

Application to Register Land as Town or Village Green - Southwick Court  
Fields, Southwick and North Bradley  
Appendix 10 - Objector's Comments on Representations

**From:** [Caroline Waller](#)  
**Sent:** 23 May 2022 14:39  
**To:** [Green, Janice](#)  
**Cc:** [REDACTED]  
**Subject:** RE: Commons Act 2006 - s.15(1) & (2) Application to Register Land as Town or Village Green, Southwick Court Fields (2020/02TVG) [CW-Legal.FID2351227]  
**Attachments:** [Objection to revised application 23 May 2022.PDF](#)

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**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Janice

Please see the attached further representations on behalf of the Landowner.

Please acknowledge receipt.

Kind Regards

**Caroline Waller**

Partner  
Clarke Willmott LLP

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**From:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Sent:** 07 April 2022 15:49  
**To:** Caroline Waller <[Caroline.Waller@clarkewillmott.com](mailto:Caroline.Waller@clarkewillmott.com)>  
**Subject:** Commons Act 2006 - s.15(1) & (2) Application to Register Land as Town or Village Green, Southwick Court Fields (2020/02TVG) [CW-Legal.FID2351227]

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Dear Ms Waller,

**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

**Application no.2020/02TVG**

**Your Ref - CW-Legal.FID2351227**

Further to the close of the formal objection period, following notice of the above-mentioned application to register land known as Southwick Court Fields, Southwick and North Bradley, as a town or village green, on 31<sup>st</sup> January 2022, I am writing to advise you that the objections (and representations) received in the formal notice period, were forwarded to the Applicant for comment and additional representations have now been submitted.

Under regulation 6(3) of “The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007”, the Registration Authority are required to send to the applicant a copy of every written statement in objection to the application which it receives, before the date on which it proceeds to the further consideration of the application and under regulation 6(4), the Registration Authority must not reject the application without giving the applicant a reasonable opportunity of dealing with the matters contained in any statement of objection. The Applicant was given opportunity to comment on the objections, until 6<sup>th</sup> April 2022.

Please find attached the following correspondence for your attention:

1. Copies of representations made regarding the application during the formal notice period - 12<sup>th</sup> November 2021 - 31<sup>st</sup> January 2022:

	<b>Representations</b>	<b>Date</b>		<b>Representations</b>	<b>Date</b>
1	P Allsop	13/12/2021	12	J & B Keltie	12/12/2021
2	T Allsop	12/12/2021	13	North Bradley Parish Council	04/01/2022 & 14/01/2022
3	H Chamulewicz	12/12/2021	14	M Noutch	12/12/2021
4	J Dennis	19/12/2021	15	M & J Oliver	14/12/2021
5	M Dennis	19/12/2021	16	Savills on behalf of Waddeton Park Ltd	09/11/2021
6	P & S Elphick	10/12/2021	17	Southwick Parish Council	16/12/2021 & 20/01/2022
7	D Goodship	17/12/2021	18	M & L Stevens	13/12/2021
8	C Hill	14/12/2021	19	N & A Swanney	13/12/2021
9	Cllr G Hill	15/12/2021	20	Cllr D Vigar	15/12/2021
10	R Hunt	17/12/2021	21	M & G Whiffen	10/12/2021
11	B Jones	12/12/2021	22	S & P Willcox	12/12/2021

2. Copies of additional representations regarding the objections - 22<sup>nd</sup> February 2022 - 6<sup>th</sup> April 2022:

	<b>Correspondence</b>	<b>Date</b>
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1	Mr N Swanney	05/04/2022
2	Cllr G Hill	05/04/2022

If you would like to make any comments regarding the representations received during the formal notice period and/or the additional comments on the objections received, (as attached), I would be very grateful if you could forward them to me in writing at the address given below, or by e-mail, not later than 5:00pm on Wednesday 25<sup>th</sup> May 2022.

Yours sincerely,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



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**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick & North Bradley - Ref: 2020/02/TVG**

**Supplemental Comments on behalf of the Landowner**

**In Response to Revised Application.**

**1 Introduction**

- 1.1 These comments supplement the Objection made on behalf of the Landowner.
- 1.2 In the interest of concision, we have refrained from re-stating any points previously made in the original Objection. Therefore, the landowner's Supplemental Comments should be read together with the original Objection.
- 1.3 These Supplemental Comments address points of new evidence submitted in support of the application. Where points are repeated or have already been adequately covered in the Objection, we have not commented again in this document. However, our silence should not be taken to be tacit acceptance of any point.
- 1.4 Similarly, where the updated application and/or supporting evidence misstates the relevant legal tests (for example, stating that the "Objection must eliminate all such use to be valid"<sup>1</sup>) or where material is irrelevant to the TVG application (such as continued references to the planning process or erroneous allegations that the land should be considered to be "public realm"), we have refrained from commenting on such material. We are content to rely on the decision maker to disregard such content.
- 1.5 For ease of reference, we have adopted the same headings and subject order as the Objection.

**2 Standard of Proof and Quality of Evidence**

- 2.1 We have nothing further to add on this point save for the fact that the application still fails to meet the statutory tests.

**3 Occurrence of Trigger Events and Variation of Application**

- 3.1 The application had been submitted in respect of the whole site. However, following the Council pointing out that the northern part of the site (i.e. the part closest to the housing) had been the subject of a trigger event, the application has been amended and further evidence has been submitted.
- 3.2 Nonetheless, it remains the case that it is wholly unclear whether the majority of the supporting evidence still relates to the whole site (which was subject to the original application) or just the southern part (which is now the subject of the application).

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<sup>1</sup> Para 6 of Mr Swanney's April Statement

- 3.3 By way of example, reference is made in one of the supporting representations to a swing (“even a swing was popular this year attached to a substantial tree”<sup>2</sup>). The substantial tree in question is a boundary oak tree located on the boundary closest to the housing. This is outside the area which is now the subject of the TVG application.
- 3.4 Therefore, there is evidence that at least some of the respondents have misunderstood the extent and nature of the revised application.
- 3.5 It remains the case that the vast majority of evidence is ambiguous as to where uses are claimed to have taken place. Accordingly, as before, the weight of such evidence must necessarily be reduced.

#### **4 20 Year’s Use**

- 4.1 Mr Swanney’s statement of 5 April 2022 refers to “additional sworn statements” at a number of points. We have not seen any such additional sworn statements. In so far as we can see, the only aspect of the application that has been “sworn” is Mr Swanney’s statutory declaration which is part of the application form.
- 4.2 We therefore assume that this is a mis-reference to the emails and letters which have been submitted containing representations from members of the public. If this is not the case, we would ask for copies of the sworn statements and an opportunity to comment thereon.
- 4.3 Mr Swanney’s April statement contains a table containing 20 names. The final column of the table is headed “Number of YEARS familiar with the use of the fields”. “Familiarity” with the fields is not sufficient to demonstrate use for the purposes of a TVG application. Evidence needs to be provided to demonstrate use for lawful sports and pastimes (with a sufficient quality of user) as of right by a significant number of the inhabitants of the locality. The table does nothing to assist with proving such use.
- 4.4 Of those 20 names, many appear to be from the same household (although the names have been split up to reduce this impression). 6 of the 20 people listed have provided separate written representations. It is important that they are not counted twice.
- 4.5 During the pandemic, many people began accessing their local countryside more frequently (due to lockdown restrictions). This phenomenon was seen in edge-or-town countryside locations around the country. Therefore, caution should be exercised in taking the evidence relating to the use of the site since March 2000 as being representative of the use of the site over the preceding period. The landowner has noticed a very significant increase in both the use of the site and the instances of damage being caused to fences and gates during this period.
- 4.6 This makes it even more important to have regard to evidence of the frequency and nature of the claimed uses in the earlier part of the 20 year period. The evidence relating to that period is insufficient to meet the statutory requirements.

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<sup>2</sup> See email from H.Chamulewicz dated 12 December 2022



## 5 Lawful Sports and Pastimes

### General Comments on New Evidence

- 5.1 The vast majority of the newly submitted evidence suffers from the flaws mentioned in our original Objection. The evidence remains vague as to the location or frequency of the claimed uses.
- 5.2 Further, we note that a number of the statements and representations submitted in December relate to uses of the land which should be discounted when considering use as of right in the context of the TVG application. For example, express reference is made to “walking permissive pathways”<sup>3</sup> and use of the “rights of way”<sup>4</sup>. The majority of the claimed uses are walking (with or without dogs) or running. It is reasonable to assume that such uses would have taken place on the pathways and should, therefore, be discounted.

### Current Use of the Land

- 5.3 *Mr Swanney states: “As explained elsewhere the grazing of cattle was spread across at least six discrete fields in the ownership of the landowner. The small section in question of this Application was never closed to any form of access and was utilised minimally throughout the time when agriculture was in place as a source of winter fodder.”*
- 5.4 He later states: *“The location of the Village Green application was therefore never out of bounds, nor restricted by any signage or activity or even practically placed out of use with the exception of the two part-days when mowing and then baling took place. Even on those days it was just a case of avoiding the progress of the tractor and not related to any formal or informal exclusion.”*
- 5.5 This is incorrect and further highlights the need for precision when providing evidence regarding the use of the Site over the 20 year period.
- 5.6 The part of the site which is now the subject of the TVG application has been used during the summer months (usually April to September) for grazing cows during the vast majority of the 20 year period (as stated in the Objection). During the winter months the field is allowed to recover from grazing.
- 5.7 In very recent years, cows have not been present on the site. However, there is a good reason for this change. Around 2-3 years ago, fences and gates began being regularly damaged. Fences were cut with wire cutters and gates were broken (presumably by people wishing to access the land). The cost of repeatedly repairing and replacing the fences outweighed the revenue that could be generated from the use of the land for cattle grazing. Therefore, the cattle were moved elsewhere. However, before this point, cattle were present on the land during the summer months.

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<sup>3</sup> Peter Allsop and Tracy Allsop

<sup>4</sup> Malcolm Oliver

- 5.8 It was due to the increasing level of vandalism and the breaking of gates and fences that it was necessary to padlock a number of gates on the site (as shown in Mr Swanney's photographs).
- 5.9 In this respect, it is relevant to note that in order to be "as of right", the use must be without force, stealth or permission. The breaking of gates, cutting of fences and other acts of vandalism to access the site amounts to access by force. The use of the site by any person carrying out such acts or by others who are benefiting from those acts cannot be taken into account.
- 5.10 For the sake of completeness, we should note that cattle could be returned to the TVG application land at any time.

#### Camping by Local Children

- 5.11 The additional commentary provided by Mr Swanney has been helpful in pinpointing this incident. As Mr Swanney implies, the camping was not by local "children" but by teenagers and young adults "as evidenced by the bottles and cans" also referred to by Mr Swanney.
- 5.12 The landowner is aware of one camping incident occurring. The "campers" were on site for one night and then fled the scene leaving their tents, some clothes and various other items which were then disposed of.
- 5.13 The use was clearly not "as of right". The users knew they should not have been camping on the site (as evidenced by the fact that they fled when it appeared that they would be challenged). The use was intended to be "by stealth" even if the campers failed to achieve this.
- 5.14 This is certainly not a regular occurrence. The landowner is only aware of the one isolated incident. The use does not have the quality of user to be a relevant consideration in the TVG application.

#### Landing and taking off of para-wings and hot air balloons

- 5.15 Mr Swanney has now clarified this claimed use as follows: "*The hang glider/parawing is probably misnamed. The flying device had rigid, framed, cloth covered wings and was powered with a single large fan situated behind the pilot. Landings and take-offs occurred regularly pre-Covid.*"
- 5.16 Despite the clarification, the landowner has no recollection of such use ever taking place. Therefore, notwithstanding the clarification, if the use ever did take place (which is not accepted) it remains the case that the use would be 'so trivial and sporadic as not to carry the outward appearance of user as of right' and should, therefore, be ignored for the purposes of the Application.



## 6 Use As of Right

- 6.1 We have nothing further to add save for our comments above in respect of the use of the site by those who have damaged gates and fences. Such use would be by force and not “as of right”.

## 7 Significant Number of the Inhabitants of any Locality

- 7.1 We have tried to refrain from drawing attention to the points at which the legal tests have been wrongly applied by the Applicant. However, we feel it is necessary to draw attention to the application of the wrong legal test in relation to this element of the statutory test. The misunderstanding is material to the way in which the evidence has been compiled and presented. Therefore, the error affects the way the evidence should be understood and applied in assessing the application.
- 7.2 Before considering the error, we should note that, at box 6, the application identifies the “locality or neighbourhood within a locality in respect of which this application is made” as “Grove Ward, Trowbridge”. A plan is attached to the TVG application identifying Grove Ward.
- 7.3 Mr Swanney April Statement states:

*“Population numbers for Grove Ward are unnecessary and irrelevant. The nature of the Village Green application requires the applicant to identify a Community Area which the application will serve. The truth of this Application is that many visitors to the area in question travel to the vicinity for their recreation....*

*The number of residents in the nearby Ward has been estimated and used as “evidence” that numbers are exaggerated. If they are submitted to imply usage then no consideration has been made for footfall from other Wards such as Drynham or Central, Villages such as North Bradley and Southwick, or the many who drive to the boundaries from not only the Town to reach the most accessible green infrastructure, but from as far as Frome.*

*Grove Ward is only identified as nearest conurbation and place of residence of Applicant as required in the Village Green Application. Should the Application be successful, there will be no restrictions for access based on postcode and the current use of the land will be maintained and protected in Law.”*

- 7.4 It is, therefore, clear that the applicant, when preparing the application has misunderstood the relevant statutory tests. Rather than ensuring that the evidence is drawn from the “locality” (to demonstrate use by a significant number of the inhabitants of the locality specified in the application), the applicant has assumed that the evidence should relate to use by any persons who might, in the future, wish to use the TVG should it be registered. The evidence relating to the use of the site has, therefore, drawn on a far wider range of users of the site than should have been the case. This is an important and material error.

- 7.5 If, as stated by the Applicant, the locality of Grove Ward has been considered to be “irrelevant” when preparing the evidence, the relevance of the evidence to the statutory tests must be doubted.
- 7.6 It is also notable that Mr Swanney previously stated that the number of users had been generated through a survey. In his April Statement, Mr Swanney now states that the number is an “estimate”. This casts further doubt on the evidence.

**23 May 2022**

**Clarke Willmott LLP**