

AGENDA SUPPLEMENT (1)

Meeting: Western Area Planning Committee

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

Date: Wednesday 7 June 2023

Time: 3.00 pm

The Agenda for the above meeting was published on Tuesday 30 May 2023. Additional documents are now available and are attached to this Agenda Supplement.

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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 - 22)

DATE OF PUBLICATION: Monday 5 June 2023

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:
7 JUNE 2023**

**JANICE GREEN – SENIOR DEFINITIVE MAP
OFFICER**

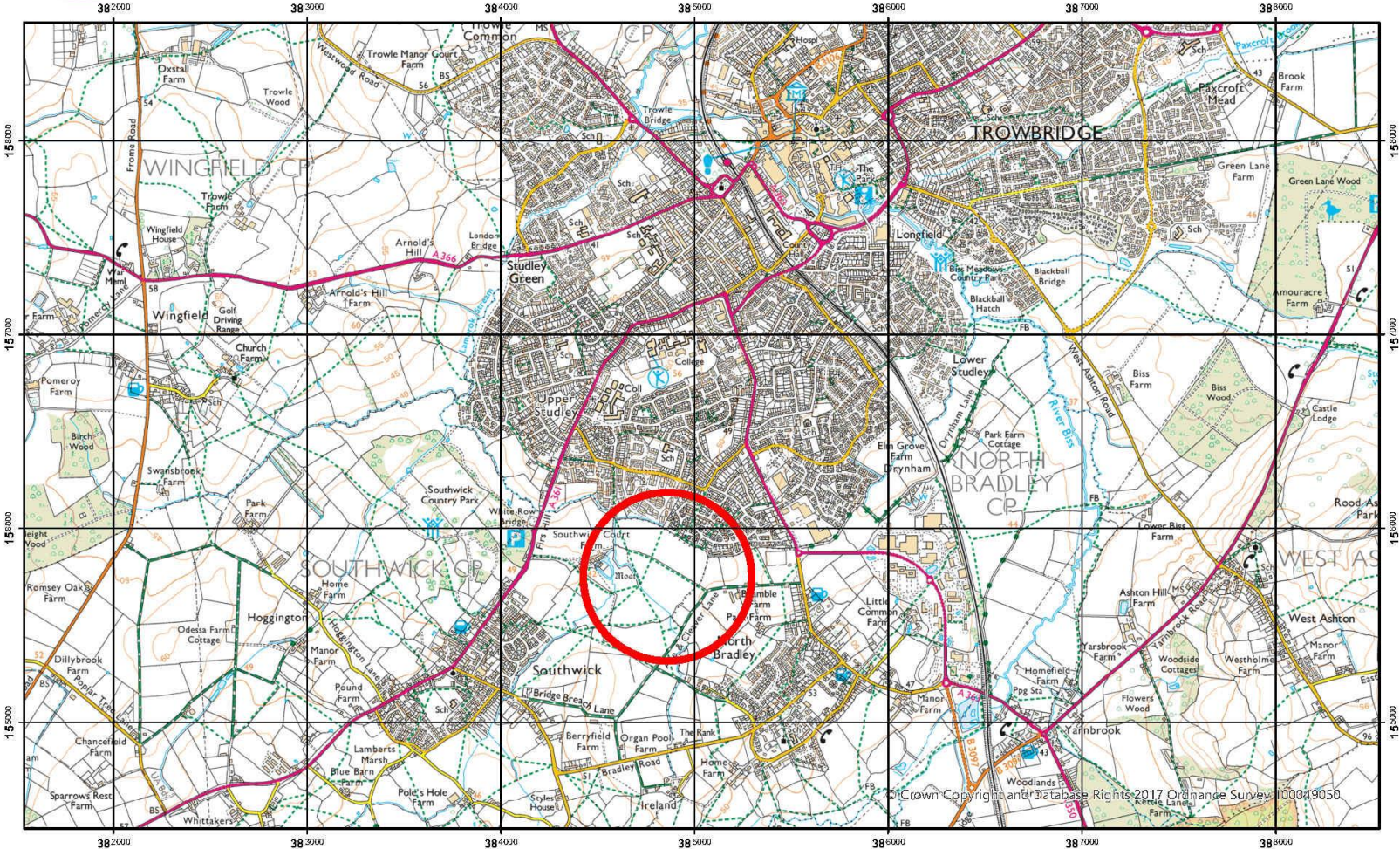
Agenda Annex

Location Plan



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

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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.

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

The Application

- The application is made by Mr N Swanney as a local resident. The Parish Councils of Southwick and North Bradley and Trowbridge Town Council support the application.
- The application is date stamped as received by Wiltshire Council as the Commons Registration Authority (CRA): Application no.2020/02TVG – 30 November 2020.

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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.

- 49 parties provide evidence in support of the application: 21 witnesses statements and 2 petitions.
- There is 1 objection to the application, made on behalf of the landowner the Right Honourable Mrs S Rhys.
- Wiltshire Council as the CRA must remain neutral and determine the application in a manner which is fair and reasonable to all parties.

Planning Trigger and Terminating Events

Growth and Infrastructure Act 2013 Section 16 – insertion of Section 15C into Commons Act 2006 - the removal of the right to apply to register land as a TVG where specified planning “trigger” events have occurred, e.g:

- An application for Planning Permission in relation to the land is first publicised
- A Draft Development Plan which identifies the land for potential development is published for consultation
- A Development Plan which identifies the land for potential development is adopted

Right to apply to register land as TVG is revived where corresponding planning “terminating” events have occurred, e.g:

- Planning Permission is refused and all means of challenge by legal proceedings in the UK are exhausted and the decision upheld
- A Draft Development Plan is withdrawn, or adopted
- A Development Plan is revoked, or a policy contained in the document which relates to the development of the land in question is superseded

List is not exhaustive and a full list of planning trigger and terminating events is included at Schedule 1A of the Commons Act 2006 (as amended)

Planning Trigger and Terminating Events

On receipt of the application to register land at Southwick Court Fields as a TVG, Wiltshire Council, as the CRA, consulted with the Planning Authorities regarding trigger and terminating events on the land:

The Planning Inspectorate

Wiltshire Council Development Control

Wiltshire Council Strategic Planning

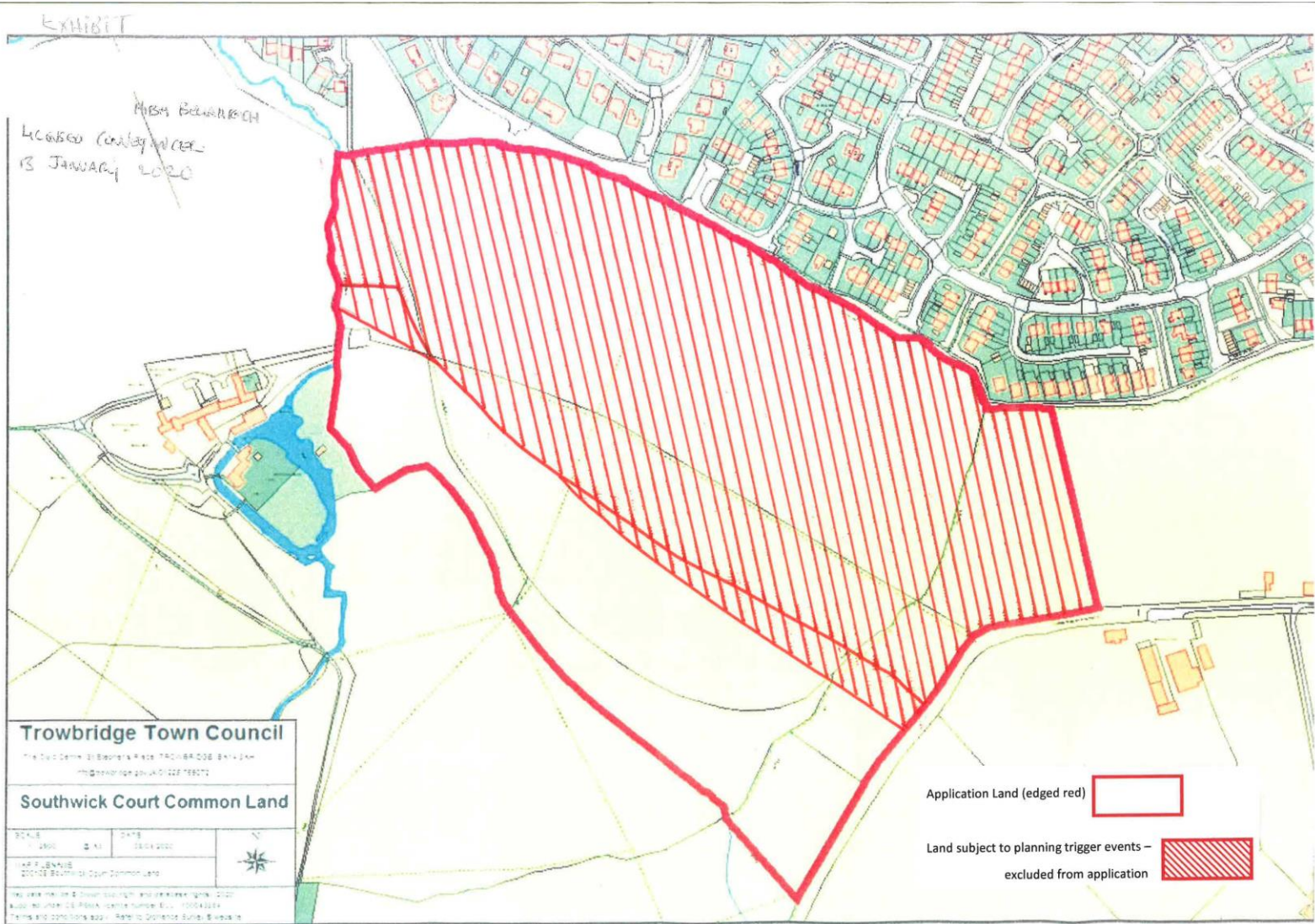
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Two planning trigger events, without corresponding terminating events, are present on part of the land which extinguish the right to apply to register that section of the land as a TVG:

- 1) Inclusion of the land in adopted Development Plan (Wiltshire Housing Sites Allocation Plan - WHSAP)
- 2) Planning Application no.20/00379/OUT for 180 houses and associated infrastructure

The CRA continues to determine the application as normal on that section of the application land not affected by planning trigger events.

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

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Locality

FORM 44 SECTION 6

BOUNDARY MAP OF GROVE WARD,
TROWBRIDGE - LOCALITY IN
RESPECT OF THIS APPLICATION

Exhibit B



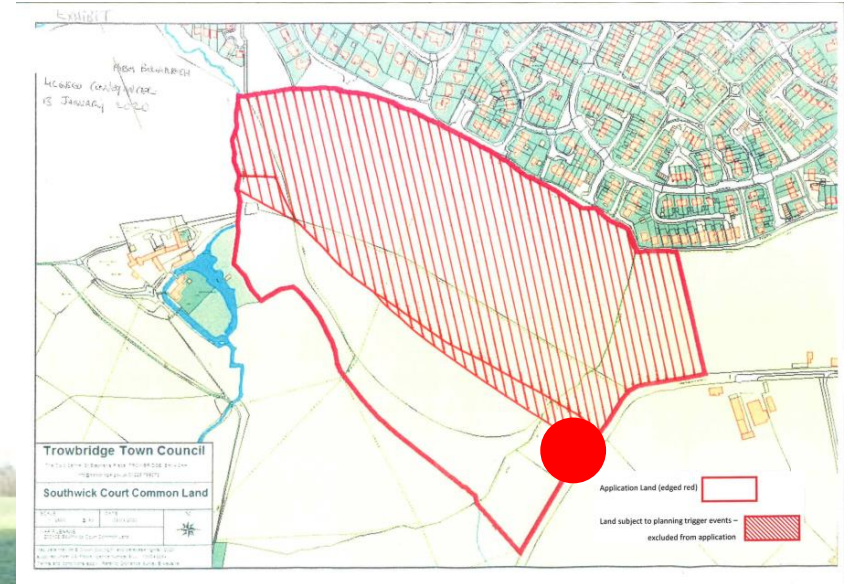
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The Applicant identifies Grove Ward, Trowbridge as the relevant “locality” in the application.

44 of 49 parties providing evidence are inhabitants of Grove Ward (where addresses are provided).

Application land looking generally north-west

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

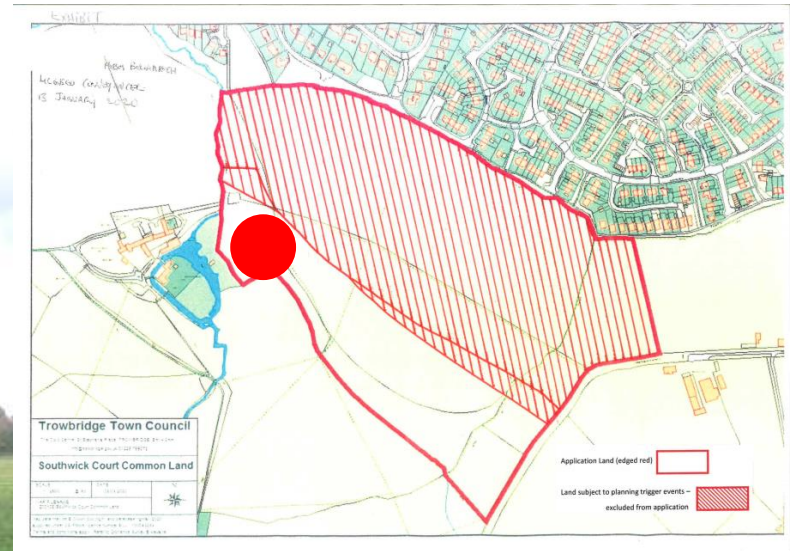
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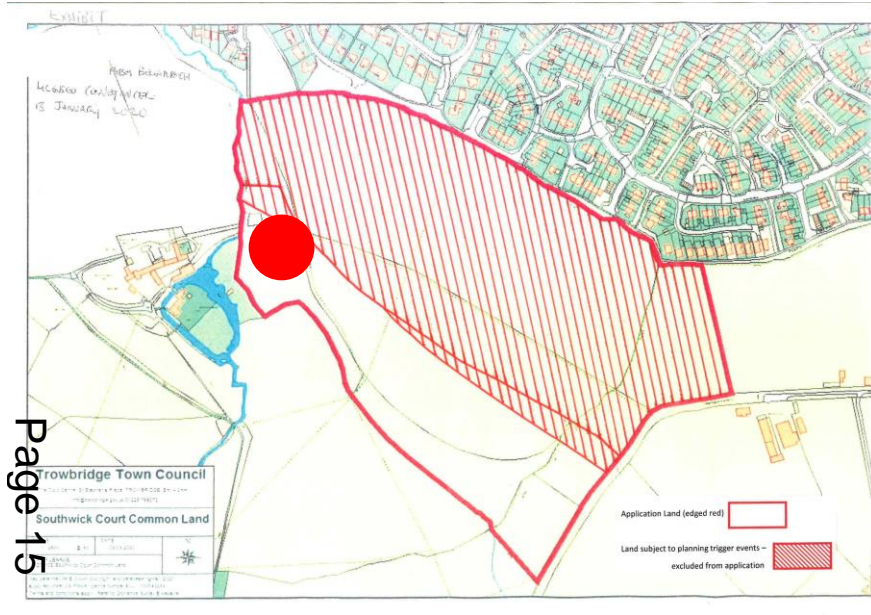
The application land looking north



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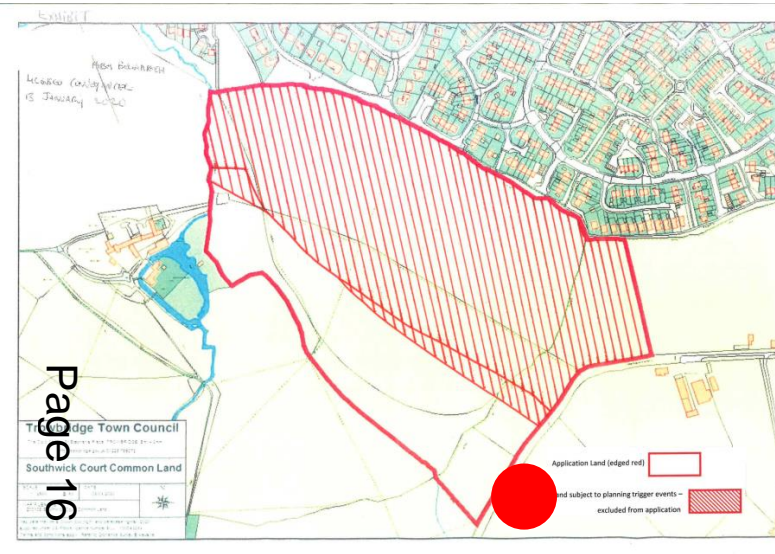
The application land looking generally east



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The application land looking generally north-west from Axe and Cleaver Lane (Bridleway no. 4 North Bradley) – Enclosed area included in the application land



Extent of Land to be Excluded

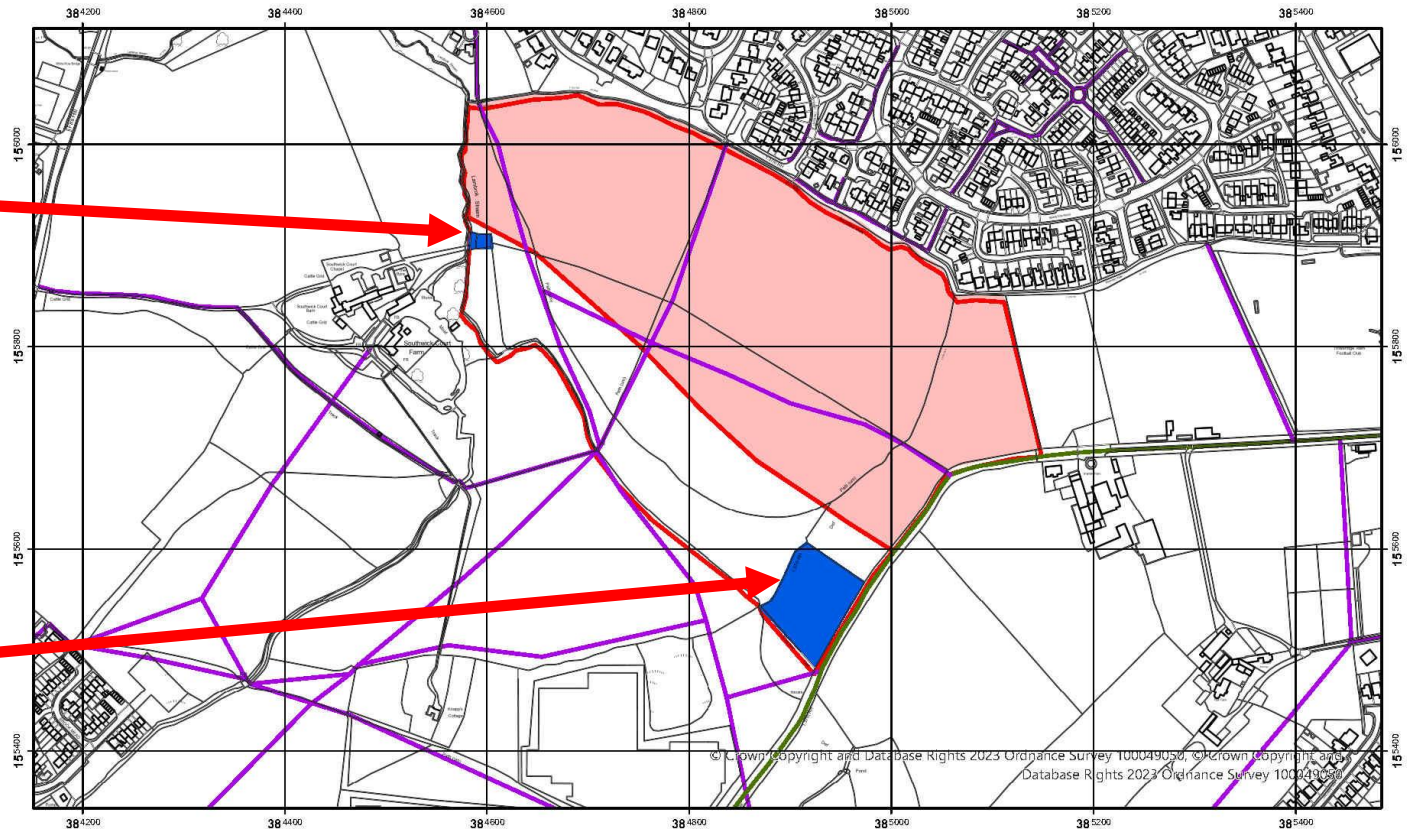
Officers' consider that if the application is successful, the two areas shaded blue should be excluded from registration as a TVG, as enclosed areas which are unlikely to have been accessible to local inhabitants:

Wiltshire Council

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

1) Area of
pennings
at north-
west
corner
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2) Enclosed
land at
south-east
corner



The Burden of Proof

- In order for an application to be successful each element of the legal test (Sub-section 15(2) of the Commons Act 2006), must be satisfied, where it is no trivial matter for a landowner to have land registered as a green.
- The burden of proof lies with the applicant.
- The CRA has no investigative powers.
- The standard of proof is the balance of probabilities.

The Evidence

Evidence is key and no other matters may be taken into account in the determination of the application.

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, with use continuing at the time of application, is disputed by the Objector, in particular:

Whether the main use of the land for walking and fruit picking is attributable to the exercise of a right of way along a defined route or qualifying wider use of the land for lawful sports and pastimes.

Non-Statutory Public Inquiry

- It is the duty of the CRA to determine the application in a fair and reasonable manner.
- It is open to the CRA to hold a non-statutory public inquiry where there is substantial dispute of fact, which is likely to be resolved by hearing from the witnesses, or the matter is of great local interest:
 - R (on the Application of Whitmey) v Church Commissioners*
[2004] EWCA Civ 951
- An Inspector appointed by the CRA to preside over the inquiry will hear evidence from all parties and produce a recommendation to the CRA, to assist in its determination of the application. There is no requirement for the CRA to follow the Inspectors recommendation, however, any alternative decision must be supported by clear evidential reasons.
- Oral evidence provided at a public inquiry may be given weight where it is subject to cross examination.

Officers' Recommendation

Where there is significant dispute of the evidence, to appoint an independent Inspector on behalf of the 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 TVG at Southwick Court Fields, in the parishes of Southwick and North Bradley, as soon as is reasonably practicable.

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.**
- **If the Committee uses its power to determine the application against the Officers recommendation to hold a non-statutory public inquiry, the Committee must give legally valid reasons for this determination, which must be supported by the evidence.**