

AGENDA

Meeting: Western Area Planning Committee
Place: Council Chamber - County Hall, Trowbridge BA14 8JN
Date: Wednesday 13 December 2017
Time: 3.00 pm

Please direct any enquiries on this Agenda to Jessica Croman, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718262 or email jessica.croman@wiltshire.gov.uk

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

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Membership:

Cllr Christopher Newbury (Chairman)	Cllr Peter Fuller
Cllr Jonathon Seed (Vice-Chairman)	Cllr Sarah Gibson
Cllr Phil Alford	Cllr Edward Kirk
Cllr Trevor Carbin	Cllr Stewart Palmen
Cllr Ernie Clark	Cllr Pip Ridout
Cllr Andrew Davis	

Substitutes:

Cllr David Halik	Cllr Jim Lynch
Cllr Deborah Halik	Cllr Steve Oldrieve
Cllr Russell Hawker	Cllr Roy While
Cllr George Jeans	Cllr Jerry Wickham
Cllr David Jenkins	Cllr Graham Wright
Cllr Gordon King	

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Public Participation

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

The full constitution can be found at [this link](#).

For assistance on these and other matters please contact the officer named above for details

AGENDA

Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 7 - 12*)

To approve and sign as a correct record the minutes of the meeting held on the 15th November 2017

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register by phone, email or in person no later than 2.50pm on the day of the meeting.

The rules on public participation in respect of planning applications are detailed in the Council's Planning Code of Good Practice. The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered.

Members of the public will have had the opportunity to make representations on the planning applications and to contact and lobby their local member and any other members of the planning committee prior to the meeting. Lobbying once the debate has started at the meeting is not permitted, including the circulation of new information, written or photographic which have not been verified by planning officers.

Questions

To receive any questions from members of the public or members of the Council

received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Wednesday 6 December 2018** in order to be guaranteed of a written response. In order to receive a verbal response questions must be submitted no later than 5pm on **Friday 8 December 2018**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Planning Appeals and Updates** (*Pages 13 - 44*)

To receive details of completed and pending appeals and other updates as appropriate.

7 **Commons Act 2006 - Sections 15(1) And (3) - Application to Register Land as a Town or Village Green - Great Lees Field, Semington** (*Pages 45 - 222*)

8 **Planning Applications**

To consider and determine the following planning applications.

9 **17/01158/FUL - St Pauls Church, Staverton** (*Pages 223 - 234*)

10 **17/04707/FUL - Land at Whaddon Lane, Hilperton** (*Pages 235 - 246*)

11 **17/08557/FUL - Princecroft School, Warminster** (*Pages 247 - 262*)

12 **17/04730/VAR - Land West of 198 Norrington Lane, Broughton Gifford** (*Pages 263 - 280*)

13 **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency.

Part II

Item during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

WESTERN AREA PLANNING COMMITTEE

MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 15 NOVEMBER 2017 AT COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Christopher Newbury (Chairman), Cllr Jonathon Seed (Vice-Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Peter Fuller, Cllr Sarah Gibson, Cllr Edward Kirk, Cllr Pip Ridout, Cllr David Jenkins (Substitute) and Cllr Jerry Wickham (Substitute)

Also Present:

Cllr Tony Jackson, Cllr Ben Anderson and Cllr Johnny Kidney

91 Apologies

Apologies for absence were received from Councillors Phil Alford and Stewart Palmen.

Councillor Alford was substituted by Councillor Jerry Wickham.

Councillor Palmen was substituted by Councillor David Jenkins.

92 Minutes of the Previous Meeting

Public participation

David Shaw spoke in objection to the minutes.

The minutes of the meeting held on 18 October 2017 were presented.

The Chairman referred to agenda supplement 2 which included a letter from the Codford Residence Group which proposed some amendments to the minutes.

The Chairman and Councillors Andrew Davis, Ernie Clark and David Jenkins would abstain from voting due to not being present at the meeting.

Resolved

To approve and sign the minutes of the 18 October 2017 as a true and

correct record, subject to the following amendments:

Under Public Participation of Minute 85 replace the words ‘on behalf of Codford Parish Council’ with ‘from Codford Parish Council’

In Paragraph 7 of Minute 85, insert ‘the nature of the legal advice was explained by Sarah Marshall, Senior Solicitor’ in place of ‘the nature of the legal advice was discussed’

In Paragraph 7 of Minute 85 remove ‘the weight of evidence submitted by all parties’.

93 **Declarations of Interest**

Councillor Jerry Wickham declared a non-pecuniary interest for item 7 noting that he had been approached in the early stages and gave advice on the appropriate route for the footpath to follow.

94 **Chairman's Announcements**

There were no Chairman’s Announcements.

The Chairman gave details of the exits to be used in the event of an emergency.

95 **Public Participation**

No questions had been received from councillors or members of the public.

The Chairman welcomed all present. He then explained the rules of public participation and the procedure to be followed at the meeting.

96 **Planning Appeals and Updates**

The Planning Appeals Update Report for 06/10/17 to 03/11/17 was received.

As a supplemental to the above report, Cllr Ernie Clark enquired about the reasons and implications of the recent quashing of an appeal dismissal pursuant to refused application 16/01633/OUT at land south of Devizes Road in Hilperton. In response, the Committee was informed that the appellant had successfully challenged the appeal decision issued on 7 August 2017 on the grounds that the heritage impacts reasons for dismissing the appeal had not been fully considered during the hearing dated 6 June. The appeal would now need to be re-opened in front of another inspector.

Resolved:

To note the Planning Appeals Update Report for 06/10/17 to 03/11/17.

97 **Bratton Path No. 42 and Parish of Edington Path No 36**

Public Participation

Frank Compton spoke in support of the order.

Ian Humphrey spoke in support of the order.

Michael Pierce spoke in support of the order.

Cllr Jeff Ligo on behalf of Bratton Parish Council spoke in support of the application.

Craig Harlow, Assistant Rights of Way Warden, presented the report, which recommended that order be forwarded to the Secretary of State with the recommendation the order be confirmed without modification. The history of the order and details of the route were provided, along with the extent of evidence.

Members of the Committee then had the opportunity to ask technical questions of the officers which focused on if the person who deposited the section 31, was the land owner at the time.

Members of the public then had the opportunity to address the Committee, as detailed above.

As local Member , Councillor Jerry Wickham spoke on the item noting that; Bratton had won the best kept village award in Wiltshire; it was a village where everyone knew what was happening in their village; the path was well known and established and that the evidence was compelling.

A motion to forward the order to the Secretary of State with a recommendation from Wiltshire Council that the order be confirmed without modification was moved by Councillor Jerry Wickham and seconded by Councillor Trevor Carbin, and at the conclusion of debate, it was,

Approved

To forward the order to the Secretary of State with a recommendation from Wiltshire Council that the order be confirmed without modification.

98 **Planning Applications**

The Committee considered the following applications:

98a 17/06276/FUL-Trowle House, Wingfield

Public Participation

Helen Bennion spoke in objection to the application.

Gillian Williams spoke in objection to the application.

Mathew Williams, agent, spoke in support of the application.

Claire Braunbarth spoke in support of the application.

Cllr Simon Taylor on behalf of Wingfield Parish Council spoke in objection to the application.

The senior planning officer, Steven Sims, introduced a report which recommended planning permission be granted for the change of use of Trowle House from a private dwelling (Class C3) and chiropractic and physiotherapy clinic (Use D1) to a mixed use comprising a private dwelling, a bed and breakfast establishment and a venue for small business, social and community events – with the events to take place within Trowle House itself and that no physical alterations were proposed and there was no requirement for listed building consent.

Key issues highlighted included the principle of development; the impact on the setting of the listed building; the impact on the Green Belt; the impact on the living conditions of neighbouring residents; the impact on the character of the area and highway safety and parking issues.

Members of the Committee then had the opportunity to ask technical questions of the officer which focused on: whether listed building consent was required; if WCS Core Policy 40 was the most appropriate policy to test this application against; and, how would the Council monitor and enforce against noise related nuisance.

Members of the public then had the opportunity to address the Committee, as detailed above.

The Chairman sought further clarification on the following issues raised during the public speaking: whether there is sufficient sewage capacity available to serve the development; how best to secure improvements to the site boundaries; and, whether there was a need for a traffic assessment. In response, the committee was advised that planning informatives could adequately address the sewage capacity and boundary treatment queries and it was confirmed that there was no requirement for a transport assessment to be undertaken for this proposed development.

At the start of the debate a proposal was moved by Councillor Peter Fuller and seconded by Councillor Trevor Carbin to move the officer recommendation but to amend condition 5 so as to exclude Christmas and Good Friday for events taking place on site and to add two additional informatives for sewage and for a boundary treatments.

During the debate it was noted that access to the site was confusing and that the applicants should add signage.

At the end of the debate it was;

Resolved

To unanimously approve subject to conditions.

- 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan scale 1:1250 (dwg no. 17023-01) and Proposed Site Plan scale 1:1250 (dwg no. 17023-02 rev A)

REASON: For the avoidance of doubt and in the interests of proper planning.

3. No part of the development hereby approved shall be brought into use until the 2.4m x 120m (measured to the nearest carriageway edge) sight lines for vehicles exiting the subject property at the A366 access point have been improved insofar as the land is within the control of the applicant. The approved visibility splays shall thereafter be permanently maintained and maintained free from obstruction.

REASON: In the interests of highway safety.

4. No part of the development hereby approved shall be brought into use until the parking areas shown on the approved plans (dwg no. 17023-02 rev A) have been laid out in accordance with the approved details. This area shall be maintained and remain available for this use at all times thereafter.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

5. The number of events shall be limited to no more than 25 in any calendar year and there shall be no more than one event held at a time and no more than 25 attendees per event. No events shall take place outside the hours of 08:00 hours and 18.00 hours Monday to Saturday (or Christmas Day and Easter Friday) and there shall be no amplified noise or music entertainment associated with these events.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

6. No loudspeaker or public address system shall be operated within the premises hereby approved or its curtilage.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

7. The development hereby permitted shall not be brought into use until details of the storage of refuse, including the exact details

confirming the location, size, as well as the means of enclosure, have been submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved refuse storage shall be complete and made available for use in accordance with the approved details prior to the use being brought into use.

REASON: In the interests of public health and safety.

INFORMATIVE TO APPLICANT:

1. The applicant is advised that this permission authorises a change of use only and does not authorise any works or alterations that may require planning permission/internal or external alterations, additions, or works, which may require a separate grant of Listed Building Consent.
2. The applicant is advised to contact Wessex Water on 01225 526333 (Waste Water) in relation to the provision of foul water on site.
3. The applicant should provide a plan detailing how missing sections of the boundary treatment would be repaired and improved.

99 **Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00 - 4.55 pm)

The Officer who has produced these minutes is Jessica Croman of Democratic Services, direct line 01225 718262, e-mail jessica.croman@wiltshire.gov.uk

Press enquiries to Communications, direct line (01225) 713114/713115

**Wiltshire Council
Western Area Planning Committee
13th December 2017**

Planning Appeals Received between 03/11/2017 and 01/12/2017

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
16/12279/OUT	Land South of Blind Lane, Southwick Trowbridge, Wiltshire BA14 9PJ	SOUTHWICK	Outline application for the development of up to 100no. residential dwellings, together with open space, sustainable urban drainage, vehicular and pedestrian access, landscaping and related infrastructure and engineering works. (Outline application relating to access)	DEL	Inquiry	Refuse	22/11/2017	No

Planning Appeals Decided between 03/11/2017 and 01/12/2017

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
16/12099/OUT	2 The Hatchery Deverill Road Sutton Veny Wiltshire, BA12 7BZ	LONGBRIDGE DEVERILL	Outline Application for the erection of 1 dwelling, with all matters reserved	DEL	Written Reps	Refuse	Dismissed	06/11/2017	None
16/12297/OUT	Thornhill Clay Street Crockerton Warminster BA12 8AF	LONGBRIDGE DEVERILL	Outline Application for the erection of two dwellings	DEL	Written Reps	Refuse	Dismissed	08/11/2017	None
17/00895/OUT	Land at Little Acre 74 Clay Street Crockerton Warminster BA12 8AF	LONGBRIDGE DEVERILL	Outline Application for erection of detached dwelling (all matters reserved)	DEL	Written Reps	Refuse	Allowed with Conditions	09/11/2017	None

***PLANNING APPEAL DECISION – 07/08/17, COSTS DECISION – 12/09/17, DRAFT CONSENT ORDER – 27/10/17**

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
16/01633/OUT	Land at The Grange Devizes Road Hilperton, Wiltshire BA14 7QY	HILPERTON	Erection of up to 26 dwellings - outline application: all matters reserved other than access	WAPC	Hearing	Approve with Conditions	Dismissed	07/08/2017	Partial Award of Costs to Appellant 12/09/2017

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Costs Decision

Hearing Held on 6 June 2017

Site visit made on 6 June 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 September 2017

Costs application in relation to Appeal Ref: APP/Y3940/W/17/3167012 Land at The Grange, Devizes Road, Hilperton, Wiltshire BA14 7QY

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Charlcombe Homes Ltd for a full award of costs against Wiltshire Council.
 - The hearing was in connection with an appeal against the refusal of outline planning permission for erection of 30 dwellings.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural Matters

2. As I clarified in my appeal decision, the description in the third bullet point of the above header is taken from the original planning application form and the parties agree and have confirmed that the proposal has been amended to relate to up-to 26 dwellings. I determined the appeal on that basis.
3. I have taken into account the Government's Planning Practice Guidance (PPG), issued on 6 March 2014, in reaching my decision.

The submissions for Charlcombe Homes Ltd

4. The contents of the applicant's appeal statement demonstrate that it is a gross factual inaccuracy of the Western Area Planning Committee Members to claim that there is a 5 year housing land supply (5 year HLS). The position about the Council not having such a supply is made clear both in the Planning Committee Report, and the contents of the most up to date Housing Land Supply Statement published in November 2016. The Councillors were all provided with a Briefing Note which made the position abundantly clear. To take a stance that is totally contrary to such a clear factual position is grossly unreasonable, and a clear inaccurate assertion.
5. The contents of the Planning Committee Report again make it abundantly clear there are no grounds whatsoever to refuse planning permission on the claimed issue of educational harm, with officers clearly pointing out to the Councillors that a contribution through CIL would be sufficient to meet the modest education needs of this development.

6. The Council has relied on vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis. The outcome is that the Council has prevented development which should clearly be permitted, having regard to the development plan, national policy and any other material considerations. This unreasonable stance by the Council to refuse such a positive application is even more acute given the Government's firm focus to boost significantly the supply of housing.
7. The applicant also made further verbal submissions at the Hearing adding, amongst other things, that the Committee made a decision based on incorrect facts. It is submitted that the subsequent adoption of the Chippenham Site Allocations DPD may or may not have vindicated the Councillors' decision but the Committee did not exercise its responsibility correctly in determining the application.

The response by the Council

8. The Council has not behaved unreasonably in a substantive manner as suggested. It is not uncommon for Council Committee Members to overturn a planning officer's recommendation, but the application was determined on its planning merits and took into account the up to date development plan, national policy and other material planning considerations.
9. As demonstrated in the Council's up to date published (March 2017) Housing Market Supply Statement, the North and West Housing Market Area can demonstrate a supply of deliverable housing in excess of the 5% buffer for this area. The fact that this document is now available to support the Council Committee Members' decision is material to the determination of this application and the costs case. As such it is considered that the Members' stance to take a contrary position to the case officer's recommendation was justifiable and correct in this instance. Whilst Members conclusions were reached at a slightly different path than the evidence that now stands for consideration, the updated survey does confirm that Members were correct in their decision making process.
10. In respect of educational harm, it is acknowledged that the Council has proactively identified appropriate solutions to the provision of both primary and secondary school education contributions in relation to this site. However, Committee Members quite rightly identified that the development proposal is contrary to the content of Core Policy 29 which requires adequate secondary school provision to be in place prior to the approval and delivery of additional housing on unallocated Greenfield sites. It was further identified that the lack of objection from the Council's education officer did not override the requirements of adopted policy.
11. The Wiltshire Core Strategy (the Core Strategy) identifies that the housing numbers for Trowbridge Town include Hilperton and it is therefore considered that taking the wording of Core Policy 29 to mean that Hilperton is included within Trowbridge Town then the application would be contrary to this policy until such time as the improved secondary school provision is in place in accordance with the strategic site at Ashton Park. To reach an alternative conclusion would undermine the wording of the policy and the strategic objectives and vision of the Core Strategy as a whole.

12. Therefore in policy terms the development of this site would be contrary to the provisions of Core Policies 1, 2 and 29 of the Core Strategy, which is the conclusion that the Members of the planning committee reasonably reached. The Council's Appeal Statement of Case clearly demonstrates why the Council refused planning permission and clearly substantiates each reason for refusal. As such, it is considered that the Council did not unreasonably refuse planning permission or behave in an unreasonable way.

Reasons

13. The PPG advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
14. In terms of the first issue relating to 5 year HLS, the substantive evidence at the time the Council made its decision pointed to the Council not being able to demonstrate such a supply. Despite this, the Council made its decision in respect of this issue based on an assumption that permissions since the base date of April 2016 for housing land supply figures could be used to show a 5 year HLS, contrary to officer advice.
15. The basis for considering there to be a 5 year HLS was therefore flawed. Nevertheless the appeal has drawn out that a 5 year HLS does exist, albeit that the evidence at the time of making the decision indicated otherwise. Furthermore, I found in my appeal decision that the proposal would be unacceptable for the reasons given. The Council's determination of the application has therefore not proven to have delayed an acceptable form of development of the site.
16. Notwithstanding the above, in respect of the second issue concerning provision for education needs relating to the proposed development, there is insufficient evidence to indicate that the Council took full and proper account of the proposed mitigation measures in the form of a financial contribution. Regardless of the wording of Core Policy 29, officers made it clear that there was a solution in this case to ensure the objectives of providing adequate education for the development in question could be met. In those circumstances it was unreasonable for the Council to refuse planning permission in respect of this issue.

Conclusion

17. For the above reasons, despite the shortcomings of the Council in its determination of the application, I find that it did not behave unreasonably in terms of the first issue relating to 5 year HLS. However, I find that it did behave unreasonably in terms of the second issue concerning education provision. As such, in respect of that second issue the appellant's costs in pursuing that aspect of the appeal were unnecessarily incurred and wasted. For this reason, and having regard to all other matters raised, a partial award of costs is justified.

Costs Order

18. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that

Wiltshire Council shall pay to Charlcombe Homes Ltd the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in respect of the second issue referred to above; such costs to be assessed in the Senior Courts Costs Office if not agreed.

19. The applicant is now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Andrew Dawe

INSPECTOR



Appeal Decision

Hearing Held on 6 June 2017

Site visit made on 6 June 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07 August 2017

Appeal Ref: APP/Y3940/W/17/3167012

Land at The Grange, Devizes Road, Hilperton, Wiltshire BA14 7QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Charlcombe Homes Ltd against the decision of Wiltshire Council.
 - The application Ref 16/01633/OUT, dated 17 February 2016, was refused by notice dated 15 December 2016.
 - The development proposed is erection of 30 dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Charlcombe Homes Ltd against Wiltshire Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The description in the fourth bullet point of the above header is taken from the original planning application form. However, the parties agree and have confirmed that the proposal has been amended to relate to up-to 26 dwellings. I have determined the appeal on that basis.
4. The application was submitted in outline, with the matters of access and layout for consideration. However, based on the submissions and as confirmed at the Hearing layout is now reserved for future consideration along with appearance, landscaping and scale. A site layout plan has been submitted for illustrative purposes. I have determined the appeal on that basis.
5. It is common ground between the appellant and Council that through appropriate layout, detailed design and use of materials the development would result in no harm to the setting of the heritage assets relating to the adjacent Hilperton Conservation Area (the CA). However, concern about the effect of the proposal on the character and appearance of the surrounding area is raised by the Hilperton Parish Council and neighbouring residents. In taking account of those representations, I consider that this matter should be addressed in this decision as a main issue.

Main Issues

6. The main issues are:

- i) whether or not the Council can demonstrate a five year supply of deliverable housing sites (5 year HLS);
- ii) whether or not the proposal would be in a suitable location for dwellings, having regard to development plan policies and the principles of sustainable development;
- iii) the effect of the proposed development on the character and appearance of the surrounding area and whether it would preserve or enhance the character or appearance of the adjacent CA;

Reasons

Housing land supply

7. Paragraph 47 of the National Planning Policy Framework (the Framework) sets out the need to boost significantly the supply of housing. It is disputed by the parties as to whether or not the Council can demonstrate a 5 year HLS and I have had regard to the submissions and discussions at the Hearing on this matter.
8. I have also had regard to a recent appeal decision that underwent scrutiny at an Inquiry, Ref APP/Y3940/W/16/3150514, dated 22 June 2017, relating to a mixed use proposal including up to 200 dwellings on land at Forest Farm, Chippenham, where it was found that the Council can demonstrate a 5 year HLS. The appellant has had the opportunity to comment on this decision. Being a particularly recent decision, this is therefore a very significant material consideration, more so than an older decision referred to by the appellant relating to a large proposed development at Langley Burrell, Ref APP/Y3940/W/15/3139183, where a lack of a 5 year HLS was recorded.
9. My colleague in respect of the Forest Farm decision considered the issue of housing delivery performance in relation to a ten year period from 2006 and also took account of the findings of the Core Strategy Inspector and of the Inspector concerning another appeal (the Shurnhold appeal Ref APP/Y3940/W/15/3132915). It was found that although in some years the annualised targets were not met, having regard to the considerable fluctuations in delivery, as well as the changing housing requirements over the past ten years, there has not been a persistent record of under-delivery. The evidence submitted in respect of the current appeal does not persuade me otherwise, such that a 5% buffer and use of the method whereby housing shortfall should be made up over the remainder of the plan period (the Liverpool Methodology) would be appropriate, as my colleague also found to be the case.
10. Notwithstanding the above findings, there does however also remain dispute between the parties relating to the deliverability of development on specific sites elsewhere. Based on the 5% buffer and use of the Liverpool Methodology, the figures presented at the Hearing by the Council and appellant were for a surplus of 209 dwellings and a deficit of 355 respectively. These figures relate to 5.16 and 4.7 years supply respectively.

11. I have had regard to those other sites referred to in the submissions and as discussed at the Hearing. In respect of Rawlings Green, there are currently unresolved land ownership issues. However, I have had regard to the Forest Farm decision whereby it was found that the Council could exercise compulsory purchase powers and that other matters, including provision of infrastructure, could be achieved so as to enable 180 dwellings to be built in the next five years. I note that the Council, in respect of figures presented at the Hearing consider this now to be 100 dwellings. However, even with that figure there would be a difference of 80 dwellings from the appellant's figure.
12. In respect of South West Chippenham, concern was raised in the Forest Farm appeal about the delivery in the first year but that 30 units by April 2018 is a possibility. In light of more recent communication from the developer, Crest Nicholson, this is now more likely to be 20. I have not been informed that a reserved matters application has yet been submitted. Nevertheless, that initial fairly low projected delivery would reflect that situation. Furthermore, I have not received sufficient substantive evidence to suggest that my colleague's findings in respect of future years would not be achievable, which reflected the Council's projections. As such, the 5 year supply would be likely to amount to 520 dwellings, a difference of 110 from the appellant's figures.
13. In respect of Ashton Park, my colleague found that the Council's projection of 350 dwellings need not be amended, taking account of the effect of the proposal on bats. However, I have also had regard to fairly recent correspondence from Persimmon Homes suggesting a delay amounting to a reduction in the 5 year provision to just 50. Like the finding of my colleague, I have received no substantive evidence to indicate a lack of viability for this site and so consider the 50 projection to be reasonable against the zero figure put forward by the appellant.
14. In respect of Foundary Lane, it was found in the Forest Farm appeal that, despite contamination issues and those raised about potential delay due to the manner in which the site owner chooses to develop the site, the projected supply should not be reduced from the Council's 250 figure. Furthermore, in respect of RAF Yatesbury, despite various complexities associated with the development of the site, my colleague found that over the 5 year period it would be feasible for 46 dwellings to be delivered. With regard to Backbridge Farm, my colleague found that the delivery should be reduced by 50 which reflects the appellant's figure in this respect. In all three of these cases, I have received insufficient substantive evidence to convince me to find differently from my colleague.
15. Therefore, even without considering the North Chippenham site, which was not at issue at the Forest Farm appeal, I find that there would be a supply of at least 414 more dwellings over 5 years than the figures submitted by the appellant. That would provide a surplus of 59. As such, I find that the Council is able to demonstrate a 5 year HLS.

Suitability of location for dwellings

16. Core Policy 1 (CP1) of the Wiltshire Core Strategy (the Core Strategy) sets out the settlement strategy which identifies the settlements where sustainable development will take place. Hilperton is designated as a Large Village in respect of this policy, where development will be limited, amongst other things, to that needed to help meet the housing needs of settlements.

17. Core Policy 2 (CP2) qualifies specifically where development would be considered acceptable to meet the minimum housing requirement in Wiltshire as whole and in the North & West Wiltshire Housing Market Area (the NWWHMA). Outside of the defined limits of development, as is the case with the appeal site, other than in the case of proposals relating to other exception policies within the Core Strategy, development will not be permitted. The proposal does not relate to any of those exception policies and so is not in accordance with policies CP1 and CP2 of the Core Strategy.
18. I have had regard to the appeal decision Ref APP/Y3940/A/14/2221954 relating to the adjacent site to the east for the erection of 15 dwellings which was allowed and remains extant, albeit not yet implemented. I agree with my colleague who in determining that appeal considered that prospective residents would have good access to a range of fairly local services and facilities to serve day to day needs such as shops, primary school and leisure facilities including play areas. Bus services running in the vicinity would also enable access to further facilities, services and employment destinations in Trowbridge, including secondary schools. It is unlikely that demand for those bus services would exceed their capacity as a result of the proposed relatively small number of additional dwellings. The appeal site, being immediately adjacent to that other appeal site, would therefore afford similar levels of accessibility for its residents.
19. I have also had regard to Core Policy 29 (CP29) of the Core Strategy which relates to the spatial strategy for the Trowbridge Community Area and requires development to be in accordance with the settlement strategy set out in policy CP1. Notwithstanding that the proposal would not accord with policies CP1 and CP2, policy CP29, amongst other things, states that greenfield housing sites in addition to the strategic sites will only be permitted once improved secondary school provision has been delivered as a result of the Ashton Park urban extension. That improved provision remains to be completed. Nevertheless, the appellant has submitted a Unilateral Undertaking planning obligation which in respect of this issue makes provision for an appropriate financial contribution towards both secondary and primary education, to mitigate the additional demand from occupiers of the proposed development. Together with my finding above relating to the accessibility to such facilities, the proposal would make adequate provision in respect of education.
20. The appellant highlights that the site has been evaluated positively in the past through the Strategic Housing Land Availability Assessment process. However I have received no substantive evidence to demonstrate any certainty that the site will be included within any future amended settlement boundary for Hilperton.
21. I therefore conclude on this issue that the proposal would not accord with policies CP1 and CP2 in terms of its location outside of the defined limits of development. It would nevertheless be in a sustainable location in respect of those identified aspects relating to accessibility and would make adequate provision for education.

Character/appearance

22. The appeal site is located adjacent to the core of the village of Hilperton which is contained within the CA. There are dwellings fronting onto Devizes Road opposite, within the CA to the west, and in a modern estate to the south.

There is also the extant planning permission for 15 dwellings on the land to the east of the site. Despite that surrounding context, the site maintains a largely undeveloped gap on the southern side of Devizes Road. That is emphasised by the highly vegetated front boundary, the significant depth of paddock land extending from the road, and further vegetation beyond adjacent to the southern site boundary. Although there is a modern housing estate to the south of the site, it is set well away from Devizes Road, and well screened such that it does not deflect from the semi-rural nature of the site.

23. In this regard, and whilst taking account of the submitted Landscape and Visual Appraisal, I agree with my colleague who, in determining the appeal for the adjacent 15 dwelling proposal, found there to be a distinct character and apparent separateness of the village core, giving it a separate identity to the suburbs of Trowbridge. In that other appeal case, the proposal's impact on that distinct character was considered to weigh significantly against it. The historic nature of that core, containing a number of attractive traditional buildings, is a key contributory factor to its distinctiveness. The presence of dwellings continuing out from the core on the northern side of the road weakens that separateness to some degree. The setting to the village core and CA provided by the retained gap on the southern side is therefore all the more important in terms of preserving that distinctiveness.
24. Although the extant appeal scheme would reduce the extent of the gap, it would still be separated from the core of the village by the significant width of the appeal site which, in its existing form, would therefore maintain a buffer. The proposed development would remove that buffer, to the detriment of the existing separate identity of the village core. In doing so, it would therefore have a significantly more noticeable impact in that respect than the extant proposal which would only partially close the gap and also still be set away from that core.
25. A planting strip, comprising dense native species, is proposed along the road frontage to the site which would be likely to provide some visual screening of the proposed dwellings. However, it is inevitable that those dwellings would still be seen to varying degrees through or over that planting from the road. This would be particularly so were the dwellings sited as close to that site boundary as shown on the submitted illustrative proposed site layout plan. Any such visibility would also be more so in the winter with leaves shed from any non-evergreen species. Furthermore, any new planting would take some time to reach maturity and its full screening effectiveness. It could also not be relied upon in the longer term for screening in terms of its ongoing health and survival. The development would also be clearly seen via the site access.
26. Having regard to paragraphs 132 and 134 of the Framework, harm to the significance of the CA would be less than substantial due to the relatively small scale of the development in relation to the village as a whole. That harm needs to be weighed against any public benefits of the proposal.
27. The proposal would have the benefit of providing additional dwellings to the supply of housing in the area in a sustainable location, albeit outside of the defined limits of development and not a particularly large number. I also note that policy CP2 of the Core Strategy is not expressed in terms of a maximum number of dwellings, and the submissions highlight a remaining requirement for housing in the Trowbridge Area. Nevertheless, as the Council is able to

demonstrate a 5 year HLS, the weight that I attach to the addition of up-to 26 dwellings is not substantial. I note that the Council has an identified need for affordable housing. This proposal would contribute towards that in respect of a policy compliant minimum provision of 30% of the on-site dwellings, secured through a planning obligation. I have applied some additional weight to that social benefit. It is also likely that there would be some local economic and social benefits arising from the proposal in terms of employment relating to its construction and from future residents supporting village services and facilities. Nevertheless, I find that such benefits would not outweigh that less than substantial harm to the significance of the CA.

28. For the above reasons, I conclude on this issue that the proposed development would cause unacceptable harm to the character and appearance of the surrounding area and fail to preserve the character and appearance of the adjacent CA. As such, in respect of this issue, it would be contrary to Core Policies 51, 57 and 58 of the Core Strategy which together, in respect of this issue, require development to protect, conserve and where possible enhance landscape character and the historic environment, and to enhance local distinctiveness. It would also be contrary to the Framework which in paragraph 17 states that planning should, amongst other things, take account of the different roles and character of different areas and to section 12 relating to conserving and enhancing the historic environment.

Other matters

29. Two Unilateral Undertaking planning obligations (UUs) have been submitted by the appellant during the appeal process in relation to securing a financial contribution towards measures to mitigate any potential adverse effect of the proposal on the integrity of the Bath and Bradford on Avon Bats Special Area of Conservation (SAC). This would relate to the Trowbridge Recreation Strategy to avoid or offset a significant increase in the total number of visits to the SAC. However such a Strategy remains to be prepared and adopted. As such, it would ordinarily be necessary for me to undertake an Appropriate Assessment (AA) under the Habitats Regulations in order to determine whether the proposal would have a significant effect on the SAC. However, as I am dismissing the appeal for other reasons, it is unnecessary for me to undertake the AA in this case or to consider the UUs any further.

Conclusion

30. The Framework sets out that there should be a presumption in favour of sustainable development and indicates that to achieve that, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
31. Under paragraph 49 of the Framework, housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year HLS. In this case, I have found that the Council can demonstrate a 5 year HLS and so those policies can be considered up-to-date.
32. I note that the adjacent extant appeal scheme was allowed despite being outside of the settlement limits of Hilperton and Trowbridge and my colleague's concerns relating to the effect on the character and appearance of the area.

However, that decision was made in the context of relevant policies for the supply of housing not being considered up-to-date in light of the Council not being able to demonstrate a 5 year HLS at that time. I have also found in this case that the proposal would have a significantly more noticeable impact than the extant proposal on the character and appearance of the surrounding area and would fail to preserve the character and appearance of the CA. The circumstances are therefore materially different and I have determined this appeal on its merits.

33. In considering this appeal on its merits, I have found that the proposed development would cause unacceptable harm to the character and appearance of the surrounding area and fail to preserve the character and appearance of the CA, conflicting with the relevant Core Strategy policies. It would also fail to comply with the Council's settlement and delivery strategy policies CP1 and CP2. I have found that there would be the benefits of adding up-to 26 dwellings to local housing supply, including some needed affordable housing, in a sustainable location in terms of accessibility to services and facilities. There would also be the likely economic and social benefits of construction related employment and future support of village services and facilities by prospective residents. However, these benefits would not be sufficient to outweigh the conflicts with the development plan and it would therefore not be a sustainable form of development.
34. For the above reasons, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

Andrew Dawe

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alastair Gibson	Charlcombe Homes Ltd
Christopher Dance	LPC Ltd
Desmond Dunlop	D2 Planning
Laura Wilkinson	D2 Planning
Karen Howe	Clarke Willmott
Ceri Griffiths	Nicholas Pearson Associates
Richard Wagstaffe	Chartered Architect

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan James	Case Officer
Louisa Kilgallan	Senior Ecologist
Mark Henderson	Five Year Housing Land Supply Officer

INTERESTED PERSONS:

Ernie Clark	Wiltshire Councillor
Francis Morland	
John Jones	Local Resident
Tina Jones	Local Resident
Mr A Austin	Local Resident
Alastair Page	A Landowner
Lucie Castleman	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING:

1. Summary of figures relating to five year housing land supply including differences in figures between the Council and appellant concerning sites with disputed projected completions and figures for different buffers and approaches to addressing shortfall.
2. Documents, including various email communications, submitted by the Council relating to the issue of deliverability of housing development sites.

IN THE HIGH COURT OF JUSTICE
PLANNING COURT
BETWEEN:

CO/ /

CHARLCOMBE HOMES LIMITED

CLAIMANT

AND

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

DEFENDANT

AND

WILTSHIRE COUNCIL

INTERESTED PARTY

GROUNDS OF CLAIM

1. Charlcombe Homes Limited ("**the Claimant**") seeks an order under section 288(5)(b) of the Town and Country Planning Act 1990 quashing the decision of Inspector Andrew Dawe ("**the Inspector**") dated 7 August 2017 ("**the decision**", document 5 in the bundle) to dismiss its appeal against the refusal of outline permission for a housing development.

Summary

2. The Claimant challenges the validity of the decision on the ground that it was not given a fair opportunity of presenting evidence and argument on the single decisive point upon which the Inspector dismissed its appeal. The Inspector dismissed the appeal because he found at paragraphs 22-27 of the decision letter that the "significant width" of the whole site afforded an "undeveloped gap" which preserved the "apparent separateness" of Hilperton's village core and that closing that gap would harm the setting of the village core. The circumstances in which this decision was reached were unfair in that:

- a. The Claimant and the Interested Party, Wiltshire Council, agreed in a statement of common ground before the hearing that the proposed development caused no harm to heritage assets.
- b. The Inspector did not cite harm to heritage assets as one of the (statutorily required) "main issues" for consideration in his Agenda circulated at the start of the hearing.
- c. During the hearing, the Inspector did not give any indication that any issue related to impact upon the conservation area had or would become a "main issue". He did not alert the Claimant to the possibility that it could become a decisive issue on the appeal.
- d. He did not invite evidence or submissions from the Claimant on the impact of the development on the Conservation Area during the hearing.
- e. After the hearing, the Inspector sought additional submissions on a distinct issue unrelated to impact on the conservation area. He gave no indication that impact on the conservation area had become a "main issue" in his thinking. He did not take that opportunity to ask for any further evidence or submissions on the point.
- f. In his decision letter, he supported the Claimant's case on all issues which had been identified at the hearing as main issues. However, (at paragraph 5) he indicated for the first time that he would treat the impact of the proposal on the character and appearance of the surrounding area as a "main issue" in the decision. He proceeded to dismiss the appeal solely on that ground.
- g. The Claimant was substantially prejudiced by the Inspector's course of action in that it was deprived of a "fair crack of the whip" addressing the Inspector's concerns about maintaining "apparent separateness". The Claimant held a prospect of persuading the Inspector that there was no harm to the conservation area given that that had been the view of the local planning authority's officer. And, for example, would have wished to have explained to the Inspector the effect of the section 106 agreement in requiring substantial planting and management, an agreement which the Inspector did not consider in his decision letter.

Factual Background

3. The factual background is set out in the witness statement of Chris Dance prepared in connection with this claim.
4. Charlcombe Homes Limited has been seeking planning permission for the development of a site at The Grange, Devizes Road, Hilperton in Wiltshire since 2014. The Claimant applied for outline planning permission on 17 February 2016 for the development of land shown on the location plan at document 1 for up to 30 dwellings. At that stage both access and layout were to be determined. During the course of negotiations with Wiltshire Council the Interested Party, the application was modified to provide for the development of up to 26 dwellings and for access only to be determined at the outline stage. A revised illustrative layout plan was submitted (document 7) and revisions made to the design and access statement (document 9). A Heritage Impact Assessment (document 10) was also submitted to consider the effects of the proposed development on The Grange, a building of local significance, (though not listed), and on the Hilperton Conservation Area. The site itself lies outside the Conservation Area but its western boundary abuts the southern part of the Conservation Area.
5. The Heritage Impact Assessment concluded at Section 5.1 on page 21 that the design and layout of the proposed development would not have a detrimental impact on the Conservation Area. At page 17 the Heritage Impact Assessment concluded that the boundary treatments, including walls, buildings and mature hedgerows would provide buffers and obscure the site from further afield therefore leading to a degree of protection to the setting of the Conservation Area. The Heritage Impact Assessment concluded at paragraph 5.1 that "the proposed development will not impact in any harmful manner upon the setting of the adjacent buildings, most notably that of the Grange".
6. This view was supported by Wiltshire Council's Conservation Officer. Document 11 sets out the Conservation Officer's initial and subsequent comments following the

submission of the Heritage Impact Assessment and revised illustrative layout (document 7) in which he stated "...if the detailed scheme delivers the claimed attributes in the Heritage Statement then there should be no issue".

7. The application was reported to the Planning Committee on 14 December 2016 with a recommendation for approval (see document 14). Heritage assets were dealt with at paragraph 9.5 of that report with no harmful impact identified.
8. In the event, the application was refused by the committee on grounds which did not relate to the effect of the development on the Conservation Area (document 15), rather on the basis that there was an up-to-date five-year housing supply; the site was outside the extant village policy limits for Hilperton and because improved secondary school provision was not in place.
9. The appeal against the refusal of planning permission was submitted on 12 January 2017. Although the Appellant had requested that the matter be dealt with by written representations, the LPA requested that the matter be dealt with by of a hearing. PINS decided that a hearing should be held because of the dispute over five-year land supply which at that stage was identified as the main issue.
10. A Statement of Common Ground was submitted to the planning inspectorate in advance of the hearing (document 21). The matters of common agreement are set out at paragraph 5.1 of that document. The first bullet point states that through appropriate layout, detailed design and use of materials the development would result in no harm to the setting of the heritage assets. The matters of specific disagreement are set out at paragraph 6.1. These all relate to the question of whether or not a five-year housing land supply existed.
11. The hearing took place on 6 June 2017 and at the start of the hearing the Inspector presented an Agenda of the items that he wished to discuss (document 4). In the Agenda the Inspector identified, at the start of the hearing (as he is required to do by rule 11(4) of the statutory procedure rules governing the process) three "main issues", namely, the issue of whether there was a five-year housing supply; whether or not the proposal was in a suitable location having regard to sustainability

considerations; and the effect of the proposal on secondary school provision. The Inspector ultimately found in favour of the Appellant on each of those three main issues he had identified.

12. The bulk of the debate at the hearing was taken up with the matter of whether or not the Council could substantiate a five-year housing land supply. The Inspector did not raise the effect of the Development upon the Hilperton Conservation Area as a specific issue for discussion.
13. One issue raised by the Inspector was whether the proposed development was in a suitable location having regard to the principles of sustainable development. The Inspector did not raise any question of the impact on the conservation area in the context of this second "main issue".
14. The hearing was also attended by local residents, Mr and Mrs Jones and Mr Austin from Ashton Road and Ms Castleman from Devizes Road. Towards the end the hearing the residents addressed the Inspector on particular issues. One of the residents made a comment about the impact on the Conservation Area, but there was no substantive discussion or debate on this point and the Inspector did not invite any.
15. Throughout the hearing not once did the Inspector invite any further exploration of the Conservation Area impact issue, and at no time did he indicate that he thought this was an issue which should be addressed further. He gave no indication that it would be promoted to a "main issue" in the decision letter. He did not raise for comment his notion that the whole site acted as a buffer zone between the village core and the suburbs of Trowbridge (the issue on which he dismissed the appeal).
16. Following the hearing, correspondence was received from the Planning Inspectorate dated 27th June related to the five-year housing land supply issue and the Inspector had requested comments from both parties. The Appellant prepared a response dated 3rd July (document 10). The Inspector did not use this post-hearing opportunity to invite comment on the issue of whether, or the extent to which, the erosion of the "gap" would harm the conservation area.

17. Neither evidence nor argument on the issue of impact of apparent erosion of a "gap" on the conservation area were presented by the Appellant in or after the hearing. The reasons for this are clear from the sequence as set out in the evidence of Mr Dance:

- a. In the Statement of Common Ground agreed before the hearing the Council and the Appellant agreed that it was common ground the development caused no harm;
- b. When the Inspector identified, pursuant to rule 11 (4) of the Hearing Procedure Rules, the main issues in his Agenda at the start of the hearing, he did not identify impact on the conservation area as one of them;
- c. The Inspector did not invite comment, evidence or debate on the point from the Appellant in the hearing;
- d. The Inspector did not raise this as a main issue or a matter for further submissions after the close of the hearing.

18. Mr Dance says that he did not understand the issue to be a main issue upon which the Inspector might conceivably dismiss the appeal. He was entitled to form that opinion and entitled, if not professionally obliged, to focus his evidence and comments on the issues which had in fact been identified by the Inspector as the main issues at the hearing.

19. In his decision letter, however, the Inspector found (for the first time) that the effect of the development on heritage assets should be treated as a "main issue" notwithstanding that it was not in issue between the Council and the Appellant (see paragraph 5). He proceeded to dismiss the appeal on this issue: the reason he gave being his view that the development would infill a gap which acted as a whole as a "buffer" to the existing village core, to the detriment of its setting. He found the harm caused by this would be "less than substantial" but found that harm would not be outweighed by public benefits of the proposal and applying paragraphs 132 and 134 of the NPPF he dismissed the appeal.

20. In a separate decision, the Inspector made a partial award of costs in favour of the Appellant.

Law

Planning Appeals- Hearing Procedure Rules

21. The Town and Country Planning (Hearings Procedure) (England) Rules 2000/1626 (as amended) provide for the provision of a statement of common ground in connection with a hearing under rule 6A.

22. Rule 11 provides, so far as relevant (emphasis supplied):

(4) **At the start of the hearing** the inspector shall identify what are, in his opinion, **the main issues** to be considered at the hearing and any matters on which he requires further explanation from any person entitled or permitted to appear.

(5) Nothing in paragraph (4) shall preclude any person entitled or permitted to appear from referring to issues which they consider relevant to the consideration of the appeal but which were not issues identified by the inspector pursuant to that paragraph

(9) The inspector may allow any person to alter or add to a [full statement of case] ¹ received under rule 6... so far as may be necessary for the purposes of the hearing; but he shall (if necessary by adjourning the hearing) give every other person entitled to appear who is appearing at the hearing an adequate opportunity of considering any fresh matter or document.

23. Rule 13 of the Hearing Rules (which applies to so called "transferred" appeals meaning those determined by Inspectors rather than the Secretary of State) and provides:

(3) If, after the close of the hearing, an inspector proposes to take into consideration any new evidence or any new matter of fact (not being a matter of government policy) which was not raised at the hearing and which he considers to be material to his decision, he shall not come to a decision without first—

(a) notifying in writing persons entitled to appear at the hearing who appeared at it of the matter in question; and

(b) affording them an opportunity of making written representations to him or of asking for the re-opening of the hearing, and they shall ensure that such written

representations or request to re-open the hearing are received by the Secretary of State within 3 weeks of the date of the notification.

(4) An inspector may, as he thinks fit, cause a hearing to be re-opened and he shall do so if asked by the appellant or the local planning authority in the circumstances and within the period mentioned in paragraph (3); and where a hearing is re-opened—

(a) the inspector shall send to the persons entitled to appear at the hearing who appeared at it a written statement of the matters with respect to which further evidence is invited; and

(b) paragraphs (2) to (6) of rule 7 shall apply as if the references to a hearing were references to a re-opened hearing.

Fairmount Investments

24. These rules reflect principles of fairness and natural justice. In *Fairmount Investments Ltd v Secretary of State for the Environment* [1976] 1 W.L.R. 1255 (UL) following the conclusion of the hearing of evidence, a planning Inspector made his decision based on his own observations at a site visit but gave no opportunity to parties to comment. Viscount Dilhorne held at 1260:

“In my opinion, there is great substance in the respondent’s [Fairmount’s] complaints. Just as it would have been contrary to natural justice if the Secretary of State in making his decision had taken into account evidence received by him after an inquiry without an objector having an opportunity to deal with it, so here in my view it was contrary to natural justice for his decision to confirm the order to be based to a very considerable extent on an opinion which investigation might have been shown to be erroneous”

At 1266, Lord Russel of Killowen identified the principle that a party should have a “fair crack of the whip” and that the Inspector should have invited parties to make further representations on the matter that had come to light at the site visit in that case.

Edward Ware

25. Applying the principles established in *Fairmount*, the Court of Appeal in *Edward Ware Homes v SSTLGR* [2004] 1 P. & C.R. 6 quashed an Inspector’s decision for unfairness. The Court of Appeal held that the purpose of the statutory rules requiring a statement of common ground “is clearly to limit the scope of the Inquiry, and to indicate matters on which (subject to any direction to the contrary from the Inspector) evidence will not be required”. As a result of his site visit the Inspector

formed a view that dilapidated buildings on the site would not be reused (contrary to the position agreed), such that he disagreed with the parties' common ground on the potential "fall back" level of traffic. The Court of Appeal held, allowing the appeal and remitting the case, that the interests of procedural fairness required the inspector to withhold forming his own conclusion on those issues without giving the parties an opportunity to make submissions and asking the experts to assist. The failure to do so meant that the Appellant had been unfairly prevented from addressing the issues. The Court of Appeal's findings as to the unfairness of the procedure were made in the context of r.18(3) of the *Inquiries* procedure rules (which mirrors rule 13 of the Hearing Procedure Rules requiring an Inspector to revert to the parties on any new evidence or matter of fact after the hearing).

26. The Court found for the Appellant in that case applying *Castleford Homes v Secretary of State for the Environment* [2001] P.L.C.R. 29 in which Ouseley J. said at para.[65]—

"If an Inspector is to take a line which has not been explored ... fairness means that an Inspector give the party an opportunity to deal with it. He need not do so where the party ought reasonably to have been aware on the material and arguments presented at the Inquiry that a particular point could not be ignored or that a particular aspect needed to be addressed."

Poole

27. *R. (on the application of Poole) v Secretary of State for Communities and Local Government and Cannock Chase DC* [2008] EWHC 676 (Admin), (Sullivan J) an Inspector permitted the local authority's witness to give evidence by reading a document (which was not a proof of evidence nor a summary) which had not been copied to anyone else in the inquiry. When it became clear that the witness was departing from the implications of the statement of common ground, the inspector refused to grant an adjournment to enable the appellant to call expert arboricultural evidence. Until that point, the appellant had not called arboricultural evidence because it was not relevant to the Council's sole reason for refusal. The inspector proceeded to refuse the appeal solely on arboricultural grounds despite the fact the Council's witness had resiled from that point in cross-examination. Sullivan J. quashed the decision. He held that the inspector was not bound by the statement of common ground but could form her own view subject only to giving the appellant a

fair opportunity to comment. The importance of the statement of common ground was emphasised by Sullivan J. He held at paragraph 39:

39. I accept Mr Auburn's submissions, firstly, that the Inspector was entitled to use her own planning expertise and form her own judgments using that expertise: see *Westminster Renslade Ltd v Secretary of State for the Environment* [1983] J.P.L. 454 at p.455; and secondly that the Inspector was not bound by the statement and was entitled to form her own view subject to giving the applicant a fair opportunity to comment: see *Wigan MBC v the Secretary of State for the Environment* [2002] J.P.L. 417 at p.40; [2001] EWCA Admin 587.

40. However, it is most important when deciding whether the parties at an inquiry have had a fair opportunity to comment on an issue raised by an Inspector of his or her own motion, and whether they could reasonably have anticipated that an issue had to be addressed because it might be raised by an Inspector, **to bear in mind the highly focused nature of the modern public inquiry where the whole emphasis of the Rules and procedural guidance contained in Circulars is to encourage the parties to focus their evidence and submissions on those matters that are in dispute...**

43. The older authorities dealing with fairness in the context of public inquiries **should now be read with the modern inquiry procedure rules in mind**, where the parties are now not expected to cover every conceivable eventuality in their proofs of evidence in circumstances where, as used to be the case, the procedural rules did not require the issues in dispute to be identified, or sufficiently identified, well in advance of the inquiry.

44 **I accept that an Inspector is bound to take into consideration arguments raised by third parties, but the imperative in the Rules requiring the principal parties to focus their attention on the issues that are in dispute would be wholly frustrated if Appellants and local planning authorities were unable to place any degree of reliance on matters that had been apparently resolved in a statement of agreed facts.** It would be entirely unsatisfactory if, having agreed such matters, the principal parties to an inquiry would still have to prepare their evidence on the basis that the Inspector might wish to pursue a particular line of reasoning that departed from the agreed statement. While of course it is open to an Inspector to do so, whether of his or her own motion or in response to third party representations, if there is not to be a return to the "bad old days" where proofs were prepared to cover every conceivable eventuality, **it is essential that inspectors recognise that if they do intend to depart from what is the agreed position between the principal parties, it may be necessary to accede to applications for adjournments to enable the parties to address the (now disputed) issue or issues properly by way of expert evidence. It may not be good enough to ask a witness who happens to be at the inquiry for his or her view.** By definition, that witness may well not have the professional expertise which is relevant to the matter which has been agreed between the parties as set out in the statement of common ground.

45: In deciding whether there has been unfairness, all such factors should be taken into account. Among them, the importance of the issue in respect of which the Inspector is differing from the position agreed in the statement of common ground. In this case, as it turned out, the question whether tree T7

could be retained was not simply an important issue; it was the determining issue. Given the statement, it is clear that the Applicant not merely did not anticipate, but could not reasonably have anticipated that the retention of tree T7 would be in issue at all, let alone that it would be the determining issue."

Gates Hydraulics Ltd

28. Another example is *Gates Hydraulics Ltd v Secretary of State for Communities and Local Government* [2009] EWHC 2187 in which the appellant and the local authority had in their Statement of Common Ground agreed that there was no longer any issue between the parties relating to noise. At the inquiry, the local authority's witness confirmed that there was no issue on this topic and accordingly the appellant's counsel released the noise witness. The inspector dismissed the appeal on the noise issue. It was held that this was procedurally unfair.

Grounds of Challenge

29. Applying the above authorities to the specific facts of this case, it is clear that in this matter the hearing was procedurally unfair:

- a. The Claimant and the Interested Party, Wiltshire Council, agreed in a statement of common ground before the hearing that the proposed development caused no harm to heritage assets. As set out in each of the authorities cited above, it is not disputed that the Inspector was entitled to depart from that statement of common ground in his decision. However, as also made plain in those authorities, where he was proposing to do so he had to give the parties an opportunity to make submissions and asking the experts to assist, such opportunity potentially extending, depending on the context to an adjournment or an opportunity for further written or oral evidence.
- b. The Inspector was required by the rule 11(4) of the Hearing Procedure Rules to identify at the start of the hearing the main issues. "main issues" is a statutory term and the identification of them is designed to focus submissions by the main parties (as described by Sullivan J in *Poole*). Where a

matter is both agreed not to be in issue between the parties, and is not defined as a main issue, again it is not suggested the Inspector is precluded from subsequently treating it as a main issue. But again, a fair opportunity of addressing it as such must be given to an Appellant, such opportunity requiring at a minimum the knowledge that the issue has become a main issue, and extending, depending on the context to further evidence and submissions in writing and orally.

- c. During the hearing, the Inspector did not give any indication that any issue related to impact upon the conservation area had or would become a "main issue". He did not alert the Claimant to the possibility that it could become a decisive issue on the appeal. The Claimant was deprived even of the knowledge of the main issues (which the rules are designed to promote).
- d. The Inspector did not invite oral evidence; he did not invite oral submissions, he did not offer to allow any further written evidence or submissions. He did not give the Appellant reason to consider that such submissions or evidence might be required notwithstanding the statement of common ground and the identified main issues.
- e. After the hearing, the Inspector had the power to re-open the hearing or to seek further written submissions pursuant to rule 13(4) and he had the duty to invite further submissions on any new evidence or any new matter of fact pursuant to rule 13(3). Indeed, the Inspector used those powers and sought additional submissions on a distinct issue unrelated to the impact on the conservation area, but he still gave no indication that impact on heritage assets had become a "main issue" and he did not take that opportunity to ask for any further evidence or submissions.
- f. In his decision, he supported the Claimant's case on all issues which had been identified at the hearing as main issues. However, (at paragraph 5) he indicated for the first time that he would treat the impact of the proposal on the character and appearance of the surrounding area as a "main issue" in the decision. He proceeded to dismiss the appeal solely on that new main issue.

30. The common law demands more than compliance with the procedure rules, as the authorities above demonstrate. But the fact that in this case both the letter and the spirit of the rules was breached is indicative of the unfairness of the process. As Sullivan J indicated in Poole, the raising of a new matter which had formerly been common ground, may lead to a need to adjourn, but at the very least required a clearly defined request for comment at the hearing. Neither course was taken and the Appellant was in the dark as to what the main issues truly were. Indeed, it was misdirected as to the main issues upon which its evidence and submissions ought to focus. The process clearly failed to meet the standards of fairness required.

31. For the avoidance of doubt, while objectors did allude to what they saw as a need for a "buffer zone" very briefly in submissions, the basis on which the Inspector ultimately found a harm that required him to dismiss the appeal (the question of the whole site affording a "gap") was not identified by any objector to the proposal in their representations.

Substantial Prejudice

32. The Claimant was deprived of a "fair crack of the whip" addressing the Inspector's concerns about maintaining "apparent separateness". For example, as set out in the evidence of Mr Dance, the Claimant would have wished to have explained to the Inspector the effect of the section 106 agreement in requiring substantial planting and management, an agreement which the Inspector did not consider in his decision letter because he assumed it to be relevant only to issues relating to ecology. The Inspector considered there to be "less than substantial harm", while the Council's heritage officer, the Council members and the Appellant's expert did not consider there to be *any* harm to heritage assets (as recorded in the statement of common ground). The Claimant need only show that there was some prospect of a different overall balanced judgment having been reached in the appeal, and clearly it cannot be said that the Inspector's view of this issue was inevitable or the only one that was open to him.

Remedy

33. For the reasons set out above, the Claimant therefore asks that the Court grant an order quashing the decision of the Inspector and remitting it for reconsideration. The Claimant asks for its costs.

Alex Goodman
Landmark Chambers
180 Fleet Street
London EC4A 2HG

15 September 2017



Gwasanaeth Llysoedd
a Thribiwnlysoedd EM

HM Courts &
Tribunals Service

WILTSHIRE COUNCIL
DX: 116892 TROWBRIDGE 3

Ein cyf/Our ref: CO/4262/2017
Eich cyf/Your ref: Dorcas Ephraim

Dear Sir / Madam,

**Re The Queen on the application of CHARLCOMBE HOMES LTD v
SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT and
Others**

Please find enclosed sealed copy of HHJ Jarman QC order dated 21/11/17.

Accordingly, the case has now been closed.

Yours faithfully

For Court Manager

Swyddfa Llys Gweinyddol Cymru
Canolfan Llysoedd Sifil Caerdydd
2 Stryd y Parc
Caerdydd CF10 1ET

Administrative Court Office for Wales
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24 November 2017

27 NOV 2017

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

CO/4262/2017

**IN THE MATTER OF THE APPLICATION UNDER SECTION 288 OF THE TOWN AND
COUNTRY PLANNING ACT 1990**

BETWEEN:

CHARLCOMBE HOMES LIMITED

Claimant

and

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

First Defendant

and

WILTSHIRE COUNCIL

Second Defendant

draft CONSENT ORDER

HH Judge Jaaman QC

Before sitting in the at the Administrative Court, Queen's Bench Division,
Planning Court, High Court of Justice, The Strand, London WC2A 2LL

UPON reading the Claimant's Grounds of Claim, as well as the supporting evidence

AND UPON reading the Particulars justifying the order as agreed

IT IS ORDERED:-

1. That permission is granted to the Claimant.
2. That the application pursuant to section 288 of the Town and Country Planning Act 1990 ('TCPA 1990') be allowed for the reasons set out in the Particulars and the decision of the First Defendant contained in the Appeal Decision Letter (Ref: APP/Y3940/W/17/3167012) dated 7 August 2017 be quashed.

3. That the matter be remitted to the First Defendant for redetermination.
4. That the First Defendant do pay the Claimant £10,000 (VAT inclusive) as the reasonable costs incurred in respect of this application to the date that this Order is submitted to the Court for approval, to be paid by or before 6 November 2017.

We consent to an Order in the above terms on behalf of the parties named below.

.....
On behalf of the Claimant

Clarke Willmott LLP
Bath Street
Bristol
BS1 6BA

.....
On behalf of the First Defendant

Government Legal Department
One Kemble Street
London
WC2B 4TS

.....
On behalf of the Second Defendant

Wiltshire Council
Bythesea Road
Wiltshire
BA14 8JN

Dated

24th October

2017

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WILTSHIRE COUNCIL

WESTERN AREA PLANNING COMMITTEE

13 DECEMBER 2017

COMMONS ACT 2006 – SECTIONS 15(1) AND (3)
APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN –
GREAT LEES FIELD, SEMINGTON

Purpose of Report

1. To consider the evidence submitted with an application made under Sections 15(1) and (3) of the Commons Act 2006, to register land off Pound Lane, Semington, known as Great Lees Field, as a Town or Village Green, in order to determine the application.

Relevance to Council's Business Plan

2. Working with the local community to provide a countryside access network fit for purpose, making Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council, as the Commons Registration Authority, is in receipt of an application dated 24 June 2016, made under Section 15(1) of the Commons Act 2006, to register land off Pound Lane, Semington, known as Great Lees Field, as a Town or Village Green (see **Appendix A**). Section 15(1) of the Act states that:

“15 Registration of green

(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.”

4. 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 one year of the cessation of use. Wiltshire Council, as the Registration Authority, must therefore consider the evidence in order to determine the following:

“(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 commencement of this section; and*
- (c) *the application is made within the relevant period.*

(3A) *In subsection (3), “the relevant period” means –*

- (a) *in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);*
- (b) *in the case of an application relating to land in Wales, the period of two years beginning with that cessation.”*

5. The application is made jointly by Mr Steven Hall, Mr Jon Jonik and Dr William Scott, as the “Friends of Great Lees Field”.
6. The application land is in the joint ownership of Mr William Peter Stuart-Bruges, who has owned the land since 1987, and his nephew, Mr Arthur Haythornthwaite. Great Lees Field is located off Pound Lane in the parish of Semington and occupies an area of approximately 3.86 hectares, presently being ploughed and cropped. The application land lies between Pound Lane to the south and the Kennet and Avon Canal to the north. The residential development of Pound Close is located to the east of the field and the field to the west is owned by Mr Thomas Masters and his sister Ms Julia Masters (please see location plan at **Appendix B**). Footpath No.1 Semington leads east-west at the northern boundary of Great Lees Field, south of the canal, part of the longer route of the footpath leading generally south-west from the Hilperton Parish boundary, (north-west of the swing bridge over the canal to the west of Great Lees Field), to Semington High Street, adjacent to the Somerset Arms pub. The route of Footpath No.1 Semington through Great Lees Field has not been changed since it was recorded within the Bradford and Melksham Rural District Council Area definitive map and statement of public rights of way, dated 1952.
7. From 1951 to 2016 the land has been subject to grazing agreements made between the landowners and the Masters’ family, save for the year 2000 when there was no agreement in place. It is claimed by the landowner that during 2000, with no such agreement in place, the land had become overgrown and weed killer was applied before the land was reseeded. It is also claimed that the land was ploughed at this time.
8. The evidence suggests that the land was ploughed in April 2016, leading to the cessation of claimed user and triggering the application to register the land as a Town or Village Green. Therefore, the relevant twenty year user period in this case may be calculated retrospectively from that date as April 1996 – April 2016.

9. The land has been subject to three planning applications since 1989. Planning application no.16/05783/OUT, for the erection of 75 dwellings including 30% affordable homes with ancillary public open space and play areas and access from Pound Lane (Outline application relating to access), is now the only valid application on this site, where the decision of Wiltshire Council, as the Planning Authority, to refuse the application, is presently being appealed.
10. The Growth and Infrastructure Act 2013 introduced provisions to make it more difficult to register land as a Town or Village Green, including, at Section 16, the removal of the “right to apply” to register land where specified planning “trigger events” have occurred, e.g. where an application for planning permission in relation to the land, which would be determined under Section 70 of the Town and Country Planning Act 1990, is first publicised in accordance with the requirements imposed by a development order by virtue of Section 65(1) of that Act. The right to apply is revived where a corresponding “terminating event” has taken place, e.g. planning permission is refused and all means of challenging the refusal by legal proceedings in the UK are exhausted and the decision upheld. In the Semington case the Planning Authorities have confirmed that there are no such trigger or terminating events in place over the land and the above-mentioned planning application no.16/05783/OUT is not a valid trigger event where it was first publicised after receipt of the Town/Village Green application. Therefore, the “right to apply” is not extinguished.
11. The land has also been subject to an application to modify the definitive map and statement of public rights of way, by adding footpaths over Great Lees Field and the adjacent field to the west, in the ownership of the Masters’ family. The definitive map modification order (DMMO) application was made on 26 April 2016, shortly before the Town or Village Green application. It was refused by Wiltshire Council as the Surveying Authority, on the grounds that the application failed to make a reasonable allegation regarding the acquisition of public rights of way over the land and further that all claimed paths leading from the Pound Lane gate, were not used “as of right” owing to the locking of the gate and the subsequent damage to it.

Main Considerations for the Council

12. The Council, as Registration Authority, has considered the following evidence in its consideration of the application:
 - (i) Application dated 24 June 2016 and received by Wiltshire Council on the same date, in the form of “Form 44” and statutory declaration, including:
 - 66 completed witness evidence forms;
 - Supplementary information “The Case for a Village Green”;
 - Photographs.

- (ii) Submissions in objection to the application on behalf of the landowner (Mr William Stuart Bruges), dated 18 November 2016, including:
- Submission of Alan Evans, Counsel at Kings Chambers – 17 November 2016;
 - Statement from Mr William Stuart-Bruges (including annotated decision report, statement and Gateley Plc letter relating to the recently refused DMMO application) – 17 November 2016;
 - E-mail from Mr Arthur Haythornthwaite (joint landowner), confirming his support of the statement submitted by Mr William Stuart-Bruges – 17 November 2016.
- (iii) Representation of support – Semington Parish Council – 14 October 2016.
- (iv) Representation of support – Mr S Hall (joint applicant) – 16 November 2016.
- (v) Representation of support – The Friends of Great Lees Field (the applicants) 22 January 2017 (formal response to objections).
- (vi) Submissions in objection to the application on behalf of the landowner (in response to the formal comments on the objections from the applicant), dated 10 March 2017 and including:
- Further statement dated 6 March 2017 from William Peter Stuart-Bruges, with appendix containing grazing agreements;
 - Further comments of Alan Evans, Counsel of Kings Chambers – 9 March 2017.
13. It is noted that the tenants of Great Lees Field, TJ and JMK Masters, have not provided any evidence in this case.
14. Officers have considered the evidence submitted and concluded that there are matters of dispute within the evidence, which are likely to be resolved by holding a non-statutory public inquiry at which the witnesses may give evidence in chief and be subject to cross-examination (please see paragraphs 14.1 – 14.78 of the Decision Report attached at **Appendix C**, in which the evidence is considered in detail).

The Evidence

15. The legal test to be applied in this case, i.e. Section 15(3) of the Commons Act 2006, may be broken down into a number of components, each of which must be satisfied in order for the application to succeed, where it is no trivial matter for a landowner to have land registered as a green. The burden of proving that each of the statutory tests is met lies with the applicant and there is no duty placed upon the Registration Authority to further investigate the claim. The standard of proof lies in the balance of probabilities. Officers have carefully considered the evidence submitted, both in support of and in objection to the application, in order to draw the following conclusions:

Significant Number of Inhabitants:

16. There is insufficient evidence of community events taking place, “as of right”, over Great Lees Field. However, given the size of the locality identified as Semington, having a population of 930 in 2011, (Semington Census Information 2011 – Wiltshire Council), the number of witnesses giving evidence, 65 of whom have also observed others using the land, is sufficient to suggest use of the land by a significant number of inhabitants of the locality, rather than just occasional use by individuals as trespassers.
17. The objectors challenge the evidence regarding use of the land by a significant number of inhabitants of the locality, only in their analysis of the points of access and suggest that it cannot be shown that a significant number of inhabitants have used the land “as of right” for lawful sports and pastimes, where the evidence of those witnesses who used the Pound Lane field gate, is removed, (evidence relating to use of the Pound Lane gate is discussed later in this report).

Of any Locality or of any Neighbourhood Within a Locality:

18. The witness evidence supports the locality of Semington Parish, as identified within the application form. There appear to be others coming from outside the village and parish, from the surrounding areas and beyond, but this is acceptable where a significant number of inhabitants do come from the identified locality. All of the witnesses who have supplied witness evidence forms are presently residents of Semington and the area identified qualifies as a “locality”, as an administrative district or area with legally significant boundaries. The applicants and the witnesses identify a number of facilities, infrastructure and activities available to the community. Officers therefore consider that the applicant has successfully discharged the burden of proof with regard to identifying a “locality”.
19. The objectors make no submissions regarding the identified locality.

Have Indulged as of right:

20. Officers consider that use of the field by local inhabitants, has been “as of right”, i.e. without permission, without force, without secrecy, for the reasons set out in the following paragraphs:

Without Permission:

21. The evidence suggests that permission was sought and granted for the activities of car parking, bonfire celebrations and gymkhanas. There are also two reports of permission being sought to access the field from private gardens in Pound Close, for the purposes of access to the rear of the property, or for deliveries.

Once these activities are removed as qualifying use “as of right”, there is no further evidence submitted by witnesses or objectors, of permission being sought or granted in respect of other activities taking place on the land and officers must therefore conclude, on the balance of probabilities, that the majority of use is likely to have continued on the land without permission.

Without force (locked gate):

22. There are five points of access into Great Lees Field:

- (i) Gate off Pound Lane;
- (ii) Wiltshire gate/gap in the western field boundary, between Great Lees Field and the field to the west in the ownership of the Masters’ family;
- (iii) Stile at the north-west corner of the field on Footpath No.1 Semington;
- (iv) Stone stile at the north-east corner of the field on Footpath No.1;
- (v) Property owners in Pound Close have rear access gates into the field.

(In evidence, the applicants, and a small number of witnesses, identify an access point in the western field boundary approximately 20 metres north of Pound Lane. However, on site visits in October 2016 and August 2017, officers were unable to identify a gap/access still in existence at this location; however, it may have been available to users previously, perhaps during the relevant user period).

23. The landowner provides a great deal of evidence regarding the locking of the Pound Lane gate which, in evidence provided in the DMMO application, was successful in defeating the claim to add paths which utilised the gate, where this use would be by force as the gate was locked and subsequently damaged. The Town/Village Green case is determined under separate legislation and the evidence is subject to differing legal tests. In the officers’ analysis of the points of access to the field as part of the Town/Village Green claim, it was found that whilst the majority of the witnesses had used the Pound Lane gate, 42 witnesses had also used other/alternative entrances to the field, as listed at paragraph 22 above.

24. Officers conclude that where the locking of the Pound Lane gate forms part of the objector’s case that use has been by force and use is therefore not “as of right”, there is sufficient evidence in this case to suggest that where alternative access points have been open and available, users were not required to use force to enter Great Lees Field.

Without Force (prohibitory notices):

25. Use by force does not just refer to physical force, but also where use is deemed contentious, for example by erecting prohibitory notices in relation to the use in question.
26. In the Semington case, the landowner, in objection, claims that since 1987 signs have been fixed to the Pound Lane gate indicating that Great Lees Field was private and/or that there was no right of way. Photographs are provided purporting to show notices stating "Private No Right of Way" cast to the ground in 2004. Similarly, the landowner claims to have affixed the same notices to the Wiltshire gate in the western field boundary and again submits photographic evidence purporting to show signs at this location stating "Private Land no Right of Way" having been removed and cast to the ground.
27. The landowner relies upon the case of Taylor v Betterment (Mrs G Taylor (on behalf of the Society for the Protection of Markham and Little Francis) v Betterment Properties (Weymouth) Ltd (1) and Dorset County Council (2) [2010] EWCA Civ 250, where it was held that if a landowner displays opposition to the use of the land by erecting a suitably worded sign which is visible to, and is actually seen by the local inhabitants, then their subsequent use of the land will be contentious and on that account forcible. Moreover, if the signs were not seen by many users of the land because they were repeatedly unlawfully removed soon after erection, the landowner would nevertheless have done all that was required to make use contentious.
28. Officers conclude that the principles set out within the Betterment case law regarding prohibitory notices rendering use "by force", cannot be applied in the Semington case where the landowner has provided insufficient evidence to the Registration Authority to show that these signs were erected and subsequently removed. None of the witnesses mention prohibitory notices on the access points to Great Lees Field and the photographic evidence provided by the landowner, purporting to show these signs removed and cast to the ground, is insufficient. There is no information provided within the photographs to show that the notices were indeed erected/removed from access points on Great Lees Field. The signs on the two access point are an area of strong dispute so far as the user evidence and landowner evidence is concerned.
29. Additionally, there is no evidence that prohibitory notices were erected (and subsequently vandalised/removed), on the alternative access points on Footpath No.1, or to the rear of properties in Pound Close.
30. In the Semington case, the evidence regarding the erection of prohibitory notices is not sufficient to render use by force and therefore not "as of right".

Without Force:

31. When considering a Town/Village Green application, the Registration Authority is asked to determine only whether lawful sports and pastimes undertaken on the land, have been carried out without force. In this case, there is no evidence to suggest that the activities have been undertaken with force.
32. There is a conflict in the evidence regarding access to the field, i.e. the locking and damage to the Pound Lane gate and the erection of prohibitory notices erected at the Pound Lane gate and the gap/Wiltshire gate in the western field boundary. However, even if use of these two access points was found to be by force, there is alternative access to the field from Footpath No.1 and from the garden gates of properties in Pound Close and significant witness evidence that alternative access points have been used (42 witnesses refer to access points other than the Pound Lane gate). There is no evidence to suggest that these alternative access points have been obstructed at any time during the relevant period and no evidence to suggest the access to the field has been prevented, perhaps by fencing the footpath out of the field. Officers therefore cannot conclude that use of the field or access to the field has been by force in the village green case.

Without Secrecy:

33. Officers conclude that use of the field has been without secrecy. Nine witnesses claim to have been seen on the land, (perhaps by the tenant farmers), without challenge. None of the witnesses refer to being challenged whilst using the land and the landowner presents no evidence of incidents of users being challenged. Mr Stuart-Bruges contends that he visited Great Lees Field infrequently (at least annually), however, officers consider that on those occasions he would have been aware of the access gates from properties in Pound Close, which did not access onto public rights of way.

Have indulged in lawful sports and pastimes:

34. Is the evidence provided sufficient to demonstrate, on the balance of probabilities, that the land has been used for the exercise of lawful sports and pastimes, or has the main user been the use of linear routes for the purposes of walking and dog walking, including routes to access the canal, which could give rise to a claim for rights of way, rather than Town/Village Green rights?
35. The land has been the subject of a DMMO application, supported by 18 completed witness evidence forms. 13 of these witnesses have also completed evidence forms for the Town/Village Green application, (although please note that DMMO and Town/Village Green applications are determined under separate

legislation and the evidence is subject to differing legal tests). In the Town/Village Green application the land is used mainly for the purposes of dog walking and walking, 37 users walk with dogs and 29 users walk on the land, whilst 65 witnesses have seen dog walkers and 64 witnesses have seen people walking on the land. Some of the witnesses suggest the use of linear routes, e.g. *“To dog walk either around the edge or on the path diagonally across”* and *“To walk to the canal”*, which is not user consistent with claiming Town/Village Green rights.

36. Additionally:

- Aerial photographs suggest a number of “tracks” over the field which could be associated with the use of linear routes.
- The users do not successfully identify community events taking place over the land.
- The only seasonal activity appears to be blackberry picking, 7 witnesses giving their own evidence of this use and 57 having seen this activity taking place.
- After use for the purposes of walking and dog walking are removed, blackberry picking is the next most popular activity, followed by playing / children playing (5 witnesses give direct evidence, 59 seen); Kite flying (5 give direct evidence, 35 seen); Exercise (4 give direct evidence); Cricket (3 direct evidence, 14 seen) and Football (2 direct evidence, 19 seen).
- There are 49 instances of use other than dog walking/walking upon the land (31 users), not including the use seen. The number of witnesses giving direct evidence of undertaking these activities themselves is low when compared to the number of witnesses who claim to have seen these activities taking place. Direct evidence of use would provide greater evidential weight.

37. Whilst the applicants have provided photographs, which it is claimed record inhabitants undertaking lawful sports and pastimes on the land, officers consider that the photographs of village boys playing cricket on the field in the 1950s and village girls and boys playing cricket on the field (probably in the late 1980s), do not provide sufficient detail to identify the land as Great Lees Field. The sequence of photographs which it is claimed show children from a local nursery school being taught in the field in 2016, appear to show the children using Footpath No.1 Semington, (which leads from Semington High Street, through Great Lees Field to the swing bridge over the canal and then to the Hilperton Parish boundary), including pictures of the children (i) on the towpath; (ii) on Footpath No.1 to the east of Great Lees Field, (given the post and rail fencing in the background of the photograph) and (iii) on Footpath No.1 at the swing bridge in the field to the west of Great Lees Field, (given the three concrete structures visible in the background). The photographs included with the application, provide no additional evidence of lawful sports and pastimes being undertaken on Great Lees Field.

38. It is considered that hearing direct evidence from witnesses, and the cross-examination of witnesses on this point at a public inquiry, would assist the Registration Authority in its determination of the application, where all elements required to establish a new green must be satisfied, on the balance of probabilities.

On the Land:

39. There is no evidence to suggest that any part of the land should be excluded from the application, for example, where it was not possible for local inhabitants to use part of the land. There is no evidence to suggest that activities have taken place on part of the land which would cause substantial interference with the use of that part of land for lawful sports and pastimes, for example tipping, which would prevent registration of part of the land. The grazing agreements over the land and the subsequent agricultural activities associated with it do not appear to have caused substantial interference with the use of the land and are transient in their nature.
40. As examined in the previous section, there remains the question of whether the whole of the application land has been used for lawful sports and pastimes, where the main use of the field has been walking and dog walking, perhaps use of linear routes rather than the whole of the application land.
41. Officers must conclude that where the application is successful, the whole of the application land should be registered, where there is no evidence that any part of the land has been unavailable for the exercise of lawful sports and pastimes.

For a Period of at least twenty years:

42. The relevant user period in this case may be calculated retrospectively from April 2016 when use ceased as, according to the evidence, Great Lees Field was ploughed, the Pound Lane gate locked, prohibitory notices erected and the land subsequently planted. The user period in question is therefore April 1996 – April 2016, with the application being made no more than one year from the cessation of use, (in this case the application was received by the Registration Authority on 24 June 2016 and put in order on 9 September 2016, following the Registration Authority’s letter dated 25 August 2016 requesting that the application be put in order, where, under Regulation 5(4) of “The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007” *“it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.”*). 65 witnesses have used the land within the identified user

period and 34 witnesses have used the land for the full 20 year user period. The earliest user dates from 1938, suggesting long use.

43. Four witnesses refer to the Pound Lane gate being locked in the past for short periods, e.g. when cattle were on the field, spraying of the grass was taking place and/or travellers were present in the area. Where agricultural activities are taking place on the land, in the case of *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25, Lord Hoffman commented that *"I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes...if in practice they were not."* Officers consider that the locking of the Pound Lane gate - which in any event is only one of the entrances to the field - for short periods does not provide a significant interruption to use: (i) where there is no further evidence provided of when these occasional interruptions took place (i.e. did they take place within the relevant user period?); (ii) the agricultural activities taking place were transient in nature; (iii) the agricultural activities appear to have had little impact upon use and the two activities appear to have co-existed; (iv) where there are alternative access points into the field, i.e. from Footpath No.1; the gap/Wiltshire gate in the western field boundary and gates in the gardens of properties in Pound Close.
44. There is significant evidence of long use of Great Lees Field, before and during the relevant user period of April 1996 – April 2016. The agricultural activities taking place over the land in relation to the grazing agreements in place over the land from 1951 – 2015/16 (excluding 2000), have not presented a substantial interruption to use of the land for lawful sports and pastimes. However, officers consider that there is a conflict of evidence in the twenty year user period, where the landowner claims that the land was ploughed in 2000, thereby creating a significant interruption to the twenty year user period, whilst witnesses make no reference to this event and the applicants claim that the ploughing of the land in April 2016 is the first time the land has been ploughed in living memory. It is considered that hearing direct evidence from witnesses on this point at a public inquiry would assist the Inspector in determining whether or not the field was ploughed in 2000. If the field was ploughed in 2000, this would potentially cause a significant interruption to the twenty year user period.

Use has ceased:

45. The application is made under Sections 15(1) and (3) of the Commons Act 2006, where use has ceased and the application to register the land as a Town/Village Green is made within one year of the cessation of use. The evidence suggests that use of the land came to an end on 27 April 2016 when the field was ploughed. The application therefore appears to be correctly made within the period of one year of the cessation of use, on 27 April 2016, the application being received by Wiltshire Council as the Commons Registration Authority on 24 June 2016 and being put in order on 9 September 2016.

46. There is a conflict of evidence where the landowner claims that the land was ploughed in 2000, which would present a significant interruption to use of the land for lawful sports and pastimes and render the application invalid under Section 15(3) of the Commons Act 2006, whereby the application would not be made within one year of the cessation of use in 2000 and if use resumed after the ploughing, a period of user of twenty years or more could not be shown in this application, (because the use ends in April 2016). If the field was ploughed in 2000, the application would be considered to be fatally flawed. However, the applicants contend that before April 2016 the land had not been ploughed in living memory. It is therefore considered that hearing direct evidence from witnesses is required on this point at a public inquiry which, once the Inspector had provided a recommendation to the Commons Registration Authority, would assist the Registration Authority in determining the application, where all elements required to establish a new green must be satisfied on the balance of probabilities.

Overview and Scrutiny Engagement

47. Overview and Scrutiny engagement is not required in this case. The Commons Registration Authority must follow the statutory procedure which is set out under “The Commons (Registration of Town or Village Green) (Interim Arrangements) (England) Regulations 2007 (2007 SI no.457)”.

Safeguarding Considerations

48. Considerations relating to safeguarding anyone affected by the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

Public Health Implications

49. Considerations relating to the public health implications of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

Corporate Procurement Implications

50. Where land is registered as a Town or Village Green, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 54 - 56 of this report.

Environmental and Climate Change Impact of the Proposal

51. Considerations relating to the environmental or climate change impact of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

Equalities Impact of the Proposal

52. Considerations relating to the environmental or climate change impact of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

Risk Assessment

53. Wiltshire Council as the Commons Registration Authority has a duty to process applications made under Section 15(1) of the Commons Act 2006, to register land as a Town or Village Green, in a fair and reasonable manner. If the Registration Authority fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Local Government Ombudsman. Ultimately, a request for judicial review could be made with a risk of a significant costs order being made against the Registration Authority if it was found to have made errors in processing the application or found to have determined the application in an unlawful manner.

Financial Implications

54. 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.
55. There is currently no clear statutory guidance available to authorities regarding when it is appropriate to hold a non-statutory public inquiry; however, it is the authority's duty to determine applications in a fair and reasonable manner. In cases where there is a significant dispute of the facts, case law supports the holding of a non-statutory public inquiry. The inquiry would be open to all members of the public and all parties, i.e. the applicant; supporters; the landowners and objectors, who would be able to give evidence which would be tested in cross-examination and re-examination, which would be considered to meet the Council's duty as the Commons Registration Authority to determine the application in a fair and reasonable manner.

56. The cost of a three day non-statutory public inquiry is estimated to be in the region of £8,000 - £10,000, (estimated figures to include a three day inquiry; two days preparation and three days report writing). In the Semington case it is considered that appointing an independent Inspector and holding a non-statutory public inquiry in order for the Inspector to hear from the witnesses and consider the evidence producing a recommendation to the Registration Authority, would assist the Council as Registration Authority in its determination of this application.

Legal Implications

57. 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 ('1965 Act'), which applies where Section (1) of the Commons Act 2006 is not yet in place, which applies to Wiltshire. A challenge under 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 currently no statutory time limit in bringing these proceedings following the registration of the land.
58. Where the Registration Authority determines not to register the land as a Town or Village Green, there is no right of appeal for the applicant. However, it is open to both parties (landowner or applicant) to judicially review the decision, for which permission of the court is required and the application to challenge the decision must be made within three months of the date of the decision of the Council as Commons Registration Authority.

Options Considered

59. The options available to the Registration Authority are as follows:
- (i) Based on the available evidence, to register the land as a Town or Village Green where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over the whole of the application land, or
 - (ii) Based on the available evidence, to register the land in part, where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over only part of the application land, or
 - (iii) Based on the available evidence, to refuse the application where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have not been met in full, or

- (iv) Where, after consideration of the available evidence, it has not been possible for the Registration Authority to determine the application, to hold a non-statutory public inquiry, appointing an independent Inspector to preside over the inquiry and examine the evidence, including the oral evidence of witnesses in order to provide a report and recommendation to assist the Council as Commons Registration Authority in its determination of the application.

Reasons for Proposal

60. In the Semington 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, with the application being made not more than one year following the cessation of use, is in dispute. Matters of particular conflict within the evidence include:
- (i) Is there sufficient evidence of the exercise of lawful sports and pastimes over the land, where the majority of use undertaken on the land has been walking and dog walking?
 - (ii) The alleged ploughing of the land in 2000, which would lead to a cessation of use at that time, where 20 years use after 2000 could not be shown and the application would no longer be valid under Section 15(3) of the Commons Act 2006.
61. It is the duty of the Registration Authority to determine the application in a fair and reasonable manner. The Registration Authority has received objections to the registration of the land as a Town or Village Green which cannot be resolved. A non-statutory inquiry is therefore considered necessary in this case because the factual evidence is strongly disputed by both the applicant and the objector. It is open to the Registration Authority to appoint an independent Inspector to preside over the inquiry and produce a report with recommendations to the determining Authority. Although it is open to the Registration Authority to reject the Inspector's report and recommendation it can only lawfully do so if the Registration Authority finds that the Inspector made a significant error of fact or law. If the Inspector's recommendation is rejected the Registration Authority must give legally valid reasons supported by evidence of the error of fact or law otherwise the Registration Authority's decision would be open to legal challenge.

Proposal

62. That Wiltshire Council, as the Commons Registration Authority, appoints an independent Inspector to preside over a non-statutory public inquiry, in order that a recommendation can be made to the Council as the Registration Authority, to assist in its determination of the application to register land off Pound Lane, Semington, known as Great Lees Field, as a Town or Village Green, as soon as is reasonably practicable.

Tracy Carter

Director – Waste and Environment

Report Author:

Janice Green

Rights of Way Officer

The following unpublished documents have been relied upon in the preparation of this report:

- 1) Included with the Application Form:
 - (i) 66 completed witness evidence forms;
 - (ii) Supplementary information “The Case for a Village Green”;
 - (iii) Photographs.
- 2) Submissions in objection to the application on behalf of the landowner (Mr William Stuart-Bruges) dated 18 November 2016, including:
 - Submission of Alan Evans, Counsel at Kings Chambers – 17 November 2016;
 - Statement from Mr William Stuart-Bruges (including annotated decision report, statement and Gateley Plc letter relating to the recently refused DMMO application) – 17 November 2016;
 - E-mail from Mr Arthur Haythornthwaite (joint landowner), confirming his support of the statement submitted by Mr William Stuart-Bruges – 17 November 2016.
- 3) Representation of support – Semington Parish Council – 14 October 2016.
- 4) Representation of support – Mr S Hall (joint applicant) – 16 November 2016.
- 5) Representation of support – The Friends of Great Lees Field (the applicants) 22 January 2017 (formal response to objections).
- 6) Submissions in objection to the application on behalf of the landowner (in response to the formal comments on the objections from the applicant) dated 10 March 2017 and including:

- Further statement dated 6 March 2017 from William Peter Stuart-Bruges, with appendix containing grazing agreements;
- Further comments of Alan Evans, Counsel of Kings Chambers – 9 March 2017.

(Please note that the above documents are available to be viewed at the Offices of Wiltshire Council – Rights of Way and Countryside, Unit 9, Ascot Court, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA.)

Appendices:

Appendix A – Application to register land as a Town or Village Green – Great Lees Field, Semington (received by Wiltshire Council as the Registration Authority 24 June 2016)

Appendix B – Location Plan

Appendix C – Decision Report (6 October 2017)

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*Documents received
Friday 24/06/16 -*

*hand delivered to
Barbara Burke,*

J.G. 29/06/16

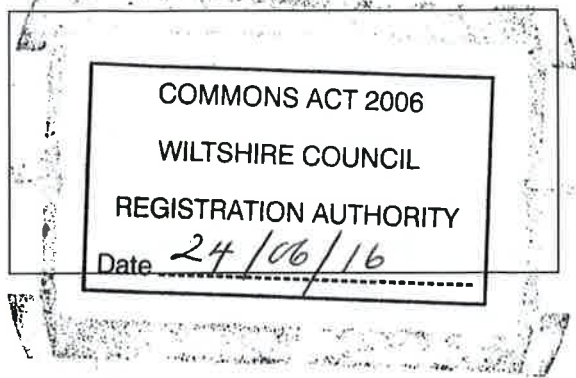
**APPLICATION TO
HAVE GREAT LEES
FIELD IN SEMINGTON
DESIGNATED AS A
VILLAGE GREEN**

FORM 44

Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:



Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1–6 and 10–11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7–8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

Wiltshire Council
County Hall
Bythesea Road
Trowbridge
BA14 8JN

Note 1

Insert name of registration authority.

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

2. Name and address of the applicant

Name:

Full postal address:

Pound Lane	Pound Lane	Pound Lane
Semington	Semington	Semington
Trowbridge	Trowbridge	Trowbridge
Postcode BA14 6LP		

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

Section 15.3
April 27th 2016

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

Great Lees Field . THIS IS THE LAND IN BLUE (RED BORDER)
SHOWN IN EXHIBIT 'X'

[Redacted] - GRAMA SIMMONS
09.09.16 SOLICITOR

Goughs Solicitors
2 Fore Street
Trowbridge
Wiltshire BA14 8HX

Location:

The field lies at the western edge of Semington village between Pound Lane to the south and the Kennet & Avon canal to the north with the properties along Pound Close at its eastern edge and a field to the west of it. It is ~~within~~ **OUTSIDE** the village settlement boundary.

[Redacted] - GRAMA SIMMONS SOLICITOR
Shown in colour on the map which is marked and attached to the statutory declaration. 09.09.16

Common land register unit number (if relevant) *

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable to it to be clearly identified.

* Only complete if the land is already registered as common land.

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

The field lies wholly within Semington parish at the edge of the village settlement described above in Question 5.

Tick here if map attached:

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

Great Lees Field in the village of Semington has been extensively used by villagers in the post-war period 'as of right' for a wide range of recreational, sporting and other activities. This use came to an end on April 27th, 2016, when the field was ploughed as a prelude to maize being planted. This event, which came without warning, was a shock to villagers who lost, overnight, a prized village amenity; that is about 4Ha of green space which could be used for a wide range of activities in and around its normal agricultural usage. The ploughing of the field has prompted this application to establish village green status for the field with the aim of enabling villagers to continue to carry out the activities that they have freely enjoyed for so long.

Up to that point there had been no attempt by the field's joint owners (who do not live in the village) to prevent use by village families; nor had any attempt been made to deny complete access to the field by villagers by notices or physical barriers. In the same vein, permission had never been sought from the owners, by individuals or families, to use the field for any purpose.

Data on residents' use of Great Lees Field, and access to it, were gathered by questionnaire. There was a 16% return, which represents a significant level of sampling of village opinion. All respondents said that they had used the field during the past 20 years, and many said that it was for much longer than that. All were supportive of this application. The data show that there are at least six ways that people on foot have used to get into Great Lees Field over the years, and there is good evidence both through photographs and on Google maps of this usage.

The data show that the use of Great Lees Field was both regular and frequent. 26% of respondents said they used it every day, 47% every week, and 12% every month. Over 30 different activities were identified. The most frequently cited were: walking (with and without dogs), children playing, picking blackberries, and kite flying. This use of Great Lees Field by the village is in tune with agricultural practice and the rhythm of the seasons, as there are both seasonal activities, for example, which fit in around grass cutting for silage, and the more frequent activities that people undertake with their families (or on their own) more or less all the time.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

Joint owners:

William Peter Stuart-Bruges, [redacted], Knowl Hill, Kingsclere, Newbury RG20 4PA

Arthur William Fitzjames Haythornthwaite, [redacted] The Strand, Steeple Ashton, Trowbridge BA14 6EP

Current tenant farmer unknown

9. Voluntary registration – declarations of consent from ‘relevant leaseholder’, and of the proprietor of any ‘relevant charge’ over the land

None

10. Supporting documentation

1. Land Registry Index Map Plan at scale 1:2500 showing the location of the field in Semington Parish.
2. Original witness statements in the form of 66 completed questionnaires about the use of Great Lees Field by Semington residents as of right.
3. Photographs showing use of the field, and setting out a number of significant features; details are provided on a separate sheet.

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

11. Any other information relating to the application

We expect the owners of the land to challenge the application. We know that the owners have made attempts over the years to sell this land for housing development, and that a planning application was turned down by West Wilts District Council in 1989. We think that they are trying to do so again, but we do not know the detail of what might be proposed.

Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

24.06.16

Signatures:

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name (and address if not given in the application form).

I, STEVEN HALL,¹ solemnly and sincerely declare as follows:—

² Delete and adapt as necessary.

1.² I am (~~the person~~ (one of the persons) who (has) (~~have~~) signed the foregoing application) (~~the solicitor to (the applicant) (³ one of the applicants))~~).

³ Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in the case of voluntary registration (strike through if this is not relevant)

4.⁴ ~~I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:~~

- ~~(i) a declaration of ownership of the land;~~
- ~~(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have~~

Cont/

GENNA SUNDSON

09.09.16 SOLICITOR

Goughs Solicitors
2 Fore Street
Trowbridge
Wiltshire BA14 8HX
Telephone: 01225 762683

⁴ Continued

~~been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.~~

[Redacted]
✓ 09.09.16

[Redacted] **GENERAL SOLICITOR**

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Goughs Solicitors
2 Fore Street
Trowbridge
Wiltshire BA14 8HX
Telephone: 01225 762683

Declared by the said **STEVEN HALL**)

at **2 Fore Street,**
Trowbridge, Wiltshire)

this **24th** day of **June 2016**)

[Redacted Signature]

Signature of Declarant

Before me *

Signature:

[Redacted Signature]

LOUISE MARTIN

Address:

**GOUGH'S
Solicitors
2 FORE STREET
TROWBRIDGE
WILTS
BA14 8HX**

Qualification:

SOLICITOR

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit

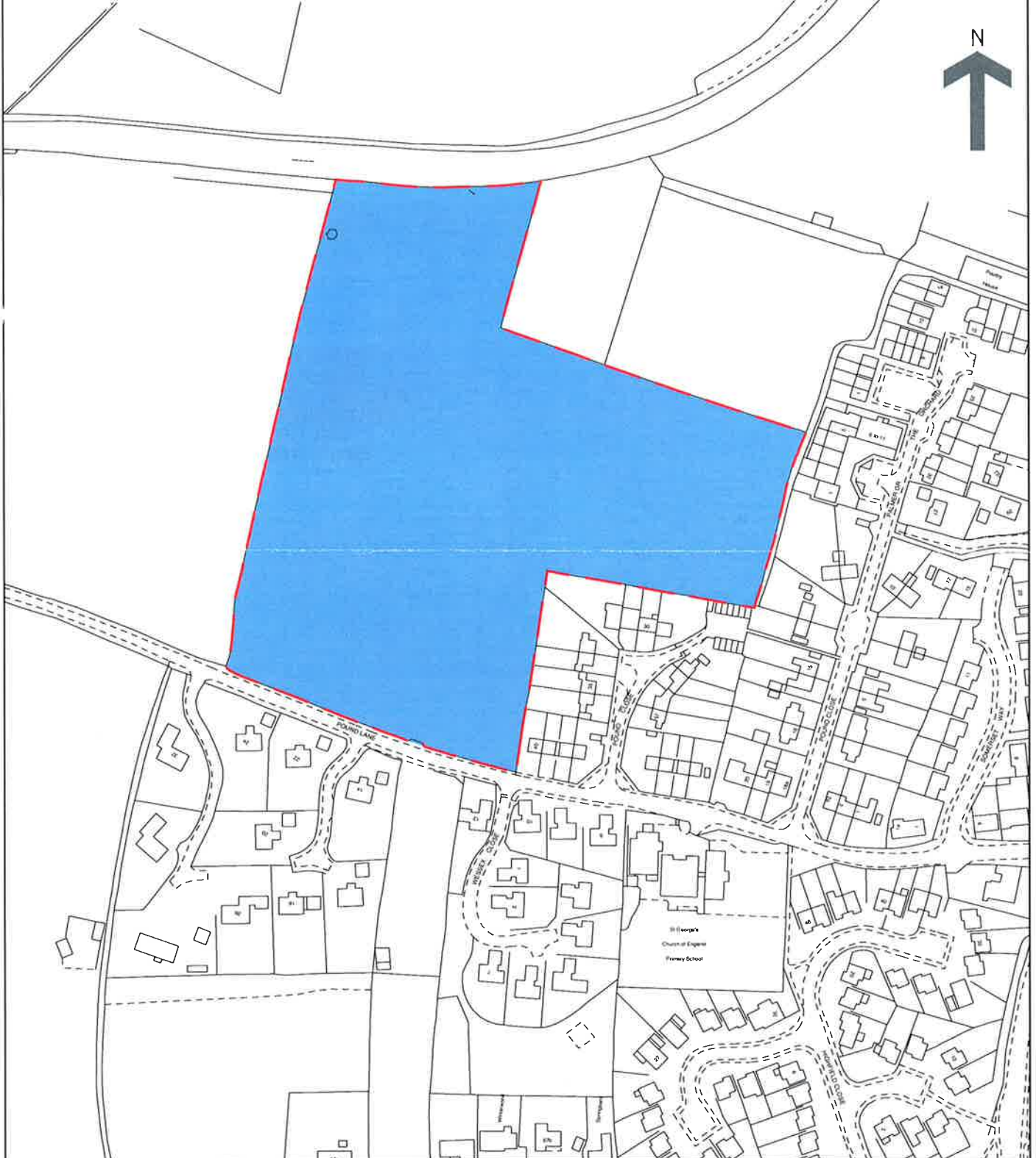
" A "

Land Registry Index map plan

Ordnance Survey map reference **ST8960NW**
Scale **1:2500**
Plan prepared on **19/04/2016** at **00:00:01**



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You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form.

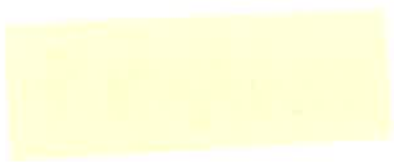


This plan should be read in conjunction with result D25TTLB.

This plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.



This is the exhibit marked "A" referred to in the
Statutory declaration of Steven Hall made this
21st day of June 2016 before me:



LOUISE MORTIMER - SOLICITOR.

GOUGH'S
Solicitors
2 FORE STREET
TROWBRIDGE
WILTS
BA14 8HX

THE CASE FOR A VILLAGE GREEN

Justification for the application to register Great Lees Field as a Village Green

Introduction

This document sets out the facts supporting the claim to have Great Lees Field in Semington, Wiltshire designated as a *village green* under Section 15(1), subsection 15(3), of the Commons Act, 2006.

It presents an analysis of recent (June 2016) survey data to demonstrate there has been *as of right* use by Semington villagers for the 20-year period (up to 27th April 2016) when the land was ploughed for the first time in living memory. Data illustrate that this usage goes back well beyond the 20-year qualification period, certainly to the 1950s. Data were collected by means of a questionnaire based on the pro-forma produced by the Open Spaces Society and were acquired over a 7-day period in mid-June 2016.

The document begins with a context-setting of the village of Semington, before describing Great Lees Field itself. It then has sections covering the ownership of the field, data gathering, and the nature of the villagers who responded. It then sets out in detail the use of Great Lees Field by villagers with a focus on the activities that have been carried out and their frequency. Finally, it addresses the issue of 'as of right' use and demonstrates that villagers have exercised this for at least the 20 year period up to April 27th 2016.

The village

The village of Semington lies within Semington parish which is in the Melksham community area in Wiltshire. The village is just over a mile south of Melksham. It lies west of the (recently diverted) A350, which, together with the A361 Trowbridge to Devizes road, runs through the parish. The vast majority of the housing and village amenities are clustered around or near the old A350 road.

According to the 2011 Census ¹, 930 people lived in the parish in 389 households – an increase of 12% and 18% respectively since 2001.

Semington is an old settlement and people have lived here since the 12th century. St George's church dates from around 1300, and records of Littleton Mill (which was burnt down in 1802 during a protest against the use of machinery) go back to these times. The village is surrounded by farmland and its farmhouses date from the 1500s. The parish has a number of notable houses built in the 17th, 18th and 19th centuries. The village school began in 1859. It is still thriving, although in much more modern buildings. The village Hall, built in 1933, and recently refurbished, is the heart of the village, both geographically and socially. It has a social club and a skittle alley, and hosts the WI, a bridge club, bingo, a stompers class, two choirs, quizzes, a special needs children's group, a Zumba class, and the parish council. An extensive history of the village was compiled with funding from the Millennium Commission and published in 2002 ².

The Kennet & Avon Canal, and Semington Brook which flows into the River Avon west of Melksham, form the northern boundary of the parish. The Wilts & Berks Canal started at Semington until its closure in 1914, but a new connection with the Kennet & Avon is now planned. Of the many well-used village footpaths, the most popular is the canal towpath.

The parish has the following features;

- Two small grassy areas; one is opposite the village hall where the Christmas tree stands. The other, The Ragged Smock, is at the south of the village and is named after an old windmill that resembled an old man in a tattered coat.
- At the Queen's Diamond Jubilee, a wood was planted south of the A361 and east of the old A350 road; since then, villagers have planted 9000 daffodil bulbs, scattered 10000 poppy seeds, and planted an oak to mark the outbreak of the First World War.
- A conservation area in the school grounds where children can monitor and encourage wildlife. There are wildlife ponds along the A350 with special crossing points underneath the road to protect the great crested newts and other fauna in the wildlife areas nearby.

¹ 2001 Census, household and population data (2001C), Wiltshire Parish Population Estimates and Projections 2001-2011. 2011 Census, household and population data, Wiltshire Census 2011 Selected Statistics Profile Tool. <http://www.intelligence-network.org.uk/population-and-census/>

² Firmager G & Firmager D (Eds.) (2002) *Semington Past and Present*; ELSP Press

- A small play area for children with basketball posts and a mini football pitch, a tennis court, and a full-size football pitch located south of the A361. The village has football teams, a cricket club and six skittles teams. A summer fête is held at the school.
- A Post Office, a monthly parish magazine sponsored by the church, the parish council and villagers, and a website providing information on parish events.
- A Neighbourhood Watch scheme works with the neighbourhood police team who attend the Thursday coffee mornings in the village hall.
- A range of businesses including a light industrial estate, a narrow boat hire and repair company, a crematorium, and a charity helping people to live independent lives.
- The Somerset Arms provides a range of activities and festivals, such as Christmas and Easter parties for children, live bands, and quiz nights.
- Regular buses to Chippenham, Devizes, Melksham, Swindon and Trowbridge, and rail links in Melksham, Trowbridge and Westbury.

Up to April 27th 2016, a further feature of the village was Great Lees Field (which some know as Big Lees Field) which has been extensively used by villagers in the post-war period 'as of right' for a wide range of recreational, sporting and other activities. On April 27th 2016 the field was ploughed thereby preventing any of these 'as of right' uses, and causing a reduction in biodiversity in the village. This is the first time that the field has been ploughed in living memory; as one respondent put it: "for the first time in my lifetime, 60 years". It is the action of ploughing the field that has prompted this application to establish village green status for the field with the aim of enabling villagers to continue to carry out their recreational, sporting and other activities that they have enjoyed for so long.

The field

Great Lees Field occupies about 4Ha and lies at the western edge of Semington village between Pound Lane and the Kennet & Avon canal with the properties along Pound Close and Palmer Grove at its eastern edge and a field to the west of it. The field lies wholly within Semington parish but outside the village settlement boundary.

The southern edge of the field (along Pound Lane) is a mature hedge which has a gate in it near the south-east corner. This is the vehicular access point for farm-related traffic. The gate has been locked since the field was ploughed on April 27th 2016.

The eastern edge of the field runs along the back gardens of properties on Pound Close and Palmer Grove. A number of these houses have access to the field from gates in their garden fences.

The northern edge of the field is the Kennet & Avon canal. There is a Right of Way along this part of the field running from the swing bridge over the canal through to the village High Street. Although the ploughing has made walking along the Right of Way more difficult than before, it is still possible to do this. This footpath is used regularly.

The western edge of the field is a mature hedge that runs from Pound Lane north to the Kennet and Avon canal. There is a gateway in it near the south-west corner, but there is no gate. This gap in the hedge is of long-standing. There is also a gap in this hedge (near Pound Lane) which is of more recent origin. There is a World War II pill box along this boundary between the gateway in the hedge and the canal.

It will be clear from this description of the field that access to it has been possible in a number of ways: by using the:

- gate on Pound Lane
- gateway in the western boundary hedge approximately 90 metres north of Pound Lane (and the gap in this hedge about 20 metres north of Pound Lane)
- stiles at each end of the Right of Way running along the northern boundary of the field where it meets the canal
- back gardens of the houses along Pound Close and Palmer Grove
- Kennet & Avon canal

It is evident from the data collected that the field has been regularly accessed in the first 4 of these ways over the last 20 years; evidence for direct access from the Kennet & Avon canal remains anecdotal. Although, unsurprisingly, the images of the field on Google Earth do not show anyone using it, they do provide evidence of access via the gate on Pound Lane, the gateway in the western boundary hedge, and from some of the back gardens of the houses along Pound Close and Palmer Grove.

Following the ploughing of the field on April 27th, printed notices were displayed on the Pound Lane gate saying that the land is 'private' and that there is no right of way. Around June 15th, more formal notices were placed on the gate on Pound Lane, and also at other access points to the field, some of which were newly blocked off. The details are:

- I. the gateway in the western boundary hedge approximately 90 metres north of Pound Lane has a sign "PRIVATE FARMLAND No Public Right Of Way" and wire mesh netting now blocks access through the gap in the hedge.
- II. there is a sign "PRIVATE LAND No Public Right Of Way" in the middle of the small gap in the hedge 20 metres north of Pound Lane
- III. the wooden stile into Great Lees Field in the north west corner has a new "PRIVATE FARMLAND No Public Right Of Way" sign in the corner of the field. This may be an attempt to prevent use of the Right of Way running along the field's boundary with the canal.

It is significant that his multiple use of notices acknowledges that there are many ways that people on foot can enter the field, and it is the first time (in living memory) that such notices have been put up. That is, there has never been any previous attempt by owners or tenants to put up notices either saying that the land is private, or denying complete access to potential users.

Ownership

The field is owned jointly by [i] William Peter Stuart-Bruges and [ii] Arthur William Fitzjames Haythornthwaite. They live, respectively, in Kingsclere, Newbury, and Steeple Ashton. Up to the Spring of this year, the tenancy was held by John and Julia Masters of Manor Farm, Semington. The ploughing of the field was carried out by a new tenant farmer, but it's not clear whether anyone in the village knows who this is.

Only 20% of respondents said that they knew who the owner / occupier was. Although no one was able to name them, a small proportion of respondents (8%) knew that they were related to a long-established village family. More respondents, particularly those who have lived in the village for a long time, were able to name the tenants of the field (until early 2016), who do live in the village.

Data Gathering

Because there are a significant number of people who have lived in the village since the 1950s, there is considerable anecdotal evidence about the use of Great Lees Field by villagers 'as of right' since that time. In order to gather evidence more systematically, a questionnaire was drawn up by the informal group of villagers known as *The Friends of Great Lees Field*.

The only information provided to householders was this text on the front of the questionnaire:

Great Lees Field on Pound Lane was ploughed on April 27th – for the first time in living memory. This great village asset has been used by many people over the years for exercise, sport, relaxation and recreation, and its loss has caused great regret and anger in the village. But we can do something about this by applying to Wiltshire Council to have Great Lees Field designated as a **Village Green**. If approved, this would mean that the field would remain open for use by villagers forever and protected from future development. If you have used Great Lees Field at any time in the past, we hope you will support this move by completing this short questionnaire about this. If you have any photographs of the field being used, that's going to be particularly helpful.

The questionnaire asked about:

- the length of time (duration in years) they had used the field
- how access was gained
- whether permission was granted for general access or specific activities (if so, from whom)
- whether permission had ever been denied, or access otherwise prevented
- the reasons for going onto the field
- frequency of use
- knowledge of other people's use of the field and / or community activities on it
- frequency and pattern of personal use

A copy of the full questionnaire is appended. 385 were distributed to village residents on June 6th / 7th, with returns requested by June 11th. No reminders were sent, and there was no follow-up of non-respondents. No questionnaires were sent to anyone living outside the village.

66 returns were received by June 13th, a return rate of 16%. All were in support of an application to register

Great Lees Field as a village green.

The respondents

Respondents lived in all parts of the village. Whilst a majority came from the streets closest to Great Lees Field, others lived in much more distant parts of the village community illustrating the wide use of the field.

All respondents said that they had used the field during the past 20 years. One said that she had used it from the late 1930s, six from the 1950s, four from the 1970s, nineteen from the 1980s, eight from the 1990s, 22 from the first decade since the millennium, and 6 more recently. This is a good representation of the various lengths of time that people have lived in the village.

Activities

What villagers have done in Great Lees Field over the last 20 years (and more) is wide-ranging. It includes individual and family activities (which predominate) and more organized community events. When asked about the activities that they have *seen* taking place, villagers reported the following (showing % positive responses):

- dog walking – 99%
- people walking – 97%
- children playing – 91%
- picking blackberries – 86%

- kite flying – 53%
- bird watching – 46%

- football – 29%
- bike riding – 29%
- cricket – 23%
- fishing – 21%

Activities with a lower than 20% response were: bonfires [18%] picnicing [15%] annual parking for the village fete [15%] team games [11%] rounders [9%] drawing / painting [9%] and a route for the village fun run (“slog”) [8%].

Other activities listed by fewer than 5 villagers included community celebrations, horse riding, picking mushrooms, running, jogging, picking damsons, children camping, Frisbee games, photography, fancy-dress fairs, the decoration and storage of carnival floats, gymkhana-related events, and rowing (presumably by using the northern boundary of the field as a launch point).

Villagers were also asked about the activities that they had engaged in personally (as opposed to observing others doing). There was a similar pattern of responses with dog walking, people walking, children playing, picking blackberries, and kite flying again being the most prevalent responses (in the same order as seen above). Football, cricket, bird-watching, picnicing, bike riding, the village fun run, and parking for the summer fête were all also mentioned.

When these responses are read in conjunction with the length of time that people have lived in the village, it is clear that the kinds of activity listed here have been happening for a long time; far longer than the 20 years since April 1996. Equally clearly, a number of these activities no longer take place. For example, responses indicate that Trowbridge Pony Club used the field for gymkhana parking from 1988 to 1998, and that there were bonfires (sometime associated with the Lions charity from the 1960s “up to 1976”. More recently, however, parking for the village summer fête (held in the school) has been “from 2005 to 2015”. It will not be used in 2016 because of the ploughing of the field.

This use of Great Lees Field by the village is fully in tune with rural life, with agricultural practice and the rhythm of the seasons. There are the seasonal community celebrations such as the spring village fun run “slog”, the summer fête, the autumn carnival and bonfire night, and seasonal individual and family activities such as “kite flying every autumn”, playing cricket with the children after “the grass was cut”, and picking mushrooms, blackberries (and damsons and elderflowers) in the late summer / autumn. Added to these are the more frequent activities that people undertake with their families (or on their own) more or less all the time, with walking and dog walking being the most reported activities whether by respondents themselves, or by other villagers.

One respondent [36] who ticked "walking" as one of the activities that he engaged in in the field, elaborated on that use, stating that this involved "exercise, relaxation, recreation, reflection, meditation, blackberrying, mushrooming, nature study, wildlife exploration" which brings home the point that Great Lees Field has a wide range of personal benefits. It is inconceivable that similar purposes were not widely shared by people who were also only "walking". This respondent added that he'd been doing this "for the last 32 years on a monthly basis". Another respondent [43] captured something of the significance of the field to children of all ages:

"I have used Great Lees Field regularly over the past 28 years. When my children were young we used to use the field for flying our kites. During summer holidays, village children would play in the field once the meadow had been harvested. The World War II pill box served as a play den, and has been a regular meeting place for teenagers wanting to be out of sight of adults."

The following extract from respondent [3] shows what has been lost:

"We own a children's day nursery and use the field on a regular basis. We have vulnerable children who live in poor accommodation (ie, flats) with no access to outdoors without an adult being present. Having access to the field given them a chance to run and play with many friends that they would not normally have in a safe environment. Great Lees Field is like another classroom for the nursery [where] they can learn, play, and draw with freedom."

Frequency

The data show that although the frequency of use varies, it can be quite regular, and very frequent. Villagers were asked how often they used Great Lees Field, and responses ranged from "every few years" to "6 times a day". Within these extremes, the following pattern of use way found:

- Every day (including the 6 times a day person, another who used it 3 times a day, and one twice a day) = 26%
- Every week = 47%
- Every month = 12%
- Every year = 5%
- Frequently / often / regularly = 9%

Within each of the weekly, monthly and yearly categories, there was also considerable variation. For example, *every week* includes those using it "nearly every day", those doing so "2 or 3 times" and those who went into the field "once a week". A similar pattern is found in the other categories. If all those who said that they used the field more than 4 days a week are added to the daily users, the % of users rises from 26 to 41.

Clearly, use changes over time. For example, from playing cricket in the field as a lad in the 1950s, to now merely walking on it; from taking children into the field two or three times a week when they were young, to now, on average, using it only once a week. There is also a clear seasonal change of use which is typified by this response: "in winter approx. 2 times a week, and at least 4 times a week in summer".

Access to the field

Respondents were asked how they got into Great Lees Field before it was ploughed and the gate locked. 80% said that they did this through the Pound Lane gate, and 25% said that it was through a gate in their back garden. A further 16% said it was through the gateway in the north-south hedge along the western boundary of the field, and 13% said it was from the canal, the right of way running along the northern edge of the field or the stiles giving access to that right of way from adjoining properties. NB, numbers sum to more than 100 because 29% of respondents said that they used multiple entrances and exits.

It was those respondents living on Pound Close and Palmer Grove, whose properties adjoin the field, who were able to use the gates in their back gardens to gain direct access to the field. It is clear from the data that they did this, not only for a host of recreational activities, but also in order to keep their property in good repair. It seems equally clear that they have done so 'as of right'.

Many respondents who used the Pound Lane gate were at pains to point out that they went through an unlocked gate. "Through open gate" is a typical and frequent comment.

As of Right use

Specific questions were asked about whether permission had been sought or given for use of the field in order to check whether 'as of right' use could be substantiated. It is clear from the data that the owners of the field have never been asked for permission to use the field, and have never given or refused it to

respondents. This is unsurprising as, as been noted already, the owners do not live in the village and none of the respondents appears to know their identity.

Respondents were asked whether they thought that they had ever been seen on the land by the owner / occupier, and if so what was said. 14% said that they thought that this had happened, but none reported any conversation taking place.

Respondents were asked whether they had sought permission for specific activities on the land or had received such permission more generally. Six (9%) responded that they had specific permission from the tenant farmers for community activities, and five of the six confirmed that this related to car parking on the field on the day of the school summer fête. No respondent said that they had ever sought or been given permission to access the land for personal / individual use. There is no evidence that the field owners were ever asked for, or ever gave, any such permissions.

Respondents were asked whether any attempt had been made by notice or fencing or any other means to prevent or discourage the use of the land. 23% of respondents replied, 'yes'. Unsurprisingly, a large majority (over 80%) of these were commenting on the ploughing of the field on April 27th 2016.

All the other responses were commenting only on the gate on Pound Lane which clearly has been locked (as opposed to its being merely closed) on a number of occasions over the years before the ploughing. The most cited reason related to stopping vehicular access by members of the traveller community. For example: "when travellers were around to stop them parking"; "when travellers were in the area"; and "when there was known traveller activity". It is not clear that this relates to the past 20 years. A very small number of agriculture-related reasons are also given, for example, cows and crop spraying. Again, detail on the timing of these uses was not supplied.

It is important here to note that complete access to the field has never been made impossible by all entry points (or entry discouraged through notices). Even when the Pound Lane gate was shut to prevent vehicles getting into the field, access through other means (the gateway in the western boundary hedge, the stiles at each end of the Right of Way running along the southern boundary with the canal, the canal bank, and the back gardens of the houses along Pound Close) has always been possible.

.....

This application is submitted to Wiltshire Council by the undersigned, who are members of the small group of villagers informally known as *The Friends of Great Lees Field*, and who acknowledge the vital support provided by the Semington village community in making this submission.


.....
Steven Hall


.....
Jon Jonik


.....
William Scott

June 24th 2016

FRIENDS OF GREAT LEES FIELD

EVIDENCE QUESTIONNAIRE IN SUPPORT OF OUR APPLICATION TO WILTSHIRE COUNCIL FOR THE REGISTRATION OF GREAT LEES FIELD AS A VILLAGE GREEN

Great Lees Field on Pound Lane was ploughed on April 27th – for the first time in living memory.

This great village asset has been used by many people over the years for exercise, sport, relaxation and recreation, and its loss has caused great regret and anger in the village.

But we can do something about this by applying to Wiltshire Council to have Great Lees Field designated as a *Village Green*. If approved, this would mean that the field would remain open for use by villagers forever and protected from future development.

If you have used Great Lees Field at any time in the past, we hope you will support this move by completing this short questionnaire about this. If you have any photographs of the field being used, that's going to be particularly helpful.

Please put your completed questionnaires (no later than 11th June) through the letter boxes of either:

Diane Swaine – Pound Close or Steve Hall – Pound Lane

If you have any questions about any of this, or would like to help in any way, please email Steve at friendsofgreatleesfield@gmail.com who can also provide additional copies of the questionnaire.

Thank you. We are the *Friends of Great Lees Field* and hope you are as well.

Diane Swain – Jon Jonik – Steve Hall – Bill Scott – Peter Smith

June 6th 2016

YOUR DETAILS

NAME	
ADDRESS	
POSTCODE	
PHONE NUMBER	
EMAIL ADDRESS	

GREAT LEES FIELD, POUND LANE, SEMINGTON

1 Please sign the bottom of the map on page 6 confirming it shows the land being claimed as a village green, and mark the location of your home with an 'X' on the map.

2	How many years have you known or used the land?	From
		To
3	Where do the people who use the land come from?	

4 What recognisable village facilities are available to people?

Please tick all boxes that apply and add any OTHER additional matters not covered.

- | | |
|---|--|
| <input type="checkbox"/> Local school | <input type="checkbox"/> Community police team |
| <input type="checkbox"/> Residents' association | <input type="checkbox"/> Doctor's surgery |
| <input type="checkbox"/> Village hall | <input type="checkbox"/> Community activities |
| <input type="checkbox"/> Church | <input type="checkbox"/> Neighbourhood watch |
| <input type="checkbox"/> Local businesses | <input type="checkbox"/> Post Office |
| <input type="checkbox"/> Sports facility | <input type="checkbox"/> Pub |
| <input type="checkbox"/> Shops | <input type="checkbox"/> Other (please state) |

'AS OF RIGHT' - HAS USE BEEN WITHOUT PERMISSION, SECRECY OR FORCE?

5	To your knowledge are there any public paths crossing the land?	Yes / No
6	How do / did you gain access to Great Lees Field?	

7	Do you know who the owner / occupier is? If possible, please supply details.	Yes / No
8	Has the owner / occupier seen you on the land?	Yes / No / Don't know
9	What did they say? And when was this?	
10	Was permission ever sought by you for specific activities on the land?	Yes / No
11	If so, from whom and when, and what for?	
12	Did anyone ever give you permission to go onto the land?	Yes / No
13	If yes, when and the reason	
14	Have you ever been prevented from using the land?	Yes / No
15	If yes, when and what was the reason?	
16	Has any attempt ever been made by notice or fencing or by any other means to prevent or discourage the use being made of the land by the local people? Please provide dates and the wording of any notices and mark their position on the map on page 6 (with an 'N').	Yes / No

LAWFUL SPORTS AND PASTIMES

17	Why do you go onto Great Lees Field?	
18	How often do / did you use the land?	
19	Did you see other people using the land?	Yes / No
20	Do you know of any community activities that take place or have taken place on Great Lees Field?	Yes / No
21	Please list activities and state when and for how long they have taken place and if possible include the frequency and duration	
22	Have you participated in any of them?	Yes / No

23	Do any organisations use the land for sports or pastimes? If so please specify.	Yes / No / Don't know
24	Do any seasonal activities take place on the land?	Yes / No / Don't know
25	Please tick all the following activities that <i>you have seen</i> taking place on the land	

- | | |
|---|--|
| <input type="checkbox"/> Children playing | <input type="checkbox"/> Football |
| <input type="checkbox"/> Rounders | <input type="checkbox"/> Cricket |
| <input type="checkbox"/> Fishing | <input type="checkbox"/> Bird watching |
| <input type="checkbox"/> Drawing and painting | <input type="checkbox"/> Picnicking |
| <input type="checkbox"/> Dog walking | <input type="checkbox"/> Kiteflying |
| <input type="checkbox"/> Team games | <input type="checkbox"/> People walking |
| <input type="checkbox"/> Picking blackberries | <input type="checkbox"/> Bonfire parties |
| <input type="checkbox"/> Community celebrations | <input type="checkbox"/> Bicycle riding |
| <input type="checkbox"/> Fetes | <input type="checkbox"/> Carolsinging |
| <input type="checkbox"/> Other (please state) | |

20 YEARS USE

26	Which years have you used the land?	From To
27	How often did you use the land?	
28	During the time you have used the land has the pattern of use remained the same? If not please supply details.	Yes / No
29	How have you accessed the land? Please mark on the map (with an 'A') where you access Great Lees Field.	
30	Please mark any stiles or gates on the map (with an 'S' or 'G'). Are the gates and stiles still in place? Has the gate ever been locked? Please supply any details.	Yes / No Yes / No

OTHER EVIDENCE

31	Do you have any photographs or any other evidence of use of the land by local inhabitants?	Yes / No
----	--	----------

32	Are you willing to lend them to us?	Yes / No / N/A
33	If you have additional information please attach a separate statement.	Yes / No / N/A
34	If you have knowledge of others who may be in a position to complete an evidence form, please write their names and addresses here.	Yes / No

DECLARATION

35	I have carried on the activities referred to in this questionnaire for years without anybody trying to stop me and I believe the activity should be treated by the law as having a lawful origin	Yes / No
36	I understand that the evidence form I have completed may be used in relation to this application may become public knowledge and I authorise the applicant to disclose this form to anyone reasonably requiring access to this application.	Yes / No
37	I also understand that this evidence may be presented at a non-statutory inquiry and I authorise the applicant to use this form for that purpose.	Yes / No
38	I am prepared to give oral evidence of my use of the land at a public inquiry.	Yes / No

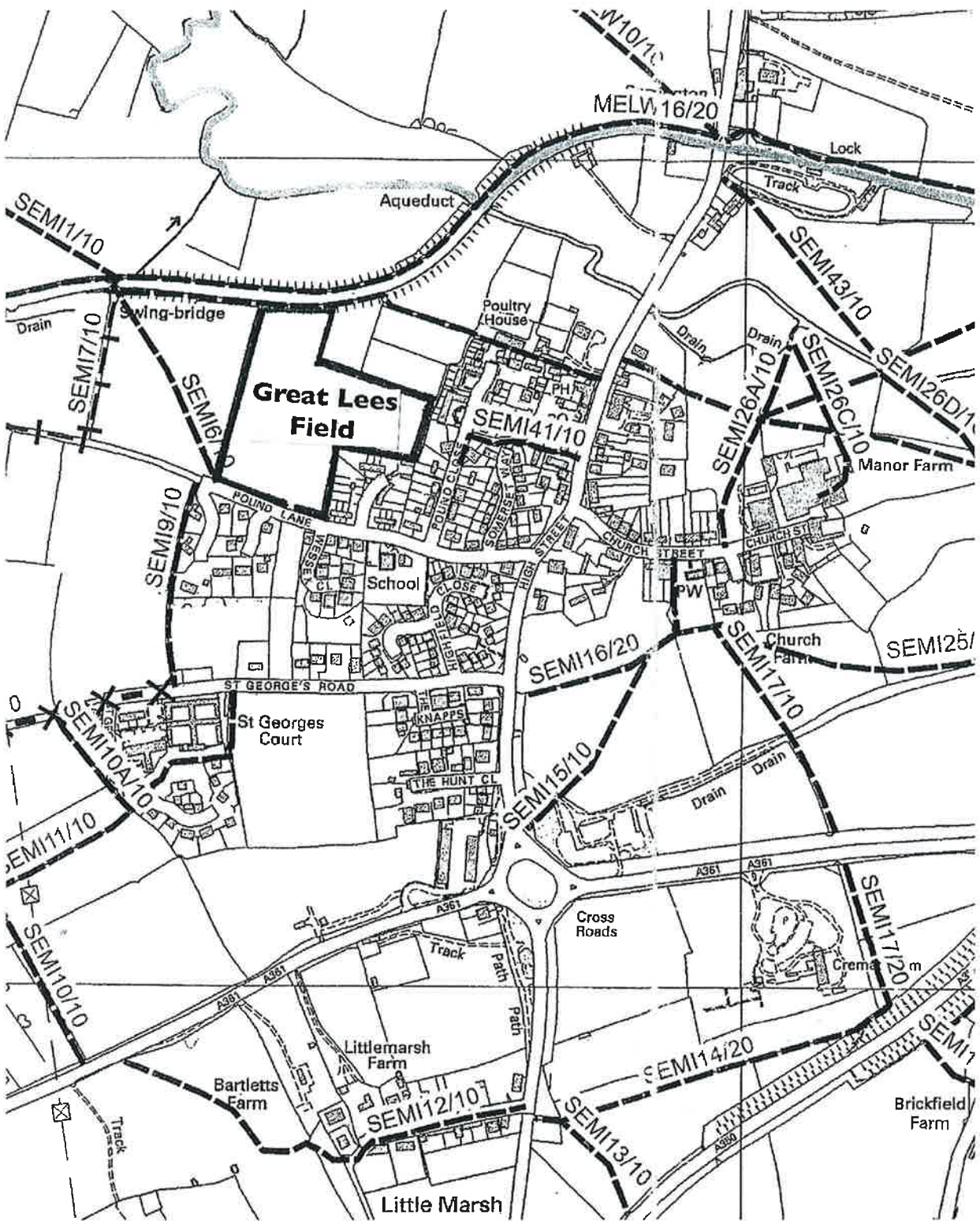
I certify that to the best of my knowledge and belief, the information I have given in this statement is true.

Signed **Date**

Please return this form to either ...

Diane Swaine - Pound Close or **Steve Hall** - Pound Lane

Map showing Great Lees Field in Semington village



PHOTOGRAPHS

Photographic Evidence

1. Respondents were asked for evidence of their use of Great Lees Field. The following photographs that they provided show:

A – Village boys playing cricket in the field the 1950s

B – Village girls and boys playing cricket in the field (probably in the late 1980s)

C – Children from a local nursery school being taught in the field in 2016

2. The following provide evidence of access to Great Lees Field:

D – An undated Google maps view of the field showing evidence of the use of the various access points

E – A Google Street View (May 2009) showing the entrances to Great Lees Field along the back gardens of Pound Close

F – A view from one of those back gardens (June 2016) showing the garden gate and the ploughed field

G – A Google Street View (May 2009) of the open Pound Lane gate

3. The following provide evidence of access denied to Great Lees Field (June 2016):

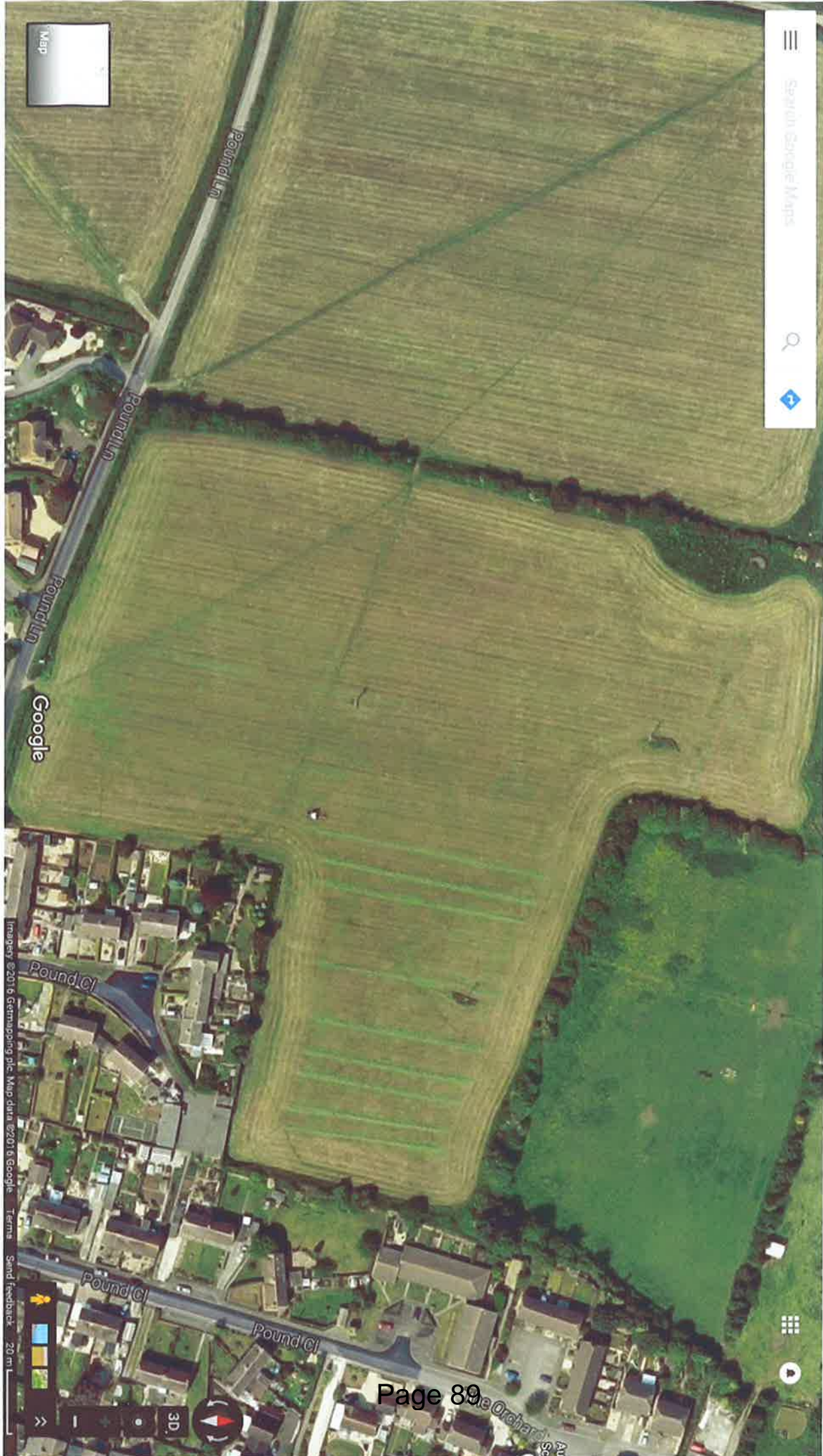
H – The Pound Lane gate after the ploughing and planting of the field with a Private Land notice (June 2016)

I – A Private Farmland notice in the gateway in the western edge of the field, some 90m north of Pound Lane

J – A Private Farmland notice at the northern edge of the field adjacent to the right of way

K – The padlocked Pound Lane gate

[Please note that photographs of individuals are not published with this report, but are available to be viewed at the Offices of Wiltshire Council - Rights of Way and Countryside, Unit 9, Ascot Court, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA]





← Pound Ln
Semington, England
Street View - May 2009

Found Ln
Pound Ln Semington
Back to Map

Google

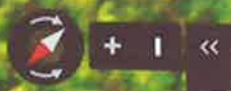


Image capture: May 2009 © 2016 Google Terms Report a problem



View of Great Lakes Field looking
South-west from the back garden
of a house in Pound Close showing
the back garden gate that always
occurs to the (L)



← Pound Ln Semington, England Street View - May 2009

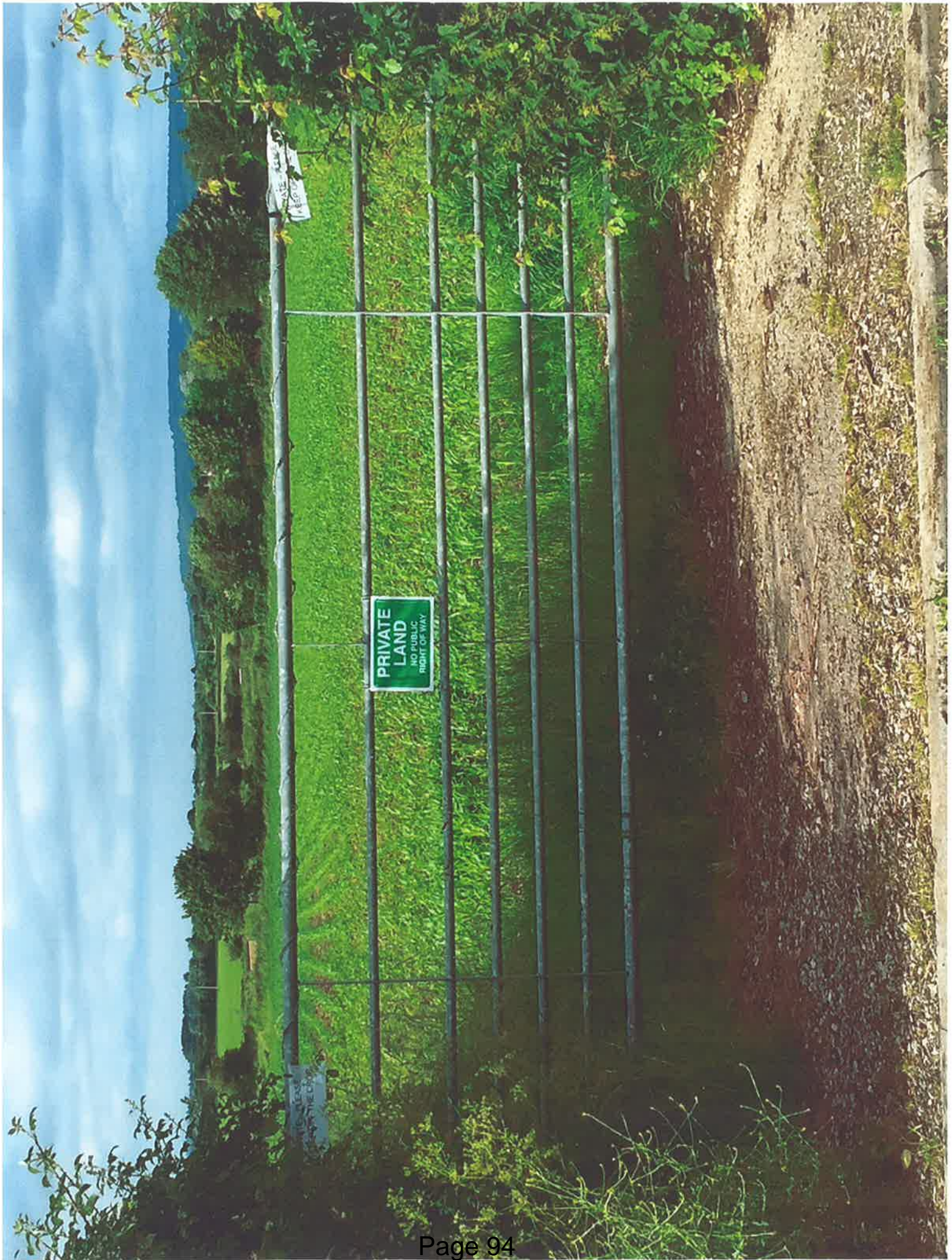
Pound Ln Semington

Back to Map

Google

Navigation controls: compass, zoom in (+), zoom out (-), and a back arrow.

Image capture: May 2009 © 2015 Google Terms Report a problem





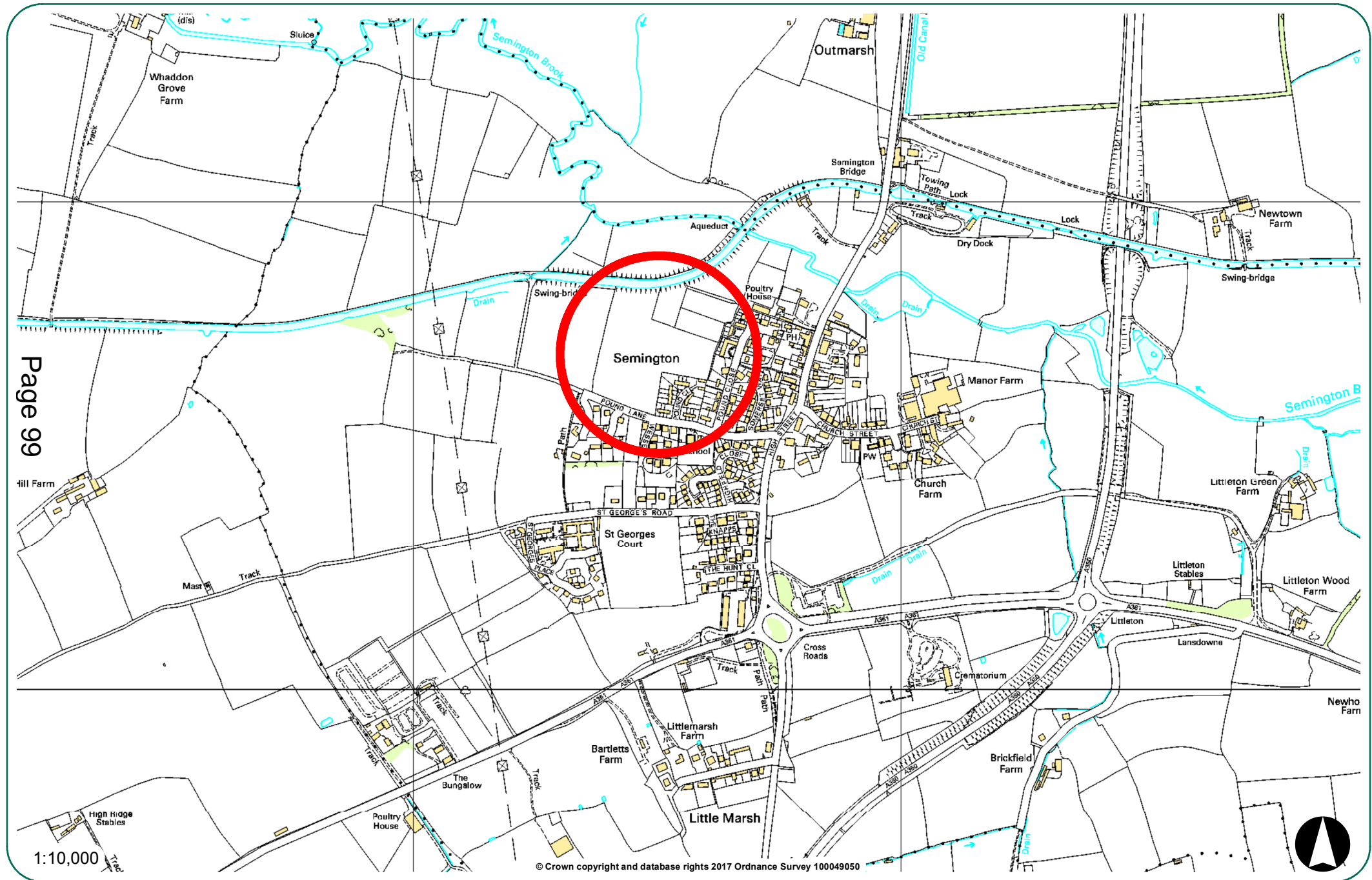




THE EVIDENCE

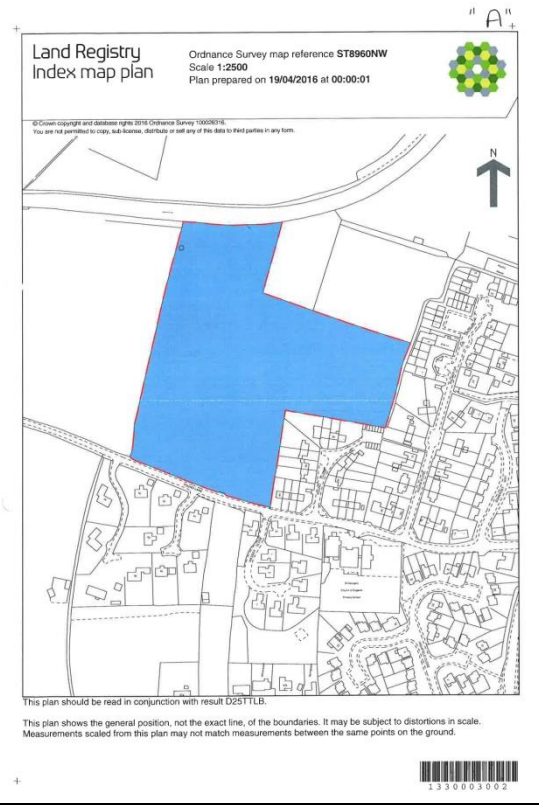
[Please note that the application is accompanied by 66 completed witness evidence forms, too numerous to be published with this reports. The completed witness evidence forms are available to be viewed at the Offices of Wiltshire Council - Rights of Way and Countryside, Unit 9, Ascot Court, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA]

Commons Act 2006 - Sections 15(1) and (3)
Great Lees Field, Pound Lane, Semington
Location Plan



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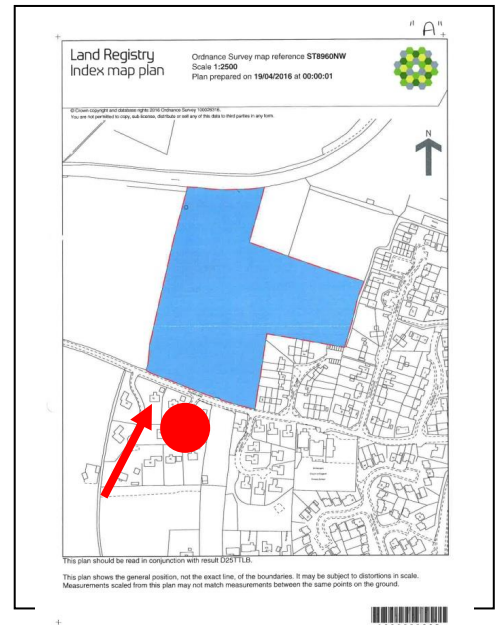
4. Application Plan



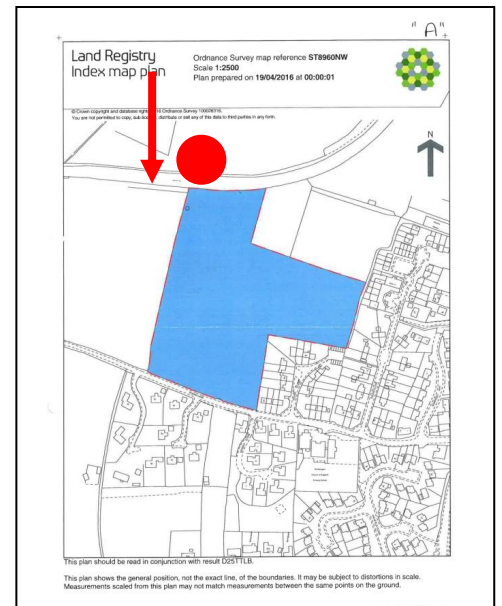
5. Photographs



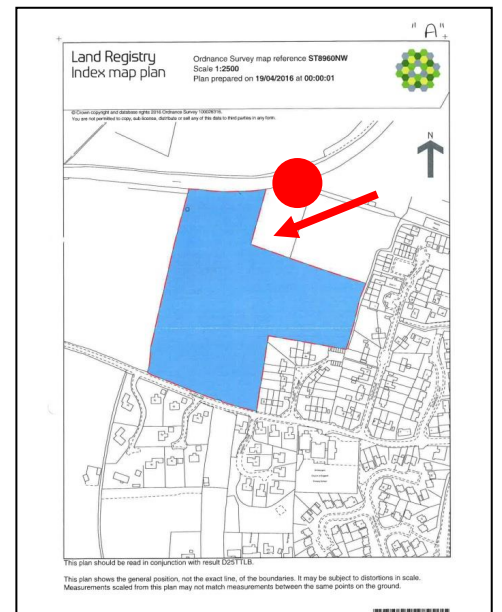
Pound Lane gate



Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

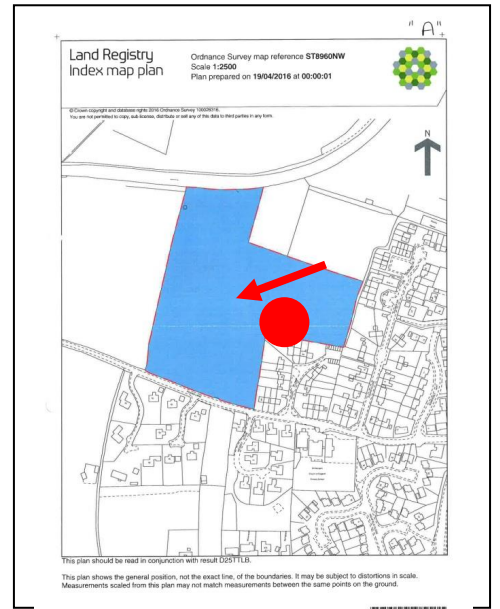
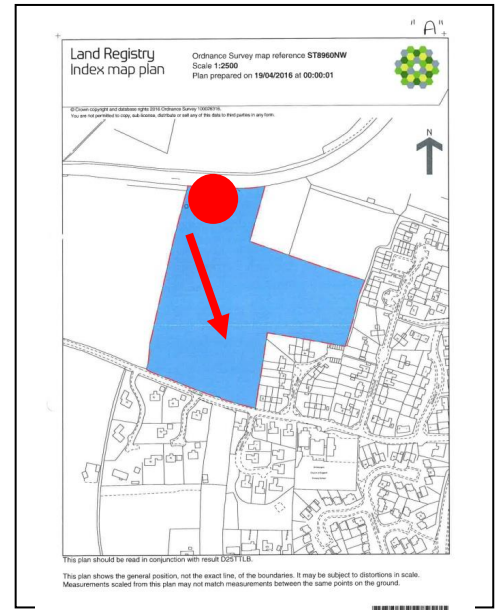


Stile on Footpath no.1 Semington (north-west corner of Great Lees Field)

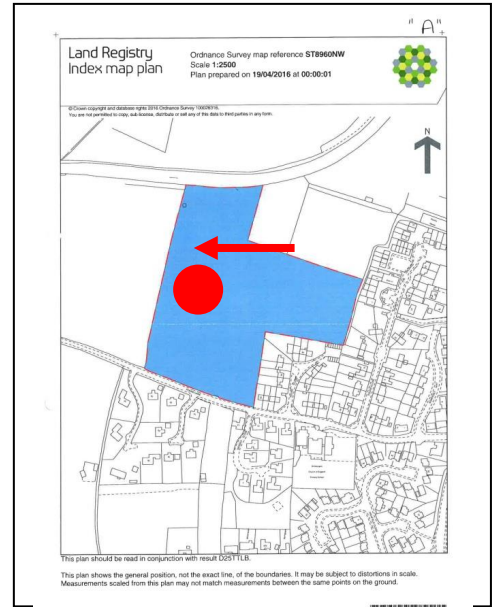


Stone stile on Footpath no.1 (north-east corner of Great Lees Field)

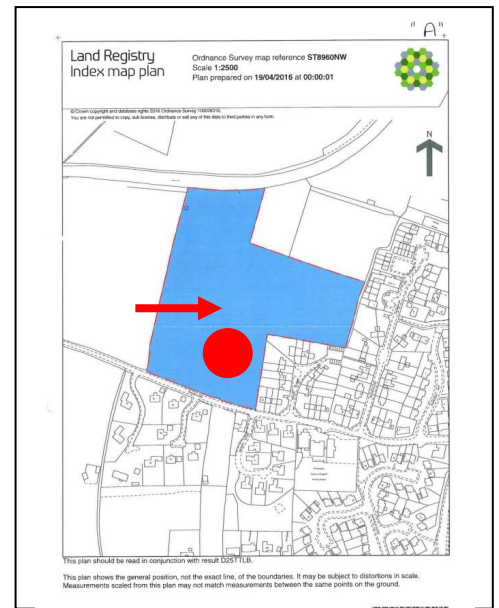
Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington



Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

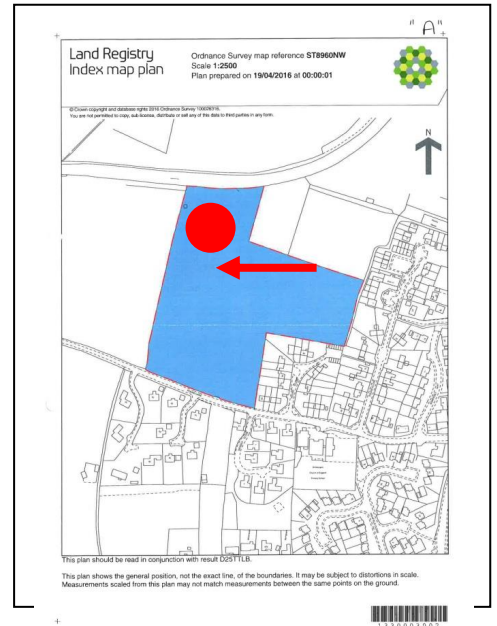


Access point in western field boundary (now fenced – site visit October 2016)



Typical access gate from gardens of properties in Pound Close, to the east of Great Lees Field.

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington



Second World War pillbox located at the western boundary, to the north of the field.

6. Aerial Photographs



*Great Lees Field, Semington
Aerial view – 2001*



*Great Lees Field, Semington
Aerial view – 2005/06*

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington



*Great Lees Field, Semington
Aerial view - 2014*

7. Applicants

7.1. Friends of Great Lees Field:

Mr Steven Hall
14 Pound Lane
Semington
Trowbridge
Wiltshire
BA14 6LP

Mr Jon Jonik
16 Pound Lane
Semington
Trowbridge
Wiltshire
BA14 6LP

Dr William Scott
24 Pound Lane
Semington
Trowbridge
Wiltshire
BA14 6PL

8. Registered Landowners

- 8.1. Mr William Peter Stuart–Bruges and Mr Arthur Haythornthwaite
C/O Mr Matthew Scudamore
Senior Associate
Gateley Plc

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

One Eleven Edmund Street
Birmingham, B3 2HJ

- 8.2. Wiltshire Council also contacted Wessex Water who, it was believed, owned a part of the application land; however, Mr Daniel Baker, Wessex Water, Legal and Estates Department, wrote on 19 December 2016 as follows:

“...I can confirm that whilst we own land nearby, Wessex Water does not own the land referred to in your earlier letter of 30 September 2016.”

9. Legal Empowerment

- 9.1. 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 Pound Lane, Semington, as a Town or Village Green, has been made under Sections 15(1) and (3) of the Commons Act 2006, which amended the criteria for the registration of greens:

“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-

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

- (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 relevant period.*

(3A) In subsection (3), “the relevant period means” –

- (a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);*
- (b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation.*

(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.”

10. Background

- 10.1. Wiltshire Council is in receipt of an application dated 24 June 2016 (received by Wiltshire Council as the Registration Authority, on the same date), made under Section 15(1) of the Commons Act 2006, to register land known as Great Lees Field, Pound Lane, Semington, as a Town or Village Green.
- 10.2. 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 one year of the cessation of use.
- 10.3. Part 7 of the application form requires the applicant to provide a summary of the case for registration:

“Great Lees Field in the village of Semington has been extensively used by villagers in the post-war period ‘as of right’ for a wide range of recreational, sporting and other activities. This use came to an end on April 27th 2016, when the field was ploughed as a prelude to maize being planted. This event, which came without warning, was a shock to villagers who lost, overnight, a prized village amenity; that is about 4Ha of green space which could be used

for a wide range of activities in and around its normal agricultural usage. The ploughing of the field has prompted this application to establish village green status for the field with the aim of enabling villagers to continue to carry out the activities that they have freely enjoyed for so long.

Up to that point there has been no attempt by the field's joint owners (who do not live in the village) to prevent use by village families; nor had any attempt been made to deny complete access to the field by villagers by notices or physical barriers. In the same vein, permission had never been sought from the owners, by individuals or families, to use the field for any purpose.

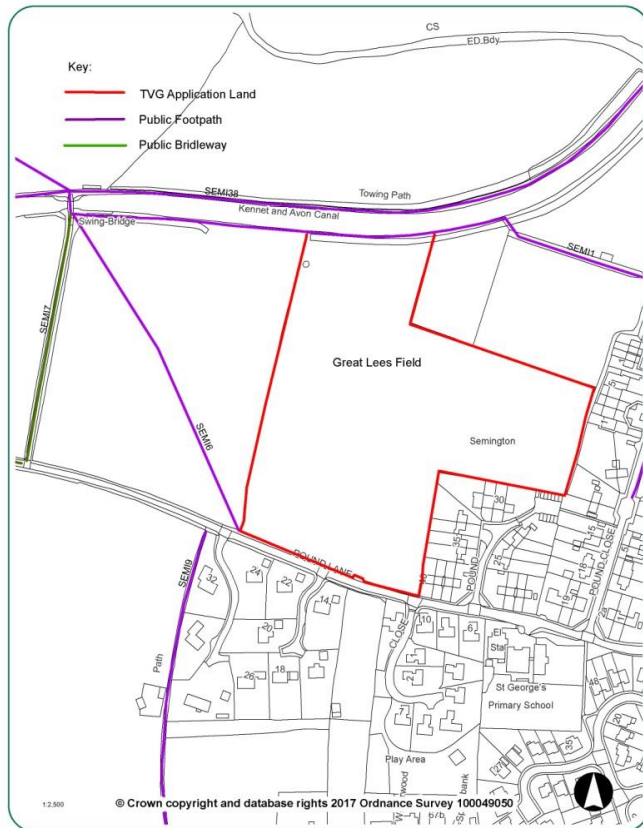
Data on residents' use of Great Lees Field, and access to it, were gathered by questionnaire. There was a 16% return, which represents a significant level of sampling of village opinion. All respondents said that they had used the field during the past 20 years, and many said that it was for much longer than that. All were supportive of this application. The data show that there are at least six ways that people on foot have used to get into Great Lees Field over the years, and there is good evidence both through photographs and on Google maps of this usage.

The data show that the use of Great Lees Field was both regular and frequent. 26% of respondents said they used it every day, 47% every week, and 12% every month. Over 30 different activities were identified. The most frequently cited were walking (with and without dogs), children playing, picking blackberries and kite flying. This use of Great Lees Field by the village is in tune with agricultural practice and the rhythm of the seasons, as there are both seasonal activities, for example, which fit in around grass cutting for silage, and the more frequent activities that people undertake with their families (or on their own) more or less all the time.”

- 10.4. The application was received by Wiltshire Council on 24 June 2016 and accepted as a complete and correct application on 9 September 2016. The

application was accompanied by 66 completed witness evidence questionnaires. Following notice of the application being posted on site, advertisement in a local newspaper and service upon all landowners, one objection and two representations of support for the application, were received.

- 10.5. The application land is located off Pound Lane in the parish of Semington and occupies an area of approximately 3.86 hectares, presently being ploughed and cropped. It is located between Pound Lane to the south and the Kennet and Avon Canal to the north. The residential development of Pound Close is located to the east and the field to the west is owned by Mr Thomas Masters and his sister Ms Julia Masters. Footpath No.1 Semington leads east-west at the northern boundary of Great Lees Field, south of the canal, leading generally south-east from the Hilperton Parish boundary, (north-west of the swing bridge over the Kennet and Avon Canal, to the west of Great Lees Field), to Semington High Street, adjacent to the Somerset Arms pub.



Footpath no.1 Semington, leading east-west, at the northern boundary of Great Lees Field, south of the canal.

10.6. Footpath No.1 was claimed by Semington Parish Council following the National Parks and Access to the Countryside Act 1949, which required all County Councils in England and Wales to compile a definitive map and statement of public rights of way. The path was included within the Bradford and Melksham Rural District Council Area Definitive Map and Statement dated 1952, (conclusive evidence that it was a public right of way at the date the map was prepared). A definitive map modification order was made in 1991, amending the route of Footpath No.1 Semington by adding a section of footpath over the swing bridge and deleting a section of Footpath No.1 which now lies in the parish of Hilperton, adding this section of the path as Footpath No.48 Hilperton, (effectively a re-numbering of the path as a result of a parish boundary change). These changes did not affect the route of the footpath

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

through Great Lees Field, which has remained unaltered since its inclusion within the definitive map and statement.

10.7. There is a gate at the southern boundary of the field onto Pound Lane; a stile at the north-west corner of the field on Footpath No.1; stone stile at the north-east corner of the field on Footpath No.1; garden gates leading into the field from properties in Pound Close and a former gap / Wiltshire gate in the western field boundary, (adjoining the land to the west owned by the Masters' family), which has now been fenced. On visiting the site in October 2016, it was noted that the landowner had erected the following notices on the land:

- 1) Pound Lane gate - "*Private Land No Public Right of Way*" notice and "*Private – Please Keep off the Crop*" notices.
- 2) Former Wiltshire gate / gap between Great Lees Field and the field to the west – "*Private Farmland No Public Right of Way*" notice.
- 3) No notices are erected on the stile in the north-west corner of the field on Footpath No.1 Semington. Just inside this stile a notice stating "*Private Farmland No Public Right of Way*" is erected on the land.
- 4) No notices are erected on the stone stile in the north-east corner of the field on Footpath No.1 Semington.
- 5) To the rear of properties in Pound Close – "*Private Land No Public Right of Way*" notice is erected on the land.

10.8. In supporting documentation, "The Case for a Village Green", the applicants give the following details of notices erected on site:

"Following the ploughing of the field on April 27th, printed notices were displayed on the Pound Lane gate saying that the land is 'private' and that there is no right of way. Around June 15th, more formal notices were placed on the gate on Pound Lane, and also at other access points to the field, some of which were newly blocked off. The details are:

- I. *the gateway in the western boundary hedge approximately 90 metres north of Pound Lane has a sign “PRIVATE FARMLAND No Public Right of Way” and wire mesh netting now blocks access through the gap in the hedge.*
- II. *there is a sign “PRIVATE LAND No Public Right of Way” in the middle of the small gap in the hedge 20 metres north of Pound Lane.*
- III. *the wooden stile into Great Lees Field in the north-west corner has a new “PRIVATE FARMLAND No Public Right of Way” sign in the corner of the field...”*

10.9. The landowner’s agent provides the following farming history of Great Lees Field:

- “7. *Great Lees Field has been in the ownership of the Stuart-Bruges family since 1951. Mr Stuart-Bruges himself has been an owner as far back as 1987. Since 1951 Great Lees Field has (up to and including 2015) been in agricultural use by the Masters family. In 1951 the Masters family were granted a tenancy from year to year of Great Lees Field for grazing and mowing. The tenancy endured until 1987. Thereafter, from (and including) 1988 onwards, annual grazing and mowing agreements were entered into with the Masters family each year save for 2000.*
8. *Throughout the period from 1951 to 2016 the Masters family used Great Lees Field for the purposes of silage and hay production. In 2016, after the cessation of the arrangements with the Masters, Great Lees Field was planted with a maize crop. In 2000 (the one year no grazing agreement was concluded with the Masters family) Great Lees Field became overgrown and weed killer had to be applied before the land was reseeded. Great Lees Field was also ploughed at this time.”*

10.10. The grazing licence has been held by the owners of the adjoining land to the west of Great Lees Field, Mr John Masters and his sister Miss Julia Masters. The land was ploughed on 27 April 2016, which it is claimed brought to an end use of the land for the purposes of lawful sports and pastimes, although the landowner contends that the field was ploughed in 2000.

10.11. The land has been subject to 3 planning applications as follows:

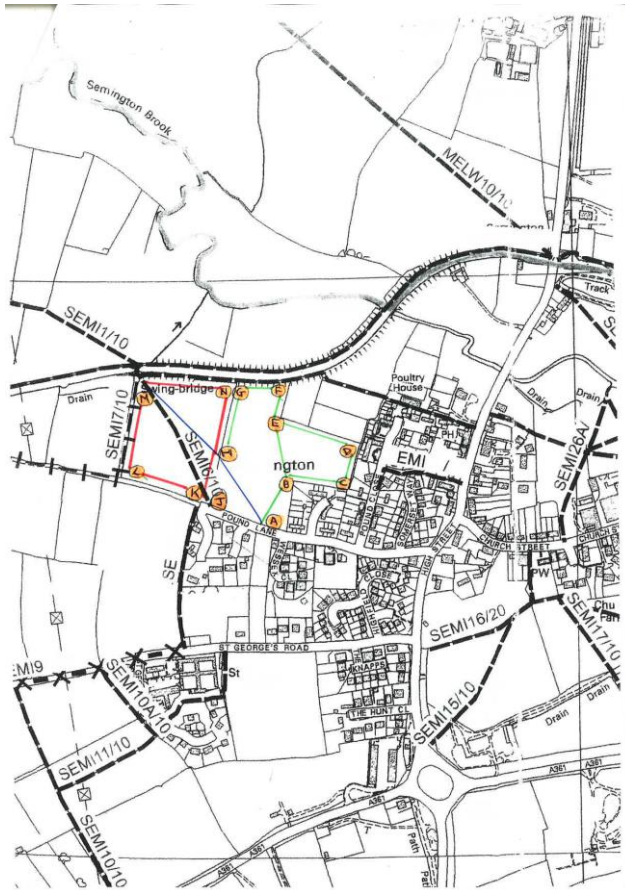
- 1) W/89/01008/OUT – Land west of Pound Close, Semington Wiltshire
Residential and ancillary development including land for community use.
Application registered – 30 May 1989
Decision 22 August 1989 – Refused

- 2) 16/05783/OUT – Land north of Pound Lane, Semington, Wiltshire
Erection of 75 dwellings including 30% affordable homes with ancillary public open space and play areas and access from Pound Lane (Outline application relating to access).
Application registered 14 June 2016
Decision 7 October 2016 – Refused
Appeal lodged 6 December 2016

- 3) 17/01053/OUT – Land to the north of Pound Lane, Semington, Wiltshire
Outline Application with some matters reserved (access) erection of 75 dwellings including 30% affordable homes, with ancillary public open space and play areas and access from Pound Lane.
Application registered 3 February 2017 (Application withdrawn)

10.12. Planning application No.16/05783/OUT is the only valid application on this site, where the decision of Wiltshire Council, as the planning authority, to refuse the application, is presently being appealed.

10.13. The land was subject to an application to amend the definitive map and statement of public rights of way, by order (definitive map modification order (DMMO)), adding footpaths over Great Lees Field and the land to the west (in the ownership of the Masters' family), (please see application plan below). The application dated 26 April 2016 was refused by Wiltshire Council, as the Surveying Authority, on the grounds that the application failed to make a reasonable allegation regarding the acquisition of public rights over the claimed routes, with an insufficiency of user for the Red Route, (please see plan below) and an interruption to user on the Blue and Green routes leading to insufficiency of evidence in the 20 year period before the interruption occurred. It was also concluded that all claimed routes leading from the Pound Lane Gate, were not used "as of right" owing to the locking of the gate and subsequent damage to it. Please note that DMMO and Town/Village Green applications are determined under separate legislation and the evidence is subject to differing legal tests.



Definitive Map Modification Order application map. The claimed routes are shown Red, Blue and Green.

11. Right to Apply

11.1. The Growth and Infrastructure Act of 2013 introduced a series of provisions to make it more difficult to register land as a Town or Village Green. This included, at Section 16, the removal of the “right to apply” to register land as a Town or Village Green where specified planning “trigger events” have occurred for example, where an application for planning permission in relation to the land, which would be determined under Section 70 of the 1990 Act, is first publicised in accordance with requirements imposed by a development order by virtue of Section 65(1) of that Act.

11.2. The right to apply is revived where a corresponding “terminating event” has taken place, for example, the withdrawal of the planning application; a decision to decline to determine the application is made under Section 70A of

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

the 1990 Act; where planning permission is refused and all means of challenging the refusal by legal proceedings in the UK are exhausted and the decision is upheld; or where planning permission is granted and the period within which the development to which the permission relates must be started expires without the development having begun, (a full list of trigger and terminating events is included at Schedule 1A of the Commons Act 2006 as added by Section 16 of the Growth and Infrastructure Act 2013 and amended by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014, which extended the list of trigger and terminating events).

- 11.3. This alters the way in which the Registration Authority deals with new applications to register land as a Town or Village Green. DEFRA has issued Interim Guidance to Registration Authorities and has recommended that on receipt of an application the authority should write to the local planning authority and the Planning Inspectorate, enclosing the application map, to seek confirmation of whether or not there are trigger and terminating events in place in relation to all or part of the application land.
- 11.4. In the Semington case, as per the guidance, the Registration Authority wrote to the Planning Inspectorate; Spatial Planning and Development Control at Wiltshire Council on 27 June 2016, using the template letter as set out within DEFRA guidance and including links to the trigger and terminating events (as amended), to request further details of any planning trigger or terminating events in place over the land. In this case the local planning authority and the Planning Inspectorate confirmed to the Registration Authority that there was no such trigger or terminating events in place over the whole of the application land or any part of it, as follows:

- 1) 5 July 2016 – Wiltshire Council Spatial Planning – *“I confirm that no trigger or terminating event has occurred on the land”*.

The Head of Spatial Planning, Wiltshire Council, confirmed in the reply: *“In the light of the relevant legislation, the document I have considered in my assessment of the Village Green application in relation to Great Lees Field, Semington is the adopted Wiltshire Core Strategy (January 2015).”*

- 2) 15 July 2016 – Wiltshire Council Development Control – *“I confirm that no trigger or terminating event has occurred on the land”*.
- 3) 11 August 2016 – Planning Inspectorate – *“I confirm that no trigger or terminating event has occurred on the land”*.

11.5. When the Town or Village Green application was received by Wiltshire Council as the Registration Authority on 24 June 2016, a planning application had already been lodged with Wiltshire Council as the Planning Authority (application No.16/05783/OUT); however, the list of relevant trigger events clearly states that a planning application is only a valid trigger event where an application for planning permission in relation to the land which would be determined under Section 70 of the 1990 Act (Town and Country Planning Act 1990), is **first published** in accordance with requirements imposed by a development order by virtue of Section 65(1) of that Act. In this case the planning application was received on 14 June 2016, (before receipt of the Town or Village Green application on 24 June 2016), but it was not published until 29 June 2016. Thus no trigger event has occurred on the land.

11.6. The Council, as the Registration Authority, must rely upon the advice given by the Planning Authorities in relation to planning trigger and terminating events over the application land.

12. Validity of Application

12.1. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 at parts 3 and 10, set out the requirements of a valid application. Regulation 5(4) allows the applicant to be given reasonable opportunity to put the application in order. In this case upon examination of the application it was found to be flawed in 5 areas:

- 1) Regulation 3(2)(d) states that the application may be supported by a statutory declaration as set out in form 44, with such adaptations as the case may require. The text of the statutory declaration was not adapted in any way to reflect this application.
- 2) Regulation 10(2)(a) refers to an Ordnance map accompanying the application and referred to in the application. Whilst the map met the requirements of the regulations, there was no reference to the map as “Map A” or “Exhibit A”, within the application form itself and no explanation of how the application land was recorded on this map. The inclusion of this reference would clearly set out that this was the correct map and the extent of the application land.
- 3) Regulation 10(3)(c) states that any Ordnance map accompanying the application must be marked as an exhibit to the statutory declaration. Whilst the map was correctly labelled as “Exhibit A” the map was not referred to within the statutory declaration itself.
- 4) At part 6 of the application, which requires the applicant to identify the locality or neighbourhood within a locality in respect of which the application is made, the applicant ticked to indicate that a map clearly marking this area was attached; however, there was no additional map

included with the application to indicate the locality or neighbourhood within a locality.

- 5) At part 5 of the application, the location description contained a typing error “It is outwith the village settlement boundary.”

12.2. Under Regulation 5(4), where an application is not duly made “...but it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.” The Registration Authority returned Form 44; the statutory declaration and map Exhibit A, to the applicant on 25 August 2016. The application was returned to the Registration Authority on 9 September 2016 and found to be in order. Wiltshire Council, as the Registration Authority, is now placed under a duty to process the application in a fair and reasonable manner.

12.3. Where the application is made under Section 15(3) of the Commons Act 2006, it must be made within one year of the cessation of use. In this case, it is claimed that user of the application land ceased when Great Lees Field was ploughed on 27 April 2016. The application to register the land as a Town or Village Green is received by the Registration Authority on 24 June 2016 and put in order on 9 September 2016; therefore, the application is received and also validly made within the one year period of grace.

13. Public Consultation

13.1. Wiltshire Council served notice of the application upon the landowner, applicant and other interested parties on 30 September 2016. Notice was also posted on site and placed in the Wiltshire Times on Friday 7 October 2016. The application including the supporting evidence was placed on public

deposit at the offices of Wiltshire Council in Trowbridge. All parties were given six weeks to make representations or objections regarding the application, (by Monday 21 November 2016).

- 13.2. Following notice of the application, one objection and two representations of support were received. The consultation replies are summarised below, (please note that full copies of all correspondence are available to be viewed with the Rights of Way and Countryside Team, Ascot Court, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA):

1) Representation of support – Mr Steve Hall (joint applicant) – E-mail correspondence dated 16 November 2016:

Since we submitted the Town or Village Green application to you, we have read the outcome of a separate application to establish rights of way across this field and the adjacent one. The Wiltshire Council report on the application to establish these rights of way [the rights of way report] contained statements that have a bearing to your deliberations about our Town or Village Green application as they relate to access to the field.

1. The first point related to the damage to the Pound Lane gate at Point A which was attributed in Section 17.3 of the rights of way report to the use of force by villagers to gain access to the field. Section 17.3 of that report says: “There is clear evidence of the use of force to gain access at point A over a considerable length of time.” However, our subsequent enquiry amongst villagers has revealed that this damage was caused to the gate by farm vehicles regularly “bumping” into it to push it open. That it was obviously unlocked to allow that to happen strengthens our case that this gate was kept unlocked.

The significant point about this is that we can provide eye-witnesses who confirm that this “bumping” was a normal means of opening the gate to allow vehicular entrance from Pound Lane. Our witnesses are prepared to provide that evidence at any enquiry. Thus, when Section 17.5 of the rights of way report reiterates this point: “Since 1987 there is evidence that use has been by force”, we have evidence that the damage was caused, not by villagers intent on walking across the field, but in order to gain access for agricultural use.

We note that the authors of the rights of way report accepted the assertions of the landowner when coming to its conclusions about who caused the damage to the gate (and why). We trust that Wiltshire Council officers will weigh this against the evidence that we are able to provide when considering this Town or Village Green application.

2. Our second point relates to signage. It is further contended in the rights of way report (Section 10.16.12) that no entry signs were posted round the field and that these were vandalised by villagers; photographs are presented of broken signs on grass. However, none of this is evidence that these signs were in use in Great Lees Field, or that the photographs of the damage were taken in and around this field. There is only assertion of the land-owner to set alongside the assertions of many users of the field that there were no such signs, and no vandalism. This is another example of Wiltshire Council officers accepting the assertions of the landowner. Again, we trust that this time, these will be weighed against the contrary evidence that we provide.
3. The third point is about the ploughing of the field. A core aspect of our case is that Great Lees Field has never been ploughed in living memory. This obviously clashes with the statement by the landowner

(found in Section 10.16.9 of the rights of way report) that the field was ploughed in 2000. Again, this is only an assertion, and we shall provide evidence from people who have lived adjacent to the field since well before the year 2000 that this did not happen. Further, the aerial photograph in Section 6.3 of the rights of way report shows the field in 2001, after it is alleged that it was ploughed. The paths across the field are as clear as they are in the adjacent field. This, we argue, provides clear evidence that it was not ploughed in the previous year and calls into question the accuracy of the landowner's memory.

4. Lastly, there is no mention in the rights of way report of the entrances to Great Lees Field through the gates in people's back gardens along Pound Close. We presume that this is because the landowner acknowledges that this access has never been restricted in any way.

2) Representation of support from Semington Parish Council (Roger Coleman – Clerk to Semington Parish Council) – E-mail correspondence dated 14 October 2016:

At its meeting held on 12 October 2016, Semington Parish Council resolved that it fully supported the application and that it had no objections to Great Lees Field being registered as a Town or Village Green.

3) 21 November 2017 – Submission from Gateley Plc on behalf of the landowners including:

- Submission of Alan Evans, Counsel at Kings Chambers
- Statement of Mr William Peter Stuart-Bruges (including annotated decision report; statements and Gateley Plc letter, all relating to the recently refused DMMO application)
- E-mail from Mr Arthur Haythornthwaite (joint landowner) confirming his support of the statement submitted by Mr William Stuart-Bruges.

The main points of the submission are summarised below and the full submission is available to be viewed at the Offices of Wiltshire Council (Rights of Way and Countryside, Unit 9 Ascot Court, White Horse Business Park, Trowbridge):

Submission of Alan Evans, Counsel at Kings Chambers – 17 November 2016:

Great Lees Field - The landowner has a firm conviction that the Town or Village Green application has been motivated by a desire to frustrate the development of Great Lees Field.

The report and witness statements made by Mr Stuart-Bruges in connection with the rights of way claim are highly relevant to the Town or Village Green application and Mr Stuart-Bruges wishes these earlier witness statements in connection with the DMMO application to be considered as evidence in respect of the Town or Village Green application.

The farming history of Great Lees Field – The Stuart-Bruges family have owned Great Lees Field since 1951, Mr William Stuart-Bruges himself since as far back as 1987. Since 1951 to 1987 (up to and including 2015) it was in agricultural use by the Masters' family who were granted a tenancy from year to year for grazing and mowing. From 1987 onwards annual grazing and mowing agreements were entered into with the Masters' family, each year save from 2000.

1951 – 2016 the Masters' family mainly used Great Lees Field for silage and hay production. After the cessation of the arrangements with the Masters' the field was planted with maize.

In 2000, where no annual agreement was entered into the field became overgrown and weed killer was applied before the land was reseeded. The field was also ploughed at this time.

Access to Great Lees Field – Of critical importance to this case is the access to Great Lees Field from Pound Lane. In the questionnaires 80% of the witnesses claim to access Great Lees Field via a gate at Pound Lane. All the grazing agreements from 1988 onwards provided that the Masters' would not permit any trespass on Great Lees Field. From 2003 onwards the grazing agreements also provided that the Masters' would maintain the gate closed and locked. Several of the evidence questionnaires refer to the locking of the gate (other than in 2016, outside the qualifying user period). Some references associate the locking of the gate with traveller activity in the vicinity, crop spraying and the cutting of silage (or even the presence of cattle) and some suggest no reason for the locking. The general impression conveyed is that the locking of the gate was occasional and for short periods, but it confirms that the gate was locked. The justification for the application to register the field as a Town or Village Green accepts that the Pound Lane gate has *“clearly been locked (as opposed to its being merely closed) on a number of occasions over the years”*.

The gate has been repeatedly unlawfully lifted off its hinges by persons wishing to get onto Great Lees Field. It has also been climbed to gain access as evidenced by damage to the bars. Damage to the gate has resulted in its replacement in 1998 and 2010 as evidenced by Mr Stuart-Bruges' 1998 invoice and a letter from Mr Masters dated 27 May 2010. Mr Stuart-Bruges has provided photographic evidence of the damage to the gate in 2009. This photograph does show the gate open at this time but it must previously have been locked shut otherwise there would be no need for it to be climbed, causing the damage to the gate.

At various times barbed wire has been wound over the top of the gate to prevent or discourage entry. The evidence produced by Mr Stuart-Bruges convinced the Council that entry by the public to Great Lees Field from Pound Lane was incontrovertibly forcible in the DMMO application and there is no good reason for the Council, as the registration authority, to reach a different conclusion in the Town or Village Green application. Jan Jen in user evidence confirms that the Pound Lane gate was padlocked and/or topped with barbed wire and that access was gained by climbing over the gate.

Since 1987 signs have been fixed to the Pound Lane gate indicating that the land was private and/or that there was no right of way. Mr Stuart-Bruges fixed these signs when he became owner in 1987 and again when the gate was replaced in 1998. In 2004 signs stating "Private No Right of Way" were unlawfully removed and cast to the ground (photographic evidence of this is provided).

There is access from Great Lees Field to the Masters' field through a gap in the hedge. That access was formerly secured by a Wiltshire gate, a wire fence which is capable of being removed. In 1998 Mr Stuart-Bruges fixed signs on the same terms as those on the Pound Lane gate. Photographs, taken in 2004, show the sign stating "Private No Right of Way" having been removed and cast to the ground.

The footpath routes claimed in the DMMO application but rejected by the Council - Three routes were claimed in respect of Great Lees Field.

The Law – Pill LJ in *R v Suffolk County Council ex p Steed*, approved by Lord Bingham in *Beresford v Sunderland City Council* – *"it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green" and that the statutory ingredients for registration must be "properly and strictly proved"*.

“As of right” is clear and well settled in law (Lord Walker – Lewis v Redcar and Cleveland Borough Council 2010). Lifting a gate off its hinges or climbing over a locked gate to access land forcibly is not “as of right”.

Law in relation to forcible use and signs is considered in Taylor v Betterment Properties Ltd 2012. Where the landowner displays opposition to the use of the land by erecting a suitably worded sign, visible to and actually seen by local inhabitants, then subsequent use is contentious and, in that account forcible. If the signs were not seen by many users of the land because they were repeatedly unlawfully removed soon after erection, the landowner would nevertheless have done all that was required to make use contentious.

In accordance with the observations and guidance in Laing Homes Ltd v Buckinghamshire County Council and of Lightman J in Oxfordshire County Council v Oxford City Council, use which was referable to the footpaths in the DMMO application should be discounted. The matter is approached on the basis of how it would have appeared to the landowner. The benefit of the doubt is to be given to the landowner as Lightman J said in the Oxfordshire case *“if the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).”*

“Significant number” – Sullivan J in McAlpine Homes Ltd, Staffordshire County Council - *“the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.”*

The law applied to the facts – The Town or Village Green application has not been properly and strictly proved as required by Steed. Access to Great Lees Field from Pound Lane has been forcible. This was the conclusion of the

surveying authority in the DMMO application and remains the only proper conclusion in the present case.

Use has been in defiance of notices stating “Private No Right of Way” and thus contentious and forcible. That users claim not to have seen notices is not to be explained on the basis that there were none (because photographs show that there were), but can only be explained if the users’ accounts are inaccurate or on the basis that notices were removed by others. In the latter alternative the reasoning in *Taylor v Betterment Properties* defeats the claim by showing that use was still contentious.

Users claim not to have been hindered by the gate; that account (if reliable) is explicable on the basis that it was repeatedly lifted off its hinges so as to circumvent its having been locked and provided open passage. Again applying *Taylor v Betterment Properties*, that repeated unlawful action would not alter the fact that Mr Stuart-Bruges (and the Masters) had done sufficient to render use contentious and thus forcible.

It follows that all claimed activity on Great Lees Field which may have been indulged in after access was obtained to the land via Pound Lane must be discounted. 80% of users accessed the field via Pound Lane. Once this body of claimed use is discounted it is impossible to say there would be sufficient use left to sustain the Town or Village Green application in that use of Great Lees Field after access from other than Pound Lane gate, was, taking the approach adopted in *McAlpine Homes*, by a significant number of the inhabitants of the parish of Semington. The applicants’ reliance on such other access points thus does not assist them.

Such use as is claimed in the Town or Village Green application is dominated by walking and dog walking. In the circumstances, the inference to be drawn (see *Oxfordshire County Council* case), is that what would have been

suggested by it to a reasonable landowner is not the exercise of a right to indulge in lawful sports and pastimes across Great Lees Field, but the exercise of rights of way. Discounting such evidence it is impossible to say that there would be sufficient other use to sustain the Town or Village Green application.

Certain activities such as the gymkhana and bonfires, referenced in the evidence questionnaires, took place with the permission of the Masters’.

Statement of William Peter Stuart-Bruges – 17 November 2016

I own the land jointly with my nephew Mr Arthur William James Haythornthwaite.

I provided evidence against the DMMO application, a statement dated 25 July 2016 and one dated 18 August 2016 (the DMMO Statements). This evidence is equally relevant to the Town or Village Green application.

The main entrance to the field, a gate at Pound Lane, has been damaged and replaced over the years. The footpath rights alleged over Great Lees Field were not “as of right” where the Pound Lane gate had been locked and damaged, suggesting forced entry. The Council accepted this evidence and on 7 October 2016 refused the DMMO application.

Since the Council’s decision, Great Lees Field has continued to be used for the purposes of maize and other crops and the Pound Lane gate and Wiltshire gate which connects to the adjacent private land remain secured.

I wish the DMMO statements and the Council’s decision in the DMMO application to also be considered as part of my evidence in response to the Town or Village Green application (copies annexed accordingly).

Matthew Scudamore of Gateley Plc submitted on my behalf a letter dated 19 August 2016 to the Council concerning the Pound Lane gate and I request that this is also considered (annexed).

Very few witnesses claim to have never entered Great Lees Field from the Pound Lane gate, which means that nearly all of the people claiming to have entered Great Lees Field did not do so “as of right”, given that the Council has already accepted that the Pound Lane gate was secured from at least 1987 and had been persistently damaged since then. Entry was by force.

In evidence Jan Jen expressly confirms that the Pound Lane gate has been secured and she climbed over it and that *“for many years the gate has been illegally [in her erroneous view] padlocked and/or topped with barbed wire”*. This confirms that the Pound Lane gate was locked. The application itself also acknowledges that the Pound Lane Gate has been secured in the “Justification for the application to register Great Lees Field as a Town or Village Green” – see the paragraph of the signature page which states: *“All the other responses were commenting only on the gate on Pound Lane which clearly has been locked (as opposed to its being merely closed) on a number of occasions over the years before the ploughing”*.

There are a few individuals who claim not to have entered Great Lees Field via Pound Lane gate, or at least did not expressly refer to it or identify it on the map as an entrance in their user evidence forms.

Brian and Anne Watts claim to enter Great Lees Field via a gateway at the rear of their property since the 1950s to the present.

Sheralyn Milburn does not expressly identify the Pound Lane gate, referring only to a gateway, but it appears on her map that the entrance point includes Pound Lane gate, I consider that she should be treated in the same way as other persons that entered via the Pound Lane gate.

Alan and Christine Jones claim to enter via the Wiltshire gate from 1987 to the present.

George Godwin simply states that he entered through “*the gate*”. I believe that this is in fact a reference to the Pound Lane gate and thus he should be considered in the same way as Sheralyn Milburn.

Mr and Mrs Tarsnane claim to have entered, since 1970, by the “gate” and “gap in fence”. It is not clear if this is a reference to the Wiltshire gate or the Pound Lane gate, but they have not marked the Pound Lane gate on their map.

Martin and Rose Costello claim to have entered through an “open gate”. Again as with George Godwin and Sheralyn Milburn, I believe this is a reference to the Pound Lane gate (even though it was secured) and their evidence should be treated accordingly.

Mandy Robinson claims use by entry from her garden gate from 1973 to the present.

Philip and Christine Deverall claim use from their garden gate for a period of 28 years.

Paul and Tricia Bowyer claim use from 2004 – 2016, but their entrance was unclear and it is likely to have been the Pound Lane gate.

Bill Scott – one of the applicants for the Town or Village Green application – claims entry from the Wiltshire gate from 1987 to the present. However, Mr Scott submitted evidence for the DMMO application as well. The evidence he submitted for that is not consistent with the evidence he is submitting now. In the DMMO application he claimed to enter Great Lees Field via the Pound Lane gate and to either follow the alleged footpaths, or to walk across the fields or to walk around them. But for this Town or Village Green application, he claims only to enter Great Lees Field from the Wiltshire gate. Given this obvious contradiction, Mr Scott’s evidence should be discounted as not credible.

Of those above, only Mr and Mrs Watts, Alan and Christine Jones, Mr and Mrs Tarsnane, Mandy Robinson and Philip and Christine Deverall can be said, on the evidence they have submitted, to have never entered via the Pound Lane gate.

This is a total of 9 people out of the 66 who have submitted evidence. Of these 9, 5 of them (the Deveralls, Mandy Robinson and the Watts) enter from their private gardens, which back on to Great Lees Field and from which no other member of the public may enter Great Lees Field. Given their residences' proximity to Great Lees Field and the Pound Lane gate, I consider it inconceivable that they would not have known Great Lees Field was secured land, given the history of its use and the history of securing Great Lees Field as set out in the DMMO statements.

Therefore, only 4 people, the Jones' and the Tarsnanes', both couples, have entered from anywhere else, specifically the Wiltshire gate. The Jones' claim to have done so since 1987, but the Council has already accepted that Great Lees Field had been secured by then. The evidence in my DMMO statement demonstrates that I put signage up on the Wiltshire gate and the Pound Lane gate anyway, although it was later torn down. Furthermore, the Tarsnanes' claim use from 1970, but it is not clear whether they may have in fact used the Pound Lane gate given their reference to a "gate".

Other evidence – I have also considered the evidence provided by the Council on 19 October in the form of photographs showing people using Great Lees Field. The photograph of the boys playing cricket from the 1950s is in fact, I believe, a photograph of my cousin (centre), Michael Bruges (d.2013), who lived in Semington at that time. I have contacted other family relatives who also believe it to be him (attached photograph of Michael as a boy showing the similarity). If that is correct, then at that time our grandparents or my father were the owners depending upon when the photograph was taken

and the boys would most probably have been there with consent from Michael as grandson/nephew of the owner of the field and not as of right. Even if it is not Michael, it is not possible to say that this photo was even taken on Great Lees Field.

The photograph of children from the 1980s – it cannot be shown to have been taken on Great Lees Field, it could be a field anywhere.

Photographs of the school/nursery children – two of these are taken by the canal on a mown bank and not on Great Lees Field where there is a lot of greenery and no mowing has occurred. In the other two photographs the children are seen to be picking dandelions. Great Lees Field was ploughed in April 2016, before dandelions would have flowered, so these photographs cannot have been taken on Great Lees Field. They are a different location as confirmed by the presence of the pill boxes in the photographs. There is only one concrete structure on Great Lees Field to the left of the stile, not to the right as seen in the photographs.

The photograph of the open gate has been accepted by the Council (in the DMMO application) as being evidence of the gate being damaged and therefore entry was by force and not as of right.

Whenever I have visited Great Lees Field, I have never seen these activities taking place. If I had I would have made clear to people that they were on private land. Arthur Haythornthwaite confirms the same.

I note frequent references to bonfires and a gymkhana. I know from my dealings with the Masters' that these events occurred in the past but were always with permission and were, to the best of my knowledge, events that mainly took place on the Masters' land in the 1960s and 1970s in the case of the bonfire and the 1980s and 1990s in the case of the gymkhana.

Some evidence relates to the “Semington Slog” which I understand is a fun run. The Facebook page records the route and it does not enter Great Lees Field, but goes round it, perhaps making use of the existing footpath which runs along the canal bank.

Proposed development – In the DMMO statements I set out that I had always intended to develop Great Lees Field and that this fact was well known in the village and I attach evidence to that effect.

Conclusion – The evidence submitted in support of the Town or Village Green application does not establish that Great Lees Field has been used for the purposes of a village green. The evidence I have supplied in the DMMO statements and this statement demonstrates that. It remains my view that certain residents of Semington are using any mechanism they can to prevent the development of my land.

- 13.3. As part of the statutory procedure for determining Town or Village Green applications, where objections are received, they must be forwarded to the applicant allowing reasonable opportunity for dealing with matters raised (Regulation 6(3) and (4)). Therefore, on 15 December 2016, the applicant was forwarded all the above-mentioned correspondence, as set out at 3.2, received within the formal objection period.
- 13.4. Officers allowed the applicant a reasonable opportunity to respond to the objections with comments to be received, in writing, not later than 5:00pm on Monday 23 January 2017. Comments on the objections were received from “The Friends of Great Lees Field” on 22 January 2017. The main points are summarised below and the correspondence in full is available to be viewed at the offices of Wiltshire Council, Ascot Court:

Introduction and rationale:

The landowner asserts that the evidence submitted in the rights of way application over Great Lees Field is equally relevant to the Town and Village Green application. He claims:

- The main entrance, (gate at Pound Lane) has been damaged and replaced over the years.
- Routes over Great Lees Field were not “as of right” where the gate had been locked and damaged, suggesting forced entry.
- The Council accepted the evidence and refused the rights of way application.
- 57 of 66 users have entered via the Pound Lane gate and have thus used force.
- Remaining users must have known Great Lees Field was secured land.

His own evidence in the village green objection is largely reliant on Wiltshire Council’s acceptance of “incontrovertible evidence” over that of Semington villagers.

The landowner’s evidence is far from incontrovertible and is largely unsustainable hearsay.

1. Two quite separate applications – We acknowledge that there is some overlap; however, they are separate applications with different purposes. We ask that Wiltshire Council rejects the landowner’s attempts to link the two applications and that the Officers’ judgements on the rights of way case are ignored in its deliberations about this Town and Village Green application.

2. Inappropriately-focussed legal advice – The legal advice does not concern this application and does not refer to this application. We ask that Wiltshire Council ignore the legal advice.

3. A distinction in law – Comments on the land for the rights of way application should not be used in consideration of the Town and Village Green application and we ask that the Council ignores any legal advice that relates to rights of way.

4. No evidence of any denial of a right of way – A sign has been placed on the Pound Lane gate and the Wiltshire gate in the boundary with the field to the west, saying “Private Land No Public Right of Way”, after the Town and Village Green application. We are able to provide witness evidence that the gap between Great Lees and the field to the west is of long standing and has never been closed before, giving easy access between the fields. It is central to our case that such signs were never in place before the application and we are able to provide numerous witnesses to that effect, including people who did not complete our original survey. The landowner did not, before our application set out a clear message to the public that there was no right of way onto the field and the landowner provides no evidence that he did. He states that there were signs, but these were vandalised, but there is no actual evidence, other than assertion, that such signs were on the Pound Lane gate at a particular date and he does not say that he immediately replaced any damaged signs. The landowner has submitted photographic evidence of the dislodged signs; however, these pictures could be signs anywhere, at any time. Nor is there any evidence that the signs were vandalised.

The submission made by Alan Evans of Kings Chambers, refers to the case of *Winterburn v Bennett* [2016] EWCA Civ 482, i.e. *“the continuous presence of signs can render use in defiance of the same contentious and not ‘as of right’.”* However, this case makes clear that notices have to be displayed in a continuous and unmistakable manner to carry weight. In the case of Great Lees Field, such signage was not maintained and the landowner cannot provide evidence that appropriate signage denying a right of access was ever displayed on the Pound Lane gate, let alone at all the many points of entry

and has not tried to assert steps taken to continue signage, because he did not do so. We are content that the landowner did nothing to prevent the village use of Great Lees Field in the many ways and for the long duration that we set out in our submission. We ask that the landowner's comments about the denial of rights of access are treated as lacking a convincing evidential base.

5. No evidence of vandalism – It is central to the landowner's case that people have vandalised the Pound Lane Gate on numerous occasions to gain use "by force". Evidence of a new gate being purchased in 1998 is provided, however there is no evidence that this was because vandalism had taken place. There have been no direct accusations or prosecutions because of it. The Council accepted this assertion as "incontrovertible" evidence of forced entry and it was the key reason for refusal of the rights of way claim. Our contention is that there is no evidence of vandalism by villagers in order to gain forced entry to the field; however, there was never any need to force entry through a gate that was routinely left unlocked and open. There is a significant number of people in the village who can say that over time they never saw any signs at Pound Lane, were never made aware of a locked gate or of damage to the gates and never encountered any obstruction. These include people who did not contribute to our original survey.

It is difficult to understand how a robust 7 bar gate would be damaged by people climbing over it, such that replacement is needed. Indeed, there are witnesses who can provide evidence that the damage to the gate was caused by agricultural vehicles routinely being driven into the unlocked gate to nudge it fully open, causing the damage as seen in the photographs submitted by the landowner. For this damage to be possible the gate would need to be unlocked and unfastened. There is another gate in the village with the same damage as the two gates are used by the same agricultural vehicles. We ask that comments regarding vandalism, in order to force entry to the field are

ignored, since the landowner is not able to provide evidence that is “incontrovertible”. We ask that Wiltshire Council sets aside its own officers’ previous judgements in relation to vandalism and forced entry and look in an objective way at the nature of the evidence that exists.

6. All evidence should be considered – The landowner requests that most of the witness statements are ignored where they relate only to access through the gate on Pound Lane, where the gate was damaged, the evidence is invalid. Walkers did not vandalise the gate as it was open and prior to 2016 had never been faced with notices denying them a right of way. As such, their evidence must be included and we ask that Wiltshire Council examines all evidence provided by the applicants on its merits and not discount any.

7. Unsigned grazing agreements – The objector encloses in evidence a number of grazing agreements from 1951 – 2015. These are important to his case that the Pound Lane gate was locked; however, none of the agreements are signed by the landowners. As such, they are worthless as legal documents and can only show intent, not provide evidence of action. The evidence of witnesses is that use was without force, secrecy or permission (as of right). There were no signs preventing access until April 2016 and any desired denial of entry before that date was not carried out. Also, typically, these agreements covered only part of the year. We ask that all grazing agreements in the landowner’s submission are ignored.

8. Unfettered access to Great Lees Field – Access to Great Lees Field was possible at a number of points including the footpath along the southern edge of the canal (which the Land Registry maps show to be part of Great Lees). Access at this point has always been possible and still is. Residents of Pound Close have garden gates leading directly onto the field, since around 1960 when the houses were built. They have never been prevented from using the gates; nor have signs ever been put up denying them a right of way. There is

now a barbed wire fence blocking this access, erected on 18 November 2016, after the Town or Village Green application and we take this as evidence that the landowner understands the importance of this mode of entry to the field. The landowner attempts to downplay the significance of the number of people using these gates because not all provided evidence but there are good reasons for this and it should not be equated with an unwillingness to provide convincing evidence of access over time. We ask that Wiltshire Council gives considerable weight to the evidence of completely open access to Great Lees by those living in Pound Close adjacent to the field.

9. No evidence of ploughing since WWII – We argue that the field has never been ploughed since WWII. Where the landowner states that it was ploughed in 2000, there is no evidence to support this contention and numerous villagers have told us that the field was not ploughed at that time. Google Earth evidence indicates that there was no disturbance to the tracks across the field in and around 2000. The landowner understands that the work involved weedkilling, ploughing and reseeding, but he has no direct knowledge of it, despite this, in the legal opinion this understanding becomes a fact “Big Lees was ploughed at this time.” We ask that it is concluded that the field has not been ploughed since at least the end of WWII until 2016.

10. Disputing photographic evidence – The landowner disputes the value of the photographs provided in support of the application. Their value as evidence can only be proved by an examination of witnesses. We ask that all the photographic evidence provided by the applicants is considered on its merits.

11. A reliance on hearsay – The landowner states that when he has visited Great Lees Field he has never seen these activities taking place. We accept this statement; however, as he does not live in the village, this is unsurprising. In objection to the rights of way claim the states “*I visit Semington at least*

annually". He has never seen the activities; or any vandalism or forced entry which is alleged, he therefore has to rely on hearsay evidence for the assertions he makes. We ask Wiltshire Council to ignore all hearsay.

12. Regular gate replacement – The landowner implies that in 1998 the gate was replaced because of forced entry and shows a 1998 invoice as evidence of this which is evidence only of a gate replacement, not why it was replaced and no evidence that it is replacement of Pound Lane Gate. Again he notes that the gate was replaced in 2010 by the tenants, but there is nothing in the correspondence about this to suggest it was replaced due to damage caused by people forcing entry. We ask that the invoice is accepted only as evidence of the gate being replaced and not why it was replaced.

13. Evidence from Google Streetview – The landowner produces a 2009 Google maps streetview photograph of the Pound Lane entrance gate. He claims it shows damage to lower bars resulting from people climbing over it. We accept that the gate is damaged, but it is also open, so there is no reason for users to damage the gate whilst climbing over it. An open, unlocked gate is consistent with those giving village green evidence. We ask that it is accepted that this image only provides evidence that the gate was open and unlocked.

14. Conclusion – Villagers have used Great Lees Field since the end of WWII without force, secrecy or permission and the landowner cannot provide evidence that appropriate signage denying access was continually displayed at all points of access to the field.

13.5. The objectors were then given opportunity to comment on the response from the applicants, giving a deadline of 10 March 2017. Their response dated 10 March 2017, is summarised as follows:

Statement of William Peter Stuart-Bruges – 6 March 2017

Grazing Agreements – This is a non-point. The agreements were signed, but usually, for convenience, in counterpart. Signed pages are attached.

The ploughing of the land in 2000 – My cousin Michael Bruges informed me that he had arranged for the ploughing of Great Lees Field at this time. Unfortunately, he is now deceased so the Council will have to accept that I am accurately reporting what he told me.

Regular Gate Replacement – At the time of the gate replacement in 1998 I owned no land in the UK apart from my share in Great Lees Field. I was renting a house at Deane near Basingstoke. I could not have had any conceivable reason to have paid for a different gate. The tenant's letter dated 7 April 2003, previously submitted, alludes to people frequently lifting the gate off its hinges.

Evidence from Google Streetview (2009) – The gate is shown damaged and that damage is entirely consistent with people climbing over it, which concurs with the evidence of Jan Jen. The tenant replaced and locked the gate shortly after, as confirmed in their letter of 27 May 2010.

Support from Parish Council – It is of no consequence as to the merits of the Town or Village Green application whether the Parish Council supports it or not. The actions of the Parish Council merely underline that the real motives behind the application are to prevent the development taking place on Great Lees Field.

A failure to declare an interest in the application when considering it has occurred (as with the rights of way application), as evidenced by the Parish Council minute for 12 October 2016. I believe certain members should have declared an interest because many of them are either Applicants for the

application or have submitted evidence in support of it, or live in the vicinity of Great Lees Field. The actions of those members in failing to declare their interests suggests to me a co-ordinated attempt to prevent development at any cost on Great Lees Field.

Having considered the minute, I can see that Messrs Rimmer, Wade and Smyth failed to declare an interest, despite having submitted evidence for the application, and Mr Robinson failed to do so, despite living adjacent to Great Lees Field and sharing a household with another person who submitted evidence. Mr Scott, one of the applicants, abstained from the vote but I have already expressed my view that his evidence should be disregarded for lack of credibility.

Alan Evans, Kings Chambers 9 March 2017 - Comments on behalf of William Peter Stuart-Bruges and Arthur William Fitzjames Haythornthwaite in response to (1) the response of the applicants (the friends of Great Lees Field) 22 January 2017 (2) The email of Steven Hall of 16 November 2016 and (3) Semington Parish Council's email of 14 October 2016

The objection is maintained in its entirety.

Two quite separate applications – This point asks that the previous application to claim rights of way across Great Lees Field and the judgements that were made in respect thereof by officers of the Council (on its behalf in its capacity as surveying authority under the Wildlife and Countryside Act 1981) be ignored when considering the present application. It would be perverse for the registration authority to proceed in this fashion and would amount to an error of law to do so. The question of whether access to Great Lees Field was forcible was a central issue in the rights of way application. It is also a central issue in the present application. The law on this particular issue is the same

whether the context is rights of way or Town or Village Greens. That common issue coupled with identical governing law makes the previous application and the evidence directed to it highly relevant to the present application and Mr Stuart-Bruges in terms relies in his witness statement objecting to the present application on his previous witness statements in the earlier application. The link is inexorable. And, equally, the previous evaluation made by an experienced rights of way officer as to the weight to be attached to the landowner's evidence that entry via the Pound Lane gate was forcible is not something that can be ignored when considering the same issue in the present application. That is particularly so given that the evaluation was not expressed in tentative or provisional terms but in unequivocal fashion: "*an incontrovertible body of evidence*" (paragraph 20.1 of the decision report) of forcible user (a conclusion, it is to be noted, which was based on contemporaneous documentary evidence).

Inappropriately focussed legal advice – Unclear what legal advice, identified in the response as "the legal advice set out by the applicant" is being referred to. For the avoidance of doubt, it is here made plain that it is categorically not accepted there was any such inappropriate focus in the legal submissions made in the Objection.

A distinction in the law – This point asserts that the law governing Town or Village Green applications and that for rights of way applications are distinct and that the latter should not be applied to the former. The law in relation to the key issue of forcible user is the same in Town or Village Green and rights of way cases. More generally, the Response does not engage with the point made in the Objection (see paragraphs 29 and 34) that, where the evidential position is ambiguous as to supporting a right of way claim or a claim to a new green, the benefit of the doubt should be given to the landowner in that, in such circumstances, as Lightman J said in *Oxfordshire County Council v Oxford City Council* "*the inference should generally be drawn of exercise of*

the less onerous right (the public right of way) rather than the more onerous (the right to use as a green)". The fact that use of Great Lees Field first found expression in a rights of way application makes this issue particularly pertinent in the present case and is another reason why the contention that the previous application is to be ignored should be soundly rejected.

No evidence of denial of a right of way – It is a bad point that Mr Stuart-Bruges evidence as to signs on the Pound Lane gate and the Wiltshire gate and their unauthorised removal by others should be treated as unsubstantiated assertion. So is the point that the photographs of signs lying on the ground could have been taken anywhere at any time. The account given by Mr Stuart-Bruges is part of a formal witness statement supported by a statement of truth. There is no reason to reject Mr Stuart-Bruges' evidence that there were signs, that they were placed where he says they were and that the photographs (which are dated), are taken when and where he says. Mr Stuart-Bruges' evidence is not falsified by the fact that users claim not to have seen signs; if that claim is correct, the simple explanation is that many would not have seen the signs if they were soon removed.

It is argued that the lack of continuous presence of signs, on the basis of the decision in *Winterburn v Bennett*, such would be required in order to render the user forcible. However, *Winterburn v Bennett* (which was not a village green case) has nothing to say about a case where signs are unlawfully removed. The relevant case here is *Taylor v Betterment Properties Limited*, which establishes that if signs were not seen by many users of the land because they were repeatedly unlawfully removed soon after erection, the landowner would nevertheless have done all that was required to make use contentious.

No evidence of vandalism – It is raised that no-one would have needed to vandalise the Pound Lane gate, because it was routinely left unlocked.

However, that point is contradicted by several strands of evidence. The grazing agreements from 1988 onward provided that the Masters' would not permit any trespass on Great Lees Field. From 2003 onwards the grazing agreements also specifically provided that the Masters' would maintain the gate closed and locked. The witness statement of Mr Stuart-Bruges of 25 July 2016 and its accompanying documentary exhibits demonstrate that Mr Stuart-Bruges was careful to ensure that the Masters' kept the gate locked and confirm that the Masters' observed the obligation to do so. Julia Masters' letter to Mr Stuart-Bruges on 7 April 2003 states "*the gate is locked*". John Masters' letter of 27 May 2010 to Mr Stuart-Bruges states that "*the old gate to the field has been replaced by a new one and padlocked.*" Several of the evidence questionnaires in support of the application refer to the locking of the gate (other than in 2016 at which point any potential qualifying use ceased). The justification for the application to register Great Lees Field as a Town or Village Green accepts that the Pound Lane gate has "*clearly been locked (as opposed to its being merely closed) on a number of occasions over the years*". Jan Jen confirms that the Pound Lane gate had, for many years, been padlocked and/or topped with barbed wire. The suggestion made by Jan Jen that the locking of the gate was illegal is totally misconceived.

The point made about vandalism to the gate, is wrong. There is contemporaneous documented evidence of wrongful interference with the Pound Lane gate which should be given considerable weight (rather than, as the Response would have it, ignored). Julia Masters' letter to Mr Stuart-Bruges of 7 April 2003 specifically states that the Pound Lane gate will need to be locked not just where it is fastened but also at its hinged end "*because people keep lifting it off the hinges*". There would have been no need to do this if the gate had not been locked. Moreover, there is no reason not to accept further the evidence of Mr Stuart-Bruges which, although not first hand, relates directly to what he was told by one of the farming licensees, namely, "*Julia Masters told me that it has always been a problem that people*

lift the Pound Lane gate off its hinges, damage it or climb over it". The lifting of the gate off its hinges is corroborated by the letter from Julia Masters just referred to above. Moreover, as Mr Stuart-Bruges continues, "*she also said that you could always tell when people had climbed over the Pound Lane gate because the bottom bars always became bent.*" And Jan Jen also specifically admits that access was gained by climbing over the gate.

It is a facile point to say that no one has ever been directly accused of vandalism or prosecuted for it. The culprits have never been identified.

The point is made that damage to the gate was caused by agricultural vehicles routinely being driven into the unlocked gate to nudge it fully open. It is said that witnesses can be provided who will attest to this. However, no witness statements are provided and no particular witnesses are identified. This truly is unsubstantiated assertion and cannot be relied upon by the registration authority. The assertion is inherently improbable in any event. Not only does it postulate the farmers consciously damaging what was effectively their own gate, but the occasions when active agricultural operations were taking place in the field involving the entry of agricultural vehicles thereto would have been the very times when it is the most likely that steps would have been taken to lock the gate (so that there would not have been any question of nudging fully open an unlocked gate).

All evidence should be considered – Of course it is true that all evidence must be considered, it is not argued otherwise. However, it is one thing to consider evidence but quite another, following such consideration, thereafter to discount the evidence as showing qualifying use on the basis that it has involved forcible access to the land. In reality, point 6 of the Response is nothing more than a plea to reject the analysis of forcible access via the Pound Lane gate as put forward in the objection. For all the reasons put forward in the objection and in this document, it is submitted that the analysis

is compelling. If (as here) a gate is regularly locked being repeatedly lifted off its hinges to provide open access, it is clear from Betterment Properties, that that latter unlawful action does not alter the fact that the landowner has nevertheless done sufficient to render use contentious. In such circumstances the evidence of those who say they were not impeded by a locked gate does not avail the applicants.

Unsigned grazing agreements – The applicants here suggest that, as none of the copies of the grazing agreements which were exhibited to Mr Stuart-Bruges' witness statement of 25 July 2016 were signed by the landowners, they are worthless as legal documents. Mr Stuart-Bruges has in his further witness statement of 6 March 2017 exhibited copies of the relevant page of the grazing agreements for the years 1988-1999 and 2001-2015, signed by the landowners (2000 being when the land was ploughed). Mr Stuart-Bruges explains in this statement that he generally did keep a copy of the page of the agreements signed by the landowners and that they were signed in counterpart. The carrying into effect of the requirement (since 2003) in the grazing agreements that the Pound Lane gate be kept locked and closed is abundantly demonstrated in the evidence already adduced by Mr Stuart-Bruges.

Unfettered access to Great Lees Field – This point draws attention to the availability of access from the Kennet and Avon Canal and, in particular, via the back gates of houses in Pound Close. No emphasis is given in the Response to the former means of access. In connection with the latter means of access, reference is made to evidence not provided with the application. If not provided, that is not material which the registration authority can act upon. In any event, as pointed out in paragraph 9 of the Objection, it is the Applicants' own assessment (found in the "Justification for the Application to register Great Lees Field as a Town or Village Green" under the heading "Access to the field") that, of the user questionnaire respondents, 80% claim

that access to Great Lees Field was gained via the Pound Lane gate. The further analysis of accesses said to have been used, which is provided by Mr Stuart-Bruges in his witness statement of 17 November 2016, is not challenged in the Response. Any access from back gates in Pound Close was from private property whereas access from Pound Lane was from public highway. The steps taken in respect of Pound Lane access were themselves sufficient to demonstrate to the local public at large (as opposed to directly neighbouring householders), that user of Great Lees Field was contentious.

No evidence of ploughing since WWII – The issue of whether Great Lees Field was ploughed in 2000 remains a discrete area of dispute between the parties.

Disputing photographic evidence – The points made by Mr Stuart-Bruges in his witness statement of 17 November 2016 in relation to the slender photographic evidence provided in support of the Application remain unaltered in the light of the Response. However, the registration authority is also entitled to regard as significant the fact that there is more or less a complete absence of any photographs demonstrating the indulgence of local residents in sports and pastimes on Great Lees Field.

Reliance on hearsay – Asking the registration authority to ignore all hearsay is a surprising submission from Applicants who, at a number of points in their Response, invite the registration authority to act on the basis of material which has not even been placed before the registration authority (and does not therefore attain the status of evidence at all). As a matter of principle, however, hearsay is not simply to be ignored but a rational assessment must be made of the weight of the hearsay evidence in question in the light of all the relevant circumstances. For instance, insofar as Mr Stuart-Bruges relies on what he has been told by Julia Masters (people lifting the gate off its hinges), that evidence can be accorded weight because it comes from a

source (the farming licensee), who can be expected to have direct knowledge of the matters in question and because it is, to a significant degree, corroborated by documentary evidence (her letter of 7 April 2003), as well as being consistent with the evidence questionnaire of Jan Jen. The bulk of Mr Stuart-Bruges' evidence is, in any event, based on documentary material and concerns matters to which he can speak directly.

Regular gate replacement – The implicit suggestion in the Response that the 1998 gate replacement might not have been of the Pound Lane gate because the relevant invoice does not identify the same is to clutch at straws. Mr Stuart-Bruges in his witness statement of 25 July 2016 makes it clear that the invoice related to the Pound Lane gate. There is no reason at all why this evidence should not be accepted. The Response accepts that the 2010 gate replacement was of the Pound Lane gate. The thrust of the Response thereafter is that the simple fact that the gates were regularly replaced does not as such evidence the reason for the replacement. That may be so but the very fact that the gate was twice replaced within a relatively short space of time demonstrates both that there was a recurring source of damage necessitating such replacement and that the landowner was taking steps to keep Great Lees Field secure by effectively gating access. The registration authority should plainly prefer the evidenced explanation by Mr Stuart-Bruges that the damage was caused by unauthorised third parties seeking access to Great Lees Field to the unevidenced and improbable assertion on the part of the Applicants of damage by agricultural vehicles.

Evidence from Google Streetview – It is submitted that the relevant image, while showing the Pound Lane gate open at the particular point in time when the photograph was taken, clearly shows damage to the lower bars which is entirely consistent with forcible access.

13.6. In summary, in its consideration of the application to register Great Lees Field, Semington as a Town or Village Green, the Registration Authority have considered the following documents:

1. Application dated 24 June 2016 and received by Wiltshire Council on the same date, in the form of “Form 44” and statutory declaration, including:
 - 66 completed witness evidence forms;
 - Supplementary information “The Case for a Village Green”;
 - Photographs.

2. Submissions in objection to the application on behalf of the landowner, dated 18 November 2016, including:
 - Submission of Alan Evans, Counsel at Kings Chambers – 17 November 2016;
 - Statement from Mr William Stuart-Bruges (including annotated decision report, statement and Gateley Plc letter relating to the recently refused DMMO application) – 17 November 2016;
 - E-mail from Mr Arthur Haythornthwaite confirming his support of the statement submitted by Mr William Stuart-Bruges – 17 November 2016.

3. Representation of support – Semington Parish Council - 14 October 2016.

4. Representation of support – Mr S Hall (joint applicant) – 16 November 2016.

5. Representation of support – The Friends of Great Lees Field (the applicants) 22 January 2017 (formal response to objections).

6. Submissions in objection to the application on behalf of the landowner (in response to the formal comments on the objections from the applicant), dated 10 March 2017 and including:
- Further statement dated 6 March 2017 from William Peter Stuart-Bruges, with appendix containing grazing agreements;
 - Further comments of Alan Evans, Counsel of Kings Chambers – 9 March 2017.

13.7. It is noted that the tenants of Great Lees Field, TJ and JMK Masters, have not provided any evidence in this case, although they have been sent notice of the application.

14. Main Considerations for the Council

14.1. Under Section 15(1) of the Commons Act 2006, it is possible, (where the right to apply is not extinguished), 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 20 years or more and in this particular case, under Section 15(3) of the Act, where use of the land has ceased not more than one year prior to the application date.

14.2. The legal tests set out under Sections 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, where it is no trivial matter for a landowner to have land registered as a green. 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. The standard of proof lies in the balance of probabilities.

Significant number of inhabitants

- 14.3. 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.
- 14.4. The requirement is that users should include a significant number of inhabitants of the claimed locality or neighbourhood, in order to establish a clear link between the locality or neighbourhood and the proposed green, even if these inhabitants do not comprise most of the users. In this case the Council has received 66 completed witness evidence questionnaires from individuals who claim to have used the land. 66 of the witnesses are currently residents of Semington as the claimed locality. In evidence, the applicants advise that 385 evidence questionnaires were distributed to village residents on 6 and 7 June 2016, with 66 forms being completed and returned by 13 June 2016, a return rate of 16%.
- 14.5. As well as their own use of the land, all but one of the witnesses have seen others using the land (one witness does not reply to this question). Sheralyn Milburn states *“I have used this field with friends and family for walks/dog walks for 2+ years.”* Graham and Cindy Wyllie claim to have *“observed families playing football, golf, cricket, cycling, kite flying.”* and Mr Godwin claims to have met *“with other village people recreation.”* (Activities observed taking place on the land are included at **Appendix 5** of this report)
- 14.6. Additionally, some of the witnesses refer to community activities taking place on the land, (please see table at **Appendix 1**). Witnesses refer to use of the

land for car parking for the annual village fete at the school, where the road (Pound Lane) became congested. In the cases of *Attorney-General v Southampton Corporation* (1970) and *Attorney-General v Poole Corporation* (1938), it was held that car parking was not a qualifying lawful sport or pastime (*“Getting Greens Registered – A guide to law and procedure for town and village greens”* Second Edition by John Riddall, Open Spaces Society 2007). Additionally, there is evidence that the parking of vehicles on the land for the annual fete was carried out with the permission of the owner/occupier. Mr Colin Wade confirms that: *“With permission of the occupier it has served as a car park for events at the school”* and 5 other witnesses support this use with permission, (please see table at **Appendix 2**). User with permission cannot qualify as user “as of right” (user as of right is fully considered later in this report) therefore the parking of vehicles on the land is not qualifying user and must be discounted.

- 14.7. Additionally, witnesses refer to bonfire night celebrations and gymkhanas on the land. Again, it is likely that these events took place with the permission of the owner/occupier of the land and in evidence the landowner, Mr William Stuart-Bruges, confirms: *“I also note that there are frequent references to bonfires and a gymkhana. I know from my dealings with the Masters’ [the tenants of Great Lees Field and adjoining landowners] that these events occurred in the past but these were always done with permission and were, to the best of my knowledge, events that mainly took place on the Masters’ land in the 1960s and 1970s in the case of the bonfire and the 1980s and 1990s in the case of the gymkhana.”* Again where these activities took place with permission, they are not qualifying user and must be discounted in evidence.
- 14.8. Other witnesses make reference to the Semington Slog taking place on Great Lees Field; however, the landowner provides evidence that the route of this event did not take place on the application land: *“Some of the evidence also refers to the “Semington Slog” (Exhibit 2) which I understand is a fun run. The*

Facebook page for it shows the route and it is apparent that it does not enter onto Great Lees Field, but goes round it instead, perhaps making use of the existing footpath which runs along the canal bank.”

14.9. The Semington Slog is an annual 10k run and fun run (1k) combining road and off road surfaces, now its 3rd year (2017). The route of the run appears to follow existing and recorded public rights of way and public highway. The 2015 description of the run states: *“The run will start and finish at St Georges School in the village of Semington. The 10k route will take you through the village and onto the Kennet and Avon Canal towpath. From there you will follow leafy lanes and bridle paths before returning to the village.”* Officers would therefore agree with the landowner’s comments and conclude that this event is not qualifying user to support use of the land as a Town or Village Green, where it utilises Footpath No.1 Semington at the northern boundary of Great Lees Field and Footpath No.6 in the adjoining field to the west, in the ownership of the Masters’ family. Therefore, any reference to the Semington Slog must be discounted in evidence.

14.10. It is notable that 33 witnesses claim that there are no community events taking place on the land and some of the witnesses when asked to describe the community events taking place, refer to their own individual use of the land.

Significant number of inhabitants - Officers conclude that there is insufficient evidence of community events taking place, “as of right”, over Great Lees Field. However, given the size of the locality identified as Semington, having a population of 930 in 2011, (Semington Census Information 2011 – Wiltshire Council), the number of witnesses giving evidence, 65 of whom have also observed others using the land, is sufficient to suggest use of the land by a significant number of inhabitants of the locality, rather than just occasional use by individuals as trespassers.

The objectors challenge the evidence regarding use of the land by a significant number of inhabitants of the locality, only in their analysis of the points of access, and suggest that it cannot be shown that a significant number of inhabitants have used the land “as of right” for lawful sports and pastimes, where the evidence of those witnesses who used the Pound Lane field gate, is removed, (this matter is examined at paragraphs 14.23 – 14.45 of this report, user without force).

Of any locality or of any neighbourhood within a locality

14.11. A Town or Village Green is subject to the rights of local inhabitants to enjoy general recreational 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 the identified locality or neighbourhood who will have legal rights of recreation over the land if the application is successful.

14.12. The definition of “locality” and “neighbourhood within a locality” were reiterated in the 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. So, for example, a housing estate can be a neighbourhood, but not just a line drawn around the addresses of the people who have used the claimed green.

14.13. In the *Semington* case, the applicant has identified the parish of Semington as the relevant “locality”. This meets with the requirements of a locality, as set

out above, as an area with administrative/legally significant boundaries. In “The Case for a Town or Village Green”, the applicant provides the following information regarding the facilities available:

“...The village school began in 1859. It is still thriving, although in much more modern buildings. The village Hall, built in 1933, and recently refurbished, is the heart of the village, both geographically and socially. It has social club and a skittle alley, and hosts the WI, a bridge club, bingo, a stompers class, two choirs, quizzes, a special needs children’s group, a zumba class, and the parish council. An extensive history of the village was compiled with funding from the Millennium Commission and published in 2002.

The Kennet & Avon Canal, and Semington Brook which flows into the River Avon west of Melksham, form the northern boundary of the parish. The Wilts & Berks Canal started at Semington until its closure in 1914, but a new connection with the Kennet & Avon is now planned. Of the many well-used village footpaths, the most popular is the canal towpath.

The parish has the following features;

- Two small grassy areas; one is opposite the village hall where the Christmas tree stands. The other, the Ragged Smock, is at the south of the village and is named after an old windmill that resembled an old man in a tattered coat.*
- At the Queen’s Diamond Jubilee, a wood was planted south of the A361 and east of the old A350 road; since then villagers have planted 9,000 daffodil bulbs, scattered 10,000 poppy seeds, and planted an oak to mark the outbreak of the First World War.*
- A conservation area in the school grounds where children can monitor and encourage wildlife. There are wildlife ponds along the A350 with special crossing points underneath the road to protect the great crested newts and other fauna in the wildlife areas nearby.*

- *A small play area for children with basketball posts and a mini football pitch, a tennis court, and a full-size football pitch located south of the A361. The village has football teams, a cricket club and six skittles teams. A summer fete is held at the school.*
- *A Post Office, a monthly parish magazine sponsored by the church, the parish council and villagers and a website providing information on parish events.*
- *A Neighbourhood Watch scheme works with the neighbourhood police team who attend the Thursday coffee mornings in the village hall.*
- *A range of businesses, including a light industrial estate, a narrow boat hire and repair company, a crematorium, and a charity helping people to live independent lives.*
- *The Somerset Arms provides a range of activities and festivals, such as Christmas and Easter parties for children, live bands, and quiz nights.*
- *Regular buses to Chippenham, Devizes, Melksham, Swindon and Trowbridge, and rail links in Melksham, Trowbridge and Westbury.”*

14.14. This is supported by the witnesses, who in their evidence indicate that the locality benefits from a local school; residents association; village hall; church; local businesses (car sales and farm sales); sports facilities (tennis court and football pitch); community police team; community activities (choir; coffee mornings; bingo); neighbourhood watch; post office (part time); bus stops/bus service; canal; children’s playground; playing field; overflow car park; crematoria; caravan park; public footpaths; bridleways; towpaths and pub, giving the area a cohesiveness and identity.

14.15. The applicants confirm that Great Lees Field lies at the western edge of Semington village wholly within Semington parish but outside the village settlement boundary.

14.16. All of the witnesses are residents of Semington and 18 witnesses confirm that those using the land come from the village, as follows: 11 confirm that users are coming from Semington; 1 Semington village; 1 mainly Semington villagers; 1 mainly villagers; 2 mostly from the village; 1 villagers and friends; 1 Anywhere in village. Others refer to people coming from outside the village: 2 Local; 2 Semington and area; 1 mostly local; 2 village and surrounding area/s; 1 Semington and surrounding area; 1 village and environs; 1 Local (village) and outside; 1 Semington and surrounds; 2 village and local area; 1 in and around Semington. Other descriptions include: 1 lots of villages; 1 local and surrounding villages; 1 Semington and two other; 1 all over; 1 have met people from all over; 1 locally. 2 users refer to their own use as “*above address*” and another witness states “*Warwickshire – 2009*”. 8 users give no description of where those using the land come from.

Locality - The witness evidence supports the locality of Semington Parish, as identified within the application form. There appear to be others coming from outside the village and parish, from the surrounding areas and beyond, but this is acceptable where a significant number of inhabitants do come from the identified locality. All of the witnesses who have supplied witness evidence forms are presently residents of Semington. Officers therefore consider that the applicant has successfully discharged the burden of proof with regard to identifying a “locality”. The objectors make no submissions regarding the identified locality.

Have indulged as of right

14.17. Use “as of right” means use without force, without secrecy and without permission. In the Town or 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.”

As of Right – Officers conclude that user of the field by local inhabitants, has been “as of right”, for the reasons set out in full in the following sections – Without Permission; Without Force; Without Secrecy.

Without Permission

14.18. 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 responses given are included at **Appendix 2**.

14.19. Five of the witnesses refer to permission being sought or granted for the parking of cars for the village fete on an annual basis over the last 15 years, or at least since 2013 onwards. In addition to those users, Mr Colin Wade in evidence confirms that car parking was carried out with permission as follows: *“With permission of the occupier it has served as a car park for events at the school”*. Overall, the evidence supports that permission for car parking for the annual fete was sought from and/or granted by the tenants of the land, John and Julia Masters, whose tenancy of Great Lees Field ended in 2015/16. This activity has also been cited as a community event taking place over the land; however, where this activity has taken place with permission, it is not user “as of right” and must be disregarded as qualifying user. Furthermore, case law has found that car parking is not a qualifying sport or pastime.

14.20. The witnesses in their evidence make reference to bonfire parties and a gymkhana taking place on the land. The landowner has confirmed the following: *“I also note that there are frequent references to bonfires and a gymkhana. I know from my dealings with the Masters’ [the tenants of the application land and adjoining landowners] that these events occurred in the past but these were always done with permission and were, to the best of my knowledge, events that mainly took place on the Masters’ land in the 1960s and 1970s in the case of the bonfire and the 1980s and 1990s in the case of the gymkhana.”* Therefore, these events do not form qualifying user where they are not “as of right” and must be disregarded in evidence. Bonfires taking place on the land in the 1960s and 70s and any gymkhanas held on Great Lees Field prior to 1996, are outside the relevant user period identified in this case of 1996 – 2016, (please see paragraphs 14.67 – 14.73 where the relevant user period is examined).

14.21. Two of the witnesses refer to permission being sought/granted to access the rear of their properties in Pound Close, from Great Lees Field. It is noted that 9 properties in Pound Close (Nos 29-36 and 40 Pound Close), abut Great Lees Field and the residents of 29-36 Pound Close all refer to an access gate or accessing the field from their gardens, (the occupant of 40 Pound Close has not provided a witness evidence form, the west elevation of this property faces the field and there does not appear to be access from this property into the field). However, only 2 of these witnesses refer to seeking or being given permission to use this rear access from the owners/occupiers of Great Lees Field, (for access to the back of their property, or for deliveries). 6 residents of Pound Close do not refer to seeking or being granted permission.

14.22. Overall, 60 of the 66 witnesses claim that they have never sought or been given permission to use the land. They comment that permission was: *“Not thought necessary”*; *“Farmer had no objections to dogs”*; *“...nobody said otherwise”*; *“Not needed”* and *“gate always used by villagers no private sign”*.

Without Permission - Once car parking for the village fete; bonfire celebrations; gymkhanas and 2 instances of permission being sought for access from private gardens in Pound Close, are removed as qualifying user “as of right”, there is no further evidence of permission being granted or sought for other activities taking place on the land from witnesses, or the objectors and officers must conclude that on the balance of probabilities, the majority of user is likely to have continued on the land without permission.

Without force

14.23. In the Planning Inspectorate Publication “Definitive Map Orders Consistency Guidelines”, it is stated that *“force would include the breaking of locks, cutting of wire or passing over, through or around an intentional blockage such as a locked gate.”*

14.24. The objectors claim that the gate to Great Lees Field off Pound Lane had been locked and had been damaged on several occasions by residents using force to access the land. There are 5 points of access into Great Lees Field:

- 1) The gate off Pound Lane.
- 2) Wiltshire gate/gap in the western boundary of the field, between Great Lees Field and the field to the west in the ownership of the Masters’ family.
- 3) Stile at the north-west corner of the field on Footpath No.1 Semington.
- 4) Stone stile at the north-east corner of the field on Footpath No.1.
- 5) Property owners in Pound Close have rear access gates into the field.

14.25. In evidence the applicants also mention a gap in the hedge in the western field boundary, located approximately 20 metres north of Pound Lane. It is noted that a small number of the witnesses also mark an access point to the field at this point, on maps included with the evidence questionnaires,

however, on site visits in October 2016 and August 2017, officers of the Council were unable to identify a gap still in existence at this location.

14.26. There is clear conflict in the evidence regarding the locking of the gate and damage to the gate. Whilst the landowner claims that the gate has been locked and damaged by users of the land gaining access by force, the supporters claim that the gate has not been locked and damage to the gate has not been carried out by users of the land:

“...our subsequent enquiry amongst villagers has revealed that this damage was caused to the gate by farm vehicles regularly “bumping” into it to push it open. That it was obviously unlocked to allow that to happen strengthens our case that this gate was kept unlocked.

The significant point about this is that we can provide eye-witnesses who confirm that this “bumping” was a normal means of opening the gate to allow vehicular entrance from Pound Lane. Our witnesses are prepared to provide that evidence at any enquiry. Thus, when Section 17.5 of the rights of way report reiterates this point: “Since 1987 there is evidence that use has been by force”, we have evidence that the damage was caused, not by villagers intent on walking across the field, but in order to gain access for agricultural use.”

14.27. Officers make the following additional observations regarding the locking of the gate: (i) Witnesses mainly refer to the gate being locked and notices appearing on the gate/land when the field was recently ploughed and cropped (April 2016); (ii) Many witnesses who used the land up until it was ploughed make no reference to the locked gate or signage prior to that date, which perhaps suggests that there were no locked gates/signage; the locking of the gate and/or signage did not prevent their user; or they were using other access points without locked gates/signage.

14.28. There is some reference to the gate being previously locked on occasion for short periods of time, Mr Colin Wade confirms that it was only the gate from Pound Lane which was locked and then only occasionally. Reasons for this closure include when the grass (silage crop) was sprayed; when there were cattle on the field; or to prevent access when Travellers were in the area. Witnesses give very few further details on these closures and it is not possible to conclude whether or not they took place within the relevant user period, although there is evidence that these interruptions were occasional and only for a short time as follows: Mr Simon Resball in evidence confirms that he has been prevented from using the land and confirms that there have been attempts occasionally to prevent or discourage user before the annual silage cut, this was only for a few days and possibly just where the grass was sprayed. Also the gate was locked some years back when Travellers were in the area. Mr and Mrs G Callaghan refer to the gate being locked on a few occasions over the years, including a few years back when cows were put in the field for a short period. The gates were never locked for long. Mr E Noad confirms that the gate was locked for short periods a few times, but does not specify the reason for this. The landowner gives further evidence that the land was sprayed in 2000 when it was not tenanted by the Masters family, which may accord with one of these events.

14.29. Jan Jen's evidence is interesting as it confirms that the gate was padlocked for many years (in her view illegally) and/or topped with barbed wire. She confirms that to access the field she climbed the gate, which supports the landowner's evidence that the gate was locked and residents used force to access the field. In the application form, supplementary information, "The Case for a Town or Village Green", as the landowner points out, the applicants make the following comments regarding the Pound Lane gate:

“...the gate on Pound Lane which clearly has been locked (as opposed to its being merely closed) on a number of occasions over the years before the ploughing...”

14.30. Although the applicants and objectors have submitted a substantial amount of material and evidence regarding the Pound Lane gate, in the village green case, there are of course, other access points into the field which may be considered, i.e. the Wiltshire gate at the western boundary of Great Lees Field (adjoining the Masters' Field); 2 access points from Footpath No.1 Semington which follows the northern field boundary and access gates in the gardens of properties in Pound Close.

14.31. The landowner, in his objection, carries out an analysis of the supporting evidence regarding access points to the field and concludes that only Mr and Mrs Watts; Alan and Christine Jones; Mr and Mrs Tarsnane; Mandy Robinson and Philip and Christine Deverall, appear not to have entered via the gate off Pound Lane, (including 5 witnesses who enter from their private gardens, from which no other member of the public may enter. The landowner does not mention here whether or not these residents sought permission to enter from the gardens). He considers that this leaves only 4 witnesses, Mr and Mrs Jones and Mr and Mrs Tarsnane who have entered via the Wiltshire gate. The landowner's submission claims that *“of the user questionnaire respondents, 80% claim that access to Great Lees Field was gained via a gate at Pound Lane.”*

14.32. Officers have considered the evidence regarding access points, given as part of the Town or Village Green application (please see table at **Appendix 3**, please note that witnesses are asked to describe and also to mark on a map the access points which they have used). Despite the landowners analysis of the access points and contention that the majority of users have entered the field via the Pound Lane gate, officers in their consideration of the evidence

have concluded that whilst the majority of witnesses have used the Pound Lane gate, 42 witnesses have also used other entrances to access the field, including the gap/Wiltshire gate in the western field boundary; stiles/access points from Footpath No.1 (a recorded public right of way which follows the northern field boundary of Great Lees Field); access gates from the gardens of properties in Pound Close and some reference to access in the south-west corner of Great Lees at the termination point of Footpath No.16 Semington, (although there is now no evidence on site of an access/former access at this location). Within the witness evidence form users are asked *“How do/did you gain access to Great Lees Field?”* and *“How have you accessed the land? Please mark on the map (with an ‘A’) where you access Great Lees Field”*, (underlining added). The witnesses answers to these questions and the accesses shown on the map, will relate to their own user, rather than witnesses just being aware of other access points which they have not necessarily used. Therefore, even if evidence of user via the gate off Pound Lane were found to be by force and not “as of right”, a significant number of users provide evidence of use of alternative access points into Great Lees field.

14.33. There is no evidence of the Wiltshire gate/gap in the western boundary of the field being closed, (please see the effect of signage claimed to be in place at this point since 1987, at paragraphs 14.35 – 14.43) and where Footpath No.1 is a recorded public right of way there is no reason to consider that the access points on this route would be obstructed (illegally) and there is no evidence that the footpath has ever been fenced off from the field. In “The Case for a Town or Village Green” the applicants state that, *“It is important here to note that complete access to the field has never been made impossible by all entry points (or entry discouraged through notices). Even when the Pound Lane gate was shut to prevent vehicles getting into the field, access through other means (the gateway in the western boundary hedge, the stiles at each end of the Right of Way running along the southern boundary of the canal, the canal*

bank, and the back gardens of the houses along Pound Close) has always been possible.” On a site visit in October 2016, officers found the Wiltshire gate/gap in the western boundary to be fenced and sealed with signage, which it is believed to have been erected after the ploughing of the land in 2016 (based on the witness evidence submitted); the stiles on Footpath No.1 in the north-west and north-east corners of the field, were available for use, without signage and the access gates from the gardens of properties in Pound Close were unobstructed, (although a barbed wire fence has now been erected on the land against the gates in Pound Close to prevent access to the field from the private gardens, as observed by officers on a site visit dated August 2017).

14.34. Residents of the 8 properties 29-36 Pound Close have provided witness evidence forms and all refer to an access gate, or accessing the field from their gardens; however, only 2 of these witnesses refer to seeking or being granted permission to use this access (to access the back of their property or for deliveries) from the owners/occupiers of Great Lees Field. There remain 6 users who appear to have entered the field from their gardens, without permission, without force and without secrecy, (where these access gates would have been visible to the owners/occupiers of the land). The landowner suggests that *“no other member of the public may enter Great Lees Field”*, via these rear access gates and therefore they cannot be taken into account as an alternative access point; however, in a Town or village Green claim, the Registration Authority is not considering use of the land by the public at large, but by local inhabitants, therefore access by neighbouring properties is highly relevant. There is no evidence that these accesses have been closed at any point during the relevant user period. In evidence, the applicant says of the residents of Pound Close whose back garden gates lead directly into the field: *“They have had that access ever since the houses were built around 1960. They have never been prevented from using the gates; nor have signs ever been put up denying them a right of way. There is now a barbed wire fence*

blocking this evidence. This was erected on 18 November 2016, only after we made our village green application and we regard it as evidence that the landowner understands the importance of this mode of entry to the field.”

Without Force (locking of the Pound Lane gate) - Officers conclude that where the locking of the Pound Lane gate forms part of the objectors case that user has been by force and is therefore not “as of right”, there is sufficient evidence to suggest, on the balance of probabilities, that where alternative access points have been open and available, users were not required to use force to enter Great Lees Field.

14.35. Use by force does not just refer to physical force, but also where use is deemed contentious, for example by erecting prohibitory 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.”

14.36. The landowner’s case states that since 1987 signs have been fixed to the Pound Lane gate indicating that Great Lees Field was private and/or that there was no right of way. Mr Stuart-Bruges affixed such signs when he became landowner in 1987 and did so again in 1998 when the gate was replaced. In 2004 signs stating “*Private No Right of Way*” were removed and cast to the ground, the landowner has provided photographic evidence of

these notices lying on the ground. In 1998 Mr Stuart-Bruges also affixed the same notices to the Wiltshire gate between the Masters' land to the west and Great Lees Field. Again the landowner submits photographs taken in 2004, to show signs at this location stating "*Private Land No Right of Way*", having been removed and cast to the ground.

14.37. The landowner's case submits that the law in relation to force was considered in the case of *Taylor v Betterment (Mrs G Taylor (on behalf of the Society for the Protection of Markham and Little Francis) v Betterment Properties (Weymouth) Ltd (1) and Dorset County Council (2) [2010] EWCA Civ 250*), where it was held that if a landowner displays opposition to the use of the land by erecting a suitably worded sign which is visible to, and is actually seen by the local inhabitants then their subsequent use of the land will be contentious and, on that account, forcible. Moreover, if the signs were not seen by many users of the land because they were repeatedly unlawfully removed soon after erection, the landowner would nevertheless have done all that was required to make use contentious.

14.38. The *Taylor Betterment* case, concerns an area of land in Dorset registered as Town or Village Green in 2001 by Dorset County Council, with two public footpaths over the land. Upon receiving notice of the application, the landowner objections included their contention that user had not been "as of right" where the public had either used force to gain access to the land or had done so with stealth or with permission. The Curtis family, as the landowners, submitted evidence that they had at all times strenuously resisted any acts of trespass on the land by maintaining boundaries with local housing and by erecting notices on the land warning people not to trespass and to keep off the land on either side of the footpath. A similar conflict of evidence arises (as with the *Semington* case), where none of the users recalled seeing any signs warning them off the land.

14.39. Lord Justice Patten states:

“27. The landowners’ case at the inquiry was that fences had been maintained on the boundaries with the housing and that signs had been erected so as to make it clear to the public that they should not trespass on the registered land from the footpaths. The evidence from local inhabitants (as summarised in the Council’s decision letter of 5th June 2001) was that they regularly used the land for games and recreation and did not confine themselves to the footpaths. In doing so they had (they said) never been challenged nor did they recall seeing any signs saying that the fields were private property which they should not enter.

28. By contrast, the landowners’ witnesses gave evidence that signs were put up at strategic points on the perimeter of the land and at the edge of the footpaths...

29. ...The residents who provided evidence to support the s.13 application were all local inhabitants who gained access to the registered land via one or other of the footpaths.

30. The issue for the inquiry and for Morgan J was whether the Curtis family had taken sufficient steps so as to effectively indicate that any use by local inhabitants of the registered land beyond the footpath was not acquiesced in. At the inquiry this turned on the presence or visibility of the signs...

40. The question of how far the landowner must go was considered by Pumfrey J in Smith v Brudenell-Bruce [2002] 2 P&CR 51 (a case about the acquisition of a private right of way by prescriptive user). He said that:

“It seems clear to me a user ceases to be user “as of right” if the circumstances are such as to indicate to the dominant owner or to a

reasonable man with the dominant owner's knowledge of the circumstances, that the servient owner actually objects and continues to object and will back his objection either by physical obstruction or by legal action. A user is contentious when the servient owner is doing everything, consistent with his means and proportionality to the user, to contest and to endeavour to interrupt the user."

41. ...the last sentence of this dictum suggests a wider test under which the owner who does everything reasonable to contest the user will thereby have made such user contentious regardless of the extent to which his opposition in fact comes to the notice of those who subsequently seek to establish the prescriptive right."

14.40. In this case there was evidence that the notices in question may have been removed, (as is suggested in the Semington case):

"47. The evidence of such users that they did not see any signs of the kind described by the landowners' witnesses is, Mr George submits, entirely consistent with the notices not surviving for very long and with any replacements faring no better.

48. ...If the landowner erects suitably worded signs and they are seen by would-be peaceable users of the land then it follows that their user will be contentious and not as of right. That is the easy case. The alternative is an objective test based on knowledge being attributed to a reasonable user of the land from what the landowner did in order to make his opposition known.

51. The essential criticism, of the judges analysis at paragraph 122 is that it treats the reasonable user of the land as being in possession of knowledge which the actual users who gave evidence in support of the s.13 application said they did not have...

52. ...If most peaceable users never see any signs the court has to ask whether that is because none was erected or because any that were erected were too badly positioned to give reasonable notice of the landowner's objection to the continued use of his land.

59. It seems to me that the only possible reconciliation between the judge's findings of primary fact and the recollections of Mrs Horne's witnesses is that the signs were vandalised and removed on a regular basis shortly after they were erected...

14.41. Lord Justice Patten found:

"63. If the steps taken would otherwise have been sufficient to notify local inhabitants that they should not trespass on the land then the landowner has, I believe, done all that is required to make users of his land contentious.

64. It follows therefore that the Curtis family were not required to take other steps such as advertising their opposition in order to rebut any presumption of acquiescence. In my view, the judge was correct to hold that there was not user as of right for the requisite 20 years."

14.42. Whilst the landowner's submission correctly interprets the findings of the Betterment case, there are key differences between this case and Semington. The Betterment case provides additional evidence of the signage having been erected:

"31. The landowners' evidence about the signs was given by a number of witnesses..."

In the Semington case evidence of signage on the land prior to April 2016, is provided only by the landowner and no other witnesses. Although some witnesses do refer in evidence to previous attempts to prevent/discourage user for occasional and short periods of time, none of the witnesses refer to signage on the access points/land prior to 2016. There is no photographic evidence, or other evidence of the signs “as erected” in 1987 and 1998. Photographs taken in 2004 and provided by the landowner, purport to show the signs removed and cast to the ground, (i) at the Pound Lane gate: “*Private No Right of Way*” and (ii) at the Wiltshire gate/gap in the western field boundary: “*Private Land No Right of Way*”. However, these photographs give no indication that they are located in Great Lees field and do not provide sufficient evidence to support the landowner’s claim that signage was erected in 1987 and 1998. In an e-mail dated 7 November 2017, Mr Stuart-Bruges submits photographs of “*No Footpath*” and “*Footpath*” signs erected in 2016 in the adjoining field to the west, owned by the Masters’ family, having been pulled down and thrown into a hedge by June 2017, to “*confirm that vandalism of signs is normal in Semington*”. However, this evidence does not assist in the objectors claim regarding signage erected over the application land in 1987 and 1998.

14.43. In the Semington case there is an existing right of way, Footpath No.1 Semington, located at the northern boundary of Great Lees Field, leading east-west. The notices in the Betterment case were erected on either side of the footpath accessing the land. At Semington there is no evidence provided of signs being erected on either side of Footpath No.1 at the northern boundary of the field, or near to the Pound Close garden access points, which would bring to the attention of users entering the field from those access points, that wider use of the field was not permitted.

Without Force (Prohibitory Notices) - The principles set out within the Betterment caselaw regarding prohibitory notices rendering user “by force”, cannot be applied

in the Semington case where the landowner has provided insufficient evidence to the Registration Authority to show that these signs were erected and removed. Officers cannot conclude that user was made contentious in 1987 and 1998 by the erection of prohibitory notices.

Additionally, there is no evidence that prohibitory notices were erected (and subsequently vandalised/removed), at Footpath No.1, or at the rear of Pound Close and the principles of Betterment cannot be applied where prohibitory notices have never been erected.

In the Semington case, the evidence regarding the erection of prohibitory notices is not sufficient to render user by force and therefore not “as of right”.

14.44. The landowner has submitted copies of grazing agreements for Great Lees Field dated 1988 – 1999 and 2001 – 2015, covering the whole of his period of ownership (there was no grazing agreement entered into in 2000). The agreements are made between the landowners and TJ and JMH Masters, (signed copies were included with the further submission of Mr Stuart-Bruges, dated 6 March 2017). They contain the following condition:

*“(6) The Graziers agree to the following conditions:
(a) that they will not permit trespass upon the Property”*

From the 2003 agreement onwards, this condition is amended to:

*“(6) The Graziers agree to the following conditions:
(a) that they will not permit any Trespass on the Property and will maintain the gate closed and locked”*

14.45. In evidence Mr Stuart-Bruges confirms that *“Due to damage that had occurred to the Pound Lane Gate I ensured that the grazing tenancies specifically stipulated the prevention of trespass, and from 2003 onwards the maintenance, closing and locking of the gate (although the Masters had*

always confirmed they were doing that prior to 2003 anyway).” Whilst this provides evidence that it was the landowner’s intention for the gates to be locked from 2003 and that they wished to prevent trespass onto the land after 1988, the inclusion of these conditions within a private grazing agreement appears not to be sufficient to convey to local inhabitants that their right to use the land was being challenged. Preventing trespass onto the land would have been very difficult where there was a public footpath with unobstructed access at the northern edge of the field, (there is no evidence provided that the footpath was ever fenced out of the field), and alternative access points in the western field boundary and from the gardens of properties in Pound Close. We have already seen that the locking of the gate at Pound Lane was not sufficient to make user of the land for the purposes of village green user, by force where there are alternative access points were available and there is insufficient evidence of signage erected on the Pound Lane gate and the western access point, to render user contentious and by force. Additionally, these grazing agreements only applied for part of the year, e.g. the agreement made on 10 May 2003 lasted until 25 December 2003; therefore, there would be no obligation upon the Masters’ family to lock the gates and prevent trespass onto the land, outside the grazing agreement periods.

Without Force (Conclusion) - When considering a Town or Village Green application, the Registration Authority is asked to determine only whether the lawful sports and pastimes have been carried out without force. In this case there is no evidence to suggest that the activities have been undertaken by force. There is conflict in the evidence regarding access to the field, i.e. the locking and damage to the Pound Lane gate and the erection of prohibitory notices at the Pound Lane gate and the gap/Wiltshire gate in the western field boundary. However, even if user of these two access points was found to be by force, there is alternative access to the field from Footpath No.1 and from the garden gates of properties in Pound Close and significant witness evidence that alternative access points have been used, (42 witnesses refer to access points other than the Pound

Lane gate). Officers therefore cannot conclude that use of the field or access to the field has been by force in the village green case, on the balance of probabilities.

Without Secrecy

14.46. When asked whether they had been seen on the land by the owner/occupier, 7 of the witnesses claimed that they had not been seen on the land; 9 claimed that they had been seen on the land and 50 witnesses did not know if the landowner/occupier had seen them using the land. Of the 9 users who claimed that they had been seen by the owner/occupier, they were asked what the owner/occupier had said to them and when this was, with the following replies: “*said nothing*”; “*A while ago (sorry can’t recall) – Nothing*”; “*said nothing – March 2016*”; “*Just waved*”; “*friendly*”; “*Nothing said seen many times*” and “*Summer most years*”. Witnesses provide no information regarding what activities they were undertaking on the land when seen and whether or not they were seen by the landowner or the tenants. This evidence would suggest that users of the land did so without secrecy and were not challenged when doing so.

14.47. Mr Stuart-Bruges the landowner, confirms that he visited the site “...*at least annually or as and when is necessary.*” The landowner claims that he never saw activities taking place on the land:

“Taking the user evidence as a whole and the activities that the Town and Village Green application alleges are carried out, I can say that whenever I visited Great Lees Field I have never seen these activities taking place. If I had I would have made clear to people that there were on private land. I have also spoken to Arthur Haythornthwaite and he likewise confirms that he has never seen these activities occur.”

14.48. However, 8 properties in Pound Close have access to the field; these gates would be visible to the owners/occupiers of the land. Additionally, the landowner entered into grazing agreements which included specific clauses to prevent trespass and maintain the gates closed and locked, which may suggest that the landowner was aware of use.

Without Secrecy - In conclusion, officers consider that user of the field has been without secrecy, some witnesses having been seen on the land (perhaps by the tenant farmers), without challenge. None of the witnesses refer to being challenged whilst using the land and the landowner presents no evidence of incidents of users being challenged. Mr Stuart-Bruges contends that he visited Great Lees Field infrequently (at least annually), however officers consider that on those occasions he would have been aware of the access gates into the field from properties in Pound Close, which did not access onto public rights of way, (only 2 users claim to have used these gates with permission). Additionally, the grazing agreements included conditions to prevent trespass on the land, suggesting that the landowner may have been aware of use.

Have indulged in lawful sports and pastimes

14.49. The activities which witnesses claim to have undertaken on the land are listed at **Appendix 4**. Witnesses also claim to have seen activities taking place over the land, please see **Appendix 5**. The majority of user appears to be walking and dog walking. Walking can be related to establishing linear routes on the land and in this case a definitive map modification order (DMMO) application was made in 2016, to add multiple footpath routes over the land as shown on the plan at paragraph 10.13.

14.50. The DMMO application (to establish linear routes over the land) was based upon user evidence from 18 witnesses who completed witness evidence forms. 13 of those witnesses have also completed Town or Village Green

witness evidence forms (the Town or Village Green witness evidence form is completed jointly by T and V Waylen, whilst the footpath evidence form is completed only by T Waylen; the Town or Village Green witness evidence form is completed jointly by S and J Hall whilst they have individually completed two footpath witness evidence forms; Mr and Mrs G Callaghan have jointly completed a Town or Village Green evidence form whilst the footpath witness evidence form is completed by Mr G Callaghan only and K Clark has completed a Town or Village Green evidence form whilst the footpath evidence form is completed jointly by K and S Clark), although please note that DMMO and Town/Village Green applications are determined under separate legislation and the evidence is subject to differing legal tests.

14.51. In the Town or Village Green case the land is used mainly for the purposes of dog walking and walking. 37 users walk with dogs and 29 users walk on the land, whilst 65 witnesses have seen dog walkers on the land and 64 have seen people walking. Several of the witnesses clarify their own walking on the land as: *“access to canal”*; *“To dog walk either around the edge or on the path diagonally across”*; *“Pleasant walk to canal with grandchildren”*; *“To walk the canal”*; *“Walks to canal”*; *“Canal walks”*; *“To walk to canal”* and *“Path to canal”*, which suggests that users followed paths as direct routes across the field to access the canal. Such use is not consistent with claiming Town or Village Green rights.

14.52. Use associated with rights of way claims is the use of linear routes which cannot then establish user for lawful sports and pastimes, although where a number of different footpath routes are identified and it is obvious that people have been criss-crossing the field, do these many linear routes become use of the whole of the application land for lawful sports and pastimes?, for example where users have strayed from the paths to retrieve dog toys, etc.

14.53. If the evidence of user of foot, i.e. walking and walking with dogs, is removed, there are activities remaining which could give rise to the exercise of lawful sports and pastimes, but are they sufficient in this case?

14.54. The witnesses do not successfully identify community events taking place over the land where: (i) occasional bonfires and gymkhanas held prior to 1996 are outside the qualifying user period (1996 – 2016) and in any case appear to have been undertaken with the permission of the owner/occupier, additionally whilst 12 witnesses claim to have seen bonfire parties taking place on the land, no witnesses give first hand evidence of themselves attending bonfire parties or gymkhanas on the land; (ii) car parking for the village fete is not qualifying user as established in case law and appears to have been undertaken with the permission of the owner/occupier; (iii) the Semington Slog, which in 2017 was only in its 3rd year, (so only one of these events may have taken place on the land in May 2015, before close of the relevant user period in April 2016), appears to have utilised existing public rights of way including Semington Footpath No.1 at the northern field boundary. The witnesses do not consider there to be seasonal events taking place over the land, but blackberry picking is identified by some users and officers would consider this to be a seasonal activity. Overall, the lawful sports and pastimes exercised over the land do not appear to be formal and structured.

14.55. After dog walking and walking, blackberry picking is the next most popular activity, with 7 witnesses giving their own evidence and 57 having seen this activity taking place, (officers have observed blackberries growing at the boundaries of the application land). The next most popular activities are playing/children playing - 5 (59 seen); Kite flying - 5 (35 seen); Exercise - 4; Cricket - 3 (14 seen); and Football - 2 (19 seen). 34 witnesses also claim to have seen bird watching taking place over the land but only 1 witness has

undertaken bird watching themselves. There are 49 instances of user other than dog walking/walking upon the land (31 users), not including use seen.

14.56. In the supplementary evidence submitted by the applicants, “The Case for a Town or Village Green” it is stated:

“Another respondent [43] captured something of the significance of the field to children of all ages:

“I have used Great Lees Field regularly over the past 28 years. When my children were young we used the field for flying our kites. During summer holidays, village children would play in the field once the meadow had been harvested. The World War II pill box served as a play den, and has been a regular meeting place for teenagers wanting to be out of sight of adults.”

The following extract from respondent [3] shows what has been lost:

“We own a children’s day nursery and use the field on a regular basis. We have vulnerable children who live in poor accommodation (ie, flats) with no access to outdoors without an adult being present. Having access to the field [has] given them a chance to run and play with many friends that they would not normally have in a safe environment. Great Lees Field is like another classroom for the nursery [where] they can learn, play and draw with freedom.”

14.57. Officers would certainly agree that the pill box structure located at the western field boundary in the north of the field would provide an excellent place for children and others to play and investigate etc, but there is limited user evidence to support this activity. Whilst 59 users claim to have seen play in the field, only 5 witnesses give their own direct evidence of play, which would be of greater evidential weight. As an area for learning, one witness refers to undertaking nature walks on the field and another witness claims to have undertaken nature study and wildlife exploration on the land.

- 14.58. The applicants have provided photographs which it is claimed record inhabitants undertaking lawful sports and pastimes on the land:
- 1) Village boys playing cricket in the field in the 1950s,
 - 2) Village girls and boys playing cricket on the field (probably in the late 1980s),
 - 3) Children from a local nursery school being taught in the field in 2016.

The landowner makes the following comments on the photographs:

“The photograph of the boys playing cricket from the 1950s is in fact, I believe, a photograph of my cousin (centre), Michael Bruges (d.2013), who lived in Semington at that time. I have contacted family relatives and shown them this photograph and they also believe it is him. I attach a photo of Michael as a boy showing the similarity (Exhibit 1). If that is correct, then at the time our grandparents or my father were the owners depending on when the photograph was taken. That means that the boys playing cricket would most probably have been there with consent from Michael, as grandson/nephew of the owners of Great Lees Field, and not as of right. Even if it is not Michael, though, it is not possible to say that this photo was even taken on Great Lees Field.

The photograph of the children from the 1980s is not one I recognise, but I can see no way in which this can be shown to have been taken on Great Lees Field at all. It could be anywhere.

As for the photographs of the school/nursery children, two of these are taken by the canal on a mown bank, and not on Great Lees Field where there is a lot of greenery present and no mowing has occurred. In the other two photographs, the children are seen to be picking dandelions. Great Lees Field was ploughed in April 2016, before dandelions would have flowered, so those

photographs cannot have been taken on Great Lees Field. They must have been taken on a different field and this is confirmed by the presence of the concrete pillboxes in the photographs. There is only one concrete structure on Great Lees Field and any photo would show it to the left of the stile, not to the right as seen in the photographs. It therefore seems that the school/nursery is confused about which land it is using.”

14.59. Officers would make the following comments regarding the photographs:

- Officers can make no comment on whether or not the boy in the 1950s photograph is Michael Bruges, the landowner’s grandson/nephew. It is therefore not possible to comment on whether or not the children are on the land with permission. Officers would comment that it is not possible to identify the land as Great Lees Field, from the photograph.
- Again in the photograph taken in the 1980s of children playing cricket on the land, there are no identifying features to confirm the location of the photograph as Great Lees Field.
- The first three photographs of children from a local nursery school, taken in 2016 show the children on the towpath, (a recorded public right of way) and perhaps on Footpath No.1 east of Great Lees Field, given the post and rail fencing visible in the background. In the final photograph, which includes the children picking dandelions in a field, three concrete structures and a stile visible are behind them. Officers conclude that these are the three concrete structures located on Footpath No.1 Semington, close to the swing bridge, in the field located to the west of Great Lees Field. Officers consider that, looking at the series of photographs, the children have used public Footpath 1, which leads through Great Lees Field, to reach the swing bridge and none of the photographs of children undertaking lawful sports and pastimes, appear to have been taken in Great Lees Field itself.

- Therefore the photographs included with the application, provide no additional evidence of lawful sports and pastimes being undertaken on Great Lees Field.

Lawful Sports and Pastimes - Is the evidence provided sufficient to demonstrate on the balance of probabilities, that the land has been used for the exercise of lawful sports and pastimes, or has the main user been use of linear routes for the purposes of walking and dog walking, including routes to access the canal? It is considered that hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry would assist the Registration Authority in its determination of this application, where all elements required to establish a new green must be satisfied, on the balance of probabilities.

On the land

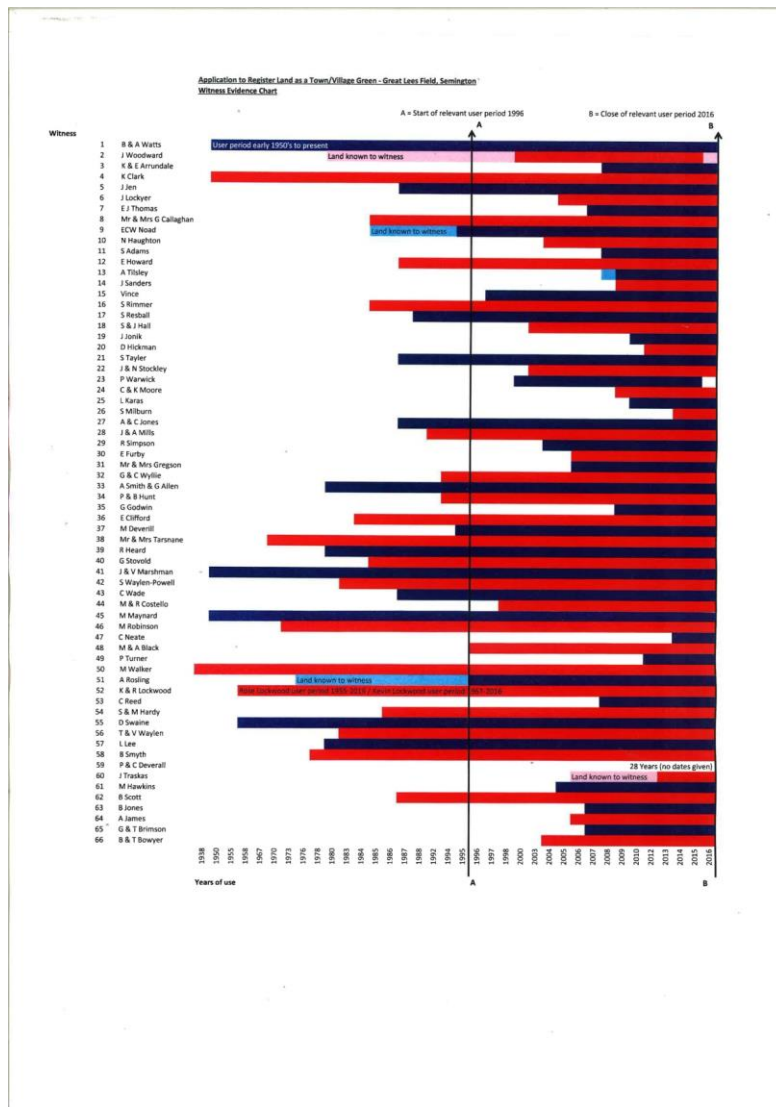
14.60. The map included with the witness evidence forms, already shows the area of Great Lees Field, i.e. the application land highlighted and witnesses have not individually annotated maps to record the area of land which they themselves have used. However, there is no evidence to suggest that any part of the land should be excluded from the application, for example, where it was not possible for local inhabitants to use part of the land and the landowners present no evidence to suggest that only part of the land was used. There is no evidence that activities have taken place on part of the land which would cause substantial interference with the use of that part of the land for lawful sports and pastimes, for example tipping, which would prevent registration of that part of the land. The grazing agreements over the land and the subsequent agricultural activities associated with it do not appear to have caused substantial interference with the use of the land and are transient in their nature.

14.61. There is a question over whether the whole of the application has been used for lawful sports and pastimes where the main user of the field has been for walking and dog walking, perhaps use of linear routes rather than use of the whole of the application land.

On the Land - Officers consider that where the application is successful, the whole of the application land should be registered, where there is no evidence that any part of the land has been unavailable for the exercise of lawful sports and pastimes. However, the question of whether or not the whole of the application land has been used for lawful sports and pastimes remains where the main user is walking and dog walking, perhaps utilising only linear routes. It is considered that hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry would assist the Registration Authority in its determination of this application, where all elements required to establish a new green must be satisfied, on the balance of probabilities.

For a period of at least 20 years

14.62. To satisfy the 20 year user test, with use ending in April 2016, when the land was ploughed and the Pound Lane gate locked, notices erected and the subsequent planting of the land, the user period in question is April 1996 – April 2016, with the application made no more than one year from the cessation of use, (in this case the application is received by the Registration Authority on 24 June 2016). Please see user evidence chart below:



14.63. There is no requirement for all of the witnesses to have used the land for a full period of 20 years, rather the evidence may have a cumulative effect to demonstrate public user for a period of 20 years. In this case 65 witnesses have used the land within the identified user period of 1996-2016. Although P and C Deverall do not give dates of user, they state that they have used the land for a period of 28 years, this is likely to have been within the relevant 20 year user period where they are presently residents of Pound Close and access the field through a gate at the bottom of their garden. 34 of the witnesses have used the land for the full 20 year user period.

- 14.64. There is also a significant amount of evidence of use prior to the relevant 20 year user period, the earliest user evidence being from 1938.
- 14.65. However, 4 witnesses do in evidence make reference to closures of the Pound Lane gate in the past, for short periods, which may interrupt the period of user, for example when there were cattle on the field; spraying of the grass and/or Travellers present in the area. Officers consider that this would not be an effective interruption to user during the relevant user period, where there is no further evidence of when these occasional closures took place, (i.e. did they take place within the relevant user period?), and where there were alternative access points into the field, i.e. from Footpath No.1; the gap/Wiltshire gate in the western field boundary and the gates in the gardens of properties in Pound Close.
- 14.66. The condition of the field from the aerial photograph taken in 2001 and 2005/06 (see part 6), suggests some kind of agricultural practice taking place, perhaps consistent with the grazing agreements in place over the land at that time. The action of producing a hay/silage crop would not form an interruption to use of the land by local inhabitants for lawful sports and pastimes. This point was considered in the case of *R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] where it was held in the High Court that the annual gathering of a hay crop was incompatible with use of the land as a Town or Village Green and as a result the decision to register the green was quashed. However, in *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25, Lord Hoffman commented on that earlier decision saying *“I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes...if in practice they were not.”* Therefore, where there has been use of the land for agricultural purposes throughout or at some time during the relevant user period, each case must be determined on an individual basis on the degree of interruption to user and the extent to which the agricultural activity is consistent with that use. In the

Semington case there are infrequent references to interruption to user caused by the production and gathering of the silage crop, spraying or the keeping of cattle on the land. Where these references are made, they appear to be with reference to the locking of the Pound Lane gate for these purposes, but in the Semington case there are other/alternative access points onto the land and the agricultural activities appear to have had little impact upon user and the two activities have co-existed. The ploughing of the land would not be consistent with user for the purposes of lawful sports and pastimes.

14.67. There is evidence presented in the Landowner's case to suggest that the field was ploughed in 2000, when it was not tenanted by the Masters' family for one year. This action would present a clear interruption to the 20 year user period and the application would be invalid under Section 15(3) of the Commons Act 2006, which requires the Town or Village Green application to be made after the commencement of Section 15 of the Commons Act 2006 and within 1 year of the cessation of user. Neither would it be a valid application under Section 15(4), where user ends before 6 April 2007 and the application is made within 5 years of that date. Prior to the commencement of the Commons Act 2006, which enabled applications for new village greens to be made, where Great Lees Field was not a registered Town or Village Green within the original registration period, i.e. by 31 July 1970 (Commons Registration Act 1965), the 1965 Act also provided for amendment of the register, after that date, where land could be shown to have become a Town or Village Green by prescription.

14.68. The applicants maintain that the field was ploughed for the first time in living memory in 2016 and the witnesses make no reference in the evidence forms, to ploughing of the field in the year 2000. Mr and Mrs Lockwood, who have used the land from 1960 to 2016, state "*...as of 2 weeks ago. Signs on gate, Field Ploughed for the first time in my lifetime 60 yrs.*" There is a clear conflict

of evidence regarding the ploughing of the land in 2000, (this is explored in further detail in the following part of this report “Use has ceased”).

For a Period of At Least 20 Years – There is significant evidence of long user of Great Lees Field, before and during the relevant user period of April 1996 – April 2016. The agricultural activities taking place in relation to the grazing agreements in place over the land from 1951 – 2015/16 (excluding 2000), have not presented a substantial interruption to use of the land for lawful sports and pastimes. However, officers consider that there is a conflict in the evidence regarding the 20 year user period, where the landowner claims that the land was ploughed in 2000, thereby creating a significant interruption to the 20 year user period, whilst witnesses make no reference to this event and the applicants claim that the ploughing of the land in April 2016, is the first time the land has been ploughed in living memory. It is considered that hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry would assist the Registration Authority in its determination of this application, where all elements required to establish a new green must be satisfied, on the balance of probabilities.

Use has ceased

14.69. The application is made under Sections 15(1) and (3) of the Commons Act 2006, where use has ceased and the application to register the land as a Town or Village Green is made within 1 year of the cessation of use. In the application it is claimed that “...*use came to an end on April 27th, 2016, when the field was ploughed as a prelude to maize being planted...The ploughing of this field has prompted this application to establish village green status for the field...*”

14.70. 13 users claim that they have been prevented from using the land, 11 of whom refer to the land being ploughed; cropped; notices erected and/or the gate being closed/locked as follows (user evidence forms completed 2016): In

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

part because field has been ploughed; last month gate closed and notice; since 27/04/16 – crop planted; Gate locked and field ploughed 27/04/16; Gate locked and field ploughed April 2016; Only recently once padlocked; Recently ploughed otherwise used it all the time; Ploughed 27 April; From May 2016 when field was ploughed; When it was ploughed up and planted; When the field was recently planted with crops. 3 witnesses confirm that they have not been prevented from using the land: Until now with gate closed and sign saying keep off crop; Not until May 2016 – ploughed; Not until it was ploughed. These references appear to apply to the ploughing of the land in 2016 and suggest that witnesses have not been prevented from using the land before that event.

14.71. Witnesses are also asked to confirm whether there has been any attempt made by notice or fencing or by any other means to prevent or discourage the use being made of the land by local people. 30 users confirm “yes” to this question, some of these witnesses refer to this as a recent development and/or refer specifically to the ploughing; planting; notices and/or closing/locking of the gate as follows: Only recently; Recent notice to keep off as being ploughed; Ploughing of field; April 2016 notice on gate field ploughed for 1st time; From 27/4/16; May 2016 Please do not walk in field – use for crops; From 27 April when land was ploughed “No footpath sign” up; Approximately April 2016 onwards; Signs placed and field ploughed and seeded May 2016; Last 2-6 weeks field ploughed; Ploughing the field on 27/04/16 discourages use and inference suggests crop production; Crops planted in May 2016; April 2016 The field was ploughed and signs put on gate stating private land please keep off the crops; Recent notices (I have photos) closed gate in Pound Lane; As of 2 weeks ago; Signs on gate, field ploughed for the first time in my lifetime 60 years; Gate was suddenly locked in April 16; Only in last few weeks, since field ploughed; Signs are now on gate stating Private Land Keep off the crops; 27 April 2016 “Private – Please keep off the crop”; May 2016 Notice requesting that people keep off the crop; When it was

ploughed up Spring 2016; It was ploughed on 27/4/16 and notices put up; Only recently notice erected on gate in Pound Lane. One witness confirms that there has been no such attempt until the very recent ploughing.

14.72. Whilst 50 witnesses refer to never being prevented from using the land and 34 witnesses refer to there being no attempt to prevent or discourage user, there is evidence as outlined above, to support the ceasing of user in April 2016, when the field was ploughed, accompanied by the locking of the gate and the present notices on site, followed by the cropping of the land, all of which prevented public user. The applicants confirm that this event has prompted the Town or Village Green application.

14.73. The application to register the land as a Town or Village Green would appear therefore to be correctly made within the period of one year of the cessation of user, ending on 27 April 2016, the application being received by Wiltshire Council as the Registration Authority on 24 June 2016. There is caselaw which supports the date of receipt of the application as the relevant date, rather than the date upon which the application is accepted as a validly made application, in R (Church Commissioners for England) v Hampshire County Council and Anr and Barbara Guthrie [2014] EWCA Civ 643. It concerns a case where Mrs Barbara Guthrie filed an application with the registration authority on 30 June 2008; however, the application was defective in several respects, finally complying with all the requirements of the regulations on 20 July 2009. Lady Justice Arden concludes:

“44. Accordingly, I conclude on this issue that Regulation 5(4) provides a means for curing deficiencies in an application which does not provide all the statutory particulars, and, once an application is so cured, it is treated as duly made on the date on which the original defective application was lodged.”

14.74. In any event, in the Semington case, the application was put in order on 9 September 2016, which remains within the one year period of grace for making an application to register land as a Town or Village Green, following the cessation of user.

14.75. However, in the landowner's evidence it is claimed that the field was ploughed in 2000, the only year that there was no grazing agreement with the Masters' family (between 1951 and 2015/16): *"Great Lees Field became overgrown and weed killer had to be applied before the land was reseeded. Great Lees Field was also ploughed at this time."* Ploughing the land is not compatible with user for the purposes of lawful sports and pastimes, therefore the ploughing would have been a significant interruption to the 20 year user period in question, i.e. 1996 – 2016. The landowner provides no evidence of ploughing (i.e. photographic or documentary evidence) and states:

"...my cousin Michael Bruges, informed me that he had arranged for the ploughing of Great Lees Field at that time. Unfortunately Michael is now deceased so obviously the Council will have to accept that I am accurately reporting what he told me."

14.76. There is a conflict in the evidence, where none of the witnesses refer to the ploughing of the land in 2000. On this point the Town or Village Green applicants comment that:

"A core aspect of our case is that Great Lees Field has never been ploughed in living memory. This obviously clashes with the statement by the landowner (found in Section 10.16.9 of the rights of way report) that the field was ploughed in 2000. Again, this is only an assertion, and we shall provide evidence from people who have lived adjacent to the field since well before the year 2000, that this did not happen. Further, the aerial photograph in Section 6.3. of the rights of way report shown the field in 2001, after it is

alleged that it was ploughed. The paths across the field are as clear as they are in the adjacent field. This, we argue provides clear evidence that it was not ploughed in the previous year and calls into question the accuracy of the landowner's memory."

"We argue that the field has never been ploughed since the second world war. The landowner says that it was ploughed in 2000, but provides no evidence to support this contention. Numerous villagers have told us that the field was not ploughed at that time, and evidence from Google Earth indicates that there was no disturbance to the tracks across the field in and around 2000 which would have been the case had the ploughing taken place. In fact, the landowner only actually "understands" that the work to the field involved weedkilling, ploughing and reseeding. He has no direct knowledge of it. Despite this in the statement from King's Chambers (paras 10 to 13 of the submission) the landowner's understanding becomes a fact: "Big Lees was also ploughed at this time".

We ask that Wiltshire Council concludes that the field has not been ploughed from (at least) the end of WWII until 2016."

14.77. Looking at the aerial photograph taken in 2001 (please see part 6), the year after the ploughing is purported to have taken place, there are "tracks" clearly visible over the land and the land does appear to be in cultivation. Mr and Mrs Lockwood support the assertions of the applicant in their evidence stating that *"...as of 2 weeks ago. Signs on gate, Field Ploughed for the first time in my life time 60 years."*

14.78. If the land was ploughed in 2000, this is not compatible with use of the land for lawful sports and pastimes and would present a significant interruption to the 20 year user period, whereby if use resumed after 2000, it would not yet be possible to establish a qualifying 20 year user period. Additionally, the application would not be a valid application under Section 15(3) of the

Commons Act 2006 which applies only where the user has ended after the commencement of Section 15 of the Act and the application is made within one year of the cessation of user. Neither would it be a valid application under Section 15(4) of the Act where user has ended before 6 April 2007 and the application is made within 5 years of that date, even if there was sufficient evidence of use of the land for lawful sports and pastimes for a 20 year period before 2000.

Use has Ceased - There is a conflict in the evidence where the landowner claims that the land was ploughed in 2000, which would present a significant interruption to use of the land for lawful sports and pastimes, whilst the applicants contend that, before April 2016, the land has not been ploughed in living memory. If the land was ploughed in 2000, the application to register the land as a Town or Village Green would be fatally flawed. It is considered that hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry would assist the Registration Authority in its determination of this application, where all elements required to establish a new green must be satisfied, on the balance of probabilities.

15. Overview and Scrutiny Engagement

15.1. Overview and Scrutiny Engagement is not required in this case. The Council must follow the statutory procedures which are set out under “The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (2007 SI no.457)”.

16. Safeguarding Considerations

16.1. Considerations relating to safeguarding anyone affected by the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The

determination of the application must be based upon the relevant evidence alone.

17. Public Health Implications

17.1. Considerations relating to the public health implications of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

18. Corporate Procurement Implications

18.1. Where land is registered as a Town or Village Green, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 22.1. – 22.3. of this report.

19. Environmental and Climate Change Impact of the Proposal

19.1 Considerations relating to the environmental or climate change impact of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

20. Equalities Impact of the Proposal

20.1. Considerations relating to the equalities impact of the registration of the land as a Town or Village Green under Sections 15(1) and (3) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

21. Risk Assessment

21.1. Wiltshire Council has duty to process applications made under Section 15(1) of the Commons Act 2006 to register land as a Town or Village Green, in a fair and reasonable manner, as set out in the case of R (on the application of Whitmey) v Commons Commissioners [2004] EWCA Civ 951, where it was held that:

“28...the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties by a judicial process. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs (as the Commons Commissioners are able to do: section 17(4) of the 1965 Act). However, the registration authority must act reasonably. It also has power under section 111 of the Local Government Act 1972 to do acts which are calculated to facilitate, or are incidental or conducive, as to the discharge of their functions. This power would cover the institution of an inquiry in an appropriate case.

29. In order to act reasonably, the registration authority must bear in mind that its decision carries legal consequences. If it accepts the application, amendment of the register may have a significant effect on the owner of the land or indeed any person who might be held to have caused damage to a green and thus to have incurred a penalty under section 12 of the Inclosure Act 1857). (There may be other similar provisions imposing liability to offences or penalties). Likewise, if it wrongly rejects the application, the rights of the applicant will not receive the protection intended by Parliament. In cases where it is clear to the registration authority that the application or any objection to it has no substance, the course it should take will be plain. If however, that is not the case, the authority may well properly decide, pursuant to its powers under section 111 of the 1972 Act, to hold an inquiry...”

21.2. If the Council fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Local Government Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the Council where it is found to have acted unlawfully.

22. Financial Implications

22.1. 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.

22.2. It is possible for the Registration Authority to hold a non-statutory public inquiry into the evidence, appointing an independent 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 determine the application in a fair and reasonable manner and its decision is open to legal challenge, therefore a public inquiry should be held in cases where there is serious dispute of fact, or the matter is of great local interest. Even where a non-statutory public inquiry is held, there is no obligation placed upon the authority to follow the recommendation made.

22.3. The cost of a 3 day public inquiry is estimated to be in the region of £8,000 - £10,000, (estimated figures to include a three day inquiry; two days preparation and three days report writing). In the Semington case it is considered that it would assist the Registration Authority in its determination of the application to hear directly from the witnesses and to test the evidence through the process of cross examination, particularly with regard to lawful sports and pastimes undertaken on the land and the alleged ploughing of the field in 2000.

23. Legal Implications

- 23.1. 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). 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 in bringing these proceedings following the registration of the land, it may be years after the decision and could lead to the de-registration of the land.
- 23.2. Alternatively, where the Registration Authority determines 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.

24. Options Considered

- 24.1. The options available to the Registration Authority are as follows:
- (i) Based on the available evidence, to grant the application to register the land as a Town or Village Green where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over the whole of the application land, or

- (ii) Based on the available evidence, to grant the application in part, where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have been met in full over only part of the application land, or
- (iii) Based on the available evidence to refuse the application where it is considered that the legal tests for the registration of land, as set out under Sections 15(1) and (3) of the Commons Act 2006, have not been met in full, or
- (iv) Where, after consideration of the available evidence, it has not been possible for the Registration Authority to determine the application, to hold a non-statutory public inquiry, appointing an independent Inspector to hold the inquiry and examine the evidence, including the oral evidence of witnesses and to provide a report and recommendation to the determining authority.

25. Reason for Proposal

25.1. In the Semington 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, with the application being made not more than 1 year following the cessation of user, is in dispute. Matters of particular conflict within the evidence include:

- (i) Is there sufficient evidence of the exercise of lawful sports and pastimes over the land, where the majority of user undertaken on the land has been walking and dog walking?

- (ii) The alleged ploughing of the land in 2000, which would lead to a cessation of user at that time, where 20 years user after 2000 could not be shown and the application would no longer be valid under Section 15(3) of the Commons Act 2006.

25.2. It is the duty of the Registration Authority to determine the application in a fair and reasonable manner, it is therefore considered appropriate to hold a non-statutory public inquiry where there is substantial dispute of fact, which is likely to be resolved by hearing the oral evidence of the witnesses and through cross-examination, at a public inquiry, particularly where the authority's decision is open to legal challenge. The applicants have indicated on several points that witnesses are prepared to provide evidence at any inquiry, including witnesses who did not complete the original survey (witness evidence forms). It is open to the Registration Authority to appoint an independent Inspector to preside over the inquiry and produce a report with recommendations to the determining Authority. Although it is open to the Registration Authority to reject the Inspector's recommendation it can only lawfully do so if it finds that the Inspector has made a significant error of fact or law. If the Inspector's recommendation is rejected the Registration Authority must give legally valid reasons supported by evidence of the error of fact or law, otherwise the Registration Authority's decision would be open to legal challenge.

26. Proposal

26.1. That Wiltshire Council, as the Commons Registration Authority, appoints an independent Inspector to preside over a non-statutory public inquiry, in order that a recommendation can be made to the Council as the Registration Authority, to assist in its determination of the application to register land off Pound Lane, Semington, as a Town or Village Green, as soon as is reasonably practicable.

Janice Green

Rights of Way Officer, Wiltshire Council

Date of Report: 1 December 2017

Appendix 1 – Community Activities

Witness	Community events taking place on the land
1	Yes – Children playing ball games, dog walkers (every day), 5 November bonfires (in the past).
2	Yes – Car parking for annual fete (approximately 2005-2015).
3	No reply given.
4	Yes – The children of the village used on bonfire night 5 November and played football and cricket. Semington school fete parked their cars.
5	No – Children playing, walking, running, dog walking – frequently and always. Some years ago I think the field was used for gymkhanas.
6	Yes – parking for fete, fun run for school kids – 2015.
7	No.
8	No – This has been used many times as a car park for the fete at the school.
9	No – Not known – except lots of dog walking and children playing.
10	Yes – Annually – school/village fete parking, Semington fun run, see people walking daily.
11	Yes - Yearly parking for school/village fete, Semington Slog – yearly, daily seeing people walking.
12	No.
13	Yes – Me - walking, dog walking, kite flying, blackberry picking, all of these since August 2009. Walking (most weekends), blackberry picking (summer months), dog walking (most weekends), kite flying as and when. School has used the land.
14	No.
15	Yes – School events field used for parking.
16	Not to my knowledge.
17	Yes – Car park for village fete (once a year for afternoon).
18	Yes – School fete annually, Semington 10k Slog.
19	Yes – School fete – car parking (annually).
20	No.
21	Yes – (No activities specified).
22	School race 5k 2012. Dog walking 3 times a day for 13 years / 5k race 2012.
23	No.

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

24	No – Kite flying each autumn, two or three times for an hour, walking across the land with children to show them nature once a week for the last 5 years.
25	No – To park.
26	No – Not sure if this field was used for the Semington Slog 2015 / 2016 years. Fete Committee: Fete parking.
27	Yes – Car parking for village fete when held at St G's School, Trowbridge pony club used GL field for parking cars, horse boxes etc during annual gymkhana from June 1988 – 1998.
28	Yes – In the summer children playing there, school fete parking.
29	No.
30	Yes – Village fete parking 1 st Sat in July as long as we've lived here.
31	No reply given.
32	Yes – every year field used for school fete, observed families playing football, golf, cycling, kite flying.
33	No.
34	Yes – has been used by school, local people, children for many years.
35	No – Walking about half an hour also meeting with other village people for recreation.
36	No – Exercise, relaxation, recreation, reflection, meditation, blackberrying, mushrooming, nature study and wildlife exploration take place constantly for the last 32 years on a monthly basis for 20-30 minutes.
37	No – Dog walking, walking.
38	Yes – Car parking.
39	No.
40	No.
41	Yes – (no activities specified).
42	No.
43	Yes – With permission of the occupier it has served as a car park for events at the school.
44	Yes – I recall a past resident holding a "lions" charity bonfire party and the field was used for fireworks.
45	Yes – Bonfire parties 1960.
46	Yes – Firework bonfire, parking for school fete.
47	No.
48	No.
49	Not known.
50	Yes – (no activities specified).
51	Yes – Bonfire parties prior to 1976.

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

52	Yes – In the past the field was used for football, cricket matches, always used for bonfire nights, fancy dress, fairs, carnival floats stored and decorated each year.
53	No.
54	No.
55	Yes – Many years ago village bonfire.
56	No – Apart from parking for village fete as road too congested.
57	No.
58	Yes – Use of field as parking for annual village fete.
59	No.
60	No.
61	No.
62	Yes – Land has been used as a car park on village fete days.
63	No.
64	No – Regular dog walking at least 3 times weekly, play with grandchildren most weekends.
65	No.
66	No.

Appendix 2 – Permission

User	Permission	User	Permission
1	Permission given to deliver to back garden (30 Pound Close).	34	No.
2	Permission sought from the farmers (the Masters' family) 1) for access to back of house and garden (31 Pound Close), 2) parking for village fete. This permission was given over last 15 years.	35	No.
3	No.	36	No.
4	No.	37	No.
5	No.	38	No.
6	No.	39	No.
7	No.	40	No.
8	No.	41	No.
9	Permission given for parking for fete.	42	No.
10	No.	43	No.
11	No.	44	No – but gate always used by villagers no Private sign.
12	No.	45	No.
13	No.	46	No.
14	No.	47	No.
15	No.	48	No.
16	No.	49	No.
17	No.	50	No.
18	No.	51	No.
19	No.	52	No.
20	No.	53	No.
21	No.	54	No.
22	No – not needed.	55	No.
23	No.	56	No – but nobody ever said otherwise.
24	No.	57	No.
25	Permission given for parking for village fete at school.	58	No.

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

26	Permission sought and given for village fete parking via John/Julia Masters, at least 2013 onwards.	59	No.
27	No.	60	No.
28	No.	61	No.
29	No.	62	No.
30	Permission sought and given from John Masters for village fete parking every year.	63	No.
31	No.	64	No – farmer had no objections to dogs.
32	No.	65	No.
33	No – not thought necessary.	66	No.

Appendix 3 – Access to Great Lees Field

User	Access	Ever prevented from using the land	Attempts to prevent / discourage user	Gates ever locked
1	From back garden	No	No	Not reply given
2	From my garden, map also indicates access gate off Pound Lane	No	Yes – keeping field gate shut	Yes
3	Through our back gate, map also indicates access off Pound Lane	No	No	No
4	Via our back gate, map also indicates access gate off Pound Lane	No	No	Yes – when Travellers were around to stop them parking
5	Climb over gate, through gate off Pound Lane	No	Yes – for many years the gate has been illegally padlocked and/or topped with barbed wire	No reply given
6	Gate, map indicates access gate off Pound Lane	No	No	Yes
7	Through 'OPEN' metalled gate (reference to metalled gate suggests Pound Lane gate)	No	No	No reply given
8	Gateway in Pound Lane, Through the gate, map indicates gate off Pound Lane	Yes – The gate was locked on a few occasions over the years	Yes - and a few years ago cows were put in the field for a short time	Yes – on a few occasions but never for long
9	Through open gate in Pound Lane, Through gate, map indicates Pound Lane gate and access in west field boundary	No	No – gate locked for short periods a few times	Yes
10	Via Pound Lane, map indicates access off Pound Lane	No	Only recently	Yes
11	From Pound Lane, map indicates access off Pound Lane	No	Recent notice to keep off as being	Yes – it is locked at the moment

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

			ploughed	
12	Via gate/gap in hedge, map indicates access at Pound Lane (gate), access at south-east end of FP SEMI16 at south-east corner of Great Lees, access in west field boundary and access from FP SEMI1 at north-west corner of Great Lees	No	No – as far as I know	Yes – as far as I know, not before mid-May 2016
13	Through open gate, map indicates access off Pound Lane, perhaps also stile at south-east corner of Great Lees?	Yes – in part yes because field has been ploughed	Yes – ploughing of field	No
14	Via open gate, map indicates gate off Pound Lane	No	No	No
15	Field gates, map indicates access gate off Pound Lane	Yes – last month gate closed and notice	Yes – April 2016 notice on gate field ploughed for 1 st time	Yes – April 2016
16	Gate off Pound Lane, map indicates gate access off Pound Lane, access in south-west corner of Great Lees, access in western boundary, stile accesses at north-west and north-east corners of Great Lees (FP no.1)	Yes since 27/4/16 crop planted	From 27/4/16	Yes – only since April 2016
17	Main gate and through break in hedge, Through gate and hedge break, map indicates access gate off Pound Lane and access in western field boundary	No	Yes – occasionally before annual silage crop. Only few days, possibly just sprayed grass?	Yes – some years back when Travellers were in the area
18	Field gate, gap in hedge, stile, map indicates gate access off Pound Lane, stile access at north-west corner of Great Lees (FP 1)	Yes – gate locked and field ploughed 27 April 2016	No	Yes – Lock on or around 27 April 2016
19	Via road gate and public footpath stile, map indicates gate off Pound Lane and stile at north-west corner of Great Lees (FP 1)	Yes – gate locked and field ploughed April 2016	No	No reply given

20	Through gate, map indicates gate access off Pound Lane, stile at north-west corner of Great Lees (FP 1)	No	No	No reply given
21	Along lane after school (suggests Pound Lane access given location after the school)	No	No	No reply given
22	Via open gate, map indicates access gate at Pound Lane and access in western field boundary	No – not until May 2016, ploughed	Yes – May 2016 Please do not walk in field – use for crops	Yes – May 2016
23	Through gate or from adjacent field, map indicates access gate off Pound Lane and access in western field boundary	No	No	No
24	Through gate Pound Lane and from Footpath by canal as well as footpath leading from The Orchard, map indicates access gate at Pound Lane, access in western field boundary and access at north-east corner of Great Lees	No	Yes – From 27 April when land was ploughed “No Footpath” sign up	No
25	Entrance near St George’s School (suggests Pound Lane access given location), map indicates Pound Lane access	No	Not that I am aware of	No. Don’t know if gated
26	Through gateway, map indicates Pound Lane access and access in western field boundary	Yes – only recently, recently once padlocked	Yes – Approx April 2016 onwards	Yes recently – April 2016
27	Gate, gap in hedge, stile, map indicates gate off Pound Lane, access in western field boundary and stile at north-west corner of Great Lees (FP 1)	No	No	No reply given
28	Through open gate, map indicates access at Pound Lane	Yes – recently ploughed otherwise used it all the time	No	Only locked very recently
29	Gate Pound Lane, gap west side of	No	Not that I know of	Yes – in recent

	field, stile at bottom, map indicates gate access at Pound Lane, access in western boundary and stile access at north-west corner of Great Lees and stile at north-east corner (both FP 1)			weeks
30	From Pound Lane past the school, map indicates gate access off Pound Lane and gate access in western field boundary	Not until it was ploughed	No	No
31	Through a gate, the gateway on Pound Lane, the map indicates access off Pound Lane and access at north-west corner of Great Lees (FP 1)	No	No	No
32	Through gate / from footpath and other field, map indicates gate access off Pound Lane, access in western field boundary and stile accesses at north-west and north-east corners of the field (both on FP 1)	No	Yes – signs placed and field ploughed and seeded May 2016	Yes – recently May 2016
33	From Pound Lane, map indicates access gate at Pound Lane	No	No	No
34	Gate at Pound Lane, map indicates access gate at Pound Lane	No	Yes – last 4-6 weeks field ploughed	No reply given
35	Through the gate (this reference is likely to refer to gate off Pound Lane, but could also refer to Wiltshire gate in the western field boundary where no access points are indicated on the map)	No	No	No reply given
36	Through open gate, map indicates access off Pound Lane	No	Yes – Ploughing the field on 27 April 2016 discourages use and by inference suggests crop production	No
37	Walk, map indicates access gate off Pound Lane (possible indication of	No	No – Not known	No

	access points in the northern field boundary to access canal and at Palmer Grove – possible rear access to property)?			
38	Via gate, gap in fence, down by canal, map indicates gate off Pound Lane, access in western boundary and access at north of Great Lees (FP 1)	No	No – except for very recent ploughing	No
39	Gate in Pound Lane, map indicates access off Pound Lane	No	Yes – gate locked	Yes
40	Unlocked gate from Pound Lane, map indicates access at Pound Lane	Yes – Ploughed April 27th	Yes – Crops planted in May 2016	Yes – on and off in May 2016
41	Through main gate, map indicates access off Pound Lane, gate in western field boundary, stile accesses in north-west and north-east corners of Great Lees (both on FP 1) and stile at in northern boundary south of horse paddock	No	No	No
42	Through gate on Pound Lane and my parents' garden gate, map indicates gate access off Pound Lane and possible access from Pound Close garden?	No	Yes – April 2016 the field was ploughed and signs put on gate stating private land please keep off the crops	Yes – since April 2016
43	Through either gate off Pound Lane or from field beyond, map indicates gate access off Pound Lane and gate access in western field boundary	No	Yes – Occasionally the gate from Pound Lane was padlocked – when there known Traveller activity locally	Yes – only from Pound Lane and rarely except for Traveller activity
44	Through open gate, map indicates gate off Pound Lane	No	No	No
45	Through main gate and gate in my garden, map indicates gate access at	No	No	No

	Pound Lane and possible access from Pound Close garden?			
46	Gate at the bottom of our garden, map indicates gate access from Pound Close garden	No	No	Yes – when there are cattle and crop spraying
47	Via our garden (The Orchard via FP 1), map indicates gate access off Pound Lane, stile access at north-east corner of Great Lees (FP 1)	No	No	No
48	Gate, map indicates gate access off Pound Lane, gate in western field boundary, stile at north-west corner of Great Lees, gate at north-east corner of Great Lees (both on FP 1)	No	No	No
49	Map indicates access gate off Pound Lane	No	Yes – Recent notices (I have photos), closed gate in Pound Lane	No reply given
50	Gate, map indicates access off Pound Lane, gate in western field boundary, stiles at north-west and north-east corners of Great Lees (FP 1)	No	No	No
51	Through the main gate into the field, through main gate, mother-in-laws back gate into field, map indicates gate access off Pound Close, gate in western field boundary, stile/gate at north-east corner of Great Lees (FP 1) and access from Pound Close garden	No	No	No
52	Gate, map indicates access gate off Pound Lane	No	Yes – as of 2 weeks ago. Signs on gate, field ploughed for the first time in my life time 60 years	Yes - with threat of Travellers using the field
53	Via canal tow path or entrance Pound Lane, map indicates access in western	No	No	Yes

	field boundary			
54	Via unlocked gate and path through hedge in public footpath field, via unlocked gate to Pound Lane and path through hedge to west, map indicates access gate on Pound Lane, access in western field boundary and gate in north-east corner of Great Lees (FP 1)	Yes – occasional locked gate due to spraying	Only in last few weeks, since field ploughed	Yes – When field sprayed
55	Through gate in Pound Lane, map indicates access gate at Pound Lane and access in western field boundary	Yes – Rare occasion years ago when cattle in field or when sprayed	Yes – gate was suddenly locked in April 2016	Yes
56	Through the gate at the bottom of our garden, map indicates access at Pound Lane and possibly gate at north-west corner of Great Lees near Palmer Grove / Pound Close?	No	Yes – Signs are now on the gate stating Private Land Keep off the Crops	No – until now
57	Through the gate, map indicates access off Pound Lane	No	No	No
58	Pound Lane gate, from the field to the west, from footpath along boundary with canal, map indicates access gate off Pound Lane, access in western field boundary, access at south-west corner of the field (at southern end of FP 6) and access stiles at north-west and north-east corners of Great Lees (both on FP 1)	No	Yes – 27 April 2016 “Private – Please Keep off the Crop”	Yes – from 27 April 2016
59	Through gate at the bottom of my garden, map indicates gate off Pound Lane and access from Pound Close garden	No	No	Yes
60	Through the gate on Pound Lane or gap between this field and the next, map indicates access gate at Pound Lane, access in western field boundary and	Yes – From May 2016 when field was ploughed	Yes – May 2016 notice requesting that people kept off the crop	Yes – briefly in May 2016 when survey was taking place

	stile at north-west corner of Great Lees (FP 1)			
61	Through the gate off Pound Lane, map indicates gate off Pound Lane and gate in western field boundary	Yes – When it was ploughed up and planted	Yes – Again when it was ploughed up and planted Spring 2016	Yes – Spring 2016
62	Through a gate between two fields, map indicates gate at Pound Lane and access in western field boundary	No	Yes – it was ploughed on 27-4-16 and notices put up	Yes – since 27.4.16
63	Gate, pathway, map indicates access gate at Pound Lane and access in western field boundary	No	No	No reply given
64	Gateway Pound Lane, map indicates access at Pound Lane and access in western field boundary	No	Only recently notice erected on gate in Pound Lane	No reply given
65	Pound Lane gate or through my back garden, map indicates gate access at Pound Lane and access in western field boundary	Yes – when field was recently planted with crops	Yes	Yes – when crops were planted
66	Gate or stile, map indicates access gate/stile at Pound Lane	No	No	No reply given

Appendix 4 – Lawful Sports and Pastimes undertaken on the land

Witness	Lawful sports and pastimes undertaken on the land	Seasonal activities
1	To walk – regularly	No
2	Children to play cricket – most years 1988-1998 when grass was cut	Don't know
3	Dog walking - daily	Don't know
4	I played cricket when I was a lad, I walked the dog, picked blackberries – 2 or 3 times a week	The Semington School fete parked their cars
5	Walk – about once a week	Don't know
6	Walk dogs, play football – every day with dogs.	No
7	Walking, exercise - weekly	Don't know
8	Dog walking – at one time everyday	Don't know
9	Dog walking and access to canal – once or twice a month	Don't know
10	Dog walking - weekly	Don't know
11	Walking, children playing - weekly	Don't know
12	Walking - regularly	Don't know
13	Walking, dog walking, blackberry picking, kite flying - weekly	Don't know
14	Dog walking, nature walks – 1 x week	Don't know
15	Walking - monthly	Yes
16	Dog walking – irregular up to 3/4 times per week	Don't know
17	Walk – once every few years	Grass cutting
18	Walking, cycling, blackberry picking - Daily	Grass cutting
19	Dog walking – every other day	Yes
20	To walk my dog - daily	Don't know
21	Walking – every day	No / Don't know
22	Dog walking – every day x 3, school race (5k race 2012)	No
23	To walk my dog – 2-3 times per week	Don't know
24	Walks, kite flying – once a week Kite flying each autumn, 2 or 3 times for an hour, walking across the land with children to show them nature once a week for the land 5 years	No
25	To park – once a year	Don't know
26	Dog walking – 3-4 times weekly	N/A
27	Dog walking - daily	Silage cutting
28	Walking, flying kites, children have camped there – all the time	Yes
29	Dog walking, children walking – approx weekly	Don't know

Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington

30	To dog walk either around the edge or on the path diagonally across – 3-4 times a week minimum	Don't know
31	Walking the dog, blackberry picking – at least once a week	Don't know
32	Dog walker, foraging – every day	Don't know
33	Pleasant walk to canal with grandchildren - often	Don't know
34	Dog walking, exercise - daily	Don't know
35	Walking and meeting people doing the same – some days	Don't know
36	Exercise, relaxation, recreation, reflection, meditation, blackberrying, mushrooming, nature study, wildlife exploration – once a month	Don't know
37	Leisure and exercise – 4-6/month	Don't know
38	Walking – 4/5 times a week	Don't know
39	Walking – 2 times per week	Don't know
40	Dog walking – 2-3 times weekly	Don't know
41	Walks, picking berries, elderflower – 3-4 times a year	No
42	To walk the canal, playing when I was young and now with my son – 3-4 times a week	Don't know
43	Walks to canal, in past to fly kite – approx once per week	No
44	Walk, monthly	Don't know
45	Dog walking – most days	Don't know
46	Dog walking – nearly everyday	No
47	Walking – once or twice a week	No
48	Walking - daily	Don't know
49	Exercise self and dogs – almost daily	No reply given
50	Walk dog, pick blackberries, walk - frequent	No reply given
51	Dog walking and jogging – most days	No reply given
52	Walking dog, canal walks, bird watching – 3 times a week	Don't know
53	Dog walks and playing with granddaughter – quite frequent	Don't know
54	Walk the dog - regularly	Don't know
55	Walking the dog - daily	No
56	To walk to canal, playing cricket and football with grandson, to cut weed and grass outside fence – in winter approx 2 times a week and at least 4 times a week in summer	No
57	Have 3 dogs – twice a day	No
58	Dog walking, family walks, Frisbee, games, kite flying – up to 4 times per week	Don't know
59	Walking – about once a week	Don't know

60	Dog walk – daily	Don't know
61	To walk my dog - everyday	No reply given
62	Exercise – at least once a month	Yes
63	Dog – 6 times a day	No reply given
64	Dog walking – at least 3 times weekly, playing with grandchildren – most weekends	Don't know
65	Dog walking, playing with children, picnics, sports - daily	Don't know
66	Path to canal – 1 per month	Don't know

Activities undertaken	No. of witnesses	Activities undertaken	No. of witnesses
Dog walking	37	Children camping	1
People walking	29	Foraging	1
Picking blackberries	7	Meting people	1
Children playing / playing	5	Games	1
Kite flying	5	Bicycle riding	1
Exercise	4	Leisure and exercise	1
Cricket	3	Relaxation	1
Football	2	Recreation	1
Nature walks	1	Reflection	1
Bird watching	1	Meditation	1
School race	1	Frisbee	1
Picnicking	1	Picking Mushrooms	1
Parking	1	Picking Elderflowers	1
Jogging	1	Nature study	1
To cut weed and grass outside fence	1	Wildlife exploration	1
		Sports	1

Appendix 5 – Lawful Sports and Pastimes observed taking place on the land

Activities seen	No. of witnesses	Activities seen	No. of witnesses
Dog walking	65	Team games	7
People walking	64	Rounders	6
Children playing	59	Drawing and painting	6
Picking blackberries	57	Fetes	5
Kite flying	35	Community celebrations	4
Bird watching	30	Pony / horse riding	1 (reported), 3 (seen)
Bicycle riding	19	Car parking	2
Football	19	Running	2
Fishing	14	Picking mushrooms	1
Cricket	14	Picking damsons	1
Bonfire parties	12	Photography	1
Picnicking	10	Carnival floats stored and decorated	1
Fetes (parking)	9		

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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	13 December 2017
Application Number	17/01158/FUL
Site Address	St Pauls Church, Staverton BA14 6PE
Proposal	Change of use of church to 2 bedroom dwelling, addition of rooflights, internal alterations and parking to rear of 95 Staverton.
Applicant	Mr Malcolm Archer
Town/Parish Council	STAVERTON
Electoral Division	HOLT AND STAVERTON – Councillor Carbin
Grid Ref	385483 160854
Type of application	Full Planning
Case Officer	Steven Sims

Reason for the application being considered by Committee

Councillor Trevor Carbin has requested that if officers are minded to approve this application, it should be reported to the Planning Committee for the consideration of the following:

- Car parking

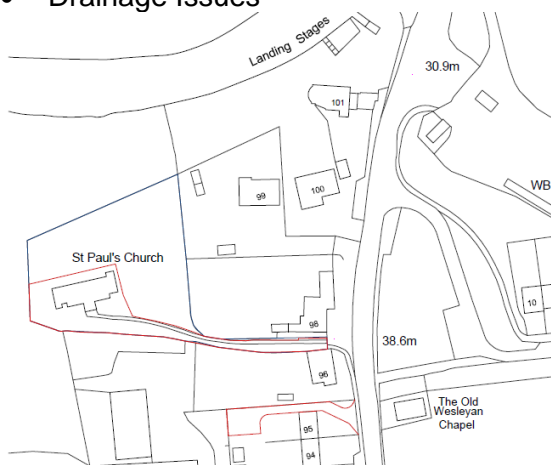
1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved.

2. Report Summary

The main issues to consider are:

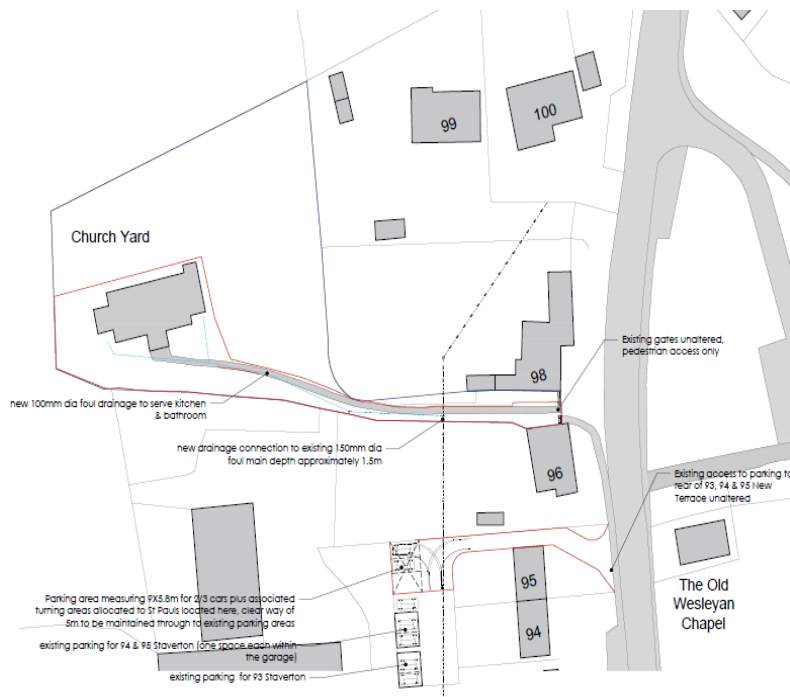
- Principle of Development
- Impact on the Setting of the Listed Building
- Impact on the Character of the Area
- Impact on the Living Conditions of Neighbouring Residents
- Impact on Highway Safety
- Ecology Issues
- Drainage Issues





3. Site Description

The subject property for this application is the Church of St. Pauls which is a Grade II listed building dating from 1826 and is constructed from dressed limestone under a Welsh slate roof with coped verges with cross finials and is located outside of the settlement limits of Staverton. It is understood that the church which has a footprint of about 132 sq.m, ceased being used in



March 2011; and since then, the building has been unused. As indicated on the site location plan above, the property is set back from the highway and is accessed via a pedestrian footpath off the main carriageway. There is no dedicated vehicular access for the church. The footpath gates located between No 96 and No 98 Staverton are also grade II listed.

Three trees subject to Tree Preservation Orders are located on the 920 sq.m site positioned to the north and east of the church. As illustrated on the location plan insert on the previous page, and beyond the church property the application site includes an irregular shaped parcel of land owned by Staverton Farm to the south east of the Church and to the west of the old Wesleyan Chapel and public highway. This land comprises a means of vehicular access and an area for residential car parking located behind No. 95 Staverton – which is used at present for parking on an informal basis.

4. Planning History

>>

15/06296/LBC and 15/06282/FUL – Conversion of existing redundant church building to a single dwelling – Applications Withdraw - It should be noted that applications 15/06296/LBC and 15/06282/FUL were withdrawn following consultation with Historic England. The scheme originally proposed parking to be adjacent and directly south of No. 98 Staverton which would result in the existing listed gates being set back from their existing position by approx. 10 metres. This arrangement was considered unacceptable by Historic England who advised that this part of the scheme needed to be revised.

17/01569/LBC – Addition of roof lights and internal alterations associated with change of use of church to dwelling – This application is pending a decision but is supported by officers

5. The Proposal

This is a full application for the change of use of the vacant late Georgian gothic design inspired church to residential use. The dwelling would comprise 2 bedrooms, bathroom, living room and kitchen. A portion of the churchyard would form the residential curtilage of the development while the remainder of the churchyard would remain in the ownership of the Diocese with public access. Pedestrian access to the site would be off the existing footpath which would also be used by members of the public to access the churchyard.

No alterations to the churchyard are proposed. 2 parking spaces would be created off an existing driveway located to the south, behind (and to the west of) No. 95 Staverton. External alterations to the Grade II listed building include the addition of 2 new conservation roof lights to the south elevation, the replacement of all the existing vent grilles with larger cast iron grilles, a new timber door (on north elevation) and new cast iron vent to the kitchen (on east elevation) and a new flue to the boiler. The proposed elevations are reproduced below.



6. Planning Policy

Wiltshire Core Strategy (WCS) Core Policy 1: Settlement Strategy; Core Policy 2: Delivery Strategy; Core Policy 7: Spatial Strategy: Bradford on Avon Community Area; Core Policy 45:

Meeting Wiltshire's Housing Needs; Core Policy 48: Supporting Rural Life; Core Policy 49: Protection of Rural Services and Community Facilities; Core Policy 51: Landscape; Core Policy 57: Ensuring High Quality Design and Place Shaping; Core Policy 58: Ensuring the Conservation of the Historic Environment; Core Policy 60: Sustainable Transport; Core Policy 61: Transport and Development

West Wiltshire District Local Plan (1st Alteration) Saved Policies: Saved Policy U1a Foul Water Disposal
Wiltshire Local Transport Plan 2011- 2026

National Planning Policy Framework 2012 (NPPF): especially chapter sections: 6. Delivering a wide choice of high quality homes; 7. Requiring Good Design; and 12. Conserving and Enhancing the Historic Environment
National Planning Practice Guidance (NPPG)

7. Summary of Consultation Responses

Staverton Parish Council: No objections

Wiltshire Highway Authority: No objections to amended parking layout

Wiltshire Conservation Officer: No objections subject to conditions

Wiltshire Landscape & Arboricultural Officer: No objections

Wiltshire Archaeology Officer: No objection subject to conditions

Wiltshire Ecology Officer: No objections subject to conditions

Wessex Water: No objections subject to an informative.

8. Publicity

The application was publicised via site notices and posted notifications sent to properties within close proximity of the site. As a result of the publicity 8 letters of objection were received raising the following concerns:

- Visibility at the driveway access onto main carriageway is poor
- Area proposed for parking is already used by local residents
- A failure on the part of the applicants to purchase the parking area would lead to additional parking elsewhere (e.g. Elm Close)
- There is no turning area
- The access track is unsafe for pedestrians
- There would be a loss of privacy from the use of access track and proposed parking spaces
- The change of use of the church would result in loss of community use.

It should be noted that of the 8 objection letters received, 3 stated they had no objections to the proposed change of use of the church.

9. Planning Considerations

9.1 Principle of Development - The site and subject property is located beyond the north-western fringe of the settlement of Staverton, although the application site clearly forms part of a well-established mixed group of properties which the map insert below illustrates. In terms of the adopted WCS, Core Policy 1 and Core Policy 7 defines Staverton as a Small Village where development for housing is considered acceptable. Core Policy 2 states within the limits of

development there is a presumption in favour of sustainable development at, amongst others, Small Villages.



9.1.1 Core Policy 48 allows for the conversion and re-use of rural buildings for employment, tourism, cultural and community uses provided they meet certain criteria and only following justification in line with local and government policy should residential development be considered. In addition the policy allows for the protection of community services until such time as the community has had a realistic opportunity to take control of the asset.

9.1.2 In addition, adopted WCS Core Policy 49 titled: 'Protection of Rural Services and Community Facilities' states that for development

proposals involving the loss of a community service or facility will only be supported where it can be demonstrated that the site/building is no longer economically viable for an alternative community use. In this particular case, the property was marketed and a marketing report has been submitted by Colliers International which confirms that following the decision reached by the Diocese of Salisbury to close St Pauls for worship in 2011, the site was marketed robustly for 10 months and was advertised in local press and placed online on Colliers International website where it still remains. It is duly reported that:

"At the start of the marketing process [there was] a high volume of enquiries from a range of prospective purchasers and for a range of uses. Enquiries related mainly to planning and guide price. Initially, and in order not to restrict or 'lead' the market the building was offered on the basis of 'offers invited'. Latterly, when pressed, an indicative guide of between £50,000 and £100,000 was provided. Viewings were generally conducted on a 'block' basis although individual appointments were accommodated from time to time. Fifteen conducted viewings [were] undertaken. A number of external viewings [were] also taken place without a Colliers International representative on site" (page 10 of Colliers Marketing Report).

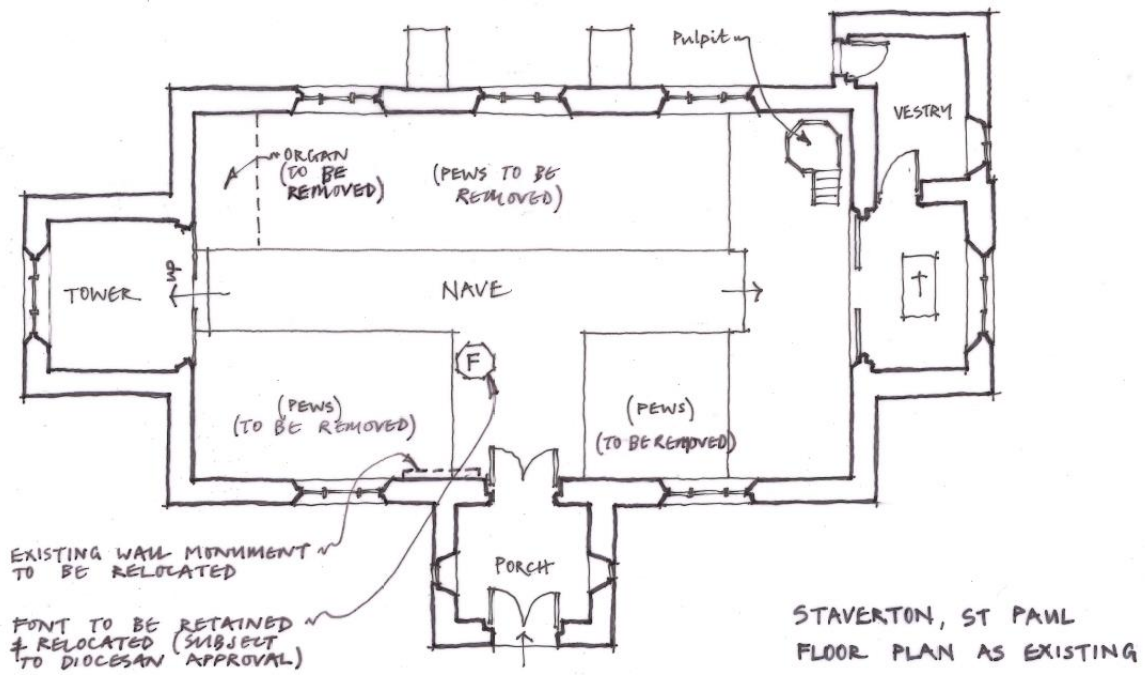
9.1.3 The site marketing in reality has never stopped as the property remains listed on Colliers website. Although more than 6 years on from the closure of the church, it is considered now reasonable to move towards accepting that the church property does not have a viable non-residential commercial interest. It should be noted also that the property remains under the ownership of the Church of England Commissioners and they will retain ownership of the church yard/graveyard located to the north and east of the church, which does not form part of the sale or indeed this application. The requisite certificate notifications have been completed. However it is relevant to report that the church commissioners have reviewed the applicant's proposals and found them to be acceptable and has identified them as the preferred bidder.

9.1.4 As a result of the marketing exercise, the principle of development is considered to be acceptable by officers and would comply with Core Policies 48 and 49 of the Wiltshire Core Strategy.

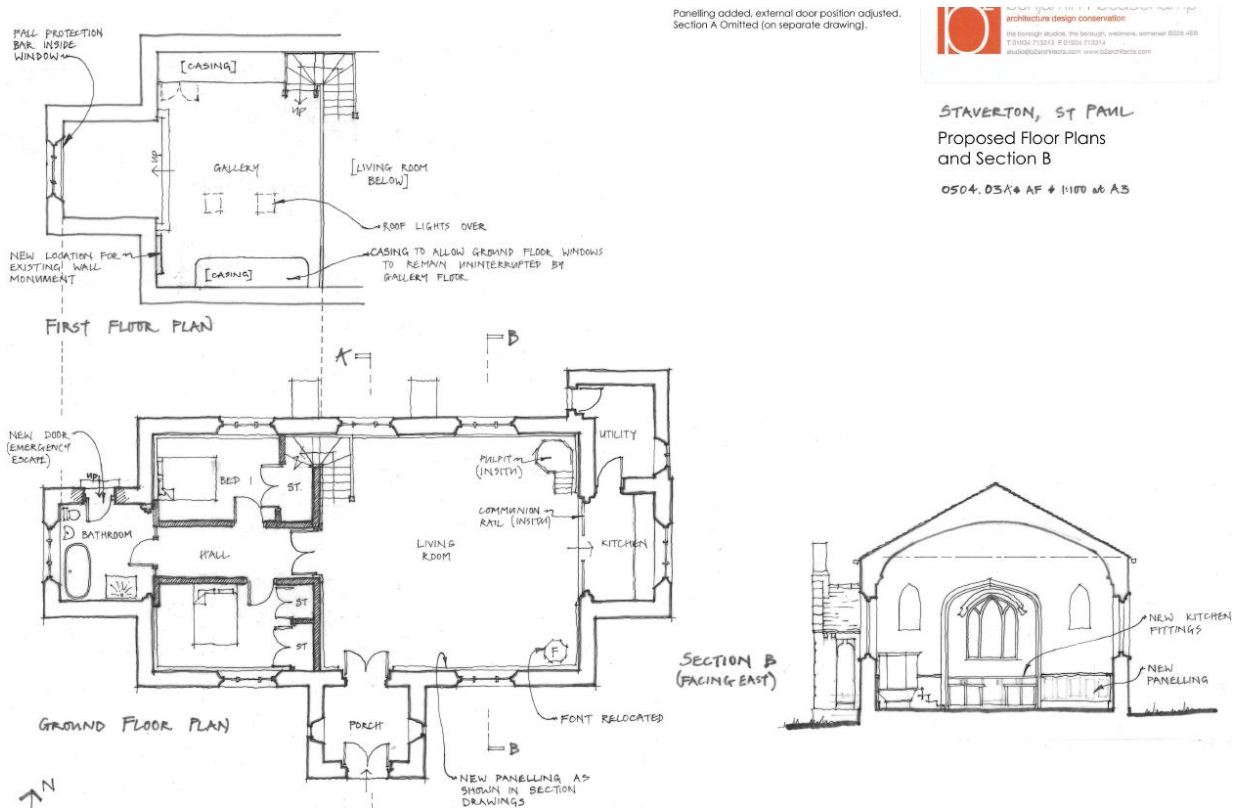
9.2 Impact on the Listed Building/Heritage Asset - Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering any application affecting a listed building, the local planning authority [or the Secretary of State] shall have special regard

to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires 'special regard' to be given to the desirability of preserving a listed building or its setting. The NPPF identifies that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 132 of the Framework furthermore states that when considering the impact of a proposed development on the significance of a designated heritage asset, 'great weight' should be given to the asset's conservation. Core Policy 58 of the Wiltshire Core Strategy echoes the above national policy in seeking the protection, conservation and, where possible, the enhancement of heritage assets.

In this particular case, the applicant proposals some external alterations to the grade II listed building that would comprise the insertion of 2 new conservation roof lights to the south elevation, the replacement of all existing vent grilles with larger cast iron grilles, a new door on the north elevation and new cast iron vent to the kitchen on the east elevation and a new flue to the boiler. These new installations would be done sensitively and would respect the appearance of the protected building. The proposed alterations are considered acceptable and the Council's Conservation Officer – who as reported in section 7, has no objection to the scheme. The proposed alterations would have no adverse impact on the setting of the listed building or harm the heritage asset. The conversion of the church to residential use in this sympathetic manner would also allow the church to remain in good maintenance for the foreseeable future. The scheme therefore complies with Core Policy 58 of the Wiltshire Core Strategy and advice contained in the NPPF.



Above: Existing Floor Plan



Above: Proposed Floor Plan

9.3 Impact on the Character of the Area - Core Policy 51 of the Wiltshire Core Strategy states that development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character. Core Policy 57 requires a high standard of design in all new developments and that development respond positively to the existing townscape and landscape in terms of building layout, built form, height, mass, scale, building line, plot size, design, materials and streetscape.

9.3.1 The proposed external alterations to the church are considered acceptable by your officers and the scheme would not harm the heritage asset.

9.3.2 The area of land the rear of No. 95 Staverton for car parking is not within the setting of the listed church but it is already used to park cars on an informal basis. Therefore, officers are satisfied with the proposal making the car parking more formal and that it would not harm the character of the area; and on this aspect, the proposed development complies with Core Policy 51 and 57 of the WCS.

9.4 Impact on the Living Conditions of Neighbouring Residents – In addition to the above, WCS Core Policy 57 requires all new development to have regard to the compatibility of adjoining buildings and uses; and avoid harmful impacts through the loss of privacy, amenity, overshadowing and pollution (e.g. light intrusion and noise). St Pauls Church is located approx. 50 metres to the west of the residential development at No. 98 Staverton and approx. 50 metres southwest of No. 99 Staverton. Due to these separation distances to the neighbouring properties, it is considered that the proposed change of use of the church to residential use would have no adverse impact on the living conditions of neighbouring residents in terms of overlooking or loss of privacy.

9.4.1 The footpath between No.96 and No 98 Staverton was historically used to access the church when in use as a place of worship and is still used by members of the public to access the churchyard. As such it is not considered that the additional use of the footpath generated

by residential occupants of the church would result in additional harm to the living conditions of adjacent residents, in terms of loss of privacy or noise issues.

9.4.2 Although it is recognised that the use of the driveway to the proposed parking spaces to the rear of No. 95 Staverton would increase in terms of both vehicle and pedestrian movements, it is not considered that this increase would be so significant that it would result in significant harm to the detriment of the living conditions experienced by adjacent residents, in particular residents at No. 95 and 96 Staverton, in terms of loss of privacy, noise or light pollution.

9.4.3 On the basis of the above, the proposed development is considered compatible with Core Policy 57 of the Wiltshire Core Strategy and the NPPF.



9.5 Impact on Highway Safety - Paragraph 32 of the NPPF states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. Core Policy 61 of the Wiltshire Core Strategy requires new development to be served by a safe access to the highway. In this particular case, it is proposed that the development would be served by 2 parking spaces and a turning space located to the rear of No. 95 Staverton. The parking spaces would be accessed by a driveway to the north of No. 95 with access off the main carriageway. The turning space would allow vehicles to exit the site in a forward gear.

9.5.1 Although concern has been raised by local residents about the safety of the proposed vehicle access in terms of exiting the site onto the main carriageway, the access is already used on a daily basis by residents at No's 93, 94 and 95 Staverton and the Council's highways team have no record of there being any accidents in the vicinity or attributable to the use of the access within the last 5 years. The increase in vehicle movements associated with 2 additional car parking spaces, would not have such a severe impact on highway safety that the application could be reasonably refused on such grounds. The Council's highways officer concurs with this view.

9.5.2 Concern has also been raised by local residents in terms of loss of parking to the rear of No's 93, 94 and 95 Staverton due to the provision of formalised residential parking for the occupants of the Church. The fact remains that the land in question is not in the ownership of the occupants of No 93, 94 or 95 Staverton and is used for parking only on an informal basis and the owners of the land could, at any time, prohibit this.

9.5.3 The proposed development would therefore be served by sufficient car parking to comply with council parking standards and there is sufficient space to turn on site so vehicles can exit in a forward gear. Although it is recognised the vehicle access onto Staverton is substandard there is insufficient evidence to indicate that use of the access by residents of St Pauls Church, would result in a severe harm to highway safety. The proposed development therefore complies with current council parking standards and the NPPF.

9.6 Ecology Issues - Core Policy 50 of the Wiltshire Core Strategy states development proposals must demonstrate how they protect features of nature conservation and geological value and how such features will be retained and maintained. The Council's ecologist has reviewed the submitted ecology report which surveyed for bat roosts and a subsequent dusk emergence survey as well as checking for evidence of/potential for nesting birds and/or roosting as well as the vegetation within the application site boundary; and an appraisal of the whole application site in terms of its potential for other protected and/or priority species and habitats. The Council's ecologist and tree officer have raised no objection to the development subject to conditions relating to the protection of protected trees during conversion /alteration works and the addition of a condition requiring the development to be carried out in strict accordance with the ecological mitigation strategy detailed within the ecology report.

9.7 Drainage Issues - Foul water drainage would be via an adopted foul sewer adjacent the site to which Wessex Water have raised no objection to. Both foul and surface water drainage could be adequately dealt with by planning condition.

10. Conclusion (The Planning Balance) - The proposed development would not significantly or adversely affect the setting of the listed building, cause harm to the heritage asset, negatively impact the character of the area or the living conditions and amenities of neighbouring residents or severely harm highway safety interests. The property has been supported by robust statements and the proposed development complies with Core Policies 48, 49, 51, 57 and 58 of the Wiltshire Core Strategy and the advice contained within the NPPF.

11. RECOMMENDATION: APPROVE, subject to conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Amended Site Location Plan scale 1:1250 (dwg no. 0504 01 rev B)
Existing Floor Plans scale 1:100 (dwg no 0504 02A)
Proposed Floor Plans and Section B scale 1L100 (dwg no. 0504 03A)
Existing Elevations scale 1:100 (dwg no. 0504 04)
Proposed Elevations scale 1:100 (dwg no. 0504 05)
Amended Block Plan scale 1:500 (dwg no. 0504 07 rev G)
Proposed Section A-A scale 1:50 (dwg no. 0504 09 rev A)

REASON: For the avoidance of doubt and in the interests of proper planning.

3. No development hereby approved shall commence within the area indicated as the proposed development site until:

- A written programme of archaeological investigation, which should include on-site work and off-site work such as the analysis, publishing and archiving of the results, has been submitted to and approved by the Local Planning Authority; and
- The approved programme of archaeological work has been carried out in accordance with the approved details.

REASON: To enable the recording of any matters of archaeological interest.

4. The development hereby approved shall be carried out in strict accordance with Section 7 of the Ecological Assessment report (Greena Ecological Consultancy, 27th August 2017 V1A) and the mitigation measures proposed therein with respect to roosting, commuting and foraging bats and nesting birds.

REASON: To ensure the implementation of appropriate mitigation and protection for protected species, notably bats and birds.

5. No development shall commence on site until the trees on the site which are protected by a Tree Preservation Order have been enclosed by protective fencing, in accordance with British Standard 5837 (2012): "Trees in Relation to Design, Demolition and Construction - Recommendations". Before any fence is erected its type and position shall be approved with the Local Planning Authority and after it has been erected, it shall be maintained for the duration of the works and no vehicle, plant, temporary building or materials, including raising and or, lowering of ground levels, shall be allowed within the protected areas.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to enable the Local Planning Authority to ensure the protection of trees on the site in the interests of visual amenity.

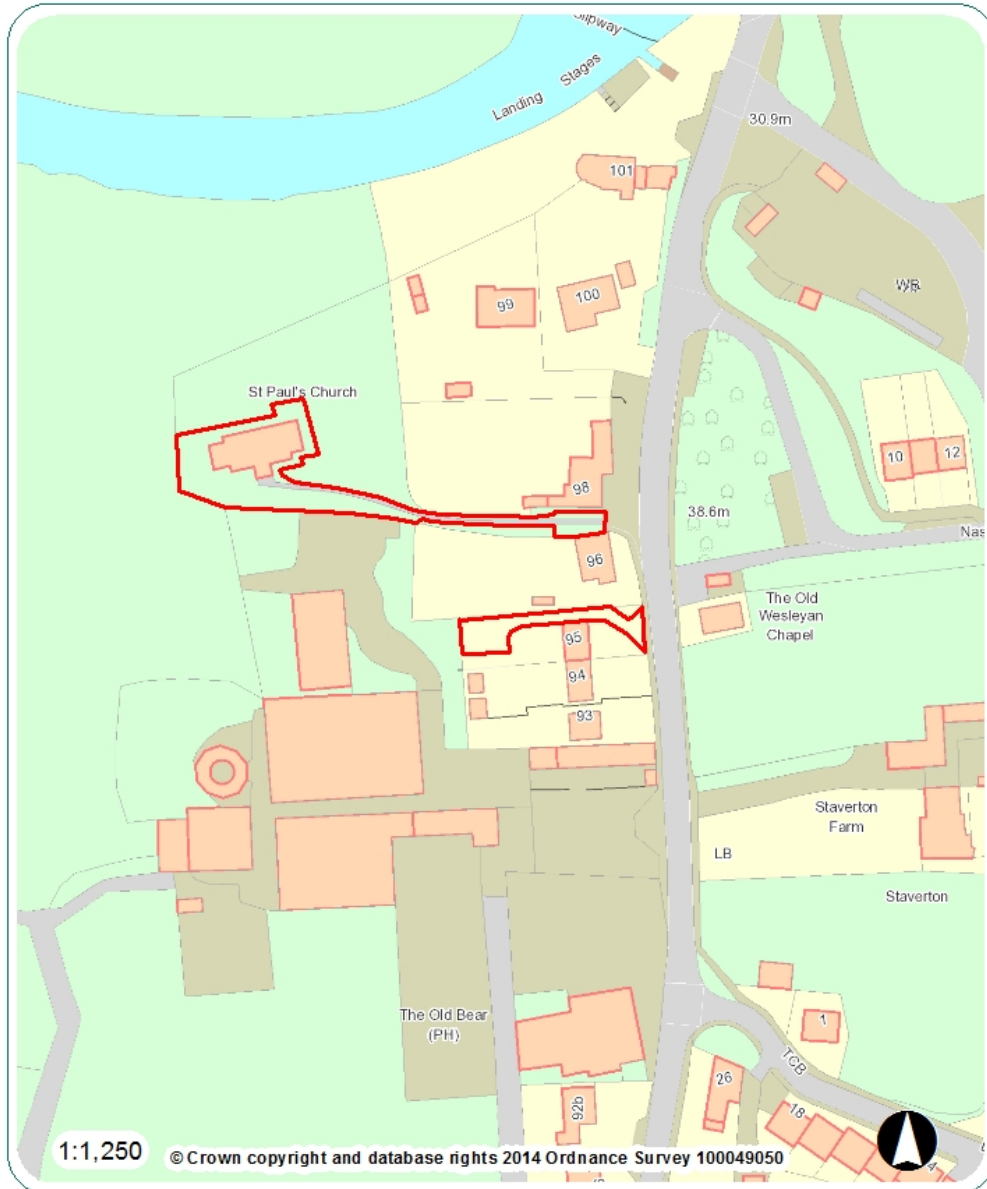
6. No part of the development hereby approved shall be occupied until the turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

INFORMATIVES TO APPLICANT:

1. New water supply and waste water connections will be required from Wessex water to serve this proposed development. Application forms and guidance information is available from the Developer Services web-pages at our website www.wessexwater.co.uk Further information can be obtained from our New Connections Team by telephoning 01225 526222 for Water Supply and 01225 526333 for Waste Water. Separate systems of drainage will be required to serve the proposed development. No surface water connections will be permitted to the foul sewer system.

2. The work should be conducted by a professional archaeological contractor and there will be a financial implication for the applicant.



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REPORT OUTLINE FOR AREA PLANNING COMMITTEES

Date of Meeting	13 December 2017
Application Number	17/04707/FUL
Site Address	Land at Whaddon Lane, Hilperton, Wiltshire BA14 6NR
Proposal	Siting of a temporary rural workers dwelling and access track
Applicant	Mr & Mrs S Yalland
Town/Parish Council	HILPERTON
Electoral Division	HILPERTON – Councillor Ernie Clark
Grid Ref	387960 160165
Type of application	Full Planning
Case Officer	Steven Sims

Reason for the application being considered by Committee

Councillor Ernie Clark has requested that if officers are minded to approve the application, it should be reported to the Planning Committee for the consideration of the following:

- The Scale of Development
- Visual Impact upon the Surrounding Area
- Design - Bulk, Height, General Appearance
- Environmental or Highway Impact
- The Parish Council objects to the application proposal and have requested that it is call to committee for the elected members to determine.
- Financial viability of the proposed development (despite requesting the accounts nothing has been received)
- Areas of the 'rented land' seem to have only informal grazing rights at limited times of the year
- The land owned by the applicant is not large enough to warrant any type of agricultural dwelling

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved.

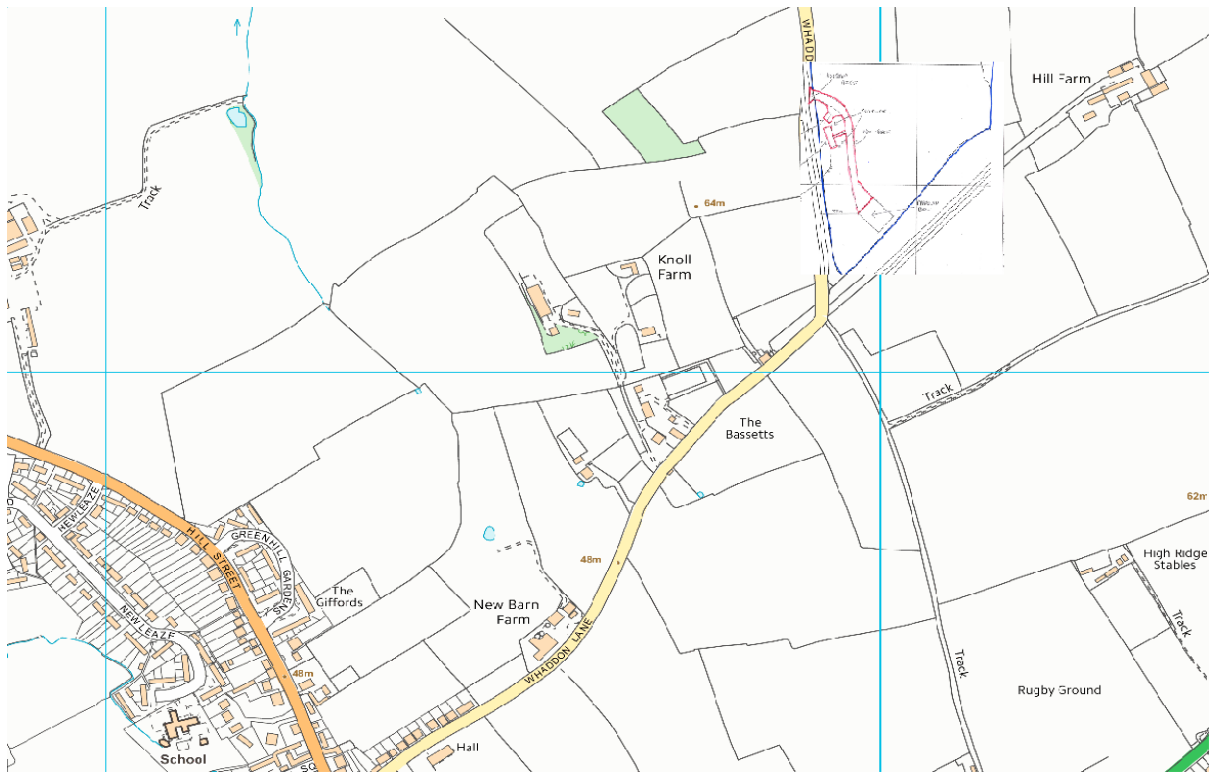
2. Report Summary

The main issues to consider for this application are considered to be:

- The Principle of Development
- The Impact on the Character of the Area
- The Impact on the Living Conditions of Neighbouring Residents
- Highway Safety/Parking Issues
- Drainage Issues

3. Site Description

The site is located within the open countryside beyond any defined settlement and consists of a field located to the east of Whaddon Lane. The field is bordered by hedgerows and an existing agricultural barn is located on the site. The applicants have recently advised that they now live on site within a touring caravan. Officers have been further advised that the applicants used the proceeds of sale from their freehold dwelling to fund the purchase of the freehold land. The touring caravan is located to the south of the aforementioned barn. The nearest residential dwellings are located at Hill Farm approximately 430 metres to the northeast, Sharkays, Whaddon Lane approximately 220 metres to the southwest and Knoll Farm located approximately 260 metres to the west. The plan insert on the following page illustrates the application site being overlaid on a wider plan of the local area followed by a more detailed site plan.



The Existing Farming Practice

The holding is run as a livestock breeding and rearing business. The core enterprises are the production of finished lambs from a ewe flock, the production of finished cattle from a small suckler herd and rearing and sale of cattle from purchased calves. In addition to the “conventional” livestock the applicants also breed and sell pygmy goats.

The ewe flock comprises some 470 ewes. Lambing is split, with 100 Dorset mules due to lamb in September, a further part of the flock to be lambed in January and the maincrop lambing from March to May. Finished lambs are sold to slaughter. The applicants advise that September lambing takes place outdoors, with all other lambing taking place at the farm building. In addition to the breeding flock the applicants also have some 750 head of sheep on tack over winter. Cattle are reared either for sale as stores or as finished animals from a small

suckler herd. The most recent batch of calves comprised 40 head with sales split 50/50 between weaned animals and 12 month stores. The pygmy goats comprise some 30 head of nannies, which are bred to produce offspring which are sold to private buyers as pets.

The farm enterprise is supported by a sole building on site which is a covered yard, constructed with a four bay portal frame main span and lean-to. The building has fibre cement sheet to the roof, spaced timber boarding to the upper elevations and concrete panels to the lower elevations. At the time of the Council's agricultural consultant's site visit in June, the building was recently constructed and close to completion. The overall dimensions of the building are 24m x 18m including the 6m lean-to.

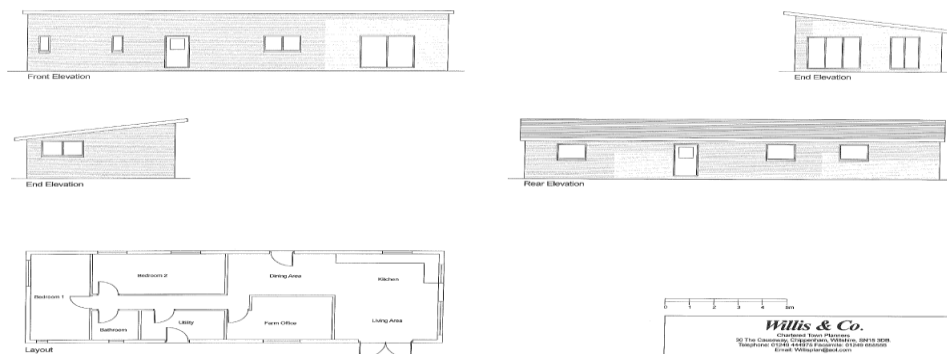
4. Planning History

16/06363/APD - General Purpose Agricultural Building – Refused 25.07.2016 for the following reason: *“The proposed development is not permitted development by Part 6, Class A.1 (i) because the development would be located within 400 metres of the curtilage of a protected building and the proposed building would be used for the accommodation of livestock”.*

16/08376/AGD - Erection of agricultural building for the storage of agricultural vehicles, tools equipment, feed and fodder and the provision of an area of hardstanding – Approved 16.09.2016.

5. The Proposal

This is a full application seeking temporary planning permission for a three year period for the siting and occupation of a timber clad mobile home to be used as a farm workers dwelling. As illustrated in the plan below, the proposed dwelling would be single storey and rectangular in shape measuring 6 metres wide and 17 metres long. Accommodation would comprise 2 bedrooms, office, living room, dining room and kitchen. It is noted the proposed study could form a third bedroom. 2 parking spaces would be provided on site with vehicle access being accommodated via an existing access off Whaddon Lane.



The Proposed Farming Practice

The proposal is to expand the enterprises over the next three years. The ewe flock will be expanded to approximately 600 head. The suckler herd is likely to stay at its current size. The pygmy goat enterprise will be expanded to 100 head of nannies. A turkey rearing enterprise will be introduced, with the applicants taking on a franchise arrangement under the “Kelly Bronze” brand. Some 500 poults will be purchased and reared in the farm building. Under the franchise the franchiser takes a proportion of the finished animals with the balance sold by the applicant under the Kelly Bronze brand.

6. Planning Policy

Wiltshire Core Strategy - CP1: Settlement Strategy; CP2: Delivery Strategy; CP48: Supporting Rural Life; CP51: Landscape; CP57: Ensuring High Quality Design and Place Shaping; CP60: Sustainable Transport; and CP61: Transport and new development

Saved Policies for the West Wiltshire District Local Plan (1st Alteration) - U1a Foul Water Disposal; the Wiltshire Local Transport Plan 2011- 2026; and the Emerging Hilperton Neighbourhood Plan

The National Planning Policy Framework (NPPF) – Chapter 6: Delivering a wide choice of high quality homes; Chapter 7: Requiring good design and Chapter 11: Conserving and enhancing the Natural Environment; and The National Planning Practice Guidance (NPPG)

7. Summary of Consultation Responses

Hilperton Parish Council: Objects. *'The land in question is outside Village Policy Limits and the information on the application is insufficient, making it difficult for the Parish Council to make a reasoned judgement. However, we are not at all convinced that there is any justification for the proposal or any necessity for this dwelling for agricultural purposes.'*

Wiltshire Council's Agricultural Consultant: No objection – please refer to the consultant's detailed appraisal of the proposal contained within section 9 of this report.

Wiltshire Council's Local Highways Officer: If the committee is minded to approve the application, the highway officer has recommended a series of conditions to improve the visibility splays and ensure safe ingress and egress of vehicles using the access.

8. Publicity

The application was publicised via a site notice. Following the publicity, 5 letters of objection were received raising the following concerns:

- Increased traffic and associated risk
- Adverse impact on open countryside
- Development out of character
- Unwelcome noise
- No need for an essential rural worker to be located on site
- Applicants already live in the area
- Contrary to policy
- Not a viable agricultural enterprise
- Concerns about type of foundation of building
- Power supply to building
- Soakaways do not work

3 letters of support were also received with the following comments:

- There would be no increase in traffic movements
- By living on site, the applicants can continue to grow their business

9. Planning Considerations

9.1 Principle of development - Paragraph 49 of the National Planning Policy Framework (NPPF) states that housing applications should be considered in the context of the presumption in favour of sustainable development. Paragraph 55 of the NPPF advises that *'Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside'* (Note – the emphasis has been added by officers).

9.1.1 WCS Core Policy 1 outlines the settlement strategy for Wiltshire and identifies the settlements where sustainable development will take place. Core Policy 2 addresses the issue of development outside of settlement boundaries and states that, other than in circumstances permitted by other policies within the plan (including supporting rural life),

residential development will not be permitted outside the limits of development (unless it has been identified within the subsequent Site Allocations Development Plan Document and Neighbourhood Plan). Core Policy 48 states that proposals for residential development outside the defined limits of development will be supported where these meet the accommodation needs required to enable rural workers to live at or in the immediate vicinity of their place of work and such proposal should be supported by functional and financial evidence.

9.1.2 The Council's agricultural consultant has assessed the need for an agricultural workers dwelling at this site based upon the current farm practices and the proposed business plan to expand the farming enterprise. It is therefore firstly relevant to consider the requirements of the current enterprise and whether those requirements present an essential need for a worker to live at or near the farm enterprise. On this point, the Council's agricultural consultant concludes by saying (with paragraphs duly referenced) that:

'6.3 It is my view that the key aspects of essential need are lambing, calving, kidding and the close care of neonatal animals, including the turkey poults. The quantity and spread of births proposed across the year will in my view present a requirement for essential care at short notice across most of the year.'

6.4 It is my view that the implementation of the business plan will result in an essential need for a presence on site at most times'.

9.1.3 The Council's agricultural consultant therefore concludes there is an essential need for a person to live on or near the site.

9.1.4 In cases such as this, it is necessary to assess the existing and proposed business as part of understanding the justification for the proposed rural dwelling. Such an assessment is critical to forming an opinion on the "essential need". In this case the essential need described and recognised above will only continue through the operation of the business. If the business does not operate on a profitable and viable basis then it will fail; and, in such cases the application for a temporary basis is considered most appropriate to proof the viability of the agricultural business. Should the enterprise fail, the mobile could be easily removed from the site and the land restored to avoid the site being left with a dwelling with no "essential need" for its presence.

9.1.5 In assessing the applicant's business plan, the Council's agricultural consultant has made the following comments:

"7.1 There is no express reference in the NPPF to a financial assessment of either an existing or proposed business which will operate in association with the proposed rural dwelling. It is my opinion that such an assessment is critical to forming an opinion on the continuation of the "essential need..."

7.2 The applicant has submitted profit and loss accounts for the last four trading periods, together with a projected profit and loss for the three years of the business plan, along with a document which describes the current farming practice and sets out the proposed practice.

7.3 Whilst the recent accounts show a profit and salaries to the applicants there is also reliance on a large proportion of gross income from agricultural contracting off-site. In my view the historic profitability offers little value in assessing the business on site due to the extent of the income earned off site.

7.4 The projected accounts show a very significant reduction in off-site income. It is my view that for profit and loss the business plan appears to be planned on a relatively sound basis.

The capital accounts show that the business has a high level of gearing and a small proportion of net assets. In order to expand it is likely that the business will need further capital; I understand this is likely to be available from Director loans”.

9.1.6 The council's agricultural consultant has concluded that the business plan has been planned on a relatively sound basis with a requirement for further capital in order to expand the business. The Council's agricultural consultant has raised concerns that there is a heavy reliance on use of third party land under short term agreements, which provides no long term security on use of the land. However, he does conclude that there is a plentiful supply of land available on short term arrangements and there is no evidence to suggest that such supply is likely to significantly reduce in the short term and the availability of such land offers the means by which new farming businesses such as that promoted by the applicants here, can gain quick establishment.

9.1.7 In terms of land, the applicants own 12 acres freehold which comprises the field on which the temporary dwelling would be located. In addition the applicants have access to approximately 124 acres of land rented annually on a formal basis. This land lies adjacent the application site and with the freehold land forms a central block of 136 acres. This land is used mainly during the spring and summer to graze sheep and cattle. The applicants also have access to approximately 502 acres of land rented over the winter period to graze sheep on an informal short term basis.

9.1.8 Although it is recognised that there is a heavy reliance on short term agreements, it is considered that the applicants have access to sufficient land, either freehold or rented annually (approx. 136 acres), to support the business in the short term and to support this fledgling business.

9.1.9 It is furthermore noted that concerns have been raised that there is a heavy reliance on off-site contracting work. However the Council's agricultural consultant has concluded that the business is nevertheless planned on a sound financial basis and the applicant has confirmed that his income and time committed to the off-site agricultural contracting will diminish over the three year term. In response to this, the Council's agricultural consultant states that:

“5.2 The proposed expansion of the enterprises will present a labour requirement in excess of one full time unit; [and within paragraph] 9.0 The expansion of the business will present an essential need for a presence on site at most times. The business appears to be planned on a sound financial basis, however, the position on net assets is not strong”.

9.1.10 Based upon the information provided it is considered that there is an essential need for one agricultural worker to live on the site and that the farm enterprise is financially sustainable in the short term. The principle of development for the erection of a temporary dwelling for three years for an essential farm worker would be compliant with WCS CP48 and paragraph 55 of the NPPF and it can therefore be supported.

9.2 Impact on the Character of the Area - Core Policy 51 of the Wiltshire Core Strategy states that development proposals should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character and any negative impacts must be mitigated through sensible design and landscape measures. In particular development proposals must demonstrate that the local distinctive character of settlements and their landscape settings have been conserved and where possible enhanced. Core Policy 57 states application for new development must respond positively to the existing landscape to effectively integrate the building into its setting.

9.2.1 The proposed timber clad mobile would be relatively modest in size at approximately 3.7 metres to the eaves and 5 metres to the ridge; and 6 metres wide and 17 metres long.

The building would be located within 6-8 metres of the western boundary of the field and adjacent to Whaddon Lane and would not appear as an incongruous or isolated form of development. Due to the height of the hedgerow adjacent to the highway the proposed dwelling would be sufficiently screened from Whaddon Lane.

9.2.2 When viewed from across the fields, in particular from the east, the proposed temporary dwelling would be seen against the back drop of the existing hedgerow. Due to the proposed position of the dwelling on site, its modest size and height and the exterior materials in its construction, it is not considered that the dwelling would have an adverse impact on the rural character of the area. The development is considered acceptable and would comply with Core Policies 51 and 57 of the Wiltshire Core Strategy.

9.3 Impact on the Living Conditions of Neighbouring Residents - Core Policy 57 of the Wiltshire Core Strategy requires a high standard of design in all new developments and that development has regard to the compatibility of adjoining buildings. The nearest residential dwellings are located at Hill Farm approximately 430 metres to the northeast, Sharkays, Whaddon Lane approximately 220 metres to the southwest and Knoll Farm located approximately 260 metres to the west. As such, the proposed temporary dwelling would be located a sufficient distance from neighbouring residents and would have no material impact on their living conditions/amenities. The development therefore complies with Core Policy 57 of the Wiltshire Core Strategy and advice contained in the NPPF.

9.4 Highway Safety/Parking Issues - Paragraph 32 of the NPPF states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. Core Policy 61 furthermore advises that new development should be served by safe access to the highway network. In this particular case, the Council's highway officer states the existing access is substandard in terms of visibility however this issue can be addressed by requiring certain improvements along the site frontage on land owned and controlled by the applicants. Should the committee be minded to approve temporary planning permission, the condition should require visibility at the access to be improved before the development is brought into use.

9.4.1 Sufficient space is available on site to accommodate 2 off road parking spaces. As such the scheme complies with current council parking standards. The proposed development would therefore not result in severe or cumulative harm to highway safety and the scheme complies with the advice contained within the NPPF and policy CP61 of the WCS.

9.5 Drainage Issues - Paragraph 103 of the NPPF states when determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere. In this case, the site is recognised as being flood zone 1 and there are no known land drainage constraints which cannot be addressed. The applicant proposes to deal with foul water drainage by an on-site septic tank. A condition is recommended approval requiring details of surface water drainage to be submitted before works on site commence.

9.6 Other Material Issues - Other issues have been raised by third parties namely concern over the proposed foundations of the building and power supply, however these issues carry little weight in the planning determination. In addition concern has been raised about unwelcome noise from the development however these issues are dealt with under other legislation such as Environmental Health legislation.

10. Conclusion (The Planning Balance) - In conclusion, the Council's agricultural consultant advises that the implementation of the business plan would result in an essential need for on-site occupation at most times. He concludes that the current business is viable and whilst the projected accounts show a very significant reduction in off-site income, the business plan for the upcoming three year period appears to be planned on a sound basis. Although there is a

large amount of land held by the applicant under temporary or short terms agreements, the agricultural consultant has concluded that there is no evidence to suggest that such supply is likely to significantly reduce in the short term. The siting of a temporary workers dwelling would not significantly or adversely affect the rural character of the area, the living conditions and amenities of neighbouring residents or highway safety interests. The application therefore complies with Core Policies 48, 51, 57 and 61 of the Wiltshire Core Strategy and the advice contained within the NPPF. It would need to be subject to rigorous planning conditions, which are set out within section 11.

11. RECOMMENDATION: Approve temporary planning permission subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Proposed Site Location Plan; Site plan scale 1:500 received 19 May 2017; Proposed Layout and Elevations Plan (dwg no. 2629/02) received 19 May 2017; Septic Tank details received 19 May 2017; Attenuation treatment details received 19 May 2017; Visibility splay details received 27 July 2017.

REASON: For the avoidance of doubt and in the interests of proper planning.

3. The occupation of the temporary dwelling hereby approved shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any resident dependants.

REASON: The site is in an area where residential development for purposes other than the essential needs of agriculture or forestry is not normally permitted and this permission is only granted on the basis of an essential need for a new dwelling/residential accommodation in this location having been demonstrated.

4. The temporary dwelling hereby approved and all external residential paraphernalia associated with the residential unit shall be removed and the land restored to its former condition on or before 13 December 2020 in accordance with a scheme to be submitted to and approved by the Local Planning Authority.

REASON: Permission is granted on a temporary basis only to establish whether there is a functional need for permanent on site residential accommodation at this agricultural holding.

5. No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure that the development can be adequately

drained.

6. The development hereby permitted shall not be occupied until the means of foul water drainage for the temporary dwelling (i.e. the septic tank details received 19 May 2017) have been completed in accordance with the submitted details.

REASON: To ensure that the development is provided with a satisfactory means of drainage.

7. The development hereby approved shall not be first occupied until visibility splays have been provided between the edge of the carriageway and a line extending from a point 2.4 metres back from the edge of the carriageway, measured along the centre line of the access, to the points on the edge of the carriageway 90 metres in both directions from the centre of the access. Such splays shall thereafter be permanently maintained free from obstruction to vision above a height of 900mm above the level of the adjacent carriageway.

REASON: In the interests of highway safety.

8. The development hereby approved shall not be first occupied until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

9. Any gates shall be set back 4.5 metres from the edge of the carriageway, such gates to open inwards only.

REASON: In the interests of highway safety.

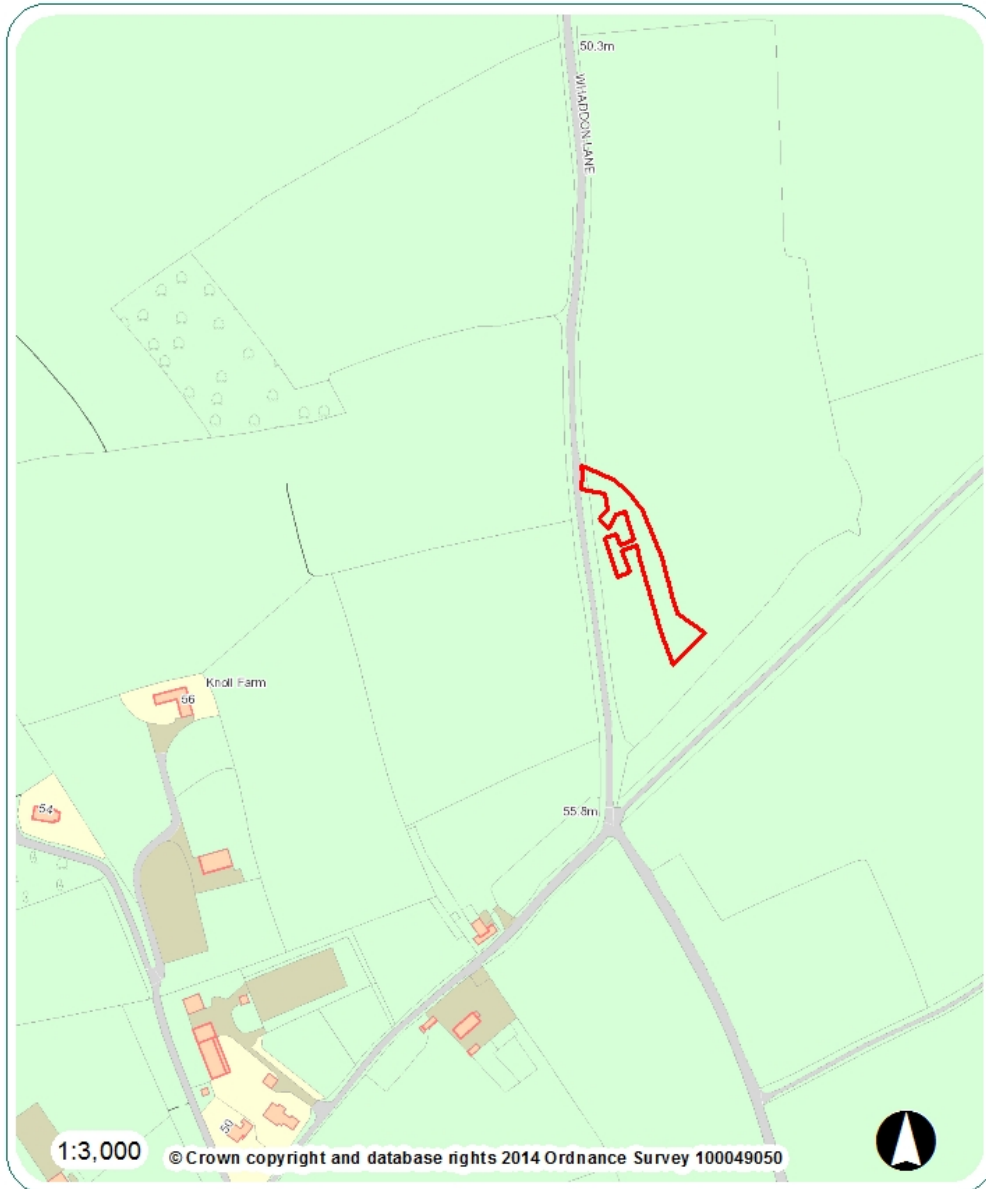
10. Within 1 month of the occupation of the temporary agricultural workers dwelling hereby approved the touring caravan shall be permanently removed from the site.

REASON: This site is in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit additional permanent residential accommodation in tandem with the approved.

INFORMATIVE TO APPLICANT:

The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website www.wiltshire.gov.uk/planninganddevelopment/planningpolicy/communityinfrastructurelevy

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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	13 th December 2017
Application Number	17/08557/FUL
Site Address	Princecroft CP School, Princecroft Lane, Warminster BA12 8NT
Proposal	Proposed extensions and alterations to the existing school including the construction of a new school hall
Applicant	Mr Anthony Dixon
Town/ Parish Council	Warminster Town Council
Electoral Division	Warminster West - Cllr Pip Ridout
Grid Ref	386334 144789
Type of Application	Full Planning
Case Officer	Katie Yeoman

Reason for Application Being Considered by Committee:

This report is brought to Committee since it is an application made by Wiltshire Council and there have been objections. This is in accordance with the scheme of delegation which states that:

“Applications submitted by Wiltshire Council will not be dealt with under delegated powers where an objection has been received raising material planning considerations”. The decision making authority must therefore rest with the elected members of the area planning committee”.

1. Purpose of Report

The purpose of this report is to assess the merits of the application proposal against the policies of the development plan and other material considerations and to recommend that the application be approved.

2. Report Summary

The main issues to consider with this application are:

- Principle of development
- Impact on the character and appearance of the host building
- Impact on the surrounding area including the adjoining Conservation Area and its setting
- Impact on neighbour amenity
- Impact on highways safety and parking provision
- Impact on sports facilities
- Impact on drainage
- Impact on trees

3. Site Description

The application relates to Princecroft Primary School, located within a residential housing estate within Warminster. The application site includes the primary school, nursery, former children’s centre and associated car parking and hard and soft play areas that are clustered to the southern part of the site. To the north of the application site, lies a playing field enclosed by boundary trees. The primary school comprises a single storey flat roof building with small scale, two-storey elements, as shown in the plans and site photographs reproduced on the following page.

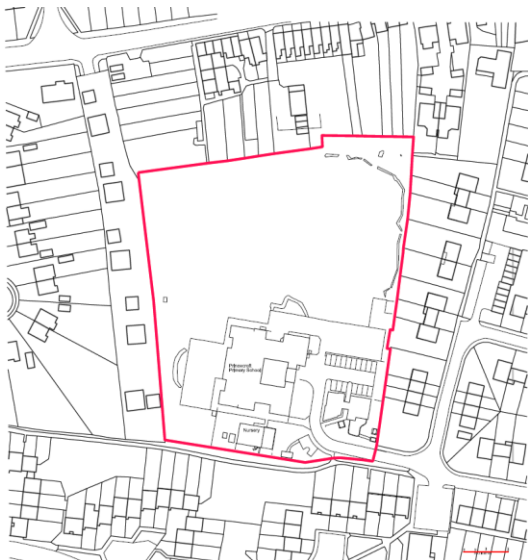


Existing south and east elevations of the school



Existing north elevation of the school

The application site is accessed via Princecroft Lane located at the south east corner of the application site and forms the only vehicular access for the school. The Warminster Conservation Area abuts the northern boundary of the application site. The site itself is not constrained by any statutory designations. The application site and its immediate context are illustrated in the location plan below and the access to the school is shown in the photograph.



4. Planning History

W/03/00487/FUL - Construction of hard surface – Approved on 16/05/2003;

W/03/00862/FUL - Construction of 2 low level play equipment areas on existing play areas - Approved on 21/07/2003;

W/10/01953/REG3 - Extension and refurbishment to caretakers' bungalow to form a new children's centre - Approved on 13/08/2010;

W/12/01076/FUL - Removal of existing modular building and replace with new modular building - Approved with conditions on 23/07/2012.

15/00172/FUL - Erect two commercial parasols within existing boundary of outside play area to provide children with all-weather protection – Approved with conditions on 05/03/2015.

5. The Proposal

This application which is submitted by the Council's capital build projects strategic assets team seeks permission for the construction of a new sports hall extension to the north elevation of the primary school including extending the hard standing playground area covered with a flat roof canopy. The proposal also includes plans to convert an existing underutilised room to a new classroom as well as making a number of alterations to the external appearance of the existing building including the insertion of roof lights, flat roof canopies to the main entrance and east elevation and alterations to the existing fenestration sizing and arrangement. Further to this, the proposal seeks to establish 5 additional car parking spaces and the erection of timber boundary fencing.

The applicant has advised that the school was originally designed to accommodate 210 pupils within 7 classrooms (which included the reception area) however due to falling pupil numbers prior to 2010, 2 of the classrooms were converted into a library and other school resource facilities, leaving the school with 5 classrooms currently (labelled as 44, 45, 25, 28 and 51 on the existing floor plan) and has about 150 pupils on the school roll.

In granting planning permission for Redrow Homes' 203 house development at land west of St Andrews Road under application 14/06562/FUL, it was accepted that such a development would generate additional need for school places in the form of 55 primary and 39 secondary spaces; and the designated area schools for the aforementioned site were Princecroft Primary and Kingdown Academy. In the summer of 2016 when the aforementioned application as reported to the strategic planning committee, members were informed that the Local Education Authority identified the need to expand Princecroft Primary to provide a sustainable 1FE (210 pupil capacity); and, given the essential priority attached to delivering further education infrastructure, officers secured £628,223 from Redrow Homes via a s106 to fund the expansion of Princecroft Primary. With this consented development now under construction, the school will need to increase to approximately 210 places and there is therefore a substantive requirement to create additional classrooms/pupil capacity. Instead of converting the library and resource spaces back into classrooms, the applicant proposes to carry out the aforementioned works to ensure the continued improvement of the school and its facilities.

6. Planning Policy

Local Context: Wiltshire Core Strategy (development plan) - CP1, CP2, CP31, CP41, CP57, CP58, CP60, CP61, CP62, and CP64.

'Saved' policy U1a of the West Wiltshire District Plan 1st Alteration (2004)

The Warminster Neighbourhood Plan

Wiltshire Playing Pitch Strategy Community Area Profile Action Plan

Wiltshire Council's adopted Statement of Community Involvement

National Context: National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG)

Planning (Listed Building and Conservation Areas) Act 1990: Section 72: General duties as respects Conservation Areas in exercise of planning functions

7. Summary of Consultation Responses:

Warminster Town Council: Supportive.

Sports England: No objection and confirmed that the proposal satisfied Sport England's planning policy exception E1.

Wessex Water: No objections subject to an informative.

Wales and West Utilities: No objections subject to a planning informative recommending that the applicant contact the utilities team to discuss the gas infrastructure.

Council's Drainage Engineer: Supportive subject to conditions.

Council's Public Protection Officer: No objection subject to conditions covering construction / demolition hours, preventing waste being burned on site; and requiring a dust management plan.

Council's School Development Officer: This development proposal forms part of an important school infrastructure expansion project and the education team fully support it.

Council's Highways Officer: No objections subject to conditions. It is understood that the school was designed and built to accommodate 210 pupils although in recent years the school has accommodated fewer pupils. As a direct consequence of recent consented residential development in the vicinity of the school, the demand for pupil places at Princecroft School is forecasted to increase back to the original 210 pupil threshold and in order to maintain the use of the library and resource space, an additional classroom is now necessary. This will involve some alterations and much needed improvements to take the school forward into the future. It is accepted that the school could have at any time since 2010, converted the library and resource facility space back into classrooms without the need for planning approvals or any highway input. The pupil population will increase to what it originally was intended to be, and subject to planning conditions, no highway objection is raised.

8. Publicity:

The public notification exercise comprised advertisement by site notice and neighbour notifications. To date, one objection was been received raising the following concerns:

- Public Consultation - Local residents were denied any suitable opportunity to comment on the pre-application consultation event on 12 July.
- Safety and Highways – Measures to alleviate traffic and transport issues as described and recommended in the School Travel Plan have not been adopted, thus making any increase in capacity at the school currently a highway safety risk.
- No suitable new road access to the school has been identified creating permanent gridlock in neighbouring residential streets and main access roads to the town centre.
- Despite the additional 5 car parking spaces there is insufficient parking on site as the majority of the spaces originally required were lost when the former Caretaker's building was converted to a Children's Centre in 2010/11.

- The application form is factually incorrect in specifying the number of car parking spaces. There are only 16 parking spaces on the site and one permanent loading bay, and not 17 parking spaces as listed in the application form.
- Information on the application form is factually incorrect and misleading. The existing car parking spaces are attributed to the redevelopment of the caretakers bungalow to form a new children's centre (W/10/01953/REG3). Thus, at maximum, Princecroft School has only 9 Parking Spaces directly available to the main building and not the 17 as stated.
- The Design & Access Statement fails to identify and relay information concerning additional pupil numbers also attending Noah's Ark Nursery on the same site, and that the Sure Start building on the same site is also being considered for redeployment as a childcare centre. Thus further exacerbating highways, access, fire protection and associated issues.
- No survey has been taken of traffic maximum flow rates in the Home Zone which should not exceed 100 vehicles per hour at peak volume in accordance with Home Zone design guidelines.
- Westleigh Home Zone and the surrounding road network is not suitable for access by large construction traffic, for increased traffic flows or for prompt and easy access to the school by suitable fire-fighting equipment due to the restrictions, traffic bottle necks and parked cars.

9. Planning Considerations

9.1 Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

9.2 The Principle of Development: The application site is located within the development limits of Warminster which is defined as a market town by CP1 of the Wiltshire Core Strategy. CP1 states that development at markets towns has *"the ability to support sustainable patterns of living in Wiltshire through their current levels of facilities, services and employment opportunities. Market Towns have the potential for significant development that will increase the jobs and homes in each town in order to help sustain and where necessary enhance their services and facilities and promote better levels of self-containment and viable sustainable communities"*.

9.2.1 CP2 of the Core Strategy seeks to deliver development in Wiltshire in the most sustainable manner and goes on to state that: *"within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages."*

9.2.2 CP31 sets out the strategy for the Warminster Community Area and the specific issues to be addressed. One such issue is that options should be sought for expanding primary school provision in Warminster and Princecroft School is given as an example where a larger facility and expansion is identified. Following the referenced consented Redrow residential development nearby, there is a substantive need to expand the school back to having capacity to accommodate 210 pupils.



Proposed site plan

9.4 Impact on the Surrounding Area including the Adjoining Conservation Area and its Setting: The application site adjoins the Warminster Conservation Area therefore careful consideration has been given to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 which states that in the exercise of any functions, special attention should be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

9.4.1 NPPF paragraphs 129-132 require local planning authorities to identify and assess the particular significance of any heritage asset that may be affected and consider the impact of the proposed development on its significance. Furthermore, paragraphs 133 and 134 require local authorities to make an assessment as to whether there is substantial harm, less than substantial harm or no harm to the heritage asset.

9.4.2 The proposed school hall extension and the other proposed alterations to the host building would be at least 50m from the boundary of the Conservation Area and would be separated by the existing playing fields and boundary vegetation. Furthermore, the proposals would be viewed within the existing school context and views would be confined largely from the northern aspect only. As set out within paragraphs 9.3 and 9.3.1, officers are satisfied that the development would be CP57 compliant and that the development would not harm the significance or setting of the Conservation Area.

9.5 Impact on Neighbour Amenity: The proposed new hall would be sited at an acceptable distance from any neighbouring properties and officers do not consider the hall or the other proposed alterations would harm residential amenity in terms of overshadowing, loss of light, overlooking or overbearing impacts.

9.5.1 The proposed hall would not give rise to any significant increases in noise and disturbance levels, over and above the existing situation. Whilst the design and access statement refers to the hall being hired out to the wider community for activities, given the separation distances to the nearest residential properties, should the hall be used for non-education purposes out of school hours, officers are satisfied that the development and use would comply with Core Policy 57 of the WCS.

9.6 Impact on Highways and Parking Provision: As referenced within section 7 of this report, the Council's highway officer has raised no objections to this development proposal. The highway's officer acknowledges that the development would not result in increased pupil numbers above the original capacity of the school (210 pupils and 7 classrooms) and that the proposals would allow for the re-instatement of 210 pupils to be accommodated within the school with improved facilities. The development proposals are unlikely to cause a significant change to traffic flow rates on the surrounding road network and within the Westleigh Home Zone.

9.6.1 Concerns have been raised that no suitable new road access to the school has been identified to address traffic issues on the surrounding road network. Whilst the existing vehicular access to the school is not considered ideal, the proposed development would not increase the pupil numbers or number of classrooms over the original capacity therefore it is not justified to require an alternative means of access.

9.6.2 Additional concerns have been raised that no suitable new road access to the school has been identified leading to traffic issues on the surrounding road network. However, although the existing vehicle access to the school is not considered ideal, the proposal would not increase the pupil numbers or number of classrooms over the original capacity therefore it would be unreasonable to require any alterations to the vehicle access as part of this scheme.

9.6.3 Concerns have also been raised that there is insufficient parking on site. Policy CP64 of the Wiltshire Core Strategy refers to the Council's adopted Car Parking Strategy which sets out the 'maximum' parking standards for staff, visitors and parents for primary schools, as detailed below:

Use class	Land use	Standard
Education Centres	Staff	2 per 3 staff
	Visitors	1 per 7 staff
	Parent – Infants	1 per 12 pupils
	Parents – Primary	1 per 20 pupils

Wiltshire Council Maximum Parking Standards relating to primary schools

9.6.4 Based on the number of pupils attending the primary school (210), a maximum of 11 spaces are required for the parents. In addition, a maximum of 13 car parking spaces would be required for the staff and visitors to the school. On this basis, a maximum of 24 car parking spaces are required on site. Taking into account the existing number of parking spaces on site (a total of 16 spaces which includes a disabled bay and a dedicated parking bay for the head teacher) and the additional spaces to be provided as part of this scheme (5 parking spaces to front of the school) the primary school would only fall marginally short of the maximum parking standards. Due regard should in this case, be given to the fact the aforementioned standards

reflect the maximum parking provisions, and after liaising with the Council's highway team, your officers advise that the proposed parking provision is acceptable and that the development would not result in any additional adverse impacts. The proposals relate to improvements to the school facilities only and would not increase pupil numbers over and above its original capacity.

9.6.5 It is duly noted however that a local resident has raised concerns that the Westleigh Home Zone is not suitable for access by large construction vehicles. The principle of a Home Zone is to allow people and vehicles to share the whole space equally with deliberate constraints so that vehicle speeds are kept low. However, Home Zones also guarantee access and minimum width distances for emergency vehicles and heavy vehicles such as refuse collection vehicles and construction vehicles. Any construction vehicle should therefore have a reasonable route and passage through the Home Zone and should be able to manoeuvre without undue difficulty. Nevertheless, a condition is recommended which sets out the need for a construction method statement to be submitted and agreed prior to the commencement of development including details on the most appropriate route for construction vehicles, size of vehicles and timings in order to reduce the impacts of construction traffic on Princecroft School, the Westleigh Home Zone and surrounding road network.

9.6.6 Concerns have also been raised that the measures to alleviate traffic and transport issues as described and recommended in the school travel plan have not been adopted. The school travel plan adviser has been advised of the need for an updated travel plan which is also recommended to be covered by a condition.

9.7 Impact on Sports Facilities: The application was referred to Sports England as part of the consultation exercise and based on the additional information submitted by the agent relating to Wiltshire Playing Pitch Strategy Community Area Profile, Action Plan Part 2 Table E5, the proposed loss of 316m² of the existing school playing field satisfies Sport England's exemption Policy E1. On this basis, Sport England offers no objections and officers are supportive of the proposal.

9.8 Impact on Drainage: The detailed design drawings and soakaway calculations submitted to the Council's drainage engineer have been accepted and it has been confirmed that the proposals would not cause any adverse impact on land drainage.

9.9 Impact on Trees: The development proposal would result in the loss of two trees, as identified on the submitted drawings (no. 051). As the two trees are not located within a Conservation Area, and are not protected by a Tree Preservation Order and offer little amenity value, no objection is raised with respect to their proposed removal. The Arboricultural Survey reports that the two trees to be removed are of low and moderate quality and their loss would be mitigated by additional tree planting elsewhere within the site. A landscaping condition would therefore need to be imposed on any planning consent being granted to ensure an appropriate compensatory tree planting scheme is implemented.

9.10 Other Material Considerations: Additional concerns have been raised that the applicant's consultation exercise carried out prior to the submission of the planning application was inadequate. As set out within the Council's adopted Statement of Community Involvement (SCI), pre-application discussions are encouraged for all types of applications – major, minor and others. The objective of pre-application discussions should be to confirm whether the principle of development is acceptable and to clarify the format, type and level of detail required to enable Wiltshire Council to determine an application. It is duly noted that there has been criticism lodged against the applicant department within the Council relative to the manner in which local

residents were informed at pre-app stage. For the record, this comprised an advertisement in the Warminster Journal, the school's website and Facebook page on the 6th July 2017 and a letter drop to local residents on 8th and 9th July 2017 prior to the public consultation event taking place on 12th July 2017. It is fully acknowledged that the Council's SCI does encourage applicants to involve the local community as early as possible in the process of preparing their proposals and the relative short notice of a local public consultation duly reported in this case, is regrettable.

9.10.1 Separate to the above however, the development management team opened up the detailed planning proposals to a formal consultation period comprising the advertisement by site notice and individual neighbour notifications; and as such, the completed public consultation exercise fully satisfies the statutory requirements as set out within Article 15 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

RECOMMENDATION: Approve subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Site location plan – drawing no. 005 Rev A – received 15/09/2017; Existing location plan – drawing no. 010 Rev A - dated 15/09/2017; Proposed location plan – drawing no. 011 – received 15/09/2017; Existing site plan – drawing no. 050 Rev A – dated 06/07/2017; Proposed site plan – drawing no. 051 Rev C – dated 15/09/2017; Existing ground floor plan – drawing no. 060 Rev A – 06/07/2017; Proposed ground floor plan new hall – drawing no. 061 Rev C – dated 15/09/2017; Proposed ground floor plan – drawing no. 062 Rev C – dated 15/09/2017; Existing elevations – drawing no. 2001 Rev A – dated 31/08/2017; Proposed elevations – drawing no. 2002 Rev C – dated 08/11/2017; Existing roof plan – drawing no. 0208 – dated 23/11/2017; Proposed roof plan – drawing no. 0209 Rev B – dated 08/11/2017; Proposed 3D views 01 birds eye – drawing no. 9401 Rev A – dated 29/08/2017; Proposed 3D views 02 birds eye – drawing no. 9402 Rev A – dated 30/08/2017; Proposed 3D views 03 street level – drawing no. 9403 Rev A – dated 29/08/2017; Detailed drainage layout – drawing no. 500C – dated 30/10/2017; Manhole schedule – drawing no. 510C – dated 30/10/2017; Construction details – drawing no. 520 sheet 1 – dated 30/10/2017; Construction details – drawing no. 521 sheet 2 – dated 30/10/2017; Construction details – drawing no. 522 sheet 3 – dated 30/10/2017; Infiltration crate details – drawing no. 523 – 30/10/2017; Soakaway crate detail – sheet 1-5 – dated 27/10/2017

REASON: For the avoidance of doubt and in the interests of proper planning.

3. The development shall not be first occupied until the surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

4. No construction or demolition work shall take place on Sundays or Public Holidays or outside the hours of 07:30 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturdays.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area during the construction phase of the development.

5. No burning of waste or other materials shall take place on the development site during the demolition/construction phase of the development.

REASON: To minimise any detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety.

6. No development shall commence on site until a dust management plan has been submitted to and approved in writing by the local planning authority. The plan shall include details of the measures that will be taken to reduce and manage the emission of dust during the demolition and/or construction phase of the development. The construction/demolition phase of the development will be carried out fully in accordance with the dust management plan at all times.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

7. No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- The parking of vehicles of site operatives and visitors;
- Loading and unloading of plant and materials;
- Storage of plant and materials used in constructing the development;
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- Wheel and road cleaning when necessary;
- Measures to control the emission of dust and dirt during construction;
- A scheme for recycling/disposing of waste resulting from demolition and construction works;
- Measures for the protection of the natural environment;
- The hours of construction, including deliveries

Has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement without the prior written permission of the Local Planning Authority.

REASON: To minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

8. No development shall commence on site until a photographic pre-condition highway survey of the following roads; Westleigh, Princecroft Lane and Pound Street, has been carried out and issued to the Highway Authority. Within 3 months of the completed development, a post condition survey should be made available to the development management team.

REASON: To ensure Westleigh, Princecroft Lane and Pound Street are maintained to an acceptable standard and any defects attributed to the construction traffic are rectified in the interests of highway safety.

9. No part of the development shall be brought into use until a fully updated School Travel Plan, reflecting the increase in pupil numbers, has been submitted to and approved in writing by the Local Planning Authority. The travel plan shall include details of implementation and monitoring and shall be implemented in accordance with these agreed details and with guidance from the school travel plan adviser who can be contacted on 01225 713483.

REASON: In the interests of road safety and reducing vehicular traffic to the development.

10. The development shall be carried out in accordance with the submitted Arboricultural survey, impact assessment and protection plan (prepared by Barton Hyett) in relation to the protection of trees.

REASON: In the interests of tree protection and the amenities of the area.

11. No development shall commence on site until details of on-site compensatory tree planting, as referred to in the Arboricultural survey, impact assessment and protection plan (prepared by Barton Hyett) has been submitted to an approved in writing by the Local Planning Authority.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

12. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

13. The hereby approved new hall and additional classroom accommodation shall not be brought into use until the 5 additional car parking spaces identified on the approved site plan (drawing no. 3345_L_051) have been provided and are available for use. Thereafter, the parking spaces shall be retained for such purposes.

REASON: To ensure the school has a satisfactory on-site car parking provision.

INFORMATIVES TO APPLICANT:

1. The developer is requested to note that Wales and West Utilities have pipes in this area which may be affected and at risk during construction works. The promotor of these works, hereby permitted, should contact Wales and West Utilities directly to discuss their requirements

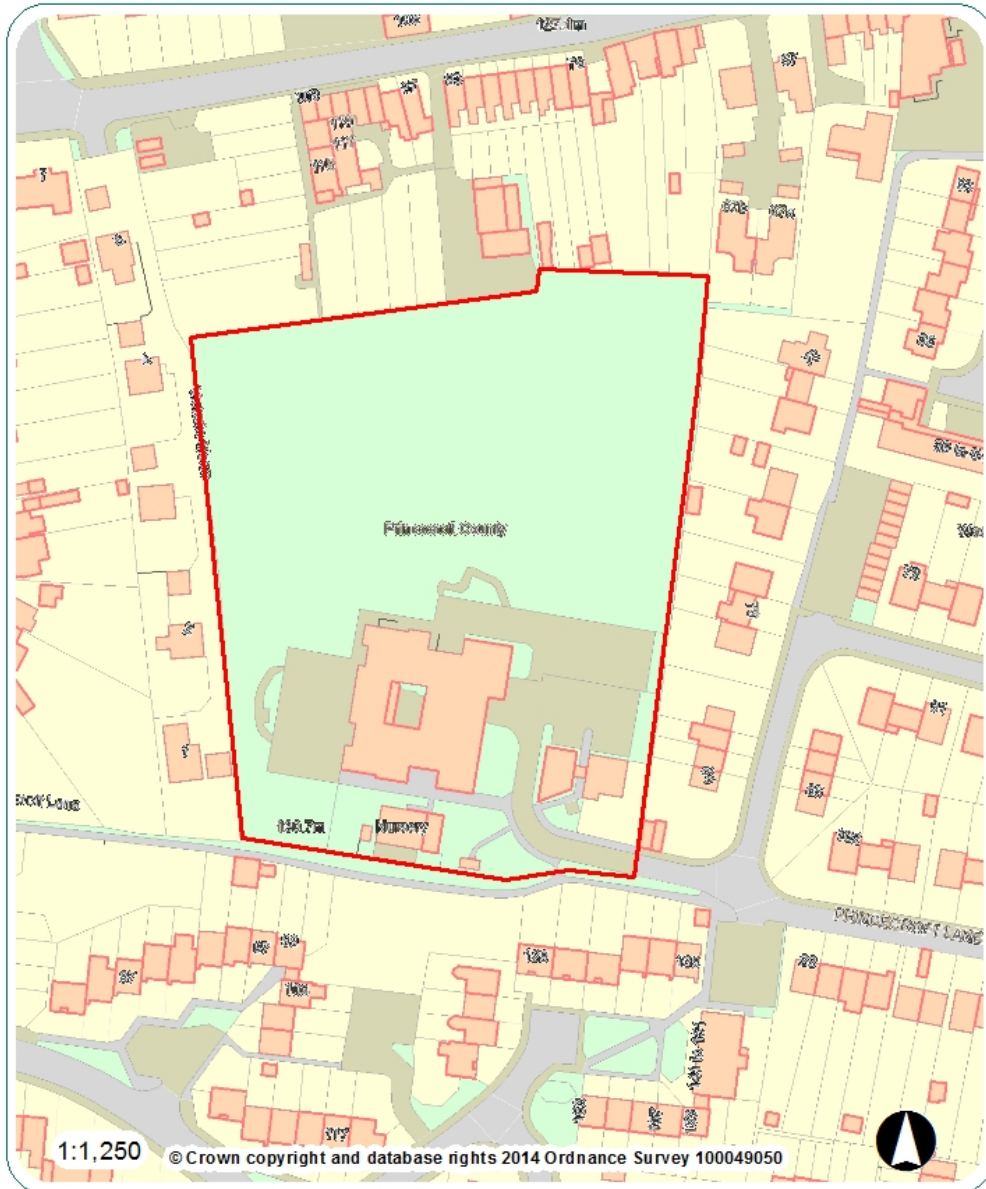
in detail before any works commence on site. Should diversion works be required these will be fully chargeable.

2. The applicant should be informed that the Highway Authority will pursue rectification of any defects identified by the highway conditions survey which can be attributed to the site construction traffic under the provision of Section 59 of the Highways Act 1980.

3. Pursuant to conditions 2 and 3, Wessex Water advises that the surface water discharge treatment needs to satisfy the Environment Agency guidelines. Non domestic supplies required for firefighting or commercial use would require a separate assessment with network modelling subject to design requirements. Wessex Water recommends the use of storage tanks where network capacity is not available or where off site reinforcement is necessary to provide the stated demand.

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17/08557/FUL
Princecroft School
Princecroft Lane
Warminster
Wilts
BA12 8NT



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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	13 December 2017
Application Number	17/04730/VAR
Site Address	Land West Of Norrington Lane, Broughton Gifford, Norrington Common SN12 8LR
Proposal	Minor material amendment to planning permission W/12/02072/FUL (varying conditions 4 and 10) to facilitate the "as built" plans
Applicant	Norrington Solar Farm Ltd
Town/Parish Council	BROUGHTON GIFFORD
Electoral Division	MELKSHAM WITHOUT NORTH – Cllr Alford
Grid Ref	388136 164692
Type of application	Full Planning
Case Officer	James Taylor

Reason for the application being considered by Committee

Councillor Phil Alford has requested that this application be determined by Members should officers be supportive of it and to allow Members to consider the following key issues:

- Scale of development;
- Visual impact upon the surrounding area;
- Design - bulk, height, general appearance; and
- Fencing.

1. Purpose of Report

The purpose of this report is to consider the merits of the application and to explain the rationale for officers recommending approval.

2. Report Summary

The following report outlines the relevant material considerations, the results of the consultation process, the assessment of the planning merits and concludes by recommending that the application should be approved.

The key planning issues are considered to be:

- Introduction, Principle of Development and Planning History
- Potential contribution to reducing climate change and sustainable development objectives
- Impact on the Landscape of the Open Countryside
- Impact on Public Rights of Way
- Impact on Highway Safety
- Impact on Ecological Interests
- Impact on Archaeological Interests
- Impact on agricultural land and surface water flooding

- Impact on Heritage Assets
- Conditions

This conclusion and recommendation to grant permission is reached on the basis that the proposals address the previous reasons for refusal on the variation application 14/01962/VAR, an application determined by this planning committee. This is because the CCTV proposals have been omitted from this scheme and the previous metal fencing has been entirely removed and replaced with deer proof fencing.

This proposal as built and operating makes a significant (10 Mw) and highly valued contribution towards Wiltshire's renewable energy targets. Although the site is located within the open countryside it has to be acknowledged that to provide the scale of renewable energy necessary to meet climate change targets that this type of development needs to be located in rural and semi-rural areas.

The on-going negative public response to this variation application compared to the original application is noted. However significant weight must be given to the fact that planning permission was granted in June 2013 for the installation of a solar photovoltaic (PV) farm covering this site of 22.1 hectares.

Furthermore the variation application of 2014 that sought to regularize the as built scheme was refused due to the impact of the existing fencing and proposed CCTV. These elements of the scheme have been addressed, with the fencing replaced by the approved fencing and the CCTV proposals dropped.

The development has been virtually completed and this application (by a new owner) seeks to make material alterations to the original approval. Officers submit that the alterations would not result in any significant material harm in planning terms above and beyond the extant approval when considered singularly or cumulatively with more recent large-scale solar PV schemes in the vicinity.

3. Site Description

The application site, until the implementation of planning approval W/12/02072/FUL, was agricultural fields. In total there were 4 fields with mature field margins and drainage ditches on the periphery. Since the implementation of the planning permission (albeit not wholly in accordance with the approved plans), the 4-field site has taken on a different character formed by the solar panel arrays and associated development such as invertors and fencing whilst retaining the same mature field margins.

It is important to stress again that the site is not subject to any special landscape designations.

Access is to the east of the main solar farm area onto Norrington Lane – which is a single width country lane bounded by high hedgerows. The access point to the public highway was originally via a farm access, however this has been altered (as previously approved) to facilitate the implementation of W/12/2072/FUL.

The application site has public rights of way across it, some of which have been formally diverted following the implementation of W/12/02072/FUL.

To the south of the application site is Broughton Gifford Common and the associated designated Conservation Area. There are also a number of listed buildings within the designated conservation area including the Grade II* listed Gifford Hall. There are isolated rural dwellings close to the site to the east, next to the electricity station and residential property around The Common to the south of the application site.

4. Planning History

W/12/02072/FUL - Installation of solar photovoltaic (PV) arrays and frames covering 22.1 hectares including associated cable trenches, electrical connection buildings and improvements to existing access – Permission on 25.06.2013

14/01962/VAR - Minor material amendment to planning permission W/12/02072/FUL to facilitate CCTV and revised access track – Refused on 3 September 2014 for the following reasons:-

1. The metal security perimeter fencing and the proposed 72 CCTV cameras based on poles would have an unacceptable adverse visual impact on the countryside and landscape contrary to policies C1 and C34 of the West Wiltshire District Plan (1st alteration) and with policy CP51 of the emerging Core Strategy (April 2014 tracked changes version) and with the Governments Planning Practice Guidance that recognises the impact security measures on solar farms could have on the landscape.

2. The metal security perimeter fencing and the proposed 72 CCTV cameras based on poles would be detrimental to the heritage assets and setting of the Grade II listed building known as Gifford Hall contrary to the National Planning Policy Framework and policy 58 of the emerging Core Strategy (April 2014 tracked changes version) and the Governments Planning Practice Guidance.*

5. The Proposal

This is a minor material amendment application seeking to vary the original planning approval for the installation of solar photovoltaic (PV) arrays and frames covering 22.1 hectares including associated cable trenches, electrical connection buildings and improvements to existing access. As with the 2014 application the following alterations are detailed – and did not form a part of the reasons for refusal in the 2014 minor material amendment application:

- Amendments to access to allow separation from SSE electricity pole;
- Extension to permanent track way to allow year round maintenance access;
- Arrays to have 1 leg instead of 2 and 0.73 metres lower in height;
- Arrays to be 2x landscape rather than 6x portrait and closer together;
- Alterations to on-site substation detail including reduction in area by circa 22sqm and height by circa 0.5 metres;
- Alterations to DNO substation so circa 15sqm smaller but approximately 0.73 metres higher;
- Reduction in number and height of inverter houses to allow 8 (rather than 13) and circa 0.5 metres lower in height;
- Revised landscaping detail to reflect alterations above.

In order to address the previous reasons for refusal against the 2014 minor amendment application and in order to address wider Parish Council and resident concerns the following works/alterations to the proposal have been detailed/agreed with the Parish Council and your officers:

- Removal of CCTV cameras from the proposal in order to reduce visual and heritage impacts (Never installed);
- Removal of all metal security fencing and replacement with deer proof fencing. (Deer proof fencing was approved in the 2012 application) (Work completed);
- Three acoustic noise barriers around the inverters closest to the southern and eastern boundaries of the site to address a concern raised by neighbours (Work completed);
- Revised drainage strategy (To be completed and a condition suggested by the applicants);
- Replacement of a stile with a kissing gate as requested by the Parish Council (Work completed) and signage as requested by Parish Council (Work completed);
- Completion of ecological and mitigation requirements from the original planning permission and Landscape Environment Management Plan (LEMP) as far as possible, including site and surroundings tidying; ecological enhancement; ditch clearing; and enhanced landscape planting (Work completed, on-going implementation);
- Additional landscaping in key areas to reduce the visual impact of the solar PV farm from the surrounding properties, landscape and heritage assets (Work completed);
- Replacement of dead Ash tree (Work completed).

It is understood that works are substantially complete and the development has been producing renewable energy since installation. Outstanding planning requirements relate to installation of some drainage swales. The reference in the description to seeking changes to conditions 4 and 10 reflects the fact that condition 4 refers to the plans approved, and condition 10, the landscaping.

6. Planning Policy

Local context:

Wiltshire Core Strategy 2015

SO2: Addressing Climate Change;

SO5: Protecting and Enhancing the Natural, Historic and Built Environment;

CP3: Infrastructure requirements;

CP15: Spatial Strategy for the Melksham Community Area;

CP42: Standalone Renewable Energy Installations;

CP50: Biodiversity and Geodiversity;

CP51: Landscape;

CP57: Ensuring High Quality Design and Place Shaping;

CP58: Ensuring the conservation of the historic environment;

CP62: Development Impacts on the Transport Network;

CP67: Flood Risk; and

appendix D's 'saved policy CR1 (Footpaths and Rights of Way) of the West Wiltshire Leisure and Recreation DPD 2009.

National Context:

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

Section 66 of the Planning (Listed building and Conservation area) Act 1990 states that the local planning authority has a duty to pay special attention to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Section 72 of the Planning (Listed building and Conservation area) Act 1990 states that the local planning authority has a duty to pay special attention to the desirability of preserving and enhancing the character or appearance of the conservation area.

7. Consultations

Broughton Gifford Parish Council: Objection.

“Broughton Gifford Parish Council has commented on this planning application after a Special Planning Meeting held on 7th June and a subsequent site walkabout on Monday 12th June. The site visit showed that some of the work on the ground did not match what was in the plan and generally seemed scrappy and unfinished.”

“In view of this, while the Parish Council SUPPORTS three recent improvements, (two on the ground and one promised by Jacobs) generally it has no option except to OBJECT to the Minor Amendment Application as a whole, as currently presented.

The Parish Council SUPPORTS the following proposals within the application:

1. ACCOUSTIC BARRIERS – INVERTERS: The Jacoustic close-timber-fencing enclosures around the inverter cabinets, albeit heavy in appearance for the open countryside, do appear successful in reducing the noise.

2. REPLACEMENT OF BROKEN STILE WITH KISSING GATE: Jacobs has promised to install a new kissing gate at the Norrington end of the site, where the existing stile, due to soil level changes, now steps from/to a big dip in the land, making it extremely unsafe/ hard to use. The Parish Council welcomes this change as it will enable safe footpath access from Norrington to the fields again.

3. REINSTATEMENT OF VERGES AT NORRINGTON: The Parish Council welcomes the re-instatement work done recently along the carved-up verges.

The Parish Council OBJECTS to the MMA application for the following reasons:

4. DETERIORATING FENCING The Parish Council does not support the developer being allowed to retain the incorrect industrial fencing, rather than the required deer fencing, and is sceptical about the £100,000 cost that has been quoted. How has this sum been calculated? Apart from the fact that the industrial fence looks inappropriate, overbearing and obtrusive in the open countryside, it is not fit for purpose. It does not enclose the panels effectively or keep livestock in the enclosures. After less than a third of the life of the Solar Farm, the fence is already breaking down in several places ; peeling upwards at its base with gaps underneath to allow easy breaches and movement by all types of animals. The recent Parish Council site visit showed that sheep were running freely inside and outside the enclosures. The fencing must be replaced because it is deteriorating and is not stock-proof.

5. SOLAR PANELS: As you will be aware, 67% more solar panels have been built than were given permission. In some fields these are jammed together, making the corridors outside the enclosures too narrow and in other fields there are huge gaps, meaning an unnecessary loss of agricultural land. If the correct deer fencing were to be installed to replace the poor industrial fence, this would provide an opportunity to redress the imbalances and place the fence at the same regular distance from panels throughout the site.

6. *POOR QUALITY, UNPROTECTED LANDSCAPING* The additional landscaping and screening is of poor quality; spindly new 3-5 ft whips and small hedgerow plants have been used. Sadly as the landscaping has not been properly protected from sheep roaming inside the enclosures, much of what has been planted, has been eaten or has died through lack of care. In one area sheep have completely knocked off the small protective sleeves. The new landscaping does not therefore provide the necessary additional screening. To be acceptable, some areas need to be redone using good quality strong plants, that are fully protected from animals.

7. *POND AND DRAINAGE:* There is no 10m exclusion zone around the pond and it is tightly fenced with barbed wire. While the plans show several drainage swales, only two sections (25%) have been installed so far.

8. *REQUIREMENT FOR TARMAC SPLAY, NORRINGTON:* The heavy duty tarmac splay, where the track from cottages joins the main Norrington Lane, has not yet been installed. There was a requirement for hedgerow adjacent to the Lane to be set back by 1.5 metres to give visibility and this has not yet been done.

9. *BLOCKED, UNDELINEATED RIGHTS OF WAY:* There is no explanatory rights of way board, showing diverted routes at the main Common stile or any directional waymarks to indicate diverted routes. Ideally, at least two boards are needed at either end of this large site; both at the main Common and at Norrington, next to the main stiles so that they are well placed to assist walkers. Two rights of way are blocked by a barbed wire "Wiltshire gate" which many walkers would find unnegotiable. One stile to the left of the first field from Norrington, actually has barbed wire along one side, making it difficult to climb without getting one's foot entangled. This needs to be made safe.

10. *WILD FLOWER PLANTING, BORDER HEDGEROW ZONES & TREE DAMAGE:* There is no ecological area protected from cattle, as promised in the original application. Some of the zones between hedgerows and the industrial fencing are narrower than the required 10m zones. With heavy cattle and bulls roaming the border areas, the narrower corridors along fields could make some dog walkers feel vulnerable. Two mature trees set within the hedgerow were not given the 10m zone required during construction and so one large Ash tree is now dead and needs to be replaced.

In summary, the Parish Council believes that this MMA Application has been prematurely submitted without the necessary changes being done to bring the site up to an acceptable standard, namely:-

- a) Correct deer fencing to replace damaged industrial fencing. New fencing should be installed at the same distance away from solar panels in all fields.
- b) Good quality, larger landscaping plants that are properly protected from animals and guaranteed to provide full screening within 5 years.
- c) 10m exclusion zone around pond.
- d) 100% swales, as shown in plans, to be installed.
- e) 2 Explanatory rights of way boards at either end of Solar Farm; (The Common and at Norrington).
- f) Removal of "Wiltshire gates" and replacement with fence/kissing gates.
- g) Barbed wire removed from stile near Norrington and made safe or kissing gate installed.
- h) Ecological zone provided with wild flower planting.
- j) Replacement of dead Ash with mature new tree (12-15 ft high).
- k) Fund retained to guarantee landscape management plan in place for duration of Solar Farm.

It is now four years since the original Solar Farm was installed (W/12/02072/FUL and there has already been much time and opportunity to rectify some of the worst planning breaches. There is concern that if the MMA application is permitted as it is, with set conditions, this work will never be properly completed. The Parish Council would therefore recommend that the MMA application should either be put on hold until the above work is seen to have been completed satisfactorily or rejected outright.”

“Further to my Council’s comments on 28th June 2017, the Parish Council wish to express their full support for the many letters sent by residents in objection to the original gross breach of planning consent in installing 67% more solar panels than the permission allowed. The extra unscheduled panels alters the appearance of the site overall quite considerably in giving the effect of solid glass and a greatly diminished open aspect. The overbuild on the site is shocking, showing a total lack of respect for the planning process. The Parish Council believes the developers should be taken to task for this and made to comply to the number/ total area of panels set by the original application and to remove the excess panels.”

Melksham Without Parish Council: No objection.

Historic England:

“Within the village of Broughton Gifford are a number of listed structures that have the potential to be affected by this proposal; Gifford Hall (grade II) being the most highly graded and nearest to the site. There are also a number of Grade II listed buildings in close proximity to Gifford Hall that could also be affected. This group of designated heritage assets is located to the eastern side of Broughton Common and forms an important element of the Broughton Gifford Conservation Area.*

The site of the solar farm covers approximately 20 hectares of land located to the west of Norrington Lane and abuts the Conservation Area boundary. The topography is generally flat with minor undulations, and the land around the Conservation Area is predominantly agricultural in use and rural in character with a number of public footpaths connecting the village to outlying areas.

The list description for Gifford Hall states that it is “A good, little altered example of an early 18th century classical house“, and whilst its primary facade faces south towards the Common, its wider setting, and that of the Conservation Area, is one of rural, open character.

I visited site on 11 September 2017 and observed the solar farm from public footpaths and from Gifford Hall itself.

The solar farm impacts on the agricultural, rural character which defines the setting of the Grade II Gifford Hall and of Broughton Gifford Conservation Area. Their settings are harmed by the introduction of a form of modern development at odds with the historical character of the area.*

Given the scale of the consented solar array and its impact on the setting of the Grade II Gifford Hall and Broughton Gifford Conservation Area, Historic England would have expected to have been consulted on the original application that has now been implemented, albeit not in accordance with the permitted plans.*

The current application is to increase in the number of rows of panels (from 93 to 155), with a reduction in the gaps to the hedges in some places. This suggests that, despite the reduction in height of the panels, the local, visual impacts are greater than the permitted scheme.

The solar farm is visible from the some of the rear windows of the upper floors of Gifford Hall, where the rows of panels appear as a solid mass, i.e. due to the oblique viewing angle the gaps between the rows are not visible. The permitted scheme had fewer rows, with taller panels, and may also have appeared as a similar mass of panels.

The approved “deer fence”, with wooden posts, is more akin to what one would expect to find in an agricultural environment.”

“In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess; section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas; and section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine planning applications in accordance with the development plan unless material considerations indicate otherwise.

Your authority should take these representations into account in determining the application.”

Wiltshire Council's Conservation Officer: No comments and did not object to original scheme.

Environment Agency: No comments received. Note that they raised no objection to original scheme

Natural England: No comment.

Wiltshire Council's Archaeology: No comments received. Note that they raised no objection to original scheme.

Wiltshire Council's Ecology: No objection. Note that they raised no objection to original scheme.

Wiltshire Council's Environmental Health: No objection.

Wiltshire Council's Highways: No objection.

Wiltshire Council's Landscape Officer: No comments received. Note that they raised no objection to previous variation application but stated that they would prefer not to have seen the addition of CCTV or changes to fencing but there are no major landscaping concerns.

Wiltshire Council's Rights of Way: No comments received. Note that they raised no objection to original scheme.

Wiltshire Council's Tree Officer: No comments received. Note that they raised no objection to original scheme.

8. Publicity

This application was advertised by means site notices; neighbour notification letters; newspaper advertisement and publication on the Council's website.

Circa 52 letters of objection have been received and the issues raised may be summarised as follows:

- This is the same application as in 2014 and should be refused again. Nothing has

changed.

- Only one retrospective application can be made, (nothing has changed / exactly the same) and so this must be refused. – We ought to determine the application as there have been material changes in circumstances.
- Statutory duty to remove an illegal eyesore through enforcement;
- Land should be returned to agricultural use;
- Site should be developed as agreed by 2012 permission;
- Applicant has shown disregard to neighbours; and planning and government conditions and guidelines;
- Developer has disregarded / flouted terms and conditions on earlier application.
- Additional planting inadequate in face of such a massive and significant overbuild;
- Harm to heritage assets of Gifford Hall (Grade II* listed) and conservation area through overbuild and fencing.
- Landscape and visual impact, harmful to the countryside character and therefore amenity of local residents and ramblers;
- 67 - 70% overbuild / too many rows;
- Fence seven times the length of the Titanic
- Inadequate notification and consultation
- Wildlife (deer, foxes, badgers, rabbits) being trapped inside enclosures / biodiversity and landscaping enhancements not realised;
- Cumulative impact with other solar development in the vicinity;
- Significant damage to the highway verges, adjacent drainage ditches and common land;
- Do not understand how this is a minor amendment;
- Noise from inverters unacceptable / barriers ineffective / well designed acoustic cabins and bunding required;
- Detracts from local economy by reducing agricultural labour force demand and reliance on non-local maintenance and construction labour; and
- Deprived people of a right of way through farm land.

9. Planning Considerations

9.1 Introduction and Principle of Development and Planning History:

Planning permission (ref: W/12/02072/FUL) has been granted for the installation of solar photovoltaic (PV) arrays and frames covering 22.1 hectares including associated cable trenches, electrical connection buildings and improvements to existing access. This sets the principle for such development on the site.

The development, save for provision of some swales is completed with the production of renewable energy having been occurring since July 2014. The detailed material considerations are the potential impact on planning interests from the proposed modifications.

A variation planning application was refused by planning committee in September 2014 (ref: 14/01962/VAR). This was refused for the following reasons:

1. The metal security perimeter fencing and the proposed 72 CCTV cameras based on poles would have an unacceptable adverse visual impact on the countryside and landscape contrary to policies C1 and C34 of the West Wiltshire District Plan (1st alteration) and with policy CP51 of the emerging Core Strategy (April 2014 tracked changes version) and with the Governments Planning Practice Guidance that recognises the impact security measures on solar farms could have on the landscape.

2. The metal security perimeter fencing and the proposed 72 CCTV cameras based on poles

would be detrimental to the heritage assets and setting of the Grade II listed building known as Gifford Hall contrary to the National Planning Policy Framework and policy 58 of the emerging Core Strategy (April 2014 tracked changes version) and the Governments Planning Practice Guidance.*

Reason 1 and reason 2 for refusal have been addressed in this current proposal because:

The metal security perimeter fencing has been removed from the site. This has been replaced with deer proof fencing as required under the original consent. The applicant removed the metal fencing in 2017 after discussion and negotiation with Council officers. The installed deer proof fencing is approximately 10cm lower than the approved deer proof fence and has fewer supporting poles as they are at 5m intervals rather than the 4m intervals approved originally. Otherwise the as built security fencing is exactly as originally approved.

These differences are considered to be minimal and with the reduction in the number of supporting poles and the slightly lower fence, would be a slight improvement on the originally approved fencing that would result in no unacceptable adverse visual impact on the countryside and landscape; and no detrimental impact to heritage assets and setting of the Grade II* listed building known as Gifford Hall.

Furthermore no CCTV cameras (or associated poles) are being proposed. No CCTV cameras have been installed on site and the site has been producing renewable energy since 2014 without any known security issues.

Based on the above it is clear that the reasons for refusal in September 2014 by the western area planning committee have been addressed and overcome.

It must be borne in mind that beyond the fencing and CCTV a number of alterations formed a part of the 2014 variation application, were described in the officer report to the committee and were not objected to by the Council at the time and did not form part of the reasons for refusal. This includes the items listed within section 5 above, namely:

- Amendments to access to allow separation from SSE electricity pole;
- Extension to permanent track way to allow year round maintenance access;
- Arrays to have 1 leg instead of 2 and 0.73 metres lower in height;
- Arrays to be 2x landscape rather than 6x portrait and closer together;
- Alterations to on-site substation detail including reduction in area by circa 22sqm and height by circa 0.5 metres;
- Alterations to DNO substation so circa 15sqm smaller but approximately 0.73 metres higher;
- Reduction in number and height of inverter houses to allow 8 (rather than 13) and circa 0.5 metres lower in height;
- Revised landscaping detail to reflect alterations above.

This variation application has also detailed a number of further alterations (listed within section 5 above) to the as built scheme. These have been driven by requests made from the Parish Council to the applicants, namely:

- Three acoustic noise barriers around the inverters closest to the southern and eastern boundaries of the site to address a concern raised by neighbours (Work completed);
- Revised drainage strategy (To be completed and a condition suggested by the applicants);
- Replacement of a stile with a kissing gate as requested by the Parish Council (Work completed) and signage as requested by Parish Council (Work completed);
- Completion of ecological and mitigation requirements from the original planning permission and Landscape Environment Management Plan (LEMP) as far as possible, including site and surroundings tidying; ecological enhancement; ditch clearing; and enhanced landscape planting (Work completed, on-going implementation);
- Additional landscaping in key areas to reduce the visual impact of the solar PV farm from the surrounding properties, landscape and heritage assets (Work completed);
- Replacement of dead Ash tree (Work completed).

9.2 Potential contribution to reducing climate change and sustainable development objectives

The modifications proposed would enable the solar farm to continue to contribute to ambitious targets to cut greenhouse gas emissions and accord with the economic, social and environmental dimensions of sustainable development.

9.3 Impact on the landscape of the Open Countryside

In short, there would be some nominal apparent changes in terms of the immediate landscape context, but these would not cause significant harm over the extant approval. The reduction in the gaps between the solar arrays and resultant increase in rows is balanced by the reduction in the height and width of the arrays, reduction in the number of solar panels, easement allowed for overhead wires through the site, the reduction in inverter buildings and the reductions in scale and heights that have occurred. The gap between the rows of the solar arrays is not materially different from the nearby solar farm at Norrington that was approved following a site visit from members, and is similar to other approved solar farms, such as Poulshot.

Wider impacts would be negligible and the amendments would not affect the potential cumulative impact of this scheme with other developments in the area over and above the extant approval.

This proposal details a revised landscape mitigation that has recently been provided. This is because previous mitigation planting failed as a result of sheep grazing at the site and a lack of suitable protection. The landscaping strategy has also been reviewed and supplementary planting over and above previous applications. In November 2017 planting work has taken place and protective fencing has been installed to allow hedges to grow and reach a manageable height of between 2 and 3 metres and 2 metre width as it matures. The hedges include a mix of native species including hawthorn, blackthorn and goat willow. Further planting includes a wildflower mix around the retained pond and

additional hedgerow trees to the eastern end of the site to include oak and field maple.

This is not a landscape that is subject to any special landscape designations. Due to the topography of the area, the presence of mature field boundaries that have been retained and the additional mitigation landscaping that has now been provided it is considered that the proposals would cause no harm over and above the extant planning approval.

9.4 Impact on Public Rights of Way

Over and above the extant approval, the rights of way and their routes are unchanged.

The experience of those using the rights of way would be little altered over and above the extant scheme, especially now that the deer proof fencing has been installed instead of the metal fencing and the CCTV cameras have been omitted from the proposal.

9.5 Impact on Highway Safety

The proposals would have no impact over and above the extant scheme in terms of highway safety and the highway officer raises no objection. As the scheme has been implemented, traffic generation is minimal.

9.6 Impact on Ecological Interests

The Council's ecologist has raised no objection to the revisions and it is assessed that they would have no impact on ecological interests.

9.7 Impact on Archaeological Interests

The alterations detailed would not affect the archaeological area of interest on the site. The area that has no or limited archaeological interests would be less disturbed with the reduction in the number of legs on the arrays.

9.8 Impact on agricultural land and surface water flooding

The modifications have no impact on the ability to use the site for grazing. The site has been grazed for a number of years whilst electricity has been generated. Suitable protection has now been provided to ensure the additional landscaping may reach maturity.

The surface water management has been reviewed in the context of the as built scheme and a number of improvements suggested by the applicant's drainage consultants. The drainage memo sets out the provision of an additional 90m long swale in the north-west corner of the site. It also sets out a requirement for 15 "check dams" to be provided within the existing swales along the southern edge of the site. These will address the gradient within the swale and slow down water transfer by the swale. These changes are considered to be reasonable and proportionate to the nature of the development that has merely incised impermeable surfaces by as little as 0.64%

The drainage works are now the only outstanding work at the site and it is considered that they can be subject to a condition so as to allow this variation application to be approved.

9.9 Impact on Heritage Assets

Historic England's officer has visited the site and viewed the development from within Gifford Hall as part of their assessment of this proposal. They have noted the designated

heritage assets as the conservation area and the grade II* listed Gifford Hall. Their comments have been set out verbatim above.

It is noted that the topography of the area is generally flat with minor undulations, and the land around the Conservation Area is predominantly agricultural in use and rural in character with a number of public footpaths connecting the village to outlying areas. Some of these rights of way dissect the application site. It is also noted that there are significant landscape features between the recognized heritage assets and the application site commensurate with the rural character at this point.

It was previously assessed that the impact on views from Broughton Gifford Conservation Area would be very limited. This is as a result of distance, topography and the trees in between. Any views from public areas, such as The Common, are small distant glimpses through the intervening trees. The significance of The Common as part of the Conservation Area lies in its open nature and the houses bordering it. The solar farm has no impact on this and so any impact on the character and appearance of the conservation area from the changes to the solar farm is negligible and at best, at the very bottom end of less than significant.

It was previously assessed under application W/12/02072/FUL that there were 2 listed buildings whose settings could be affected - Gifford Hall and The Hayes. It was assessed that *"Gifford Hall is visible from the site in long distance views, and long distance oblique views of the PV arrays will be visible from upper floor rooms of the property. However, the distance (300m) of the property from the site and the intervening landscape would ensure that the setting of the listed building would not be harmed as a result of the landscape. At the Hayes upper floor south facing windows would have views of the development. The distance of the 550m would ensure that any impact on the setting of the building would be so small as not to be significant."*

As was the case in September 2014 the proposed alterations for which consent is now sought, would not impact further on these heritage assets over and above the extant approval as they would be viewed within the context of other similar development which either creates a backdrop of development or obscures it from view. As set out above the contentious fencing and CCTV no longer form part of this proposal.

Historic England advise that Gifford Hall's primary facade faces south towards the Common and not the application site. They set out that the solar farm is visible from some of the rear windows of the upper floors of Gifford Hall and appears as a mass of panels as it would likely have done under the consented scheme. As such, any impact from the amended proposal only affects the setting of the rear upper part of the building, and this only from limited parts of the application site as the house is not visible at all from other parts of the site. Any impact is therefore at the lower end of less than substantial.

Historic England considers that the character and setting of the heritage assets at this point is one of a rural, open character. It was acknowledged at the time of the original permission that the countryside in the application site would be altered in character but the limited impact on the countryside was outweighed by the benefit of providing a significant amount (10Mw) of renewable energy. It is considered that the very much less than substantial harm to the setting of the rear of Gifford Hall from the amended proposals is still outweighed by the public benefit of provision of the renewable energy generated from the site.

9.10 Public responses

A great deal of weight has been placed on the perceived "overbuild" by the developers at this site. The level of development is as per what was considered by the western area

planning committee in 2014. Members of the public have set out an overdevelopment of some 67% based on the number of rows increasing from 93 on the approved plans compared to the 155 rows as built in 2014.

The number of rows at the site has increased by circa 67%. However the overall height of each array has reduced by circa 24% and the width of the PV arrays has reduced from 5.95m to 3.33 meters; some 44%. The total number of solar panels has been calculated for both the consented scheme and the "as built" scheme. The consented scheme allowed for circa 50,000 solar panels, whereas the as built scheme resulted in circa 43,500 solar panels. This is a reduction of approximately 13%.

It is considered that the consented scheme and as built scheme are broadly comparable in terms of the planning impacts. It is considered that with the change to the perimeter fencing that has been made, the scheme has a spacing, character and appearance that is comparable to other solar developments within western Wiltshire.

9.11 Conditions

It is necessary to consider the original conditions imposed on the basis that the Council would, if it approved this application, create a fresh permission. The original conditions have therefore been revisited and omitted and amended as appropriate to the stage reached at the time of writing. The development has been completed save for the outstanding drainage works at paragraph 3.6 of the applicant's drainage memo.

10. Conclusion

Officers submit that the solar installation would make a significant and highly valued contribution towards the provision of renewable energy targets in Wiltshire. Although the site is located within the open countryside it has to be acknowledged that to provide the scale of renewable energy necessary to meet climate change targets that this type of development needs to be located in rural and semi-rural areas.

The more significant level of public response to this variation application compared to the original application is noted. However planning permission for the installation of solar photovoltaic (PV) arrays and frames covering the same 22.1 hectares including associated cable trenches, electrical connection buildings and improvements to existing access was granted in June 2013 and that is a very significant material consideration. The development has been virtually completed and this application seeks to make relatively minor alterations to the original approval. It is assessed that the alterations would not result in any significant material harm in planning terms above and beyond the extant approval when considered singularly or cumulatively with more recent large- scale solar PV schemes in the vicinity; and as such, it is recommended favorably.

Furthermore this is a resubmission of an earlier variation application in 2014. This was refused by the western area planning committee due to issues with the fencing and proposal for CCTV. The metal fencing has been removed and replaced by deer proof fencing, akin to that approved on the original scheme. The CCTV proposals have been omitted. Therefore all the reasons for refusal have been addressed by this revised submission. Further alterations beyond this have been made to resolve additional concerns raised by the Parish Council and to reflect the as built scheme.

Given the established planning history, and the applicant's addressing of the reasons for refusal of the previous application, it is not considered that there are any sound reasons for refusal of this application.

RECOMMENDATION: Approve subject to conditions.

1.

The development hereby approved shall be discontinued and the land restored to its former condition on or before 31 December 2039 in accordance with the hereby approved Decommissioning Plan approved under W/12/02072/FUL; unless before that date planning permission has been sought and granted for the retention of these structures for an extended period of time.

REASON: In the interests of amenity and the circumstances of the use; and in the interests of consistency with W/12/02072/FUL.

2.

In the event that the development ceases to be operational for the generation of energy before the end of the period defined in condition 2 then all associated development on, under or above the application site shall be removed from the site and the land returned to its former condition in accordance with the hereby approved Decommissioning Plan approved under W/12/02072/FUL, within six months of the cessation of the generation of energy from the site.

REASON: In the interests of amenity and the circumstances of the use; and in the interests of consistency with W/12/02072/FUL.

3.

The development hereby permitted shall not be carried out except in complete accordance with the details shown on the hereby approved plans:

1295/2575 (Revision V5) - Location Plan by aardvark, dated 20 Feb 14;
001-9-5575 SHT 1 of 1 - Substation general arrangement by Ormazabal, dated 23/01/14;
B2281200-L-14 Rev 3 - Landscape Mitigation Plan by Jacobs, dated 03/11/2017;
HESR FRAME 3 Version 1 by Power Electronics, dated 13/06/2013;
Sheet 1 - Track detail 1 by prosolia, dated 04/14;
150641- Detail Doors Locks by prosolia, dated 10/12;
DXX70 - Detail Fibergate GRP by prosolia, dated 02/14;
JG16-350/XSEC2D/01 Rev 0 - Cross Section by Jacobs, dated Nov 16;
JG16-350/Topo3D/01 Rev D - As built Plan by Jacobs, dated Nov 17;
Proposed fence design V1 by Lightsource, dated 25.07.17;
B2281200-JAC-SKT-D-00001 Rev 1.0 by Jacobs, dated Aug 17 (within Jacobs Memorandum dated 28 November 2017);

Drawing: 1295/2576 (Revision V2) - Existing Site Plan;
Drawing: 1285/2580 (Revision V1) – Topographic Survey;
Drawing: 1295/2559 (Revision V3) – Footpath Site Plan; and
Drawing: 1295/2585 (Revision V1) – Indicative interpretation board specification details;

REASON: To define the terms of this permission.

4.

The development shall be maintained in accordance with the hereby approved Landscape and Ecological Enhancement Plan – Addendum dated 29 August 2017; and the Landscape and Ecological Enhancement Plan dated October 2013 approved under the discharge of conditions against W/12/02072/FUL.

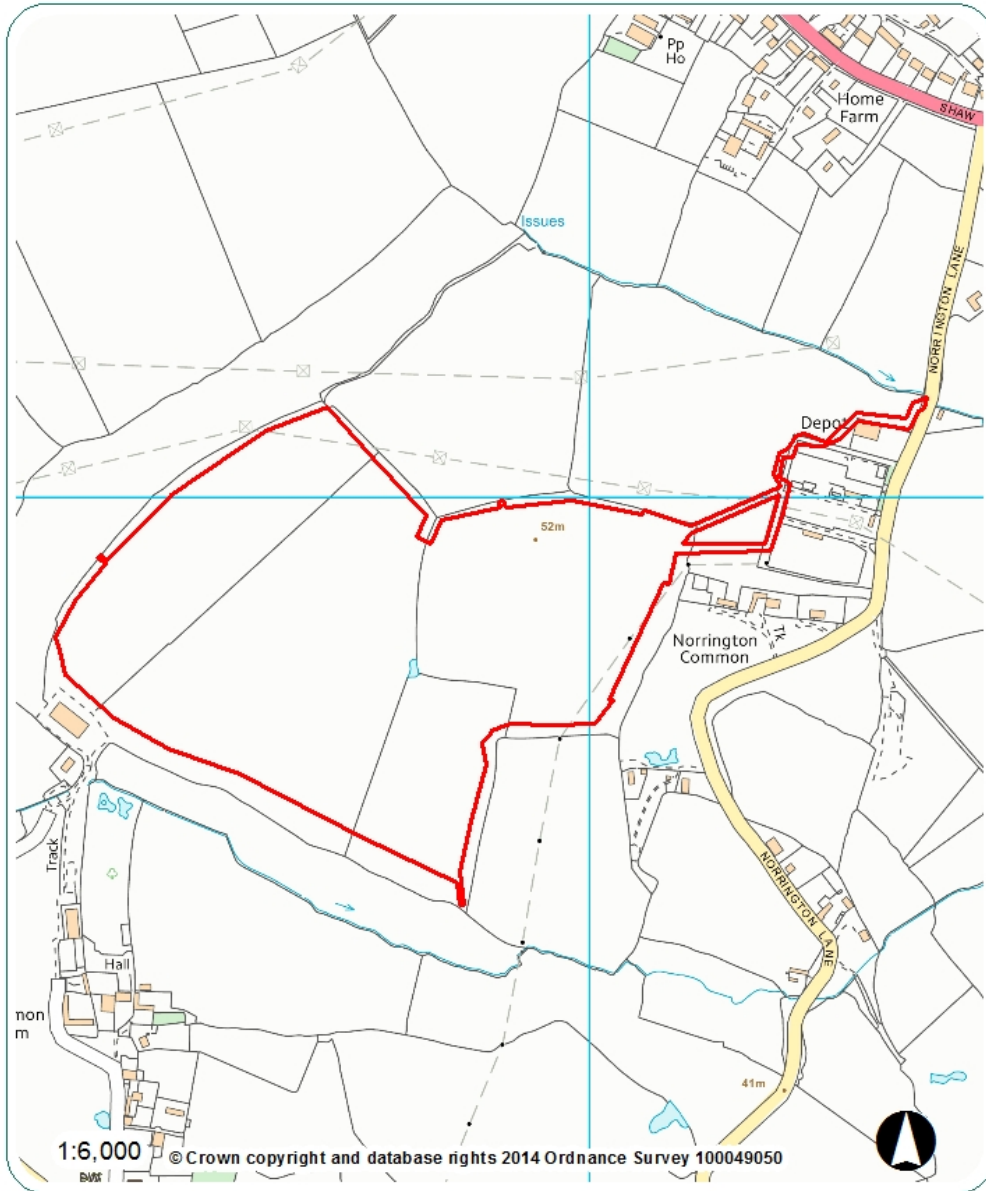
REASON: To ensure a satisfactory landscaped setting for the development, the protection of existing important landscape features; the protection and enhancement of biodiversity

interests and in the interests of consistency with W/12/02072/FUL.

5.

Within 4 months of the grant of this approval the drainage works identified at paragraph 3.6 of the "As Built Surface Water Drainage System" Memorandum by Jacobs, dated 28 November 2017 and detailed on drawing reference B2281200-JAC-SKT-D-00001 Rev 1.0 by Jacobs, dated Aug 17 at Appendix C shall have been carried out as hereby approved. The surface water drainage system shall be maintained through the lifetime of the development as per the provisions of this document.

REASON: To minimise flood risk by ensuring the satisfactory management of surface water from the site through its lifetime; and in the interests of consistency with W/12/02072/FUL.



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