

AGENDA

Meeting: Western Area Planning Committee

Place: [Access the meeting online here](#)

Date: Wednesday 20 January 2021

Time: 3.00 pm

Please direct any enquiries on this Agenda to Ben Fielding, of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718656 or email Benjamin.fielding@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 Kevin Daley	Cllr Jim Lynch
Cllr David Halik	Cllr Steve Oldrieve
Cllr Russell Hawker	Cllr Toby Sturgis
Cllr Jon Hubbard	Cllr Ian Thorn
Cllr George Jeans	Cllr Philip Whitehead
Cllr Gordon King	Cllr Graham Wright

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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 - 6*)

To approve and sign as a correct record the minutes of the meeting held on 28 October 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**

The Council welcomes contributions from members of the public. During the ongoing Covid-19 situation the Council is operating revised procedures and the public are able to participate in meetings online after registering with the officer named on this agenda, and in accordance with the deadlines below.

[Guidance on how to participate in this meeting online](#)

[Access the meeting online here](#)

Statements

Members of the public who wish to submit a statement in relation to an item on this agenda should submit this in writing to the officer named on this agenda no later than 5pm on 18 January 2021.

Submitted statements should:

- 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;
- Be readable aloud in approximately three minutes (for members of the public and statutory consultees) and in four minutes (for parish council representatives – 1 per parish council).

Up to three objectors and three supporters are normally allowed for each item on the agenda, plus statutory consultees and parish councils.

Those submitting statements would be expected to join the online meeting to read the statement themselves, or to provide a representative to read the statement on their behalf.

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 electronically to the officer named on the front of this agenda no later than 5pm on 13 January 2021 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 15 January 2021.

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 members prior to the meeting and made available at the meeting and on the Council's website. Questions and answers will normally be taken as read at the meeting.

6 **Application to Register Land Known as 'Church Field', Hilperton as a Town or Village Green (Pages 7 - 204)**

To consider an application made under Sections 15(1) and (2) of the Commons Act 2006, to register land known as 'Church Field', in the parish of Hilperton, near Trowbridge, as a town or village green.

7 **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 28 OCTOBER 2020 AS AN ONLINE MEETING

Present:

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

127 **Apologies**

Apologies for absence were received from Councillors Peter Fuller and Edwards Kirk.

Councillor Kirk was substituted by Councillor David Halik.

128 **Minutes of the Previous Meeting**

The minutes of the meeting held on 19 August 2020 were presented for consideration, and it was,

Resolved:

To approve and sign as a true and correct record the minutes of the meeting held on 19 August 2020.

129 **Declarations of Interest**

There were no declarations.

130 **Chairman's Announcements**

There were no Chairman's Announcements.

131 **Public Participation**

The rules of public participation and the procedure to be followed at the meeting were noted.

132 **Planning Appeals and Updates**

The update report on planning appeals was received, with details provided including in relation to the appeals for Breach Lane, Southwick, and Corsley House, Corsley, which were successfully defended.

Resolved:

To note the Planning Appeals Update Report for 28 October 2020.

133 **Planning Applications**

The Committee considered the following applications:

134 **20/02178/FUL: Land Adjoining Hatch House, Up Street, Upton Lovell, BA12 OJP**

Public Participation

A statement in objection to the application was received from Maria Ironside.

A statement in objection to the application was received on behalf of Rex Harrison.

A statement in objection to the application was received from Lindsay Bray.

A statement in support of the application was received from Mark Street.

A statement on behalf of Upton Lovell Parish Council in objection to the application was received, read by Maria Ironside.

David Cox, Senior Planning Officer, presented a report which recommended an application be approved for change of use from agricultural land to a dog exercise area with the retention of small paddock for agricultural use following expiry of the 2-year temporary permission granted under 18/01841/FUL. Key issues included the principle of the application and impact on neighbouring amenity.

Members of the Committee had the opportunity to ask technical details regarding the application. Details were sought on the stated business need for use of the site, potential use of a personal condition for use of the site, and level of use of the site during the period of temporary permission. It was confirmed that the Coronavirus pandemic had prevented use during part of the temporary permission period.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The local Unitary Member, Councillor Christopher Newbury, then spoke regarding the application, including detail of the history of the application, concerns raised by local residents and potential conditions if the Committee wished to approve the application.

A motion was moved by Councillor Newbury, seconded by Councillor David Halik, to approve the application in accordance with the officer recommendation, with an additional condition on permitted development rights and imposing a personal condition on use of the site for the business owner.

The Committee debated the application, discussing whether the additional conditions were reasonable inclusions, and that it was not felt that the permission should be continued as a temporary permission.

At the conclusion of debate, it was,

Resolved:

That application 20/02178/FUL be approved as per the following conditions:

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

Design and Access Statement; Ecological Statement; Location Plan and Site Plan - all received 5 March 2018; and Planning Statement received 1 April 2020 and further supporting statement (use dairy) received 28 April 2020.

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

2. The development hereby granted shall only enure for the benefit of Mrs Lorna Street's dog exercise and training business and no more than 9 dogs shall be brought onto or be exercised at the site at any one time.

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

3. In order to protect the openness and landscape character of the application site as defined by the approved site location plan, the development hereby approved shall only benefit from the limited provisions set out within Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or as otherwise amended) pursuant to temporary, moveable buildings or structures being used in connection with the hereby approved use of land, and that no other permitted development right(s) provisions will be valid for any other building or structure on the site.

REASON: To define the terms of this personal permission.

4. The use hereby permitted shall be restricted to dog exercise and training purposes only taking place between the hours of 0900 - 1700 on Mondays to Fridays. The use shall not take place at any time on Saturdays, Sundays or during Bank or Public Holidays.

REASON: To define the terms of this permission and in order to protect residential and local amenities.

5. The dog waste associated to the use shall continue to be collected, binned and composted on the site in full accordance with the approved details discharged on 11 January 2019, and in perpetuity for as long as the dog exercise/training land use operates.

REASON: In the interests of protecting the nearby SSSI from contaminated waste.

6. No external lighting shall be installed anywhere on site.

REASON: In the interests of preserving the scenic beauty of the Area of Outstanding Natural Beauty and to protect neighbouring amenity.

135 **19/07647/REM: Land North West of Boreham Mill, Bishopstrow Road, Warminster, Wiltshire**

Public Participation

A statement in objection to the application was received from Iain Perkins.

A statement in support of the application was received from Chris Beaver, agent.

A statement on behalf of Bishopstrow Parish Meeting in objection to the application was received, read by the Democratic Services Officer.

Morgan Jones, Senior Planning Officer, presented a report for a reserved matters application for: layout, scale, appearance and landscaping pursuant to outline permission 13/06782/OUT, to include 34 dwellings. Key issues included the impact on ecology, highways and the layout and design of the application.

As detailed in the published report, officers advised that should the committee resolve to agree to the officer recommendation to approve the reserved matters, that the application be delegated to the Head of Development Management to only issue the decision notice to approve subject to the favourable conclusion of the Habitats Regulations Appropriate Assessment (HRA) pursuant to securing phosphate reductions in the River Avon SAC and its tributaries, and that until the HRA has been completed, this development cannot be formally approved. Members were however advised that a strategy to resolve matters was well advanced and that the Council has been liaising closely with Natural England amongst numerous interested stakeholders.

Members of the Committee had the opportunity to ask technical details regarding the application. Details were sought on the stated business need for use of the site, potential use of a personal condition for use of the site, and level of use of the site during the period of temporary permission. It was confirmed that the Coronavirus pandemic had prevented use during part of the temporary permission period.

Members of the Committee had the opportunity to ask technical questions relating to the application. Further details were sought on the extent of the phosphate issue, and it was also stated that as its resolution would not impact the outline of the development delegation to approve the application would allow for action as soon as possible. It was stated that technical consultees had no objections to the proposal, and it could be appealed for non-determination.

Details of the history of the application involving self-build elements was also raised. It was confirmed that the outline planning permission for the site was for up to 35 dwellings, though only 34 had been requested.

Members of the public then had the opportunity to present their views to the Committee, as detailed above.

The local Unitary Member, Councillor Andrew Davis then spoke regarding the application, raising matters of phosphate levels, design and quality of the application.

A motion was moved by Councillor Sarah Gibson, seconded by Councillor Jonathon Seed, to delegate the application for approval in accordance with the officer recommendation.

The Committee debated the application, noting that many of the cited objections to the application were about the principle of the development which had been dealt with at the outline stage and other concerns were not supported by any technical consultee objection. The concerns expressed about the design of the proposed dwellings were also discussed alongside the level of controls the Council would have on the customising choices future homeowners would have. Members also noted the commitment given by the Area Team Leader that should the HRA strategy for phosphate reduction require on site mitigation that would require the applicant to amend the application or otherwise have on site materials implications, a supplemental report would be prepared and be brought back to the committee for its consideration.

At the conclusion of debate, it was,

Resolved:

To defer and delegate the approval of this reserved matters application to the Head of Development Management subject to the following conditions and informatives following the completion of the necessary HRA Appropriate Assessment in respect to the SAC.

- 1 The development hereby permitted shall be carried out in accordance with the following approved documents and plans:**
 - **Document. Design & Access Statement Addendum (November 2019) by AHMM Architects, received 04.11.19;**
 - **Document. Design & Access Statement (Date of issue 21 January 2020) by AHMM Architects, received 04.02.20;**
 - **Document. Construction Environmental Management Plan (April 2020 [V3]) by Seasons Ecology, received 29.04.20;**
 - **Document. Landscape and Ecological Management Plan (ref JBA 19/019) (September 2019 Rev F 07.09.20), by JBA, received 07.09.20;**
 - **Document. Updated Ecology Appraisal (February 2020) by Seasons Ecology, received 04.02.20;**

- Document. Updated Dormouse Survey (July to November 2019) by Seasons Ecology, received 04.02.20;
- Document. Updated Water Vole and Otter Survey (August / November 2019) by Seasons Ecology, received 04.02.20;
- Document. Geo-Environmental Review Technical Note by Clarke Bond (ref B05066 / dated 11.18.19), received 02.12.19;
- Document. Water Efficiency Calculations (ref. Jon no.4748 / date 11.03.20), received 13.03.20;
- Document. Flood Risk Assessment Addendum by Clarke Bond (date 29/07/19) (report no. B05066-CLK-XX-XX-RP-FH-1001 / Number. P3 / Status. S2), received 07.08.19;
- Document. Technical Note (Access Culvert Design) by Clarke Bond (date 07/08/19) (report no. B05066-CLK-XX-XX-TN-C-0001 / Number. P02 / Status. S2), received 07.10.19;
- Document. Drainage Operations and Maintenance Manual (report no.B05066-CLK-XX-XX-RP-C-0001 / Status S2) by Clarke Bond, received 23.04.20;
- Document no.0004 Rev.P03 – Highway Network with Surcharge (Surface Water Calculations & Scheme Design), received 23.04.20;
- Document no.0006 Rev.P03 – Private Network with Surcharge (Surface Water Calculations & Scheme Design), received 23.04.20;
- Drawing no.0515 Rev.P04 – Flood Exceedance Route Plan, received 23.04.20;
- Drawing no.0535 Rev.P03 – Drainage & Tree Removal Plan, received 23.04.20;
- Drawing no.0010 Rev.P01 – Proposed Ditch Re-Profile, received 04.02.20;
- Drawing no.0705 Rev.P01 – Engineering Levels & Contours Layout, received 23.04.20;
- Document. Arboricultural Method Statement (October 2019) by James Blake Associates, received 04.11.19;
- Document. Tree Survey Schedule by James Blake Associates, received 07.08.19;
- Drawing no. JBA 19-019 TP01 Rev. B – Tree Protection Plan, received 04.11.19;
- Drawing no. JBA 19-019 TP01 Rev. B – Tree Removal Plan, received 04.11.19;
- Drawing no. P002 Rev.P04 – Proposed Site Plan, received 23.04.20;
- Drawing no. P100 Rev.P06 – Proposed Masterplan, received 23.04.20;
- Drawing no. P101 Rev.P04 – Proposed Unit Type Plan, received 23.04.20;
- Drawing no. P102 Rev.P04 – Proposed Tenure Plan, received 23.04.20;
- Drawing no. P103 Rev.P04 – Proposed Parking Plan, received 23.04.20;

- Drawing no. P101 Rev.P03 – Boat House – Type B4.1, received 07.08.19;
- Drawing no. P101 Rev.P03 – Large Boat House – Type LB4.1, received 07.08.19;
- Drawing no. P102 Rev.P03 – Large Boat House – Type LB4.2, received 07.08.19;
- Drawing no. P101 Rev.P03 – Terrace – Type TA1.1, received 07.08.19;
- Drawing no. P102 Rev.P03 – Terrace – Type TA2.1 & TA2.2, received 07.08.19;
- Drawing no. P103 Rev.P03 – Terrace – Type TA3.1, received 07.08.19;
- Drawing no. P104 Rev.P03 – Terrace – Type T3.1, received 07.08.19;
- Drawing no. P105 Rev.P03 – Terrace – Type T3.2, received 07.08.19;
- Drawing no. P106 Rev.P03 – Terrace – Type T3.3, received 07.08.19;
- Drawing no. P107 Rev.P03 – Terrace – Type T3.4, received 07.08.19;
- Drawing no. P108 Rev.P03 – Terrace – Type TA2.3, received 07.08.19;
- Drawing no. P201 Rev.P03 – Proposed Road Elevations – AA & BB, received 07.08.19;
- Drawing no. P203 Rev.P03 – Proposed Road Elevations – CC & DD, received 07.08.19;
- Drawing no. P203 Rev.P03 – Proposed Road Elevations – EE, received 07.08.19;
- Drawing no. JBA 19-01901 Rev. I – Proposed Hard Landscape, received 23.04.20;
- Drawing no. JBA 19-01902 Rev. L – Detailed Soft Landscape Proposals for Plots and POS, received 01.09.20;
- Drawing no. JBA 19-01903 Rev. L – Detailed Soft Landscape Proposals for Plots and POS, received 01.09.20;
- Drawing no. JBA 19-01904 Rev. H – Proposed Boundary Treatments, received 23.04.20;
- Drawing no. 0006 Rev.P02 – Boundary Conditions Retaining Walls, received 04.11.19;
- Drawing no. SK003 – Boundary Treatment Cross Sections, received 04.11.19;
- Drawing no. SK003 – Masterplan Upon Highway Officers Comments, received 04.11.19;
- Drawing no. 0140 Rev.P06 – Swept Path Analysis Refuse Vehicle, received 04.11.19;
- Drawing no. 0141 Rev.P06 – Swept Path Analysis DB32 Fire Tender, received 04.11.19;
- Drawing no. 0142 Rev.P06 – Swept Path Analysis DB32 Fire Tender, received 04.11.19;

- **Drawing no.0145 Rev.P03 – Visibility Constraints Plan, received 23.04.20.**

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

- 2 Prior to the post-shell design process and customisation of the dwelling on each plot, full details of the final design, layout, appearance and landscaping used in the construction of that plot, in accordance with the customisation options detailed within the approved Design & Access Statement by AHMM Architects (ref R001 Rev.P05) shall be submitted to and approved in writing by the Local Planning Authority. The design, layout, appearance and landscaping of each plot shall thereafter be carried out in accordance with the approved details.**

REASON: In the interests of the appearance of the site and because the final details for each plot have not been established to allow for flexibility in this custom-build scheme, in accordance the outline planning permission, ref 13/06782/OUT.

- 3 Prior to the first occupation of the development hereby permitted full details of the design and wording of the information boards required to be installed in line with paragraph 5.6.2 of the Ecological Management Plan (ref JBA 19/109) (September 2019) by JBA shall be submitted to an approved in writing by the Local Planning Authority. The approved information boards should be installed prior to the first occupation of the development.**

REASON: In order to ensure long-term protection of habitats and wildlife in line with the requirement of the approved Ecological Management Plan.

- 4 Prior to the first occupation of the development hereby permitted the boundary between the development and the ecology zone shall be defined by the fencing and native hedgerow shown on the approved Detailed Soft Landscape Proposals for Plots and POS drawings (JBA 19/019-02 Rev L and JBA 19/019-03 Rev L) and the Proposed Boundary Treatments drawing (JBA 19/019-04 Rev H). The boundary treatments shall thereafter be retained for the lifetime of the development. None of the land within the ecology zone will be incorporated into gardens or used for any purpose including any temporary use other than for nature conservation, pedestrian access along the footpath marked on the Masterplan (P100 Rev P06) and works related to ditch and river**

management.

REASON: In order to ensure long-term protection of habitats and wildlife in line with the requirement of the approved Ecological Management Plan.

- 5 No above ground development shall commence on site 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 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 area

- 6 Notwithstanding the details shown on the approved plans, no railings, fences, gates, walls, bollards and other means of enclosure development shall be erected in connection with the development hereby permitted, including the enclosure of the Pump Station, until details of their design, external appearance and decorative finish have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details prior to the development being occupied.

REASON: In the interests of visual amenity and the character and appearance of the area.

- 7 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 dwellings 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.

- 8 The development hereby permitted shall be carried out in strict accordance with the Arboricultural Method Statement (October 2019) by James Blake Associates, received 04.11.19.**

REASON: 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.

- 9 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 the tree protective fencing has been erected in accordance with the approved details. 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.**

No retained tree/s shall be cut down, uprooted or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approval shall be carried out in accordance British Standard 3998: 2010 "Tree Work - Recommendations" or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise.

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: 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.

- 10** No development shall commence on site until full details of the remedial works recommended within the Geo-Environmental Review Technical Note by Clarke Bond (ref B05066 / dated 11.18.19) has been submitted to and approved in writing by the Local Planning Authority via a remediation strategy. The approved works shall thereafter be carried out in accordance with a timetable that shall be detailed within the remediation strategy. On completion of any required remedial works the applicant shall provide written confirmation to the Local Planning Authority that the works have been completed in accordance with the agreed remediation strategy.

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 land contamination can be dealt with adequately prior to the use of the site hereby approved by the Local Planning Authority.

NOTE: The Geo-Environmental Review Technical Note recommends a cover systems to private gardens and communal areas and as such the remedial strategy should detail how and where this will be carried out; to be followed by verification reporting that confirms the nature of clean cover placed in private gardens and communal areas including locations, depth profiles, photographs and soil analysis.

- 11** With the exception of the installation of the access road, no development shall commence on site until details of all earthworks have been submitted to and approved in writing by the Local Planning Authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, and the nature and source of the material, showing the relationship of proposed mounding to existing vegetation and surrounding landform. The earthworks shall then be carried out in accordance with the details approved under this condition.

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.

- 12** Prior to the occupation of each dwelling hereby permitted the access, turning area and parking spaces serving that dwelling shall be 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.

- 13** No dwelling shall be occupied until details of secure covered cycle parking serving each individual dwelling have been submitted to and approved in writing by the Local Planning Authority. The cycle parking facilities shall be provided in accordance with the approved details prior to the occupation of each dwelling and retained for use at all times thereafter.

REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car.

- 14** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

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.

- 15** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no window, dormer window or rooflight, other than those shown on the approved plans, shall be inserted in the roof slopes of the dwellings hereby permitted.

REASON: In the interests of residential amenity and privacy.

- 16** Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: To safeguard the character and appearance of the area.

- 17 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the garages hereby permitted shall not be converted to habitable accommodation.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety.

INFORMATIVES TO APPLICANT:

The attention of the applicant is drawn to the conditions imposed on the outline planning permission reference 13/06782/OUT, dated the 20th July 2017. However, the Local Planning Authority can confirm that the details hereby approved under this reserved matters consent, as listed within condition 1 and detailed below, satisfy pre-commencement conditions 6, 9, 10, 14, 15 & 17 of outline planning permission 13/06782/OUT: -

Condition 6 - Culvert Details

- Document. Technical Note (Access Culvert Design) by Clarke Bond (date 07/08/19) (report no. B05066-CLK-XX-XX-TN-C-0001 / Issue Number. P02 / Status. S2), received 08.10.19.

Condition 9 - Footway Reconstruction

- Drawing no.0110 Rev.P1 - Highway Construction Details - Sheet 1, received 06.09.19;
- Drawing no.0200 Rev.P1 - S278 Works Proposed Junction Site Clearance Plan received 06.09.19;
- Drawing no.0801 Rev.P1 - S278 Kerbing & Surfacing Plan, received 06.09.19.

Condition 10 - Drainage Strategy

- Document. Technical Note (Access Culvert Design) by Clarke Bond (date 07/08/19) (report no. B05066-CLK-XX-XX-TN-C-0001 / Number. P02 / Status. S2), received 07.10.19
- Document. Drainage Operations and Maintenance Manual (report no. B05066-CLK-XX-XX-RP-C-0001 / Status S2) by Clarke Bond, received 23.04.20;
- Document no.0004 Rev.P03 - Highway Network with Surcharge (Surface Water Calculations & Scheme Design), received 23.04.20;
- Document no.0006 Rev.P03 - Private Network with Surcharge (Surface Water Calculations & Scheme Design), received 23.04.20;
- Drawing no.0515 Rev.P04 - Flood Exceedance Route Plan, received 23.04.20;
- Drawing no.0535 Rev.P03 - Drainage & Tree Removal Plan, received 23.04.20;

- Drawing no.0010 Rev.P01 - Proposed Ditch Re-Profile, received 04.02.20.

Condition 14 - Construction Environmental Management Plan

- Document. Construction Environmental Management Plan (April 2020 [V3]) by Seasons Ecology, received 29.04.20.

Condition 15 - Water Efficiency

- Document. Water Efficiency Calculations (ref. Jon no.4748 / date 11.03.20), received 13.03.20.

Condition 17 - Land Contamination Investigation

- Document. Geo-Environmental Review Technical Note by Clarke Bond (ref B05066 / dated 11.18.19), received 02.12.19.

The approved details listed above, which enable the pre-commencement conditions to be discharged, has been submitted under Discharge of Condition applications reference 19/08603/DOC, 19/11510/DOC, & 20/03527/DOC in tandem with the reserved matters application.

This approval of matters reserved refers only to condition 2 of outline planning permission 13/06782/OUT but does not by itself constitute a planning permission.

This development may require a permit under the Environmental Permitting (England and Wales) Regulations 2010 from the Environment Agency for any proposed works or structures, in, under, over or within eight metres of the top of the bank of the River Wylfe, designated a 'main river'. This was formerly called a Flood Defence Consent. Some activities are also now excluded or exempt. A permit is separate to and in addition to any planning permission granted. Further details and guidance are available on the GOV.UK website:
<https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>.

The need for an Environmental Permit is over and above the need for planning permission. To discuss the scope of the controls please contact the Environment Agency on 03708 506 506. Some activities are now excluded or exempt; please see the following link for further information:
<https://www.gov.uk/guidance/flood-risk-activities-environmental-permits>.

It must be noted that any works in proximity of a watercourse other than a main river, may be subject to the regulatory requirements of the Lead Local Flood Authority/Internal Drainage Board

Under the terms of the Land Drainage Act 1991 the prior written Land Drainage Consent of the Lead Local Flood Authority (Wiltshire Council in this case) is required for any proposed works or structures that could affect the flow of an ordinary watercourse (all non-main river watercourses/streams/ditches etc.). To discuss the scope of their controls and please contact Flood Risk Management Team at Wiltshire Council.

Safeguards should be implemented during the construction phase to minimise the risks of pollution from the development. Such safeguards should cover:

- the use of plant and machinery**
- wheel washing and vehicle wash-down**
- oils/chemicals and materials**
- 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.**

Water voles and their burrows are legally protected from harm and disturbance. Management works to the ditches should be conducted with advice from an ecologist to avoid committing an offence under the Wildlife and Countryside Act 1981 (as amended).

The ecology zone comprises land within 8m of the River Wylye which is main river and 4m of the ditches which are ordinary watercourses. The relevant authority (Environment Agency /Local Land Drainage Authority) should be consulted and approval sought for any new works proposed in these zones or any proposed new discharges to the river/water courses. This includes the works proposed under the current application and any subsequent changes.

136 **Urgent Items**

There were no Urgent Items.

(Duration of meeting: 3.00 - 5.35 pm)

The Officer who has produced these minutes is Kieran Elliott of Democratic Services, direct line 01225 718504, e-mail kieran.elliott@wiltshire.gov.uk

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

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WILTSHIRE COUNCIL

WESTERN AREA PLANNING COMMITTEE

20 January 2021

COMMONS ACT 2006 – SECTIONS 15(1) AND (3)
APPLICATION TO REGISTER LAND KNOWN AS ‘CHURCH FIELD’, HILPERTON
AS A TOWN OR VILLAGE GREEN

Purpose of Report

1. To:
 - (i) Consider a report and recommendation, dated 19 November 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. This was held virtually using “Zoom” on 29 and 30 September 2020, to consider an application made under Sections 15(1) and (2) of the Commons Act 2006, to register land known as ‘Church Field’, in the parish of Hilpertont, 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 April 2017, made under Section 15(1) of the Commons Act 2006, to register land at Hilpertont known as ‘Church Field’ as a town or village green. The application was also made under Section 15(2)(a)(b) of the Act, i.e. where a significant number of the inhabitants of any locality, or neighbourhood within a locality, have indulged in lawful sports and pastimes on the land for a period of at least 20 years and they continue to do so at the time of the application. The application was made by the “Church Field Friends”.
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:

“A significant number of inhabitants of Hilpertont have used the land (marked on the map exhibit A) for a period of 20 years, as of right, and continue to do so. This is supported by statements - in the form of letters from parishioners (Exhibit D) and supporting photographic evidence (Exhibit C). A supporting statement is enclosed marked Exhibit B”.

5. The application was accepted as a complete and correct application on 19 June 2017. The plan submitted, showing the extent of the applicant land edged in red, is appended at **APPENDIX 1**. The application was advertised on site and in The Wiltshire Times on 21 July 2020 with a deadline for receipt of objections or representations of 4 September 2020. Notices were also placed on site and served on the owners of the land, the occupier of the land, the applicant, Hilperton Parish Council and Wiltshire Council as planning authority. Three objections and one representation in support were received. Additionally, after the advertised deadline, in January 2018, Hilperton Parish Council wrote to the Council expressing its support for the application.
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 which are raised. A right to reply was also extended to the objectors. Exchanges of comments on the objections occurred between October 2017 and April 2018.
7. Wiltshire Council, as the Commons Registration Authority (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 6 March 2019, (a copy of the officers' report to committee is attached at **Appendix 2**). At paragraph 16.3 officers highlighted some areas of concern when interpreting the evidence adduced:

"Officers have considered the evidence and the objections and consider that the opinion of an expert in this area of law would greatly assist the Council in coming to a decision on the application. In particular a non-statutory public inquiry where witnesses could give their evidence verbally and possibly under cross examination would expand and elucidate the following points especially:

- a) *Is there sufficient evidence from a significant number of inhabitants?*
- b) *Has use been by permission?*
- c) *Have the agricultural activities prevented registration?*
- d) *Is the evidence sufficient to demonstrate use of the whole field and not just the public rights of way?"*

8. Officers recommended that given the dispute of facts in this case and the difficulties inherent in interpreting the written evidence 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 6 March 2019:

“The Committee agreed for Wiltshire Council to appoint an independent Inspector to hold a non-statutory Public Inquiry and provide an advisory report for the Western Area Planning Committee on the application to register land as a town or village green at Church Field, Hilperton.”

9. 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. Owing to constraints on movements and meetings imposed by the Covid-19 pandemic the Inspector held an unaccompanied site visit in August and a two day virtual public inquiry using Zoom software. Interested parties could either participate or observe the inquiry. Closing statements were invited after the inquiry and were considered by the Inspector as part of his report to the Council.

Main Considerations for the Council

10. 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 at Church Field, Hilperton, as a town or village green, has been made under Sections 15(1) and (2) 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 5 February 2019 at Appendix 2 of the Western Area Planning Committee report dated 6 March 2019.

11. 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...

...(2) 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 continue to do so at the time of the application.

12. 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* Admin 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.
13. 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 19 November 2020 (please see report attached at **APPENDIX 3**), in which he discussed and recommended as follows:

NB: The applicants and the objectors each appointed counsel to represent them. The applicants were represented by Mr Horatio Waller and the objectors by Mr James Marwick.

“Discussion

130. The application must be tested against the criteria for registration contained in section 15(2) of the CA 2006, namely whether a significant number of the inhabitants of (in this instance) any locality had indulged as of right in LSP on the application land during the relevant 20 year period ending in April 2017.

131. In the first instance, it is plain that the civil parish of Hilperton is a qualifying locality. For reasons already explained, this is not a case where the applicants rely on one or more neighbourhoods straddling more than one locality. The case advanced is based solely on the qualifying use of those living in the civil parish of Hilperton. In the result, the applicants are unable to rely on the use of the land by others living outside the boundaries of the village. The point is academic anyway as the applicants are relying only on the written and oral evidence of those who actually live, or have lived, in the village.

132. The core issue on this application is, as it seems to me, whether, without more, the use of the land for walking, with or without dogs, children's play and general informal recreation suffices to justify registration? This is not, however, a straight-forward application involving a small parcel of land being used for qualifying purposes. On the contrary, it is a very large grass meadow subject to low-level agricultural uses which happens to be criss-crossed by four PROW (with gated access points and directional signs) and a circular path running around the outside of the field which, in my view, in the case of the latter, is likely

to fall within the category of an emergent right of way. I cannot see how it would have appeared other than this from the perspective of the landowner in a case where walkers mainly use the path to walk around the field and only incidentally walk outside it, perhaps to stand around chatting with other dog walkers or to follow their dog or else cut a corner if they are pressed for time or even to bypass other walkers ahead of them.

133. *It seems to me that the main issues which need to be addressed by the CRA on this application are these:*

- (a) Where do people mainly walk when they use the land?*
- (b) Was that main use sufficient to justify registration – for instance was it non-qualifying as a matter of law because it was not enough to suggest to a reasonable landowner that the whole of the land was being used for informal recreation during the relevant period?*
- (c) Were other incidental uses outside the trodden paths, when looked at in the round, sufficient to justify registration?*

134. *I shall start by dealing with the general pattern of use of the land and its context.*

135. *The land is a grass meadow of long-standing within the Hilperton Gap. The agricultural use within the relevant period has been limited to an annual hay or silage crop although prior to the coming of Elizabeth Way in 2015 it had also been used for the occasional grazing of a small number of cattle (the evidence is too vague to put a number on it but the grazing herd would have been small and non-threatening to walkers) none of which activities in practice, as I find, would have been inconsistent with the use of the land for TVG purposes. It was not as if the land was ploughed or used extensively for grazing. In general, the whole of the land was available for informal recreation during the relevant period although it is important to note that before the grass was cut in June/July each year there would have been a number of weeks when the grass was longer and more difficult to walk upon.*

136. *The alignment of the PROW and the main circular path have remained more or less consistent over the years. The Google earth images after 2002 demonstrate that this has been the case. The landscape changed in around 2015 with the construction of Elizabeth Way which ran through Hilperton Gap and cut off the land from the two fields which used to adjoin it on its south-west side. One can, for instance, see how cattle would have been moved between these fields with ease and how HILP3 ran across these fields right into the outskirts of Trowbridge. It is also apparent from the rights of way plan at App/2 that before the new road was built walkers could have traversed Hilperton Gap unhindered via a network of paths whereas the new road places limits on the practicalities of this (compare the plans on App/1 and App/2) despite the new Middle Lane crossing.*

137. *I think Mr Marwick is right when he says that the trodden paths crossing and running around the land represent the principal way in which it has been used by walkers, with or without dogs, during the relevant period. A number of oral witnesses on both sides gave evidence to this effect. It seems to me that whereas, before 2015, there is certain to have been greater use of the land as a place of transit into the adjoining fields, the position after the advent of the new road is that most people now stick to the field as a destination in its own right and use it, as one might expect, by walking mainly on the worn paths or at least as close to these paths as makes no difference. I also consider that any use outside the paths should be treated as being incidental to the primary use of the paths and not referable to LSP.*

138. *I think Mr Marwick is right when he says that the use of the trodden paths would have indicated to a reasonable landowner the assertion of an emergent right of way, in the case of the main circular path and its offshoots, or the use of actual rights of way when it comes to the use of the four PROW and that, as a matter of law, such use should be discounted for TVG purposes. I also accept his submission (i) that any use by those straying off the paths (including by those retrieving their dogs), and (ii) that any use in excess of the width of the paths identified in the DMS would also have been such as to indicate the exercise of emergent or actual rights of way.*

139. *While I accept that, from time to time, people used the field for other recreational activities such as ball games, flying kites and model aeroplanes, jogging, camping and generally enjoying the land, I do not accept that these uses were, either by themselves or collectively, substantial enough or occurred with sufficient frequency to justify registration. I find that these other non-dog walking uses were very probably trivial uses and, as Mr Marwick rightly says, did not involve user of such a duration, nature or quality as would support registration. In my view, such uses are likely to have occurred mainly in the summer months after the grass had been cut when, for a while, the land is bound to have been much easier to walk on.*

140. *The CRA needs to be satisfied that, for all practical purposes, it can sensibly be said that the whole of the application land had been used for informal recreation always bearing in mind that qualifying use will be heavier in some areas than in others. I have already indicated that, in my view, the land is mainly used by people walking on the trodden paths which, as I find and as I saw for myself on my inspection in August, soon reappear after the grass has been cut. However, this still leaves the rest of the field which, as I find, is largely unused apart from only trivial or occasional uses when the length of the grass and the condition of the weather is such as to accommodate with far greater ease other non-dog walking uses.*

141. *It is not an uncommon difficulty in what I might call a 'big field' case for a CRA to have to decide whether the whole or part of the land is still registerable even though large parts of it are unused. In such a case, even if the CRA were (a) required to discount the use of the trodden paths, yet (b) considered that*

other uses taking place outside these paths were still sufficient to justify registration, an applicant would, in these circumstances, (c) still need to identify with precision where these other qualifying uses took place on the land in order that the CRA might then consider whether to exercise its power to sever from the application those parts of the land where qualifying use may not have taken place. As Mr Marwick succinctly puts it at OBJ/33 at para 6, the claimed use in this instance (outside the trodden paths) 'is imprecise and unclear both temporally and spatially'. I agree. This is not a severance case even if it was arguable that other uses outside the use of the trodden paths would have supported registration which, I hasten to add, is not the case on the basis of evidence laid before the CRA. The applicants' case might have been a good deal more arguable when it came to uses outside the paths if it had showed with much greater precision what was happening on the land, where it was taking place and when but their case under this head had not been properly or strictly proved.

142. I am not going to reiterate my findings on the oral evidence (where, it will be recalled, I expressed concerns about the quality of the evidence of Ms Katevska, Ernest Clark and Mrs Hart) but there is another matter which I should address and it concerns the Paxcroft Mead development.

143. Whilst I accept that this estate resulted in some people who lived outside the village boundary using the land (and so may have numbered amongst others observed to be using the land by qualifying local residents), it is, as I find, unlikely to have been a major component in the overall use of the land although I accept that some discounting would be necessary to allow for the use of those living outside the village. However, it still needs to be recognised that crossing the A361 is likely to have been a major hindrance to those living outside the village boundary who wished to recreate on the field, especially in the case of adults with young children in tow. The field was very probably also too away for unsupervised play in the case of younger children. I am also told that there are suitable amenity spaces within the new estate although I doubt whether they are likely to be as desirable for dog walking as the application land. This issue arose late in the day and in the absence of a proper audit as to how many people accessed the land for recreation via points 11-13 on App/3 one can only but speculate on the number of people using the land who lived outside the village boundary, whether they came from the Paxcroft Mead estate or elsewhere. At the end of the day, however, there were, in my view, enough qualifying witnesses who gave oral and written evidence to signify that the land was likely to have been in general use by the local community for informal recreation. It is just that the user relied on was, for the reasons explained, not qualifying use for the purposes of section 15 of the CA 2006.

Recommendation

144. In light of the above discussion, I recommend that the application to register the application land (proceeding under application number 2017/01)

should be rejected on the ground that the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied.

145. Put shortly, the predominant use of the application land during the relevant period was for walking, with or without dogs, on four PROW and a circular path (and its offshoots) running around the outside of the application land which would not have justified registration as a matter of law as it would not have suggested to a reasonable landowner the exercise of a right to indulge in LSP across the whole of the application land. Other claimed uses taking place outside these paths were either incidental to the primary use of the paths or else were too trivial or occurred only sporadically and, either alone or collectively, would not have been sufficient in terms of duration, nature or quality to support registration.

146. 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 19 November 2020”.

14. 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 3**), 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.
15. 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, it can consider matters of local importance within the area such as the registration of town and village greens.

Safeguarding Implications

16. 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

17. 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

18. 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

19. 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

20. 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

21. 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.
22. 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.
23. There is no duty for Registration Authorities to maintain land registered as town or village green.

Legal Implications

24. 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.
25. 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.

26. 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.
27. The issue of 'pre-determination' or approaching a 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, make an order for costs and for the decision sent back to the CRA to be re-made.

Options Considered

28. Members of the Committee need to consider whether to:
 - (i) Accept the Inspector's recommendation that the application by 'Church Field Friends' made under Section 15(2) of the Commons Act 2006 be rejected for the reasons set out in the Inspector's report dated 19 November 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 'Church Field', as a town or village green.

29. 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

30. In the Hilperton 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.
31. Following the close of the inquiry, the Inspector presented a well written and extremely thorough consideration of the evidence in a 52 page report with recommendation to Wiltshire Council, as the Registration Authority, dated 19 November 2020 (**APPENDIX 3**):

"..., I recommend that the application to register the application land (proceeding under application number 2017/01) should be rejected on the ground that the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied."

32. Officers are satisfied that over the course of the two 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 Inspector's report is a correct and accurate reflection of the witness and documentary evidence and that the Inspector's recommendation should be accepted.

Proposal

33. That Wiltshire Council, as the Registration Authority, accepts the Inspector's recommendation and that the application by 'Church Field Friends', under Sections 15(1) and (2) of the Commons Act 2006, to register land at Church Field, Hilperton, be rejected for the reasons set out in the Inspector's report dated 19 November 2020.

Jessica Gibbons
Director – Communities and Neighbourhood Services

Report Author:

Sally Madgwick
Definitive Map and Highway Records Manager
CM10006/F

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

None

Appendices:

Appendix 1 – Plan showing applicant land

Appendix 2 – Report to the Western Area Planning Committee 6 March 2019

Appendix 2A to 6 March 2019 report

Appendix 2A.1 to 6 March 2019 report

Appendix 2A.2 to 6 March 2019 report

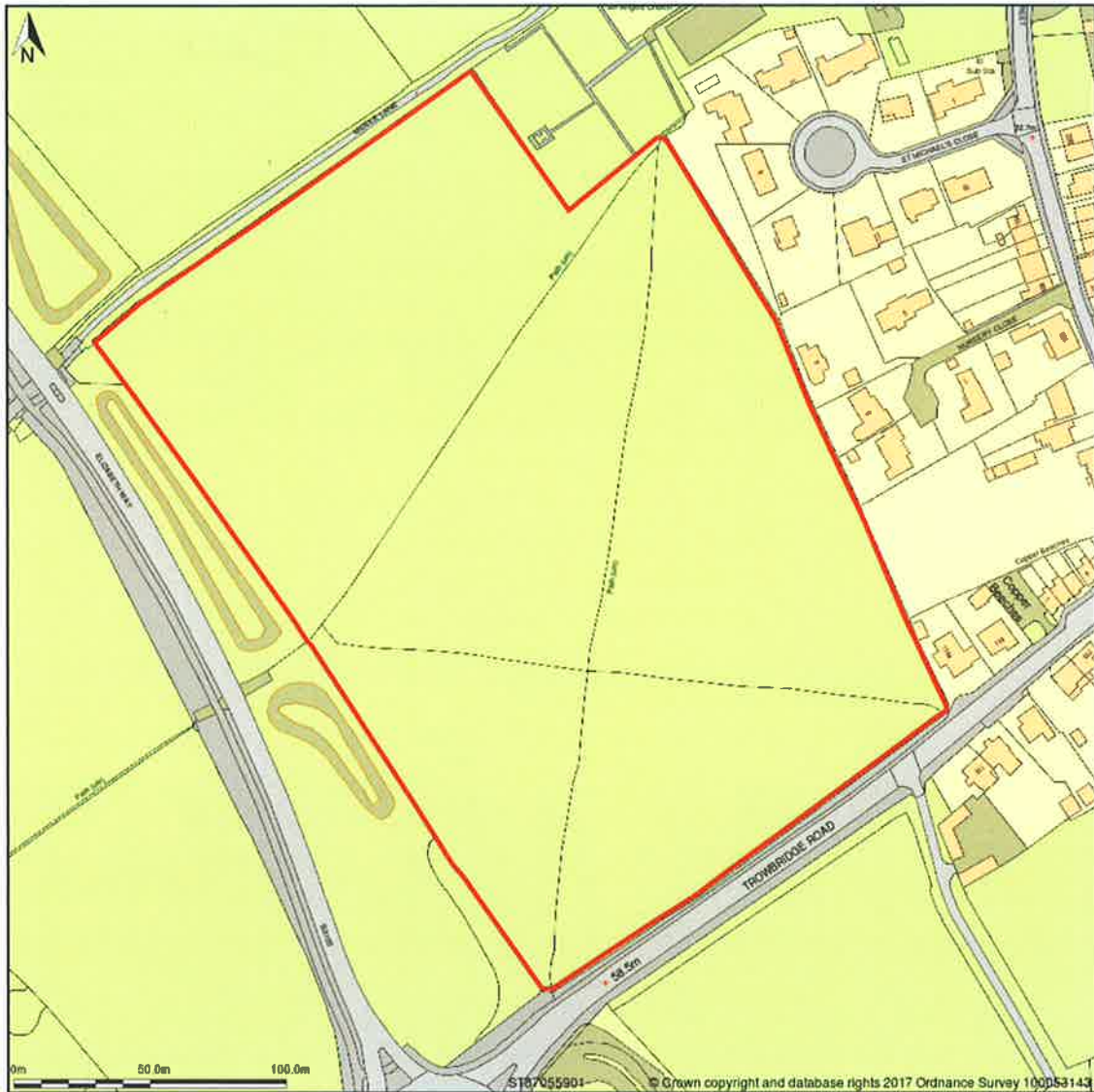
Appendix 2A.3 to 6 March 2019 report

Appendix 2A.4 to 6 March 2019 report

Appendix 3 - Inspector's report dated 19 November 2020

Appendix 3.1 to Inspector's report 19 November 2020

Exhibit A - Churchfield



Site Plan shows area bounded by: 386850.47, 158815.47 387250.47, 159215.47 (at a scale of 1:2500), OSGridRef: ST87055901. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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**COMMONS ACT 2006 – SECTION 15(1) AND (2) APPLICATION TO REGISTER
LAND AS A TOWN OR VILLAGE GREEN – CHURCH FIELD, HILPERTON**

Purpose of Report

1. To seek approval to appoint an independent Inspector to hold a non-statutory Public Inquiry and provide an advisory report for the Western Area Planning Committee on the application to register land as a town or village green at Church Field, Hilperton.

Relevance to Council's Business Plan

2. Working with the local community to maintain an up-to-date register of town and village greens to make Wiltshire an even better place to live, work and visit.

Background

3. Wiltshire Council received an application to register land at Church Field, Hilperton as a town or village green on 24 April 2017. The application was made under Section 15(1) and (2) of the Commons Act 2006 which requires the applicant to demonstrate, on the balance of probabilities, that the land has been used by a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, and that they have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years.
4. The application was accepted and duly advertised on 21 July 2017 for a period of 42 days. During this time three objections and one representation in support were received. One of the objectors was the owner of the land. He has since died and the objection is being maintained by his estate.
5. Full details of the application and all relevant submissions are appended to this report at **Appendix A**.

Main Considerations for the Council

6. Wiltshire Council is the Registration Authority and has a statutory duty to determine the application. However, there are no regulations in force at the moment which set out the process by which provide any mechanism as to how the authority should determine applications of this type.
7. The application is disputed. The objections raise a number of matters that must be addressed by the council including:

- (i) Can the evidence of multiple family members be taken into account?
- (ii) Is the number of people who have submitted evidence of use sufficient to be taken as a significant number of the inhabitants?
- (iii) Was use by permission?
- (iv) Was use by right owing to the presence of four rights of way in the field?
- (v) Are some of the claimed activities (for example socialising, creating dance routines and creating memories) lawful sports and pastimes?
- (vi) Is use of the land for grazing cattle and taking an annual silage crop fatal to the registration of the land?
- (vii) How were the witnesses motivated?
- (viii) How credible is some of the evidence?
- (ix) Is the evidence sufficient to demonstrate use of the whole field and not just the public rights of way?

8. Section 15 of the Commons Act 2006 provides that to register land as a town or village green it must be shown that:

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.

9. The registration of land as a town or village green is no trivial matter. Although the inhabitants of the parish of Hilperton would have a right to use the land for lawful sports and pastimes at all times and forever, land that is so registered is protected by Victorian statutes against harm or damage to the extent that any control of future activities on the land is largely taken from the landowner. The most obvious loss is that the land may not be developed but it may also not be ploughed, used for arable crops, divided for grazing of, say, horses or any other alteration that a landowner may reasonably expect to be able to do.

10. The responsibilities of the council in this regard were recognised by the justices in the Court of Appeal in the case of *R(Christopher John Whitmey) v The Commons Commissioners [2004] EWCA Civ. 951*. Arden LJ at paragraphs 28 and 29:

“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....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...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.....”

11. At paragraph 66 Waller L J agreed:

“66. I make these points because the registration authority has to consider both the interest of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration.”

12. Officers have considered the evidence both in support and in objection to the application at **Appendix A**. Whilst some points raised may simply be dealt with by the council it is clear that there are matters of serious dispute in the evidence. Officers consider that the four main points of dispute are:

- Is there sufficient evidence from a significant number of inhabitants?
- Has use been by permission?
- Have the agricultural activities prevented registration?
- Is the evidence sufficient to demonstrate use of the whole field for lawful sports and pastimes and not just the public rights of way?

13. It is considered unreasonable to all parties to make a decision without further testing of the evidence in front of an expert in this area of law.

Overview and Scrutiny Engagement

14. The determination of town and village green applications is governed by statutory regulations, relevant case law and non-statutory guidance.

Safeguarding Implications

15. The committee’s attention is brought to the High Court decision in the case of *Somerford Parish Council v Cheshire East Borough Council (1) and Richborough Estates (2) [2016] EWHC 619 (Admin)* where the High Court quashed the local borough council’s decision not to register land as a new town or village green on the basis of procedural error. The case highlights a number of practical points to note regarding privilege, equity and the importance of the Public Inquiry in determining an application to register land as a town or village green. The court’s decision also reinforces the findings in *Whitmey* and the need for Registration Authorities to hold a non-statutory Public Inquiry where there are sufficient disputes over factual issues.

16. Where a town or village green application is refused, the course of appeal for the applicant is by way of judicial review to the High Court. Applications of this nature usually, as can be seen from paragraph 15 above, focus closely on the procedure used in the decision making process. To safeguard both the reputation of the council and to avoid the serious financial costs of defending an action for judicial review it is imperative that the proper procedure is followed by the council in the decision making process. Likewise, the registration of the land may result in a similar High Court action instigated by the landowner, again underlining the need for the council to follow correct procedure.

Public Health Implications

17. There are no public health implications arising from this report.

Corporate Procurement Implications

18. The procurement implications of processing the application are dealt with under the Financial Implications given below.

Equalities Impact of the Proposal

19. There are no equalities impacts of the proposal.

Environmental and Climate Change Considerations

20. There are no known environmental and climate change considerations arising from this report.

Risk Assessment

21. The financial and legal risks to the council arise from the council reasonably proceeding with the application (where financial risks are limited to costs detailed below) or in acting unreasonably whereby risks relate to the cost of legal challenges through the courts. A challenge to the council's decision in the High Court where it is decided against the council may result in expenses of around £50,000 or more if resort is made to the higher courts.

Financial Implications

22. 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 the costs are borne by the council for which there is no budgetary provision.

23. A recent estimate for an inquiry lasting four to five days and for the production of the Inspector's report was £15,000 plus VAT.

Legal Implications

24. The legal implications associated with the report are set out in paragraph 21.

Options Considered

25. Members of the committee must consider the following possible decisions open to them:

- (i) To appoint an independent Inspector to hold a non-statutory Public Inquiry and produce an advisory report with his findings and recommendations for the council's consideration.
- (ii) To determine the application.

Reasons for Proposal

26. There is a serious dispute regarding the evidence and the application is of great local interest. In paragraph 15 above the committee's attention was brought to the *Cheshire East High Court Judgement*. The case was brought to the High Court on the basis of procedural error by the borough council. The case highlights a number of practical points for the committee to note and consider regarding privilege, equity and the importance of Public Inquiries in determining an application to register land as a town or village green in disputed cases. The court's decision also reinforces the findings in *R (Whitmey) v Commons Commissioners* and the need for Registration Authorities to hold a non-statutory Public Inquiry where there are sufficient disputes over factual issues.
27. Where the Registration Authority decides not to register land as a town or village green there is no right of appeal to the council or for example to the Secretary of State as there is with a planning application. The applicant's course for redress is by way of judicial review to the High Court. Applications of this nature usually, as can be seen in paragraph 15 above, focus closely on the procedure used in the decision making process. To safeguard both the reputation of the council, and to avoid the serious financial costs of defending an action for judicial review, it is imperative that the council adopts the proper decision making process in dealing with this application.

Proposal

28. To seek approval to appoint an independent Inspector to hold a non-statutory Public Inquiry and provide an advisory report for the Western Area Planning Committee on the application to register land as a town or village green at Church Field, Hilperton.

TRACY CARTER

Director Waste and Environment

Report Author
Sally Madgwick
Definitive Map and Highway Records Team Leader

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

None

Appendices:

Appendix A - Officers' Interim Decision Report

This report has 4 appendices:

- A1 Summary of user evidence
- A2 Landowner's objection to the application
- A3 Applicant's response to objections
- A4 Landowner's response to applicant's response

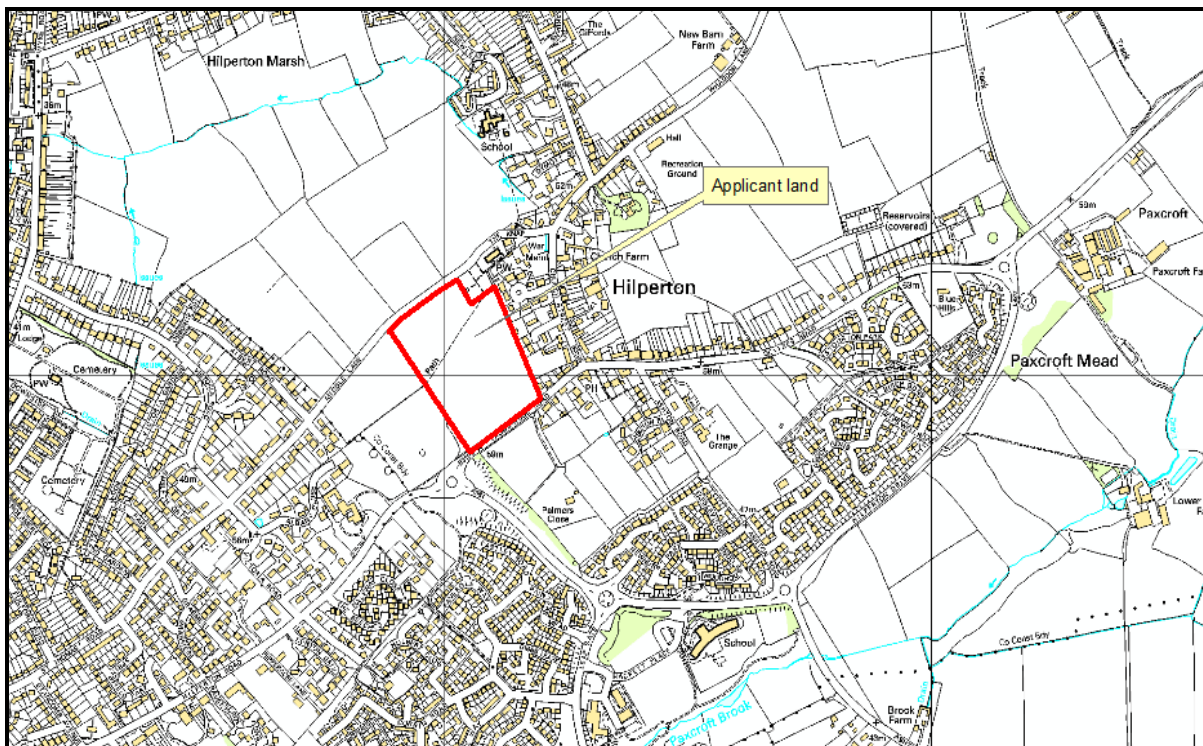
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WILTSHIRE COUNCIL**APPENDIX A****COMMONS ACT 2006****INTERIM REPORT****APPLICATION TO REGISTER LAND AT CHURCH FIELD, HILPERTON AS A TOWN OR VILLAGE GREEN****1 PURPOSE OF REPORT**

- i) To consider the application and evidence submitted under Section 15(1) and (2) of The Commons Act 2006 to register land at Church Field, Hilperton as a Town or Village Green.
- ii) To recommend that a non-statutory public inquiry is held before an expert in this area of law to test all evidence and to make a recommendation to assist the council make a decision on the application.

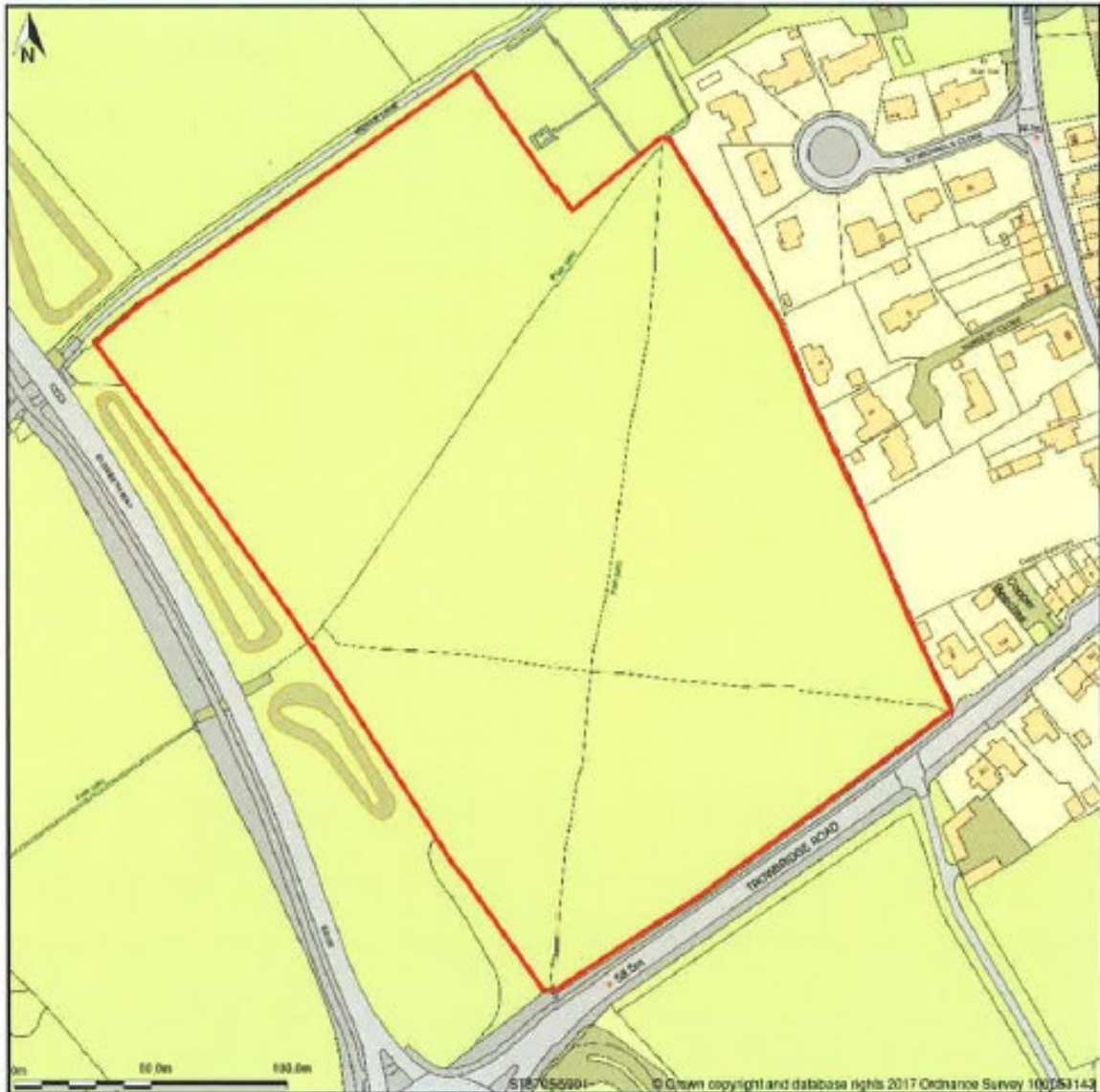
2 LOCATION PLAN

The land is located south west of the Church of St Michael and All Angels, Hilperton, BA14 7RJ and is referred to as Church Field (shown highlighted in red):



3 APPLICATION PLAN

Exhibit A - Churchfield



4 APPLICATION DETAILS:

Application number: TVG 2017/01

Date of receipt: 24 April 2017

Name of applicant: Church Field Friends

Address of applicant: c/o 2 Nursery Close
Hilperton
Trowbridge
Wiltshire
BA14 7RP

Application made under:	Section 15(1) and (2) Commons Act 2006
Description of land:	Church Field, Hilperton
Locality or neighbourhood:	Hilperton parish
Justification for application:	“A significant number of inhabitants of Hilperton have used the land (marked on the map Exhibit A) for a period of over 20 years, as of right, and continue to do so.”
Supporting documentation:	Exhibit A – map Exhibit B – supporting statement Exhibit C – supporting photos Exhibit D – 33 x personal statements Exhibit E – land registry search documents Exhibit F – map of Hilperton parish

5 LANDOWNER DETAILS

From 1959 to his death in late 2017 the land was owned by:

Mr Roger Pike
Fairfield House
Nursery Close
Church Street
Hilperton
BA14 7RP

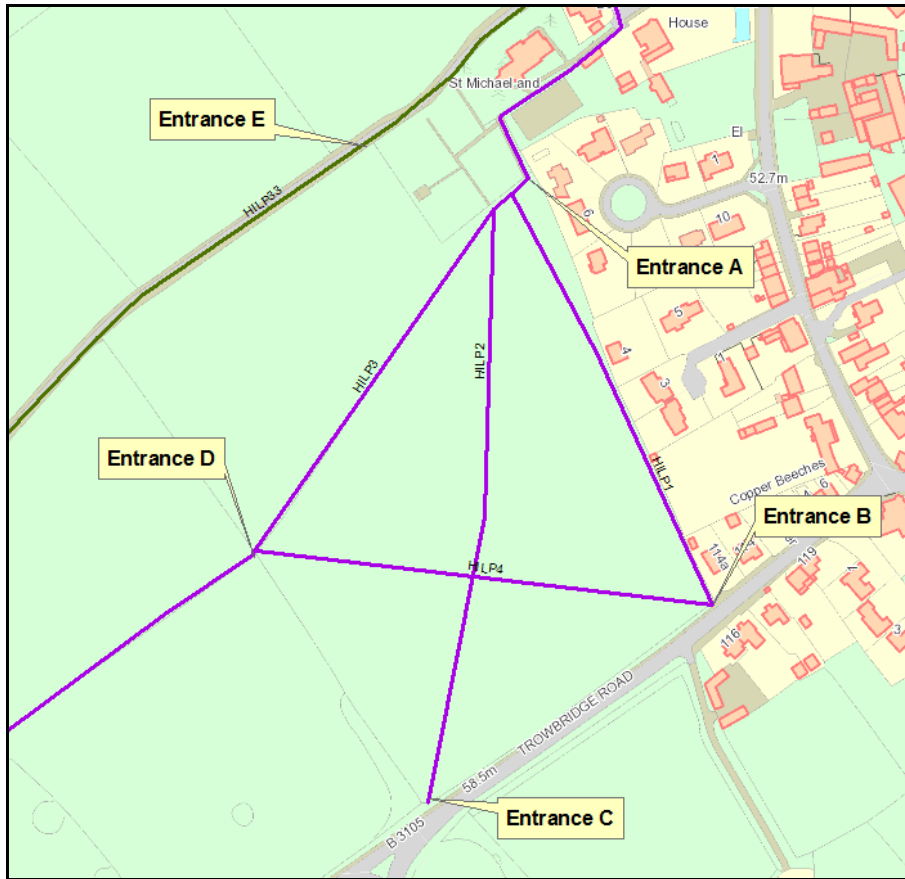
The land is now administered by Goughs Solicitors on behalf of the estate:

Dave Powell
Goughs Solicitors
Ramsbury House
30 Market Place
Devizes
SN10 1JG

The land was subject to a Grasskeep Agreement between approx. 1990 and 2017 to:

Mr R M Fyfe
Lower Paxcroft Farm
Hilperton
Trowbridge
BA14 6JA

6 PHOTOGRAPHS OF THE APPLICANT LAND 31 MAY 2017



Entrance (A) to land by church (footpath HILP1)



Entrance (B) to land at B3105 (footpath HILP4)



Entrance (C) to land at roundabout (footpath HILP2)



Entrance (D) at link road (footpath HILP 3 & 4)



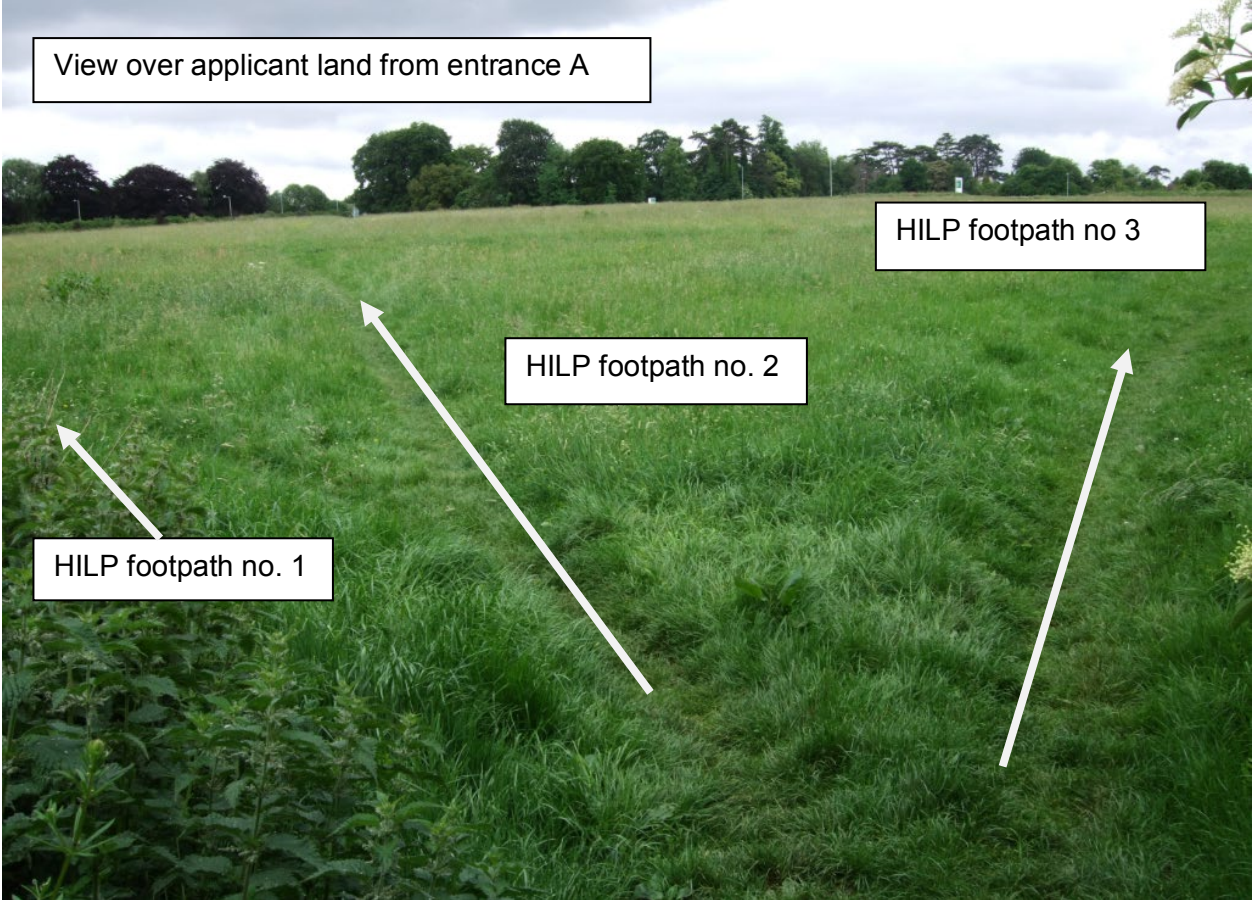
Entrance (E) from applicant land to bridleway HILP33

Additionally 3 properties have gates onto the land from their gardens:





View over applicant land from entrance A



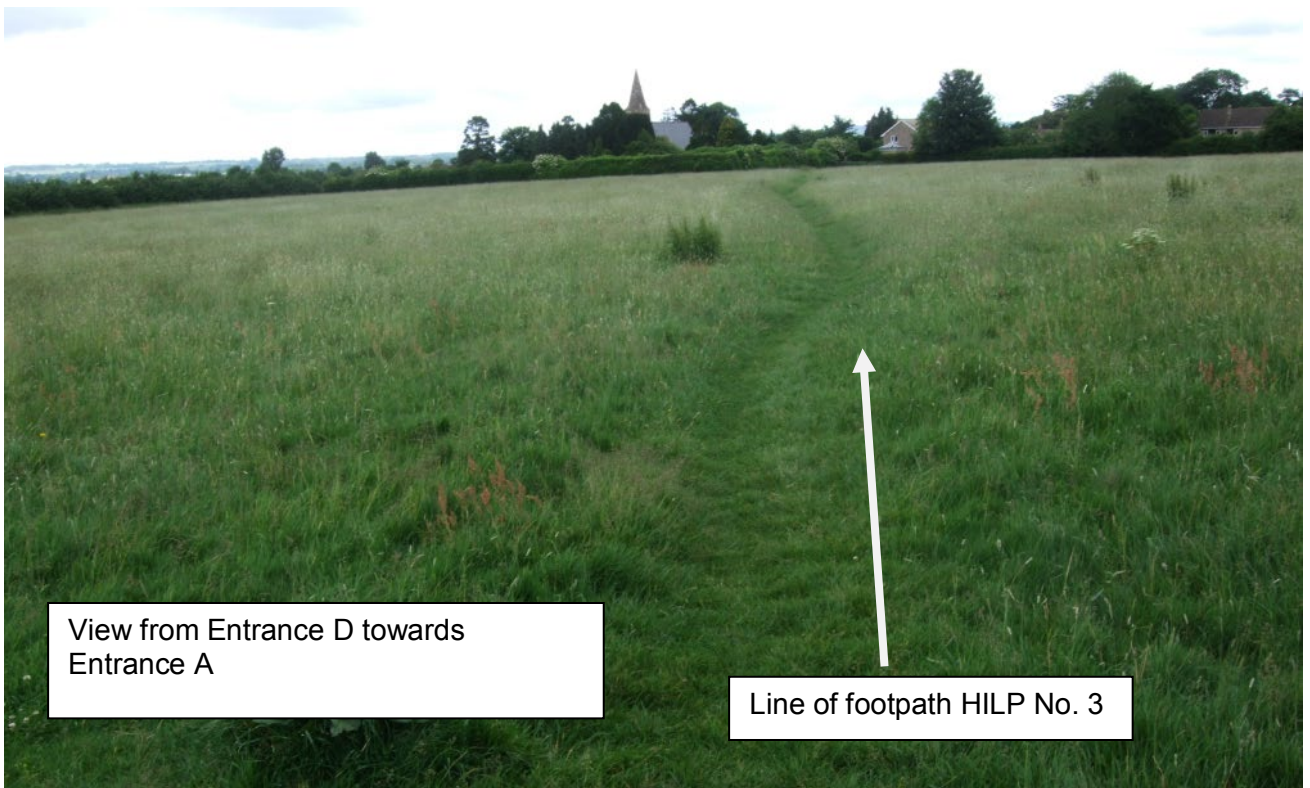
View from Entrance B looking north to Entrance A



View from Entrance B south west towards Entrance C



View from Entrance C north towards Entrance D (link road)



View from Entrance D towards Entrance A

Line of footpath HILP No. 3



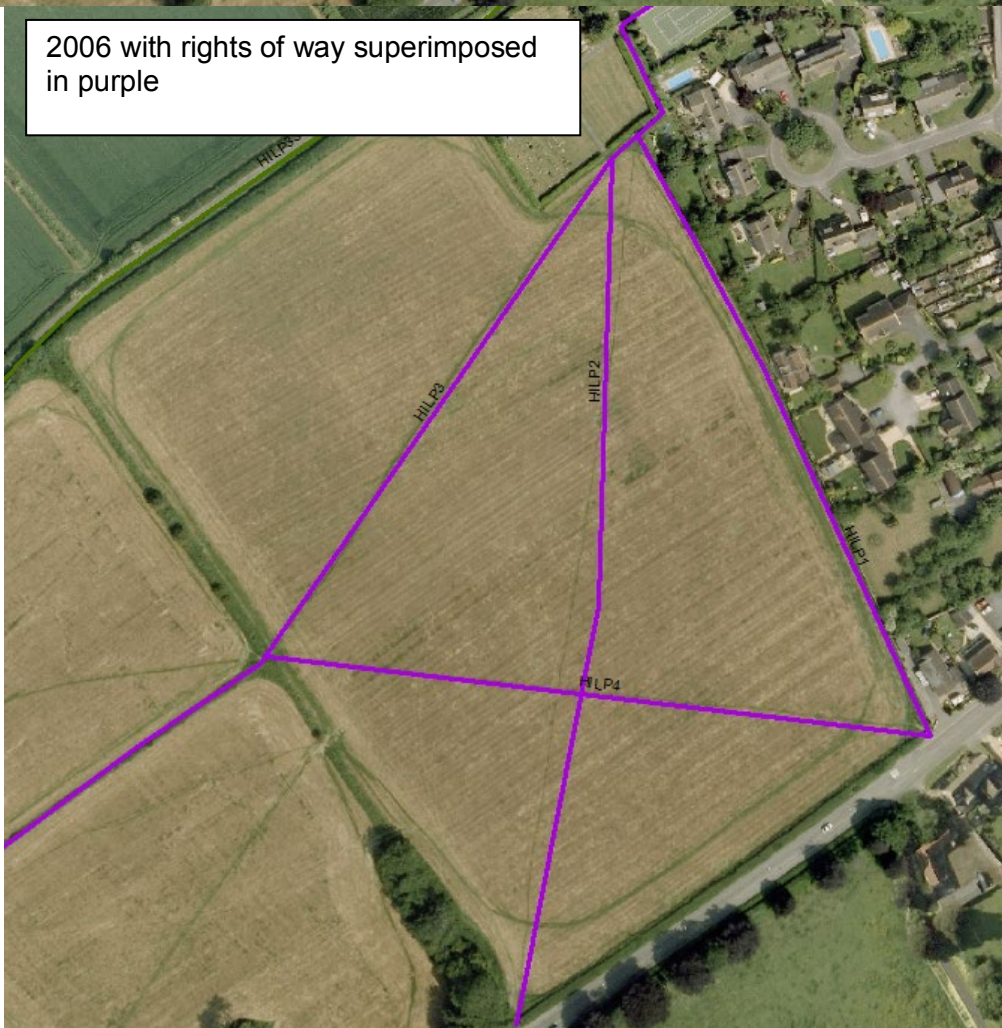
View to Entrance E



View from Entrance E south across Applicant Land

7 AERIAL PHOTOGRAPHS OF THE APPLICANT LAND

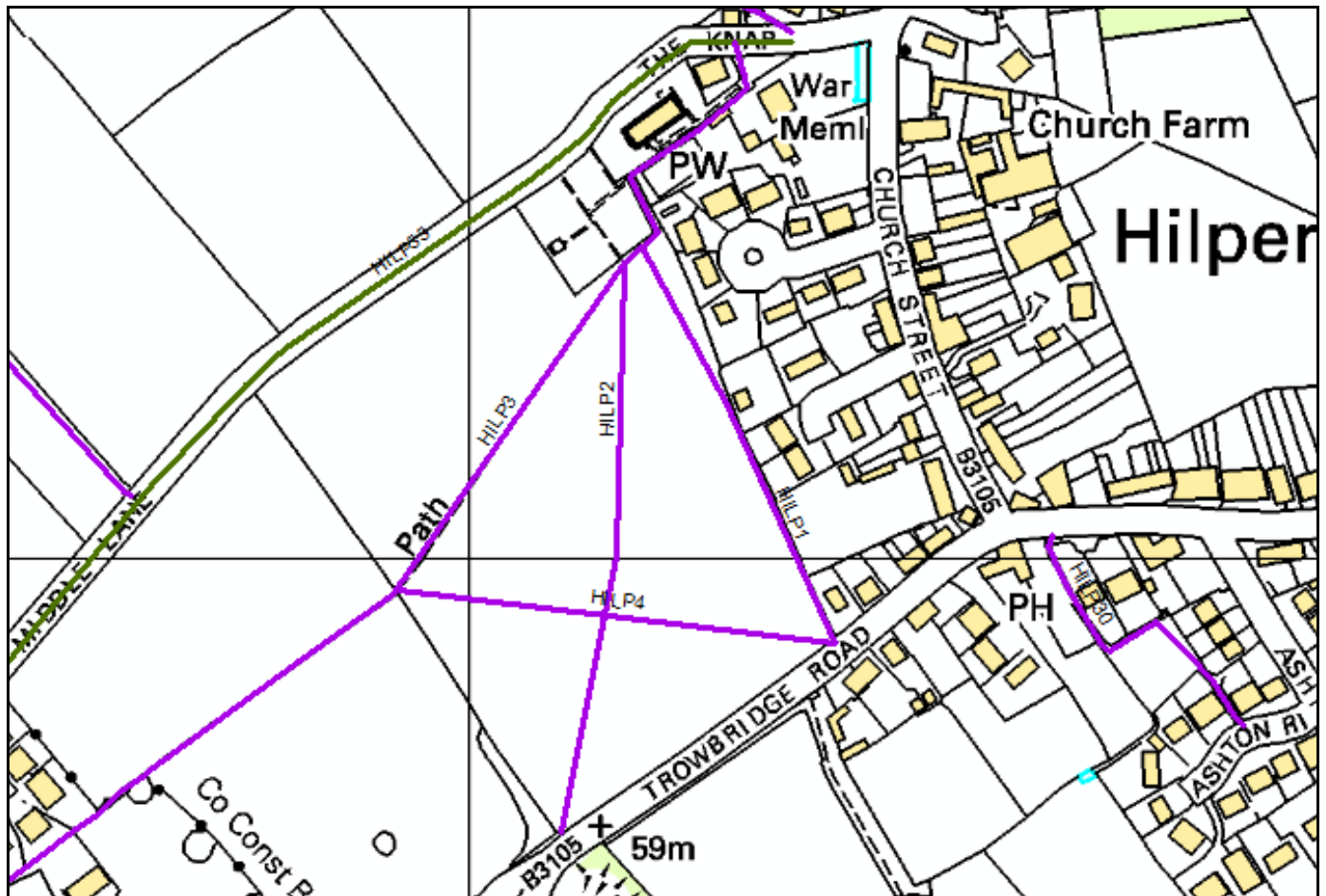






8 PUBLIC RIGHTS OF WAY

Plan showing public rights of way across and beside the applicant land:



9 LEGAL EMPOWERMENT

- 9.1 Wiltshire Council is the Commons Registration Authority for the County of Wiltshire (excluding the Borough of Swindon).
- 9.2 The application has been made under Section 15 of the Commons Act 2006 as amended by the Growth and Infrastructure Act 2013 (the 2013 Act).
- 9.3 Section 16 of the 2013 Act amended the law on the registration of new town and village greens under Section 15(1) of the Commons Act 2006. It did this by inserting new provisions – section 15C and schedule 1A into the 2006 Act – which exclude the right to apply to register land as a green when any one of a number of events, known as ‘trigger events’, have occurred within the planning system in relation to that land.
- 9.4 The trigger events are prescribed by Schedule 1A of the Commons Act 2006, and extended by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014 and The Housing and Planning Act 2016 (Permission in Principle etc)(Miscellaneous Amendments)(England) Regulations 2017 Statutory Instrument 2017 No. 276. For example, where an application for planning permission is first publicised then the right to apply to register land as a green is excluded. This ensures that decisions regarding whether land should be developed or not may be taken within the planning process. Other

Trigger Events include the inclusion of the land in adopted or emerging development plan policy.

- 9.5 The new section 15C(2) of the Commons Act 2006 provides for ‘terminating events’, which are also set out in Schedule 1A to that Act. If a terminating event occurs in relation to the land in question, then the right to apply for registration of a green under section 15(1) is again exercisable. For example, if the right to apply to register land has been excluded because of an application for planning has been publicised, the right to apply for registration of the land as a green again becomes exercisable if planning permission is refused and all means of challenging that refusal have run their course.
- 9.6 The 2013 Act amended the Commons Act 2006 in two other ways (Section 14 amended sections 15(3)(c) and inserted sections 15A and 15B. These amendments relate to the deposit of ‘landowner statements’ – the purpose of which is to protect the land from future claims – but are not relevant to the application being considered here as no deposits have been made.
- 9.7 This application has been made under Section 15(1)(2) of the Commons Act 2006:

Commons Act 2006

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 the application.

(3)

(4)

15A

15B

15C Registration of greens: exclusions

(1) The right under section 15(1) to apply to register land in England as a town or village green ceases to apply if an event specified in the first column of the Table set out in Schedule 1A has occurred in relation to the land (“a trigger event”).

(2) Where the right under section 15(1) has ceased to apply because of the occurrence of a trigger event, it becomes exercisable again if an event specified in the corresponding entry in the second column of the Table occurs in relation to the land (“a terminating event”).

(3) The Secretary of State may by order make provision as to when a trigger or a terminating event is to be treated as having occurred for the purposes of this section.

(4) The Secretary of State may by order provide that subsection (1) does not apply in circumstances specified in the order.

(5) The Secretary of State may by order amend Schedule 1A so as to –

(a) specify additional trigger or terminating events;

(b) amend or omit any of the trigger or terminating events for the time being specified in the Schedule.

(6) A trigger or terminating event specified by order under subsection 5(a) must be an event related to the development (whether past, present or future) of the land.

(7)

(8)

9.8 Once an application has been delivered to the Commons Registration Authority (the CRA) it is necessary to first ascertain whether a Trigger Event has occurred. If it has, and no corresponding terminating event has occurred the right to apply is suspended and the application must be returned. However, if there are no Trigger Events the CRA may proceed with the application.

9.9 Regulations prescribe the form that the application must take.

(The Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) Regulations 2007 2007 No. 457 10(3)(c)).

10. – (1) This Regulation applies to the description of any land which is the subject of an application for registration as a town or village green.

(2) Land must be described for the purposes of the application –

(a) by any Ordnance map accompanying the application and referred to in that application; or

(b) in the case of land already registered as common land, if the application relates to the whole of the land in a register unit, by a reference to that register unit.

(3) Any Ordnance map accompanying an application must –

(a) be on a scale of not less than 1:2500

(b) show the land to be described by means of distinctive colouring; and

(c) be marked as an exhibit to the statutory declaration in support of the application.

(d)

9.10 The regulations at 5.4 permit the Commons Registration Authority (the CRA) to allow the applicant an opportunity to correct the application:

5. – (1) Where an application is made under section 15(1) of the 2006 Act to register land as a town or village green, the registration authority must, subject to paragraph (4), on receipt of an application –

(a)

(b)

(c)

(2)

(3)

(4) *Where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it without complying with paragraph (1), but where 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.*

(5)

(6)

(7)

9.11 In the case of *R (The Church Commissioners for England) v Hampshire County Council and Guthrie [2013] EWHC 1933 (Admin) Collins J* considered that the CRA were entitled to consider the application as duly made from the date it was originally received and that a period of at least five years was a reasonable time period in which corrections could be made.

10 Timeline for the Processing of the Application

- | | |
|----------------------|---|
| 24 April 2017 | Application deposited at the offices of Rights of Way and Countryside, Wiltshire Council at 1715. |
| 25 April 2017 | Letter enquiring whether a Trigger Event (and/or Terminating Event) had occurred sent to:
Wiltshire Council Development Management (Planning Authority) – <i>responded negative</i>
Wiltshire Council Spatial Planning – <i>responded negative</i>
The Planning Inspectorate – <i>responded negative</i> |
| 26 May 2017 | Letter to applicant informing them there had been no trigger events. Application allocated number TVG 2017/01. |
| 30 May 2017 | Letter to applicant returning the application for correction owing to identified failings in Form 44 and Exhibit A. |
| 19 June 2017 | Revised application returned. |
| 17 July 2017 | Letter sent to applicant, landowner, believed tenant farmer, Wiltshire Councillor, Parish Council and Wiltshire Council as planning authority enclosing Form 45 (Notice of Application) and application plan. |
| 20 July 2017 | Form 45 notices posted on site (all entrances to the land) and maintained until 04 September 2017. |
| 21 July 2017 | Form 45 published in the Wiltshire Times. Responses to be received by 1700 04 September 2017. |
| 13 Aug 2017 | Objection received from R Sims |

14 Aug 2017	Representation in support received from E Clark
01 Sept 2017	Objection received from R H & I R Craddock
04 Sept 2017	Objection received from Goughs on behalf of R Pike (landowner)
02 Oct 2017	Additional statements submitted by Goughs on behalf of Mr Pike
25 Oct 2017	3 objections and 1 representation submitted to applicants for comment
18 Dec 2017	Copies of 3 objections and 1 representation sent to Goughs for information
18 Jan 2018	On 16 th January 2018 Hilperton Parish Council resolved to fully support the application and has no objection to Church Field being registered as a Town or Village Green
26 Feb 2018	Response received from applicant
08 Mar 2018	Applicant's response sent to 3 objectors and 1 representor for comment
30 Apr 2018	Response received from Goughs
15 Nov 2018	Further enquiries made to Wiltshire Council as Planning Authority regarding the effect of Wiltshire Council's Core Strategy (adopted January 2015) on the application in the light of the decision of D Elvin QC in <i>Cooper Estates Strategic Land Ltd v Wiltshire Council et al [2018] EWHC 1704 (Admin)</i> .
16 Nov 2018	Response from Wiltshire Council confirming no trigger event applied to the land at the time the application was made. The land being outside of the limits of development, not within a SHLAA site and not identified for development in the Wiltshire Core Strategy, Site Allocations Plan or any other development document for Wiltshire.
23 Jan 2018	Wiltshire Council case officer commences writing report.

11 EVIDENCE IN SUPPORT OF THE APPLICATION

It is for this applicant to demonstrate to the Registration Authority (Wiltshire Council) that on the balance of probabilities a significant number of the inhabitants of the parish of Hilperton have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years and that they continued to so on the 25th April 2017. Exhibit A of the application is the application form (Form 44).

11.1 Exhibit B is a supporting statement on behalf of applicants:

"This following statement is submitted in support of the application to enter into the register of Village Greens the land known as Church Field, Hilperton, (see Exhibit A).

The land has been used by the local community for a period in excess of 20 years. The Hilpertons historic society has evidence of the field being used during the war as a runway for aircraft (US Army Air Corp L-4 Grasshopper reconnaissance aircraft) and we cannot find any evidence to suggest that it has not been in continuous use by the community to the present day.

The field has been used for lawful sports and pastimes, as of right, including dog walking, snowman building, kite flying, ballgames and camping, a full list is provided in the appendix to this statement. A number of local organisations such as the local pre-school and Brownie/Scout groups have also used Church Field for various activities including nature trails and sports.

We have collected together witness statements from members of the Hilpertons community who used Church field over a period stretching from 1980 to present. These same members of the community have also provided us with photos taken during this period of various uses of the field, such as snowman building and nature trails.

These letters witness that the signatories have used Church Field as Village Green as of right without let or hindrance, and on no occasion have the owners or controllers of the land challenged their use of the land. That every part of Church Field has been used by the witnesses and that there has not been a period where use of Church Field has been prevented.”

“Appendix – summary of uses of the land from witness statements

*Kite flying
Running/walking for relaxation
Building snowmen
Dog walking
Ball games
Socialising
Building dens
Creating dance routines
Creating memories
Rounders/football/cricket
Scouts/brownies/pre-school activities
Nature trails
Camping
Air Ambulance landing
W – unreadable text”*

11.2 Exhibit C is a collection of 33 pages of undated photographs showing activities on the applicant land:

- | | |
|-------------------------------------|---|
| 1. Dog walking games with ball | 2. 6 people building large (8ft plus) snowman |
| 3. 9 people with same snowman | 4. 2 people with same snowman |
| 5. 8 people & dog with same snowman | 6. Snowman in middle of field |
| 7. Snowman | 8. Dog in snow |
| 9. Snowman | 10. 2 walkers in snow |
| 11. 2 walkers and dog in snow | 12. 2 walkers in snow |
| 13. 2 walkers and dog in snow | 14. Old picture of 9 men in uniform |
| 15. Walkers and dogs | 16. Walkers and dogs |
| 17. Meadow flowers | 18. Poppies |

- | | |
|--|---|
| 19. 11 people and large snowman | 20. Report of use of field in the 1940s |
| 21. Aircraft photography | 22. 4 people and snowman in 1999 |
| 23. 8 people and snowman | 24. 9 people and several dogs |
| 25. C. 16 St Michael's children waking | 26. 9 St Michaels children |
| 27. Man walking dog | 28. Photography of rainbow |
| 29. Landscape photography | 30. 2 walkers and dog in snow |
| 31. Brownie, adult and cows | 32. Children playing in snow |
| 33. Children playing in snow | |

11.3 Exhibit D is 33 signed statements from people who have used the land. Of the 34 people, 32 live (or lived in Hilperton at the time of their use), 1 gives her address as St Michael's Pre-school, Hilperton and 1 lives close by but in Trowbridge. A summary of their evidence produced by the case officer for Wiltshire Council is attached at **APPENDIX 1**

11.4 All 33 users have used the land within the period of 1997 to 2017 with 13 of them having it used it for the full 20 years. All bar 1 have seen others using the land.

11.5 No users have been challenged or seen any sign or notice prohibiting their use. They report that their use has been uninterrupted.

11.6 A range of activities carried out by witnesses include:

Dog walking	25 people
Walking	12 people
Snowmen and igloos	10 people
Kite flying	9 people
Rounders	7 people
Football/cricket/rugby	7 people
Ball games	5 people
Picnics	5 people
Blackberry picking	3 people
Meeting friends	3 people
French cricket	3 people
Building dens	2 people
Running	2 people
Frisbee	2 people

11.7 Exhibit E is the Land Registry search for the land.

11.8 Exhibit F is a plan showing the boundaries of Hilperton Parish which is the claimed locality for the purposes of this application.

12 OBJECTIONS AND REPRESENTATION TO THE APPLICATION

The application was duly advertised (Form 45) between the 21st July and the 4th September 2017. 3 Objections and 1 representation in support were received.

- 1) R and H Craddock (objection)
New Barn Farm
Whaddon Lane
Hilperton
BA14 7RN

- 2) Rosemary Sims (objection)
16 St Mary's Close
Hilperton Marsh
Trowbridge
BA14 7PW
- 3) Goughs Solicitors – acting for Roger Pike deceased (objection)
Dave Powell
Ramsbury House
30 Market Place
Devizes
SN10 1JG
- 4) E Clark (representation in support)
75 Westmoreland Avenue
Hornchurch
Essex
RM11 2EF

12.1 **R and H Craddock**

“Reference: Form 45 Commons Act 2006 section 15(1). Notice of Application for the registration of land as a Town or Village Green

I am writing to express my disgust at the above reference. Church Field has been farmed by 3 generations – Amor Pike, Norman Pike and Roger Pike. Roger retired from actively farming in 1988 and remains the owner letting this land in question on a grass keep basis to neighbouring farmers, formerly R Fyffe of Lower Paxcroft Farm and more recently Richard Vigar from Poplar Far, Wingfield who have all farmed it as part of their commercial business without interruption up until the present day.

There has been no “lawful sports and pastimes on this land” and any suggestions to the contrary are untrue, and if so, any such use would be regarded as unlawful and trespass.

We the Craddock family have been close neighbouring farmers since 1933 and can confirm that to the best of our knowledge no such use has been suggested or ever taken place, other than pedestrians having use of the designated footpaths HILP1, HILP2, HILP3 & HILP4 which are clearly marked on the council rights of way website for all to view.

Mr Roger Pike has more recently donated land for the village allotments and we feel that his generosity is now being taken for granted. He has now been forced to defend his property and in his early 90's he shouldn't have to endure this anxiety.

To conclude we strongly feel that this application should NOT be included in the Town and Village Greens register.”

12.2 **Mrs R Sims**

“I wish to register my objection to the proposed application of “Church Field” in Hilperton Village as a “Village Green”.

My responses are as follows: -

1) There is already a Green Space in the village. The playing field beside the Village hall, which is used for all the things a village green needs, i.e. fetes, football etc.

2) There is no wildlife to speak of on this field, the rook population has declined by half since the "Road to No Where" (Elizabeth Way) was started. I walk these fields regularly. I have counted the nests in use fall from around 30 to around 14 this last spring.

3) This site will not be cultivated to "Village Green" standards, but left mostly to grass, roughly kept and used as it is presently, by dog walkers and people using the existing 2 footpaths that cross this field.

4) The only reason this field has been selected is that it is the last "Green Space" between Trowbridge & Hilperton Village. Should this field be built on, then Hilperton would be just another "suburb" of Trowbridge and lose its village status, which it is determined to hang on to!!

5) I trust and hope this application is very carefully and great consideration given to any objections raised regarding this matter."

12.3 Goughs Solicitors acting for Mr R Pike

The objection made on behalf of Mr Pike is appended to this report at **APPENDIX 2**. The objection comprises:

- i) Notice of Objection
- ii) RP1 – Deeds relating to the applicant land
- iii) Copies of : *R Cheltenham Builders Ltd v South Gloucestershire District Council [2003] EWHC 2803 (admin)* and *Richard Naylor v Essex County Council v Silverbrook Estates Ltd, Diana Humphreys, Tendring District Council [2014] EWHC 2560 (Admin)*
- iv) Statement of Richard Vigar
- v) Statement of Richard Fyfe
- vi) Statement of Roger Pike

12.4 E Clark

"I have seen the Wiltshire Council notice dated 21 July regarding a village green application for Church Field.

I wish to add my support to the application.

I have used the field, and others in Hilperton Gap, for twenty-one years. My first use was simply when I was taken there for walks by my parents. Over the years I have since used the field for many uses including blackberrying, playing football, building snowmen, paintballing in the hedgerow and dog walking. I still use the field for dog walking when I am in Hilperton.

I did not, and do not, remain on either the 'public' or 'other' footpaths but used/use the whole of the field and its hedges. At no time have I ever been asked to leave by the owner or anyone else and my use of the field has been in broad daylight."

12.5 Hilperton Parish Council

This representation in support was received on the 18th January 2018, outside of the advertisement period. However, it is included here for completeness:

“Re. Village Green Application – Church Field, Hilperton

At its meeting on the 16th January 2018, Hilperton Parish Council resolved to fully support this application, and it has no objection to Church Field being registered as a Town or Village Green.”

13 APPLICANT’S COMMENTS ON THE OBJECTIONS AND REPRESENTATION

Copies of the objections and representation were sent to the applicant on the 25th October 2017. The response deadline was set as being the 8th January 2018 but extended on request from the applicant to the 5th February 2018 and again to the 2nd March 2018. All interested parties were kept informed.

13.1 The applicant’s response to the objections and representation was received on the 27th February 2018 and is appended here at **APPENDIX 3**. The response comprises:

- i) Letter of response
- ii) Summary of Time and Usage of Church Field
- iii) Additional photographs 1 to 17b
- iv) Additional evidence letters Herlinger, A Sawyer, Clark, House, Bowden, Hoskins, Hayes and S Sawyer.

14 OBJECTORS’ RESPONSES TO APPLICANT’S COMMENTS

Copies of the applicant’s comments referred to at paragraph 13 were sent to the 3 objectors (and to Mr Clark who had made a representation in support) on the 8th March 2018. The deadline for responses was the 13th April 2018. Officers had no objection to an extension to this period and one response was received from Goughs Solicitors. This was received on the 30th April 2018. This appended here at **APPENDIX 4**.

15 CONSIDERATIONS FOR THE COUNCIL

The Council, in its role of Commons Registration Authority has a duty to determine this application. The legal tests that must be satisfied for registration of the land as a town or village green are contained within s.15(2) of the Commons Act 2006:

Commons Act 2006

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 the application.*

15.1 In considering whether, on the balance of probabilities (that is, it is more likely than not), a significant number of the 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 it is helpful to break down the requirements as follows:

15.2 **The locality**

The claimed locality is the civil parish of Hilperton. Officers are satisfied that this is a qualifying locality and that the applicant adduces evidence from users who live or have lived in the parish of Hilperton.

15.3 **A significant number of the inhabitants**

Population numbers for the parish of Hilperton from census information are as follows:

YEAR	NUMBER
1991	2632
2001	4284
2011	4967

15.4 The original application adduced evidence of use from 33 individuals. This was supplemented by statements from 8 additional users of the land by the applicant in their submission in response to the objectors' comments (**APPENDIX 3**). 6 of these adduced evidence of use covering the whole of the 20 year period 1997 to 2017. The total of users giving statements regarding their use throughout or during the 20 year period is therefore 41.

15.5 Figures for 1997 are not known but even if at 1991 levels, taken at its highest the application adduces evidence from just less than 2% of the population of the parish.

15.6 The case of *R(Alfred McAlpine Homes) v Staffordshire County Council [2002] EWHC 76 (Admin)* established that the term 'significant' did not mean a considerable or substantial number but needed to be sufficient to show that the land is in general use by the local community for informal recreation, rather than just occasional use by individuals.

15.7 The applicant land is in full view of a number of adjoining properties and some users in support of the application have stated that they frequently see people on the land. Aerial photography supports that the land has many well trodden paths leading across and around it. However, the land is well served by public footpaths which lead across and through it (see this report paragraph 7) and these footpaths coincide with some of the trodden paths. The landowner's property is approximately 35 metres from the land but visibility is probably obstructed by another property. 3 properties have garden gates into the field. These cannot have been missed by the owner or holder of the grazing licence.

15.8 Accordingly any landowner would not be surprised to see the public in the parts of the field where the footpaths lead and the landowner accepted that "some inhabitants of the local area regularly use these rights of way while, for example, walking their dogs". However, the presence of trodden paths in other areas of the field (especially the northern third or quarter of the field and around the perimeter) would have alerted any landowner to some form of activity occurring in the field. Additionally activities that clearly spread out from the rights of

way (for example French cricket or Frisbee) would appear different to any observer. Although it is not known where the snowmen were built in the field they would have remained in position long after the remainder of the snow had thawed and would have been very obvious to any observer of the land. Built on a right of way a snowman would be an obstruction.

15.9 The landowner considers that evidence of use is light and that it does not represent a significant number of the inhabitants. There is also a conflict of evidence regarding multiple user evidence from different family members.

15.10 The law is clear that it is “the inhabitants” that must be considered and it does not require evidence to be considered from households instead of individuals. Individual use will vary considerably and officers are content to accept that while some family members walked the dog or picked blackberries, other family members played as children or played rounders or French cricket. Frequency and years of use also vary between individuals. Anyone observing the use would not differentiate between families or households but would merely see people using the land.

15.11 **As of right**

Qualifying use must be ‘as of right’ and not ‘by right’. Use that is ‘as of right’ is without permission, without force and without secrecy. Use that is ‘by right’ is pursuant to a given authority to do so. For example it is without question that use of the public footpaths for walking, with usual accompaniments (i.e. a dog or pram) is ‘by right’ and that such use cannot qualify for registration of the land as a village green where it is coincident with the line of the paths. Any use of the paths as ‘A to B’ routes must be discounted for the purposes of village green registration as must some straying off the path by people and dogs; the application should demonstrate that there was a general use of the land for recreation which is not explicable as use of the right of way, however widely interpreted.

15.12 No users claim that they sought or had permission to use the field, nor that they used force or conducted their activities in secret. The landowner in his objection recalled that he “has been asked for permission by potential users of Church Field to carry out certain activities there”. For example he recalled being asked for permission for Hilperton School (when it was at the Knap) to camp and pitch tents in the field. The applicant consider that this was outside of the relevant period. The landowner does not claim to have granted permission to St Michael’s Pre-school to use the land though disputes that they did so, considering it being more likely that they used land that was closer to their school.

15.13 There are no reports of any signs on the land indicating that use of the wider field was by permission or that permission was needed. The presence of so many rights of way would have made it difficult for a landowner to erect signs that weren’t misleading (since the public are invited onto the land ‘by right’ on the public footpaths) but it is noted that there were none.

15.14 **Lawful sports and pastimes**

Lawful sports and pastimes can be any number of a range of activities including several of the activities that this application claims to have taken place on the applicant land. They may be formal or informal, seasonal, personal or with others. They may be taken together and whilst some uses may not cover all times (for example seasonal activities such as blackberry picking or making snowmen) they must, as a whole, have been exercised continuously throughout the period.

- 15.15 Activities stated for this application that have been approved by the courts include children playing, informal cricket, football, rounders, bird watching, picnics, kite flying, taking dogs for walks, wandering or promenading and recreational walking. Additionally blackberrying and snowballing are likely to be considered to be lawful sports and pastimes.
- 15.16 The landowner disputes that 'socialising', 'creating dance routines', creating memories' and 'air ambulance landing' are to be considered as lawful sports and pastimes. Officers agree that use by the Air Ambulance is unlikely to be considered thus or indeed that creating dance routines was likely to have been a regular occurrence, especially since it was not mentioned by many people, however, the general term 'socialising' may well be included in the term 'promenading' as referred to in Appendix 3 of the Open Spaces Society "Getting Greens Registered":

"wandering or promenading by way of pastime, recreational walking: 'Popular amusement takes many shapes; and there is no outdoor recreation so general and perennial as the promenade" Abercromby v Fermoy Town Commissioners (1900) 1 IR 302."

15.17 **On the land**

The whole of the field has been claimed for registration as a town or village green. This may include land with rights of way across it (provided that use extends beyond them) and it is not necessary for the applicant to demonstrate that all of the land was used for all of the sports and pastimes. However, any activity that causes substantial interference with the public use will be viewed as an interruption to use and will prevent registration.

- 15.18 No users claim any interruption to use of any part of the land. The landowner considers that the taking of a hay crop forms an interruption to use as does the grazing of the field by cattle. A grazing licence to Mr Fyfe was in place for the whole of the relevant period (1997 to 2017). This permitted the grazing of the land for part of the year and for a hay or silage crop to be taken. Mr Fyfe's statement confirms that he took an annual silage crop from the field in June. It is noted that harvesting grass cut for silage is less intrusive than for hay as drying and turning processes are longer for hay.
- 15.19 It is known that these activities took place in a field crossed by several public rights of way. The rights of way were not obstructed by that use of the land and were not closed to accommodate it. Claims that dog walkers stayed out of the field when the cattle were in it (potentially from after the June silage cut to December) seem highly unlikely and is not supported by any users of the land. Indeed, if cattle were to have this effect on the 4 rights of way in the field for a period of up to 6 months they would be deemed to be an obstruction; which they are not.
- 15.20 It is difficult to see therefore that if use continued on the rights of way that use of the wider field could not have also continued uninterrupted. Photograph 6b of the applicant's response to the objections (Appendix 3) shows 7 people and 3 dogs using the land over long cut grass and photograph 9 of the same appendix shows a Brownie talking to a cow in 1992. Both photographs were taken outside of the relevant period (pre and post application) but do demonstrate the principle that these farming activities continued alongside public access. There is no evidence of any segregation, division or protection by use of electric fencing or any other temporary means.
- 15.21 In *R(Laing Homes Ltd) v Buckinghamshire County Council [2003] EWHC 1578* it was held in the High Court that the annual gathering of a hay crop was incompatible with the use of

the land as a village green. The landowner relies upon the judgement in *Laing Homes* being fatal to the registration of the land as a Town or Village Green.

- 15.22 In *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674 para 57 Lord Hoffman commented that he did not agree that low level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes if in practice they were not.

*“57. There is virtually no authority on the effect of the Victorian legislation. The 1857 Act seems to have been aimed at nuisances (bringing on animals or dumping rubbish) and the 1876 Act at encroachments by fencing off or building on the green. But 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 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. 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 for the purposes of section 22 if in practice they were not....”*

- 15.23 In *R(Lewis) v Redcar and Cleveland Borough Council* [2010] UKSC 11 the Supreme Court considered that shared use of land could give rise to a town or village green where there was evidence that some users deferred to other users of the land.

- 15.24 At paragraph 28 Lord Walker in considering the judgement of Sullivan J in *Laing Homes* says:

*“28Taking 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. *Fitch v Fitch* (1797) 2 Esp 543 is venerable authority for that. That is not to say that *Laing Homes* was wrongly decided, although I see it as finely – balanced...”*

- 15.25 And at paragraph 36:

*“36...I have no difficulty in accepting that Lord Hoffman was absolutely right, in *Sunningwell* [2000] 1 AC 335 to say that the English theory of prescription is concerned with “how the matter would have appeared to the owner of the land” (or if there was an absentee owner, to a reasonable owner who was on the spot). But I have great difficulty in seeing how a reasonable owner would have concluded that the residents were not asserting a right to take recreation on the disputed land, simply because they normally showed civility (or, in the inspector’s word, deference) towards members of the golf club who were out playing golf. It is not as if the residents took to their heels and vacated the land whenever they saw a golfer. They simply acted (as all members of the Court agree, in much the same terms) with courtesy and common sense.....”*

- 15.26 *Lewis v Redcar* makes it clear that actions of deference and acting in a courteous manner are no bar to use being ‘as of right’ and do not amount to an interruption to use. At Hilperton the users of the public footpaths must have deferred to the agricultural use at the time the silage was being cut or baled and it is logical to accept that their use of the greater

area of land would have been similarly directed for those relatively brief and infrequent times that the crop was being cut and taken.

- 15.27 Unlike in the *Laing Homes* case where a hay crop was taken, the land at Hilperton was used only for silage. Mr Fyfe says in his statement that *“As far as I can recall, in each year throughout the 27 years or so in which I had Grasskeep Arrangements for Church Field, I first mowed the land for silage in around June, and after that I would graze livestock, primarily cattle, on the whole of Church Field.”*
- 15.28 Additionally. In *Laing Homes* there were other potentially disruptive processes associated with the hay crop. There was harrowing, rolling with a three ton roller and fertilising; none of which are activities described by Mr Fyfe. Hay crops require considerably more drying and turning than silage crops where moisture levels can be much higher. If silage is collected and clamped it can be off the field very rapidly after cutting. If silage is baled it will still be taken off the field much quicker than hay. *In Laing Homes* the judge considered the level of agricultural activity associated with the hay crop (including the growing and cutting of the grass) to be an interruption to lawful sports and pastimes. In this case however, many of the activities are compatible with long or cut grass, for instance it is still possible to play with a ball, to play Frisbee or to promenade over long or cut grass. It is a matter of fact and degree.

15.29 At least 20 years

The application is made under s.15(2) where use continues up to the date of application. In this case therefore the twenty year period is from April 1997 to April 2017.

- 15.30 Any evidence referring to events after this date (for example many of the applicant's photographs adduced after the application was submitted) must be disregarded for the purposes of this application.
- 15.31 The application adduces evidence extending back to the 1970s and covers the 20 year period 1997 to 2017.

16. Reasons for recommendation

- 16.1 The council has a duty to determine the application. The council has the power to accept the evidence adduced with the application and register the land as a town or village green or it may refuse the application and not register the land. The landowner has raised a number of points in objection to the application which the council has a duty to consider in a reasonable manner. The council must remain impartial throughout the determination process.
- 16.2 In summary the matters highlighted by the objectors are as follows:
- i) Can the evidence of multiple family members be taken?
 - ii) Is the evidence from a significant number of the inhabitants?
 - iii) Was use by permission?
 - iv) Was use by right owing to the presence of the rights of way?
 - v) Are socialising, creating dance routines and creating memories lawful sports and pastimes?
 - vi) Is use of the land for grazing cattle and taking a silage crop a bar to registration?
 - vii) How were the witnesses motivated?

viii) How credible is some of the evidence?

- 16.3 Officers have considered the evidence and the objections and consider that the opinion of an expert in this area of law would greatly assist the Council in coming to a decision on the application. In particular a non-statutory public inquiry where witnesses could give their evidence verbally and possibly under cross examination would expand and elucidate the following points especially:
- a) Is there sufficient evidence from a significant number of inhabitants?
 - b) Has use been by permission?
 - c) Have the agricultural activities prevented registration?
 - d) Is the evidence sufficient to demonstrate use of the whole field and not just the public rights of way?
- 16.4 Where matters of evidential interpretation are not clear the Council is bound by the Court of Appeal judgement in *R(Christopher John Whitmey) and The Commons Commissioners [2004] EWCA Civ. 951*
- 16.5 In considering the duty of the Commons Commissioners to determine disputed applications for registration of town or village greens under s.13 of the Commons Registration Act 1965 Lady Justice Arden at paragraphs 26 onwards:

“26. In my judgement, there are three ways in which disputes as whether land should be registered as a green under section 13 can be determined. First, there can be an application to the court at any time for a declaration that a property is or is not a village green for the purposes of the Act. Second the registration authority could itself determine the matter. Third, following registration a dissatisfied party can apply to the court for rectification of the register under section 14(b) of the 1965 Act.

27....

28. As to the second option, 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 on 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 offence 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. We are told that it is the practice for local authorities so to do either by appointing an independent inspector or by holding a hearing in front of a committee. If the dispute

is serious in nature, I agree with Waller LJ that if the registration authority itself has to make a decision on the application (c.f. paragraphs 30 and 31 below), it should proceed only after receiving the report of an independent expert (by which I mean a legal expert) who has at the registration authority's request held a non-statutory public inquiry.

30. *One advantage of such an inquiry is that the proceedings can take place with some degree of informality and utilising a flexible approach to procedure.....The authority may indeed consider that it owes an obligation to have an inquiry if the matter is of great local interest...."*

16.6 Waller L J agreed and at paragraph 66 said:

"66. I make these points because the registration authority has to consider both the interests of the landowner and the possible interest of the local inhabitants. That means that there should not be any presumption in favour of registration or any presumption against registration. It will mean that, in any case where there is a serious dispute, a registration authority will almost invariably need to appoint an independent expert to hold a public inquiry, and find the requisite facts, in order to obtain the proper advice before registration."

17. RECOMMENDATION

That a non-statutory public inquiry is held before an expert in this area of law to test all evidence and to make a recommendation to assist the Council make a decision on the application.

Sally Madgwick
Definitive Map and Highway Records Team Leader
Wiltshire Council

05 February 2019

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Summary of User Evidence from Exhibit D– relevant period 1997 – 2017

APPENDIX 1

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
1	S Kotevska	26	20	With pupils looking at insects and nature. Access route.	Flying kites, walking dogs and jogging	St Michael's Pre-School Manager Never questioned about being in the field. No signs saying the field is private. Includes photos of children in field (undated)
2	G Kehily	1998 – 2017	19	Walking dog (1999 – 2013) Flying kites with children Running Walking for relaxation	Dog walkers	Includes photos taken in 2002 of his son and dog in the field
3	K Lacey	No more than 25 years	Not known	Playing rounders and other ball games (as a child) Picnics (as a child) Having fun (as a child) With own children and dog all of whom can run free here	No comments	No signs Never sought permission
4	R Huggins	19	19	Walking dogs (at least 5 times per week) Play area for children taking exercise Safe route to and from school	Socialises with other dog owners	Never challenged or prevented. No signs that land is private and never sought permission
5	A Sawyer	1974 – 2017	20	As a short cut Since 1998 walked dogs	Other dog walkers	No signs and has not been told use was not permissible

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
6	C Barker	Not more than 14	Not more than 14	Rounders Football with friends Walking dog Treasure Hunt at Easter Built snowmen and an igloo	Other children playing rounders and football	Witness is a minor
7	J Goodwin	30	20	Walking the perimeter, down the side and across the middle	Dog walkers Children playing Kicking a ball Flying a kite Family walks Keep fit circuit Runners	Lives in bungalow next to applicant land
8	T Clark	1995 – 2017	20	With friends kicking footballs Throwing rugby balls Picking blackberries Playing paintball Picnics Building snowmen Walking dogs	Activities with friends as own use	Use reduced to dog walking in about 2009
9	Revd Clark	1992 – 2017	20	Wild flower spotting Playing ball or Frisbee while walking footpaths Picnics Own children played there Puppy training Snowman building Photography	“...it snowed...many phone calls...to meet in field to build a snowman....whole community came together. Hot toddies shared, snowmen and igloos built, snow ball fights..at lunch time many dispersed and some retired to the (pub)”	

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
10	R Coles	1978 – 2016	19	Children's play, flying kites, building snowmen, dog walking and other activities.	Dog walking often large groups	Had a gate leading directly into field. Walked dogs daily 1990 to 2015.
11	W Coles	Born 1984. As a young child and teenager (c.1989 – 2000)	4	Played there as a child with friends, pretending to ride horses, make up dance routines, design obstacle courses for dogs, running round and making dens.		Parents house had a gate leading directly into field.
12	J Davies	1998 – 2017	18	Walks, playing football and rugby. Dog walking.	Especially popular with people walking dogs	Used regularly but did degree at Portsmouth Uni.
13	C Davies	1998 – 2017	18	Walks, ball games with children who also ran around the field. Walking route into Trowbridge. Dog walking (2007 – 2015)	Invariably sees many other local people using the field	Have used the field "hundreds of times"
14	T Davies	1998 – 2017	18	Weekend walks around the field. 1998 – 2010 kite flying and ball games. 2008 – 2015 dog walking. Walking route to Trowbridge.	Typically would see 3 or 4 groups of people in the field often more	Used the field on hundreds of occasions and regularly
15	S Kenich	1987 – 2017	20	As a child for walking and playing with family and dog. Now uses to walk dog and daughter, ball games, meet friends, watch sunset.	Meets new and old friends	

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
16	K and C Warr	2007 – 2017	10	Walking. Cross the field as a short cut to church.	Mrs Warr lived for 20yrs elsewhere in Hilperton and saw many people access the field. Current house overlooks the field and they see many people walking and running in the field.	Notes that a few houses have gates onto the field.
17	I and A Moore	1997 – 2017	20	Dog walking. Children playing football.	Walkers and joggers, games, kite flying etc	His mother walked dogs in the field in the 1960s
18	N Walker	2008 – 2017	9	Dog walking twice a day around the circumference and on FPs.	Dog walking and sun bathing.	Recalls cows in the field. Also that Hilperton Parish Council planted trees in the field
19	L, M and S Wilcox	1996 – 2017	20	Dog walking,	Children's activities, flying kites and model aeroplanes. Brownies, Scouts and cubs nature activities and camping. Exercise, games, walking and running.	Some dog walkers drive there from elsewhere
20	H Davies	1998 – 2017	19	Walking and dog walking 2007 – 2015	Many other people enjoying walking around the field	
21	J A S Waring	1983 – 2015	18	Her children made daisy chains, camps and practised for Brownie and Guide badges. Walked dogs most days.	Kite flying, model aeroplanes.	

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
22	K J Waring	1983 – 2015	18	Almost daily dog walking and training	Seemed like a public space. Other dog walkers.	
23	C Hart	2007 – 2017	10	French cricket, rounders, kite flying, wild flower collecting. Dog walking from 2009.	Brownies bug hunts, nature trails and map reading.	The entire field is in use not just the footpath
24	P hart	2007 – 2017 (born 2003)	10 but as a child	Walking dog (roughly 1716 times). Built snowmen and igloos. Football, French cricket, Frisbee. Watching sunsets.	Plays football, French cricket and Frisbee with friend	
25	H Hart	2007 – 2017	10	Walking with dog and family. Two children building snowmen, playing rounders, football, flying kites and playing with friends.	Local schools and clubs for treasure hunts and trails by running club.	Children used to watch planes coming and going in 1944
26	I Hart	2007 – 2017	10	Walking, cartwheeling and cycling. Helicopters and a hot air balloon have landed there.	Can see field from her bedroom. Perhaps 100 people come and go during the day. Often in groups.	
27	S Lacey	1992 – 2017	20	Walked dogs and children. Played rounders, cricket, flown kites and had fun with snow.	Regularly sees everyone having a lovely time in the field when she visits the cemetery	
28	H Whitehead	2008 – 2017	9	Walks with children, to town, dog walking, socialising and running. Almost daily use.	People use it as open space.	

No	Name	Period of use in years	Years of use in rel. period	Nature of own use	Nature of observed use	Notes
29	E Clark	1993 - 2017	20	Annual blackberry picking, wandered at will with young son, dog walked almost daily from 2002. Played football, kite flying, snowball fights etc with sons.	Meet others for socialising when snowing	
30	D Harvey	1993 – 2017	20	Picnics and rounders. Blackberry picking in autumn, birdwatching in spring and snowman building in winter. Has used all parts of the field.	Model planes. Air Ambulance practices here. Dog walking, flying kites and children chasing each other.	
31	S Harvey	1993 – 2017	20	Dog walking, kite flying and occasional picnic.	The field is busy with dog walkers and very rarely is there no one in the field	
32	N Harvey	1996 – 2017 born 1996	c.16	Playing, building snowmen, kite flying and rounders. Walking dogs. Building dens and playing hide and seek.		
33	K Walker	1987 – 2017	20	Dog walking	Other dog walkers, children playing	

No users report seeing any signs or having any challenges to their use.

APPENDIX 2

Notice of Objection to application for the registration of Church Field, Hilperton, as a Town or Village Green

This Objection is made on behalf of Mr Roger Pike of Fairfield House, Nursery Close, Church Street, Hilperton, Trowbridge, Wiltshire, BA14 7RP ("Mr Pike") in response to an application dated 20 April 2017 by 'Church Field Friends' for the registration of an area of land known as Church Field, Hilperton, as a Town or Village Green under section 15 of the Commons Act 2006 ("the Act") ("the Application"). Mr Pike is the owner of the land at Church Field, having acquired title to it pursuant to a Deed of Gift from his late father, Norman Pike, dated 15 September 1959. A copy of that Deed of Gift, together with the Assent dated 10 July 1953 that is referred to in the Deed (which contains a plan identifying Church Field as Pt 140 on the Ordnance Survey Map (1936 and 1939 Revisions)) is attached to this Notice of Objection and marked "RP1".

The purpose of this Notice of Objection is to set out the grounds on which Mr Pike's objection is based. Mr Pike, through his solicitors, has reached an agreement with the registration authority, Wiltshire Council, that his evidence in support of the grounds stated herein is to be submitted to the Council within 28 days of this Notice, so by no later than 2 October 2017.

Before setting out the grounds of Mr Pike's objection, it is important to note that 'Church Field Friends' have specified that subsection (2) of section 15 of the Act applies to this Application. Section 15(2) provides as follows:

(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 the application.

Grounds of objection

Mr Pike objects to the Application on the following grounds:

1. 33 statements have been provided in support of the Application, and in some instances (Clark, Coles, Davies, Waring, Hart and Harvey) statements have been provided by multiple members of the same family, presumably in an attempt to show that the Application has the support of a greater number of people, notwithstanding that the family members' evidence in those instances is essentially the same. In any

event, 33 people do not represent a significant number of the inhabitants of any locality, or neighbourhood within a locality, for the purposes of section 15 of the Act;

2. It is a requirement of section 15 of the Act that the sports/pastimes in question must have been indulged in "as of right". On several occasions throughout the 20-year period prior to the Application, Mr Pike has been asked for permission by potential users of Church Field to carry out certain activities there. For example, Mr Pike remembers being contacted by members of staff at Hilperton School (when it was at the Knap, Hilperton), who requested permission for the School's pupils to camp/pitch tents on Church Field;
3. There are at least three common law rights of way across Church Field. They are represented by the black dotted/broken lines on the plan attached to the Application as Exhibit A. Mr Pike accepts that some inhabitants of the local area regularly use these rights of way while, for example, walking their dogs. Their use of Church Field is consistent with their right to walk across it. In other words, their usage of Church Field has been "by right", not "as of right" (for an analysis of the differences between the two, see *Naylor v Essex County Council* [2014] EWHC 2560 (Admin));
4. Exhibit B to the Application contains a so-called 'Summary of uses of the land from witness statements'. That list contains several spurious alleged uses, including "Socialising", "Creating dance routines", "Creating memories" and "Air ambulance landing". To the extent that those alleged uses are capable of amounting to sports or pastimes (and, for the avoidance of any doubt, it is not accepted that they do), it is unlikely that those activities have been indulged in with sufficient regularity/frequency such that they could reasonably be said to count towards the sports/pastimes that are alleged to have been carried on at Church Field throughout the relevant period;
5. For several significant periods of time during the 20 years prior to the Application, Mr Pike has granted licenses to local farmers for them to graze livestock on Church Field. It is improbable that the activities alleged in the Application to have been carried on at Church Field could have done so uninterrupted during the 20-year period because they were incompatible with the use of the land for grazing livestock (for a discussion of the impact of such an interruption on what might otherwise be continuous use for sports/pastimes, see the *Naylor* case referred to above);
6. In light of: (a) other uses of the land during the relevant 20-year period (such as grazing; and the use of parts of Church Field as an overflow car park for St Michael and All Angels Church); and (b) it being used primarily in accordance with the

common law rights of way which make up only a small part of the land; it cannot sensibly be said that the whole of Church Field has been used for the alleged sports/pastimes during the relevant period (see *R (Cheltenham Builders Ltd) v South Gloucestershire Council* [2003] EWHC 2803 (Admin));


7. Most of the statements made in support of the Application are by persons who can each attest only to parts of the relevant 20-year period (Thomas Clark, Robert Coles, Wendy Coles, James Davies, Catharina Davies, Tim Davies, Helen Davies, Kenneth Warr, Nicola Walker, J.A.S. Waring, K.J. Waring, Chris Hart, Phoebe Hart, Heidi Hart, Isabelle Hart, Helen Whitehead, Steve Harvey). Accordingly, their evidence is of limited value in establishing that Church Field has (or, as the case may be, has not) been used as of right for indulgence in the alleged sports/pastimes throughout the 20 years;
8. With particular reference to the statement by Sonja Kotevska, Mr Pike is surprised by the assertion that, during the last 26 years or so, children who attend St Michael's Pre-School "*have accessed the whole of Church field on a regular basis, exploring nature and using it for recreational purposes ...*". As far as Mr Pike is aware, St Michael's Pre-School has, for a considerable period of the last 26 years, been based in the Village Hall, Whaddon Lane. In the grounds of the Village Hall is a large playing field. It seems improbable that the staff and children at St Michael's Pre-School would not simply use their own playing field for field trips/nature walks rather than using Church Field, which is much further away. As for Ms Kotevska's assertion that "*children from Trowbridge utilize the field as safe access to the pre-school*", that is simply a reference to the common law rights of way which are dealt with at paragraph/ground number 3 above;
9. It is quite clear from a number of the statements from members of the 'Church Field Friends' group that many of them are at least partially motivated to support the Application on account of their desire not to see the land developed on in the future. That is not one of the criteria for a successful application under section 15 of the Act, nor is it a factor to be taking into account by the registration authority which determines the application. The following are some examples of the Church Field Friends' expressions of their motivations/desires that there should be no development work on Church Field or further development in Hilperton generally:

- (a) Wendy Coles: "*I remember when I first heard the mention of a road being built across the fields and the possibility of houses. My friends and I devised a plan to stop the opening of the road (not a particularly solid plan!) and luckily*

for me it was never built during my time there so we never put our strategy into action!";

- (b) Kenneth and Catherine Warr: *"...if houses were to be built on part of The Gap in the future, the preservation of Church Field as a continuing venue for wildlife would become even more important.";*
- (c) Ivan and Ayesha Moore: *"There are very few such areas remaining in the districts and it is essential that places of long established leisure and amenity such as this, combined with its historic farming use, are preserved and protected from change or future developments.";*
- (d) Lucy, Martin & Sian Wilcox: *"Villages are a quintessential part of the British countryside. With village green status for Church Field we will uphold these traditions and ensure that future generations can enjoy this beautiful part of the country side.";*
- (e) Chris Hart: *"Church Field is a place that the residence [sic] of Hilperton go to socialise, exercise and relax and I believe if it isn't already, should be preserved for future residence [sic] to use.";*
- (f) Sally Lacey: *"I think it is very important to keep this field as it will give a gap between Trowbridge and Hilperton. If this field is not saved the people in Hilperton will struggle to find somewhere close to go to walk the dog or for other recreational reasons.";* and

10. Mr Pike is understandably concerned by the letter from Mr Kenneth Warr to Chris and Heidi Hart dated 28 March 2017 (included within Exhibit D to the Application), in which Mr Warr suggests that he would remove anything prejudicial to the success of the application if prompted to do so by Mr and Mrs Hart. Arguably this suggests that some of the evidence may have been tailored/contrived so that, ostensibly, it meets the criteria for a successful application under section 15 of the Act rather than simply representing the facts about the local inhabitants' use of Church Field during the relevant period.

Signed: 

Goughs Solicitors

(For and on behalf of Roger Pike)

Dated: 4 September 2017

"RPI"



MEMORANDUM By a Conveyance dated 18 March 1972 the property being OS Estates 412, 414, 415, 417, 418 and 451 was transferred to Conington Estates Ltd. Duplicates of both transfers are in the file records of Conington Estates. By a Transfer made in favour of Conington Estates being the transferee from Hilperston Transfer Station etc. etc. etc. (a copy of the plan is attached hereto) the transfer to Hilperston Transfer Station

DATED 15th September 1959.

NORMAN PIKE, ESQ.

- to -

ROGER PIKE, MGC.

DEED OF GIFT

WILKINS & HILL,
Solicitors,
TICOMBERIDGE,
Wilts.

MEMORANDUM:

BY a Deed of Covenant made the 14th day of September 1979 between the within named Roger Pike and Erich Schonfeld and Mary Schonfeld the within named Roger Pike covenanted not to plant erect or construct any item on the area hatched Black on the plan attached to the Deed and to restrict the growth of plants trees and shrubs on the land in all respects so as not to interfere with the clear visibility required from an access way to be built on the Covenantees' adjoining property

MEMORANDUM By a Conveyance (copy with deeds) dated 25th November 1985 part of OS estate 148 was conveyed by Roger Pike to Raymond Phillip Hart and Dianne Mary Hart in fee simple subject as herein contained and an acknowledgment was given for production of His Deed of Gift

MEMORANDUM By a Conveyance dated 8 September 1988 a strip of land being part of OS 148 and adjoining 192 Denizes Road Hilperston was conveyed in fee simple to Dennis Overton and Barry Tony Overton (Duplicate with deeds)

MEMORANDUM By a Conveyance dated 19th December 1988 4.577 acres of land adjoining 162 Denizes Road Hilperston (OS 118 and part 119 and 119(M) (H) (S)) was conveyed in fee simple to HS & KM Nurkowsk Ltd (copy with deeds)



DEED OF GIFT is made the *Fifteen* day of *September* One thousand nine hundred and fifty-nine BETWEEN NORMAN PIKE of "Highfield" Trowbridge in the County of Wilts Farmer (hereinafter called "the Grantor") of the one part and ROGER PIKE of Monkton Broughton Gifford in the said County of Wilts Farmer (hereinafter called "the Donee") of the other part WHEREAS the Grantor is seised of the property hereinafter described for an estate in fee simple in possession free from incumbrances and is desirous of conveying the said property to the Donee by way of gift

NOW THIS DEED WITNESSETH that in consideration of his natural love and affection for the Donee the Grantor hereby conveys unto the Donee ALL THOSE pieces or parcels of land situate in the parish of Hilperton in the County of Wilts TOGETHER with the farmhouse and buildings erected thereon or on some part or parts thereof and known as Church Farm Hilperton aforesaid TOGETHER ALSO with the five cottages known as Numbers 104, 105, 106, 107 and 108 High Street Hilperton aforesaid All which said premises are more particularly described in the Schedule hereto AND TOGETHER ALSO with the benefit of the restrictions stipulations and covenants referred to in the Third Schedule to a certain Assent dated the tenth day of July One thousand nine hundred and fifty-three and made by the Grantor and Harold Freedy in favour of the Grantor TO HOLD the same unto the Donee in fee simple Subject to the restrictive stipulations covenants and conditions referred to in the Second Schedule to the said Assent.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

THE SCHEDULE above referred to.

<u>No. on O.S. Map</u> <u>(Revision of 1936).</u>	<u>Area.</u>
118	.385
119	6.383
119a	2.898
119f	1.238
119g	.725
Pt. 122	12.071 est.
126	.619
127	1.311
Pt. 140	14.925 est.
142	.953
Pt. 148	5.400 est.
148a	.431
Pt. 198	20.500 est.
<u>(Revision of 1939).</u>	
182	3.845
	<hr/> 71.684

6

THE SCHEDULE above referred to (contd).

No. on O.S. Map.
(Revision of 1939).

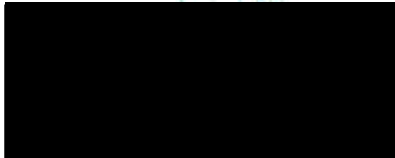
Area.

	71.684
183	10.821
184	12.685
213	7.152
214	8.060
215	1.754
216	.905
217	7.570
443	2.619

Total

123,250 Acres

SIGNED SEALED and DELIVERED
by the said NOKMAN PIKE in the
presence of:-



By a Conveyance dated the 29th April 1966 between the within named Roger Pike (1) & The Bradford & Melksham R.D.C. (2) part O.S. No 140 adjoining the Cemetery Hilperton Wilts was conveyed unto the R.D.C. in fee simple & its right to production of the within written Deed was thereby acknowledged.

BY a Conveyance dated the 29th day of February 1970 made between the within named Roger Pike (1) and The Bradford & Melksham R.D.C. (2) part O.S. Number 140 containing 9 perches or thereabouts and adjoining the land conveyed to the R.D.C. by a Conveyance dated 29th April 1966 on the East side thereof was conveyed unto the R.D.C. in fee simple and its right to production of the within written Deed was thereby acknowledged.

MEMORANDUM: BY a Deed of Grant made the 31st day of December 1971 between the within named Roger Pike (1) and the Southern Electricity Board (2) the said Roger Pike granted to the Southern Electricity Board a right to lay and maintain underground electric lines under the within described land being part of Church Farm Hilperton in the County of Wilts in fee simple and the Board's right to production of the within written Deed was thereby acknowledged.

MEMORANDUM: BY a Conveyance dated the 28th day of August 1975 made between the within named Roger Pike (1) and Phyllis Pike (2) Number 108 Church Street (formerly Number 108 High Street) Hilperton in the County of Wilts and the garden thereto belonging was conveyed unto Phyllis Pike in fee simple and her right to the production of the within-written Deed was thereby acknowledged.

MEMORANDUM: BY a Conveyance made the 11th day of August 1976 between the within named Roger Pike and the Parish Council of Hilperton the said Roger Pike conveyed to the Parish Council of Hilperton the Blind House, Hilperton, in fee simple and acknowledged their right to the production of the within written Deed of Gift.

MEMORANDUM: BY a Deed of Gift dated the 20th day of March 1978 and made between the within named Roger Pike (1) and Pamela Joan Pike (2) Numbers 104 and 105 Church Street Hilperton in the County of Wilts were conveyed to the said Pamela Joan Pike in fee simple and her right to the production of the within written Deed was thereby acknowledged.

MEMORANDUM: BY a Conveyance made the 25th day of April 1980 between the within named Roger Pike (1) and Stephen Merritt (2) Number 106 Church Street was conveyed by the said Roger Pike to Stephen Merritt in fee simple and the right to the production of the within written Deed of Gift was thereby acknowledged.

MEMORANDUM: BY a Conveyance made the 19th day of February 1982 between Pamela Joan Pike and the within named Roger Pike (1) and Victor John Crapnell and Patricia Ann Crapnell (2) the land formerly forming part of the garden land at the rear of Numbers 106 and 108 Church Street Hilperton edged red and hatched green on the plan annexed to the said Conveyance was conveyed by Roger Pike to Victor John Crapnell and Patricia Ann Crapnell and the said Conveyance contained an acknowledgment for production and undertaking for safe keeping of the within written Deed of Gift.

MEMORANDUM: By a Conveyance dated 15 December 1986 107 Church Street Hilperton was conveyed to David John Bartholomew in fee simple (copy has attached)

MEMORANDUM: By a Transfer dated 6 July 1987 a small area of land at rear of 108 Church Street Hilperton was conveyed to Phyllis Pike in fee simple (copy has attached)

MEMORANDUM: By a Conveyance dated 24 January 1990 (duplicate with Deeds) a small area of land being part of OS 0006 (formerly 140) at the rear of 5/6/7 St Michaels Close Hilperton was conveyed to Vivian Leonard Smith and Hentzer Beryl Smith in fee simple.

DATED 10th July 1953.

The Personal Representatives
of Amor Mullins Fike deceased

-to-

Norman Fike Esq.

A S S E N T

to the vesting to Church
Farm, Hilperton, Wilts.

[Handwritten scribbles]

[Handwritten notes]

BY a Conveyance dated the 20th June 1957 and made between the within-named Norman Fike of the one part and Roger Fike of the other part the property within described as No. 179 on the O.S. Map containing 17.176 acres together with other property was conveyed to the said Roger Fike in fee simple and his right to production of the within written Assent was thereby acknowledged.

PERFORMED.



KNOW ALL MEN BY THIS ASSENT which is made the *seventh* day of *July* One thousand nine hundred and fifty three that NORMAN PIKE of Highfield Hilperton Road Trowbridge in the County of Wilts Farmer and HAROLD FREEDY of 19 Fore Street Trowbridge aforesaid Auctioneer (hereinafter called "the Representatives") hereby declare as follows:

1. IN this Assent the following expressions shall have the following meanings that is to say :-

- (a) "The Deceased" shall mean Amor Mullins Pike late of Church Farm Hilperton in the said County of Wilts Retired Farmer deceased who died on the Fourth day of April One thousand nine hundred and fifty two and Probate of whose Will was granted to the Representatives out of the Winchester District Probate Registry on the Fifth day of August One thousand nine hundred and fifty two
- (b) "The Owner" shall mean the said Norman Pike

2. THE Deceased was at his death entitled at law and in equity and the Owner is now entitled in equity to the property specified or referred to in the First Schedule hereto for an estate in fee simple in possession subject as stated in the Second Schedule hereto but otherwise free from incumbrances

3. THE Representatives as Personal Representatives of the deceased have not given or made an assent or conveyance in respect of a legal estate in or affecting all or any part of the property specified or referred to in the First Schedule hereto

4. THE Representatives as Personal Representatives of the deceased hereby :-

- (a) ASSENT to the vesting in the Owner of ALL the property specified or referred to in the First Schedule hereto TO HOLD unto the Owner in fee simple and for his own absolute use and benefit but subject as stated in the second Schedule hereto
- (b) ASSIGNS to the Owner absolutely the benefit of the rights and benefits specified or referred to in the Third Schedule hereto

5. THE Representatives hereby acknowledge the right of the Owner to production of the Probate so granted to the Representatives as aforesaid (the possession whereof is retained by the Representatives) and to delivery of copies thereof

IN WITNESS whereof the said parties to these presents have hereunto set their hands and seals the day and year first before written.

THE FIRST SCHEDULE Above referred to Particulars of the land to which the above written Assent relates.

ALL THOSE several closes or pieces of land which are known as Church

Farm and are situate in the Parishes of Hilperton and Trowbridge in the County of Wilts and comprise in the whole 138.423 acres or thereabouts and are more particularly described hereunder and with the respective boundaries or abutments thereof are (by way of further identification but not by way of restriction) delineated on the plan annexed hereto and are thereon coloured over with the colour pink such plan being taken from the Ordnance Survey Maps dated in the years One thousand nine hundred and thirty six and One thousand nine hundred and thirty nine of the said Parishes of Hilperton and Trowbridge and the numbers set out hereunder referring to the corresponding numbers in such plan Together with the messuage or farmhouse known as Church Farmhouse and other buildings on the aforesaid pieces or parcels of land

No. on Ordnance Survey Map (1936 and 1939 Revisions).	Description.	Quantity.
118	Rickyard and skilling	. 385
Pt 119	Pasture	6 . 383
Pt 119 c	Pasture	1 . 923
119 f	Pasture	1 . 238
119 g	Pasture	. 725
Pt 122	Pasture	12 . 071
126	Pasture	. 619
127	Farmhouse garden yard and outbuildings	1 . 311
Pt 148	Pasture	5 . 400
148 a	Pasture	. 431
Pt 198	Pasture	20 . 500
Pt 140	Pasture	14 . 850
179	Pasture	17 . 176
182	Pasture	3 . 845
183	Pasture	10 . 821
184	Pasture	12 . 685
213	Pasture	7 . 152
214	Pasture	8 . 060
215	Pasture and shed	1 . 754
216	Pasture	. 905
217	Pasture	7 . 570
443	Pasture	2 . 619
		<u>138 . 423</u>

THE SECOND SCHEDULE Before referred to.

The lands specified in the First Schedule before written are by the above written Assent vested in the Owner subject so far as thereby respectively affected to the matters following that is to say:

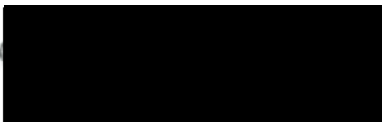
1. As to Ordnance Numbers 179 182 183 and 214 to the restrictions and stipulations on the part of the deceased contained in a Conveyance dated the Sixteenth day of July One thousand nine hundred and twenty three made between the deceased of the one part and Edgar Leonard Hill of the other part

2. As to all the land subject to any title redemption annuity and all easements affecting the same
3. The burden of all covenants (whether positive or negative) on the part of the deceased or the Representatives and provisions binding on him or them given or entered into by him or them and of all rights granted by him or them on or in with the sales of any lands

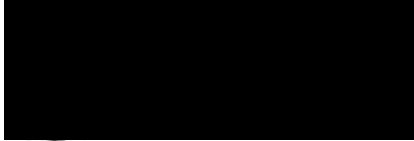
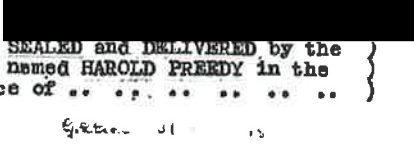
THE THIRD SCHEDULE Before referred to
Particulars of rights specifically assigned by the
above written Assent

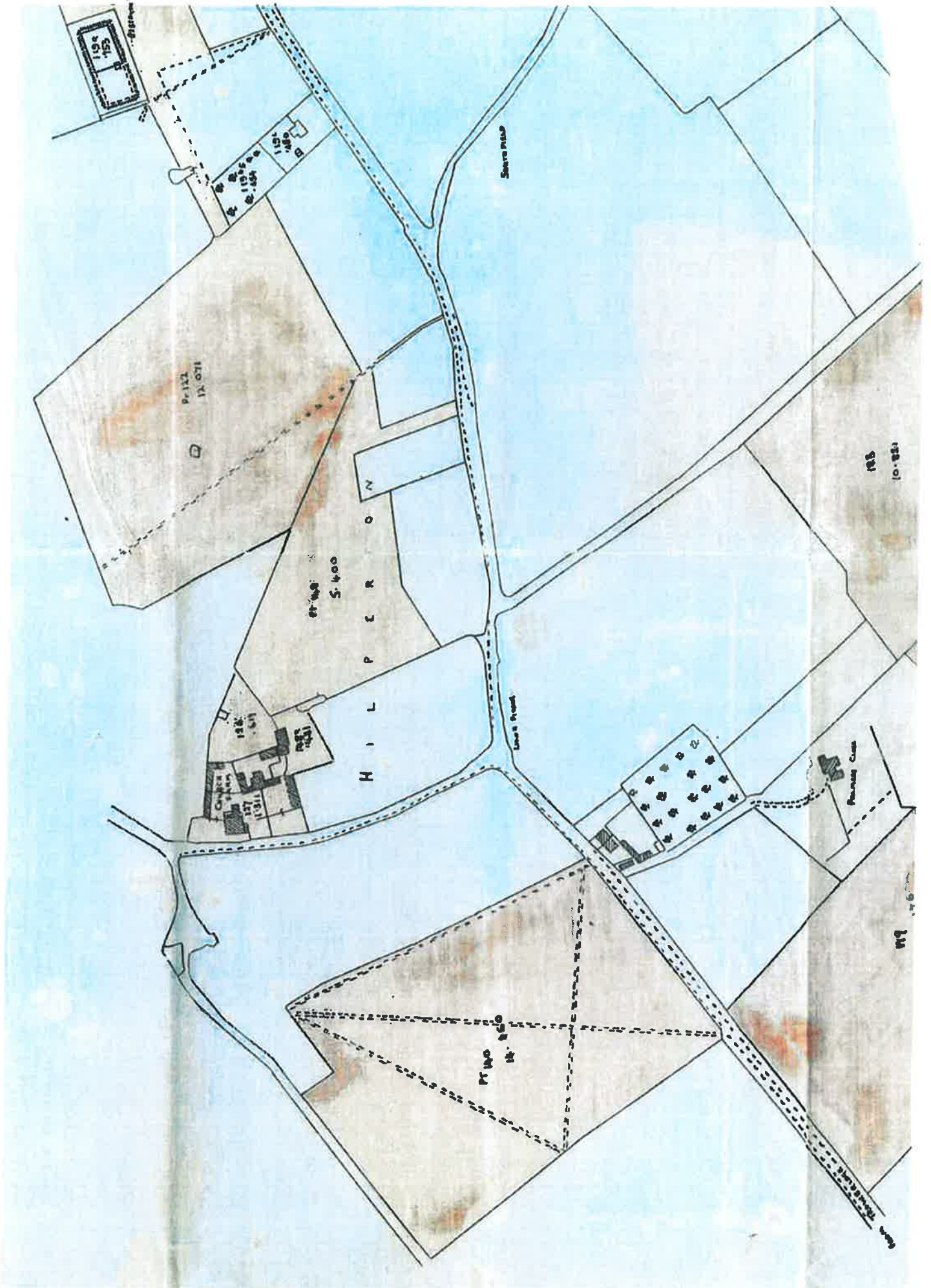
1. The benefit of the restrictions and stipulations on the part of the said Edgar Leonard Hill contained in the said Conveyance dated the Sixteenth day of July One thousand nine hundred and twenty three being a Conveyance on Sale to the said Edgar Leonard Hill of certain lands at Hilperton aforesaid
2. The benefit of the covenants on the part of the Trowbridge Water Company contained in two several Conveyances dated respectively the Thirty First day of December One thousand nine hundred and twenty five and the Twelfth day of November One thousand nine hundred and twenty seven and each made between the deceased of the one part and the Trowbridge Water Company of the other part being Conveyances on Sales to the Trowbridge Water Company of certain lands situate near to the Devizes Road at Hilperton aforesaid
3. The benefit of all covenants and agreements (whether positive or negative) and reservations and other provisions in favour of the deceased or the Representatives obtained by him or them on or in connection with sales of lands fronting the Devizes Road at Hilperton aforesaid
4. The benefit of all payments under part VI of the Town and Country Planning Act 1947 in respect of interests in the lands specified in the First Schedule before written which are depreciated in value by virtue of the provisions of that Act

SIGNED SEALED and DELIVERED by the
before named NORMAN PIKE in the
presence of



SIGNED SEALED and DELIVERED by the
before named HAROLD FREEDY in the
presence of





**In the matter of the Commons Act 2006: Section 15
Application by 'Church Field Friends' for registration of Church Field, Hilperton
as a Town or Village Green**

STATEMENT OF RICHARD VIGAR

1. My name is Richard Vigar. I am a local farmer and have been an active working partner in our family farming business at Pomeroy Farm, Wingfield, BA14 9LJ, for many years.
2. I have known Mr Roger Pike, the owner of Church Field in Hilperton, for approximately 30 years. For a long time, we were both local farmers and have operated in the same circles.
3. On 13 March 2017, the Vigar family farming partnership, J H Vigar & Son, entered into a Grazing Licence Agreement with Mr Pike so that we could use the land at Church Field for agricultural purposes. Attached to this statement and marked "RV1" is a copy of our Grazing Licence Agreement with Mr Pike. I am aware that prior to our licence to use Church Field, Mr Richard Fyfe of Lower Paxcroft Farm, Hilperton, used the field for many years for various agricultural purposes, including grazing livestock.
4. In June of this year, we cut grass from the entire acreage of Church Field and used it to make hay. We intend to take another cut of grass from Church Field quite soon (depending on the weather) to use as silage.

Signed: 
R Vigar

Dated: 30-9-17

"RV1"

GRAZING LICENCE

AGRICULTURAL TENANCIES ACT 1995

THIS AGREEMENT is made the thirteenth day of March two thousand and seventeen between Roger Pike, Fairfield House, Nursery Close, Hilperton, Trowbridge BA14 7RP (hereinafter called the Landlord) and ~~Richard Vigar~~, Pomeroy Farm, Wingfield, BA14 9LJ (hereinafter called the tenant) of the other part. J H VIGAR + SON

WHEREBY it is mutually agreed as follows:

1. The Landlord agrees to let and the Tenant agrees to take on the land known as 12.7 acres Hilperton for the period 1st March 2017 to 30th November 2017 in the sum of £1000. Such rent payable on the commencement of this Agreement.
2. It has been agreed between the Landlord and the Tenant that the land shall be used for agricultural purposes only and at all times and the Tenant shall be entitled during the above period to graze with all classes of livestock except pigs.
3. The Tenant shall keep all fences, walls, gates, ditches and water courses in no worse condition than at the commencement of this Agreement and shall at his own expense put up all necessary fencing to prevent the escape of stock from said land and to insure for the escape of any stock from the land onto adjoining land.
4. The Tenant shall keep the pasture land in no worse condition than at the commencement of the tenancy
5. The Tenant shall not allow the said lands to be injured by excessive treading or pounding of stock.
6. The Tenant shall not assign the benefit of this Agreement nor give or grant any licence to any other person or persons for any use of the said land or any part thereof for any purpose whatsoever.
7. On the termination of this Agreement the Tenant shall leave all walls and hedges in a condition similar to that in which the same are in at the date thereof.
8. If any dispute shall arise out of this Agreement such a dispute shall be referred to an Arbitrator to be appointed by the President of the Royal Institution of Chartered Surveyors, whose findings and costs of reference shall be binding on both parties. Such application will be under the Arbitration Act 1950 and 1996
9. The Tenant will comply with Section 10 of the Agriculture Act 1947 in respect of the

rules of good husbandry.

Signed



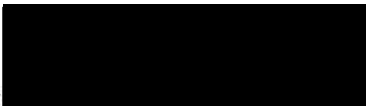
Signed

.....
J H Vigar + Son

**In the matter of the Commons Act 2006: Section 15
Application by 'Church Field Friends' for registration of Church Field, Hilperton
as a Town or Village Green**

STATEMENT OF RICHARD FYFE

1. My name is Richard Fyfe. I am retired now, but before that I was a farmer at Lower Paxcroft Farm in Hilperton, which is where I still live with my wife.
2. For many years, about 27 as far as I can recall, I had agreements in place with Roger Pike, the owner of Church Field in Hilperton, which were described as 'Grasskeep Agreements'. Those agreements allowed me to graze livestock on Church Field and to mow the land for silage and/or hay. I also entered into 'Deeds of Profit à Prendre' with Mr Pike and his daughters in respect of other parts of their land in Hilperton, on what was called Pound Farm.
3. Copies of some of the Grasskeep Agreements I had in place with Mr Pike, in particular the agreements for the years 2011, 2012 and 2014, are attached to this statement and marked "RF1", "RF2" and "RF3" respectively. As explained above, these are just some of the agreements that we had – I gather that copies of the earlier agreements have not been readily available, but I can confirm that I used the land at Church Field since the 1990s. During the earlier years, I recall that Mr Pike and I put the agreements together ourselves. More recently, we have used the services of Davis Meade land agents. Also attached to this statement are letters that Mr Barry Meade of Davis Meade sent to me in February 2011, March 2012, February 2013 and March 2013, about my agreements with Mr Pike (marked "RF4", "RF5", "RF6" and "RF7" respectively).
4. As far as I can recall, in each year throughout the 27 years or so in which I had Grasskeep Agreements for Church Field, I first mowed the land for silage in around June, and after that I would graze livestock, primarily cattle, on the whole of Church Field. In around 2014, Elizabeth Way was built next to Church Field, and that effectively cut across the land that I used for grazing livestock. From that time onwards, it was no longer suitable for me to graze livestock on Church Field because my loading pens, which are situated near Albany Close, became too difficult to access. However, I would still take a cut of silage from Church Field in June of the years between 2014 and 2017, which is when I had my last agreement with Mr Pike before I retired.

Signed: 

R Fyfe

Dated: 2.10.17

"RF1"

GRASSKEEP AGREEMENT

THIS AGREEMENT is made the _____ of _____ two thousand and eleven between Roger Pike, Fairfield House, Nursery Close, Hilperton (hereinafter called the 'Vendor') of the one part and Mr Lyfe, Paxcroft Farm, Trowbridge (hereinafter called the Purchaser) of the other part.

WHEREBY It is mutually agreed as follows:-

1. The Vendors agree to sell and the Purchaser agrees to purchase the Grasskeep on the enclosure known as approximately 12.87 acres of land at Hilperton in the county of Wiltshire, in the sum of £772.20 (seven hundred and seventy two pounds and twenty pence).
2. The Purchaser shall be allowed to graze the field with all classes of animals from the 1st day of March 2010, to 31st day December of 2010.
However, taking into respect that if the land becomes wet the Purchaser shall remove his stock so as not to poach the land.
3. The purchase price of £772.20 (seven hundred and seventy two pounds and twenty pence) shall be paid on the signing hereof and this agreement shall be void in the event of non-payment.
4. The Purchaser shall be responsible for the straying of his stock and for any damage caused to adjoining lands and will insure his stock for this purpose.
5. The Purchaser shall be permitted to mow the land for silage and/or hay.
6. (i) The Vendors hereby agree that should any quota (especially milk quota) become attached to the above land through statutory instrument, legislation or by any other means during the term of the Grasskeep, he will not take any action to secure such quota without the express consent of the purchaser insofar as such quota relates to the terms of the Grasskeep agreement.

(ii) And if, notwithstanding (i) above, such quota becomes attached to the land by the process of law, then the Vendor agrees to pay for such quota at open market value or at a value being the difference in value between the land with the quota and the value of the land without the quota, whichever shall be the greater.

7. If any dispute shall arise out of this sale, such dispute shall be referred to an Arbitrator under the Arbitration Act 1996 to be mutually appointed by the parties of this agreement and whose findings and costs of reference shall be binding on both parties (to be appointed by the Royal Institution of Chartered Surveyors).

Signed

.....
Roger Pike
Fairfield House
Nursery Close
Hilperton

Signed

.....
Richard F
Paxcroft Farm
Trowbridge

"RF2"

DavisMeade

GRASSKEEP AGREEMENT

THIS AGREEMENT is made the _____ of _____ two thousand and twelve between Roger Pike, Faifield House, Nursery Close, Hilperton (hereinafter called the 'Vendor') of the one part and Mr Fyfe, Paxcroft Farm, Trowbridge (hereinafter called the Purchaser) of the other part.

WHEREBY It is mutually agreed as follows:-

1. The Vendors agree to sell and the Purchaser agrees to purchase the Grasskeep on the enclosure known as approximately 12.87 acres of land at Hilperton in the county of Wiltshire, in the sum of £900.90 (nine hundred pounds and ninety pence).
2. The Purchaser shall be allowed to graze the field with all classes of animals from the 1st day of March 2012, to 31st day December of 2012.

However, taking into respect that if the land becomes wet the Purchaser shall remove his stock so as not to poach the land.

3. The purchase price of £900.90 (nine hundred pounds and ninety pence) shall be paid on the signing hereof and this agreement shall be void in the event of non-payment.
4. The Purchaser shall be responsible for the straying of his stock and for any damage caused to adjoining lands and will insure his stock for this purpose.
5. The Purchaser shall be permitted to mow the land for silage and/or hay.
6. (i) The Vendors hereby agree that should any quota (especially milk quota) become attached to the above land through statutory instrument, legislation or by any other means during the term of the Grasskeep, he will not take any action to secure such quota without the express consent of the purchaser insofar as such quota relates to the terms of the Grasskeep agreement.

(ii) And if, notwithstanding (i) above, such quota becomes attached to the land by the process of law, then the Vendor agrees to pay for such quota at open market value or at a value being the difference in value between the land with the quota and the value of the land without the quota, whichever shall be the greater.

7. If any dispute shall arise out of this sale, such dispute shall be referred to an Arbitrator under the Arbitration Act 1996 to be mutually appointed by the parties of this agreement and whose findings and costs of reference shall be binding on both parties (to be appointed by the Royal Institution of Chartered Surveyors).

Signed

.....
Roger Pike
Fairfield House
Nursery Close
Hilperton

Signed

.....
Richard Fyfe
Paxcroft Farm
Trowbridge

"RF3"

GRASSKEEP AGREEMENT

THIS AGREEMENT is made the _____ of _____ two thousand and fourteen between Roger Pike, Fairfield House, Nursery Close, Hilperton, Ms Elizabeth Pike and Mrs Carolyn Parkinson c/o 37 Balmoral Close, Chippenham SN14 0UT (hereinafter called the 'Owners') of the one part and Richard Fyfe, Paxcroft Farm, Trowbridge (hereinafter called the Purchaser) of the other part.

WHEREBY It is mutually agreed as follows:-

1. The Vendors agree to sell and the Purchaser agrees to purchase the Grasskeep on the enclosure shown in the schedule attached hereto of approximately 23.56 hectares of land at Hilperton in the county of Wiltshire, in the sum of £6,000 (six thousand pounds).
2. The Purchaser shall be allowed to graze the field with all classes of animals from the 1st day of March 2014, to 31st day December of 2014.

However, taking into respect that if the land becomes wet the Purchaser shall remove his stock so as not to poach the land.

3. The purchase price of £6,000 (six thousand pounds) shall be paid on the signing hereof and this agreement shall be void in the event of non-payment.
4. The Purchaser shall be responsible for the straying of his stock and for any damage caused to adjoining lands and will insure his stock for this purpose.
5. The Purchaser shall be permitted to mow the land for silage and/or hay.
6. (i) The Owners hereby agree that should any quota (especially milk quota) become attached to the above land through statutory instrument, legislation or by any other means during the term of the Grasskeep, he will not take any action to secure such quota without the express consent of the purchaser insofar as such quota relates to the terms of the Grasskeep agreement.

(ii) And if, notwithstanding (i) above, such quota becomes attached to the land by the process of law, then the Owners agree to pay for such quota at open market value or at a value being the difference in value between the land with the quota and the value of the land without the quota, whichever shall be the greater.

7. If any dispute shall arise out of this sale, such dispute shall be referred to an Arbitrator under the Arbitration Act 1996 to be mutually appointed by the parties of this agreement and whose findings and costs of reference shall be binding on both parties (to be appointed by the Royal Institution of Chartered Surveyors).

Signed

.....
Roger Pike
Fairfield
Nursery Cross
Hilperton

Signed

.....
Richard Fyfe
Paxcroft Farm
Trowbridge

bvm/et/gka/Pike/3

"RF4"

DavisMeade
AGRICULTURAL

3 Market Place
Marshfield
Wiltshire
SN14 8NP

Mr Richard Fyfe
Paxcroft Farm
Trowbridge
Wilts. BA14 6JB

RVM/EF/Pike

7 February 2011

Dear Richard

Profit à Prendre

Can I presume that you are interested in taking Roger Pike's land again at the same rate as last year, partly on a Profit à Prendre and partly on grass keep? Assuming this to be the case I enclose herewith agreements for your signature. Could you kindly return them with your cheque if you are happy to continue?

Yours sincerely

Barry Meade
DAVIS MEADE Agricultural

encs.



DIRECTOR: BARRY MEADE FRICS FRAV · CONSULTANT: PHILIP MEADE FRICS
Davis Meade Agricultural is a trading name for Smiths of Newent at Marshfield, Registered in England, Company No. 5078677

LAND & ESTATE AGENTS · CHARTERED SURVEYORS · AUCTIONEERS · VALUERS · FINE ART SALES

"RFS"

Mr Richard Fyfe
Paxcroft Farm
Trowbridge
Wilts. BA14 6JB

BVM/HF/Pike

6 March 2012

Dear Richard

Deed of Profit à Prendre and Grasskeep

I presume that you are interested in taking Roger Pike's land again at the same rate as last year, partly on a Profit à Prendre and partly on grass keep. I therefore enclose agreements for your signature. Could you kindly return them with your cheque, for a total of £6990.90, if you are happy to continue? This price includes an increase in the grasskeep from £60 an acre to £70 an acre.

Yours sincerely

Barry Meade
DAVIS MEADE Agricultural

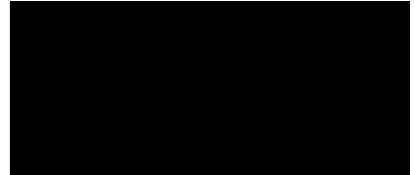
encs.

"RF6"

DavisMeade
AGRICULTURAL

3 Market Place
Marshfield
Wiltshire
SN14 8NP

Mr Richard Fyfe
Paxcroft Farm
Trowbridge
Wilts. BA14 6JB



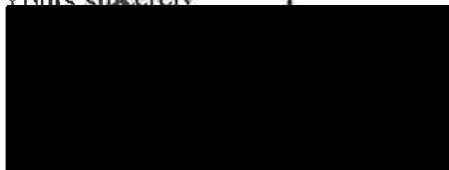
19 February 2013

Dear Mr Fyfe,

Deed of Profit à Prendre and Grasskeep

I enclose herewith the usual agreements for Grasskeep and Profit à Prendre, could I please have your cheques made out to Davis Meade Agricultural.

Yours sincerely



Barry Meade
DAVIS MEADE Agricultural

encls.



DIRECTORS: BARRY MEADE FRCSE FAWC - CONSULTANT, PHILIP MEADE MRICS
Davis Meade Agricultural is a trading name for Smiths of Bezwent at Marshfield. Registered in England. Company No. 0079577

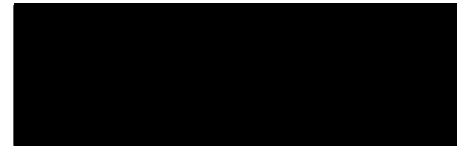
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"RF7"

DavisMeade
AGRICULTURAL

3 Market Place
Marshfield
Wiltshire
SN14 8NP

Mr Richard Fyfe
Paxcroft Farm
Trowbridge
Wilts. BA14 6JB



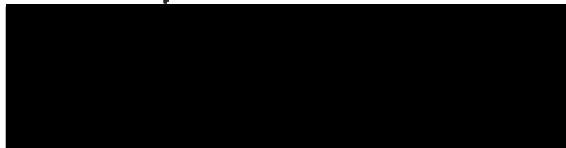
10 March 2013

Dear Mr Fyfe,

Land at Hilperton

I enclose herewith the Grasskeep agreements concerning land at Hilperton on behalf of Roger Pike, Elizabeth Pike and Mrs Parkinson. I have left the price the same as last year. Could I please have your cheque, made out to Davis Meade Agricultural, if you wish to go ahead.

Yours sincerely



Barry Meade
DAVIS MEADE Agricultural

encs.



DIRECTOR: BARRY MEADE FRICS FRAV · CONSULTANT: PHILIP MEADE MRICS
Davis Meade Agricultural is a trading name for Smiths of Newent at Marshfield. Registered in England, Company No. 5174677

LAND & ESTATE AGENTS · CHARTERED SURVEYORS · AUCTIONEERS · VALUERS · FINE ART SALES

In the matter of the Commons Act 2006: Section 15
Application by 'Church Field Friends' for registration of Church Field, Hilperton
as a Town or Village Green

STATEMENT OF ROGER PIKE

1. My name is Roger Pike. I own the land at Church Field, Hilperton, which is the subject of the application by 'Church Field Friends' for registration of the land as a Town or Village Green under the Commons Act 2006 (which I will refer to in this statement as "the Act"). I am retired now, but for all of my working life I was a dairy farmer.
2. I provided input to the Notice of Objection dated 4 September 2017 submitted on my behalf in this matter. Some parts of that Notice are legal arguments about whether the relevant criteria under the Act have been met. I have received advice from my solicitors about those arguments, and I understand them. I also feel that I can provide some helpful evidence to the registration authority, Wiltshire Council, in support of some of those arguments.
3. I have read the statements provided by Richard Fyfe and Richard Vigar. To the extent that those statements cover factual matters within my knowledge, I confirm that they are true. In particular, I confirm that Mr Fyfe used Church Field every year between about 1990 and 2017 for his farming business. For the vast majority of that time, Mr Fyfe grazed livestock on Church Field between the summer and autumn of each year. It was only in the later years, after the construction of Elizabeth Way, that Mr Fyfe used the land only for silage and no longer grazed livestock on it. I know this, not only because I have had agreements in place with Mr Fyfe for him to use the land for those purposes, but also because I live just around the corner from Church Field, in Nursery Close. Hilperton is not a big place and it is easy to keep up with what is going on in the village.
4. A significant part of the evidence submitted in support of Church Field Friends' application comes from local dog owners/walkers. For several years now, I have been aware that local people walk their dogs on Church Field. I do not dispute that this has been going on. However, and without wishing to insult the intelligence of those at the Council who are determining this application, I feel that I should offer some of the benefit of my experience as a farmer. Cattle and dogs do not mix very well. Given that Mr Fyfe was grazing his cattle on Church Field between June and October of each year between the 1990s and about 2014, there would be about a four-month period each year where dogs were not being walked across Church Field. If dog walkers were using Church Field during the times that cattle were grazing there, it is almost

certainly the case that the dogs and their owners would not be able to walk wherever they liked on Church Field – the cattle would not tolerate that, and neither would Mr Fyfe – particularly given that he was paying a fee to use the land each year. The reality is that, depending on the time of year, the local community members' use of Church Field has always been restricted by the farming taking place on the land.

5. I must say that I was surprised by some of the statements provided in support of the Church Field Friends' application. For example, it is explained in my Notice of Objection as to why I find the statement provided by Sonja Kotevska difficult to accept (the children at St Michael's Pre-School have access to a large playing field at the Pre-School and I find it hard to believe that Church Field would offer them anything for their Field Trips that their own playing field does not).
6. Although I cannot remember specific dates, I remember that on several occasions over the years I was contacted by members of staff at Hilperton School while it was in The Knapp (right next to Church Field). The reason they contacted me was to request permission for the school pupils to camp on Church Field and have other extracurricular activities there. I was only too happy for them to use it on those special occasions – and I still am – but it is certainly not the case that local schools have used Church Field whenever they like without running it past me first.
7. Another example of me allowing others to exercise rights over Church Field is provided by my arrangement with English Landscapes. I have always allowed their grave diggers access, via Middle Lane, to the cemetery at St Michaels Church so that they can bring their diggers onto the site. I have provided them with a key to the gate for that very purpose – as a goodwill gesture to the church and the village.
8. In summary, I have been happy to allow members of the local community to use Church Field for various purposes, but within the confines of what I am comfortable with and so long as those purposes have not interfered with my contractual obligations to Mr Fyfe (and now J H Vigar & Son). In other words, members of the local community have not used Church Field because they are entitled to do so – they do so because I have allowed them to. As far as I am concerned, that is the case regardless of whether I have installed any physical barriers to entry of Church Field. I think it would be artificial and unrealistic to conclude that simply because I have not prevented the local community from accessing Church Field, they have somehow acquired rights to do so. In any case, they have not enjoyed an unrestricted freedom to do so given the agricultural purposes for which the land has been used for the last 25 years or so.

Signed:

R Pike

2nd October 2017

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Church Field Friends
c/o 2 Nursery Close
Hilperton
BA14 7RP

Ms S Madgwick
Rights of Way Officer
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

26th February 2018

Dear Ms Madgwick

Thank you for your letter of 25th October 2017 and attachments which we read with interest and would like to use this letter to formally respond.

In response to the objections we have grouped objections for clarity so as not to necessitate repetition.

Goughs point 1: 33 Statements and some from the same family do not represent a significant number of inhabitants of the locality.

Point 4: Activities have not been indulged with sufficient regularity to count as sport and pastimes.

Point 7: Not enough People with over 20 years use.

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.

We believe the evidenced through numerous personal witness statements and photographs, evidences fully 20 years use, not only pertaining to themselves and seeing others use the area in question on a regular and daily basis but also by other users such as the local Scouts, Brownies, pre school, school, running club and church.

We are providing an additional 5 statements covering a 20 year period giving evidence of use of Church Field as Village Green and that some of the people mentioned by name in paragraph 7 have now completed 20 years and we are willing to ask them to reissue their letters.

On any day of the week from as early as 6.30am until well after dark, the area can be seen to have a number of users enjoying the space for different forms both recreational and for socialising.

We also note that there is an objection to statements being made from members of the same family but we believe that all members of a family are valid as different individuals, who use the area on different occasions for different uses, as well as together.

Goughs Point 8a: The Pre School children use the field at the Village Hall.

Pike point 4: Why would the children use Church field when they use the Village Hall Green?

Sims point 1: There is already a Village Green Space used for Fetes and Football.

The Village Hall green area is very different in nature to that of Church Field and has been used in very different ways. It is clear from the evidence provided in statements that the Village Hall area is restrictive in what you are able to use it for, for example you are not allowed to allow your dog off the lead there. There are overhead cables which make it

difficult to fly a kite and there are often football and Cricket matches going on which prevent you from walking freely with you dogs, jog, cycle, or meet friends. Church field is, as stated by Sonja Kotevska used by St Micheal's Pre School to explore nature, wildlife and insect hunts.

Goughs Point 2: Asking for permission to use the field for sports and pastimes

Goughs solicitors (on behalf of Mr Pike) state that on several occasions throughout the 20 year period prior to the Application Mr Pike was asked for permission to carry out activities. For example Hilperton school when it was in the Knap. (Hilperton school relocated from the Knap in 1970).

We believe that this is a rare example as from the land registry evidence we provided in our application the land is unregistered and therefore how could people ask for permission to use the land if they did not know who owned it.

Goughs point 2 and 3 Pike points 3, 5, 6, 7: Use of Church Field 'as of right'

Use of the official footpaths on Church Field is sporadic and as can be shown by aerial photos in new evidence provided ref 1a, 1b, 1c, 2a, 2b and 3, there are well trodden paths away from the footpaths that have been used over time by many people using the field. The term "as of right" means that use must have been without force, without secrecy and without permission. We have provided signed statements that these users of Church field were never asked nor did they seek permission to use the area in its entirety, they used the field openly and without secrecy.

Ref Goughs case study - Richard Naylor v Essex County Council v Silverbrook Estates Ltd, Diana Humphreys, Tendering District Council

We are of the firm opinion that the case cited is not applicable to our application as the public have used Church Field 'as of right' and not 'by right' and that the above case is not relevant as Church Field has always been used for 'grasskeep' or cattle and has not been maintained by the Council. We have evidence letters from users of Church Field over a continuous 20 year period to support our opinion.

Pike point 8: People have not enjoyed unrestricted freedom

We do not believe and have never heard of an occasion where any person was asked to refrain from entering and using Church Field as they saw fit. Nearly all the witness statements state that they have always openly used the field without challenge nor having seen a notice stating the field is private property.

Goughs points 5, 6a, Pike points 1, 2: Livestock grazing on Church Field incompatible with land use.

We agree with Mr Pike that the land was used for grazing during summer and autumn intermittently over some of the years but we strongly disagree that local people did not use the field during this time. (See new photographic evidence provided, number 9) During grazing time the field seemed to be busier than ever as an attraction to see the calves. The cattle would congregate in corners or block the footpaths and therefore local people would make alternative routes through Church Field to avoid the cattle. Denise Harvey can personally remember walking through the field when a cow had just given birth to a calf and the herd was gathered around, stating: "It was necessary to walk well into the middle of the field, away from the footpath, in order to give the mother cow and the herd plenty of space."

Goughs point 6 There have been other uses of Church Field

If Church Field has been used as an overflow car park for St Michael's Church it has been very rarely and never enough cars to interrupt the continued general use by the public.

Ref Goughs case law - The Queen on the application of Cheltenham Builders Limited v South Gloucestershire District Council

We are firmly of the opinion that the case cited is not applicable to our application as the whole of Church Field is accessible to the public there are no significant areas of trees or brambles which would prevent lawful sports and pastimes. We have evidence in the form of 44 letters from users of the field to support our opinion that continued and full use was never interrupted.

Goughs points 9, 10 and Sims point 4: Motivation from some to not see the land developed, and that the letters have somehow been tampered with

We did not tailor or edit any of the letters that we received, Goughs Solicitors (on behalf of Mr Pike) reference the letter from Mr Kenneth Warr (date 28 March 2017). If we had edited or asked people to re-submit their letters we would not have let this statement remain or any that may have personal feelings about future development. We realise these opinions are not valid in terms of a village green application but we left all letters, however emotive, intact. As it is, this un-edited letter proves that we did not tailor or contrive evidence.

Simms point 2: That there is no wildlife to speak of on the field.

We have included a number of photographs of the wildlife currently within Church Field see new photographic evidence provided 4a,4b,4c, 7,10, 15a and 15b.

Within the Hilperton Neighbourhood Development Plan Scoping Report for the Parish of Hilperton 2016-2026 in its Biodiversity section 6.6 it states that:

'In Wiltshire, the Wiltshire Biodiversity Action Plan (BAP) sets out Habitat Action Plans for a range of habitats. The BAP will soon be complimented by a new Wiltshire and Swindon Landscape Conservation Framework. To deliver conservation and enhancement of biodiversity, a number of Landscape Biodiversity Areas have been identified. These are shown on the Lnk2Nature website. In terms of the Landscape Map of the latter, Hilperton lies within the 'Bristol Avon Vale' area.'

It goes on to state in section 6.7 Biodiversity in Hilperton parish that:

'there are several categories of what the Wiltshire BAP identifies as 'Priority Habitats' present.'

One category they include is:

6.13 Farmland habitat

'Much of the land in the Parish is farmed— mainly arable. This land is home to a range of species from plants, fungi, butterflies, mice, birds, hares and rabbits. There are many species of birds on the red danger list (published by the RSPB) that seem to be surviving on the untouched fields and many on their amber list too but in lesser numbers than 10 years ago. Lost in the last 2 years is the Skylark (which was in fields adjacent to Middle Lane) and this year Crickets and Grasshoppers. On the original survey it was shown that the very rare Bechstein Bats were present but since then no survey has been done to see if they still visit these fields. During the winter months the fields and the banks of the River Avon at Whaddon provide an ideal habitat for visiting migratory birds.'

We also provide the written statements as evidence of using the field for exploring all the wildlife from: Chris Hart, Denise Harvey, Heidi Hart, Helen Whitehead, Jacqui Clark, Katherine Warr, Ken Warr, Martin Wilcox, Lucy Wilcox, Sonja Kotevska, Lesley House, Sheila Sawyer and Emma Herlinger.

Simms point 3: The field will not be cultivated to Village Green standards and left and used as it is now.

We believe that the field being less cultivated is why it is being used so much now and feel that most of the village would prefer it that way. The Brownies, Scouts, Runners, Schools and ramblers have expressed this as a reason that they visit it because as it is an open and relaxed area full of nature, with no overhead cables or restrictions.

Cradock point 1 and 2: Church Field has been farmed for 3 generations as part of a commercial business.

We believe that there is evidence to prove that no ploughed agriculture has occurred within the chosen qualification period of 20 years, in Church Field, as it appeared to have always been permanent pasture. We believe the witness reports we have provided offer additional evidence of no interruption of use.

As Mr Cradock points out himself, the land has been farmed on a grass keep basis. We believe this does not constitute agricultural use within the terms that prohibit the granting of Village Green status.

In R(Laing Homes Ltd) v Buckinghamshire County Council [2004] 1 P & CR 573 it was held in the High Court that the annual gathering of a hay crop was incompatible with the use of the land as a village green but The Open Space Society note Lord Hoffman has commented on that decision by 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" (Oxfordshire County Council v Oxford City council [2006] 2 AC 674 para 57)

Cradock point 3

Mr Cradock suggests that there has been no "lawful sports or pastimes on this land" and that any suggestions to the contrary are untrue

We believe that there is significant evidence from users of Church Field over a 20 year period to prove that there has been lawful sports and pastimes on Church Field and that local people have used the whole field as of right . We have provided additional evidence from an aerial photographs (1a, 1b, 1c, 2a, 2b and 3) to show that there are marked walking paths on Church Field which do not follow footpaths HILP1, HILP2, HILP3 or HILP4 , in particular there is a well trodden path which skirts around the graveyard and runs parallel to Middle Lane. Additionally the google maps satellite photograph of the field shows a well trodden path around the circumference of the field in addition to the footpaths above.

Cradock point 5: That Mr Pike has donated land for the village allotments and is being forced to defend his property at his age.

We did not know who owned all of land and on investigation discovered that it was unregistered apart from a tiny part owned by Mr Pike next to the cemetery.

Yours sincerely

Denise Harvey
Secretary on behalf of Church Field Friends

Summary Of Time and Usage Of Church Field

Name	Years used/ since	Use
1. Andy Sewyer	1974/ 44yrs	Walked Dogs, Bikes, Flying Kites.
2. Catherine Davis	1998/ 20yrs	Walks, Ball Games, Enjoying Green Space
3. Charlie Barker	2003/ 15yrs	Playing Games with Friends and Family, Rounders, Football, Walking Dog, Treasure Hunt, Built Snowmen and Igloos.
4. Chris Hart	2007/ 11yrs	French Cricket with wider family, Rounders, Kite Flying, Wild Flower Collecting to press with children. Dog Walking, Socialising whilst walking.
5. Graham Kehily	1998/ 20yrs	Running, Kite Flying, Walking Dog, Relaxing
6. Denise Harvey	1993/ 25yrs	Sports, Picnics, Rounders, Blackberry Picking, Birdwatching, Building Snowmen, Model Plane Flying, Dog Walking, Children Playing.
7. Ernie Clark	1992/ 26yrs	Blackberry Collecting, Exercising, Dog Walking, Football, Kite Flying, Snowball Fights, Social Gatherings.
8. Heidi Hart	2007/ 11yrs	Snow Play, Dog Walking, Rounders, Football, Flying Kites, Schools and Clubs Use it for Nature Trails and Treasure Hunts, Running Club use It, Social Walks.
9. Helen Davies	1998/ 20yrs	Family Walks, Dog Walks
10. Helen Whitehead.	2008/ 10yrs	Took the children in her care as a childminder on Nature Walks. Dog Walks, Socialises there, Running for Exercise.
11. Isabelle Hart	2007/ 11yrs	Sees nearly 100 people a day use it mostly in groups socialising. Cartwheels, Cycling, Walking Dog, Watch Sunset there, Balloon landing, Helicopter use.
12. Ivan Moore	1960's /35yrs	Dog Walks, Football, Say it is always in use by locals, Walking, Jogging, Games, Kite Flying.
13. Ayesha Moore	1960's /35yrs	Dog Walks, Football, Say it is always in use by locals, Walking, Jogging, Games, Kite Flying.
14. J Clark	1992/ 26yrs	Frisbee, Walking, Spotting Wildflowers and Nature, Running and playing with a ball, Hiding in Bushes, Playing Chase, Paintball Fights, Picnics, Dog Walking, Building Snowmen and playing Snowball fights with the whole community gathered drinking hot toddies. Built igloos.
15. J Waring	1983/ 35yrs	Children Playing with the neighbours children, Making Daisy Chains, Making Camps, Practising Brownie and Guide Skills for badges, Dog Walking, Meeting friends for chats.
16. James Davies	1998/ 20yrs	Football, Walks, Rugby, Dog Walks, Witnessed many people use the field.
17. Julia Goodwin	1988/ 30yrs	Walking, Sees the field used extensively throughout the day, Dog Walking, Socialising, Children Playing, Kicking a Ball, Kite Flying, Running and Keeping Fit.

Summary Of Time and Usage Of Church Field

Name	Years used/ since	Use
18. K Waring	1983/ 35yrs	Children Played with the neighbours children, Walked dogs.
19. Katherine Warr	1980's /33yrs	Walking for leisure, Seen many villagers use the field for Exercise, Running, Socialy and for the Wildlife. Cemetery visitors use the field for a bit of peace.
20. Kenn Warr	1980's /33yrs	Walking for leisure, Seen many villagers use the field for Exercise, Running, Socialy and for the Wildlife. Cemetery visitors use the field for a bit of peace.
21. Kathi Walker	1987/ 31yrs	Recreation, Dog Walking, Used by families as a safe area to play.
22. Kathryn Lacy	1992/ 26yrs	Walked Dog with the family, Rounders, Ball Games, Picnics, For Fun.
23. Martin Wilcox	1996/ 22yrs	Dog Walks, Witnessed the community use the field daily. Kite Flying, Model Aeroplanes, Brownies, Scouts and Cubs for Nature Activities and Camping, Exercising, Games, Running and Socialising.
24. Lucy Wilcox	1996/ 22yrs	Dog Walks, Witnessed the community use the field daily. Kite Flying, Model Aeroplanes, Brownies, Scouts and Cubs for Nature Activities and Camping, Exercising, Games, Running and Socialising.
25. Nicola Walker	2008/ 10yrs	Walking dog twice a day, Playing Games, Badminton, French Cricket, Cricket matches, Sunbathing, Meditation.
26. Phoebe Hart	2007/ 11yrs	Dog Walks, Building Snowmen and Igloos, Football, French Cricket, Frisbee with Friends. Watching the Sunset with friends and family. Always full of visitors.
27. Rob Coles	1978/ 40yrs	Play Area, Flying Kites, Build Snowmen, Dog Walking, Large Groups Of People Socialising.
28. Maggie Coles	1978/ 40yrs	Play Area, Flying Kites, Build Snowmen, Dog Walking, Large Groups Of People Socialising.
29. Ros Huggins	1998/ 20yrs	Walking Dogs, Playing with their Children, Exercise, Socialising with Friends.
30. Sally Lacey	1993/ 25yrs	Walking the Dogs off the Lead, Playing Games, Rounders, Cricket, Kite Flying, Playing in the Snow.
31. Sarah Kenich	1988/ 30yrs	Dog Walking with them running free, Walking for Leisure, Playing Catching a Ball, Feeling Happy and Safe and Socialising.
32. Sonja Kotevska	1992/ 26yrs	Exploring nature and Wildlife with the Pre School, Looking For Insects. Seen people Flying Kites, Dog Walking, Jogging.
33. Steven Harvey	1993/ 25yrs	Picnics, *Used Field even when the Cows were in there. Dog Walking, Kite Flying,
34. Thomas Clark	1995/ 23yrs	Blackberry Picking, Football, Rugby, Playing Paint Ball, Picnics, Snowmen Building.

Summary Of Time and Usage Of Church Field

Name	Years used/ since	Use
35. Tasha Harvey	1996/ 22yrs	Building Snowmen, Social Gatherings, Kite Flying, Rounders, Walking Dogs, Building Dens, Playing Hide and Seek with friends.
36. Tim Davies	1998/ 20yrs	Recreation, Walks, Kite Flying, Ball Games, Dog Walking.
37. Wendy Coles	1980's /30yrs	Playing Imaginative Games, Running, Exploring, Walking Dog, Pretending to Ride Horses, Dance Routines, Built Obstacle Courses for the dogs, *Trying to Stroke The Cows, Making Dens.
38. Alison Hoskins	2011/ 6yrs	Exercised the Dogs off the lead and frequently sees people use the field similarly.
39. Kate Hayes	1988/ 30yrs	Dog Walking, Socialising, Exercising and always sees others using the field.
40. John Bowden	1977/ 41yrs	Walked Daily, Built Friendships, Walked Dogs.
41. Lesley House	1987/ 31yrs	Walked Dog Twice Daily, Played, Flying Kites, Picking Buttercups, Blackberrys and Sloes, Building Dens, Paint Balling, Snow Ball Fights with Friends, Learning about Nature, Meeting Friends Socially, Kite Boarding, Drones, Radio Controlled Aircraft.
42. Edward Clark	1997 /21yrs	Walking, Blackberry Picking, Playing Football, Building Snowmen, Paint Balling in the Hedgerow, Dog Walking.
43. Sheila Sawyer	1974/ 44yrs	Play, Exercise, Learn about the Countryside, Flying Kites as there are no overhead lines, Dog Walking, Camping, Brownies, Guides and Scoutes use it for Tracking, Artists.
44. Emma Herlinger	2016/ 2yrs	Dog Walking, Running, Children Play Safely, Saw People Flying Kites, Scooting, Blackberry Picking, Socialising and Making Friends, Spotting Wildlife including Muntjac Deer and Identifying Wildflowers.

Church Field Additional Photographs - Key For Evidence Of Use

- 1a Church Field Northern Corner siding St Michaels Church Cemetery showing a well trodden wide
1b area of track marks from regular pedestrian use. These marks continue following the northern
1c edge of the field where there are no public footpaths. (photographs by Graham Kehily 4th Feb 2018)
- 2a Church Field North west corner showing a well defined track mark from pedestrian use continuing
2b where there are no public footpaths. Also some members of the public clearly using the field
indiscriminately. (photographs by Graham Kehily 4th Feb 2018)
- 3 The west side of Church Field showing the continuing track marks where no public footpaths exist.
(photograph by Graham Kehily 4th Feb 2018)
- 4a Church Fields vast array of meadow grasses, a butterfly on the grasses in the foreground.
4b (photographs by Heidi Hart 3rd July 2017)
4c
- 5a Church Field users playing frisby and dog walking, Elizabeth way in the background.
5b (photographs by Heidi Hart 19th July 2017)
5c
- 6a Walkers and dog walkers using Church Field and Socialising in groups.
6b (photographs by Heidi Hart 8th July 2017)
- 7 Wildflowers on Church Field. (photograph by Heidi Hart 3th July 2017)
- 8 Runner on Church Field. (photograph by Heidi Hart 20th July 2017)
- 9 Brownies socialising and trying to pet the cows in Church Field. (Photograph by Rob Coles Spring 1992)
- 10 Butterfly in Church Field/closer view (photograph by Heidi Hart 3rd July 2017)
- 11 Someone flying a remote controlled aircraft on Church Field. (photographs by Heidi Hart 31st Oct 2017)
- 12 Runner on Church Field from further away to show more of the field. (photographs by Heidi Hart 20th July
2017)
- 13 Duplicate of image 5
- 14 Frisby playing on Church Field. (photographs by Heidi Hart 30th May 2016)
- 15a Flocks of Rooks and pigeons on Church Field. (photographs by Heidi Hart 20th Feb 2018)
15b
- 16 A selection photographs of her family using Church Field from Mrs Lesley House to accompany an
additional evidence letter provided.
- 17a Children Playing in the snow in Church Field. (photographs by Ernie Clark 2009/10)
17b

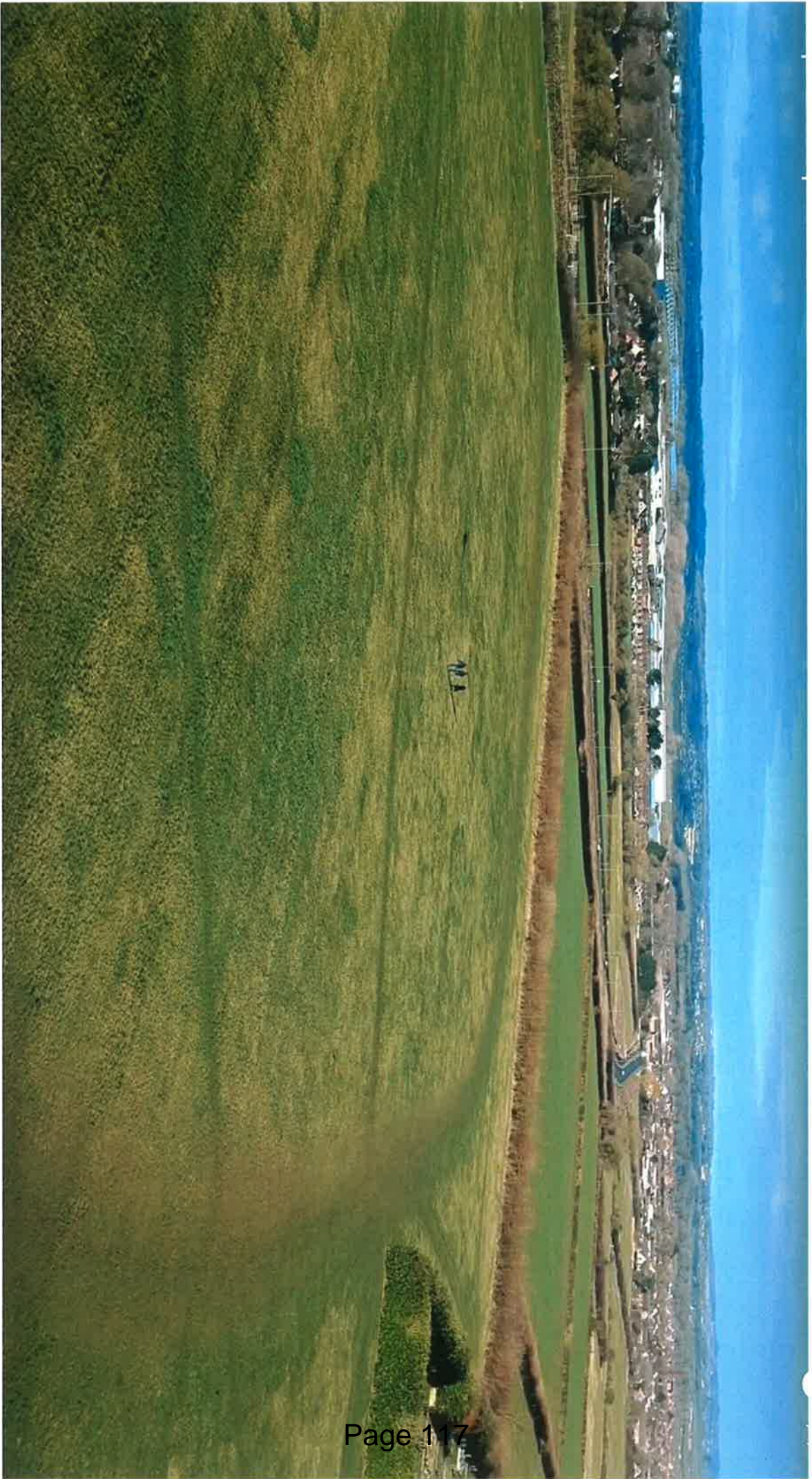
04 FEB 2018

1a



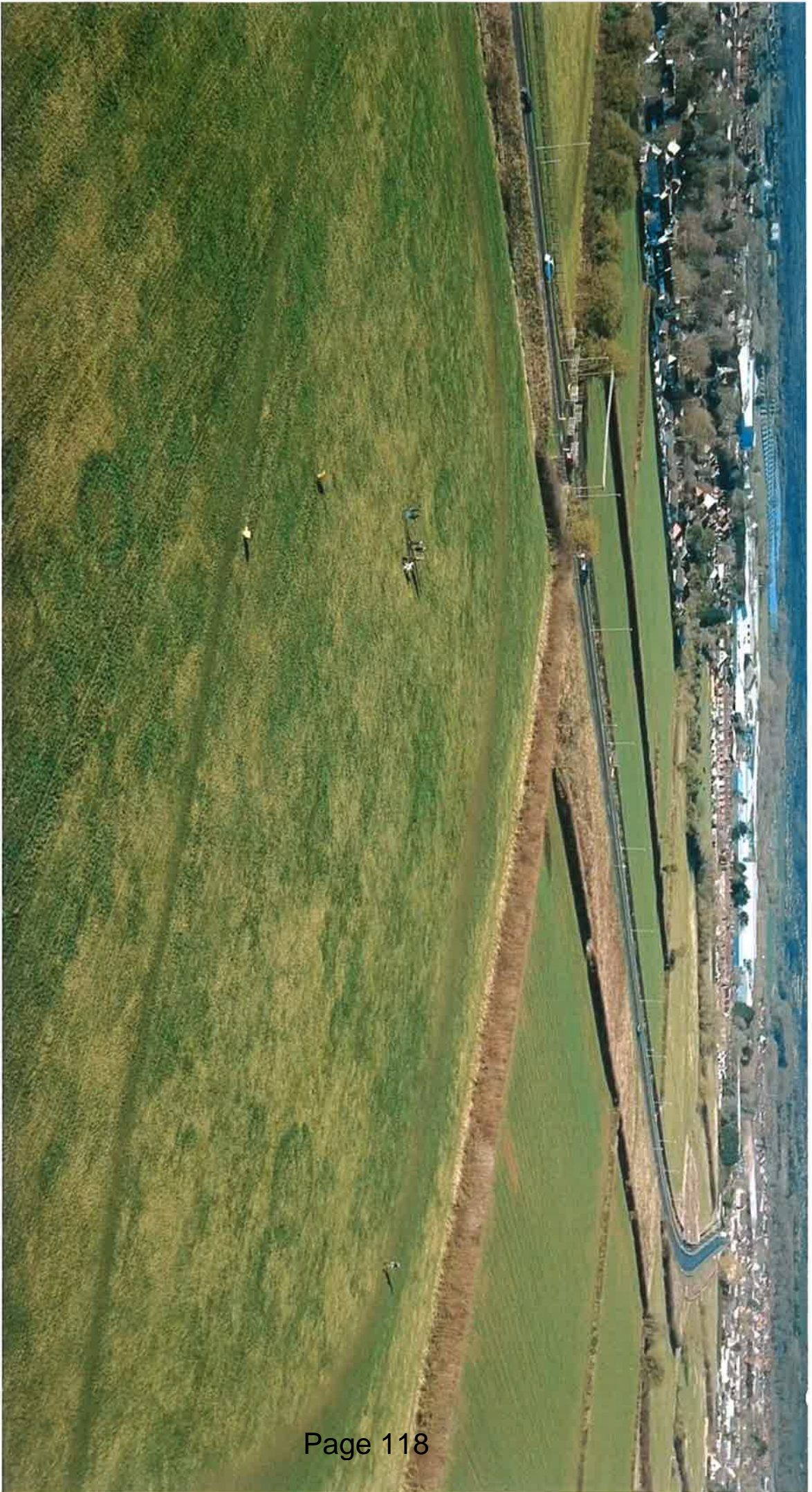


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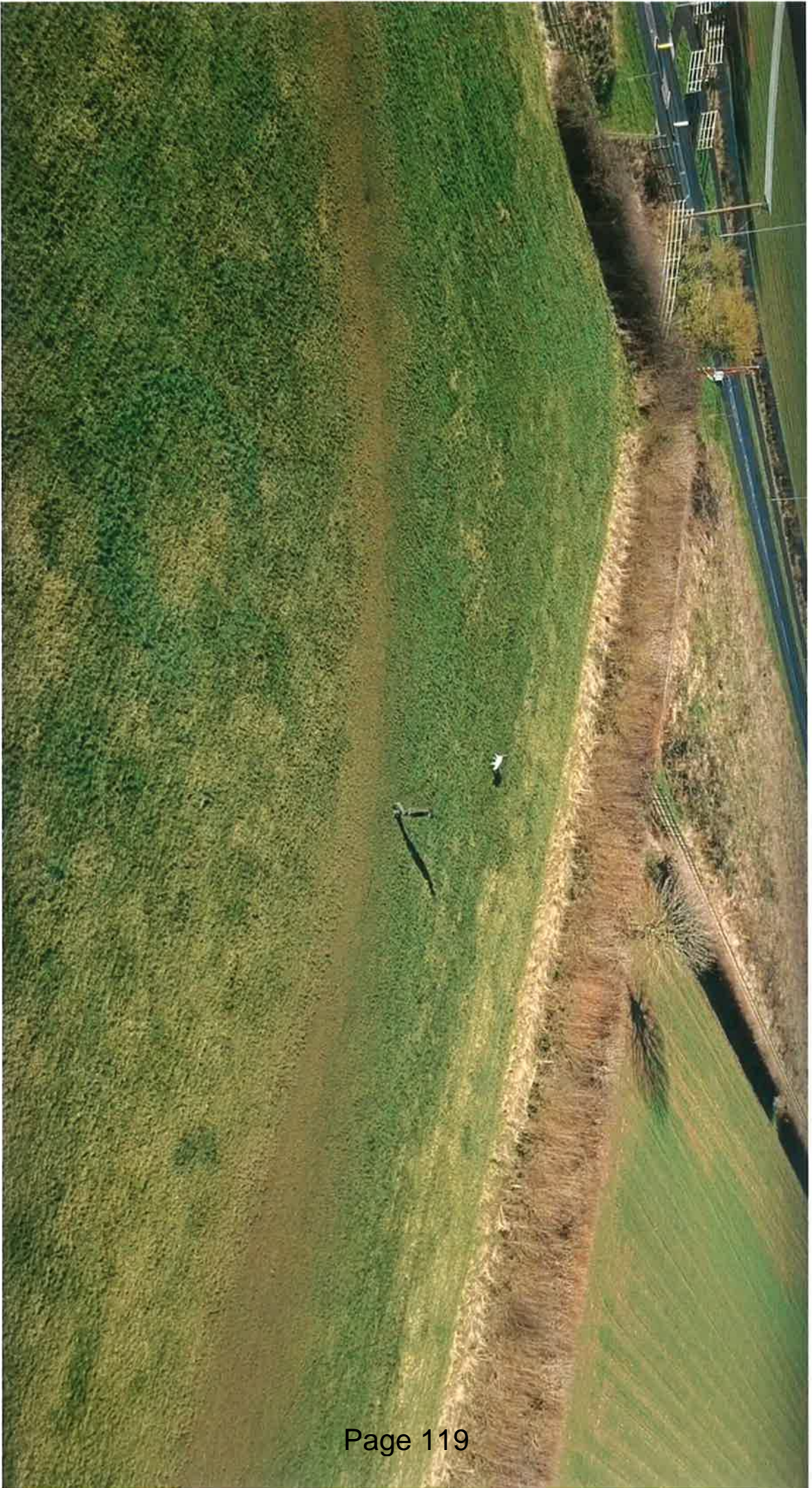
04 FEB 2018

1c

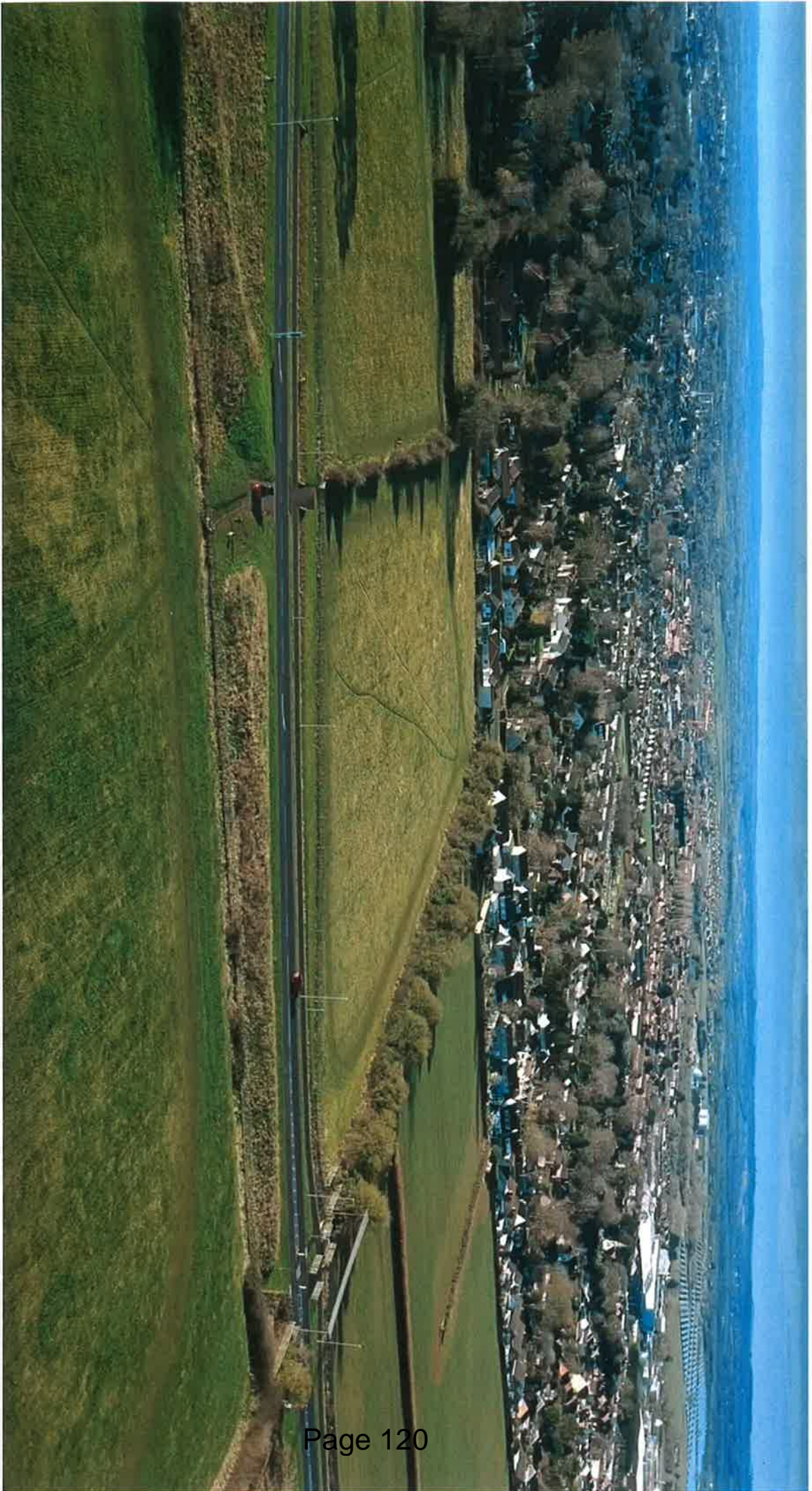


04/02/18

2a



04 FEB 2018



4a

03 July 2017



4b

03 July 2017



Ac
03 JULY 2017



5a
08 JULY 2017



5b



19 JULY 2017

5c



19 JULY 2017

6a
8 JULY 2017



6b
8 JULY 2017



7 03 JULY 2017



8 20 JULY 2017



9

SPRING 1992



10

03 JULY 2017



31 OCT 2017

11



20 JULY 2017

12



Duplicate of Image 5

13



30 MAY 2016

14



20 FEB 2018

15a



15a

15b



15b



Handwritten text on the right side of the page, oriented vertically, including the name "L House" and other illegible markings.











at the time
all 1978





17a

2009 | 2010



176

2009/2010



Emma Herlinger

■ Nursery Close

Hilperton

BA14 7RP

18 February 2018

I am writing in regards to the application for Church Field to gain Village Green status,

We moved to Hilperton 2 years ago and in that two years I have used Church Field most days and every time without permission or challenge.

When we moved here we wanted somewhere to walk our dog, a place to go running/jogging and for our children to safely play, I could always see people using church field and had no idea it was privately owned as there were no signs up and people were using it in its entirety. We therefore started using church field to walk our dog and exercise ourselves and the children, I found it a very sociable place and have met lots of people from the village by using this field for recreational activities. We moved to Wiltshire in the summer and out of our window we could see people flying kites, children playing and groups of people meeting up to walk their dogs, I knew instantly that we had made the right decision to move here as I could see this village had a heart and could picture my boys using this field as they grow, playing ball and running around playing with their friends.

I still feel the same about this field two years down the line and feel it is a great candidate for village green status. I have had the pleasure on early morning dog walks of seeing Monjack and Deer in this field and in the summer I have seen teenagers sitting down with friends and chatting or eating. My children run around the field and have even used their scooter in the dryer summer months. We have picked blackberries and my eldest son loves trying to identify the wild flowers.

We are aware that there is another village green in Hilperton however it is a very different space to Church Field my children love to use the park there, however for unbridled and unrestricted fun they love to run around Church Field with other children and being animal lovers having numerous dogs also running around with them just adds to the magic.

Yours sincerely,

■
Emma Herlinger

Received 14 Aug 2017
Ack. 15 Aug 2017.

4

Westmoreland Avenue
Hornchurch
Essex
RM11 2EF

✓ Wiltshire Council
Church Field Friends

Dear Sirs,

I have seen the Wiltshire Council notice dated 21 July regarding a village green application for Church Field.

I wish to add my support to the application.

I have used the field, and others in Hilperton Gap, for twenty-one years. My first use was simply when I was taken there for walks by my parents. Over the years I have since used the field for many uses including blackberrying, playing football, building snowmen, paintballing in the hedgerow, and dog walking. I still use the field for dog walking when I am in Hilperton.

I did not, and do not, remain on either the 'public' or 'other' footpaths but used/use the whole of the field and its hedges. At no time have I ever been asked to leave by the owner or anyone else and my use of the field has been in broad daylight.

Yours faithfully,


Edward Clark.

28 July '17

Hi,

I have been using the church field to walk across as a short cut on my regular trips to Trowbridge since 1974, at no time has anyone ever told me not to use this route and I have never seen any signs telling me not to use this route.

This is a very loved and utilised dog walking area which I have personally used since 1987, at no time has anyone ever told me not to use this route or I have never seen any signs telling me to not use this route.

Also during this period people have walked this area flying kites and with their children and bikes etc.

I have known people use the church field from Paxcroft Mead and the adjoining area of Trowbridge as well as the ever expanding village of Hilperton.

Kind regards



Andy

23 July '17

Hi,

I have been using the church field to walk across as a short cut on my regular trips to Trowbridge since 1974, at no time has anyone ever told me not to use this route and I have never seen any signs telling me not to use this route.

This is a very loved and utilised dog walking area which I have personally used since 1987, at no time has anyone ever told me not to use this route or I have never seen any signs telling me to not use this route.

Also during this period people have walked this area flying kites and with their children and bikes etc.

I have known people use the church field from Paxcroft Mead and the adjoining area of Trowbridge as well as the ever expanding village of Hilperton.

Kind regards


Andy

Sent from my iPad

██████ Trowbridge Road

Hilperton

Wilts

BA14 7QQ

11th September 2017

Dear Sir or Madam

I am writing in support of the application to give Church Field, Hilperton, 'Village Green' status.

We bought our house on Trowbridge Road, Hilperton in August 1987, in part, because it is situated opposite the Church fields. We had a dog which we exercised there twice daily, until her death almost ten years later. We have since had two more dogs, and both have been walked regularly in Church Fields.

During the thirty years we have lived in our home, we have brought up three daughters. The field was a wonderful place for them to play. They enjoyed walking with the dogs, flying kites, picking buttercups, blackberries and sloes and as they grew a little older, playing games with their friends, building hide-outs and paintballing. In the winter snows, they would join the crowd of local children who gathered to build snowmen and have snowball fights. We used the footpaths on their walks to and from Hilperton Primary School. It has been a wonderful place to teach them to love and appreciate nature; they have learned to identify plants, butterflies and birds.

We meet many people using the fields each day. Some we see almost daily, also walking their dogs, others, we see less regularly, playing with their children or simply enjoying walking in the fresh air. Looking out of my window as I write this letter I can see three groups of people walking with their dogs.

In the past, a group of teenagers practised kite boarding in the field. Others have flown radio controlled aircraft and more recently drones. Many use the footpaths to walk into the village or, in the opposite direction, to go to Trowbridge or Paxcroft Mead, but we have always used the entire field not just the foot paths and have never been challenged or told to stop. The only time we have been unable to use the fields was during the last foot and mouth crises, when most fields in the country were closed to walkers.

I feel that Church Field is a valuable resource for Hilperton Village, one that I and my family have cherished for the last 30 years. I hope that the Church Field will be given 'Village Green' status and will provide a natural space for future generations to enjoy.

I enclose some photographs of my family enjoying using Church Field.

Yours faithfully



Mrs Lesley House

(Female, in my mid fifties)

Church Field, Hilperton
Village Green Status

10 August 2017

I feel that it is essential that Church Field, Hilperton be designated Village Green Status.

I have walked over these fields, daily, since 1977, being now well over 80 years, and can name quite a few friends who have also walked there daily. And still do!. Over the years we have become almost a family, talking of our families and "putting the world to rights"

My own children have accompanied me, and then my grandchildren also, as well as a succession of dogs, from puppies to old age. I look forward to taking my great grandchildren in a few years!

No one has ever challenged me for walking on the fields and apart from cows from time to time, nothing else happens to the field.

In these days of change and impermanence it is essential for some things to remain the same. Church Field is one such - streets and houses cannot replace the calm memories of the Church Field and the bridleway - just ask the young children who have walked with parents, grandparents and a variety of dogs.

[REDACTED]
[REDACTED] Green Lane
TROWBRIDGE

Statement regarding use of Church Field, Hilperton Parish

I have been using Church Field in Hilperton Parish since I moved into the area in 1988.

I have used the whole of this field for recreation, dog walker & exercising and socialising with other users.

When I had a dog I used the field almost daily but now not so frequently.

There are always other people using this field.

I have never been challenged on using the field nor prevented from use. I have never seen a sign to say the land was private.

I have never sought permission to use the field.

I fully support the application for a village green for this field.

[REDACTED]

Kate Hayes

[REDACTED] Horse Road, Hilperton

HILL STREET
HILPERTON
TROWBRIDGE
WILTSHIRE
BA14 7RS

22nd July 2017

To whom it may concern.

I and my family moved to Hilpert on in Jan 1974.
and have used church field since at least the summer
of 1974 regularly, for both short cuts into Trowbridge
and to let the children play, exercise and learn
about the country. indeed in the school holidays
it could be quite a social gathering.

It was one of the few places you could fly
a kite (it not having any power lines across
it.)

We blackberried in Autumn
We always walked our dogs here, all year
round & apart from 'foot-mouth-scave' I've
never seen a notice to prevent this use.
I've seen tents in the field in the morning &
where youths had enjoyed camping and I've
seen when my children attended brownies / guides
cubs / scouts in the nearby church hall (now a private

HILL STREET
HILPERTON
TROWBRIDGE
WILTSHIRE
BA14 7RS

hours) they used the field for tracking etc,
I once came across a gentleman perched on a
stool drawing the church from that angle.

In the 29 yrs I lived at the crown my family
enjoyed the care of Church Field, and since
moving further down the village my son has
continued to walk our dogs here most days

Sheila SAWYER.

Response on behalf of the estate of the late Roger Pike to the response to objections dated 26 February 2018

This is a response on to the various points/assertions made in the applicants' response document dated 26 February 2018 ("the Applicants' Response") on behalf of the estate of the late Mr Roger Pike, who passed away on 6 December 2017.

No responses are provided in relation to those parts of the Applicants' Response which relate to submissions made by RH & IR Craddock Ltd and Mrs Rosemary Sims. However, it should not be taken from the absence of any response to those parts of the Applicants' Response that those parts are accepted by Mr Pike's personal representatives.

Response to "Goughs point 1 ... Point 4 ... Point 7"

1. To the extent that the applicants wish to rely on evidence provided by people who have allegedly "*now completed 20 years*", i.e. where 20 years of usage as of right for lawful sports and pastimes could not be established from their evidence at the time the application was made, any such reliance is misguided. Under section 15 of the Act, the relevant date for establishing 20 years of usage is the date of the application (see *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25 for confirmation of this). So it is irrelevant as to whether the applicants/local residents have used Church Field for sports or pastimes since the application was made.
2. "[S]ocialising" cannot reasonably be described as a sport or pastime and the applicants have not been able to point to any case law in support of their suggestion that socialising falls within the ambit of section 15 of the Act. It is submitted that the applicants' reliance on something as tenuous as "socialising" speaks volumes about the merits (or otherwise) of the application.
3. The applicants' reference to their belief that "*all members of a family are valid as different individuals*" is missing the point and is nothing more than a self serving statement. The points raised on behalf of Mr Pike are that if the evidence provided by additional family members does not establish 20 years of usage for lawful sports or pastimes then it adds very little, if anything, to the evidence provided by the primary evidence provider / family member. Moreover, if the evidence provided by the additional family members is essentially the same as that provided by the primary evidence provider / family member then arguably it should not be factored into an assessment of whether 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 for the purposes of section 15 of the Act.

Response to "Goughs Point 8a ... Pike Point 4 ..."

4. Evidence of the differences between Church Field and the Village Hall green area does not amount to evidence that lawful sports or pastimes were in fact taking place on Church Field throughout the requisite period.

Response to "Goughs Point 2 ..."

5. The fact that the land is unregistered does not mean that local residents and organisations would not have known that Mr Pike owned Church Field. Hilperton is a small place in which local knowledge is easily transmitted by word of mouth.

Response to “Goughs point 2 and Pike points 3, 5, 6, 7 ...”

6. There is a suggestion in this part of the Applicants’ Response that the applicants have used Church Field “*in its entirety*”. The evidence produced in support of the application does not establish that the applicants have used Church Field in its entirety.

Response to “Goughs case study – Richard Naylor v Essex County Council v Silverbrook Estates Ltd ...”

7. Although it is helpful that the applicants have confirmed that Church Field has been used throughout the relevant period for, as they put it, “*grasskeep or cattle*”, this is a confusing paragraph in the Applicants’ Response. It is incorrect to say that the “by right” principle established in the *Naylor* case does not apply to this case. *Naylor* was cited in support of Mr Pike’s objection to the application because the applicants’/local residents’ usage of parts of Church Field has been by right (not as of right) due to the existence of the rights of way across Church Field. In other words, the fact that Church Field has not been maintained by the Council is not determinative of the issue as to whether the applicants’/local residents’ usage has been by right or as of right. The facts of this case do not need to be on all fours with those of the *Naylor* case in order for the same principles to apply.

Response to “Pike Point 8 ...”

8. The salient point here is that the applicants/local residents cannot have enjoyed an unrestricted and uninterrupted freedom to use all of Church Field given that the land was also used for grazing livestock, primarily cattle, throughout the relevant period.

Response to “Goughs points 5, 6a, Pike points 1, 2 ...”

9. The applicants have confirmed that “*local people would make alternative routes through Church Field to avoid the cattle.*” Firstly, this seems to support the submission made in opposition to the application that, to the extent that Church Field has been used by local people, it has been primarily as a way of getting from A to B (note the reference to routes through Church Field) rather than for sports or pastimes. Secondly, it also contradicts the applicants’ suggestion that they have used Church Field “*in its entirety*” (they acknowledge that they have understood the need to avoid the cattle).

Response to “Ref Goughs case law – The Queen on the application of Cheltenham Builders Limited v South Gloucestershire District Council”

10. The contents of paragraphs 8 and 9 above are repeated here in response to this part of the Applicants’ Response. For the avoidance of any doubt, it is not accepted that the contents of the 44 letters referred to adequately address the argument that the grasskeep and grazing arrangements in place for Church Field were interruptions of any uses for lawful sports and/or pastimes.

11. Again, the facts of the *Cheltenham Builders Ltd* case do not need to be on all fours with the facts of this case for the same principles to apply. The absence of any “significant areas of trees or brambles which would prevent lawful sports and pastimes” can hardly be said to amount to evidence that the whole of Church Field has been used for lawful sports or pastimes throughout the 20-year period.

Response to “Goughs points 9, 10 ...”

12. Putting to one side the concerns previously raised about the possibility that some of the evidence in support of the application might have been tailored/contrived, the most pertinent point here is that a significant amount of that evidence has been influenced by the real motivation behind it – that the applicants do not want Church Field to be developed/built on. The applicants have now accepted in the Applicants’ Response that these motivations/opinions “are not valid in terms of a village green application.”

Response to applicants’ references to *R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] and *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674 para 57)

13. In *R (Laing Homes Ltd)* it was held that village green rights could not be established where land was being used for the growing, cutting, drying, baling etc. of a hay crop. The Court found that the activities involved in gathering a hay crop interrupted the recreational use or enjoyment of a field since people had to avoid the machinery when it was in use and avoid disturbing the mown hay whilst it was drying. Messrs Fyfe and Vigar both provided evidence in their statements dated 2 October and 30 September 2017 respectively that they have entered into Grasskeep Agreements and Grazing Licence Agreements that allow them to mow the grass on Church Field for use as silage. In Mr Fyfe’s case, these agreements were in place with Mr Pike for a 27-year period (so throughout the 20-year period that is relevant to the application). Any usage of Church Field by the applicants/local residents for sports or pastimes would have been interrupted by the mowing that was being carried out there. As per paragraph 9 above, it is also submitted that grazing livestock on Church Field would have been an interruption to any sports or pastimes indulged in thereon during the relevant period.
14. The applicants appear to argue that the reasoning applied in *R (Laing Homes Ltd)* is flawed and they point to the comments of Lord Hoffman in *Oxfordshire County Council v Oxford City Council* [2006] in support of that argument. The relevant passage from Lord Hoffman’s judgment is as follows:

“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 for the purposes of section 22 [of the Commons Registration Act 1965] if in practice they were not.”

Lord Hoffman’s comments in *Oxfordshire County Council* were obiter dicta and not, therefore, legally binding as a precedent. *R (Laing Homes Ltd)* remains good law. In any event, Lord Hoffman’s comments should not alter the outcome in this case – His

Lordship was careful to use the words "*if in practice they were not*". In other words, His Lordship took the view that each case would need to be determined on its own facts, and that whether or not the low-level agricultural activities in question are inconsistent with use for sports and pastimes has to be decided on a case-by-case basis. Based on the evidence provided in this case, not only in support of Mr Pike's objection to the application, but also by members of Church Field Friends themselves (see, for example, Denise Harvey's statement about having to give a mother cow and herd plenty of space), it is submitted that the agricultural activities which have taken place on Church Field were in practice inconsistent with use for sports and pastimes on the whole of the site throughout the 20-year period.

Signed:


Goughs Solicitors

(For and on behalf of the estate of Roger Pike)

Dated: 27 April 2018

COMMONS ACT 2006

IN THE MATTER OF AN APPLICATION TO REGISTER LAND
KNOWN AS 'CHURCH FIELD' AT HILPERTON AS A NEW TOWN OR
VILLAGE GREEN

Application number: 2017/01

Dated 19 November 2020

INSPECTOR'S REPORT

Preliminary matters

1. I am instructed by Wiltshire Council (WC) acting in its capacity as commons registration authority ('CRA') which is the responsible authority for determining applications to register land known as Church Field in the village of Hilperton (which will, as the context permits, be referred to in this report as either the 'application land' or the 'land' or 'the field') as a town or village green ('TVG').
2. The application was made by a local action group known as 'Church Field Friends' ('the applicants' or 'As') on an undated Form 44 delivered to WC on 24 April 2017. The application was returned and after correction of minor matters was accepted by WC and a notice in Form 45 was circulated on 21 July 2017 and objections were received from the landowner and others.
3. On 6 March 2019 WC's Western Area Planning Committee (which exercises the function of CRA within WC) resolved to appoint an independent inspector to hold a non-statutory public inquiry ('NSPI') to hear evidence and to provide an advisory report on the application to register to the CRA.

4. A NSPI was initially fixed for 23-25 June 2020 but had to be postponed because of the pandemic. It was tentatively re-scheduled for 29-30 September 2020 when the prospect of a face-to-face hearing at a local venue was still zero in view of government regulations placing restrictions on public gatherings for the protection of the public.
5. At my suggestion the CRA agreed that an inquiry could proceed on the basis that oral evidence was heard remotely with the remainder of the inquiry process being determined by way of written representations. There followed consultation with the parties at two pre-inquiry meetings on my Chambers Zoom platform (at the second of which counsel appeared for both parties – Horatio Waller for the applicant and James Marwick for the objectors (or ‘Os’), namely Carolyn Parkinson and her sister Elizabeth Pike who inherited the land from their father, the late Roger Pike) after which I issued directions for the NSPI on 21 July 2020. Although there were other objectors the eventual defence to the application coalesced in the case advanced by Os as owners of the application land.
6. The NSPI took place and oral evidence was heard remotely on 29-30 September 2020. The process was much assisted by the skill and ingenuity of both counsel who ensured that the inquiry (which is likely to have been the first of its kind where oral evidence was heard remotely) ran as well as might have been expected if it been held at a local venue, not least in relation to the inquiry bundles which were uniformly well prepared and informative. I am also indebted to counsel for their helpful and conscientious written submissions which I received on 14 October 2020. Last, but not least, I am grateful for the administrative support provided by officers of WC (Sally Madgwick and Sarah Marshall) which was indispensable to the smooth-running of the process in what were clearly testing and unique circumstances.

Legal framework

7. Section 15(2) of the Commons Act 2006 (‘CA 2006’) (under which subsection 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, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.
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 (Allaway) 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.
10. As this is not an application based on a ‘neighbourhood within a locality’ Mr Marwick is right when he says that the CRA need only be concerned with the sufficiency of use on the part of those living within the singular locality. Put another way, any use by individuals living outside the claimed locality will not count. The position is otherwise on a neighbourhood application (*Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438).

‘of the inhabitants of any locality’

11. The term ‘locality’ is taken to mean a single administrative district or an area within legally significant boundaries. On this application the objector agrees that the relevant qualifying locality is the village and civil parish of Hilperton

(which, as the context permits, will be referred to in this report as ‘Hilperton’, ‘Hilperton village’, or ‘the village’) which is only separated by a few fields from the north-eastern edge of Trowbridge. The population of the village was a little under 5,000 at the time of the 2011 census.

‘have indulged as of right’

12. The traditional formulation of the requirement that user must be ‘as of right’ is that the user must be without force, secrecy or permission (the so-called ‘tripartite test’). The rationale behind as of right is acquiescence. The landowner must be in a position to know that a right is being asserted and he must acquiesce in the assertion of the right. In other words, he must not resist or permit 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. Judging from Mr Marwick’s closing submissions the issue of an implicit licence is not pursued, nor does he suggest that the claimed use was, at any time, non-peaceable.

‘lawful sports and pastimes’

13. 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.
14. Difficulties arise where the predominant recreational use is that involving the use of paths (typically tracks crossing or running around the perimeter of 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] EWHC 12 (Ch) 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] and was also followed more recently in *R (Allaway) v Oxfordshire County Council* [2016] EWHC 2677 (Admin).

15. A helpful overview of the pre-*Allaway* cases is to be found in the village green 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.
16. *Dyfed County Council v Secretary of State for Wales* (1989) 59 P&CR 275 should also be noted. Here it was held that the use of a path for purposes ancillary to the recreational use of a lake did not give rise to a presumption of a public right of way. The principle appears to be that the use of paths cannot be excluded for TVG purposes where it is ancillary to LSP taking place on the land as a whole.
17. It is now tolerably clear in law that where a path or paths are merely being used for walking it would not normally count as it could not then be said that walkers were mainly using the land as a whole for general recreation. Such a state of affairs might arise, for instance, where, although some walkers were simply using the paths as part of a route from a point outside the land to another, the great majority were using the land for general recreation by walking on the paths whilst say their dogs ran all over the land and where others indulged in other forms of qualifying recreation elsewhere. The question at the end of the day is what a reasonable landowner would think from the totality of the walking and other recreation taking place on the land as a whole. If the position is ambiguous then it is correct in law that an inference should be drawn in favour of use which would indicate only an emergent right of way in which case it should be discounted. It would though be quite wrong to say that the use of paths should always be excluded and especially where such use happens to be integral to a pattern of much wider recreational use taking place across the land as a whole.

Use of a public right of way

18. The foregoing legal position is normally applicable to the treatment of emergent rights of way rather than to tracks which are already shown as public rights of way ('PROWs') in the Definitive Map and Statement for the area ('DMS'). The question is whether highway land is registrable as a matter of law? I consider this to be unlikely as qualifying use on highway land would be markedly constrained by the right of the public to use the land as a highway. This arises from *DPP v Jones* [1999] 2 WLR 625 which determined that the public can lawfully do anything reasonable on highway land provided it does not interfere with the public's right to pass and repass. In practice, most activities on highway land would not be qualifying LSP and what is left may either be too trivial to justify registration or else may amount to an interference with the highway and be unlawful and thus non-qualifying in any event. In my view, it would be legally correct for the CRA to proceed on the basis that the public's use of a PROW should be discounted as it cannot be classified as use which is 'as of right' but 'by right'. In this case the application land is crossed by four PROWs. I shall deal with this later.

'on the land'

19. The expression 'on the land' does not mean that the CRA has to look for evidence that every square foot of the land has been used for LSP. Rather it needs to be satisfied that, for all practical purposes, it can sensibly be said that the whole of the land has 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 County Council v Oxford City Council* [2004] Ch 253 at [92]-[95]). Where areas of the land are shown not to have been used for LSP (and the whole of the land is, in this instance, accessible to walkers) the question is whether the whole of the land is still registrable. The answer to this, in my view, is whether the unused areas can be said to be integral to the enjoyment of the land as a whole although it is clearly a question of fact and degree whether the existence of large tracts of unused land would justify registration. 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’

20. The relevant period in this case is 24 April 1997 to 24 April 2017 (i.e. the date when the application to register was delivered to the CRA).
21. 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 [70] Patten L.J said that where competing uses can accommodate one another then time does not cease to run. In that case substantial drainage works meant that the public were wholly excluded from part of the land for some 4 months.
22. On this application there is an issue of competing uses arising from the use of the land for agricultural purposes. As say that the pattern of use when agricultural use took place was a classic example of where public recreation and low-level agricultural uses co-existed happily side-by-side.
23. 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.

Procedural issues

24. 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 CRA to hold a non-statutory inquiry and to provide an advisory report and recommendation on how it should deal with the application.
25. In *Regina (Whitmey) 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 registration authority 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.
26. The only question for the registration authority 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.
27. 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.
28. The procedure in this instance is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.

29. 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.
30. 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

31. Registration gives rise to rights for the relevant inhabitants to indulge in LSP on the application land.
32. Upon registration the land becomes subject to (a) s.12 of the Inclosure Act 1857, and (b) s.29 of the Commons Act 1876.
33. 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.
34. 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.
35. Under both Acts development is therefore prevented.

Inquiry bundles and appendices

36. For the avoidance of doubt, references to documents within the bundles will be to A/1 and so on in the case of the applicants' documents, OBJ/1 and so

on in the case of the objector's documents and CRA/1 and so on in the case of documents within the CRA's bundle.

37. Accompanying this report are four appendices. Appendix 1 ('App/1') is a map of Hilperton village. The application land is edged black and forms the gap between the settlement and Elizabeth Way and Trowbridge Road. The land covers 12.8 acres and is crossed by the PROWs identified on Appendix 2 ('App/2'). App/2 pre-dates App/1 as Elizabeth Way is not shown on App/2. Building work on the road began sometime in 2014 and the work was evidently completed on 21 October 2015 (A/190). Having scrutinised the aerial images it seems plain enough that none of the application land was needed for the new road which cut through the north-east sides of the two fields shown on A/189 with roadside fencing introduced on either side of the new road.
38. The PROWs identified on App/2 (coloured blue) are classified on the DMS as (i) HILP1 (which runs along the north-east edge of the land ; (ii) HILP2 (which crosses the land from north to south); (iii) HILP3 (which runs from the north to mid-way along the road boundary and is described as having a width of 0.6m or 1.96 feet) and (iv) HILP4 (which crosses the land in the south-east corner to the same mid-way point along the road boundary as HILP3). HILP33 is coloured green on App/2 and is a bridleway. This track is known as Middle Lane.
39. The PROWs are described as having a width in each case of 0.6m or 1.96 feet. HILP1, HILP2 and HILP3 were added to the DMS in 1952 as footpaths and have remained unaltered since that time. The bridleway, HILP33, was added to the DMS at the same time and is also unaltered.
40. Appendix 3 ('App/3') comprises a very helpful list and accompanying plan provided by As which tells us where the 13 access points are around the perimeter of the land which are described under the list of gates. In this report it will be convenient if I refer to the various access points by the numbering shown on the plan in App/3.

41. Appendix 4 ('App/4') comprises another very useful batch of documents provided by As which tells us where their witnesses (44) live (in a handful of streets close to the application land) within the 24 households identified on the plan. The list also includes the number of years which each witness claims to have used the application land.

Description of the application land and surrounding area

42. I carried out an unaccompanied inspection of the application land (which is classified as Grade 1 agricultural land in the local development plan) on 21 August 2020. The weather was overcast and damp but with good visibility. I spent time walking around and across the land and within the two fields on the south-west side of Elizabeth Way. I also visited Middle Lane and the recreation ground which sits alongside the village hall which is a formal open space. I also took a large number of photos which has helped me to recall the site as I come to my report. I also drove around the village and am satisfied that I saw enough of the application land and the surrounding area.
43. I think I should begin by speaking about Hilperton village which is separated by a few fields (known as the Hilperton Gap) from the north-eastern edge of Trowbridge (see plan at App/2). South of Hilperton village are large areas of housing constructed in the late 1990s (or even later) including the housing estate known as Paxcroft Mead within which there are amenity spaces for public recreation. The most prominent landmark in the village is the parish church of St Michael and All Angels which can be seen (as 'PW') just off the Knapp on the plan at App/1 beyond which is an enclosed graveyard which adjoins the application land. If one refers to the plan at App/2 one sees that HILP1 runs along a narrow path along the southern side of the churchyard until you eventually arrive at small gate leading into the application land which is a rectangular-shaped meadow which runs in a south-westerly direction up a gentle slope to the Elizabeth Road boundary.
44. The location is an extremely tranquil one with a strong sense of openness. I can readily understand that those who support the case for registration are likely to have a strong desire for Hilperton village to retain its own identity and

separation from its larger urban neighbour. However these are matters of town planning with which I have no concern.

45. When inside the field I walked in a clockwise (or south-easterly) direction alongside the boundary where there is a worn track in the grass in the position shown on App/2, some 5m or thereabouts inside the boundary. The ground itself was flat and seemed to me to be an ideal place for recreational walking. I also observed a cross-field track following the alignment of HILP2 shown on App/2 which follows a gentle upslope gradient towards Elizabeth Way at its junction with what is known as the Fieldways roundabout. The eastern boundary comprises a field hedge until one comes upon various dwellings with prominent gates where shown on the plan at App/3 between which there was a mix of boundary features including a brick wall of some age and mesh fencing. The perimeter path takes you to the made-up track and gate leading into Trowbridge Road at point 9 on App/3.
46. At the south-eastern corner of the land the perimeter path continues (again running clockwise around the field) along its southern boundary with Trowbridge Road. The path is again some 5 yards out into the field and I noticed that in places along this boundary some trees had been planted by, I gather, the parish council which was mentioned in the oral evidence. I might add that in the south-east corner at point 9 on App/3 I did notice a track in the grass (which was not particularly worn) running upslope following roughly the same alignment for HILP4 on App/2 which leads to the access mid-way along the boundary with Elizabeth Road which I will deal with later.
47. The track in the grass running alongside the Trowbridge Road boundary was well worn. It follows the perimeter of the field and there is a well-worn spur off it near point 11 on App/3 which leads to a 5-bar field gate alongside a smaller gate for pedestrian use. In the road outside there is a pavement leading back into the village. Looking back into the field at point 11 on App/3 I could see a worn cross-field track running along the same alignment for HILP2 with a cross-field view of the church tower being a notable feature on the landscape.
48. Alongside the boundary with Elizabeth Way there was more than one perimeter path. There was a track quite close to the undergrowth at the outer

edge of the field and another well-worn track further out into the field. There was a post and rail fence alongside the road although the boundary was heavily overgrown the nearer one got to the corner of the field at point 11 on App/3. However, running on clockwise to point 13 there is a pedestrian gate with an area just outside the field, say 20 yards wide, on which a vehicle may park alongside the road. In fact, whilst I walking at this point a vehicle did park just outside the field in this area from which a dog walker emerged who came into the field whom I observed walked the whole way along HILP4 to point 9 on App/3 and back again to her parked car.

49. I should perhaps mention that point 12 on App/3 is not a current gate and is given to mark the location of the field gate which used to exist at this location before Elizabeth Way was built. This was the point where cattle used to pass between the adjoining fields and the ground still gently dips away where it had become worn over decades of previous usage by cattle.
50. Although beyond point 13 on App/3 a well-worn perimeter path runs on quite close up to the fencing installed by the road contractors there was another track, albeit much less worn, running around the perimeter further out into the field. Both tracks continued around the perimeter, one more worn than the other running closer into the dense hedgerow, with the other less worn track running much further out as it rounded the north-west corner of the field.
51. At point 1 on App/3 there is a somewhat run-down field gate with barbed-wire threaded along the top rung to prevent people clambering over the gate where the oral evidence suggested that it could be opened at the latch without too much difficulty (I did not try this) and was a well used point of access into the field. The oral evidence suggested that this gate (which leads into Middle Lane) is used by vehicles gaining access to the graveyard. If one refers to the plan at App/3 one can see that the outline of the field changes in this corner where it accommodates the graveyard which is surrounded by a tall planted hedgerow with a 5-bar gate for vehicular access shown at point 2 on App/3.
52. Having walked around the perimeter of the field I investigated the inner areas of the field. In doing this I walked over much of the field and it seemed plain enough to me that outside the above-mentioned tracks crossing the field

(which were consistent with the alignment of the PROWs shown on the plan at App/2) there was no other obvious wear and tear on the ground other than, in some places, marks consistent with the passage of vehicles which is unsurprising as I was told that the grass is normally cut for silage in June/July.

53. Before I close on my own inspection of the field I should mention that in the time I was there I must have seen in the region of say half a dozen dog walkers who, with the exception of the walker who had parked her car outside the gate at point 13 on App/3, walked around the edge of the field.
54. My own inspection of the field in August 2020 broadly mirrors the position shown in the images on *Google earth* in the years 2006 and 2014-18 where the predominant activity appears to be that of walking on the PROWs and around the perimeter of the field. My impression on my visit was that the PROWs were not as readily discernable on the ground as is likely to have been the case if, say, I had been walking on trodden tracks through longer grass whereas, at the time of my visit, the grass had only been cut a month or so before. Although I am unsure whether one can place too much reliance on the accuracy of the monthly dating shown on the online images, it seems to me that the aerial images for 2006 and 2018 clearly show tracks on the ground and my impression is that these images were probably taken when the grass was much longer than it was on my visit. I might add that I viewed all the images for the application land online which are very much clearer than the copies in the applicant's bundle. In the current context it is, I think, reasonable to speculate that there are going to be subtle shifts in the actual locations of the tracks from one year to the next depending upon where, on the ground, walking resumes once the grass has been cut each year and/or where muddy areas are bypassed by walkers.

Photographs

55. The applicant's bundle contained a number of photographs (the objector produced no photos). These are set out below along with the witnesses who produced them.

- (i) Two undated photographs of pre-school children playing in the field (Sonja Kotevska at A/62-63).
- (ii) Three photos taken on same day in 2002 of child, dog and adult in field (Mr Kehily at A/95).
- (iii) Single photo of Hart family taken on date unknown walking on snow in field (Heidi Hart at A/85).
- (iv) Two photos taken in June 2015 by Chris Hart showing longer grass and wild flowers at A/87 and enlarged at A/155-156).
- (v) Photo of field (assumed to be taken in February 2016) at gateway on point 9 on App/3 showing muddy start of HILP4 running upslope Andrew Pike at A/115).
- (vi) A batch of photos collected together at A/119-186. Those of interest include the following:
 - Six aerial photos of dog-walkers walking mainly outside the various tracks on same day in Feb/2018 (A120-125). Even though these photos post-date the qualifying period (which ended in April 2017) they are still relevant as they show (i) large sections of the perimeter track on its north-eastern and north-west sides; (ii) HILP1 running (in this instance as two tracks running parallel with one other along the field's north-east boundary) between points 3 and 9; (iii) HILP2 and HILP3 running out across the field from point 3 on App/3; (iv) the convergence of HILP3 and HILP4 at point 13 on App/3; and (v) the perimeter path where it runs up the boundary with Elizabeth Way.
 - A batch of photos taken in July/2017 (at A/126-132). Although these photos again post-date the qualifying period, they are still helpful in that they show the length and nature of the uncut meadow grass in various parts on the field before and after it was mowed. For instance, the photo at A/126 (4b) shows the worn perimeter path running alongside what must be Trowbridge Road with the uncut grass on either side. At A/127 (4c) one can see the length of the grass running

crossfield in the direction of the church. There is a useful photo at 6b showing a group of dog-walkers walking through unbaled grass cuttings towards point 3 on App/3 on what I suspect is roughly the same alignment as HILP2. At A/131 we have a 1993 photo (which pre-dates the start of the qualifying period in 1997) showing 6 cows, an adult and a child on the southern side of the field.

- At A/133 we have a couple throwing a frisbee to one another in May 2016. They appear to be standing on a worn track in the approximate position of HILP1 on App/2.
- At A/135-142 we have an undated batch of photos provided by Lesley House showing a snowbound field, children and their parents on the field in warmer weather and a particularly interesting photo at A/138 showing the use of worn tracks and uncut meadow grass on either side. The field is obviously rich in buttercups. This photo can be viewed alongside the two photos at A/153 which are likely to have been taken at the same time by Rob Coles in March 2013.
- At A/145-146 we have children playing in the snow in Feb/2009. At A/146 (bottom) we have a walker using a section of worn grass and at A/147-152 we have photos of adults and children in the snow in 2009 and 2010.
- At A/154 there is a photo of Maggie Coles with her two dogs on the north-eastern boundary of the field in 2012 in the approximate position of HILP1 shown on App/2.
- At A/157-174 we have photos of children and adults again playing in the snow in 2009-2010. Within this batch are photos of J Clark's dogs (A/163 & 166).
- The batch of photos at A/175 onwards includes photos taken in 2018, 2019 and 2020 which again post-date the end of the qualifying period and are no doubt intended to be indicative of previous use. Of some

interest, however, is (i) at A/178 a photo of a group of walkers taken sometime in 2017 by Heidi Hart stood on the perimeter path alongside Elizabeth Way; (ii) at A/177 a photo of a model aeroplane also taken by Heidi Hart in March 2017 showing, in the foreground, a worn path running across the field in the approximate position of HILP1 and is consistent with the alignment of the same worn path I saw on my own viewing which is still a few yards out from the boundary (the inner path close to the boundary shown on A/121 was barely noticeable on my visit); (iii) at A/186 there is a photo of a group of people with dogs taken by Chris Hart on 15 June 2020 which, in the foreground, shows a worn track in what could well be the approximate position on the ground of HILP1; and (iv) at A/183 there is another photo taken by Chris Hart on 21 June 2020 showing what looks like a child on a miniature motor bike riding across the field within a worn section of grass with unmown and much taller grass on either side.

56. The photos are helpful when it comes to the length of the unmown grass at the height of the growing season which can, I suspect, grow somewhere in the region 1-2 feet and would generally be too long to walk through in comfort (especially when there were trodden tracks nearby) although a dog could certainly chase through it (see A/126-127, A/130-131, A/138, A/140, A/142, A/153, A/155-156 and 183). I also accept that the height of the grass in the growing season would not be consistent across the whole of the field and would probably be lower on the periphery of the field (see A/126, A/138, A/154 and A/163). Judging from the photos, where the grass is long and unfit for walking users very probably stick to the established tracks where the grass is more convenient for walking (see A/126 (photo 4b), A/138, A/153, A/183 or even the picture of J Clark's dog in 2015 at A/163 which is walking quite close to App/3 where one can see that even where the grass is not especially long there is still a worn track curving around the corner of the field in a north-easterly direction along the Trowbridge Road boundary). It is undoubtedly true, however, that there are photos of instances of recreational use taking place outside the established tracks such as during the snow or before the start of the growing season when the height of the grass makes

walking much easier across the whole of the field although it is to be expected that where the established tracks become muddy pedestrians will normally walk outside them.

The objectors evidence

The written evidence

57. I shall begin with the evidence of the late Roger Pike who died in December 2017. Mr Pike used to own the application land (in fact the Pike family owned around 500 acres in and around Hilperton village, including the land on which the Paxcroft Mead development was built) which is now vested in his two daughters, Elizabeth Pike and Mrs Carolyn Parkinson, both of whom gave oral and written evidence objecting to the application.
58. The late Mr Pike's statement is at OBJ/26 and is dated 2 October 2017. Until he retired Mr Pike was a local dairy farmer. He confirms that in the period 1990-2014 the application land was being used by the late Richard Fyfe for grazing livestock during the summer and autumn seasons. Following the construction of Elizabeth Way he says that Mr Fyfe (who I understand died in 2018) used the land only for silage.
59. Mr Pike accepts that dog-walkers have been using the land. He makes the point that 'cattle and dogs do not mix very well' such that there would have been around four months each year where dogs were not being walked on the land. He says that even if dog walkers were using the land at the same time as cattle were in the field they would not have been able to roam where they wanted.
60. Mr Pike agrees that he allowed grave diggers access to the graveyard with their equipment via the gate on Middle Lane (point 1 on App/3) and for camping and 'other extracurricular activities' by school pupils at Hilperton School on special occasions although he denies that the school would have gone onto the land 'whenever they like without running it past me first'.
61. The late Richard Fyfe's statement is dated 2 October 2017 and will be found at OBJ/15. Mr Fyfe deals with the arrangements which enabled him to graze

the land and to mow it for silage or a hay crop. He produces the grass keep agreements for the seasons in 2011-2014 which he says are just some of the agreements which he had with Mr Pike over the years in 'the 27 years or so' he used the land. He says that he mowed the land for silage in around June and grazed livestock there for the rest of the time (in the case of the agreements between 2011-2014, the right to graze endured between 1 March and the 31 December which is likely to have been the norm whilst Mr Fyfe used the land until the end of 2014. The last of the three grass keep agreements produced was made with Mr Pike and his two daughters who by then were joint owners of the land – in fact the 2014 agreement was more costly and extended to 23.56 hectares whereas the earlier agreements had involved only the application land which extended to 12.87 acres. Mr Fyfe says that with Elizabeth Way splitting the land it was no longer convenient to use the land for grazing although he continued to take a cut of silage up to 2017 when he retired from farming.

62. There follows at OBJ/121 a statement from a Richard Vigar who farmed locally and whose firm J.H Vigar & Son took a grazing licence from the late Mr Pike for a period of 9 months ending on 30 November 2017. It is to be observed that he also took a hay crop and a cut of silage in the 2017 growing season.

The oral evidence

63. Richard Vigar's daughter, Jacqui Browne, gave oral and written evidence. Her statement is dated 10 September 2020 and will be found at OBJ/11. She confirmed that the Vigar family took over the land under an agreement which lasted between 1 May to 30 November 2017 and which has continued to date. The grass is cut for hay and silage in June/July and is not used for grazing. Mrs Browne says that she only visits the field a few times a year before it is cut. In her statement she says that she observed people walking on the paths through the field rather than through the longer grass. She says that the grass 'is far from ideal' and one of the reasons for this is that the field is used by 'a lot of dog walkers'.

64. In her oral evidence Mrs Browne said (and she was, I think, speaking in general terms) that dog-walkers follow paths, where there may be no grass, even though their dogs may be off the lead. In the case of the application land she said that the paths would have been 'permanently obvious to walkers any day in the year as the grass is flattened by frequent walking'. She said that you could not avoid seeing 'trodden footpaths around the field'. The crop (be it hay or silage) would have been 'between' the paths was not of good quality and it was not as if it was a 'new ley' (i.e. land put down to grass for one or more years as opposed to permanent pasture). She said that there was no grass to cut on the tracks within the field.
65. Mrs Browne said that there were always dog walkers in the field on her infrequent visits. Dog-mess had also been a concern (although she herself had not seen any) with the result that none of the silage cut in the field is fed to their cattle within 6 months of being baled.
66. I accept the evidence of Mrs Browne who was a conscientious witness, although her own observations of people using the land were necessarily limited as her visits were only occasional. The thrust of her evidence, however, was that the tracks within and circling the field were flattened ground indicating where regular walking must have been taking place.
67. The firm of R.H & I.R Craddock Ltd were also initial objectors to the application to register. A letter of objection from this dated 31 August 2017 will be found at OBJ/28. In the event Mr I.H Craddock (who was born in the village in 1961) gave oral evidence (R.H Craddock is his father). The Craddock's have a farm in Hilperton and Mr Craddock is familiar with the application land. The Craddock objection is based on the fact that any use of the application land by local inhabitants is limited to the four PROWs.
68. The Craddock land is extensive and includes the arable and pasture beyond Middle Lane along with other land on the south-east side of Hilperton to the north of Devizes Road. Mr Craddock said that he only walked with his own dog on the application land 'once or twice'. Indeed since 1997 he has lived in Hill Street which is not especially close to the land.

69. Mr Craddock accepted that a lot of (as he put it) 'dog activity' takes place on the application land although he also said that there are 'also a lot of footpaths, so it's a good place to walk a dog'. Mr Craddock is aware of the importance of footpaths as he says that he marks out the paths on the Craddock land once a crop has been sown. One can see from the plan at App/2 that HILP5 and HILP54 crosses arable land belonging to the Craddocks (see also the 2014 image from *Google earth* at A/189). He also says that he is 'very quick to jump on anybody not walking in the right place'.
70. In dealing in chief with what he observed taking place on the application land, Mr Craddock accepted that he had seen dog walkers walking between the PROWs. When cross-examined about this he said that the dogs he had seen 'were wandering freely across the land'. In terms of cattle on the land, he said that after the silage has been cut there may be a batch of up to 30 cattle on the land.
71. I find that Mr Craddock was a genuine witness. What I think he probably meant when he gave evidence in chief about dog walkers walking between the PROWs was that he saw dogs wandering all over the field. This is what he claimed in cross-examination. I doubt this matters very much as I find that Mr Craddock was not a regular visitor to the application land and that his observations of dog-walking were limited to what he saw on his occasional visits to the land. He is, I think, unlikely to have gathered very much about where, precisely, people were walking on the land if he was relying solely on his view of the application land when looking across from the Craddock land.
72. Elizabeth Pike gave oral and written evidence. Her statement will be found at OBJ/10.
73. Ms Pike told the inquiry that she was brought up in Hilperton. She and her sister left the village in the 1990s. In her case she returned home to visit her parents on a very regular basis (I think she lived firstly in Melksham before moving to Chippenham). In their retirement in the 1990s her parents, having farmed in the village at Church Farm, moved to live in Nursery Close which is very close to the application land. Ms Pike said that she visited her parents most weeks. Although her mother died in 1999 she continued seeing her

father regularly, certainly after 2012-13 when he became more infirm, until his death in December 2017.

74. Ms Pike has always had a dog and regularly took it for walk on the application land when she visited her parents. She says that she saw dog walkers in the field having accessed the land at any one of points marked 1, 3 and 9 on the plan at App/3. She says that she used the perimeter path. She says that in general people walked on the paths within the field. She says there were more dog walkers on the field after the development of the Paxcroft Mead estate (see location plan at App/4 – she said that walkers from the estate entered the field at point 11 on the plan at App/3 whereas villagers whom she knew would usually enter the field at points 3 and 9).
75. Ms Pike says that her father paid for, as I understand it, a number of the pedestrian swing gates and 5-bar gates which were kept locked. She particularly mentioned the 5-bar gates off Middle Lane and into the graveyard where a key/keys was/were kept by the Parish Council and/or the contractors in order to facilitate the digging of graves. She also mentioned instances of overflow parking (involving as many as 100 cars) permitted by her father within the field at times near to the gate at point 1 on App/3 when there was what she described as ‘Open House’ at Hilperon House which is located just in front of the church. I doubt whether this happened very often as she mentioned such events occurring only in June 2015/June 2016. I also gather from her oral evidence that pre-arranged parking within the field also took place from time to time in the case of weddings and funerals although in view of her cross-examination replies it seems probable that this would have occurred, as she put it, ‘back in the day’ or in the 1980s/90s rather than in recent years. She says that her father was, as she again puts it, ‘a very giving person to the village’ and he always gave his consent to his field being used for these purposes. (It is worth noting that Ernest Clark, as Chair of the Parish Council, said that he had no recollection of the field being used for car parking at the time of weddings or funerals during the qualifying period from which it may be reasonable to infer that when she said ‘back in the day’ Ms Pike probably meant before 1997.)

76. Ms Pike says that her father was a quietly-spoken man who did not look for trouble. She doubted whether he would ever ask someone to stick to the PROWs crossing his land if they were walking outside these paths. She said that he just 'let things go – he was liked in the village'.
77. In relation to the grazing cattle, Ms Pike said that before Elizabeth Road came (and, as already indicated, the road works severed the application land from the two fields which adjoined it on its south-western side (A/187)) cattle would move around between these fields once the silage had been cut.
78. Ms Pike was a conscientious witness. She not only visited the field regularly but also had a very clear recollection of what she observed when in the field and generally gave her evidence with great care.
79. Carolyn Parkinson also gave written and oral evidence. Her statement is at A/9. Mrs Parkinson left Hilperton more than 30 years ago. Mrs Parkinson lived locally for a while before moving to the Isle of Wight in 2001 where she still lives. She said that she visited her father once a month and would generally stay for a couple of days. On her visits home she often walked her dog in the field if he had accompanied her on the trip. If she met up with her sister they would walk the land together. She said that unless on a lead the dogs in the field would run off with their owners following them. She also said that most people walked around the outside of the field unless they wanted to walk further in which case they walked across the field. Mrs Parkinson gave clear evidence that 'most people stuck to the tracks', meaning on the PROWs or the perimeter path.
80. Although not as regular a visitor to the field as her sister I find that Mrs Parkinson was, like her sister, a genuine witness who was clear in her evidence that walkers in the field kept mainly to the established tracks.
81. Before leaving the objectors' evidence I also take into account the letter of objection dated 30 August 2017 which was sent in by Mrs Rosemary Sims of Hilperton Marsh who complains (in effect) (i) there is already adequate amenity space in the village; (ii) the field is not of high value in ecological terms; (iii) the field will not be maintained as well as it is at the present time

(presumably she means if it is registered as a TVG); and (iv) the only reason the land has been selected for possible registration is that it will at least limit any development taking place within the Hilperton Gap.

The applicant's evidence

The oral evidence

82. Nicola Walker was the applicant's first witness. Mrs Walker's statements will be found at A/29 (17 August 2020) and A/89 (undated). Mrs Walker lives at 16 Church Street, Hilperton. This address is at number 16 on the plan at App/4. Mrs Walker has lived in the village since 2007 and has been a dog walker in the field daily since 2008.
83. In her 2020 statement she says that she has walked her 'dog daily around the field for his health and mine'. She mentions 'a well trodden track around the field, at a distance of five or more meters from the edge in places'. When cross-examined she said that most walkers used this path. She says that there are a significant number of dog walkers using the field even when cattle have been kept there. She thought that there was usually only around a 'dozen or so' cattle in the field at any one time and that cattle would have been in the field (and I understood her to mean annually – no doubt after the silage had been cut in June/July) for some '8-12 weeks'. She said that the cattle were not particularly intrusive and that they moved around 'as a herd' and it was easy to walk around them or to change direction as necessary to avoid encountering them. However whenever cattle were in the field she said that she kept her dog on the lead.
84. Mrs Walker said that she mainly accessed the field via the gate at point 3 on App/3. Only rarely would she walk through into the adjoining fields before Elizabeth Way was built. When on the field with her dog she says that she followed the path going round the field and that she rarely used the cross-field paths. She says she has made many new friends on the field over the years and meets up with other dog-walkers using the field at the same time.
85. Mrs Walker's step-son was only 6 when she moved to Hilperton and, usually in the summer, they played ball games on the field. In the winter when it

snowed they built snowmen (I have no precise details as to when the field would have been covered in snow although there are photos of snow in 2009-10 although Mrs Walker conceded that it would not have been possible to build a snowman every year). The playing of games would have taken place outside the tracks mainly at the northern end of the field.

86. Mrs Walker stated that the length of the grass did not affect her use of the field as there was always 'a very defined track around the perimeter of the field'. There were also people 'crossing or walking a direct path across the field without dogs' (and she agreed that there are a number of PROWs within Hilperton Gap – for instance, one can see from the plan at App/2 that HILP3 continues right into Trowbridge via TROW47). She considers the use of the PROWs to have reduced since Elizabeth Way was built which, as I understand her evidence, means that most people using the field are using it as a destination for recreation.
87. In chief Mrs Walker dealt with other activities observed by her on the field such as people picnicking, sunbathing or just sitting on the field, frisbee throwing and ball games. The clear impression I got from Mrs Walker's evidence is that none of these activities took place with any frequency and even then occurred only in small pockets of the field, usually around the periphery when the grass was growing or in the central areas after it had been cut. Indeed, when cross-examined she accepted that whereas the PROWs were used regularly by walkers (with or without dogs) it was only occasionally that other recreational activities take place on the field. She noted that organised sports took place at the recreation ground (as a member of the Village Hall Committee until 2010 Mrs Walker would have been aware of what took place at the recreation ground and how it was run).
88. Mrs Walker was a genuine witness and I accept her evidence. Her evidence was clearly to the effect that the field is mainly used by dog walkers who walk on the established path running around the outside of the field. It was also her evidence that other recreational activity outside the various paths would have taken place only occasionally.

89. The next oral witness was Tasha Harvey who, until a couple of years ago, lived at 3 Nursery Close which backs onto the field to which access is obtained via its own gate (see point 6 on the plan at App/4). She now lives at Victoria Road in Trowbridge which appears to be only a short walk from Middle Lane. Her statements are at A/33-36.
90. Ms Harvey was born in Hilperton in 1996 (at a time when the family were living at an address at Hill Street in Hilperton). She says that the application land 'has been part of my life for as long as I can remember'. She mentions playing in the snow with her sister and friends, flying kites, games of rounders or playing hide and seek with friends who lived locally. One can imagine how simple it would have been for Ms. Harvey, when only a small child, to play in the field within such a short distance of the back gate to her home. She says that as she became more independent she would use the entire field, wandering off the paths picking flowers, flying her kite, playing in the snow or taking the dogs of neighbours for a walk (she walked a number of dogs belonging to various people on the field – she said that she walked on and off the paths). When she was old enough she says she walked into Trowbridge across the fields before Elizabeth Way was built.
91. In her oral evidence she recalls playing rounders in the field between the ages of 5/6 until she was 16 although when asked about this it never occurred more than around 7-8 times a year and would have been less often after the age of 14 when her main playmates would have been her friends at her secondary school in Bradford-on-Avon. It seems that the area in which she played rounders would have been outside her home although her flower-picking took her further into the field. She says that she gave cattle a wide berth whenever they were in the field. They never prevented her from being able to use the field for whatever reason she wanted, nor did the grass-cutting in the summer.
92. Ms Harvey said that she used the field for walks with or without her neighbours' dogs. She did though observe a number of dog-walkers using the field either on the paths or walking outside of them for different reasons such as the presence of grazing cattle which she says numbered between

15-20 max. She said that the field was mainly used by dog-walkers in her time at Nursery Close. Of some significance she said that any other activity taking place in the field would have depended on the grass by which, I understand, she meant the length of the grass.

93. Although I find that Ms Harvey was a genuine witness I consider it to have been more likely than not that her use of the field would only have been regular in the period when she was old enough to play unsupervised (such as when she was playing rounders near her back gate) at a time when she was living in Nursery Close and only then when she was still attending the local primary school. At other times, I suspect that the frequency of her use of the field would have been limited mainly to those occasions when she walked dogs belonging to others around the circular path although I do not doubt that the dogs she was walking ran off the lead to various parts of the field and that she would have run after them if she felt inclined to play with them. In my view, it is probable that when walking in the field she kept mainly to the paths. Nor am I suggesting that she did not roam around the whole of the field when picking flowers. It is just that I find that this activity probably happened only occasionally when she was a small child, rather like her kite-flying, building dens and playing hide and seek or even playing in the snow at those times in the qualifying period when there was enough snow on the ground.
94. Robert Coles lived at 4 Nursery Close between 1978 and April 2016 when the property was sold to the Hart family. This is the charming property shown in the remarkable photo at A/148 showing a perfect rainbow overhead. One can see the gate into the field in this photo. His statement is at A/37. It is worthy of note that until Nursery Close was developed this property (which used to have a Church Road address) enjoyed no vehicular access for which he had to obtain consent from Mr Pike to use the access off Trowbridge Road at point 10 on the plan at App/3 (which has fallen into disuse but still affords access to 4 Nursery Close if required).
95. Mr Coles and his wife have two children who were aged 15 (boy) and 13 (girl) in 1997. Mr Coles frankly admitted that his children probably stopped

using the field as a play area when they were aged around 14. In the period 1990-2015 the family had two dogs who were walked daily in the field. He was asked about his regular walking route and he said that it would have been around the perimeter of the field (they walked further afield when the dogs were younger). The dogs were usually off the lead unless there was cattle in the field in which case they would walk around them. Sometimes he would see someone he knew and would walk over to speak to them.

96. Mr Coles said that most people walked around the field although there were times when this was not the case and he cited the photo at A/148 which was taken further into the field or when kicking a ball about with his son Michael who was 15 in 1997 and which I doubt would have been a regular occurrence in the qualifying period. Mr Coles also mentioned sunbathing or people kicking a ball around in the summer before the grass got too long. There is also the photo of Mrs Coles sitting on the ground with her dogs in 2012 which shows them in the field just outside HILP1. The second photo is another 'in the field' photo showing a local mother and Mr Coles's daughter playing with a cow not far from their back gate but still further into the field than HILP1.
97. Although Mr Coles accepted that there was more walking in the field with the expansion of the Paxcroft Mead development he said that people (and I took him to mean dog walkers) 'always walked around the field'. He said that the field was mainly used by dog walkers. He also mentioned kite flying, in which his own children indulged, which he observed several times a year although he did not give any further details about this. Although in his statement Mr Coles mentioned watching visiting hot air balloons, helicopter landings and kiteboarding these are most unlikely to count as qualifying activities.
98. I accept the evidence given by Mr Coles who did his utmost to assist the inquiry. It is plain from his evidence that the field was mainly used by dog walkers who walked around the field. Whilst it is true that parts of the field would have been used for other recreational activities, the impression I gained from his evidence is that the field was mainly used by dog walkers. It was obviously a great blessing for the Coles' family to have had such ready

access to this field. It was obviously a safe haven for the Coles' children but, as Mr Coles recognised, by the start of the qualifying period (1997) his children were of an age when they were, or were soon to become, interested in other things rather than playing around in a field with the limited attractions which this field has for young children.

99. Sonja Kotevska currently lives in the property at point 19 on App/4 (4 Copper Beeches) which is close to the Trowbridge Road entry at point 9 on the plan at App/3. She has lived in the village since 1990. Her statements will be found at A/43-49. From around 2008 Ms Kotevska has been the Lead Practitioner/Manager of St Michael's Pre-School which is based at the Village Hall at Whadden Lane. She produced the photos of children running around the field at A/46-47.
100. Ms Kotevska said that from sometime in the 1990s (and continuing) children from the Pre-School (mainly in the warmer weather) visited the field in small groups for nature studies/recreation (up to around 20 times max each year and involving groups of 14 max with 4 accompanying adults). She said that the children (3/4 year olds) would have been on the field for around half an hour at a time. She said that she had accompanied the children to the field on these nature/recreation trips even before she became Lead Practitioner/Manager of the Pre-School although she doubted whether she would have accompanied the children to the field as early as 1997 although her predecessor would have done so.
101. Ms Kotevska also gave evidence of her own walking on the field (after 1998), once or twice a day, with dogs (sometimes four at a time) belonging to others depending on whose dog she was walking. She says that she usually walked across the field and did not stick to the paths. Sometimes she had to walk outside a path in order to bypass waterlogged areas (this was a reference to the south-east side of the field). She says that she also walked in the centre of the field to avoid groups walking around the outside path. She also said that other dog-walkers walked outside the paths. She also said this in chief: 'When I'm walking I see people walking off the outside path most of the time'. I have not overlooked her written evidence that when using the field she has

also seen (as she puts it) 'villagers using the whole field to take exercise, flying kites, dog walkers and joggers using the whole field'.

102. When cross-examined Ms Kotevska said that the Pre-School had not asked for permission to use the field although there were risk assessments in place (which she did not produce). Although Ms Kotevska accepted that she had met the late Roger Pike in the village she denied that she had ever sought permission from him in relation to the Pre-School's use of the field for the purposes of their nature/recreation trips.
103. I was concerned by elements of Ms Kotevska's evidence. Firstly, I find it hard to accept that permission was not obtained by the Pre-School at some point for children as young as this to be allowed to use the field whilst attending Pre-School. A risk assessment would be the norm in a situation such as this which, as it seems to me, is bound to have raised the question of landowner consent. It might also have asked whether the landowner had insurance cover in place for normal accidental risks. It seems to me that a visit to a field used for agricultural purposes (albeit only occasionally) by upwards of around 14 children aged between say 3-4 along with 4 supervising adults (a trip of some distance for such young children and along busy roads), would not have been a stroll in the park but an undertaking of some magnitude for a Pre-School and doubtless took a great deal of organisation and very probably also required parental consent. Ms Kotevska did not say that she had looked through the available papers or had spoken to her predecessor to ask whether there had in fact been an initial permission (which I am sure Mr Pike would have given) which I think she ought to have done in view of the importance of this evidence. All she said was that she had never asked Mr Pike for permission (even though she accepts that she had met him in the village). In my view, this is not a satisfactory answer. Of course, if he had ever given permission then the use of this field by these children and the accompanying adults who lived in the village would not be qualifying use.
104. The second concern I have about Ms Kotevska's evidence is that she said that whenever she was on the field she saw 'people walking off the outside path most of the time'. This was said by her in the context of her other

evidence that she had seen other dog-walkers walking outside the paths. This is important evidence. What she was saying was that dog-walkers did not stick to the paths which is not consistent with the weight of the evidence from other witnesses which is to the effect that they usually did. In the circumstances, and especially in light of her evidence on the permission point, it is, with regret, that I am bound to advise the CRA that it should not attach great weight to the evidence of Ms Kotevska.

105. Ernest Clark is Chair of Hilperton Parish Council. He lives close to the field at point 7 on the plan at App/4. Mr Clark is also a District and County Councillor for the Hilperton ward. His written evidence is at A/39-42 and at 81 (I have also noted his wife's statement at A/98). He has lived in the village since 1992 and within a short time he became a regular visitor to the field, initially (weather permitting) with his children when they were young and, since 2002, as a dog-walker (he has had two dogs since 2006 which have been walked by he and his wife). He has three children who were aged under 10 in 1997, two of whom (now living out of the area) have provided supporting statements at A/97 and at A/100.
106. His written evidence is to the effect that he and the children used the whole of the field for recreation and not just the PROWs. He also speaks of what it was like before Elizabeth Way was built when he was a regular user of the adjoining field to the south-west where his dogs continued to roam. He also says that the grass cutting does not hinder use of the field as it takes only a short period of time to cut and bale the grass and he avoids the vehicles involved in this work if he is using the field at the same time. The position was similar when cattle were grazing in the field (and they were never there for extended periods) although he kept his dogs on their leads and kept away from the cattle. Mr Clark also spoke of children 'running around the field', joggers and others picnicking in the field or sitting around in collapsible chairs. He concludes his written evidence by saying that on most of his visits to the field there was usually one other walker (usually with a dog) using the field but 'not on any of the public footpaths'.

107. In his oral evidence Mr Clark said that his children walked with him around the perimeter as 'the hedges were more interesting'. He also said that the exact route of the circular path 'would vary' and he instanced the introduction of new trees planted in around 2010 which would have affected the location of the perimeter path alongside Trowbridge Road which is now further into the field than used to be the case. The position was the same in relation to what he called the 'trodden paths around the field' which he said were not in the same place every year although he conceded that they were 'roughly' in the same place. He claimed that he was not 'a great user of the ways'.
108. It emerged that he took longer walks if (as he put it) he was 'feeling more energetic' (which I took to mean beyond the field into the adjoining fields before Elizabeth Way was built) although he said that he now walked 'one or two laps' of the field (which he explained in cross-examination meant walking around the field twice) although he paid 'no regard' to the trodden paths. As previously indicated in the case of Ms Pike's evidence, Mr Clark could not recall the field being used for parking during funerals and weddings during the qualifying period and I accept his evidence about this.
109. When in chief he was asked where he walked in the field he said that he walked both on and off the 'trodden paths'. In the case of others, he observed that some people used the perimeter path whereas others (like himself) followed their dogs 'rather than a track on the ground'. He did though accept that the PROWs were 'being used but not by a lot of people'.
110. When cross-examined Mr Clark said that children would have played outside the perimeter path. He also explained that his routine when going for a walk in the field started with entry at point 9 on App/3. He then let the dogs off the lead and followed them, aiming to intercept them as and where he could. He said that he did walk on part of the perimeter path 'when [he] needed to do so'.
111. When asked by me to explain his reference (in chief) about walking 'laps' of the field Mr Clark said that, having entered the field (off Trowbridge Road) at point 9 he walked on it in (as he put it) a 'haphazard way following the dogs

around, sometimes on the permitted path but mostly off it, but where I go is not governed by the presence of paths or where they take me’.

112. The evidence of Mr Clark has troubled me as I think that he subconsciously exaggerated the extent to which he walked outside the trodden paths, not least the perimeter path, which is where one might reasonably expect him to walk, or mainly walk, if, as he claimed, he walked ‘one or two laps’ of the field. It also seems to me that it is inherently unlikely that he regularly walked all over the field until the grass was cut in June/July as the grass was probably too long to make it worth the effort when there were trodden tracks all around the field.
113. Mrs Hart and her family moved to the village in 2007 living initially at 221 Church Street (between 8/18 on App/4) and, since 2016, alongside the field at 4 Nursery Close. Her statements are at A/55-57. She and her family have used the field throughout their time in the village. Her daughter Phoebe learned to ride her bike on the field. Mrs Hart was happy to allow her children to play unsupervised in the field with their large group of friends in the village by the time of their final year at primary school. When living at Church Street she would normally wander down to the field to check up on them and/or to get them home for their tea. Mrs Hart says that the children played in most of the field although, as it seems to me, she cannot really cannot be sure where her children would have played on the field if she was not with them.
114. The family have had a dog since 2009 (one following the death of another) and (weather permitting) she, along with the children when they were younger, walked with the dog daily on the field with the dog off the lead unless, that is, there were cattle grazing in the field (she said that she only used the field occasionally before they got a dog in 2009). She says it was a case of following close after her dog so that she could scoop up any mess. She says that if she was meeting friends she might only walk on the trodden paths. Indeed she said that if she saw people she knew walking on the perimeter path she would do likewise from which I infer that this is where her dog walking friends mainly walked when in the field. At other times, when walking on her own or with the children, she said that they did not stick to the

paths and (as she put it) walked 'randomly'. She said that she has never 'stuck to the track' which I take to be a reference to the perimeter path. She says that on a normal day (since 2016) as many as 100 dogs use the field – 'They all use it differently and randomly'. Mrs Hart described it as a 'massive amount of dog-walking'. Although at one time she counted as many as 15 separate families using the field, she agreed that the field was predominantly used by dog-walkers who, as she said, wandered everywhere although people do go 'round the outside'. Mrs Hart also said that the location of the tracks might shift because of mud.

115. Mrs Hart did not consider that the length of the grass impeded her use of the whole of the field. She said that the grass was not long for very much of the year. Children also used to cycle on the field and she has regularly seen people flying kites ('dozens of times') and on one occasion I think she even saw someone kite-surfing whose identity is unknown.
116. Mrs Hart has taken a leading role in the application to register. It was she who signed the statutory declaration in support. She canvassed support and asked for statements from people in the village and the application came to be made in the name of the 'Church Field Friends'. She also corrected typos in the helpful online survey usage document (August 2020) at A/193-202 (which generated 93 participants and additional comments from 43 individuals) where we were told Alison Hoskins on A/196 should in fact be 6 and not 20 years use and Adam Ingham on A/195 should be 24 and not 88 years. I am quite satisfied that the application and evidence-gathering process was undertaken by Mrs Hart and her colleagues with great care and with all due propriety.
117. Mrs Hart is undoubtedly very committed to the application to register. However, it was my impression that she, in common with Mr Clark, subconsciously exaggerated the extent to which she walked outside the established paths across and around the field. For instance, she claimed that her children used the whole of the field even when she was not with them. Further, her evidence that she might only walk on the trodden paths if she was meeting up with friends or that if she saw people she knew walking on

the perimeter path she would join them is not entirely credible. It seems to me that she probably only gave such evidence in order to stress how little she used the established paths. I also doubted her evidence that the growing grass did not restrict her use of the whole field when clearly it must have done and for months at a time during the growing season. Although her evidence clearly demonstrates that a large number of people in the village used the field it is not, in my view, compelling when it comes to the central issue on this application, namely as to exactly what parts of the field she and others used when they were there walking with or without dogs.

118. Graham Kehily has since 1998 lived at 109 Church Street which is at point 5 on App/4. His statement will be found at A/53. He has two children, boys, who were born in 1999 and in 2002. The family had a dog between 1999-2013 and in his statement Mr Kehily said that he used the field extensively for walking the dog and that his sons often came with him. He said they would walk across the field and that the dog would run around and the children played ball games. He said cattle (which he put at around 30-40 cows – although he said that cattle had not been there for several years) would have been in the field for ‘a few weeks’ at a time when the grass would be trampled down. Mr Kehily said that the tracks are more noticeable now than they were 10-15 years ago although when cross-examined he said that he was not ‘conscious’ of the tracks going back to 2000.
119. Mr Kehily says that he used the field as an ‘open space’ and that he did not stick to the path, playing ball games with his children (which he said was ‘a weekend thing’) within, as I understood him, the wider area outside the tracks. It appears that his sons left the village in 2005 although the dog stayed with him. This change meant that dog walking reduced to around 2-3 times a week whereas his wife had taken the dog out more often than this. He also said he jogged around the field in the period 2007-14.
120. In cross-examination Mr Kehily said that there had been ‘a perimeter track at most times’. It was, he said, largely where he ran when he was jogging in the field. When taking the dog out he reiterated that he walked across the middle of the field, outside the tracks, to get to the other side of the field. He was not

especially clear what he did once he had walked across the field. As he put it, 'It's been let's go for a walk to the field'.

121. Although Mr Kehily was a genuine witness his evidence was not as detailed as it might have been. The impression I get is that for a limited period before 2005 he and his wife walked the dog in the field and for an even shorter time whilst his sons were old enough to play ball games, quite possibly around the periphery of the field seeing as this is a very large field and the boys were still very small even by 2005 (certainly Shaun who was born in 2002 whereas his brother was still only 6 in 2005). After 2005 Mr Kehily says he walked the dog some 2-3 times a week in the field until 2013, or perhaps earlier than this as the dog would have been getting on in years by the time it no doubt died in 2013 and the field would have been a longish walk for an old dog. Other than dog walking after 2005, Mr Kehily jogged around the perimeter path between 2007-14. It seems to me that, reduced to its essentials, Mr Kehily's evidence is probably of some value to the applicant's case but it does not greatly help to deal with one of the main issues on this application which is where local people generally walked when they used the field for informal recreation. I am also puzzled by Mr Kehily's assertion, when cross-examined, that he was not 'conscious' of the tracks going back to 2000 whereas it is probable that there would have been there. One only has to look at the images on *Google earth* in 2002 and 2006 to see where established tracks ran on the ground at this early stage in the application timeline although they were admittedly less clear on the ground in 2002 than they were in 2006, at least in the photo but I suspect that they would have been clear enough in 2002 to anyone walking across or around the land.

Applicant's documents

122. I have read the documentation which accompanied the application and I have also read the written evidence contained in the applicant's inquiry bundle. I have already dealt with the photos and the appendices speak for themselves. I have also looked again at the note handed in by Mr Waller (OBJ/218-227) entitled: 'Note on Paxcroft Mead Development' which has a number of useful documents attached to it. This document is intended to

show that the new development (which was built out in three phases in the late 1990s (or even later) following an outline grant obtained in 1995) will have led to an increase in the use of the application land. There is a plan showing the Hilperton parish boundary (which was altered in 2017 following a boundary review) which now aligns with the A361.

123. In my directions I asked the applicant to provide me with a summary of their user evidence. In the event, at A/203-211, I was provided with an extremely helpful schedule containing the names of 41 witnesses with the added headings: (i) *Period of use in years*; (ii) *Years of use in rel. period*; (iii) *Nature of own use*; (iv) *Nature of observed use*; and (v) *Notes*. I have decided not to add these additional sheets to the appendices but the applicant may be rest assured that I have studied them with care. At A/203 there is an explanatory note which tells us that the applicant's user evidence summary derives from a table produced by Sally Madgwick when the matter was first looked at by the CRA. I gather that her summary was based on the evidence of the 33 statements which accompanied the application. What the applicant has done is to update Sally Madgwick's summary by drawing on the evidence contained in a further 8 statements. At the end of the day the CRA is left with a very helpful summary of all the applicant's written evidence.
124. The applicant also produced the results of an online survey at A/193-201. It was generated on various dates in August/September 2020 and contains answers to various questions put to respondees such as number of years used, frequency of use, how the land has been used and observed use, along with nearly two pages of further comments which I have read. The survey is clearly interesting but, in my view, the CRA should not accord a great deal of weight to it. In the first place, it is singularly lacking in the sort of detail which the CRA requires in order to be able to make an informed decision (such as where users actually walked on the land) and, in the second, it comes well after the end of the qualifying period even though I accept that a number of those who participated in the survey also claim to have used the land during the material period. However, although consistent with it, it nonetheless adds little in practice to the combined weight of the other written and oral evidence.

125. The use of those witnesses who did not give oral evidence is broadly consistent with the evidence of those who did. The evidence focuses on walking with or without dogs, children playing (including ball games, flying kites and model aeroplanes), jogging, camping and people generally enjoying the land or spending family time in less strenuous ways, including picking blackberries and playing around in the snow. This is all that one might have expected in an open space near to a moderately-sized settlement to which there is unhindered public access and a landowner living locally who seemingly lets them all get on with it, albeit coupled with periodic and mainly limited agricultural use taking place from time to time. I should mention that I have not overlooked the brief flurry of correspondence involving Sadie Pike/Andrew Pike/Ernest Clark/Andrew House in February/March 2013 about rubbish and trespass within the 'Hilperton Gap' which was not investigated in the oral evidence and is not relied on by the objector, no doubt as it is not focused on user within the application land and could apply to other land.
126. The real difficulty with the written statements is that, with some exceptions, the evidence does not deal with the precision that is required as to where these witnesses walked when they were on the land. As I say, in some instances there are indications of where qualifying witnesses walked but the question begs as to whether even this evidence is strong enough to justify registration.
- (1) Mrs Catharina Davies says, for instance, that she took her young children 'for regular walks' in the field and they 'played ball games and ran around the field enjoying the space' (A/73). In his statement (A/74) her husband, Tim Davies, speaks of 'Weekend walks around Church Field when the children were young'. Mrs Davies also says (as does her husband) that they 'also used Church Field as our route to walk into Trowbridge' (Mr Davies speaks of using the field 'for pedestrian access to Trowbridge via Middle Lane'. There was also walking, with and without a dog, but it is unclear where exactly they both routinely walked when using the field for their walks. Their son James also speaks of regular walks on the field when he was young but when he was older he used the land to walk into Trowbridge (A/76).

(2) Sally Lacey says that over the years she has walked 'the dogs all over the field, it is so nice to be able to let the dogs off the lead and let them run free, played games such as rounders and cricket etc ..' (A/83). For instance, did she walk around the edge of the field whilst her dogs ran off elsewhere and how often and where was rounders and cricket played (presumably by her children)?

(3) Phoebe Hart (when aged 14) said in her statement (A/86) that she took her dog 'for walks around Church Field about 3 times a week' (which may not assist the applicant's case). She also said that she plays football, French cricket and with frisbees with her friends but she does not say where or how often this occurred. Mr. Hart says that 'the entire field is in use all the time' which is, I think, far too wide-ranging to carry sufficient weight to justify registration.

(4) K.J Waring said that he suspected that he has 'covered every inch of Church Field chasing after dogs, recovering lost balls and trying to train our canine pals'. This evidence might very well imply that he normally sticks to the paths and from time to time will chase after and retrieve his errant dog or the ball that has not been picked up by the dog (A/88).

(5) Jacqui Clark says that (when they were small) her children ran and played with a ball 'whilst I wandered around the footpaths' (A/98). When they were older they used the path on their way to and from school avoiding the then busy Church Street route. When her children were older (i.e. when they were unsupervised) Mrs Clark says that they played in the field with their friends for prolonged periods. However, and in all fairness to the objector, Mrs Clark cannot sensibly be heard to say where her children played when she was not with them. Her evidence about training her dog in the field is admittedly stronger but this is unlikely to have been prolonged.

(6) Emma Herlinger speaks (at A/99) of 'using church field to walk our dog and exercise ourselves and the children' but she gives no details as to where exactly she regularly walked on the field. She also says her children 'run around the field and have even used their scooter in the dryer summer

months'. Does she mean that they ran around the perimeter and was using a scooter outside the paths even feasible when the grass was longer?

(7) Someone called Andy at A102 says he used the field as a short-cut on his regular trips to Trowbridge. Although he says that he has used the field since 1987 he does not say where he walked.

(8) Lesley House speaks of regular usage of a whole of activities across the entire field and not just the footpaths (A/103). It is also the case that Mrs House and her children used the land on their way to and from their primary school. In my view, this is precisely the sort of evidence which needed to be tested by cross-examination.

(9) Sheila Sawyer's evidence (A/107) also needed more detail. For instance, she says she came to the village in 1974 and she and her children used the field regularly. On the face of it, her children had probably ceased playing on the field before 1997 and the evidence of her own use is not sufficiently detailed.

Closing submissions

127. I hope both advocates will forgive me if I merely summarise the main points within their comprehensive submissions.

Applicant

128. Mr Waller submits as follows:

- (1) It is common ground that the qualifying period is 1997 to 2017.
- (2) Public access to the land has been enjoyed since 1952 which is when HILP1, HILP2 and HILP3 were added to the DMS.
- (3) Elizabeth Way was built in 2015 after which time the land was no longer used for grazing.
- (4) The construction of the road did not interfere with the size, boundaries or the public's use of the land.

- (5) The aerial photos after 2002 show trodden paths throughout the material period. These paths run around the field perimeter and also correspond with HILP, 1, HILP2 and HILP3.
- (6) The applicant's evidence in chief evidence suggested that these paths were renewed after the summer cut.
- (7) The perimeter path remained in roughly the same location.
- (8) There were other tracks not corresponding with the PROWs such as the curved path between Middle Lane (in fact it runs from the circular path and does not go as far as Middle Lane) and HILP3 (which can be seen on the aerial photo for 2017).
- (9) Paxcroft Mead was built out in phases in the late 1990s. Only that part of Paxcroft Mead to the north of the A361 lies within the village of Hilperton (see App/4 plan and OBJ/221 – the boundary with Trowbridge now aligns with the outer edge of the Hilperton Gap on its south-western side). The rest of Paxcroft Mead falls within the administrative area of Trowbridge.
- (10) It is accepted that some of those who used the land in the period 1997-2017 would have resided in the administrative area of Trowbridge and would have accessed such land via points 11, 12 or 13 on the App/3 plan.
- (11) It is also accepted that some of those using the land would have been using it as a place of transit from Hilperton to Trowbridge or vice versa. Such use would not be qualifying.
- (12) The use by the inhabitants of more than one locality would be qualifying use following *Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438. The multiple localities in this instance are the civil parish of Hilperton and the administrative area of Trowbridge Town Council. It is also being alleged in the alternative that the use via the access at 11 was by the inhabitants of more than one neighbourhood. It is suggested that Paxcroft Mead could be described either as a single or (with the A361 as a potential dividing line) a multiple neighbourhood within the town of Trowbridge, perhaps corresponding with the boundary of Adcroft ward which sits on the eastern

side of the town. I found all this puzzling as the application is advanced as a 'locality' claim (see Box 6 on Form 44 with the accompanying Exhibit F being a map of the civil parish). It is too late in closing submissions to convert the claim into one which is based on a neighbourhood claim of some description.

- (13) The written and oral evidence provides 'ample' evidence of qualifying use (including observed use) across the entirety of the application land in order to justify registration (41 written statements, the 2020 online questionnaire and 7 oral witnesses). I am not going to review Mr Waller's submissions on the applicant's evidence which I have already covered in detail along with my findings on that evidence.
- (14) Mr Waller comments upon the objectors' suggestion that there are other open spaces in the locality, including the recreation ground, the grass meadows to the west of Elizabeth Way and to the south of Hilperton Marsh, and in the amenity spaces in and around the new Paxcroft Mead development. The objectors no doubt wish the CRA to infer from this that as there was accessible walking space elsewhere the volume and frequency of use of the application land would necessarily be diminished. Mr Waller points to the heavy use of the recreation ground for football whereas the application land is of an entirely different nature, a place for instance where one could do other things such as fly kites or play rounders or, he might have added, walk dogs off their leads which would not be allowed on the recreation ground. It is also some way off from Paxcroft Mead, even allowing for the A361 road crossing. I might add that I have considered the note on alternative recreational areas in and around the Paxcroft Mead estate lodged by Denise Harvey and Ernie Clark which I thought very useful and informative. It seems obvious that the application land is of an entirely different character to the amenity spaces found within the new development.
- (15) I am invited to discount use which is accepted to be non-qualifying. In this regard, Mr Waller mentions the use of the land as a cut-through to Trowbridge and vice versa (the so-called 'transit use'). Mr Waller dealt with the use of what he called 'the trodden paths' which he analysed as either qualifying use or PROW use. He also posed the question as to whether use

in the case of the former involved qualifying use across the whole of the land. He accepted, however, that most of the witnesses mainly stuck to the 'trodden paths' although there were others who wandered over the field, including some of the witnesses.

- (16) Mr Waller raised the issue of the use of existing PROWs or of emergent rights of way neither of which, he accepts, would be qualifying use. He placed emphasis on what Lightman J said in the *Oxfordshire* case at [2004] Ch 253 at [103] where he instanced a situation where a track lead to an attractive viewpoint (which might readily be regarded as referable to user as a public highway alone) or to a case where users of the track veer off the track and play, or meander leisurely over and enjoy the land on either side which would usually be referable to use as a green. As the learned judge put it in full at [103] (and on which Mr Waller no doubt relies): '... 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'. As Mr Waller puts it at [86]: 'It is a holistic test rather than a test that engages only with the evidence of user of the circular / linear tracks taken in isolation'. This must be right and he cites from *R (Allaway) v Oxfordshire CC* [2016] EWHC 2677 (Admin). He goes on at [89]: 'Thus the question is whether, looking at the entirety of the user evidence holistically, the reasonable landowner would have interpreted the user of trodden paths as referable to a PROW or LSP'. I do not overlook either Mr Waller's reliance on the findings of fact made by the inspector in *Allaway* which he says 'is remarkably similar to the facts' of the present application although I think that Mr Waller would have to accept that TVG applications are highly fact-specific.
- (17) At [91] Mr Waller sets out in detail why, in this instance, 'a reasonable landowner would have viewed the use of the trodden paths on CF as referable to use for LSP, not a PROW'.
- (18) Mr Waller invites me to reject any suggestion that the late Mr Pike expressly or impliedly permitted recreational use. He says that there is no evidential basis for this and the permission afforded to grave-diggers and in relation to

the grass keep arrangements had no impact on the public's use of the land for recreation. Mr Waller is also right when he refers to the evidence about overflow parking for weddings and funerals which, if it happened, either predated the start of the qualifying period or else came after it had ended.

- (19) Mr Waller also submits (in effect) that the agricultural activity did not materially impact on the public's use of the whole field.

Objectors

129. Mr Marwick invites me to read his lengthy opening case outline (OBJ/32) in conjunction with his closing submissions (which was accompanied by a document headed 'Landscape & Visual Setting Analysis' dated October 2017 which was prepared for Hilperton Parish Council and contains some very helpful photos of the Hilperton Gap and plans of the general area – this document would have been helpful during the oral evidence). Looking at Mr Marwick's submissions in the round, it seems to me that the objectors' main defences to the application to register are as follows:

- (1) It is agreed that Hilperton village is a qualifying 'locality' in law. Mr Marwick submits that as this is a 'locality' case, rather than a case involving a 'neighbourhood within a locality', any user by those living outside the boundaries of the village should be discounted (citing *Leeds Group Plc* [2010] EWCA Civ 1438 at [27]).
- (2) The alignment of the four PROW has remained consistent over the years and represents the main way in which the application land has been used, namely by walkers with or without dogs. Any claimed wider use 'is imprecise and unclear both temporally and spatially'. Any walking, with or without dogs (which Mr Marwick accepts is the principal use of the land) should be discounted 'because it is objectively referable to right of way user (see OBJ/33 at para 6) (I believe Mr Marwick to be saying that this is the core issue on the application). It is claimed that any remaining user was either permissive or too trivial or sporadic to justify registration and/or would be incompatible with the use of the field for agriculture. It is also suggested that the length of the grass and the presence of cattle in the field from time to

time would, in any case, have limited the scope of other, non-dog walking, recreational use.

- (3) The CRA should be slow to assume that all the user taking place on the land is necessarily by qualifying local inhabitants. Some discounts need to be made for, if I may put it, outside of locality use during the qualifying period. Mr Marwick suggests that the very location of the land in the Hilperton Gap adjacent to Trowbridge made it more likely that user would also be by walkers/dog walkers from outside the village. He also points to alternative open spaces for recreation both within and outside the village both of which, I understand him to be saying, impact on the sufficiency of qualifying use (he also suggests incidentally that there are formal areas for more structured LSP within both the Hilperton Gap and Paxcroft Mead areas). It follows, Mr Marwick suggests, that the evidence of third party user (by which I understand him to mean 'observed use') should be treated with caution.
- (4) Mr Marwick suggests that the use of all the worn paths was such as to indicate to a reasonable landowner the assertion of emergent rights of way (in the case of the perimeter path) or the use of actual rights of way (x4) and should be discounted. He also submits that any user by those straying off the paths, including by those retrieving their dogs, and any use of the paths in excess of the width of the PROW identified in the statement accompanying the definitive map (likewise picnics and kite flying close to the trodden areas which a reasonable landowner would attribute to right of way user), was such as to indicate the exercise of emergent or existing rights of way and in both cases should be discounted. Any use off the paths should be treated as incidental to these primary uses and would not obviously be referable to LSP. Mr. Marwick cites from *Allaway and Oxfordshire*. He also correctly states that the starting point is how the matter would have appeared to a reasonable landowner observing the user made of his land?
- (5) The CRA should be alive to the risk that the applicant's witnesses have been motivated by a desire to protect the application land against development. The written evidence should be accorded less weight as it has not been subjected to cross examination.

- (6) Other smaller points: (i) a finding should be made that the pre-school children were expressly allowed to use the field at some stage; (ii) heavier use by families living close to the field would not indicate to the landowner that the land was in general use by the local community for informal recreation; (iii) gatherings for snowball fights or building snowmen should be regarded as brief en masse trespass rather than the assertion of recreational right of user; (iv) those with gates opening directly onto the land (and an adjacent PROW) would not indicate to a landowner that a communal right to recreate existed on the land; and (v) helicopter landing is not LSP and no one knows where the kite surfer came from.
- (7) Once non-qualifying user is discounted the applicant falls short of meeting the statutory threshold for registration. Mr Marwick suggests that the burden lies on the applicants to provide convincing evidence that the claim to register has been made out. In this case he suggests ‘that there has not been user of such a duration, nature and quality as to support registration’.

Discussion

130. The application must be tested against the criteria for registration contained in section 15(2) of the CA 2006, namely whether a significant number of the inhabitants of (in this instance) any locality had indulged as of right in LSP on the application land during the relevant 20 year period ending in April 2017.
131. In the first instance, it is plain that the civil parish of Hilperton is a qualifying locality. For reasons already explained, this is not a case where the applicants rely on one or more neighbourhoods straddling more than one locality. The case advanced is based solely on the qualifying use of those living in the civil parish of Hilperton. In the result, the applicants are unable to rely on the use of the land by others living outside the boundaries of the village. The point is academic anyway as the applicants are relying only on the written and oral evidence of those who actually live, or have lived, in the village.
132. The core issue on this application is, as it seems to me, whether, without more, the use of the land for walking, with or without dogs, children’s play and general informal recreation suffices to justify registration? This is not, however, a straight-forward application involving a small parcel of land being

used for qualifying purposes. On the contrary, it is a very large grass meadow subject to low-level agricultural uses which happens to be criss-crossed by four PROW (with gated access points and directional signs) and a circular path running around the outside of the field which, in my view, in the case of the latter, is likely to fall within the category of an emergent right of way. I cannot see how it would have appeared other than this from the perspective of the landowner in a case where walkers mainly use the path to walk around the field and only incidentally walk outside it, perhaps to stand around chatting with other dog walkers or to follow their dog or else cut a corner if they are pressed for time or even to bypass other walkers ahead of them.

133. It seems to me that the main issues which need to be addressed by the CRA on this application are these:
- (a) Where do people mainly walk when they use the land?
 - (b) Was that main use sufficient to justify registration – for instance was it non-qualifying as a matter of law because it was not enough to suggest to a reasonable landowner that the whole of the land was being used for informal recreation during the relevant period?
 - (c) Were other incidental uses outside the trodden paths, when looked at in the round, sufficient to justify registration?
134. I shall start by dealing with the general pattern of use of the land and its context.
135. The land is a grass meadow of long-standing within the Hilperton Gap. The agricultural use within the relevant period has been limited to an annual hay or silage crop although prior to the coming of Elizabeth Way in 2015 it had also been used for the occasional grazing of a small number of cattle (the evidence is too vague to put a number on it but the grazing herd would have been small and non-threatening to walkers) none of which activities in practice, as I find, would have been inconsistent with the use of the land for TVG purposes. It was not as if the land was ploughed or used extensively for grazing. In general, the whole of the land was available for informal recreation during the relevant period although it is important to note that before the grass

was cut in June/July each year there would have been a number of weeks when the grass was longer and more difficult to walk upon.

136. The alignment of the PROW and the main circular path have remained more or less consistent over the years. The *Google earth* images after 2002 demonstrate that this has been the case. The landscape changed in around 2015 with the construction of Elizabeth Way which ran through Hilperton Gap and cut off the land from the two fields which used to adjoin it on its south-west side. One can, for instance, see how cattle would have been moved between these fields with ease and how HILP3 ran across these fields right into the outskirts of Trowbridge. It is also apparent from the rights of way plan at App/2 that before the new road was built walkers could have traversed Hilperton Gap unhindered via a network of paths whereas the new road places limits on the practicalities of this (compare the plans on App/1 and App/2) despite the new Middle Lane crossing.
137. I think Mr Marwick is right when he says that the trodden paths crossing and running around the land represent the principal way in which it has been used by walkers, with or without dogs, during the relevant period. A number of oral witnesses on both sides gave evidence to this effect. It seems to me that whereas, before 2015, there is certain to have been greater use of the land as a place of transit into the adjoining fields, the position after the advent of the new road is that most people now stick to the field as a destination in its own right and use it, as one might expect, by walking mainly on the worn paths or at least as close to these paths as makes no difference. I also consider that any use outside the paths should be treated as being incidental to the primary use of the paths and not referable to LSP.
138. I think Mr Marwick is right when he says that the use of the trodden paths would have indicated to a reasonable landowner the assertion of an emergent right of way, in the case of the main circular path and its offshoots, or the use of actual rights of way when it comes to the use of the four PROW and that, as a matter of law, such use should be discounted for TVG purposes. I also accept his submission (i) that any use by those straying off the paths (including by those retrieving their dogs), and (ii) that any use in excess of the

width of the paths identified in the DMS would also have been such as to indicate the exercise of emergent or actual rights of way.

139. While I accept that, from time to time, people used the field for other recreational activities such as ball games, flying kites and model aeroplanes, jogging, camping and generally enjoying the land, I do not accept that these uses were, either by themselves or collectively, substantial enough or occurred with sufficient frequency to justify registration. I find that these other non-dog walking uses were very probably trivial uses and, as Mr Marwick rightly says, did not involve user of such a duration, nature or quality as would support registration. In my view, such uses are likely to have occurred mainly in the summer months after the grass had been cut when, for a while, the land is bound to have been much easier to walk on.
140. The CRA needs to be satisfied that, for all practical purposes, it can sensibly be said that the whole of the application land had been used for informal recreation always bearing in mind that qualifying use will be heavier in some areas than in others. I have already indicated that, in my view, the land is mainly used by people walking on the trodden paths which, as I find and as I saw for myself on my inspection in August, soon reappear after the grass has been cut. However, this still leaves the rest of the field which, as I find, is largely unused apart from only trivial or occasional uses when the length of the grass and the condition of the weather is such as to accommodate with far greater ease other non-dog walking uses.
141. It is not an uncommon difficulty in what I might call a 'big field' case for a CRA to have to decide whether the whole or part of the land is still registerable even though large parts of it are unused. In such a case, even if the CRA were (a) required to discount the use of the trodden paths, yet (b) considered that other uses taking place outside these paths were still sufficient to justify registration, an applicant would, in these circumstances, (c) still need to identify with precision where these other qualifying uses took place on the land in order that the CRA might then consider whether to exercise its power to sever from the application those parts of the land where qualifying use may not have taken place. As Mr Marwick succinctly puts it at OBJ/33 at para 6, the claimed use in this instance (outside the trodden paths) 'is imprecise and

unclear both temporally and spatially'. I agree. This is not a severance case even if it was arguable that other uses outside the use of the trodden paths would have supported registration which, I hasten to add, is not the case on the basis of evidence laid before the CRA. The applicants' case might have been a good deal more arguable when it came to uses outside the paths if it had showed with much greater precision what was happening on the land, where it was taking place and when but their case under this head had not been properly or strictly proved.

142. I am not going to reiterate my findings on the oral evidence (where, it will be recalled, I expressed concerns about the quality of the evidence of Ms Katevska, Ernest Clark and Mrs Hart) but there is another matter which I should address and it concerns the Paxcroft Mead development.
143. Whilst I accept that this estate resulted in some people who lived outside the village boundary using the land (and so may have numbered amongst others observed to be using the land by qualifying local residents), it is, as I find, unlikely to have been a major component in the overall use of the land although I accept that some discounting would be necessary to allow for the use of those living outside the village. However, it still needs to be recognised that crossing the A361 is likely to have been a major hindrance to those living outside the village boundary who wished to recreate on the field, especially in the case of adults with young children in tow. The field was very probably also too away for unsupervised play in the case of younger children. I am also told that there are suitable amenity spaces within the new estate although I doubt whether they are likely to be as desirable for dog walking as the application land. This issue arose late in the day and in the absence of a proper audit as to how many people accessed the land for recreation via points 11-13 on App/3 one can only but speculate on the number of people using the land who lived outside the village boundary, whether they came from the Paxcroft Mead estate or elsewhere. At the end of the day, however, there were, in my view, enough qualifying witnesses who gave oral and written evidence to signify that the land was likely to have been in general use by the local community for informal recreation. It is just that the user relied on was, for the reasons explained, not qualifying use for the purposes of section 15 of the CA 2006.

Recommendation

144. In light of the above discussion, I recommend that the application to register the application land (proceeding under application number 2017/01) should be **rejected** on the ground that the criteria for registration laid down in section 15(2) of the CA 2006 have not been satisfied.
145. Put shortly, the predominant use of the application land during the relevant period was for walking, with or without dogs, on four PROW and a circular path (and its offshoots) running around the outside of the application land which would not have justified registration as a matter of law as it would not have suggested to a reasonable landowner the exercise of a right to indulge in LSP across the whole of the application land. Other claimed uses taking place outside these paths were either incidental to the primary use of the paths or else were too trivial or occurred only sporadically and, either alone or collectively, would not have been sufficient in terms of duration, nature or quality to support registration.
146. 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 19 November 2020”.

William Webster

3 Paper Buildings

Temple

London EC4Y 7EU

Inspector

APPENDIX 3.1 to WAPC 20.01.2021 report

Appendix 1 to Inspector's report



Appendix 2

Appendix 3

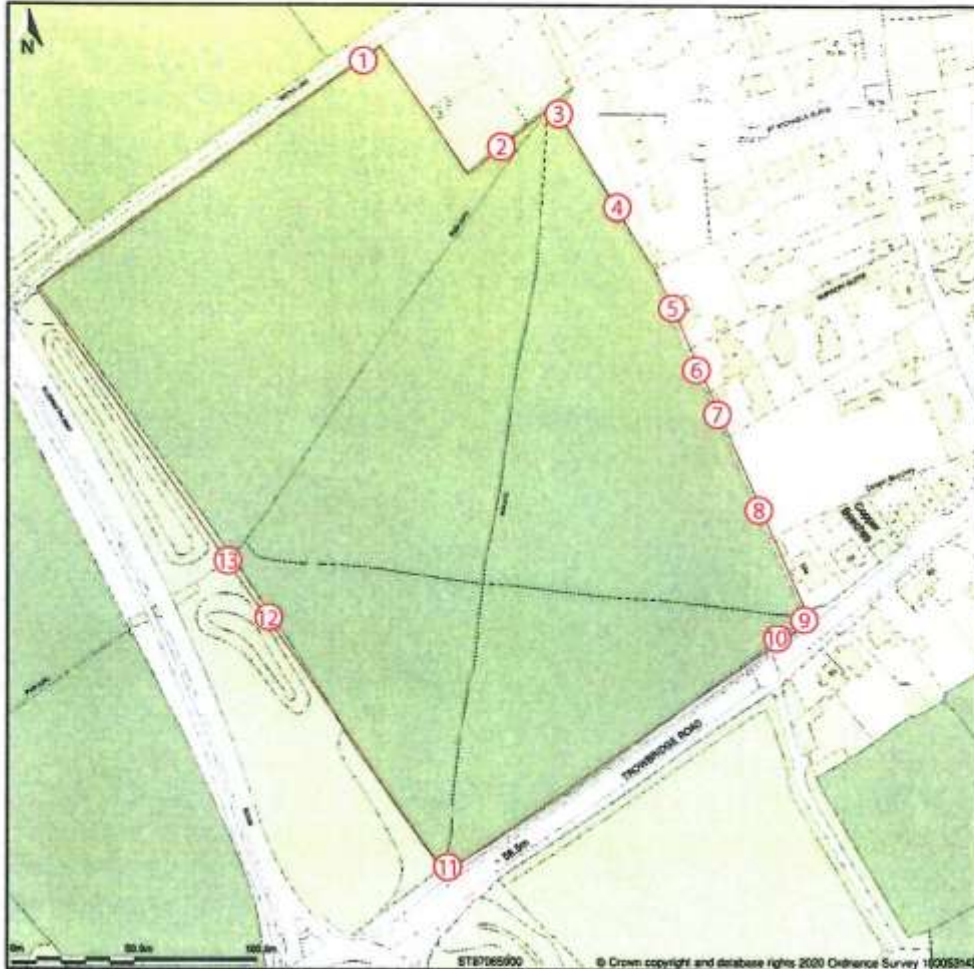
Gate

Numbers

The gates of Church Field

- 1.** Field gate, metal J bar, cannot recall it being secured-well used.
- 2.** Cemetery gate- Ted gate 5 bar, cannot recall it being secured- lightly used.
- 3.** Kissing gate from Church footpath
- 4.** Wooden gate from House
- 5.** Metal gate from House
- 6.** Metal gate from House
- 7.** Now wooden from House at the time of application was metal.
- 8.** Brick surround with pillars and lintel over wooden gate- gateway looks as old as house- 1920's
- 9.** Gate in corner- kissing gate
- 10.** Wooden gate- house number 4 Nursery Close has access to this gate in their Deeds. It is falling apart and not used.
- 11.** Wooden kissing gate -Field Gate
- 12.** Position of field gate prior to construction of Elizabeth Way in 2014. Used for cattle between fields the ground dips here showing where it used to be
- 13.** Kissing gate which is new, before Elizabeth way it was an old metal gate.

Church Field, Hilperton, Wiltshire



Plan shows area bounded by: 366068.75, 156806.37 367266.75, 155205.37 (at a scale of 1:2500), OSGridRef: ST87065900. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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Appendix 4



Witness Location Key

Name	Years used/ since	Number
1. Andy Sewyer	1974/ 44yrs	1
2. Catherine Davis	1998/ 20yrs	2
3. Charlie Barker	2003/ 15yrs	3
4. Chris Hart	2007/ 11yrs	4
5. Graham Kehily	1998/ 20yrs	5
6. Denise Harvey	1993/ 25yrs	6
7. Ernie Clark	1992/ 26yrs	7
8. Heidi Hart	2007/ 11yrs	4
9. Helen Davies	1998/ 20yrs	2
10. Helen Whitehead.	2008/ 10yrs	8
11. Isabelle Hart	2007/ 11yrs	4
12. Ivan Moore	1960's /35yrs	9
13. Ayesha Moore	1960's /35yrs	9
14. J Clark	1992/ 26yrs	7
15. J Waring	1983/ 35yrs	10
16. James Davies	1998/ 20yrs	2
17. Julia Goodwin	1988/ 30yrs	11
18. K Waring	1983/ 35yrs	10
19. Katherine Warr	1980's /33yrs	12
20. Kenn Warr	1980's /33yrs	12
21. Kathl Walker	1987/ 31yrs	13

Witness Location Key

Name	Years used/ since	Number
22. Kathryn Lacy	1992/ 26yrs	14
23. Martin Wilcox	1996/ 22yrs	15
24. Lucy Wilcox	1996/ 22yrs	15
25. Nicola Walker	2008/ 10yrs	16
26. Phoebe Hart	2007/ 11yrs	4
27. Rob Coles	1978/ 40yrs	4 prior to the Harts
28. Maggie Coles	1978/ 40yrs	4 prior to the Harts
29. Ros Huggins	1998/ 20yrs	17
30. Sally Lacey	1993/ 25yrs	14
31. Sarah Kenich	1988/ 30yrs	18
32. Sonja Kotevska	1992/ 26yrs	19
33. Steven Harvey	1993/ 25yrs	6
34. Thomas Clark	1995/ 23yrs	7
35. Tasha Harvey	1996/ 22yrs	6
36. Tim Davies	1998/ 20yrs	2
37. Wendy Coles	1980's /30yrs	4 prior to the Harts
38. Alison Hoskins	2011/ 6yrs	20
39. Kate Hayes	1988/ 30yrs	21
40. John Bowden	1977/ 41yrs	22
41. Lesley House	1987/ 31yrs	23
42. Edward Clark	1997 /21yrs	7

Witness Location Key

Name	Years used/ since	Number
43. Sheila Sawyer	1974/ 44yrs	1
44. Emma Herlinger	2016/ 2yrs	24