

**IN THE MATTER OF THE COMMONS REGISTRATION ACT 1965**

**AND**

**IN THE MATTER OF THE COMMONS REGISTRATION (NEW LAND) REGULATIONS 1969**

**APPLICATION MADE BY ERNEST CLIVE ROWLAND DATED 25 NOVEMBER 2005**

**RESPONSE TO REPRESENTATIONS MADE  
BY  
LILAC INVESTMENTS LIMITED AND ALAN BROWN**

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This Statement responds to the representations made by Lilac Investments Limited and Alan Brown dated February 2006 (*the Landowners Representations*) in relation to the Town Green Application submitted by Ernest Clive Rowland (*the Application*) in respect of the amenity land at Drews Park (*the Land*).

For ease of reference, the paragraph numbers used in this Statement correlate with the paragraph numbers in the Landowners Response to the Application. Where paragraphs are not numbered in the Landowners Representations, paragraph numbers have been allocated in this Statement. All other terms are defined in the Application.

## **1 Interests of Land Owners**

It is not disputed that the Land shown in Appendix 1 is owned by Lilac Investments Limited and Alan Brown since 2002 (*the Landowners*) and it is noted that the Landowners object to the Application.

## **2 History and use of the application land**

2.1 The ownership history of the Land is not disputed.

2.2 The remainder of Section 2 attempts to describe the operation and use of Roundway Hospital (*the Site*) from its opening in 1851 until its closure in 1995 and also the use of the Site since 1995. The description relies on the Statutory Declaration of Mr Piper but in his Statutory Declaration Mr Piper states that he has knowledge of the Site since 1996 when Havering Land Company Limited purchased part of the Site, and that he purchased a property within the Drews Park development in 2000. No evidence has been provided that demonstrates that Mr Piper had any knowledge of the Site prior to 1996, and this is a significant omission.

It is apparent that Mr Piper has no actual knowledge of how the Site operated and is not, therefore, qualified to comment on the history or land-use policies of the hospital or whether local inhabitants used the grounds of the hospital for recreational purposes. Mr Piper states 'I do not believe that when the hospital was in use that members of the public would have had access to the grounds of the hospital' and this statement contains a clear admission that his knowledge of the Land prior to 1996 is based on belief rather than actual knowledge. The evidence of Mr Piper that relates to the operation of the Site should not be taken into account, as his evidence is based on pure surmise and not fact.

It is incorrect to state that while the Site was in use as a psychiatric hospital the Land was secure throughout its operational history. Stuart Hislop, who was employed as a psychiatric nurse at the Site, states in his Statutory Declaration (attached to the Application) that the Site was not secure and that members of the public were freely able to use the Land while the hospital was in operation. Stuart Hislop also stated that the hospital management committee operated an 'open door policy' well before 1979 and many of the residents had free access into the community on a daily basis.

- 2.3 It is incorrect to state that the hospital was 'mothballed' pending its sale in the 1990's. The Site was used almost up to completion of its sale in December 1995 and Elm Ward within the Site was utilised as offices by the Health Authority until the month immediately prior to completion. The access roads adjoining Pans Lane, Wick Lane and Green Lane were used constantly by local inhabitants. The listed part of the Site had a small amount of security fencing erected around it when work was being carried out at each stage but the Site was open to all who wanted to visit it and the Land remained accessible to local inhabitants. There was a hoarding across the front of the main façade of the Site but at no time were fences erected around the Land.

It is disputed that any security provided by Securicor up to 1995 or after 1995 had the effect of preventing local inhabitants from using the Land. The Statutory Declarations of Lisa Penington (attached to the Application) and Stuart Hislop and the user questionnaires demonstrate that the unrestricted access that had been enjoyed by local inhabitants before the closure of the hospital continued after the hospital was closed. The access roads were used daily by both the workers on the

Site and by local inhabitants. It is acknowledged that the buildings on the Site may have been secured but access to the Land has never been prevented.

- 2.4 The content of this paragraph is not disputed.
- 2.5 It is acknowledged that the Land forms part of the 'Open Space' referred to in the Section 106 Agreement and the Landowners are required to arrange for the cutting of all grassed areas within the Open Space during the growing season. It is acknowledged that the Landowners are not required to permit the public to enter and use the Land without hindrance under the terms of the Section 106 Agreement dated 24<sup>th</sup> July 1997 but Condition 34 of the planning consent for the redevelopment of the Site achieves this requirement, as it states that the Open Space 'shall be retained as open amenity land and shall not be enclosed or used for any other purpose'. The Land is included within the Open Space referred to in Condition 34.
- 2.6 Any security provided by MK1 from 1997 until completion of the development in 2000, referred to in Martin Kehoe's Statutory Declaration, did not limit public access to the Land. The Statutory Declarations of Lisa Penington and Stuart Hislop and the evidence in the questionnaires demonstrate that during this period local inhabitants continued to use the Land for recreational purposes. The Statutory Declaration of Lisa Penington provides evidence that security guards did not patrol the Land and Lisa Penington states that she was not prevented from using the Land and none of the users of the Land stated in their questionnaires that they had been prevented from using the Land by security guards. In addition no direct evidence has been provided from any security guard stating that they patrolled the Land and informed users of the Land that they were not permitted to use the Land.

Martin Kehoe's Statutory Declaration states that fencing and notices were in place while he was providing security but none of the users' questionnaires record the fact that they observed such notices or fencing.

It is incorrect to state that the Site was 'secure' between 1997 and 2000. Four existing individual houses were sold off in advance of the development of the listed part of the hospital and occupied as early as 1997. Furthermore, 75 houses had been sold and occupied by the end of 1999. Approximately 20 sales were completed from mid-1998 and a further 55 were completed and the residents in occupation all through 1999. The Site was, therefore, neither unpopulated nor

secure during the years 1997 to 2000 and this situation is confirmed by the Statutory Declaration of Joyce Little attached at Appendix 1.

2.7 It is acknowledged that a small strip of the Land was fenced off in late 2003/early 2004 to allow David Wilson Homes to construct a drainage ditch to the balancing pond. The fencing did not prevent access to the Land and was only erected for safety reasons. It is also not disputed that the balancing pond was fenced but it should be noted that the balancing pond does not fall within the boundary of the Land.

2.8 Today part of the Land, which comprises the orchard, is overgrown due to the failure of the Landowners to cut the grass in accordance with the obligations set out in the Section 106 Agreement dated 24 July 1997. This part of the Land is not sufficiently overgrown, however, so as to prevent local inhabitants from using it for recreational activities.

### **3 Essential requirements for town green status**

It is disputed that the Application fails to meet the components required for a successful town green application.

#### **3.1 The Land**

The users of the Land are entirely clear as to the boundary of the Land that is the subject of the Application. This is demonstrated by the fact that a plan is attached to every questionnaire form and every user has identified the Land. A number of users also use other areas of open space in the vicinity of the Land and refer to their use of other open space in the area in their questionnaires. The Land does not have a specific title and is known by local inhabitants by different names, hence the variance in how the users name the Land in their questionnaires.

#### **3.2 Use for lawful sports and pastimes**

John Piper states that he has never seen persons carrying out the activities described in the questionnaires. We submit that this evidence lacks credibility and that John Piper has limited knowledge of the use of the Land, given the fact that John Piper's property does not have a direct view of the Land and the fact that he

only visits his property at Drews Park 5 - 7 times a year for a week at a time. We submit that the questionnaires provide comprehensive evidence to demonstrate that the Land has been used for a wide range of lawful sports and pastimes.

As referred to in Section 2.8 above it is accepted that part of the Land is overgrown. The fact that part of the Land is overgrown has not prevented local inhabitants from using the whole of the Land for recreational activities.

### **3.3 Use continuously for 20 years**

As stated in section 2.2 above, no evidence has been provided in the Landowners Representations that deals with the operation of the Site prior to 1995. We submit that whilst the Site operated as a hospital and until the present day local inhabitants had unrestricted access to the Land and used it for recreational activities as of right.

The security arrangements at the Site and construction activities on the Site have not prevented access to the Land by local inhabitants since 1995 and there have been no restrictions on the use of the Land during this period. Clear evidence has been produced to demonstrate that the Land has been used continuously and without interruption for over 20 years. Local inhabitants continue to use the Land to the present day. It is not necessary for all users to have used the Land for 20 years, it is only necessary to demonstrate that the Land has been consecutively used by people for various lengths of time over a period of 20 years. The evidence that accompanied the Application clearly satisfies these criteria. The Landowners state 'that for the greater part of the last 10 years the public have been denied any right to use the land' but this statement is incorrect and unsubstantiated by evidence.

We note that the Statutory Declarations are criticised because the persons who made them did not use the Land. The purpose of these declarations was to provide evidence from persons who were associated with the operation of the hospital during the relevant 20 year period and who had knowledge of the land use policies of the Site and how the Land was used during the relevant period. The questionnaires have been submitted by local inhabitants who regularly use the Land. The questionnaires contain evidence regarding how long the individuals have used the Land for, the recreational activities that they have carried out on the Land and where they lived in relation to the Land when they used it.

### 3.4 Use as of right

The assertion that local residents would have been aware that they had no right to use the Land whilst the hospital was operational is entirely incorrect. Hospitals are generally viewed by the public as sites that have free and unrestricted access, as they are public institutions operated by public bodies. Whilst the Site operated as a psychiatric hospital it was not a secure unit, and patients could go where they chose unless they had been detained under the Mental Health Act and this position is confirmed by Stuart Hislop in his Statutory Declaration. The fact that the hospital encouraged community involvement has been taken out of context in the Landowners' Representations. This statement in Stuart Hislop's Statutory Declaration was purely referring to the fact that the hospital didn't want the hospital to be a forbidding asylum where the public would be reluctant to enter. The Landowner's Representations comment that Mr Hislop stated that restrictions were not enforced is incorrect as this statement is not present in Mr Hislop's declaration. It is also incorrect to state that 'any members using the land did so assuming that they had permission' as no evidence has been provided to support this assertion.

The evidence that was submitted with the Application demonstrates that local inhabitants have not been prevented from using the Land since the Site was sold and that local inhabitants were never made aware that their use of the Land was not permitted.

The Landowners Representations state that the use of the Land should continue until the date of registration of the Application due to the judgment of the Court of Appeal in the case of Oxfordshire County Council v Oxford City Council and Catherine Mary Robinson [2005] (*the Oxfordshire case*). The Court of Appeal stated that the use of land that is the subject of a town green application must continue until the date of registration and the Landowners argued that their attempt to erect fencing around the Land in February 2006 prevented the use of the Land and thwarted the Application. This argument is no longer valid as an appeal against the Court of Appeal's judgment was heard in the House of Lords between 27 March and 3 April. The Lords stated in their judgment that the use of land that is the subject of a town green application must continue until the date of the application. The Application therefore complies with the Lords judgment, as no attempt was

made to prevent local inhabitants from accessing the Land prior to the date of the Application.

The Landowners' Representations state that the landowners objected to the original application dated 13 May 2005 ('the Original Application') in September 2005, and that it is recognised in the judgement in R v South Gloucestershire District Council ex parte Cheltenham Builders Limited [2003] (***the South Gloucestershire Case***) that the lodging of an objection may be part of the process by which any use begins to lose its quality as being "as of right". In the South Gloucestershire case, an application to register a town green was withdrawn following an objection by the landowner, and a gap of four months passed before a new application was submitted. The judge stated that the landowner was entitled to conclude that the withdrawal of the application was a result of acceptance by the applicant of his objections.

The Application can be distinguished from the South Gloucestershire case because the Original Application was not withdrawn until after the Application was submitted. If the Landowners wished to resist the Original Application then the appropriate method to demonstrate this to local inhabitants, following receipt of the Original Application, would have been to erect notices informing local inhabitants that use of the Land was not as of right. The Landowners did not take this action and we submit, therefore, that the Land was used for a period of over 20 years by local inhabitants "as of right" prior to submission of the Application and continues to be used by local inhabitants.

We are aware of the fact that the Landowners sought to erect fencing around the Land in February 2006, as stated in the Statutory Declaration of Martin Brady, but wish to clarify that the Applicant did not prevent these actions. In any event fencing cannot be lawfully erected around the Land as it would represent a breach of condition 34 that granted consent for the redevelopment of the Site. As previously mentioned condition 34 states:

*'The areas identified on the submitted plans as public open space shall be retained as open amenity land and shall not be enclosed or used for any other purpose'*

The public open space referred to in Condition 34 includes the Land.



### 3.5 Use by a significant number of residents of a locality

There is no statutory definition for a 'significant number' but the case of *R v Staffordshire County Council ex parte Alfred McAlpine Homes Limited* [2002] considered this point. Mr Justice Sullivan concluded that in considering the words "significant number of the inhabitants" in section 22(1A) of the Commons Registration Act 1965, that what matters is that the number of people using the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers. Mr Justice Sullivan also stated that he did not accept the proposition that significant in the context of section 22(1), as amended, means a considerable or a substantial number. In relation to the Application a wide cross-section of people from the locality have completed questionnaires and have provided evidence of their use of the Land and the Application therefore complies with the reasoning in this case. Legislation has not expressly defined the word 'significant' and this fact was noted by the House of Lords where they stated in the Oxfordshire case that 'every case depends on its own facts and ... it would be inappropriate for this House in effect to legislate to a degree of particularity which Parliament has avoided'.

In relation to the Locality, we accept the reasoning in the case of *R v South Gloucestershire District Council ex parte Cheltenham Builders* [2003] i.e. 'It is clear Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a "locality". It may well be difficult to define the boundary of a "locality" on a plan because views may differ as to its precise extent, but there has to be, in my judgment, a sufficiently cohesive entity which is capable of definition. Merely drawing a line on a plan does not thereby create a "locality".'

The Application is compliant with the principles in this case as it relates to a clearly defined locality which is expressed as the electoral wards of Roundway, Devizes South and Devizes East and the users of Land are all drawn from this locality. The Application therefore satisfies the locality test. It is not necessary to consider the neighbourhood test as the Application is not related to a specific neighbourhood within a locality.

## **4 Additional responses to the Statutory Declarations**

### **4.1 Statutory Declaration of Mr Nicholson**

We note that Mr Nicholson states at paragraph 3 of his Statutory Declaration that 'these pieces of land were offered to the local residents association, but the offer was not taken up' but we submit that this statement is not factually correct. Chris Nicholson did negotiate with the Drews Park Village Association, with the intention of selling them the meadow, orchard and cricket field and an agreement was reached in January 2002 for the purchase of this land. Mr Nicholson, however, withdrew from the sale without notice in April 2002 which resulted in the residents incurring £4,000 in abortive legal fees.

Mr Nicholson states at paragraph 3 that various pieces of land were fenced off to prevent occupation by travellers. We would like to make the position entirely clear and confirm that travellers did attempt to occupy the site of the former Katherine McNeill clinic, which is situated close to the Land, and the site of the former clinic was fenced off to prevent access. The Land, however, was never occupied by travellers and was never fenced off.

### **4.2 Statutory Declaration of Martin Brady**

Mr Brady says at paragraph 2 of his Statutory Declaration that he 'is certain that he fenced the land' as part of his contract with Mark 1 Security. As stated previously, the questionnaires and Statutory Declarations clearly state that the Land has never been enclosed by fencing.

## **5 Conclusions**

- The users of the Land are entirely clear as to the boundary of the Land that is the subject of the Application. This is demonstrated by the fact that a plan is attached to every user questionnaire form and each user has identified the Land.
- It is submitted that the Landowners have no knowledge of the operation of the Site prior to 1995 and are not aware of the operating methods of the hospital and the fact that it had an open-door policy.

- The Landowners' Representations state that security guards made it clear to any persons entering the Land that they had no right to do so. No direct evidence has been produced from any security guard that states that they informed local inhabitants that their use of the Land was not permitted, as has been alleged by the Landowners. A considerable amount of evidence accompanied the Application which demonstrates that local inhabitants were not prevented from using the Land or made aware that use of the Land was not permitted during the years 1995 to 2000. Furthermore, this was not a secure site as a number of properties had already been completed and were sold to private purchasers during this period.
- Since 2000 the use of the Land for recreational purposes has continued to be unrestricted and the Land has been used by many inhabitants of the Locality and this use of the Land is documented in the questionnaires.
- The Landowners are not permitted to erect fencing around the Land as Condition 34 attached to the planning consent prevents them from doing so. If the Landowners wished to exercise their ownership rights and prevent access to the Land they should have done so when they first acquired the Land or following receipt of the Original Application.
- There has only been one minor interruption to the use of the Land during the relevant 20 year period when a drainage ditch was created by David Wilson Homes in late 2003/early 2004. The interruption consisted of the fencing of a strip of land but access to the Land was not prevented to any extent.
- There is a substantial amount of evidence that demonstrates that the Land has been used for over 20 years without interruption by a significant number of people resident in the Locality. The Locality is properly defined as the wards of Roundway, Devizes East and Devizes South.
- The Application is properly made out and it is irrelevant that the Landowners have incurred costs in responding to the Application. Furthermore, the approval of the Application would not deprive the Landowners of use of their land providing that they did not interfere with the rights of local inhabitants.

Accordingly Wiltshire County Council, as Registration Authority, is respectfully invited to approve the Application and to make the relevant Order.

**Bevan Brittan**

**June 2006**

**STATUTORY DECLARATION  
OF  
JOYCE ANN LITTLE**

STATUTORY DECLARATION

OF

JOYCE ANN LITTLE

Statutory Declaration

I, Joyce Ann Little of Mill House, Wick Lane, Devizes, Wiltshire SN10 5DW

Do solemnly swear and sincerely declare as follows:

- 1 My present occupation is property sales negotiator for the estate agents Atwell Martin in Devizes.
- 2 There is now produced and shown to me a plan marked 'JAL1' which indicates the amenity land edged red which is the subject of the Town Green application ('the Land'). The Land is part of the former Roundway Hospital Devizes which is now known as Drews Park.
- 3 I have lived in the area for 60 years and in Devizes for 12 years and I have known of the Land for eight years.
- 4 I was employed by Strakers, the estate agents, to sell the newly developed houses at Drews Park from approximately February 1998 to 30<sup>th</sup> June 1999.
- 5 My office was situated directly opposite the Land and I passed the Land every day on my way to and from work. ~~x~~The Land was never fenced off, and while I was working on the Drews Park development site I frequently saw people using the Land and walking their dogs.  
*x To the best of my knowledge JAL*
- 6 There were never any notices erected on the Land that informed people that their use of the Land was restricted or not permitted.
- 7 Four of the existing houses were sold off before the development started and in 1998 about 20 properties were sold and occupied, and in 1999 about 55 were sold. The Land and Drews Park could not at any time be described as 'secure'.
- 8 The Drews Park development site was open day and night and the road to the Green Lane Hospital ran right through the centre of the Drews Park development site.
- 9 There were security guards who looked after the listed building, and patrolled the Drews Park development site at night. I do not know if they told people that they should not use the Land, but throughout the time that the security guards patrolled the development site the public continued to use the Land..
- 10 To the best of my knowledge members of the public have freely used the Land for recreational activities throughout the time that I have known the Land.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1835

DECLARED by JOYCE ANN LITTLE.....*Joyce Little*.....

At: **GOUGHS SOLICITORS**.....

On this **30 MARKET PLACE** day of **DEVIZES WILTSHIRE** 2006

*31st* *March*

Before me: *[Signature]* *RITA GLOTTA*  
(Solicitor/Commissioner for Oaths)



Joyce Little

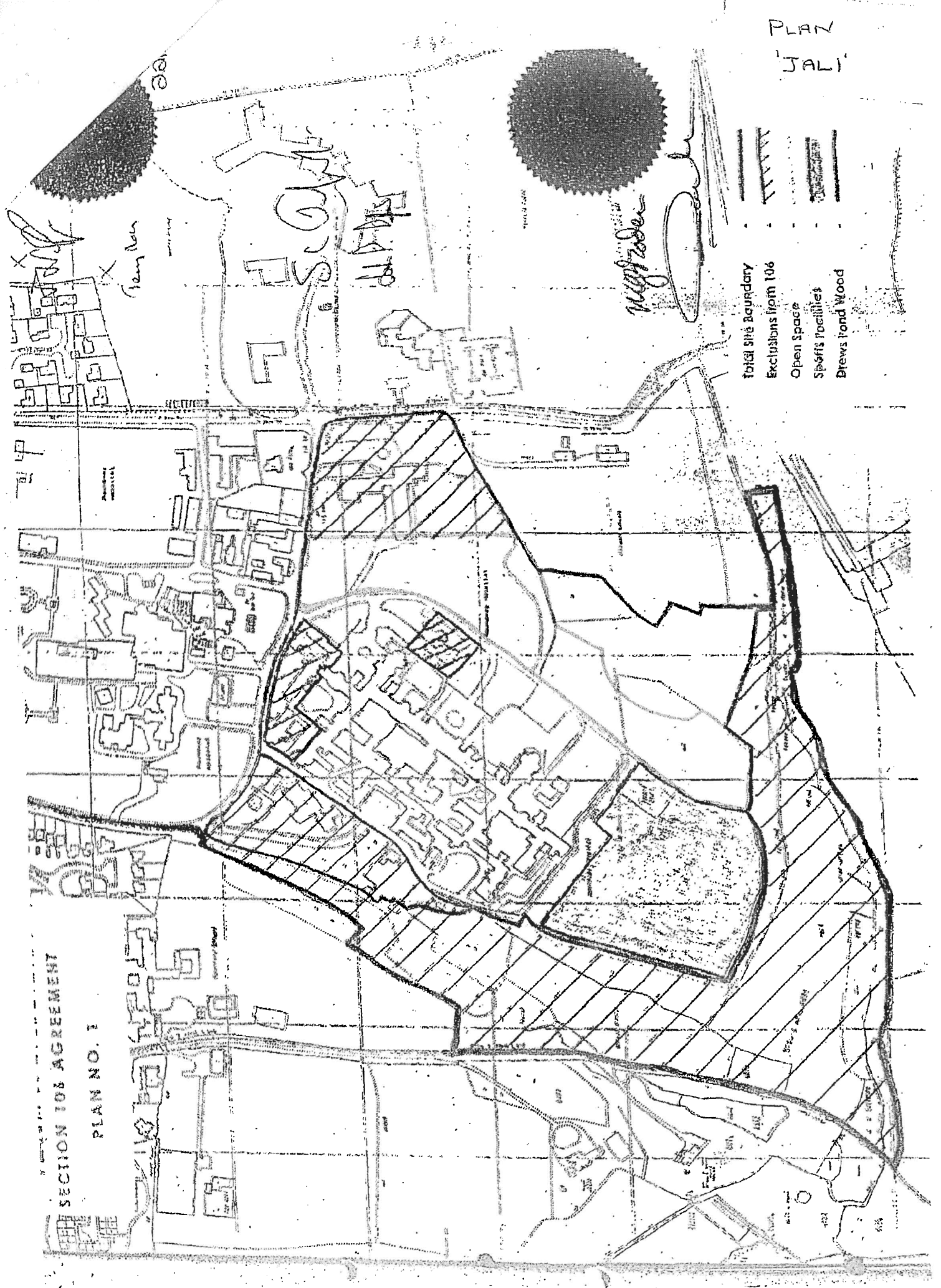
This is the exhibit marked "JAL1" referred to in the  
statutory declaration of Joyce Ann Little  
made this 3<sup>rd</sup> day of March 2006

before me

Signature and Qualification  RINA GUPTA

**GOUGHS  
SOLICITORS  
30 MARKET PLACE  
DEVIZES WILTSHIRE  
SN10 1JG**

PLAN  
'JALI'



- ▬ Total Site Boundary
- ▨ Exclusions from 106
- Open Space
- ▤ Sports Facilities
- ▧ Dregs Pond Wood

SECTION 106 AGREEMENT  
PLAN NO. 1

Temp. Non

MUSTADE