

5<sup>th</sup> March 2003

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COMMONS REGISTRATION ACT 1965 (as amended)  
APPLICATION FOR THE REGISTRATION OF A TOWN OR  
VILLAGE GREEN: THE BACKFIELD, off RINGWOOD AVENUE AND  
LYNDHURST ROAD, AMESBURY

Purpose of Report

1. To inform the Committee of an application which has been received to register land at The Backfield, off Ringwood Avenue and Lyndhurst Road, Amesbury, as a Town Green under the Commons Registration Act 1965 and to seek a decision on the application.

Background

2. The Commons Registration Act 1965, required all common land and town or village greens to be formally registered. County Councils were charged with compiling the register of such land.

Failure to register any land within the prescribed period, which expired in 1970, resulted in that land ceasing to be common land or town or village green.

3. Further registrations may be made in certain very specific circumstances.

Under Section 22(1A) of the Commons Registration Act 1965 (inserted with effect from 30<sup>th</sup> January 2001 by Sections 98 and 103(2) of the Countryside and Rights of Way Act 2000) land will be a town or village green:-

“... if it is land on which for not less than twenty years a significant number of inhabitants of any locality or of any neighbourhood within a locality have indulged in lawful sports and pastimes as of right and either:-

(a) continue to do so, or

(b) have ceased to do so for not more than such period as may be prescribed or determined in accordance with prescribed provisions.”

No regulations have yet been made under paragraph (b).

If any application to register land as common land or as a town or village green is made, the County Council as Registration Authority is required to advertise the application in the local press and on the site, inform the other local authorities in the area and the owner, lessee, tenant or occupier of the land concerned. A period of not less than six weeks is allowed for objections to the application to be lodged.

The application and objections must then be considered by the Registration Authority and a decision made as to whether the land is to be registered or not. Whilst there is no formal right of appeal against a rejected application, it is open to the applicant to seek a judicial review of the Authority's conduct, if he believes it to constitute an abuse of power or to be wrong in law, unreasonable, procedurally improper, biased or contrary to legitimate expectations.

#### Detail

4. The application site is known as The Backfield and is shown hatched on the plan attached as Appendix I. Mr Eric David Gerrard and Mrs Elizabeth Lewis are registered at H.M. Land Registry as the owners of the land. Until 1991, it was owned by the Ministry of Defence.
5. The application dated 29<sup>th</sup> July 2002 was made by Mr John Lodge, on behalf of Amesbury Town Council. The Town Council's case is that the land became a town green on 1<sup>st</sup> January 1997 by the actual use of the land by the local inhabitants for lawful sports and pastimes.
6. The application was supported by 14 letters from local residents.
7. Following notice to the owners of the application, an objection was received on behalf of Elizabeth Lewis, one of the co-owners of the land, from Turley Associates and is annexed to this report as Appendix II.
8. As required by the Regulations, the Town Council has been given an opportunity to comment on the objection and a letter from Messrs Bonallack & Bishop, Solicitors to the Town Council, is attached to this report as Appendix III. In addition, in response to the objection, 29 letters in support of the application have been received including letters from the original supporters of the application, in which they have made additional comments arising from the objection.

Copies of the application and the letters and accompanying photographs have been placed in the Members' Room.

#### Issues for Consideration

9. In order to meet the requirements of the Commons Registration Act 1965 (as amended), the applicant must demonstrate that the land has been used by a significant number of local inhabitants for lawful sports and pastimes, as of right for not less than 20 years and continues to be so used. To qualify 'as of right' the use must have been open. It must have been achieved without the use of force. It must have not been used under licence or permission from the owner. Each of these requirements is examined below.

The residents, in their letters of support, place great emphasis on the land being a safe place for children to play, because it is overlooked by the houses from which the children come. Members are advised that the issue of safety is not a relevant one for the purpose of determining the application.

### Actual Use for Lawful Sports and Pastimes

10. The statements in support of the application for registration, assert that the land has been used for recreation and sport. On behalf of the owners, it is contended that the use has not been continuous, nor continuing and that it was related to part of the land only, for mainly one-off activities.

### Local Inhabitants

11. The use must be mainly, but need not be solely, by a significant number of inhabitants of any locality or of any neighbourhood within a locality. All the letters in support of the application are from local residents.

### As of Right for Not Less than 20 years

12. The applicant claims that the land became a town green on 1<sup>st</sup> January 1997 by the actual use of the land for lawful sports and pastimes.

In order to qualify for use 'as of right', the users need not necessarily believe that they **have** any right to go on the land. It is, however, necessary to provide evidence to satisfy the tests of the use without force, without secrecy and without permission.

On behalf of the owners, it is stated that there is no public right of access onto the land and that fencing has previously been erected to prevent trespassing onto the land. It is also stated, that until about 1990 the application site and the land surrounding it were in the common ownership of the Ministry of Defence and that the use of the land by its tenants cannot be regarded as being 'as of right'.

The County Council has recently learnt that in 1986, Byelaws were made by the Secretary of State for Defence giving the public permission to use the land. The Solicitor to the County Council is considering the legal effect of the making of the Byelaws and further legal advice on this point will be available at the meeting.

Members will see from Appendix IV that 2 of the letters in support of the application refer to a period of 20 years before 1997 and a further 2 to a period of 20 years before the date of the application.

### Conclusion

13. In considering this application, members need to consider and determine whether, on the evidence, local people have as of right used The Backfield for lawful sports and pastimes for the required period of time, or whether the use has been by licence. If it is considered that the use has been of right, the application for registration should be approved. If it is considered that the use has been by licence, the application should be rejected.
14. Members are asked to determine whether or not the land should be registered as a Town Green.

15. If Members are of the view that there is a serious conflict in the evidence, it is open to the County Council to hold a non-statutory Public Inquiry. The total cost of an Inquiry (to include the Inspector's fee and the cost of accommodation and advertising), is estimated to be in the region of £5,000 to £7,000.

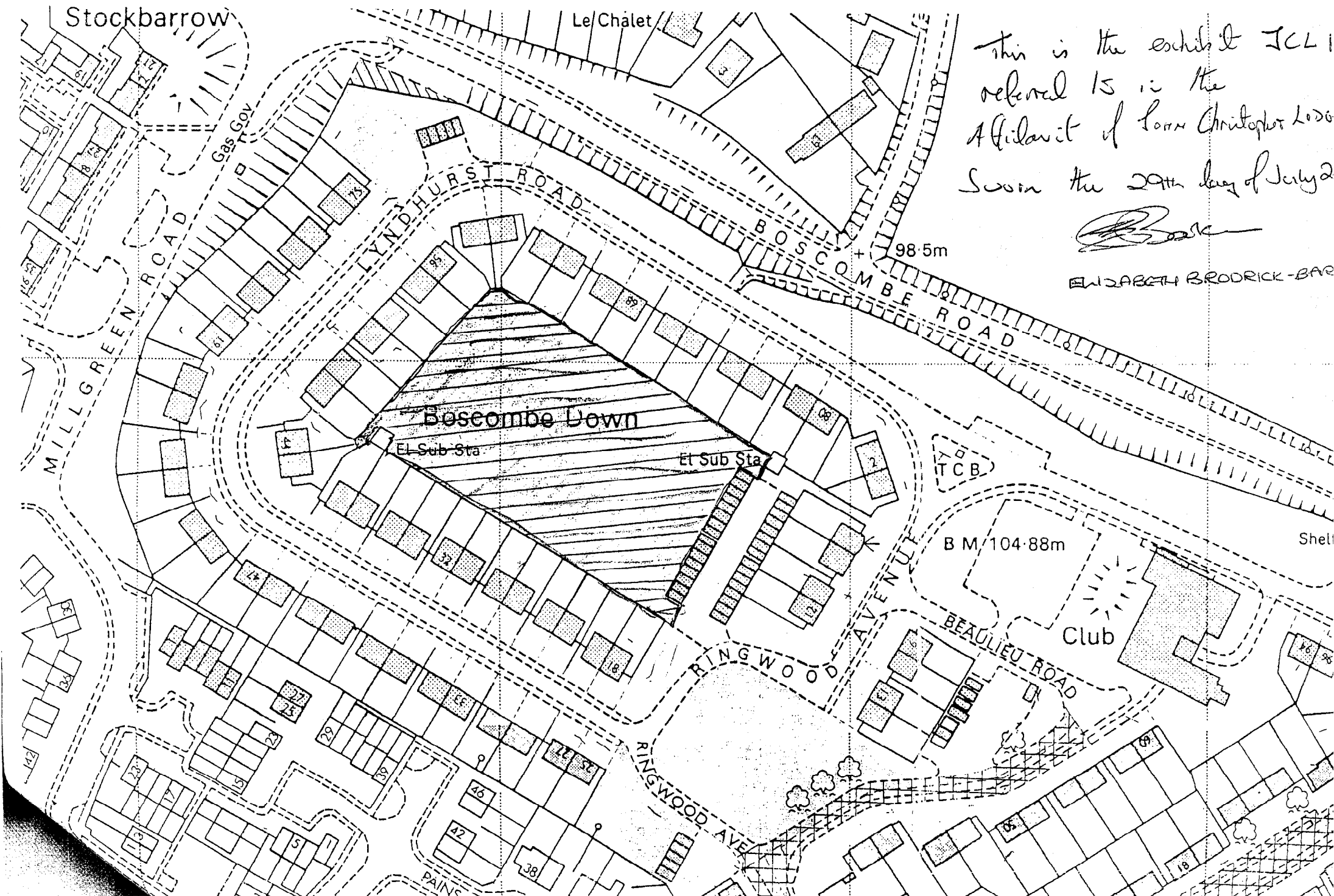
PETER SMITH  
Director of Corporate Services

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Unpublished documents relied upon in the production of this report:- The application for registration and representations received.

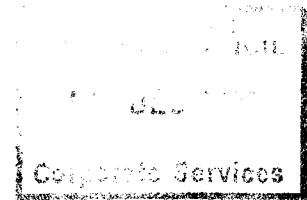
Environmental impact of the recommendations contained in this report:- Approval of the application for registration would result in The Backfield, Amesbury, being registered as a Town Green under the Commons Registration Act 1965.

APPENDIX T



This is the exhibit ICL  
referred to in the  
Affidavit of Lord Christopher Lodes  
Sworn the 29th day of July 2

ELIZABETH BRODRICK-BAR



FAO Trevor Slack  
Solicitor to the Council  
Wiltshire County Council  
County Hall  
Trowbridge  
Wiltshire

Our ref : LEWW1 000

BY FAX & POST

16 December 2002

Dear Sir

**Application for registration of land as village green – Land at Ringwood Avenue, Boscombe Down**

I refer to the above and on behalf of my client and co-owner of the land, Miss Elizabeth Lewis, and in conjunction with my client's solicitor's, John Hardman & Co, set out below our objections to the application.

**In short, it is our belief that the land has not been used for lawful sports and pastimes for more than 20 years, and that the limited evidence put forward in support of the application is not sufficient as of right to justify the registration as a village green.**

Based on relevant case law, we consider that there are four fundamental tests that the application fails to satisfy :

- (i) use for at least a 20 year period;
- (ii) use as of right;
- (iii) the continuing use of the whole of the application land for lawful sports and pastimes; and
- (iv) use by a significant number of the inhabitants of the locality or any neighbourhood within a locality.

**(i) The 20 Year period**

Part 4 of the application submission states that the alleged date that the land became a town Of village green was on 1<sup>st</sup> January 1997. This implies that the applicant asserts that the land has been used continuously as of right for lawful sports and pastimes since 1<sup>st</sup> January 1977 and has continued and still continues to be so used since 1<sup>st</sup> January 1997.

Notwithstanding the above, we note that there are only 14 letters from local residents offering support for the application, of which a mere 4 residents have claimed that the land has been used at any time for lawful sports and pastimes for over twenty years or more. There is no photographic

evidence of this activity prior to 1982; the only photograph from this period is of a child in a rear garden area and NOT on the application land. This is insufficient evidence to demonstrate that the application land has been used for sport and pastimes for more than twenty years up to 1<sup>st</sup> January 1997.

**(ii) As of Right**

It will be contended that most if not all of the houses surrounding the application land and the land itself were in the common ownership of the Ministry of Defence until about 1990 and that any use of the land by the occupants of the houses, who would be tenants of the common owner, cannot be as of right during this period.

**(iii) Continuous Use**

The limited evidence submitted alleges the use of the application land for lawful sports and pastimes on various occasions in the past, many of which relate to one-off activities, e.g. barbeques, camping nights, building a snowman. There is no evidence that any of these activities has been continuous, nor that any of them is continuing. In addition, none of these activities relates to the whole of the application land at any time, let alone continuously. Each relates to only an insignificant part of the land as a whole.

The land is and has always been overgrown with rough grassland and weeds. Pockets of the land may have been used by a small number of local residents for one-off activities, but none of the evidence supports any continued and continuous use.

**(iv) Significant number of the inhabitants**

There is no public right of access onto the land. Fencing has previously been erected to prevent trespassing onto the land. The land is enclosed by the rear gardens of a limited number of properties and the rear of a block of garages. It can only be glimpsed from the private access to the garages off Ringwood Avenue. It cannot be viewed from the wider area of Boscombe Down and does not provide a wider community function. Although the letters in support indicate that inhabitants in the locality (e.g. Ringwood Avenue) have used the land on occasions and notwithstanding this larger number of persons who could have access to the site, only four persons have supported the application.

For the above reasons, we therefore urge the Regulatory Committee to reject this application

My client would also wish the Committee to take into account the following other matters.

In the consideration of a planning appeal for the development of affordable housing on the application land, an Inspector on behalf of the Secretary of State for the Environment noted in his decision letter dated 5<sup>th</sup> August 2002 that the site was privately owned and that there appeared to be no public rights of way over it. He therefore concluded that 'it would be unreasonable to

withhold planning permission for housing development at this site because of its former use as open space.' My client has demonstrated above that this 'open space' usage was in any case infrequent and did not form a wider community function. The comments of the Inspector add weight to the evidence that this application cannot be substantiated.

It is essential to protect my client's proprietary interest in the land that we continue with our enquiries and investigations, particularly given the lengthy timescale to extract historical evidence from the Ministry of Defence (the original owners), and we would respectfully reserve the right to submit further evidence prior to the Regulatory Committee Meeting.

If you require any clarification of the any of the above please do not hesitate to call.

Yours sincerely



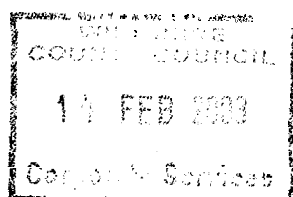
Simon Packer  
spacker@rta.co.uk

on behalf of Elizabeth Lewis

Enc.

cc. Elizabeth Lewis, C/o John Hardman & Co.  
Paul Newhall





Our Ref: TGB/JDJN/ATC  
Your Ref: TSS/04890/GOO15

13 February 2003

T Slack Esq  
Wiltshire County Council  
Legal Department  
DX 116892  
Trowbridge 3

*By Fax & DX*

Dear Sir

**Re: Application to register land as Village Green (The Green) -  
Land at Ringwood Avenue, Boscombe Down**

Further to our letter of 31 January we write in response to the points made in the letter dated 16 December from Turley Associates on behalf of Miss Lewis. Firstly we should point out that whilst the letter is dated 16 December it was only forwarded to this office by your letter of 28 January being received here on the 29<sup>th</sup>.

Our clients have considered the submission made by Turley Associates and we are instructed to respond as follows:

1. It is contended that there are four fundamental tests that fail to be satisfied. Dealing with these tests in order:

**(i) Use -for at least 20 year period.**

Due to the nature of the property and the constant movement of service personnel it has to be accepted that there is not a high number of people in the vicinity who have lived there for over 20 years. Indeed in these times not many people stay in the same property for that period of time. Nonetheless we attach at Appendix A:

A1 Declaration by E T Surgey of 18 Lyndhurst Road who has lived at his property since 1981 who states that at that time he was a police sergeant serving with MOD. He states that The Green has been used since 1950 for lawful sports and pastimes up to the present day. His declaration is supported by photographs and there is no reason to doubt the accuracy of his statement.

PARTNERS T.J. BISHOP\* T.G. BONALLACK

CONSULTANTS T.G.M.H. COWARD# C.D. CARNEGIE o I.D. LAMB • ASSOCIATE SOLICITORS P. JONES ROSALEEN BEASHEL.: • R.H. GREEN G. A. MAIDMENT JENNIFER ELLIS  
LEGAL EXECUTIVE SALLY BEARFOOT FINST L. EX. LEGAL ASSISTANTS LIN CUMBERLIN LOUISE BRENNAN AMANDA HARPER TRACEY MARSHALL. PRACTICE MANAGER D.G. PENNY

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- A2 Letter from Richard C Crook dated 11 February 2003 with attached extract from Amesbury Journal. He states that he has known The Green as a local farmer and Town Councillor since 1964 and that he personally over a three year period undertook the grass cutting on behalf of local residents who used The Green for football matches and other pastimes.
- A3 Letter from Mr & Mrs K Evans stating that they have lived at 68 Lyndhurst Road since 1980 and that The Green has been used regularly for various games such as football, cricket, volleyball tennis in addition to barbeques and camping.
- A4 Letter from Mr A G Eyre of 50 Lyndhurst Road stating that he has lived at his address since 1976 and that all the houses in the inner circle of Lyndhurst Road have rear gates giving access to The Green which has been used by local children as a recreation area for the entire time that he has been in his property.
- A5 Letter from P A Panter of 56 Lyndhurst Road who has lived at that address for nearly 25 years and has seen the area played on by “many many children”.

**(ii) Use as of Right.**

Had The Green been used as of right it is submitted that it may not be necessary to apply for Village Green status. It is submitted that the statement of Mr Surgey with which he exhibits a copy of a statutory instrument 1986 number 780 establishes that the use of the area provides that “the public are permitted to use all parts . . .”. Individual rights to specific parts of The Green have never been an issue and the fact that The Green as a whole has been used by all of the local inhabitants is fundamental to the application for Village Green status.

At no time has the MOD taken any steps to establish that people using The Green were trespassers – indeed quite to the contrary as it was recognised as a safe haven within which families could allow their children to play.

**(iii) Continuing use.**

From the correspondence and statements submitted with our original application and from the additional declaration by Mr Surgey and statement by Mr Crook it can be seen that The Green has been used for a large variety of activities. Some of these may be one off activities as suggested by Turley Associates but the activities that have been referred to throughout the statements and letters that have been produced have listed the following: barbeques, treasure hunts, jubilee parties, family parties, play area, dog walking, football (posts having been erected), sports generally, camping, volleyball, bonfire, cycling, rugby, cricket, kite flying, rounders, tents.

The common theme to most statements has been that football has been played on the green as long as anyone can remember and hence it is unrealistic of Turley Associates to state that “none of these activities relates to the whole of the application land at any time”

the whole Green has been used to support all the above listed activities at various times and some of the activities all of the time.

*(iv) Significant number of the inhabitants.*

Turley Associates state that there is no public right of access onto The Green. There is access to The Green by the footpath between houses in Ringwood Avenue and the other is by the garages access road. In addition most of the gardens have access leading directly from their gardens to The Green. The Green has never been permanently fenced and it is wholly untrue to suggest that it has ever been fenced to prevent trespassing. Turley Associates state that the land cannot be viewed from the wider area of Boscombe Down and it does not provide a wider community function. This is simply unsupported by fact and as will be seen from the number of letters in support of the initial application and the further letters in support of this letter and indeed in view of the number of letters that have been sent by inhabitants direct to County Hall it is clear that the application is supported by the majority of local residents and opposed by none.

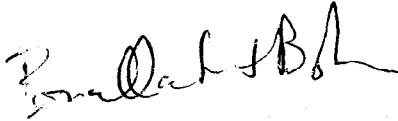
2. In view of the large number of letters of support it is clear that there are strong feelings that the status quo regarding The Green should be maintained particularly bearing in mind that most of the inhabitants are of an age where there are a large number of young children in the area and The Green has always provided a safe haven on which they could play. The Green is maintained by an enthusiastic body of local inhabitants who not only ensure that it is kept in good order but that it remains a safe place for children to play where they can be seen by their parents from their own homes.
3. We append at Annex B1 a copy of a letter dated 24 May 2002 from Councillor Noeken of Salisbury District Council to the Planning Inspectorate setting out the reasons for objection to a planning application for the erection of 16 houses on the land at Ringwood Avenue. A number of objections to the proposals were raised in the letter but we would draw your attention particularly to the reference to loss of public open space on page 2 being one of the main facts in support of the application to dismiss the appeal against refusal of planning permission. The same reasons put forward in that letter would apply to the current application for Village Green status. Also attached (B2) is a copy of the agents particulars relating to the land in question which state “there is a centrally placed recreation area used as a football pitch . . .”.

Attached to the same bundle (B3) is a copy of the appeal decision made by the inspectors on 5 August 2002 and we would draw your attention to paragraph 8 on page 2 referring to the loss of recreational open space. The statement continues "there is no doubt that residents of Lyndhurst Road have enjoyed the use of the appeal site as open space for many years. This is demonstrated in my view by the fact that most of the properties backing onto the site have a rear garden gate leading directly into the site. Moreover local residents claim that there is a restrictive covenant preventing development of the site and I note that sales particulars in 1991 describe the site as a recreation area."

The lack of hard evidence in the form of photographs or documentary evidence is not in itself fatal to the application for Village Green status. We therefore submit on behalf of Amesbury Town Council and the large body of local inhabitants who have written to us in support of the application that the objections raised by Messrs Turley Associates should be overruled and that the Application should therefore be granted. We continue to receive communications from interested parties regarding the land in question and therefore reserve the right to produce further evidence to support the Application.

We shall await hearing from you.

Yours faithfully



BONALLACK & BISHOP

APPENDIX IV

NAME	ADDRESS	YEARS OF PERSONAL KNOWLEDGE	ACTIVITIES
F T Howlett	74 Lyndhurst Road	1974 – present	Recreational
A C T Eyre	50 Lyndhurst Road	1976 – present	Snowman building, snowball fighting, tobogganing, football, cricket, running around in the open air, frisbee and kite flying
R J Panter	56 Lyndhurst Road	1978 – present	Sports and camping (for children)
Mr & Mrs S Richardson	28 Lyndhurst Road	1979 – present	Barbeques, birthday parties, picnics, football, cricket, games
K & L Evans	68 Lyndhurst Road	1980 – present	Games, football, cricket, volleyball, tennis & other raquet sports, barbeques, street parties, camping
E T Surgey	18 Lyndhurst Road	1981 – present	Football, volleyball, family parties, camping (for children)
Mr & Mrs J O’Hare	27 Lyndhurst Road	1986 – 1989 (recently returned)	Football, cricket, rounders, picnics
Mr R Thomas	80 Lyndhurst Road	1990 – present	lawful sports and pastimes
Mrs L Pearson	49 Lyndhurst Road	1990 – present	Play area
Mr L W Smith	8 Ringwood Avenue	1990 – present	Playing, dog walking, football
M K & E A Vincent	76 Lyndhurst Road	1990 – present	Football, rugby, rounders, camping (for children) barbeques
F R Best	64 Lyndhurst Road	1990 – present	Football, play area for children
A & L Johnson	62 Lyndhurst Road	1990 – present	Games of many types: kite flying and sledging (for children)
A W C Mundy	11 Ringwood Avenue	1990 – present	Daily use for football, play area (for children)

NAME	ADDRESS	YEARS OF PERSONAL KNOWLEDGE	ACTIVITIES
J Hill	71 Lyndhurst Road	1990 – present	Football, softball and cricket (for children)
M A & A G Browne	66 Lyndhurst Road	1990 present	Dog walking, Play area
E L Cook	52 Lyndhurst Road	1990 present	Play area
R C Crook	Apple Tree Cottage Flower Lane, Amesbury	1990 – 1993	Used tractor to cut grass to enable football matches to be played
T J & M R y a n	6 Ringwood Avenue	199 1 present	Football, rugby and cricket, learning to cycle, kite flying, camping (for children)
D A Eacock	15 Ringwood Avenue	199 1 present	Football, games
Mr & Mrs L Parry	73 Lyndhurst Road	1992 – present	Play area, barbeques, relaxation, general community use
L & S Brown	78 Lyndhurst Road	1996 – present	Rounders and barbeques, cricket, play area and camping (for children)
Mr & Mrs D Kidley	10 Ringwood Avenue	1998 present	Play area
Mr & Mrs J Roach	3 1 Lyndhurst Road	1999 present	Football, playing
E & S Ryan	26 Lyndhurst Road	Not specified	Football, volleyball, other games and bonfires (for children)
A Langley	20 Lyndhurst Road	Not specified	Play area, Easter egg treasure hunts, Golden Jubilee party (for children), birthday parties, family gatherings, barbeques, dog exercising
M & H Smith	32 Lyndhurst Road	Not specified	Football, rounders, pet walking, tea parties (for children), recreation generally
Mrs L Barnett	54 Lyndhurst Road	Not specified	Lawful sports and pastimes
P M Bowley	60 Lyndhurst Road	Not specified	Play area