

AGENDA SUPPLEMENT (1)

Meeting: Western Area Planning Committee

Place: Council Chamber - County Hall, Bythesea Road, Trowbridge, BA14 8JN

Date: Wednesday 10 April 2024

Time: 3.00 pm

The Agenda for the above meeting was published on Tuesday 2 April 2024. Additional documents are now available and are attached to this Agenda Supplement.

Please direct any enquiries on this Agenda to Ellen Ghey of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718259 or email ellen.ghey@wiltshire.gov.uk

Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Part I (Pages 3 - 20)

DATE OF PUBLICATION: Monday 8 April 2024

Presentation Slides

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**COMMONS ACT 2006 – SECTIONS
15(1) & (2) – APPLICATION TO
REGISTER LAND AS A TOWN OR
VILLAGE GREEN – SOUTHWICK
COURT FIELDS, SOUTHWICK &
NORTH BRADLEY**

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**AGENDA ITEM NO.6
WESTERN AREA PLANNING COMMITTEE:
10 APRIL 2024**

**JANICE GREEN – SENIOR DEFINITIVE MAP
OFFICER**

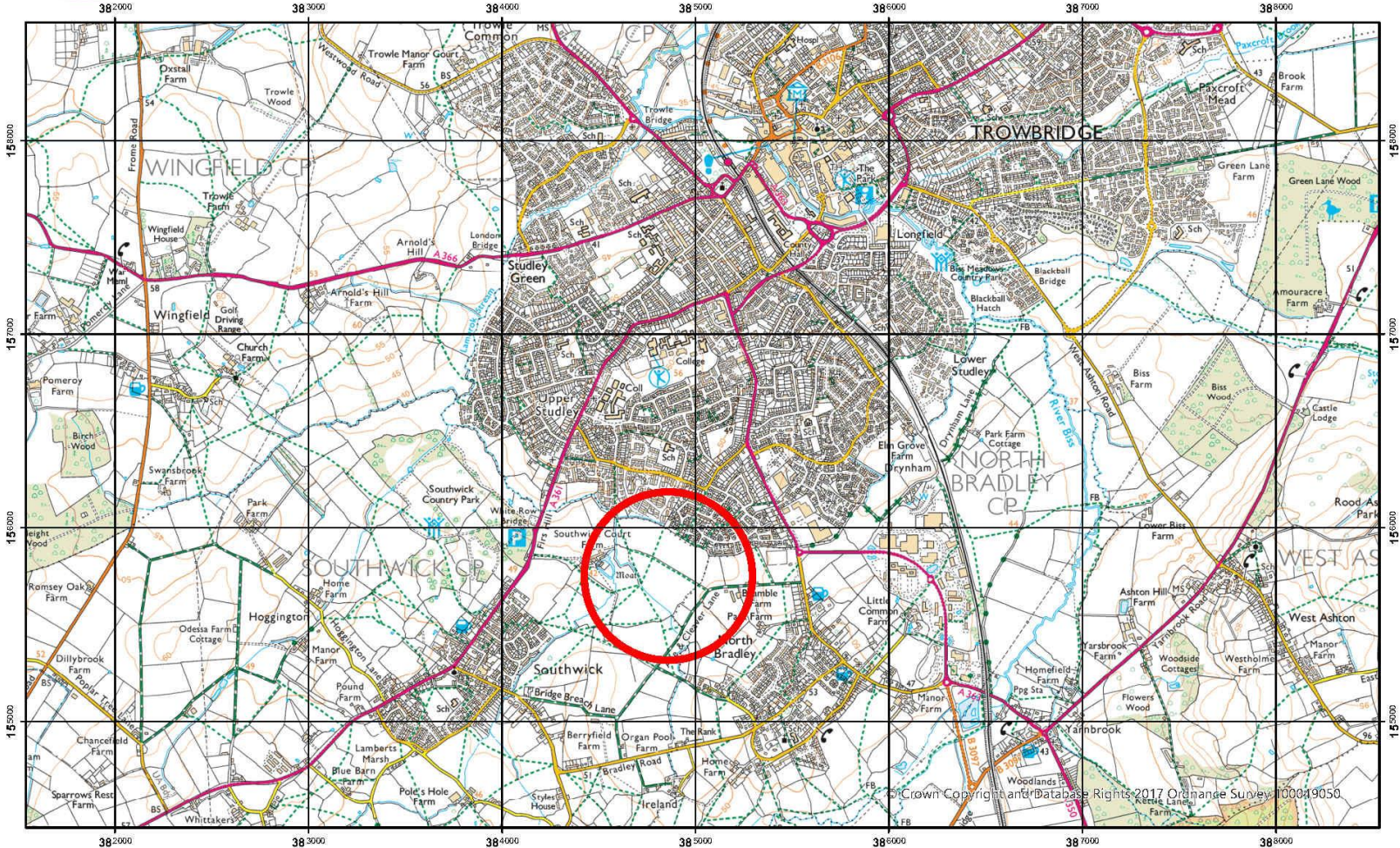
Agenda Annex

Location Plan



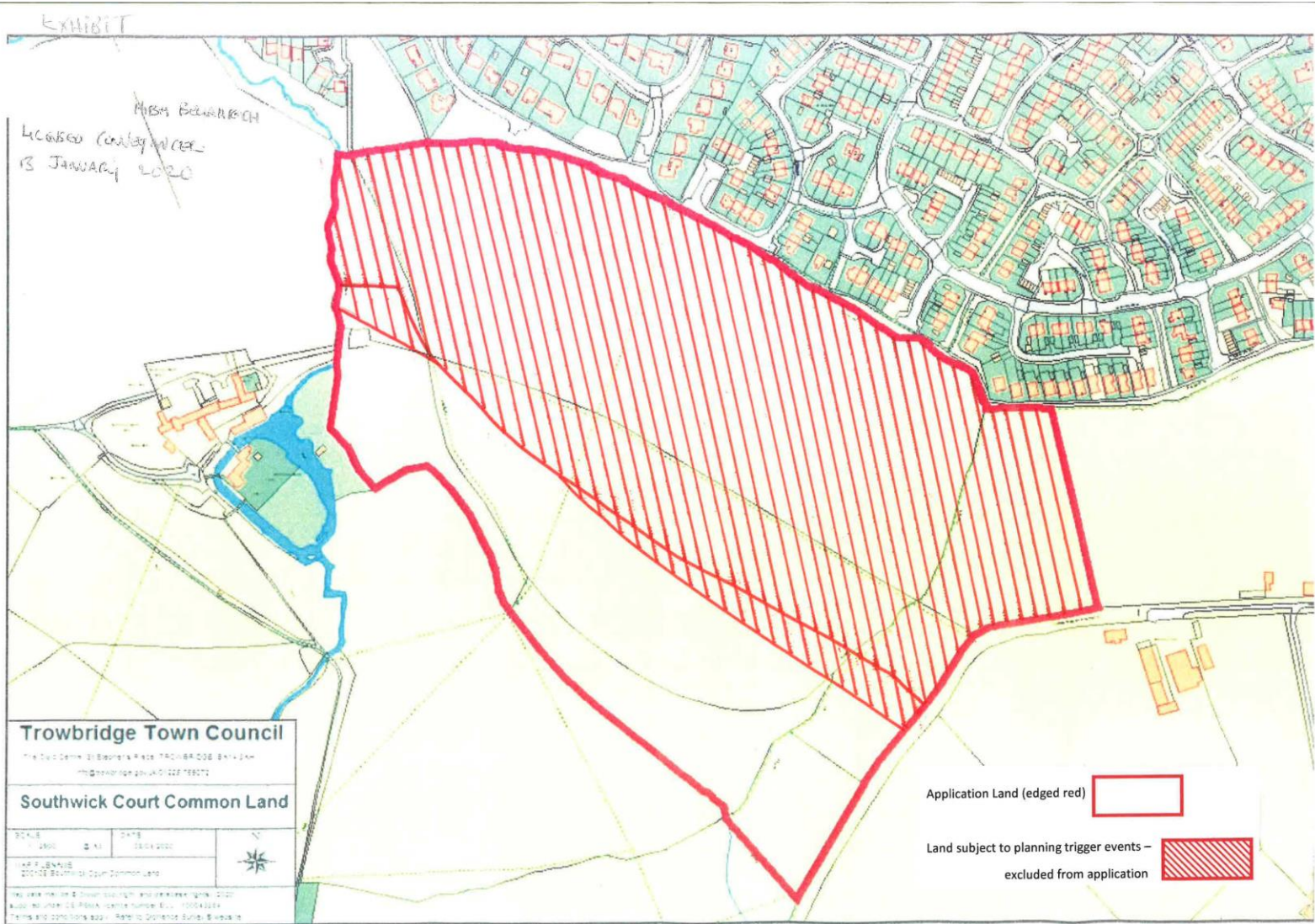
Application to Register Land as Town or Village Green - Southwick Court Fields
Location Plan

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Accepted Application Plan – Southwick Court Fields, Southwick & North Bradley (Application no.2020/02TVG)

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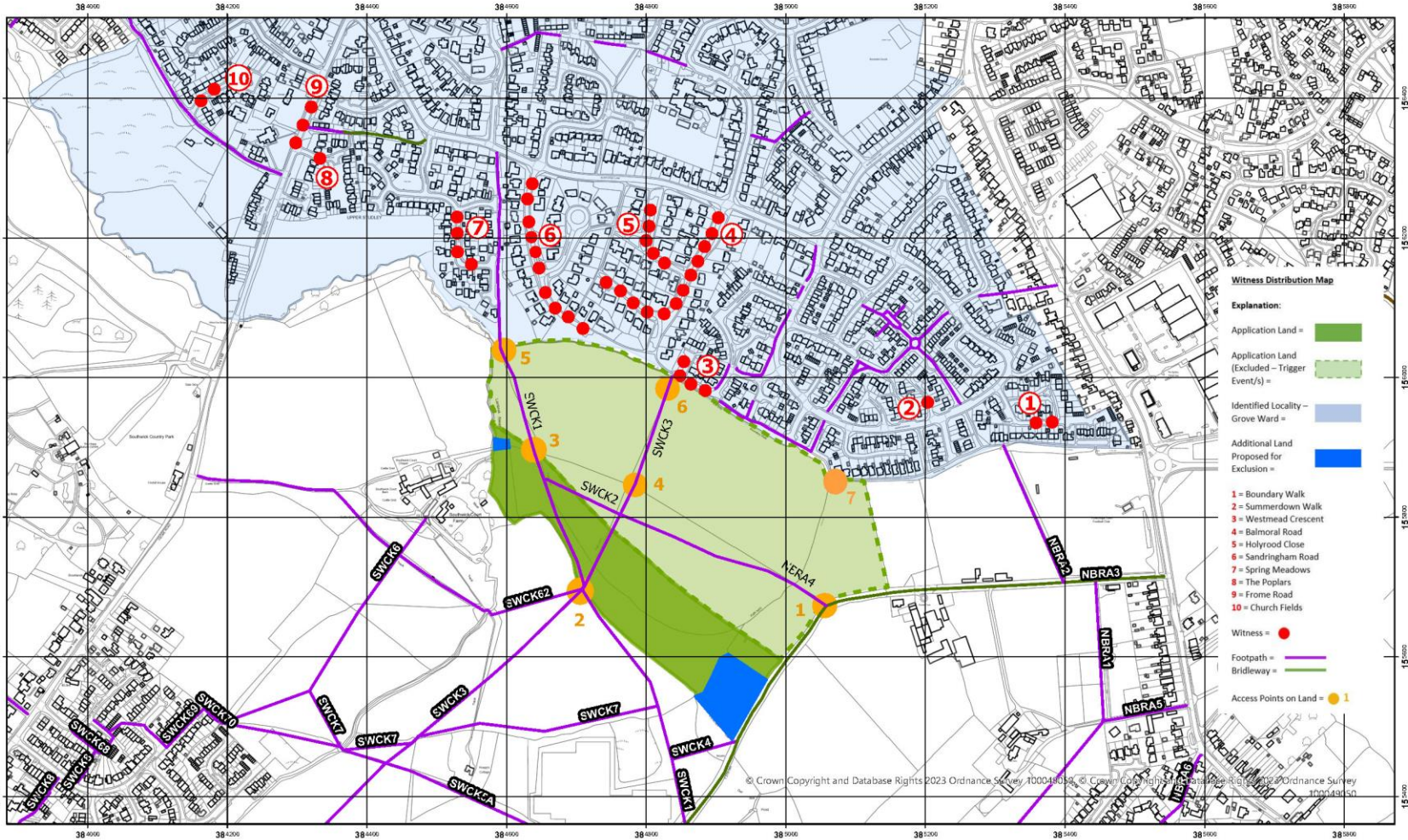


Public Inquiry – Working Plan

Commons Act 2006 - Sections 15(1) and (2)
 Application to Register Land as Town or Village Green - Southwick Court Fields

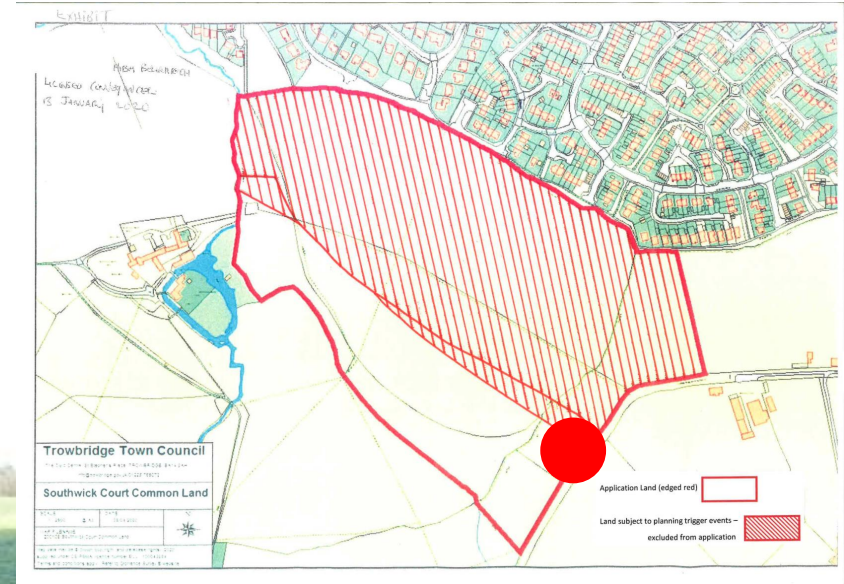
Public Inquiry - Working Plan

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Application land looking generally north-west

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Application land looking south-west – existing stile in southern boundary (Footpath no.3 Southwick)

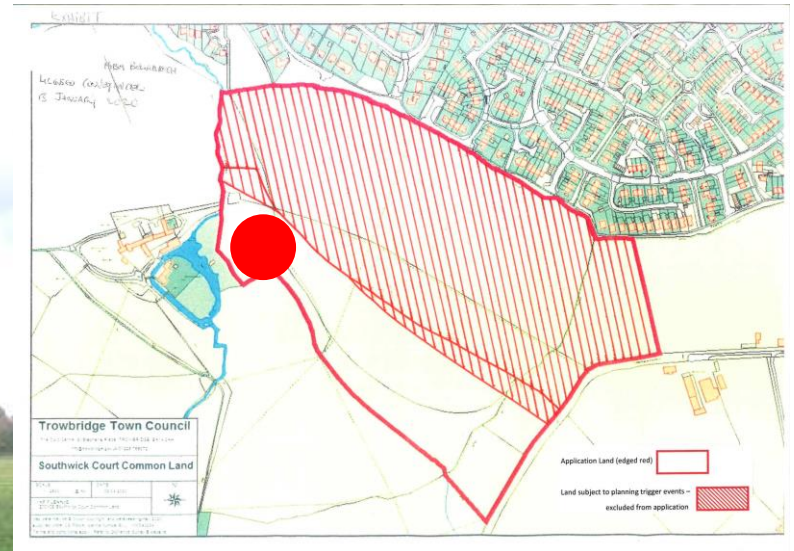
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The application land looking north



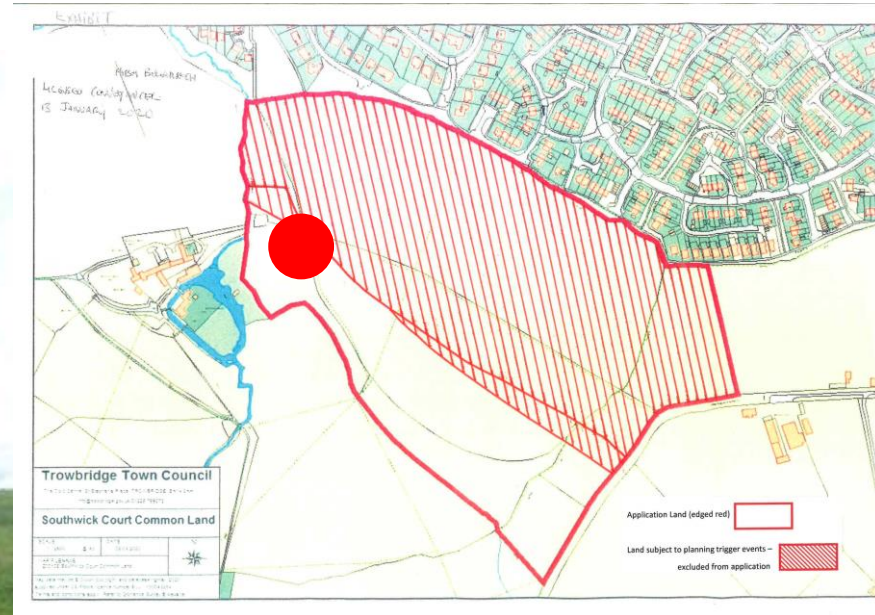
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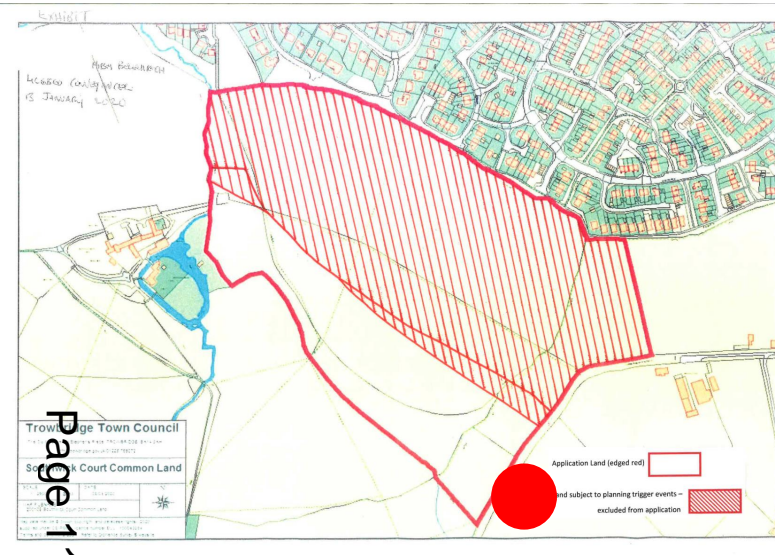
The application land looking generally east



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The application land looking generally north-west from Axe and Cleaver Lane (Bridleway no. 4 North Bradley)



The Legislation

- **Application to register land as a Town or Village Green (TVG), at Southwick Court Fields, in the parishes of Southwick and North Bradley, is made under subsections 15(1) and (2) of the Commons Act 2006:**

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Sub-section 15(1) 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.***

The Legislation

- **Sub-section 15(2) states:**

(2) This subsection applies where –

(a) 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

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

- **Each part of the legal test (above) must be satisfied for an application to be successful, where it is no trivial matter for a landowner to have land registered as a TVG (*R v Suffolk County Council ex parte Steed [1996] 75 P & CR 102*).**
- **The burden of proof is on the balance of probabilities.**

The Application

- The application was made by Mr N Swanney as a local resident. The Parish Councils of Southwick and North Bradley and Trowbridge Town Council supported the application.
- The application land is located at Southwick Court Fields, to the south-west of Trowbridge, in the parishes of Southwick and North Bradley. The land is owned by the Right Honourable Mrs S Rhys and Mr and Mrs Marshall.

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Where the application was made in 2020, the 20-year user period in question is 2000 – 2020, with use continuing at the time of application.

- The Identified “locality” for this application is Trowbridge Grove Ward.
- 49 parties provided evidence in support of the application: 21 witnesses statements and 2 petitions.
- There was 1 objection to the application, made on behalf of the landowner the Honourable Mrs S Rhys.

Western Area Planning Committee - 7 June 2023

- **Wiltshire Council as the CRA must remain neutral and determine the application in a manner which is fair and reasonable to all parties.**
- **Where there is substantial dispute of the evidence it is open to the CRA to hold a non-statutory public inquiry at which the evidence of all parties will be heard and tested through cross-examination, appointing an independent Inspector to preside over the inquiry and to provide an advisory report and recommendation to the determining authority.**

The Western Area Planning Committee considered the application at their meeting dated 7 June 2023 and resolved:

To appoint an independent Inspector on behalf of the Commons Registration Authority (CRA) to preside over a non-statutory public inquiry at which the evidence of all parties will be heard and tested through cross-examination, and to produce an advisory report and recommendation regarding the application to the Western Area Planning Committee, to assist the CRA in its determination of the application to register land as a Town or Village Green at Southwick Court Fields, in the parishes of Southwick and North Bradley, as soon as is reasonably practicable.

Inspector's Recommendation

- **Wiltshire Council as the CRA, held a non-statutory public inquiry locally on 21–22 November 2023, at which the Inspector appointed by the CRA, Mr William Webster, 3 Paper Buildings, heard evidence from all parties.**
- **Oral evidence provided at a public inquiry may be given additional weight where it is subject to cross-examination.**

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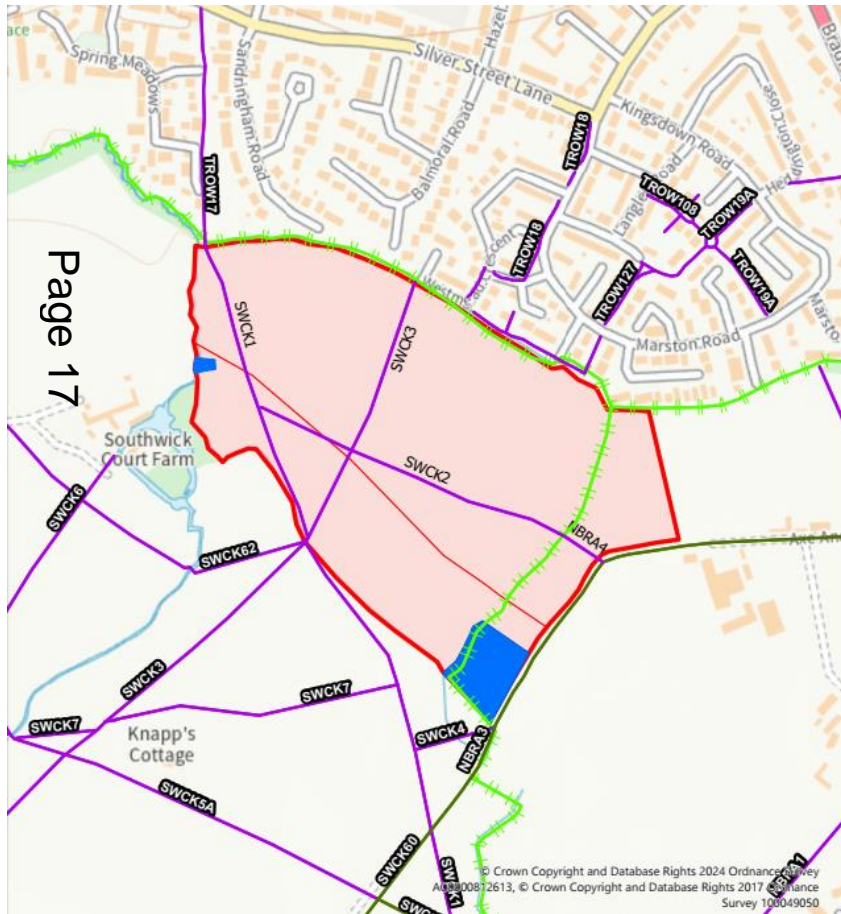
The final report of the Inspector was received by the CRA on 9 February 2024, and contains the following recommendation:

192. ...I recommend that the application to register the TVGAL (proceeding under application number 2020/02 TVG) should be rejected on the ground that all the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied.

193. The CRA must give written notice of its reasons for rejecting the application. I recommend that the reasons are stated to be “the reasons set out in the Inspector’s report dated 9 February 2024”.

Rights of Way

The land is crossed by recorded public rights of way, as shown on the plan below - Footpath no's 1,2 & 3 Southwick and no.4 North Bradley, as well as a number of unrecorded paths and trackways, as seen on the aerial photograph (2020/21):



The Evidence

- Evidence is key and no other matters may be taken into account in the determination of the application, as the Inspector states:

59. The only question for the CRA is whether the statutory conditions for registration are satisfied and the onus is on the applicant to establish this on the balance of probabilities. There is no scope for the application of an administrative discretion or any balancing of competing interests. In other words, it is irrelevant that it may be a good thing to register the land as it is a convenient open space for use by local inhabitants or that it is a necessary step to prevent its development in the future...

The Inspectors findings on the user evidence are summarised, as follows:

- (i) Use of the application land by qualifying inhabitants is mainly confined to paths, with or without dogs, which would have appeared to a reasonable landowner as referable to the exercise of rights of way along defined routes.
- (ii) Use of public rights of way located within the application land is not qualifying use as it involves use by right, not as of right.
- (iii) The Applicant has failed to prove that other claimed recreational uses were sufficient in quality and quantity to justify registration, nor would it have appeared to a reasonable landowner that users were asserting a right to use the application land for recreation.
- (iv) The Applicant has been unable to demonstrate that, for all practical purposes, it could sensibly be said that the whole of the application land had been used for legal sports and pastimes for the relevant period.
- (v) The Applicant has failed to prove that areas outside the paths on the application land were, throughout the whole of the qualifying period, suitable for informal recreation due to (i) wet ground conditions; (ii) cattle grazing; (iii) condition of the ground; (iv) growing grass crop (March to June annually).

Officers' Recommendation

That Wiltshire Council, as the CRA, accepts the Inspector's recommendation that the application to register land at Southwick Court Fields, in the parishes of Southwick and North Bradley, (proceeding under Application number 2020/02TVG), should be rejected on the ground that all the criteria for registration laid down in section 15(2) of the Commons Act 2006 have not been satisfied, for the reasons set out in the Inspector's Advisory report dated 9 February 2024.

Decision

- **The Committee is acting in its Regulatory function which requires the Committee to act in a quasi-judicial capacity.**
- **When a Committee acts in its quasi-judicial capacity, it must follow a proper procedure which accords with the requirements of natural justice and the right to a fair hearing.**
- **Although it is open to the CRA to reject the Inspector's report and recommendation, it can only lawfully do so if the CRA finds that the Inspector has made a significant error of fact or law. If the Inspector's recommendation is rejected, the CRA must give legally valid reasons, supported by evidence, of the error of fact or law, where the CRA's decision is open to legal challenge.**