

AGENDA

Meeting: Western Area Planning Committee

Place: Online Meeting

Date: Wednesday 17 June 2020

Time: 3.00 pm

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

Substitutes:

Cllr David Halik	Cllr Steve Oldrieve
Cllr Russell Hawker	Cllr Toby Sturgis
Cllr George Jeans	Cllr Ian Thorn
Cllr Nick Holder	Cllr Philip Whitehead
Cllr Gordon King	Cllr Graham Wright
Cllr Jim Lynch	

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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.

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 5 - 10*)

To approve and sign as a correct record the minutes of the meeting held on 22 January 2020.

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**

During the ongoing Covid-19 situation the Council is operating revised procedures to permit remote attendance of meetings. The procedure for the Western Area Planning Committee including public participation is attached.

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Statements

Members of the public who wish to submit a statement in support of or in objection to an application on this agenda should submit it to the officer named on this agenda no later than 5pm on 12 June 2020.

Those statements in accordance with the Constitution will be included in an agenda supplement. Those statements must:

- State whom the statement is from (including if representing another person or organisation)
- State clearly whether the statement is in objection to or support of the application
- If read aloud, be readable in approximately 3 minutes

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 9 June 2020 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 12 June 2020. 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 11 - 12*)

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

7 **Planning Applications**

To consider and determine the following planning applications.

7a **Application to Register Land Known as 'Great Lees Field' Off Pound Lane, Semington, as a Town or Village Green** (*Pages 13 - 318*)

7b **19/09800/FUL - 12A Frome Road, Bradford On Avon, Wiltshire BA15 1LE** (*Pages 319 - 338*)

7c **20/00059/FUL Bishop's Folly, No. 2 Ireland, North Bradley, BA14 9RW** (*Pages 339 - 354*)

7d **19/12153/VAR McDonald's Restaurant 235 Bradley Road Trowbridge BA14 0AZ** (*Pages 355 - 362*)

7e **19/10471/FUL 3 A Church Lane Limpley Stoke BA2 7GH** (*Pages 363 - 384*)

8 **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 22 JANUARY 2020 AT COUNCIL CHAMBER - COUNTY HALL, TROWBRIDGE BA14 8JN.

Present:

Cllr Jonathon Seed (Vice-Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Peter Fuller, Cllr Sarah Gibson, Cllr Edward Kirk, Cllr Stewart Palmen, Cllr Pip Ridout, Cllr Suzanne Wickham and Cllr David Halik (Substitute)

81 **Apologies**

Apologies for absence were received from:

Cllr Christopher Newbury who was substituted by Cllr David Halik.

Cllr Jonathon Seed as Vice-Chairman chaired the meeting.

82 **Minutes of the Previous Meeting**

The minutes of the meeting held on 18 December 2019 were presented.

Resolved:

To approve as a correct record and sign the minutes of the meeting held on 18 December 2019

83 **Declarations of Interest**

Cllr Jonathon Seed noted that he knew the applicant.

84 **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.

85 **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.

86 **Planning Appeals and Updates**

The Planning Appeals Update Report for 06/12/2019 and 10/01/2020 was received.

Resolved:

To note the Planning Appeals Update Report for 06/12/2019 and 10/01/2020.

87 **Planning Applications**

The Committee considered the following applications:

88 **19/08882/FUL - Bays Corner, Pinckney Green, Farleigh Wick, BA15 2EG**

Public Participation

Richard Cosker (Agent) spoke in support of the application.

Sir Charles Hobhouse (Applicant) spoke in support of the application.

Cllr Mathew Midlane (Chair of Monkton Farleigh Parish Council) spoke in support of the application.

Verity Giles-Franklin, Senior Planning Officer, introduced the report which recommended that retrospective planning permission be refused for the construction of a single storey dwelling following the unauthorised demolition of a farm building (with material alterations to the size and design of the building previously approved, and use of the building as a dwelling rather than a holiday let).

A Member site visit had taken place prior to the meeting on the 22 January 2020 at 1pm and all members of the committee were present.

A late representation had been received from the current occupier of the adjoining office in support of the application.

Key determining issues for the application included; The principle of the development, the impact on the Green Belt and on the Cotswolds Area of Outstanding Natural Beauty (AONB), impacts on neighbouring amenity, ecology and highway safety.

Members of the Committee had the opportunity to ask technical questions of the officer and the main points focused on: what part of the former steading should

have been retained and converted to a holiday let use; the terms and extent of the 2014 approved development; and, whether the classified use of a building could be changed.

In response officers noted that; the 2014 application had been approved by officers under delegated powers for a mixed-use development comprising a holiday let (where the unauthorised dwelling was sited), an office and a residential barn conversion. The committee were also shown slides, as part of the PowerPoint presentation, which illustrated the former barn of which some of the walls should have been retained for the development but had been demolished and replaced with a new dwelling; and, it was confirmed that the use of a building could be changed.

Members of the public, as detailed above, had the opportunity to speak on the application.

Local member Cllr Trevor Carbin spoke in support of the application with the key points focusing on: the positive impact the development would have on the local area compared to the consented 1-bed holiday let (which was considered to be unviable); that the development had been completed to a high standard that did not harm the green belt or the AONB; that no objections had been received from any consultee; that the Parish Council fully supported the application and that no local resident had objected. Referring specifically to WCS Core Policy 48, Cllr Carbin argued that the development would support rural lives and that the dwellinghouse would provide added security for the site, which included an office.

Officers were asked to confirm the status of the conditions imposed on the 2014 development and it was confirmed that a number of the suspensive planning conditions had been discharged, however there was clear non-compliance with the holiday let conditions and that no details had been submitted to discharge the highway related conditions. However, it was noted that the highway officer raised no objections to the application and did not seek to impose any highway conditions to this application. Officers were also asked if the committee could impose a condition on another part of the steading (the office building) to restrict its use and in response, were advised that it would be unreasonable to do so as it did not form part of the application site..

A motion to approve the retrospective application with conditions on: the protection and mitigation of protected species, outside lighting and permitted development rights, was moved by Cllr Trevor Carbin and seconded by Cllr Edward Kirk.

Key points raised during the debate focused on: the lack of harm the development has on the green belt and AONB, any precedent being set by approving the application, the retrospective nature of the application; and, the cited appeal at Staverton (which was appended to the officer report).

Following the vote, Cllr Ernie Clark who opposed the motion, requested his vote to be recorded.

Cllr Jonathon Seed abstained from voting.

Following which it was;

RESOLVED

The committee approved planning permission with the following conditions:

1 The development has been hereby permitted in accordance with the following approved plans:

Drawing Nos: L1-1211, Location Plan; L1-1211-P3, As built elevation drawings and floor plan for Bays Corner, as received on 16 September 2019

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

2 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A-E shall take place on the dwellinghouse(s) hereby permitted or within their curtilage.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

3 The dwelling hereby approved shall adhere to the recommendations made in Section 7 of the Bats and Protected Species Survey report dated 16th July 2014 prepared by Chalkhill Environmental Consultants, including the provision of a Little owl nest box on a suitable mature tree to be identified by a professional ecologist.

REASON: To ensure adequate protection and mitigation for protected species.

4 No external lighting shall be installed until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Professionals in their publication "Guidance Notes for the Reduction of Obtrusive Light GN01:2011", have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

REASON: In the interests of the amenities of the area and to minimise unnecessary light spillage above and outside the development site.

89 **Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00 - 3.50 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

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Wiltshire Council
Western Area Planning Committee
17th June 2020

Planning Appeals Received between 10/01/2020 and 08/06/2020

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
17/00649/ENF	Fairfield Piggeries Leigh Road Bradford On Avon Wiltshire, BA15 2RN	BRADFORD ON AVON/SOUTH WRAXALL	Alleged unauthorised use of land and buildings and unauthorised operational development	DEL	Hearing	-	11/05/2020	No
18/00802/ENF	194A Bath Road Atworth, Melksham Wiltshire, SN12 8HF	ATWORTH	Unauthorised container in front drive	DEL	Written Representations	-	17/02/2020	No
18/00901/ENF	Breach Lane Orchard Breach Lane, Southwick Trowbridge, Wiltshire BA14 9RG	SOUTHWICK	Unauthorised residential caravan	DEL	Written Representations	-	15/05/2020	No
18/00400/ENF	Home Farm Whaddon Lane Hilperton, Trowbridge Wiltshire, BA14 6NR	HILPERTON	Unauthorised metal fabrication business	DEL	Written Representations	-	28/05/2020	No
19/03718/FUL	Breach Lane Orchard Breach Lane Wynsome Street Southwick, Trowbridge Wiltshire, BA14 9RG	SOUTHWICK	The retrospective siting of a mobile home for a temporary period of four years in connection with the agricultural use of the land for the keeping of alpacas.	DEL	Written Representations	Refuse	15/05/2020	No
19/06023/OUT	A and G Minibuses Paddock Wood Bradley Road Warminster, BA12 7JY	WARMINSTER	Demolition of commercial buildings; erection of 8no. dwellings (outline)	DEL	Written Representations	Refuse	19/03/2020	No
19/07894/FUL	79 & 81 Station Road Westbury, Wiltshire BA13 3JS	WESTBURY	Construction of two detached bungalows and replacement garage within the grounds of 79 and 81 Station Road, Westbury	DEL	Written Representations	Refuse	11/02/2020	No
19/07948/FUL	Ganders Heath Farm Lane Chapmanslade Westbury, Wiltshire BA13 4AN	CHAPMANSLADE	Change of Use of Agricultural Building to Live/Work Unit and Change of Use of The Potting Shed to Tourist Accommodation (retrospective).	DEL	Written Representations	Refuse	05/02/2020	No
19/08838/FUL	Land Adjoining Bereburne 34 Dursley Road Heywood, Westbury Wiltshire, BA13 4LG	HEYWOOD	Erection of two 3 bedroom chalet dwellings and associated works.	DEL	Written Representations	Refuse	27/05/2020	No
19/09018/FUL	Westbury Leigh Baptist Church, Westbury Leigh Westbury, BA13 3SU	WESTBURY	Conversion of Baptist Chapel Building to four two bedroom apartments	DEL	Written Representations	Refuse	27/04/2020	No
19/09870/LBC	Westbury Leigh Baptist Church, Westbury Leigh Westbury, BA13 3SU	WESTBURY	To create four two bedroom apartments in the chapel building.	DEL	Written Representations	Refuse	27/04/2020	No

Planning Appeals Decided between 10/01/2020 and 08/06/2020

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
18/00802/ENF	194A Bath Road Atworth, Melksham Wiltshire, SN12 8HF	ATWORTH	Unauthorised container in front drive	DEL	Written Reps	-	Dismissed	18/05/2020	None
18/01106/ENF	7A Kennet Gardens Bradford On Avon Wiltshire, BA15 1LT	BRADFORD ON AVON	Erection of 'shepherds hut' to front of property	DEL	Written Reps	-	Dismissed	04/02/2020	Appellant applied for Costs - REFUSED
19/04504/FUL	Siennas Valley Farm Huntenhull Lane Chapmanslade BA13 4AS	CHAPMANSLADE	Extension to agricultural building.	DEL	Written Reps	Refuse	Dismissed	26/03/2020	Appellant applied for Costs – ALLOWED (PARTIAL)
19/04757/106	4 Tangier Close Warminster, Wiltshire BA12 0FA	WARMINSTER	Application to discharge the S106 agreement obligation in respect of development of one dwelling (Planning Application 13/03824/FUL)	DEL	Written Reps	Refuse	Dismissed	14/02/2020	None
19/05285/FUL	Golden Maplecroft Bath Road Bradford On Avon BA15 2PE	BRADFORD ON AVON	Re-siting, repair and re-construction of a stone built historic garden structure believed to be an Orchid House	DEL	House Holder Appeal	Refuse	Dismissed	21/04/2020	None
19/05530/FUL	15 Elms Cross Drive Bradford On Avon Wiltshire, BA15 2EH	BRADFORD ON AVON	Roof lifted and reconfigured to form first floor accommodation, side and front extensions, new parking and associated landscaping	DEL	House Holder Appeal	Refuse	Dismissed	17/01/2020	None
19/07894/FUL	79 & 81 Station Road Westbury, Wiltshire BA13 3JS	WESTBURY	Construction of two detached bungalows and replacement garage within the grounds of 79 and 81 Station Road, Westbury	DEL	Written Reps	Refuse	Withdrawn	28/04/2020	None

WILTSHIRE COUNCIL

WESTERN AREA PLANNING COMMITTEE

17 JUNE 2020

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

Purpose of Report

1. To:
 - (i) Consider a report and recommendation, dated 7 February 2020, made by Mr William Webster of 3 Paper Buildings, appointed by Wiltshire Council as an independent Inspector to reside over a non-statutory public inquiry, held in October/December 2019, to consider an application made under Sections 15(1) and (3) of the Commons Act 2006, to register land known as ‘Great Lees Field’, in the parish of Semington, near Trowbridge, as a town or village green.
 - (ii) Recommend that Wiltshire Council accepts the Inspector’s recommendation.

Relevance to the Council’s Business Plan

2. Working with the local community to provide an accurate register of town and village greens, making Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council received 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. The application was also made under Section 15(3) of the Act, i.e. where use of the land for recreational purposes had ceased and the application made within one year of the cessation of use. The application was made by Dr William Scott, Mr Steven Hall and Mr Jon Jonik on behalf of ‘The Friends of Great Lees Field’.
4. Part 7 of the application form requires the applicant to provide a summary of the case for registration. The applicant included the following information:

“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 27, 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."

5. The application was accepted as a complete and correct application on 9 September 2016. The application was accompanied by a plan on which the land is shown edged red at **Appendix B** and 66 completed witness evidence questionnaires. The witness evidence questionnaires were available to be viewed by the public at the Offices of Wiltshire Council - Rights of Way and Countryside, Unit 9, Ascot Court, White Horse Business Park, Trowbridge, Wiltshire, BA14 0XA and continue to be available to the public at the Council offices (Rights of Way) County Hall, Bythesea Road, Trowbridge. The Council, as the Commons Registration Authority ('CRA'), has a statutory duty to determine the application. The evidential burden of proof lies on the applicant for the registration of a new green. Following the service of formal notice of the application, posting of notice of the application on site and in one local newspaper and placing the application on public deposit, objections and representations were received, as follows:

Objections were received from:

- 1) Gateley Plc who put in a Submission on behalf of the landowners – 21 November 2016

Representations of support were received from:

- 2) Mr Steven Hall – E-mail correspondence dated 16 November 2016
- 3) Semington Parish Council (Mr Roger Coleman Clerk to Semington Parish Council) – E-mail correspondence dated 14 October 2016

*(Please note all responses are included in Wiltshire Council's decision report dated 1 December at Appendix C of the Western Area Committee report dated 13 December 2017 at **Appendix C** to this report).*

6. As part of the statutory procedure for determining town and village green applications, where objections are received, they must be forwarded to the applicant allowing the applicant a reasonable opportunity for dealing with the matters raised. Comments on the objections from 'The Friends of Great Lees Field' were received on 22 January 2017. The objectors were then given further opportunity to respond and their representations were received on 10 March 2017.

*(Please note all responses are included in Wiltshire Council's decision report dated 1 December at Appendix C of the Western Area Committee report dated 13 December 2017 at **Appendix C** to this report).*

7. The claimed land is located to the north of Pound Lane, Semington on the western side of the parish, just outside the settlement boundary identified within the Wiltshire Core Strategy document, between Pound Lane to the south and the Kennet and Avon Canal to the north, occupying an area of approximately 3.86 hectares (please see location plan at **Appendix A** and application plan attached at **Appendix B**).
8. Access to the site is possible from the following points:
 - (i) Public footpath no.1 Semington which leads from the Semington/Hilperton parish boundary, north-west of the swing bridge over the Kennet and Avon Canal to the west of 'Great Lees Field', through 'Great Lees Field' to Semington High Street, adjacent to the Somerset Arms pub. The route enters the field via a stile at the north-west corner of the field and a stone stile in the north-east corner of the field.
 - (ii) Gate in the southern field boundary alongside Pound Lane, (the Pound Lane gate).

- (iii) A former gap/Wiltshire gate (now fenced) in the western field boundary leading into the field to the west which has recorded public rights of way.
 - (iv) Garden gates leading from private properties on the eastern side of the field which are now fenced out of the field.
9. The whole of the application land is jointly owned by Mr William Stuart-Bruges and Mr Arthur Haythornthwaite. The land to the west is owned by Mr Thomas Masters and his sister, Ms Julia Masters.
10. Wiltshire Council, as the CRA, must determine the application in a manner that is fair and reasonable to all parties. All the elements of the application must be demonstrated. The standard of proof is the civil standard of proof on the balance of probabilities that ‘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 over the land for a period of at least 20 years and that use has ceased’. The Council, as CRA, has no investigative duty in relation to village green applications which would require it to find evidence or reformulate the applicant’s case. The Council considered the evidence and the objections received within a report to the Western Area Planning Committee dated 13 December 2017, (A copy of the Committee’s report is attached at **Appendix C**). Of particular concern to officers in the determination of this application were:
- (i) Was there sufficient evidence of the exercise of lawful sports and pastimes over the whole of the application land, where the majority of use undertaken on the land had 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.
11. Officers recommended that given the substantial dispute of fact in this case it would be open to Wiltshire Council, as the Registration Authority, to hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to preside over the inquiry and to provide a report and recommendation to the determining authority. It was resolved by the Western Area Planning Committee on 13 December 2017:

“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.”

12. Wiltshire Council appointed Mr William Webster, of 3 Paper Buildings, as an independent Inspector to preside over a non-statutory public inquiry and to write a report containing a recommendation to Wiltshire Council as the determining authority. The inquiry was held at Semington Village Hall, located not far from the application land, on 15 – 17 October 2019 inclusive and 4 – 5 December 2019 inclusive, with an accompanied site visit held on 17 October 2019 and closing submissions in written form following the close of the inquiry.

Main Considerations for the Council

13. It should be noted that prior to the resumed inquiry on 4 December 2019, the CRA received a joint request from Counsel acting for both the applicants and the objectors, to adjourn the inquiry to a date not before the beginning of March 2020, in order to allow the parties time to continue ongoing discussions and complete the details of an agreement where the parties had, in principle, agreed that the town/village green application would be withdrawn in exchange for the dedication of a footpath around the perimeter of the site. The DEFRA advice - *“Section 15 of the Commons Act 2006 – Guidance notes for the completion of an application for the registration of land as a town or village green outside the pioneer implementation areas”* October 2013, states:

“61. ...If you decide at any stage not to proceed with your application, the registration authority has discretion either to take no further action on your application, or to go ahead and determine the application you made, based on the available evidence.”

14. This request was considered by both the CRA on receipt and by the Inspector at the inquiry and commented upon within the Inspector’s report (**Appendix D**). Where it is at the discretion of the Registration Authority, it was concluded that the inquiry should continue and the application be determined where there was a wider public interest and due to the difficulties that a six month adjournment would cause to the Inspector being obliged to make findings on the earlier evidence.
15. Under the Commons Registration Act 1965, Wiltshire Council is 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, (‘Great Lees Field’), 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. Section 15 of the Commons Act is set out in full at part 9 of the Wiltshire Council decision report dated 1 December 2017 at Appendix C of the Western Area Planning Committee report dated 13 December 2017 and included at **Appendix C** to this report.
16. Sections 15(1) and (3) of the Act, state:

“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...

...(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 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)...

17. There is currently no statutory or non-statutory guidance available to authorities regarding when it would be considered appropriate for a Registration Authority to hold a non-statutory public inquiry. However, judicial cases have confirmed that it is the authority’s duty to determine an application in a fair and reasonable manner and judicial decisions have also sanctioned the practice of holding non-statutory inquiries. In *R (Cheltenham Builders Ltd) v South Gloucestershire District Council* Admn 10 Nov 2003 the Court decided that the holding of a non-statutory public inquiry in some circumstances would be necessary as a matter of fairness. In *R (on the application on Naylor) v Essex County Council* [2014] EWHC 2560 (Admin) the Court confirmed that a public inquiry was one means by which a registration authority may obtain evidence other than from the applicant and any objector or by which it may test or supplement that which it has received in written form.

18. Following consideration of the available documents and the hearing of evidence given in chief; in cross-examination and in re-examination at the public inquiry, the Inspector presented a report to Wiltshire Council, dated 7 February 2020 (please see report attached at **Appendix D**), in which he made the following recommendation:

“Findings of Fact

259. The core findings I make are these:

(a) A significant number of the local inhabitants of Semington used the land, but not the whole of the land, for LSP (lawful sports and pastimes) throughout the qualifying period.

- (b) *The land was mainly used as a place of transit for walking to destinations outside the land rather than as a destination in its own rights for LSP over the whole of the land. Any remaining use of the land itself would have been confined largely to walking, with or without dogs, around the perimeter of the field.*
- (c) *It follows that the land would have been mainly used for the exercise of putative or supposed rights of way along a defined route or routes. Such use would not justify registration. It follows that the whole of the land has not been used for qualifying LSP.*
- (d) *Any use not falling within category (b) (i.e. once the footpath use has been discounted) would not justify registration as it was too limited and infrequent.*
- (e) *The As (the Applicant's) are precluded from relying on use through the Pound Lane gate as it involved use which was forcible in law and therefore not as of right and would not justify registration as a matter of law. The use of the land by others who had entered it through different entry points was insufficient to justify registration.*
- (f) *WS-B (William Stuart-Bruges) threaded barbed wire on the top bar of the three Pound Lane gates after 1987. In doing so his intention had been to discourage local inhabitants from using this gate as a means of entry into the land. Reasonable users of the Pound Lane gate should have known that the presence of barbed wire in these circumstances meant that the land was private and off limits to the public.*
- (g) *Throughout the whole of the qualifying period the Pound Lane gates would have been continuously locked for months, if not for years, at a time except on those occasions when the Masters wished to go onto the land for their own purposes. Reasonable users who were regularly using these gates as a means of entry into the land should have been aware of the existence of the lock and chain around the latch post and should have appreciated that the land was private and off limits to the public.*
- (h) *If the Pound Lane gate had been left open at any time it was either because it had been inadvertently left open for short periods by the Masters or, prior to at least 2003, because the gate had been wrongfully lifted off its hinges on the hanging post by persons unknown allowing local inhabitants to enter the land.*
- (i) *Prohibitory signs were erected by WS-B on the Pound Lane and Wiltshire gates in 1987, 1989, 1998, 2003 and in 2004. By 2010 there was no further prohibitory signage on the Pound Lane gate. Such signs are likely to have been removed within a relatively short period by persons unknown and Os (the Objectors) were justified in the circumstances in not re-erecting replacement signage on a continual basis as it was likely to be torn down within a short period.*

- (j) *The foregoing signs would have said 'Private – No Right of Way' or similar. They were located where they would be seen by reasonable users and would have conveyed the clear message that the land was private and off limits to the public.*
- (k) *If any one or more of the three gates had been secured to the angle iron and had not been locked to the latch post it would have occurred on only a few occasions when contractors were working in the field. Any entry into the field by local inhabitants on these occasions would have been very limited and would not justify registration.*
- (l) *Any damage done to any of the Pound Lane gates will have been caused by persons unknown using the gate as a means of improper entry into the land and was not as a result of the ordinary passage of agricultural vehicles through the gateway.*
- (m) *The Wiltshire gate was usually open during the qualifying period as were the stiles at the northern end of the land.*
- (n) *The land was ploughed in 2000.*
- (o) *The grass on the land was cut twice each year (late spring and early autumn) during the qualifying period and prior to cutting would have been in the region of 2-3 feet long.*
- (p) *The cases of Os on permissive use and interpretation are rejected for the reasons given.*

Recommendation

260. *In the light of the above discussion, I recommend that the application to register the land as a TVG (being application number 2016/02) should be **rejected** on the ground that the applicable statutory criteria laid down in section 15(3) of the CA (Commons Act) 2006 have not been satisfied.*
261. *Put shortly, in order to justify registration As had to show that a significant number of inhabitants of Semington indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years before the application was made and, in my view, they failed to do this for the reasons explained.*
262. *Under reg 9(2) of the 2007 Regulations, the CRA must give written notice of its reasons for rejecting the application. I recommend that the reasons are stated to be 'the reasons set out in the inspector's report dated 7 February 2020'."*

19. There is no obligation placed upon the determining authority to follow the Inspector's recommendation, although if the Committee decide not to follow the Inspector's recommendation which is supported by the very detailed and thorough consideration of the evidence in the Inspector's report (**Appendix D**), the Committee must provide sound evidential reasons for departing from the recommendation before it. Members of the Committee are requested to consider the Inspector's report and the available evidence in order to determine whether or not the application land should be registered as a town or village green.
20. Under the Council's constitution one of the functions of the Area Planning Committee is that where an objection has been received and has not been resolved, to consider matters of local importance within the area such as the registration of town and village greens.
21. On 4th June 2020, Dr William Scott, a joint applicant in the Town/Village Green application, made representations regarding the Inspector's perception of his role in the application process, as contained within the report. It is not for the Registration Authority to alter the Inspector's findings in his report and it should be noted that the Inspector states that it was "*my impression*". An extract from Dr Scott's email is set out below for the Committee's information:

"I have been mulling over one aspect of Mr Webster's report for some time, and thought I had better raise it with you. It is the second sentence of para 78 on page 32. It says:

"It is my impression that he is the driving force behind the application to register."

The "he" is a reference to me. I am wondering how concerned I ought to be with this sentence appearing in a document which is about to be published. I say this because I do not regard the statement as true. I would readily concede that I was a driving force, but there were 5 of us involved and each was as committed as I was to the case we were arguing – as were a lot of other people in the village outwith the Friends group.

Its true that it is only Mr Webster's "impression", but I do not know why he wrote this. It seems gratuitous, and hardly germane to the inquiry or his recommendation. What was his point? Was it, perhaps, that this was something that one person was driving and not the collective endeavour that our case argued it was? I must say that this is how I read it – as might a reasonable uninvolved reader, I think. If so then this is more problematic than putting "the" instead of "a" (as noted above).

My concern is that when this goes to committee and is accepted (as we both know it will be), then this "impression" of my actions will be formally endorsed by Wiltshire Council. In effect the Council will be endorsing an opinion about me which I refute."

Safeguarding Implications

22. There are no safeguarding implications as those relating to safeguarding are not permitted with Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Public Health Implications

23. There are no public health implications as considerations relating to public health are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Environmental and Climate Change Considerations

24. Considerations relating to the environmental impact of the proposal are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Equalities Impact of the Proposal

25. Considerations relating to the equalities impact of registering land as a town or village green are not permitted within Section 15 of the Commons Act 2006. Any determination must be based on the relevant evidence before the Registration Authority.

Risk Assessment

26. The holding of a non-statutory public inquiry and the production of the subsequent report and recommendation to Wiltshire Council from an independent Inspector, have reduced the risk to the Council of a potential legal challenge as the evidence of witnesses has been heard, tested and considered.

Financial Implications

27. Presently, there is no mechanism by which the 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.
28. Where the Council makes a decision to register / not to register the land as a town or village green it must give clear reasons for its determination as this decision is potentially open to legal challenge as any decision of the Council is open to judicial review. The legal costs of a successful challenge against the Council could be in the region of £40,000 - £100,000.
29. There is no duty for Registration Authorities to maintain land registered as town or village green.

Legal Implications

30. If the CRA decides not to register the land as a town or village green, the only right of appeal open to the applicant is through judicial review proceedings and

challenging the lawfulness of the decision in the High Court. The court's permission to bring proceedings is required and the application must be made within three months of the date of the decision to determine the village green application. A landowner could also use judicial review proceedings to challenge the Council's decision if the land were to be registered as a town or village green.

31. If the land is successfully registered as a town or village green, the landowner could potentially challenge the Registration Authority's decision by an appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965 ('the 1965 Act'), which allows the High Court to amend the register only if it can be shown that the registration ought not to have been made and that it is just to rectify the register. The overall effect is that the registration of the land is deemed to have been made under Section 13 of the 1965 Act and there is a preserved right under Section 14 to apply to the court to rectify the registration of the town or village green without limit of time. The application, which could be made many years after the decision and potentially enables the Court to hold a re-hearing of the application and consideration of the facts and law, could lead to de-registration of the land.
32. Judicial review proceedings are a complex area of administrative law where every aspect of the law and facts relevant to the decision and the CRA's decision making process would be subject to detailed analysis by the Court. Due to the complexity of such cases the legal costs can quickly escalate. If the judicial review proceedings are not successfully defended, the Aarhus convention (concerning the legal costs for environmental cases) does limit the costs liability so far as the Council as CRA is concerned (if the case is lost) to £35,000; however, the CRA would also be required to meet its own legal costs to defend the case (which would be a broadly similar sum if not more depending on the issues that may arise during the proceedings) in addition to the applicant's costs. The applicant's potential maximum costs liability if their case is unsuccessful is £5,000.
33. The issue of 'pre-determination' or approaching decision with a 'closed mind' (for example a decision maker having already made up their mind on the application before considering the evidence and/or Inspector's recommendation and making the decision) is a serious allegation and one that a CRA must avoid. There is a potential reputational issue for a Commons Registration Authority if a court was to make a finding that 'pre-determination' took place before a committee made a formal decision to determine an application to register land as a town or village green. The court may order that the decision be quashed and the decision sent back to the CRA to be re-made.

Options Considered

34. Members of the Committee need to consider whether to:
 - (i) Accept the Inspector's recommendation that the application by 'The Friends of Great Lees Field' made under Section 15(3) of the Commons

Act 2006 be rejected for the reasons set out in the Inspector's report dated 7 February 2020.

- (ii) Accept the Inspector's recommendation, but with modification supported by the available evidence, e.g. registering only part of the application land.
 - (iii) Not accept the Inspector's recommendation and resolve to register all of the land as described in the application made under Section 15(1) of the Commons Act 2006 and described as 'Great Lees Field', as a town or village green.
35. Where Members of the Committee do not resolve to accept the Inspector's recommendation in full and make an alternative decision, clear reasons for this decision, based on evidence, must be given as the decision of the Registration Authority is open to legal challenge by both the applicants and the landowners.

Reasons for Proposal

36. In the Semington case, the evidence of whether a significant number of inhabitants of any locality, or 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 was in dispute. It is the duty of the determining authority to determine the application in a fair and reasonable manner. Due to the substantial dispute of fact in this case, Wiltshire Council determined to hold a non-statutory public inquiry where the facts of the case would be likely to be resolved by the inquiry process through witnesses giving oral evidence in chief and through cross-examination and re-examination, including consideration of documentary evidence by the Inspector.
37. Following the close of the inquiry, the Inspector presented a well written and extremely thorough consideration of the evidence in a 97 page report with recommendation to Wiltshire Council, as the Registration Authority, dated 7 February 2020 (**Appendix D**):
- "...I recommend that the application to register land as a TVG (being application number 2016/02) should be **rejected** on the ground that the applicable statutory criteria laid down in section 15(3) of the CA 2006 have not been satisfied."*
38. Officers are satisfied that over the course of the five days of the public inquiry, the Inspector carried out a thorough and detailed examination of the evidence, all parties being given full opportunity to make their representations and to cross-examine other parties on their evidence. Officers consider that the report (**Appendix D**) is a correct and accurate reflection of the witness and documentary evidence and that the Inspector's recommendation should be accepted.

Proposal

39. That Wiltshire Council, as the Registration Authority, accepts the Inspector's recommendation and that the application by 'The Friends of Great Lees Field', under Sections 15(1) and (3) of the Commons Act 2006, to register land off Pound Lane, Semington, known as 'Great Lees Field', be rejected for the reasons set out in the Inspector's report dated 7 February 2020 (**Appendix D**).

Jessica Gibbons
Director – Communities and Neighbourhood Services

Report Author:
Janice Green
Senior Definitive Map Officer

The following unpublished documents have been relied on in the preparation of this Report:

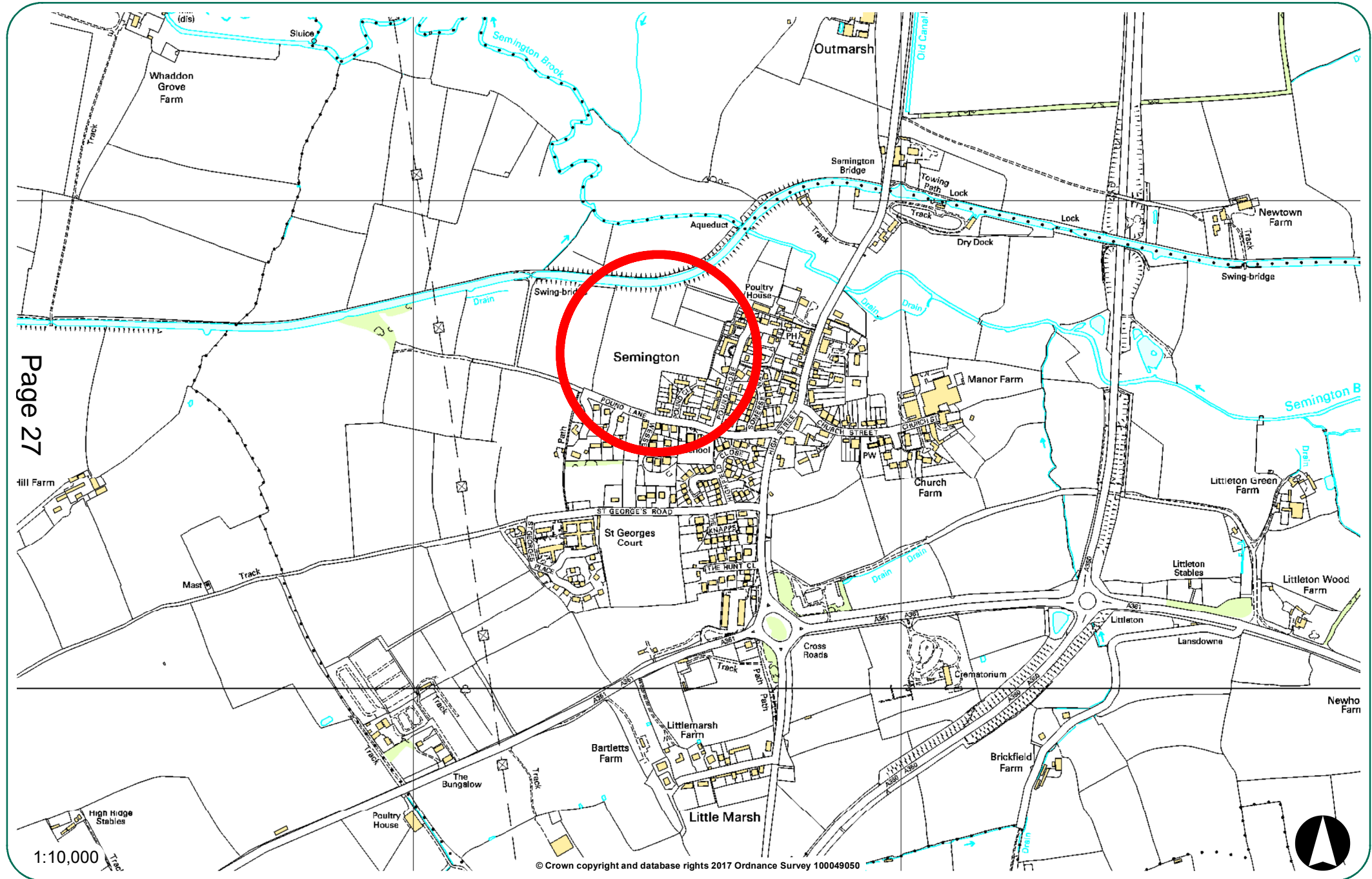
None

Appendices:

- Appendix A – Location Plan
Appendix B – Application Plan
Appendix C Wiltshire Council Western Area Planning Committee Report on recommendation to hold a non-statutory public inquiry (13 December 2017)
Appendix D Inspector's Report – Mr William Webster, 3 Paper Buildings – 7 February 2020

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



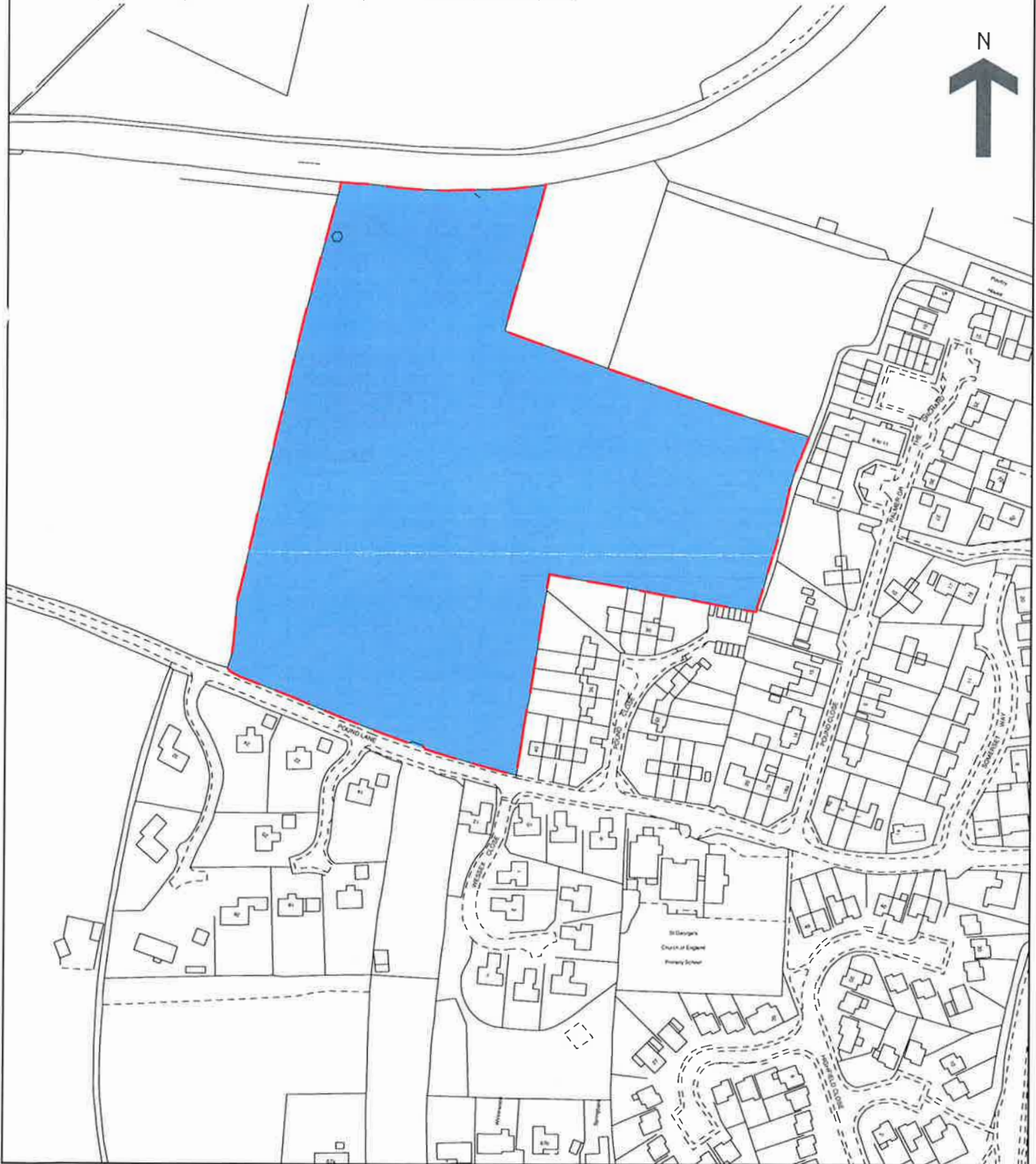
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Land Registry Index map plan

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



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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.



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WILTSHIRE COUNCIL

AGENDA ITEM NO.

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*

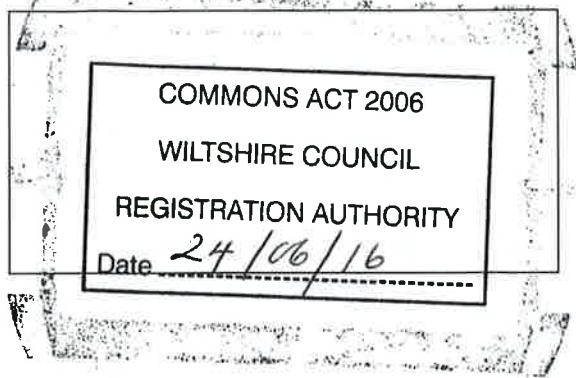
**APPLICATION TO
HAVE GREAT LEES
FIELD IN SEMINGTON
DESIGNATED AS A
VILLAGE GREEN**

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

Telephone: 01225 762683

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

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.

Common land register unit number (if relevant) *

n/a

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

U 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

~~General Solicitor~~ 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

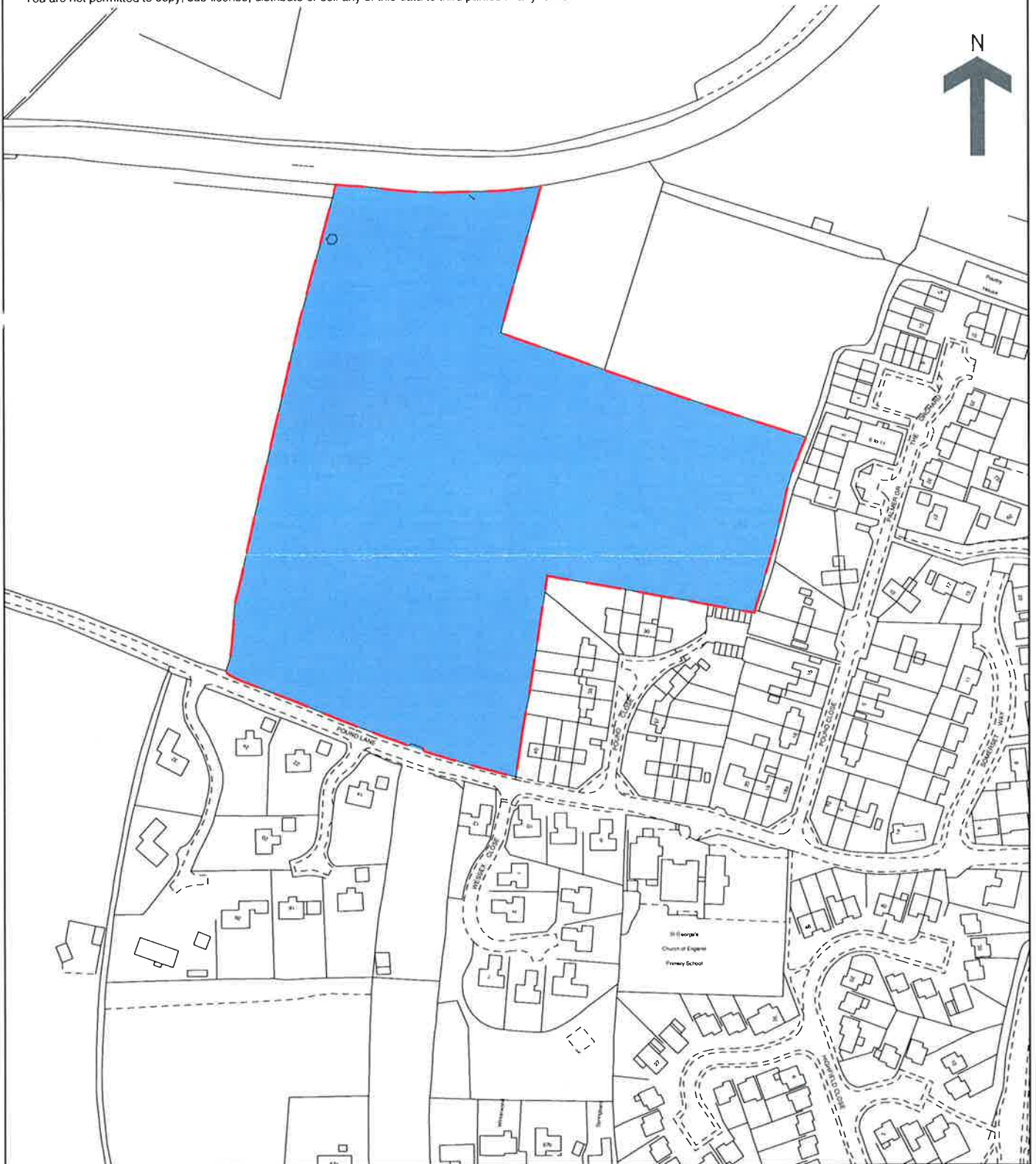
" A "

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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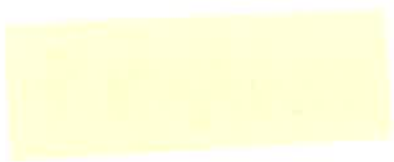


This plan should be read in conjunction with result D25TTLB.

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.

GOUGHES
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.intelligenenetwork.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
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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

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):

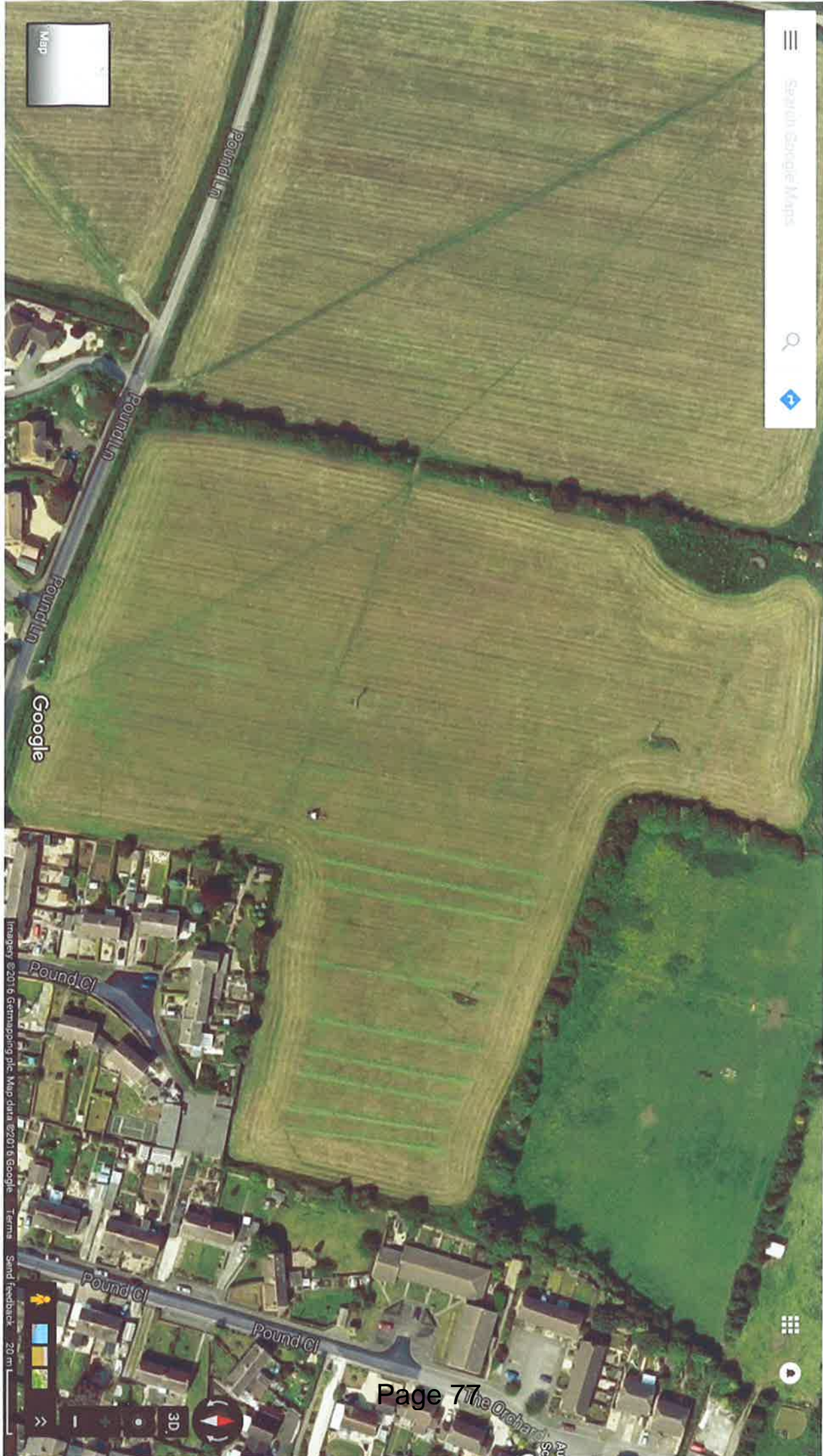
H – The Pound Lane gate after the ploughing and planting of the field with a Private Land notice (June 2016)

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

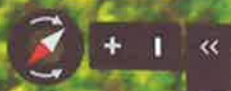


Image capture: May 2009 © 2016 Google Terms Report a problem



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 Pond



← Pound Ln Semington, England Street View - May 2009

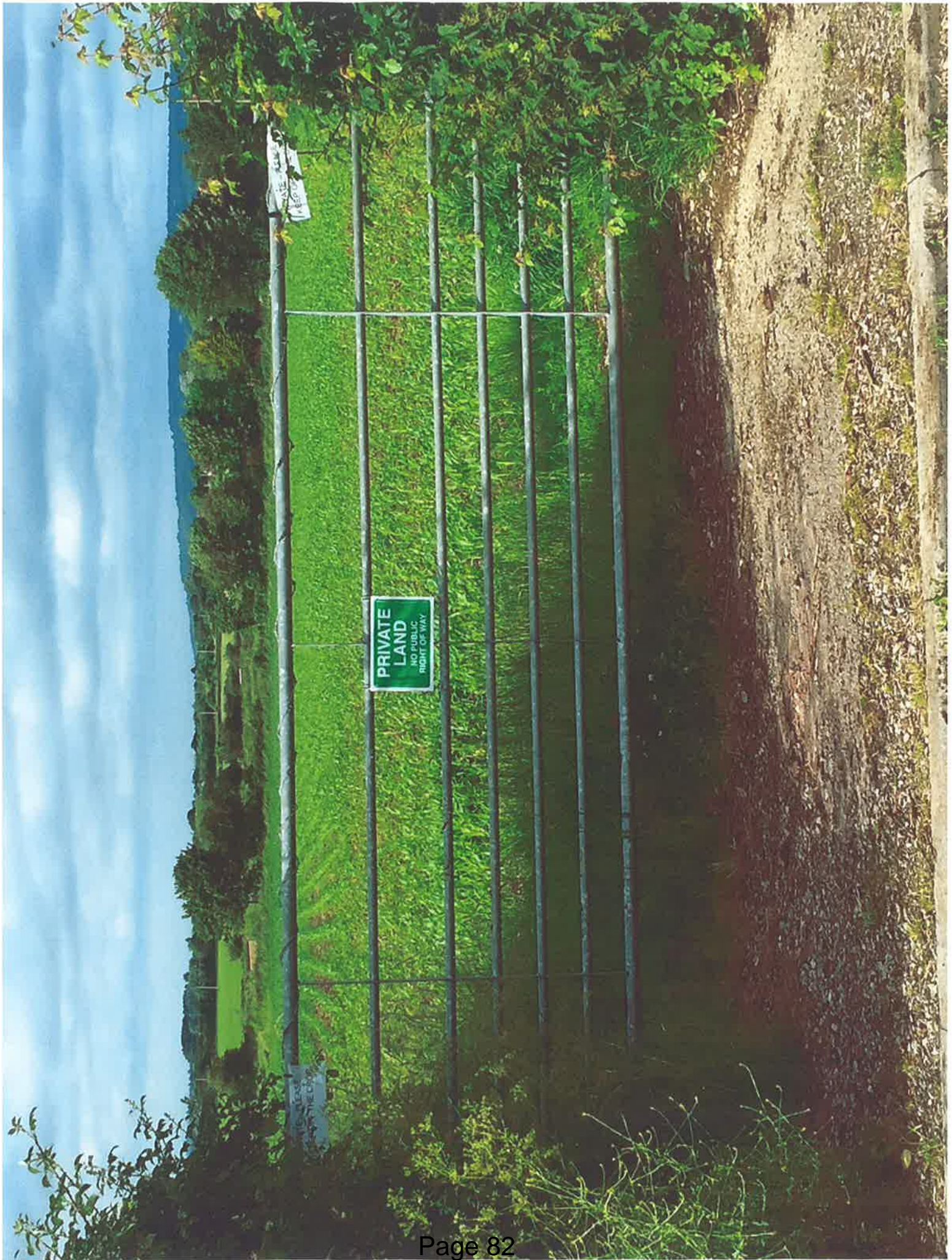
Pound Ln Semington

Back to Map

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

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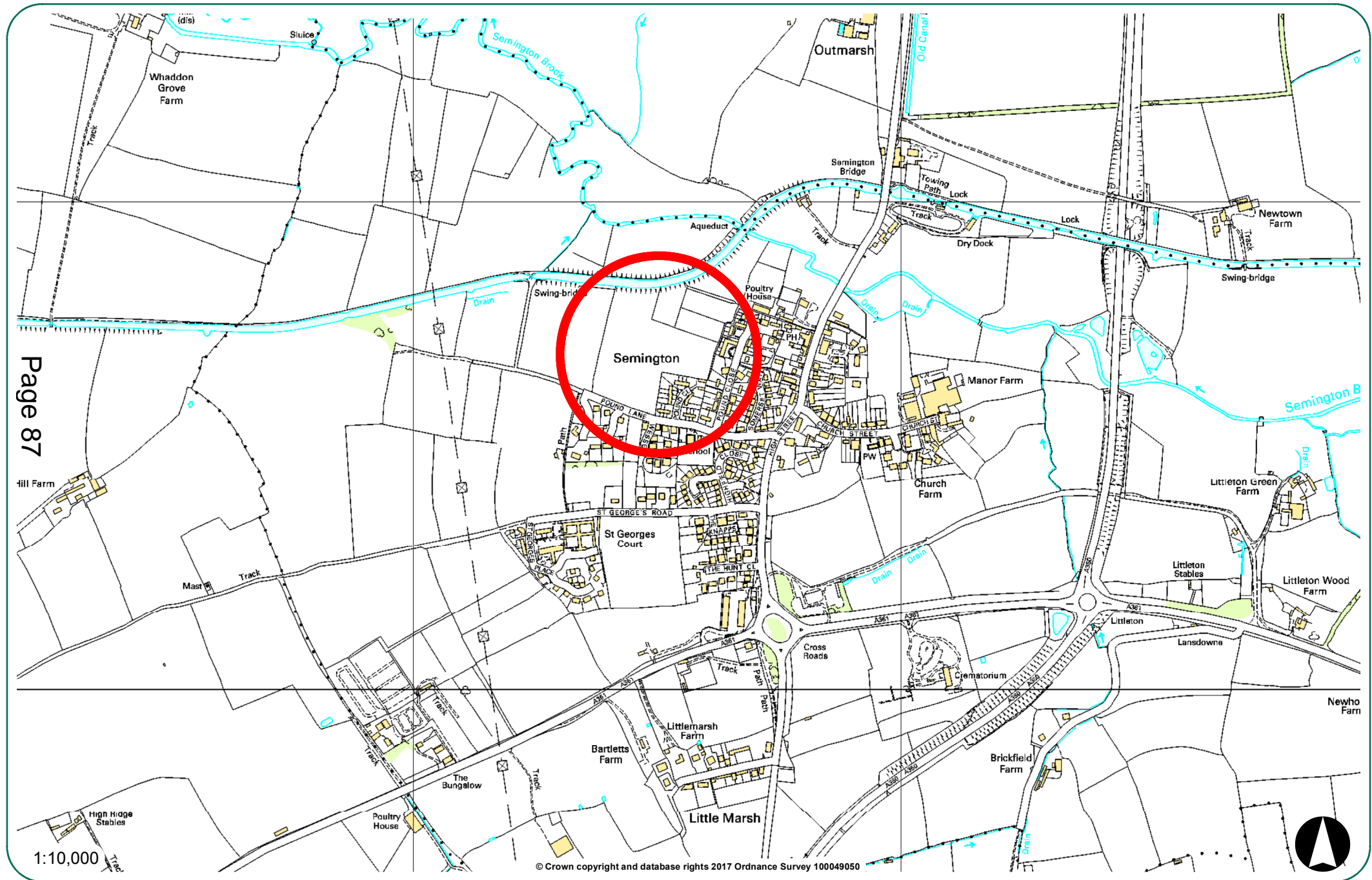




THE EVIDENCE

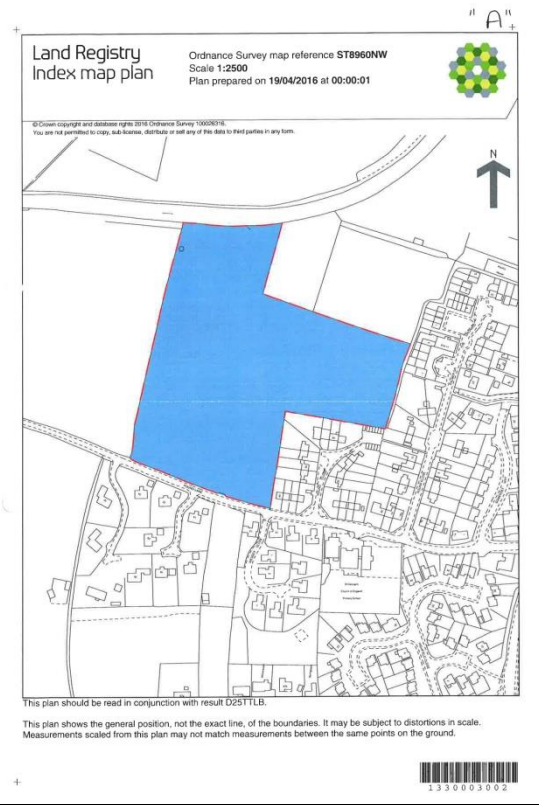
[Please note that the application is accompanied by 66 completed witness evidence forms, too numerous to be published with this reports. The completed witness evidence forms are available to be viewed at the Offices of Wiltshire Council - Rights of Way and Countryside, Unit 9, Ascot Court, White Horse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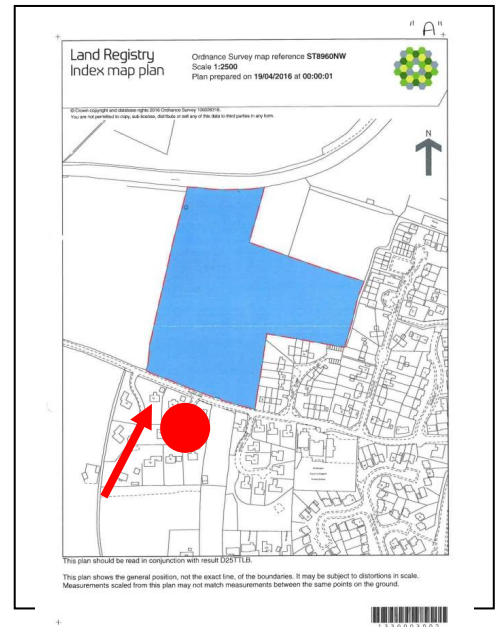
4. Application Plan



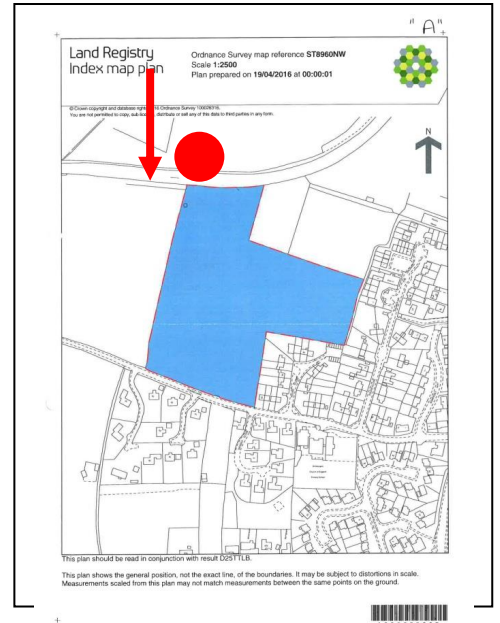
5. Photographs



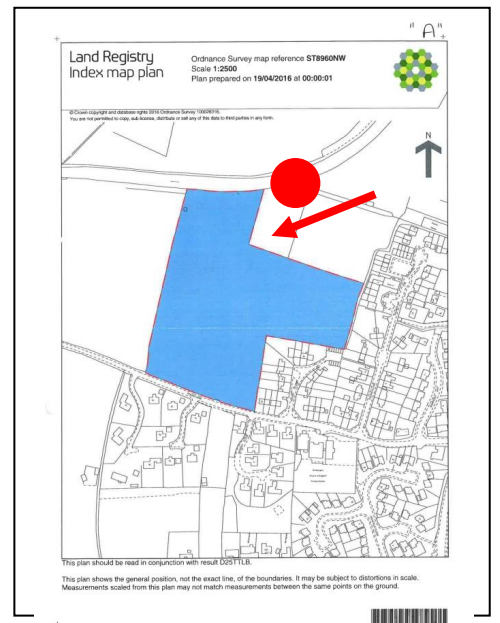
Pound Lane gate



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

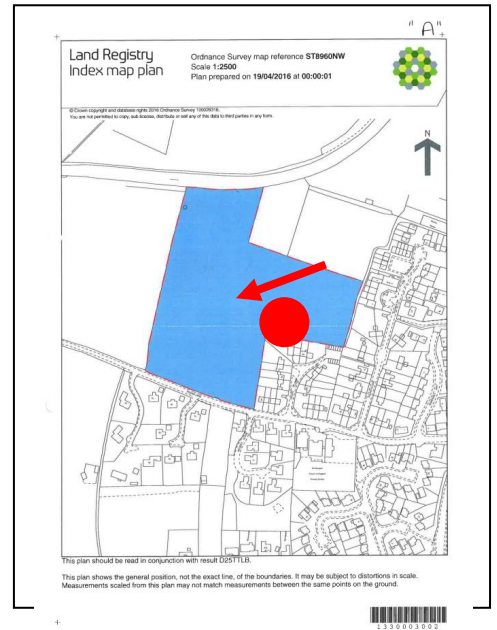
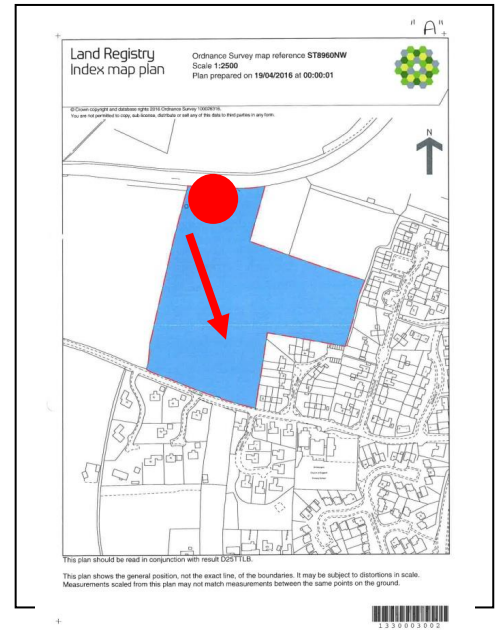


Stile on Footpath no.1 Semington (north-west corner of Great Lees Field)

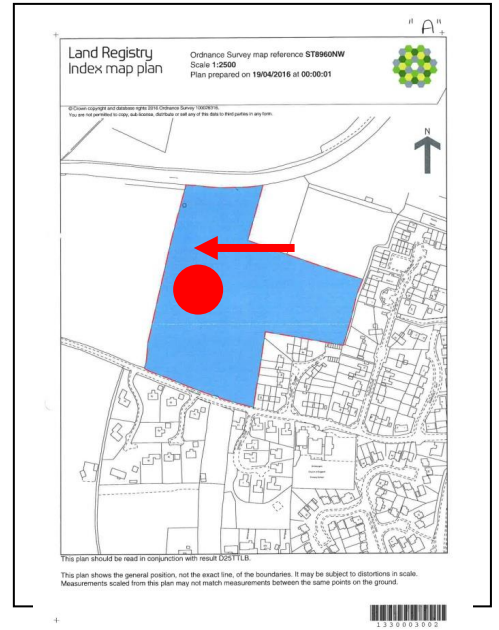


Stone stile on Footpath no.1 (north-east corner of Great Lees Field)

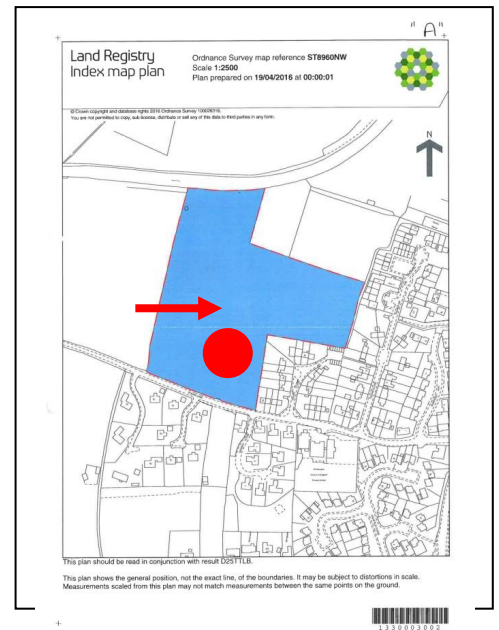
Commons Act 2006 – Sections 15(1) and (3) – Application to Register Land as a Town or Village Green – Great Lees Field, Semington



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

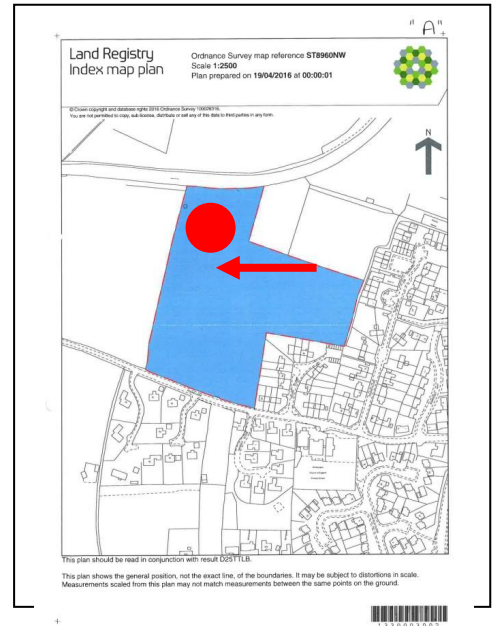


Access point in western field boundary (now fenced – site visit October 2016)



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
■ Pound Lane
Semington
Trowbridge
Wiltshire
BA14 6 ■

Mr Jon Jonik
■ Pound Lane
Semington
Trowbridge
Wiltshire
BA14 6 ■

Dr William Scott
■ Pound Lane
Semington
Trowbridge
Wiltshire
BA14 6 ■

8. Registered Landowners

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

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.

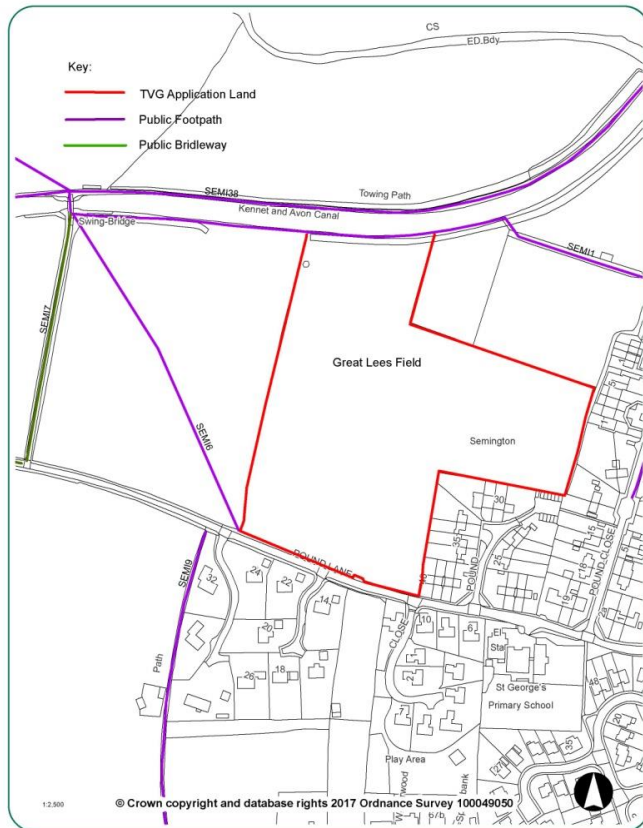
The data show that the use of Great Lees Field was both regular and frequent. 26% of respondents said they used it every day, 47% every week, and 12% every month. Over 30 different activities were identified. The most frequently cited were walking (with and without dogs), children playing, picking blackberries 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.

Great Lees Field Semington
Public Rights of Way



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:

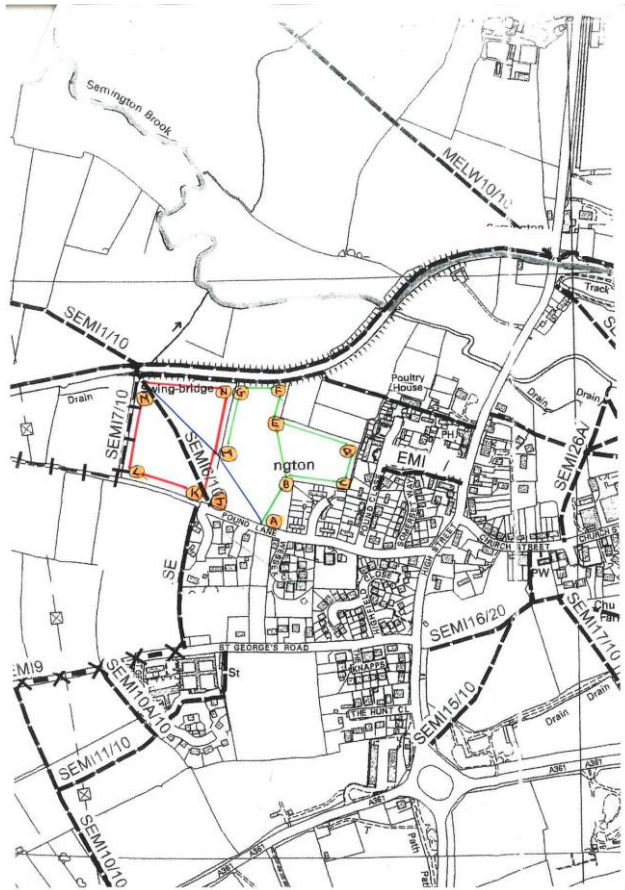
- 1) W/89/01008/OUT – Land west of Pound Close, Semington Wiltshire
Residential and ancillary development including land for community use.
Application registered – 30 May 1989
Decision 22 August 1989 – Refused

- 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

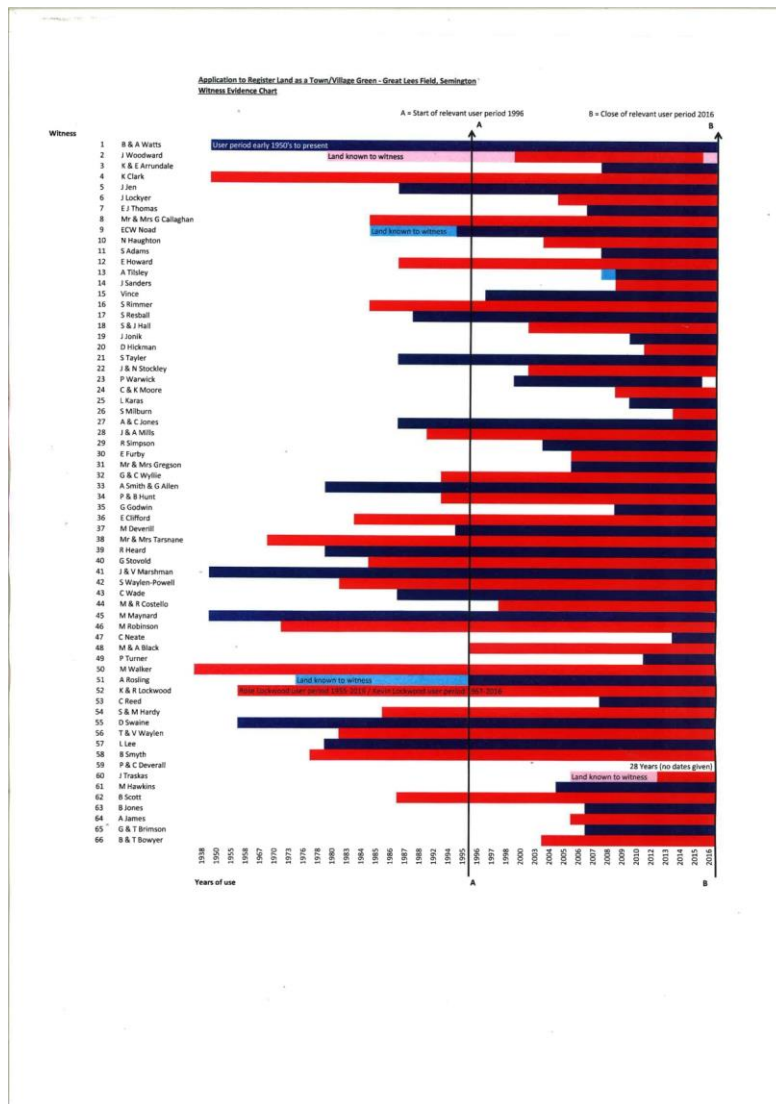
14.60. The map included with the witness evidence forms, already shows the area of Great Lees Field, i.e. the application land highlighted and witnesses have not individually annotated maps to record the area of land which they themselves have used. However, there is no evidence to suggest that any part 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

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

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.

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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

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			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

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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

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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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WILTSHIRE COUNCIL

COMMONS ACT 2006

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND
KNOWN AS 'GREAT LEES FIELD' AT SEMINGTON, Nr
TROWBRIDGE, WILTSHIRE AS A NEW TOWN OR VILLAGE GREEN**

Application number: 2016/02

Dated 7 February 2020

INSPECTOR'S REPORT

Introduction

1. I am instructed by Wiltshire Council ('WC'), acting in its capacity as commons registration authority ('CRA') under Part 1 of the Commons Act 2006 ('CA 2006'), which is the responsible authority for determining applications to register land as a new town or village green ('TVG') under section 15 of the CA 2006 (as amended). In fact the decision-making body within WC is the Western Area Planning Committee ('WAPC').
2. I was instructed by WC to hold a non-statutory public inquiry to enquire into the facts behind the application to register the application land ('the land') and to apply the relevant law to those facts in order that I might provide the WAPC with a report containing my recommendation on whether the application to register should be allowed or refused.
3. Accordingly, I gave directions for the holding of a public inquiry which was held over five days in the village hall at Semington on 15 – 17 October and 4 – 5 December 2019.
4. Participants at the inquiry

(a) The applicants for registration ('As') were Steven Hall, Jon Jonik and Dr William Scott who were represented by Horatio Waller, a barrister.

(b) The only objectors ('Os') were William Stuart-Bruges and his nephew Arthur Haythornthwaite in whose joint names the freehold title of the application land is vested. Os were represented by Ruth Stockley, a barrister.

I am indebted to these parties for their assistance and helpful submissions. I am also grateful for the administrative support provided by Janice Green and her colleagues on behalf of the CRA.

5. References in this report to A/1, O/1, CRA/1 and so on are to page numbers in, respectively, the inquiry bundles of the applicant, the objector and the CRA (which includes an unpaginated supplemental CRA bundle).
6. References in this report to P/1, P/2, P/3, P/4 and P/5 are to various documents attached to this report. P/1 shows the application land coloured red. P/2 is a map showing the boundaries of the Civil Parish of Semington (and incorporates the AL shown coloured blue and the names of streets within the village). P/3 is a plan produced by As showing the AL with perimeter access points. P/4 is an extract of the Definitive Map for the area. P/5 is the application map on the application made in April 2016 to add footpaths to the Definitive Map and Statement at Semington.

Legal framework

7. Section 15(3) of the CA 2006 (under which subsection, in its amended form, the application to register is made) enables any person to apply to register land as a TVG in a case 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 time of the application but after the commencement of this section; and

(c) the application is made within the relevant period of no more than one year before the date of the application.

8. One then has to look at the various elements of the statute all of which have to be made out to justify registration.

‘a significant number’

9. ‘Significant’ does not mean considerable or substantial. What matters is that the number of people using the land 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 (*R v Staffordshire County Council, ex parte McAlpine Homes Ltd* [2002] EWHC 76 at [64] (Admin) (Sullivan J)). In most cases, where recreational use is more than trivial or sporadic it will be sufficient to put a landowner on notice that a right is being asserted by local inhabitants over his land. See *Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438 at [31] (Sullivan L.J) and *R (Allway) v Oxfordshire CC* [2016] EWHC 2677 (Admin) where the court found that an inspector had properly concluded that the starting point had to be whether the recreational use relied was such as to suggest to the reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land.

‘of the inhabitants of any locality’

10. The term ‘locality’ is taken to mean a single administrative district or an area within legally significant boundaries. On this application the parties agreed that the relevant locality is the Civil Parish of Semington (P/2). As I am informed by As, according to the 2011 Census 930 people lived in the parish in 389 households (A/75). It is therefore unnecessary to concern ourselves with the existence of a qualifying neighbourhood.

‘have indulged as of right’

11. The traditional formulation of the requirement that user must be ‘as of right’ is that the use must be without force, secrecy or permission (the so-called ‘tripartite test’).

12. The rationale behind 'as of right' is acquiescence. In the first instance, the landowner must be in a position to know that a right is being asserted and, in the second, it must be shown that he has acquiesced passively in the assertion of the right. 'As of right' will be defeated if the landowner has either resisted or permitted the use. The nature of the inquiry is the use itself and how it would, assessed objectively, have appeared to the landowner. One first has to examine the use relied upon and then, once the use had passed the threshold of being of sufficient quantity and suitable quality, to assess whether any of the elements of the tripartite test applied, judging these questions objectively from how the use would have appeared to the landowner.
13. The issue of 'force' needs to be examined with some care as it is a material issue on this application. Put shortly, the applicable principles are set out below.
- (a) Use by force is not use as of right (*R v (Oxfordshire County Council ex parte Sunningwell Parish Council* (2000) 1 AC 335).
- (b) Forcible use does not require the use of physical force; use of land in the face of resistance by a landowner is forcible use, and not therefore use as of right (*R (Lewis) v Redcar and Cleveland BC* [2010] 2 AC 70, per Lord Rodger at [88]). It follows that use which is contentious and non-peaceable (even if not accompanied by physical force) amounts to use which is forcible.
- (c) The erection of a fence or a locked gate to enclose or secure land or the erection of a prohibitory notice will generally be such to render use forcible (see *Lewis* (above) and *Winterburn v Bennett* [2016] EWCA Civ 482).
- (d) Where a landowner takes steps to resist trespassory use through the erection of a fence, locked gate or a suitably placed prohibitory notice, the fact that those steps are disabled (through making gaps in a fence and/or removing locks or notices) will not negate the effect of those steps in terms of rendering use forcible (*Taylor v Betterment Properties Ltd.* [2012] EWCA Civ 250 per Patten L.J at [38] and at [60]-[63] – where he spoke of the principle

that rights of property cannot be acquired by force or by unlawful means). It follows that notwithstanding the fact that an individual trespasser may not himself/herself have broken a fence and/or forced an entry through a locked gate and/or removed a prohibitory notice, their use remains forcible. In other words, if prohibitory signage is not seen as it has been wrongfully removed then an applicant would not be entitled to rely on the evidence of users whose ignorance of such signage was due only to its removal in this way. In both cases the user would be non-qualifying.

(e) Provided steps taken by a landowner are sufficient to indicate that trespassory use is resisted, if those steps are interfered with or disabled, or ignored a landowner is not then required to take further steps to resist on-going trespass (*Winterburn v Bennett* (above) at [36]-[37]).

(f) It also follows that if use is rendered forcible by actions taken by the landowner before the commencement of the twenty-year qualifying period (which, in this instance, would have begun on 27 April 1996) trespassory use within the qualifying period will remain contentious unless or until there is clear evidence that a landowner has changed its position such that it is no longer contesting the use. The issue was addressed in *Winterburn v Bennett* which was a notice case. The notice in question had been erected before the commencement of the prescriptive period yet the CA held (see [37]) that that step remained sufficient to render use in the prescriptive period trespassory. Evidence of a landowner's change of attitude can be, for example, through the introduction of measures to facilitate recreational use such as the installation of a bench or a dog waste bin.

'in lawful sports and pastimes'

14. The expression 'lawful sports and pastimes' ('LSP') form a composite expression which includes informal recreation such as walking, with or without dogs, and children's play.
15. Difficulties arise where the predominant recreational use is that involving the use of paths (typically linear tracks around the perimeter or crossing a field)

such as would have appeared to a reasonable landowner to be referable to the exercise of existing, or the potential acquisition of new, public rights of way rather than rights sufficient to support a TVG registration. The matter has been addressed in *Oxfordshire County Council v Oxford City Council* [2004] Ch 253 at [102]-[103] and in *Laing Homes Ltd v Buckinghamshire County Council* [2004] 1 P&CR 36 at [102]-[110]. The guidance in these cases was approved by Lord Hoffmann in the *Oxfordshire* case at [2006] 2 AC 674 at [68].

16. In the *Oxfordshire* case at [103] Lightman J said this:

103. Three different scenarios require separate consideration. The first scenario is where the user may be a qualifying user for either a claim to dedication as a public highway or for a prescriptive claim to a green or for both. The critical question must be how the matter would have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a public footpath, user for recreational activities or both. Where the track has two distinct access points and the track leads from one to the other and the users merely use the track to get from one of the points to the other or where there is a track to a cul-de-sac leading to, e.g., an attractive view point, user confined to the track may readily be regarded as referable to user as a public highway alone. The situation is different if the users of the track, eg, fly kites or veer off the track and play, or meander leisurely over and enjoy the land on either side. Such user is more particularly referable to use as a green. In summary it is necessary to look at the user as a whole and decide adopting a common-sense approach to what (if any claim) it is referable and whether it is sufficiently substantial and long standing to give rise to such right or rights.

17. A helpful overview of these cases is to be found in the TVG report of Vivian Chapman QC in *Radley Lakes* (13/10/2007) at [304]-[305] who said that the main issue in such cases is whether the use would appear to a reasonable landowner as referable to the exercise of a right of way along a defined route or to a right to enjoy recreation over the whole of a wider area of land. If the appearance is ambiguous, then it shall be ascribed to a lesser right, i.e. a right of way.

‘on the land’

18. The expression ‘on the land’ does not mean that the registration authority has to look for evidence that every square foot of the land has been used. Rather

the registration authority needs to be satisfied that, for all practical purposes, it can sensibly be said that the whole of the land had been used for LSP for the relevant period, always bearing in mind that qualifying use will be heavier in some areas than in others (*Oxfordshire* [2004] Ch 253 at [92]-[95]). Where areas of the AL are shown not to have been used for LSP (and the whole of the AL is, in this instance, accessible to walkers) the question is whether the whole of the AL is still registrable. One answer to this may be whether the unused areas can be said to be integral to the enjoyment of the land as a whole. On the other hand, the registration authority does have a power to sever from the application those parts of the land where qualifying use may not have taken place, either at all or not for the full period.

‘ ... for at least 20 years ..’

19. The relevant 20 year period in this case ends, at the latest, on the 27 April 2016 when the AL was ploughed.
20. Qualifying use has to be continuous throughout the 20 year period (*Hollins v Verney* (1884) 13 QBD 304). However, temporary interruptions in use are not to be equated with a lack of continuity. It is essentially a matter of fact and degree for the decision-maker to determine whether the whole of the land has been available for LSP throughout the 20 year period. In *Taylor v Betterment Properties (Weymouth) Ltd* [2012] EWCA Civ 250 at [71] Patten L.J said this:

... there must be a physical ouster of local inhabitants from the land and the disruption must be inconsistent with the continued use of the land as a village green. If the two competing uses can accommodate each other (as they did in *Redcar (No 2)*) then time does not cease to run. But here the exclusion was complete and the use of the land for the drainage scheme was not compatible with it remaining in use as a village green. The judge was therefore correct in my view to hold that there had not been twenty years' user of the works site.

In *Taylor* there was an issue arising from the public's exclusion from part of the land for around four months and it was found that an interruption of this duration was sufficient to stop time running in relation to such land. The same principle is equally applicable to periods when qualifying use was interrupted at a time or times when use could not have been exercised 'as of right'.

21. On this application there is an issue of competing uses arising from the use of the AL for low-level farming activities. The law is now clear about this, namely that where the recreational uses are not displaced or excluded by, or incompatible with, the owner's use in the qualifying period they would generally still be regarded as qualifying for TVG. The question posed in *R (Lewis) v Redcar & Cleveland BC (No.2)* [2010] 2 AC (in the context of rights after registration) was whether it was possible for the respective rights of the owner and of the local inhabitants to co-exist with give and take on both sides. If the two uses could not sensibly co-exist at all then it may very well give rise to a material interruption in the LSP. In *TW Logistics Ltd v Essex CC* [2018] EWCA Civ 2172 (again in the context of an argument on continuing use after registration) the court accepted the finding at first instance that the competing uses had co-existed during the qualifying period which it was found was essentially a question of factual evaluation.

22. It is perhaps also worth recalling that in the *Oxfordshire* case Lord Hoffmann said this at [2006] 2 AC 674 at [57]:

... I do not think that either Act was intended to prevent the owner from using the land consistently with the rights of the inhabitants under the principle discussed in *Fitch v Fitch* (1798) 2 Esp 543 . This was accepted by Sullivan J in *R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] 1 P & CR 573 , 588. In that case the land was used for 'low-level agricultural activities' such as taking a hay crop at the same time as it was being used by the inhabitants for sports and pastimes. No doubt the use of the land by the owner may be relevant to the question of whether he would have regarded persons using it for sports and pastimes as doing so 'as of right'. But, with respect to the judge, 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.

Procedural issues

23. The regulations which deal with the making and disposal of applications by registration authorities outside the pilot areas make no mention of the machinery for considering the application where there are objections. In particular no provision is made for an oral hearing. A practice has, however, arisen whereby an expert in the field is instructed by the registration authority

to hold a non-statutory inquiry and to provide an advisory report and recommendation on how it should deal with the application.

24. In *Regina (Whitney) v Commons Commissioners* [2004] EWCA Civ 951 Waller L.J suggested at [62] that where there is a serious dispute, the procedure of

conducting a non-statutory public inquiry through an independent expert should be followed almost invariably.

However, the CRA is not empowered by statute to hold a hearing and make findings which are binding on the parties. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs. However, the registration authority must act impartially and fairly and with an open mind.

25. The only question for the CRA is whether the statutory conditions for registration are satisfied. In its determination there is no scope for the application of any administrative discretion or any balancing of competing interests. In other words, it is irrelevant that it may be a good thing to register the application land as a TVG on account of the fact that it has been long enjoyed by locals as a public open space of which there may be an acute shortage in the area.
26. The onus lies on the applicant for registration and there is no reason why the standard of proof should not be the usual civil standard of proof on the balance of probabilities.
27. The procedure in this instance is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.
28. The prescribed procedure is very simple: (a) anyone can apply; (b) unless the registration authority rejects the application on the basis that it is not 'duly made', it proceeds to publicise the application inviting objections; (c) anyone can submit a statement in objection to the application; and (d) the registration authority then proceeds to consider the application and any objections and decides whether to grant or to reject the application.

29. It is clearly no trivial matter for a landowner to have land registered as a TVG and all the elements required to establish a new green must be 'properly and strictly proved' (*R v Suffolk CC ex p Steed* (1996) 75 P&CR 102 at p.111 (Pill L.J) and approved in *R (Beresford) v Sunderland City Council* [2003] UKHL 60 at [2] (Lord Bingham)).

Consequences of registration

30. Registration gives rise to rights for the relevant inhabitants to indulge in LSP on the application land.
31. Upon registration the land becomes subject to (a) s.12 of the Inclosure Act 1857, and (b) s.29 of the Commons Act 1876.
32. Under s.12 of the Inclosure Act 1857 it is an offence for any person to cause damage to a green or to impede
the use or enjoyment thereof as a place for exercise and recreation.
33. Under s.29 of the Commons Act 1876 it is deemed to be a public nuisance (and an offence under the 1857 Act) to encroach or build upon or to enclose a green. This extends to causing any
disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green.
34. Following registration a landowner is not prevented from using his/her land altogether and retains the right to use it in any way which does not interfere with the recreational rights of the inhabitants, nor, for that matter, can the inhabitants' rights to use the green after registration interfere with the competing activities of the landowner to a greater extent than during the qualifying period (*R (Lewis) v Redcar and Cleveland Borough Council* [2010] 2 AC 70).
35. Accordingly, it follows under both Acts that development is prevented.

Description of the application land and surrounding area

36. The land is situated on the western side of Semington just outside the settlement boundary. It is edged in red on P/1 and coloured blue on P/2 on the map on which the civil parish boundaries are also edged in red. The land extends to around 4ha or nearly 10 acres and slopes downwards from south to north with extensive views to the north and the west off Pound Lane. The land has no current public access although the public footpath SEMI/1 runs along the towpath on the southern side of the Kennet & Avon Canal. Pound Lane runs along the southern edge of the land. Vehicular access into the land from Pound Lane is obtained via a substantial metal gate which is currently locked and chained and has barbed wire threaded around the top of seven cross-bars. I was told that this gate has been locked since the land was ploughed on 27 April 2016.
37. The footpath SEMI/6 crosses the field immediately to the west of the land ('the Masters' field') where there is a swing bridge over the canal and is an attractive destination for walks. The Master's field is ordinary grazing land and is probably how the land would have appeared before it was ploughed. The popular canal towpaths (SEMI/1 and MELW/16) run alongside the canal. Bridleway SEMI/7 is slightly further west and meets the public rights of way ('PROW') at the canal swing bridge to the west of the land.
38. I had an accompanied view of the land and general neighbourhood on the afternoon of 17 October 2019. After a short diversion along SEMI/26 (on the eastern side of High Street), our walk on the western side of the High Street took us along SEMI/1, beginning at the bottom of the High Street, close to the Somerset Arms, took us along a narrow track past the end of Pound Close and the paddock and the northern end of the land (crossing two stiles in the process) before arriving at the swing bridge. We not only walked around the perimeter of the land but also walked back to Pound Lane across the Masters' field to the west of the land (which is a fairly well-worn track) where, at the Pound Lane end, there is a somewhat dilapidated farm gate with a stile alongside. It is plain that the land separates the canal from the built up area of the village and that when viewed from the canal the land has a tranquil and rural character. The planning inspector said as much in his decision letter at CRA/1112 (para 27).

39. There are really only two man-made features on the land. Firstly, overhead electricity wires run across the field with a pylon standing virtually in the middle of the field. Secondly, there is a much decayed and overgrown WWII pill box located on the north-east side close to the crossing into the Masters' field on the western side (this is classified as a non designated heritage asset and as such must still be taken into account on planning applications whereas the Semington Aqueduct, which carries the canal over Semington Brook to the north-west of the AL, is a grade II listed structure). The rest of the land is now under cultivation. The land is flat and featureless as its slopes down from Pound Lane and there are no worn tracks running within or around the field.
40. The boundaries of the land are either fenced or consist of traditional field hedgerows. The fencing on the eastern side, where it abuts Pound Close, consists of posts and barbed wire (two strands) which is set into the land by around a meter or so from a mix of the concrete mesh and other styles of fencing running around the edges of the nine gardens which border the land. If reference is made to P/3 there is a very helpful plan produced by As where the number 7 denotes those properties which have gates which lead directly into the land which can no longer be used because of the new fencing erected by Os which precludes all access into the field other than by way of the informal track at the northern end which leads into the Master's field. If one again refers to P/3 there are access points into the land denoted at points 4, 5 and 6. There are stiles at points 4 and 6. The one at point 4 is wooden (see top photo and accompanying location plan on CRA/942) whereas the other at point 6 is a stone structure (see bottom photo on same page with its accompanying location plan) and the land is open and accessible between these points. There is a short but relatively steep embankment on the southern side of the canal upon which there is a good deal of impenetrable undergrowth which is likely to preclude access to the canal directly from the edge of the land and the Masters' field on the western side belongs to Julia Masters and her brother Thomas Masters who are local farmers and whose farm () we observed at a distance on the eastern side of High Street as we walked a short way along SEMI/26.

41. There are traditional field hedges elsewhere along the eastern boundaries as well as along the western boundary and it is certainly possible to walk unhindered around the entire perimeter of the field. The southern boundary alongside Pound Lane also comprises a substantial hedgerow with a single gateway. Just inside this gateway, on the eastern side, there is a solitary rusted angle iron (which is of some age and is certain to be embedded in concrete as it was impossible to move it) which cropped up in the oral evidence and can be seen in the photos which I took on my accompanied view which will be found in the supplemental CRA bundle (with the reference RA/3 noted on the top right hand corner of six documents). The angle iron also appears at CRA/593 where there is a photo taken by Sally Madgwick, a WC Rights of Way officer, on 28 April 2016, showing the angle iron and the newly ploughed field in the background with the gate's closing mechanism holding the gate firm against the angle iron (rather than the main gate post on this side) leaving a gap of around 2-3 feet enabling pedestrians to walk through into the field if they wanted. Another picture was taken by a Mr and Mrs Hall of the same gate being held firm against the angle iron on 8 April 2016 (O/158). However, the same gate is properly secured to a gate post in another photo taken by them on 5 May 2016 (O/156) to which they refer in their email dated 21 May 2016 (O/155) as a 'new gate post'.
42. If one again refers to P/3 one can see at point 2 the location of what at one time had been an opening in the hedge some 20m to the north of Pound Lane. No such gap currently exists. At point 3 on P/3, running some 90m north of Pound Lane, there used to be a gateway in the hedgerow. On my visit I observed a narrow gap in the hedgerow at this point which had been filled by some rough and ready mesh fencing which at one end was, as I recall, attached to a movable post in the same manner as the former *Wiltshire gate* which I was told used to exist at this point. One can see a gate post on the northern side of this gap in the western hedgerow in the photos at O/201 which form part of the officer's decision report on the DMMO applications to which reference will be made later.
43. The accompanied site visit also took in the children's play area off Wessex Close which is close to the Pound Lane gateway into the land, and what was

referred to as the 'Motel Field' which is another area in which dogs might be walked in safety which is located on the southern side of the village close to the A361 roundabout which is the main access point for vehicles entering and leaving the village.

44. In the result, in the 20 year period ending on 27 April 2016 access into the land would have been available to local inhabitants via (a) the Pound Lane gateway; (b) the gateway in the western hedgerow; (c) a smaller gap within the same hedgerow much closer to Pound Lane; (d) the PROW on the northern boundary (SEMI/1) (where there are stiles on both sides of the field); and (e) in the gates at the rear of dwellings in Pound Close.

The material history of the AL

45. The land is jointly owned by Os. It appears from the oral evidence of William Stuart-Bruges ('WS-B') that the land belonged to his grandmother who died in 1956 (she had acquired the land in 1951). In 1954 the land (which had been reduced by 1.34 acres following a sale for public housing) passed to his father who died in 1984 following which the land passed (in, I think, 1987) to his four children in unequal shares. In 2015 the land was registered (under title number WT414792) and the title became vested in Os who hold on trust for the Stuart-Bruges' siblings. The trusteeship arose in consequence of capacity issues affecting the elder sister's interest.
46. The land was tenanted for many years by a local farming family, the Masters of ██████████ in Semington. Between 1951 and 1987 the land was subject to an agricultural tenancy held by William Masters which ran from year to year (O/83-85). However, after 1987, there were a series of annual seasonal grazing licences involving the Stuart-Bruges' siblings (with the exception of the licence for 1988 when a Mr David Morris, most probably a Salisbury solicitor, participated in the licence jointly with WS-B in their capacity as owners of the land) and members of the Masters' family. From and after the 2002 season Julia and her brother Thomas Masters were the licensees whereas before this time Helen Masters, presumably their mother, had also been a joint licensee in what would have been a family farming partnership.

These licences will be found at CRA/761- 858 and end with the licence for the 2015 season.

47. In each licence the 9.62 acre parcel is occupied for grazing or mowing for periods of less than a year ending on 25 December in each year. The licensee is responsible for looking after the land and keeping the gates and fences in good order. In the 1988 season (CRA/763) one observes a covenant which required the licensee not to permit any trespass on the land (c.6(a)). By the time we get to the licence in 2003 this obligation had extended to a requirement to keep the gate (meaning the gate off Pound Lane) 'closed and locked' (CRA/812). I also observe from the licences for the seasons in 1989, 1995, 2003 and 2015 that of the four Stuart-Bruges siblings, only WS-B was resident in the UK and he lived at addresses Nr Salisbury, Warwickshire and in Hampshire. We are, therefore, not dealing with a landowner living close to the land but with absent landowners.
48. A joint statement by Julia Masters and her brother Thomas is produced by Os (O/51-53) although neither of these parties gave oral evidence (a matter with which I will also deal with later). It is of interest that the statement says that from the late 1980s to the early 1990s the land (which they call 'Big Lees Field') was grazed by cattle when they say that they visited the land on a daily basis to check on their cattle. It was thereafter used for silage and hay when they say that their visits to the land were only occasional. They also say that the land was not used in 2000 and that it was sprayed in the 1980s. They say signs were put up indicating that the land had been sprayed. The last grazing licence was for the 2015 season (CRA/858) and the obligation to prevent trespass and to keep the gate on Pound Lane 'closed and locked' continued to the end.
49. On 26 April 2016 an application was made by Peter Smith of ■ The Hunt Close, Semington to add three footpaths to the Definitive Map and Statement ('DMS') at Semington. The application plan will be found at P/5 from which it will be seen that perimeter paths were being sought around the Masters' field and around most of the land (less a short stretch on the western boundary). The third path claimed was a linear path commencing at the Pound Lane gate

leading into the land and running west through the gateway at point 3 on P/3 and continuing across the Masters' field joining up with SEMI/6 just short of the swing bridge over the canal. The application to so modify the DMS failed and the decision report of Sally Madgwick dated 27 September 2016 will be found at CRA/581. Ms Madgwick's report recommends that the application to modify the DMS should be dismissed, which recommendation was duly accepted by WC and was not appealed. In her lengthy report Ms Madgwick considered that (a) there was insufficient evidence to justify the application in the case of the claimed route coloured red on P/5; (b) that there had been an interruption in the use of the routes coloured blue and green on P/5 prior to the elapse of 20 years before the right had come into question in April 2016; and (c) the fact that any user via the Pound Lane gateway had been non-qualifying as it had been non-peaceable owing (as she found at para 29.4 of her report – see CRA/633 – top of page):

... to the locking of the gate and subsequent damage to it.

50. Ms Madgwick's report contains a number of useful photos. I shall deal with the aerial photos later but those at CRA/590-596 were taken on her visit to the site on 28 April 2016. For instance, we can see that there was an established gateway at point H on P/5 (and at point 3 on P/3) between the land and the Masters' Field. There are also several photos of the land after it had been ploughed on 27 April 2016 which, as I understand it, was the day after Mr Smith's application had been made to modify the DMS. The report also contains a reference to the evidence and photos of Mr and Mrs Hall (CRA/600-602) of which mention has already been made and discloses that the main gate into the land would have been locked by 8 April 2016 with the field being ploughed on 27 April 2016 with, as is claimed by the Halls, the installation of a new gate post against which the gate could be properly secured by 5 May 2016. This entry point into the land is of critical importance to the application to register the land as a TVG as it is claimed in the statement accompanying the TVG application that some 80% of those known to have used the land entered it by means of the Pound Lane gateway (A/79).

51. On 3 February 2017 Richborough Estates applied to WC for outline planning permission to erect a total of 75 residential units on the AL (O/1147) (incorporating ancillary public open space, play areas and access from Pound Lane). The application was refused by WC on 7 October 2017 and an appeal determined by an Inspector appointed by the Secretary of State was dismissed in a decision letter running to 39 pages dated 14 December 2017. The public inquiry lasted for 14 days. In the course of the inquiry the appellant amended its application to increase the proportion of affordable housing to 40%. There were a number of objections to the application and the view taken by the inspector was that the proposal would not represent sustainable development whose benefits, with other material considerations, did not outweigh the significant harm to the character and setting of Semington or otherwise justify a departure from the development plan.

Application to adjourn

52. Shortly before the start of the resumed hearing on 4 December 2019 (Day 4) the CRA received an agreed joint note dated 27 November 2019 from counsel acting for As and Os (to be found at the end of the supplemental CRA bundle) in which the CRA was invited to adjourn the public inquiry to a date 'not before the beginning of March 2020'. The note invited the CRA to make an urgent decision in order that the parties might know whether their attendance was required at the resumed hearing on 4-5 December 2020.
53. I was consulted about this by the CRA and it was my recommendation that an adjournment of the public inquiry should not be permitted on public interest grounds and a reasoned letter was sent both parties on 29 November 2019 notifying them of WC's decision. The parties were also informed that if they wished to renew their joint application to adjourn they could so at the resumed inquiry which was then less than a week away and where all necessary arrangements had been made and publicised in advance.
54. The reason given for the requested adjournment was that the parties had reached agreement in principle that the application would be withdrawn in exchange for (amongst other things, about which I was given no details) for a dedication of a footpath around the perimeter of the land. It was suggested

that an adjournment would give the parties time to work out the details of the suggested agreement (which, it is said, they expected to reach) and that to continue the inquiry might frustrate the ability of the parties to secure an amicable settlement. It also seemed to me that the Rights of Way team at WC would need to be brought into these negotiations in order to see whether they were minded to support any proposal by the landowner to dedicate land as a public right of way in view of their powers under the Highways Act 1980.

55. The CRA has a discretion whether to allow an adjournment in much the same way as it has a discretion to allow an application to be withdrawn before it has been determined. Where it would be reasonable to allow an application to be withdrawn the discretion will no doubt be exercised in favour of the withdrawal. Much will depend on the context which might include the prospects of the application succeeding in law and the measure of support which it enjoyed within the local community. In this case we were about to begin day four of what proved to be a five day inquiry in what is a well-supported application. In such circumstances (unlike in private law litigation) there is, as it seems to me, an obvious legitimate public interest in the application being determined in order that the status of the land might be determined rather than being left in a state of limbo.
56. The inquiry was told that As had contacted 'a number of people' who had submitted completed evidence questionnaires and that there had been a meeting which approved the application for an adjournment. There was no suggestion that everyone, or at least an overwhelming majority of those who had lodged written evidence, had signified their consent to the proposed adjournment although a number of them clearly had.
57. I invited submissions on the application to adjourn at the start of Day 4 and the matter was also discussed privately by myself with officers of WC who attended the hearing. It was my recommendation that the application should be rejected and that the inquiry should continue (which it did) which was the unanimous view of these officers which I later communicated to the parties in open session. In my remarks I noted (a) that there was a wider public interest in seeing the application through to a conclusion now that we were part way

through the inquiry (and by that stage 12 witnesses supporting the application had already given oral evidence); (b) that the CRA had not been presented with evidence that the overwhelming majority of those who supported the application to register had agreed to the proposal to adjourn; and (c) that by adjourning the inquiry to March or even April 2020, whenever it could be re-fixed to suit the convenience of the parties and their witnesses, it would mean that there would potentially be a gap of around 6 months before the inquiry resumed which made it extremely difficult for the Inspector who was obliged to make findings on the earlier evidence.

58. It is my view that the application to adjourn was, in the exercise of their undoubted discretion in the matter, rightly rejected by the CRA.

The failure of Julia Masters and Thomas Masters to appear and give oral evidence at the public inquiry

59. It concerned me when I was informed by Os that Julia and Thomas Masters had refused to attend the inquiry to give evidence. Although it is clearly no function of the CRA to assume any control over the evidence given by the parties, it seemed to me to be necessary to enquire into the steps taken by Os to obtain the agreement of these witnesses to give evidence on matters which were clearly of the first importance to the outcome of the application and with which they would have been very familiar in view of their close association with the land over many years. Indeed, on my accompanied site visit I was told that a tractor travelling past the land was in fact being driven by Thomas Masters whose home is only a short walk from the inquiry venue. I therefore invited Miss Stockley to seek instructions with a view to clearer evidence being given about the steps taken to secure the presence of Julia and her brother Thomas Masters at the inquiry.
60. In the event, at the resumed hearing Os produced a letter to the inquiry dated 2 December 2019 from Os solicitor, namely Matthew Scudamore of Gately LEGAL, detailing the efforts which had been made by his firm to secure evidence from Julia and Thomas Masters (I have taken the liberty of adding this letter at O/438E(i)-438E(ii)). The letter noted that the writer had first

visited Miss Masters at her home on 5 July 2016 to discuss her evidence in response to the DMMO applications. Subsequent efforts to speak to her again did not prove fruitful until Mr Scudamore received a telephone call from the Masters' solicitors in Stratford-upon-Avon who informed him that she was not, as he put it:

... prepared to provide any evidence in respect of Great Lees Field (although she did submit a letter to Wiltshire Council in respect of alleged rights of way affecting her own field.

61. Mr Scudamore goes on to say that once the date of the inquiry had been fixed his firm chased the Masters' solicitors (whom he had been informed were still acting for Miss Masters) on twelve occasions between August and October 2019 with a view to securing evidence from her for use at the inquiry. Eventually, on 4 October 2019, Miss Masters provided a joint statement bearing that date which will be found at O/51 and to which reference has already been made. Thereafter Mr Scudamore repeatedly tried to secure the attendance of Miss Masters and her brother at the inquiry until, on 18 November 2019, he was informed by Miss Masters' solicitors that she would not be attending the hearing.

62. Mr Scudamore also notes that WS-B also tried to get Miss Masters to provide evidence and he evidently met her in June/July 2018 but his efforts were not fruitful.

63. Mr Scudamore concludes his letter by saying this:

Given that Ms Masters has repeatedly refused to provide evidence at a hearing, as confirmed by her solicitors, unfortunately I do not consider that there is anything further that can be done to secure her appearance at the hearing on 4 December 2019.

64. I accept such evidence which was, I think, quite rightly not challenged at the inquiry by Mr Waller. In the event, written and oral evidence was produced by Os from other witnesses at the resumed hearing.

Aerial photographs (to be found in supplemental CRA bundle and online)

65. We start with the image from Google earth for 2001 which is undated although the grass looks to have been recently cut. There are obvious linear tracks

leading from the Pound Lane gate and from 32 Pound Close across the field to the gateway at point 3 on P/3. There is also the feint sign of a track around the eastern perimeter but with much clearer signs of usage on the northern boundary in line with SEMI/1. On the face of it, local inhabitants appear to be using the Masters' field as a main crossing point to the swing bridge via the stile on Pound Lane. The 2001 image shows heavy use of the perimeter on the eastern and northern boundaries and a feint cross field path from point 3 on P/3 joining up with the main track crossing the Masters' field which is SEMI/6.

66. The image for 2006 is broadly similar but the effect is lessened by recent mowing. The image for 2014 is not very clear. All that one can see with any clarity on the land is the linear path between the Pound Lane entry and point 3 on P/3 on the western boundary. The inquiry would have been greatly assisted by year to year aerial images from a professional source.
67. To be fair to As, I looked online at a fuller assembly of the pre-2016 aerial imagery. This included an image from 2002 which is much the same as described above for 2001 but with the addition of a track leading from point 2 on P/3 (the second gap in the western hedgerow of which there is no longer any evidence) up to the cross field track running out from 32 Pound Close. There are also very feint tracks in the eastern corner which are very probably associated with the use by two of those dwellings which have gates onto the land. There is also an image for 2014 which is none too clear either but one can see the linear paths from the Pound Lane gate and from 32 Pound Close which lead to point 3 on P/3. The image for 04/2015 does not really have sufficient clarity to work with and the image for 08/2016 post-dates the ploughing but shows a number of trenches associated with archaeological investigation prior to the planning application made in 2017.

Applicants' evidence

Written evidence

68. The submission accompanying the application sets the scene for the initial evidence gathering in the form of the 66 completed evidence questionnaires. I

could not do justice to As submission by summarising it and have therefore decided to set it out in full below.

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

17.

- 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 was 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.

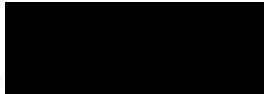
It is important here to note that complete access to the field has never been made impossible by all entry points (or entry discouraged through notices). Even when the Pound Lane gate was shut to prevent vehicles getting into the field, access through other means (the gateway in the western boundary 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.

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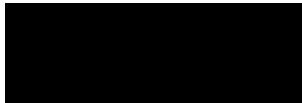
This application is submitted to Wiltshire Council by the undersigned, who are members of the small group of villagers informally known as *The Friends of Great Lees Field*, and who acknowledge the vital support provided by the Semington village community in making this submission.



Steven Hall



Jon Jonik



William Scott

June 24th 2016

69. A number of points can be flagged up from As 'Justification' document.
- (a) The user relied on is, as one might expect, predominantly that of walking, with or without dogs, together with children's play.
 - (b) There is ample user covering the requisite 1996-2016 period: one person claims to have used the land from the late 1930s, six from the 1950s, four from the 1970s, nineteen from the 1980s, eight from the 1990s, twenty-two from the 2000s and six more recently.
 - (c) There has been occasional parking over the years for community events with the consent of the Masters which is not inconsistent with the use of such land as a TVG.
 - (d) It is claimed that the erection of prohibitory notices at the time of the ploughing (and later) was the first time anyone had seen such notices.
 - (e) It appears to be accepted that the Pound Lane gate was occasionally locked (although it is not entirely clear whether it is accepted that this occurred in the 1996-2016 window) and the reasons cited for this involve a risk of incursion by travellers or at times when the field was being sprayed (the Masters allude to spraying in their parents' time in the 1980s when signs were evidently erected indicating that the field had been sprayed) or when cattle were in the field (which the Masters also say in their joint statement had lasted until the early 1990s), neither of which, in my view, would have been inconsistent with TVG use or indicative of an implied licence in favour of local inhabitants.
 - (f) Although As submissions and returned evidence questionnaires go into detail about most things such as why and how often the land is used and what others get up to on the land, there is next to no detail given as to precisely where on the field users go when they get there.
 - (g) It is alleged that 80% of users access the land via the Pound Lane gate which, for this to happen, is presumably either left open or else is opened by users or even climbed over if it is locked as the hedgerow appears, at least for

most of the time, to have grown hard up to the gate on either side leaving no gaps for unhindered access (A/93).

(h) The preamble to the evidence questionnaire is, in my view, a positive invitation to those looking to prevent development to subconsciously exaggerate their use of the land in order to achieve this end.

70. At this point I should also mention the comprehensive analysis of the user evidence drawn up by Janice Green, WC's Rights of Way Officer, in her helpful decision report dated 1 December 2017, to the WAPC which recommended that the application should be taken forward to a non-statutory inquiry. The five appendices to this report contain an extremely thorough audit of the contents of the 66 evidence questionnaires which it would be difficult for me to improve upon (see CRA/1044-1060).

71. A small selection of photographs accompanied the application. We can see what the land looked like before it was ploughed in a number of them (see Supp/CRA/34 (not in As bundle), A/90-91 (2016), A/90 (May 2009) and A/93 (May 2009) from which it is plain that the land would have accommodated walking, with or without dogs, and, within reason, all manner of other recreational uses of the kind alleged in the questionnaire responses. One photograph is interesting. This is A/93 (May 2009) which shows the open gate at Pound Lane which is badly damaged, the causes of which are unknown. The grass shown is fairly long but certainly accessible for walking. The gate itself is without a central bar and a buckled lower bar and the gap is easily wide enough for able-bodied users to clamber through with their dogs. The photograph is all we have and there was, as I recall, much speculation at the inquiry about what might be gathered from the photograph which certainly indicates that the gate was in a state of some neglect in May 2009 and that this would have been obvious to anyone walking or even driving along Pound Lane. The gap in the western hedgerow shown in photograph A/95 (post-April 2016 – showing a growing maize crop) also shows what point 3 on P/3 would have looked like at this time with the hedgerow closing in on both sides. Note the damaged 'Private Farmland – No Public Right of Way' sign on the fencing within the gap (the location of the former 'Wiltshire gate' – see close-up of the

same sign at CRA/684). There was a similar, but undamaged, sign on the Pound Lane gate (A/94).

72. It would be useful if, at this point, I also mention the additional five photos attached to the statement of Graham Wyllie at A1/111. These show his dogs on various occasions in the years 2013-2014. The condition of the land in each case would have been fit for walking. I was particularly struck by the photo of three dogs running towards the larger of the two gaps in the western hedgerow (point 3 on P/3) which looks to have been well established and one can see why it was suitable for those walking within the field who might have been looking for a longer walk, perhaps to the swing bridge and back. Mr Wyllie gave oral evidence and was a daily user of the field between 1994 until it was ploughed in April 2016. In relation to this gateway, it was the oral evidence of Dr Scott that there were posts on either side but no actual gate before April 2016 and this is how it appears on the photo at A/111A which dates back to March 2014 although this is not incompatible with this having been a 'Wiltshire gate'.
73. As bundle has been carefully prepared. A1/tab 4 comprises the oral witness statements (numbering 21, of whom 2 no longer live in the village) with accompanying evidence questionnaires where available. A1/tab 5 comprises all the other witness statements (85), again with evidence questionnaires where available. By my reckoning, of the 66 evidence questionnaires 5 were signed by more than one party and a total of 21 were lodged in the names of two members of the same household. I have reviewed all of this material.

Applicants' oral evidence

Dr William Scott

74. Dr Scott is an organic chemist and has, I believe, lived at [REDACTED] Pound Lane since 1987. He is one of the three applicants and a co-author of the foregoing 'Justification' document. He is also responsible for the perimeter plan at P/3. His statement at A/117 deals with the steps taken to obtain user evidence from within the local community. It tells us that 385 questionnaires were distributed with 66 returned (16%), representing the views of 86 residents. In

terms of the witness statements, it was usually he and colleagues who prepared drafts for approval based on the questionnaire responses. In view of what Dr Scott says, it seems likely that most witnesses (although some provided their own statements) will no doubt have relied heavily on the draft statement provided for their consideration (no doubt some more than others) which were eventually signed after discussion with the witness after any necessary alterations had been made. Dr Scott said that he had attended another TVG inquiry at Marlborough where I was also the inspector and reliance was placed on the layout of the statements on that application.

75. In his oral evidence Dr Scott told the inquiry that the 'Friends of Great Lees Field' (for whom the three As act – there are apparently two others involved, all of whom were involved in the statement gathering process) have a constitution, bank and email accounts. Dr Scott is a parish councillor and also gave evidence on the application to amend the DMS. He also sat through the lengthy planning inquiry and drafted the preamble on the evidence questionnaire pro forma.
76. Dr Scott was at pains to point out that the TVG application (which was received by the CRA on 24 June 2016) followed pre-application consultation with Richborough Estates at Melksham Town Hall on 12 May 2016. Dr Scott attended that consultation as one of three parish councillors. At that stage the parish council had no prior knowledge of the development proposals. In the event, the three parish councillors reported back to the parish council at the next meeting on 25 May 2016. It was after this meeting that the Friends of Great Lees Field was formed and a TVG application was promptly made. The parish council's support for the TVG application may be gathered from the email sent to the CRA on 14 October 2016 (CRA/539).

[It should be noted that as the TVG application was received by WC before the material application for planning permission was first publicised on 29 June 2016 it was unaffected by a relevant trigger event (CRA/485).]

77. Although Dr Scott accepted that people in the village remember the Pound Lane gate being locked on a number of occasions over the years (this is how it was expressed in the 'Justification' document at A/80), he says that he

never saw a padlock on the gate before 2016. He also said that he was one of the 80% who entered the field via the Pound Lane gate. He says he is a keen walker but is not a dog-walker. When in the field he would, as he put it, 'meander'. Dr Scott's son used the land extensively. His son's statement will be found at A/286. In 1996 Dr Scott's son, Jonathan, would have been aged 17. In his statement he says that he used the land at least once a month although Dr Scott said that his son's use would have pre-dated 1996.

78. I consider Dr Scott to have been a genuine and conscientious witness. It is my impression that he is the driving force behind the application to register.

Michael Hawkins

79. Mr Hawkins has lived at [REDACTED] Pound Lane since 2005 and he walks on the land two or even three times a day in the summer. He is self-employed and says that he is always at home. His statement will be found at A/35. Mr Hawkins says that he walked all over the field, playing with a frisbee for his dog to fetch. He also walked in the Masters' field through the gap in the western hedgerow which was never gated until fenced off in 2016 (i.e. point 3 on P/3). Going back and forth between the two fields was a regular occurrence for him and other dog walkers whom he saw doing likewise (Mr Hawkins says that he also used the road access into the Masters' field before using the gap in the western hedgerow (i.e. point 3 on P/3) to get into the land. He accessed the land through what he described in his statement as an 'unlocked Pound Lane gate' which is close to his home. He never saw any prohibitory notices and he says that the Pound Lane gate was never locked until 2016.
80. At times when the grass was being cut and baled (which took place twice in the growing season – in late spring and in early autumn) Mr Hawkins did not go into the field. He said that the grass was some 2-3 feet high when it was cut. The grass-cutting did not take long, say 2-4 hours maximum per day over a 2-3 day period when contractors were doing similar work in other fields. The grass was in the region of 2-3 feet long before it was cut.
81. When cross-examined he said that he kept to the perimeter of the field on his walks although he would have to retrieve his frisbee if his dog ran off. In

getting into the land he said that he opened the Pound Lane gate and walked through it. He never climbed over it. As this was developed he said that he could not say whether he had to push the gate to open it or whether it was on a latch (i.e. that it was secured to a gate post). He also never recalled the Pound Lane gate being damaged.

82. I am sure that Mr Hawkins regularly walked on the land over the years with his various dogs. What troubles is his written and oral evidence: (a) on the one hand, that he walked all over the field ('barely a square inch of field I have not walked across') and, on the other, his oral evidence that he kept to the perimeter; and (b) that he was unable to recall precisely how the gate opened, i.e. did the gate merely have to be pushed open or did it have to be physically detached from its locking mechanism on the gatepost? It seems to me that these aspects of his evidence reduce the weight that I must attach to his evidence which might otherwise have been compelling.

Christine Jones

83. Mrs Jones (with her late husband) has lived at ■ Pound Lane since 1987. Her statement is at A/41. She says that she and her late husband were regular dog walkers both on the land and within the Masters' field where they saw others recreating on the land. She says that there were never any notices saying that the land was private and that it was never (contrary to what the Masters' say about this) ploughed in 2000.
84. In her oral evidence it was clear that her own dog walking took place in the period 1991-2010 (since when she has not used the land) in which time she had three dogs although she also walked another. She appears to have used all the access points around the perimeter of the land although she says that there was no gap at point 2 on P/3. The Pound Lane gate was close to her home. It was a feature of her evidence that other than when crossing the land, presumably when walking between point 3, where she says there was a gap, and point 1 on P/3 on her way back home to Pound Lane from a longer walk to the swing bridge, she said that she kept to the perimeter within the field where there were tracks. She said that she did not like the long grass when it was wet and muddy. She also saw children playing on the land at weekends

and in the holidays (and she mentions seeing this in the area of the pill box) and she thinks they lived in houses backing onto the field. She said that walking in the field was a good way of keeping in contact with villagers.

85. When asked for more details about the Pound Lane gate she said that it was 'open or partly open – there was a latch which you could lift and close if necessary – I had no difficulty opening the latch if I had to use it – It would swing open and freely'. She went on to say that it was a 'normal farm gate lock – lift latch and then drop'. It was never padlocked.
86. Mrs Jones was also a conscientious witness. Her description of the Pound Lane gate is clearly consistent with the condition of the gate shown in the photo at A/93 (May 2009). My clear impression is that when she was in the field she kept to a circuit that took her around the edge of the field where the grass was shorter and walking conditions were no doubt firmer under foot which is perfectly understandable. She clearly speaks of others using the field for dog walking and children at play. She even saw people flying toy planes.

Colin Wade

87. Mr Wade has lived at ■ Pound Lane since 1987 and his statement will be found at A/98. In it he says that when his children were young they used to walk and play in both fields. His children were born in 1990/1991 and he says they would have played in the field under supervision in around 1997/98 and on their own with their friends after 1998/99. The younger child's statement will be found at A/tab5/350. She makes it plain that she played in the field and loved watching the canal boats which is obviously a big draw for anyone, young or old, entering the Masters' field from the AL, whether sticking to SEMI/6 or not. She says that she usually entered the field 'through the unlocked gate on Pound Lane'. She lived at home until 2015. Her father thinks that she used the land until 2006-07 whilst still a teenager.
88. They entered the field via Pound Lane gate, which was not locked, before using the gaps in the hedgerow leading into the Masters' field. Mr Wade is sure that there were two gaps as shown on P/3, the one nearer Pound Lane being the narrower of the two which, in his oral evidence, he said he last went

through in 2005 and is now closed over. When the children were younger their walks took place two or three times a week. Later he said he walked in both fields on a weekly basis up to 2016 (he is not a dog walker). Other children and adults used the field for recreation but the Pound Lane gate was occasionally locked, for example, to keep travellers off the land and would have lasted for no more than two weeks. He also denies that there were notices saying that the field was private. He also says that on occasions (at harvest time) he has seen agricultural vehicles 'driven into the closed (but not locked) gate in order to nudge it open and give access to the field'. When pressed about this in his oral evidence he said he saw what happened from his front drive and it occurred on some three occasions the last of which would have been at least fifteen years ago.

89. Mr Wade says that the Pound Lane gate would have been locked with a chain and padlock on around six occasions in 30 years but not within the last ten years. He mentions that this occurred to keep travellers off the land when they were known to be in the area. He says that he could even enter the field by walking around the gate post (i.e. in the gap between the post and hedgerow) although the gate now in situ is a different gate to what had been there before.
90. Mr Wade was unaware that the Pound Lane gate had been replaced and padlocked in 2010 (I will deal with this again when I come to WS-B's evidence) although he accepts that the gate had been changed in 2016. He is unaware of any enclosure in the western hedgerow and has not seen signs on gates or on the ground. He thinks that the Pound Lane gate was damaged after 2010 (despite having been replaced in that year) and what he describes bears a close resemblance to the gate shown in the May 2009 photo at A/93 at which time he told me that he would have been using this gateway as a means of access into the field on a weekly or monthly basis. He recalls that the same gate in the late 1990s/2000s was attached to the receiving gate post by means of a loop of bailer twine.
91. Mr Wade certainly did his best to help the inquiry and was clearly a genuine witness. What came out of his evidence is that the Pound Lane gate was unlocked except on the rare occasions he mentions. It is also clear from his

evidence that the gate was kept shut using a loop of baler twine late 1990s/2000s and was, as he thought, also damaged after 2010 whereas there is evidence that the gate was actually replaced in 2010 and Mr Wade might have been muddling what he saw after 2010 with the gate before it was replaced in that year. There is also the reference to agricultural vehicles nudging the gate open which only happened on three occasions. I am disinclined to think that an experienced tractor driver will have damaged the Pound Lane gate in the manner shown in the May 2009 photo at A/93 although I am prepared to believe that at busy times a tractor driver might well nudge an already open gate further open to facilitate access into the field without having to get out of the cab. I think this is very probably what Mr Wade witnessed but without any damage occurring to the gate itself.

Elaine Arrundale

92. Mrs Arrundale and her husband and children have lived at ■ Pound Close (which is a corner site – see P/3) since 2008 and she used the land to walk her dog every day up to 2016, using the gate in their rear fence to access the land. In her statement at A/8 she says she saw others using the land for dog walking and children playing. She mentions kite flying and games of football and cricket and people picking blackberries. She did not see any prohibitory signs indicating that the land was private. She is a dog walker (in 2008 their dog was being walked on the land three times a day) and also saw ‘lots of dog walkers and people walking along the canal’. She told the inquiry that her longer walks took her across the land into the Masters’ field and back via the footpath. Her shorter walks (in the mornings and at weekends) kept her in the field, especially if there were no other dogs around. When I asked Mrs Arrundale how busy the field was she said at weekends it was very frequently used.
93. Mrs Arrundale runs full-time a day nursery in Trowbridge. She took groups of small children from the nursery to the land and, presumably their eventual destination, the swing bridge. Most of these children (I think only two of them) lived in Semington.
94. Mrs Arrundale was also a conscientious witness and I accept her evidence.

Peter Turner

95. Mr Turner has lived at ■ Somerset Way (which is just off the High Street) since 2012. His statement is at A/92. He is a dog walker and claims to have walked all over the land on a virtual daily basis until 2016, entering via the unlocked Pound Lane gate. He also walked through the gap in the hedgerow into the Masters' field. He looked out for birds and also saw others walking in the field with or without dogs. He never saw any notices.
96. In his oral evidence he accepted that he used the land 'mainly as a place of transit'. His normal route involved him entering the land via the Pound lane gate before cutting into the Masters' field and on to the swing bridge before returning to the village on the canal path along SEMI/1.
97. Mr Turner therefore used the field on his way to the swing bridge although he says that he sometimes stopped off to chat with other dog walkers.
98. Mr Turner's evidence was unhelpful to As as he accepted in his oral evidence that he did not use the land as a destination in itself for LSP but as part of his route to the swing bridge which was at variance with his statement in which he claims to have regularly walked 'all over' the field which was not the case.

Steven Hall

99. Mr Hall is one of the As. He is not a dog walker. His statement is at A/29. He has lived at ■ Pound Lane (whose entrance via the Pound Lane gate is only some 10m from his front gate) with his family (his daughters were aged 3 and 4 when they moved into the village) since 2003 and he used the land until 2016. They used the field (and also walked into the Masters' field through the gaps in the western hedgerow) every weekend and often several times a week which seems to have persisted until 2016. He played games of hide and seek with his children and they watched the birds. As his own children grew older they played on the land with their friends.
100. He usually entered the field most days via the unlocked Pound Lane gate but he also used the stile leading onto SEMI/6 across the Masters' field. He also says he used the stiles at points 4 and 6 on P/3 when leaving the field. He

mentions seeing children playing or riding bikes in the field and people with and without dogs walking in the field or picking blackberries in season or playing in the snow. He also claims (on around six occasions) to have seen agricultural vehicles nudging the unlocked Pound Lane gate open when the grass was being cut and baled.

101. Mr Hall said that there were tracks on the ground across the field and from the road down to the far end of the field and around the perimeter around which he claims to have cycled. When it came to the Pound Lane gate he said that it was 'free-swinging' (this accords with Mr Waller's note) and could be nudged open. His reference to the gate being lifted off its hinges is something which, on his evidence, would only have occurred after the gate is agreed to have been locked, i.e. after April 2016.
102. Mr Hall said that he has seen Mr Masters in the field, either observing others getting in the hay/silage crop, or doing work himself. He recalls seeing him in a tractor turning the hay once it had been cut or driving up and down Pound Lane. He said that the Masters are well known farmers in the village and run beef cattle on the other side of the canal.
103. When shown the May 2009 photo of the damaged Pound Lane gate (A/93) it was his evidence that the gate was replaced after that photo was taken. He said the gate had been damaged when they moved into the village in 2003 but was not as badly damaged as it became by 2009. Both gates (previously described as 'free-swinging'), along with the new gate, had/have a spring bolt closing mechanism. He never saw the earlier gates locked although, when pressed on this, he suggested that he might have been away or on holiday when the gate was locked. He can though recall seeing barbed wire on the Pound Lane gate when the family moved to the village in 2003. As he put it: 'There has always been barbed wire there', something which can clearly be seen in the 2009 photo at A/93 (which, as I recall, had not been spotted before Mr Hall gave evidence about this). When asked about what implications might be drawn from the presence of barbed wire wrapped around the top bar of the gate he said that the barbed wire indicated that he should not climb over the gate and to his knowledge no one ever did. When

asked to look at the partially open gateway found in the photo at CRA/2/593, shortly after the field had been ploughed on 27 April 2016, he said that the arrangement for entry into the field was the same as the arrangement he found in 2003 and that the angle iron was still there. He also said that the gate was never strapped to the gatepost which has never been used.

104. I found that part of Mr Hall's evidence which concerned the condition of the Pound Lane gate somewhat challenging as no other witness up to this stage had suggested that one might access the land merely walking through a gap between the end of the gate and the hedgerow. I also thought that he underplayed the significance of the presence of barbed wire on the gate which, on his evidence, had been in place after 2003.

Graham Wyllie

105. Mr Wyllie has lived at ■ Highfield Close since 1994. He is a dog walker. His statement will be found at A/111. His statement discloses that he walked on the AL and the Masters' field every day, accessing these fields respectively via the unlocked gate on Pound Lane and the gap in the western hedgerow. He also saw others using the land for walks and children at play. He also introduced photos where light tracks are shown on the ground.
106. In his oral evidence he said that he sometimes walked around the perimeter or would cross the land on his way to the swing bridge via the gap in the hedgerow. His longer walks at weekends would see him returning into the village along the canal footpath whereas his shorter walk took him through the Pound Lane gate through into the Masters' field and then back via the stile at the northern end of the land. He explained that the land was a popular place citing ball games (at least occasionally and near the back of the houses in Pound Close), kite flying and even bonfires and that he roamed on the land wherever his dog took him. He said that he normally saw others on the land whenever he walked there and that it was primarily being used by dog walkers.
107. He recalls (without being able to recall when this happened) the gate being closed and having a sign on it on one occasion warning users that the field

had been sprayed but there was never any prohibitory signage. He says the gate would have been 'closed' for no longer than a month. The gate had been secured against an angle iron which meant that it leaned into the field whereas it would have to be forced back if it had been locked up to the main gate post although he could not recall a time when the gate was secured to the main gate post.

108. Mr Wyllie could not recall seeing the sign ('Private – No Right of Way') shown on the ground on O/108 (these were photos of the removed sign or signs at the Pound Lane gate), nor could he recall seeing barbed wire threaded along the top bar of this gate.
109. Mr Wyllie was generally a sound witness but it troubled me that he was unable to recall the barbed wire on top rung of the Pound Lane gate. It might be supposed that as a virtual daily user of this gate he would have noticed this. It will be recalled from Mr Hall's evidence that there had always been barbed wire on this gate (see 2009 photo at A/93). Other than his vagueness on this point, Mr Wyllie was a strong witness for As.

Diane Swaine

110. Ms Swaine has lived at [REDACTED] Pound Close since 1958 and was a very regular dog walker (at least twice daily, even after dark) on the land and in the Masters' field for the whole of that time until April 2016. She appears to have often walked on the land with a local friend who also had a dog and whose home backed onto the land. Ms Swaine's statement is at A/86. She says that she was only prevented from using the land when it was locked on rare occasions when cattle were in the field (in her oral evidence she said this occurred in the late 1980s and not otherwise). In her oral evidence she said that the gate was not locked when the field was sprayed but there were signs on three or four occasions over the years warning locals that spraying had taken place. At any rate, she never saw any notices forbidding entry but she kept off the land whilst the spraying signs were in place as she worried about the effect of the chemicals on her dog.

111. Ms Swaine's home does not back onto the land and she gains access via the Pound Lane gate. She says that she walked within the whole of the field and also around the perimeter and used the main gap in the hedgerow to go through into the Masters' field (there was no barrier preventing access between the two fields). She exited the field via the Pound Lane gate.
112. Ms Swaine said that as the grass grew to some 2-2.5 feet in the growing season people walked around the perimeter where there was a defined path. For around 3-4 weeks the grass was, as she put it, 'really long' and she kept to the perimeter.
113. She recalled that the gate onto Pound Lane was replaced over the years but was unable to recall when this happened. When questioned about the nature of the gate, she said that it was 'pulled close to the main gate post' (but not bolted). There was a sliding bolt which did not fit very well but when the gate was bolted it prevented her from going into the field. She certainly recalled the barbed wire attached to the top rung of the gate which she thinks would have been in place 'over the last 30 years or so'. In the period before 2006 she recalls that the gate would either be pulled up to the main gate post or else properly bolted in place. More often than not when she used the gate it had been left open. She went on to say that for a few years (a) before the gate was replaced in 2010, and (b) before the field was closed off in 2016, the gateway would have appeared as it looked in A/593 (i.e. with the gate sufficiently open as to leave a gap for entry into the field between the end of the gate and the adjoining hedgerow – she said that the angle iron 'has always been there'). She also made it plain that the gateway was not always in this state after 1994 as is suggested by Mr Wyllie.

Brian Smyth

114. Mr Smyth has lived at ■ Highfield Close since 1978. His statement is at A/74. He has three children who were born in 1976 (Catherine), 1978 (Alison) and 1984 (Robert) who would have been 12 in 1996 at the start of the 20 year window. Mr Smyth normally entered the field via the Pound Lane gate and then via the gap in the hedgerow to enter the Masters' field or the other way around. Mr Smyth was a dog walker in the period 1979 through to 2003/04.

On longer walks with the dog he says he walked around the field 'and anywhere else'. After the last dog he says he walks in the field with his grandchildren and they sometimes walk around the field. He also walked up the canal path and to the end of Pound Lane which leads to a dead end in the countryside. His use of the field by 2016 would have been in the region of ten times a year and he accepted that his use would only have been occasional. His overall perception of the gate was that before 2003 it would have been left open. After 2003 his recollection was that the gate was left partially open leaving a small gap which you could walk through comfortably. As he put it: 'Most times the field was accessible without having to use the locking mechanism ... the gate tended to be open a little bit ... mostly easy to walk through although sometimes it would be a bit of a squeeze'. When shown CRA/593 he said that this was the gap there used to be when he was using the field and he vaguely remembers the angle iron. When shown CRA/40 (the 2009 photo of the damaged open gate) he said that he had actually ducked through this gate on occasions.

115. The only sign seen by Mr Smyth (and he saw it once or twice) concerned cattle in the field and this would have been in the 1990s. He did not use the field when there were cattle there or during cutting. He said his son (Robert) had three close friends in the village and they all played in the field.
116. My impression of Mr Smyth's evidence is that his own regular use of the field ended in 2003-04 and that he struggled to remember with any accuracy how the gate appeared in the period before its closure in 2016. His recollection of these things was vague but his distinct impression was that one could normally get into the field as the gate was usually left sufficiently open so that one could walk around it although, as he put it, it might be something of a squeeze on some occasions.

Philip Deverall

117. Mr Deverall has lived at [REDACTED] Pound Close since 1988. His property backs onto the land and there was a gate at the end of his garden. His statement is at A/21. He is not a dog walker but he used to walk on the land regularly, about once a week, until around ten years ago (2009) when he usually walked

straight across the field through the gap in the hedgerow, perhaps stopping in the field on the way to talk to someone he knew, and beyond to the swing bridge and then, as he put it, he would go elsewhere as he pleased (he never used the Pound Lane gate although he might have walked past it two or three times). His wife never walked on the field. He could though, from his home, see people (including children playing, flying kites (twice) and kicking balls around) using the field every day walking with or without dogs. He says that he saw 'a lot of people walking around all the time ... usually someone out there'. The fact that the field was sprayed 'not very long ago' (canister on the back of a trailer spraying pellets in a dovetail) did not affect his own use of the field as the spraying did not take very long (half a day). He did not go into the field when the grass was longer.

118. Although he did not witness the collision, Mr Deverall did say that he heard a crash which he knew (as a former tractor driver) was tractor striking a gate although he did not say that it was the Pound Lane gate with which the tractor had collided.
119. Mr Deverall was a friendly conscientious witness who did his level best to assist the inquiry. Although his own use of the land was limited, as he lives close by he had a clear view of what was happening on the land and his evidence about this is very clear.

Angela Mills

120. Mrs Mills has lived at Pound Lane since 1993. Her statement is at A/59. She has three children Paul, Kirsty and Josh (whose statements I have also read) all of whom played on the land. Josh, the youngest, would have been aged 8 in 1996 (the elder two children would have been aged 17 and 18 in 1996). The family lived at Wessex Close (on the south side of Pound Lane) until 1998 when they moved to ■ Pound Lane.
121. In light of Mrs Mills' oral evidence it seems that all her children played in the field and in the Masters' field (especially in the summer) and did so with their friends unsupervised when old enough to do so. They were obviously drawn to the swing bridge and canal. The youth club was popular in the village in the

1990s and Josh was involved in this and they used to play cricket and rounder's in the middle of the land in the summer unless the grass was too long in which case they would do other things such as play hide and seek (the youth club met twice a month). Mrs Mills mentioned that a couple of families used to let fireworks off. She also used the land herself after 1998 for walks with, I think, mainly her friend Brenda. It seems that they used the field gate into the Masters' field before walking over to the swing bridge and then back along the canal path either going on into the village or returning for a cup of tea at her friend's home which was just opposite the Pound Lane gate.

122. In relation to the condition of the Pound Lane gate, I think Mrs Mills surprised us all by saying that she was unable to recall seeing a gate before 2016. She said that 'the way was always open ... you went through it... I can't recall a gate' even though she told us that she used the field up to 2016 with her grandchildren. In re-examination she explained that she walked around the land and returned home via the gap in the hedgerow, exiting via the Pound Lane gate. She then went on to say that occasionally she walked around the perimeter of the land, entering at the Pound Lane gate. Before the Ship Inn closed she walked into the village via the gap in the western hedgerow and then along the canal path via the swing bridge, returning home by the road.
123. When I put the May 2009 photo to Mrs Mills (showing a damaged gate partially open) she had no recollection of this gate. She said that she could not remember being prevented from obtaining access into the field through the Pound Lane gate.
124. Mrs Mills was also a conscientious witness who did her best to assist the inquiry but her very poor recollection of the Pound Lane gateway means either that her evidence cannot be accorded a great deal of weight or that her use of the land via this entry point was so infrequent that she simply cannot recall these things with the accuracy which is demanded by an inquiry of this nature. My own impression is that her use of the land was very probably much more frequent when her children were young since when her own use is liable to have been sporadic.

Kenneth Clark

125. Mr Clark has lived in the village since 1939 and at [REDACTED] Pound Close since 1967. His home backs onto the land where there is a rear gate. His statement is at A/15. He retired in 1994 and had a dog in 1996. Whereas in his statement he said he walked his dog all over the field, in his oral evidence he said he cut across the field from his garden gate and went through into the Masters' field via the gap in the hedgerow (he said he did not walk around the field). He recalls a Wiltshire gate in this gap in around 2000 which was not always closed. When the gate was across the gateway (and he said that it was rarely closed) he would lift a wire up to get through (he never used the Pound Lane entry). He cannot recall the AL being ploughed in 2000 and would have noticed this if it had happened as the field is just outside his house. Mr Clark said that the field 'never got overgrown' and was cut for hay and silage twice a year.
126. Mr Clark was another genuine witness. However, his evidence is of limited weight as his use of the field was limited to a cross field walk.

Jack Woodward

127. Mr Woodward has lived at [REDACTED] Pound Close since 1980. He is able to access the field through a gap between his shed and a brick wall in his back garden. His statement is at A/105. He is not a regular user of the field, nor is he a dog walker. His three children would have been aged 14, 12 and 9 in 2000 and they would have played in the field, including cricket after the grass had been cut. He also disputes that the field was ploughed in 2000. He says in his statement that they had a regular circular walk to the canal and back, returning along Pound Lane and to their front door at Pound Close. He does though say that he regularly saw people walking in the field with or without dogs and children playing there.
128. He says that the Pound Lane gate was occasionally locked although, as he put it, he has 'no clear memory' of when it was locked (although he said that you could see it padlocked) and when it was not locked.

Objectors' evidence

Written evidence

129. Os have lodged a lengthy bundle containing a large number of statements dealing with the TVG and DMMO applications (in fact I have five statements from WSB between July 2016 and October 2019). There are also photos and correspondence involving the DMMO and submissions from Miss Stockley and her predecessors all of which I have read. A good deal of this material was also addressed at the inquiry. Additional statements were introduced from Chris Awdry (O/438A), James Holloway (O/438C) and Nicholas Grout (O/438D) all of whom gave oral evidence.

Oral evidence

Chris Awdry

130. Mr Awdry is a local farming contractor and gave evidence that he ploughed the land in 2000. He recalls meeting Michael Bruges ('MB') (the late father of Richard Bruges and William Stuart-Bruges' uncle) and he recalls being let in by the gate being unlocked. The process involved clearing the overgrowth (which took around 2 weeks) followed by spraying, power-harrowing, drilling to plant new grass seed followed by rolling to firm up the land as an aid to germination. He said that MB wanted him to sort the field out. The process, about which Mr Awdry went into in some detail, would have taken, as I understand it, at least 4 weeks. He thinks that the field would have been fit for a resumption of dog walking after around another 2-3 weeks, by which time the new grass seed would have germinated. He said the ground would have looked different before the new grass germinated although it would not have impeded dog walking.

131. Although he no longer has any records of this transaction he was sure the ploughing took place in 2000. He said that was able to recall this as he divorced in 1999 and also took over a friend's contracting business at around this time. It was Mr Awdry who was contracted by William Stuart-Bruges ('WS-B') to plough the field in April 2016 (when a maize crop was planted) and in successive years.

132. When asked to comment on the photo at O/153 taken by Sally Madgwick on 28 April 2016 showing the gate secured against the angle iron, leaving a gap for walkers to enter the field, Mr Awdry said it was possible for his driver to have left the gate secured in this way and so avoid having to keep it closed with a lock and chain. He said it would have been safer to keep the chain in the cab whilst the driver worked in the field. He also thought that the angle iron (which he said was concreted in) could have served as the original gate post (or an old shifting post as he described it) which would have been left in place once a new gate post had been installed although the hedgerow would have come up to the angle iron to create an enclosure otherwise any animals in the field could have walked straight out into the road.
133. I accept Mr Awdry's evidence. I accept that the field was ploughed in 2000 and that the gate had to be unlocked to allow him into the field. I am also inclined to think that he is probably right when he said that at one time the angle iron served as an informal gate post up to which the hedgerow would have grown. It will be recalled from the written evidence of the Masters that there were cattle in this field until the early 1990s.

James Holloway

134. In 2014 Mr Holloway, who lives in Trowbridge, was looking at a plan to buy land within the curtilage of the land for a self-build scheme. His statement is at O/438C. To that end Mr Holloway visited the field on, he thinks, around five occasions in the March-May period (he has the dates for two of these visits). He recalls that on one of these visits he had to climb over a locked Pound Lane gate which he recalls was topped with barbed wire and in good condition and was secured, he believes, by a padlock and chain to a substantial galvanised post. He says that they would not have been able to squeeze around the side of the gate which he said was locked up to a gate post and not secured against the angle iron. He was with his wife and small child and he remembers his wife passing him the child over the gate in order that she might climb over the gate herself. On other occasions they entered the field via the canal side footpath and stile from the adjoining field.

135. I accept Mr Holloway's evidence. He was clearly an honest and genuine witness and is independent of the parties.

Nicholas Grout

136. Mr Grout's evidence will be found at O/438D. In September 2015, when employed by Savills, Mr Grout, who is an FRICS, was involved with WS-B in seeking out a promoter of the land for development. Mr Grout says that he visited the land on 14 September 2015 in order (in effect) to judge its potential for development and to have a good look at the site. He says that he had to climb over the Pound Lane gate as it was locked. He took a number of photos that day some of which he produced at the inquiry (the remainder are still with Savills, that is, if they still exist). They show that the field had recently been cut and there are bales of silage scattered within the field. There is no one in the field and, of course, any tracks on the ground might well have resulted from the passage of agricultural vehicles on the soft grass (for instance, Mr Grout noted that the photo at O/438D(xiv) disclosed signs of the remnants of historic drilling). On the other hand, tracks by those on foot might well be discernable in some of the photos, notably in one or two places around the perimeter and between the Pound Lane gateway and the gap in the hedgerow on the western side (where he recalled seeing the remains of the Wiltshire gate which he says was 'folded back into the nettles'). At any rate, these tracks were very faint and would no doubt be open to debate if judged solely by what we can actually see in the photos.

137. What was of interest, however, was the photo at O/438D(v) (which was taken within the field) showing the Pound Lane gate. It had been my initial note that Mr Grout had said that there was a lot of undergrowth around the gate and he could not be sure whether it was locked. When we came back to his evidence on this point Mr Waller told the inquiry that it had been his note that he had been asked (I think by me) whether he could be sure the gate was locked and that his answer had been that if he had been able to open the gate he would have done so although he could not recall seeing any lock. It was Miss Stockley's note that Mr Grout had said he had climbed over the gate but could not recall seeing whether the gate was locked in view of the undergrowth. In

other words, both counsel appear to agree that Mr Grout had not said that the gate was unlocked merely that he could not recall seeing any lock. In the result, it seems probable that because Mr Grout had to climb over the gate (and especially as it had barbed wire threaded around the top rung) it is more likely to have been locked in view of his evidence (as noted by Mr Waller) that if he had been able to open the gate he would have done so. At any rate, Mr Grout looked at the photo of the Pound Lane gate and it was his evidence that at the time of his visit on 14 September 2015 the gateway was more overgrown and the undergrowth had been trimmed back by the time of his later visit mentioned below.

138. Mr Grout also attended on site in March 2016 with WSB and his cousin Richard Bruges (who lives nearby at [REDACTED]) when the gate was open and one was able to walk straight into the field. He recalls seeing the angle iron.
139. Mr Grout says he advised WS-B to pay particular attention to the perimeter, and in particular to the point of entry at the Pound Lane gate in view of the risk (in effect) of the accrual of informal rights.
140. Mr Grout was a competent professional witness whose evidence I accept.

Richard Bruges

141. The written evidence of Richard Bruges is at O/43. Mr Bruges is a cousin of WS-B on his father's side. His late father, a chartered surveyor and partner in Humberts, owned the adjacent land (including the paddock) at [REDACTED] (the curtilage of this property is shown edged blue on the plan at O/47 – the paddock land is on the south-west side and is let separately). His parents lived at [REDACTED] between 1968 and 2003. I gather that his father returned every week to keep an eye on the property, which was let, until he died in 2013. In 2012 Mr Bruges and his family had gone to live at [REDACTED].
142. Mr Bruges says that his father warned WS-B to ensure that his tenant (i.e. the Masters) kept the Pound Lane gate locked at all times. WS-B had told him about this. Mr Bruges recalls seeing barbed wire on the gate to discourage people from climbing over it as well as signs on the former gate indicating that

the land was private on his regular visits to his parents in Semington. In his oral evidence he said that he visited his parents at intervals of around a month or every 6 weeks. He can distinctly recall seeing a handwritten 'private land' sign ('or something like that') tied to the earlier Pound Lane gate (at one point he said that the handwritten signs were rather like the signs shown on O/108 but he later conceded that he was unable to recall whether these were in fact the signs seen by him, or even like them, erected on what he described as the old gate) which he says was usually shut whenever he saw it whilst his parents lived in Semington (i.e. pre-2003). In the period 2012-16 he thinks he walked down Pound Lane once a month but it appears from his oral evidence that he cannot recall seeing signs on this gate since he moved to live in Semington (other than recently).

143. He recalls an older gate being replaced and can recall seeing it locked with a chain and padlock wrapped around the gate post. He does not recall seeing the Pound Lane gate left open, nor did he ever see the gate locked by being affixed to the angle iron. He also remembers that the gate had barbed wire on it. He has also seen the Wiltshire gate both shut and open (it contained two strands of barbed wire). He said it was shut when there were cattle in the field (but not in the last 8 years). He cannot recall seeing a sign on the Wiltshire gate. He admits that he has seen a few dog walkers walking around the edge of the field but no one playing games on the land, nor children playing around the pill box (in his statement he says that he has never seen the field being used for recreational purposes). He also said that since 2012 he rarely bumps into anyone using the PROW running along the northern end of the field even though he walks this way with his dog every day.
144. Mr Bruges believes that to the extent that any use of the land by local inhabitants took place at all then it was confined to the 'outer perimeter' of the field. Mr Bruges closed his evidence by saying that if you lived in the country you respected people's gates. If there was a double wired fence across a path most people would assume that it was not a right away and would not walk around the edge of the field. In response to my questions, Mr Bruges agreed that the Masters' were responsible for managing the land which belonged to absent landowners and that these factors resulted in locals having unhindered

access onto the land. I took him to be suggesting that the Masters' were too lax in their approach to managing the land.

William Stuart-Bruges (WS-B)

145. WS-B is a joint trustee owner of the land (along with his nephew Arthur Haythornthwaite). I hope that Mr Stuart-Bruges will forgive me for using the shorthand 'WS-B'. He has in fact put in a total of five witness statements on the TVG and DMMO applications.

DMMO	O/73 (25/07/2016)
	O/145 (18/08/2016)
TVG	O/59 (17/11/2016)
	O/55 (06/03/2017)
	O/35 (02/10/2019)

146. WS-B helpfully gave us a brief family and land ownership history. The land belonged to his grandmother who acquired it with other land in 1951. She died in 1956 and the land passed to his father who died in 1984. Ownership of the land thereafter passed to his four children in 1987. Because of capacity issues affecting an elder sister the land passed to WS-B (who lives in Kingsclere) and his nephew (who lives in Steeple Ashton) in 2015 (when the land was first registered) who currently hold on trust for members of the family on terms that are of no relevance to the inquiry. As previously indicated, since the surrender of the farming tenancy in 1987 the field was rented out to the Masters' family until the end of 2015 on a succession of grazing/annual grass keep licences (with a gap of one year in 2000) under which they assumed responsibility for keeping the gates and fencing in good order.

147. By 1987 the Pound Lane gate consisted of a metal 5-bar gate on which WS-B later threaded barbed wire along the top rung as the gate had been damaged and he had wanted to discourage people from climbing over it (the gate posts might well have been wooden at that point). A Wiltshire gate had also become established in the gap in the hedgerow on the western boundary although he considered that there was no agricultural need or legal requirement to maintain a locked gate in this location (other than to define the boundary), nor

were there cattle on the land after the early 1990s. WS-B also says that he purchased a chain and padlock for use by the Masters in order to keep the Pound Lane gate secure. He also erected (on the advice of his cousin Michael) 'amateurish' signs ('Private Land – No Entry') made of plywood in order to deter people from entering the field but they were removed within a couple of years and had to be replaced (1989).

148. WS-B thought that he would normally have visited Semington once a year after 1987 and, with the exception of what he found on his visit in 1997, the Pound Lane gate would have been locked and chained (the Masters always had a key as did WS-B and his cousin). It seems that in practice he left it to his cousin to keep an eye on things in his absence. However, when he visited in 1997 he discovered that the gate had been lifted off its hinges with the lock and chain still wrapped around the gate post to which they had been attached. WS-B said that half of the gate was lying on the ground and rungs were broken. He spoke to the Masters about it and, by common consent, it was agreed that the gate had (as WS-B put it in his oral evidence) passed its sell-by date and needed to be replaced. In cross-examination WS-B said that the gate had been in such a poor state of repair for at least a year before its replacement that it may have become impossible to keep it properly locked. His cousin also told him that the gate needed replacing. WS-B said that the damage to the gate was caused by people climbing over the gate and lifting it off its hinges. In his statement dated 25 July 2016 (para 16) WS-B says that Julia Masters told him that people lifting the gate off its hinges or damaging it by climbing over it had always been a problem. She said that you could always tell when people had been climbing over the gate because the bottom bars had become bent. She also told him that the Wiltshire gate had also been damaged over the years.

149. We then come to the invoice of Matthews and Jefferies dated 12 February 1998 (which was recorded as having been paid 3 days later) under which this firm supplied WS-B with a new 'Super 7 14F gate' plus hanging and latch posts which, with transport and installation to dig out and cementing in holes, came to £259.11. With the new gate installed, WS-B says that his cousin, Michael, encouraged him to put up signs only for the Masters to tell him that

this would be a waste of time. Signs were again placed by WS-B on the new gate indicating that the land was private (he recalls using wood from cutting up an old tea chest). He also wound barbed wire around the top bar to prevent people from climbing over it, just as he had done with the former gate in 1987. It assists, I think, if I mention at this point that I noted that Mr Waller agreed that the fence post shown on the photo at O/153 (taken on 28 April 2016 and showing the gate secured to the angle iron and leaving a gap wide enough for people to walk through into the field) was the same one which had been replaced in 1998.

150. On 18 April 1999 (O/117) WS-B wrote to Julia Masters asking whether they wished to rent the field again that year and that if this was not the case they should return the key to the lock of the gate and should confirm that the gate had in fact been left locked. In fact an agreement was taken up with the Masters for the 1999 season (CRA/800).

151. In his oral evidence WS-B said that he did not visit Semington in 1999-2000 but on his visit in June 2001 he found the Pound Lane gate to be locked and chained with the barbed wire still in place on the top rung of the new gate. However, the signs had been removed. When he visited in June 2002 the position had not changed. WS-B said that looking at the gate was something he would normally do on each visit to Semington.

152. On 7 April 2002 WS-B wrote to Thomas Masters (who I think may be more commonly known as John Masters) thanking him for his letter of 3 April and enclosing an agreement for the new season. In the letter WS-B said that he hoped that the gate was:

still in place and working, and that you still have the key? Let me know if not – I am happy with the rent staying at £500, if you will continue to agree to keep it locked.

153. On 7 April 2003 Julia Masters wrote to WS-B asking whether they could rent the field again in 2003 (O/115). She said this:

The gate is locked and we still have the key although it will need to be locked the other end as people keep lifting it off the hinges.

154. WS-B replied on 12 April 2003 (O/114). After saying that he would be pleased to rent the field again that year, he said this:

Regarding the gate, I would be most grateful if you could do something to prevent it being lifted off. Maybe a stiff wire, or a permanently locked chain?

155. By 2003 the position had, however, changed within the family in that the wife of WS-B's cousin had become ill and they relocated to Bath which meant that Michael Bruges would no longer be around to keep an eye on things when it came to the field. This prompted WS-B to erect, as he put it, 'heavier and better' signs on both the Pound Lane and Wiltshire gates. However, despite doing this, on his visit to Semington in 2004 (on his way to Bath to attend the funeral of his cousin's wife) he found that the signs on both gates had still been interfered with and he took photos of the dislodged signs lying on the ground in the hope of using them to catch the culprits. It is not entirely clear whether these signs were re-erected at the time but it seems probable that they would have been and I shall assume this to have been the case. These photos will be found at exhibit 9 to his statement dated 25 July 2016 (O/108) where signs (and I think there were two of them) saying 'Private – No Right of Way' are shown lying on the ground to which heavy galvanised wires were attached through holes in the plywood (WS-B says that these wires could only have been removed with a wire cutter). Photos of the signs which had been removed from the Wiltshire gate will also be found at O/110, being exhibit 7 to the same statement. On his visit in 2004 WS-B thinks that the barbed wire was still in place on the Pound Lane gate.
156. WS-B said that he continued his roughly annual visits to Semington between 2004 and 2010. It was apparent that people were still using the gate to enter the field as by 2009 the gate was in a state of neglect. Damage is shown in the *Google* image taken in May 2009 image (CRA/40 and O/119) by which time the lock and chain had gone although barbed wire was still on the gate. WS-B said he discussed the matter with the Masters and correspondence for 2010 was produced.
157. On 27 May 2010 Thomas Masters wrote to WS-B saying that they would like to rent the field again in 2010 (O/113). In the letter he noted:

The old gate has been replaced by a new one and padlocked.

In cross-examination WS-B said that the new gate (for which the Masters paid) was more substantial and a much better gate. He also said that he did not believe that a tractor driver would have been 'so careless and stupid to damage a gate'. Indeed, the suggestion that agricultural vehicles would nudge the gate open and cause damage to it in the process was rejected by the Masters in their joint statement at O/52 (para 8).

158. In his reply dated 8 June 2010 (O/112) WS-B said this:

I confirm that we are prepared to keep the rent at the same value as the last three years - £500 - and thanks for replacing the lock and padlock.

159. There were no signs on the new gate as the Masters told WS-B (and they said much the same whenever he discussed signage with them) that it was a waste of time as they would only be ripped down again. WS-B said that he would have added barbed wire to the top rung of the new gate on one of his trips to Semington. He said that the gate looks the same as it does today (see photos at CRA/41 and the Hall's photos at O/212-3).

160. In his oral evidence WS-B said that on his 'at least' annual visits to Semington the Pound Lane gate was 'always perfectly locked' in the period 2010-2016. He said that he would drive along Pound Lane to check on the gate and barbed wire threaded along the top bar. There was no signage after 2010 as he said he had 'given up on signage', concentrating instead on seeing that the gate was locked and chained. He also pointed out that he never saw anyone on the field at the time of his visits.

161. When asked to comment on the Halls' photo taken on 6 April 2016 at O/158 showing the new gate attached to the angle iron rather than the gate post, he said that he not seen the gate secured in such a way against the angle iron until he saw the Hall's photo (Note: whereas the gate is certainly attached to a gate post on the photo taken by the Halls on 5 May 2016 (O/156) which was described by them as a 'new gate post'). He also suggested that the photo at O/153 (showing the gap between the angle iron to which the gate was attached and the gate post, a gap wide enough for people to have walked

through) was taken after the hedge had been cut back although he could not say who had done this. He asked Mr Awdry about it and it had not been him although the latter had cut the rear hedge in 2016 and, for their part, the Masters had carried out hedge trimming over the years (see cl.6(c) at O/102 – keeping the hedges properly cut and brushed).

162. WS-B was shown the photo of the (Private Farmland – No Public Right of Way) damaged sign (it has been slightly buckled) attached by galvanised wires to the mesh closing off the gateway of the former Wiltshire and he said that this sign (which is made of thick plastic) would probably have been erected in July 2016 after the TVG application had been made.
163. WSB said that it was common knowledge in the village that the land was private to which the public had no right of access.
164. In cross-examination WS-B agreed that he had never lived in Semington but that his cousin 'was around the corner' (between 1988 and 1996 he lived in Warwickshire). At para 61 above, reference is made to the fact that WS-B also tried to get Julia Masters to provide evidence and he evidently met her in June/July 2018 but his efforts were not fruitful. When asked about this WS-B noted that the Masters never told him that they were also making a planning application to develop land which they owned in the village.
165. WS-B accepts that when he saw Mr Grout in 2015 he was already aware of the need to secure the boundaries of the field.
- 166 WS-B also said that there was no way of stopping those living in the eight properties in Pound Close which had rear gates from gaining access into the land. When it came to the Pound Lane gate he said he relied on the Masters to keep the gate locked which was reinforced by the annual agreements which obliged them to prevent trespass and to keep the gates and fencing in good order and, after 2003, to keep the gate 'closed and locked' (O/98). WS-B said that he thought that the Masters would stop people coming onto the land. There had been no prior discussion with the Masters about the introduction of an obligation to lock the gate. WS-B said that he felt that he had done all that he needed to do to prevent trespass. Of some importance, he said that he

thought that the Masters would have stopped recreational use if it had been significant.

167. I should mention that on two occasions after 2010 consents were given by the Masters which allowed the field to be used for car parking at the time of the combined church and school fete. WS-B was aware of this and appears to have raised no objection.
168. I have dealt with WS-B's evidence at some length in view of the absence of the Masters. His evidence is clearly important. He was, in my view, a helpful and conscientious witness who I am sure tried his utmost to assist the inquiry. It was, I think, obvious that he found the inquiry process something of an ordeal but I was impressed by his command of the facts in what was a lengthy narrative in which he had effectively been an absent landlord. Nonetheless he had made periodic visits to the village over very many years and was able to speak clearly as to what he found. I have no hesitation at all in accepting his evidence.

Closing submissions

Applicants (Mr Waller)

169. Mr Waller says that witness statements from 105 residents were before the inquiry (many of which have accompanying questionnaire responses) and that oral evidence was heard from 14 residents with respect to their personal use of the field and the use they saw by others on the land. Additionally oral evidence was given by Dr William Scott in relation to the process by which As gathered evidence to support their application. I agree with him when he says that that process was comprehensive and fair.
170. Mr Waller is also correct when he says that I indicated at the close of the inquiry that it was my preliminary view that the agricultural use made of the field in the material 20 year window (i.e. between April 1996 through to April 2016) was insufficient to displace qualifying TVG use and that this was not an incompatibility case. I still adhere to this view. Mr Waller helpfully deals with the agricultural user under a separate heading which, in my view, cannot be said to have been inconsistent in any material sense with qualifying TVG uses

allowing for give and take on both sides and would be allowed to continue even if registration was found to be justified. Mr Waller rightly cites from the speech of Lord Hoffmann in *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 at [57] where he said that he did 'not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes for the purposes of section 22 if in practice they were not.' Mr Waller is also right to refer to the later case of *Lewis v Redcar and Cleveland BC No 2* [2010] UKSC 11, in which, at [28], Lord Walker said that he saw great force in Lord Hoffman's judgment in this respect, adding that 'taking a single hay crop from a meadow is a low-level agricultural activity compatible with recreational use for the late summer and from then until next spring'. Whether it is one or two cuts of hay and/or for silage it is I think clearly settled now that such low-level agricultural uses are mere interruptions and by themselves would not count as a legal barrier to the registration of land as a TVG in a proper case. The allegation that the field was ploughed in 2000 (which As accept happened) merits separate consideration although Mr Waller thinks that it was not necessarily fatal to his case as it did not on the evidence, as he puts it, 'obstruct recreational use taking place on Great Lees in any meaningful way'.

171. In the first part of his submissions Mr Waller deals with the facts and evidence given by witnesses which, as it seems to me, have already been sufficiently covered by my report, if only in outline, but with due regard to the necessity to record those parts of the oral evidence which are likely to be material to the outcome of this application. Not all the evidence given falls within this category. However, much of what Mr Waller says is common ground and he is clearly right when he says that informal recreation undoubtedly took place on the land. The question, as always, concerns (a) the nature and extent of the use during the qualifying period, and (b) if As can overcome the first hurdle, whether that use is precluded from being qualifying use on the ground that it involves non-peaceable use, a factor which occupied a great deal of the time of the inquiry.
172. Pound Lane gate: I am in agreement with Mr Waller's case that the gate was replaced in 1998 and again in 2010. I also agree that the gate installed in

2010 is the one in place today but that the galvanised steel post to which the 2010 gate is secured was probably the one installed in 1998 to serve the gate erected at that time. The suggestion of newness created by the Halls' email (O/155) can only sensibly be explained by an overgrown hedge which, by 2016, had covered up the galvanised steel post installed in 1998. Further, there can also be little doubt that the angle iron is of long standing and pre-dates the commencement of the qualifying period.

173. Mr Waller makes detailed submissions on the enclosure of the Pound Lane gate on which I am required to make findings. A significant point he makes is that the condition of the gate must have been so poor by 1998 and again by 2010 that there would have been periods when it might not have been capable of being locked and chained to a gatepost. He also addresses the recollections of his witnesses (both oral and written and his analysis of the documents show that there are 68 witnesses who fall within this category) who regularly used this access into the field and who claimed to have walked through an unlocked or open gate. He also suggests that of those who mention locking, all refer to it as occurring only rarely (such as when the field was being sprayed or when travellers were known to be in the vicinity) and even then for a limited period (of whom there are, he says, 19 residents although Miss Stockley would put the number at 18). At any rate, most of As witnesses say they used the Pound Lane access as they were able to do so as the gate was unlocked which one presumes meant that the gate was left open or because there was a gap between the angle iron (to which the gate was secured, as shown in O/153, CRA/593) and the main gate post through which people could walk unhindered into the field which is, of course, a matter on which I have to make a finding.
174. Mr Waller makes the following points in order to justify why I should find, firstly, that the Pound Lane gate was locked only occasionally and, secondly, that when not locked a gap existed allowing unimpeded access between the angle iron (i.e. when the gate had been secured to it) and the galvanised gate post erected in 1998. The point is important as it is conceded that some 80% of users gained access to the field via the Pound Lane gate although I have clearly not overlooked the fact that this was not the only access into the field.

(a) He says that the arrangement of securing the gate to the iron angle would have been convenient given the relative positions of the galvanised steel post, the iron angle and the hedge, the frequent poor condition of the gate and the overgrowth in the hedge.

(b) As the field has not been in use for pasture since the early 1990s, the Masters are unlikely to have been concerned by a gap of around 3ft created by this arrangement.

(c) The fact that the Masters admit in their joint statement at O/52 (para 10) that it was possible to go *round* the locked gate.

(d) The evidence of a gap explains why it is that local inhabitants were able to freely use the gateway.

(e) Mr Grout's warning to WS-B that he should secure the site might well have implied that this was not the case on his visit in September 2015.

175. Mr Waller then goes on to deal with the gap in the western hedgerow (i.e. point 3 on P/3). No one disputes that there was a gap in the hedgerow at this point which, since 2016, has been blocked off by Os. Mr Waller rightly says that none of the residents who gave oral evidence recall any obstruction within this gap which would have precluded access into the Masters' field. There was some evidence of wiring indicative of the presence of a Wiltshire gate but it was, as Mr Waller suggests, limited. He mentions Mr Clarke seeing two barbed wires stretched between the gate-posts at point 3 and it was his view that these wires were in *situ* only 'very rarely' and perhaps only when the Masters kept horses on their field. Mr Grout also recalled a Wiltshire gate rolled up next to the hedge when he visited in September 2015. Richard Bruges also recalled two wires present at point 3 on occasion but nothing like what we see at the moment in this gap.

176. Mr Waller reviews the evidence of signage and barbed wire. I have already dealt with this in the case of WS-B's evidence.

177. Mr Waller questions why it is none of the claimed signs were ever seen by As witnesses. Mr Waller does not suggest that evidence was given dishonestly

by WS-B. What he says is that any signs which were erected were not erected securely or on suitably long-lasting material and were not erected in a suitable location and that such signage was admittedly amateurish (as WSB accepts). He says that WS-B visited infrequently and that no obligation was placed on the Masters to maintain the signs (although they had undoubtedly been under an obligation since 1988 (O/89 at para 6(a)) not to permit trespass). Mr Waller also points to the absence of a metal gate at point 3 (or even a Wiltshire gate throughout) on which he might have erected signs.

178. Mr Waller very helpfully summarises the findings of fact which he invites me to make.

(a) The location and features of Great Lees made it ideally suited during the relevant period for residents of Semington to recreate upon.

(b) The field has been used by a significant number of the inhabitants of the locality of the Parish of Semington for a variety of qualifying TVG uses continuously throughout the qualifying period.

(c) TVG use was carried out compatibly with the agricultural use made of the field during the same period.

(d) The Pound Lane gate was frequently unlocked allowing unimpeded access into the field.

(e) When locked (infrequently and for agricultural reasons) the Pound Lane gate was secured invariably, or almost invariably, by locking the gate to the iron angle, and this created a gap through which pedestrians could pass around the locked gate.

(f) There is no doubting the fact that those living on the perimeter of the field at Nos.29 to 36 Pound Close will have had unimpeded access into the field.

(g) Nor was there any obstruction through point 3 into the Masters' field. The only impediment to access through this gap (such as it might have been) would have been limited to two pieces of wire hung across the former gateway on rare occasions when horses were in the fields.

(h) Barbed wire wound around the top bar of the Pound Lane gate at various occasions throughout the qualifying period was intended merely to prevent people from climbing over the gate.

(i) Only amateurish signs were erected on the Pound Lane gate. The content of these signs is unclear but they were prohibitory in nature but they were not securely fixed, nor were they of long-lasting material, and nor were they fixed at suitable locations.

(j) Any signs on the gate were lost or removed shortly after being erected by persons unknown.

The concessions made in (h), (i) and (j) above are clearly important.

179. Mr Waller also addresses the questions which I invited the advocates to deal with in their closing submissions.

(a) The steps taken by the landowners to demonstrate to local inhabitants that he did not welcome trespass on the field.

(b) Were these steps reasonably sufficient to demonstrate the landowners non-acquiescence (in light of *Winterburn v Bennett* [2017] 1 W.L.R. 646 and *Taylor v Betterment Properties (Weymouth) Ltd* [2012] P&CR 3)?

(c) Did the locking of the Pound Lane gate give rise to a material interruption (by analogy with the fencing off of part of the site in *Taylor v Betterment Properties (Weymouth) Ltd* [2012] P&CR 3)?

(d) Can the CRA be satisfied that, for practical purposes, the whole of the field was used for informal recreation during the qualifying period?

180. Mr Waller took points (a) and (b) together: put shortly, he said the question is whether the landowners acquiesced in the use of the field for TVG purposes? Mr Waller says clearly that on the evidence Os acquiesced and that reasonable users would not have been aware that Os did not welcome or otherwise encourage local inhabitants to come into the field (save by use of the PROW).

181. Under this head Mr Waller deals with WS-B's reliance on the annual grazing agreements, the signage, barbed wire wrapped around the top rung of the gate and his annual inspections. As was posed in the *Betterment* case, had the landowner taken reasonable steps to advertise his opposition to the use of his land by local inhabitants such that reasonable users would have been made aware that their use was contentious? It is Mr Waller's case that Os have fallen short of what it is they must demonstrate in order to show that use was non-peaceable and thus non-qualifying. What Mr Waller seems to be saying is that greater steps, if taken, are more likely to have brought it home to users that they were not welcome on the field. The fact that none of As witnesses saw any signs affords grounds for supposing that Os did not do enough, indeed not nearly enough, to demonstrate their opposition to the use of their land by local inhabitants for recreational purposes. Mr Waller is, I think, suggesting that there should have been more clearly-worded and securely fixed signs which should have been re-erected with greater frequency. It is suggested that as WS-B's presence on site was so infrequent he should have seen to it that someone else should have dealt with signage in his absence. He also cites the absence of prohibitory signage elsewhere. Mr Waller says that the reasonable landowner would have placed signs on all potential points of access for the public (although the PROW at the northern end of the field would have precluded this). He also suggests that signage such as 'Private No Right of Way' or 'No Right of Way' might be construed as prohibiting access onto the field at that particular point of access, i.e. as right of way, and not as a general prohibition extending to points elsewhere around the perimeter of the field.

182. In relation to the wrapping of barbed wire around the top bar of the Pound Lane gate, Mr Waller says that this cannot be demonstrative of non-acquiescence especially as, on occasions, when the gate was locked, access remained possible through the gap between the end of the gate and the hedgerow and at all times from other locations around the perimeter. He says the existence of barbed wire in this context might reasonably have been understood to count as an expression of Os opposition to the gate being climbed over. Mr Waller also contends that the locking of the Pound Lane

gate, even if it was secured to the galvanised steel post, was not *per se* indicative that access of the land was prohibited. He says that the natural inference a reasonable person would draw was that the owners did not want vehicles accessing the land but that there was no objection to pedestrian access through the various alternative points of access that remained unimpeded and which were (in relation to those access point in the rear of the properties in Pound Close) obviously in use by residents.

183. The case on interruption: Mr Waller says that even though the gate would have been locked from time to time, it was always possible to access the land via the gap between the angle iron and the hedgerow which presupposes that the gate would have been locked to the angle iron. Also there were alternative access points which meant that this was not a total exclusion case. Interruption is accordingly denied.
184. The next issue is whether, for all practical purposes, it can sensibly be said that the whole of the land had been used for LSP for the relevant period, always bearing in mind that qualifying use will be heavier in some areas than in others. Mr Waller says that it would have been.
185. Under the same head (even though it is in fact a separate point germane to the nature of the claimed user), Mr Waller asserts that Os are, as he puts it, incorrect to argue that the primary use of Great Lees is attributable to the assertion of a public right of way rather than a community asserting general recreational rights over the land. He does though concede that some of As witnesses gave evidence which was consistent with the use of the field (as he puts it) as a convenient route to transit to other locations. As previously indicated, the true question is whether the use would appear to a reasonable landowner as referable to the exercise of a right of way along a defined route or to a right to enjoy recreation over the whole of a wider area of land. If the appearance is ambiguous, then it shall be ascribed to a lesser right, i.e. a right of way. This is clearly critical to this case as we have a popular cross-field track leading eventually to the canal and swing bridge which is an attractive location for walkers looking to proceed westwards along the canal PROW or return along the canal path PROW back into the village. The position is to be

contrasted with a situation where users veer off the track and play or meander leisurely over and enjoy the land on either side, which is referable to use as a green. This is no doubt As case and the burden lies on them to establish that this was in effect the nature of the user in this case. Mr Waller says that the vast majority of the use that took place is only consistent with the assertion of a right to indulge in LSP across the field as a whole and a reasonable landowner could only consider this use to be referable to use as a TVG. He also makes the point that whereas many dog walkers use the perimeter areas, other dog-walkers choose to take a perimeter or linear route through the field and others stray off these path. It is clear, he argues, that the full extent of the field, or at least most of it was traversed by dog-walkers. He also mentions children's' games such as cricket, football, hide and seek, fox and hounds, frisbee, kite flying and aeroplane flying which are not activities that one would associate with the lesser use of the land as a right of way along a defined route or routes. It follows, Mr Waller argues, that even were one to discount perimeter walks or cutting through the evidence of qualifying TVG use remains extensive.

186. Miss Stockley also raises other arguments which Mr Waller wishes to address.

(a) The opening of the Pound Lane gate on special occasions would have been permissive. This must surely be right when it came to parked vehicles during the occurrence of village events. For his part, Mr Waller speaks of the absence of overt acts. Secondly, he says that access as of right would have been available elsewhere around the field from which he says it follows that any case based on an implied licence is founded on a false premise.

(b) That residents causing damage to the Pound Lane gate were, in any case, using the field by force. Not surprisingly, Mr Waller cites the fact that there are 104 residents whose user evidence confirms that they did not cause any damage to access the site, nor did they see any notices saying the land was private. He also argues that, as a matter of law, the fact that the Pound Lane gate may have been damaged by a person or persons unknown will not of itself render the use by these 104 residents by force. I doubt whether he is

right about this as the law is now clear, namely that notwithstanding the fact that an individual trespasser may not himself/herself have broken a fence and/or forced an entry through a locked gate and/or removed a prohibitory notice, their use remains forcible. See *Taylor v Betterment Properties Ltd.* [2012] EWCA Civ 250 per Patten L.J at [38] and at [60]-[63], where he spoke of the principle that rights of property cannot be acquired by force or by unlawful means).

(c) Mr Waller is, however, at pains to point out that the veracity of As evidence was not challenged at the inquiry and that it is not open to the Objectors to suggest now that their use of Great Lees Field was by force or for the inspector to so conclude. I am content to draw inferences about this where necessary from the evidence I have heard and I certainly do not regard Miss Stockley as having been under an obligation to cross-examine As witnesses on all details of the parties' respective cases. He also says that a plausible explanation for damage to the gate may lie with the agricultural contractors accessing the land over the years.

187. Accordingly, Mr Waller invites me to recommend that the application to register be allowed.

Closing submissions

Objectors (Miss Stockley)

188. Miss Stockley rightly contends that for the application to succeed, it must be established, pursuant to the Commons Act, section 15(3) (which is the relevant sub-section on this application):

- (a) that the Land has been used for LSP for a period of not less than 20 years;
- (b) that such qualifying use has been by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;
- (c) that such use has been as of right; and

- (d) that the application was made within one year of the date of cessation of the qualifying use.
189. She also rightly points out that the burden (and the standard is the usual civil standard) lies on As to justify all the elements necessary for the registration of the field as a new TVG. She also reminds me of the often repeated observations of Lord Bingham in *R. v. Sunderland City Council ex parte Beresford* [2004] 1 AC 889 who noted that Pill LJ. had rightly pointed out in *R v Suffolk County Council ex parte Steed* (1996) 75 P&CR 102, 111 that the registration of land as a TVG was no trivial matter and that it was necessary that all ingredients of the definition should be met before land was registered.
190. Miss Stockley accepts that the relevant 20 year window is the period from 27 April 1996 through to 27 April 2016. She further acknowledges that the application to register dated 24 June 2016 and received by the CRA on that date would have been made within the requisite one year period allowed for this. She also accepts that this is a locality case concerning the civil parish of Semington (whose boundaries are shown on P/2).
191. Miss Stockley also sets out those elements of the statutory definition which are in dispute on this application, namely (and I deal with them in the order in which they arise in Miss Stockley's submissions):
- (a) whether the qualifying use has been non-peaceable and therefore not as of right;
 - (b) whether the qualifying use has been permissive and thus not as of right;
 - (c) whether the qualifying use has been interrupted during the relevant 20 year period and so has not taken place for full 20 year qualifying period;
 - (d) whether, and to what extent, the qualifying use has amounted to the assertion of recreational rights over the field as a whole in contrast to the assertion of public rights of way across and/or around the perimeter of the field; and

(e) whether the qualifying use of the field as a whole has been demonstrated by As to have been carried out to the requisite degree and extent by a significant number of the inhabitants of Semington Parish throughout the relevant 20 year period.

192. Miss Stockley begins with use by force (or non-peaceable use as it is also known). She begins with the legal principles which I have already covered at para 13 above and it is unnecessary to replay all these matters. Suffice to say that I agree with her analysis of the law. Clearly use that is either violent or contentious will not justify registration as it will not be use which is *as of right*.

193. It is though necessary to deal with one case concerning signage which reached the Court of Appeal (and went to the Supreme Court on a separate issue) and is in point on this application. It is that of *Betterment Properties (Weymouth) Limited v. Dorset County Council* [2012] EWCA Civ 250 At para 8 Patten LJ stated that:-

if the landowner displays his opposition to the use of his 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 not be peaceable. It is not necessary for Betterment to show that they used force or committed acts of damage to gain entry to the land. In the face of the signs it will be obvious that their acts of trespass are not acquiesced in.

He went on to state at para 60 in relation to the removal of signs:

It seems to me that there is a world of difference between the case where the landowner simply fails to put up enough signs or puts them in the wrong place and a case such as this one where perfectly reasonable attempts to advertise his opposition to the use of his land is met with acts of criminal damage and theft. The judge has found that if left in place, the signs were sufficient in number and location; and were clearly enough worded; so as to bring to the actual knowledge of any reasonable user of the land that their use of it was contentious. In these circumstances is the landowner to be treated as having acquiesced in that user merely because a section of the community (I am prepared to assume the minority) were prepared to take direct action to remove the signs?

And further at para 63:

It would, in my view, be a direct infringement of the principle (referred to earlier in the judgment of Lord Rodger on Redcar (No. 2)) that rights of property cannot be acquired by force or by unlawful means for the Court to ignore the landowner's clear and repeated

demonstration of his opposition to the use of the land simply because it was obliterated by the unlawful acts of local inhabitants. Mrs Taylor is not entitled in effect to rely upon this conduct by limiting her evidence to that of users whose ignorance of the signs was due only to their removal in this way. **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.**" (The emphasis is Miss Stockley's).

194. The question is whether Os took sufficient steps to demonstrate to local inhabitants that they were not acquiescing in the trespass by local inhabitants.
195. Miss Stockley then deals with the importance of the Pound Lane gate to the case and the concession made that 80% of As witnesses entered the land via that gate which she rightly said was consistent with the oral evidence.
196. Miss Stockley then addressed the evidence of Os conduct in terms of the locking of the gate, the replacement of the gate when damaged, the placing of barbed wire along the top of the gate, and the erection and replacement of signage on the gate during the relevant 20 year period. She rightly says that the evidence of Os conduct should be considered as a whole in determining whether it was sufficient to demonstrate to local inhabitants that Os were not acquiescing in the trespass which was taking place on their land.
197. The following evidence is noted.
 - (a) It is alleged to be significant that locking of itself is not in dispute; what As dispute is the frequency of such locking before 2016. A number of As witnesses who provided oral and/or written evidence in support of the application speak of a locked gate.

In terms of the As oral evidence:

Colin Wade stated in chief that he had seen the gate locked on around 6 occasions, usually by means of a chain and padlock.

Graham Wyllie stated in chief that he recalled the gate being locked by means of being chained to the main gate post.

Diane Swaine stated in chief that she recalled the gate being locked.

Brian Smyth stated in cross examination that even if the gate was closed, *'he could duck down and climb through the gate which I've done on occasion'*, indicating that it was locked from time to time.

Kenneth Clark stated in cross examination that he saw the gate locked. He went on to state that although he did not access via that gate, he was aware from *'hearing it on the grapevine'* that it was sometimes locked. Such evidence confirms the statement in As 'Justification' document and also Dr Scott's evidence that it was known in the village that the gate was locked from time to time. Miss Stockley says that Mr Clark's evidence is also noteworthy for the fact that he used the field to walk from the rear garden of his house to the gap in the western hedgerow, i.e. point 3, where he said in chief that there was always a gate which he climbed through when it was closed *'by lifting the wire up. There was always a means.'*

Jack Woodward acknowledged in cross examination that the Pound Lane gate was *"locked on occasions"* with a padlock. It is further of note that he was aware of such locking despite his access to the Land being primarily via his rear garden.

In terms of As written evidence, the following witnesses refer to the gate being locked before 2016 The numbered references are to documents within A/tab/5 (save where the contrary is stated).

Martyn Jansen *aka Jan Jen* (171)

Jenny Lockyer (204)

Mr G Callaghan (36)

Mrs G Callaghan (36)

Mr E Noad (CRA/97)

Nicola Houghton (140)

Simon Restall (253)

Ray Heard (122)
Mandy Robinson (271)
Kevin Lockwood (198)
Rose Lockwood (198)
Christopher Reed (247)
Sue Hardy (110)
Martin Hardy (110)
Philip Deverall (A/tab1/24)
Christine Deverall (A/tab1/24)
Gemma Brimson (30)
Tyler Brimson (30)

198. Miss Stockley says that the written evidence of Martyn Jansen *aka Jan Jen* is worthy of special note. He states in his user form that he has used the field around once a week from 1987 until 2016 and that his means of access was to “*climb over gate*” (box 6). He goes on to state (at box 16):

For many years the gate has been illegally padlock [sic] &/or topped with barbed wire.
(Again, Miss Stockley’s emphasis).

Miss Stockley goes on to say that that evidence is entirely consistent with Os evidence.

199. Miss Stockley says that even on As own evidence the primary access point into the field has been locked on a number of occasions to the extent that a total of 25 of As oral and written witnesses make specific reference to it. I am, however, inclined not to attach a great deal of weight to the evidence raised in the ‘Justification’ document which I think was largely drawn up by Dr Scott following the assembly of the written evidence. When one looks at the ‘Justification’ document (A/80) there is admittedly a reference to the Pound Lane gate being locked ‘on a number of occasions over the years before the ploughing’. However, the same document then goes on to give instances of when this happened all of which were covered in the oral evidence and I do not read this document as an admission by As that there was a regular pattern of gate locking over the years although they are certainly saying that it happened at times when travellers were known to be in the locality or when

cattle were in the field or when spraying took place. Miss Stockley is, I think, saying that these events which justified locking the gate should not be given any or any great weight. She says that spraying with dry pellets would not justify locking the gate and there is nothing to corroborate traveller movements within the locality. At all events, Miss Stockley is saying that the issue of gate locking is primarily one of frequency on which I am required to make findings.

200. Miss Stockley deals with the evidence of Chris Awdry, James Holloway and Nicholas Grout which I have already covered all of whom gave evidence of a locked gate at various times over the years, namely in 2000 (Awdry), 2014 (Holloway) and 2015 (Grout). As did not challenge the evidence of these witnesses. Miss Stockley also deals at length with the evidence of WS-B who, she says, gave very credible and largely unchallenged evidence as to his significant efforts to ensure the gate was locked which I will not repeat. Miss Stockley also accepts that the written evidence from the Masters will not have been tested by cross-examination. It seems to me, however, that it would still be open to me to give it some weight where it was consistent with other evidence that was put before the inquiry such as that which was given orally by WS-B. For instance, they say at paras 5 and 6 of their joint statement (O/51) that they always did their best to keep the gate closed and locked (except for the periods when silage was being made) but that over the years the gate was damaged and vandalised.
201. Miss Stockley also deals with inconsistencies in the evidence when it came to whether the gate was left open. She notes that Michael Hawkins recalled opening and shutting the gate whereas Christine Jones stated that she recalled there being 'a normal farm gate latch which you lifted up and dropped to close'. Further, Diane Swaine referred in cross examination to pushing the gate to open it whilst Angela Mills stated in cross examination that she did not recall a gate ever being in situ at Pound Lane until 2016, evidence which I recall surprised us at the time.

202. Miss Stockley asks me to bear in mind the context in which the 2009 open gate photo was taken which, she says, shows a badly damaged gate which was replaced the following year, a gate which had been installed as a new gate only in 1998. She also asks me to bear in mind that the photo of the gate attached to the iron stake at O/153 followed the end of the relevant 20 year period at a time when the land would have been under cultivation and as such might have been left in that position to suit the contractor's convenience whilst such work was in progress. What Mr Awdry actually said was that it was possible for his driver to have left the gate secured in this way and so avoid having to keep it closed with a lock and chain. He said it would have been safer to keep the chain in the cab whilst the driver worked in the field. He also thought that the angle iron could have served as the original gate post (or an old shifting post as he described it) which would have been left in place once a new gate post had been installed although the hedgerow would have come up to the angle iron to create an enclosure otherwise any animals in the field could have walked straight out into the road. Contrary to what Miss Stockley says about this, Mr Awdry did not cut back the hedgerow at this point in 2016. WS-B was asked about this and he suggested that, whilst the photo at O/153 was taken after the hedge had been cut back, he could not say who did this. He asked Mr Awdry about it and it had not been him although he had cut the rear hedge in 2016. In other words, the evidence was not quite as expressed by Miss Stockley.
203. Miss Stockley also questions, in effect, the obvious incompatibility between, on the one hand, Os alleged acquiescence in the use of the land by local inhabitants for informal recreation and, on the other, the presence of barbed wire over the top of the gate throughout the whole of the 20 year period (indeed it is still there). There was no dispute over the presence of barbed wire on the gate. Indeed, Diane Swaine said it had been there for over 30 years (see evidence of Steven Hall, Diane Swaine, WS-B and James Holloway).
204. Miss Stockley also asks me to bear in mind, in effect, the totality of the steps taken by WS-B in the period 1987 through to 2016, evidence which I need not repeat. She asks me to consider the letter written by Julia Masters to WS-B on

7 April 2003 stating that the gate 'will need to be locked the other end as people keep lifting it off the hinges', something which the Masters also say in their witness statement at para 6. She invites me to link such conduct with people similarly damaging the Wiltshire gate and creating a new gap in the western hedgerow at point 2 on P/3 which is reported in the officer's report (with photos) in the DMMO applications at O/218 (Pictures 5/6). Miss Stockley also rejects the notion that the Pound lane gate would have been damaged by agricultural vehicles. Looked at in the round, she argues that the landowners took sufficient steps to indicate that they were not acquiescing in the trespass which took place on the land. She says that this conclusion would also be consistent with the findings of the surveying authority in rejecting the application for a DMMO on the ground that the primary use of the land had been by force and so not as of right.

205. Miss Stockley also raises, in the alternative, an issue of implied permission which would also negate use as of right. She argues that the regular locking of the Pound Lane gate implies that the use of the land by local inhabitants on other occasions would have been by virtue of an implied consent, consistently with the well known dictum of Lord Bingham in *Beresford* at [5] where he said precario might be implied whenever a landowner periodically excluded the inhabitants where he wishes to use the land for his own purposes. Such a case would, of course, be radically incompatible with Os main case on exclusion. At any rate Miss Stockley argues that the locking of the gate amounted to an *overt act* by the Landowner in the sense contemplated by Lord Bingham in *Beresford* and by Lewison LJ in *TW Logistics Ltd v Essex County Council* [2019] Ch 343 at [87], and not to mere inaction as arose in the latter case. Indeed, that locking was sufficiently regular, even on As own case, for it to be clearly known to locals.
206. Miss Stockley also raises the question of interruption arising from signage and locking (when use cannot have been as of right seeing as it would have been contentious) and ploughing in 2000 (when that particular summer had been a wet one). Interruption is clearly a question of fact but Miss Stockley reminds me that in the *Betterment* case ([2012] EWCA Civ 250 at [68]) an interruption lasting for 4 months where the land was cut off and unavailable for LSP was

held to have stopped time running. She says that the material interruptions in this case would have lasted for at least 4 months and, she says, for much longer than this.

207. Miss Stockley also raises the issue of the sufficiency of qualifying use over the whole of the land. She cites from the well-known cases under this head, namely *R (Laing Homes Limited) v Buckinghamshire County Council* [2003] EWHC 1578 (Admin) at [102], and at first instance in *Oxfordshire County Council v Oxford City Council* [2004] Ch 253 at [102]. She points (a) to the primary use of the land being that of dog walking, and (b) to the oral evidence of what she says was the vast majority of the witnesses who indicated that their use of the land was as a transit route, walking across the land from their point of access to point 3, or around the perimeter of the land, rather than using the land as a destination in itself on which to recreate. Such use, she argues, is more akin to the exercise of a right of way and would not support registration. Miss Stockley summarises the evidence which falls within this category:

- Michael Hawkins stated in chief that he ‘followed the boundary’ of the land.
- Christine Jones in chief stated she used the land as part of a longer walk.
- Colin Wade stated in chief that he used the Land to walk to the canal which was his destination.
- Peter Turner in chief and in response to the Inspector’s question stated that he ‘only’ used the land between points 1 and 3 ‘as a place of transit’ to get to the swing bridge which was his destination.
- Steven Hall stated in chief he used the land ‘as a cut through to the village’ and did not regard it as a destination for dog walkers.
- Graham Wyllie confirmed in chief that he used the land merely to transit for both his short and long walks.
- Brian Smyth stated in chief he either walked across the land between points 1 and 3 or walked around the perimeter.
- Philip Deverall stated in chief that he used the land as a means of transit from his rear garden access to point 3 in order to access the swing bridge.

- Kenneth Clarke stated in chief he walked across the land to point 3 as part of a longer walk; and
- Richard Bruges gave evidence that he had only seen very occasional use of the land by dog walkers walking round the perimeter of the land.

208. Miss Stockley argues that there was a distinct lack of evidence regarding use of the land as a destination on which to recreate. She says that such use was clearly referable to the assertion of a public right of way and not to general recreation over the Land as a whole and must accordingly be discounted from the qualifying use. She says this position is consistent not only with the case for a DMMO but with the aerial photos which show defined tracks across the land between the Pound Lane gate and point 3 on P/3 and from the rear gardens of the Pound Close properties again to point 3 showing that the land had been used as a means of transit along these defined routes. She goes on to say that if one discounted such evidence what is left would be insufficient to justify registration. Indeed she mentions a lack of photos and the further fact that even the video produced by Graham Wyllie during the summer months showed no one else on the land. She also mentions the evidence of Michael Hawkins and Christine Jones both of whom appear to attribute children's play within the field to use by children living in the houses backing onto the Land. Further, she says that such evidence is consistent with the evidence of WS-B who never saw any recreational use of the land during any of his visits, whilst Richard Bruges only saw occasional dog walking round the perimeter.

209. Accordingly, Miss Stockley argues that once the appropriate discount of footpath use has been carried out, the recreational use of the land has been extremely limited. She says it has not been demonstrated by As that the land as a whole has been used by a significant number of the inhabitants of Semington Parish throughout the relevant 20 year period. She therefore says that I should recommend that the application to register the land as a TVG should be rejected.

Discussion

210. The quality of As oral evidence was generally poor. This is not to suggest that any one of As witnesses attended with a view to telling untruths. All of them used the land and gave the impression that they were safeguarding it. I think that all of them were attempting to describe matters as they genuinely saw them.
211. However, I always bear in mind that where strong emotions are raised by an application, as is the case here, memories and recollections may be unconsciously coloured or distorted, especially where a group of people with a common interest are involved.
212. It is also true that where an activity has been carried on in the recent past, it is easy to believe that the activity has been carried on longer and/or more often and/or more continuously than it really has. I must therefore be cautious about the oral evidence which was given about events occurring in the early stages of the qualifying period.
213. For example, if a witness says that he/she saw no lock and chain on the Pound Lane gate and has never been prevented from accessing the land through this gate, then I should treat such evidence with care in view of the contemporaneous documents (such as the Masters/WS-B correspondence) which corroborated Os evidence.
214. I begin by dealing with those elements of section 15(3) of the Commons Act 2006 on which there is no dispute. Firstly, that the relevant qualifying period was between 27 April 1996 and 27 April 2016. Secondly, that the application to register dated 24 June 2016 was made within the one year period allowed for this. Thirdly, that this is a locality case involving the civil parish of Semington whose boundaries are shown on P/2.
215. The core issues on this application are these: (a) whether there was significant qualifying use by local inhabitants; (b) whether it was such as to suggest to the reasonable landowner the exercise of a right to indulge in LSP across the whole of the land (and any use which is more than occasional or

sporadic normally would be); (c) whether that use is precluded from being qualifying use on the ground that it involves forcible or permissive use; and (d) whether that has been a material interruption; in other words, whether time stopped running because the land was closed off, or was interrupted at a time when it could not have been exercised as of right, or where the competing uses of the landowner and the local inhabitants could not have sensibly co-existed on the same land (which is unlikely to arise here as the agricultural use was at an extremely low level after 1996).

216. These issues can, I think, be divided into discrete sections:

- (a) Did a significant number of local inhabitants go onto the land?
- (b) Did they use the whole of the land for qualifying LSP?
- (c) Did they do so for the whole of the 20 year qualifying period?
- (c) If the answers to (a)-(c) are YES then the question is whether that use is precluded from being qualifying use on the ground that it involved forcible or permissive use?

I now propose to deal with each of these issues in turn.

Did a significant number of local inhabitants go onto the land?

217. The sufficiency of use point is perhaps the least difficult as it is, I think, obvious that a significant number of local inhabitants used the land, but not the whole of the land, for informal recreation during the qualifying period. As have produced witness statements from 105 residents (many with accompanying questionnaire responses) and oral evidence was heard from 14 residents who spoke of their own use and the use they observed of others on the land. Indeed, the analysis of As evidence, as disclosed by the very useful 'Justification' document, shows that the user relied on is, as one might expect, predominantly that of walking, with or without dogs, together with children's play. In my view, a significant number of local inhabitants used the land throughout the qualifying period.

218. It is, however, a common complaint in proceedings of this nature that although As submissions and the returned evidence questionnaires go into detail about most things such as why and how often the land is used and what others get up to on the land, there is next to no detail given as to precisely where on the land users actually go when they get there.
219. It is also asserted in this case by As (despite there being a number of other access points around the perimeter of the land) that some 80% of users accessing the land did so via the Pound Lane gate. For this to have happened a number of possibilities arise (and occurring at various times during the qualifying period). First, the gate would either have had to be left open or could be opened with relative ease. Second, it might have been feasible for users to climb through or over the gate (in the case of those users were prepared to clamber over the barbed wire running along the top of the gate). Third, if the gate could be avoided altogether by users simply walking through a gap between the end of the gate and the adjoining hedgerow. This would have been because the gate was secured to the angle iron at a time when the hedgerow had been cut back leaving a gap for unhindered access into the field. The photo at O/153 taken on 28 April 2016 suggests that this might have been the case for a short time but is not generally supported by the oral evidence, nor is it inherently likely anyway as there was a perfectly usable gate post only 2/3 feet away. It is, I think, more likely that the gate would have been attached to the angle iron as a temporary expedient when work was taking place in the field. It will be recalled that when Chris Awdry was asked to comment on the photo at O/153 he said it was possible for his driver to have left the gate secured in this way and so avoid having to keep it closed with a lock and chain. He said it would have been safer to keep the chain in the cab whilst the driver worked in the field.
220. At all events, what seems clear is that most users were able to get onto the land via the Pound Lane gate. Having said that, access into the field would also have been available (a) midway along the western hedgerow at point 3 on P/3; (b) at the northern end of the field via the two stiles (i.e. at points 4 and 6 on P/3); and (c) by those whose homes in Pound Close had the

advantage of a gate leading straight onto the land at the rear of their properties (i.e. those living at Nos.29 to 36 Pound Close).

221. It is, I think, probable that local inhabitants were using the field more often than on an occasional or sporadic basis as it is close to a settlement comprising a sizable community which, as it seems to me, is lacking in accessible open space for walking, with or without dogs, and although the area is admittedly well-served by PROWs it is not the same as having a field down to grass on one's door step. It is also an obvious place of transit (via the Masters' field) to the swing bridge, canal and towpath which are attractive destinations for walkers on long or short walks. For those not wishing to walk as far as the canal but who are looking instead for a walk closer to their homes or, perhaps, a shorter circular walk taking them back into the village via the PROW (SEMI/1), one can see the attraction of a walk around the perimeter of the field where the ground will probably be firmer and the length of the grass less of a problem during the growing season. It is also material that the land was ploughed in 2000 (this is now agreed) which means that it would have been much softer in the central areas where the post-2000 aerial images disclose precious little evidence of the impact of human feet on the ground.
222. Where it is alleged that undeveloped areas are in regular use by local inhabitants one would normally expect to see some, perhaps even limited, evidence of tracks on the ground. It will be recalled that my own analysis of the aerial imagery from *Google earth* does not assist As case.
223. The image for 2001 shows obvious linear tracks leading from the Pound Lane gate and from 32 Pound Close across the field to the gateway at point 3 on P/3. There is also the faint sign of a track around the eastern perimeter but with much clearer signs of usage on the northern boundary consistently with those walking to and from the swing bridge from the village. Judging by this image the land appears to be used as a crossing point into Masters' field in conjunction with SEMI/6. The 2001 image shows heavy use of the perimeter on the eastern and northern boundaries and a faint cross field path from point 3 on P/3 joining up with the main track crossing the Masters' field which is

SEMI/6. The image for 2002 is much the same as described above for 2001 but with the addition of a track leading from point 2 on P/3 (the second gap in the western hedgerow) to the cross field track running out from 32 Pound Close. There are also very faint tracks in the eastern corner which are very probably associated with the use by two of those dwellings which have gates onto the land. The image for 2006 is broadly similar but the effect is lessened by recent mowing and the image for 2014 is unclear although there is a linear path between the Pound Lane entry and point 3 on P/3 on the western boundary. The image for 04/2015 does not really have sufficient clarity to work with.

224. The written evidence therefore discloses that a significant number of local inhabitants were using the land and it is my finding that such use would have been more than occasional or sporadic. The photographic evidence is of some assistance to As but there are few photos in this case but those we have do show what the land would have looked like before it was ploughed in 2016 and would have accommodated walking within the field and all manner of other recreational uses of the kind alleged, at least when the grass was short. I have previously mentioned the photos produced by Graham Wyllie which date back to 2013-2014 and the condition of the land in each case would have been fit for walking. One of these photos clearly shows a well established gap in the western hedgerow at point 3 on P/3 and one can easily see why it was suitable for those walking within the field who might have been looking for a longer walk on to the swing bridge. It was the oral evidence of Dr Scott that there were posts on either side of this gap but no actual gate before April 2016 and this is how it appears on the photo at A/111A which dates back to March 2014 although this is not incompatible with this having been, at some point, a Wiltshire gate.

Was the whole of the land used for qualifying LSP?

225. It is my finding that the land was mainly used as a place of transit for walking, with or without dogs, to destinations elsewhere or as a place for walks across and/or at the edges of the land. This was either into the Masters' field via the gap in the hedgerow at point 3 or the stile at point 4 on P/3 or via the stile at

point 6 on P/3 which leads back into the village which we walked on the accompanied site visit.

226. There would have been children's play but I doubt very much whether this was significant and I agree with Miss Stockley when she says that the evidence of use by children is limited. She mentioned the evidence of Michael Hawkins and Christine Jones both of who attribute children's play on the land to the children who lived in the houses that backed onto the land in Pound Close. This is not a case where one has a copse or deep hedgerows in which one will find dens where children will tend to congregate and play. The land itself is open and bounded by fencing or traditional hedgerows fit only for picking blackberries on the few weeks in the year when this is feasible. When I looked at the WWII pill box it seemed to me to be obvious that it would not count as a destination in itself for children's play. I think it unlikely that children, and especially when accompanied by their parents, are going to spend much time in recreating on the land and are more likely instead to be using it as a place of transit to the canal, swing bridge and towpaths.
227. Reference has been made to the *Laing Homes, Oxfordshire* and *Radley Lakes*' cases in paragraphs 14 through to 17. These cases are relevant to the issue of whether certain activities are referable not to LSP and a right to enjoy recreation over the whole of a wider area of land, but to the exercise of a putative or supposed right of way along a defined route or routes. The question is how the user would have appeared to a reasonable landowner on the spot. Clearly where, as here, tracks have distinct access points and the track leads from one to the other and the users merely use the track to get from one of the points to the other and which leads (as here) either to an attractive view point or back into the village, then user confined to the track may readily be regarded as referable to user as a public highway alone. The question might be different where users veer off the track and play, or meander leisurely over and enjoy the land on either side which is more likely to be referable to use as a green. Lightman J noted in *Oxfordshire* that where there was any doubt about the matter the inference should be drawn in favour of the exercise of the less onerous right rather than the more onerous right to

use land as a new green. In other words, the landowner gets the benefit of the doubt in the case of doubt.

228. It is clearly relevant here that in 2016 an application was made to add three footpaths to the DMS. The application plan is at P/5 and it shows that a perimeter path was being sought around most of the land (less a short stretch on the western boundary) (this is the green route: A-B-C-D-E-F-G-H). It was also claimed that a linear path should be added to the DMS commencing at the Pound Lane gate running directly to the gap at point 3 on P/3 and continuing across the Masters' field before joining up with SEMI/6 in the north-west corner of the Masters' field just short of the swing bridge over the canal (this is the blue route: A-H-M). These applications failed but it seems to me that most of the claimed use of the land in the TVG proceedings would be consistent with the rights of way which were claimed in the DMMO process (inclusive of the use of the stile at point 6 on P/3 as a way back into the village for those interested in a longer circular walk). What user would be left once the putative right of way user was discounted would not, in my view, have been of such a character and frequency as to justify registration.
229. I might add that in the *Laing Homes* case that Sullivan J did not consider that a dog's wanderings or the owner's attempts to retrieve his errant dog would suggest to the reasonable landowner that the dog-walker believed that he was exercising a public right to use the land beyond the footpath for informal recreation. In the *Oxfordshire* case in the House of Lords ([2006] 2 AC 674 at [68]) Lord Hoffmann approved of the guidance on this issue offered by Lightman J at first instance and by Sullivan J in *Laing Homes*.
230. I am assisted by Miss Stockley's submissions, with which I agree and which I have set out in detail at paragraphs 207 to 209 above. What she has done is to point to the evidence of ten of As witnesses who indicated, in their various ways, that their own use of the land was as a transit route in the sense that they either walked across the land from their point of entry onto the land to point 3 on P/3 or else around the perimeter of the land rather using the land as a destination in itself on which to recreate. Such use, she argues, is more akin to the exercise of a right of way and would not support registration. She

says that there was a distinct lack of evidence regarding use of the land as a destination on which to recreate which would also be consistent with the evidence of WS-B who never saw any recreational use of the land during any of his visits, whereas Richard Bruges only saw occasional dog walking round the perimeter.

231. Miss Stockley therefore invites me to find that once footpath use has been discounted what is left when it comes to recreational use over the remainder of the land is too limited and infrequent to justify registration. I agree. She also says that it has not been demonstrated by As that the land as a whole has been used by a significant number of local inhabitants for LSP throughout the qualifying period from which it must follow that I should, on this ground alone, recommend that the application to register should be rejected. I agree and am bound to say that with land of this size (around 4 ha or nearly 10 acres) it was always going to be something of a challenge for As to show, on the evidence laid before the inquiry, that it could sensibly be said that the whole of the land had been used for LSP for the relevant period even allowing for the fact that qualifying use will be heavier in some areas than in others. Indeed, it is not as if the unused areas can be said to be integral to the enjoyment of the land as a whole such as might arise perhaps in the case of areas which are unused as they have been landscaped or are under cultivation such as might arise in the case of planted borders, water features and the like.

Whether the use relied on is precluded from being qualifying use on the ground that it involved forcible use?

232. The starting point is the evidence of WS-B whose evidence I accept (note my assessment of his evidence in paragraph 168 above). The narrative in his case begins in 1987 once ownership had passed to he and his siblings where WS-B appears to have taken the leading role.
233. By around 1987 WS-B says that he had threaded barbed wire along the top rung of the Pound Lane gate in order to discourage people from climbing over it. A Wiltshire gate had also become established in the gap in the hedgerow on the western boundary which is more than likely as there were cattle on the

land until the early 1990s. WS-B says that he also purchased a chain and padlock for use by the Masters in order to keep the Pound Lane gate secure. He also erected signs on the gate ('Private Land – No Entry') made of plywood which any reasonable user would understand to mean that the land beyond was off limits. These signs were, he says, removed and had to be replaced within a couple of years, say by 1989. It would, in my view, have happened sooner if he had been visiting Semington more often than once a year.

234. It is WS-B's clear evidence that, with the exception of what he found on his visit in 1997, the Pound Lane gate would have been locked and chained (the Masters always had a key as did WS-B and his cousin, Michael Bruges). It seems that, in practice, he had left it to his cousin to keep an eye on things in his absence. WS-B can, of course, only speak about what he found on his annual visits but I find that the gate would have been locked or, at least, was usually left locked by the Masters until around the time of WS-B's visit in 1997 (that is, when locking the gate was still feasible which may not have been the case for around a year before WS-B's visit in 1997, i.e. until not long after his previous visit) when he found the gate to have been lifted off its hinges at one end (i.e. off the hanging post on the left hand side as one looks at the gate from the road) with the lock and chain still wrapped around the latch post on the other side of the gateway.
235. In his written evidence (statement dated 25 July 2016 (para 16)) WS-B says that Julia Masters told him that people lifting the gate off its hinges or damaging it by climbing over it (resulting in damage to the lower bars) had always been a problem, something which also affected the Wiltshire gate on the western boundary. We then come to the February 1998 repair involving the installation of a new gate plus hanging and latch posts. This was accompanied by fresh signage on the new gate indicating that the land was private. He also wound barbed wire around the top bar to prevent people from climbing over it, just as he had done with the former gate in 1987 (it is agreed that the latch post shown on the photo taken on 28 April 2016 was the same one replaced in 1998. It is, as I find, likely that the new gate was also locked as on 18 April 1999 WS-B wrote to Julia Masters asking whether they wished

to rent the field again that year and that if this was not the case they should return the key to the lock of the gate and should confirm that the gate had in fact been left locked. In the event, an agreement was taken up with the Masters for the 1999 season which implies that WS-B was satisfied that all was in order when it came to the gate.

236. In his oral evidence WS-B said that he did not visit Semington in 1999-2000 but on his visit in June 2001 he found the Pound Lane gate to be locked and chained with the barbed wire still in place on the top rung of the new gate. However, the signs had been removed. The position was the same in June 2002. This is consistent with what WS-B said in his letter dated 7 April 2002 to Thomas Masters in which he said that he hoped that the gate was, as he put it, 'still in place and working, and that you still have the key? Let me know if not – I am happy with the rent staying at £500, if you will continue to agree to keep it locked'. On 7 April 2003 Julia Masters also wrote to WS-B asking whether they could rent the field again in 2003 saying, as she put it, 'The gate is locked and we still have the key although it will need to be locked the other end as people keep lifting it off the hinges' which meant that lifting the gate off its hinges at the hanging end was still something of a problem. WS-B's reply was an exhortation to the Masters to, as he put it, 'do something to prevent it being lifted off. Maybe a stiff wire, or a permanently locked chain?'
237. The departure of WS-B's cousin, Michael Bruges, to Bath sometime in 2003 prompted WS-B to erect, as he put it, 'heavier and better' signs on both the Pound Lane and Wiltshire gates ('Private – No Right of Way'). However, on his visit to Semington in 2004 (on his way to Bath to attend the funeral of his cousin's wife) he found that the signs on both gates had been removed and were lying on the ground. I find it to be more probable than not that he re-erected these signs. It is clearly material that someone had deliberately cut the heavy galvanised wires which would have attached the plywood signs to the two gates. Despite the removal of the signage I find that barbed wire was still in place on the top rung of the Pound Lane gate (it is worthy of mention that Steven Hall, who has lived at 14 Pound Lane since 2003, said that the barbed wire had always been there).

238. Despite these measures it seems plain that people were still using the gate to enter the field as by May 2009 the gate, which had been installed brand new in 1998, was in a state of some disrepair (see photo on CRA/40 and O/119) with the lock and chain gone. The gate is seen to be left open although barbed wire was still on the gate.
239. The issue was raised as to whether the damage shown in these photos was caused by agricultural vehicles nudging the gate open. I reject this possibility which the Masters dispute in their joint statement. It is, I think, wholly unlikely that experienced tractor drivers would have driven into this gate and caused the damage shown which involved the complete removal of the middle bar and the buckling of the bar below it which seems to me to be more consistent with damage caused by people clambering over or through a locked gate. At any rate, on 27 May 2010 Thomas Masters wrote to WS-B saying, as he put it, that the 'old gate has been replaced by a new one and padlocked.' There is no reason to suppose that this never happened and in his reply dated 8 June 2010 WS-B thanked him for, as he put it, 'replacing the lock and padlock'.
240. There was no prohibitory signage on the new gate as by then he and the Masters had given up on signs (concentrating instead on seeing that the gate was locked and chained) as they were only going to be ripped down again. WS-B said that he would have added barbed wire to the top rung of the new gate on one of his trips to Semington and that the gate looks the same as it does today. At any rate, WS-B continued to make annual visits to Semington and the Pound Lane gate was, as he found, 'always perfectly locked' in the period 2010-2016. This evidence is consistent with the evidence of James Holloway, and Nicholas Grout both of whom climbed over the Pound Lane gate in, respectively, 2014 and 2015, as the gate would have been locked.
241. The evidence of Nicholas Grout is also of interest on the state of the hedgerow at the latch post end of the gate. It was his evidence that at the time of his visit on 14 September 2015 the gateway was more overgrown and the undergrowth had been trimmed back by the time of his later visit in March 2016 which suggests that the galvanised latch post erected in 1998 (which Mr Waller agrees is the same one in situ today) might well have been obscured

from time to time by the adjoining hedgerow which may have led Mr and Mrs Hall to think that it had in fact been newly installed in April/May 2016. For his part, Mr Holloway also said he would not have been able to squeeze around the side of the gate which he said was locked up to a gate post and not secured against the angle iron. He was with his wife and small child and he remembers his wife passing him the child over the gate in order that she might climb over the gate herself. I think this evidence is consistent with the angle iron being used only temporarily whilst contractors were in the field in 2016 and not before-hand. It follows, I think, that the photo taken in April 2016 showing the gate attached to the angle iron leaving a gap for people to walk into the field is something of a red herring. I agree with WS-B that the photo on CRA/593 is more likely to have been taken after the hedge had been cut back although it is not clear who did this yet the Masters had admittedly been responsible for keeping the hedges properly cut (their last agreement had lasted until the end of 2015).

242. WS-B's evidence was that when it came to the Pound Lane gate he relied on the Masters to keep the gate locked (pursuant to their obligations in the several grazing/annual keep agreements) and to stop people coming onto the land. As they were on the spot and as WS-B was an absent landowner (and of course his cousin had left the village in 2003) there was nothing unreasonable about this. Clearly the Masters had been far too lax in their management of the land which is bound to have contrasted with the position when they had cattle in the field until the early 1990s. In my view, it is more probable than not that they knew that local inhabitants were using the land for walks, with or without dogs, and chose, for their own reasons, to do nothing about it although I think it likely that whenever they cut/sprayed the grass they would have unlocked/locked the gate to the latch post.

243. It is also material that As are not disputing that from time to time the Pound Lane gate would have been locked. In her skeleton Miss Stockley identifies oral and written evidence adduced by some of As witnesses which deals with this which I have covered in paragraphs 197-198 above. She is clearly right when she says that such evidence is consistent with Os case on regular locking. I also agree with her that the evidence of Martyn Jansen of ■ Wessex

Close is worthy of special note in that he says in his questionnaire responses at A/tab5/170 that the gate had been 'illegally' locked 'for many years' (he claims to have used the land around once a week between 1987 and 2016 which he says he accessed by climbing over the Pound Lane gate.

244. It is not possible for me to say how long, throughout the qualifying period, the gate would have been continuously locked but it seems to me that, on the evidence, it is likely to have been locked intermittently for months, if not years, at a time and that reasonable users who were regularly using this means of access onto the land would have been aware of the existence of the lock and chain and ought to have appreciated that the land was private and off limits to the public. There were, of course, also instances when the gate itself was removed from its hinges on the hanging post. Any use arising out of such unlawful conduct (and I find that it is bound to have been significant over the years as the Masters complained about this and WS-B himself discovered an uplifted gate on a visit to Semington in 1997) cannot possibly justify registration notwithstanding the fact that an individual trespasser may not himself/herself have been responsible for this. The position is the same in the case of those whose use only came about as a result of an entry having been forced through a locked gate or by virtue of the removal of a prohibitory sign. Again, this is, as I find, bound to have been significant over the years.
245. The evidence in relation to the prohibitory signs suggest that they are only likely to have been in place on the Pound Lane and Wiltshire gates for relatively brief periods. Such signs were erected by WS-B in 1987, 1989, 1998, 2003 and in 2004. By 2010 at the latest there were no further prohibitory signs on the new Pound Lane gate or the Wiltshire gate. It seems plain, however, that WS-B had probably given up on signs long before this as he and the Masters took the view that it was never worth it as they would only be ripped down again and I find that this is what must have happened. At any rate, I find that prohibitive signs were in place and would have been seen by those entering the land after these dates via the Pound Lane gate (to which a sign or signs would have been attached) and by those coming and going through the Wiltshire gate.

246. I have already advised on the law of forcible (or non-peaceable) use. It is clear that forcible use is not use as of right and will not justify registration. We are dealing here with use that is either by force or else is contentious, even if not accompanied by physical force. The erection of a fence or a locked gate to enclose or secure land or a suitably placed prohibitory notice will usually be such as to render use forcible. The fact that these steps taken to resist trespassory use are disabled (such as by removing locks or notices or, as occurred here on various occasions, by actually lifting the gate off its hanging post) will not negate the effect of those steps in terms of rendering use forcible (see *Taylor v Betterment Properties Ltd.* [2012] EWCA Civ 250 per Patten L.J at [38] and at [60]-[63], where he spoke of the principle that rights of property cannot be acquired by force or by unlawful means).
247. As previously indicated, it follows that notwithstanding the fact that an individual trespasser may not himself/herself have forced an entry through a locked gate and/or removed a prohibitory notice and/or lifted the gate of its hanging post, their use remains forcible in law. In other words, if prohibitory signage is not seen as it has been wrongfully removed or if a gate has been forced open or otherwise rendered easier to use, by whatever means, as a place of access onto the land then an applicant for registration would not be entitled to rely on the evidence of users whose ignorance of such signage or whose use of a gate which has been interfered with has been made possible in such circumstances. In such cases the user would be non-qualifying.
248. The question, therefore, is were the steps taken by WS-B/Masters sufficient to indicate that trespassory use was resisted. In my view, they were more than adequate to do this. I might add that even if those steps were interfered with/disabled/ignored a landowner is not then required by law to take further steps to resist on-going trespass (see *Winterburn v Bennett* [2016] EWCA Civ 482 at [36]-[37]). It is also the case that even if use is rendered forcible by actions taken by the landowner before the commencement of the twenty-year qualifying period (in this instance before 27 April 1996, and I have already highlighted the actions of WS-B taken in 1987/89) trespassory use within the qualifying period will remain contentious unless there is clear evidence

that Os changed their position such that they were no longer contesting the use. No such evidence arises in this case. The issue was addressed in *Winterburn v Bennett* which was a notice case. The notice had been erected before the commencement of the qualifying period yet the CA held (see [37]) that that step remained sufficient to render use in the qualifying period trespassory.

249. I also think that in placing barbed wire on the top rung of a gate a landowner is sending out a clear message that he does not welcome trespass beyond the gate. This is not a step taken by a landowner who is acquiescing passively in the assertion of a right by local inhabitants to go onto the land and to use it for informal recreation. Barbed wire, in combination with a lock and chain and prohibitive signage (whose meaning would have been obvious to a reasonable user) over many years is, I think, ample evidence to negative any suggestion that, with open eyes, Os indulged in the use of their land by local inhabitants. I find that it follows that any use of the Pound Lane gate by local inhabitants after 1987 would have been non-qualifying for TVG purposes. Since the overwhelming majority of those using the land would have done so via this gateway it must surely follow that the application must also fail on this ground as it is my finding that the remaining use did not pass the threshold of being of sufficient quantity or quality to harden into a legal right.

Permissive use

250. The next question is whether Os can resist registration on the ground that the recreational use was, by necessary inference, permissive. Miss Stockley relies on the principle stated by Lord Bingham in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 at [5] on the footing that local inhabitants, at least those wishing to enter from Pound Lane, were being excluded from the land (by means of a locked gate) on those occasions when Os had no particular need for the land. The implication of a licence requires some overt act on the part of the landowner. Would locking the Pound Lane gate suffice for these purposes?

251. In *R (Mann) v Somerset County Council* [2017] 4 WLR 170 the landowner occasionally held a beer festival and funfair on part of the land for which he charged an entrance fee. It was held that the exclusion of members of the public (except for those who paid the entrance fee) for a few days in the year was sufficient exclusion to demonstrate that public access to the land for the rest of the year was permissive.
252. By contrast in *R (Cotham School) v Bristol City Council* [2018] EWHC 1022 (Admin) the court found that a landowner who laid out football and rugby pitches on the land (which would have prevented simultaneous use by the public for recreational purposes) did not do enough to confer an implied licence at times when the pitches were not used. Sir Wyn Williams held that, in essence, the principle of co-existence negatives the grant of permission. In other words, that the marking out pitches did not deprive the recreational use of its character of being use as of right.
253. It seems to me that Os cannot have it both ways. They cannot sensibly be heard to say, on the one hand, that the gate was locked and had barbed wire along the top bar and that prohibitive signage was in place and, on the other, that such use as may be found to have occurred at other times when the gate happened to be open or was utilised in some nefarious way as a means of access into the land would have been subject to an implied permission.
254. The point being made here by Os is that it is not possible to register a TVG on land that was available for recreational use upon a part time basis. It seems to me, however, that the defence under this head bears no relation to the factual position in this case in circumstances where (a) forcible use is being advanced, and (b) where the Pound Lane gate was not even the only access into the field such that any exclusion from the land would only have been a partial one.
255. In my view, one could not really categorise the locked gate and the prohibitory signage in this case with overt acts involving, say, temporary exclusion from which it might be inferred that the landowner was permitting access on other

occasions when the gate was usable. The exclusion in this case, though only partial, is, in my view, far from the kind of exclusion to which Lord Bingham was referring in *Beresford* which seems to me to apply in those cases where periodically the landowner is regulating access to and use of his land. I do not see how in this case that by closing off the gateway in the manner in which WS-B and/or the Masters did the landowner was communicating to local inhabitants their permission for LSP to take place on the land. I therefore take the view that the case on implied permission fails.

Interruption

256. The case under this head is really this: on the assumption that, at times during the qualifying period, the Pound Lane gate was periodically inaccessible to 80% of those who claim to have been using the land on a regular basis, would it necessarily follow that the land had not in fact been used for LSP for 20 years?
257. It is essentially a matter of fact and degree whether land has been so used for LSP throughout the 20 year period. Clearly, in light of WS-B's evidence, the gate will have been locked for prolonged periods throughout the qualifying period. In *Taylor v Betterment Properties (Weymouth) Ltd* [2012] EWCA Civ 250 at [71] Patten L.J spoke of an ouster of local inhabitants where the disruption would have been inconsistent with the continued use of the land as a green. In that case the public had been excluded from part of the land for around four months and it was found that that interruption would have been sufficient to stop time running.
258. In this case the exclusion had the effect of curtailing the use of one of a number of access points around the perimeter for a prolonged period, quite possibly for a great many months if not for years. It was not as if, by locking off the Pound Lane gate, there was a cessation in the use of the whole of the land. In my view, the principle of interruption is likely to arise in practice where local inhabitants are (a) deprived of the use of the whole of the land; or (b) where the disruption is, for whatever reason, inconsistent with the continued use of the whole or parts of the land as a TVG; or (c) where, in a case where

the landowner was also using the same land for his own purposes, it would not be possible for the respective rights of the landowner and of the local inhabitants to co-exist, at least not sensibly; or (d) where qualifying use of the land could not have been exercised as of right as, for instance, where the land is temporarily used under licence. It seems to me that none of these things arise on the present facts and that the case against registration is better explained by reference to questions involving the sufficiency of qualifying use and non-peaceable use precluding use as of right.

Findings of fact

259. The core findings I make are these:

- (a) A significant number of the local inhabitants of Semington used the land, but not the whole of the land, for LSP throughout the qualifying period.
- (b) The land was mainly used as a place of transit for walking to destinations outside the land rather than as a destination in its own right for LSP over the whole of the land. Any remaining use of the land itself would have been confined largely to walking, with or without dogs, around the perimeter of the field.
- (c) It follows that the land would have been mainly used for the exercise of putative or supposed rights of way along a defined route or routes. Such use would not justify registration. It follows that the whole of the land has not been used for qualifying LSP.
- (d) Any use not falling within category (b) (i.e. once the footpath use has been discounted) would not justify registration as it was too limited and infrequent.
- (e) The As are precluded from relying on use through the Pound Lane gate as it involved use which was forcible in law and therefore not as of right and would not justify registration as a matter of law. The use of the land by others who had entered it through different entry points was insufficient to justify registration.

(f) WS-B threaded barbed wire on the top bar of the three Pound Lane gates after 1987. In doing this his intention had been to discourage local inhabitants from using this gate as a means of entry into the land. Reasonable users of the Pound Lane gate should have known that the presence of barbed wire in these circumstances meant that the land was private and off limits to the public.

(g) Throughout the whole of the qualifying period the Pound Lane gates would have been continuously locked for months, if not for years, at a time except on those occasions when the Masters wished to go onto the land for their own purposes. Reasonable users who were regularly using these gates as a means of entry into the land should have been aware of the existence of the lock and chain around the latch post and should have appreciated that the land was private and off limits to the public.

(h) If the Pound Lane gate had been left open at any time it was either because it had been inadvertently been left open for short periods by the Masters or, prior to at least 2003, because the gate had been wrongfully lifted off its hinges on the hanging post by persons unknown allowing local inhabitants to enter the land.

(i) Prohibitory signs were erected by WS-B on the Pound Lane and Wiltshire gates in 1987, 1989, 1998, 2003 and in 2004. By 2010 there was no further prohibitory signage on the Pound Lane gate. Such signs are likely to have been removed within a relatively short period by persons unknown and Os were justified in the circumstances in not re-erecting replacement signage on a continual basis as it was likely to be torn down within a short period.

(j) The foregoing signs would have said 'Private – No Right of Way' or similar. They were located where they would be seen by reasonable users and would have conveyed the clear message that the land was private and off limits to the public.

(k) If any one or more of the three gates had been secured to the angle iron and had not been locked to the latch post it would have occurred on only a few occasions when contractors were working in the field. Any entry into the

field by local inhabitants on these occasions would have been very limited and would not justify registration.

(l) Any damage done to any of the Pound Lane gates will have been caused by persons unknown using the gate as a means of improper entry into the land and was not as a result of the ordinary passage of agricultural vehicles through the gateway.

(m) The Wiltshire gate was usually open during the qualifying period as were the stiles at the northern end of the land.

(n) The land was ploughed in 2000.

(o) The grass on the land was cut twice each year (late spring and early autumn) during the qualifying period and prior to cutting would have been in the region of 2-3 feet long.

(p) The cases of Os on permissive use and interruption are rejected for the reasons given.

Recommendation

260. In light of the above discussion, I recommend that the application to register the land as a TVG (being application number 2016/02) should be **rejected** on the ground that the applicable statutory criteria laid down in section 15(3) of the CA 2006 have not been satisfied.

261 Put shortly, in order to justify registration As had to show that a significant number of the inhabitants of Semington indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years before the application was made and, in my view, they failed to do this for the reasons explained.

262. Under reg 9(2) of the 2007 Regulations, the CRA must give written notice of its reasons for rejecting the application. I recommend that the reasons are stated to be 'the reasons set out in the inspector's report dated 7 February 2020'.

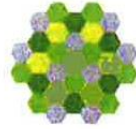
William Webster
3 Paper Buildings
TEMPLE

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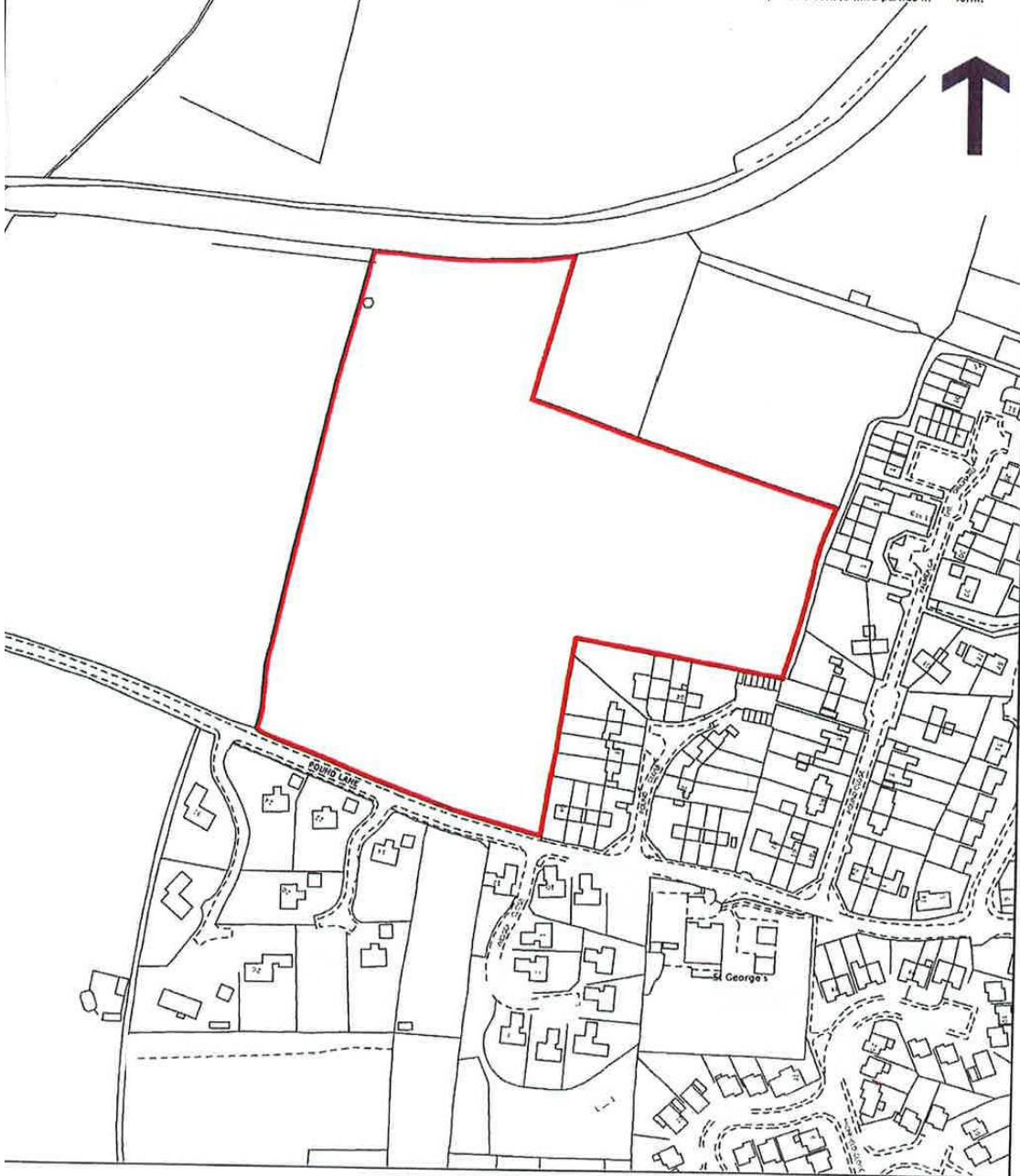
PLAN INDEX

- Plan 1 Plan of application land (edged red)
- Plan 2 Map showing boundaries of the Civil Parish of Semington (incorporating the application land coloured blue and index of streets within the village)
- Plan 3 Plan produced by the applicants showing the application land with perimeter access points
- Plan 4 Extract from working copy of definitive map of public rights of way
- Plan 5 Application map with DMMO application to add footpaths to the DMS made in April 2016

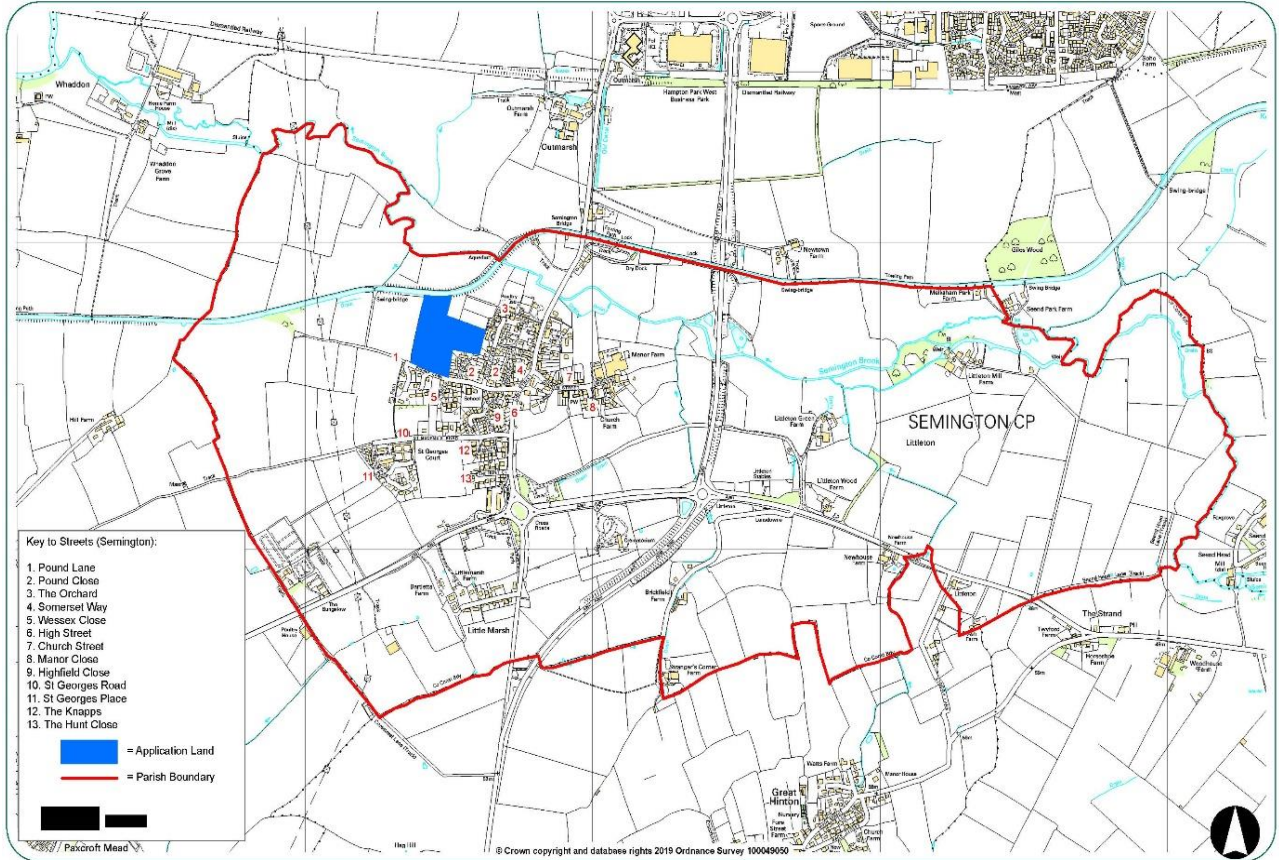
PLAN 1



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PLAN 2

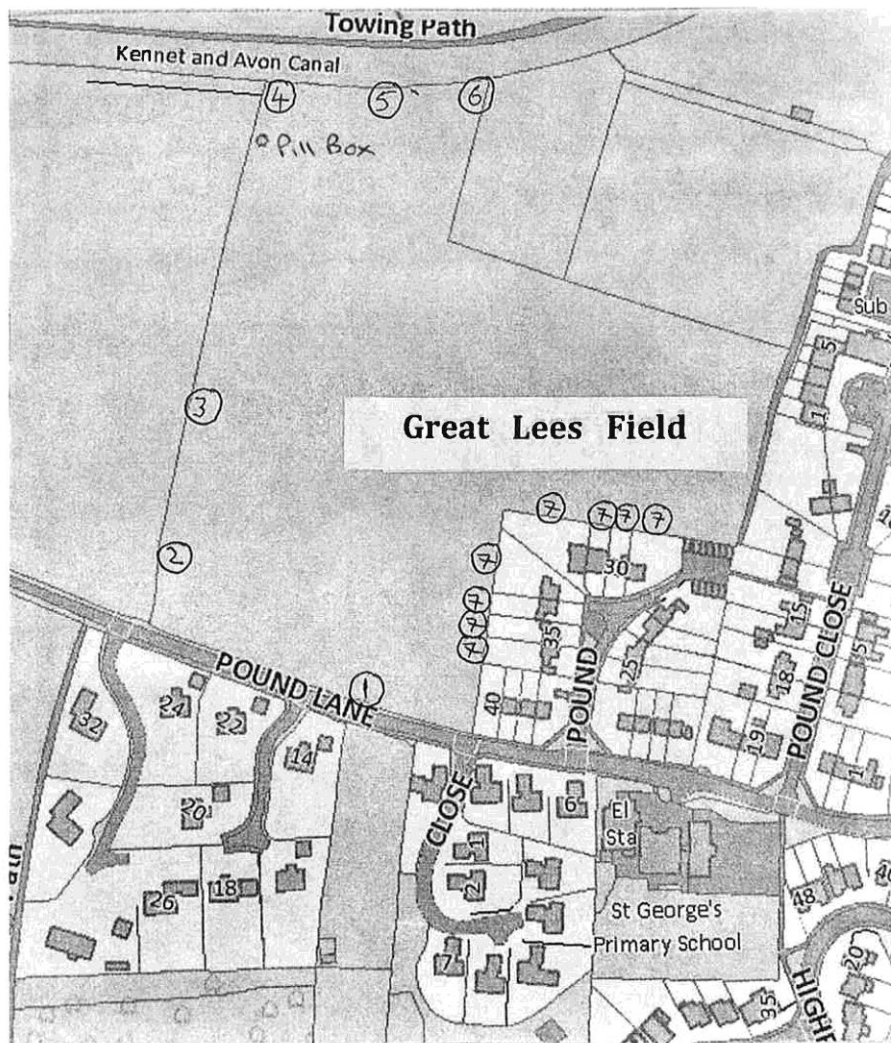


PLAN 3

2. Map showing the Great Lees Field boundary and perimeter access points

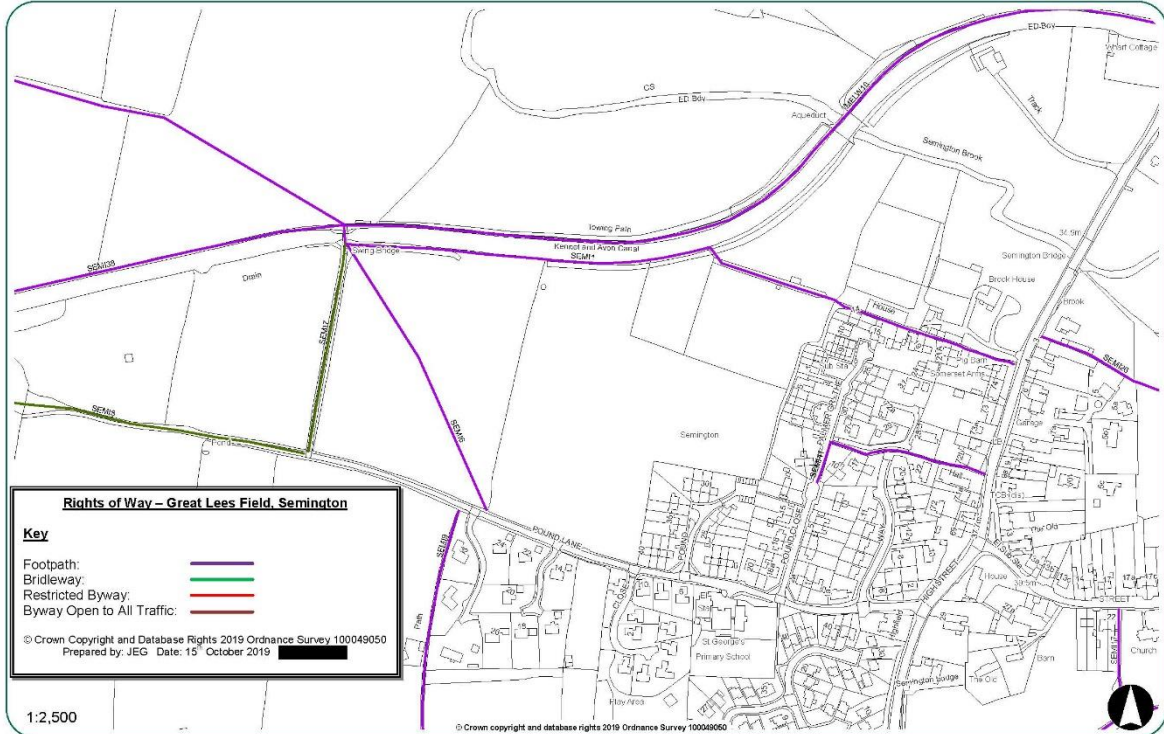
Access points to Great Lees Field:

1. the gate on Pound Lane
2. the gap in the western boundary hedge ~20 metres north of Pound Lane
3. the gateway in the western boundary hedge ~90 metres north of Pound Lane
4. stile at the western end of the right of way running along the northern boundary of the field
5. the southern bank of the Kennet & Avon canal
6. stile at the eastern end of the right of way running along the northern boundary of the field
7. back garden gates of numbers 29 to 36 Pound Close



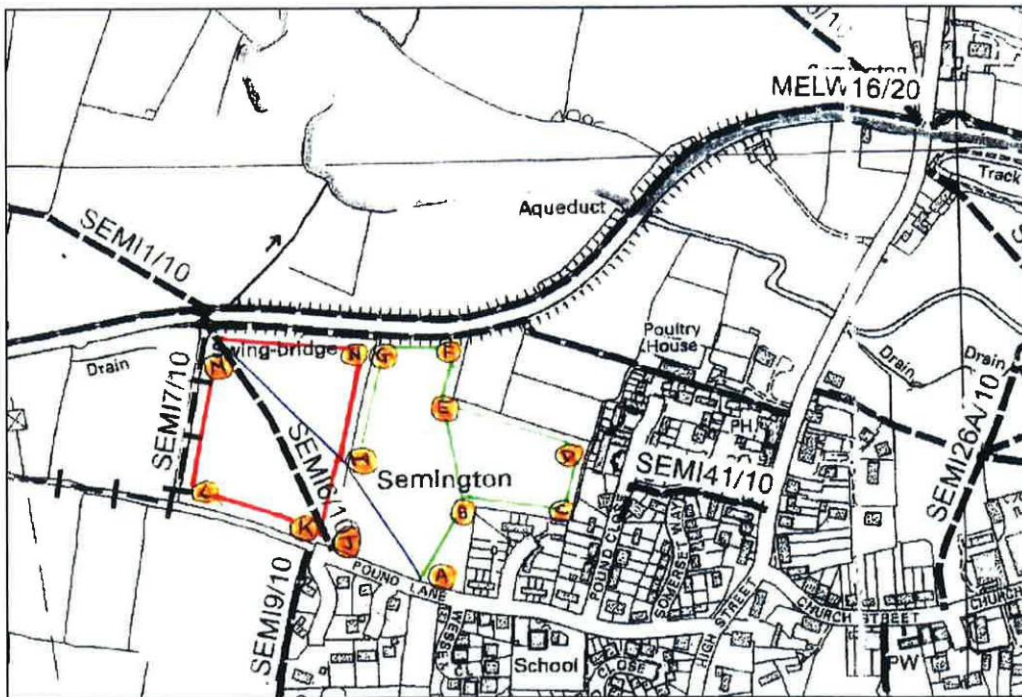
Application to Register Great Lees Field in Semington as a village green under the Commons Act 2006

PLAN 4



PLAN 5

1.1 Extract from application map:



1.2 Routes claimed:

- Red route – K-L-M-N
- Green route – A-B-C-D-E-F-G-H
- Blue route – A-H-M

REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	17 June 2020
Application Number	19/09800/FUL
Site Address	12A Frome Road, Bradford On Avon, Wiltshire BA15 1LE
Proposal	Demolition of an existing dwelling and outbuilding and erection of 5 residential dwellings with alterations to the existing boundary wall to accommodate a widened vehicular access.
Applicant	Avonvale Developments Ltd
Town/Parish Council	BRADFORD ON AVON
Electoral Division	Bradford on Avon South
Grid Ref	382615 - 160381
Type of application	Full Planning
Case Officer	Jemma Foster

Reason for the application being considered by Committee

This application was 'called in' for the Western Area Planning Committee to determine at the request of the elected local ward member, Cllr Sarah Gibson for highway reasons in recognition that officers are supportive of the development proposal. It was published on the agenda for the March committee that was subsequently cancelled due to the covid 19 situation and is therefore brought before this meeting of the Western Area Planning Committee to enable a decision to be made.

1. Purpose of Report

The purpose of this 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 should be approved.

2. Report Summary

The key determining planning issues are considered to be:

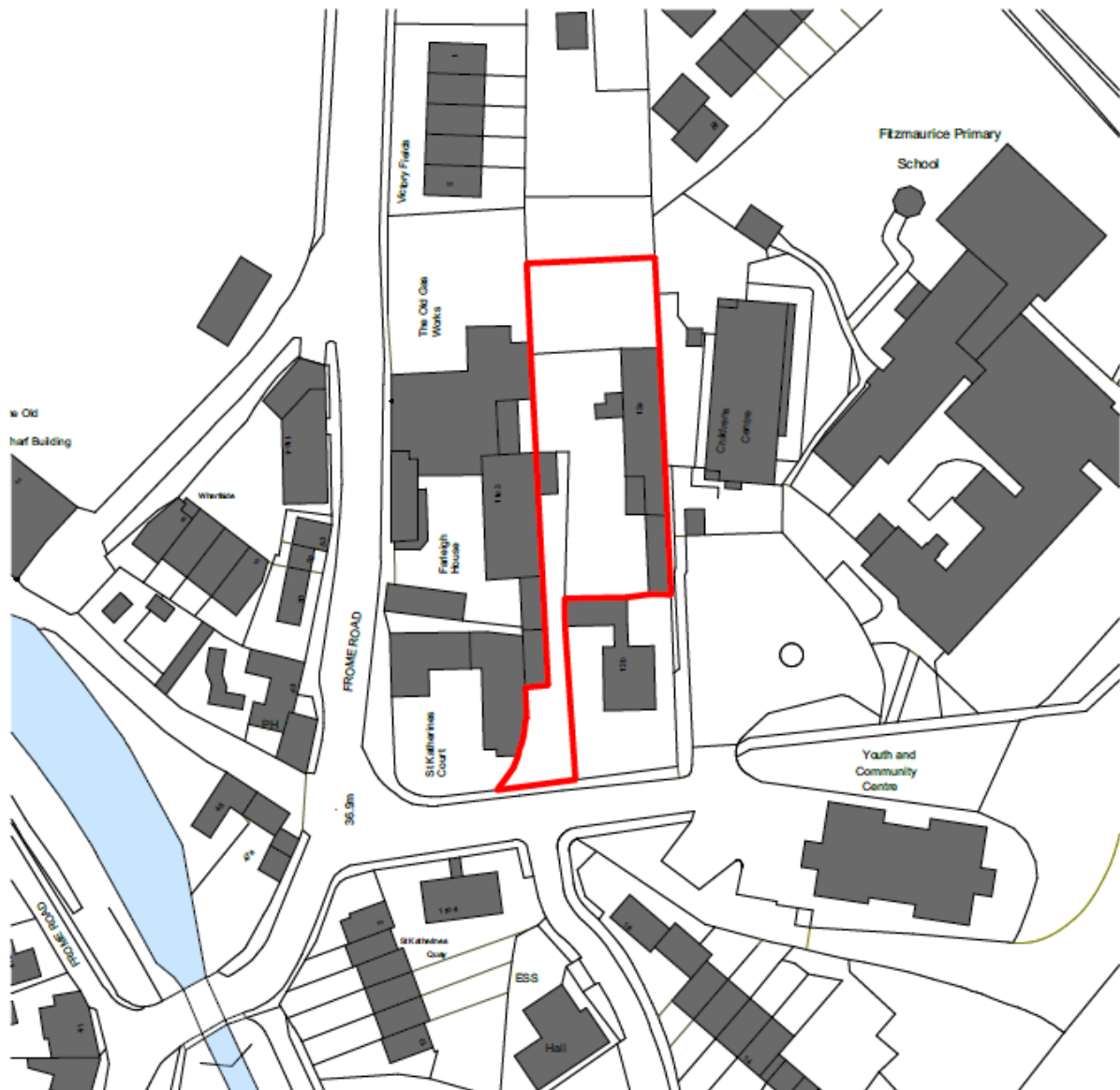
The Principle of Development; Heritage Matters; Highway Impacts; Neighbouring Impacts; Tree Impacts; and Sustainability and Biodiversity Matters

3. Site Description

The site is located within the defined settlement limits of Bradford on Avon and within the Conservation Area. As illustrated on the site location plan inserted on the following page, the application site adjoins a range of buildings at the old gas works site. These buildings are grade II listed. The building known as St Katherines Court is not listed however.

The application site also adjoins the boundary of Fitzmaurice Primary School and Children's Centre which are located to the east. The Bradford On Avon Youth Development Centre is located to the south-east of the site with residential properties located to the south. An existing unlisted 4-bed dwelling is located on the site – which would be demolished to accommodate the proposed development.

The site is accessed off Kennet Gardens which is an unclassified highway. The site lies approximately 44 metres to the east of the Green Belt and 185 metres east of the AONB.



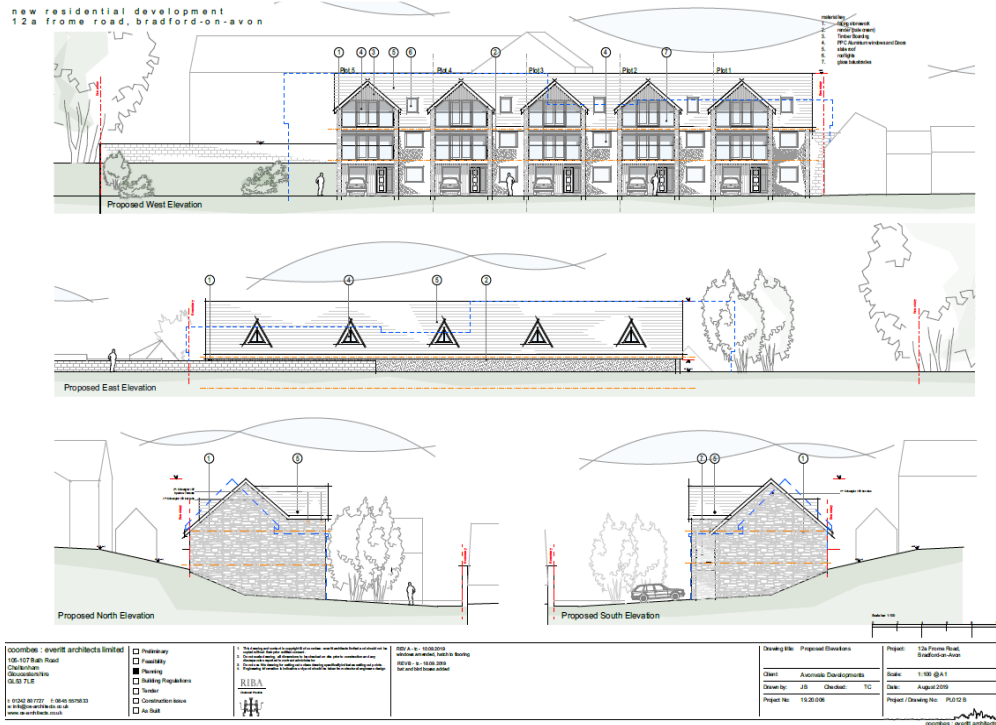
4. Planning History

W/12/01110/CAC – Demolition of existing garage – Approved with Conditions

5. The Proposal

The site is largely overgrown with a derelict single storey dwelling built with stone under a tiled roof. This application seeks full planning permission for the demolition of the existing

dwelling and the erection of 5 terraced dwellings with associated parking. The proposed dwellings are to be constructed with facing brickwork on the side elevations with a pale cream render on the front and rear elevations and timber boarding to the protruding elevations on the front façade under a slated roof - with windows and doors to be made from aluminium. The access is to remain as existing. The proposed plans are as follows:



6. Planning Policy

The Wiltshire Core Strategy (adopted Jan 2015):

CP1 – Settlement Strategy, CP2 – Delivery Strategy, CP7 – Spatial Strategy Bradford on Avon Community Area, CP51 – Landscape, CP52 – Green Infrastructure, CP57 – Ensuring High Quality Design and Place Shaping, CP58 – Ensuring the Conservation of the Historic Environment, CP60 – Sustainable Transport, CP61 – Transport and New Development, CP64 – Demand Management, CP67 – Flood Risk

Saved Policies for the West Wiltshire District Local Plan (1st Alteration):

Policy C3 - Special Landscape Area, U1a Foul Water Disposal and U2 Surface Water Disposal

The Wiltshire Waste Core Strategy (adopted 2009):

Policy WCS6 - Waste Reduction and Auditing

The 'made' Bradford on Avon Neighbourhood Plan (NP)

The Wiltshire Local Transport Plan (LTP) and Car Parking Strategy;

National Planning Policy Framework 2019 and Planning Practice Guidance (PPG)

Circular 06/2005 – Biodiversity and Geological Conservation

7. Consultation Responses

Bradford on Avon Town Council: Objection

The site adjoins Fitzmaurice Primary School which has accommodation for some 300 children plus staff. The position and configuration of the access to the site introduces significant additional traffic movements only 20 metres from the school gates that represents an unacceptable risk to the children and other pedestrians. There is a 2.8 metre pinch point part way into the site and this together with inadequate on-site turning space will result in vehicles either reversing into or out of the access. This is also a serious safety hazard. The lack of on site casual parking will add pressure onto the access road to the further detriment of highway safety. Refuse and other large vehicles waiting on the access road to serve additional dwellings, as proposed, is not acceptable. This proposal fails to comply with Policy H1 of the Bradford on Avon Neighbourhood Plan. In this case vehicular access and parking are inadequate and unsafe. There is inadequate private amenity space, the amenity of the school (and number 12 B Frame Road) are adversely affected. Thus the proposal represents significant overdevelopment of the site.

Wiltshire Council Conservation Officer: Supportive subject to conditions

Wiltshire Council Highways Officer: Do not consider these proposals to cause detriment

to highway safety, and as such, recommend that no highway objection is raised, subject to conditions

Wiltshire Council Public Protection Officer: No objections

Wiltshire Council Drainage Officer: No objection subject to conditions

Wiltshire Council Ecologist: No comments

Wiltshire Council Arboricultural Officer: No objection subject to conditions

Wessex Water: No objections

Bradford on Avon Preservation Trust: Objection

Although this is a backland location we have no objection to the site being developed but this is a wasted opportunity and we would suggest fewer units and recommend refusal. The current proposal is more reminiscent of a hotel in Hastings or other seaside resort rather than a development in an historic inland town. We object to the poor design and height of the buildings that would have a harmful impact on the character, appearance and setting of the Conservation Area. The design, particularly the unattractive front elevation, lacks any cohesion as a result of an odd mix of different design elements and materials. Clearly there is a need for glass to gain light into what would be dark rooms at the rear of the proposed buildings but fewer and wider units of a reduced depth would overcome the need for so much glazing and would improve the overall layout.

8. Publicity

The application was advertised by a site notice and posted neighbour notification letters.

Following the above, 8 letters have been received objecting to the scheme and they raise the following comments which have been summarised as follows:

Impact on the Area

- The development would be an overdevelopment of the site and the pattern of development would be out of keeping with the surrounding area whereby houses generally have a rear garden;
- The proposed plot, layout, scale and form of development are not characteristic of the area – particularly the conservation area which causes conflict with C18 and C31a;
- The triangular form of the rear dormer windows would be incongruous and out of keeping.

Impact on Amenity

- Concern raised about there being sufficient amenity space for the family units
- Is the communal space at the end of the site practical or appropriate?
- The amenity spaces should not be allowed to turn into additional parking areas
- The top bedrooms could easily be converted to form two bedrooms which would require more parking spaces

- There are proposed windows on the eastern elevation which overlook the school and children's centre which raises issues of safeguarding.
- Unsatisfactory standards of living due to windows only being proposed on the front elevation. – not enough daylight and a poor outlook.
- Insufficient space is provided for waste bins
- Insufficient amenity space for future occupants

Highways Impacts

- There will be a conflict during construction and occupation between highway users – perhaps a construction management plan should be conditioned if the application were to be approved
- There are a large number of people who walk in this area – for the school and the elderly who live here – there is already a dangerous high level of traffic associated with the school and youth centre – the scale of this development would therefore be hazardous
- The garages are not large enough to fit a modern car
- The additional fifth space required by Appendix G is not being provided – where will visitors park?
- The existing bottleneck is not being addressed. How will people evacuate the site, how will deliveries and construction traffic access the site,
- The proposal does not comply with manual for streets.
- Fitzmaurice School has an unsafe traffic and parking situation on the Frome Road Access which forms the recommended pedestrian route for all school users. Parents are advised to park at Baileys Barn Canal Trust Car parking with whom we have a free parking arrangement and then walk to school either along the towpath or along Kennett Gardens. We also have a high level of vehicular traffic. It is essential that the school has an unobstructed emergency access for ambulances and other vehicles at all times to ensure the safe running of the school and for coaches to park outside for regular school trips.

Other Matters

- No pro-active engagement has occurred with the school.
- There is a gas pipe at the pinch point which is at risk of being damaged from construction traffic and external walls of both 12B and Katherines Court could also be at risk
- The boundaries of our garden and 12A are shown inconsistently in the application and are well into our land – Page 10 of the DAS and the “MAP”
- Where will the bins go on bin collection day?
- There is a 4-metre retaining wall that runs along St Katherines Court, Farleigh House, Victory Fields development down as far as 6 Junction Road. Any ground work or tree work may weaken the all and impact the existing dwellings along this road.
- The amount of excavation proposed will threaten the stability of my listed walls and damage to my listed property could be extensive
- The existing fence adjacent to the nursery is to be removed – how will our children be kept safe when so close the building site, it will cause noise and disruption and our play area will be overlooked.
- The proposal does not meet the Building Regulation criteria for access for fire service

Two additional letters were received supporting the application which are summarised as follows:

- There should be an obvious prompt and signage to the dwellings as the existing access is ignored by pedestrians.
- Deliveries and site clearance should also be avoided at school opening and closing times.
- We are looking forward to seeing some affordable family homes as it is an ideal spot for school and town centre living
- We are pleased to see the far garden area being saved for natural habitation
- There are dangerous overhanging and out of control trees which will finally be sorted.
- The work detailed will improve the area and add much needed residential development and extra housing quota on a brownfield space

9. Planning Considerations

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.

9.1 The Principle of Development and Housing Supply

The site is located within the defined settlement limits of Bradford on Avon, which is a designated market town where there is a presumption in favour of supporting sustainable development in accordance with CP1, CP2 and CP7 of the Wiltshire Core Strategy. The Core Strategy establishes that Market Towns are specifically identified as settlements that have:

“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”.

WCS Core Policy 7 inter alia sets out the strategy for Bradford on Avon and its community area and identifies that 780 additional dwellings should be provided as a minimum by 2026 This requirement is expressed as a 20-year provision covering the plan period of 2006-2026 and the WCS identified in 2015 there was a residual requirement to provide 93 additional dwellings beyond what was committed and completed. This proposed development would assist in delivering this outstanding residual housing delivery requirement.

The proposal is for the re-use of a previously developed site for residential development infill and as such is considered to comply with policies DP1 and H1 of the made Bradford on Avon Neighbourhood Plan.

9.2 Heritage Impacts

Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires the Council to pay special attention to the desirability of preserving or enhancing the character or appearance of designated Conservation Areas.

Paragraph 193 of the NPPF 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. ... This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”*

NPPF Paragraph 194 also states that *“Any harm to, or loss of, the significance of a designated heritage asset (from development within its setting), should require clear and convincing justification.”*

NPPF Paragraph 196 moreover directs that: *“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal...”*

Paragraph 197 of the NPPF makes it clear that: *“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset”.*

Adopted Wiltshire Core Strategy Core Policy 57 states that: *“A high standard of design is required in all new developments, including extensions... [and that] development is expected to create a strong sense of place through drawing on the local context and being complementary to the locality. Applications for new development must be accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire through...being sympathetic to and conserving historic buildings”.*

WCS Core Policy 58 echoes national policy in terms of seeking the protection, conservation and, where possible, enhancement of heritage assets.

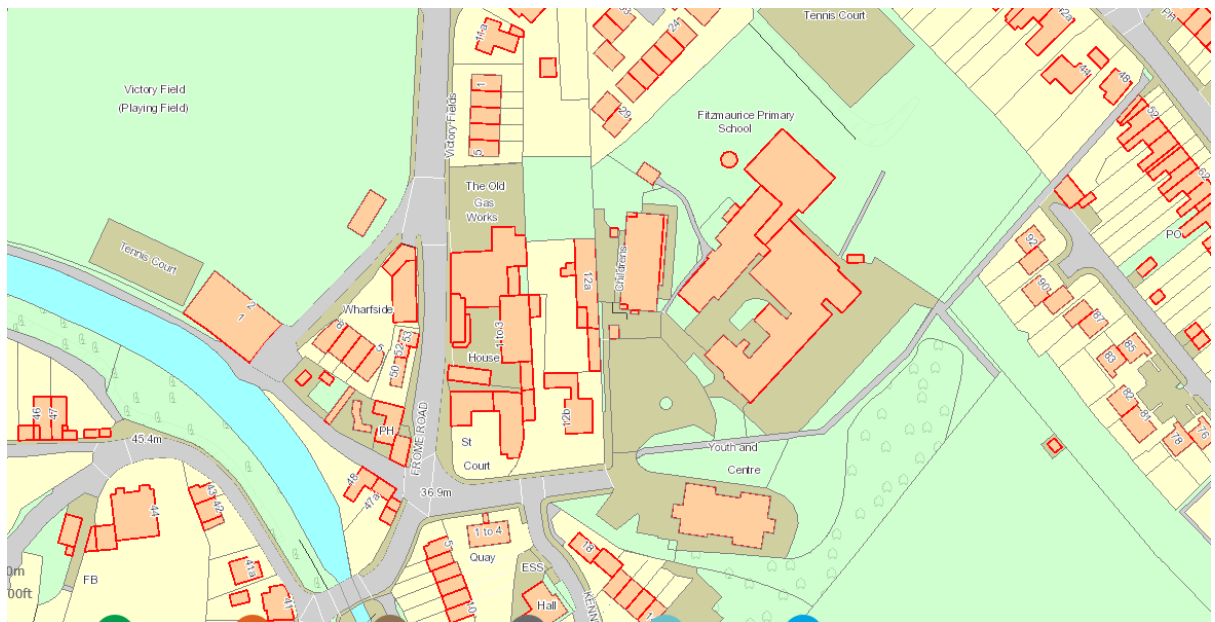
The site is largely overgrown with a derelict single storey dwelling built with stone under a tiled roof. The existing building is of limited historic interest and is not a curtilage listed building. The property is referenced within the 2008 published Bradford on Avon Conservation Area Character Appraisal as being a building of local interest of approximately 100 years old, that was possibly at one time, linked to the gasworks site but it has been heavily altered over the decades and now has very little historic interest left.



Whilst some may consider the existing property to merit consideration as a non-designated heritage asset, officers do not. The property has had significant level of alterations over the years which has resulted in leaving very little of the original fabric to such an extent that officers do not consider the building to warrant retention. The Council's Conservation officer considers the building to fall short of meriting non-designated heritage asset status and has no objection to the proposed demolition. The application is supported by a robust Heritage Impact Assessment which adequately covers the issue of the demolition and the impacts of the proposed development

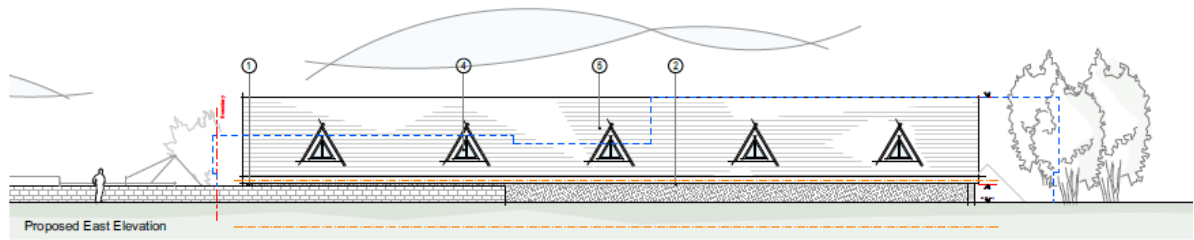
The proposed development comprises the erection a terrace of five 3-storey, 3-bed dwellings constructed with facing brickwork on the side elevations with a pale cream render on the front and rear elevations and timber boarding to the protruding elevations on the front façade under a slated roof - with windows and doors to be made from aluminium.

The pattern of development within close proximity to the site is characterised by tight knit terraced housing to the North, South and further to the East and West – which the following insert illustrates; and as such, the principle of a terraced row of additional housing at this location is considered to be acceptable.



Officers accept that within this part of the town, dwellings generally have rear gardens. However, the existing dwelling within the site only has a front garden and the lack of any proposed rear gardens within the development proposal is not considered sufficient grounds to refuse planning permission.

Concerns have been raised about the proposed triangular shaped dormers on the rear elevations (which are illustrated below) and how they would appear in relation to neighbouring development and land uses. The dormers would face the neighbouring school uses and officers argue that the proposed design and use of materials are appropriate and that there would be no harm to the immediate or wider setting.



The Conservation officer argues that the proposed terrace would make a good use of the restrictive site. The new building would be sited on the eastern boundary of the plot, farthest away from the Old Gasworks (which is a Grade II listed building) and would not result in harm. The design would be modern but would architecturally pick up on historic local vernacular details, such as strong gables and natural stonework. The proposed choice of materials would be of high quality; and, if the committee is minded to approve the development officers recommend that a planning condition secures the submission of sample materials to be viewed and appraised as a post slab obligation.

On the basis of the above, officers are satisfied that the development would comply with the NPPF as well as WCS Core Policies 57 and 58 and, BE1, BE2 and H1 of the Bradford on Avon made Neighbourhood Plan.

9.3 Highway Impacts

Access to the site is proposed from Kennett Gardens via a shared driveway. The property that shares this access is 12B and will be retained and will continue to share this access with the proposed dwellings. The existing access will be widened to 5 metres which will be sufficient to serve the number of proposed dwellings and will also allow for 2 cars to pass each other which currently is not possible. This is therefore considered to be of highway benefit nearest an area which is currently congested at peak times due to the neighbouring school and community centre. The proposed access also sees a continuous footway with a dropped kerb access arrangement which gives pedestrians priority over any vehicles which again is considered to be a highway benefit especially given the nature of the uses surrounding the site. Visibility at the access is also considered sufficient for the speeds of vehicles using Kennett Gardens.

Within the site, the access has an unavoidable pinch point of 2.8 width. Whilst this is below the recommended minimum technical width to allow a fire appliance access, it just about meets the absolute minimum width for a fire appliance to fit through. This is also supported by swept path analysis which does indeed confirm access is possible. It is also noted that even if the fire appliance was to stop before the pinch point, it would still be within 45m of the furthest property, which is in accordance with the requirements of access for fire appliances.



Concerns have been raised regarding the conflict of the proposed use against the nearby uses – mainly the school. The Highways Officer has taken the nearby uses into consideration and agrees that there is an existing traffic problem, however this application is not able to solve existing problems and would not worsen the existing problem. It should be noted that there are already double yellow lines on this side of the approach road for a large section of it. As such there is no highway objection to the proposal.

A comment related to the garages not being of correct size. The proposal does not provide any garages but open port style parking areas. The parking sizes meet the relevant criteria of the Wiltshire Car Parking Strategy. One letter of complaint incorrectly sites Appendix G of a document in relation to parking that has been superseded and as such cannot be used to assess this application.

Many concerns relate to the demolition and construction process and the large vehicles that will be associated with these processes. As these are temporary they are not a reason to refuse a planning application. However, an Informative can be added to any approval requesting the applicant to discuss site clearance and construction activity with the nearby uses.

9.4 Neighbouring Amenity Impacts

It is considered that by reason of the location of the proposed development there would be no overlooking, overshadowing or overbearing issues that would warrant a refusal reason.

On the eastern elevation triangular shaped dormers are proposed which due to the topography of adjoining land, they would be between ground floor and first floor level when viewed from the rear. These dormer windows would serve a stairwell and not habitable rooms, and as such, there would be no harmful overlooking over the adjoining land which includes the primary school/nursery.

Concerns have been raised regarding whether the proposed amenity space would be sufficient for the proposed three-bed dwellings. The gardens to plots 2-5 (which are the smallest) would measure approximately 16.5 square metres, and officers acknowledge that they are small however, they would provide some private outdoor space to each individual dwelling. On their own, they would be insufficient for family housing. However, there is a large area of shared amenity space to the north (shown in green below) which

will be used by the future occupiers which would provide sufficient amenity to make up for the limited private amenity space being allocated for each plot.



9.5 Impact on Trees

There are some significant trees to the north of the site which would be retained and would not be compromised by the proposed development. The Council's Arboricultural officer has advised that the trees identified for removal within the site are of low grade and amenity and appear to have been neglected since the property became vacant. The submitted tree survey identifies some Category A and B trees within the site – which are to be retained; and as such, to ensure their protection, the area to the north of what would be open space, should be robustly fenced off and should not be used for the storage of any materials and root protection fencing should be installed prior to any demolition / construction works. This can be secured by a suitably worded condition.

9.6 Sustainability and Ecological / Biodiversity Matters

Paragraph 170 of the NPPF requires planning decisions to contribute and enhance the natural environment. A bat survey and Great Crested Newt Survey were submitted with the application.

The bat survey indicated no known bat roosts on site. However bats are known to fly through and around the site and there is a possibility that crevice bats could be found on site. If bats are found during the construction process, the report requires works to stop and a licenced ecologist to be contacted for further advice. As part of this report it confirms that 2 bat tubes are to be located on the north and south elevations of the proposed development and 4 bat boxes are to be located in the existing trees. This will provide a benefit to the existing environment. This report also requires any trees to be soft felled, external lighting to be kept to a minimum No Great Crested Newts were found in the existing pond on site and the report recommends that if any are found during the construction process then works should stop and a licensed Ecologist should be contacted. Conditions can be applied to a positive recommendation to ensure that these features are carried out to ensure that the development is in accordance with Paragraph 170 of the NPPF.

9.7 Other Matters

The applicant proposed to connect to the mains sewer for foul sewerage and surface water drainage. Wessex Water have raised no objections to the proposals and officers are satisfied that on drainage grounds, the application is acceptable.

Concerns have been raised regarding the 4-metre high wall on the boundary of the site which is detailed on the plans to remain. Public concerns have also been raised about ground works, excavation and construction/demolition traffic damaging boundary walls and the stability of existing buildings alongside additional bedrooms possibly being created in the future. These matters whilst noted, are not material considerations which would justify a refusal of planning permission.

A third-party concern has been raised regarding the safety of nursery and school children during demolition and construction works due to an existing fence being removed to the rear of the property. This is not a planning matter to consider but is instead a health and welfare matter for the developer to attend to through the safe site practice protocols and Building Control regulations. In relation to this, the applicant's agent was open to having a construction management condition to be imposed as part of any conditional planning permission and include liaison with the nearby school and Nursery. Whilst the Council could require the developer to submit details to set out the proposed on-site working practices and operations, the Council cannot burden a developer to require third party consent. This does not however prevent the applicant from entering separate discussions with third parties outside of the planning sphere to agree matters with the adjoining landowners. A planning informative is considered to have some merit to encourage the applicant to have separate discussions with neighbouring landowners and occupiers.

Another representation cites policies C18 & C31a from the former West Wiltshire District Plan – 1st Alteration which are no longer extant policies. Core Strategy Policies CP57 and CP58 of the Core Strategy are however extant and have been fully appraised by officers.

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:

PL001 (existing block and site plan), PL002 (existing site plan 1 of 2), PL003 (existing site plan 2 of 2), PL004 (existing house layout), PL005 (existing elevations), PL006 (existing sections), PL007A (proposed block plan and drainage plan), PL008 (proposed site plan 1 of 2), PL009A (proposed site plan 2 of 2), PL010B (proposed ground floor plan and views), PL011B (proposed first and second floor plans), PL012B (proposed elevations), PL013 (proposed street scene), PL014A (proposed 3D views), SK01D (site access visibility), DD/A1 (topographic site survey)

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

3. No development shall commence on site until a construction management plan, detailing the timing of deliveries, the projected construction hours and erection of fences, the drainage arrangements during the construction phase and the provision for the installation of attenuation storage prior to the installation of any upstream drainage infrastructure has been submitted to and approved in writing by the Local Planning. The development shall then be carried out in accordance with the approved details.

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 and to ensure the reduction of flood risk elsewhere.

4. No development shall commence on site until a scheme for the discharge of surface water from the site/phase, including sustainable drainage systems has been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

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 and to ensure acceptable surface water discharge.

5. No demolition, site clearance or development shall commence on site, and; no equipment, machinery or materials shall be brought on to site for the purpose of development until protective fencing in accordance with British Standard 5837: 2012: "Trees in Relation to Design, Demolition and Construction -Recommendations" has been erected to fence off the entire garden area/open space (as shown in green on drawing number PL009A). The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations. This protected area shall not be used for the storage of materials and/or equipment, mixing of materials and shall be kept clear of any associated building works.
6. If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must be agreed in writing with the Local Planning Authority.

No fires shall be lit within 15 metres of the furthest extent of the canopy of any retained trees or hedgerows or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later].

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 retention of trees on the site in the interests of visual amenity and the Conservation Area.

7. The development hereby approved shall be carried out in accordance with the mitigation section of the 'Dusk Emergence and Pre-dawn Re-entry surveys for Bats' dated September 2019 by All Ecology Ltd.

REASON: To ensure adequate protection of protected species.

8. The development hereby approved shall be carried out in accordance with the conclusion section of the 'Great Crested Newt eDNA Analysis' Report dated May 2019 by All Ecology Ltd.

REASON: To ensure adequate protection of protected species.

9. No development shall commence beyond slab level on site until a scheme of hard landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include: -

The boundary treatments (including individual plot boundary treatment), means of enclosure, car park layouts, other vehicle and pedestrian access and circulation areas, all hard-surfacing materials, minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc).

All hard landscaping shall be carried out in accordance with the approved details prior to the occupation of any dwelling.

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 neighbouring amenity.

10. No development shall commence beyond slab level on site until full details of the proposed access alterations, including the provision of a continuous footway across the site access, has been submitted to and approved in writing by the Local Planning Authority. No dwellings hereby approved shall be occupied until the said works have been completed in accordance with the approved details.

REASON: In the interests of highway safety.

11. No development shall commence beyond slab level until the exact details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

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, in the interests of visual amenity and the character and appearance of the Conservation Area.

12. The vehicular access hereby approved shall remain ungated in perpetuity.

REASON: In the interests of highway safety.

13. The dwellings hereby approved shall not be 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.

14. The dwellings hereby approved shall not be occupied until the access and turning areas 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.

15. The dwellings hereby approved shall not be occupied until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 600mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

REASON: In the interests of highway safety.

16. The dwellings hereby approved shall not be occupied until the parking space(s) together with the access thereto, have been provided in accordance with the approved plans.

REASON: In the interests of highway safety and the amenity of future occupants.

INFORMATIVES TO APPLICANT:

17. 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

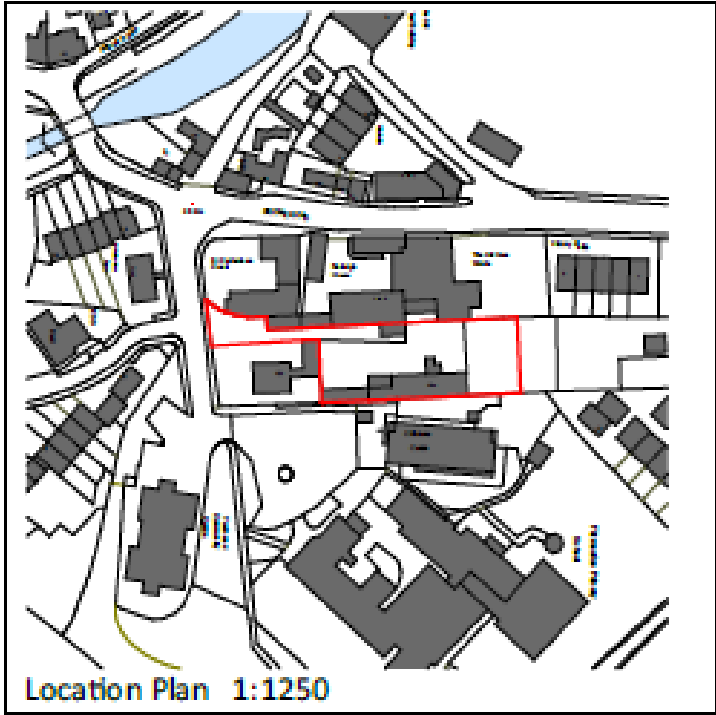
18. In order to discharge conditions 3 and 4 above, the following will need to be included as part of any future discharge of condition application:
- " Evidence that the surface water drainage system is designed in accordance with national and local policy and guidance, specifically CIRIA C753 (The SuDS Manual), the Non-statutory Technical Standards for SuDS and Wiltshire Council's Surface Water Soakaway Guidance;

- A plan showing the cross sections and design of any attenuation pond and its components.
 - Pre and post development surface water discharge rates.
 - The proposed ownership details of the drainage infrastructure;
 - Any third-party agreements for discharge to their system (temporary and permanent).
 - Where a connection to a surface water sewer is proposed, confirmation and acceptance of an agreed connection point and discharge rate for surface water disposal from the sewerage undertaker.
 - Construction plan detailing how the site will be drained during construction such that the flood risk to others is not increased.
19. To avoid disturbing nesting birds and breeding season, no works should take place to the site boundaries between March to July inclusive. All British birds (while nesting, building nests and sitting on eggs), their nests and eggs (with certain limited exceptions) are protected by law under Section 1 of the Wildlife and Countryside Act 1981 (as amended) and the Countryside and Rights of Way Act 2000. If birds are nesting on/in or within the vicinity of the proposed development, work should be undertaken outside the breeding season for birds to ensure their protection, i.e. works should only be undertaken between August and February. Further advice on the above can be sought from the Council Ecologists.

Furthermore, the applicant/ developer must be mindful that bats are protected under The Conservation of Habitats and Species Regulations 2010 (as amended), which implements the EC Directive 92/43/EEC in the United Kingdom, and the Wildlife and Countryside Act 1981 (as amended). All site operators must be informed that if bats are discovered, all works should stop immediately, and Natural England should be contacted for advice on any special precautions before continuing.

20. The applicant/developer is strongly encouraged to have an open dialogue with the adjacent school and nursery as early as possible prior to the proposed demolition, construction works. The discussion should include details pursuant to the timing of deliveries, the projected construction hours and erection of fences.
21. The developer/applicant is required to reach an agreement with Wessex Water with respect to finalising foul water and clean water connections.
22. The developer/applicant is advised to ensure appropriate safeguards are fully implemented during the construction phase to minimise the risks of pollution from the development. Such safeguards should cover: - the use of plant and machinery - oils/chemicals and materials - wheel-washing and waste water disposal - the use and routing of heavy plant and vehicles - the location and form of work and storage areas and compounds - the control and removal of spoil and wastes. The applicant should refer to the Environment Agency's Pollution Prevention Guidelines at: <https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>
23. The developer/applicant is advised to follow guidance produced by Wiltshire Fire & Rescue Service in terms of precautionary measures to reduce the risks of fire and on-site measures to deal with an emergency. This advice is often in addition to building regulation requirements. Further guidance can be obtained regarding the on-site provision of fire hydrants and a water supply for the purposes of fire-fighting.
24. The developer/applicant is advised to incorporate water efficiency measures into this scheme to provide resilience to some of the extremes of weather conditions that

climate change brings. It benefits future residents by reducing water bills, and also benefits wider society by making more water available at times of shortage. The development should include water efficient systems and fittings. These should include dual-flush toilets, water butts, water-saving taps, showers and baths, and appliances with the highest water efficiency rating (as a minimum). Greywater recycling and rainwater harvesting should be promoted and implemented. An appropriate submitted scheme should include a water usage calculator showing how the development would not exceed a total (internal and external) usage level of 105 litres per person per day.



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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	17 June 2020
Application Number	20/00059/FUL
Site Address	Bishop's Folly, No. 2 Ireland, North Bradley, BA14 9RW
Proposal	Erection of two storey extension, double garage, alterations and associated access works.
Applicant	Mr & Mrs Hawketts
Town/Parish Council	North Bradley
Electoral Division	Southwick
Grid Ref	384925 154622
Type of application	Full Planning
Case Officer	Selina Parker-Miles

Reason for the application being considered by Committee:

Cllr Horace Prickett requested that this application be called-in for the West Area Planning Committee to determine should officers be minded to grant permission. The March Committee meeting that the application was due to be determined at was postponed due to the Covid-19 pandemic. In April, following the onset of the pandemic, Cllr Prickett subsequently requested that his call in be rescinded and the application be determined through delegated powers. However, as those who had objected to the application had already been advised in writing that the application would be determined by members at a committee meeting, it was decided that it should be determined at a committee meeting. The expressed key issues identified initially at the call-in for the Committee to consider were:

- The scale of the development
- The visual impact upon the surrounding area
- The relationship of the development to the adjoining properties
- The highway impact
- Car parking
- Public rights of way access

1. Purpose of Report

The purpose of this 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 with this application are:

- The lawful use of the land for the erection of the garage
- The impact on a public footpath
- The impact on highway safety
- The impact on a non-designated heritage asset
- The impact on neighbour amenity
- The impact on the character and appearance of the host dwelling and wider area.

3. Site Description

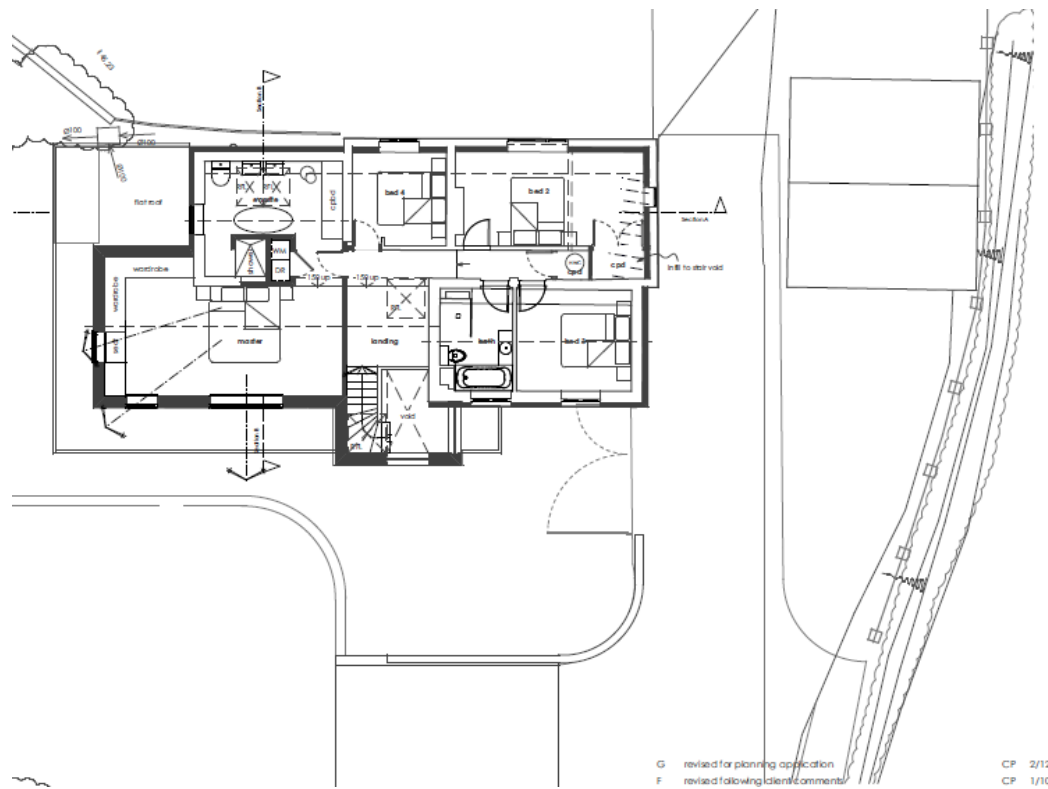
The application site relates to No. 2 ('Bishops Folly') which is a detached two storey dwelling located within a hamlet of c. 10 properties known as 'Ireland', which itself is located in open countryside between the villages of Southwick and North Bradley, south of Trowbridge.

No. 2 sits within a large garden area extending to the north, east and south sides of the house, and benefits from an off-street parking area to the front. The site is not subject to any landscape or other designations.

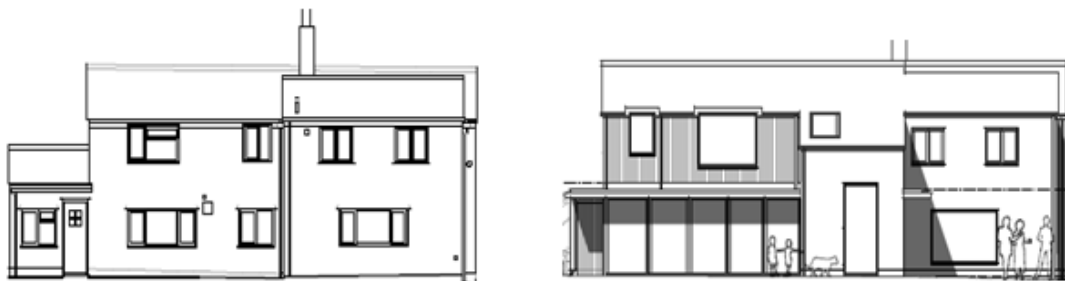


4. Planning History

W/02/00549/FUL	Two storey extension and new conservatory	Approved with Conditions
W/06/01646/FUL	First floor extension to a bedroom. Enlarging the bedroom and providing an en-suite shower/wc to provide a rear conservatory. To install solar panels in the roof	Approved with Conditions
15/01030/FUL	First floor extension to provide master en-suite and dressing area, erection of conservatory to rear of property and single storey side extension	Approved with Conditions



Proposed first floor plan



Existing (left) and proposed (right) front (south east) elevation



Existing (left) and proposed (right) rear (north west) elevation

The alterations would include some re-modelling of the external appearance of the house, as shown on the elevations (above).

The double garage would be erected on a separate parcel of land to the north-east of the house. The separation is as a consequence of a highway and public footpath (NBRA24)

which run to the immediate north-east of the house. The separated land has been confirmed as within the applicant's ownership and was used as residential curtilage by the previous owner (at No 1 Ireland) until its sale to the current applicant in 2017. Therefore, an application for change of use of this land to residential curtilage is not necessary. Revised plans were received on 4th May 2020 removing the pedestrian access door from the west elevation of the garage to the north elevation. Neighbouring properties were consulted on the revisions for a period of 14 days.



Highways plan illustrating the adopted highway and existing turning head (orange) and public footpath (purple)

6. Planning Policy

Wiltshire Core Strategy (the development plan) – relevant policies – CP29, CP57, CP51 and CP61

National Planning Policy Framework (NPPF) and Planning Practice Guidance (PPG)

7. Summary of Consultation Responses

North Bradley Parish Council: Most recent comments (4th June) No objection, provided that the public right of way continues to be maintained.

(In its earlier response in February, the parish council supported overall plans for alterations and amendments to the house but objected to the proposal to build a double garage on an adjoining area of land owned by the applicants for the following reasons:

- A previous application for a dwelling was refused in 1983 as it was considered an undesirable intensification of sporadic development and would create traffic congestion and access danger caused by increased use of the narrow lane
- The garage is not within the residential curtilage of the property and goes outside of the confines of the hamlet itself, within the “triangle” of land.
- The garage is an over development on a limited area reducing public access.)

Wiltshire Council Highways Officer: No objection, subject to conditions. It is considered that the proposed new garage will not cause an obstruction to the public highway in the location as proposed, and the Rights of Way team will also give their views on the application. The proposed parking spaces to the southern corner of the site will require the end of the public highway to be upgraded to form a vehicle access, this can be implemented as part of the works to upgrade the whole section of public highway as proposed. The whole of these works can be managed under a Vehicle Access Application, and will be overseen by the Area Highway Office, details of how to apply for a vehicle access application, should be included on any planning permission in the form of an Informative..... Adequate off-street parking is proposed to meet Wiltshire's parking standards in the new garage and parking spaces.

Wiltshire Council Rights of Way Officer: No objection: In this case it is not considered that the proposed development will have an adverse effect on the footpath. The part of the footpath that is directly affected by the proposal is recorded as an unclassified road which ends at the gateway to the field, from which the path continues. It is therefore appropriate for comments to have been made by Highways Development and not by Rights of Way. This section of road is to be resurfaced to highway standards which should improve access to the field. Access should also be improved by removing the need for vehicles to park on this narrow stretch of road. All the building activity is off the highway and Public Right of Way. I would agree with the recommendation of the highways team with regard to the surfacing and any drainage requirements that they have. I would request that any new gates which are installed are done in such a way that they open away from the highway. In some ways I would support this application as it will remove the possibility of vehicles being parked on the highway blocking the entrance to the Public Footpath. In terms of signage I have no plans to sign the paths from the main road as this could lead the public to believe that the only public rights are as a bridleway or footpath. The Footpath NBRA24 is signed from where it leaves the metaled Highway and I believe this meets our statutory duty.

Wiltshire Council Archaeologist: No objection: The Wiltshire and Swindon Historic Environment Record shows an undated linear feature mapped running in the direction of the proposed development site. In line with the National Planning Policy Framework, in consideration of the significance of the heritage asset and scale of impact, I do not consider any archaeological investigation is required in relation to this application.

8. Publicity

The public consultation exercise comprised individual letters being sent to neighbours and the display of a site notice. In total 4 letters of objection (from 2 objectors) have been received which in summary raise the following issues:

- Previous complaints regarding the applicants restricting access to the public right of way.
- Concerns that the erection of a garage to the north east of the dwelling will be perceived as being within private ownership and likely to deter public use of the right of way and deter residents from their overflow parking there.
- Concerns that there may be inadequate provision for vehicles to safely use the turning area.
- Concerns that the proposed garage is to be built on highway verge and the application should be submitted as a change of use.
- Concerns that the proposed garage is to be built on former paddock land and the application should be submitted as a change of use.
- The requirement for surface water run-off provision.
- Safety concerns that vehicles will be unable to turn at the road's terminus and have to reverse down the narrow access lane.

- Overbearing impact of the garage and enclosure of the only open aspect of No.6's garden with reference to Wiltshire Council's Planning and Development Planning and Design Guide.
- Additional noise disturbance and privacy issues through additional vehicle movements associated with the garage and parking area.
- Overlooking created by the installation of additional windows on the north west elevation.
- Overdevelopment of the area – with reference to the refused historic application W/83/00524/OUT for a proposed dwelling in garden of No 1 Ireland.
- The installation of additional windows to the rear of the property and to a window in the roof is completely out of character of the property and surrounding buildings.
- The large area of timber cladding is out of keeping with the appearance of surrounding properties.
- Hedging plants were removed prior to the application being submitted - this was omitted from the application form.
- The applicants would have no right of access/ easement to the driveway of the neighbouring property in order to implement their building work.
- That appropriate consideration has not been given to the objectives of Paragraph 98 of the NPPF or the Core Strategy Policy CR1 Footpaths & Rights of Way by the Rights of Way team.
- Query why there has not been any reference to Core Strategy Policy CP52 – Green Infrastructure
- Omission of any consultation with the Ecology team in respect of bat activity
- Privacy concerns raised by the installation of an access door to the proposed garage directly exiting onto the public highway and facing neighbouring properties.
- That there has been insufficient evidencing (via photographs) within the committee report of the neighbouring properties proximity to the proposed garage building
- That there has been omission within the committee report of the existing garage serving Bishops Folly.
- Questions raised over adherence to Wiltshire Council's Planning and Development Planning and Design Guide regarding the siting of the proposed garage.
- Query over the dismissal of a proposed condition recommended by the Rights of Way Officer as reasonable.

One letter of objection was received (06.05.2020) after the submission of the revised plans relating to the development as a whole and not the revisions. The points raised within this objection have previously been summarised.

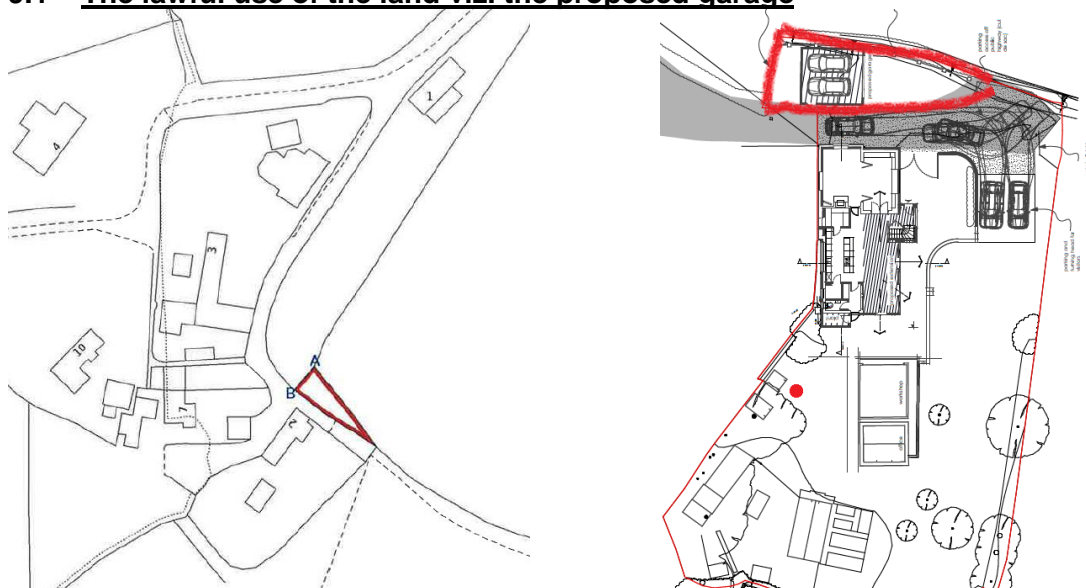
9. Planning Considerations

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.

The main issues to consider with this application are:

- The lawful use of the land for the erection of the garage
- The impact on the rights of way footpath
- The impact on the highway safety
- The impact on the Non-designated Heritage Asset
- The impact on neighbour amenity
- The impact on the character and appearance of the host dwelling and wider area.

9.1 The lawful use of the land viz. the proposed garage



9.1.1 One third party has raised questions about the lawful land use of the parcel of land where the detached garage is proposed (as roughly identified in the above right image). The objector has queried whether the land was previously highway land or used as a paddock whilst under the ownership of No.1 Ireland. However, the previous owner of the land has confirmed that it was used in association with his garden and the Council's records confirm that it is not part of the public highway.

9.2 Impact on the Public Right of Way

9.2.1 The Rights of Way (ROW) Officer raises no objections as all building works are clear of the highway and the public right of way. The ROW officer supports the proposed parking and turning head as these remove any vehicles from blocking the entrance to the public footpath.

9.2.2 Third party concerns relating to the restricting / blocking of accesses are civil / police matters and are not material to the consideration of a planning application. Likewise, conjecture over the applicant's intentions or otherwise to utilise the public highway for private use and/or dissuade public access to the right of way is not relevant to the consideration of the application. A third party has raised the issue of why Core Policy 52 was not referenced in the decision-making process, whilst it is acknowledged that this policy refers to Green Infrastructure and can include domestic gardens, due to the limited scale of the scheme proposed the application of this policy is not considered relevant.

9.3 Impact on the Highway Safety

9.3.1 Third party concerns regarding the access to the highway have been considered by the Highways Officer. The Highways Officer raises no objections to the proposed garage as it would not cause an obstruction to the public highway. The upgrading of the public highway would be subject to a standalone vehicle access application to Highways Services. Conditions are proposed to ensure the vehicle access to the parking spaces would remain un-gated and to mitigate any surface water run-off.

9.3.2 Safety concerns raised by third parties relating to traffic within the narrow access lane unable to turn at the road's end have been addressed by the proposed upgrade of the

existing turning head. This would enable adequate manoeuvring within the highway land for vehicles to reverse and turn safely. Vehicles turning into and from the driveways of No.6 No.7 and No.8 Ireland would be largely unaffected by the proposed scheme as the highway access would be as existing, with the garage contained within the land owned by No.2

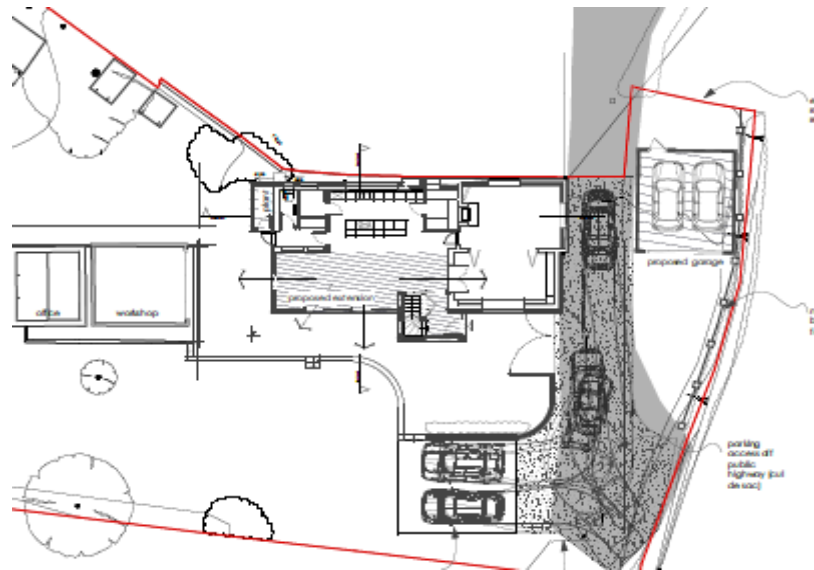
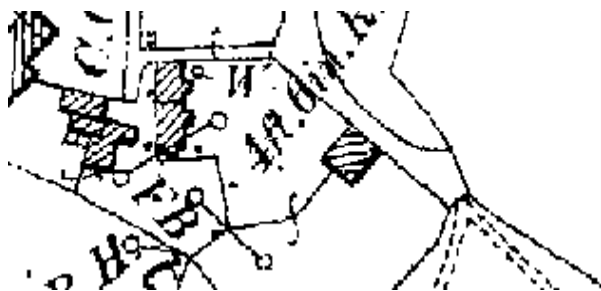


Illustration of the proposed garage, turning head and parking access off the public highway

9.4 Impact on the Non-Designated Heritage Asset

9.4.1 Paragraph 135 of the NPPF requires local planning authorities to take account of the effect of an application on the significance of a non-designated heritage asset. In weighing up proposals that affect directly or indirectly non-designated heritage assets, a balanced judgement is required having regard to the scale of any harm or loss, and the significance of the heritage asset.



- ▶ Landmark - Historic Maps - Epoch 1 - 1868-1899 - 500
- ▶ Landmark - Historic Maps - Epoch 2 - 1895-1911 - 10560
- ▶ Landmark - Historic Maps - Epoch 2 - 1895-1911 - 2500
- ▶ Landmark - Historic Maps - Epoch 3 - 1908-

9.4.2 Based on site observations and the historic mapping records (Landmark Epoch 2 dated 1895-1911) which dates back to the 19th century, the existing house is identifiable on the historic map and merits being considered as a non-designated heritage asset. Built in the Victorian era, it has some historical interest, with its significance defined by its traditional construction materials and the contribution it makes to the immediate environs.

9.4.3 The proposed extension would enhance the current living accommodation, the design is considered complimentary, and the materials proposed are of high quality.

9.4.4 Taking into consideration the scale of the proposed extensions combined with the proposed design, materials and overall size, it is considered that the development would not harm the significance and / or character of this non-designated heritage asset.

9.5 Impact on Neighbour Amenity

9.5.1 With regards to the potential overbearing effect of the garage on No. 6, whilst the owner's outlook from No. 6 would be altered by having a structure on the application site, the distance from the proposed building would be 31m; and with the proposed garage having a maximum height at the ridge of only 4.2m, it is not considered that the relationship with No. 6 would be overbearing or result in any overlooking.



Aerial photograph illustrating the distance separating the proposed garage site and the neighbouring property at No.6 Ireland

9.5.2 It is not considered that the erection of a garage would create any additional vehicle movements (and therefore noise disturbance) over and beyond what is currently experienced by the existing access and parking arrangements. The proposed access door on the north west side elevation of the proposed garage maintains sufficient separation distances to neighbouring properties to dismiss any harm concerned with overlooking, especially as the properties are separated by the unclassified road.

9.5.3 Third party questions have been raised over the siting of the garage adjacent to the front gardens of No. 6 and No.7 Ireland, giving reference to the Planning and Design Guide “ . . . detached buildings are not normally acceptable at the front of semi-detached or terraced houses because of their dominant impact on the street scene and adjoining properties ... “this guidance relates to the host dwelling and is given as guidance to protect the existing street scene within built up residential areas. The Planning and Design Guide also gives reference to garages within detached properties being acceptable within front gardens where they “form part of the existing character of the street e.g. where garages were built as part of the original layout of an estate” and a third party claim that a precedent has been set by the existing layout of the five properties located at the end of the lane having driveways or garages set within the curtilage.

9.5.4 Whilst this is duly noted, the garage proposed is within the residential curtilage of No.2 and it is also noted that the property at No.8 Ireland immediately adjacent to Bishops Folly received planning permission in 2007 for a change of use from agricultural land to enable the erection of a garage and garden store.

9.5.5 Responding to third party comments raised over the omission of the existing garage and the neighbouring properties proximity to the proposed garage the photo above clearly illustrates the existing layout of the properties within the vicinity of the application site and plans included within this report also reference the existing garage located beyond the western elevation of the host dwelling.

9.5.6 The proposed windows in the rear (north west facing) elevation of the proposed extension would not result in harmful overlooking or loss of privacy to the near neighbours given the existing arrangement of windows and separation distances between the building and the neighbouring properties (see existing and proposed north-west elevation drawing 'snips' in section 5, above).

9.5.7 The proposed roof light located within the rear roof slope of the altered house would be positioned 2.9m above the internal floor level, this preventing any overlooking from this window. For these reasons, it is considered that neighbour amenity would not be adversely affected, and the development proposal is compliant with policy CP57 of the Core Strategy.

9.6 Impact on the character and appearance of the existing dwelling and surrounding area

9.6.1 The double storey extension, by reason of its complementary roof and elevational design would represent an acceptable addition to the host dwelling being proportionate to the size of the plot. The garage is viewed as subservient to the main dwelling and proportionate to the area defined as the residential curtilage. The use of quality materials (render and rubble walls with timber cladding, slate and zinc roofing and aluminium fenestration) would help to harmonise the development with the surroundings which already supports development of mixed character and form. For these reasons, the proposal would comply with policy CP57 of the Wiltshire Core Strategy.

9.6.2 This application for the extension to the host dwelling follows a previously approved scheme (15/01030/FUL) that has expired without implementation. The previously approved scheme was for a two storey and single storey extension to the western elevation of the host dwelling. This scheme proposes a larger double storey extension to the west (omitting the single storey element) and squares off the existing 'L -shape' footprint adding a front porch and covered wrap-around veranda. Bishops Folly benefits from an extended residential curtilage of approximately 0.13 ha and with the proposed extensions and garage equating to an additional footprint of approximately 70sqm above the existing footprint the proposed development is not considered to constitute as overdevelopment of the site.

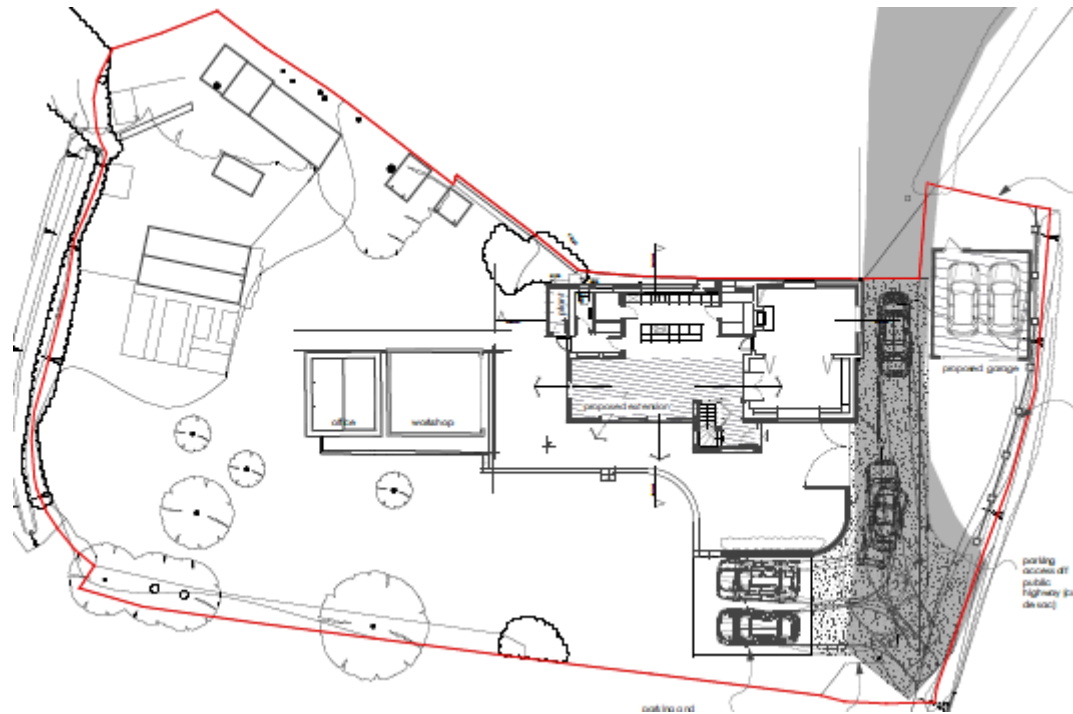


Illustration of the proposed footprint of Bishops Folly

9.6.3 Whilst it is acknowledged that there was an application refused in 1983 (W/83/00524/OUT) for a detached dwelling in the rear garden of No.1 Ireland with separate access, that decision was for an independent dwelling and within a separate parcel of land, and so is not comparable or relevant to the current proposal.

10. Conclusion

For the reasons set out in this report, the proposal is considered to comply with the policies of the development plan and to have no significant adverse impact on the amenities of residents of nearby properties and the appearance of the area. Accordingly, the application is recommended for approval

11. RECOMMENDATION: Approve with 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. The development hereby permitted shall be carried out in accordance with the following approved plans:

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

- Existing Site Plan - DWG No - 13327/5000B - Received 06.01.2020
- Existing Ground Floor Plan - DWG No - 13327/5001B - Received 06.01.2020
- Existing First Floor Plan - DWG No - 13327/5002B - Received 06.01.2020
- Existing Elevations - DWG No - 13327/5011A - Received 06.01.2020
- Location Plan - DWG No - 13327/5100A - Received 06.01.2020
- Proposed Site Plan - DWG No - 13327/6000L - Received 04.05.2020

Proposed Ground Floor Plan - DWG No - 13327/6001H - Received 04.05.2020
Proposed First Floor Plan - DWG No - 13327/6002G - Received 06.01.2020
Proposed South East & North East Elevations - DWG No - 13327/6012D - Received 06.01.2020
Proposed South West & North West Elevations - DWG No - 13327/6013F - Received 04.05.2020
Proposed Garage Elevations - DWG No - 13327/6014D - Received 04.05.2020

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

3. The double garage hereby permitted shall not be first brought into use until the access to it from the edge of the carriageway, has been consolidated and surfaced in accordance with details to be submitted to and approved in writing by the local planning authority.

REASON: In the interests of highway safety.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order, the vehicle access to the parking spaces shall remain ungated, unless a separate grant of planning permission is obtained from the local planning authority.

REASON: In the interests of highway safety.

5. No part of the development hereby approved shall be first brought into use until the parking and turning head for visitors shown on the approved plans has been consolidated, and surfaced in accordance with details to be submitted to and approved in writing by the local planning authority. 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.

6. No development shall commence on site until a scheme for the discharge of surface water from the site of the double garage, access, and turning area, incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first brought into use until surface water drainage has been constructed in accordance with the approved scheme.

REASON: 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.

7. **Informative:** The applicants are advised that the discharge of this condition does not automatically grant land drainage consent, which is required for any works within 8m of an ordinary watercourse or any discharge into an ordinary watercourse. The applicant remains responsible for obtaining land drainage consent, if required, at the appropriate time.

8. **Informative:** The application involves the upgrading of the public highway. The consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a licence will be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact our Vehicle Crossing Team on vehicleaccess@wiltshire.gov.uk and/or 01225 713352.

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PLANNING APPLICATION



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Location PLAN

A red line revised to include road
Amendments

CP 9/12/19
By Date

PLANNING APPLICATION

Job No/Drawing No 13327/5100A Job Title Bishops Folly, 2 Ireland, North Bradley

Scale 1:1250 Date 12/19 Drawn CP Drawing Title 3500m Plan
@ A4

Page 353

All Dimensions to be checked on site OS Licence No: Topo
pad Design Ltd - The Tobacco Factory - Raleigh Road - Bristol BS3 1TF - Tel. 0117 9530059 - www.pad-design.com



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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	17 June 2020
Application Number	19/12153/VAR
Site Address	McDonald's Restaurant 235 Bradley Road Trowbridge BA14 0AZ
Proposal	Variation of condition 3 of W/96/00587/FUL to modify the opening hours to 06:00-23:00 Monday to Saturday
Applicant	McDonalds Restaurant
Town/Parish Council	Trowbridge Town Council
Electoral Division and Ward Member	Trowbridge Drynham
Grid Ref	385,495 156,022
Type of application	Variation of condition
Case Officer	David Cox

Reason for the application being considered by Committee

The Local Member, Cllr Andrew Bryant, has requested that should officers be minded to permit this application, it should be brought before the elected members of the area planning committee for its determination to consider the impact upon local residences in respect of noise, smell, traffic and pollution.

1. Purpose of Report

Having assessed the merits of the proposed development and tested it against the policies of the development plan and other material considerations, to consider the recommendation that the application should be approved.

2. Report Summary

The main issues discussed in this report are as follows:

- The Principle of the Development
- Impact on neighbouring amenity

3. Site Description

The application site comprises of the McDonalds restaurant which is located within the Spitfire Retail Park on Bradley Road, Trowbridge. It has a drive through facility where orders are placed on the eastern side of the building and paid for and collected on the western side of the building facing the residential properties on the opposite side of Bradley Road. The residential properties immediately opposite are approximately 55 metres from the McDonalds building. No 134 (opposite the junction into the retail park) is approximately 40 metres away.

To the south, also within the Retail Park are Costa Coffee and KFC. Costa Coffee does not have a drive through but has permitted opening hours (under application 19/08237/VAR) of 06:00-19:00 Monday-Saturday (including Bank Holidays) and 08:00 -18:00 on Sundays. Deliveries are not allowed between the hours of 19:00 to 06:00 Monday-Saturdays nor before 08:00 or after 18:00 on Sundays.

KFC, also has a drive through but has varying opening hours but currently does not open earlier than 10:00 and does not close later than 23:00.



Site Location Plan with Costa Coffee and KFC to the south

4. Planning History

W/96/0586/FUL – Single Storey Restaurant with Drive-Through Facility (A3) with associated landscaping and car parking – Permitted 19 September 1996 (this is the existing McDonalds building).

Condition 3 restricted the use and servicing to the hours of 07:30 – 23:00

14/03456/FUL - Reconfiguration of the drive thru lane to provide a side-by-side order point, incorporating a new island for signage and reconfigured kerb lines and associated works to the site. One tree to be removed with the planting of new tree. Installation of 2 no. Customer Order Displays – Permitted 21 May 2014.

This application sought to change the drive through road layout on the eastern side to allow for two order points, which has been implemented on site.

16/11877/VAR - Variation of Condition 03 (hours of operation) of planning permission W/96/00586/FUL – Refused 6 February 2017. The proposed hours were 06:00 to 24:00. This application was not appealed.

“The proposed extended hours of operation by reason of increased activity by customers, staff and deliveries beyond the existing hours, would give rise to a loss of amenity to the existing nearby residential development, contrary to CP 57 of the adopted Wiltshire Core Strategy.”

5. The Proposal

The proposal is materially different to 16/11877/VAR in that this application only seeks to amend the morning hours only. The proposed hours are 06:00-23:00 Monday to Saturday.

On Sundays the existing restriction of 07:30-23:00 would remain.

6. Planning Policy

Wiltshire Core Strategy (WCS) - The following Core Policies (CP) are relevant when assessing this application: CP1 (Settlement Strategy); CP2 (Delivery Strategy); CP3 (Infrastructure Requirements); CP29 (Trowbridge Area Strategy); CP57 (Ensuring High Quality Design and Place Shaping).

The National Planning Policy Framework (NPPF), National Planning Practice Guidance (NPPG)

7. Summary of Consultation Responses

Trowbridge Town Council – Objection

The original condition remains pertinent and should not be changed

Wiltshire Council Environmental Health Officer: No objection

8. Publicity

A site notice was displayed on 20 January 2020 and 13 neighbour notification letters were sent. Following this consultation five representations were received (three objections and two letters of support) which can be summarised as follows:

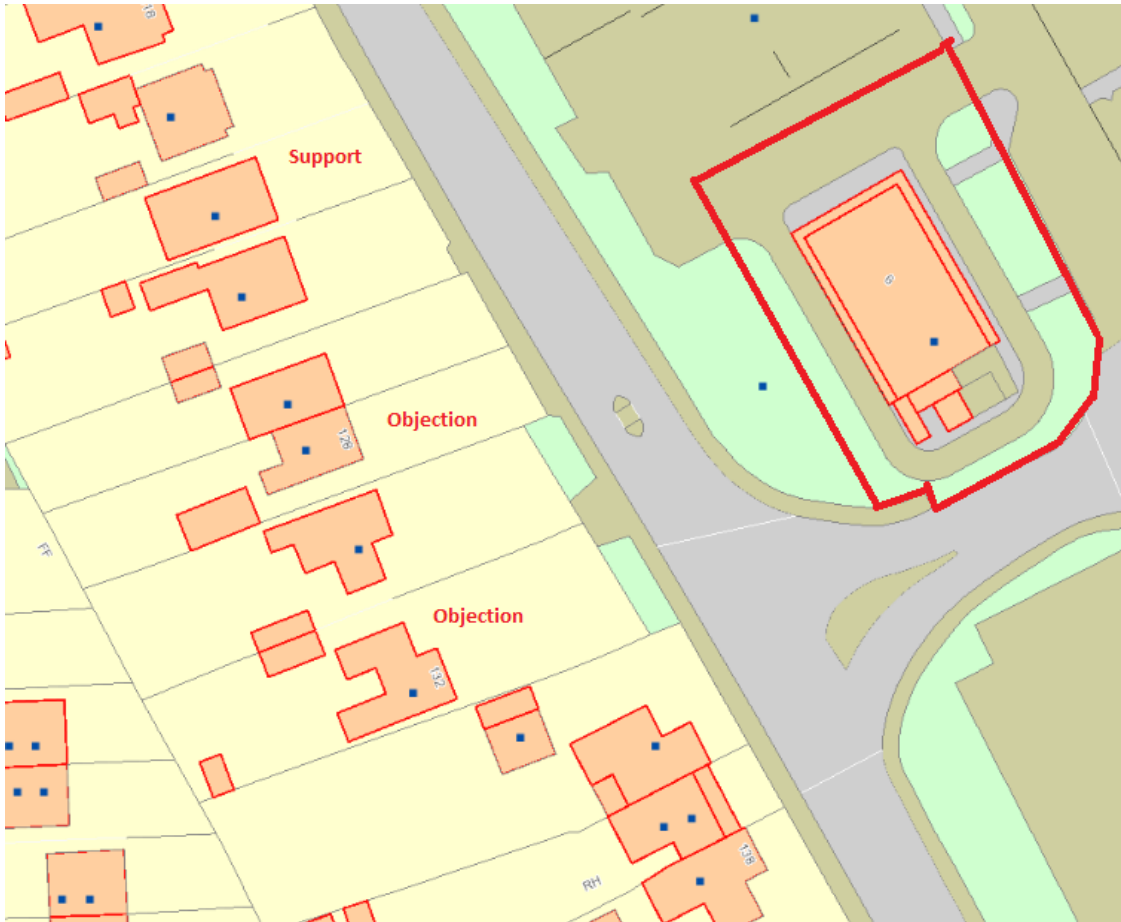
Support:

- I'm an early starter and am often frustrated by the late 0730 start. This would help me and others start their day at a reasonable hour. Many other tradesmen agree with me
- We live opposite the Spitfire Estate and we have absolutely no issues with the proposed start time of 6am. If it was 24 hours though we would object
- Costa Coffee opens at 6am
- Traffic on Bradley Road starts at 5am anyway.
- Don't live opposite a retail park and moan about it

Objection:

- We live opposite and we strongly oppose the application to open at 6am. There would be too much increased activity and noise at that time of the morning and would be totally unacceptable
- The original permission set the time at 0730 for a reason; being that its near residential premises and that the business would have an impact on nearby residents

- Opening earlier would lead to staff arriving earlier for work, presumably around 5am creating more noise
- Customers would start arriving before 6am, creating more noise
- The supporting statement is complete nonsense



Map showing where the immediate representations were received from

9. Planning Considerations

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. In this case, the Wiltshire Core Strategy, including those policies of the West Wiltshire District Plan that continue to be saved and enshrined within the WCS, constitutes the relevant development plan for the Trowbridge (CP29) area.

9.1 Principle of the Development

9.1.1 The Wiltshire Core Strategy (WCS) promotes through Strategic Objective 1, to deliver a thriving economy “encouraging economic vitality, providing local jobs for Wiltshire’s population”. McDonalds is an existing business located within an established retail park and this proposal would help retain existing jobs whilst also allowing for longer hours of work. The principle of development is therefore unobjectionable.

9.2 Impact on neighbouring amenity

9.2.1 WCS core policy 57 (vii) states;

“Development must have regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants including the consideration of pollution e.g. noise and fumes.”

9.2.2 The concerns around the previous application mainly related to anti-social behaviour, police being called, noise disturbance and ‘boy racer’ congregation – activities that would have been associated with the late-night opening, which is no part of this application.

9.2.3 The Environmental Health Officer has looked at previous noise complaints, and the only issues reported from McDonald’s itself related to an alarm being tested in the morning when managers arrived on site to open the restaurant. McDonalds have now confirmed that the alarm has now been reduced in volume and is now inaudible outside the restaurant. The Council’s Environmental Health Officer is satisfied and has no objection to the proposal.

9.2.4 In these circumstances and given that the restaurant is on the opposite side of the road, it is not considered that extending the opening hours in the morning would have a significant adverse impact on the amenity of occupants of nearby residential properties.

9.2.9 Other material changes to the context include the fact that in 2019, application 19/08237/VAR allowed the adjacent Costa Coffee to open from 6am, so this application would bring the opening hours in line with this outlet and would ensure consistent treatment of operators. Finally, the current covid-19 situation brings the economic benefits into the equation, as well as assisting social distancing by spreading the customer demand over a slightly wider time frame.

10. Conclusion (The Planning Balance) -

It is considered that the proposed earlier opening hours will not have any significant adverse impact on the amenity of residents of properties on the opposite side of the road, and this, combined with the economic benefits, justifies a favourable response to the application.

11. RECOMMENDATION: Permit with the following conditions

1. The use hereby permitted shall only take place between the hours of 06:00-23:00 Monday-Saturday (including Bank Holidays) and 07:30 - 23:00 on Sundays. Deliveries shall not take place between the hours of 23:00 to 06:00 Monday-Saturdays nor before 07:30 or after 23:00 on Sundays.

REASON: In the interests of neighbouring amenity and to be synchronised with the other nearby takeaway food/restaurant outlet.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan and Covering Letter – both received 23 December 2019.

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

INFORMATIVE TO APPLICANT: The applicant is respectfully advised to consider adding or making more prominent, advertisements that encourage customers to not have loud music or radios when using the drive through.

INFORMATIVE TO APPLICANT: The applicant is also respectfully advised to consider to directly encourage staff who drive to McDonalds to park as far away from Bradley Road as reasonably possible in order to reduce potential noise disturbance on neighbouring amenity.

McDonald's Restaurant, 235 Bradley Road, Trowbridge, BA14 0AZ
Site Location Plan



Promapv2
LANDMARK INFORMATION

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REPORT FOR WESTERN AREA PLANNING COMMITTEE

Date of Meeting	17 June 2020
Application Number	19/10471/FUL
Site Address	3 A Church Lane Limpley Stoke BA2 7GH
Proposal	Erection of 2 No. dwellings and associated landscaping and access works (amended design).
Applicant	Mr & Mrs A Holdoway
Town/Parish Council	LIMPLEY STOKE
Electoral Division	Winsley and Westwood
Grid Ref	378214 160472
Type of application	Full Planning
Case Officer	Jemma Foster

Reason for the application being considered by Committee

This application has been 'called in' for the Western Area Planning Committee to determine at the request of the local division member, Cllr Johnny Kidney, for the following reasons in recognition that officers are supportive of the development proposal.

Cllr Kidney has requested that the application be considered by the Planning Committee for the following reasons:

- Visual impact upon the surrounding area – mainly the setting of the Grade II* Listed Church of St Mary, Limpley Stoke
- Relationship to adjoining properties
- Other – conflict with the neighbourhood plan (specifically infill policy)

1. Purpose of Report

The purpose of this 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 should be approved.

2. Report Summary

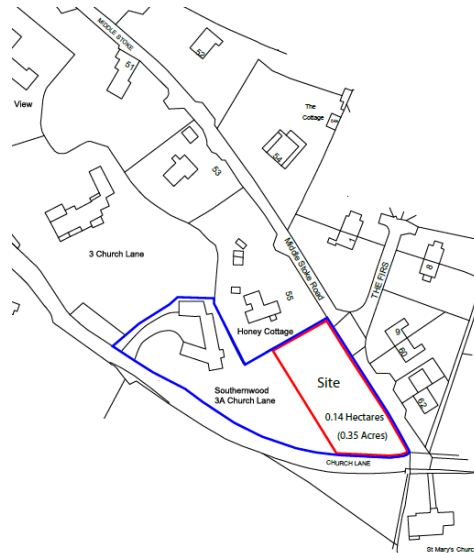
The key determining planning issues are considered to be:

The Principle of Development; Impact upon the Area and wider landscape; Heritage Matters; Highway Impacts; Neighbouring Impacts and Biodiversity Matters.

3. Site Description

The site is currently is garden land associated with 3A Church Lane and is within the Bristol, Bath and Western Wiltshire Green Belt. The site lies within a Special Landscape Area and

a nationally important landscape designated as an Area of Outstanding Natural Beauty (AONB). The site is located in Limpley Stoke, which is a 'small village'. To the south east is St Mary's Church which is a Grade II* listed building and has curtilage structures that are separately listed Grade II buildings. To the North West is an existing dwelling known as Honey Cottage, to the North East is a cul-de-sac known as The Firs and immediately East are three residential properties known as 60-62 Middle Stoke. To the West is a recently built single storey dwelling that due to the topography of the land sits above the proposed site.



4. Planning History

Reference	Description	Date
18/12089/FUL	Full refurbishment and small extension to existing dwelling	Approved 13.02.2019
17/03051REM	Reserved matters application following 16/10391/VAR for appearance, landscaping, layout and scale for the erection of a single dwelling.	Approved 29.06.2017
16/10391/VAR	Variation of condition 10 of 16/05118/OUT relating to access	Approved 24.10.2016
16/11052/VAR	Variation of Condition 2 of 16/04907/FUL (MMA)	Approved 06.01.2017
16/04907/FUL	Erection of 1 No. dwelling and associated access and landscaping works (Plot 3)	Approved 19.08.2016
16/05118/OUT	Erection of 1 No. dwelling and associated access works (Plot 1).	Approved 19.08.2016
01/01116/FUL	Granny Annexe	Approved 17.09.2001
W94/00854/FUL	Pergola	Approved 25.08.94
W90/00067/FUL	Annexe extension	Refused 24.04.1990
W76/00324/HIS	Swimming pool annexe	Approved 1976

5. The Proposal

This application is for the erection of two 3-bedroom, two-storey dwellings with associated parking, turning and landscaping. The site is currently within the curtilage of 3A and in areas has overgrown vegetation.

Amended plans have been received which resulted in a new consultation period being undertaken for 21 days. The changes include the following:

- There is an overall reduction in height of 800mm that has been achieved by lowering ground levels by 300mm, and a reduction in the eaves and ridge height of 500mm.
- Houses A and B have been made 300mm narrower (north-south) with a total width reduction of 600mm.
- The side extension to House A has been re-modelled and its rear wall is now flush with the rear wall.
- The upper storey gable end windows to the north and south elevations have been removed. Windows to the east and west elevations have been replaced with dormer windows, which will provide light to the first-floor accommodation.
- The proposed Planting Plan has also been updated to increase the diversity of proposed native species hedge planting and to also annotate proposed ecological mitigation in the form of nesting boxes.

6. Planning Policy

The Wiltshire Core Strategy (adopted Jan 2015):

CP1 – Settlement Strategy, CP2 – Delivery Strategy, CP7 – Spatial Strategy Bradford on Avon Community Area, CP51 – Landscape, CP52 – Green Infrastructure, CP57 – Ensuring High Quality Design and Place Shaping, CP58 – Ensuring the Conservation of the Historic Environment, CP60 – Sustainable Transport, CP61 – Transport and New Development, CP64 – Demand Management, CP67 – Flood Risk

Saved Policies for the West Wiltshire District Local Plan (1st Alteration):

Policy C3 - Special Landscape Area, U1a Foul Water Disposal and U2 Surface Water Disposal

Other

- The Wiltshire Waste Core Strategy (adopted 2009)
- Policy WCS6 - Waste Reduction and Auditing
- The 'made' Freshford and Limpley Stoke Neighbourhood Plan (NP)
- The Wiltshire Local Transport Plan (LTP) and Car Parking Strategy
- National Planning Policy Framework 2019 (NPPF)
- Planning Practice Guidance (PPG)
- Circular 06/2005 – Biodiversity and Geological Conservation
- "The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning 3" (HE GPA3)

7. Consultations

Limpley Stoke Parish Council -Object to the amended plans for the following reasons (summarised):

- the applicant has attempted to address some of the concerns raised in our earlier objection but we still object
- The corner piece of land between Middle Stoke and Church Lane is a highly sensitive site in the village. It is an area of open land that links the village with the countryside adjoining St Mary's Church. The Hawthorn Hedgerow that runs tightly along the beginning of Middle Stoke helps to maintain the rural link and is an original village feature giving a semi-rural view and important habitat for wildlife.
- The previously approved application saw the importance of the church from Middle Stoke.
- The previously approved application allocated this site as a wildflower meadow which was crucial to the acceptance of the dwelling. This proposal replaces the wildflower meadow with 2 dwellings.
- The re-development of Southernwood (previously approved application) was creating 3 properties from the one site. That means that the proposal for the 2 new houses on Middle Stoke do not count as infill development. Wiltshire Council policy in villages suggests that infill development comprises up to 2 properties. This site has already accommodated 2 new properties. These 2 proposed houses will take the total on 3 Church Lane to a total of 4 and as such means that far more notice should be given to local concerns.
- The reduced height will still have a seriously detrimental impact on the setting of the corner of Middle Stoke adjoining Church Lane which is currently open green land, as well as the setting of and views to St Mary's Church.
- The properties opposite on Middle Stoke will still be looking up at the new houses and again, the elevated position above Middle Stoke will be really quite overbearing notwithstanding the 20.5m separation distance between houses. We accept the distances between proposed development and neighbouring properties are over 20m as recommended however these proposed houses are unnecessary overbearing and seriously affect the character and visual amenity of this part of the village.
- The applicant has stated that the setting of the Grade 2* St Mary's Church will be improved by this development as a result of the hedge being moved back by 2m. We strongly disagree – the view of the church as one progresses towards it from Middle Stoke is one of the key views in the village. The church is experienced in an open setting and not constrained by buildings.

The Parish Council objected to the submitted scheme with the following comments which have been summarised:

- The site is highly sensitive in the village. It is an open area of land that links the village with the countryside adjoining St Marys Church. The Hedgerow that runs tightly along the beginning of Middle Stoke helps to maintain the rural link
- Honey Cottage will suffer significantly – overbearing, windows in the gable elevation facing the property will overlook, location which is too close, the height and failure to sink the properties further into the ground
- The houses opposite will be will be looking up at the new houses and therefore they will be overbearing.

- The relocation of the hedgerow will not improve the setting of the Church – the view of the church as one progresses towards it from Middle Stoke is one of the key views in the village.
- We accept the distances between the proposed and existing dwellings are over 20m but they will be overbearing and affect the character and visual amenity of this part of the village.
- This site has already had 2 new properties – these proposed houses will take the total on site up to 4 which is no longer infill and is contrary to the NP policy.
- This is a highly intrusive and inappropriate development that will fundamentally change the character of the village.

Freshford Parish Council – Object for the following reasons:

- The construction of these two new homes is inappropriate development which by its nature is harmful to the Green Belt. That the definition of infill is not met in this instance and is neither in compliance with the Neighbourhood Plan Housing Policy nor the Villages Design Statement. It does not clearly outweigh the fundamental need to preserve the openness of the Green Belt.
- The application is in part in direct contravention of the Conditions attaching to the planning permission granted for No3A Church Lane.

Wiltshire Council Conservation Officer – No objection

Wiltshire Council Highways – No objection subject to conditions

Wiltshire Council Ecologist – No objection subject to conditions

Wessex Water - No objections

Historic England – Seek the views of your specialist conservation advice

Natural England – No objection

8. Publicity

The application was advertised by a site notice and neighbour notification letters. The deadline for any correspondence was 8th May 2020. 14 letters of objection have been received on the amended plans which make the following comments (in addition to those below):

Principle

- Fundamentally this application runs against Wiltshire's Core Planning Policy and adopted Neighbourhood Plan for Limpley Stoke, which allows for limited infilling of only up to two houses and the previous application has already fulfilled this.
- If this is allowed -where will future development stop?

Impact on Amenity

- The proposal is still too imposing and will result in loss of light and privacy
- Reducing the dwellings by 800mm does not overcome our concerns

Other

- This is solely for financial gain

- How can the pre-application advice be positive without local input and community consultation?

In addition to the above, 12 letters of objection were received on the originally submitted plans which made the following comments (summarised):

Principle

- This is excessive given the previous development of 2 dwellings on the site and its proximity to the St Marys Church.
- It will jeopardise the character of this small village
- This is not infill and therefore against local policy and the NP
- This is not affordable housing – it does not benefit anyone in the village

Impact on the area

- The buildings will be overbearing, domineering with a significant impact upon the horizon which would be acutely felt from the lower end of The Firs.
- The long flowing hedging is part of the character of our neighbourhood and neatly frames both the church and the open skyline.
- The site remains one of the few areas of open grassland and hedging within Middle Stoke and is quite distinctive
- Habitat loss would be detrimental to wildlife – there are lizards, hedgehogs, toads and insects
- The proposal will interrupt the view towards the church – the plans submitted are outdated because the vegetation no longer exists.
- Render, slate and metal roofs are not appropriate when comparing against the older properties in the area.

Impact on neighbouring amenity

- We have endured noise and disruption from this site for 2 years
- The height of the dwellings would be obtrusive in relation to the open views when viewed from the Church
- The propose dwellings would be overbearing to those properties opposite.

Highways

- Middle Stoke is a very small lane and putting another access point onto it will cause further problems
- How will vehicles turn
- The changing of the junction will only encourage larger vehicles to try and use our lane
- Why can't the access be taken from the existing access to 3A rather than Middle Stoke?
- There are no pavements
- There is a likelihood of increase in traffic on the blind corner with Church Lane and Middle Stoke which will subsequently cause risk to the church boundary walls on Church Lane as cars exit Middle Stoke

Other

- The Applicant has not made no effort to be open with the plans to develop the site
- There could be safety issues to the villagers caused by building traffic management and vans during the build process.

- There is risk to our boundary wall which is opposite the site as the access is at the narrowest point of Middle Stoke especially during construction.

9. Planning Considerations

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.

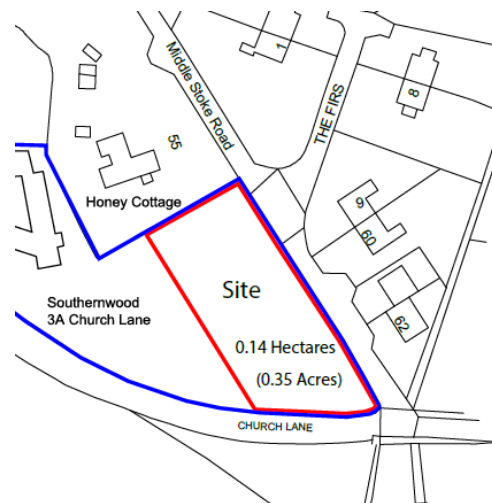
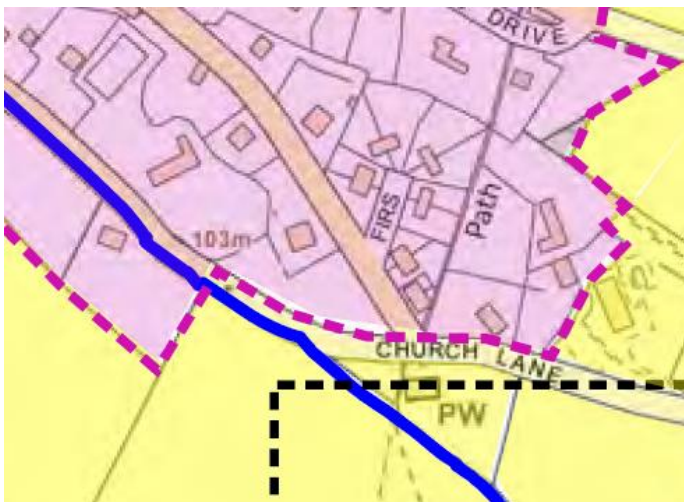
9.1 Principle

The site is located within the small village of Limpley Stoke. Core Policy 2 confirms that at small villages, development will be limited to infill within the existing built up area and that proposals for small developments in small villages will be supported where they seek to meet housing needs of settlements or provide employment, services and facilities provided that the development:

- *Respects the existing character and form of the settlement*
- *Does not elongate the village or impose development in sensitive landscape areas*
- *Does not consolidate an existing sporadic loose knit areas of development related to the settlement*

Limpley Stoke has an adopted Neighbourhood Plan and defines infill as: *“the filling of a gap normally capable of taking no more than two houses. Infill development must be consistent with the policies set out in the Plan and preserve the openness of the Green Belt”*

The site is within the defined “northern settlement” as detailed below which is a snippet from Map 2 of the NP (left) within which infill residential development is permitted subject to certain criteria.



It is considered when assessing the application against the principle of CP2 the proposal would fall under the definition of infill due to the existing built up development which sees existing dwellings to the North, East and West of the site and as such does not elongate the village or result in sporadic loose knit development. The site as demonstrated above is also located in the northern settlement of the NP where future development is to be

focused. The criteria of CP2 and the NP will be assessed below in the design section of this response.

The Parish Council and neighbour objections have stated that as there have already been two dwellings built on the original site of Southernwood (under references 16/05118/OUT & 16/04907/FUL) and therefore the definition of infill has already been achieved. The opinion of the objection letters is that the addition of the dwellings proposed as part of this application would be over the definition of infill as stated in the NP. However, every application has to be based upon its own merits and the development description is for two dwellings which is in accordance with the definition contained in the NP and the WCS and as such is considered to be acceptable in principle terms.

Concerns have also been raised regarding the prospect of future development if this application were to be approved. Any future development would be decided upon on its own merits but would need to be located within the “built up area” identified in the NP and comply with policies in the WCS – this current application complies with both of these adopted documents.

The site is also located in the Green Belt. The NPPF confirms that *inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.* It continues to say that the construction of new buildings is inappropriate. Exceptions to this include *limited infill in villages*. As such in principle it is considered that the proposal would be considered appropriate development within the terms of the NPPF as the proposed dwellings are considered to be infill.

9.2 Impact upon the character and appearance of the area

The proposed semi-detached dwellings face onto Middle Stoke Road and are set back to mirror the pattern of development of the existing dwellings opposite the site. By being set back from Middle Stoke Lane, the view of the church when approaching it from Middle Stoke Road remains uninterrupted.

The dwellings are to be built with rubble stone to the front and side elevations and through colour render to the rear elevation under a natural slate roof. The rainwater goods will be metal and the windows and doors will be painted timber. The single storey extensions are to be built with timber under shallow metal roofs. The materials are considered to be appropriate to their immediate setting which sees the use of the above materials on existing dwellings.



Saved Policy C3 states: *The landscape character of Special Landscape Areas will be conserved and enhanced and development will not be permitted which is considered to be detrimental to the high quality of these landscapes. Proposals for development essential to the social and economic well-being of the rural community or desirable for the enjoyment of its amenities will be permitted having regard to highways, access, scale, design, materials, location, siting, landscaping and other appropriate environmental considerations.*

CP50 states in full: *Development should protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character, while any negative impacts must be mitigated as far as possible through sensitive design and landscape measures.....*

Proposals for development within or affecting the Areas of Outstanding Natural Beauty (AONBs), New Forest National Park (NFNP) or Stonehenge and Avebury World Heritage Site (WHS) shall demonstrate that they have taken account of the objectives, policies and actions set out in the relevant Management Plans for these areas. Proposals for development outside of an AONB that is sufficiently prominent (in terms of its siting or scale) to have an impact on the area's special qualities (as set out in the relevant management plan), must also demonstrate that it would not adversely affect its setting.

Due to the location of the proposed dwellings which are situated on lower ground than the recently built dwelling known as Southernwood and due to their location adjacent to existing dwellings it is considered that the proposed development would not have an impact upon the Special Landscape Area, the openness of the Green Belt or the AONB.

Much has been said in the letters of objection regarding the wildflower meadow in the previously approved application. The concern appears to stem from this current application contravening the previous approval. Below is an extract from the landscaping plan on the approved application. Whilst the wildflower meadow has been shown and there is a condition on the decision notice to require the soft landscaping to be carried out, it was not explicit to the approval of the previous application and as such there is no material planning reason to use this reason to withhold future development on the site such as the one subject of this current application.



9.3 Drainage

The planning application indicates that foul sewerage will be disposed of via the main sewer and that rainwater run-off will be disposed of via a soakaway. Wessex Water have raised no objections to the proposal.

9.4 Ecology/Biodiversity

Paragraph 170 of the NPPF requires planning decisions to contribute and enhance the natural environment. The site is within the core zone for Greater Horseshoe bats using the Bath and Bradford on Avon Bats Special Area of Conservation. An extended phase 1 habitat survey has been submitted with the application which found that the site is likely to be used for commuting and foraging bats. The existing state of the site also makes it possible that common reptiles and birds are likely to be using the site as a habitat. No badgers or great crested newts were found on the site.

To ensure the site can still be used for the foraging and commuting of bats new hedgerows around the two proposed dwellings will be planted to compensate for the hedgerow being removed for the visibility splays for both the dwelling and the junction improvements. Two ash trees on site will be maintained and new trees will be planted. A bat box is also proposed on the southern elevation. In addition to these elements, nest boxes are to be erected and a reptile hibernacula (winter sheltering area) in the garden area outside of the proposed residential curtilage and closest to the church.

Paragraph 196 of the NPPF states that *“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal...”*

Core Policy 57 of the Wiltshire Core Strategy states: *“A high standard of design is required in all new developments, including extensions... Development is expected to create a strong sense of place through drawing on the local context and being complementary to the locality. Applications for new development must be accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire through... being sympathetic to and conserving historic buildings”*

Core Policy 58 of the Wiltshire Core Strategy echoes the above national policy in seeking the protection, conservation and, where possible, enhancement of heritage assets.

The following points are taken from the Historic England document *“The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning 3”* (HE GPA3) that are considered to be particularly relevant:

HE GPA3 Part 1:

“The NPPF makes it clear that the setting of a heritage asset is the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset.”

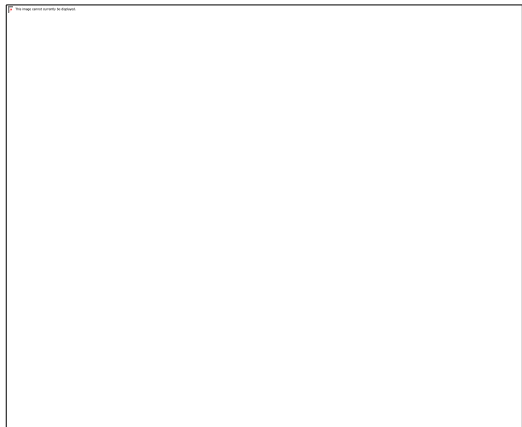
“The extent and importance of setting is often expressed by reference to visual considerations. ...views of or from an asset will play an important part...”

“While setting can be mapped in the context of an individual application or proposal, it cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset. This is because the surroundings of a heritage asset will change over time.”

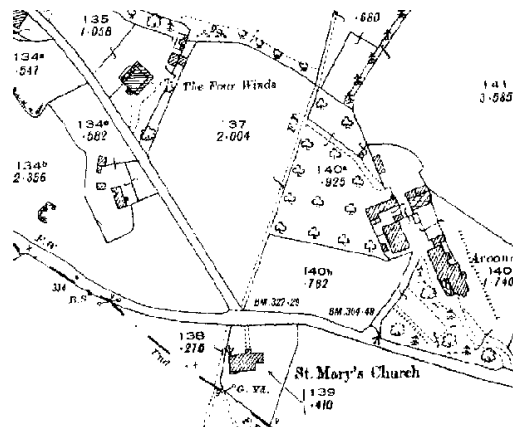
“The importance lies in what the setting contributes to the significance of the heritage asset or to the ability to appreciate that significance.”

This application for a pair of semi-detached dwellings which would have an impact on the setting of the Grade II* listed church to the south east of the application site. The site and the church are not within a Conservation Area. The Grade II* listed church has its origins in the 10th Century with building periods from the 13th, 15th, 17th and 19th Centuries and was then restored and extended in the 20th Century. The church has evolved over the centuries to its present configuration. The relationship the church has with the village and therefore the setting of the church has also evolved over the last 150 years. The church in 1868 was in relative isolation, and since then the village has gradually moved closer to the church as houses have been built. As follows:

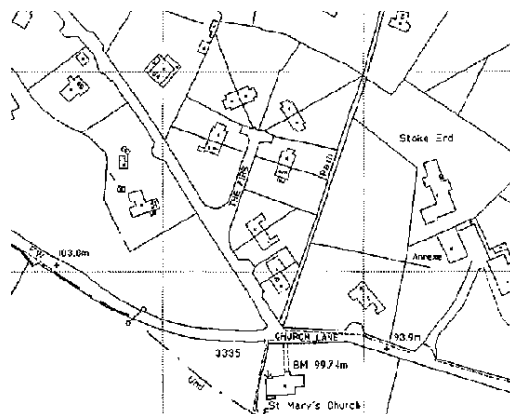
1868-1899 map extract:



1908-1933 map extract:



1952-1992 map extract:



The proposed dwellings would be opposite 9 The Firs and 60 Middle Stoke. Number 62 Middle Stoke would still remain the closest dwelling to the church (around 39 metres). The southern-most tip of the proposed dwellings would be around the same distance from the church as Damson House, Church Lane (around 45-50 metres). These existing dwellings are not built with traditional materials and do not respect the setting of the church.

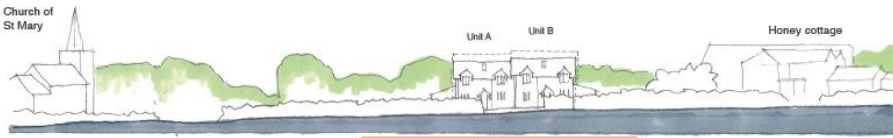
The distance between the church and the application site also crosses two existing boundaries, hedging and other vegetation, with a third boundary hedge proposed around the proposed garden. The front and side elevations of the proposed dwellings (north, east and south) would be built in natural stone. On the south elevation would also be a ground floor timber projection. These are the most important elevations with regard to the setting of the church. The Conservation Officer is of the opinion that these complementary materials would not result in harm to the setting of the church.

The proposed dwellings would be dug into the site, bringing the ridgeline down accordingly. The Proposed Site Sections drawing (007 Rev. 4) shows that the scale of the proposal is in keeping with the topography and surrounding buildings. Sections BB and DD in particular show the relationship between Honey Cottage, the proposed dwellings and the church. The Conservation Officer is of the opinion that this demonstrates a consistent approach to the scale of the dwellings and one that follows the historic pattern of new development in the village. Looking at the gradual expansion of the village, the

proposed development would be in keeping with the grain and plot sizes of the nearby dwellings; the plot size of the proposal would be consistent with surrounding development.



Section AA through proposed upper house



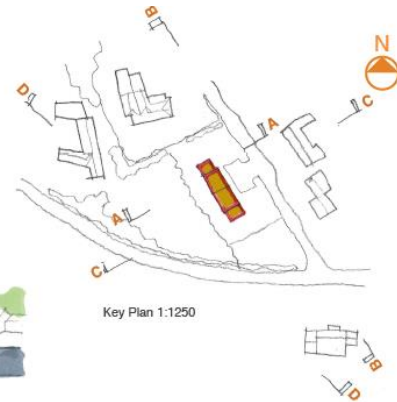
Section BB through Middle Stoke road



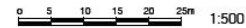
Section CC through lower house



Section DD from the west



Key Plan 1:1250



The HE GPA3 explores the fact that the setting of a listed building changes over time and is not fixed. The above paragraphs show that the proposed development remains consistent with the growth of the village and that the proposed dwellings would be no closer to the church than other development already in place. The setting of the church has changed from one of relative isolation to one that is more closely connected to the village.

The Conservation Officer is of the opinion that views from the churchyard, part of which is raised, would include a view of the proposed development; however, as above, the design and use of natural materials would not mean that this view becomes harmful to the setting of the church. The ability to appreciate the significance of the church would not be marred by the proposed development. The proposed development would have an impact on the setting of the church, but not a harmful one; due to the use of natural materials, the siting and design, its scale and massing, the result would be a neutral impact.

The proposal includes highway safety works which are discussed below, however as part of these works, the existing wall is to be reduced and the hedge removed and a new one planted further back to increase visibility along the lane. It is considered that these works would only improve the view of the church when viewed from the village which is currently interrupted by the existing hedge.

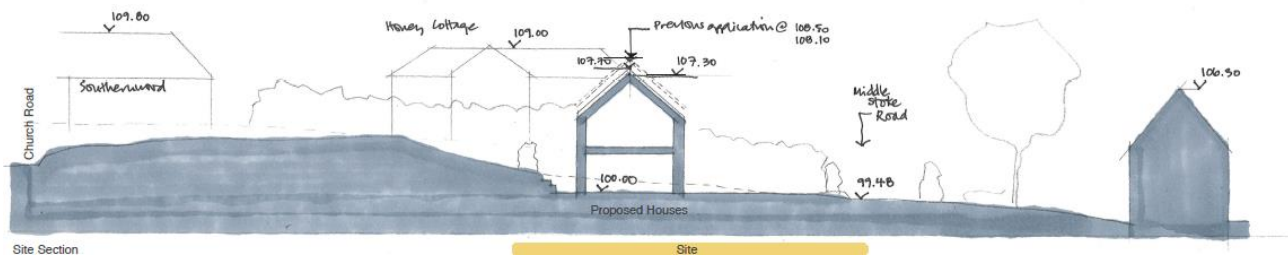


The Conservation Officer is therefore of the opinion that the design, siting, use of complementary materials, along with the intervening vegetation (existing and proposed) would not result in harm to the setting of the church. The development would continue the careful expansion of the village that would not in this case be detrimental to the setting of the church. The proposal is therefore considered to comply with the relevant policies, CP57, CP58, the Historic England document “The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning” and the NPPF.

9.6 Impact upon neighbouring amenity

The ridge of the proposed dwellings is lower than that of Honey Cottage. The Northern elevation is approximately 11 metres to the boundary of Honey Cottage from the single storey element and 15.5 metres to the two-storey element and just over 22 metres to the closest point of Honey Cottage which does have fenestration at ground floor and first floor facing the site. The proposed Northern elevation sees a window at ground floor facing the boundary with Honey Cottage but no windows at first floor level. It is therefore considered that the proposed dwellings would not overlook, overshadow or be overbearing to the existing dwelling known as Honey Cottage.

The front elevation sees a distance of approximately 28 metres between the existing dwellings (9 The Firs and 60 Middle Stoke Road) and the proposed dwellings where Middle Stoke Road also runs in-between. It is therefore considered that there would be no overlooking to existing properties that would warrant a refusal reason. It is accepted that the proposed dwellings will be located on slightly higher ground than the existing properties opposite, however given the distance between them, it is considered that there would be no overbearing or overshadowing issues that would warrant a refusal reason. The occupiers of the existing dwellings may lose their outlook, however this is not a material planning consideration and cannot be taken into consideration when making a decision on this application.



The recently built dwelling to the west by reason of its location on higher ground and slightly more north would not be affected by the proposed development.

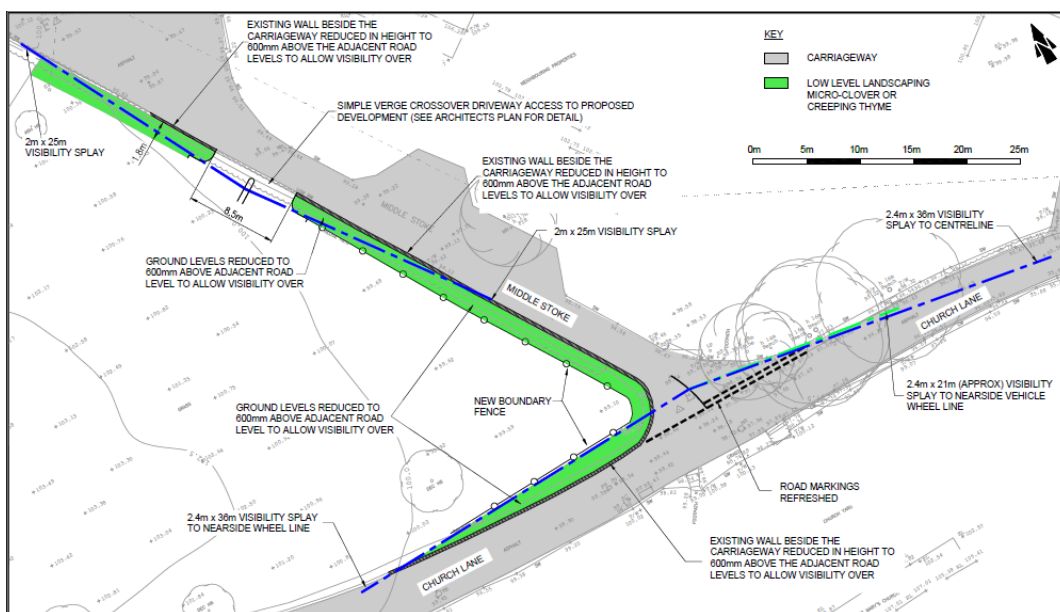
Noise related to construction has been cited as an objection. As the construction process is temporary this would not be a reason to refuse the application.

It is considered that the proposal would not result in loss of amenity that would warrant a refusal reason and as such the proposal complies with the relevant criteria of CP57.

9.7 Highway Impact

Three parking spaces per dwelling are proposed which complies with the Wiltshire Parking Strategy and the proposed access and off-street turning area complies with the relevant policies. The Highways Officer has raised no objections to the proposal subject to conditions which are considered to be appropriate.

An objection to the proposal including the following: *There is a likelihood of increase in traffic on the blind corner with Church Lane and Middle Stoke which will subsequently cause risk to the church boundary walls on Church Lane as cars exit Middle Stoke.* The proposed change in junction is considered to only bring about benefits to the village by ensuring the corner is no longer blind and as such is considered to be appropriate. The changes include the lowering of the existing wall to 600mm (which will be done by hand) with an area of low-level landscaping beyond to allow greater visibility for people when using the junction. A re-located boundary fence is to be erected behind the visibility splay lines. It is important to note that the wall in the majority of places will be left in situ as it is already below 600mm.



9.8 Other Matters

Some concerns that have been included are not material planning considerations that can be taken into consideration when making a recommendation on this application. These include financial gain, lack of public consultation by the Applicant before submitting the application, the pre-application process not including consultation with the public and safety measures during the construction process.

10. Conclusion

The proposal is considered to comply with the relevant policies of the Local Plan and as such is recommended for approval.

RECOMMENDATION: Approve with 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:

Received on 31st October 2019: Location Plan, 18086-SK01 (junction improvements), D01 Rev A (Drainage Strategy)

Received on 15th April 2020: 002 Rev4 (site plan), 003 Rev 3 (proposed ground floor plan), 004 Rev 2 (proposed first floor plan), 005 Rev 3 (E&W elevation plan), 006 Rev 4 (long section and N&W elevation plan), 007 Rev 4 (proposed site sections), 010 Rev 2 (roof plan), 318_PP_01 (planting plan)

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

- 3 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 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, in the interests of highway safety

- 4 The development hereby approved shall be carried out in accordance with the 'Discussion and Conclusions' section of the revised Extended Phase 1 Habitat Survey' report by Stark Ecology (April 2020) and the revised Planting Plan (April 2020).

REASON: To ensure adequate protection and mitigation for protected species through the implementation of detailed mitigation measures in accordance with NPPF, that were prepared and submitted with the application before determination.

- 5 Prior to any lighting being installed on the site details of such lighting shall be submitted to and approved in writing by the Local Planning Authority. The lighting shall then be carried out in accordance with the approved details.

REASON: Many species active at night (bats, badgers, otters) are sensitive to light pollution. The introduction of artificial light might mean such species are disturbed and/or discouraged from using their breeding and resting places, established flyways or foraging areas. Such disturbance can constitute an offence under relevant wildlife legislation.

- 6 No part of the development hereby permitted shall be first occupied until the access, 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 interest of highway safety and to ensure adequate off-street parking, access and turning facilities for the proposed dwellings.

- 7 The development hereby permitted 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 interest of highway safety and to ensure no material is discharged onto the highway

- 8 No part of the development shall be first occupied until the visibility splays shown on the approved plans (18086-SK01 Rev B) have been provided with no obstruction to visibility at or above a height of 600mm above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.

REASON: In the interest of highway safety and to ensure occupants of the proposed dwellings can leave the site in a safe manner

- 9 No part of the development hereby permitted shall be first occupied until the junction improvements have been carried out in accordance with the approved plans (18086-SK01 Rev B).

REASON: In the interest of highway safety

- 10 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.

All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

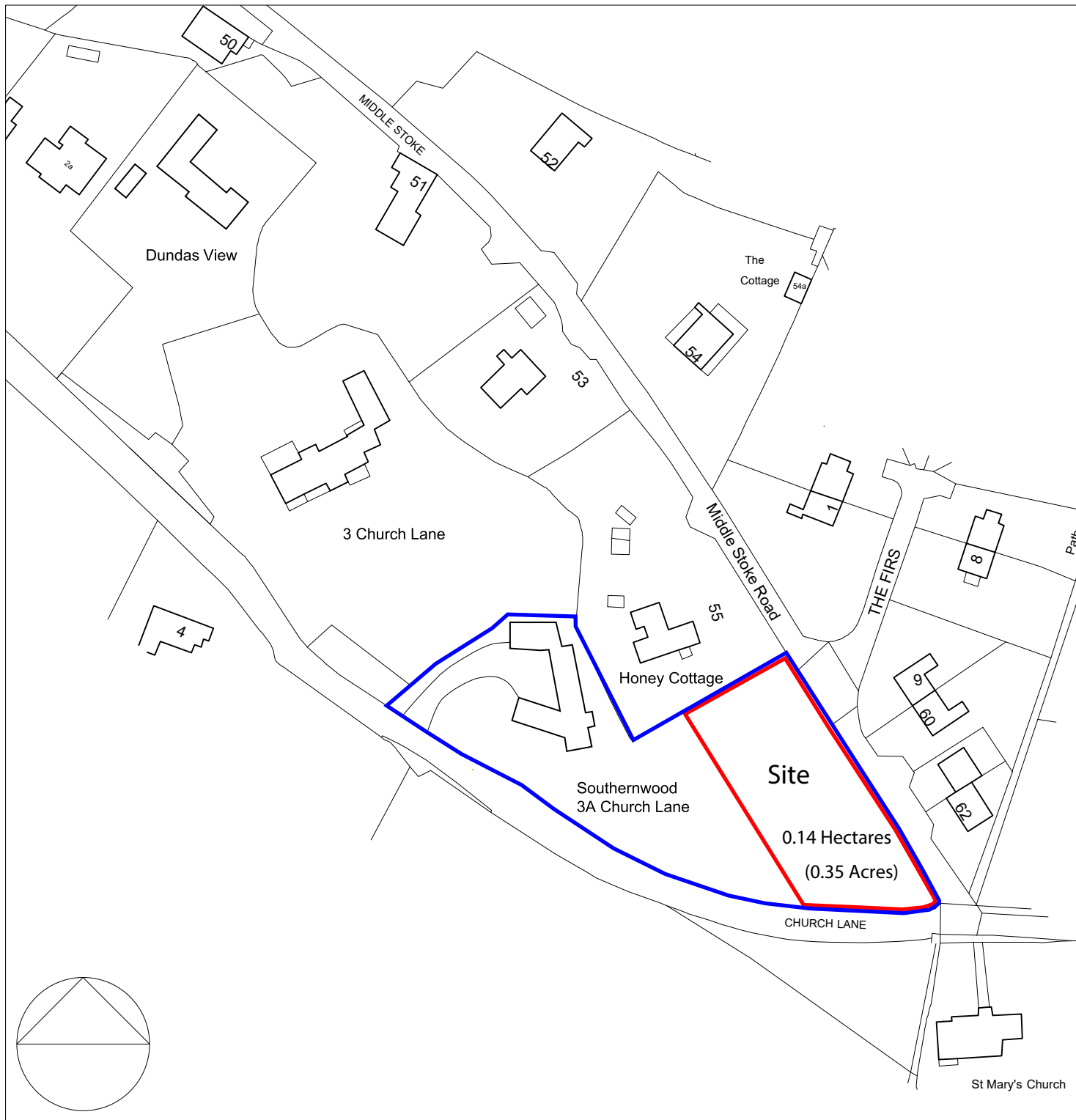
REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

1 INFORMATIVE TO APPLICANT:

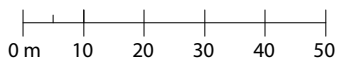
The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued 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.

2 INFORMATIVE TO APPLICANT: The consent hereby granted shall not be constructed as authority to carry out works on the highway. The applicant is advised that a licence will be required from Wiltshire Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway. Please contact the Council's vehicles crossing team on vehicleaccess@wiltshire.gov.uk and 01225 71335.

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3A Southernwood Church
 Lane Limply Stoke BA2
 7GH

Date: 30.10.19
 Drg No: 318_LOC_01
 Scale: 1:1250 @ A4

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