

**WILTSHIRE COUNCIL**

**APPLICATIONS TO REGISTER LAND ADJOINING SEAGRY ROAD AT  
LOWER STANTON St QUINTIN, Nr CHIPPENHAM AS A NEW  
TOWN OR VILLAGE GREEN**

**Application reference numbers: 2018/01 & 2019/01**

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**INSPECTOR'S ADVISORY REPORT**

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References to A/1, O/1 and CRA/1 and so on are to documents in the paginated hearing bundles of the Applicant, Objectors and Commons Registration Authority.

**Preliminary**

1. I am instructed by Wiltshire Council ('WC'), acting in its capacity as Commons Registration Authority ('CRA'), which is the responsible authority for determining applications to register land in the village of Stanton St Quintin ('SSQ')(which will be referred to in this report, where the context permits, as the 'the application land' or 'the land') as a town or village green ('TVG').
2. Separate applications to register were received by the CRA on 30 April 2018 (A/6) and on 26 April 2019 (A/22) under the Commons Act 2006, section 15(2), on behalf of SSQ Parish Council ('the Parish Council'). Both applications were made by the Parish Council on the usual standard form (Form 44).
3. On 25 May 2022 WC's Northern Area Planning Committee (which exercises the function of CRA within WC) resolved to appoint an independent inspector to hold a non-statutory public inquiry (which I shall refer to as 'the inquiry') to hear evidence and to provide an advisory report on the applications to register the land as a TVG.

4. I gave directions for the holding of the inquiry on 3 July 2022 and an inquiry was initially fixed for 20-22 September 2022 but it had to be put back as the Objectors (Malcolm and Kathryn Reeves) wished to have further time for preparation having only recently instructed solicitors. The CRA agreed to a short adjournment and the inquiry later took place at the village hall on 1-2 November 2022 where oral evidence was heard.
5. I am indebted to those members of the Parish Council who attended the inquiry (notably its Chair, a Mr Adrian Andrews) and to the Objectors' counsel, Daniel Stedman Jones, for their helpful and conscientious submissions. Last, but not least, I am grateful for the administrative support provided by officers of WC (Janice Green, Sally Madgwick and Sarah Marshall) which was indispensable to the smooth-running of the process.
6. There are two further matters that I should mention at this point. First, the Objectors put before the inquiry a very detailed report dated 1 November 2022 from a Robin Carr who is well known as an expert witness in cases involving public rights of way. Mr Carr's report will be found at O/65 and runs (with appendices) to some 111 pages. It is Mr Carr's view that the application land is highway land.
7. Sally Madgwick, who is a Senior Definitive Map Officer at WC, produced a short report on the highway issue dated 1 February 2019. She had not had the time to respond in any detail to Mr Carr's report, let alone time to produce a written response for use at the inquiry or to prepare herself for giving oral evidence at the inquiry.
8. It seemed to me (i) that it would be appropriate for the highway issue to be adjudicated upon by a Court, and (ii) that the highway issue might turn out to be of academic interest only if the applications to register were rejected on other grounds. I therefore recommended to the CRA that the issue of whether the application land was highway land should be set to one side and that the inquiry should continue on other grounds, namely whether registration was justified by reference to the usual qualifying criteria. The parties accepted this outcome and Mr Carr was stood down.

9. The second matter involves the various appendices to my report which I have marked App/1, App/2, App/3, App/4 and App/5 (six sheets).
- (i) App/1 shows the application land edged in red. The land coloured blue is land shown on WC's highway record as highway land.
  - (ii) App/2 is the extent of the application land shown in the first application (note the gap between the two red parcels).
  - (iii) App/3 shows the extent of the application land shown in the second application (the gap between the two red parcels is now incorporated into the application land).
  - (iv) App/4 is the plan (or one like it) that accompanied the Objectors' application for planning permission (under planning ref: 18/01108/FUL) which shows [REDACTED] at [REDACTED] Seagry Road and the proposed access leading from this property to the road, crossing the application land whose ownership is unknown (coloured green on the plan). The planning application for the new access was dismissed under a refusal notice dated 7 March 2018 which, although pre-dating the first TVG application, had been triggered by the Objectors' planning application. The second TVG application incorporated the land excluded by the first TVG application following the earlier refusal of planning permission.
  - (v) App/5 (six sheets) is a summary of the user evidence lodged in support of both TVG applications which was contained in Appendix 14 to the report dated 25 May 2022 of Janice Green, also a Senior Definitive Map Officer of WC, who is the case officer managing both TVG applications.

### **Legal framework**

10. Section 15(2) of the Act enables any person to apply to register land as a TVG in a case where -
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application.

11. It is the duty of the CRA to consider the various elements of the statute all of which have to be made out to justify registration.

*'a significant number'*

12. 'Significant' does not mean considerable or substantial. What matters is that the number of people using the land has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation rather than occasional use by individuals as trespassers (*R v Staffordshire County Council, ex parte McAlpine Homes Ltd* [2002] EWHC 76 at [64] (Admin) (Sullivan J)).

*'of the inhabitants of any locality'*

13. The term 'locality' is taken to mean a single administrative district or an area within legally significant boundaries. On this application the claimed locality is the civil parish of SSQ of which Lower Stanton St Quintin ('LSSQ') forms part, being separated from the rest of the village by the A429. The population of the village was 705 at the time of the 2021 census. I was told that there are 79 dwellings in LSSQ although it may be slightly more than this. In view of the presence of the A429 any regular use of the land by those living to the west of the road is liable to be minimal, if at all.

*'have indulged as of right'*

14. To be qualifying use it must be use 'as of right' which means that it must be without force, secrecy or by permission (the so-called 'tripartite test'). It has been held that once the claimed use has passed the threshold of being of sufficient quantity and of a suitable quality, it is necessary to assess whether any of the elements of the tripartite test applied, judging these questions objectively from how the use would have appeared to the landowner. In this case, of course, no one knows who owns the land although the claimed use has undoubtedly been peaceable, open and without consent.

*'lawful sports and pastimes'*

15. The expression 'lawful sports and pastimes' ('LSP') form a composite expression which includes informal recreation such as walking, with or without dogs, and children's play. I should perhaps mention that the "Wee Free Library" box not only started up after the qualifying period ended but is also located outside the application land.

*'on the land'*

16. The expression 'on the land' does not mean that the CRA has to look for evidence that every square foot of the land has been used for LSP. Rather it needs to be satisfied that, for all practical purposes, it can sensibly be said that the whole of the application land has been used for LSP for the relevant period, always bearing in mind that qualifying use will be heavier in some areas than in others (*Oxfordshire County Council v Oxford City Council* [2004] Ch 253 at [92]-[95]).
17. The registration authority does have a power to sever from the application those parts of the land where qualifying use may not have taken place or where the excluded land is non-qualifying. This arises in the case of the blue land within the red edging on App/1 which is within the highway land. In my view, such land would not be registrable because of the right of the public to use the land as a highway (*DPP v Jones* [1999] 2 WLR 625).

*'for at least 20 years'*

18. The relevant period in this case is, in the case of the first application, April 1998 to April 2018. In the case of the second application it is April 1999 to April 2019.
19. Qualifying use has to be continuous throughout the 20 year period (*Hollins v Verney* (1884) 13 QBD 304) although temporary interruptions are not to be equated with a lack of continuity. It is essentially a matter of factual evaluation for the decision-maker to determine whether the whole of the application land has been available for LSP throughout the 20 year period.

## Procedural issues

20. The regulations which deal with the making and disposal of applications by registration authorities outside the pilot areas make no mention of the machinery for considering the application where there are objections. In particular no provision is made for an oral hearing. A practice has, however, arisen whereby an expert in the field is instructed by the CRA to hold a non-statutory inquiry and to provide an advisory report and recommendation on how it should deal with the application.
21. In *Regina (Whitney) v Commons Commissioners* [2004] EWCA Civ 951 Waller L.J suggested at [62] that where there is a serious dispute, the procedure of  
  
conducting a non-statutory public inquiry through an independent expert should be followed almost invariably.  
  
However, the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs. However, the registration authority must act impartially and fairly and with an open mind.
22. The only question for the registration authority is whether the statutory conditions for registration are satisfied and the onus is on the Parish Council to establish this on the balance of probabilities. There is no scope for the application of an administrative discretion or any balancing of competing interests. In other words, it is irrelevant that it may be a good thing to register the land as it is a convenient open space for use by local inhabitants or that it is a necessary step to prevent its development in the future.
23. The procedure is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. It is very simple in that (i) anyone can apply; (b) unless the registration authority rejects the application on the basis that it is not 'duly made', it proceeds to publicise the application inviting objections; (c) anyone can submit a statement in objection

to the application; and (d) the CRA then proceeds to consider the application and any objections and decides whether to grant or to reject the application.

24. It has been said that it is clearly no trivial matter for a landowner to have land registered as a TVG and all the elements required to establish a new green must be '*properly and strictly proved*' (*R v Suffolk CC ex p Steed* (1996) 75 P&CR 102 at p.111 (Pill L.J) and approved in *R (Beresford) v Sunderland City Council* [2003] UKHL 60 at [2] (Lord Bingham)).

### **Consequences of registration**

25. Registration gives rise to rights for the relevant inhabitants to indulge in LSP on the application land. Upon registration the land becomes subject to s.12 of the Inclosure Act 1857, and s.29 of the Commons Act 1876 (these are known as 'the Victorian statutes') which make it an offence to damage the land or to impede its use for recreation. Under both Acts development is therefore prevented.

### **Description of the application land and surrounding area**

26. We are dealing with land in a tranquil village setting which is surrounded by agricultural land and is quite close to junction 17 on the M4 motorway. There is a mix of residential and commercial ribbon development along the A429 (which runs between Chippenham and Malmesbury) close to a road junction which separates SSQ and LSSQ. The Parish Hall, Primary School and Church will be found in SSQ. The southern part of Hullavington Airfield is also in SSQ. The RAF left the airfield in 1993 and various buildings were transferred to the Army and renamed Buckley Barracks in 2003. In 2016 the airfield part of the site was sold to the technology company Dyson who converted the two hangers for office use.
27. The application land extends to 408m<sup>2</sup>. It is, as Mr Reeves claims in his witness statement at O/216, only 15m deep and 30m wide which, as he says, means that the land is "not a place for a recreational walk". I made two unaccompanied visits to the application land before and during the inquiry. I also made an accompanied visit after the inquiry had ended. I instigated this

last visit as a result of Mrs Reeves' evidence that one could see the application land from within No. [REDACTED] Seagry Road ('No. [REDACTED]'). It was her evidence that she never saw locals recreating on the land. She is only partly right about this as the view across the western side of the application land is screened from view by trees.

28. The application land (or at least most of it) was once a large pond at the side of the road passing through the village (A/76). The pond was filled in by 1965 and was later put down to grass and planted with a small number of deciduous trees (one of which was planted in memory of a former Chair of the Parish Council, Richard Voelcker). It appears that additional trees, shrubs and a new notice board were installed in 1988-89 (A/41, A/45-6, O/303 & O/307). There is also a picnic table on paving slabs and two benches on concrete bases which commemorate the lives of local residents. The picnic table was put there in late 2018 (O/447). The first bench was put there more than 20 years ago and the second is a more recent arrival. The Wee Free Library box (which was installed in May 2019) is sited outside the application land close to the entrance to No. [REDACTED] Seagry Road ('No. [REDACTED]') in front of which there is a telegraph pole (again outside the application land) which is supported by two stay wires planted in the ground.
29. The bench seats are shown on O/355-356. The older of the two seats appears to have had something of a makeover by the time of my visit. Mr Reeves says that the benches were cleaned in 2018, after the TVG applications had been made, and again in 2022 once the decision had been made to take the applications to a public inquiry (see the before and after photos in CRA/1033).
30. I understand the Objectors to be saying that the pre-2018 condition of these benches (or at least the older of the two) is consistent with their (or its) lack of regular use over the years. The picnic table could well have replaced seating of some description as the slabs beneath it look quite old. There is no rubbish bin or bin for dog faeces, nor any of the detritus which one might expect to see on the ground in a small parcel of regularly used open space. There was no evidence of any periodic litter picking by anyone and because there is no



pavement it is easier to pass by the land by walking in the road which is certainly not a busy road.

31. The application land is separated from No. [REDACTED] (a bungalow owned by the [REDACTED] and from No. [REDACTED] by a low dry stone wall which is capped with concrete. There is an outward bulge in the wall in front of No. [REDACTED]. Behind the wall there is a drive running parallel with the wall which leads to No. [REDACTED] and is its only access to the road. The drive belongs to No. [REDACTED] and No. [REDACTED] enjoys a right of way over it (see the Objectors' registered title at O/497).
32. The Objectors complain that the drive is too narrow although it seemed wide enough to me to accommodate all but the very widest of vehicles (see photos showing HGVs leaving No. [REDACTED] on A/88 and O/48) although the extended wall and raised edging shown in the photos on O/47-48 cannot have helped (see O/366 showing how the end of the wall appeared in 2011 and as it is now). It was for this reason that Mr Reeves applied for planning permission (see App/4) to put down an access crossing a section of the application land, for which permission was refused on three grounds. The first ground concerned highway safety. The second ground involved the impact which the proposal would have on the local character of the surrounding area. The third ground was that the access would cross an important local green space without being mitigated by suitable alternative provision.
33. I mentioned to the inquiry that I was aware of an emerging Neighbourhood Development Plan ('NDP') for SSQ in which the application land was designated as Local Green Space. The proposed NDP has not yet been examined although the clear impression I get is that it is being promoted with enthusiasm by the Parish Council.
34. The application land is small and is the only open space in LSSQ on which those who choose to do so can walk, with or without dogs, or just sit down on the benches provided. Clearly ball games are out of the question in view of its proximity to the road. The grass is and has always been cut periodically at the expense of the Parish Council. I should say that, in my view, the frequency of the claimed use is not borne out by any discernible wear and tear on the soft

ground or in the case of the benches. I also saw no one using the application land on my unaccompanied visits although there were a handful of dog users there on my accompanied visit one of whom had been present at the inquiry. On the face of it, we are dealing with an area of grassed open space in a small village setting. I bear in mind that the sufficiency of the evidence of qualifying use needs to reflect the fact that the application land sits in an area with few households. For instance, it is not as if we are within easy walking distance of a housing estate or larger settlement or close to the convergence of heavily used public rights of way.

### **Photographs and agreed local use**

35. The Parish Council's bundle includes a number of photos at tab 8. They include photos taken at communal events on the application land. In the course of the inquiry I asked whether it might be possible if an agreed list of communal events which took place during the qualifying period (and in the case of the second application the period ended in April 2019) could be agreed and I was provided with lists by the Parish Council (which I put in at A/75A) and by the Objectors (which I added at O/500A) which, for ease of reference, I set out below.

Open air services at Pentecost in 2001, 2002, 2003, 2004, 2005 and 2006

Royal Wedding in April 2011

The Queen's 90<sup>th</sup> Birthday in June 2016

Setting up the Community Garden in May 2018

Book sale in June 2018

Other events are mentioned but they come after the end of the qualifying period and I propose to discard them. It probably does not matter as the above events were somewhat infrequent anyway and would have been of only limited duration on the day. It is not as if, for instance, the application land was the location of the annual village fete or was a place where the annual Remembrance Day service took place each year. At O/346-348 there are photos of the village fete which took place on a large field opposite

Buckley Barracks (which I gather is known as the Buckley Barracks Sports Ground) in 2013 which I think, for a time (possibly until 2018), was where the annual village fete took place. It seems that the annual village fete now takes place in the gardens of Stanton Manor Hotel (we have flyers for this venue in 2016, 2019 and 2022). I also note that there is also a photo of a fete which took place at the Primary School in 2017.

### **History of No. [REDACTED] and the works on this property after 2016**

36. Although not directly material to the applications it helps, I think, if I shortly deal with how No. [REDACTED] came to belong to the Objectors. The case is unusual in that the Objectors do not actually live in the village. They live in Sutton Benger which is some 3.5 miles away on the other side of the M4.
37. Mr Reeves gave oral evidence to the effect that his late mother (a Mrs Dargie) moved to live in LSSQ in around 1986/87. She used to live in Chepstow and after her late husband died she purchased the plot next to No. [REDACTED] and built No. [REDACTED]. The idea was that she would live near to the Objectors who, at that time, lived in Sutton Benger as they do today.
38. Mr Reeves says that he used to visit his mother some 3-4 times a week. By 1998 he had four children under 14 and as his mother's house had a pool the family were no doubt frequent visitors, especially in the summer. His mother died in December 2014 since when No. [REDACTED] has not been occupied. In late 2015 Mr Reeves applied for planning permission to convert No. [REDACTED] by extending the available living space by introducing a second storey and additional roof space for storage and, having obtained permission, work began in 2016.
39. As an electronics engineer Mr Reeves is not without practical ability and he carried out a good deal of work himself on the conversion project both inside and outside the building. He mentioned installing, amongst other things, the guttering and fascia's, stud walling, plumbing, plastering, the electrics and the kitchen and bathroom units and what he described as a mechanical heat recovery ventilation system which he explained to me on site. His wife also helped him with a number of these works. However, builders were employed

to deal with the main works although, as I say, a good number of the finishes were carried out by the Objectors themselves. Indeed, Mr Reeves told me that he had even built the extension to the family home at Sutton Benger.

40. When I visited No. [REDACTED] it is plain that there is still a great deal to be done and that the pace of work taking place on the property is slow. For instance, one could only get to the second floor by using a ladder and my impression is that there is still a great deal to be done before No. [REDACTED] is ready to be occupied. It seemed to me that not a lot is being done at the moment. I do however think that when working inside No. [REDACTED] the Objectors are unlikely to be spending very much time keeping a lookout on what is happening on the grass beyond their boundary wall. There are also trees which, as I was told, had to be cut back in 2017-18 after the Objectors had complained about overhanging branches. At any rate, before around 2017-18 some of the application land would have been screened by trees when viewed from No. [REDACTED].
41. I have refrained from commenting on (i) whether or not a gate existed in the north-east corner of No. [REDACTED] (see plan at O/308), and (ii) whether the Parish Council acted improperly in asserting, at one time, that it owned the application land (which the Objectors say would have deprived No. [REDACTED] of an independent access to the road without resort to the right of way over No. [REDACTED]). In my view, neither of these factors assist in the evaluation of the applications to register.
42. Before I move on from this section I should mention that No. [REDACTED] is served with the utilities shown on the plan at O/35 which were installed in 1986/87 or earlier with the exception of gas which was installed in 2017. Although the Objectors' counsel raises the issue of statutory incompatibility it seems to me that these services fall within the principle of 'give and take' discussed in *TW Logistics Ltd v Essex County Council* [2021] AC 1050.
43. The legal position is that after registration a landowner has the right to continue to undertake activities of the same general quality and at the same general level as it had during the qualifying period. A landowner is also entitled to undertake new activities, provided they do not interfere with the

public's right to use the land for LSP. Mr Reeves mentions the gas installation on O/224 of his witness statement. He says that the work took 2 days rather than the one day which it should have taken because a Cllr Eley (and I am unsure whether this individual was a member of the Parish Council at the time or a District Councillor) halted the work on the first day (Mr Reeves says that there was a false report that he was installing a driveway) which Mr Reeves says should have taken only one day. I rather doubt whether this work (even if it took two days) took so long that it stopped time running or gave rise to criminality under the Victorian statutes and no one has suggested that it did.

### **Parish Council's written and oral evidence**

#### *Parish Council's Documents*

44. Within the Parish Council's bundle there is a short statement signed by the Chair of the Parish Council, Adrian Andrews, in which he says that the applications to register is supported by the "vast majority of the parishioners". Box 7 in both applications refer to the use of the land by local residents and its long-standing maintenance by the parish Council (in terms of grass cutting and tree maintenance) which is funded through the parish precept.
45. It is said in the first application that the application land is "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" and 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". Statements such as these are perhaps better suited to applications to list land as assets of community value rather than in support of TVG applications where the focus should mainly be on the quality and quantity of the public's use of the land.
46. At A/69-75 the Parish Council produces a questionnaire and feedback from those in the village. There are two questions: (i) whether the "Village Green should be given official status", and (ii) whether the space occupied "by the Wee Free Library" should also be given "Village Green status". For the reasons given in para 15 question (ii) is not material.

47. The Parish Council tells us that of the 81 forms delivered there were 74 replies of which 68 were supportive with only 1 negative. 5 who responded had no opinion. In summary, the replies speak of the application land as an outdoor community hub or meeting place or area within which children can play or a place where social gatherings to mark significant events can take place. It is also said that the area has been improved over the years and that it is the only communal facility or open green space on this side of the A429. An unnamed responder who has lived adjacent to the application land for 28 years says that it is frequently used by people meeting others or walking with or without dogs or as a place for children to play. It is also said that groups of walkers or cyclists socialise at the picnic table (obviously walkers and cyclists passing through the village may not even be qualifying users). The consensus of opinion within the village is that TVG status would protect the land as it fulfils the functions of what one might expect of a village green. None of this evidence is really helpful as it lacks detail and none of the responders are identified by name.
48. After the inquiry WC received extracts from the Parish Council's Minute Book showing that no formal resolution had been passed which had authorised the making of the first application although I think this occurred in the case of the second application in view of what is noted at item 6 of the minutes for the meeting on 26 March 2019. This minute clearly refers to the first application where the access land was found to be subject to a trigger event which prevented it being the subject of a TVG application at that time and that the second application would be able to overcome this omission. I also see that the first application was discussed at the meeting on 25 September 2018 and of course the Parish Council consulted widely on both applications. No one has previously suggested that one or other or both applications had not been properly authorised. It was though a point which was raised by me and by the Objectors' counsel at the inquiry. In my view, the resolution passed at the meeting on 26 March 2019 ("it was **recommended** that this further application is made ...) probably suffices for these purposes although the Parish Council needs to be reminded that its decisions should be properly

authorised by minuted resolutions. I have added this material to the Parish Council's bundle which I have numbered 61A-61F.

### **Parish Council's oral evidence**

*Marianne Fernandez*

49. I have added Mrs Fernandez's unsigned statement to A's bundle and have given it page nos 68A-68B. Her statement deals with the desirability of registration and does not focus on her own use.
50. Mrs Fernandez and her husband moved to the village in 2007. They live at [REDACTED] in Avils Lane, LSSQ. They have two children (8 and 13). She is offended that the Objectors attempted to take possession (a "land grab" as she called it) of part of a communal green space. As she also put it in her statement: "Cars for one family versus grass for all the village families".
51. She said that the limited amount of green space in the village is very important for children. She regularly sees other children with their mothers using the land for play. She deals with the Royal Wedding celebration which took place on the application land in 2011. She said that there were around 60 people "milling around" for a couple of hours. The road had even been closed. She also attended the Queen's 90<sup>th</sup> Birthday celebrations in June 2016 and the Community Garden project in May 2018. She said that the land had been "instrumental in getting us around together". She also mentioned the facilities on the land and its use by cyclists looking to take a break. Mrs Fernandez says that she likes to see the green space whenever she goes out which she says is valued by villagers.
52. Mrs Fernandez was none too specific about the frequency of her own use of the application land. Although I think it is probable that she uses the land from time to time as a place to pause on her walks in and around the village with her children, her evidence focuses mainly on her wish to see the land registered so that it might never be developed.

*Gil Schwenk*

53. Mr Schwenk lives at [REDACTED] LSSQ. His statement will be found at A/66. In it he says that because of its central location the land is the only place in the village for people to stop and have a conversation and he thought it would be a shame if this “social amenity” was lost. He too was angered by the Objectors’ proposal to drive across the application land.
54. In his oral evidence Mr Schwenk told the inquiry that he and his wife only moved to the village in October 2014. He attended the organised events which took place on the application land. He was asked about his own use of the land in the period 2014-18. Although he said that he had stopped there to chat with other residents, when pressed about this he could not recall particular events. He has though seen people stopping on the land to chat with others and the benches are regularly used. He too has sat on one of the benches.
55. In common with Mrs Fernandez, Mr Schwenk was also none too specific about the frequency of his own use of the land. Clearly he used the land from time to time but I doubt whether he did so very often in the final years of the qualifying period.

*Mark Pickavance*

56. Mr Pickavance and his wife have lived at [REDACTED] in LSSQ for 17 years (say from 2005). His statement is at A/65. He says that they attended the organised events which took place on the land which, amongst other things, fostered a “rich sense of community”. The thrust of his written evidence is that the land (“our little patch of grass”) is in the heart of the village and “definitely deserves protecting as such with ‘village green’ status”.
57. It was plain from his oral evidence that Mr Pickavance has not used the land very much (he said that his use was “more incidental than most”) although, as also he put it, there was no lack of inclination on his part to do so. He had though seen people stopping on the land to have a chat with others and children playing there. He thought that if use had increased recently it was



probably because people were concerned about losing the land. I doubt whether the evidence of this witness carries much weight as he was probably not a regular user of the land himself.

*Brigadier Michael Smith (retired)*

58. Brigadier Smith's statement will be found at A/68.
59. Brigadier Smith has lived at ■ The Forge in LSSQ since 1997. He says that the land has been much used as recreational space by local residents. He attended many of the organised village events which took place there. He says that the benches are regularly used by local residents and by walkers and cyclists passing through the area. He says that the land is a pleasant and shady space. Since he retired in 2004 he has, as a dog walker (and the family have always had a dog since 2000), regularly used the land (along with others out with their dogs) which he confirmed in his oral evidence – indeed I recall seeing Brigadier Smith on the land with his dog on my final site visit. He said that he currently uses the green “more or less” twice a day and he also meets others there. There is no pavement on this side of the road and it is a safe place to stand. He also said that the land will be lost to another planning application or to use as a lay-by or for mobile homes.
60. For the period after his retirement Brigadier Smith is a strong witness for the Parish Council and he has a keen interest in the land.

*Michael Doran*

61. Michael Doran lives at ■ which is just across the road from the land. He has lived in LSSQ for 45 years and his statement is at A/74A.
62. In his statement Mr Doran says that his two children played on the land when they were growing up (his children were born in 1988 and 1991). He says that local children now meet and play on the land. He says that the facilities on the land are “frequently used as a meeting point by residents” and on numerous occasions “for social gatherings, coffee mornings and special

celebrations". Christmas lights and decorations on the land are also mentioned.

63. In his oral evidence Mr Doran said that up until his children went to secondary school (say before 1999 and 2002) they played on the land regularly. He also said that there are fewer trees than there used to be but the area is still large enough for children to play on (the documents show that additional trees and shrubs were planted in 1988). He mentions seeing people meeting up on the bench seating and he has seen coffee mornings take place there. He said that the first bench was put there more than 20 years ago although the second is more recent (it was paid for by the Queen's Jubilee Fund). The picnic table was put there in 2018. He also spoke of dog walkers using the land and cyclists stopping there on their way through the village. He also agreed that there had been more activity on the land recently. He suggested that this was because people are being more sociable whereas in the past the land was used more for special dates and gatherings.

*Stuart Jackson*

64. Mr Jackson has lived close to the land at [REDACTED] in LSSQ since 1994. He agreed that he and his wife had only occasionally used the land. Although not a dog walker he did say that he had used it to meet up with people and in attending the more formal events which had taken place there.
65. I cannot attach a great deal of weight to Mr Jackson's evidence as he did not use the land regularly.

*Peter & Elizabeth Cullen*

66. This married couple sat together when giving their oral evidence. They also produced a joint statement at A/62-63. Although for over 28 years they have lived next door to the land at No. [REDACTED] their bungalow is set back from the road.
67. In their statement the Cullens maintain that they are in a strong position to comment on the use of the land which they say is widely used by local

residents as a place to walk, with or without dogs, or as a place for drinking coffee and children's play. It was popular during the lockdown.

68. They also mention the communal events which have taken place on the land "perhaps once or twice a year" which they mostly attended. They say that the land (or 'the green' as they say it is known locally) is an amenity which fulfils all the functions of a village green and they see no real reason why it should not be registered. It also needs to be protected from, as they put it in their statement, "encroachment and development for future generations".
69. In his oral evidence Mr Cullen said that they have certainly used the land but not every day: "It is just a general meeting place". Mrs Cullen said that it is a place "where people feel happy and safe to meet". She also mentioned the results of the local survey when over 90% of those who responded said that they would like to see the land registered as a village green. She also said that there was nowhere else for the children to play. She said that she had seen children playing there during the 20 year period in question.
70. Mrs Cullen was asked why it was in their planning objection (which is dated 28 February 2018 and will be found at O/425) they made no mention of the land as a village green. The Cullens appear to have had no objection in principle to the Reeves' planning application but could see no reason why, if it were granted, the existing right of way across their land should be retained. In dealing with this Mr Cullen said that they sent another version (as he put it) of the same objection to the local planning authority which it was discovered they did and the unredacted version will be found at PO/425A. In this version of their planning objection the Cullens said that they sympathised "with those in our community who believe that the loss of part of our village green and screening trees would damage our environment and be a disbenefit to village residents".
71. The Cullens do not get on with their neighbours. They have fallen out over the right of way to No. [REDACTED]. It seems that the Objectors were angered by the Cullens' construction of a reinforced wall and the introduction of a concrete step at the turning point in front of the gateway to No. [REDACTED] which the Objectors

say makes it much harder for HGVs accessing No. [REDACTED] (see photos on O/48; Malcolm Reeves also deals with this in his statement at O/210-211). The ill-feeling between these neighbours was obvious at my accompanied visit. I therefore have to take into account the animosity which exists between these neighbours in considering the weight which should be attached to the Cullens' evidence.

*Adrian Andrews*

72. Mr Andrews is the current Chair of the Parish Council. He lives reasonably close by at [REDACTED] which is at Avil's Lane which he bought in 2008. I think that his decision to give oral evidence was made late. There is no witness statement from him but I saw no reason why he should not give oral evidence.
73. Mr Andrews said that he had used the land "on occasions" and had "seen people meeting there". He has also attended the various events which have taken place on the land.

*Parish Council's evidence in the round*

74. It will be recalled that App/5 summarises the user evidence lodged in support of both TVG applications which is, in my view, of limited value. It would be quite impossible to strictly prove the case for registration on the basis of this evidence although it is clearly consistent with the oral evidence.
75. Overall there was written evidence from 24 individuals (which includes Mr Andrews acting in his personal capacity) plus from the Parish Council (although in three cases no address was given – the rest lived locally). To these witnesses should now be added Michael Doran, Mark Pickavance, Gil Schwenk and Marianne Fernandez. This means that written evidence supporting the application was put in by 28 individuals plus, of course, from the Parish Council. It will also be recalled that the local consultation produced 68 responses supporting the application to register. In addition, there was oral evidence from 9 witnesses (including the Cullens who gave their evidence jointly).

## **Objectors' written and oral evidence**

### *Documents*

76. Excluding authorities and legal submissions, the Objectors' bundle runs to 497 pages which is excessive for an application of this nature and only parts of it were actually looked at in the course of the inquiry. I appreciate that the highway evidence was not considered and that this was at my instigation.
77. What counts in the application process are the section 15(2) criteria, all of which must be satisfied, in order that registration may be justified. My main focus will be on this evidence and just because I fail to analyse all the other evidence adduced by the Objectors it is not because I have not considered it. It is just that I do not consider such evidence to be material to the fact-finding inquiry as to how the land has been used, by whom and, of course, the frequency, duration and character of the claimed qualifying use.
78. Mr Reeves put in a number of objection letters and statements. See the Objectors' bundle at pages O/8 (2019), O/12 (2020), O/39 (2021), O/59 (2021), O/63 (2021) and his principal witness statement which starts at O/210 (2 November 2022) which runs to 16 pages. There is also a statement from Mrs Kathryn Reeves at O/178 (2020) plus her main witness statement at O/180 (31 October 2022) along with a statement from their eldest child, James, at O/177 (20 September 2020) who also gave oral evidence.

### *Malcolm Reeves*

79. At the start of the qualifying period the Objectors had four young children under 14. Mr Reeves says that the family often visited his mother at No. [REDACTED]. In the summer they used her pool and it was also a place where the wider family got together. He says that at no time did he see anyone (as he puts it) using the land "for sports and pastimes", nor had he seen events taking place on the land or even children playing there. At no time did his mother ever mention (before she died in 2014) events of any description taking place on the land in front of her home.

80. After his mother died there were regular trips to No. [REDACTED] to sort out the property and in 2015/16 steps were taken to obtain planning permission to extend the living space. The main works began in February 2016 when the roof and gables were dismantled and replaced by new walls and a new roof. Mr Reeves says that he was on site every day acting, as he puts it, as a labourer and project manager. They worked on a scaffold and had a decent view of the land in front of the property. He says that he saw no one undertaking “sports and pastimes” on the land although he does mention the Queen’s 90<sup>th</sup> Birthday celebrations in June 2016 which he says involved only a small gathering of around 12 people and was the only event of this kind that he ever observed taking place on the land.
81. Mr Reeves accepts that he sees people using the land as if it were a public footpath. He mentions a Mr Haines who was repairing the wall at the front of the house. He evidently used the land in this fashion on his way to carry out repairs. Mr Reeves says that he has not seen any regular use of the land for walking either before or since although he has seen dog walkers who mainly walk in the road. He has also seen the odd cyclist or group of cyclists stop for a rest on the land but he is, I think, probably right when he says that these people are not “villagers”. He also mentions seeing workers engaged in work on nearby houses or in relation to the road or local services using the benches to take their lunch but, in general, walkers do not use the application land as a short cut and prefer stick to the road.
82. In his oral evidence Mr Reeves confirmed the contents of his final statement at O/210. It is obvious that Mr Reeves has convinced himself that he has been hard done by the Parish Council who had no right to claim that they owned the land and so prevented his mother from securing an independent access to No. [REDACTED] across the land without resort to what is now (as he sees it) a wholly unsatisfactory right of way over his neighbours’ property which has resulted in, as I see it, quite pointless conflict with the Cullens. The CRA has no need to look into the neighbour dispute but the fact that it exists at all means that the Cullens cannot be regarded as truly independent witnesses.

*Kathryn Reeves*

83. The evidence of Mrs Reeves mirrors that of her husband. She says that they treated No. [REDACTED] as their second home. One can imagine this as Mrs Dargie lived alone and probably needed support. When she became ill in 2014 Mr and Mrs Reeves provided round the clock care until Mrs Dargie died in December 2014.
84. Mrs Reeves deals robustly with the claim that there were Christmas lights on the land. She says that this was not the case and it was only after the TVG applications that someone put a few lights up in the tree directly in front of No. [REDACTED]
85. Mrs Reeves says that when she and her husband were sorting out Mrs Dargie's effects it was very quiet outside. It was mainly traffic and the occasional dog walker heading down Avil's Lane and back again (the road is a dead end). She saw no one sitting on the benches which she says were in a poor state of repair. There were also dead flowers left in and around the benches which no one bothered to throw away until she did. Mrs Reeves says that it was always very quiet outside No. [REDACTED] and that you could spend time on the front drive without ever seeing anyone walk by let alone indulging in, as she puts it, "sports/pastimes or activities".
86. She then moves on to the works on the bungalow which started in 2016. She says that the grass was mowed periodically. Although the driver wore a safety helmet he would still bang his head on the low branches of the trees. It is worth noting that Mr Reeves says on O/215 that low branches overhanging No. [REDACTED] were lopped in 2017 following a complaint which he made to WC.
87. Mrs Reeves says that they attended the Queen's 90<sup>th</sup> Birthday celebrations on the land in June 2016 although only around a dozen people turned up, two of whom were she and her husband along with, as she puts it, two newcomers to the village and they all left after ten minutes.
88. Mrs Reeves says that she only ever normally sees one dog walker crossing the land but he never stops, nor does he do this daily. She says that

sometimes the grass is too long to walk over and in general dog walkers walk down the road. She says that she does see people with dogs chatting in the road. She accepts that with the renovation of the benches in 2018 and the later introduction of a picnic table she has seen walkers stop off briefly for a sit down. She also says that children do not play on the land and anyone looking at the notice board will not take very long.

89. In her oral evidence she made various observations. First, she accepted that they never slept at No. [REDACTED]. Second, the grass was cut once a month in the summer. Third, in the summer she saw two young mothers pushing buggies up the road and they went by the land without stopping. Fourth, she said that when working inside No. [REDACTED] it was possible to see what is going on outside as there are large windows at the front. Fifth, once they had taken over No. [REDACTED] the grass on the land was “rough” and grew longer. Sixth, the outlook at the front into the village was also affected by the thickness of the trees beyond their front wall which her husband did not like (as previously indicated, the tree canopy overhanging No. [REDACTED] was eventually cut back). Mrs Reeves said that this involved the removal of three large trees leaving one conifer which itself came down in February 2022.
90. Not only did Mrs Reeves’ put in a very effective statement but I find that she was also a very credible witness when she gave her oral evidence.

*James Reeves*

91. His statement dated 20 September 2020 was quite short. James was born in [REDACTED] and by the time he left home in 2006 (when aged [REDACTED] he has no recollection of, as he puts it, the verge outside No. [REDACTED] being used for “sports, pastimes or events of any sort”. He also says that

... it makes no sense that anyone could use the land for this purpose; it is far too narrow for athletic activities, it is cluttered with trees, and the land slopes towards the road, making ball games impractical even if there were space for them. At least while I was growing up, the grass was often left to grow long and unkempt

The claim that this space has been a vibrant village green for years is not credible.



92. James Reeves was not cross-examined. He did though give evidence in chief and I find that he too was a very credible witness. I also thought his statement was very effective.

### **Closing submissions**

#### *Applicant*

93. The submissions of Mr Stedman Jones run to 25 pages. Although I do not cover all the points which he makes, I hope I do justice to his submissions in my report. On the face of it, the main points he makes are these:
- (i) The land is highway land such that LSP cannot have been *as of right*.
  - (ii) There is a lack of user evidence across the whole of the qualifying period April 1998-April 2018 and some of the evidence relied on took place outside this period.
  - (iii) The application is statutorily incompatible with TVG registration because utility undertakers are entitled to access the land to carry out work.
94. The highway issue I put to one side for reasons explained at the inquiry.
95. I will address the issue of (put shortly) the sufficiency of qualifying use separately. This will depend on my findings on the evidence I have heard. That said, it is clearly for the Parish Council to establish that all the criteria necessary for the land to be registered as a TVG have been met. This will involve an evaluation of the claimed informal recreation which took place on the land, such as it was in the qualifying period, and whether it was sufficient in terms of quantity and quality to justify registration.
96. Turning to the statutory incompatibility point, I see no incompatibility between the 2006 Act and the statutory regime applying to the installation of domestic gas supplies. The application land in this case is plainly not held for a statutory purpose which would be incompatible with its registration as a TVG. It is also now established (see *TW Logistics Ltd v Essex County Council* [2021] 1050) that after registration a landowner is entitled to use his land in

any way which did not interfere with the public's recreational rights and members of the public had to exercise their rights reasonably and with respect to a landowner's concurrent use. I cannot see how the exercise of statutory powers in this instance will be frustrated by the registration of the application land as a TVG? To suggest without more (if this is what is being suggested) that land beneath which ordinary household utilities have been laid by service providers under the various enabling Acts (covering digital, electricity, gas and water supplies) should be removed from the 2006 Act is, I think, misconceived and takes the principle much further than was ever contemplated by the Supreme Court in the well known cases on this subject. Not only would such a proposition emasculate the 2006 Act but I am unaware of any case which would support this. Indeed, it is conceded that the point in issue has not been tested in the courts. I therefore find against the Objectors on this issue.

97. I now turn to the submissions of Mr Stedman Jones on the user evidence adduced by the Parish Council. Again, I propose to summarise what he says as I have already covered the evidence in this report.

- (i) The applications were not supported by any user evidence.
- (ii) Oral evidence was given by only 9 witnesses (Mr Stedman Jones mistakenly says 8 – he misses out Mr Andrews).
- (iii) The number of oral witnesses is less than the 22 who provided questionnaire responses.
- (iv) Most of the witnesses, including some of the oral witnesses, refer to the desirability of registration which is irrelevant to the statutory tests.
- (v) Only 5 witnesses speak for the whole of the 20 year qualifying period (Smith, Doran, Jackson and the Cullens).
- (vi) The Cullens are not impartial witnesses given the history of the neighbour dispute between them (including their response to the Objectors application for planning permission) and their evidence must be treated with caution.

(vii) The evidence of the others shows that user was no more than trivial or sporadic.

(viii) Brigadier Smith would have been away from home a good deal before he retired in 2004 when his wife would have walked their dog.

(ix) Observations were also made about the evidence given by Mr Doran, Mr Jackson, Mrs Fernandez, Mr Schwenk and Mr Pickavance. I think the main thrust was that these witnesses agreed that use of the land had increased in more recent times. Mr Pickavance had thought that if use had increased it was probably because people were concerned about losing it.

98. Mr Stedman Jones also addressed the evidence of Mr and Mrs Reeves. He is right when he says that they were questioned extensively. Apart from their evidence in chief, the questioning was mainly by me as the Parish Council was unrepresented. It seemed to me to be appropriate that I should test the Objectors' evidence if the inquiry was to serve a useful purpose. Again, I propose to summarise what he says as I have already covered much of the evidence given by these parties.

(i) It is said that they explained in detail the time they spent at No. [REDACTED] both before 2014 and afterwards. Mrs Reeves added that she was there with her husband and helped as much as she could with the building work and the finishes.

(ii) Comment was made that Mrs Reeves said that she would not have allowed her children to play on the application land in view of its closeness to the road. James Reeves also confirmed that he never saw children playing on the application land when he was young (1987-2006).

(iii) That I would have been able to satisfy myself on my visit to No. [REDACTED] what could be seen at the front of the property.

(iv) It is said that the Objectors' evidence was specific, comprehensive credible and consistent.

99. Mr Stedman Jones also submits (in effect) that the applicant's evidence came from far too few local inhabitants for it to constitute a "significant number" within the meaning of section 15(2)(a) of the 2006 Act.
100. It is also claimed that not all the evidence was qualifying LSP. I was encouraged to consider (in effect as it appeared to me) whether some of the evidence of walking on the land would be more characteristic of use as a public right of way rather than as a destination in its own right for LSP. The evidence given by Brigadier Smith is cited under this head. It is said that the application land is too small to walk a dog around and does not allow for the type of dog walking contemplated by qualifying LSP and is more indicative of highway use or use ancillary to the range of recreational activities that would be permissible on the highway. The evidence given that the application land was a useful stopping point for visiting cyclists and walkers would also fall within this category of non-LSP use.
101. It is also submitted that the open air services which took place on the application land on six occasions in the early 2000's are not qualifying LSP. I agree. I think Mr Stedman Jones must be right when he says that religious observance cannot be equated with recreational activity.
102. It is also submitted that user for at least 20 years prior to the applications is not made out. It is said (in effect) that, at its highest, the evidence about this is sporadic and that the case for continuity of use throughout the relevant period is simply inadequate. Although it appears to be accepted that the land has been used more often in recent times there are lengthy gaps in the evidence where no direct evidence of any specific use is given or else is simply too vague or lacking in the level of detail required for these purposes.
103. I have read the "Additional Matters" set out on pp.22-24 of Mr Stedman Jones's closing submissions but whilst I understand why he has raised these points (vis: the absence of the land's reputation as a "green", the irrelevance to be attached to its maintenance and the conduct of the Parish Council – in fact it is even alleged that the objectors "have been unfairly demonised") I do not need to consider these points in any detail for the purposes of this inquiry.

However, Mr Stedman Jones helpfully reminds me that the Parish Council attempted but failed to register the land as common land in 1983 (O/294).

### **Applicant's closing submissions**

104. I have introduced Mr Andrews' closing statement at A/89-90.
105. Mr Andrews notes that, as he puts it, the Parish Council did not have the money to employ a barrister to put its case to the inquiry. He also complains that because the Objector's bundle arrived late (after the deadline) it was impossible to "read and digest" the evidence being put before the inquiry.
106. Mr Andrews goes on to deal with the "substantial written, verbal and photographic evidence to establish usage of the land as a Village Green". He goes on to say that the Parish Council has "demonstrated the strength of feeling of the parishioners about this piece of land". He cites the survey of parishioners which he says shows "overwhelming support" for registration.
107. Mr Andrews says the concern of Mr Reeves about the maintenance of the utilities serving No. [REDACTED] in the event of registration is irrelevant. He also cites the fact that the Objectors do not even live in the village and because of this it is unclear how they can state "so definitively" that the land is not being used as claimed.
108. Mr Andrews also mentions that although Mr Reeves said that his late mother told him that the land was not being used for events, he agreed that she was in the photograph of the Royal Wedding celebration on 29 June 2011. He also says that although Mr Reeves says that other places exist in the village where events have taken place, such use is only available with permission and that the MOD sports field is no longer freely available for parish use.
109. Mr Andrews argues that the land has been used "for formal and informal recreation and other community purposes over a long period". He says that the land has also been maintained by the Parish Council and individual residents for these purposes for over 30 years. He says that the land is also designated in the SSQ (draft) Neighbourhood Plan as a Local Green Space.

He says that in the view of the Parish Council there is a strong case for registration and “preserving its status as a valuable village asset and green environment to be enjoyed by future generations”.

110. The Parish Council invites me to recommend to the CRA that the application land should be registered as a TVG and that the objection to this is “not sufficient or robust enough to demonstrate that the area has not been used for community events during the time under consideration”.

## **Discussion**

### *Some general points when looking at evidence in TVG cases*

111. As a general rule considerably less weight should be attached to the evidence of witnesses who do not give oral evidence. This is principally because the Objector will not have had an opportunity to test this evidence by cross-examination.
112. I also bear in mind that the recollection of events over 20 years is not straightforward or often reliable. Twenty years is a long period. Recollections may dim, or more likely run into one another.
113. It is also true that where an activity has been carried on in the recent past, it is easy to believe that the activity has been carried on longer and/or more often and/or more continuously than it really has.
114. I always bear in mind that where strong emotions are raised by an application, as is the case here, memories and recollections may be unconsciously coloured or distorted, especially where a group of people with a common interest are involved.

### *The evidential focus in this case*

115. The application must be tested against the criteria for registration contained in section 15(2) of the CA 2006, namely whether a significant number of the inhabitants of (in this instance) SSQ had indulged as of right in LSP on the application land during the relevant 20 year period ending in April 2019.

116. I start by dealing with the application land and its context which, in my view, provides a useful starting point as to how, by whom and the frequency with which the land is likely to have been used for qualifying purposes?
117. We are dealing with a small parcel of land on the side of a road where the passing traffic is only light. LSSQ is a very small settlement and at this end of Seagry Road there are likely to be few pedestrians. I have a note that there are only 79 houses in the village on the eastern side of the A429. This figure may not be entirely accurate but the population of LSSQ is plainly small and the number of recreational walkers, with or without dogs, or children able to use the land for play is going to be even smaller.
118. The land has no pavement running alongside it and in practice is too small to walk around or for ball games or for children to play unsupervised in view of its proximity to the road. In truth it is little more than a wide verge.
119. It is not as if the land is located near a busy estate or at the convergence of popular public rights of way. There is no school or shop on this side of the A429 nor any laid out communal open space available for walks etc.
120. Although the grass is cut periodically in the summer it cannot be an easy place to walk on at other times. I noted that the land is soft underfoot and I suspect that it would be damp and boggy in the wetter weather.
121. The fact that the land is unlikely to be used with any frequency by local residents is amply borne out by the fact that there are no tracks on the land nor other signs of wear to indicate that it is in active use.
122. The land has no rubbish bin or bin for dog faeces which one might have expected to see if it was being used more than just occasionally by walkers, with or without dogs, or by those stopping to snack or drink or merely just to chat with friends (as doubtless occurred during the pandemic).
123. The land had even more trees until fairly recently and has never been a completely open space. The trees and their low branches are undoubtedly intrusive when walking on and around the land.

124. Although the land has 2 benches on it at the moment and a picnic table, this has not been a longstanding position. One bench was put there over 20 years ago and the other is of more recent origin. The picnic table was only put there in late 2018. In truth, for most of the twenty years there has only been one bench on the land and its condition in the photographs shows that it was probably used only rarely as a functioning seat. One only has to look at the photo of the older bench in O/29 which was evidently taken on 21 November 2017 where the seat is seen to be covered with mould and lichen.
125. The application land has no view or outlook of particular interest although I accept that it is a wide enough place off the road for friends to meet and talk for short periods. It is, I think, just as likely that the people will stop and chat on the pavement on the opposite side of the road rather than sit on a dirty/wet seat/seats and make a mess of their clothing (and perhaps also get their shoes wet if it has been raining). Indeed, unless perhaps it were a warm, sunny day, it seems to me unlikely that many people, if out for a walk with their dog and/or with a child in a push chair, would choose to stop and/or sit down on the application land for any appreciable length of time and especially if they are close to home.
126. It is true that the land is a place where, perhaps at a push, communal events can take place. I have already indicated that the 6 church services in the early 2000s do not count. This then leaves (i) the Royal Wedding in April 2011, (ii) the Queen's 90<sup>th</sup> Birthday in June 2016, (iii) the Community Garden Project in May 2018 and (iv) the Book Sale in June 2018. These four events were one-off events and I am not aware of other events in the course of the qualifying period. They would have lasted for a few hours at a time and could even have attracted non-qualifying residents. It is also worth bearing in mind what Mrs Reeves said about the Queen's 90<sup>th</sup> Birthday celebrations in June 2016 where she says that only around a dozen people turned up, including she and her husband plus two newcomers to the village, and they all left after ten minutes.



*The quality of the oral evidence adduced by the Parish Council*

127. The quality of the oral evidence in support of the case for registration was generally poor. This is not to suggest that any one of witnesses who attended to give oral evidence did so with a view to telling untruths. All of them used the land and gave the impression that they were safeguarding it. I think that all of them were attempting to describe matters as they genuinely saw them.
128. The position is that the Objectors are saying that the land is hardly used for informal recreation whereas the witnesses called by the Parish Council say that it was in regular use for these purposes and they point to the events described in para 126 above and to its use as described by their witnesses, both oral and as recorded in the documents, not least in relation to the results of the village survey to which, as I find, only limited weight may be attached.
129. It seems to me that the real problem with the case for registration is that it is woefully short on proof. I have already stated in para 24 that the law requires such claims to be properly and strictly proved. It means that sufficient use of the application land for LSP must be made out by local residents for the whole of the 20 year qualifying period. As indicated in para 12 above, it needs to be shown that the use of the land must signify that it is in general use, as opposed to only occasional use, by the local community.
130. In this case oral evidence was called from only 5 witnesses who lived at LSSQ in the 20 year period ended in April 2018.
131. Stuart Jackson has been in the village since 1994 but he said that he had used the land only occasionally and although a truthful witness I cannot really attach a great deal of weight to his evidence.
132. Although Peter and Elizabeth Cullen have lived in the village for over 28 years they do not get on with the Objectors and I have to take into account this animosity which I find reduces the weight which should be attached to their evidence. As I said in para 71, the ill-feeling between these neighbours was obvious at my accompanied visit after the inquiry.

133. Brigadier Smith came to the village in 1997. Although he claims to be a regular user of the application land and has also observed others using it, Brigadier Smith retired in 2004 and I doubt very much whether the frequency of his use before he retired was anything like what it is now. The family has also only had a dog since 2000.
134. Michael Doran has lived in the village for 45 years. He lives just across the road from the application land. On the face of it, he appeared to be a good witness for the Parish Council. However, he did say that the land was being used more often nowadays which he thought was because people were being more sociable. I am disinclined to accept that this is the real reason for the increase in the land's use. It seems to me to be obvious that this results from the application to register and no doubt, but to a lesser extent, the recent pandemic when, for a time, the land would very probably have been a popular meeting place. By using the land more often local residents are demonstrating that the land is an important communal asset and that this will make its registration as a TVG more likely. Indeed, Mr Pickavance said that if user had increased it was probably because people were concerned about losing the land. I accept the submission of the Objectors' counsel that the case of the Parish Council was very largely predicated by the desirability of registration which is irrelevant to the statutory tests.
135. I add that I was also troubled by Mr Doran's reference to Christmas lights in view of the evidence of Mrs Reeves about this (which I accept). It is also possible that Mr Doran (who is not, I think, a dog walker) would have mainly used the land when his children liked to play there before they went to secondary school which I believe would have been in around 1999 and 2002.
136. In the case of the other witnesses, Mrs Fernandez and Mr Schwenk were none too specific about their own use of the land and I also doubt whether Mr Pickavance and Mr Andrews used the land to any great extent.
137. I am surprised that there were so few oral witnesses in view of the apparent support within LSSQ for registration. I suspect that the Parish Council believed that by producing the results of their questionnaire and by calling a

small number of oral witnesses covering the qualifying period it would be enough to get these applications across the line. If, however, they had been legally represented they would doubtless have been advised of the importance of adducing credible oral evidence from a significant number of witnesses showing that the land had been used for LSP throughout the whole of the qualifying period. Furthermore, in these cases decision-makers are, more often than not, presented with photographs of the use of the land for LSP and although I accept that we have some communal photos of the Royal Wedding in 2011, the Queen's 90<sup>th</sup> Birthday celebrations in 2016, the Community Garden project in 2018 and Book Sale in 2018 there is nothing else in the way of helpful photographic evidence.

138. It is plain that the Objectors' planning application to run a new access road across the application land was very unpopular in the village. I suspect that most people in LSSQ found it hard to accept that such an application could even feasibly be made by the Objectors when they neither lived in the village nor owned the land which their proposed access was supposed to cross (land which is to be designated in the emerging NLP as a Local Green Space). It was this local opposition to the Objectors' planning application which resulted in the Parish Council making the two applications to register. I have no doubt that within the village strong emotions were raised (i) by the planning application, and (ii) by the Objectors' belief that the application land is in fact highway land and as such would be available to them for use by vehicles. The result of all this is, as I find, that memories and recollections are likely to have been unconsciously coloured or distorted by those who gave written and/or oral evidence in support of the case for registration.
139. In the result, I find that there were too few witnesses who could speak reliably about the use of the land over the period of 20 years ending with the date of both applications. I therefore accept the submission of the Objectors' counsel that the applicant's evidence came from far too few local inhabitants for it to constitute a "significant number" within the meaning of section 15(2)(a) of the 2006 Act.

140. When looked at in the round, these applications concern a small parcel of open land on the side of a road which is far too small to be of much practical use for LSP. On the basis of the written and oral evidence which has been put to the inquiry I find that the LSP claimed is likely to have been too trivial or sporadic and would not have been sufficient in terms of duration, nature or quality to support registration. I also take the view that the points which I make in paras 116-126 about the application land and its context are supportive of my findings on the balance of probabilities on the evidence before the inquiry.

### **Recommendation**

141. In light of the above discussion, I recommend that the applications to register the application land (proceeding under application number 2018/01 and application 2019/01) should be **rejected** on the ground that the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied.
142. The CRA must give written notice of its reasons for rejecting the application. I recommend that the reasons are stated to be “the reasons set out in the Inspector’s Advisory Report dated 9 January 2023”.

**William Webster**

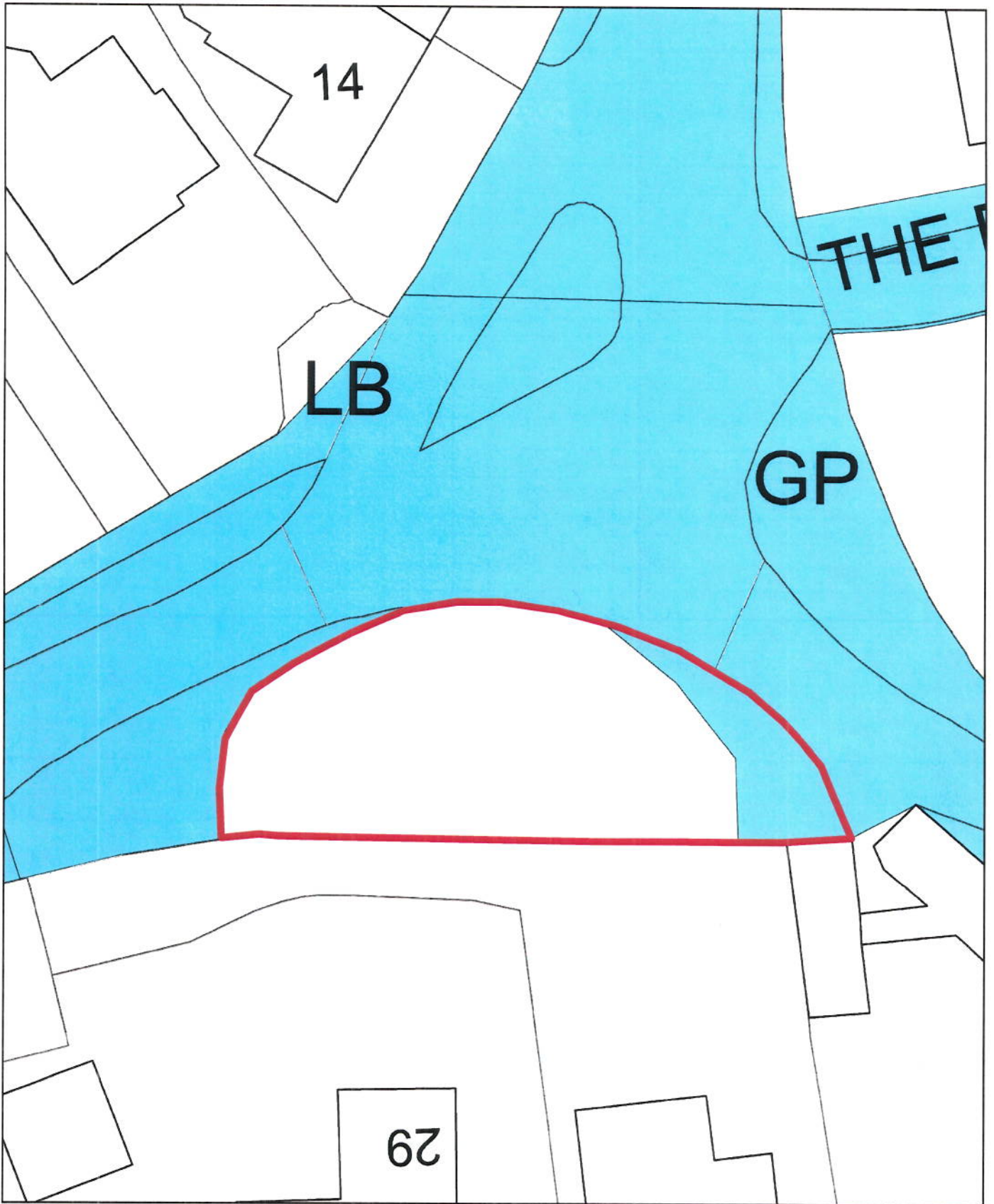
**3 Paper Buildings**

**Temple**

**Inspector**

**9 January 2023**





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24/05/2022

Scale 1:300 @ A4

App/1

Wiltshire

1:1,197

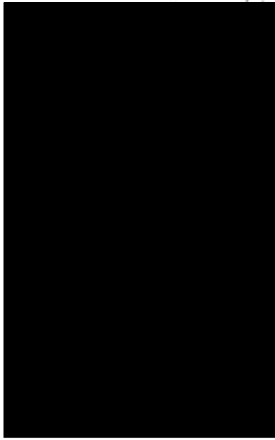
A.A. EXHIBIT B  
A.A. THIS EXHIBIT (B)  
A.A. THIS EXHIBIT A.A.  
REPLACES EXHIBIT A.A.  
A237/19



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APP/2

SECOND OF TWO EXHIBITS  
DECLARATION 18 APRIL  
2019



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App 13



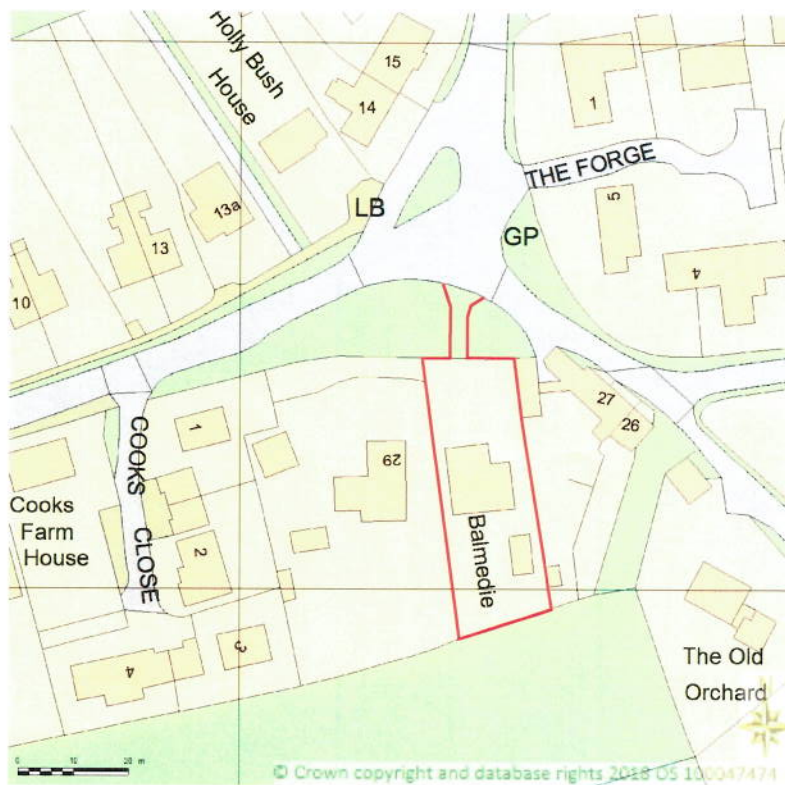
**Seagry Road, Lower Stanton St. Quintin,  
Chippenham, Wilts, SN14 6**

SITE LOCATION PLAN

AREA 2 HA

SCALE 1:1250 on A4

CENTRE COORDINATES: 391729, 180835



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APP 14

# Appendix 5

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

### Applications to Register Land as Town or Village Green – Land off Seagry Road, Lower Stanton St Quintin

#### Appendix 14 – Summary of Witness Evidence

	Name	Locality	Years used / Known	How used	Events	Comments
1	Paul & Alison Avis	■ The Forge, LSQ				Support registration of land in its entirety
2	Malcolm Barrington & Tracy Warne	■■■■■ ■■■■■ ■ LSQ	2009	Meeting place	VE day 2020 – a neighbour and myself turned the land and the area opposite into a VE day display by parking a WW2 jeep and 3 WW2 motorcycles.	Village green a focal point of village, no pub and not many places where people can gather for fun.
3	Michael Childs			Picnic site (my family)	2020 VE day – small display of WW2 vehicles in the absence of any formal event due to covid 19. Local free library on site. Seen a number of others use it as picnic site	Small village with very few amenities, not even telephone box anymore. For many geographical centre of Lower Stanton St Quintin.
4	Hilary Creasey	Newbourne Gardens, LSQ			When we were children pond had been filled in, we had fetes on the pond. There were fancy dress competitions and picnics. Church services. Also other celebrations. 2 benches on the pond, one in memory of a villager, people sit there in the summer months.	The village green is on the opposite side of the road in front of Spider Cottage. The Pond was dug out by the farmers so their cattle and horses could drink. They also put carts through the water to swell spokes so metal bands on wheels didn't fall off. 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 access to bungalow and house), where our parents and grandparents played games, cards, dominoes, whist, crib etc.

						Reading Room, Methodist chapel, shop and all farm yards now gone. Pond is the only original landmark of village that is left. It there was an access to house onto the road here would be dangerous.
5	Liz Cullen	██████████ LSQ	26 years		<p>Several open air church services/ Numerous national celebrations with “bring and share” food and drink, eg. Queen’s jubilee, Royal weddings and most recently VE day with display of vintage vehicles.</p> <p>May 2018 – a group of adults helped village children plant wildflower seeds to establish small community garden (photo 1).</p> <p>June 2019 – book sale to raise finds for “Wee Free Library” (photo 2). Wee Free Library where people could exchange books, paid for by an anonymous local person – books purchased to start the venture, very well used especially in lockdown months when shops and libraries closed. Library opened by local poet (photo 3).</p>	<p>Community asset. Public notice board gives information about PC meetings, church services and local events. Bench seat and picnic bench used by residents as pleasant place to meet, picnic and chat. PC have maintained the area for many years, paying for regular grass cutting and tree surgery. Vast majority of villagers in favour of applications.</p>
6	Peter Cullen	██████████ LSQ	26 years		<p>Focus for village celebrations including street parties, most recently VE day in May. Church services. Book sales. Many more informal gatherings of locals. Benches on the green used daily at least in summer by residents and also walkers and cyclists passing through the village. Little library used at least daily and well received.</p>	<p>It gives a great deal of pleasure to village residents, visitors from the locality and those passing through. Trees and grass maintained at PC’s expense from time I have lived in LSQ and I believe well before I arrived. Valuable asset and focus of enjoyment for the local community and others.</p>
7	Martin Davis		Oct 1997		Increasing use, particularly with social distancing the coming together of families	The space has played a part in bringing the village together on many occasions.

					in sensible surroundings to maintain a healthy life balance. Royal celebrations. Most recently VE day celebrations with historical military vehicles and a village gathering to celebrate.	We have met and made strong friendships which would not have developed if the green space not available to use. Not many places in village where people gather for fun. Today all too many people live in isolation and this has brought out people who would never socialise and has made them and the village stronger because of it. Living memorial for a number of families who have dedication benches installed.
8	Keith Garrod	■ Cooks Close, LSQ		Grandchildren play on the green when they visit	A place to sit and enjoy the peace and tranquillity. A place to meet and chat with the local community who are not immediate neighbours but still members of the village. Ideal location to meet and keep social distancing.	Essential part of our community.
9	Cllr Howard Greenman Wiltshire Councillor					Support this application and can confirm its legitimacy.
10	Mary Haines				Opportunity for people to sit for a few minutes or to visit the Wee Free Library.	PC have looked after the Green very well and it is a credit to the village.
11	S R Jackson	■ LSQ				Support for both applications.
12	H W Jolly	■ LSQ	About 30 years		Many events for the community have taken place on the land which I have thoroughly enjoyed.	Always considered it as being a village green.
13	Doreen Pattison		32 years (Before living in LSQ lived within RAF camp at other end		Many social events held, I have helped organise several in the past few years. Good to have a space to gather and the majority of the village attend. We put up bunting to celebrate national and even some local events such as a wedding. At Christmas there are some lights.	Throughout time in LSQ and at RAF camp, regarded this as the village green.

			of the village)		<p>Wee free library (greatly appreciated particularly when library closed). I received permission from the PC several years ago to install small picnic bench. We involved local children when we planted wild flower seeds. Only open space for children to play. Small but spread out community, village green is point of connection.</p>	
14	Graeme Pattison	<p>██████████ ██████████ LSQ</p>			<p>Used by villagers as a green for many decades and to my knowledge since spring 1977. Events have taken place on many occasions and only Covid 19 situation prevented VE and VJ day celebrations recently. Only piece of land available to the residents. Facility is appreciated and frequently used by a wide range of people passing through the village as a resting point and/or to have refreshment such as lunch or coffee.</p>	<p>Land was originally pond filled in many years ago as considered dangerous for children of the village. PC has maintained land and paid for tree surgery when required. PC funded grass cutting and paid for other amenities such as table and benches as well as village notice board. 2 benches installed with PC approval as memorials to villagers.</p>
15	Malcolm Peal	<p>██████████ LSQ</p>				No objection.
16	John & Glynis Seale	<p>██████████ The Forge LSQ</p>			<p>For past 50 years the Village Green has provided the only community land focal point on which residents can celebrate notable historical and commemorative events. Proven community value through both historical and current use and an asset to rural village life. No other similar community land asset exists in LSQ. Value of Village Green further enhanced by siting of a commemorative tree and plaque; picnic bench and small residents' lending library.</p>	<p>Land maintained by PC for last 50 years. Map appears to show pathway across green, do not support any such future development across the Village Green.</p>

					Land provides "home" for PC notice board for residents.	
17	Mike Smith	■ The Forge, LSQ	1997		Since 1997 in continual use as a green by residents throughout this period. Mature trees, village notice board, 2 picnic tables and a 'wee free' library box, all regularly used by residents of the village and visitors.	No driveway across the green, no evidence of vehicle access at this point. The extent of the green area encompasses both sides of the Seagry Road and a more realistic registration would encompass all of these areas, not just piece to the south of Seagry Road.
18	Roger Starling	■ The Forge, LSQ			Focal point at the heart of small village. There for all to enjoy and meet up on special occasions with neighbours and new arrivals alike. Only green space within safe convenient walking distance for parents with younger children. Attractive visual amenity.	Identified as green space in draft neighbourhood plan which contributes to the wellbeing of all. Deserves to be protected.
19	Mervyn & Sue Stephens	■ Stanton St Quintin				In favour of registration. It would protect this site for current residents of the village as well as providing an opportunity for future residents.
20	Serena Parker	■ Stanton St Quintin			Villagers and visitors can congregate and come together to relax and have community events.	The land has been used as a village green for many years, ever since the former pond was filled in. During this time the PC has maintained the land by cutting the grass, general maintenance, tree cutting. This is the only village green in the Stanton Villages, there is no other suitable space to hold village events.
21	Adrian Andrews	Avils Lane LSQ			The wee free library is used daily and has been a meeting point (keeping up Social Distancing).	I have been in the village for 12 years.
22	Stanton St Quintin Parish Council				2 Royal weddings and VE day (75 years) in last 12 years. Many other events including a church service. Social gatherings and informal events.	Listed as village green in the Neighbourhood Plan. Village have paid for upkeep, most recently a tree surgeon and trees regularly maintained on previous occasions, grass

						cutting for over 14 years and notice board maintained. Extracts from Parish minutes back to 1983.
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