they would be very rare for me not to have seen or heard about them. Support for the Queens 90th gathering witnessed by me in June 2016 was sparse, no more than 12 people, 2 of whom were myself and my husband who happened to be passing. No other events until May 2018 after the application was submitted. What appeared to be a protest event was held directly in front of our house where certain members of the village congregated, sat on our wall and even encouraged children to climb all over it. As highway land, the real current usage of this land is not under threat, people will continue to use this land for walking across, walking their dogs, small gatherings and sitting on benches as they have done for many years.
Wessex Water	*"…we would like to make it clear that Wessex Water does not object to the use of the Land for sports and pastimes. Wessex Water simply wishes to record the need for careful consideration of Wessex Water's statutory obligations in deciding how to approach the future designation of the Land."*
Mr M Reeves	At no time when visiting my mother at [redacted] have I ever seen anybody using this land for sports and pastimes, nor have I ever seen any events taking place, nor have I seen any boards or flyers or posters advertising events on this land and it is common practice to advertise events. I always see the board set out for Sutton Benger Village Fete, Firework Night, Beer and Sausage Night etc. At no time did my mother tell me about any sports taking place on this land directly in front of her house, nor did my mother tell me about events planned for this land and yet she did tell me about fetes held in other villages as suggestions for a family outing, we visited all the local fetes, it is inconceivable that she would not have mentioned events taking place or planned in front of her house. During 2015, whilst working on the house, we saw no sign of anyone using the land for sports and pastimes, nor any events held on the land nor did we see any flyers for events. In 2016, started work on remodelling the house with scaffolding in place

	until mid Sept 2016. In the whole of 2016, majority of which I had aerial view I saw nobody undertaking sports and pastimes and one candidate event on this land on the Queen's 90th birthday. It was a very small gathering of perhaps 12 people, the tree branches were at eye height, nobody sat on benches. No formal arrangement, no cake stalls, beer tent or games, music etc as expected at village fete. I do not think this meets 15(2) requirements and is the only one candidate event I have seen or heard since about in the whole period up to 2018.

14.35. Use of the land for lawful sports and pastimes does not refer only to organised group activities and can relate to use by individuals for lawful sports and pastimes which would include walking or resting and enjoying the view, perhaps activities less likely to come to the attention of the objectors than an organised event or gathering.

14.36. In this case there is an absence of direct evidence relating to of dog walking / general walking and playing on the land, it is only a small space adjacent to the highway. There is some evidence in the Parish Council minutes dated 1st June 1990 that the land was used for playing ball games: "*The use of the green at Lower Stanton for ball games and the possibility of providing protection for the young trees was discussed. It was felt that this would prove more costly than replacement and the Parish Council therefore proposed no action be taken.",* which suggests a level of use sufficient for the Council to consider this course of action. Additionally, Mrs K Reeves suggests that the land is highway and as such *"The real current usage of the land is not under threat. People will continue to use this land for walking across, walking their dogs, small gatherings and sitting on benches as they have done for many years."* The activities of walking, small gatherings and sitting on benches, having been carried out for many years as Mrs Reeves states, could equally contribute to TVG status, (notwithstanding that this point is made by Mrs Reeves in relation to her claim that the application land is highway).

14.37. Given the amenities placed on the land, it is also reasonable to assume that local inhabitants have used the land to access these parish amenities, including the lending library, Parish Council notice board and benches, although note the Objector's observations regarding use of the benches and picnic table mainly by non-residents of Stanton St Quintin.

14.38. Mr Reeves states in his objections that *"Another part of the parish councils statement is about the benches and the notice board which is again nothing to do with sports and pastimes so is irrelevant."*, Officers would disagree with this statement. In supplementary information ref planning application no.18/01108/FUL the Objector (and applicant in that planning application), Mr M Reeves states, *"The most regular use for this verge is by villagers looking at the notice board or people using the one relatively clean bench, often these are cyclists taking a breather, not villagers. Non (sic) of these usages are frequent. The only other use of this verge is people walking across it…"* again, these activities can equally qualify as relevant TVG use, as planned community events.

14.39. Mr and Mrs Reeves do however, make further reference to the condition of the benches in the representation dated 5th January 2021: *"The photos I included in my objection letter (page 17,18), reproduced above in figure 2 and figure 3 show the poor condition of these benches in 2017 which belies the claim that they were in regular, even daily, use for years. And the claim should specify what sports or pastime these benches facilitate, how many residents were doing this sport and pastime, and when and how often this sport or pastime took place, and evidence to support this."*

14.40. Mr and Mrs Reeves state in objection *"Most, if not all "in support" representations seem to be repeating hearsay and not speaking from their own personal knowledge".* Officers would agree that it is often not clear from the evidence statements whether the witnesses have themselves participated in the events/activities, or just have knowledge of the

event/activity having taken place on the land. 5 witnesses simply record their support for registration, without referring to any use of the land to support the application.

Lawful Sports and Pastimes – Although there is a lack of direct evidence relating to dog walking/walking and playing on the land, given the land as the location of the "wee free library", 2 benches, picnic table with benches and the village notice board, it is reasonable to assume that local inhabitants would visit the land frequently to make use these amenities and it is clear from the evidence that the land provides a focal point for local people to gather and celebrate national events. These events might be less frequent, i.e. annually, however, photographic evidence of events taking place on the land is limited and from the witness evidence statements provided it is not always clear if witnesses are speaking to their own use of the land for these activities or an indirect knowledge of activities. There certainly appears to be a desire locally to register the land, but the decision of the CRA must be based on evidence and additional evidence regarding lawful sports and pastimes taking place on the land would assist the CRA in making a determination on this point.
The objectors dispute use of the land for lawful sports and pastimes and state that if events have occurred, they have been infrequent and poorly attended.

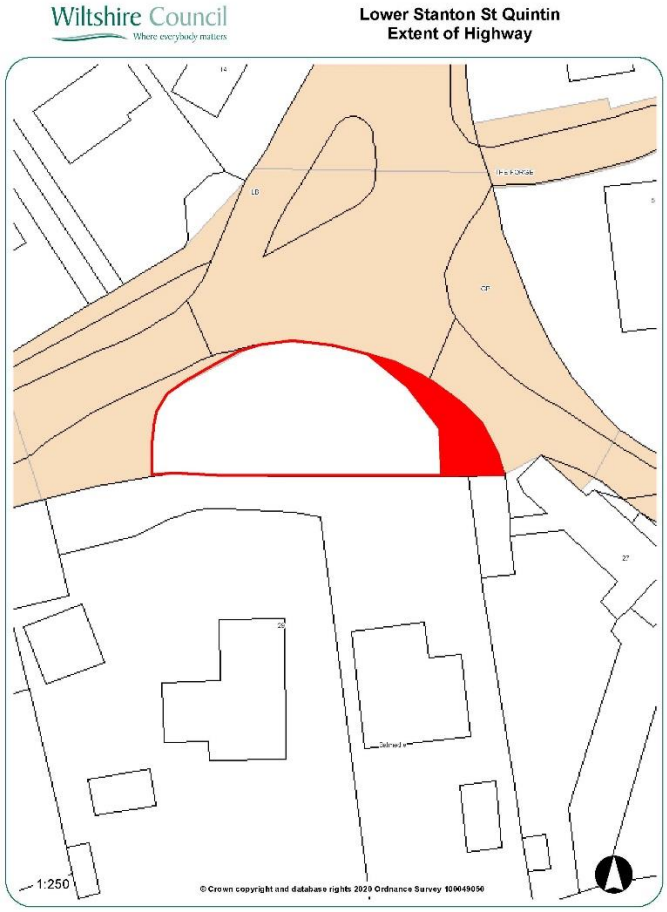
On the land

14.41. Witnesses have not included maps of the land to suggest which part of the land they have used, however, the area of land is only relatively small and it is assumed that the areas around and accessing the notice board, library and benches would be well used. Additionally, mingling at the community events over the land is likely to have covered the whole of the land, as can be seen from the photographs listed above, which identify the application land as the location for these events, (see photographs at **Appendix 17**).

14.42. Previously the land was a pond, this is referred to by Mrs Creasey who provides evidence that the pond was filled in, (mid 1960's), when she was a child and fetes were then held on the area.

14.43. In his objection Mr M Reeves considers that the whole of the application land is highway (verge). This view is supported by Wales and West Utilities who write (24th September 2020) regarding their pipe laid in 2016: *"The area of land was found to be unregistered at the time and as it adjoined the public highway it was assumed to be highway verge. Notices were served in relation to work in a highway and the pipe was therefore legally laid."* It is not possible to record highway as TVG and Mr Reeves claims as such there is nothing to prevent people gathering on the highway verge, those rights are already protected and there is no reason for the TVG applications.

14.44. Officers agree that part of the application land is indeed recorded highway at the eastern side and for this reason, should the application to register the land be successful, it would be proposed to exclude that area of existing public highway, as shown in red on the plan below as the CRA may register the land in part where it is considered that the legal tests for the registration, as set out under Sections 15(1) and (2) of the Commons Act 2006, have been met in full over part of the application land. Mr Reeves agrees on this point in his recollection that over the last 34 years this area has been used as a driveway for [redacted] Lower Stanton St Quintin and there has usually been a car parked in front of the garage located just south of this land, therefore it could not have been enjoyed for lawful sports and pastimes over the last 20 years. Additionally, Mr Reeves' mother never mentioned such use to him, having overlooked the land between 1987 and 2014.



Extent of highway =

Application land = Edged red

Application land also Recorded as highway maintainable at public expense =

14.45. Mr Reeves additionally considers the central area of the land, i.e. the former pond, to be highway and therefore incapable of being registered as a TVG. The matter of the extent of highway has been examined and considered at length by an Officer of the Rights of Way and Countryside Team in a full report dated 1st February 2019 and attached at **Appendix 18**.

14.46. The Officers report found that the land had never been recorded as maintainable highway and considered the Inclosure Award documents in detail:

"2.1. It is clear that from at least 1929 the area of land being queried has not been recorded as HMPE (Highway Maintainable at the Public Expense) by the highway authority."

"5.1. The plot of land numbers 143 and the pond (i.e. the land excluded from the highway record) were clearly created at Inclosure and related to the nearby dwelling house (which may or may not still exist). The area of land was created out of what was possibly historic highway but the effect of the inclosure award (as enabled by the Act of Parliament) was to extinguish existing highways and to create new ones. We can see good examples of this in the top left hand corner of the extracts above. Here, old highways have ceased to exist and new ones have been formed to allow for the new division of the land. The road in the village is not different to this and the new highway, no 128, was created as the new road. The inclosure award did not specifically include the pond or the parcel of land numbered 143, which, on the balance of probability, also included the pond area.

5.2. Village ponds are not uncommon features in villages and have historically been used to produce fish, house ducks, soak cartwheels, wash clothes and provide water for animals. The purpose of Lower Stanton St Quintin's pond is not known. If it was formed in the highway it would have formed an obstruction to the highway and although it remains lawful to drain the highway onto adjoining land it is not lawful to drain adjoining land onto the highway.

5.3. Whatever the history of ownership of this land since 1783 it is irrelevant to the matter of whether highway rights were subsequently acquired. It is not possible to acquire highway rights through a pond and since the pond has been filled in (the mid 1960's) the Council has no evidence to suggest that a highway right to pass and re-pass has ever been acquired by any member of the public either on foot, on horseback, cycle or with a mechanically propelled vehicle. Even in the event that they had been acquired in this way it is even less likely that the way would be maintainable at the public expense.

5.4. Officers consider that the extent of highway maintainable at public expense is correctly recorded at this location. Even if the extent of highway had included the pond area the area directly south of the pond, parcel number 143, was clearly allotted to a property distinct from the road."

14.47. Inclosure was a process by which lands which had previously been communally farmed by the inhabitants of the manor were redistributed amongst people having rights of common. By the 18th century new innovations in farming were increasing output, but where communal farming was in place it was difficult to modernise without the agreement of all parties, therefore the larger landowners who wished to increase productivity set about obtaining parliamentary authority to redistribute property rights.

14.48. Inclosure Awards provide sound and reliable evidence where they arise from Acts of Parliament. The Acts gave the Inclosure Commissioners the power to change the highway network of the parish and authorised and required the Commissioners to set out highways public and private, within the parish, including the stopping up and alteration of existing roads. Additionally, the public process to be followed was clearly set out within the Act, e.g. notice of the public and private roads to be set out was required and opportunity given for objection to the inclusion or non-inclusion of public and private roads. The Officer has examined the inclosure award in detail and concludes that the application land was not awarded as highway in the 1783 Stanton St Quintin Inclosure Award and since that date has never been recorded as highway maintainable at the public expense.

14.49. Mr Reeves makes reference to the former pond as part of the highway and suggests that Mrs Creasey's written evidence that the carts used to go through the pond to swell the spokes of the wheels, is supportive of his conclusion that the pond was not a barrier to traffic and legally a submerged road is still a road. In fact Mrs Creasey's evidence suggests that the pond was dug out privately by the farmers for the purposes of allowing their cattle

and horses to drink, not in relation to the highway. She does not mention public use of the pond for the purposes of swelling the spokes on the carts and carriages, but only the farmer's use of the pond for this purpose: "*The POND was dug out by the Farmers (maybe JONES') so their Cattle and Horses could drink.*
They also put their Carts through the water to swell the spokes on the wheels, so the metal bands wouldn't fall off."

14.50. Regarding the Finance Act evidence, Mr Reeves claims the application land which is left uncoloured as part of the 1910 Finance Act plan, suggests highway. Whilst we would expect a road which was not subject to taxation to be excluded from the neighbouring hereditaments, the Planning Inspectorate Consistency Guidelines, urge caution when viewing these documents: *"…in the case of Fortune v Wiltshire CC [2012] in which Lewison J gave careful consideration to the interpretation of routes excluded from adjacent hereditaments. In essence he concluded that the Finance Act records are not definitive; they are "simply one part of the jigsaw puzzle "to be considered along with other relevant material particular to each case."*
"Documents and plans produced under the Finance Act can provide good evidence regarding the status of a way. In all cases the evidence needs to be considered in relation to the other available evidence to establish its value…It should not be assumed that the existence of public carriageway rights is the only explanation for the exclusion of a route from adjacent hereditaments although this may be a strong possibility, depending on the circumstances. It must be remembered that the production of information on such ways was very much incidental to the main purpose of the legislation."
The main purpose of these documents was not to record highways, unlike the inclosure documents, and therefore they must be viewed and weighed against other documentary evidence.

14.51. The Highway records themselves show that since 1929 (Local Government Act 1929), when the responsibility for rural roads was transferred from the Rural District Council's (RDC's) to the County Council and the RDC surveyors completed maps showing the extent of highway maintainable at the public expense, from their own knowledge and records, the land in question remains uncoloured is not recorded as highway maintainable at public expense.

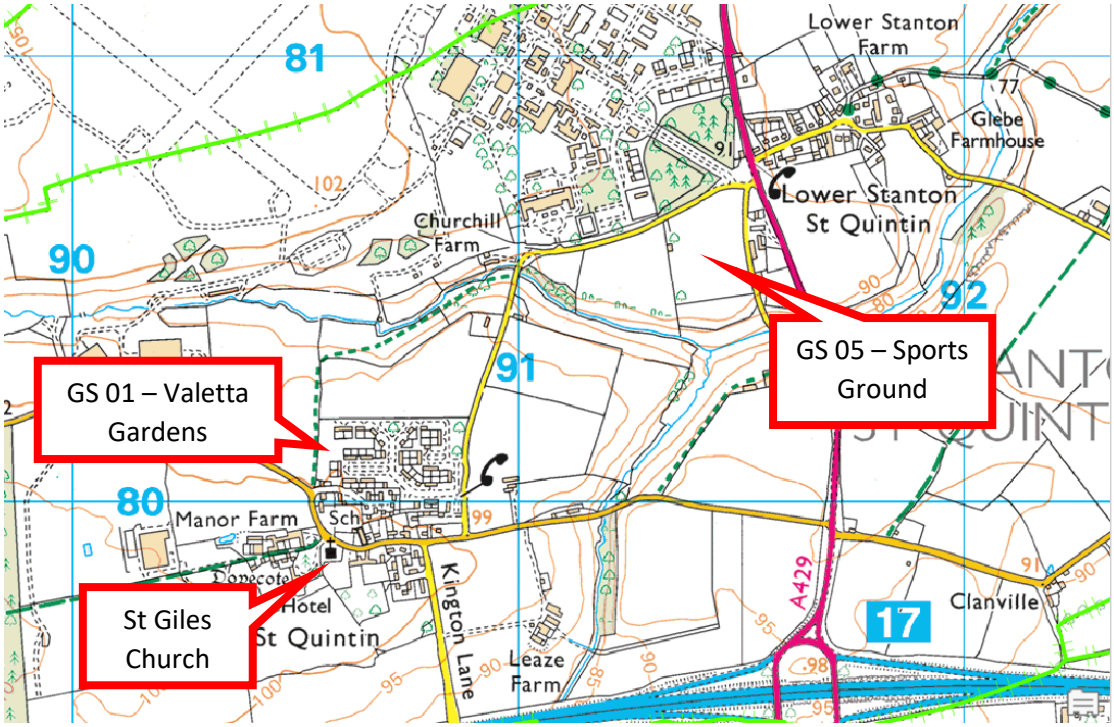
14.52. The minutes, (as provided in evidence by Mr M Reeves), reflect the view of the County Council that the land is not highway maintainable at the public expense, supporting the highway records above. It is noted that in the minutes of the Parish Council dated 6th November 1950, the County Surveyor had written stating that the Roads and Bridges Committee were of the opinion that the matter of cleaning the pond was largely a sanitary one and not the responsibility of the highway authority. The later minutes of the Roads and Bridges Committee regarding the Parish Council request to fill in the pond, support this and consistently refer to no action to be taken by the highway authority, it not being their responsibility. If they considered that the pond formed part of the highway, Officers would expect the minutes to reflect this. The use of material from the Council Housing development, which Mr Reeves suggests to be fly tipping if not on highway land, and later soil covering and seeding and unauthorised parking are perhaps gestures of goodwill rather than an admission that the land is highway maintainable at the public expense. The Parish Council AGR minutes dated 1st June 1955 acknowledge that the Calne and Chippenham RDC had no powers to deal with the matter, but *"…the opportunity has been taken, when the housing site was being developed, to use the pond as a site for dumping the surplus material; thus assisting the Parish Council in dealing with the nuisance."*

14.53. Mr Reeves suggests that where the land is a highway *"it is Wiltshire Council's duty to protect the public right to use the highway for all the uses of*

a highway. The public rights for a Village Green are more restrictive than a highway. Therefore Wiltshire Council would be failing in its duty to allow highway to become green as it would not be protecting all the highway rights". Mr Reeves claims that if the land is highway, there is nothing to prevent people gathering on this land, as highway verge, nor would the objector wish to prevent gathering, which is already lawful and already protected by legislation, therefore, there is no reason for the TVG applications. Officer's do not agree that the central and western sections of the application land are highway and therefore this argument does not follow.

14.54. In witness evidence Mr M Smith makes the point that in fact land on the other side of the road from the application land should be included within the application and points out that during the WWII vehicle display 2020, vehicles were also parked on that side of the road. Mrs Creasey also suggests that in fact the green is on the opposite side of the road, however, this land does not form part of the application and there is insufficient evidence of use of that land to include it within any registration by reference to only one event of parking vehicles for the VE day celebrations 2020. There are, to the Officers knowledge, no village amenities located on this land, i.e. benches, notice board etc.

14.55. Witnesses make reference to the proposed green being the only suitable place to hold village events and bringing residents together as a focal point of the village. However, Mr and Mrs Reeves points out that there are other green spaces in the village, as identified in the draft neighbourhood design plan, i.e. the sports field (GS05) and land to the rear of Valetta Gardens (GS01) and that historically the annual Stanton St Quintin village fete has been held on the sports field, not the application land. The locations of these alternative green spaces in the parish are recorded on the map below:



14.56. Referring to the correspondence from Mr M and Mrs K Reeves dated 5th January 2021, in considering the matter of the rights of local inhabitants over the application land, Wiltshire Council as the CRA are not concerned with private matters and dispute regarding the access to the private properties [redacted] and [redacted].

On the land – The current highway record is not conclusive in law, but it is reasonable for the Council to rely upon these records and the burden of proving otherwise lies with the person questioning its validity. In this case the evidence regarding the highway record has been investigated in detail and the extent of highway maintainable at the public expense is correctly recorded at this location, therefore, the majority of the application land is capable of registration as a TVG, although this is disputed by the objectors. Additionally, the objectors are concerned that if the land is indeed highway, it has wider public rights, therefore if the land was registered as TVG, the Council would fail in its duty to protect and assert all public rights.

At the eastern side there is a section of the application land which is shown in the highway records to be maintainable at the public expense and if the land is successfully registered as town or village green, it is proposed to exclude from the registration that part of the application land which is existing highway.
There are photographs of events taking place on the land, which clearly supports the application land as the location for these events, (please see **Appendix 17**).

For a period of at least 20 years

14.57. To satisfy the 20 year user test, application 2018/01 requires a user period April 1998 – April 2018 and application 2019/01 requires a user period April 1999 – April 2019. Mr and Mrs Cullen have known the land for 26 years; Mr Davis since October 1997; H W Jolly for around 30 years; Doreen Pattison 32 years; Graeme Pattison since 1977; Mr and Mrs Seal refer to use as a village green and maintenance by Parish Council for last 50 years but give no dates of their own use/knowledge of the land; Mike Smith since 1997; Cllr A Andrews for 12 years and Mrs Creasy has known the land since childhood. Additionally, the Parish Council minutes refer to this piece of land as "the village green" since at least 1983: Minutes 14th April 1983 – the land is referred to as "the village green", the Parish Council did not own the land, but the Clerk to arrange for the Parish Council to register the village green as common land.

14.58. There is evidence of use as a village green in those dates as seen at **Appendix 14** and summarised below:

Witness	Years land known	How used	Events
2	Since 2009	Meeting place	VE Day 2020
3		Picnic site (with family and others seen)	VE Day 2020 Local free library
4		Fetes, fancy dress competitions, picnics	Church Services
5	26 years		Church Services annually 2001, 2002, 2003, 2005, 2006, 2007 (one or two

			cancelled due to weather but attended 2001 service) National celebrations: Jubilee/Royal weddings/VE day Road closure and party on the Green for William & Kate's wedding April 2011 Queen's Jubilee celebration 2012. May 2018 – Adults and village children planted community garden June 2019 – Book sale Wee Free Library set up 2019
6	26 years		VE Day Church Services Book sales Informal gatherings of locals Little library Benches used daily in summer by residents and others passing through
7	Oct 1997		Royal celebrations VE day (village gathering)
8		Grandchildren play on the green when they visit	A place to sit A place to meet and chat with local community
9			Opportunity to sit for afew minutes Wee Free Library
12	About 30 years		Many events for community (I have thoroughly enjoyed)
13	32 years		Social events (I have helped organise several in last few years) Bunting for national and local events such as a wedding Christmas lights Wee Free Library Picnic bench We involved local children in planting wildflower seeds Open space for children to play
14	1977		Used by villagers as a green sine 1977 to my knowledge Events on many occasions Frequently used by people passing through the village
16	Refer to use as a village green and maintenance by Parish Council for		Residents can celebrate notable historical and commemorative events Commemorative tree and

	last 50 years		plaque/picnic bench/library/PC notice board for residents
17	Since 1997		Since 1997 continual use as a green by residents Mature trees/village notice board/2 picnic tables/library all regularly used by residents
18			Focal point at heart of small village Meet on special occasions with neighbours and new arrivals
20			Villagers and visitors can congregate to relax and have community events
21	Last 12 years		Wee Free Library
22			2 Royal weddings and VE day celebrations in last 12 years Church service Social gatherings and informal events

14.59. There are events taking place outside the relevant user periods, e.g. the 2020 VE day celebrations; June 2019 book sale and the "Wee Free Library" opening June 2019, after the applications are made. Mr and Mrs Reeves make the following comments on this: *"Wee Free library – doubly irrelevant since not only was it installed in 2019, outside of the 20yr period in question, it is also not on the claimed land but on highway verge…VE 75 celebration – irrelevant since outside the 20yr period in question and also because the vehicles were parked on the verge opposite the TVG claimed land as the photo in figure 1 shows. This proves the point that highway verge can be used for events…Christmas lights – not a sport or pastime, and only a recent occurrence too so outside the date range. There are 3 small battery power strings up this year, 2 more than the 1 in 2018, the first year they appeared…Picnic table – this was installed without consultation, there is no reference in the parish minutes to this picnic bench and it is in fact on the route the Fire Service suggested they would use to reach our house. This picnic table is recent, not the several years that is claimed, but dates from after the application in 2018. Hence it is irrelevant to proving 20 yrs use, plus*

as mentioned in the representations it is used primarily by walkers or cyclists passing through, which again does not meet 15(2) which is only interested in use by residents of the neighbourhood the TVG serves, in other words, Stanton St Quintin parish…Other events – various claims have been made about open air church services (when?), Queen's Jubilee (which?) and Royal Weddings (which?). None of these specify a date or even the year or whose wedding was being celebrated. The only events that are given dated are those after the TVG application was submitted so are outside the 20yrs that are relevant. Likewise the only photos submitted are for events that post date the application so are irrelevant."

14.60. Officers would certainly agree that details regarding the events claimed to be taking place on the land are vague and many witnesses provide no dates for the events and there is reference to events which we know to have taken place outside the relevant 20 year user period, e.g. the VE day celebrations 2020, which are considered in the next section of the report. Mrs Cullen makes reference to the dates of open-air church services held on the land between 2001 and 2007 (excluding 2004), albeit that one or two were cancelled due to the weather, Mrs Cullen confirms the 2001 service as she herself attended; a party on the Green to celebrate the wedding of Prince William & Catherine Middleton, in April 2011 and the Queen's Jubilee celebration 2012. Mr and Mrs Reeves refer to a celebration for the Queens 90th birthday taking place in April 2016, which they attended. The sowing of wildflowers in May 2018, (possibly an event on the land referred to by Mr Reeves on 19th May 2018), can be included where the second application is received April 2019 and given the small area of land, it is likely to have covered that part of the land subject to the second application 2019/01. There is however, little evidence of events taking place on the land in the early part of the user periods 1998 and 1999, other than the 2001 Church Service which is confirmed by Mrs Cullen to have taken place and also evidence within the Parish Council minutes of ball games taking place on the

land in 1990, but prior to the relevant user periods. Despite anecdotal evidence of use as a village green for the last 50 years; since 1977 and since 1997, there is little supporting evidence of actual use at the early part of the user periods.

14.61. Wessex Water consider that the 20 year user period required may not be met, as follows: "*Whilst Wessex Water is not the owner of the Land, it does have assets beneath its surface with associated rights of access through the surface of the land. These rights are akin to easements and have, as a result of the exercise of statutory powers, been described as a "statutory easement". As such, the condition contained within section 15(1) of the Commons Act 2006 as to indulgence "as of right" for the period of time set out may not be met. At any time the indulgence could have been halted by service of the requisite notice under sections 159 and 168 of the Water Industry Act 1991."*

Wessex Water provide no specific example of an interruption to use of the land by local inhabitants for lawful sports and pastimes, based on their activities, during the relevant user periods 1998-2018 and 1999-2019, however, it is understood that their plant was installed in around 1986, prior to the user periods in question.

14.62. Whilst use must be continuous throughout the 20 year period, temporary interruptions in use do not demonstrate a lack of continuity and it is a matter of fact and degree for the decision-maker to determine whether the whole of the land has been available for lawful sports and pastimes throughout the 20 year period. In Taylor v Betterment Properties (Weymouth) Ltd [2012] EWCA Civ 250, paragraph 71, Patten L.J said:

"…there must be a physical ouster of local inhabitants from the land and the disruption must be inconsistent with the continued use of the land as a village green. If the two competing uses can accommodate each other (as they did in Redcar (No 2)) then time does not cease to run. But here the

exclusion was complete and the use of the land for the drainage system was not compatible with it remaining in use as a village green. The judge was therefore correct in my view to hold that there had not been twenty years' user of the works site."

14.63. In the Betterment case, the duration of public exclusion from the land was a period of around 4 months, which was found to be sufficient to stop time running in relation to the use of the land. The Stanton St Quintin case differs where any interruption in use for the installation/maintenance of services, is likely to have been for only a very short period and would not have covered the whole of the application land. In the case of TW Logistics Ltd v Essex County Council [2018] EWCA Civ 2172, which examines the rights of all parties including the landowner, following the registration of land as a TVG, (part of a working port), Lord Sales and Lord Burrows conclude:

"65. …Registration of land as a TVG has the effect that the public acquire the general right to use it as such, which means the right to use it for any lawful sport or pastime (whether or not corresponding to the particular recreational uses to which it was put in the 20 year qualifying period, evidence of which gave rise to the right to have it registered as a TVG). However, the exercise of that right is subject to the "give and take" principle so that it is potentially misleading to think that there is a "one size fits all" principle. This means that the public must use their recreational rights in a reasonable manner, having regard to the interests of the landowner (which may, or may not, be commercial) as recognised in the practical arrangements which developed to allow for coexisting use of the land in question during the qualifying period. The standard of reasonableness is determined by what was required of local inhabitants to allow the landowner to carry on its regular activities around which the local inhabitants were accustomed to mould their recreational activities during the qualifying period."

14.64. The objectors too have known the land for the full relevant user periods: J Cowley has known the land since childhood (born 1991); O & J Kelly have known the land since 1987-2010; James Reeves has known the land 1987-2006; Jonathan Reeves visited regularly from 1990-2010; Josephine Reeves has known the land 1988-2014; K Reeves and M Reeves have known the land for over 34 years. The Objectors' visits to a property adjacent to the land were frequent and regular and they certainly would have had views of the land from the property. They claim that in the earlier years of their knowledge of the land that it was untidy and unkempt, with trees, i.e. in a condition which did not lend itself to the exercise of lawful sports and pastimes, which concurs with the lack of evidence of use of the land at the early part of the user periods.

14.65. The objectors dispute recreational activities taking place on the land, only Mrs K Reeves and Mr M Reeves confirm their knowledge and attendance at an event, the Queens 90th birthday celebrations in June 2016, (within the user periods in question), which was poorly attended (no more than a dozen people), who stood and chatted for an hour or two before drifting off. However, Mrs K Reeves does make reference to *"The real and current usage of this land…People will continue to use this land for walking across, walking their dogs, small gatherings and sitting on benches, as they have done for many years. We are not disputing this…"* and as part of the planning application Mr M Reeves contends *"The most regular use for this verge is by villagers looking at the notice board or people using the one relatively clean bench, often these are cyclists taking a breather, not villagers. Non (sic) of these usages are frequent. The only other use of this verge is people walking across it…"*, which suggests this use throughout their period of knowledge of the land from 1986, when the property adjacent to the land was purchased by Mr Reeves' mother, to their present day ownership of the property.

14.66. Mr Reeves refers to the TVG application and the Parish Council statement that the land has been used as a village green for the past 50 years - they do not say how it has been used as a green and present no evidence of this use. However, as Mr Reeves comments that Mrs Creasey's evidence pre-dates the relevant user period, it also supports the claim made by the Parish Council that the land has been used for the past 50 years. Mr Reeves considers that this would give a user period from 1968-2018 and yet there was no objection to planning application 72QW68 at that time which proposed an access road across the middle of the land and the land was not registered as common land following the Commons Registration Act 1965. These matters are not relevant to the consideration of the use of the land during the relevant user periods 1998-2018 and 1999-2019, on which the present claims are based. Common Land and Town Village Green are subject to different rights, common land subject to the rights of commoners to use or take provisions from the land and TVG's having a right for local inhabitants to recreation over the land.

For a period of at least 20 years – There is evidence of events taking place within the relevant user period of 1998-2018 and 1999-2019 and some evidence that the activities of walking across the land, walking dogs, small gatherings and sitting on benches, have taken place for many years. However, there appears to be a gap in the evidence of use for the early part of the user periods in question. Additional evidence on this matter would assist the CRA in making a determination on this point.
Additionally, Objectors dispute events/activities taking place on the land and those that did take place were poorly attended.

Use continuing

14.67. The application is made under Sections 15(1) and (2) of the Commons Act 2006, with use continuing at the time of application.

14.68. The latest organised event on the land appears to be the VE day celebrations in 2020 and Mrs Cullen provides evidence that the book sale to raise funds for the "Wee Free Library" was held in June 2019 and Mr Reeves confirms that the library was not in place on the land until June 2019, both of which occur after the 2019/01 application received by the CRA on 26th April 2019. Additionally, Mr M Davis confirms that there is Increasing use, particularly with social distancing and the coming together of families in sensible surroundings to maintain a healthy life balance. The Parish Council presents evidence that the Wee Free Library is still being used and has been particularly popular during lockdown. The parish notice board and benches continue to be present on site and it is assumed that members of the community continue to visit these amenities. The Parish Council also refer to recent works to trees on the site, funded by them.

14.69. The objectors refer to events, activities taking place on the land following the TVG application dates which do not support the application. Mr Reeves points to photographs which the Parish Council have submitted showing use of the land dated pre-application, but which are actually taken post-application: *"I would draw your attention to the lie on page 6 (old page 14) where in Cllr Andrews' email of 23 Nov 2020 14:31 he says "Here are some photos of events held prior events prior to application" (sic) by which it is clear he is claiming the photos below, labelled as taken in 2019, pre-date the TVG application which is dated 20 April 2019"*, (M Reeves e-mail 2nd February 2021). These are photographs of the opening of the Wee Free Library in June 2019, which Mr Reeves correctly identifies as post-application. Additionally, Mr Reeves suggests that the application is dated 30th April 2018 and therefore the evidence needs to show that sports or pastimes took place on the land over the period 30th April 1998 – 30th April 2018, however, in this case we are dealing with two applications dated April 2018 and April 2019, so activities may be considered to fall within the 20 year user period, up until April 2019, if they take place on the second area of

application land, which given the small size of the land, is very likely for a gathering or event, or even just walking over the land.

14.70. The legal test in this case under Section 15(2) of the Commons Act 2006, is that use is continuing at the time of application, i.e. there being no event to stop/prevent public access by the time of the application and it could therefore be legitimately considered that this use, unfettered may also continue after the application and may be considered as part of the evidence in order to meet this part of the Section 15(2) test. Officers would suggest that where there has been no event to prevent use of the land, such as fencing or signage, it is likely that use will continue after the applications are made and although this use cannot support the 20 year user period, it does support the last requirement of the relevant legal test.

Use continuing – The evidence suggests that use of the land is continuing at the time of the applications. The Objectors dispute that events held on the land post 30th April 2018, are admissible as evidence in this case.

Comments on other objections

14.71. **Land ownership** - Mr Reeves claims that the Parish Council have made false and repeated claims that they owned the land from 1982 and given this history the TVG application is clearly vexatious, discriminatory and a breach of the Human Rights Act, therefore an unlawful action by the Parish Council. Mr Reeves claims that the Parish Council have deliberately restricted the claim to the green area outside his property, with all the services to his property, whilst leaving a green space for new or re-routed services for the neighbouring property to the west.

14.72. The matter of ownership is not of great concern in this application, it is noted that Stanton St Quintin Parish Council do not own the land and the Officer who previously considered the extent of highway at this location, in her 2019 report considers, (see report at Appendix 18): "*Whatever the history of ownership of this land since 1783 it is irrelevant to the matter of whether highway rights were subsequently acquired*." Officers would suggest that the same is true in the TVG case. The land in question is not registered and the notices of application were correctly posted on the site and in a local newspaper addressed to all owners and occupiers as the CRA are required to do under statute. No landowner has come forward. It is noted that the Parish Council have taken responsibility for the land and placed local amenities upon the land, perhaps under the false impression that they owned the land, but there has been no objection and no parties with an interest in the land have made themselves known. For the purposes of correctly recording the rights of local inhabitants over the land, it matters not that there is no recorded landowner or that the land is not owned by the Parish Council, if the legal tests as set out at Section 15(2) of the Commons Act 2006 are met in full.

14.73. **Human Rights Act 1998** - Mr Reeves expands on the Human Rights Act 1998 point, with reference to the services to his property which are located in the application land, (i.e. Gigaclear; Wales and West Utilities; Wessex Water and BT Openreach), *"…it is legally impossible occupy* [sic] *or disturb the soil unless this is for the benefit of the green. The existing services to my house are clearly of no benefit to a green and installing new services would clearly harm the green until the grass recovered. The granting of TVG would thus make my existing services criminal, cutting off my property from the services it has used since 1987. It would also make criminal the installation of any new services such as fibre, or indeed any replacement services for failed cables or pipes."*

"It doesn't take a judge to realise that attempting to cut off the services to someone's house is an improper action for a council. In fact it is a breach of the Human Rights Act and an obvious one at that.
The First Protocol, Article 1 of the Human Rights Act is about protection of rights for property. It states that every "person is entitled to the peaceful enjoyment of his possessions" which includes property. In addition, HRA Article 14, prohibits discrimination, including discrimination due to association with a particular property. Article 8 of the HRA is also applicable. Article 8 includes "respect" for "his home" and "family life". It forbids interference except in extreme circumstances, such as national security, public safety or the for the [sic] *protection of the rights and freedoms of others. And as has already been mentioned the Highways Act s130 already guarantees the public right of use and enjoyment of this verge so there is no need to this TVG application unless the aim is to cut off my services."*

14.74. Mr Reeves is concerned that services provided to his property located beneath the application land will be made criminal if the land is registered as TVG by virtue of the "Victorian Statutes", i.e. Section 12 of the Inclosure Act 1857 "Protecting from nuisances town and village greens and allotments for exercise and recreation", which makes it an offence to carry out any act to the injury of the green or to the interruption of the use or enjoyment thereof as a place for exercise and recreation, and Section 29 of the Commons Act 1876, "Amendment of law as to town and village greens", any encroachment on or inclosure of a green and also any erection thereon or disturbance or interference with, or occupation of the soil thereof, which is made otherwise than with a view to the better enjoyment of the green, is deemed a public nuisance. Mr Reeves is concerned that the services will be removed and this would be an improper action for the Council and a breach of the Human Rights Act under which every *"person is entitled to the peaceful enjoyment of his possessions"* which includes property. In addition, the Human Rights Act Article 14, prohibits discrimination, including discrimination due to

association with a particular property. Article 8 of the Act is also applicable where it includes “respect” for “his home” and “family life”.

14.75. If Mr Reeves is correct that the area now being claimed as TVG is in fact highway, it would be possible to lay new services in the highway and carry out works to the existing services present in the highway, with the relevant permissions. However, Wiltshire Council do not agree that all the area claimed as TVG is highway.

14.76. Mr Reeves refers to the Victorian Statutes under section 12 of the Inclosure Act 1857 and Section 29 of the Commons Act 1876, under which it becomes an offence to disturb the soil of the green otherwise than with a view to better enjoyment or the land, or to undertake any action which interrupts its use as a place for exercise and recreation. It is not possible to carry out works on a TVG and it is not generally possible to gain consent for works on a TVG under section 38 of the Commons Act 2006, as it would be on common land, the only remedy for works to a TVG is the exchange of land to remove TVG status from the land requiring works. Mr Reeves is understandably concerned that if the land is registered, it will require the removal of the services to his property, located within the land, where it will not be legally possible to carry out works and maintenance which will require disturbance to the soil of the green, not for the benefit of the green. This would he says result in a breach of the Human Rights Act, making the existing services criminal; cutting off his property from the services it has enjoyed since 1987 and making the installation of new services illegal, (services were installed in 1986/7 with the exception of gas which was installed in 2016). Wessex Water share these concerns and the effect of registering the land as a TVG on their ability to meet their statutory duties as the appointed sewerage and water undertaker. Wales and West Utilities have requested that if the land is registered the presence of the gas pipe is recognised to ensure that it is not

damaged or disturbed and that access can be maintained for repair or maintenance.

14.77. Officers consulted with the relevant statutory undertakers, the following replies were received:

1) **Gigaclear Ultrafast Fibre Broadband equipment** – Cllr Adrian Andrews, Stanton St Quintin Parish Council confirms to the CRA (25.08.20): *"This email is to confirm the relocation of the broadband pots. This relocation will make it easier for both properties to connect to Gigaclear, rather than going across the green."*
As confirmed in Gigaclear e-mail to Cllr Andrews 19.08.20: *"We understand that the application to move turn [sic] the public land in front of these properties into the Village Green is getting closer and as such we have asked our contractor to complete the works on this location inside the next 2-3 weeks, once the appropriate minor works permit has been agreed with the Local Authority. As discussed previously with myself, and our Project Delivery Lead you met on site Scott Jones, they will be taken to the furthest left and right most points of the Green close to the wall at the back. Hopefully this means they will not be visible or disrupt the soon to be Village Green once the reinstatement is completed."*

2) **Wales and West Utilities** – *"The approximate position of the pipe is shown by a red line on the plan attached, it was laid in 2016. The area of land was found to be unregistered at the time and as it adjoined the public highway it was assumed to be highway verge. Notices were served in relation to work in a highway and the pipe was therefore legally laid. WWU has various rights under legislation related to gas and services, in particular the Gas Act 1986. WWU does not anticipate any issues with the pipe but should access be required for repair or*

maintenance then WWU needs to make sure that access can be obtained, the area would be reinstated following completion.
Should the application for Town or Village Green status be successful then WWU asks that the presence of a gas pipe is recognised to ensure that it is not damaged or disturbed through any activities that may take place on the land in the future."

3) **Wessex Water** – *"Wessex Water would like to register its concerns as to the effect of Land as a town or village green on Wessex Water's ability to meet its statutory duties as the appointed sewerage and water undertaker for its region, which includes this are of Wiltshire.*
Our records show an existing foul sewer as well as water meters indicative of the presence of water supply pipes running beneath the Land…
Wessex Water enjoys powers conferred by section 159 and 168 of the Water Industry Act 1991 to enter and carry out works in land other than a street, subject to the service of prescribed periods of notice on the owner and occupier of that land. Such works relate to the laying of new pipes and accessories and to inspection, maintenance, adjustment, repair and alteration of existing pipes and accessories.
We understand that certain Victorian legislation – namely section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876 – is brought into play by virtue of land being registered as a town or village green. These provisions create criminal offences as regards causing injury, interruption of use as a place of recreation or disturbance of soil of town or village greens.
Any designation of the Land as a town or village green has the potential to frustrate Wessex Water's ability to maintain, extend and improve its assets…
If future maintenance and repair of Wessex Water's underground pipes was in any way restricted (e.g. a blockage in a sewer beneath the Land

which could not be accessed and cleared), there could be significant impact on the immediate locality.

Consequently, Wessex Water is concerned that registration of the Land as a town or village green could have adverse impacts both on its ability to carry out its statutory duties and potentially on the residents of Lower Stanton St Quintin, on visitors to the area and to the wider environment. Whilst Wessex Water is not the owner of the Land, it does have assets beneath its surface with associated rights of access through the surface of the land. These rights are akin to easements and have, as a result of the exercise of statutory powers, been described as a "statutory easement". As such, the condition contained within section 15(1) of the Commons Act 2006 as to indulgence "as of right" for the period of time set out may not be met. At any time the indulgence could have been halted by service of the requisite notice under sections 159 and 168 of the Water Industry Act 1991. Furthermore, the designation, going forward, as a town or village green seems to be at odds with the notion that Wessex Water enjoys rights of easement over the Land.

In submitting these observations, we would like to make it clear that Wessex Water does not object to use of the Land for sports and pastimes. Wessex Water simply wishes to record the need for careful consideration of Wessex Water's statutory obligations in deciding how to approach the future designation of the Land."

4) BT Openreach – Plant at location but no representations made following service of notice of applications 2018/01 and 2019/01.

14.78. Officers find it unlikely that it would be necessary to remove and cut off the services to property if the land was successfully registered as a TVG. There is evidence to suggest the services being present since 1986/87, whilst local inhabitants have been using the land for the purposes of lawful sports and pastimes, the two uses have co-existed and there is no reason to remove

services. However, Mr Reeves is correct that on the face of it there appears to be no legal process under which the statutory undertakers will be able to seek consents to maintain and repair their equipment where it is an offence to disturb the soil other than for the improvement of the green, if the land is registered.

14.79. The T W Logistics Supreme Court case, T W Logistics Ltd (Appellant) v Essex County Council and other (Respondents) [2021] UKSC 4, is the first case which examines the scope of the rights of the parties involved, including the landowner, post registration as a TVG and scrutinises the effect that the Victorian statutes and other legislation might have in respect of the landowner. It confirms that the landowner doesn't lose all rights and what wasn't criminal before registration, does not become criminal by virtue of the registration/legislation, as long as the activities which they continue to do are consistent with the activities undertaken before registration.

14.80. The case concerned some 200m^2 of concrete, on or close to the waters edge in a working port at Allen's Quay, Mistley, owned by TW Logistics Ltd and registered as a TVG by Essex County Council. The central question of the appeal being whether the registration of the land would have the consequence that the continuation of the landowner's pre-existing commercial activities would be criminalised under the Victorian statutes. As well as Section 15 of the Commons Act 2006; the Victorian statutes and section 34 of the Road Traffic Regulation Act 1988 which made it an offence to drive a vehicle on to or upon common land, moorland or land of any other description not being land forming part of a road without lawful authority, the case also considered section 3(1) of the Health and Safety at Work Act 1974 and regulation 17(2) of the Workplace (Health, Safety and Welfare) Regulations 1992 (SI 1992/3004) as the health and safety legislation, breach of either provision being a criminal offence under section 33 of the 1974 Act. It was held that:

"65. …Registration of land as a TVG has the effect that the public acquire the general right to use it as such, which means the right to use it for any lawful sport or pastime (whether or not corresponding to the particular recreational uses to which it was put in the 20-year qualifying period, evidence of which gave rise to the right to have it registered as a TVG). However, the exercise of that right is subject to the "give and take" principle so that it is potentially misleading to think that there is a "one size fits all" principle. This means that the public must use their recreational right in a reasonable manner, having regard to the interests of the landowner (which may, or may not be commercial) as recognised in the practical arrangements which developed to allow for coexisting use of the land in question during the qualifying period. The standard of reasonableness is determined by what was required of local inhabitants to allow the landowner to carry on its regular activities around which the local inhabitants were accustomed to mould their recreational activities during the qualifying period…

80. Interpreting the Victorian statutes with these features of the common law offence in mind, we consider that Lewison LJ was correct to hold that the activities of TWL would not be criminalised by the Victorian statutes where those activities are "warranted by law". This underlying feature of the Victorian statutes is reflected in the words "without lawful authority" in section 12 of the 1857 Act, which qualify the offence created in so far as it applies in relation to the activity of wilfully leading or driving any cattle or animal on the TVG…

81. Interpreting the Victorian statutes in this way leads to a sensible and readily comprehensible result in the present case, which is consistent with the overall legislative scheme in relation to TVG's. Here, as TWL has the legal right in the period after registration of the Land as a TVG to carry on with what it has been doing previously on the Land, its activities are "warranted by law". TWL would therefore not be committing an offence under

the Victorian statutes in continuing its pre-existing commercial activities. The same is true in relation to the common law offence of public nuisance, which continues to be relevant in this context.

82. We also agree with Lewison LJ that, in so far as one is concerned under the Victorian statutes with an interference with the use and enjoyment of the TVG by the public (eg in section 12 of the Inclosure Act 1857: to "do any … act …to the interruption of the use or enjoyment thereof as a place of exercise and recreation"), the public's use and enjoyment of the land is qualified by - or, one might say, the extent of that use or enjoyment is defined by - TWL's pre-existing activities. Put another way still, the public's statutory right is only to enjoy the land subject to the continuation of the owner's pre-existing rights, as exercised to that extent. There is therefore no interference with the relevant use and enjoyment of the land by TWL continuing with its pre-existing activities…

87. …the Victorian statutes do not have the effect of criminalising post-registration activities which TWL carried out on the Land before its registration as a TVG…

91 …TWL's activities have not been criminalised under the Victorian statues in respect of their continuation after the registration of the Land as a TVG. Nor has registration had the effect that they are criminalised under any other legislative provision."

14.81. Parallels may be drawn in the Stanton St Quintin case and Officers would suggest, in applying the caselaw, that although the statutory undertakers are not landowners, where plant is already present under/in/over/across/along the land, the maintenance of these services is consistent with the presence of the plant prior to registration, this use of the land by the utility companies having co-existed alongside the use of the land by local inhabitants since

1986/87 and 2016 and is therefore not made a criminal offence or a nuisance under the Victorian Statutes. The use of the land by statutory undertakers for carrying on their undertakings, is warranted by law as referred to by Wales and West Utilities (the Gas Act 1986) and Wessex Water (section 159 and 168 of the Water Industry Act 1991) and use by local inhabitants has been shaped around the use by statutory undertakers, through the practice of "give and take" which has taken place and should continue.

14.82. **Trigger event – 2015 planning permission on adjacent site** - Mr Reeves quotes paragraph 1 of Schedule 1A to the Commons Act 2006 which sets out the trigger events, a valid trigger event is:

"1. An application for planning permission, or permission in principle, in relation to the land which would be determined under section 70 of the 1990 Act is first published in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act".

Mr Reeves claims that there is a relevant planning trigger event in place "in relation to the land" given the planning permission granted in 2015 for the remodelling of his property adjacent to the application land and which is currently underway: planning application no.15/08031/FUL – [redacted] Lower Stanton St Quintin – Conversion of bungalow to a house by adding a second storey and new roof, approved with conditions 7th October 2015. He claims that the key words here are *"in relation to the land"* and the Royal Wootton Bassett case states that the legislation should be read literally which implies a looser connection and the presence of the services under the application land is the link which makes the planning permission for the remodelling of [redacted] Lower Stanton St Quintin, a planning permission "in relation to the land", as the development needs this land for the services.

14.83. The corresponding terminating events are as follows:

"(a) The application is withdrawn.

(b) A decision to decline to determine the application is made under section 70A of the 1990 Act.

(c) In circumstances where planning permission or permission in principle is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted and the decision is upheld.

(d) In circumstances where planning permission is granted, the period within which the development to which the permission related must be begun expires without the development having been begun."

None of the above apply to the 2015 planning application, so if it were a valid planning trigger event, there is no corresponding terminating event to revive the right to apply the register the land as TVG.

14.84. Officers do not consider that the planning application, still being undertaken on adjoining land, not on the application land itself, is a relevant planning trigger event and has not been identified by the Planning Authorities as such in the trigger event consultations. Even if this were related to the utilities located in the application land for the property subject of the planning application, most of the utilities pre-date the 2015 planning application, being present since 1986/87, with the exception of gas installed in 2016. However, if it were resolved to hold a public inquiry into the evidence, this legal point could be directed to the Inspector residing over the inquiry for a recommendation on this matter.

15. Overview and Scrutiny Engagement

15.1. Overview and Scrutiny Engagement is not required in this case. The Council as the Registration Authority 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)" and Defra Guidance, (see **Appendix 5**).

16. Safeguarding Considerations

16.1. Considerations relating to safeguarding anyone affected by the registration of the land as a town or village green under Section 15(1) and (2) of the Commons Act 2006, are not considerations permitted under the Act. The determination of the applications must be based upon the relevant evidence alone.

17. Public Health Implications

17.1. Considerations relating to the public health implications of the registration of the land as a town or village green under Sections 15(1) and (2) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the applications must be based upon the relevant evidence alone.

18. Corporate Procurement Implications

18.1. 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 part 22 of this report.

19. Environmental and Climate Change Impact of the Proposal

19.1 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 (2) of the Commons Act 2006, are not considerations permitted within the

Act. The determination of the applications must be based upon the relevant evidence alone.

20. Equalities Impact of the Proposal

20.1. Considerations relating to the equalities impact of the registration of the land as a town or village green under Sections 15(1) and (2) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the applications must be based upon the relevant evidence alone.

21. Risk Assessment

21.1. Wiltshire Council has duty, at common law, 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, as set out in the case of R (on the application of Whitmey) v Commons Commissioners [2004] EWCA Civ 951, where Arden LJ at paragraphs 28 and 29, 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…"

At paragraph 66 Waller L J agreed:

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

21.2. 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, a request for judicial review could be made with significant costs against the Council if it is found to have acted unlawfully.

21.3. In the High Court decision in the case of Somerford Parish Council v Cheshire East Borough Council (1) and Richborough Estates (2) [2016] EWHC 619 (Admin), the High Court quashed the local Borough Council's decision not to register land as a new town or village green on the basis of

procedural error. The case highlights a number of practical points to note regarding privilege, equity and the importance of the Public Inquiry in determining an application to register land as a town or village green. The court's decision also reinforces the findings in the Whitmey case, (see paragraph 21.1) and the need for Registration Authorities to hold a non-statutory Public Inquiry where there are sufficient disputes over factual issues.

22. Financial Implications

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

22.2. It is possible for the CRA 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, at common law, to determine the application in a fair and reasonable manner and its decision is open to legal challenge, therefore a public inquiry should be held in cases where there is serious dispute of fact, or the matter is of great local interest. The responsibilities of the council in this regard were recognised by the justices in the Court of Appeal in the case of R (on the application of Whitmey) v The Commons Commissioners [2004] EWCA Civ. 951, see paragraph 21.1. above. Even where a non-statutory public inquiry is held, there is no obligation placed upon the authority to follow the recommendation made.

22.3. The cost of a 3 or 4 day non-statutory public inquiry is estimated to be in the region of £12,000 - £15,000 plus VAT. In the Stanton St Quintin case it is considered that appointing an independent Inspector to hold a non-statutory

public inquiry in order to hear from the witnesses and consider the evidence, producing a recommendation to the CRA, would assist the Council, as the CRA, in its determination of the applications.

23. Legal Implications

23.1. If the land is successfully registered as a TVG, the landowner is able to challenge the CRA'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.

23.2. Alternatively, where the CRA 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.

24. Options Considered

24.1. The options available to Wiltshire Council as the CRA, are as follows:

(i) Based on the available evidence, to register the land as a TVG where it is considered that the legal tests for the registration, as set out under

Sections 15(1) and (2) 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 register the land as a TVG in part, where it is considered that the legal tests for the registration of the land, as set out under Sections 15(1) and (2) 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 applications where it is considered that the legal tests for the registration of the land as a TVG, as set out under Sections 15(1) and (2) 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 CRA to determine the application, to hold a non-statutory public inquiry, appointing an independent Inspector to preside over the inquiry and examine the evidence, including the oral evidence of witnesses, in order to provide a report and recommendation to assist to Council, as the CRA, in its determination of the application.

25. Reason for Proposal

25.1. In the Stanton St Quintin case, the evidence of whether a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of least 20 years, with use continuing at the time of application, is in dispute. Matters of particular conflict within the evidence include:

(i) use by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality,

(ii) user as of right,

(iii) the exercise of lawful sports and pastimes on the land for a period of at least 20 years.

25.2. Additionally, the Objectors raise the following legal points:

(1) Is the land subject to a planning trigger event which would extinguish the right to apply to register the land as a TVG?

(a) by virtue of planning permission granted for the re-development of [redacted] Lower Stanton St Quintin (15/08031/FUL - 2015) and the required services present being "in relation to" the application land, and/or

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

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

25.3. It is possible to seek a legal opinion regarding these points before proceeding to a non-statutory public inquiry at a cost to the CRA, however, where the evidence regarding use of the land by local inhabitants for local sports and pastimes for a period of 20 years of more, as of right, is disputed, it may be preferable to proceed to hold a non-statutory public inquiry and seek the Inspector's opinion on these legal points.

25.4. It is the duty of the CRA, at common law, to determine the applications in a fair and reasonable manner. The CRA has received objections to the registration of the land as a TVG which have not been resolved. A non-statutory public inquiry is therefore considered necessary in this case because the factual evidence is strongly disputed. It is open to the CRA to appoint an independent Inspector to preside over the inquiry and produce a report with recommendations to the determining authority. Although it is open to the CRA to later reject the Inspector's report and recommendation, it can only lawfully do so if the CRA finds that the Inspector has made a

significant error of fact or law. If the Inspector's recommendation is rejected, the CRA must give legally valid reasons, supported by evidence of the error of fact or law, otherwise the CRA's decision would be open to legal challenge.

26. Proposal

26.1. As there is a significant dispute regarding the evidence and the legal points raised by the Objectors regarding the planning trigger events and the presence of services within the application land, to propose that an independent Inspector be appointed on behalf of the CRA to preside over a non-statutory public inquiry at which the evidence of all parties will be heard and tested through cross-examination and to address the legal points raised by the parties, in order that a recommendation can be made on the applications to the CRA, to assist the CRA in its determination of the applications to register land off Seagry Road, Lower Stanton St Quintin, as a TVG, as soon as is reasonably practicable.

Janice Green - Senior Definitive Map Officer, Wiltshire Council
Date of Report: 25th May 2022

Appendices:

Appendix 1 - Location Plan
Appendix 2 – Application Plans
Appendix 3 – Photographs of Application Land
Appendix 4 – Aerial Photographs
Appendix 5 – Commons Act 2006 – Section 15
The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007

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

Appendix 6 – Objections (8)

Appendix 7 – Other Representations (23)

Appendix 8 – Supplementary Information provided by Mr Reeves for Planning Application no.18/01108/FUL (Extract) and Objections from Mr M Reeves prior to Service of Form 45

Appendix 9 – Applicants Revised Comments on the Objections

Appendix 10 – Objectors Comments on Representations

Appendix 11 – Applicants Additional Evidence (April 2021)

Appendix 12 – Trigger/Terminating Event Consultation Replies

Appendix 13 – Documents Relied Upon

Appendix 14 – Summary of Witness Evidence

Appendix 15 – Summary of Objectors Evidence

Appendix 16 – Witness Evidence Map

Appendix 17 – Photographs of Events on the Land

Appendix 18 – Officers Report Regarding Extent of Highway - 2019