COVERING PAGE FOR DECISION REPORT ON APPLICATION TO REGISTER LAND AS A TOWN OR /ILLAGE GREEN – THE COMMON/BROWNS COPSE FIELD/BLUEBELL WOOD FIELD/VILLAGE HALL FIELD/THE FIELD, WINTERSLOW

PLEASE SIGN OFF THE REPORT NEXT TO YOUR NAME

		Signature	Date Signed Off
To:	Sarah Marshall (Solicitor – Highways)	Agreed subject to suggested comments	22 April 2014
	Barbara Burke (Definitive Map and Highway Records Team Leader)	Barbara Burke Good, agree	23.04.2014
	Richard Broadhead (Rights of Way and Countryside Manager)	RBroadhead Agreed noted observations made on report by SM.	23.04.2014
	Ian Brown (Head of Environment Services)		19.05.2014
	Tracy Carter (Associate Director – Environment and Leisure)	Tracy L. Carter	23.5.2014
From:	Janice Green		
Date of report:	31st January 2014		
Return to:	Janice Green, Rights of Way (Ext. 13345)		

Nature of Report:

This is a report from Janice Green (Case Officer) to Richard Broadhead (Officer with the relevant delegated powers).

Executive Summary:

Wiltshire Council are in receipt of an application dated 3rd February 2012, made under Section 15(1) of the Commons Act 2006, to register land off Middleton Road, Winterslow, known as The Common/Browns Copse Field/Bluebell Wood Field/Village Hall Field/The Field, as a Town or Village Green. It is possible to apply for land to be registered as a town or village green where a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.

The application is also made under Section 15(3) of the Act, where use of the land for recreational purposes has ceased and the application is made within two years of the cessation of use.

The application form requires the applicant to provide a summary of the case for registration. The applicant included the following justification:

"Indulgence by a significant number of inhabitants of Winterslow as of right in lawful sports and pastime for a period of at least 20 years and 5 months under Section 15(3) of the Commons Act 2006, as witnessed by the 63 enclosed signed statements showing use for activities including dog walking, picking blackberries, kite flying and bicycle riding by a total of 63 people over a period extending from December 1990 to April 2011."

The application was accompanied by 63 completed witness evidence questionnaires and following notice of the application, 2 objections and 3 representations were received.

On examining the evidence received, Officers noted a number of areas of dispute within the claim. It is the registration authority's duty to determine an application in a fair and reasonable manner and where there is serious dispute, or if the case is of great local interest, it is open to the authority to hold a non-statutory public inquiry. Substantial dispute of fact is likely to be resolved by the inquiry process, i.e. through witnesses giving oral evidence and through cross examination. The determining authority may appoint an independent Inspector to preside over the inquiry and to produce a report with recommendations. There is no obligation upon the determining authority to follow the recommendation made.

Officer's Recommendation:

To hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to preside over the inquiry and to provide a report and recommendation to the determining authority.

DECISION REPORT

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

APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN – THE COMMON/BROWNS COPSE FIELD/BLUEBELL WOOD FIELD/VILLAGE HALL FIELD/THE FIELD, WINTERSLOW

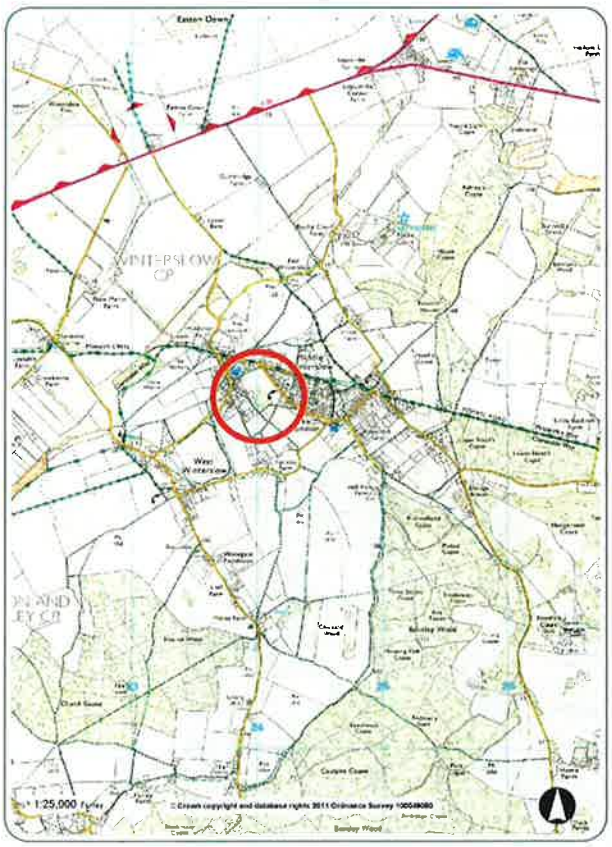
1. Purpose of Report

1.1. To consider the evidence submitted with an application made under Section 15(1) and (3) of the Commons Act 2006, to register land adjacent to Middleton Road, Winterslow, known as The Common/Browns Copse Field/Bluebell Wood Field/Village Hall Field/The Field, as a Town or Village Green.

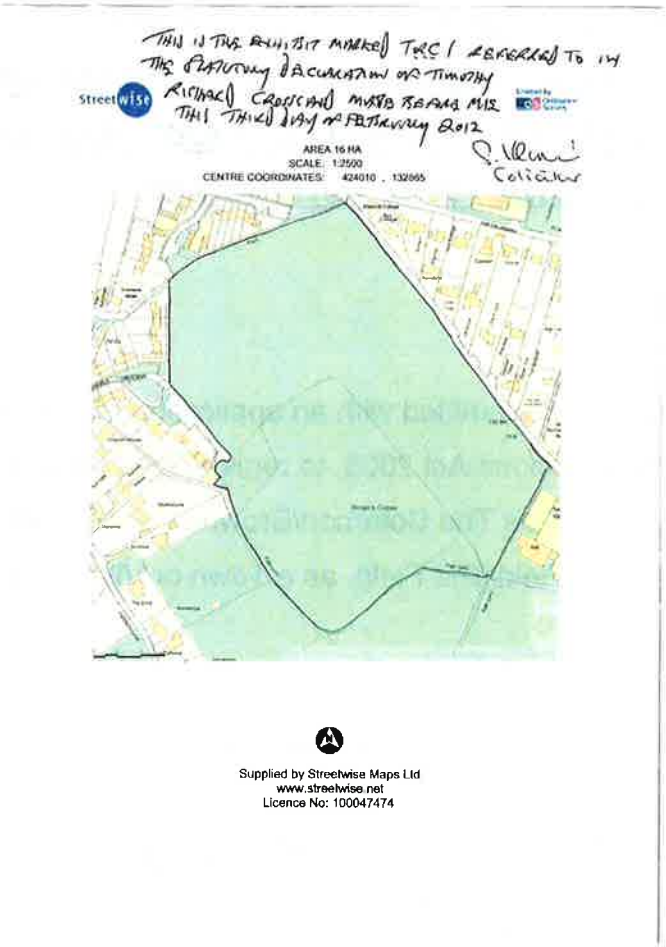
2. Location Plan

Wiltshire Council

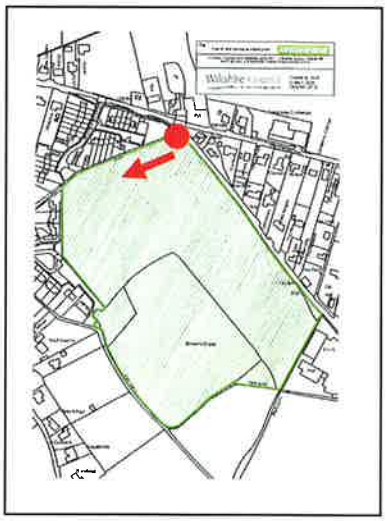
Winterslow Location Plan

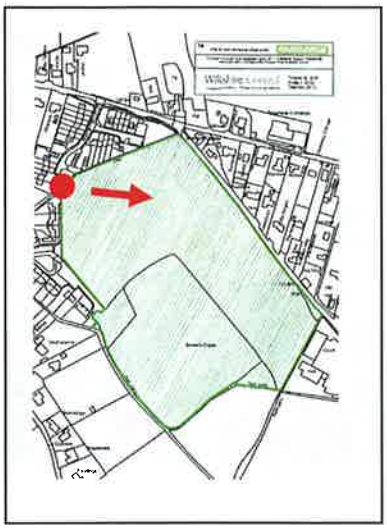


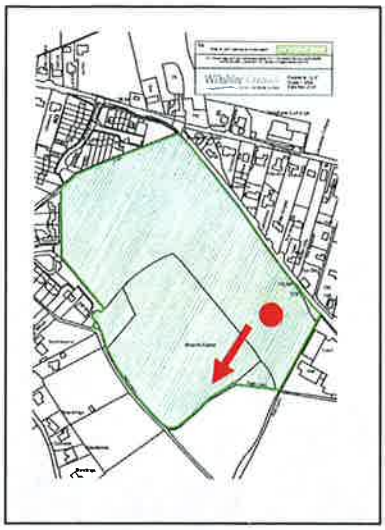
3. Application Plan

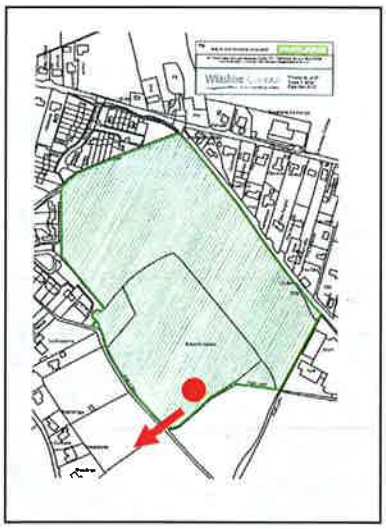


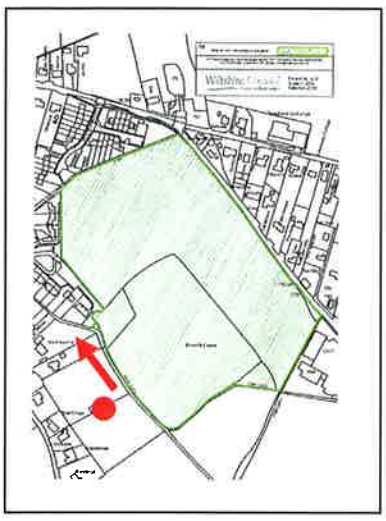
4. Photographs











5. Applicant

5.1. Winterslow Opposed to Over Development (WOOD)
C/O Mr T Crossland
Box Cottage
Middleton Road
Winterslow
Wiltshire SP5 1QJ

6. Registered Landowners

6.1. Mr Richard and Mrs Patricia Sheppard
Weston Hill Farm
Winterslow
Wiltshire SP5 1RL
(Land ownership outlined in green on the plan of the application land below).

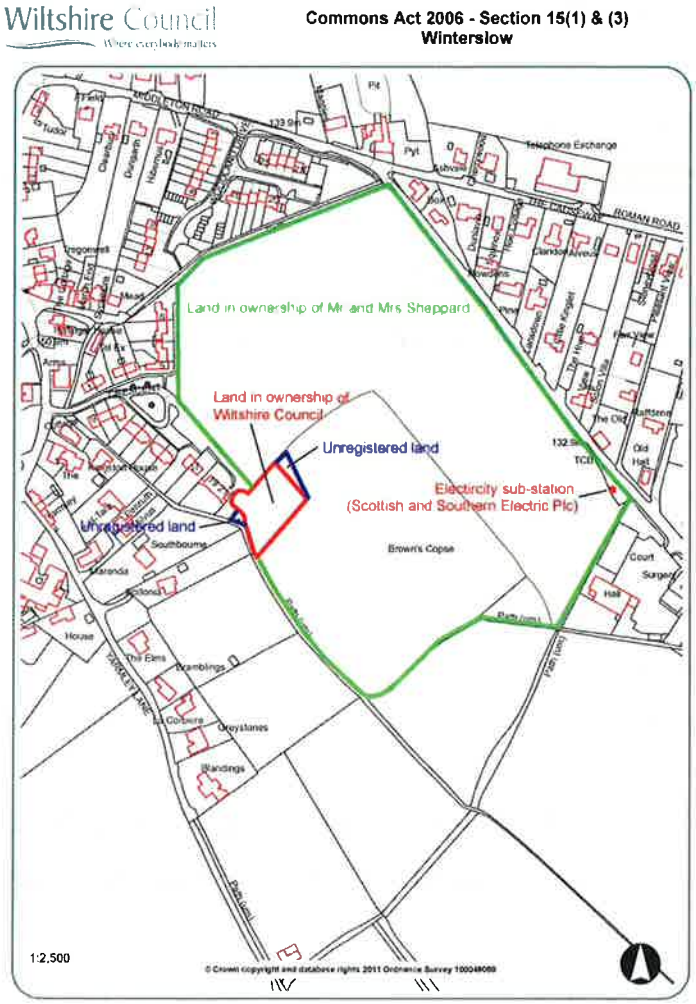
6.2. A small part of the application land to the west, is owned by Wiltshire Council (land ownership outlined in red on the plan below):

Wiltshire Council
C/O Property Services
County Hall
Bythesea Road
Trowbridge
Wiltshire BA14 8JN

6.3. Scottish and Southern Electric own an electrical sub-station located at the south-east of the application land (please see land ownership plan below):

Scottish and Southern Electric Plc
Mapping Services
PO Box 6206
Basingstoke
Hampshire RG24 8BW

6.4. Two parts of the land (outlined in blue on the plan below) are unregistered according to Land Registry searches. Notice of the application was posted on site on 6th December 2012, addressed *"To every reputed owner, lessee, tenant or occupier of any part of the land described below,* (in the schedule), *and to all others whom it may concern."* Additional landowners of the unregistered land have not come forward.



7. Legal Empowerment

7.1. Under the Commons Registration Act 1965, Wiltshire Council is now charged with maintaining the register of Town and Village Greens and determining applications to register new Greens. The application to register land off Middleton Road, Winterslow, as a Town or Village Green, has been made under Section 15(1) and (3) of the Commons Act 2006, which amended the criteria for the registration of greens, and states:

"15 Registration of greens

(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies 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 application.

(3) This subsection applies where-

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

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

(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).

(4) This subsection applies (subject to subsection (5)) where-

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

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

(c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).

(5) Subsection (4) does not apply in relation to any land where-

(a) planning permission was granted before 23 June 2006 in respect of the land;

(b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and

(c) the land-

(i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or

(ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.

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

(7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied-

(a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in

subsection (6), those persons are to be regarded as continuing so to indulge, and

(b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land "as of right".

(8) The owner of any land may apply to the commons registration authority to register the land as a town or village green.

(9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land.

(10) In subsection (9)-

"relevant charge" means-

(a) In relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (c. 9);

(b) In relation to land which is not so registered-

(i) a charge registered under the Land Charges Act 1972 (c. 61); or

(ii) a legal mortgage, within the meaning of the Law of Property Act 1925 (c. 20); which is not registered under the Land Charges Act 1972;

"relevant leaseholder" means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted."

8. Background

8.1. Wiltshire Council are in receipt of an application dated 3rd February 2012, made under Section 15(1) of the Commons Act 2006, to register land off Middleton Road, Winterslow, known as The Common/Browns Copse Field/Bluebell Wood Field/Village Hall Field/The Field, as a Town or Village Green.

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

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

"Indulgence by a significant number of inhabitants of Winterslow as of right in lawful sports and pastimes for a period of at least 20 years and 5 months under Section 15(3) of the Commons Act 2006, as witnessed by the 63 enclosed signed statements showing use for activities including dog walking, picking blackberries, kite flying and bicycle riding by a total of 63 people over a period extending from December 1990 to April 2011."

8.4. The application was accepted as a complete and correct application on 29th August 2012. The application was accompanied by 63 completed witness evidence questionnaires. Following the posting of notice of the application on site and publication in one local newspaper 2 objections and 3 representations regarding the application, were received.

8.5. The claimed land is located to the south-west of Middleton Road, Winterslow and occupies an area of approximately 18 acres, laid to grass and woodland

with open access from public rights of way located at the north and south perimeters of the site.

9. Public Consultation

9.1. Wiltshire Council served notice of the application upon the landowner Mr R Sheppard and other interested parties, on 6th December 2012. Notice was also posted on site and placed in the Salisbury Journal on 6th December 2012. The application was also placed on public deposit in Wiltshire Council Offices. All parties were given 28 working days to make representations or objections regarding the proposals.

9.2. Please note that landowner notice was served upon Mr R Sheppard. In fact Mr Sheppard is a joint owner of the land with his wife Mrs P Sheppard, however it is considered that Mrs Sheppard has not been prejudiced by this error and she has submitted a joint objection with her husband Mr R Sheppard.

9.3. It was later noted that small parts of the application land were in the ownership of other parties, i.e. Wiltshire Council owned a small part of the application site to the western side and Scottish and Southern Electric Plc owned an electrical sub-station located at the south-east of the site. Therefore notice of the application was served upon Wiltshire Council and Scottish and Southern Electric on 25th October 2013, giving them 28 working days to respond to the proposals. It is considered that neither Wiltshire Council or Scottish and Southern Electric have been prejudiced by this delay.

9.4. Following notice of the application 2 objections and 3 representations regarding the application were received (Wiltshire Council were also copied correspondence sent to Mr R Sheppard from Mr John Glen MP regarding the system of registering land as a town or village green in general, however this

has not been included as a formal objection or representation as it was not addressed to Wiltshire Council). The following consultation responses were received (please note that full copies of all correspondence are available to be viewed with the Rights of Way and Countryside Team, Newbury House, Trowbridge):

Residents of Highfield Crescent – Correspondence undated:

"We are writing with reference to the application to register land adjacent to Middleton Road, Winterslow for village green status. While we do not want to see any development here we do want to correct the wrong information you have clearly been given.

We are Winterslow born and bred and have lived in Highfield Crescent overlooking this field for 40 years so know exactly what happens here and for much of that time it was cultivated. It was only when it was left fallow or set aside that certain people thought it their right to use it as a dumping ground for their rubbish, a dog walking area and as a short cut even though the area is adequately served with footpaths.

It has not been used as a sports field and the statement saying that it has been used by "a significant number of inhabitants as a right of lawful sports and pastimes" is a complete puzzle to us and as far as we are concerned is at best stretching the truth or worse, complete lies. Winterslow has sufficient areas for sports and other pastimes namely the Recreation Ground and the large area known as Barry's fields.

People continued to trespass in the field even when the landowner put up notices stating it was not public land. They tore them down and even cut the fence the council put up on the boundary with Highfield Crescent so they could gain access to the field.

We have seen how people have wilfully treated this area, abusing the farmer's tolerance and even walking through the field when it was planted with crops.

As previously stated, we do not want to see this land built on but we do defend the landowners right to stop people trespassing on what was always an agricultural field and for it not to have village green status forced upon it."
This correspondence is signed by 19 residents of Highfield Crescent, 1 resident of The Flood, 1 resident of Weavers Close, 1 resident of Middleton Road and 2 residents of Southbourne.

L E Rogers – Correspondence dated 16th April 2013 –
"I have lived in Winterslow all my life and I am now 97 years old.
In my lifetime the field has always been cultivated with various crops. The Copse has always been worked for hazel for hurdles and spars.
Until the set aside came in a programme which lasted several years. Only in the last couple of years has it been ploughed and planted."

The landowners Mr and Mrs Sheppard also copied to the Council several letters which they had written on the matter:

Statement from Mrs P Sheppard to the Chairman of Winterslow Parish Council (undated). I understand this to be a presentation to the Parish Council meeting –
"Mr Chairman
I just wanted to take this opportunity to say a few words regarding "The Land" that is on the agenda for discussion tonight.
Many in this room will know The Land is owned by my husband, Richard Sheppard and I.
Many years ago part of The Land was made available for "the original council houses". In addition to that, in 1992 land was gifted for "the village hall" we're standing in, "tennis courts" and "extensive car park".
Plans were then drawn up in our home by several of the doctors for the Dr Surgery, again on land provided by us. I'm sure you would all agree these are tremendous assets for the village.

There are some that call themselves villagers who should be ashamed of themselves for suggesting we have any intent of spoiling the village we love. Many of these are here today and gone tomorrow…unlike us.
If and when a planning application is received there is a due process to be followed. It cannot be pre-determined at this stage.
Considering the evidence which has now been produced regarding the past use of this land, I think it would be very unwise for the parish council to take sides in this matter.
We have instructed solicitors to review this evidence and will pursue through the courts if necessary.
We are not asking for special treatment, just a fair hearing as all the other developments receive."

Letter from Mrs P Sheppard to Councillor Devine – Correspondence dated 14th January 2013

"As you are aware there is an action group called WOOD, I understand that you support this group?
At this week's PC meeting I made a speech and so there is no ambiguity I enclose a copy of it for you, I have also sent a copy to the Clerk so that there is no misunderstanding as to what I said on behalf of the family.
I also attach a copy of the letter that has been sent to Wiltshire Council by 20 residents who live around our field. It is self explanatory and confirms, as we have and will continue to maintain, that at no time has anyone used the field for recreation purposes, nor has permission ever been given.
From our own point of view we are aghast at the attitude of people who believe they have a right to try and take our land. You may know historically that we have been generous benefactors to Winterslow donating free of charge land for the village hall and car park, the tennis courts. We also made the land available for the doctors surgery. Please therefore consider this, what right does this action group, who have collectively contributed nothing to the village, have to create a pack of lies saying our land has been used for other

purposes when it has not. The PC are not supporting this group, and we would like you to consider your own position on this. Anyone who supports this group is in effect supporting a pack of lies with regards to use of our land, and those in authority should, in our opinion, play no part in this sorry saga.
I am sorry to have to write to you in this way but all we seek is fair play, this action from WOOD is skulduggery, appointed Councillors should not be associated with it, indeed they should be against such spurious and unethical actions. An example has been set by those who live around the field and see it daily, they recognise fair play, yes they have their own views on development but they are honest people.
Should any planning application ever go to Wiltshire Council for this field there is legislation under the planning system to deal with it, the land was earmarked not by my family but by the old regime of SDC in the SHLAA for 150 dwellings. No number has been suggested by us. There is a proper arena for such a debate on planning matters, it should not be taken over by a small but loud group of instigators who are out to cause as much trouble as they can for us.
There are few people in Winterslow that have the links to the village and the commitment to it that we have shown over many decades. We are private and honest people and seek good relations with everyone, to this end it is reasonable of us to expect you to be neutral at worst but you should be supportive of us because we have shown our good will and generosity to this village over such a long period of time and will continue to do so.
I will copy this letter to both the PC, the Chief Executive of WC and John Glen MP."

Richard and Patricia Sheppard – Correspondence to Councillor Devine dated 22nd April 2013 –
"This is to inform you that we have submitted our defence to the spurious claim to Wiltshire Council from the WOOD action group.

You will know that the Sheppard family have contributed massively towards the facilities and housing for Winterslow, yet we have been forced to spend £5000 to defend ourselves and our land.

We are aghast that we have been forced into this position by actions we consider are based on a fabrication of the facts by a small group of people who consider they represent the masses, they do not, they are not elected and should not be given any credence whatsoever.

When we read the 63 (witness) forms we were saddened by the amount of fabrication and lies used in an effort to try and take our families land from us, this cannot be right or just. They refer to Brownies using the field, yes with our permission, Bonfire night, again with our permission, they try to weave a picture saying these events were regular. This is simply not the case, we know the history of our land better than anyone, particularly the newcomers to the village, these instigators are wrong. We still cannot believe that people accepted our generosity in allowing them to use our land, but then on the back of this, claim rights over it.

A large amount of the 63 forms are from people who have only lived in the village for a short time, one is even from a 7 year old child!!! It is interesting that they all say that they have used the land as a short cut walk from one end of the village to the other. We do not dispute this. There is a statutory declaration to cover this use which has been in place for many years. This was made between our family and Wiltshire Council allowing an unofficial footpath link. It is not a piece of common land that they can simply come along and take, it is our land and that is a true fact.

Had we known this was going to happen we would never have entered into the statutory declaration and would have stopped everyone using our land for this use. Interestingly, quite a few people recognise there were "No Public Right of Way" signs erected as our photographs prove, but others say that there were never any in place. You and many others know there were signs in place, the land is private and they know the proper and honest history. There

has never been any public use of this land in the way this action group is trying to pretend there has been.
As you indicated in our phone call to us, we would appreciate your further support to ensure this application is not registered. We would be grateful if you could let us know the position of Wiltshire Council on this matter."
(Copy to John Glen MP).

John Glen MP – Correspondence to Mr and Mrs Sheppard dated 24th April 2013 –
"Many thanks for your recent letter appraising me of the recent Village Green application in Winterslow. I was extremely dismayed to read of the difficulties you have experienced at the hands of the village green system.
It may interest you to know I recently helped take the Growth and Infrastructure Bill through Parliament that seeks to amend the village green application system to address the problems it presents to legitimate landowners – who are understandably distressed at experiences like yours. Unfortunately this will only apply to new applications once the Bill receives Royal Assent. Village Greens are an important tool within the planning process to designate a space valued by the community, but they are not the only one. They are also, sadly, frequently abused – approximately 48% in 2009 were triggered by a planning application or inclusion within a local plan: as a result, only 40% are successful.
When the National Planning Policy Framework was introduced, a new Local Green Space designation was introduced within it. The intention is to try and rationalise two very separate systems, so sites that could perhaps be designated village or town greens could be safeguarded within local plans – removing the overlap and associated bureaucracy of a separate application system you discuss.
We have no intention of undermining legitimate spaces people wish to protect for a whole variety of reasons, and we have indeed introduced new mechanisms to do so. However, the current system does not work with a grain

of the planning system and is too often used for spurious purposes. I personally would rather see greater use of the provisions within neighbourhood planning than the village green system.
Your experience highlights to me how important such reforms are. Whilst I have no direct influence over the matter, I will happily discuss the matter with Cllr Devine and Wiltshire Council and ensure your views are taken into full consideration."

E-mail from Councillor Christopher Devine dated 13th May 2013 –
"As a resident of Winterslow from 1992 until 2005 I was well acquainted with the usage of the footpath in question and the area referred to as the `common`. In relation to the questions posed I reply as follows:

- *Q: For what purpose was the land used by people?*
  A: Almost exclusively as a footpath from the village hall to the village shop/recreation ground or for dog walking.
- *Q: What numbers of people were using the land and how frequently?*
  A: It was used regularly, but, often the area was empty. Normally only a single person would be seen at any one time.
- *Q: The number of years that use has continued over the land?*
  A: During my period in the village, 1992 to 2005.
- *Q: Were people using the land as of right, i.e. without force, without secrecy and without permission?*
  A: Yes, although it was generally acknowledged that it was private land, but, the owner would not object if it was used as a short cut.
- *Q: Was use of the land by local residents or by people from outside the area?*
  A: I only ever saw local residents use it.
- *Q: How the land was managed, e.g. was it cropped, was any signage erected etc?*

A: During the period I was a resident, the land was left fallow and cut regularly, but, signage was erected at regular intervals, which stated it was private land with no right of way."

Additionally the landowner submitted a large bundle of evidence in objection to the application, (too large to include here), but available to be viewed in full with the Rights of Way and Countryside Team, Newbury House, Trowbridge. The objectors main grounds for objection are summarised as follows:

- The burden of proof in satisfying the registration authority that the application land is eligible for registration as a town or village green, lies with the applicant, the standard of proof being the balance of probabilities. With regard to the standard of proof, Lord Bingham advises in R v Sunderland City Council, ex parte Beresford [2004] 1 AC 889 *"As Pill L.J rightly pointed out in R v Suffolk County Council, ex parte Steed [1996] 75 P&CR 102,111: "It is no trivial matter for a landowner to have land registered as a town green…". It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers must consider carefully whether the land in question has been used by inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met."* The applicant must prove all the necessary elements for registration of the land as a town or village green.

- No sufficient user by local inhabitants. The application land was known by the objectors to be used as a crossing point but was not in general use as a destination in itself for informal recreation and any proven user for these purposes would have been occasional or trivial anyway and thus non-qualifying.

- Such use as there had been would not have brought the existence of the claimed right to the attention of the landowner – a number of villagers have even written to the Council challenging the user relied on by the applicant

- Such user did not constitute lawful sports and pastimes in that the overwhelming majority of users were purportedly exercising only public rights of way on tracks crossing the application land. The pending application to modify the definitive map and statement of public rights of way to introduce new public rights of way over the application land, offer a strong evidential basis for the contention that a reasonable landowner could not have believed that users were exercising a public right to use land beyond the tracks for lawful sports and pastimes and the same would apply in the case of walkers who casually or accidentally strayed from the tracks without deliberate intention to go on other part of the field.

- The application land is being used as a short cut from one side of the village to the other, instead of using Middleton Road and that such user will not be referable to use as a green.

- Any proven user is not "as of right", being at times over the relevant 20 year period, by force, stealth or with express or implied licence of the landowner.

- User is by force and thus non-qualifying in the case of access obtained through the fencing or the boundary with Highfield Crescent, which was cut in order to facilitate access onto the application land. It is irrelevant that those taking advantage of the damaged fencing were not themselves responsible for damage, it would be wrong and not in the public interest that people should be rewarded with rights whose acquisition is only made possible by unlawful activities of others.

- Use by force is not confined to physical force. It includes use which is contentious and a landowner may render use contentious by erecting prohibitory signs or notices in relation to the use in question.

- In R (Oxfordshire & Buckinghamshire Mental Health Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire County Council and others [2010] EWHC 530 (Admin), (Warneford Meadow) the court rejected a case where a challenge to the registration of land as a town or village green was made on the grounds that "No Public Right of Way" signage had been erected over the land. However the facts of this case are distinguishable from the Winterslow case and in the Warneford Meadow case there had been a finding that the landowner had no objection to recreational access to the land, but objected to the creation of public rights of way.

- The objectors contend that the signs erected in 2009 cannot be said to relate solely to the nearby paths and there is no reason why they should not be taken objectively to refer to recreational use of the whole of the application land where the land had not been used for such purposes and where the whole of the application land was covered by a Section 31(6) Highways Act 1980, statutory declaration.

- The fact that the 2009 signage did not refer to the wider user of the application land was unnecessary in that users knew, or ought to have appreciated from the notices that the landowners were objecting to and contesting their use of the land and is consistent with the following matters:
  (i) there is an absence, or virtual absence of any general recreational user in this case which was not the position in the Warneford Meadow case;

(ii) the size of the application land where limited signage at both ends of the field was more than adequate to cover a prohibition affecting the entire field as were the deposits under Section 31(6) of the Highways Act 1980;

(iii) the collective view of those who lived close to the application land and who signed a letter to Wiltshire Council whose view it was that "people continued to trespass in the field even when the landowner put up notices stating that it was not public land. They tore them down…";

(iv) the response of the locals to such signage which was torn down, and

(v) the objectors subsequently ploughed the field and erected more robust prohibitory signage which is unlikely to have happened if all they had intended by erecting the signage in 2009 was to prevent new rights of way claims;

- In any event and without prejudice to the foregoing, any user of the paths after 2009 must be discounted in the accrual of either the lesser burden on the application land (i.e. use of paths as public rights of way) or the greater burden involving user of the application land as a new green.

- The objectors also reserve the right to argue that any objection on their part to a lesser burden on the land must have by implication and without more included objection to the greater burden notwithstanding what was said about this in the Warneford Meadow case.

- The claim based on the claimed user gave rise to an implied license.

Comments from Wilshire Council as landowner:

E-mail from Barbara Coombs, Principal Legal Executive, Legal Services, Wiltshire Council, dated 18th November 2013 –

"It seems that part of the land is owned by Wiltshire Council and is not considered to be Public Open Space. I suspect that it is what might be called 'housing amenity land' – open areas of land on a Council housing estate. I do not have any details about whether our 'housing' colleagues accept that this area of land has been used by the public as of right for lawful sports and pastimes for the relevant period of time."

E-mail from Sarah Holloway, Technical Officer, Environment and Leisure, Wiltshire Council, dated 23rd October 2013 –

"The land was not included in the District Council Open Spaces Study, nor is it on the list to be surveyed as part of the Current Open Spaces Study. Therefore it appears it is not Public Open Space."

Wiltshire Council as a landowner have made no objection to the proposals and no correspondence regarding the proposals has been received from Scottish and Southern Electric Plc as the additional landowner.

9.5. As part of the statutory procedure (Regulation 6(3)), where objections are received, they must be forwarded to the applicant allowing reasonable opportunity for dealing with the matters raised. Therefore on 22nd May 2013, the applicant was forwarded the following documents:

1) Objectors response to village green application from Mr Richard Sheppard – dated 11th March 2013
2) Letter with enclosures to Wiltshire Council from Mrs P Sheppard – dated 14th January 2013
3) Letter with enclosures to Wiltshire Council from Mr Richard Sheppard – dated 27th April 2013

4) Letter with enclosures to Wiltshire Council from Mr Richard Sheppard dated 30th April 2013
5) Petition letter from residents of Highfield Crescent – undated
6) E-mail from Councillor Christopher Devine – dated 13th May 2013.

9.6. Officers allowed the applicant a reasonable opportunity to respond to the objections and comments received, in writing not later than 5:00pm on Friday 5th July 2013. No further comments regarding these matters were received from the applicant and the matter now falls to be determined by Wiltshire Council as Commons Registration Authority.

10. Main Considerations for the Council

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

10.2. It is important to understand the previous management of the land in order to understand how the public may have used it. We have evidence from L E Rogers, of Coppice View, in his letter dated 16th April 2013, that the land was always cultivated with various crops and the copse was also worked for hazel for hurdles and spars. After that the landowners Mr and Mrs Sheppard provide evidence that the field was set aside in 1988. In 2009 signs were erected on the land stating that there was no public right of way. On 4th April 2011 the land was rough ploughed, ploughed again on 23rd January 2012 and sown with linseed on 16th April 2012. "Private Property – Please Keep Off" signs

were erected on 11th June 2012 and the linseed crop was harvested in October 2012.

The evidence

10.3. The legal tests set out under Section 15(1) and (3) of the Commons Act 2006 can be broken down into a number of components, each of which must be satisfied in order for the application to succeed. The burden of proof lies in the balance of probabilities, i.e. the Registration Authority is not required to prove beyond reasonable doubt that rights exist, just that it is more likely than not. The burden of proving that each of the statutory qualifying requirements are met lies with the applicant and there is no duty placed upon the Registration Authority to further investigate the claim.

Significant number of inhabitants

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

10.5. In this case the Council received 63 completed witness evidence questionnaires from individuals who claim to have used the land. All but 4 of the witnesses are residents of Winterslow and those 4 are former residents. The witness evidence questionnaires also make reference to use of the land with family members and others being seen using the land. They also refer to community events such as bonfire night celebrations, part of the village fete on the land and organised events being carried out over the land by the

Rainbows, Brownies, Guides, Cubs, Scouts, pre-school children and the Duke of Edinburgh Award, however the landowners claim that use for community events was undertaken with their permission only and therefore this evidence may not be taken into account.

10.6. Officers consider that given the size of locality identified (Winterslow parish, which covers approximately 4,800 acres and has a population of 2,300 (Winterslow Parish Plan 2010)), the number of witnesses and their evidence of use with family members and others seen using the land for lawful sports and pastimes, are sufficient to suggest general use by the local community.

Of any locality or of any neighbourhood within a locality

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

10.8. The definition of "locality" and "neighbourhood within a locality" were reiterated in the recent case of Paddico (267) Ltd. v Kirklees Metropolitan Council (2011) as follows: a "locality" being an administrative district or an area with legally significant boundaries, such as a borough or parish, whilst a "neighbourhood" does not need to be an area known to law, but must be a cohesive area which is capable of meaningful description, such as a housing estate.

10.9. In this case the applicant has identified "Winterslow Parish" as the "locality". There is no map of the identified locality included with the application, however this is not necessary where an administrative/geographical area is identified by name. Winterslow parish qualifies as a "locality" as an administrative district with legally significant boundaries.

10.10. This identified neighbourhood is supported by witnesses, all of whom, apart from 3 former residents and 1 non-reply, consider themselves to be local inhabitants in respect of the land. Please note that 1 resident of Salisbury, Lucy Clark, is a former resident of Winterslow, but considers herself still to be a local inhabitant in respect of the land. 60 of the witnesses are resident of Winterslow (please note that Evelyn and David Houghton have jointly completed one evidence form).

10.11. When asked what recognisable facilities are available to the local inhabitants of the locality, witnesses included: School catchment area; local school; pre-school; Residents Association; Community Centre (village hall); local church or place of worship; sports facilities; cricket pavilion and pitch; recreation ground; local shop; area policeman; doctors surgery; community activities; neighbourhood watch; a central feature; scout hut; post office; 2 pubs; social and recreational events; copse; plantation and open spaces/fields in and around village.

10.12. In his representation, dated 13th May 2013, Councillor Christopher Devine confirms that whilst resident of Winterslow from 1992 – 2005, he only ever saw local residents on the land.

10.13. The applicant has successfully discharged the burden of proof with regard to identifying a "locality".

Have indulged as of right

10.14. Use "as of right" means use without force, without secrecy and without permission. In the Town\Village Green case of R v Oxfordshire County Council Ex p Sunningwell Parish Council (2000), Lord Hoffman commented on use as of right:

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

10.15. Lord Hoffman rejected the necessity for subjective examination of the state of mind of the users (i.e. did they believe they were exercising a public right).

"My Lords, in my opinion the casual and, in its context, perfectly understandable aside of Tomlin J. in Hue v. Whiteley has led the courts into imposing upon the time-honoured expression "as of right" a new and additional requirement for which there was no previous authority and which I consider to be contrary to the principles of English prescription."

10.16. This was considered in the Supreme Court Judgement R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents) (2010), Lord Brown concluded:

"I see no good reason whatever to superimpose upon the conventional triparte test for the registration of land which has been extensively used by

local inhabitants for recreational purposes a further requirement that it would appear to a reasonable landowner that users were asserting a right to use the land for the lawful sports and pastimes in which they were indulging. As Lord Walker has explained, there is nothing in the extensive jurisprudence on this subject to compel the imposition of any such additional test. Rather as Lord Hope, Lord Walker and Lord Kerr make plain, the focus must always be on the way the land has been used by the locals and, above all, the quality of that user."

10.17. As Lord Kerr clarifies on this point, there is in his opinion:

"...no overarching requirement concerning the outward appearance of the manner in which the local inhabitants used the land is to be imported into the tripartite test...If the use of the lands has taken place in such circumstances, it is unnecessary to inquire further as to whether it would be reasonable for the owner to resist the local inhabitants' use of the lands."

10.18. Therefore there is no requirement upon the determining authority to consider, as part of their examination of use "as of right", the state of mind of users, or how use would appear to the landowner, i.e. was use sufficient that it would appear to a reasonable landowner that a right was being asserted against them, in order for the landowner to challenge such use. The main focus should be on how the land has been used by local people and the quality of the user evidence.

Permission

10.19. The witness evidence questionnaire asks users if they have ever been given permission to use the land, or requested permission to use the land during their period of use. The following responses were given at Appendix 1 to this report.

10.20. The majority of use has taken place without permission. Only 2 users claim to have sought or been granted permission to use the land. Jeanette Soloman sought permission for activities on the land from the owner, between 2009 and 2011 (the witness gives no explanation for this, however it does coincide with the landowners claim that they erected notices on site saying "no public right of way" in 2009 and the ploughing and cultivation of the land in 2011). Felicity Rickard was given permission to collect straw from the land, but no dates for this are given.

10.21. Some users believed that they did not require permission to use the land and that the area was already open to the public. Several users state that the landowner did see them using the land, but at no point did the landowner advise them that permission was required to use the land.

10.22. In a letter to Councillor Devine, dated 22nd April 2013, the landowners Mr and Mrs Sheppard make comment on the 63 completed user evidence and state that: *"They refer to the Brownies using the field, yes with our permission, Bonfire night again with our permission..."* It would appear that some of the pastimes over the land had been carried out with permission, in particular the organised/community events and therefore these events should be disregarded as evidence.

Without force

10.23. None of the users claim to have used force to enter upon the land, although the landowner claims that in the case of access obtained through the fencing on the boundary with Highfield Crescent, the fence was cut in order to facilitate access onto the land. Their contention is that it is irrelevant that those taking advantage of the damaged fencing were not themselves responsible for causing damage as it would be wrong and not in the public

interest that people should be rewarded with rights whose acquisition is only made possible by the unlawful activities of others.

10.24. It is the Officers view that it would not be necessary for users of the land to enter by force, for example breaking down fences or damaging locks, as the land is accessible from several points and is not fenced against the public footpaths to the north and the south perimeters. In evidence none of the witnesses make reference to stiles or gates (locked or unlocked), when accessing the land.

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

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

10.26. The landowners did erect signs over the land in 2009, but this referred to use of linear routes across the land and stated "No Public Right of Way" rather than referring to the wider public recreational use of the land.

Without secrecy

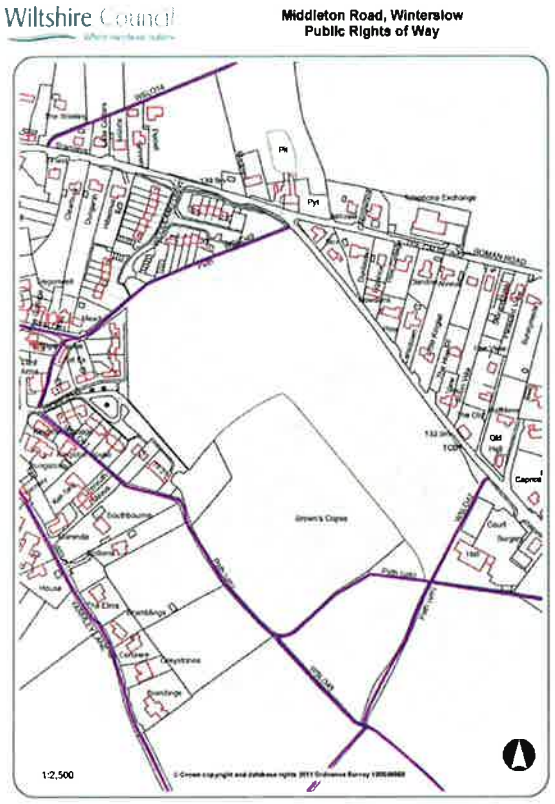
10.27. 13 witnesses claim to have been seen by the landowner whilst using the land, however, on these occasions the landowner/s either said nothing to them or just passed the time of day. At no point did the landowner advise that the land was private (see table at Appendix 1). However it is not clear from the evidence what activities were taking place when they were seen by the landowner/s. They may have been using linear routes, the use of which the landowners appear to have been aware of, as evidenced by their deposition with the Council of a plan and statement and subsequent statutory declarations under Section 31(6) of the Highways Act 1980 and erecting "No Public Right of Way" signage over the land in 2009.

10.28. In conclusion Officers are satisfied that, based on the evidence, use of the land has been as of right.

Have indulged in lawful sports and pastimes

10.29. The lawful sports and pastimes claimed to be engaged in upon the land are included in the table attached at Appendix 2 to this report. In practice, use of the land for dog walking, childrens play and general informal recreation will normally suffice as qualifying user under Section 15 of the Commons Act 2006.

10.30. Further, in order for the land to be successfully registered as a town or village green, it must be established that there is use of the land generally rather than use being concentrated on a linear route/s across the land, which could give rise to a claim for public rights of way rather than a town or village green. There are no recorded public rights of way directly over the land, however there are several rights of way on the perimeter of the site, please see plan below (footpaths are recorded as purple lines):



10.31. Many of the witnesses make reference to their use of the land as a through route on their way to the shop, village hall, doctors surgery, pubs, to take the children to school/pre-school etc, avoiding traffic on Middleton Road. Use for these purposes suggests the use of linear routes rather than more extensive use of the land. When aerial photographs are examined a number of unrecorded routes over the field can clearly be seen (photograph taken 2005/2006, when the land was in the set aside scheme).

10.32. Simultaneously with the claim to register the land as a village green, an application was made to Wiltshire Council to claim several public rights of way over the land, based on evidence of user for a 20 year period. This claim was defeated as the landowner had deposited with Wiltshire County Council a statement and plan dated 30th April 1998 and subsequent statutory declarations dated 16th June 1998 and 5th August 2008, under Section 31(6) of the Highways Act 1980. The landowners recorded within the plan all admitted public rights of way over their land (Weston Hill Farm). The plan and statement had the effect of negating any claim for new rights of way over the land based on user evidence, by demonstrating the landowners non-intention to dedicate any new rights of way over their land within the duration of the plan and statement and subsequent renewals, being in effect. 29 of the witnesses who have submitted evidence in support of the rights of way claim over the land, have also submitted witness evidence forms in support of the village green claim over the land.

10.33. Wiltshire Council are also in receipt of a petition letter signed by mainly residents of Highfield Crescent, Winterslow, which overlooks the land in question, in which they state:

"It was only when the land was left fallow or on set-aside that certain people thought it their right to use it as a dumping ground for their rubbish, a dog walking area and as a short cut even though the area is adequately served with footpaths.
It has not been used as a sports field and the statement saying that it has been used by "a significant number of inhabitants as a right of lawful sports and pastimes" is a complete puzzle to us and as far as we are concerned is at best stretching the truth or worse, complete lies."

10.34. As at paragraph 10.22 some events such as those organised by the Brownies etc. and the Bonfire night celebrations, must be disregarded as the landowners have advised that they gave permission for these events to be held on their land and therefore they cannot be "as of right".

10.35. The witness evidence from all parties regarding use of the land for lawful sports and pastimes, is at odds and it is very difficult to reach a conclusion when all this evidence is taken together. Although there is a large amount of evidence that users may have simply used linear routes over the land to reach a specific destination, as a shortcut, or to avoid traffic on Middleton Road (which is not qualifying use in a village green claim), there is evidence that a number of other activities were taking place over the land such as sledging, bird watching, berry picking etc (please see activities table attached at Appendix 2), when the use relating to linear routes across the land and use for community events which have taken place with permission, are removed. Additionally residents of Highfield Crescent refute that any qualifying activities have taken place at all. Councillor Devine supports this view in his statement dated 13th May 2013 and states that between 1992 and 2000 the land was

almost exclusively used as a footpath from the village hall to the village shop/recreation ground or for dog walking.

On the Land

10.36. All witnesses who have completed evidence questionnaires have confirmed their use of the land by attaching and signing a plan outlining the area in question. However, it would appear that the witnesses have not individually marked on this map the areas of the land which they have used, (they have marked the location of their own properties). A public inquiry could bring out the areas of the land which individuals have used, through cross-examination.

10.37. This application is made under Section 15(1) of the Commons Act 2006 and also Section 15 (3) which applies where use of the land has ceased but the application is made within 2 years of the cessation of use. Use of the land appears to have ceased in 2011 when the land was rough ploughed, before being ploughed again in 2012 and then being sown with linseed. The landowners, in their statement, advise that the land was rough ploughed on 4th April 2011 to deter trespass. Prior to that the land had been in set aside since 1988. Many of the witnesses make reference to 2011 as a cut off point after which they were prevented from using the land due to ploughing. The "Private Property – Please Keep Off" signs were erected in 2012, after public use had ceased.

10.38. The landowners have claimed in their evidence that the grass in the field was topped once a year. "Topping" is the process of chopping and mulching everything growing in a field, using a topper, a piece of machinery which takes everything down to a certain height. It is usually carried out at times of the year before the weeds go to seed. It is also considered that during the period of set aside, 1988-2011, a policy of less intervention over the land was undertaken by the landowner as part of this scheme. It is considered that the

process of topping would not have been sufficient to prevent the public undertaking lawful sports and pastimes over the land (save for the day on which the process of topping the land was undertaken).

10.39. The wooded area also appears to have been subject to public use. 12 witnesses walked to the local copse (some of these to view the bluebells), 1 witness would cycle in the copse which now has well defined cycle routes and the same witness has built dens and rope swings in the woods with his son. 2 further witnesses make mention of playing in Browns Copse. However, although 12 witnesses mention walking to the local copse, they do not elaborate on whether they entered the wood or just viewed the bluebells from the edge of the wood. Only three witnesses mention entering the wood. This appears to be insufficient evidence to register the Browns Copse part of the application land and it is recommended that if the application is successful, Browns Copse should be excluded from the registration land.

10.40. It would appear that part of the application land is not in the ownership of Mr and Mrs Sheppard. Wiltshire Council own a small part of the application land to the west of the area claimed. Notice was served upon Wiltshire Council who made no comment on use of the land by the public for recreation purposes and made no objections to the proposals.

10.41. It was found that Scottish and Southern Electric Plc owned an electrical substation at the east of the application land. Notice was served upon Scottish and Southern Electric who made no comment on the use of the land by the public for recreational purposes and made no objections to the proposals. However, Officers conclude that it is unlikely that the public would have accessed the electricity sub-station to carry out lawful sports and pastimes over this area of the application land. Therefore if the application is successful it is recommended that the sub-station should be excluded from the registration.

For a period of at least 20 years

10.42. To satisfy the 20 year user test, with use ending in 2011 when the land was ploughed and cultivated, the period of user in question is 1991 – 2011, with application made no later than two years following the cessation of use (in this case the application is dated 3rd February 2012). During this period the land was in set-aside with no crops over the land. Please see user evidence chart at Appendix 3 to this report.

10.43. 24 users have used the land for the whole of the period in question. In order to qualify it is not necessary for the land to have been used by all of the witnesses for the full 20 year period in question, rather the evidence may have a cumulative effect.

10.44. It is the Officers opinion that the applicant has satisfied the 20 year user test.

11. Comments on the objections

11.1. The landowner had made a number of objections as outlined at section 9 of this report. Officers would like to make the following comments relating to the landowners main points of objection:

1) **Burden of proof – The applicant must prove all the necessary elements for registration of the land as a town or village green.** Officers would agree with this statement, in order for an application to register land as a town/village green to be successful all the component parts of the legal test as set out at Section 15(1) and (3) of the Commons Act 2006, must be satisfied and the burden of proof lies with the applicant.

2) **No sufficient user by local inhabitants – i.e. the land was used as a crossing point (this is accepted by the objectors), but was not in general use itself as a destination in itself for informal recreation:**
The facts of the case in this matter are disputed in evidence submitted by users and objectors.

3) **Such use as there had been (i.e. occasional or trivial and thus non-qualifying) would not have brought the existence of the claimed right to the attention of the landowner:**
This is disputed by the witness evidence. Wiltshire Council are in receipt of a large number of statements from members of the public, giving evidence that activities such as children playing, picnicking, sledging, picking blackberries etc. were being undertaken during the 20 year period of user in question and this amount of evidence, cannot be viewed as "trivial" or "occasional" activities (in the opinion of Officers).
13 of the witnesses also claim to have been seen by the landowner when using the land. However, they do not state what activities were being undertaken when they were seen by the landowner at that moment in time and as we have seen a great deal of the use appears to have been associated with use of linear routes across the land to get from A to B.
It is possible that the landowners were not aware of the wider use of the land for recreational purposes, but were aware of use of linear routes, as in 2009 they erected signage stating "No Public Right of Way".
The facts of the case in this matter are again disputed in the evidence submitted by users and objectors.

4) **Such user does not constitute lawful sports and pastimes in that the overwhelming majority of users were purportedly exercising only rights of way on tracks crossing the land:**
It is agreed that aerial photographs do show a number of tracks over the land and many of the activities undertaken over the land do relate to the

use of linear routes rather than recreational use of the whole of the land, however, once activities of this nature are removed, and community activities for which permission was sought from the landowners, Officers consider that there are a number of other activities which are claimed to have been exercised over the land which satisfy the test of legal sports and pastimes.

Where users have casually or accidentally strayed from the tracks without deliberate intention to go onto other parts of the field, Officers would agree that this does not constitute the exercise of lawful sports and pastimes on the land.

Wiltshire Council are also in receipt of a petition from local residents claiming that lawful sports and pastimes have not been exercised over the land.

The facts of the case in this matter are disputed in the evidence given by users and objectors.

5) **The application land is being used as a short cut from one side of the village to the other, avoiding Middleton Road and that such user will not be referable to use as a village green**.

Please see above. Again the facts of the case in this matter are disputed in the evidence given by users and objectors.

6) **Any proven user is not "as of right", being at times over the 20 year period, by stealth or with express or implied licence of the landowner.**

Please see paragraphs 10.14 – 10.22 of the report regarding use "as of right". Again the facts of the case in this matter are disputed in the evidence given by users and objectors.

7) **User is by force and thus non-qualifying in the case of access obtained through the fencing or the boundary with Highfield**

Crescent which was cut in order to facilitate access onto the application land. It is irrelevant that those taking advantage of the damaged fencing were not themselves responsible for damage, it would be wrong and not in the public interest that people should be rewarded with rights whose acquisition is only made possible by unlawful activities of others:

In evidence the witnesses make no reference to the use of force to access the land and it is the Officers opinion that the use of force would not have been necessary in order to access the land, as it is open to public rights of way at its northern and southern perimeters.

8) **Use by force is not confined to physical force. It includes use which is contentious and a landowner may render use contentious by erecting prohibitory signs or notices in relation to the use in question:**

The landowners erected signage advising the public that there were no rights of way over the land (other than the routes at the edge of the land recorded on the definitive map of public rights of way) in 2009. This does not address the use in question, i.e. wider recreational use of the land. Whilst this protects the landowner against rights of way claims, it does not protect against a town/village green claim i.e. the act of erecting signage to advise the public that there was no right of way, does not bring home to the public that their right to use the land for recreational purposes, was being challenged.

However, the action of erecting this signage may also suggest that whilst the landowners were aware of the use of linear routes over the land, they may not have been aware of the wider use of the land for recreational purposes, i.e. use was insufficient to bring it home to the landowners that rights were being asserted against them and subsequently they did not erect signs prohibiting all access until June 2012, following the application to register the land as a town or village green dated 3rd February 2012.

9) **Recent caselaw rejected a challenge to the registration of land as a town or village green on the grounds that "No Public Right of Way" signs had been erected, however the Oxfordshire case is distinguishable from the Winterslow case.**
Please see above.

10) **The fact that the signs erected in 2009 did not relate to the wider user of the application land was not necessary as users knew or ought to have appreciated that the landowners were contesting their use:**
Please see above.

11) **The claimed user gave rise to an implied license:**
Please see paragraphs 10:14 – 10:22 of the report regarding use "as of right". Again this fact is disputed in the evidence given by users and objectors.

11.2. Where there are so many points of dispute regarding the evidence, it is prudent to hold a public inquiry where there is substantial dispute of fact which is likely to be resolved by the inquiry process through witnesses giving oral evidence and through cross-examination.

12. Risk Assessment

12.1. None.

13. Environmental Impact

13.1. None

14. Legal Considerations

14.1. If the land is successfully registered as a town or village green, the landowner is able to challenge the Registration Authority's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965, which applies where Section(1) of the Commons Act 2006 is not yet in place, i.e. outside the pilot areas (Wiltshire is not a pilot area). The case of Piper Land Development (Solihull) Ltd v The Rhondda Cynon Taf County Borough Council and Richard Jones (20th December 2011), is the first known example of a landowner employing Section 14(1)(b) of the 1965 Act where they are disappointed by a decision to register land. Importantly, an appeal under Section 14(1)(b) of the 1965 Act is not just an appeal, but enables the High Court to hold a complete re-hearing of the application and the facts of law. There is no time limit to bringing these proceedings following the registration of the land, it may be years after the decision and could lead to the de-registration.

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

15. Equality Impact

15.1. None.

16. Financial Implications

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

16.2. It is possible for the registration authority to hold a non-statutory public inquiry into the evidence, appointing an Inspector to produce a report and recommendation to the determining authority. There is no clear guidance available to authorities regarding when it is appropriate to hold an inquiry, however it is the authority's duty to decide an application reasonably and fairly and the authority's decision is open to legal challenge, therefore a public inquiry should be held in cases where there is serious dispute or if the matter is of great local interest. Even where a non-statutory public inquiry is held, there is no obligation on the authority to follow the recommendation made.

16.3. The costs of holding a non-statutory public inquiry are estimated as follows:

Description of work	**Estimated Time**	**Fees**
Initial read and drafting Directions		£1000.00
Ad hoc advice & directions		£125.00 per hour – for a maximum of 10 hours work
Site Visit		£1000.00
Preparation for Inquiry and first day	Time estimate 1-2 Days	£4000.00 based on three days prep
Preparation for Inquiry and first day	Time estimate 3-5 Days	£6000.00
Refreshers		£1000.00
Writing Report (1-2 days)		£2500.00
Writing Report (3-4 days)		£6000 for up to 50 hours work
Expenses	Hotels capped @ £100.00 per night	Mileage @ 45p per mile

16.5. Based on the rates quoted above (12 College Place, 2012), the costs of holding a non-statutory public inquiry are estimated at between £11,100 (for a 2 day inquiry) and £15,800 (for a 5 day inquiry). The costs of holding a non-statutory public inquiry in the Winterslow case, will be met from the usual budget available for statutory public inquiries.

16.6. The costs of a successful legal challenge to the Council's decision could greatly exceed this amount and could be in the region of £40,000 - £100,000.

17. Options to Consider

17.1. To:

(i) Grant the application to register the land if it is considered that the legal tests for registering a town or village green, as set out under Section 15(1) and (3) of the Commons Act 2006, are met fully, or

(ii) Refuse the application if it is considered that the legal tests for registering a town or village green, as set out under Section 15(1) and (3) of the Commons Act 2006, are not fully met, or

(iii) Hold a non-statutory public inquiry, appointing an independent Inspector to hold the inquiry to examine the evidence and to provide a report and recommendation to the determining authority.

18. Reasons for Recommendation

18.1. In the Winterslow case, the evidence of whether a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, is in dispute. It is the duty of the determining authority to determine the application in a fair and reasonable manner, it is therefore

considered prudent to hold a public inquiry where there is substantial dispute of fact, which is likely to be resolved by the inquiry process through witnesses giving oral evidence and through cross-examination, particularly where the authority's decision is open to legal challenge. It is open to Wiltshire Council to appoint an independent inspector to preside over the inquiry and to produce a report with recommendations to the determining authority. There is no obligation upon the determining authority to follow the recommendation made.

19. Proposal

19.1. To hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to preside over the inquiry and to provide a report and recommendation to the determining authority.

Janice Green
Rights of Way Officer, Wiltshire Council
Date of Report: 31st January 2014