

# AGENDA

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**Meeting:** Western Area Planning Committee

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

**Date:** Wednesday 7 June 2023

**Time:** 3.00 pm

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Please direct any enquiries on this Agenda to Ellen Ghey - Democratic Services Officer of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718259 or email [ellen.ghey@wiltshire.gov.uk](mailto:ellen.ghey@wiltshire.gov.uk)

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

This Agenda and all the documents referred to within it are available on the Council's website at [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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## Membership:

Cllr Christopher Newbury (Chairman)	Cllr Stewart Palmen
Cllr Bill Parks (Vice-Chairman)	Cllr Pip Ridout
Cllr Trevor Carbin	Cllr Jonathon Seed
Cllr Ernie Clark	Cllr David Vigar
Cllr Andrew Davis	Cllr Suzanne Wickham
Cllr Edward Kirk	

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## Substitutes:

Cllr Matthew Dean	Cllr George Jeans
Cllr Jon Hubbard	Cllr Gordon King
Cllr Tony Jackson	Cllr Mike Sankey
Cllr Mel Jacob	Cllr Graham Wright

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## **Recording and Broadcasting Information**

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**County Hall, Trowbridge**  
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**Monkton Park, Chippenham**

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## **Public Participation**

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

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

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

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



# AGENDA

## Part I

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

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 5 - 12*)

To approve and sign as a correct record the minutes of the meeting held on 10 May 2023.

3 **Declarations of Interest**

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

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

### **Statements**

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register **no later than 10 minutes before the start of the meeting**. If it is on the day of the meeting registration should be done in person.

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

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

### **Questions**

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular,

questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Wednesday 31 May 2023** in order to be guaranteed of a written response. In order to receive a verbal response, questions must be submitted no later than 5pm on **Friday 2 June 2023**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

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

### **Town or Village Greens Applications**

To consider and determine the following Town or Village Green applications.

- 6 **Commons Act 2006 - Sections 15(1) and (2): Application to Register Land as Town or Village Green - Southwick Court Fields, Southwick and North Bradley - Application no.2020/02TVG (Pages 13 - 310)**

To consider the evidence submitted regarding an application made under Sections 15(1) and (2) of the Commons Act 2006, to register land at Southwick Court Fields, in the parishes of Southwick and North Bradley, as a Town or Village Green (TVG) – Application no.2020/02TVG, in order to determine the application.

- 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

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### MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 10 MAY 2023 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

#### **Present:**

Cllr Christopher Newbury (Chairman), Cllr Bill Parks (Vice-Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Edward Kirk, Cllr Stewart Palmen, Cllr Jonathon Seed, Cllr David Vigar, Cllr Suzanne Wickham and Cllr Mike Sankey (Substitute)

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#### 18 **Apologies**

Apologies for absence were received from Councillor Pip Ridout, who was substituted by Councillor Mike Sankey.

#### 19 **Minutes of the Previous Meeting**

The minutes of the previous meeting held on 12 April 2023 were considered. Following which, it was:

#### **Resolved:**

**To approve and sign the minutes of the previous meeting held on 12 April 2023 as a true and correct record.**

#### 20 **Declarations of Interest**

There were no declarations of interest.

#### 21 **Chairman's Announcements**

The Chairman announced that upon the receipt of further late comments on the application, the applicant had made the decision to withdraw application PL/2022/09808, in order to review the information received. Therefore, the Committee would not be making a decision regarding Agenda Item 8.

#### 22 **Public Participation**

The Chairman explained the rules of public participation and the procedure to be followed at the meeting.

There were no questions or statements submitted.

23 **Planning Appeals and Updates**

The Chairman invited Kenny Green, Development Management Team Leader, to update the Committee on the pending and determined appeals as per the appeals report included within the Agenda Pack.

Following which, it was:

**Resolved:**

**To note the appeals report for the period 31 March 2023 to 27 April 2023.**

24 **PL/2022/02749: Land at Semington Road, Melksham, Wiltshire**

**Public Participation**

Kenneth Graham, local resident, spoke in objection to the application.

Cecilia Hughes, agent, spoke in support of the application.

Cllr Richard Wood, Melksham Without Parish Council, spoke in support of the application.

Steven Sims, Senior Conservation and Planning Officer, introduced the report which recommended that reserved matters approval be granted for the development comprising of the erection of 144 dwellings with informal and formal open space, associated landscaping, and vehicular and pedestrian accesses off Semington Road. Key issues included: the principle of the development and highways issues.

In response to technical questions asked by the Committee, officers explained that the application hadn't reached the 200-dwelling threshold to be considered by the Strategic Planning Committee. The Committee were informed that the application had been revised following officer/developer negotiations that resulted in a materially different housing mix, which officers now supported. Clarification was also given regarding the fencing along the southern boundary of the application site, to prevent public access. It was further confirmed that Shails Lane was a private road, and that Wessex Water would have exclusive access and control of the gate to access utilities and for maintenance purposes.

There were queries raised on relevant planning policies, and the terms of the reserved matters application, and about the secured Section 106 obligations relating to contributing to the cost of supporting the healthcare provision for the Melksham and Bradford-on-Avon Primary Care Network.

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

A debate on the application followed, Councillor Jonathon Seed, seconded by Councillor Trevor Carbin, moved that the officer's recommendations be approved, subject to additional informatives relating to securing a variation of the Section 106 pursuant to a different off-site highway improvement project, to clarify the security hoarding to prevent vehicular use of Shails Lane, and to

encourage enhanced pedestrian connections and additional informal areas of play.

The wording of the proposed additional conditions and informatives were then debated to promote positive working with the developers and other relevant parties, particularly regarding the nearby toucan crossing. The Committee discussed in detail the use of a management company to be responsible for the maintenance of the development and noted that the Parish Council had not been consulted upon whether it would have been willing to take on the management instead.

At the conclusion of the discussion, it was then:

**Resolved:**

**The Committee granted reserved matters approval subject to the following conditions and informatives:**

**Conditions**

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

- P21-3414\_03D ILLUSTRATIVE STREETSCENES**
- P21-3414\_06H SITE LOCATION PLAN**
- P21-3414\_07G MATERIALS PLAN**
- P21-3414\_08G EXTERNAL WORKS**
- P21-3414\_09E AFFORDABLE HOUSING**
- P21-3414\_10E BUILDING HEIGHTS**
- P21-3414\_11E REFUSE STRATEGY**
- P21-3414\_12F PARKING STRATEGY**
- P21-3414\_13F HOUSEPACK**
- P21-3414\_14G ADOPTION & MANAGEMENT**
- P21-3414\_15S SITE LAYOUT**
- P21-3414\_16A ENCLOSURE DETAILS**
- P21-3414\_19C BAT AND SWIFT BRICKS LOCATION PLAN**
- P21-3414\_20 ENTRANCE WALL**
- P21-3414-PEG-XX-XX-DR-C-001 – Drainage Strategy – Sheet 1 – R06**
- P21-3414-PEG-XX-XX-DR-C-002 – Drainage Strategy – Sheet 2 – R06**
- P21-3414-PEG-XX-XX-DR-C-003 – Drainage Strategy – Sheet 3 – R06**
- P21-3414-PEG-XX-XX-DR-C-010 – Levels Strategy – Sheet 1 – R07**
- P21-3414-PEG-XX-XX-DR-C-011 – Levels Strategy – Sheet 2 – R07**
- P21-3414-PEG-XX-XX-DR-C-012 – Levels Strategy – Sheet 3 – R07**
- P21-3414-PEG-XX-XX-DR-C-020 – Fire Tender Tracking – Sheet 1 – R02**
- P21-3414-PEG-XX-XX-DR-C-021 – Fire Tender Tracking – Sheet 2 – R02**
- P21-3414-PEG-XX-XX-DR-C-022 – Fire Tender Tracking – Sheet 3 – R03**
- P21-3414-PEG-XX-XX-DR-C-023 – Fire Tender Tracking – Sheet 4 –**

**R02**

**P21-3414-PEG-XX-XX-DR-C-025 – Refuse Tracking – Sheet 1 – R02**

**P21-3414-PEG-XX-XX-DR-C-026 – Refuse Tracking – Sheet 2 – R03**

**P21-3414-PEG-XX-XX-DR-C-027 – Refuse Tracking – Sheet 3 – R02**

**P21-3414-PEG-XX-XX-DR-C-030 – Visibility Splays Junctions – R03**

**P21-3414-PEG-XX-XX-DR-C-035 – Bend Visibility Splay – R02**

**P21-3414-PEG-XX-XX-DR-C-040 – Access General Arrangement – R01**

**GL1768 01G Detailed Landscape Proposals (Sheet 1 of 5)**

**GL1768 02H Detailed Landscape Proposals (Sheet 2 of 5)**

**GL1768 03G Detailed Landscape Proposals (Sheet 3 of 5)**

**GL1768 04G Detailed Landscape Proposals (Sheet 4 of 5)**

**GL1768 05G Detailed Landscape Proposals (Sheet 5 of 5)**

**GL1768 06C Play Proposals**

**Flood Risk Assessment & Surface Water Drainage Strategy by Pegasus Planning Group Ltd dated February 2023**

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

**2. The roads, including footpaths and turning spaces, shall be constructed so as to ensure that, before it is occupied, each dwelling has been provided with a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.**

**REASON: To ensure that the development is served by an adequate means of access.**

**3. No dwelling shall be occupied until the parking spaces together with the access thereto for that dwelling, have been provided in accordance with the approved plans.**

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

**4. Where plots 1 - 6 (detailed on site layout plan number P21-3414\_15S) have frontage or side elevations to the road, no vegetation shall be allowed to grow above 600mm above carriageway level, over the frontage or side elevations (as appropriate) of the dwelling, within a 1-metre-wide strip parallel and adjacent to the adjacent footway edge.**

**REASON: In the interests of highway safety.**

**5. 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**

**dwelling hereby permitted.**

**REASON:** In the interests of residential amenity and privacy and to protect the character of the built environment.

**6. 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.

**7. Before the plots hereby permitted and listed below are first occupied, the windows in the elevations as detailed shall be glazed with obscure glass only [to an obscurity level of no less than level 4] and the windows shall thereafter, be maintained with obscure glazing in perpetuity:**

- **First floor west elevation side window to bathroom plot 45**
- **First floor south facing window to plot 22**
- **First floor west elevation windows plot 20**
- **First floor south elevation window to plot 108**
- **First floor east facing window to plot 109**

**REASON:** In the interests of residential amenity and privacy.

**8. 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 windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the west elevation of plot 1 above ground floor ceiling level of the development hereby permitted.**

**REASON:** In the interests of residential amenity and privacy.

**9. All soft landscaping comprised in the approved details of landscaping for each plot shall be carried out in the first planting and seeding season following the first occupation of the dwelling on the plot. All hard landscaping comprised in the approved details of landscaping for each plot shall be carried out prior to the first occupation of the dwelling on the plot.**

**All soft landscaping comprised in the approved details of landscaping for the areas of open space and structural tree planting shall be carried out in the first planting and seeding season following the first occupation of the any dwelling or in accordance with a timetable to be submitted to and agreed in writing with the Local Planning Authority.**

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 die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the Local Planning Authority.

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

10. The acoustic fence hereby approved (as detailed on plan 'External Works' drg no. P21-3414\_08 Rev G) shall be erected prior to the first occupation of plots 81 to 96.

The approved fencing shall be maintained in accordance with the approved details at all times thereafter.

**REASON:** In the interests of residential amenity.

11. Notwithstanding the submitted plans and prior to the first occupation of the development hereby approved details of the proposed gate (to be no lower than 2 metres in height) to the Shails Road/sewage works access shall be submitted to and approved in writing by the Local Planning Authority.

**REASON:** In the interest of pedestrian and highway safety.

### Informatives

Your attention is drawn to the conditions and Section 106 Legal Agreement imposed on the outline planning permission reference 20/01938/OUT, dated 10th September 2021.

Flood Risk Activity Permit - Under the Environmental Permitting (England and Wales) Regulations 2010 permission from the Environment Agency may be required should any site/site infrastructure works take place in, under, over or within 8 metres of the bank top of a designated main river. The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted, and we advise them to consult with us at the earliest opportunity. Please contact

[Blandford.frap@environment-agency.gov.uk](mailto:Blandford.frap@environment-agency.gov.uk) with details of permitted works and include the planning application reference. Further details and guidance are available on the GOV.UK website: <https://www.gov.uk/guidance/flood-risk-activitiesenvironmentalpermits>.

The following relevant comments have been received from Wessex:

Water – The applicant will need to agree protection arrangements for the existing 200mm and 225mm diameter rising main, and the 300mm and



**400mm public foul sewers which crosses the site (3m easement either side). Also, the 12” distribution main (5m easement either side). Any damage to our apparatus by third parties will result in a compensation claim.**

**Water Infrastructure – For 144 dwellings a minimum 125mm size for size connection is required. This is available from the 12” spun iron main which runs through the site boundary near to the site entrance. A secondary connection can be made to the 8” cast iron main running along Semington Road and is recommended to provide operational flexibility with the appropriate cross connections between the existing mains and proposed site mains as required.**

**The applicant should note that under the terms of the Wildlife and Countryside Act (1981) and the Habitats Regulations (2010) it is an offence to disturb or harm any protected species, or to damage or disturb their habitat or resting place.**

**Please note that this consent does not override the statutory protection afforded to any such species. In the event that your proposals could potentially affect a protected species you should seek the advice of a suitably qualified and experienced ecologist and consider the need for a licence from Natural England prior to commencing works. Please see Natural England’s website for further information on protected species.**

**Condition 17 of Outline Application 20/01938/OUT set out the requirement for the erection and maintenance of security hoarding; and for the avoidance of doubt, such hoarding shall be erected to prevent any vehicular construction usage of the private road known as Shails Lane.**

**Notwithstanding the submitted detail, the developer shall use all best endeavours to support Melksham Without Parish Council (or other parties) in the delivery of a future footbridge crossing over the brook to the north of the application site to link the development site with the ‘Village Hall’. This informative is based on the commitment expressed by the applicant to enter into a separate agreement with Melksham Without Parish Council if required to bring about the enhanced pedestrian connections, most of which extend beyond the site parameters.**

**The developer is encouraged to enter into further discussions with officers pursuant to providing an additional informal area of play within the proposed approved public open space.**

**The developer is encouraged to enter into a s106 deed of variation without delay to secure the repurposing of £200,000 for alternative off-site highway and pedestrian connection improvement works to improve connectivity between the development site, the town centre to the north and education facilities to the east, inclusive of Local Cycling Walking Infrastructure Plan routes, and measures to enhance the use of the**

**pedestrian route on the eastern side of the roundabout between Old Semington Road and Melksham.**

25 **PL/2022/09808: Land South of 92 High Street, Chapmanslade, BA13 4AN**

As detailed under Chairman's Announcements, the application was withdrawn by the applicant prior to the meeting.

26 **Urgent Items**

There were no urgent items.

(Duration of meeting: 3.00 - 4.45 pm)

The Officer who has produced these minutes is Ellen Ghey of Democratic Services, direct line 01225 718259, e-mail [ellen.ghey@wiltshire.gov.uk](mailto:ellen.ghey@wiltshire.gov.uk)

Press enquiries to Communications, direct line 01225 713114 or email [communications@wiltshire.gov.uk](mailto:communications@wiltshire.gov.uk)

**Wiltshire Council**

**Western Area Planning Committee**

**7 June 2023**

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**Commons Act 2006 – Sections 15(1) and (2)  
Application to Register Land as Town or Village Green – Southwick Court  
Fields, Southwick and North Bradley – Application no.2020/02TVG**

**Purpose of Report**

1. To consider the evidence submitted regarding an application made under Sections 15(1) and (2) of the Commons Act 2006, to register land at Southwick Court Fields, in the parishes of Southwick and North Bradley, as a Town or Village Green (TVG) – Application no.2020/02TVG, in order to determine the application.

**Relevance to the Council's Business Plan**

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

**Location Plan**

3. Please see **Appendix 1**.

**Application Plan**

4. Please see original application plans at **Appendix 2** and accepted application area at **Appendix 3**.

**Photographs**

5. Please see **Appendix 4**.

**Aerial Photographs**

6. Please see **Appendix 5**.

**Applicant**

7. Mr Norman Swanney  
■ Balmoral Road  
Trowbridge  
Wiltshire  
BA14 0■

**Registered Landowners**

8. The Honourable Sheila Mary Rhys  
[REDACTED]  
Frome Road  
Southwick  
Trowbridge  
Wiltshire  
BA14 9[REDACTED]
- Mr Jeffrey Marshall & Mrs Jean Marshall  
[REDACTED]  
Axe and Cleaver Lane  
North Bradley  
Trowbridge  
Wiltshire  
BA14 0[REDACTED]

### **Legal Empowerment**

9. Under the Commons Registration Act 1965, Wiltshire Council is charged with maintaining the register of TVG's and determining applications to register new greens. The application to register land at Southwick Court Fields, in the parishes of Southwick and North Bradley, has been made under Sections 15(1) and (2) of the Commons Act 2006, which amended the criteria for the registration of greens, (please see Section 15 of the Commons Act in full at **Appendix 6**):

#### ***“15. Registration of greens***

*(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.*

*(2) This subsection applies where-*

*(a) A significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*

*(b) they continue to do so at the time of application.”*

10. Also attached at **Appendix 6** are the relevant regulations and guidance for the processing of applications:

- i) The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007, (The Regulations).
- ii) DEFRA Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – December 2016, (The DEFRA Guidance).  
(Section 15C “Registration of greens: exclusions”, is considered at paragraphs 15 to 18 of this report).

### **Background**

11. Wiltshire Council, as the Commons Registration Authority (CRA), is in receipt of an application to register land at Southwick Court Fields, within the parishes of

Southwick and North Bradley, as a TVG. The application is made under Sections 15(1) and (2) of the Commons Act 2006, dated 13 January 2020 and received by the CRA on 30 November 2020. Upon consultation with the planning authorities regarding planning trigger events, there were found to be two trigger events in place over part of the land which would extinguish the right to apply to register that part of the land as a TVG. As a result the application was accepted only in part on 6 May 2021 and allotted application no.2020/02TVG (Form 6), (planning “trigger” and “terminating” events are considered at paragraphs 15 to 18 of this report).

12. It is claimed 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 on the land for a period of at least 20 years and they continue to do so at the time of application. Part 7 of the application form requires the Applicant to provide a summary of the case for registration:

- *The Land in question has been used “as of right” without stay or let for a period exceeding 20 years (see Encl. 7.1 and 7.2).*
  - *The unfettered use of the land has been unchallenged over this period and is symbolised by the footpaths and trackways formalised upon it (see Exhibit C).*
  - *Divergence from these footpaths and/or trackways has not been challenged either formally or informally.*
  - *Maintenance and enhancement of access points have been supported by both the landowner and Wiltshire Council as demonstrated in attached photographs and documents (see Encl. 7.3).*
  - *Surveys sponsored by Wiltshire Council and the Environment Agency have demonstrated beyond doubt that the land is:*
    1. *Classified as informal recreation space by Wiltshire Council.*
    2. *A functional flood plain (see Exhibits D and E)*
    3. *Historically significant and protected from development (See Encl. 7.5)*
  - *The land is in constant use for recreational and social purposes listed elsewhere in this submission which include the scattering of ashes of local residents with permission from the landowner.*
  - *The application for Village Green status is in line with, and supportive of Wiltshire County Policy (see Encl. 7.4).*
- Documents supporting these assertions are attached.*

13. The application is supported by testimony from Cllr Graham Hill, Trowbridge Town Councillor, Grove Ward and a petition signed by 23 individuals:

*“We the undersigned formally attest that the land known locally as Southwick Court fields (OS reference ST84801 55856 and defined on the attached maps) has been consistently in use as an informal recreational space for a minimum of twenty years. These activities have taken place both on the network of paths and trackways illustrated on this application and between them.*

*The access points have been supported and sanctioned by both the landowner and Wiltshire Council along with Town and Parish Councils.*

*Access and recreation has taken place without stay or let from the landowner and without any form of notified restriction from said landowner. It has been established over this period that such access and activity has become defined “as of right”.*

*Activities which have historically, and which continue to occur include:*

- *Rambling*
- *Exercise and fresh air*
- *Foot traffic via notified pathways to outlying villages*
- *Berry picking*
- *Drone and model aircraft flying*
- *Children camping out*
- *Childhood games*
- *Dog walking*
- *Landing and take-off of paragliders*
- *The scattering of ashes of locals with the knowledge and blessing of the landowner*
- *Protecting property from severe flooding as a functional flood plain*

*We believe that this continuity of unrestricted use meets the criteria set down in the Commons Act of 2006 and therefore make application for this “as of right” usage to be formally recognised and for all rights and protection under the law to be applied to this land.”*

14. The application land is located at Southwick Court, which lies to the south-west of Trowbridge, in the parishes of Southwick and North Bradley, (please see Application Plan (accepted) at **Appendix 3** and Photographs of Application Land at **Appendix 4**). Southwick Court itself is a Grade II listed moated medieval manor house which dates from the 16<sup>th</sup> century, lying at the centre of a system of fields and water meadows between Trowbridge town and Southwick village, of which the application land forms part. The Lambrook stream which originates in Beckington (Somerset), feeds the moat and then continues into the surrounding water meadows and then into Trowbridge where it joins the River Biss. The land is laid to grass with recorded public rights of way, Southwick Footpath no’s 1, 2 and 3 and North Bradley Footpath no.4, leading across it and footpaths from the Grove Estate (Trowbridge) to the north and from Southwick to the west, leading into it and from which it can be accessed. The land is also accessed from Axe and Cleaver Lane, (Bridleway no.3 North Bradley), which leads from Woodmarsh, North Bradley, alongside the application land at the south-east edge, (please see aerial photographs at **Appendix 5** and witness distribution map at **Appendix 15**).

## Right to Apply

15. The Growth and Infrastructure Act 2013 introduced a series of provisions to make it more difficult to register land as a TVG. This included, at Section 16, the insertion into the Commons Act 2006, of Section 15C “Registration of greens: exclusions”, i.e. the removal of the “right to apply” to register land as a TVG where specific planning “trigger” events have occurred in relation to the land, for example, where the land is subject to an application for planning permission, or the land is included in a draft development plan or development plan document which identifies the land for potential development. The right to apply is revived where a corresponding “terminating event” has taken place.

(A full list of planning trigger and terminating events is included at Schedule 1A of the Commons Act 2006, as added by Section 16 of the Growth and Infrastructure Act 2013 and amended to extend the list of events).

16. This alters the way in which the CRA deals with new applications to register land as a TVG. DEFRA has issued interim guidance to Registration Authorities which recommends that upon receipt of an application the CRA should write to the local planning authorities and the Planning Inspectorate, to seek confirmation of whether or not there are planning trigger/terminating events in place in relation to all or part of the application land, (The DEFRA Guidance, see **Appendix 6**).
17. Wiltshire Council, as the CRA, has accepted the application in part only, based upon replies from the relevant Planning Authorities that there are valid planning trigger events in place over part of the application land, (without corresponding terminating events), which exclude the right to apply to register that section of the land as a TVG, i.e:
- i) Part of the land subject to the application is affected by planning application no.20/00379/OUT – Land South of Trowbridge, Wiltshire: Outline planning permission with all matters reserved except access for the erection of up to 180 residential dwellings (Use Class C3); site servicing; laying out of open space and associated planting; creation of new roads, accesses and paths; installation of services; and drainage infrastructure, (valid date 15 January 2020).
  - ii) Part of the land subject to the application forms a designated allocation for development within the now adopted Wiltshire Housing Site Allocations Plan (WHSAP), (adopted February 2020).
18. The CRA continues to determine the TVG application over the unaffected application land, please see application plan accepted area at **Appendix 3**. Dispute of the CRA’s interpretation of the extent of planning trigger events and their effect is not maintained by the Applicant or the Objector in this case.

## Validity of Application

19. The Regulations, (**Appendix 6**), at parts 3 and 10, set out the requirements of a valid application. Where an application is found not to be in order, under Regulation 5(4) the CRA must not reject the application without allowing the Applicant reasonable opportunity of putting the application in order. Upon examination of the application, it was found to be flawed, however, the CRA considered that the Applicant should be given a reasonable opportunity to put the application in order, the CRA therefore returned Form 44; the statutory declaration and map exhibit, to the Applicant on 8 July 2021, as follows:

*“1) At Regulation 10(3)(b) it is stated that “Any Ordnance map accompanying an application must –  
(b) be marked as an exhibit to the statutory declaration in support of the application...” (my emphasis added).  
At the end of the Statutory Declaration it is stated “Reminder to Officer taking declaration – Please initial all alterations and mark any map as an exhibit.”  
I would therefore be very grateful if all maps included within the application could be labelled as “Exhibits” A, B, C etc as per the regulations and witnessed by the Solicitor.*

*2) At Regulation 10(2)(a) it is stated that the “Land must be described for the purposes of the application –  
(a) by an Ordnance Survey map accompanying the application and referred to in that application...” (my emphasis added).  
I note that there is reference to the maps in the main application Form 44, but in order to make it clearer which maps sections 5 and 6 refer to, it would be helpful if a reference to the Exhibit number could be added here, so that the extent of the application land and the identified locality/neighbourhood within a locality are clear.  
It may also be helpful to list the maps as Exhibits at question 10 of the application form.*

*Where there are changes to the application and statutory declaration required, it will be necessary for these amendments to be witnessed and initialled by the Solicitor.”*

20. It is preferable for the application to be in strict compliance with the regulations in order to remove any debate regarding the validity of the application at a later date. Wiltshire Council acknowledged safe receipt of the revised application on 23 August 2021. The revised application was checked and found to be in order on 20 September 2021.

21. The issues of timing and validity of an application are considered in a very detailed manner in case law, in the Court of Appeal before Lady Justice Arden, Lord Justice Richards and Lord Justice Vos – R (Church Commissioners for England) v Hampshire County Council and Anr and Barbara Guthrie [2014] EWCA Civ 643. It



concerns a case where Mrs B Guthrie filed an application with the CRA on 30 June 2008, however, the application was defective in several respects, finally complying with all the requirements of the regulations on 20 July 2009. Lady Justice Arden sets out the requirements of an application and concludes:

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

22. It is therefore correct to take the date on which the application was received and stamped by the CRA, as the relevant date in this application, i.e. 30 November 2020, even where the application is later amended.

### **Public Consultation**

23. Wiltshire Council, as the CRA, served notice of the application, Form 45 dated 12 November 2021, upon landowners; the Applicant and interested parties. Notice was also posted on site and placed in the Wiltshire Times. The application, including the supporting evidence, was placed on public deposit at the offices of Wiltshire Council at County Hall, Trowbridge and all parties were given at least six weeks to make representation or objection regarding the application, i.e. on or before Friday 31 December 2021.
24. Following notice of the application, one objection was received from Clarke Willmott on behalf of one of the landowners, please see **Appendix 7**, and 22 representations of support were received, please see **Appendix 8**.
25. At paragraph 6(3) of The Regulations, (see **Appendix 6**), the CRA is required to send the Applicant a copy of every written statement in objection and the application must not be rejected without first giving the Applicant a reasonable opportunity of dealing with the matters contained therein. The correspondence attached at **Appendices 7 and 8** was forwarded to the Applicant for comment on 22 February 2022. The Applicant and Cllr G Hill made additional comments on the objections on 5 April 2022, included at **Appendix 9**.
26. These comments at **Appendix 9**, (with the original representations at **Appendix 8**), were forwarded to the Objector in the interests of fairness on 7 April 2022, with opportunity for comment until 25 May 2022. The Objector’s supplementary comments dated 23 May 2022 are attached at **Appendix 10**.
27. In summary, in its consideration of the application to register land at Southwick Court Fields, Southwick and North Bradley, the CRA has considered the documents listed at **Appendix 12**. A useful chronology of the application is included here for reference:

<b>Action</b>	<b>Date</b>
Application 1	13/01/2020
Trigger and terminating event consultations	21/01/2020

Application returned	24/02/2020
Application 2	12/06/2020
Trigger and terminating event consultations	22/06/2020
Application returned	07/10/2020
Application 3	30/11/2020
Trigger and terminating event consultations	07/12/2020
TVG application accepted in part – allotted no.2020/02 - Form 6	06/05/2021
Application returned to Applicant for putting in order	08/07/2021
Revised application received	23/08/2021
Revised application found to be in order	20/09/2021
Notice of Application – Form 45	12/11/2021
Close of notice period	31/12/2021
Objection forwarded to Applicant for comment	22/02/2022
Applicant's comments on objection received	05/04/2022
Applicant's comments on objection forwarded to Objector for comment	07/04/2022
Objector's comments on Applicant's comments on objection received	23/05/2022

### **Main Considerations for the Council**

28. Under Section 15(1) of the Commons Act 2006, it is possible, (where the right to apply is not extinguished), for any person to apply to the CRA to register land as a TVG and under Section 15(2) where:

***“(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and***

***(b) they continue to do so at the time of application.”***

This is the legal test to be applied in this case, (please see legislation attached at **Appendix 6**).

29. The legal test set out at Section 15(2) of the Commons Act 2006 can be broken down into a number of components, each of which must be satisfied in order for the application to succeed. It is no trivial matter for a landowner to have land registered as a green. The burden of proving that each of the statutory qualifying requirements are met, lies with the Applicant and there is no duty placed upon the CRA to further investigate the claim or reformulate the Applicant's case. The standard of proof lies in the balance of probabilities, i.e. that it is more likely than not that recreational rights for local inhabitants have been acquired.
30. The application is supported by The Wiltshire Council Member for Trowbridge Grove Division; North Bradley and Southwick Parish Councils' and Cllr G Hill, Town Councillor for Trowbridge, Grove Ward and Chair of Trowbridge Town Council.

31. A detailed consideration of the evidence in this case and the legal tests for the registration of land as a TVG under Section 15(2) of the Commons Act 2006, is included at **Appendix 17**. It is considered in this case that there is serious dispute of the evidence which is likely to be resolved by appointing an independent Inspector to preside over a non-statutory public inquiry to hear oral evidence from witnesses and to produce an advisory report and recommendation to the CRA to assist in its determination of the application.

### **Overview and Scrutiny Engagement**

32. Overview and Scrutiny Engagement is not required in this case. The Council, as the CRA, must follow the statutory procedures which are set out within The Regulations and The Defra Guidance, (see **Appendix 6**).

### **Safeguarding Considerations**

33. Considerations relating to safeguarding anyone affected by the registration of the land as a TVG under Sections 15(1) and (2) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Public Health Implications**

34. Considerations relating to the public health implications of the registration of the land as a TVG under Sections 15(1) and (2) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Corporate Procurement Implications**

35. Where land is registered as a TVG, there are a number of opportunities for expenditure to occur and these are considered at paragraphs 41-43 of this report.

### **Environmental and Climate Change Impact of the Proposal**

36. Considerations relating to the environmental or climate change impact of the registration of the land as a TVG under Sections 15(1) and (2) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

### **Equalities Impact of the Proposal**

37. Considerations relating to the equalities impact of the registration of the land as a TVG under Sections 15(1) and (2) of the Commons Act 2006, are not considerations permitted within the Act. The determination of the application must be based upon the relevant evidence alone.

## Risk Assessment

38. Wiltshire Council has a duty, at common law, to process applications made under Section 15(1) of the Commons Act 2006 to register land as a TVG, in a fair and reasonable manner, as set out in the case of R (on the application of Whitmey) v Commons Commissioners [2004] EWCA Civ 951, where Arden LJ at paragraphs 28 and 29, held that:

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

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

At paragraph 66 Waller LJ 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 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 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.”*

39. If the CRA fails to pursue its duty it is liable to complaints being submitted through the Council's complaints procedure, potentially leading to complaints to the Local Government Ombudsman. Ultimately, a request for judicial review could be made with significant costs against the Council, as the CRA, if it is found to have acted unlawfully.
40. In 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), the High Court quashed the local Borough Council's decision not to register land as a

new TVG 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 the Whitmey case above, and the need for CRAs to hold a non-statutory public inquiry where there is serious dispute over factual issues.

### **Financial Implications**

41. Presently, there is no mechanism by which a CRA 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.
42. It is possible for the CRA to hold a non-statutory public inquiry into the evidence, appointing an independent Inspector to produce a report and recommendation to the determining authority. There is no clear guidance available to authorities regarding when it is appropriate to hold an inquiry; however, it is the authority's duty, at common law, to determine the application in a fair and reasonable manner and its decision is open to legal challenge, therefore a public inquiry should be held in cases where there is serious dispute of fact, or the matter is of great local interest. The responsibilities of the Council in this regard were recognised by the justices in the Court of Appeal in the Whitmey case, see paragraph 38 above. Even where a non-statutory public inquiry is held, there is no obligation placed upon the CRA to follow the recommendation made.
43. The cost of a 3 or 4 day non-statutory public inquiry is estimated to be in the region of £12,000 - £15,000 plus VAT. In the Southwick Court Fields case it is considered that appointing an independent Inspector to hold a non-statutory public inquiry in order to hear oral evidence from the witnesses; test the evidence through the cross-examination process and consider the evidence, producing a recommendation to the CRA, would assist the Council, as the CRA, in its determination of the application.

### **Legal Implications**

44. If the land is successfully registered as a TVG, the landowner is able to challenge the CRA's decision by appeal to the High Court under Section 14(1)(b) of the Commons Registration Act 1965, which applies where Section (1) of the Commons Act 2006 is not yet in place, i.e. outside the pilot areas (Wiltshire is not a pilot area). Importantly an appeal under Section 14(1)(b) of the 1965 Act, enables the High Court to hold a complete re-hearing of the application and the facts of law. There is no time limit in bringing these proceedings following the registration of the land, it may be years after the decision and could lead to the de-registration of the land.
45. Alternatively, where the CRA determines not to register the land as a TVG, there is no right of appeal for the Applicant; however, the decision of the Council may be challenged through judicial review in the High Court, for which permission of the Court is required. The main grounds for application are illegality; procedural unfairness and irrationality of the decision and application to the Court must be made

within three months of the decision. Likewise, judicial review proceedings are also open to a landowner where the land is registered as a TVG.

### **Options Considered**

46. The options available to Wiltshire Council as the CRA, are as follows:
- (i) Based on the available evidence, to register the land as a TVG where it is considered that the legal tests for registration, as set out under Section 15(2) of the Commons Act 2006, have been met in full over the whole of the application land, or
  - (ii) Based on the available evidence, to register the land as a TVG in part, where it is considered that the legal tests for the registration of the land, as set out under Section 15(2) of the Commons Act 2006, have been met in full over only part of the application land, or
  - (iii) Based on the available evidence, to refuse the application where it is considered that the legal tests for the registration of the land as a TVG, as set out under Section 15(2) of the Commons Act 2006, have not been met in full on any part of the land, or
  - (iv) Where, after consideration of the available evidence, it has not been possible for the CRA to determine the application, to hold a non-statutory public inquiry, appointing an independent Inspector to preside over the inquiry and examine the evidence, including the oral evidence of witnesses, in order to provide a report and recommendation to assist the Council, as the CRA, in its determination of the application.

### **Reason for Proposal**

47. In the Southwick Court Fields case, the evidence of whether a significant number of inhabitants of any locality, or neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, with use continuing at the time of application, is in dispute. Matters of particular conflict within the evidence include the main use of the land identified as walking, with or without dogs, and fruit/produce picking at the perimeter of the application land, taking place on recorded public footpaths over the land and unrecorded tracks and pathways, which raises a number of issues:
- (i) Whether the use would appear to a reasonable landowner to be attributable to the exercise of a right of way along a defined route, or wider use of the land for lawful sports and pastimes.
  - (ii) Qualifying user “as of right”:
    - the use of recorded public rights of way “by right” rather than “as of right”;
    - was use of the land for lawful sports and pastimes sufficient to bring such use to the attention of the landowner to challenge that use if they so wished.

- (iii) If the use of recorded/unrecorded public rights of way is removed as qualifying user, is the remainder of the use for lawful sports and pastimes sufficient to support registration.

Additionally, there is a lack of evidence of regular/organised community events taking place on the land.

- 48. It is the duty of the CRA, at common law, to determine the application in a fair and reasonable manner. The CRA has received objections to the registration of the land as a TVG which have not been resolved. A non-statutory public inquiry is therefore considered necessary in this case because the factual evidence is strongly disputed. It is open to the CRA to appoint an independent Inspector to preside over the inquiry and produce a report with recommendation to the determining authority. Although it is open to the CRA to later reject the Inspector's report and recommendation, it can only lawfully do so if the CRA finds that the Inspector has made a significant error of fact or law. If the Inspector's recommendation is rejected, the CRA must give legally valid reasons, supported by evidence of the error of fact or law, where the CRA's decision is open to legal challenge.
- 49. If the CRA determines not to register the land as a TVG there is no right of appeal to the Council or, for example, to the Secretary of State available to the Applicant, as with a planning application. The Applicant's course for redress is by way of judicial review to the High Court. Applications of this nature focus closely on the procedure of the decision-making process. To avoid the risk of the significant costs of defending a legal challenge, it is important that the CRA adopts the proper decision-making process in dealing with this application.

### **Proposal**

- 50. Where there is significant dispute of the evidence, to appoint an independent Inspector on behalf of the CRA to preside over a non-statutory public inquiry at which the evidence of all parties will be heard and tested through cross-examination, and to produce an advisory report and recommendation regarding the application to the Western Area Planning Committee, to assist the CRA in its determination of the application to register land as a TVG at Southwick Court Fields, in the parishes of Southwick and North Bradley, as soon as is reasonably practicable.

### **Samantha Howell**

Director, Highways and Transport

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Report Author: **Janice Green**, Senior Definitive Map Officer

### **Appendices:**

**Appendix 1** - Location Plan

**Appendix 2** – Application Plan

**Appendix 3** – Application Plan - Accepted Land - Application no.2020/02TVG

**Appendix 4** – Photographs of Application Land

**Appendix 5** – Aerial Photographs

**Appendix 6** – Commons Act 2006 – Section 15

The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007  
DEFRA Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – December 2016

**Appendix 7** – Objection (1)

**Appendix 8** – Other Representations (22)

**Appendix 9** – Applicant’s and Cllr G Hill’s Comments on the Objection

**Appendix 10** – Objector’s Comments on Representations

**Appendix 11** – Trigger/Terminating Event Consultation Replies

**Appendix 12** – Documents Relied Upon

**Appendix 13** – Summary of Witness Evidence

**Appendix 14** – Witness Evidence Chart

**Appendix 15** – Witness Distribution Map

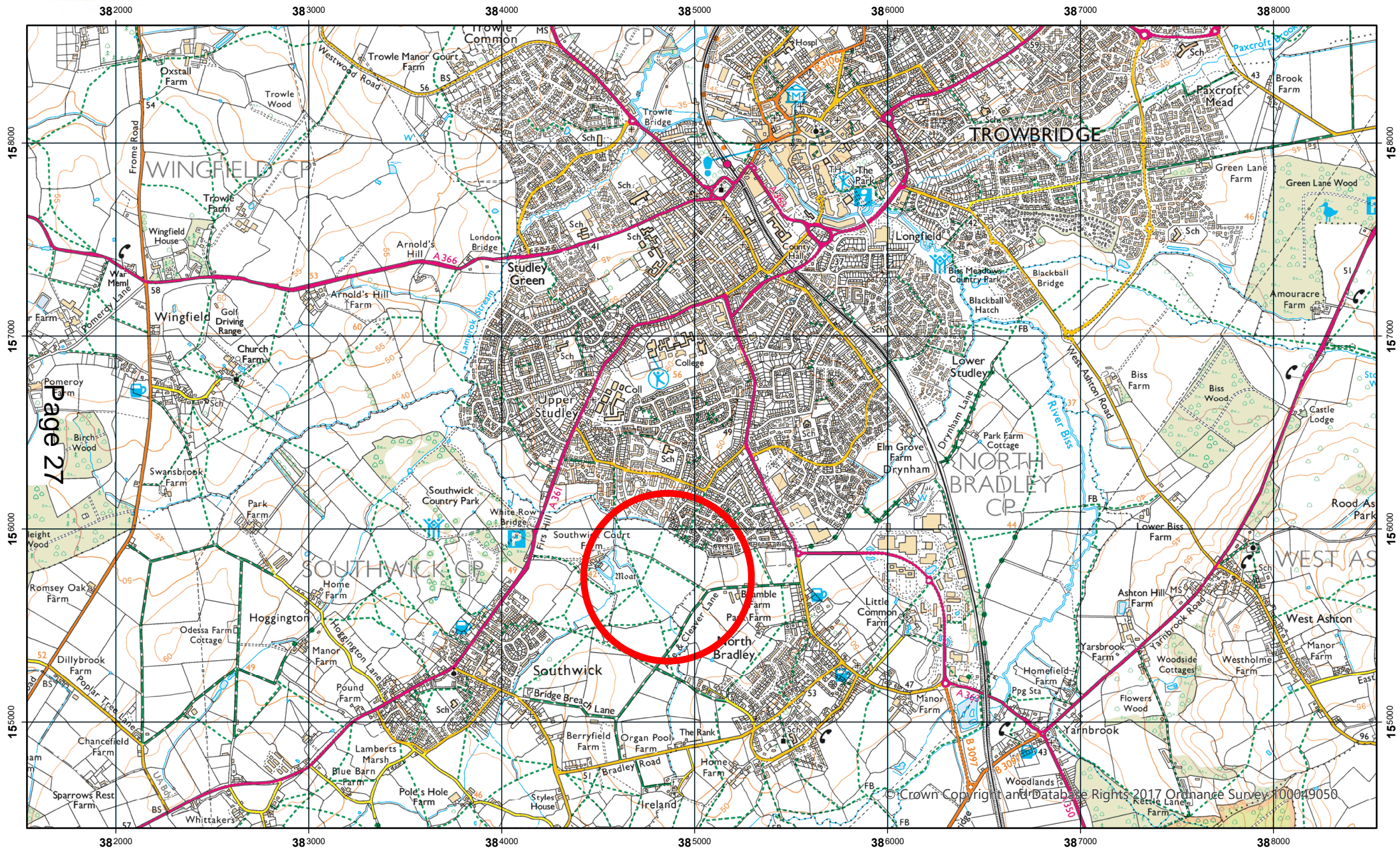
**Appendix 16** – Planning Application no.20/00379/OUT Consultation Replies

**Appendix 17** – Officers’ Consideration of the Legal Tests



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

## Appendix 1 - Location Plan



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Licensed Conveyancer  
13 JANUARY 2020

Application to Register Land as Town or Village  
Green - Southwick Court Fields  
Appendix 2 - Application Plans

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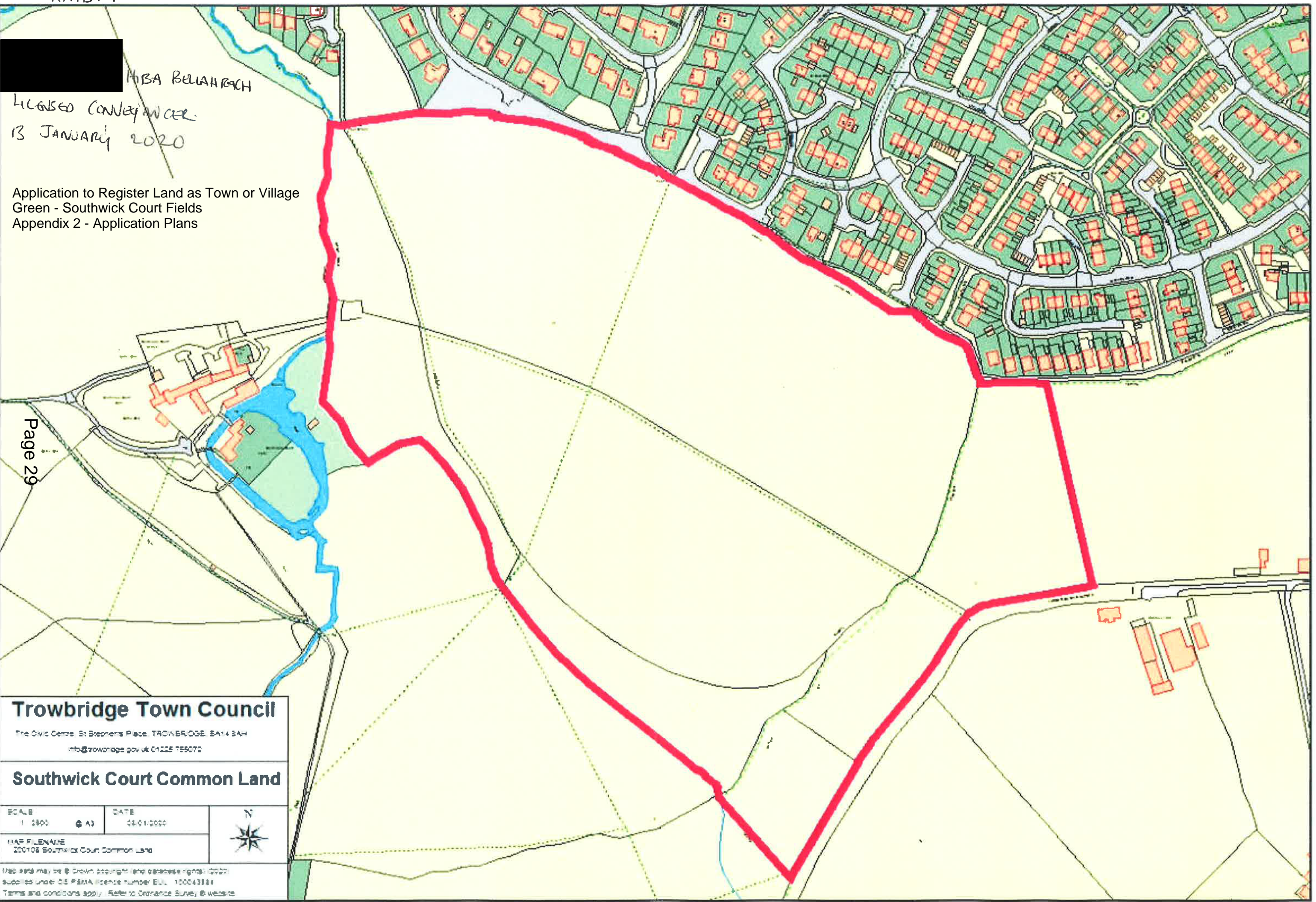
**Trowbridge Town Council**  
 The Civic Centre, St Beavers Place, TROWBRIDGE, BA14 3AH  
 info@trowbridge.gov.uk 01225 789072

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**Southwick Court Common Land**

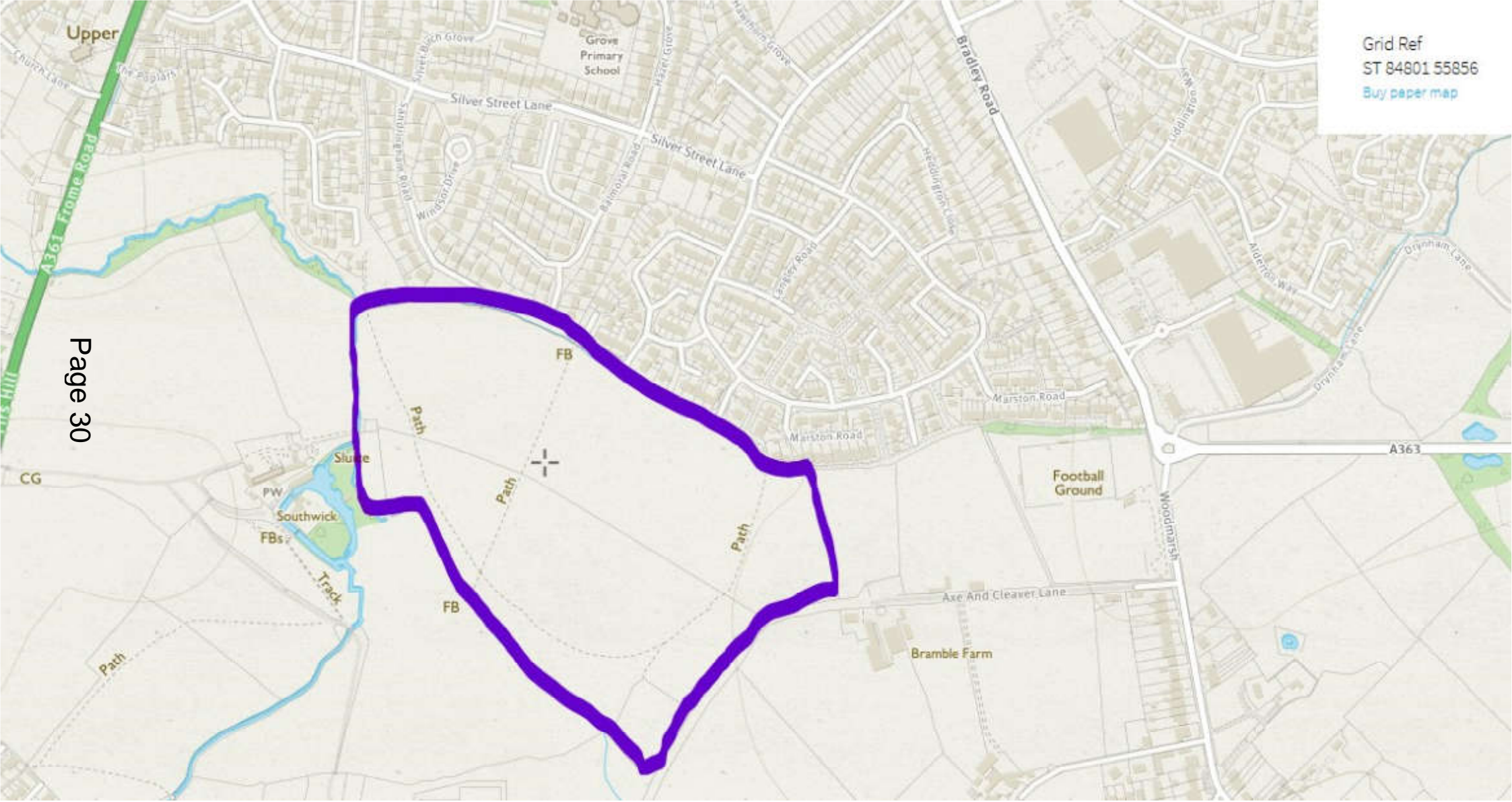
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MAP FILENAME 200108 Southwick Court Common Land	

Map data may be © Crown copyright and database rights (2020)  
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 Terms and conditions apply. Refer to Ordnance Survey @ webrts





Application to Register Land as Town or Village Green Southwick Court Fields  
Appendix 2 - Application Plans



Grid Ref  
ST 84801 55856  
[Buy paper map](#)



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LOCAL COUNCIL  
13 JANUARY 2020

Application to Register Land as Town or Village  
Green - Southwick Court Fields  
Appendix 3 - Application Plan (Accepted)

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### Trowbridge Town Council

The Civic Centre, St. Stephen's Place, TROWBRIDGE, BA14 0AH  
info@trowbridge.gov.uk 01245 755072

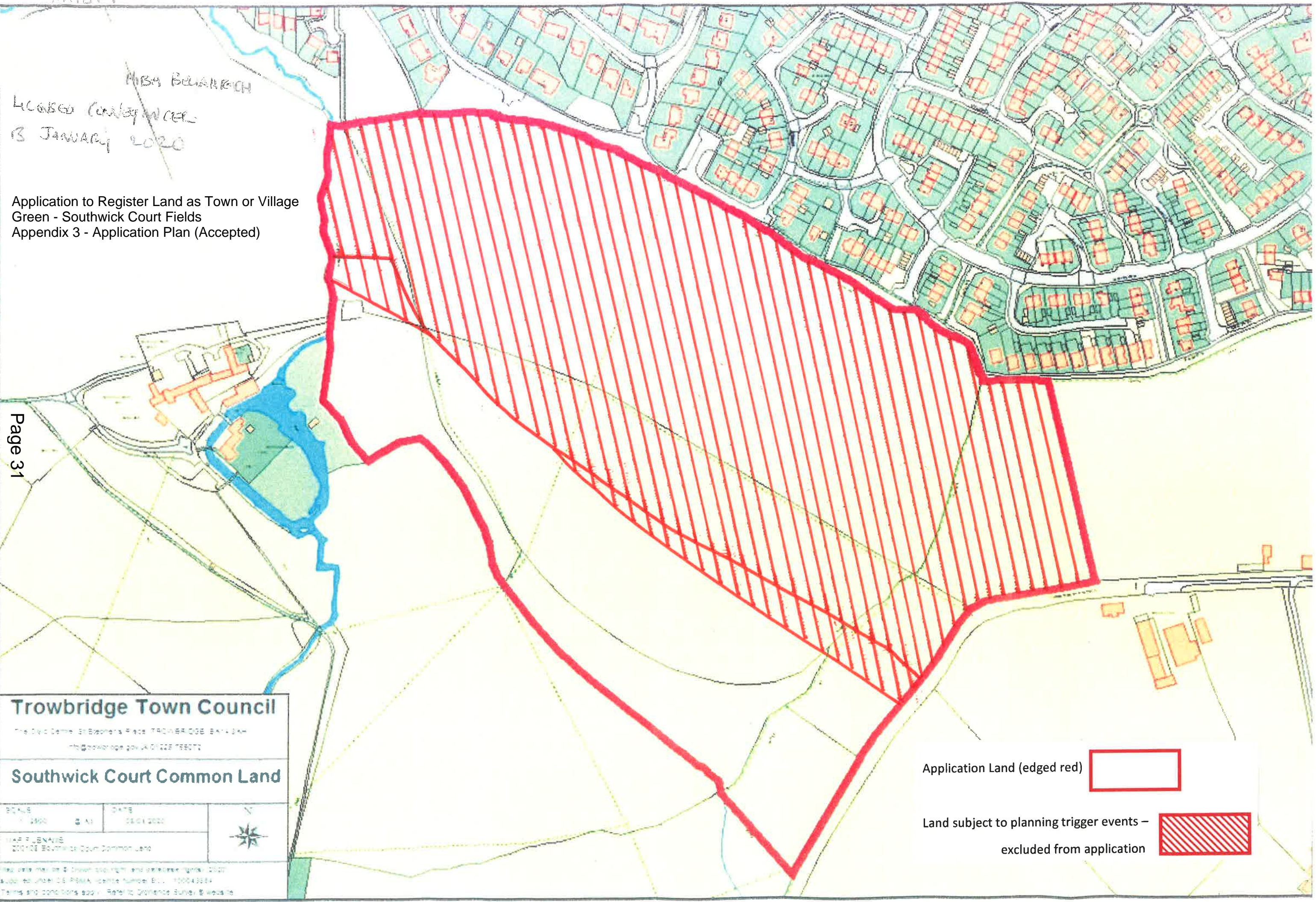
### Southwick Court Common Land

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MAP FLUENANCE  
200108 Southwick Court Common Land

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Approved under OS Planning Licence number: E11 100043084  
Terms and conditions apply. Refer to Ordnance Survey's website



Application Land (edged red)



Land subject to planning trigger events –  
excluded from application

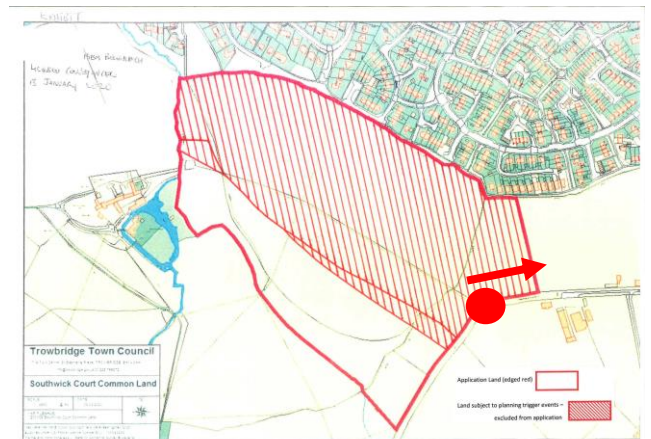




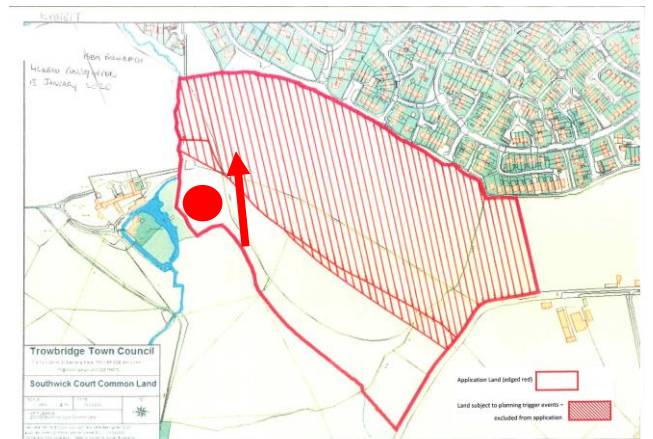
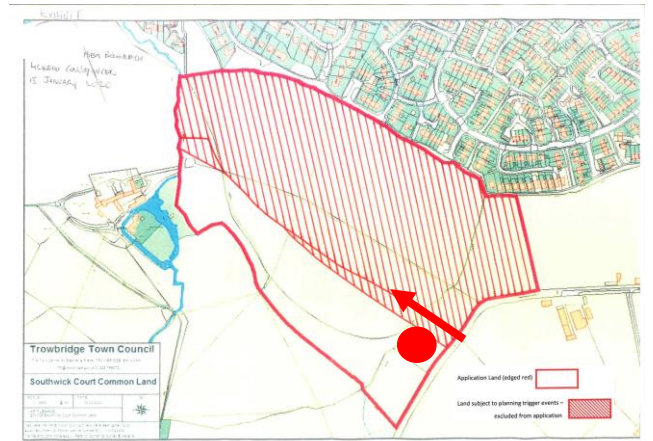
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**Commons Act 2006 – Sections 15(1) and (2) Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley – Application no.2020/02TVG**

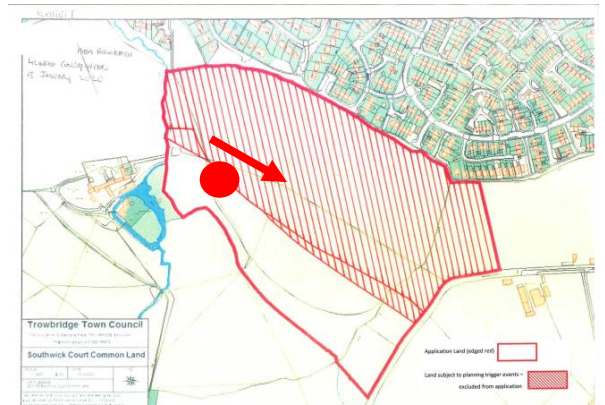
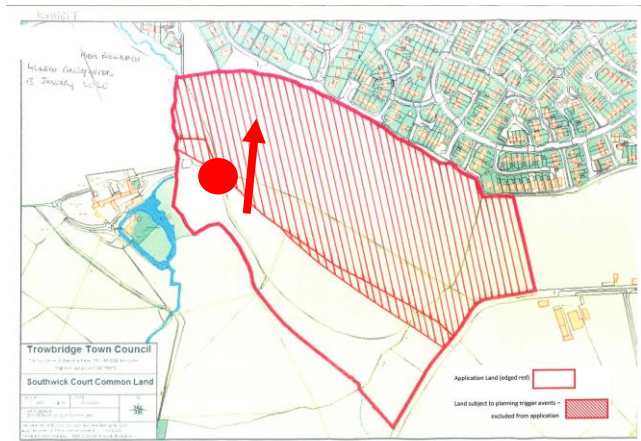
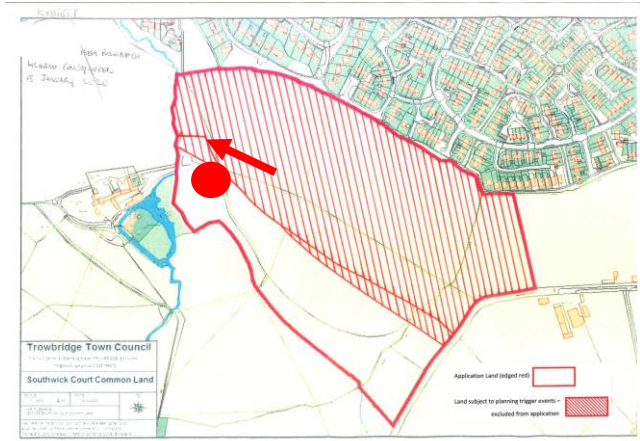
**APPENDIX 4 – Photographs of Application Land**



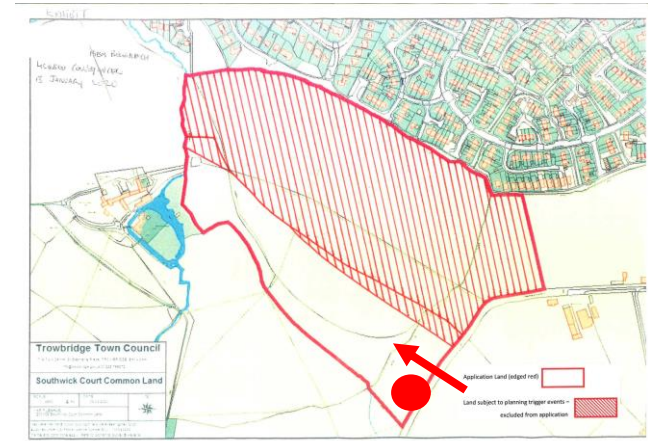
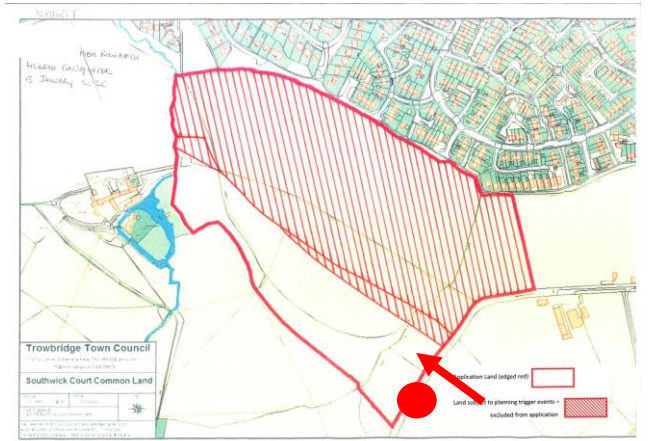
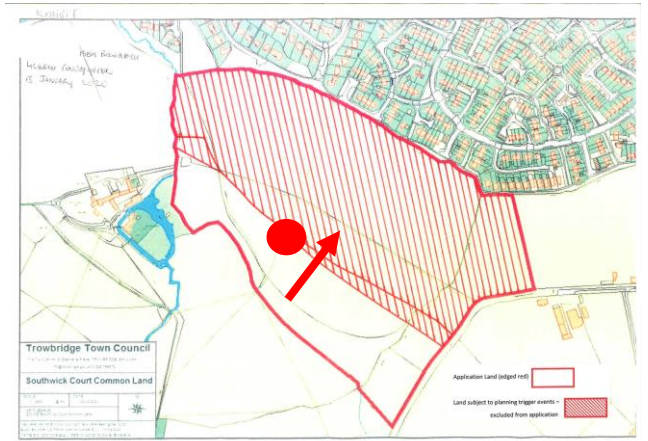










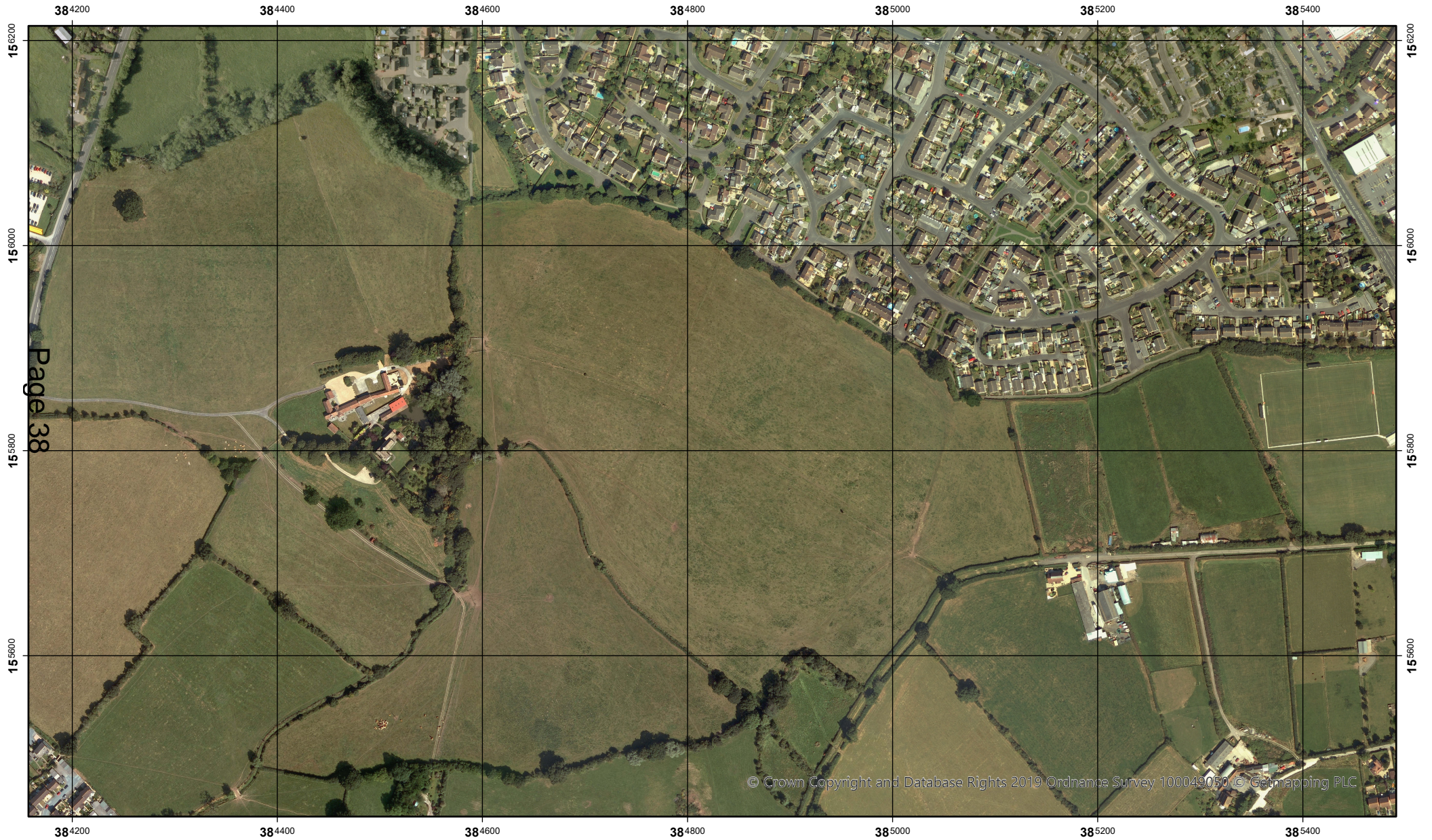




Aerial Photograph 2001

















**Commons Act 2006 – Sections 15(1) and (2)**  
**Application to Register Land as Town or Village Green – Southwick Court**  
**Fields, Southwick and North Bradley**

**Appendix 6 – Commons Act 2006 – Section 15**

**15. Registration of greens**

- (1) *Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.*
- (2) *This subsection applies where-*
- (a) *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
  - (b) *they continue to do so at the time of application.*
- (3) *This subsection applies where-*
- (a) *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastime on the land for a period of at least 20 years;*
  - (b) *they ceased to do so before the time of the application but after the commencement of this section; and*
  - (c) *the application is made within the relevant period.*
- (3A) *In subsection (3), “the relevant period” means-*
- (a) *in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);*
  - (b) *in the case of an application relating to land in Wales, the period of two years beginning with that cessation.*
- (4) *This subsection applies (subject to subsection (5)) where-*
- (a) *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*

- (b) the ceased to do so before the commencement of this section; and*
  - (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).*
- (5) Subsection (4) does not apply in relation to any land where-*
  - (a) planning permission was granted before 23<sup>rd</sup> June 2006 in respect of the land;*
  - (b) construction works were commenced before that date in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and*
  - (c) the land-*
    - (i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or*
    - (ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.*
- (6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a) and (4)(a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.*
- (7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied-*
  - (a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6), those persons are to be regarded as continuing so to indulge; and*
  - (b) where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.*
- (8) The owner of any land may apply to the commons registration authority to register the land as a town or village green.*
- (9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor or any relevant charge over, the land.*



(10) *In subsection (9)-*

*“relevant charge” means-*

(a) *in relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (c. 9);*

(b) *in relation to land which is not so registered-*

*(i) a charge registered under the Land Charges Act 1972 (c. 61); or*

*(ii) a legal mortgage, within the meaning of the Law of Property Act 1925 (c. 20), which is not registered under the Land Charges Act 1972;*

*“relevant leaseholder” means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.*

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STATUTORY INSTRUMENTS

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**2007 No. 457**

**COMMONS, ENGLAND**

**The Commons (Registration of Town or Village Greens)  
(Interim Arrangements) (England) Regulations 2007**

<i>Made</i>	- - - -	<i>17th February 2007</i>
<i>Laid before Parliament</i>		<i>26th February 2007</i>
<i>Coming into force</i>	- -	<i>6th April 2007</i>

The Secretary of State, in exercise of the powers conferred upon him by section 24(1) and (4) and section 59(1) of the Commons Act 2006<sup>(1)</sup>, makes the following Regulations—

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 and shall come into force on 6th April 2007.

(2) These Regulations apply to England.

**Scope and Interpretation**

2.—(1) These Regulations apply to applications made to a registration authority under section 15(1) or (8) of the 2006 Act to register land as a town or village green.

(2) In these Regulations—

“the 2006 Act” means the Commons Act 2006;

“concerned authority”, in relation to an application to a registration authority, means a local authority (other than the registration authority) in whose area any part of the land affected by the application lies and “local authority” means a county council, a district council, a London borough council or a parish council;

“form 44” and “form 45” mean the forms so numbered in the Schedule to these Regulations, or those forms with any variations that the circumstances may require;

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(1) 2006 c.26.

“the General Regulations” means the Commons Registration (General) Regulations 1966(2), and “General Regulation” followed by a number means the regulation so numbered in the General Regulations;

“registration authority” means a commons registration authority.

(3) Any requirement that a registration authority must send anything to “the applicant” shall, where a solicitor has been instructed for the purposes of an application, be deemed to be satisfied by sending it to the solicitor, or, where two or more persons have jointly made an application and no solicitor has been instructed, to that one of them whose name appears first in the application form.

(4) A requirement upon a registration authority to stamp any document is a requirement to cause an impression of its official stamp as described in General Regulation 3 to be affixed to it, which must bear the date mentioned in the requirement or (where no date is mentioned) the date when it was affixed.

### **Application to register land as a town or village green**

**3.—**(1) An application for the registration of land as a town or village green must be made in accordance with these Regulations.

(2) An application must—

- (a) be made in form 44;
- (b) be signed by every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or unincorporate;
- (c) be accompanied by, or by a copy or sufficient abstract of, every document relating to the matter which the applicant has in his possession or under his control, or to which he has a right to production;
- (d) be supported—
  - (i) by a statutory declaration as set out in form 44, with such adaptations as the case may require; and
  - (ii) by such further evidence as, at any time before finally disposing of the application, the registration authority may reasonably require.

(3) A statutory declaration in support of an application must be made by—

- (a) the applicant, or one of the applicants if there is more than one;
- (b) the person who signed the application on behalf of an applicant which is a body corporate or unincorporate; or
- (c) a solicitor acting on behalf of the applicant.

### **Procedure on receipt of applications**

**4.—**(1) On receiving an application, the registration authority must—

- (a) allot a distinguishing number to the application and mark it with that number; and
- (b) stamp the application form indicating the date when it was received.

(2) The registration authority must send the applicant a receipt for his application containing a statement of the number allotted to it, and Form 6, if used for that purpose, shall be sufficient.

(3) In this regulation, “Form 6” means the form so numbered in the General Regulations.

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(2) S.I. 1966/1471 as amended by S.I. 1968/658, 1968/989, 1969/1843, 1982/210, 1989/2167, 1990/311, 1994/2567 and 2003/2260 and modified by S.I. 1991/2684.

### **Procedure in relation to applications to which section 15(1) of the 2006 Act applies**

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) send by post a notice in form 45 to every person (other than the applicant) whom the registration authority has reason to believe (whether from information supplied by the applicant or otherwise) to be an owner, lessee, tenant or occupier of any part of the land affected by the application, or to be likely to wish to object to the application;
- (b) publish in the concerned area, and display, the notice described in sub#paragraph (a), and send the notice and a copy of the application to every concerned authority; and
- (c) affix the notice to some conspicuous object on any part of the land which is open, unenclosed and unoccupied, unless it appears to the registration authority that such a course would not be reasonably practicable.

(2) The date to be inserted in a notice under paragraph (1)(a) by which statements in objection to an application must be submitted to the registration authority must be such as to allow an interval of not less than six weeks from the latest of the following—

- (a) the date on which the notice may reasonably be expected to be delivered in the ordinary course of post to the persons to whom it is sent under paragraph (1)(a); or
- (b) the date on which the notice is published and displayed by the registration authority.

(3) Every concerned authority receiving under this regulation a notice and a copy of an application must—

- (a) immediately display copies of the notice; and
- (b) keep the copy of the application available for public inspection at all reasonable times until informed by the registration authority of the disposal of the application.

(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) In this regulation, “concerned area” means an area including the area of every concerned authority.

(6) A requirement upon a registration authority to publish a notice in any area is a requirement to cause the document to be published in such one or more newspapers circulating in that area as appears to the authority sufficient to secure adequate publicity for it.

(7) A requirement to display a notice or copies thereof is a requirement to treat it, for the purposes of section 232 of the Local Government Act 1972(3) (public notices), as if it were a public notice within the meaning of that section.

### **Consideration of objections**

6.—(1) Where an application is made under section 15(1) of the 2006 Act to register land as a town or village green, as soon as possible after the date by which statements in objection to an application have been required to be submitted, the registration authority must proceed to the further consideration of the application, and the consideration of statements (if any) in objection to that application, in accordance with the following provisions of this regulation.

(2) The registration authority—

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(3) 1972 c.70.

- (a) must consider every written statement in objection to an application which it receives before the date on which it proceeds to the further consideration of the application under paragraph (1); and
  - (b) may consider any such statement which it receives on or after that date and before the authority finally disposes of the application.
- (3) The registration authority must send the applicant a copy of every statement which it is required under paragraph (2) to consider, and of every statement which it is permitted to consider and intends to consider.
- (4) The registration authority must not reject the application without giving the applicant a reasonable opportunity of dealing with—
- (a) the matters contained in any statement of which copies are sent to him under paragraph (3); and
  - (b) any other matter in relation to the application which appears to the authority to afford possible grounds for rejecting the application.

#### **Procedure in relation to applications to which section 15(8) of the 2006 Act applies**

7. Where an application is made under section 15(8) of the 2006 Act to register land as a town or village green, the registration authority must grant it provided it is satisfied that—
- (a) the applicant is the owner of the land; and
  - (b) any consents which are required by section 15(9) of the 2006 Act have been obtained.

#### **Method of registration**

8.—(1) Where the registration authority grants an application, it must make the necessary registration, following as closely as possible Model Entry No. 4 with such variations and adaptations as the circumstances may require, but with the substitution, for the words “(Registration provisional.)”, of the words “(Registration under section 15 of the Commons Act 2006.)”.

(2) The provisions of paragraphs (2) to (6) of General Regulation 10 apply to registrations under these Regulations as they apply to registrations made pursuant to the General Regulations with the following modifications—

- (a) in paragraph (2), after the words “Form 2, and”, insert “, to the extent required,”; and
- (b) in paragraph (5), the words “for the Register of Common Land shall bear the prefix CL, and every such number” shall not apply.

(3) The provisions of regulation 9 of the Commons Registration (Objections and Maps) Regulations 1968(4) (changes as to provisional register maps) apply for the purposes of section 15 of the 2006 Act as they apply for the purposes of section 4 of the Commons Registration Act 1965(5) with the following modifications—

- (a) paragraphs (1), (2) and (3) shall not apply;
- (b) “new map” means any map taken into use for the purpose of this regulation;
- (c) in paragraph (4) for the words “six inches to one mile”, substitute “1:2,500”.

(4) Each new map taken into use must be stamped by, and signed on behalf of, the registration authority, and shall then form part of the register.

(5) Where the land which is the subject of an application is already registered as common land in the register of common land, the registration authority must, in addition—

(4) [S.I. 1968/989](#) as amended by [S.I. 1969/1843](#), [1970/384](#) and [1990/311](#) .

(5) [1965 c.64](#).

- (a) where rights of common are entered in that register, make a corresponding entry in the register of town or village greens; and
  - (b) modify the entry in the register of common land so that the land which is the subject of the application ceases to be registered as common land.
- (6) Where a registration authority has made a registration under this regulation, it must file the application form and any plan and return all other documents which accompanied the application to the applicant.
- (7) In this regulation—
- (a) “Model Entry No. 4” means the specimen entry so numbered in Part I of Schedule 2 to the General Regulations; and
  - (b) “register of common land” and “register of town or village greens” refer to the registers maintained by a registration authority pursuant to section 3 of the 1965 Act<sup>(6)</sup>.

### **Information about disposal of applications, and procedure on rejection**

9.—(1) When the registration authority has disposed of an application and, if it has granted the application, has made the necessary registration, it must give written notice of the fact to—

- (a) every concerned authority,
- (b) the applicant, and
- (c) every person whose address is known to the registration authority and who objected to the application.

(2) Such notice must include, where the registration authority has granted the application, details of the registration, and, where it has rejected the application, the reasons for the rejection.

(3) A person must be taken to have objected to an application for the purposes of paragraph (1) if he submitted a statement in objection to the application which the registration authority was required to consider under paragraph (2) of regulation 6 or which it did consider under that paragraph.

(4) Where the registration authority has rejected an application, it must return the application form and all accompanying documents to the applicant.

### **Land descriptions**

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 any application—
  - (a) by an 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 1:2,500;
  - (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.
- (4) In this regulation, “register unit” has the same meaning as in the General Regulations.

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(6) By article 4 of the [Commons Act 2006 \(Commencement No. 2, Transitional Provisions and Savings\) \(England\) Order 2007/456](#), a green complying with the criteria for registration under section 15 of the 2006 Act is to be entered in the register maintained by a registration authority pursuant to the 1965 Act.

17th February 2007

*Barry Gardiner*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

SCHEDULE

Regulation 2(1)

Forms

<b>FORM 44</b>	
<b>Commons Act 2006: Section 15</b>	
<b>Application for the registration of land as a Town or Village Green</b>	
<p>Official stamp of registration authority indicating valid date of receipt:</p> <div style="border: 1px solid black; height: 80px; width: 100%;"></div>	<p>Application number: <input style="width: 100%;" type="text"/></p> <p>Register unit No(s): <input style="width: 100%;" type="text"/></p> <p>VG number allocated at registration:</p> <div style="border: 1px solid black; height: 40px; width: 100%;"></div> <p><small>(CRA to complete only if application is successful)</small></p>
<p><b>Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:</b></p> <ul style="list-style-type: none"><li>• All applicants should complete questions 1-6 and 10-11.</li><li>• Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7-8 as appropriate. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.</li><li>• Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.</li></ul>	
<p><b>Note 1</b> <i>Insert name of registration authority.</i></p>	<p><b>1. Registration Authority</b></p> <p>To the</p> <div style="border: 1px solid black; height: 60px; width: 100%;"></div>



<p><b>Note 2</b> <i>If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.</i></p> <p><i>If question 3 is not completed all correspondence and notices will be sent to the first named applicant.</i></p>	<p><b>2. Name and address of the applicant</b></p>
	Name: <input type="text"/>
	Full postal address: <input type="text"/> <div style="text-align: right;">Postcode</div>
	Telephone number: (incl. national dialling code) <input type="text"/>
	Fax number: (incl. national dialling code) <input type="text"/>
	E-mail address: <input type="text"/>
<p><b>Note 3</b> <i>This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.</i></p>	<p><b>3. Name and address of solicitor, if any</b></p>
	Name: <input type="text"/>
	Firm: <input type="text"/>
	Full postal address: <input type="text"/> <div style="text-align: right;">Post code</div>
	Telephone number: (incl. national dialling code) <input type="text"/>
	Fax number: (incl. national dialling code) <input type="text"/>
	E-mail address: <input type="text"/>

<p><b>Note 4</b> <i>For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.</i></p> <p><i>* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.</i></p>	<p><b>4. Basis of application for registration and qualifying criteria</b></p> <p>If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.</p> <p>Application made under <b>section 15(8)</b>: <input type="checkbox"/></p> <p>If the application is made under <b>section 15(1)</b> of the Act, please <b>tick one</b> of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.</p> <p><b>Section 15(2)</b> applies: <input type="checkbox"/></p> <p><b>Section 15(3)</b> applies: <input type="checkbox"/></p> <p><b>Section 15(4)</b> applies: <input type="checkbox"/></p> <p>If <b>section 15(3) or (4)</b> applies please indicate the date on which you consider that use as of right ended.</p> <div data-bbox="504 1240 1273 1321" style="border: 1px solid black; height: 36px; width: 482px;"></div> <p>If <b>section 15(6)*</b> applies please indicate the period of statutory closure (if any) which needs to be disregarded.</p> <div data-bbox="510 1442 1273 1585" style="border: 1px solid black; height: 64px; width: 478px;"></div>
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<p><b>Note 5</b> <i>The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.</i></p>	<p><b>5. Description and particulars of the area of land in respect of which application for registration is made</b></p>
<p><i>* Only complete if the land is already registered as common land.</i></p>	<p>Name by which usually known:</p> <div data-bbox="502 584 1273 685" style="border: 1px solid black; height: 45px; margin-bottom: 10px;"></div> <p>Location:</p> <div data-bbox="502 792 1273 893" style="border: 1px solid black; height: 45px; margin-bottom: 10px;"></div> <p>Shown in colour on the map which is marked and attached to the statutory declaration.</p> <p>Common land register unit number (if relevant) * <input data-bbox="997 987 1273 1025" style="width: 173px; height: 17px;" type="text"/></p>
<p><b>Note 6</b> <i>It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.</i></p>	<p><b>6. Locality or neighbourhood within a locality in respect of which the application is made</b></p> <p>Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:</p> <div data-bbox="502 1323 1273 1581" style="border: 1px solid black; height: 115px; margin-bottom: 10px;"></div> <p>Tick here if map attached: <input data-bbox="767 1608 804 1637" type="checkbox"/></p>

<p><b>Note 7</b> <i>Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.</i></p> <p><i>This information is not needed if a landowner is applying to register the land as a green under section 15(8).</i></p>	<p><b>7. Justification for application to register the land as a town or village green</b></p> <div data-bbox="497 528 1272 1733" style="border: 1px solid black; height: 538px;"></div>
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<p><b>Note 8</b> Please use a separate sheet if necessary.</p>	<p><b>8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green</b></p>
<p>Where relevant include reference to title numbers in the register of title held by the Land Registry.</p> <p>If no one has been identified in this section you should write "none"</p> <p>This information is not needed if a landowner is applying to register the land as a green under section 15(8).</p>	<div style="border: 1px solid black; height: 135px;"></div>
<p><b>Note 9</b> List all such declarations that accompany the application. If none is required, write "none".</p> <p>This information is not needed if an application is being made to register the land as a green under section 15(1).</p>	<p><b>9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land</b></p>
<p><b>Note 10</b> List all supporting documents and maps accompanying the application. If none, write "none"</p> <p>Please use a separate sheet if necessary.</p>	<div style="border: 1px solid black; height: 125px;"></div>
	<p><b>10. Supporting documentation</b></p>
	<div style="border: 1px solid black; height: 150px;"></div>

<p><b>Note 11</b> <i>If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.</i></p>	<p><b>11. Any other information relating to the application</b></p>
<p><b>Note 12</b> <i>The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.</i></p>	<div style="border: 1px solid black; height: 200px; width: 100%;"></div>
	<p>Date: <input style="width: 350px; height: 15px;" type="text"/></p>
	<p>Signatures: <div style="border: 1px solid black; height: 70px; width: 350px;"></div></p>
<hr/> <p><b>REMINDER TO APPLICANT</b></p>	
<p><b>You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.</b></p>	
<p><b>Data Protection Act 1998</b></p>	
<p><i>The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.</i></p>	

## Statutory Declaration In Support

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

<sup>1</sup> *Insert full name (and address if not given in the application form).*

I.....,<sup>1</sup> solemnly and sincerely declare as follows:—

<sup>2</sup> *Delete and adapt as necessary.*

1.<sup>2</sup> I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (<sup>3</sup> one of the applicants)).

<sup>3</sup> *Insert name if Applicable*

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

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

<sup>4</sup> *Complete only in the case of voluntary registration (strike through if this is not relevant)*

4.<sup>4</sup> I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:

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

*Cont/*





**FORM 45**

**COMMONS ACT 2006 — SECTION 15(1)**

**Notice of an application for the registration of land as a Town or Village Green**

To every reputed owner, lessee, tenant or occupier of any part of the land described below, and to all others whom it may concern.

Application has been made to the *(name and address of the registration authority)* by *(name and address of applicant)* under section 15(1) of the Commons Act 2006 and in accordance with the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. The application seeks the inclusion in the register of town and village greens of the land described in the Schedule below which is claimed to have qualified for registration as a town or village green on *(period given in question 4 of Form 44)* by virtue of *(summary of case given in question 7 of Form 44)*.

The application, which includes a plan of the land proposed for registration may be inspected at the following office ..... between the hours of .....*(address and timings where and when application papers are available)*. Copies of the documents may also be inspected at the following local authority offices *(insert details of concerned local authorities if any)*.

If the registration authority is satisfied that the land described below qualifies for registration as a town or village green, it will so register the land.

Any person wishing to object to the registration of the land as a town or village green should send a statement of the facts on which the objection is based to *(name and address of registration authority)* on or before *(insert date — not less than 6 weeks from the later of the date the notice is published and displayed or the date on which it is delivered pursuant to regulation 5(2))*. Any representations that are to be taken into account by the Authority in reaching a decision on the application cannot be treated as confidential and will be copied to the applicant for comment and may be disclosed to other interested parties.

Dated

Signed (signature on behalf of the registration authority)

**Schedule**

Description of the land claimed to have qualified for registration as a town or village green

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 15 of the Commons Act 2006 (“the 2006 Act”) provides a revised basis for seeking registration of land as a town or village green.

Part I of the 2006 Act has only been partially brought into force. In particular sections 1–3 are not yet in force. Until that happens, new greens cannot be entered into the register of town or village greens to be maintained pursuant to the 2006 Act. Until that time, these Regulations enable registration authorities to register land, which meets the criteria for registration set out in section 15(1) or 15(8) of the 2006 Act, in the register of town or village greens maintained pursuant to the Commons Registration Act 1965.

These regulations—

- specify the procedure for applying to register land as a town or village green (*r.3*);
- specify the procedure for dealing with applications for registration (*rr.4–7*); and
- specify the manner of registration of land as a town or village green following the granting of an application (*r.8*).

These regulations replace the relevant provisions in the Commons Registration (New Land) Regulations 1969 ([SI 1969/1843](#)) for the registration of new town or village greens under the Commons Registration Act 1965. However, the 1969 regulations remain in force to enable the registration of new greens and new common land for the purposes specified in the savings contained in article 4(3) of the Commons Act 2006 (Commencement No. 2, Transitional Provisions and Savings)(England) Order 2007 ([SI 2007/456](#)).

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.



Department  
for Environment  
Food & Rural Affairs

# Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006

**Sections 15A and 15B: landowner statements  
and registers (including statements and  
declarations under section 31(6) of the  
Highways Act 1980)**

**Section 15C: exclusion of the right to apply  
under section 15(1) to register new town or  
village greens**

**December 2016**



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PB 13886

[www.gov.uk/defra](http://www.gov.uk/defra)

## **Version 7**

Version 6 was amended to reflect changes made by the Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) (Amendment) Regulations 2016. These regulations removed the requirement to post notices on land where a statement and map has been deposited, or a declaration lodged, under section 31(6) of the Highways Act 1980 in respect of that land.

Version 5 was amended to take account of the amended list of trigger and terminating events introduced by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014. Paragraph 6 now also refers to the Guidance for the completion of form CA16.

Version 4 was amended at paragraph 24 to qualify the statement that whilst it is possible to make a single application to deposit a highways statement, lodge a highways declaration and deposit a landowner statement, in relation to the former two, these can only be done in relation to different areas of land.

Version 3 was amended to make clear Defra's view that for a declaration to be effective as evidence against presumed dedication it must be lodged after the deposit of a statement, not at the same time.

Version 2 was amended to remove references to Annexes B and C, which featured in the interim guidance but were removed; and to make clear that the notice of application should be accompanied by a map of the land.

Version 1 was amended to correct paragraph 27 which incorrectly stated that, in relation to the increase of the 10 year period for highways declarations to 20 years, it applied retrospectively. This is not the case: the 20 year period only applies to applications submitted on or after 1 October 2013

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# Introduction

1. This guidance is for commons registration authorities in England. Chapter 1 should also be read by appropriate councils<sup>1</sup> who maintain the registers held under section 31A of the 1980 Act. Separate guidance is available to applicants on the [www.gov.uk](http://www.gov.uk) website. Please see:
  - Guidance for the completion of form CA16 (the application form for depositing landowner statements and highways statements, and for lodging highways declarations);
  - Guidance to applicants in the pioneer areas and 2014 areas (if the land is in Devon, Kent (but not including unitary authorities in these first two counties), Cornwall, Hertfordshire, Herefordshire, Lancashire (but not Blackpool), Cumbria, North Yorkshire and Blackburn with Darwen); or
  - Guidance notes for the completion of an application to register land as a town or village green.
2. This guidance is not an authoritative statement of the law, which is ultimately a matter for the courts.
3. In July 2011 the Government published a consultation on the registration of new town and village greens (“greens”) due to increasing concerns about the impact of such applications on the planning system. The Government places great importance on the planning system to support efficiency, effectiveness and growth. This is partly why the Government committed to delivering the *Penfold review*<sup>2</sup> recommendation to reduce the impact of the greens registration system on the planning system. The Penfold review looked into whether non-planning consents discourage or delay investment in development projects.
4. Government announced in October 2012 that the law on the registration of new greens under the Commons Act 2006 (“the 2006 Act”) would be amended in England only through the Growth and Infrastructure Bill, which was introduced to Parliament on 18 October 2012. On 25 April 2013 the Bill received Royal Assent and consequently became the Growth and Infrastructure Act 2013 (“the 2013 Act”). The changes apply to England only, so the law in Wales is unchanged.
5. Section 14 of the 2013 Act amended section 15(3) of the 2006 Act to reduce the period of grace following the cessation of at least 20 years’ use as of right from two

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<sup>1</sup> “Appropriate council” is defined in section 31(7) of the Highways Act 1980 and “commons registration authorities” is defined in section 4 of the Commons Act 2006. In practice, the appropriate council and commons registration authority will be the same body.

<sup>2</sup> The Penfold review was published on 18 July 2012: [www.gov.uk/government/publications/penfold-review-of-non-planning-consents](http://www.gov.uk/government/publications/penfold-review-of-non-planning-consents)

years to one year<sup>3</sup>. This came into force on 1 October 2013. Applications submitted after this date which relate to land on which recreational use as of right ceased any more than one year previous to cessation of such use must therefore fail because the one year deadline has been exceeded.

6. Section 15 of the 2013 Act inserts sections 15A and 15B into the 2006 Act to introduce, respectively, landowner statements which bring to an end any period of recreational use 'as of right' over land, and the registers in which they are to be recorded. Section 13 of the 2013 Act amended the form and procedure in England for depositing statements and declarations under section 31(6) of the Highways Act 1980 ("the 1980 Act") in order to align it with landowner statements. Sections 15 and 13, and the regulations which prescribe the rules for such applications, came into force on 1 October 2013 and are explained in Chapter 1.
7. Section 16 of the 2013 Act inserted section 15C and Schedule 1A into the Commons 2006 Act to exclude the right to apply under section 15(1) of the 2006 Act to register land as a green when a 'trigger event' has occurred in relation to that land. This came into force on 25 April 2013. Further trigger events were added in February 2014. These are explained in Chapter 2.

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<sup>3</sup> Section 14 of the 2013 Act amended section 15(3) of the 2006 Act to reduce the period of grace where recreational use as of right has ceased before an application is made. The amendment took effect on 1 October 2013 by virtue of the Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013 (SI 2013/1488).



# Chapter 1: Landowner Statements and Highways Statements and Declarations

## What has changed?

8. Section 15 of the 2013 Act amends the law on registering greens by inserting sections 15A and 15B into the 2006 Act<sup>4</sup>. Section 15A allows a landowner<sup>5</sup> to deposit a landowner statement accompanied by a map which brings to an end any period of recreational use ‘as of right’ over the land to which the statement and map relate. Section 15B of the 2006 Act makes provision for the public registers in which information relating to landowner statements are to be recorded.
9. Section 13 of the 2013 Act amends the form and procedure in England for depositing statements and declarations under section 31(6) of the 1980 Act in order to align it with the new mechanism for depositing landowner statements. The regime in section 31(6) of the 1980 Act provides a means for a landowner to counter deemed dedication (under section 31(1) of that Act) of ways over its land as highways (see paragraph 17). In this Chapter a statement deposited under section 31(6) is referred to as a ‘highways statement’ and a declaration lodged under that provision is referred to as a ‘highways declaration’.
10. The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013<sup>6</sup> (“the 2013 Regulations”) prescribe the form and process for the depositing of, and recording of information relating to, landowner statements, highways statements and highways declarations. Such deposits are submitted to the “appropriate authority”, a term which amalgamates the separate definitions of the appropriate council for highways purposes and the commons registration authority for greens purposes, which generally are the same local authority. The 2013 Regulations also provide for:
  - a prescribed application form which allows landowners to submit to the authority a single application for both highways and greens purposes<sup>7</sup> ;
  - a power for the authority to set a reasonable application fee;

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<sup>4</sup> Section 15 was commenced on 25 June 2013 for the limited purpose of making regulations (see the Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013, SI 2013/1488, article 4(b)). Section 15 was brought into effect for all remaining purposes on 1st October 2013 by the Growth and Infrastructure Act 2013 (Commencement No. 3 and Savings) Order 2013, SI 2013/1766, article 3(b)

<sup>5</sup> “Owner” is defined in section 61(3)(a) of the 2006 Act.

<sup>6</sup> SI 2013/1774.

<sup>7</sup> Regulation 2(2)(a) of the 2013 Regulations requires that an application to deposit a highways statement, highways declaration or green landowner statement on or after 1st October 2013 be in the prescribed form or in a form substantially to the same effect, with such insertions or omissions as re necessary in any particular case.

- when a landowner statement is treated as having been deposited with the authority;
- the service of notice by the authority of an application to deposit a highways statement, highways declaration and landowner statement;
- the information relating to a landowner statement which must be recorded in the public register required to be maintained under section 15B(1) of the 2006 Act, the manner of keeping such a register and the circumstances in which entries may be removed from the register; and
- where an authority wishes to record such prescribed information in the existing register maintained for highways purposes under section 31A of the 1980 Act (permitted by section 15B(3) of the 2006 Act), the creation of a new part of the existing register for that purpose.

11. Sections 13 and 15 of the 2013 Act and the 2013 Regulations came into force on 1 October 2013.

12. The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) (Amendment) Regulations 2016 (the 2016 Regulations) remove the requirement to post notices on land where a statement and map has been deposited, or a declaration lodged, under section 31(6) of the Highways Act 1980 in respect of that land.

## What is a landowner statement?

13. A landowner statement is different to a highways statement or highways declaration deposited under the 1980 Act. A landowner statement applies specifically to greens and comprises:

- a statement which brings to an end any period of recreational use as of right over the land to which the statement applies; and
- a map which shows the land to which the statement applies.

14. One key component of the criteria for registering new greens under section 15(1) of the 2006 Act is that the land has been used 'as of right', which means without permission, without force and without secrecy, for at least 20 years. The effect of depositing a landowner statement is to interrupt any such period of use of the land shown in the map and described in the statement.

15. Section 15A(2) of the 2006 Act provides that the deposit of a landowner statement does not prevent a new period of use commencing. Therefore if recreational use 'as of right' of the land were to continue then a new 20 year period of requisite user could begin to accrue. However, if a landowner statement is deposited within 20 years of the previous deposit, then it will again prevent any recreational users of the land reaching

the 20 years' use required by the greens registration criteria (i.e. because the clock is stopped once more before it reaches 20 years).

16. For land which has been subject to recreational use as of right for 20 years or more before a landowner statement is deposited, the deposit of such a statement would trigger the one year period of grace allowed for greens applications which rely on the qualifying criteria provided by section 15(3) of the 2006 Act, i.e. where use of the land as of right has ceased.

## What changes have been made to statements and declarations under the 1980 Act?

17. The regime for depositing highways statements and highways declarations continues and any previous deposits remain valid. However, section 13 of the 2013 Act amends section 31 of the 1980 Act in order to align the form and procedure for making such deposits with that for depositing landowner statements.
18. Under section 31(6) of the 1980 Act, landowners<sup>8</sup> can deposit a statement and map acknowledging which ways across their land (if any) which they admit to having been dedicated<sup>9</sup> as highways. Landowners may then, within 20 years<sup>10</sup> of the deposit of the statement and map (and within subsequent periods of 20 years<sup>11</sup> from each previous deposit), lodge a formal declaration to the effect that no additional way (other than any specifically indicated in the declaration) over the land delineated on the map has been dedicated as a highway since the date of the initial or previous (as the case may be) deposit. In the absence of proof of a contrary intention, a declaration will be sufficient evidence to negative the intention of the owner or his successors in title to dedicate any such additional way as a highway.
19. In Defra's view, for a declaration to be effective as evidence against presumed dedication, the lodging must be a separate event, *after* the deposit of the statement (i.e. not at the same time), but no more than 20 years later.
20. The appropriate council, which is the top-tier local authority for the area (e.g. county council or London borough), records information relating to highways statements and highways declarations in a public register kept under section 31A of the 1980 Act and

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<sup>8</sup> "Owner" is defined in section 31(7) of the 1980 Act as "a person who is for the time being entitled to dispose of the fee simple in the land."

<sup>9</sup> In Defra's view, reference to "dedicated" here means dedicated by the landowner (or his/her predecessors), not highways created through other means, e.g. under statute

<sup>10</sup> This period was extended to 20 years in relation to land in England by virtue of section 13(2) of the 2013 Act and section 31(6A)(c) of the 1980 Act (as inserted by section 13(3) of the 2013 Act. Section 13 was commenced on 25 June 2013 for the limited purpose of making regulations (see SI 2013/1488, article 4(a)) and was brought into effect for all remaining purposes on 1st October 2013 (see SI 2013/1766, article 3(a) and the savings provision in article 4).

<sup>11</sup> Ibid.

the Dedicated Highways (Registers under Section 31A of the Highways Act 1980) (England) Regulations 2007<sup>12</sup> (“the 2007 Regulations”). The 2013 Regulations amend the 2007 Regulations to allow for paper registers kept under section 31A to be held and inspected at a specified office (or if none is specified, the principal office) of the appropriate council, as well as consequential amendments arising from changes made by section 13 of the 2013 Act<sup>13</sup>.

21. There was previously no prescribed form for depositing highways statements and highways declarations were required to be in the form of a statutory declaration. The 2013 Regulations prescribe an application form which allows a landowner to make any or all of the following in relation to his land: a highways statement, highways declaration, and landowner statement. The 2013 Regulations also impose notice requirements on the appropriate authority, as well as permitting the authority to specify a reasonable application fee if it so decides. The form requires the applicant to sign a statement of truth. The statement of truth places on the applicant the burden of ensuring that the information in the application is correct. Any incorrect facts could invalidate the effect of the application. Furthermore the authority has the power to remove entries which contain a material error – see paragraph 53.
22. The application form in the 2013 Regulations only applies to applications made on or after 1 October 2013. The new procedure does not apply to any statement or declaration made before that date.

## Who is affected by the change?

23. Landowners, authorities and recreational users of land will be directly affected.
24. Landowners who wish to prevent the deemed dedication of any new highways over their land or prevent any part of it being registered as a green may want to submit a highways statement followed by a highways declaration and a landowner statement. They can now do any or all at the same time through the combined application form, provided the highways statement is deposited in relation to land which is different to that for which the highways declaration is lodged. For example, the highways statement is deposited in relation to Land A, the highways declaration is lodged in relation to Land B and the landowner statement is deposited in relation to both Land A and B.
25. Authorities are responsible for processing and publishing notices under the 2013 Regulations, as well as recording information relating to highways statements, highways declarations and landowner statements in the public registers.

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<sup>12</sup> SI 2007/2334

<sup>13</sup> Regulation 8 of the 2013 Regulations amends the 2007 Regulation to remove references to statutory declarations and to extend the period in which highways declarations can be made following the deposit of an initial statement and map or the deposit of a previous declaration.

26. Authorities which have straddling agreements with Commons Registration Authorities in Wales could be further affected. Section 15A(8) of the 2006 Act provides that any such straddling agreements, whether made under the Commons Registration Act 1965 or the 2006 Act (i.e. an Authority in Wales is responsible for land in England), will be disregarded if they would have the effect of requiring a landowner statement to be deposited with an Authority in Wales. In such a case an application would need to be made in respect of the English land to the relevant authority in England.
27. Recreational users of land will be affected by the deposition of landowner statements because it will bring an end to any period during which they have used the land as of right. Similarly, the deposition of either a highways statement or declaration will negative presumed dedication of the land as a highway. The notice requirements placed on authorities will ensure that users are notified of any deposition in relation to the land they use. When a landowner statement is deposited in relation to land which has been used as of right for recreation for at least 20 years, it would trigger the one-year period of grace allowed under section 15(3) of the 2006 Act.

## The registers

### The 1980 Act register

28. The keeping of the register held under section 31A of the 1980 Act remains subject to the rules prescribed in the 2007 Regulations, except that the expiry of the 10 year period mentioned in the register has been amended to refer to the expiry of a 20 year period<sup>14</sup>. Please remember this only applies to applications submitted after 1 October 2013 and declarations submitted before 1 October remain subject to the 10 years<sup>15</sup>. The register can now be held at either any specified office of the authority or at its principal office. This flexibility allows for both the highways and landowner statements registers to be kept at the same office.

### The landowner statements register

29. You may use the 1980 Act register to record landowner statements but must create a new part of the register for that purpose.
30. The register must contain an index of its contents, and provide the job title and contact details (phone and email) of the person in the authority to whom enquiries can be made. The register should be held in such a way as to enable copies of any information held in it to be taken by or for any person who requests a copy in person at

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<sup>14</sup> Regulation 8(5) of the 2013 Regulations amends the references to a 10 year period in regulation 3(3)(c) and 3(5) of the 2007 Regulations to ones of 20 years.

<sup>15</sup> This is provided by a saving in article 4 of Growth and Infrastructure Act 2013 (Commencement Order No. 3 and Savings) Order 2013 (SI 2013/1766).

the relevant office of the authority. The web version must have a search facility that, as a minimum, allows postcode and keyword searches.

31. The register is to be held in both electronic and paper form. The paper copy must be kept at the relevant office of the commons registration authority, the address of which should be specified on the authority's website, or if no office is specified it shall be the authority's principal office. People who cannot access the authority's website can find out the address of the relevant office by telephoning the authority. The register should be available for inspection during normal office hours. The electronic copy should be published on the authority's website or a website maintained by the authority.

32. The register must contain:

- a copy of the statement;
- a copy of the map and any legend which accompanies or forms part of the map;
- the name and address (incl. postcode) of the person who made the statement;
- the date on which the authority received the application to deposit the statement and map; and
- details of the land on the map (including the Ordnance Survey grid reference of a point within each parcel); the name of the parish, ward or district; the address of buildings on the land which have a postcode; the name of the nearest town or city.

33. The details to be recorded in the register for landowner statements are almost the same as those for the register for highways statements and declarations. The difference is that the highways register, with respect to highways declarations (not highways statements), records the date on which the 20 year period elapses and a unique reference number allotted by the authority to the declaration.

## The application procedure

34. There are four steps to the procedure: initial check, acknowledgement of the application, serving notice of the application and recording it in the register. Each stage is explained below.

### Initial check

35. On receipt of an application, you will need to check whether the application form is:

- in the form prescribed by Schedule 1 to the 2013 Regulations, or in a form substantially to the same effect with such insertions or omissions as are necessary in any particular case<sup>16</sup>;

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<sup>16</sup> See Regulation 2(2)(a) of the 2013 Regulations.

- signed by every owner (or by their duly authorised representative) of the land to which the application relates;
- accompanied by an Ordnance map at a scale not less than 1:10,560 (except where the application refers to a map which accompanied a previously deposited statement or declaration with the authority – see paragraph 40); and
- accompanied by the correct fee (if any).

36. Parts A and F of the application form must be completed by all applicants. Parts B to E are discretionary and allow for variation to account for the unique set of facts associated with each application. Parts B, C or D should be deleted where not applicable. Part B is to be completed where the application relates to a highways statement. Part C is to be completed where the application relates to a highways declaration and Part D is to be completed where the application relates to a landowner statement. Part E allows for additional information to be provided which is relevant to the application.
37. For applications which seek simultaneously to deposit a highways statement and lodge a highways declaration in relation to the same land, you should advise the applicant that for the application to be effective the declaration must be lodged separately, after the deposit of a statement, at any time within 20 years from the time of the deposit of the statement.
38. The application must be signed by the applicant (person A). This can be the landowner or a duly authorised representative of the owner. Where there are multiple owners, each owner must complete paragraphs 2 and 3 of Part A and complete and sign the application in Part F or a duly authorised representative (or representatives) may complete the form on behalf of all of the owners. Paragraph 3 of Part A to the prescribed form should explain in what capacity the applicant is applying e.g. landowner, managing agent, trustee. If the owner is a body corporate or an unincorporated association, the application must be signed by the secretary or another duly authorised officer.
39. Where the applicant is unable to read or write, the application must be supported by a certificate made by an authorised person<sup>17</sup> who must certify that the application and, in particular, the statement of truth in Part F has been read to person A who appeared to understand the statement and the consequences of making a false one as well as understanding and approving the content of the application as accurate; and that person A signed or made their mark in the presence of the authorised person.
40. The Ordnance Survey map, besides, being at the scale above, must show the boundary of the relevant land in coloured edging. The exception here is where the application refers to a map previously deposited with the authority in relation to a

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<sup>17</sup> An authorised person means a “conveyancer” as defined in rule 217(A) of the Land Registration Rules 2003.



highways statement or declaration (it does not matter if the map was deposited before 1 October 2013) or a landowner statement. If the application relates to multiple parcels of land, such parcels should be identified on the map by coloured edging and clearly described in paragraph 4 of Part A of the statement. A number of contiguous fields may be treated as one parcel of land, even if separated by physical boundaries such as roads or hedgerows.

41. The application must also be accompanied by the correct fee (if any has been specified). See paragraph 54 for further advice.
42. The statement of truth in the application form, which the applicant must sign, places on the applicant the onus of getting the facts correct. If the statement or map in question contains a material error, then it could invalidate the application, in whole or in part, and any entry made in reliance on it might be removed by the authority (see paragraph 53).
43. An application is to be treated as having been deposited with the authority when it has been duly made (see paragraph 35). An application can be delivered to the authority by hand at an office of the authority, or by post. Where an application is sent by any means that do not guarantee delivery, the application will not be deemed to have been made if it is proved that the authority did not receive it.

### **Acknowledgement of the application**

44. Provided all of the above has been adhered to, you should as soon as practicable send an acknowledgement of receipt to the applicant. Where it has not been adhered to then the application is not duly made and the authority is under no obligation either to acknowledge the “application” or process it further.

### **Serving notice of the application**

45. You should, as soon as reasonably practicable after receiving a duly made application, publicise notice of receipt of the application in accordance with regulation 4(1)(b), (2) and (3) of the 2013 Regulations (as amended by the 2016 Regulations). The form of the notice is prescribed in Schedule 2 to the 2013 Regulations<sup>18</sup>. The notice provides key information relating to the authority and the application itself, including a map and textual description of the land. Where the application relates to more than one parcel, each separate parcel should be described. The date the application was given to the authority must also be inserted in the notice.
46. The notice of application must be publicised through the following ways:

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<sup>18</sup> Regulation 4(3) of the 2013 Regulations provides that the notice must be in the prescribed form or in a form substantially to the same effect with such insertions or omissions as are necessary in any particular case.



- publication on the authority’s website;
- email a copy to any person who has provided an email address for the purpose of being notified (of all deposits); and
- in respect of a landowner statement, so as to bring it to the attention of users of the land, post a copy of the notice at or near at least one obvious entry point to the land for at least 60 days.<sup>19</sup>

47. There is no specified length of time for which the notice should be retained on the authority’s website. However, you should consider whether to keep it there for the same 60 day duration as the site notice.

48. You should maintain a single distribution list of email addresses of persons who wish to be notified by email of deposits of highways statements, highways declarations and landowner statements. When supplying an email address, the person opts in to receive notice of all deposits received by the authority.

49. In respect of landowner statements, the site notice is to be posted at “at least one obvious place of entry” to the land to which the application relates, or where there are no such places, at least one conspicuous place on the boundary of the land. You will need to consider how many site notices are required in each individual case in order to bring the application to the attention of users of the land. This is likely to depend on how many parcels of land the application relates to and how such land is accessed. For example, where an application relates to two contiguous parcels of land (parcels A and B) and parcel B can only be accessed via one entry point to parcel A, an authority may consider it sufficient for one notice to be placed at the obvious place of entry to parcel A. Remember to include a copy of the map of the land.

50. The site notice is required to be present for not less than 60 days. However, where the notice is removed, obscured or defaced (through no fault of the authority) before the 60 days have elapsed, the authority will be treated as having complied with the requirement.

## **Recording the application in the register**

51. You are advised to record each duly made application in the relevant register (paper and website versions) as soon as practicable after receipt of it. You need to record:
- a copy of the statement;
  - a copy of the map of the land and any legend which accompanies or forms part of the map;
  - the name and address (incl. postcode) of the person who made the statement;
  - the date on which the authority received the statement and map;

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<sup>19</sup> The 2016 Regulations removed the requirement for notices to be posted on the land in respect of highways statements or declarations.

- details of the land on the map, including the Ordnance Survey grid reference of a point within each parcel; the name of the parish, ward or district; the address of buildings on the land which have a postcode; the name of the nearest town or city;
- (for highways declarations only) the date on which the 20 year period elapses; and
- (for highways declarations only) a unique reference number allotted to the declaration.

52. Regarding the mapping of land, there are no requirements relating to the colours of the boundary of the land and the authority is advised to continue with existing practice.

## Removing an entry from the register

53. You have the power to remove an entry, or any part of an entry, which contains a material error in the map or statement in question, but must give the landowner at 12 least 28 days' notice before doing so. For example, if an authority receives an application which purports to deposit a highways declaration for parcels A, B and a landowner statement for parcel C, but at the time of the application the applicant was in process of buying parcel C and did not yet own it, then the statement for parcel C would in Defra's view be invalid and you could remove this part of the entry.

## Fees

54. Applications must be accompanied by the appropriate fee<sup>20</sup>, if any is specified by the authority. The 2013 Regulations do not provide any fee amounts: instead the authority has the power to set fees. A fee specified by the authority must be reasonable for the application of that type. The power allows different fees for different types of application. The following are examples of why the authority may wish to consider setting different fees for different purposes:

- applications which relate to **either** highways deposits (highways statements or highways declarations) or the deposit of a green landowner statement; or
- applications which relate to deposits under **both** highways and greens regimes.

55. The authority is advised to keep fees under review to ensure that amounts are commensurate with the authority's costs.

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<sup>20</sup> Regulation 2(2)(d) provides that an application must be accompanied by such reasonable fee (if any) specified by the appropriate authority for an application of that type.

## Where can the application form be found?

56. The form is prescribed in Schedule 1 to the 2013 Regulations. A copy of the Regulations can be found at the [www.legislation.gov.uk](http://www.legislation.gov.uk) website (search SI 2013/1774).

## Chapter 2: Exclusion of the right to apply under section 15(1) of the 2006 Act

57. Unless stated otherwise all references in this chapter to ‘application’, ‘the right to apply’, and ‘exclusion’ should be taken to mean (respectively) an application under section 15(1) of the 2006 Act to register land as a green, the right to apply for the same and exclusion of the right to apply for the same.

### What has changed?

58. Section 16 of the 2013 Act amended the law on registering new greens by inserting a new section 15C and Schedule 1A into the 2006 Act.

59. Section 15C(1) of the 2006 Act excludes the right to apply when a prescribed event, known as a ‘trigger event’, has occurred within the planning system in relation to that land.

60. At any time when the right to apply is excluded in respect of land, a commons registration authority cannot accept any application to register that land as a green. The right to apply remains excluded until and if a corresponding ‘terminating event’ occurs in respect of the land.

61. The trigger and terminating events are set out in Schedule 1A to the 2006 Act, which is inserted by section 16 of, and Schedule 4 to, the 2013 Act. The list of trigger and terminating events was amended on 11 February 2014 by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014 (SI 2014/257).

62. A copy of the legislation can be found at [www.legislation.gov.uk](http://www.legislation.gov.uk).

### What is a trigger event?

63. Trigger events are events related to the development of land which occur within the planning system. Where any such event has occurred in relation to land, the right to make an application for registration of that land as a town or village green is excluded.

64. The full list of trigger events is set out in the first column in Schedule 1A to the 2006 Act. Some examples of trigger events include:

- the first publication of an application for planning permission for the land, which will include circumstances where planning permission is subsequently granted;

- the publication by the local planning authority of a draft local plan or neighbourhood plan<sup>21</sup> proposal which identifies the land for potential development;
- the adoption or making by the local planning authority of a local plan or neighbourhood plan which identifies the land for potential development;
- a proposed application for development consent under the Nationally Significant Infrastructure project regime is first publicised by the applicant;
- an application for development consent under the Nationally Significant Infrastructure project regime which has been accepted by the Secretary of State (in practice the Planning Inspectorate) is first publicised by the applicant;
- a draft local development order or neighbourhood development order first published for consultation; and
- the publication of a notice of application for deemed planning permission in respect of Transport and Works Act 1992 orders.

65. There are fourteen trigger events in Schedule 1A (as amended by the 2014 Order), each of which relates to a specific planning mechanism. For each trigger event, there are a number of corresponding terminating events – explained below - also specified in Schedule 1A. The local planning authority or authorities and the Planning Inspectorate, as appropriate, will have information as to whether a trigger event or terminating event has occurred in relation to the land.

66. Note that there are no trigger events in relation to permitted development rights. Therefore the exclusion will not apply to land on which permitted development has taken place, unless a trigger event has occurred in relation to that land for another reason.

67. If a trigger event has occurred on land then the right to apply to register it as a green is excluded. Therefore a commons registration authority cannot accept any application to register that land as a town or village green. This rule applies even where a trigger event occurred prior to the commencement of section 15C.

68. The legislation allows new trigger events to be added through secondary legislation, as well as existing trigger events to be amended or omitted.

## What is a terminating event?

69. Every trigger event has corresponding “terminating events”. Where the right to apply has been excluded because a trigger event has occurred, if one of the corresponding terminating events occurs this will mean that the right to apply again becomes exercisable. From that point it will be possible to apply to register land as a town or

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<sup>21</sup> Schedule 1A to the 2006 Act refers to a ‘development plan document’ and ‘neighbourhood development plan’ but they are generally referred to as ‘local plans’ or ‘neighbourhood plans’.

village green. As with trigger events, this rule applies even where a terminating event occurred prior to the commencement of section 15C. Note the position may be more complex where more than one trigger event has occurred in relation to the land (see paragraph 101).

70. Terminating events are set out in the second column of Schedule 1A to the 2006 Act (as amended by the 2014 Order). For example, the corresponding terminating events for the publication of an application for planning permission in relation to land are: (a) withdrawal of the planning application; (b) a decision to decline to determine the planning application is made under section 70A of the Town and Country Planning Act 1990; (c) where permission is refused, all means of challenging the refusal in the UK are exhausted and the decision to refuse planning permission is upheld (or the time limit for an appeal expires without such an appeal being made); and (d) where the planning application is granted, the period within which the development to which that permission relates expires without the development having been begun.
71. The legislation allows new terminating events to be added through secondary legislation, as well as existing terminating events to be amended or omitted.

## Who is affected by the change?

72. Both commons registration authorities and prospective applicants are directly affected. The key question for both parties is whether the right to apply has been excluded in relation to the relevant land.
73. Commons registration authorities cannot consider an application where the right to apply has been excluded for that land. Therefore the commons registration authority will need to determine whether the right to apply has been excluded or not, even where an applicant is not aware of any exclusion.
74. Where the commons registration authority knows that an application is imminent, but that the right to apply has been excluded in respect of that land, it may wish to advise the would-be applicant that the right to apply has been excluded. It will need to be certain that the right is not exercisable if it elects to do this, but this could prevent wasted effort on the part of the applicant.
75. There will be cases where would-be applicants may not be aware of the exclusion and submit an application without prior discussion with the commons registration 16 authority. Even so, if the right has been excluded for that land then the commons registration authority must refuse to consider the application.
76. When determining whether an application under section 15(1) may be made within the period of grace allowed by section 15(3)(c), i.e. where recreational use of the land as of right has ceased, any period during which the right to apply is excluded is to be disregarded. In other words, any period of grace would pause when a trigger event

occurs, and if a corresponding terminating event subsequently occurred, then the period of grace would start running from where it left off.

77. For example, a trigger event occurs in relation to land at a time when six months of the grace period remains. If a corresponding terminating event occurs on that land, then the period during which the right to apply was excluded will be disregarded and there would be a further six months during which an application for registration of land as a green could be made.
78. To a lesser extent local planning authorities and the Planning Inspectorate are also affected by the legislative change, because as overseers of the planning system, they will hold information on whether a trigger or terminating event has occurred in relation to land. The commons registration authority relies on local planning authorities and the Planning Inspectorate providing confirmation of whether trigger or terminating events have occurred in relation to land.

## How will I (the commons registration officer<sup>22</sup>) know if the right to apply is excluded?

79. On receipt of an application, you will need to write to:
- each local planning authority for the land to which the application relates; and
  - the Planning Inspectorate,
- for written confirmation of whether any trigger or terminating events have occurred in relation to the land, and the details of any such events. They will need to know what land is affected so you will need to provide them with a copy of a map of the land. Those confirmations will enable you to decide whether the right to apply under section 15(1) of the 2006 Act has been excluded.
80. An example letter is provided at Annex A, which given the technical complexity of trigger and terminating events, and that such events are overseen by planning authorities and the Planning Inspectorate you are strongly advised to use. The example letter takes account of the additional trigger and terminating events which were inserted by the 2014 Order.
81. The local planning authority will be able to advise on the trigger and terminating events added by the 2014 Order.
82. If a trigger event has occurred but a corresponding terminating event has not, then the right to apply is excluded, in which case you must refuse to accept an application.

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<sup>22</sup> In the remainder of this Chapter, references to 'I' and 'you' mean the relevant commons registration officer or person carrying out that function.

83. It must be stressed that although a trigger event may have occurred in relation to land, a corresponding terminating event also could have occurred, meaning that the right to apply is again exercisable. If confirmation of whether a corresponding terminating event has occurred is not sought then you cannot know for certain that the right to apply is excluded. Note the position may be complex where more than one trigger event has occurred in relation to the land (see paragraph 101).
84. Each relevant local planning authority and the Planning Inspectorate will need to know the exact location and extent of the land, so a copy of the application map should be enclosed with your letter. If a relevant trigger event and/or a corresponding terminating event has occurred, the letter asks them to return your map (or provide their own) and clearly show the land on which the event(s) occurred. This will be important in cases where only part of the land in question is subject to a trigger or terminating event, or where a mixture of scenarios apply to different portions of the land, e.g. a trigger event applies to a small portion of the land but the remainder is not subject to a trigger event.
85. If confirmation is received from a local planning authority or the Planning Inspectorate that a trigger event has occurred (but no corresponding terminating event has occurred) in relation to the land, the right to apply is excluded and the applicant should be informed that the application cannot be accepted unless and until a corresponding terminating event occurs.
86. You can consider an application as normal where either:
- a) no trigger event has occurred; or
  - b) a trigger event has occurred but a corresponding terminating event has also occurred in relation to the land, which has therefore caused the exclusion of the right to apply to lift.

## **Don't I need to formally accept an application before checking whether the right to apply is excluded?**

87. No, you are advised to seek confirmation on whether the right to apply is excluded in relation to the land prior to formally accepting or acknowledging receipt of an application. This is because if the right is excluded then the application should not be accepted, and this extends to written confirmation of receipt of the application.
88. The rationale for this approach is to avoid time and money being spent advertising and making representations in relation to an application where it subsequently turns out there was no right to apply.
89. However, as a matter of courtesy, you may wish to call the applicant to confirm physical receipt of the documents. In doing so, you should make it clear that this does not constitute formal acceptance or acknowledgement that the application is valid. You can explain that advice from each local planning authority and the Planning



Inspectorate is needed before your authority can reach a view on whether or not to accept the application.

## Which is the relevant planning authority?

90. You will need to contact each local planning authority which has responsibility for the land in question, and also the Planning Inspectorate. There could be more than one local planning authority which exercises functions in relation to the land in question. The basic position is as follows:
- within Greater London the London borough council will be the local planning authority;
  - in metropolitan areas outside London the local planning authority will be the metropolitan district council;
  - in non-metropolitan areas, the local planning authority functions will be shared by the district council and county council or held by a unitary authority; and
  - certain other bodies, for example National Park authorities, the Broads Authority, and Mayoral Development Corporations will also exercise local planning authority functions in respect of land in their areas.
91. In areas where there are more than one local planning authorities with responsibility for the land (e.g. county and district councils), you will need to contact each of these, plus the Planning Inspectorate.
92. If the land in question crosses the boundary of several planning authorities then, as they will each be responsible for their portion of the land, each should be contacted to confirm whether a trigger event or corresponding terminating event has occurred in relation to its portion.
93. Where responsibility for town and village green registration and planning functions are housed in the same authority, in unitary authorities for example, you are still advised to seek written confirmation as to whether trigger or terminating events have occurred from your planning department. In such cases, you will still need to write to any other local planning authority with responsibility for part of the land, and to the Planning Inspectorate.
94. The Planning Inspectorate has responsibilities for certain trigger events. For example this is the case where planning permission has been refused by the local planning authority, but the matter is referred on appeal to the Planning Inspectorate. The Planning Inspectorate also deals with applications for development consent under the Nationally Significant Infrastructure project regime on behalf of the Secretary of State. This is why the Planning Inspectorate must always be contacted when determining whether a trigger or terminating event has occurred.
95. The Planning Inspectorate can be contacted at:

The Planning Inspectorate  
Customer Support Team  
Room 3/13 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol  
BS1 6PN

Email: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)  
Telephone: 0303 444 500

## **What if the exclusion applies to only part of the land?**

96. For the portion of land not subject to the exclusion, the application should proceed as usual. This is consistent with how commons registration authorities already deal with applications which can only be approved in part. But for the portion of land on which the right to apply has been excluded then the applicant should be informed that that portion of the land cannot be considered for registration as a new green.

## **What happens where no trigger event has occurred on the land?**

97. The application should proceed to determination as normal.

## **What happens where an application is submitted just before a trigger event occurs?**

98. If the application is made before the trigger event has occurred then it should be considered in the usual way.

## **What happens where the period of grace commenced before both a trigger event and its corresponding terminating event occurred?**

99. The trigger event causes the period of grace to pause. But when the terminating event occurs and the right to apply is again exercisable then the period of grace picks up where it left off. See the example at paragraph 77.

## **What happens where a trigger event and its corresponding terminating event has occurred on the land?**

100. Then the right to apply is again exercisable and the commons registration authority can accept an application for consideration as normal. Note this assumes that only one trigger event has taken place in relation to the land.

## **What happens where more than one trigger event has occurred on the land?**

101. Where more than one trigger event has occurred, the right to apply will be excluded if and until a corresponding terminating event has occurred in relation to each trigger event.

## **What happens where a trigger event occurred on land prior to the commencement of the new legislation?**

102. The right to apply is excluded in relation to that land. It does not matter how long ago a trigger event occurred prior to the commencement of section 15C – if no corresponding terminating event has occurred in respect of land since that trigger event, then the right to apply for registration of a green is not exercisable.

## **What happens where a local plan was adopted in, say 2009, which has identified the land in question for development?**

103. The adoption of that local plan would constitute a trigger event and the right to apply would be excluded unless and until a corresponding terminating event occurs. Where, for example, that plan has been revoked or a policy identifying land for development has been superseded, then either of these would be a terminating event and the right to apply would no longer be excluded.

## **What happens where a corresponding terminating event occurred on land prior to the commencement of the new legislation?**

104. Then the exclusion does not apply as the occurrence of the corresponding terminating event causes the exclusion to lift (assuming no other trigger event has occurred), and an application can be submitted as normal.

## **What if I receive an application under section 15(8) of the 2006 Act?**

105. The change in the law does not affect such applications, so the application should be considered as normal.

# Annex A: Template letter to local planning authorities and the Planning Inspectorate seeking their confirmation of trigger and terminating events

I write on behalf of [insert name of commons registration authority] which has received an [enquiry or application under section 15(1) of the Commons Act 2006 to register] land at [insert description of land] as a town or village green. I enclose a map of the relevant land.

Due to an amendment of the legislation on greens registration under the Commons Act 2006 by the Growth and Infrastructure Act 2013, the right to apply for the registration of a green is excluded if any one of a number of prescribed planning-related events (“trigger events”) has occurred in relation to the land. The right to apply becomes exercisable again only if a corresponding terminating event has occurred in relation to that land.

The trigger and terminating events are set out in Schedule 1A to the 2006 Act (as inserted by Schedule 4 to the 2013 Act). A copy can be read here:

[www.legislation.gov.uk/ukpga/2013/27/schedule/4/enacted](http://www.legislation.gov.uk/ukpga/2013/27/schedule/4/enacted). The list of trigger and terminating events was extended by the Commons (Town and Village Greens) (Trigger and Terminating Events) Order 2014. A copy can be read here: [www.legislation.gov.uk/uksi/2014/257/contents/made](http://www.legislation.gov.uk/uksi/2014/257/contents/made).

Please could you read through the trigger and terminating events and tick one of the three boxes below which describes the situation and set out in detail any relevant information in the box further below, and return the completed form and any relevant maps to me at the postal or email address above.

If a relevant trigger event and/or corresponding terminating event has occurred, please clearly mark on the map provided (or your own), the extent of the land on which the event took place. Where more than one trigger event has occurred, please confirm whether a corresponding terminating event has occurred in respect of each trigger event. Please note that where a trigger event or terminating event occurred prior 25 April 2013, it is still considered a valid event. For example, if a local plan (i.e. a development plan document) adopted in 2008 identifies the land in question for development, then that is a valid trigger event. In cases where a trigger event has occurred in relation to part, but not all, of the land, the first and second boxes should be ticked and the detail explained in the box. The map should clearly indicate the areas which are and are not subject to the trigger event.

Your answer will determine whether or not my authority can accept an application for registration of a green. This decision could be the subject of legal action, so I must stress the need for you to be certain about the information included in your return.

A copy of this letter has also been sent to [insert names of planning authority or authorities] and the Planning Inspectorate. Please notify me if you aware that any other

authority has responsibility for development control or plan-making functions in respect of the land to which this application relates.

Could you please reply to the address above by **[insert date two weeks from the date of the letter]**.

I confirm that <u>no trigger or terminating event has occurred</u> on the land	
I confirm that <u>a trigger event has occurred, but no corresponding terminating event has occurred</u> on the land	
I confirm that <u>a trigger event has occurred but a corresponding terminating event has also occurred</u> on the land	
Further information (Please use this box to explain the type and date of the trigger or terminating events.)	
Details of officer completing this form Name: Address: Email: Phone:	

Application to Register Land as Town or Village Green - Southwick Court Fields, Southwick and North Bradley  
Appendix 7 - Objection

**From:** [Caroline Waller](#)  
**Sent:** 16 December 2021 08:47  
**To:** [Green, Janice](#)  
**Subject:** RE: TVG Application- Southwick Court Fields Ref 2020/02/TVG [CW-Legal.FID2351227]  
**Attachments:** [Objection to TVG application 17 Dec 2021.PDF](#)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Janice

Commons Act 2006 – Sections 15(1) & (2)  
Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick & North Bradley  
Ref: 2020/02/TVG

Please see the attached objection to the above application submitted on behalf of the landowner.

Kind Regards

**Caroline Waller**  
Partner  
Clarke Willmott LLP

t: 0345 209 1814  
m: 07970 318 090  
e: [caroline.waller@clarkewillmott.com](mailto:caroline.waller@clarkewillmott.com)  
f: 0345 209 2557  
w: [clarkewillmott.com](http://clarkewillmott.com)

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Blackbrook Gate Blackbrook Park Avenue Taunton TA1 2PG

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**From:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Sent:** 26 November 2021 16:50  
**To:** Caroline Waller <[Caroline.Waller@clarkewillmott.com](mailto:Caroline.Waller@clarkewillmott.com)>  
**Subject:** RE: TVG Application- Southwick Court Fields Ref 2020/02/TVG [CW-Legal.FID2351227]

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Dear Ms Walker,

**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick & North Bradley**

**Ref: 2020/02/TVG**

Thank you for your e-mail. As requested please find attached a copy of the above-mentioned application in full.

I hope this is helpful.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** Caroline Waller <Caroline.Waller@clarkewillmott.com>

**Sent:** 26 November 2021 16:33

**To:** Green, Janice <janice.green@wiltshire.gov.uk>

**Subject:** TVG Application- Southwick Court Fields Ref 2020/02/TVG [CW-Legal.FID2351227]



Dear Ms Green

I have been instructed on behalf of the owner of the above site.

The TVG application and associated evidence do not appear to be available on the Council's website.

Please could you send me a copy of the application documents by email?

Kind Regards

**Caroline Waller**  
Partner  
Clarke Willmott LLP

t: 0345 209 1814  
m: 07970 318 090  
e: [caroline.waller@clarkewillmott.com](mailto:caroline.waller@clarkewillmott.com)  
f: 0345 209 2557  
w: [clarkewillmott.com](http://clarkewillmott.com)

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## Commons Act 2006 – Sections 15(1) & (2)

### Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick & North Bradley - Ref: 2020/02/TVG

#### Objection on behalf of the Landowner

#### 1 Introduction

- 1.1 This objection is made in respect of the application submitted by Mr N Swanney to register land at Southwick Court Fields, Southwick & North Bradley as a town or village green (“TVG”) (Ref: 2020/02/TVG).
- 1.2 This objection is made on behalf of The Honourable Mrs S M Rhys who owns the land which is the subject of the Application (“the Land”).
- 1.3 It is clear that the application to register the land has been made in an attempt to frustrate the development of the Land. Much of the submitted “evidence” is simply an attempt to re-open the planning merits of the development. Such representations are irrelevant to an application to register the land as a TVG.
- 1.4 In order to succeed, the Application must demonstrate through the submission of evidence 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.
- 1.5 As explained in detail below, the Application fails to meet any of the tests required in order for the land to be registered as a TVG and, must, therefore, be refused.

#### 2 Standard of Proof and Quality of Evidence

- 2.1 The burden of proof is on the Applicant to demonstrate that the requirements of s.15 of the Commons Act 2006 have been satisfied.
- 2.2 Due to the fact that the registration of land as a TVG has very serious consequences for the landowner, it is essential that the Application is accompanied by sufficiently detailed evidence to demonstrate that each of the statutory criteria has been met.
- 2.3 As explained by Pill JL in R v Suffolk County Council, ex parte Steed [1997] 1 EGLR 131:  
  
*“However, I approach the issue on the basis that it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green and that the evidential safeguards present in the authorities already cited dealing with the establishment of a customary right (class B) should be imported into a class C case. Use, as of right, and as inhabitants of Sudbury, for sports and pastimes must be properly and strictly proved.”*
- 2.4 Therefore, the Application must properly and strictly prove each of the following points:
  - 2.4.1 20 years use

- 2.4.2 For lawful sports and pastimes
  - 2.4.3 As of right
  - 2.4.4 By a significant number of the inhabitants of any locality, or of any neighbourhood within a locality.
- 2.5 Failure to properly and strictly prove just one element would be fatal to the Application.
- 2.6 We address each of these elements separately below. However, in summary the application fails to meet the requirements of s.15 of the Commons Act 2006 and must, therefore, be refused.

### **3 Occurrence of Trigger Events and Variation of Application**

- 3.1 By email of 9 November 2021, the Council has confirmed:

*“the application originally covered the whole site as shown outlined red on the application plan attached, (including the area hatched red), however, upon carry out consultations with the relevant planning authorities, it was found that part of the application land was affected by a planning application 20/00379/OUT (Jan 2020) and also allocation within the Wiltshire Housing Site Allocations Plan (WHSAP) (Feb 2020), both of which form a valid planning trigger event over part of the land (without corresponding terminating events in place). This had the effect of extinguishing the right to apply to register that part of the land as a town or village green.*

*Therefore, that part of the application land hatched red is excluded from the application, however, the application remains in place over the southern section of the land outlined in red and Wiltshire Council as the Registration Authority must determine whether or not that section of the land has qualified for registration as a town or village green under sections 15(1) and (2) of the Commons Act 2006. DEFRA guidance “Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – Section 15C: exclusion of the right to apply under section 15(1) to register new town or village greens” December 2016, states that where the exclusion applies to only part of the land, for the portion of the land not subject to the exclusion, the application should proceed as usual.”*

- 3.2 It should be noted the trigger event applies to the vast majority of the Land covered by the Application. The trigger event applies to the land closest to the housing and the locality which is alleged to have used the land for lawful sports and pastimes.
- 3.3 As the Application was made with reference to the whole site, the evidence submitted does not differentiate between the use made of the northern part of the site which is now subject to a trigger event or the southern part of the site which is much further away from the settlement. Therefore, it is wholly unclear what use is claimed to have been made of the southern part of the Land.
- 3.4 The weight to be attached to the representations must therefore necessarily be reduced. It is reasonable to assume that, if the claimed activities did occur, they would have been focussed on the northern part of the land nearest the settlement.

#### **4 20 years Use**

- 4.1 None of the evidence submitted claims to cover the necessary 20 year period.
- 4.2 Document 7.1 appended to the application is a form signed by 23 people giving their names and addresses. The front page of the form makes a number of vague statements regarding the use of the Land for recreational purposes. However, the form provides no details as to the duration, location or frequency of the claimed activities.
- 4.3 No information is given as to how long the signatories have lived at the listed address or how the relevant person claim to know of the alleged use of the Land (e.g. it is unclear whether the signatories would assert that they have carried out the uses claimed, seen the uses taking place by others or have simply heard third hand that some people claim to use the Land for the uses claimed).
- 4.4 Therefore, the evidential value of the signed form is very low.
- 4.5 The only piece of evidence which provides details as to how long the person making the statement has lived in the locality is the letter from Graham Hill (Document 7.2). Mr Hill states that he has been resident in the locality for 18 years. This is insufficient for the purposes of meeting the criteria of the Commons Act.
- 4.6 Further, the comments made by Mr Hill are vague and insufficient to meet the standard of quality of evidence required.
- 4.7 Therefore, the Application must fail on this ground.

#### **5 Lawful Sports and Pastimes**

- 5.1 It is not sufficient to simply assert that the land has been used for various lawful sports and pastimes. The nature and quality of the use must be such that it can be taken into account in support of an Application.
- 5.2 A number of principles have been established by the Courts in this respect including:
  - 5.2.1 “the user must be shown to have been of such a character, degree and frequency as to indicate an assertion by the claimant of a continuous right, and of a right of the measure of the right claimed” (White v Taylor (No.2) (1969) 1 Ch 160 at 192)
  - 5.2.2 The use must be to a sufficient extent. Use which is ‘so trivial and sporadic as not to carry the outward appearance of user as of right’ is to be ignored (R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 A.C. 335, 375D-E)
  - 5.2.3 The decision maker should be concerned with ‘how the matter would have appeared to the owner of the land’ (R (Lewis) v Redcar and Cleveland Borough Council (No 2) [2010] 2 AC 70)
  - 5.2.4 The onus is on the applicant to prove that the whole, and not merely a part or parts of the Land, have been used for lawful sports and pastimes (Cheltenham Builders v South Gloucestershire Council [2003] EWHC 2803 (Admin) at [29])

- 5.3 The submitted evidence does not address any of the requirements above. The evidence submitted in support of the application does not contain any details regarding the extent of the Land used or the frequency or duration of each claimed use. Therefore, again, as a matter of principle, the Application falls to meet the statutory requirements.
- 5.4 Notwithstanding the above, we have addressed each of the claimed uses below after first addressing the current use of the Land.

#### Current Use of the Land

- 5.5 The application states that the “current use of the land is for a sustained blend of cattle grazing and informal recreation”. This is not the case. The field is currently solely used for agriculture. During the summer months (usually April to September), the field is used for grazing cows. During the winter months the field is allowed to recover from grazing. It does not have a “recreational” use.
- 5.6 As explained below, much of the claimed use of the Land is inconsistent with the current use of the Land. Indeed, the carrying out of various activities would be impossible in light of the presence of cattle during the summer months.

#### Camping by Local Children

- 5.7 The application claims that the Land has been used for “Camping by local children”. No further information is given as to the claimed frequency or location of this use nor is any detail provided as to how this was practically or safely achieved.
- 5.8 The site owner rejects the suggestion that there has, at any time, been a camping use of the Land. If any such use has been carried out it has either been on a covert basis (thus failing the “as of right” test) or has been so trivial or infrequent as to have been undiscoverable by the landowner (thus failing the “quality of user” test).
- 5.9 Further, the claim that children have camped on the Land lacks credibility. It is presumed that the Applicant would only seek to claim that the camping took place during the summer. This is when the Land is actively used for cattle grazing. It is implausible to suggest that parents would allow their children to camp on Land when cattle are present. Such a use would have risked the children being trampled in addition to risking harm to the cattle.
- 5.10 Further, whilst it is not specified, we presume that the Applicant is suggesting that this use would have taken place on the northern part of the Land (i.e. nearest the settlement) rather than out of sight, sound or the assistance of parents. This area of the Land is subject to a trigger event. Any use of the northern part of the Land cannot assist the Applicant.
- 5.11 Therefore, no weight should be given to this claimed use.

#### Landing and taking off of para-wings and hot air balloons

- 5.12 The Application claims that the Land has been used for the taking off of para-wings and paragliders. A “para-wing” is a type of parachute. Therefore, we presume the Applicant intended to refer solely to paragliders. Nonetheless, it is difficult to see how any such thing could take



off from the Land. The Land is flat. It is wholly unclear how the Applicant asserts that paragliders can take off from flat ground. Again, this claim lacks credibility.

- 5.13 The landing of hot air balloons is covered by aviation law. It not use “as of right”. However, even if the use could be claimed to be “as of right”, the use would be ‘so trivial and sporadic as not to carry the outward appearance of user as of right’ and should, therefore, be ignored for the purposes of the Application.

#### Trail Bikes

- 5.14 One reference is made to use of the land by trail bikes in document 5.1 (description of the land). No mention is made of this use in either Document 7.1 (the signed form) or Document 7.2 (the letter or Mr Hill). Therefore, no evidence has been provided to support this claim.

#### Scattering of Ashes

- 5.15 This claimed use is stated to have occurred with the express consent of the owner. Therefore, this would not be “as of right” as it has permission.

#### Children Playing

- 5.16 No evidence is given regarding the frequency or duration of this claimed use. No evidence is given regarding the areas of the Land claimed to be used.
- 5.17 Therefore, this evidence fails the requirements of sufficiency and quality required to demonstrate use of the Land.

#### Berry Picking

- 5.18 Again, no evidence is given regarding the frequency or duration of this use. It can be assumed that this use was limited to the periphery of the Land as there are no berry-bearing plants elsewhere on the Land. However, whether this claimed use is limited to the northern part of the Land nearest the settlement (which is subject to the trigger event) is wholly unclear.
- 5.19 In any event, such a use does not demonstrate a general use of the entire Land for lawful sports and pastimes. The use would be confined to the extreme margins of the periphery of the Land.

#### Dog Walking & General Walking

- 5.20 Evidence of the use of the Land for walking should be discounted.
- 5.21 The Courts have been clear that the use of footpaths must be distinguished from use for sports or pastimes.
- 5.22 In Oxfordshire County Council v Oxford City Council Lightman J held that where the claimed use relates to defined tracks over land, this will generally only establish public rights of way, unless the user is wider in scope or the tracks are of such character that users of them cannot give rise to a presumption at common law as a public highway.

5.23 As Lightman J stated:

*“If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).” [102]*

*“The critical question must be how the matter would have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a public footpath, user for recreational activities or both.”[103]*

5.24 The Application refers to the use of the Land for general walking (for example, to access the outlying villages) and dog walking. The Applicant appends an aerial photograph (Exhibit C) showing the walking routes around the site. Therefore, the Applicant’s claim regarding walking use is limited to the routes shown on that plan.

5.25 The Land is crossed by a number of public rights of way. Any use of those public rights of way will be use “by right” rather than “as of right”. Therefore, this use must be discounted. There is also a circular route around the field which is marked on OS maps as a path.

5.26 The use of these routes for walking with or without dogs would not suggest any use to a reasonable owner other than the use of paths as a public right of way. This use would in no way suggest to a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the field.

5.27 Accordingly, in the circumstances, where people have walked the paths that traverse the Land, it would not be reasonable to expect the landowner to object to a dog-owner’s use of the footpaths due to the fact that their dog may be trespassing off-lead on the rest of the Land.

5.28 Therefore, the use of these routes for walking (with dogs or otherwise) is insufficient to amount to use of the Land for lawful sports and pastimes and should be discounted.

5.29 The Application makes reference to the improvement of points of access to the Land (including the replacement of stiles with a kissing gate). It would be a criminal offence for the Owner to stop up the access points to the public rights of way. Therefore, the presence of the access points (including the carrying out of works to make the access points safe or more widely accessible) should be discounted.

#### Drone and kite flying

5.30 No evidence is given as to the duration or frequency of this claimed use, the location where it is claimed to have occurred or the people who are claimed to have undertaken this use. Again, we assume that the use is likely to have occurred nearer the dwellings in the northern part of the Land (which is subject to a trigger event).

5.31 This claimed use lacks precision and should not be accorded any weight.

## **6 Use As of Right**

- 6.1 It is an established legal principle that 'as of right' means use not by force, nor stealth, nor the licence of the owner (as confirmed by the House of Lords in the Sunningwell case).
- 6.2 As noted above, a number of activities claimed to have been undertaken on the Land have been with the express consent of the landowner. Again, any such use would not be "as of right" as the user has the licence of the owner.
- 6.3 Given the vague nature of the evidence that has been submitted, the landowner cannot offer further comment as to whether the claimed use would be "as of right". Therefore, the landowner must reserve its position in this respect.

## **7 Significant Number of the Inhabitants of any Locality**

- 7.1 The application defines the locality as being Grove Ward, Trowbridge. Grove ward is estimated to have a population of 4,458 people (4,351 were recorded in the 2001 census and 4,495 in the 2011 census).
- 7.2 The applicant claims that "a recent survey" of activity has been undertaken. The applicant goes on to state that the survey indicated "an average use of the field by 300 distinct visits/uses per day. This sum equates to approximately a third of a million separate visits each year."
- 7.3 This statement lacks credibility for a number of reasons.
- 7.4 First, from the landowner's first-hand knowledge of the site, this appears to be a significant exaggeration of the year round use of the Land.
- 7.5 Second, no details of the survey (for example, when it was carried out, by whom or the methodology followed) have been provided. It is reasonable to assume that the use of the footpaths on the Land would be far more frequent during the summer. Use would have also been far more frequent during recent "lock down" periods when many more people have been accessing public rights of way in the countryside. Therefore, there is insufficient detail to confirm whether the survey is broadly representative of "average" conditions as claimed.
- 7.6 Third, the nature of the use has not been recorded. If a person was accessing the land to walk the public footpaths, this use must be discounted when considering use of the land for lawful sports and pastimes (as explained above).
- 7.7 Therefore, the evidential value of this statement is very low at best.

## **8 Conclusion**

- 8.1 For the reasons stated above, the Application does not meet the statutory criteria and must be refused.

**17 Dec 2021**

**Clarke Willmott LLP**

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Application to Register Land as Town or Village Green - Southwick Court Fields, Southwick and North Bradley  
Appendix 8 - Representations

-----OriginalMessage-----

From: Peter Allsop [redacted]  
Sent: 13 December 2021 11:58  
To: Green, Janice <janice.green@wiltshire.gov.uk>  
Cc: [redacted]  
Subject: Support for Village Green status (Plan no 2020/02TVG)

Dear Janice Green,

Please note that I am in favour of Village Green status on the land adjoining Southwick Court. 2020/02TVG.

I lived in Summerdown Walk in the 1980s and currently live in Spring Meadows. Both in the 1980s and for the last seven years I have walked our dogs nearly every day on the permitted footpaths through the fields around Boundry walk, Southwick Court and through to Southwick.

During the Covid lockdown this area was vital as it allowed me to get exercise without having to drive to another location with the dogs.

My wife and I have picked blackberries, for pies and sloes, to make sloe gin, from the hedgerows on many occasions.

Whilst out walking we often see deer, the odd fox and once or twice a weasel, great to see so near the edge of Trowbridge.

The landowner has been fully aware of my activities and has allowed this without stay or impediment, on occasion I have spoken to him whilst out walking.

Please record my support for the proposed Village Green status.

Kind Regards

Pete Allsop

**From:** [TRACY ALLSOP](#)  
**Sent:** 12 December 2021 14:26  
**To:** [Green, Janice](#)  
**Cc:** [Graham Hill](#)  
**Subject:** Plans for Village green (Plan no 2020/02TVG)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Janice Green,

Please note that I am in favour of Village Green status on land adjoining Southwick Court. **2020/02TVG**

I live in Spring Meadows. I walk my dogs daily on the permitted footpaths through the fields around boundary walk, southwick court and beyond. These areas were quite frankly a life saver during COVID lockdowns. They enabled me to get exercise without the need to interact with others, or have to get in my car to go to a similar area.

One thing I am constantly grateful for is the amount of wildlife around the area. I'm always on the look out for Deer, Otters and kingfishers. I have made pies and jam from the plentiful blackberries that grow in the hedgerows.

I have on occasions had conversations with the land owner whilst out walking.

Please help keep this space safe from development.

Kind Regards  
Tracy Allsop

Sent from my iPad



**From:** Hilary Chamulewicz [REDACTED]  
**Sent:** 12 December 2021 16:23  
**To:** Green, Janice  
**Cc:** Councillor Graham Hill  
**Subject:** H2.6. Village Green Application

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms Green

I am a resident at [REDACTED] Balmoral Road and write without stay or impediment to make my plea to permit the Village Green application.

The land is of immense benefit to hundreds of local people and that is not only those of us that live in the vicinity, and all ages young and old alike, plus those who drive to enjoy walking the fields. Some with dogs some without.

The value of the exercise and fresh air away from the main streets is incalculable in benefiting our community with not only physical health but mental health too.

In Summer many sit on the grass and soak up the surroundings. Fly a kite, throw a ball even a swing was popular this year attached to a substantial tree.

The surrounding hedges are a mass of blackberry bushes and I can vouch for the quantity of blackberries I pick each year. It's something I have enjoyed doing since childhood and it would be sacrilege to remove the pleasure and health advantages of foraging. Let alone for the precious thousands of wild life that forage too! There are enormous swarms of sparrows who live in the hedgerows and the volume of their chatter is astonishing. Equally there are Sloes growing within the hedge rows and another age old foraging joy.

With such high pollution on our roads and within our towns we need every opportunity to have Village Greens. Please may I implore you to recognise we must make green spaces readily accessible for the health benefits of people, pet dogs and our much valued wildlife. Time restrictions in our busy lives make the Village Green that we are proposing so important.

Please, please enable our Village Green application to be approved for the benefit and well being of human lives, and creatures all great and small.

Yours sincerely  
Hilary Chamulewicz

Sent from my iPhoneq

**From:** [Jennifer Dennis](#)  
**Sent:** 19 December 2021 20:19  
**To:** [Green, Janice](#)  
**Subject:** 2020/02TVG

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

For many years we have been using the area of the proposed Village Green. We used to walk the dog there and after his demise enjoyed just walking and enjoying the fresh air away from the roads. We walk for our health, both mental and physical and throughout the lockdowns this area was our 'life saver'. During our walks we have seen hedgehogs, deer, a grass snake and many varieties of bird. With the changing seasons we have picked elder flowers to make cordial and used the local blackberries for puddings and pies, as they are free from traffic pollution. We have also enjoyed meeting and chatting to other people from the local area and we all appreciate the fact that we have these lovely fields to enjoy.

Mrs. J. Dennis,  
■ Balmoral Road,  
Trowbridge,  
BA14 0■  
Sent from my iPad

**From:** [M Dennis](#)  
**Sent:** 19 December 2021 20:23  
**To:** [Green, Janice](#)  
**Subject:** Village Green Application.

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Village Green Application ref 2020/02TVG.

I would like to add my support for this application.

I have lived in the area for 10 years and have enjoyed many walks over this area both dog walking and walking for fitness, and to just enjoy the peace and tranquility of the countryside away from traffic interference. During my time on this land I have enjoyed observing and listening to nature which helps me to relax away from the fast pace of life.

Mike Dennis,  
■ Balmoral Road,  
Trowbridge,  
BA14 0■

**From:** [Paul](#)  
**Sent:** 10 December 2021 16:30  
**To:** [Green, Janice](#)  
**Subject:** Village green status 2020/02 TVG

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Janice.

My wife and I have lived in Sandringham Rd since 1973. A part of our garden adjoins the brook that is also the Trowbridge boundary. We use the fields where the development is proposed, and beyond that, for recreational purposes. We are two of many who walk the area and it helps to keep us fit. It is also mentally refreshing and invigorating. So many others including numerous dog walkers, would also gain from Village green status that would give all residents within the boundary a sizeable area that would be protected from future development. The benefits will be immeasurable for both old and young alike.

Please accept this letter as support for the proposal.

Yours sincerely,

Paul & Sarah Elphick.

■ Sandringham Rd

Trowbridge.

BA14 0■

**From:** [David Goodship](#)  
**Sent:** 17 December 2021 12:37  
**To:** [Green, Janice](#)  
**Subject:** Village Green  
**Attachments:** [Letter re Village Green - Trowbridge.doc](#)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Janice,  
Please see my letter attached.

Regards, David Goodship

■ Sandringham Rd  
Trowbridge, Wiltshire  
BA14 0■

17<sup>th</sup> December 2021

Attn. Janice.Green @ Wiltshire.gov.uk

**Village Green Application - 2020/02TVG**

Dear Janice,

I am writing to support the above application for a Village Green, in Trowbridge.

I have lived opposite these fields for over 45 years, during this time myself & family have used them for walking, running and picking blackberries, “without stay or impediment” by the landowner.

I am pleased to report that my Grandchildren also now enjoy walking them, again “without stay or impediment” by the landowner.

Yours sincerely,

David Goodship

**From:** [carol hill](#)  
**Sent:** 14 December 2021 11:55  
**To:** [Green, Janice](#)  
**Subject:** Village Green - 2020/02TVG  
**Attachments:** [VILLAGE GREEN.doc](#)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms Green,

Please find attached my letter of support for the application for a Village Green at Southwick Court Fields – Application Number: 2020/02TVG

Regards,

Carol Hill



Dear Ms Green,

RE: Letter of support for land at Southwick Court Field – application number **2020/02TVG** to be legally designated as a Village Green.

I am writing in support of the land being formally and legally registered as a Village Green for the following reasons:

- A Village Green would ensure the boundary between Trowbridge and Southwick will be preserved in perpetuity.
- A much loved and valued green space will be preserved for future generations to enjoy and treasure.
- Natural habitats will be allowed to flourish and endangered species found within the hedgerows will thrive.

My family have enjoyed exploring this wonderful landscape for over nineteen years without stay and impediment. Our children and grandchildren have spent many hours picking blackberries and sloes from the hedgerows and identifying birds and habitats. Learning about the countryside and enjoying daily walks throughout the year has provided a valuable education and many family adventures.

The flora and fauna found within the landscape has been a constant source of joy. Watching and documenting the changes throughout the seasons has been the inspiration for hours spent drawing, painting and crafting.

Children have a natural curiosity for all things living and having the opportunity to spend extended periods of time in the fresh air has been a valuable part of our family's upbringing. We know a multi-sensory approach to learning is the 'gold standard' and all children deserve the very best.

The restrictions placed on our liberties since March 2020 as a direct response to Covid has enhanced the need to preserve natural habitats and enjoy green spaces. Having opportunities to explore a green landscape has had a positive impact on my family's mental health and those of our local community.

Thank you for taking the time to read the enclosed. I feel confident you will share the communities request to register the land as a Village Green.

Yours sincerely,

CJ Hill  
Carol Hill

■■■■ Balmoral Road  
Trowbridge  
BA14 0■■■

**From:** [Councillor Graham Hill](#)  
**Sent:** 15 December 2021 15:28  
**To:** [Green, Janice](#)  
**Subject:** 2020/02TVG Southwick Court Fields  
**Attachments:** [VG support.pdf](#)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear M/s Green,

I hope that you are keeping safe and well.

I am writing in respect of the above application. I would be grateful if you could accept the attached into your portfolio in relation to the TVG application.

Whilst I have written in support of the application and believe that that letter was included in the initial submission a number of other pieces of the puzzle have appeared. I have attempted to explain them succinctly in the attached document.

I would be more than happy for you to share this with any subsequent Committee should the application reach that stage.

I hope that you have a very good Christmas and New Year.

Regards

Graham

Trowbridge Town Council

Deputy Mayor



---

Welcome to the home of Trowbridge Town Council

Councillor Graham Hill

**Town Councillor for Grove Ward**

**Trowbridge Town Council, The Civic Centre,**

**St Stephen's Place, Trowbridge. BA14**

P: 01225 765072

E: [graham.hill@trowbridge.gov.uk](mailto:graham.hill@trowbridge.gov.uk)



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To Whom it may concern.

I would be grateful if the following could be taken into consideration in respect of the Village Green application 2020/02TVG (Southwick Court Fields, Southwick and North Bradley Parishes).

These observations are in addition to the letter of support for the application already filed with the document pack. The reason for these additions is that, in the intervening period, fresh information pertinent to the initial application has presented itself. In the interests of clarity, I shall group the information.

### **1) Descriptions of land**

In the original submission Mr. Swanney presented a number of descriptions and definitions of the land collated from Wiltshire Council documents (I have attached a copy from my own records at the foot of this document for reference). The majority of these either referred to the amenity value of the land, its place in the landscape and value to the community or to a repeated definition that the land was classified as “informal recreational land”.

At the time of the initial submission these documents had not been recognised as having been the subject of any external scrutiny.

However, all of the documents were included in the Examination library for the 2019 WHSAP Inspection. The documents were therefore open to scrutiny and challenge by the proposed developer of the adjacent site of H2.6 and the landowner and his agents/advisors.

A principal document presented at these hearings was the Wiltshire Housing Site Allocations Plan Sustainability Appraisal Report. This repeatedly classifies the application area as “informal recreation land”. Whilst this document was referenced and discussed in detail with many opportunities to challenge this repeated description none were raised.

The only reasonable explanation for this is that the Landowner and their legal advisors saw no fault in this description. The conclusion is that there is now tacit approval of the land as being in the Public Realm. This stance has not been amended in the 34 months subsequent to the Examination.

Evidence of this presumed acceptance has been seen over the past two years. This has taken the form of sections of fencing being removed to facilitate access for the general public along the notified footpaths, and gates previously being used to retain cattle being left open, or even removed. All these changes indicate a desire to give unrestricted access to the land by the landowner and represent moves to that end.

## 2) **Wiltshire County Policy**

The TVG application is both in harmony with and supporting Wiltshire Council Policy in a number of ways which have become apparent since the initial submission. I detail them below.

### 1. **The Trowbridge Bat Mitigation Strategy (TBMS)**

The TBMS is a Policy adopted by Wiltshire Council subsequent to the adoption of the WHSAP. The establishment of a Village Green along the East-West arm of the Lambrok ensures that that element of the acknowledged Bat Corridors will remain inviolate and secured.

### 2. **Strategic Plan**

The current iteration of the Strategic Plan, albeit still in the final stages of consultation, has from its inception rejected any further development on the Southern fringes of the Trowbridge Community Area. By designating this portion of the buffer between Trowbridge and the villages of North Bradley and Southwick as a Village Green greater protection will exist in Law to support this Policy.

### 3. **Core Policy 29**

Wiltshire Council Core Policy 29 requires the maintenance of a buffer between Trowbridge and the villages of North Bradley and Southwick to enable them to retain their unique identity. The position of this Village Green will assist in ensuring the continued existence of the buffer.

### 4. **Support for the Five Year Housing Land Supply situation (5YHLS)**

Since the first submission of this application Wiltshire Council have found themselves in a position where they cannot guarantee sufficient 5YHLS to satisfy Government requirements. This shortfall was first acknowledged by a senior Planner to the Southern Board meeting of September 2019 along with the news that the Council were considering the abolition of Housing Market Areas (HMAs).

Since that time, and the subsequent adoption of the WHSAP, there have been many speculative Planning applications submitted by developers outside of either identified sites or emerging brownfield sites which may be traded for greenfield areas. Many of these predatory applications have been on sites referred to by Planners as “low-hanging fruit”. An Inspection report relating to an application at Chilvester Hill found that:

“The Council argue the shortfall is moderate and housing should be located where there is an established need and within limits of development. However, directing housing to areas with greater need has been plainly ineffective, given there remains a shortfall.”



Similarly, an application to build 200 houses on a greenfield site outside Lyneham and opposed and rejected by Wiltshire Council on sustainability grounds has been overturned on Inspection.

Wiltshire Council are in a position in which their own Policies are being overturned against their will. This application gives a support and surety that a range of Policies will be honoured and safeguarded.

The application in no way contravenes or conflicts with any Wiltshire Council Policy and I continue to support it. The above detail serves only to reinforce the validity of the application.

Graham Hill

Deputy Mayor

Trowbridge Town Councillor (Grove Ward)

### **Appendix A – Description of application site in Wiltshire Council documents**

HIA description

Southwick Court, Trowbridge Description

3.14 The site comprises a large area of gently rolling agricultural land on the southern edge of Trowbridge. It is bounded on much of its northern edge by modern residential development. **It forms part of the relatively narrow green corridor** separating suburban Trowbridge from the outlying settlements of Southwick and North Bradley.

Wiltshire Housing Site Allocations Plan Sustainability Appraisal Report  
Annex 1 A.9 Trowbridge Principal Settlement

Site context

Site size: 17.6ha      Site capacity: approximately 280 237 dwellings

The site extends across approximately 17.6 hectares of open, agriculturally improved (pasture) grassland. It lies adjacent to the southern/south-western edge of

Trowbridge, separated from residential stock through part of its length by the Lambrok Stream, mature Poplar trees and sporadic hedgerows. The site is bound to the east by mature hedgerows, highway verge and the A361 (Frome Road). Beyond the A361 to the west lies Southwick Country Park. **To the east/north-east of the site are a series of open fields used as pasture and informal recreation**, beyond which lie the A363; North Bradley; and the White Horse Business Park. To the south/south-west are open fields associated with Southwick Court and its Grade II\* Listed building complex, with Southwick village further to the south-west. A footpath runs through the site and links to Axe and Cleaver Lane to the east. P190

**The site comprises two large agricultural fields used for livestock grazing and informal recreation.** Development of the site would result in the permanent loss of agricultural land. There is no evidence of contamination issues and the land is not located within a Mineral Safeguarding Area/Waste Site Safeguarding Area. Overall the site option is considered to have a moderate adverse effect on this objective. P193

**The site comprises greenfield, agricultural land/informal open space** P196

**The site functions as a green infrastructure corridor.** The fields are large and open in character and exhibit a strong relationship with the Lambrok Stream (and its floodplain)/Southwick Court (Grade II\* Listed Farmstead). Mature hedgerows/Poplar trees provide a natural and logical boundary to the existing settlement edge of Trowbridge. In a wider sense, the site should be considered within the context of surrounding farmland and the Southwick Country Park which serve as buffer between the Town and village of Southwick. Development of the land would therefore alter the  
(sic, description incomplete) P201

In terms of historic landscape character, the site of medium sensitivity to change. The land exhibits surviving and legible post-Medieval water meadow features. **Such features are considered to be rare and are often significant contributors to local landscape character.** P201

**The land is currently greenfield and trafficked by walkers/dog walkers using the footpaths and fields for informal recreation.** P201

**protect and improve existing Public Rights of Way (PRoW) that cross the site.** P205

**From:** [rachel hunt](#)  
**Sent:** 17 December 2021 15:45  
**To:** [Green, Janice](#)  
**Subject:** Village Green Application ref: 2020/02TVG

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Janice,

I am writing to support the application for village green status in the fields in between Southwick and Trowbridge on the following grounds:

1. The fields in questions have been available for walking without stay or impediment for as long as we have lived here. In fact I and my family have used these fields daily for the last 22 years (since we moved to Trowbridge in 1999. They have been a valuable source of exercise for us all.
2. During this 22 year period we have enjoyed access to the nature that these fields provide, particularly enjoying spotting birds of prey and deer on a regular basis as well as the annual visit by the egret.
3. In addition, we have annually foraged for blackberries and elderflower , using these product to make cordials, crumbles and jams.

I therefore fully support the application for village green status so that these freedoms may be enjoyed by the community for the next 100 years.

Yours sincerely,  
Rachel

**From:** [Barry Jones](#)  
**Sent:** 12 December 2021 09:24  
**To:** Green, Janice  
**Cc:** [graham.hill@trowbridge.gov.uk](mailto:graham.hill@trowbridge.gov.uk)  
**Subject:** Village agree Application

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I wish to support the village green application from Mr N Swanney.  
I have used this area of fields for the best part of 40 years since I first moved to this part of Trowbridge without let or hindrance. Dog walking, general exercise for well being purposes, picking wild fruits, blackberries etc and being able to observe the wildlife .foxes, deer rabbits and badgers also buzzards kestrels and in the recent past egrets. This area is a very important eco system and needs to continue to be used in the way it currently is rather than decimated and concreted over

Yours faithfully

Barry Jones

■ Summerdown Walk

Trowbridge

Sent from my iPad

**From:** [Blair](#)  
**Sent:** 12 December 2021 19:31  
**To:** [Green, Janice](#)  
**Subject:** Village Green Application 2020/02TVG

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Janice - here are our comments regarding the this application

We Mr and Mrs Keltie of [REDACTED] Westmed Crescent Trowbridge. BA14 [REDACTED] wish to comment on the Village Green Application 2020/02TVG

We have lived at the above address since 1987 and have used the land subject of the application on a daily basis for the last 34 years without stay or impediment. We enjoy numerous leisure activities in the fields such as walking, dog walking, general exercise and enjoyment. We have regularly picked black berries, sloes and damsons when in season from the hedgerows. We find the nature of the site conducive to our wellbeing and enjoy seeing a variety wild life present there. We want to continue to enjoy access to the site for the above reasons and preserve access for future generations

Sincerely

Jane and Blair Keltie



**From:** [Parish Council](#)  
**Sent:** 04 January 2022 14:40  
**To:** [Green, Janice](#)  
**Subject:** Re: Application to Register Land at Town or Village  
Green - Southwick and North Bradley, Southwick Court  
Fields

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hello Janice

At last night's meeting Councillors resolved to support this application.

Kind regards

Karin Elder

Clerk to North Bradley Parish Council

T: [REDACTED]

e: [parishcouncil@northbradley.org.uk](mailto:parishcouncil@northbradley.org.uk)

[www.northbradley.org.uk](http://www.northbradley.org.uk)

Address: [REDACTED] Newtown, Westbury, Wiltshire, BA13 3 [REDACTED]

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On Thu, 23 Dec 2021 at 08:37, Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)> wrote:

Dear Ms Elder,

**Commons Act 2006 – Sections 15(1) and (2)**

**Application to Register Land as a Town or Village Green – Southwick and North Bradley,  
Southwick Court Fields**

**Ref: 2020/02TVG**

Further to the notice of the above-mentioned application to register land in the parishes of Southwick and North Bradley as a Town or Village Green, Southwick Court Fields, I am writing to

advise you that Southwick Parish Council have requested an extension to the time limit of 31<sup>st</sup> December 2021 for submitting their response in full, following a request for additional information and further consideration of the application at their meeting dated 18<sup>th</sup> January 2022. It is certainly beneficial for all parties that their submissions are as full and complete as possible and this request for additional time has been granted until Monday 31<sup>st</sup> January 2022, where they have provided an interim response before the original closing date of 31<sup>st</sup> December 2021.

Therefore, if North Bradley Parish Council would like to make representations on this matter, I would offer the same opportunity to submit an interim response by the original closing date of 31<sup>st</sup> December 2021, with full details of your representations to follow by 5:00pm on 31<sup>st</sup> January 2022.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** [Parish Council](#)  
**Sent:** 14 January 2022 18:32  
**To:** [Green, Janice](#)  
**Subject:** Re: Application to Register Land at Town or Village  
Green - Southwick and North Bradley, Southwick Court  
Fields

---

Thank you Janice. Nothing further to add.

Kind regards

Karin Elder

Clerk to North Bradley Parish Council

T: [REDACTED]

e: [parishcouncil@northbradley.org.uk](mailto:parishcouncil@northbradley.org.uk)

[www.northbradley.org.uk](http://www.northbradley.org.uk)

Address: [REDACTED] Newtown, Westbury, Wiltshire, BA13 [REDACTED]

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On Thu, 13 Jan 2022 at 17:06, Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)> wrote:

Dear Ms Elder,

**Commons Act 2006 – Sections 15(1) and (2)**

**Application to Register Land as Town or Village Green – Southwick Court Fields**

**Ref: 2020/02TVG**

Thank you for your e-mail regarding the above-mentioned application to register land in the parishes of Southwick and North Bradley, Southwick Court Fields, as a Town or Village Green, with apologies for the delay in replying. I acknowledge safe receipt of your representations and I note North Bradley Parish Council's support for the application.

Please note that the consultation period has been extended to the end of January and if the Parish Council would like to add any additional comments regarding the application, please do so in writing by 5:00pm on 31<sup>st</sup> January 2022. At the close of the consultation period, all representations will be forwarded to the interested parties, i.e. the Applicant and the Objector, for comment.

Thank you for your help in this matter, I will of course keep you updated on progress.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** Parish Council <[parishcouncil@northbradley.org.uk](mailto:parishcouncil@northbradley.org.uk)>

**Sent:** 04 January 2022 14:40

**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>

**Subject:** Re: Application to Register Land at Town or Village Green - Southwick and North Bradley, Southwick Court Fields

Hello Janice

At last night's meeting Councillors resolved to support this application.

Kind regards

Karin Elder

Clerk to North Bradley Parish Council

T: [REDACTED]

e: [parishcouncil@northbradley.org.uk](mailto:parishcouncil@northbradley.org.uk)

[www.northbradley.org.uk](http://www.northbradley.org.uk)

Address: [REDACTED] Newtown, Westbury, Wiltshire, BA13 [REDACTED]

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On Thu, 23 Dec 2021 at 08:37, Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)> wrote:

Dear Ms Elder,

**Commons Act 2006 – Sections 15(1) and (2)**

**Application to Register Land as a Town or Village Green – Southwick and North Bradley, Southwick Court Fields**

**Ref: 2020/02TVG**

Further to the notice of the above-mentioned application to register land in the parishes of Southwick and North Bradley as a Town or Village Green, Southwick Court Fields, I am writing to advise you that Southwick Parish Council have requested an extension to the time limit of 31<sup>st</sup> December 2021 for submitting their response in full, following a request for additional information and further consideration of the application at their meeting dated 18<sup>th</sup> January 2022. It is certainly beneficial for all parties that their submissions are as full and complete as possible and this request for additional time has been granted until Monday 31<sup>st</sup> January 2022, where they have provided an interim response before the original closing date of 31<sup>st</sup> December 2021.

Therefore, if North Bradley Parish Council would like to make representations on this matter, I would offer the same opportunity to submit an interim response by the original closing date of 31<sup>st</sup> December 2021, with full details of your representations to follow by 5:00pm on 31<sup>st</sup> January 2022.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** [martin nouch](#)  
**Sent:** 12 December 2021 09:35  
**To:** [Green, Janice](#)  
**Subject:** Southwick Court

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Since moving to Boundary Walk in 1987 I have used these fields, including the area which is in question, for recreation. It was especially good during lockdown for my physical and mental well-being.

Martin Nouch

**From:** [Malcolm Oliver](#)  
**Sent:** 14 December 2021 14:32  
**To:** [Green, Janice](#)  
**Cc:** [Graham](#)  
**Subject:** re Village Green Application Ref 2020/02TVG

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Sir/Madam

As residents of this area for the past 45 years, my wife and I fully support the case for this village green.

We have brought up four of our children here and made use of many of the rights of way for walking, jogging and playing, as well as enjoying the countryside pleasures of green fields, trees and shrubs, picking blackberries and watching wildlife. The addition of the proposed village green with pathways suitable for wheelchairs, mobility vehicles, park benches and picnic tables, will extend these benefits to the elderly and disabled, and probably providing a children's public playground which is sorely needed by young families in this part of Trowbridge.

In addition, part of the green could be fenced off with facilities for dog-walkers to use and dispose of their 'waste', a common sight in parks in sizeable towns and cities in Australia.

The site could undoubtedly be planted with a variety of trees and shrubs to attract all manner of birds and smaller animals for habitats and contribute to lowering our local carbon footprint.

Yours truly

Malcolm & Jennifer Oliver

**From:** [Nick Matthews](#)  
**Sent:** 09 November 2021 16:09  
**To:** [Green, Janice](#)  
**Subject:** RE: Southwick - Village Green Application

---

Hi Janice,

Many thanks for the comprehensive reply and the comfort that you have provided in relation to the land subject to the planning application and allocation.

I will advise my client accordingly and only come back to you if there is anything further they wish to pursue in relation to the land still subject to the application.

Kind regards,

Nick

---

**From:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Sent:** 09 November 2021 15:33  
**To:** Nick Matthews <[NMatthews@savills.com](mailto:NMatthews@savills.com)>  
**Subject:** RE: Southwick - Village Green Application

**EXTERNAL EMAIL: Be cautious when opening attachments or clicking links**

Dear Mr Matthews,

**Commons Act 2006 – Sections 15(1) and (2)**  
**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley**  
**Application no.2020/02TVG**

Thank you for your e-mail. Just to confirm that the application originally covered the whole site as shown outlined red on the application plan attached, (including the area hatched red), however, upon carry out consultations with the relevant planning authorities, it was found that part of the application land was affected by a planning application 20/00379/OUT (Jan 2020) and also allocation within the Wiltshire Housing Site Allocations Plan (WHSAP) (Feb 2020), both of which form a valid planning trigger event over part of the land (without corresponding terminating events in place). This had the effect of extinguishing the right to apply to register that part of the land as a town or village green.

Therefore, that part of the application land hatched red is excluded from the application, however, the application remains in place over the southern section of the land outlined in red and Wiltshire Council as the Registration Authority must determine whether or not that section of the land has qualified for registration as a town or village green under sections 15(1) and (2) of the Commons Act

2006. DEFRA guidance “Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006 – Section 15C: exclusion of the right to apply under section 15(1) to register new town or village greens” December 2016, states that where the exclusion applies to only part of the land, for the portion of the land not subject to the exclusion, the application should proceed as usual.

I hope this is helpful.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** Nick Matthews <[NMatthews@savills.com](mailto:NMatthews@savills.com)>  
**Sent:** 08 November 2021 16:16  
**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Subject:** Southwick - Village Green Application

Dear Ms Green,

We have been forwarded a copy of the letter you sent to the owner of Southwick Court Farm dated 5 November 2021, in respect of the application to register a Town/Village Green on the land at Southwick, Trowbridge (ref: JG/PC/171 & 208 2021/02TVG).

We act for a Promoter – Waddeton Park Ltd – who has a contractual agreement with the landowner to promote the land for development. The land in question forms part of an allocation for development in the Wiltshire Housing Sites Allocations Plan Development Plan Document (adopted 4 February 2020). There is also a validated, but as yet undetermined outline planning application on the land (Wiltshire Council reference: 20/00379/OUT).

As I am sure you are aware, both the presence of the allocation and the existence of a planning application are qualifying ‘trigger events’ which were introduced to preclude the registration of land under the Commons Act in amendments to the legislation in 2015. In such circumstances, it is clear that the application covering the hatched land on the plan you provided has no merit and can be dismissed in short order.

I would be very grateful if you could confirm that this is your interpretation and it is your intention to therefore decline the application.

If you have any queries regarding the above please do not hesitate to contact me.

Kind regards,

Nick

**Nick Matthews**  
**Director**  
**Planning**

Savills, Embassy House, Queens Avenue, Bristol, BS8 1SB



Tel : +44 (0) 117 910 0370  
Mobile : +44 (0) 7812 965 408  
Email : [NMatthews@savills.com](mailto:NMatthews@savills.com)  
Website : [www.savills.co.uk](http://www.savills.co.uk)



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**From:** [Nicola Duke](#)  
**Sent:** 20 January 2022 11:09  
**To:** [Green, Janice](#)  
**Subject:** RE: Commons Act 2006 - Section 15 (1) and (2) -2020/02TVG -  
Application to register Southwick Court Fields as a town/village green

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Janice

Many thanks for granting the PC an extension to consider this application.

The matter was discussed at a meeting held on Tuesday night and members resolved to support the application.

Kind regards,

Nicola Duke B.A (Hons), FSLCC  
Parish Clerk  
For and on behalf of  
Southwick Parish Council

---

**From:** Green, Janice <janice.green@wiltshire.gov.uk>  
**Sent:** 16 December 2021 12:12  
**To:** Nicola Duke <southwickclerk@gmail.com>  
**Subject:** RE: Commons Act 2006 - Section 15 (1) and (2) -2020/02TVG - Application to register Southwick Court Fields as a town/village green

Dear Ms Duke,

**Commons Act 2006 – Sections 15(1) and (2)**  
**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley**  
**Ref: 2020/02**

Thank you for your reply, I acknowledge safe receipt of your interim letter, outlining the Parish Council's position and confirmation that further details of your case will follow before the end of January 2022. I will add this to the file and at the close of the extended period for comment, as part of the application process, all representations will be forwarded to the relevant parties (i.e. the applicant and Objectors), for comment.

Thank you for your help in this matter.

Kind regards,



Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



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**From:** Nicola Duke <[southwickclerk@gmail.com](mailto:southwickclerk@gmail.com)>  
**Sent:** 16 December 2021 10:27  
**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Subject:** RE: Commons Act 2006 - Section 15 (1) and (2) -2020/02TVG - Application to register Southwick Court Fields as a town/village green

Dear Janice

Many thanks for this information and for agreeing to our extension request. We are most grateful.  
Please find attached an interim letter from the PC, as requested.

Kind regards,  
Nikki

Nicola Duke B.A (Hons), FSLCC  
Parish Clerk  
For and on behalf of  
Southwick Parish Council

## SOUTHWICK PARISH COUNCIL

Chair: Cllr John Eaton, [REDACTED] Blind Lane, Southwick, Wiltshire, BA14 4 [REDACTED]

Clerk: Nicola Duke, [REDACTED] Studland Park, Westbury, Wiltshire, BA13 3 [REDACTED]

---

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
Wiltshire  
BA14 8JN

*By email*

16<sup>th</sup> December 2021

Dear Janice

**Commons Act 2006 - Section 15 (1) and (2) -2020/02TVG - Application to register Southwick Court Fields as a town/village green**

The above application was considered at a meeting of the Parish Council held on Tuesday 7<sup>th</sup> December 2021. I copy for you below the relevant extract from the draft minutes:

*Members acknowledged receipt of the notification that Wiltshire Council was in receipt of an application to register land at Southwick Court Fields, Southwick and North Bradley as a town or village green and considered the Parish Council's representations in respect of the application. The deadline for comments was noted to be Friday 31<sup>st</sup> December 2021. Members referred to the debate under agenda item 2021/94 above and resolved to apply the same principle to this application as to planning application 20/00379/OUT. An extension for comment would therefore be sought in order for additional information to be received and, if not granted, a No Comment would be submitted, citing the PC's inability to agree its response without further information as to the applications impact on associated planning applications.*

We have subsequently received the information requested from you, for which we are grateful; noting that our request for an extension until the end of January 2022 has been kindly granted. I can confirm that further details of our case will follow, as a formal record of the Parish Council's position, no later than 31<sup>st</sup> January 2022.

Yours sincerely,



Nicola Duke B.A (Hons), FSLCC  
Parish Clerk  
For and on behalf of  
Southwick Parish Council

---

**From:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Sent:** 16 December 2021 10:08  
**To:** [southwickclerk@gmail.com](mailto:southwickclerk@gmail.com)  
**Subject:** RE: Commons Act 2006 - Section 15 (1) and (2) -2020/02TVG - Application to register Southwick Court Fields as a town/village green

Dear Ms Duke,

**Commons Act 2006 – Sections 15(1) and (2)**  
**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley**  
**Ref: 2020/02TVG**

Thank you for your e-mail, with apologies for the delay in getting back to you. Just to confirm that the application originally covered the whole of the area shown outlined red on the application plan attached, including the hatched red area. On receipt of an application, the legislation now requires the Commons Registration Authority (CRA) to carry out a consultation with the relevant planning authorities regarding whether or not a planning “trigger event” has taken place on the land, e.g. a planning application or inclusion of the land within a development plan. These events would have the effect of excluding the right to apply to register land as a town or village green (TVG) and the CRA cannot accept applications where a trigger event is in place.

In the case of the Southwick Court Fields application, it was found that part of the TVG application land was affected by planning application no 20/00379/OUT and also allocation within the Wiltshire Housing Site Allocation Plan (WHSAP), both of which form valid planning trigger events, (without corresponding terminating events in place which would revive the right to apply). This had the effect of extinguishing the right to apply to register part of the land and the area hatched red on the application plan attached is excluded from the CRA’s consideration of the application to register land as a TVG.

The application under Sections 15(1) and (2) of the Commons Act 2006, is entirely separate to the planning process and the test to be considered in relation to the TVG application is 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 application.”*

We will not be considering any matters relating to the planning application as part of this test, the only relevant matter in relation to the planning application would be the CRA’s consideration of the planning trigger events and any representations regarding the matter of the planning trigger event, in so far as this would effect the validity of the application.

I hope this information is helpful. With regard to your request for additional time to consider the matter at the meeting of the Parish Council dated 18<sup>th</sup> January 2022, it is certainly beneficial for all parties that their submissions are as full and complete as possible, therefore your request for

additional time is granted and I would be very grateful if you could make your submissions in writing before 5:00pm on Monday 31<sup>st</sup> January 2022.

In the meantime, I would be grateful if you could reply to the notice of application, in writing, before the current deadline of Friday 31<sup>st</sup> December 2021, outlining the Parish Council's initial position regarding the application and confirming that further details of your case will follow, as a formal record of your position.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



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**From:** Nicola Duke <[southwickclerk@gmail.com](mailto:southwickclerk@gmail.com)>  
**Sent:** 09 December 2021 11:28  
**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Subject:** Commons Act 2006 - Section 15 (1) and (2) -2020/02TVG - Application to register Southwick Court Fields as a town/village green

Dear Janice

The Chair and members considered your recent correspondence regarding 2020/02TVG - Application to register Southwick Court Fields as a town/village green - at a meeting of the Council held on 7<sup>th</sup> December 2021.

During debate, members noted the recent planning application 20/00379/OUT - Land south of Trowbridge, Southwick and have asked me to seek clarification from you as to the legal ramifications of this application on the pending village green application. I would be grateful if you could confirm whether the planning application has any bearing on the determination of the application to register land as a village green.

To this end, members have also asked whether an extension could be granted so that the application could be considered at the January PC meeting, once the additional information is received. The date of that meeting is scheduled for 18<sup>th</sup> January.

Many thanks in advance for your assistance in this matter,

Kind regards,

Nicola Duke B.A (Hons), FSLCC  
Parish Clerk  
For and on behalf of  
Southwick Parish Council

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**From:** [Mark Stevens](#)  
**Sent:** 13 December 2021 10:12  
**To:** [Green, Janice](#)  
**Subject:** Southwick Village Green application

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Good morning Janice

Just a short note to register our support for the Village Green application for the land adjacent to the north of Southwick and the Lambrok stream.

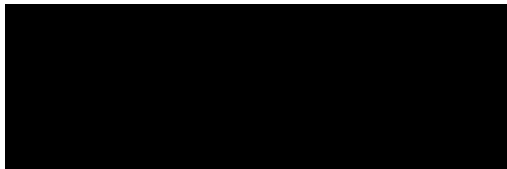
My wife Lin and I have lived in this area of over 40 years and during this time have without stay or impediment regularly walked and exercised in this area with our two children and now five grandchildren.

Our annual blackberry picking sessions still continues each year with all of the family. Our walks with the youngsters over the years to teach them of the nature and wildlife in the area has been a part of them growing up to understand the importance of maintaining this type of environment.

I do hope all concerned understand the importance of protecting this area for these activities.

Kind regards  
Mark and Lin Stevens

Mark Stevens





**From:** [Norman Swanney](#)  
**Sent:** 16 December 2021 12:56  
**To:** [Green, Janice](#)  
**Subject:** Support for 2020/02/TVG proposed Village Green  
**Attachments:** [Letter of support re 2020-02TVG.pdf](#)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Please see attached letter

Balmoral Road  
TROWBRIDGE  
Wilts BA14 0  
Tel: [REDACTED]

13<sup>th</sup> December 2021

Rights of Way and Countryside Team  
Wiltshire Council  
By email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

TO WHOM IT MAY CONCERN

We write to fully support the application 2020/02TVG for a Village Green in Southwick Court Fields.

We can attest to the regular and constant use of the land by local residents and a large number of visitors who either walk or drive to Westfield Crescent, Sandringham Road or Balmoral Road and enter the fields from there.

Our children and grandchildren have played in the field and we have observed it in use for a wide variety of activities, including

- Walking
- Jogging
- Dog walking
- Blackberry picking
- Bird watching
- Model plane flying
- Drone flying
- Hot air balloon landing

We have lived in the area and used the fields for more than 38 years and the landowner has allowed us access to these fields without stay or impediment over all this time.

Yours sincerely

[REDACTED]

N M Swanney

[REDACTED]

A L Swanney

**From:** [Vigar, David](#)  
**Sent:** 15 December 2021 16:11  
**To:** [Green, Janice](#)  
**Subject:** RE: Notice of Application to Register Land as TVG -  
Southwick Court Fields  
**Attachments:** [Village Green Vigar letter 141221.docx](#)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Janice

I hope all is well with you. Thank you for the opportunity to comment on this. I support the proposal and my representation is attached.

Please can you explain or forward the procedure that will follow the consultation period.

I have looked at a recent similar application regarding Hilperton and see that the Council as the Commons Registration authority must determine the application. In that case it appears that the Western Area Planning Committee received a report with a recommendation to appoint an independent inspector to provide expert opinion.

Does this mean that the committee will receive a report of some kind? Or might it be dealt with by officers under delegated powers? Or are Village Green applications subject to a call in process whereby the local councillor can request consideration by committee?

Best wishes

**David Vigar**  
**Councillor, Trowbridge Grove**

**Wiltshire Council**

Tel: [REDACTED]

Email: [david.vigar@wiltshire.gov.uk](mailto:david.vigar@wiltshire.gov.uk)

Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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**From:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>

**Sent:** 05 November 2021 16:52

To: Vigar, David <David.Vigar@wiltshire.gov.uk>

Subject: Notice of Application to Register Land as TVG - Southwick Court Fields

Dear Cllr Vigar,

**Commons Act 2006 – Section 15(1) and (2)**

**Application to Register Land as Town/Village Green – Southwick Court Fields, Southwick & North Bradley Parishes - Ref: 2020/02TVG**

Please find attached notice of application to register land at Southwick Court Fields, in the parishes of Southwick and North Bradley, as a town or village green, as shown on the plan attached to the notice.

If you would like to make any objections or representations regarding the proposals, I would be very grateful if you could forward them in writing, for my attention, by 5pm on Friday 31<sup>st</sup> December.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

Information relating to the way Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Report a problem: <https://my.wiltshire.gov.uk/>

Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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# David Vigar

Councillor for Trowbridge Grove



M: [REDACTED] E: david.vigar@wiltshire.gov.uk

Janice Green  
Senior Definitive Map Officer  
Wiltshire Council  
County Hall  
Bythesea Road  
Trowbridge  
BA14 8JN

December 2021

Dear Janice

I am writing to support the Village Green application 2020/02TVG (Southwick Court Fields, Southwick and North Bradley Parishes).

I believe this plan offers the opportunity to provide conclusive protection for a strategic area of recreational land in a context where the ambiguities and uncertainties of planning policy are leading to developments taking place on valuable green spaces.

I support the village green proposal for the following reasons:

## **Conformity with legislative criteria**

I believe that the site qualifies for registration as it conforms to the criteria set out in the Commons Act 2006 whereby “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 ...continue to do so at the time of the application.” I believe that submissions being made to Wiltshire Council from local residents are providing the necessary evidence cited in the Notice of Application, demonstrating that the land has indeed “been used for recreational and social purposes as of right without stay or let for a period exceeding 20 years”.

## **Alignment with Local Plan**

The proposed Village Green lies next to the Southwick Court Fields site identified as H2.6 in the Wiltshire Housing Site Allocation Plan (WHSAP). This site did not appear in the 2015 Wiltshire Core Strategy and was added to the WHSAP at the same time as expected dwelling numbers were reduced by uncertainty over the development of the 2,600 home Ashton Park estate which has now gained outline approval.

The draft *Planning for Trowbridge* document presented as part of Wiltshire Council's current draft Local Plan reiterates (para 35) the objective of retaining undeveloped land on the edge of the town to act as a green infrastructure corridor and preserve the separate identities of villages such as Southwick. This supports Wiltshire Council's Core Policy 29 which requires the maintenance of a buffer between Trowbridge and the villages of North Bradley and Southwick. The Sustainability Appraisal for the WHSAP said that development of site H2.6 would lead to an "urbanising effect", which is one reason why hundreds object to it. The appraisal said: "The stream and its floodplain, along with mature hedgerows/trees help define a logical edge to the current built framework in landscape terms." This proposal would help to combat that effect and hopefully also remind councillors and planners of this point in relation to H2.6.

### **Wildlife protection**

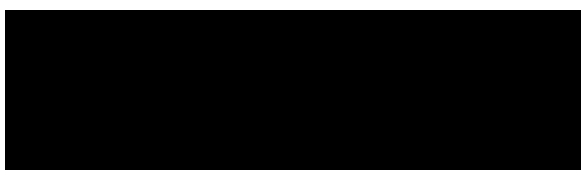
Maintaining this area as an open space would help preserve the Bath and Bradford on Avon Bats Special Area of Conservation by avoiding habitat loss and disturbance.

### **Heritage**

The plan would preserve some of the green space in the vicinity of Southwick Court which contains a number of important heritage assets including a Medieval moat and farmstead.

Thank you for taking the above points into account in determination of this application.

Yours sincerely

A large black rectangular redaction box covering the signature of the councillor.

Councillor, Trowbridge Grove Division



**From:** [geoff Whiffen](#)  
**Sent:** 10 December 2021 11:29  
**To:** [Green, Janice](#)  
**Cc:** [Councillor Graham Hill](#) [REDACTED]  
**Subject:** Application for village green 2020/02tvg

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms Green, we are writing in support of the above application.  
My wife and myself have been exercising dogs in the area of the application for over 25 years, as well as using the area for recreational and health purposes, for the last ten years we have also been utilising the area for the benefit of our four grandchildren, instilling in them the the pleasure and health benefits of the clean open air, also instilling in them how important it is to manage the countryside and utilise the fruits such as blackberries and sloes from the hedgerows also damsons from axe & cleaver lane, also to protect the area for the many species of wildlife.  
For the future generations we must please protect this wonderful reserve.

Thank you

Margaret and Geoff Whiffen

[REDACTED] Holyrood Close

Trowbridge

BA14 [REDACTED]

**From:** STEPHEN WILLCOX [REDACTED]  
**Sent:** 12 December 2021 18:33  
**To:** Green, Janice  
**Cc:** Hill Graham  
**Subject:** 2020/02 TVG

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

We lived in Southwick from 1977 until 1997 when we moved to North Bradley until 2016 when we moved to Sandringham Road in Trowbridge. Throughout this time we have regularly walked around and across the area concerned with our children and dog without let or hindrance. We have also organised community walks through those fields and used them for exercise and recreational purposes. They have provided social contact with other residents enjoying the open space and the ability to forage for wild food and observe wildlife in their home habitat.

We support the application to register the area as a village green.

Stephen and Pamela Willcox  
[REDACTED] Sandringham Road  
Trowbridge  
BA14 [REDACTED]

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Application to Register Land as Town or Village Green - Southwick Court Fields, Southwick and North Bradley  
Appendix 9 - Applicant's and Cllr G Hill's Comments on Objection

**From:** [Norman Swanney](#)  
**Sent:** 05 April 2022 14:33  
**To:** [Green, Janice](#)  
**Subject:** Re: Application to Register Land as Town or Village Green - Southwick Court Fields No.2020/02TVG  
**Attachments:** [Objection response and correction \[final\]-min.pdf](#)  
[Field-Years-Map update April 2022.pdf](#)

---

Dear Janice Green

Thank you for forwarding this material and giving me the opportunity of dealing with the matters contained in the statement of objection.

My response is attached (first enclosure).

In reply to Clarke Willmott's dismissive comment over the '20 year' issue (paragraph 4.1 of the Objection), I have asked a selection of neighbours to state exactly how many years they have used the fields and have been familiar with the lack of restrictions on access. This additional information is contained in the second enclosure.

I hope this submission will be helpful in your further consideration of this vital application and would be most grateful to know what the process is from here and when there might be a decision on this matter.

Would you kindly acknowledge receipt of this response?

Regards

Norman Swanney

■ Balmoral Road

Trowbridge

BA14 C ■

---

**From:** Green, Janice [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

**Sent:** 22 February 2022 14:26

**To:** ■

**Subject:** Application to Register Land as Town or Village Green - Southwick Court Fields

Dear Mr Swanney,

-

**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

**Application no.2020/02TVG**

Further to the close of the formal objection period, following notice of the above-mentioned application to register land known as Southwick Court Fields, Southwick and North Bradley, as a town

or village green, on 31<sup>st</sup> January 2022, I am writing to advise you that Wiltshire Council, as the Registration Authority, are in receipt of one objection.

Under regulation 6(3) of “The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007”, the Registration Authority are required to send to the applicant a copy of every written statement in objection to the application which it receives before the date on which it proceeds to the further consideration of the application and under regulation 6(4), the Registration Authority must not reject the application without giving the applicant a reasonable opportunity of dealing with the matters contained in any statement of objection.

In order to comply with the regulations, please find enclosed the following correspondence for your attention:

	<b>Correspondence (Objection)</b>	<b>Date</b>
1	Clarke Willmott for The Honourable Mrs S M Rhys	16/12/2021

For completeness I have also included copies of other representations made regarding the application:

	<b>Representations</b>	<b>Date</b>			<b>Representations</b>	<b>Date</b>
1	P Allsop	13/12/2021		12	J & B Keltie	12/12/2021
2	T Allsop	12/12/2021		13	North Bradley Parish Council	04/01/2022 & 14/01/2022
3	H Chamulewicz	12/12/2021		14	M Noutch	12/12/2021
4	J Dennis	19/12/2021		15	M & J Oliver	14/12/2021
5	M Dennis	19/12/2021		16	Savills on behalf of Waddeton Park Ltd	09/11/2021
6	P & S Elphick	10/12/2021		17	Southwick Parish Council	16/12/2021 & 20/01/2022
7	D Goodship	17/12/2021		18	M & L Stevens	13/12/2021
8	C Hill	14/12/2021		19	N & A Swanney	13/12/2021
9	Cllr G Hill	15/12/2021		20	Cllr D Vigar	15/12/2021
10	R Hunt	17/12/2021		21	M & G Whiffen	10/12/2021
11	B Jones	12/12/2021		22	S & P Willcox	12/12/2021

If you would like to make any comments regarding the objections, or indeed any of the representations attached, I would be very grateful if you could forward them to me in writing, not later than 5:00pm on Wednesday 6<sup>th</sup> April 2022.

Yours sincerely,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge

BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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argument is spurious. This understanding is confirmed in section 5.10 of the Objection when it states, in reference to “the Northern part of the land”, that “This area of land is subject to a trigger event”. This clarifies and confirms that the trigger event would apply solely to the Northern part of the land which lies outside the current scope of this acknowledged and approved Town and Village Green Application.

3.2

None of the land included in the Application impinges in any way shape or form on the WHSAP allocation. There is no element of the application which has anything but a positive impact on the allocation, supporting as it does declarations made in the Outline Planning Application, the amended DAS and existing Wiltshire Council Policy.

3.3

This is incorrect. The application as reviewed and validated by Wiltshire Council Mapping and Legal Officers is for the Southern part of the site only. The objection falls on this point.

3.4

All representations made during the consideration of the application were submitted specifically in reference to the Southern part of the land currently standing as an active Town and Village green Application. Earlier submissions only reinforce the access to the entire site which has been, and continues to be, fully open for public use. The assumption that the responses relate to the Northern part of the land is made without any evidence or justification. Clearly long-time users of the land have been aware of where they were in relation to the cardinal points of the compass. The presentation of fair assumption is without evidence or foundation.

## **4**

### **20 years use**

It must be noted at this point that the application for the land as marked on the submission validated by Wiltshire Council Officers need only be submitted by *one* individual. The presentation of additional sworn statements only serves to add validity to the applicant and illustrate the quantity of use of the identified site. Any comment seeking to undermine the presented Application by a criticism of these additional voices is irrelevant to the consideration of the application.

The comments within this section of the objection are ill-founded and without any basis in fact. The Objection should therefore be summarily rejected in this particular.

4.1

Submissions from residents sworn and countersigned by a solicitor are contained within the original application. These specify “over 20 years”. This objection is groundless.

4.2 This is the document referred to in 4.1 and meets the criteria for evidence as published. It leaves no room for doubt about the minimum period of 20 years.

## 5

### Lawful sports and pastimes

#### 5.5

The statement contained within the Objection is incorrect in both assertion and fact.

- The determination of the nature of the land is contained within the references in appendix a) as submitted in evidence *in support* of the land being allocated for development.
- As explained elsewhere the land has fallen out of use for agriculture as illustrated photographically in Appendix b).
- As explained elsewhere the grazing of cattle was spread across *at least* six discrete fields in the ownership of the landowner. The small section in question of this Application was never closed to any form of access and was utilised minimally throughout the time when agriculture was in place as a source of winter fodder.

The location of the Village Green application was therefore never out of bounds, nor restricted by any signage or activity or even practically placed out of use with the exception of the two part-days when mowing and then baling took place. Even on those days it was just a case of avoiding the progress of the tractor and not related to any formal or informal exclusion.

#### 5.8-9

Camping has and does take place. The fact that the landowner is ignorant of this is not the fault of the Applicant, or a weakness in the Application. In this case it can be presumed that the children in question would want to be as far away from adult censure as possible as evidenced by the bottles and cans which are cleared by the users of the field and that the Southern portion of the field, as applied for, is the preferred location. If cattle were present this activity could not take place and serves to support the comments made above.

#### 5.10

The presumption that these activities take place in the Northern part of the land, outside of the Village Green application area is just that, an assumption, which is not borne out factually in any way. Interestingly, in relation to objections raised in 3.2 there is a clear recognition that the trigger event applies only *to the Northern part of the land*. This makes much of the statement of opposition self-contradictory.

#### 5.12

The hang glider/parawing is probably misnamed. The flying device had rigid, framed, cloth covered wings and was powered with a single large fan situated behind the pilot. Landings and take-offs occurred regularly pre-Covid.

5.16

The idea that parents keep evidenced records of their children's play activities and locations and retains those records over a twenty-year period is fanciful. This is testing the sworn statements of families with unsupported assertions and assumptions.

5.18-19

The location for this is confirmed in statements presented in December 2021 referencing the Southern portion of the field, the Application site. The unrestricted act of foraging for berries indicates the Landowners consent and/or right by usage and supports the Application.

5.20-28

As evidenced by the trackways map and photo in appendix c), the designated footpaths are supplemented by a series of trackways and meander lines which cover the entirety of both the application site and the allocated portion of the land.

5.29

The photographs in appendix d) are related to land contained within the application and illustrated on the attached mapping. These appear to show the stopping up of access points. This would appear to run contrary to the point made within the Objection.

## **6**

### **Use as of right**

The lack of restrictions placed on any of the named activities, including berry-picking without specific permission from the landowner, but undisputed in the Objection, demonstrates one aspect of "as of right". There has never been any form of restriction placed nor permission sought for this activity. There is no evidence of any restriction ever having been placed on this foraging which has clearly taken place with the knowledge of the landowner. In order to be valid, the Objection must eliminate *all* such use to be valid. It has not and so loses any validity.

## **7**

### **Significant number of the inhabitants of any locality**

It is worth addressing points 7.1-7.7 globally.

Population numbers for Grove Ward are unnecessary and irrelevant. The nature of the Village Green application requires the applicant to identify a Community Area which the application will serve. The truth of this Application is that many visitors to the area in question travel to the vicinity for their recreation. This is partially as a result of good permeability into the field system in question via footpaths, trackways and bridle paths and partly due to the availability of parking adjacent to those aforementioned routes.

The number of residents in the nearby Ward has been estimated and used as "evidence" that numbers are exaggerated. If they are submitted to imply usage then no consideration has been made for footfall from other Wards such as Drynham or

Central, Villages such as North Bradley and Southwick, or the many who drive to the boundaries from not only the Town to reach the most accessible green infrastructure, but from as far as Frome.

Grove Ward is only identified as nearest conurbation and place of residence of Applicant as required in the Village Green Application. Should the Application be successful, there will be no restrictions for access based on postcode and the current use of the land will be maintained and protected in Law.

To address the repeated question of “evidence”, this footfall is claimed by the Applicant. The Opposer should find it simple to provide evidence to the contrary if these figures are false.

To apply a little perspective to the figures supplied within the Application:

If one takes a median daylight length of 12 hours, the number of people using the application site would have to reach the giddy heights of 25 people per hour. This would necessarily reduce during wintertime, plateau during spring and autumn, but increase exponentially in the summer months.

The estimate of 300 visits per day is therefore on the lower end of reasonable and, lacking any evidence to the contrary, must stand.

### **Summary**

There are a number of inescapable “elephants in the room” in relation to the submission of Opposition. There are conflicts in the internal logic.

- ***Either:***

- The Application is within the bounds of the Allocation.

- ***Or:***

- It is not (it is clearly and obviously not).

- ***Either:***

- The Application is designed to block the Allocation

- ***Or:***

- It is supporting the plans submitted within the Allocation. Since the Allocated site is to the North of this Application and the area of the Application has no bearing on services or access, and in fact maintains the repeated goal to retain the Application site without modification, it can in no way be seen to obstruct the Allocation in any form.

- The documents submitted to the WHSAP Examination in support of the Allocation clearly define the land as informal recreation space. If these documents are incorrect why was this not mentioned by either the landowner or the Agent for the landowner who was present at the Examination hearing? This gains significant weight when it is recognised that the documents referenced were submitted *in support* of the Allocation. The documents must therefore be correct.

- The plethora of assumptions made, in contradiction to the documents presented (for example the assumption that documents and statements presented after the notification period where the bounds of the site were clearly marked in all publicity) weakens the Opposition case. The function of the assumptions is to weaken the Application, not to contribute to the body of evidence presented. Their function is to confuse and conflate and undermine an accepted Application which has already been thoroughly examined and judged legal.
- The continued decision by a retained representative that evidence is false, inapplicable, weak, or failing, has to be seen in the light that these comments are made as **opinion**. The **fact** that this Application has been scrutinised, assessed, and amended when and where necessary by Officers and Legal teams whose role is to declare the validity of such Applications sets these comments in perspective. The lifespan of the Application has been extended as it was tested and tested again. The opinion of the representative should be balanced against the opinion and experience of the impartial arbiter.
- The fact unaddressed by this Objection is that the Application itself is supported by all of the elected bodies representing the people who have used, and wish to continue to use, the land as they have within living memory. Moreover, the Application respects the Allocation and supports the clear plan to retain the open aspect of the development. This is in line and supportive of Wiltshire Council Core Policy 29 which has been adopted to ensure the continued separation of North Bradley and Southwick villages and prevent their coalescence with the Town of Trowbridge.

No change to the use of this land is desired or suggested. Should the cattle return at some point in the future on the same basis as when the land *was* partly in agricultural use there shall be no impediment to that occurring. Historically, the multiple streams of use on the land have coexisted harmoniously. When speaking of evidence, there are no recorded instances of any restriction being placed on access or use of the land. If this evidence exists, I am sure that it will be provided to counter this argument.



## Appendix a)

### HIA description

#### Southwick Court, Trowbridge Description

3.14 The site comprises a large area of gently rolling agricultural land on the southern edge of Trowbridge. It is bounded on much of its northern edge by modern residential development. **It forms part of the relatively narrow green corridor** separating suburban Trowbridge from the outlying settlements of Southwick and North Bradley.

#### Wiltshire Housing Site Allocations Plan Sustainability Appraisal Report Annex 1 A.9 Trowbridge Principal Settlement

##### Site context

Site size: 17.6ha      Site capacity: approximately 280 237 dwellings  
The site extends across approximately 17.6 hectares of open, agriculturally improved (pasture) grassland. It lies adjacent to the southern/south-western edge of Trowbridge, separated from residential stock through part of its length by the Lambrok Stream, mature Poplar trees and sporadic hedgerows. The site is bound to the east by mature hedgerows, highway verge and the A361 (Frome Road). Beyond the A361 to the west lies Southwick Country Park. **To the east/north-east of the site are a series of open fields used as pasture and informal recreation**, beyond which lie the A363; North Bradley; and the White Horse Business Park. To the south/south-west are open fields associated with Southwick Court and its Grade II\* Listed building complex, with Southwick village further to the south-west. A footpath runs through the site and links to Axe and Cleaver Lane to the east. P190

**The site comprises two large agricultural fields used for livestock grazing and informal recreation.** Development of the site would result in the permanent loss of agricultural land. There is no evidence of contamination issues and the land is not located within a Mineral Safeguarding Area/Waste Site Safeguarding Area. Overall the site option is considered to have a moderate adverse effect on this objective. P193

**The site comprises greenfield, agricultural land/informal open space** P196

**The site functions as a green infrastructure corridor.** The fields are large and open in character and exhibit a strong relationship with the Lambrok Stream (and its floodplain)/Southwick Court (Grade II\* Listed Farmstead). Mature hedgerows/Poplar trees provide a natural and logical boundary to the existing settlement edge of Trowbridge. In a wider sense, the site should be considered within the context of surrounding farmland and the Southwick Country Park which serve as buffer between the Town and village of Southwick. Development of the land would therefore alter the  
(sic, description incomplete) P201

In terms of historic landscape character, the site of medium sensitivity to change. The land exhibits surviving and legible post-Medieval water meadow features. **Such**

features are considered to be rare and are often significant contributors to local landscape character. P201

The land is currently greenfield and trafficked by walkers/dog walkers using the footpaths and fields for informal recreation. P201

protect and improve existing Public Rights of Way (PRoW) that cross the site. P205

**Appendix b)**

**Out-of-use gates and fences**

Westernmost stile with historically removed fencing (evidenced by muddy footway through missing fencing).



Blocked open gate at Bridleway entrance





Removed fence adjacent to Bridleway gate (Western boundary of Application)



Bridleway entrance illustrating inaccessible stile blocked by opened gate (usage evidenced by muddy trackway through permanently open gate with no evidence of access from stile)



## Appendix C

### Current footpaths and trackways

Whilst photographs exist taken from ground level, this is the clearest representation of the numerous paths and trackways in us at the current time.



Current footpath/trackways key:

Black	Principal circular path
Yellow	Secondary “internal” paths running either side of the remains of the fencing and the Southern perimeter.
Blue	Right is the path from the kissing gate, Left follows the high water line of the flood zone.
Orange	The principal North-South footpath.
Red	Blocked off pathway
Purple	Right access to bridleway, left access onwards to Southwick, North Bradley and Hoggington.
White	Dog walker route



**Appendix d)**

**Locations of pictures**



**Western stile with notice (marked a) on map)**





**Eastern gate from bridleway with notice on pillar (b) on map)**



**Central Southern stile with notice (marked c) on map)**



**The note of Objection states that:**

5.29 “The Application makes reference to the improvement of points of access to the Land (including the replacement of stiles with a kissing gate). ***It would be a criminal offence for the Owner to stop up the access points to the public rights of way.***

Therefore, the presence of the access points (including the carrying out of works to make the access points safe or more widely accessible) should be discounted.”

**Stopped up and locked Western footpath (d) on map)**



**Remains of torn notice on locked gate**





**Remains of notice showing detail of restriction of lawful access**



**Further locked gate preventing access along footpath (e) on map**





**Footpath sign indicating legal access through newly stopped up gate (f) on map)**



**Stopped up access from signed end of footpath**



We the undersigned wish to register our continued support for the **Village Green Application** on Southwick Court fields (ref. 2020/02TVG (Southwick Court Fields, Southwick and North Bradley Parishes)).

We have used the land identified in the attached map **without stay or let** for the number of indicated below.

This access has not been restricted by any party. This includes not only the marked footpaths, and identified trackways.

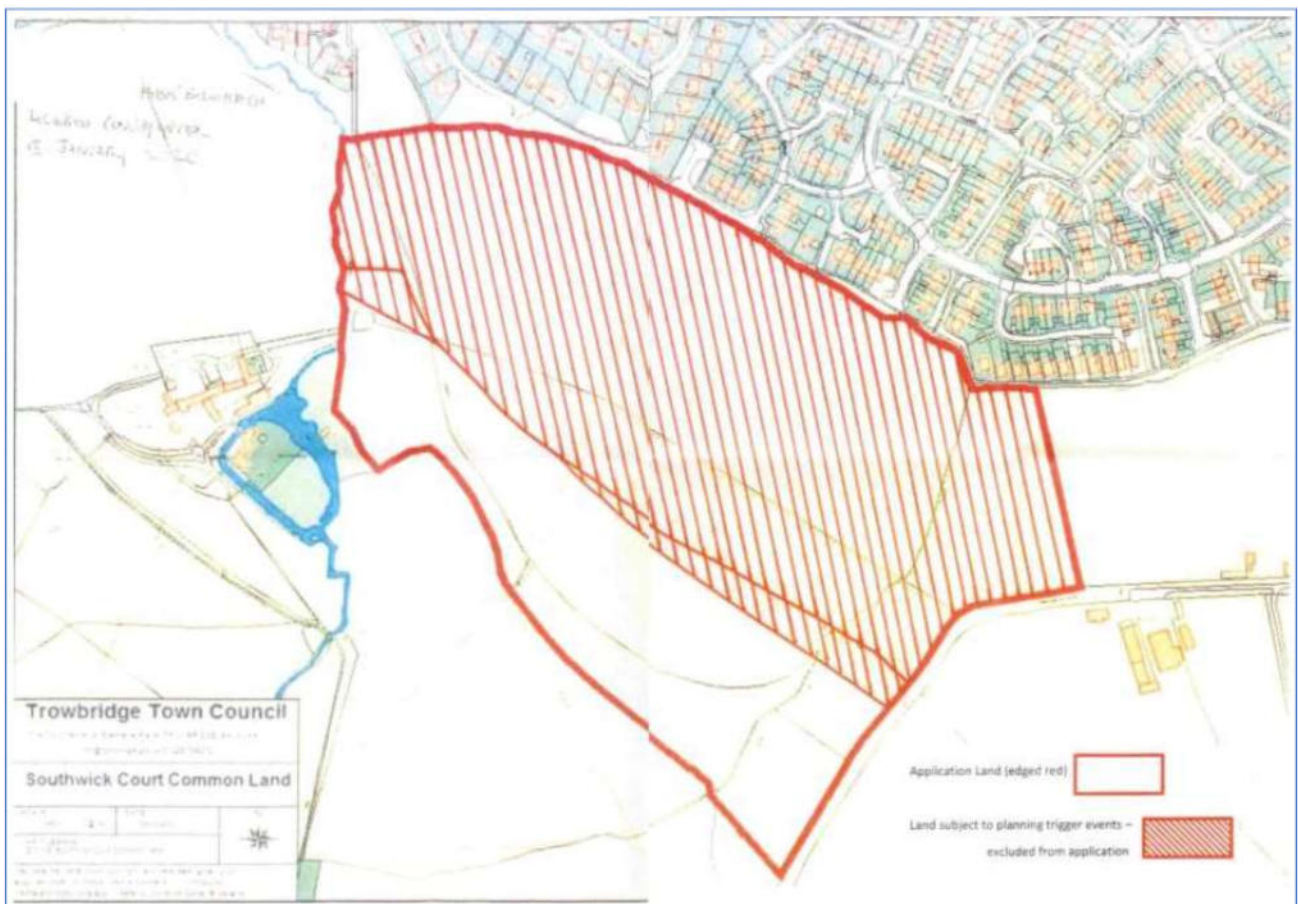
Access has been continuous including the occasional time that cattle have been present, prior to their withdrawal in 2020.

Name	Address	Number of YEARS familiar with the use of the fields
Lynda White	[REDACTED] Holyrood Close, Trowbridge, BA14 0 [REDACTED]	51
Robert Brice	[REDACTED] Church Fields Trowbridge BA14 0 [REDACTED]	50
David Goodship	[REDACTED] Sandringham Road, Trowbridge, BA14 0 [REDACTED]	49
Barbara Goodship	[REDACTED] Sandringham Road, Trowbridge, BA14 0 [REDACTED]	49
Mark Stevens	[REDACTED] Sandringham Road Trowbridge	45
Lin Stevens	[REDACTED] Sandringham Road Trowbridge	45
Stephen White	[REDACTED] Holyrood Close, Trowbridge, BA14 0 [REDACTED]	44
Norman Swanney	[REDACTED] Balmoral Road Trowbridge BA14 0 [REDACTED]	38
Ann Swanney	[REDACTED] Balmoral Road Trowbridge BA14 0 [REDACTED]	38
Emma Stevens	[REDACTED] Spring Meadows Trowbridge	35
Kevin Brice	[REDACTED] Church Fields Trowbridge BA14 0 [REDACTED]	35
Steve Willcox	[REDACTED] Sandringham Road, Trowbridge, BA14 0 [REDACTED]	35
Pam Willcox	[REDACTED] Sandringham Road, Trowbridge, BA14 0 [REDACTED]	35
Matthew Stevens	[REDACTED] Spring Meadows Trowbridge	30
Margaret A Whiffen	[REDACTED] Holyrood close BA14 0 [REDACTED]	26
Geoffrey K Whiffen	[REDACTED] Holyrood close BA14 0 [REDACTED]	26
Sally Walker	[REDACTED] The Poplars	23
Rachel Hunt	[REDACTED] Frome Road, Trowbridge BA14 0 [REDACTED]	23
Simon Hunt	[REDACTED] Frome Road, Trowbridge BA14 0 [REDACTED]	23
Abigail Hunt	[REDACTED] Frome Road, Trowbridge BA14 0 [REDACTED]	21



# VILLAGE GREEN APPLICATION SITE

Ref. 2020/02TVG





**From:** [Councillor Graham Hill](#)  
**Sent:** 05 April 2022 14:25  
**To:** [Green, Janice](#)  
**Cc:** [Norman Swanney](#)  
**Subject:** Application no.2020/02TVG  
**Attachments:** [Completed note of support.docx](#)

---

Dear Janice (if I may?),

I have attached a further note of support making passing reference to the Note of Objection presented by the Solicitor for the Landowner.

I was passed a number of photographs showing different activities taking place on the site, but since none could be dated with any accuracy I felt it better not to muddy the waters. The wording of the Objection seemed to seek evidence which was ironclad, and, life being as it is, I doubt that any ironclad evidence datable to 20 years+ exists for any such application. My only real comment is that I might expect to see evidence to the contrary to conclusively prove that no such activity had taken place. That the Application should have descended into a “he said, she said” is regrettable especially in the light of the myriad assumptions made within the Objection.

I believe that Mr Swanney has approached things in great detail and will be submitting his own amendments shortly.

Thank you again for all of your professionalism and reliability.

If I can be of any assistance in this process please do not hesitate to contact me.

Thank you once again,

Warm regards

Graham

Trowbridge Town Council

Deputy Mayor





---

Welcome to the home of Trowbridge Town Council

Councillor Graham Hill

**Town Councillor for Grove Ward**

**Trowbridge Town Council, The Civic Centre,**

**St Stephen's Place, Trowbridge. BA14**

P: 01225 765072

E: [graham.hill@trowbridge.gov.uk](mailto:graham.hill@trowbridge.gov.uk)



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To whom it may concern,

I would like to reiterate my support for this Application.

As someone “namechecked” on several occasions within the note of objection, I would like to address one or two points made.

- The Application in no way interferes or hinders the allocation site of H2.6.
- The Application supports Wiltshire Council Policy with direct reference to CP29 (CP29 is a policy in the CS which protects the character and identity of Southwick and North Bradley as separate communities. Integral to this is the preservation of the undeveloped countryside that lies between them.), and also CP51 (detail below). The replacement of any land with unrestricted access being replaced by a higher quality and quantity of land. The Westernmost part of the allocation alone fits neither of these criteria.
- The note of Objection makes several unsupported and evidence-free assumptions and assertions and frames them as “reasonable and factual” but provides no evidence whatsoever to support those statements.
- The matter of evidence is repeatedly raised. There is no evidence to the contrary presented and yet the absence of documentary evidence two decades ago is presented as crucial to the Application. I would say that a member of the pre-Instagram generation would have difficulty recounting any particular day pre-Covid, whether three years or twenty years, let alone produce evidence to that effect.
- I believe that the Objection rests on the format of presentation within a Court of Law. In such circumstances the testimony of a witness of good character is given significant weight. I believe that this application has been supported by:
  - North Bradley Parish Council.
  - Southwick Parish Council.
  - Several current and former Town and County Councillors.
  - Former and current Mayors and Deputy Mayors.
  - One gentleman who served at many levels in the Council sphere from District to County and Town. Was deputy Mayor and Mayor on a number of occasions and was recently given the freedom of the County Town after over 40 years of service.

I would contend that these people are of good character and represent the constituents, residents and wishes of the surrounding area.

It would appear to me, as an untrained individual, that the weight of evidence provided by the solemn statements of residents has a great deal of validity insofar as they are notarised by a solicitor, scrutinised by the County Mapping Department and finally by County Solicitors. This would appear to suggest to me that the argument *against* rests on the evidence provided by the Objector. However, I stand ready to be corrected.

The compliance with, and support of, CP29 and CP51 need to be addressed and included in the consideration of this Application. The crux of the matter is that NO change to current free use, access, and possible future cattle grazing (if a return to mixed use happens) is proposed, and that the Application serves only to meet the requirements of policy whilst retaining unfettered use of the application site for residents and the local population as a whole. The landowner stands to lose nothing.

Finally, should this process continue beyond May of 2022 I can declare that I have enjoyed unrestricted use of the Application site for 20 years.

Graham Hill 5/4/22

### **Wiltshire Core Strategy CP51 – green infrastructure**

“If damage or loss of existing green infrastructure is unavoidable, the creation of new or replacement green infrastructure equal to or above its current value and quality, that maintains the integrity and functionality of the green infrastructure network, will be required. Proposals for major development should be accompanied by an audit of the existing green infrastructure within and around the site and a statement demonstrating how this will be retained and enhanced through the development process.”

- The Allocation site has three access points from the North along recognised footpaths with three exit points leading to a footpath network leading to North Bradley, Southwick, Hoggington, Standerwick and Wingfield. It is away from any vehicular traffic and therefore completely safe for children and pets. The proposed replacement, when access to mandated inaccessible buffers are removed, is far smaller, has a roadway and bridge over a flood zone within its bounds, and is adjacent to a major road. Furthermore, there are no functional links to neighbouring communities and the range of uses is restricted. Therefore, a larger safe space, of great utility is being substituted by a smaller, unsafe space with no connectivity or functionality.
- **And**, when referencing Policy **CP51** in response to the site selection process Natural England responded as follows:

“We are unaware of any such audits being undertaken since the Core Strategy was adopted, and our impression is that, compensatory provision has rarely, if ever, been made.”

and:

“...we are very concerned that the allocation of such sites will result in a loss of recreational amenity. As such, without confirmation that a robust approach will be taken to implementing NPPF paras 74 and 75 and CP51, we advise that the plan is unsound.”

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Application to Register Land as Town or Village Green - Southwick Court  
Fields, Southwick and North Bradley  
Appendix 10 - Objector's Comments on Representations

**From:** [Caroline Waller](#)  
**Sent:** 23 May 2022 14:39  
**To:** [Green, Janice](#)  
**Cc:** [REDACTED]  
**Subject:** RE: Commons Act 2006 - s.15(1) & (2) Application to Register Land as Town or Village Green, Southwick Court Fields (2020/02TVG) [CW-Legal.FID2351227]  
**Attachments:** [Objection to revised application 23 May 2022.PDF](#)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Dear Janice

Please see the attached further representations on behalf of the Landowner.

Please acknowledge receipt.

Kind Regards

**Caroline Waller**

Partner  
Clarke Willmott LLP

T: [0345 209 1814](tel:03452091814) Int: +44 117 305 6814

M: [07970 318 090](tel:07970318090)

E: [Caroline.Waller@clarkewillmott.com](mailto:Caroline.Waller@clarkewillmott.com)

Birmingham | Bristol | Cardiff | London | Manchester | Southampton | [Taunton](#)



*“They are thoroughly impressive  
from top to bottom, from excellent  
trainees through to partners...  
they are wonderful to work with.”*

Chambers UK 2022



Postal address: Blackbrook Gate, Blackbrook Park Avenue, Taunton, TA1 2PG

---

**From:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Sent:** 07 April 2022 15:49  
**To:** Caroline Waller <[Caroline.Waller@clarkewillmott.com](mailto:Caroline.Waller@clarkewillmott.com)>  
**Subject:** Commons Act 2006 - s.15(1) & (2) Application to Register Land as Town or Village Green, Southwick Court Fields (2020/02TVG) [CW-Legal.FID2351227]

**\*\* This is an external email, please forward any concern with it to 'Information Security Incident' \*\***

Dear Ms Waller,

**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

**Application no.2020/02TVG**

**Your Ref - CW-Legal.FID2351227**

Further to the close of the formal objection period, following notice of the above-mentioned application to register land known as Southwick Court Fields, Southwick and North Bradley, as a town or village green, on 31<sup>st</sup> January 2022, I am writing to advise you that the objections (and representations) received in the formal notice period, were forwarded to the Applicant for comment and additional representations have now been submitted.

Under regulation 6(3) of “The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007”, the Registration Authority are required to send to the applicant a copy of every written statement in objection to the application which it receives, before the date on which it proceeds to the further consideration of the application and under regulation 6(4), the Registration Authority must not reject the application without giving the applicant a reasonable opportunity of dealing with the matters contained in any statement of objection. The Applicant was given opportunity to comment on the objections, until 6<sup>th</sup> April 2022.

Please find attached the following correspondence for your attention:

1. Copies of representations made regarding the application during the formal notice period - 12<sup>th</sup> November 2021 - 31<sup>st</sup> January 2022:

	<b>Representations</b>	<b>Date</b>		<b>Representations</b>	<b>Date</b>
1	P Allsop	13/12/2021	12	J & B Keltie	12/12/2021
2	T Allsop	12/12/2021	13	North Bradley Parish Council	04/01/2022 & 14/01/2022
3	H Chamulewicz	12/12/2021	14	M Noutch	12/12/2021
4	J Dennis	19/12/2021	15	M & J Oliver	14/12/2021
5	M Dennis	19/12/2021	16	Savills on behalf of Waddeton Park Ltd	09/11/2021
6	P & S Elphick	10/12/2021	17	Southwick Parish Council	16/12/2021 & 20/01/2022
7	D Goodship	17/12/2021	18	M & L Stevens	13/12/2021
8	C Hill	14/12/2021	19	N & A Swanney	13/12/2021
9	Cllr G Hill	15/12/2021	20	Cllr D Vigar	15/12/2021
10	R Hunt	17/12/2021	21	M & G Whiffen	10/12/2021
11	B Jones	12/12/2021	22	S & P Willcox	12/12/2021

2. Copies of additional representations regarding the objections - 22<sup>nd</sup> February 2022 - 6<sup>th</sup> April 2022:

	<b>Correspondence</b>	<b>Date</b>
--	-----------------------	-------------

1	Mr N Swanney	05/04/2022
2	Cllr G Hill	05/04/2022

If you would like to make any comments regarding the representations received during the formal notice period and/or the additional comments on the objections received, (as attached), I would be very grateful if you could forward them to me in writing at the address given below, or by e-mail, not later than 5:00pm on Wednesday 25<sup>th</sup> May 2022.

Yours sincerely,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick & North Bradley - Ref: 2020/02/TVG**

**Supplemental Comments on behalf of the Landowner**

**In Response to Revised Application.**

**1 Introduction**

- 1.1 These comments supplement the Objection made on behalf of the Landowner.
- 1.2 In the interest of concision, we have refrained from re-stating any points previously made in the original Objection. Therefore, the landowner's Supplemental Comments should be read together with the original Objection.
- 1.3 These Supplemental Comments address points of new evidence submitted in support of the application. Where points are repeated or have already been adequately covered in the Objection, we have not commented again in this document. However, our silence should not be taken to be tacit acceptance of any point.
- 1.4 Similarly, where the updated application and/or supporting evidence misstates the relevant legal tests (for example, stating that the "Objection must eliminate all such use to be valid"<sup>1</sup>) or where material is irrelevant to the TVG application (such as continued references to the planning process or erroneous allegations that the land should be considered to be "public realm"), we have refrained from commenting on such material. We are content to rely on the decision maker to disregard such content.
- 1.5 For ease of reference, we have adopted the same headings and subject order as the Objection.

**2 Standard of Proof and Quality of Evidence**

- 2.1 We have nothing further to add on this point save for the fact that the application still fails to meet the statutory tests.

**3 Occurrence of Trigger Events and Variation of Application**

- 3.1 The application had been submitted in respect of the whole site. However, following the Council pointing out that the northern part of the site (i.e. the part closest to the housing) had been the subject of a trigger event, the application has been amended and further evidence has been submitted.
- 3.2 Nonetheless, it remains the case that it is wholly unclear whether the majority of the supporting evidence still relates to the whole site (which was subject to the original application) or just the southern part (which is now the subject of the application).

---

<sup>1</sup> Para 6 of Mr Swanney's April Statement

- 3.3 By way of example, reference is made in one of the supporting representations to a swing (“even a swing was popular this year attached to a substantial tree”<sup>2</sup>). The substantial tree in question is a boundary oak tree located on the boundary closest to the housing. This is outside the area which is now the subject of the TVG application.
- 3.4 Therefore, there is evidence that at least some of the respondents have misunderstood the extent and nature of the revised application.
- 3.5 It remains the case that the vast majority of evidence is ambiguous as to where uses are claimed to have taken place. Accordingly, as before, the weight of such evidence must necessarily be reduced.

#### **4 20 Year’s Use**

- 4.1 Mr Swanney’s statement of 5 April 2022 refers to “additional sworn statements” at a number of points. We have not seen any such additional sworn statements. In so far as we can see, the only aspect of the application that has been “sworn” is Mr Swanney’s statutory declaration which is part of the application form.
- 4.2 We therefore assume that this is a mis-reference to the emails and letters which have been submitted containing representations from members of the public. If this is not the case, we would ask for copies of the sworn statements and an opportunity to comment thereon.
- 4.3 Mr Swanney’s April statement contains a table containing 20 names. The final column of the table is headed “Number of YEARS familiar with the use of the fields”. “Familiarity” with the fields is not sufficient to demonstrate use for the purposes of a TVG application. Evidence needs to be provided to demonstrate use for lawful sports and pastimes (with a sufficient quality of user) as of right by a significant number of the inhabitants of the locality. The table does nothing to assist with proving such use.
- 4.4 Of those 20 names, many appear to be from the same household (although the names have been split up to reduce this impression). 6 of the 20 people listed have provided separate written representations. It is important that they are not counted twice.
- 4.5 During the pandemic, many people began accessing their local countryside more frequently (due to lockdown restrictions). This phenomenon was seen in edge-or-town countryside locations around the country. Therefore, caution should be exercised in taking the evidence relating to the use of the site since March 2000 as being representative of the use of the site over the preceding period. The landowner has noticed a very significant increase in both the use of the site and the instances of damage being caused to fences and gates during this period.
- 4.6 This makes it even more important to have regard to evidence of the frequency and nature of the claimed uses in the earlier part of the 20 year period. The evidence relating to that period is insufficient to meet the statutory requirements.

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<sup>2</sup> See email from H.Chamulewicz dated 12 December 2022



## 5 Lawful Sports and Pastimes

### General Comments on New Evidence

- 5.1 The vast majority of the newly submitted evidence suffers from the flaws mentioned in our original Objection. The evidence remains vague as to the location or frequency of the claimed uses.
- 5.2 Further, we note that a number of the statements and representations submitted in December relate to uses of the land which should be discounted when considering use as of right in the context of the TVG application. For example, express reference is made to “walking permissive pathways”<sup>3</sup> and use of the “rights of way”<sup>4</sup>. The majority of the claimed uses are walking (with or without dogs) or running. It is reasonable to assume that such uses would have taken place on the pathways and should, therefore, be discounted.

### Current Use of the Land

- 5.3 *Mr Swanney states: “As explained elsewhere the grazing of cattle was spread across at least six discrete fields in the ownership of the landowner. The small section in question of this Application was never closed to any form of access and was utilised minimally throughout the time when agriculture was in place as a source of winter fodder.”*
- 5.4 He later states: *“The location of the Village Green application was therefore never out of bounds, nor restricted by any signage or activity or even practically placed out of use with the exception of the two part-days when mowing and then baling took place. Even on those days it was just a case of avoiding the progress of the tractor and not related to any formal or informal exclusion.”*
- 5.5 This is incorrect and further highlights the need for precision when providing evidence regarding the use of the Site over the 20 year period.
- 5.6 The part of the site which is now the subject of the TVG application has been used during the summer months (usually April to September) for grazing cows during the vast majority of the 20 year period (as stated in the Objection). During the winter months the field is allowed to recover from grazing.
- 5.7 In very recent years, cows have not been present on the site. However, there is a good reason for this change. Around 2-3 years ago, fences and gates began being regularly damaged. Fences were cut with wire cutters and gates were broken (presumably by people wishing to access the land). The cost of repeatedly repairing and replacing the fences outweighed the revenue that could be generated from the use of the land for cattle grazing. Therefore, the cattle were moved elsewhere. However, before this point, cattle were present on the land during the summer months.

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<sup>3</sup> Peter Allsop and Tracy Allsop

<sup>4</sup> Malcolm Oliver

- 5.8 It was due to the increasing level of vandalism and the breaking of gates and fences that it was necessary to padlock a number of gates on the site (as shown in Mr Swanney's photographs).
- 5.9 In this respect, it is relevant to note that in order to be "as of right", the use must be without force, stealth or permission. The breaking of gates, cutting of fences and other acts of vandalism to access the site amounts to access by force. The use of the site by any person carrying out such acts or by others who are benefiting from those acts cannot be taken into account.
- 5.10 For the sake of completeness, we should note that cattle could be returned to the TVG application land at any time.

#### Camping by Local Children

- 5.11 The additional commentary provided by Mr Swanney has been helpful in pinpointing this incident. As Mr Swanney implies, the camping was not by local "children" but by teenagers and young adults "as evidenced by the bottles and cans" also referred to by Mr Swanney.
- 5.12 The landowner is aware of one camping incident occurring. The "campers" were on site for one night and then fled the scene leaving their tents, some clothes and various other items which were then disposed of.
- 5.13 The use was clearly not "as of right". The users knew they should not have been camping on the site (as evidenced by the fact that they fled when it appeared that they would be challenged). The use was intended to be "by stealth" even if the campers failed to achieve this.
- 5.14 This is certainly not a regular occurrence. The landowner is only aware of the one isolated incident. The use does not have the quality of user to be a relevant consideration in the TVG application.

#### Landing and taking off of para-wings and hot air balloons

- 5.15 Mr Swanney has now clarified this claimed use as follows: "*The hang glider/parawing is probably misnamed. The flying device had rigid, framed, cloth covered wings and was powered with a single large fan situated behind the pilot. Landings and take-offs occurred regularly pre-Covid.*"
- 5.16 Despite the clarification, the landowner has no recollection of such use ever taking place. Therefore, notwithstanding the clarification, if the use ever did take place (which is not accepted) it remains the case that the use would be 'so trivial and sporadic as not to carry the outward appearance of user as of right' and should, therefore, be ignored for the purposes of the Application.

## 6 Use As of Right

- 6.1 We have nothing further to add save for our comments above in respect of the use of the site by those who have damaged gates and fences. Such use would be by force and not “as of right”.

## 7 Significant Number of the Inhabitants of any Locality

- 7.1 We have tried to refrain from drawing attention to the points at which the legal tests have been wrongly applied by the Applicant. However, we feel it is necessary to draw attention to the application of the wrong legal test in relation to this element of the statutory test. The misunderstanding is material to the way in which the evidence has been compiled and presented. Therefore, the error affects the way the evidence should be understood and applied in assessing the application.

- 7.2 Before considering the error, we should note that, at box 6, the application identifies the “locality or neighbourhood within a locality in respect of which this application is made” as “Grove Ward, Trowbridge”. A plan is attached to the TVG application identifying Grove Ward.

- 7.3 Mr Swanney April Statement states:

*“Population numbers for Grove Ward are unnecessary and irrelevant. The nature of the Village Green application requires the applicant to identify a Community Area which the application will serve. The truth of this Application is that many visitors to the area in question travel to the vicinity for their recreation....*

*The number of residents in the nearby Ward has been estimated and used as “evidence” that numbers are exaggerated. If they are submitted to imply usage then no consideration has been made for footfall from other Wards such as Drynham or Central, Villages such as North Bradley and Southwick, or the many who drive to the boundaries from not only the Town to reach the most accessible green infrastructure, but from as far as Frome.*

*Grove Ward is only identified as nearest conurbation and place of residence of Applicant as required in the Village Green Application. Should the Application be successful, there will be no restrictions for access based on postcode and the current use of the land will be maintained and protected in Law.”*

- 7.4 It is, therefore, clear that the applicant, when preparing the application has misunderstood the relevant statutory tests. Rather than ensuring that the evidence is drawn from the “locality” (to demonstrate use by a significant number of the inhabitants of the locality specified in the application), the applicant has assumed that the evidence should relate to use by any persons who might, in the future, wish to use the TVG should it be registered. The evidence relating to the use of the site has, therefore, drawn on a far wider range of users of the site than should have been the case. This is an important and material error.

- 7.5 If, as stated by the Applicant, the locality of Grove Ward has been considered to be “irrelevant” when preparing the evidence, the relevance of the evidence to the statutory tests must be doubted.
- 7.6 It is also notable that Mr Swanney previously stated that the number of users had been generated through a survey. In his April Statement, Mr Swanney now states that the number is an “estimate”. This casts further doubt on the evidence.

**23 May 2022**

**Clarke Willmott LLP**

## APPENDIX 11 - Planning Trigger and Terminating Events Consultation Replies

### i) Planning Trigger and Terminating Event Consultation Dated 21st January 2020

**From:** [Wilmott, Mike](#)  
**Sent:** 21 January 2020 11:51  
**To:** [Green, Janice](#)  
**Subject:** RE: Planning Trigger Event Consultation - Southwick Court Fields  
**Attachments:** [Southwick site plan.pdf](#)

---

Janice,

We received as valid a planning application that covers part of the site on 15<sup>th</sup> January 2020. The application number is 20/00379/OUT and whilst the details can be viewed on the Council's web site, I've attached a copy of the site plan, with the land outlined in red being the application site.

Hope that helps,

Regards,

Mike Wilmott  
Head of Development Management  
Economic Development & Planning

**Wiltshire Council**



---

**From:** Green, Janice  
**Sent:** 21 January 2020 10:06  
**To:** Wilmott, Mike <Mike.Wilmott@wiltshire.gov.uk>  
**Subject:** Planning Trigger Event Consultation - Southwick Court Fields

Good Morning Mike,

**Commons Act 2006 – Sections 15(1) & (2)**  
**Application to Register Land as a Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

Please find attached consultation regarding a new application to register land at Southwick Court Fields in the parishes of Southwick and North Bradley, as a Town/Village Green. I have attached a plan of the application land which lies to the south of Boundary Walk, Trowbridge.

I have attached the links included within the letter again here:

[www.legislation.gov.uk/ukpga/2013/27/schedule/4/enacted](http://www.legislation.gov.uk/ukpga/2013/27/schedule/4/enacted)

[www.legislation.gov.uk/uksi/2014/257/contents/made](http://www.legislation.gov.uk/uksi/2014/257/contents/made)

[www.legislation.gov.uk/uksi/2017/276/contents/made](http://www.legislation.gov.uk/uksi/2017/276/contents/made)

I would be very grateful for your reply by 19<sup>th</sup> February. Thank you for your help in this matter.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

Information relating to the way Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

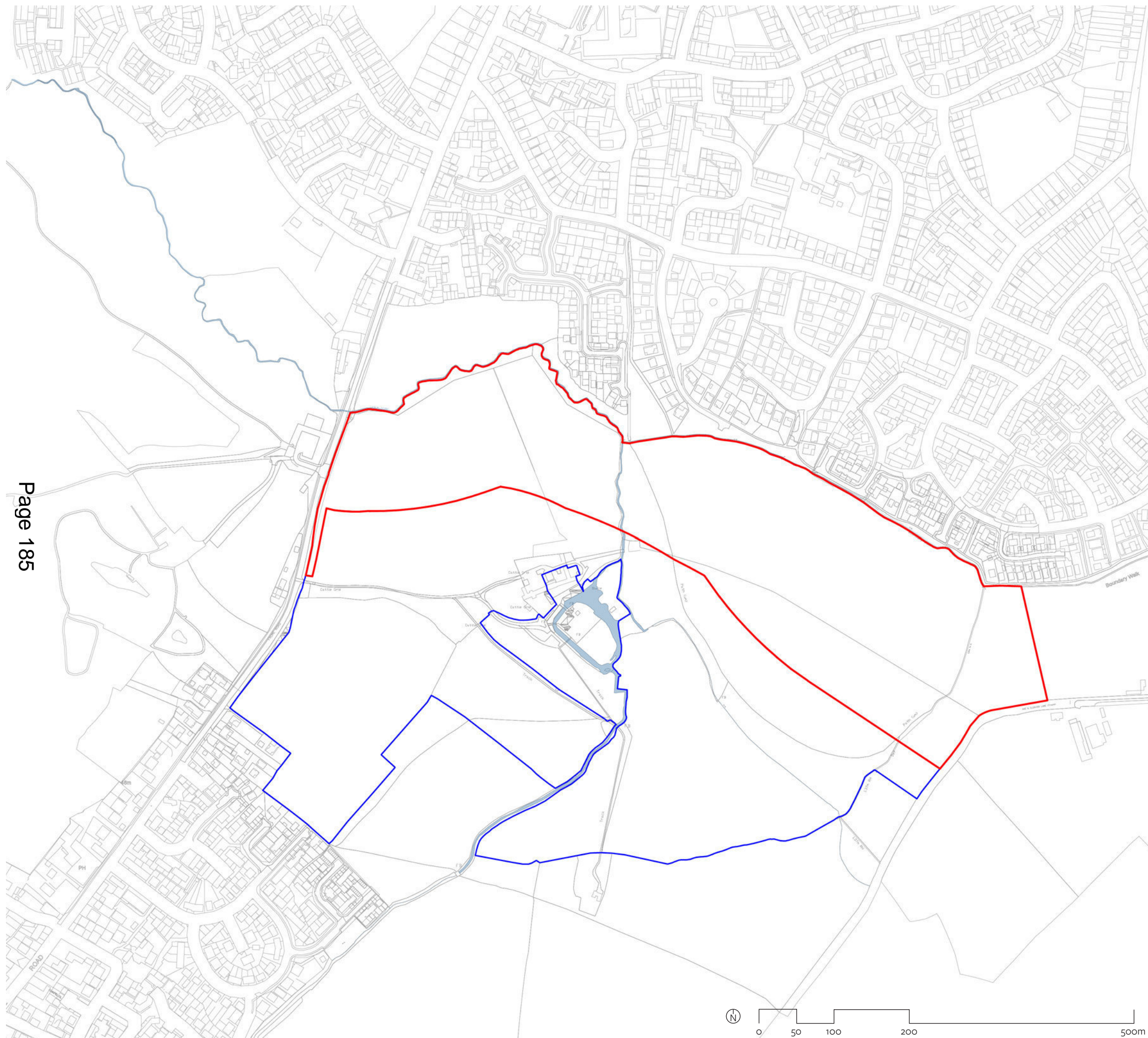
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Page 185

Legend

- Application boundary
- Other land in applicants control

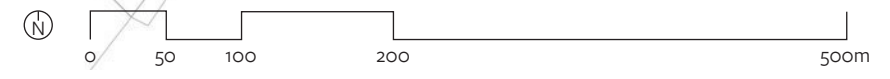
Land at Southwick Court, Trowbridge		E
Location Plan		MS / DE
150202 PP 01	Scale 1:5000 @ A3	Oct 2019

**CliftonEmerydesign**

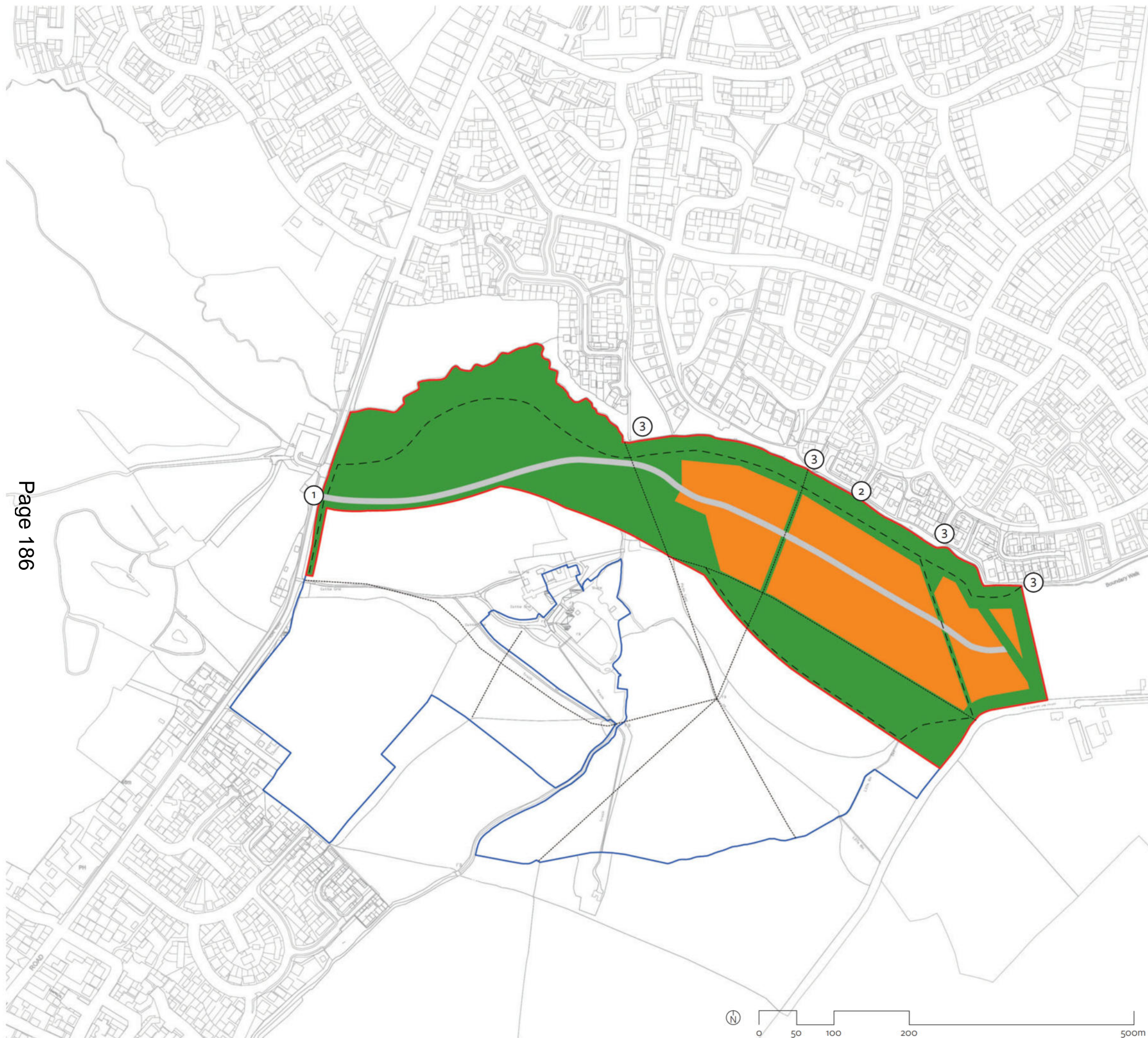
Unit 1.14, The Paintworks, Arnos Vale, Bristol, BS4 3EH  
 T: 01392 368866 W: www.cliftonemerydesign.co.uk M: mail@cliftonemerydesign.co.uk

Drawing Status Planning

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**Legend**

- Application boundary
- Other land in applicants control
  
- Access**
- ① Vehicular, pedestrian & cycle access from Firs Hill (A361)
- ② Pedestrian, cycle and emergency access to Westmead Crescent
- ③ Potential pedestrian connections to existing areas
- Strategic Road Corridor with footpaths and cycleways +/- 10m in either direction from the line shown
- Existing PROW
- Proposed permissive paths
  
- Land Use**
- Publicly accessible open space
- Residential development (6.38 ha: average density up to 30dph)
  
- Building Height**
- Development heights up to 2.5 storeys (9.5m maximum height)

Land at Southwick Court, Trowbridge		H
Access, Land Use & Building Height		MS / DE
150202 PP 02	Scale 1:5000 @ A3	Oct 2019

**CliftonEmerydesign**

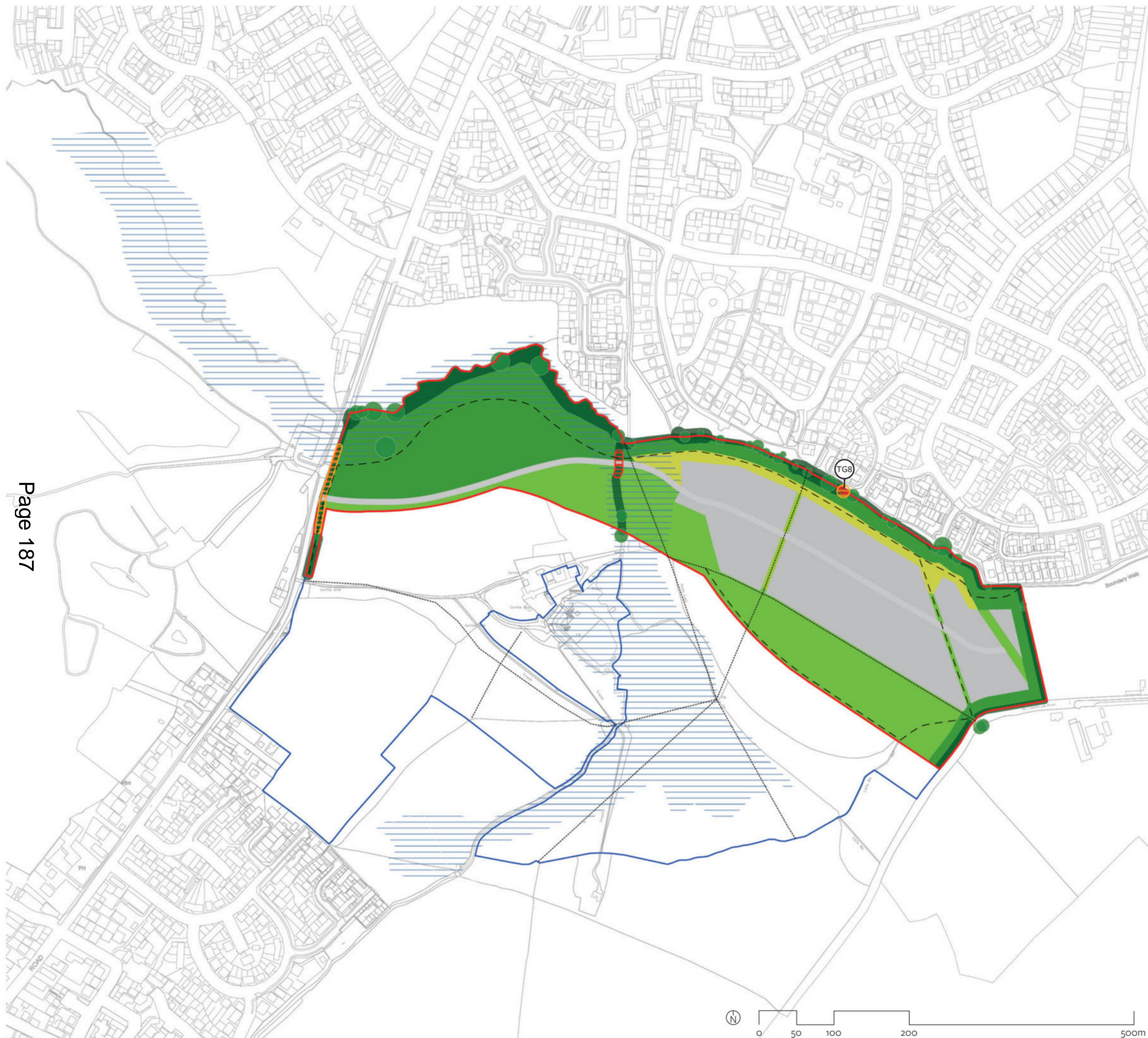
Unit 1.14, The Paintworks, Arnos Vale, Bristol, BS4 3EH  
 T: 01392 368866 W: www.cliftonemerydesign.co.uk M: mail@cliftonemerydesign.co.uk

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**Legend**

- Application boundary
- Other land in applicants control
- ..... Existing PROW
- - Proposed permissive paths

**Features**

- Multi-functional Public Open Space (POS) including woodland planting and attenuation features
- Multi-functional Public Open Space (POS) including wildlife corridor
- Urban park (including woodland planting and attenuation features)
- ▨ Flood plain
- Existing tree (individual)
- Existing tree group/hedge
- Existing tree group/hedge to be removed
- Existing hedge to be translocated due to carriageway widening (Please refer to accompanying engineers drawing no.37912/5501/002)

**\*Note.** Emergency access positioned within the RPA of Tree TG8. The removal of TG8 will be subject to the review of aspect tree consultants. Please refer to accompanying arboricultural survey.

Land at Southwick Court, Trowbridge	H
Green Infrastructure	MS / DE
150202 PP 03	Scale 1:5000 @ A3 Oct 2019

**CliftonEmerydesign**

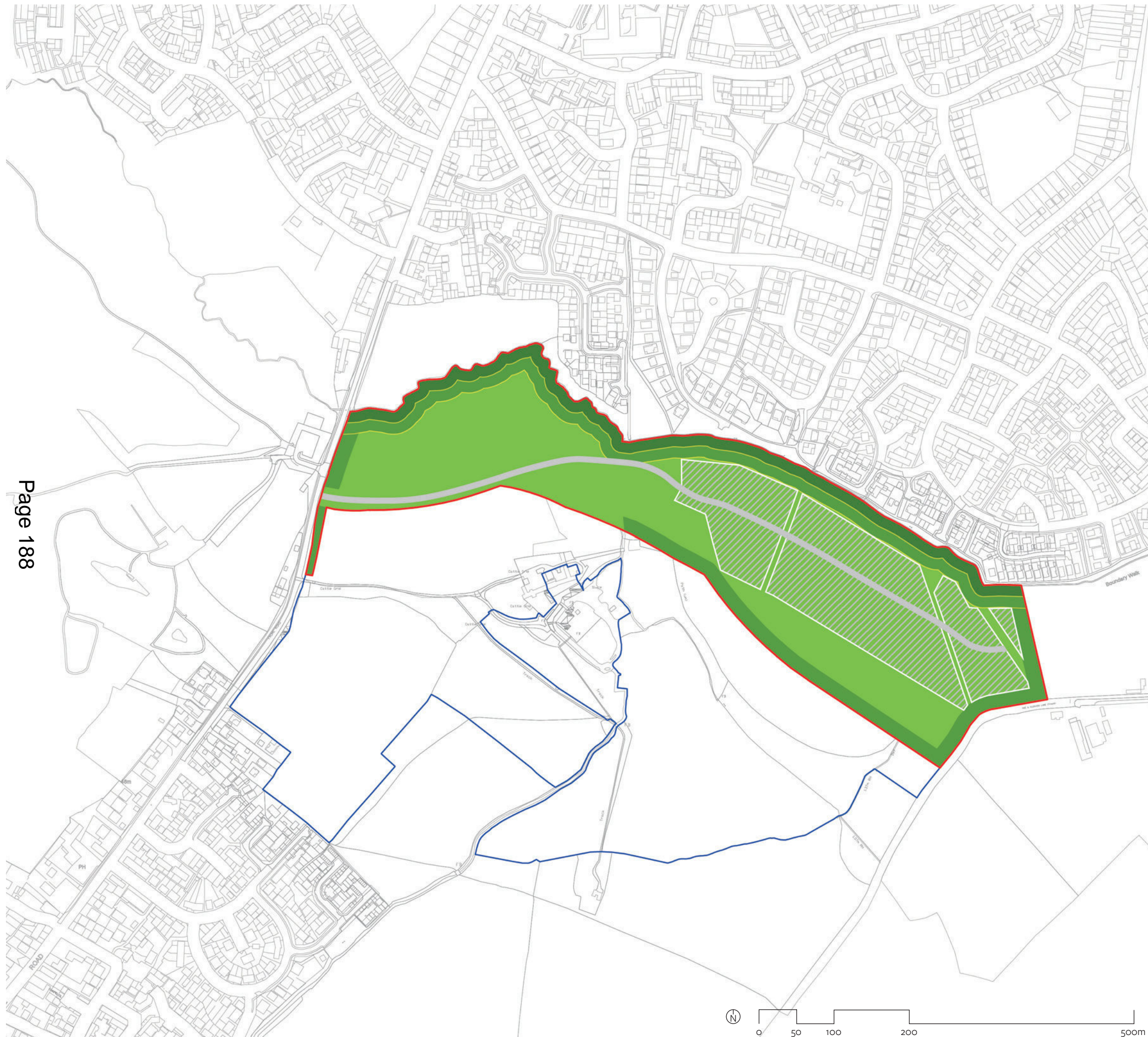
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Legend

- Application boundary
- Other land in applicants control
- Development area

Lighting

- **Zone A: Bat Habitat.** E.g. bat commuting corridor or foraging area. Lux levels less than 0.2 on the horizontal plane and below 0.4 on the vertical plane. Minimum width: 15m.
- **Zone B: Buffer Zone.** Light levels reducing from maximum of 1 Lux at edge of development. Minimum width: 15m.

Land South of Trowbridge	H
Lighting	MS / DE
150202 PP 04	Scale 1:5000 @ A3
	Oct 2019

**CliftonEmerydesign**

Unit 1.14, The Paintworks, Arnos Vale, Bristol, BS4 3EH  
 T: 01392 368866 W: www.cliftonemerydesign.co.uk M: mail@cliftonemerydesign.co.uk

Drawing Status Planning

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**From:** [Wilmott, Mike](#)  
**Sent:** 21 January 2020 12:08  
**To:** [Green, Janice](#)  
**Subject:** RE: Planning Trigger Event Consultation - Southwick Court Fields

---

Janice,

I'm double checking the dates just in case it was held up somewhere, but I doubt it – and the 15<sup>th</sup> was the date we have logged as it being received – we didn't publicise it until we sent out letter on the 17<sup>th</sup>.

However, I suspect it will fall foul of this:

3. A draft of a development plan document which identifies the land for potential development is published for consultation in accordance with regulations under section 17(7) of the 2004 Act.

Spatial Planning will be able to confirm, but I think they will advise that at least part of the site was identified for potential development in the Wiltshire Housing sites Allocation Plan, where consultation started month/years ago and which is heading for adoption next month.

Mike Wilmott  
Head of Development Management  
Economic Development & Planning

**Wiltshire Council**

---

**From:** Green, Janice  
**Sent:** 21 January 2020 11:56  
**To:** Wilmott, Mike <Mike.Wilmott@wiltshire.gov.uk>  
**Subject:** RE: Planning Trigger Event Consultation - Southwick Court Fields

Hi Mike,

Thank you for getting back to me so quickly, that's really helpful. The TVG application is dated as received 13<sup>th</sup> January, so just pre-dates the planning application, but just awaiting reply from Spatial Planning on this, so I will of course keep you posted.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer

Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345  
Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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---

**From:** Wilmott, Mike  
**Sent:** 21 January 2020 11:51  
**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Subject:** RE: Planning Trigger Event Consultation - Southwick Court Fields

Janice,

We received as valid a planning application that covers part of the site on 15<sup>th</sup> January 2020. The application number is 20/00379/OUT and whilst the details can be viewed on the Council's web site, I've attached a copy of the site plan, with the land outlined in red being the application site.

Hope that helps,

Regards,

Mike Wilmott  
Head of Development Management  
Economic Development & Planning





---

**From:** Green, Janice  
**Sent:** 21 January 2020 10:06  
**To:** Wilmott, Mike <[Mike.Wilmott@wiltshire.gov.uk](mailto:Mike.Wilmott@wiltshire.gov.uk)>  
**Subject:** Planning Trigger Event Consultation - Southwick Court Fields

Good Morning Mike,

**Commons Act 2006 – Sections 15(1) & (2)**  
**Application to Register Land as a Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

Please find attached consultation regarding a new application to register land at Southwick Court Fields in the parishes of Southwick and North Bradley, as a Town/Village Green. I have attached a plan of the application land which lies to the south of Boundary Walk, Trowbridge.

I have attached the links included within the letter again here:

[www.legislation.gov.uk/ukpga/2013/27/schedule/4/enacted](http://www.legislation.gov.uk/ukpga/2013/27/schedule/4/enacted)

[www.legislation.gov.uk/uksi/2014/257/contents/made](http://www.legislation.gov.uk/uksi/2014/257/contents/made)

[www.legislation.gov.uk/uksi/2017/276/contents/made](http://www.legislation.gov.uk/uksi/2017/276/contents/made)

I would be very grateful for your reply by 19<sup>th</sup> February. Thank you for your help in this matter.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



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Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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**From:** [Enquiries](#)  
**Sent:** 19 February 2020 11:26  
**To:** [Green, Janice](#)  
**Subject:** COMMONS ACT 2006 - Land at Southwick Court Fields,  
Southwick and North Bradley  
**Attachments:** [PINS FINAL RESPONSE - Southwick Court Fields.pdf](#)

---

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Janice,

Thanks for your letter of 21 January.

I note your comments and request for response in relation to this application from PINS. I attach our final reply as requested.

Regards,

Ian Goodall  
Customer Service Advisor

***Putting the customer at the heart of everything we do!***

 The Planning Inspectorate

Room 30, Temple Quay House,  
2 The Square, Temple Quay, Bristol, BS1 6PN

Email: [enquiries@planninginspectorate.gov.uk](mailto:enquiries@planninginspectorate.gov.uk)

Helpline: 0303 444 5000

Direct: 0303 444 5334

twitter: @PINSgov

web: [www.gov.uk/government/organisations/planning-inspectorate](http://www.gov.uk/government/organisations/planning-inspectorate)

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**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as a Town or Village Green – Southwick Court Fields,  
Southwick and North Bradley**

I confirm that <u>no trigger or terminating event has occurred</u> on the land	
I confirm that <u>a trigger event has occurred, but no corresponding terminating event has occurred</u> on the land	✓
I confirm that <u>a trigger event has occurred but a corresponding terminating event has also occurred</u> on the land	
Further information (please use this box to explain the type and date of the trigger or terminating events):  PINS report on the Wiltshire Council Site allocations plan.  Schedule 1A Trigger event 3.  Plan not yet adopted so no terminating event.	
Details of Officer completing this form:  Name: Ian Goodall  Address: The Planning Inspectorate, Customer Support Rm 3/0, Temple Quay House, 2 The Square Bristol, BS1 6PN  E-mail: enquiries@planninginspectorate.gov.uk  Telephone: 0303 444 5000	

**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as a Town or Village Green – Southwick Court Fields,  
Southwick and North Bradley**

I confirm that <u>no trigger or terminating event has occurred</u> on the land	
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Details of Officer completing this form:  Name: Ian Goodall  Address: The Planning Inspectorate, Customer Support Rm 3/0, Temple Quay House, 2 The Square Bristol, BS1 6PN  E-mail: enquiries@planninginspectorate.gov.uk  Telephone: 0303 444 5000	



**From:** [Winslow, Geoff](#)  
**Sent:** 19 February 2020 16:01  
**To:** [Green, Janice](#); [Madgwick, Sally](#)  
**Cc:** [Clampitt-dix, Georgina](#); [Davies, Sophie](#)  
**Subject:** RE: Planning Trigger Event Consultation - Southwick Court Fields  
**Attachments:** [Southwick Court TVG application response.doc](#)

---

Hi Janice/Sally

Sincere apologies for the delay in responding to this matter.

I have attached our response.

Regards

Geoff

Geoff Winslow  
Manager – Spatial Planning  
Spatial Planning  
Tel: 01225 713414  
Email: [geoff.winslow@wiltshire.gov.uk](mailto:geoff.winslow@wiltshire.gov.uk)  
Website: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

**Wiltshire Council**

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---

**From:** Green, Janice  
**Sent:** 21 January 2020 10:04  
**To:** Clampitt-dix, Georgina <[georgina.clampitt-dix@wiltshire.gov.uk](mailto:georgina.clampitt-dix@wiltshire.gov.uk)>  
**Cc:** Winslow, Geoff <[Geoffrey.Winslow@wiltshire.gov.uk](mailto:Geoffrey.Winslow@wiltshire.gov.uk)>; Davies, Sophie <[Sophie.Davies@wiltshire.gov.uk](mailto:Sophie.Davies@wiltshire.gov.uk)>  
**Subject:** Planning Trigger Event Consultation - Southwick Court Fields

Hi Georgina,

**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as a Town or Village Green – Southwick Court Fields, Southwick and North Bradley.**

Please find attached consultation regarding a new application to register land at Southwick Court Fields in the parishes of Southwick and North Bradley, as a Town/Village Green. I have attached a plan of the application land which lies to the south of Boundary Walk, Trowbridge.

I have attached the links included within the letter again here:

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[www.legislation.gov.uk/uksi/2017/276/contents/made](http://www.legislation.gov.uk/uksi/2017/276/contents/made)

I have copied in Geoff and Sophie and I would be very grateful for your reply by 19<sup>th</sup> February. Thank you for your help in this matter.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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Date: 19 February 2020

Janice Green  
Rights of Way & Countryside Team  
Communities and Neighbourhood Services  
County Hall  
Bythesea Road  
Trowbridge  
Wiltshire BA14 8JN

County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

JG/PC/171 & PC/208

Dear Ms Green

**Commons Act 2006 – Sections 15(1) & (2)**  
**Application to Register Land as a Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

I refer to your letter dated 21 January 2020 in connection with the above.

Having considered the application I am writing to confirm that trigger point 3, as defined in Schedule 1A to the Commons Act 2006 has been engaged.

The land, the subject of the above application, forms part of an allocation for development (Site H2.6) set out in the Wiltshire Housing Site Allocations Plan (the WHSAP).

The WHSAP has been through an extensive preparation process culminating in an independent examination process conducted by a Planning Inspector appointed by the Secretary of State.

The Council received the Inspector's Report on the examination of the WHSAP on 24 January 2020. The Report concludes that, subject to a series of recommended main modifications being made, the WHSAP (including the allocation of Site H2.6) is sound and legally compliant.

The Inspector's Report was considered by Cabinet on 4 February. A report, with a recommendation to formally adopt the WHSAP, will be presented to Council at its meeting on 25 February.

Yours sincerely

Geoff Winslow  
Spatial Planning Manager

Enc.

**Commons Act 2006 – Section 15(1) & (2)**  
**Application to Register Land as a Town or Village Green – Southwick Court Fields,**  
**Southwick and North Bradley**

I confirm that <u>no trigger or terminating event has occurred</u> on the land	
I confirm that <u>a trigger event has occurred, but no corresponding terminating event has occurred</u> on the land	X
I confirm that <u>a trigger event has occurred but a corresponding terminating event has also occurred</u> on the land	
<p>Further information (please use this box to explain the type and date of the trigger or terminating events):</p> <p>The land, the subject of the Town or Village Green application, has been allocated for development within the Wiltshire Housing Site Allocations Plan (WHSAP).</p> <p>The WHSAP has been through an extensive preparation process involving widespread consultation, dating back to March 2014.</p> <p>Formal, pre-submission consultation on the draft WHSAP was undertaken from July to September 2017. Land at Southwick Court (Site H2.6) was presented as a draft allocation for housing within that draft Plan.</p> <p>The WHSAP was then submitted to the Secretary of State on 31 July 2018 for the purpose of commencing the independent examination process.</p> <p>Following the submission of the WHSAP, the Council published a Schedule of Proposed Changes to the draft Plan for consultation from 27 September to 9 November 2018 and 11 December 2018 to 22 January 2019. The feedback from these additional rounds of consultation was considered by the appointed Planning Inspector as part of the examination of the submitted WHSAP.</p> <p>Examination hearing sessions were held in public from 2 April to 16 April 2019.</p> <p>Following the close of the hearing sessions, the Council consulted on a Schedule of Further Main Modifications (FMMs) from 12 September to 25 October 2019. All consultation responses received in respect of the FMMs were sent to the Inspector for consideration.</p> <p>The Council received the Inspector’s Report on 24 January 2020. Having examined the WHSAP in the light of submitted and oral evidence, the Inspector concludes that, subject to making a series of Main Modifications, the WHSAP (including the allocation of land at Southwick Court – H2.6) is sound and legally compliant.</p>	
<p>Details of Officer completing this form:</p> <p>Name: Geoff Winslow  Address: Spatial Planning Policy, County Hall, Wiltshire Council, Trowbridge  Email: <a href="mailto:geoff.winslow@wiltshire.gov.uk">geoff.winslow@wiltshire.gov.uk</a>  Telephone: 01225 713414</p>	

## ii) Planning Trigger and Terminating Event Consultation Dated 22nd June 2020

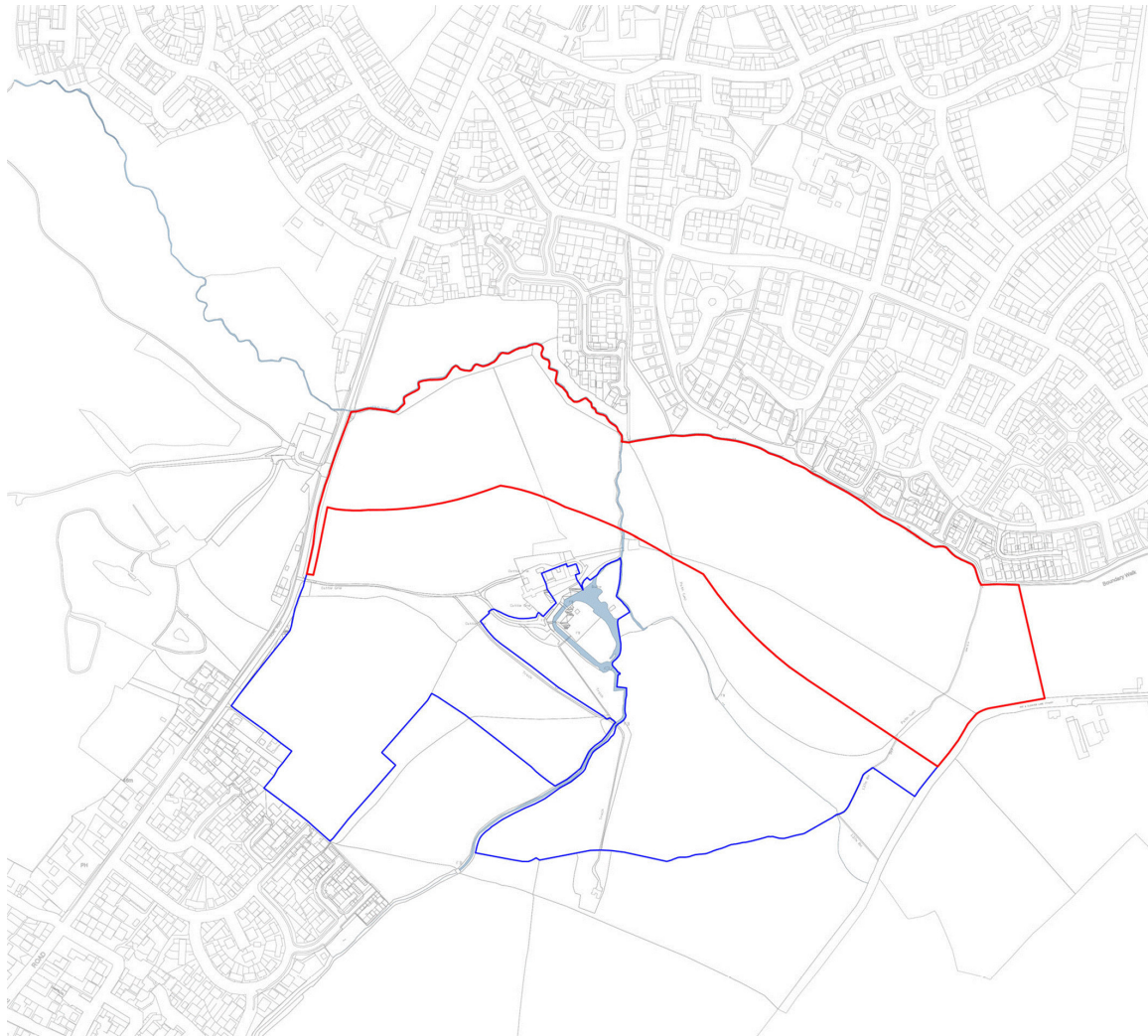
**From:** [Wilmott, Mike](#)  
**Sent:** 23 June 2020 09:13  
**To:** [Green, Janice](#)  
**Subject:** RE: Commons Act 2006 - s.15(1) & (2) Application to Register Land as TVG, Southwick Court Fields - Planning Trigger Event Consultation

---

Janice,

I'm not sure when this application was received, but I can confirm that an outline planning application for residential development on a large part of the site was received on January 15<sup>th</sup> 2020. The area of the application is outlined in red on the plan below. Georgina CD will be able to advise on the allocation history, as the site in red is allocated for residential development in the Wiltshire Housing Sites Allocation Plan.

So if the application to register the land as a VG was received after January 15<sup>th</sup>, it would be my view that a trigger event has occurred.



Regards,

Mike Wilmott  
Head of Development Management  
Economic Development & Planning

**Wiltshire Council**

---

**From:** Green, Janice  
**Sent:** 22 June 2020 19:04  
**To:** Wilmott, Mike <Mike.Wilmott@wiltshire.gov.uk>  
**Subject:** Commons Act 2006 - s.15(1) & (2) Application to Register Land as TVG, Southwick Court Fields - Planning Trigger Event Consultation

Dear Mike,

-  
**Commons Act 2006 – Sections 15(1) & (2)**  
**Application to Register Land as a Town or Village Green – Southwick Court Fields, Southwick and North Bradley, Wiltshire**



Wiltshire Council, as the Registration Authority, are in receipt of an application to register land in the parishes of Southwick and North Bradley, known as Southwick Court Fields, as a Town or Village Green. Please find attached planning trigger event consultation letter with plans, I would be very grateful for your reply by Tuesday 21<sup>st</sup> July 2020.

Thank you for your help in this matter, I look forward to hearing from you.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



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Web: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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**From:** [Winslow, Geoff](#)  
**Sent:** 01 July 2020 09:47  
**To:** [Green, Janice](#)  
**Cc:** [Clampitt-dix, Georgina](#); [O'Donoghue, Ruaridh](#); Wilmott, Mike; [Davies, Sophie](#)  
**Subject:** RE: Commons Act 2006 - s.15(1) & (2) Application to Register Land as TVG, Southwick Court Fields - Planning Trigger Event Consultation  
**Attachments:** [Trigger Event Consult June 2020 - Southwick \(Spatial Planning\).pdf](#)  
[Application Plan\\_Redacted.pdf](#)  
[Application Plan \(June 2020\).pdf](#)  
[Southwick Court Fields TVG application response.doc](#)

---

Hi Janice

Further to your email to Georgina regarding the above, please find attached our response.

Ruaridh/Mike, I'm copying you in for completeness. Sophie, copying you in as Area Lead.

Regards

*Geoff Winslow*

Manager – Spatial Planning

Spatial Planning

Tel: 01225 713414

Email: [geoff.winslow@wiltshire.gov.uk](mailto:geoff.winslow@wiltshire.gov.uk)

Website: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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---

**From:** Clampitt-dix, Georgina

**Sent:** 26 June 2020 17:12

**To:** Winslow, Geoff <[Geoffrey.Winslow@wiltshire.gov.uk](mailto:Geoffrey.Winslow@wiltshire.gov.uk)>

**Subject:** FW: Commons Act 2006 - s.15(1) & (2) Application to Register Land as TVG, Southwick Court Fields - Planning Trigger Event Consultation

Hi Geoff, would you mind responding to this please given the location.

Thanks

**Georgina Clampitt-Dix**  
**Head of Spatial Planning**  
Economic Development and Planning

**Wiltshire Council**

Tel: 01225 713472  
Email: [georgina.clampitt-dix@wiltshire.gov.uk](mailto:georgina.clampitt-dix@wiltshire.gov.uk)  
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**From:** Green, Janice  
**Sent:** 22 June 2020 19:07  
**To:** Clampitt-dix, Georgina <[georgina.clampitt-dix@wiltshire.gov.uk](mailto:georgina.clampitt-dix@wiltshire.gov.uk)>  
**Subject:** Commons Act 2006 - s.15(1) & (2) Application to Register Land as TVG, Southwick Court Fields - Planning Trigger Event Consultation

Dear Georgina,

-  
**Commons Act 2006 – Sections 15(1) & (2)**  
**Application to Register Land as a Town or Village Green – Southwick Court Fields, Southwick and North Bradley, Wiltshire**

Wiltshire Council, as the Registration Authority, are in receipt of an application to register land in the parishes of Southwick and North Bradley, known as Southwick Court Fields, as a Town or Village Green. Please find attached planning trigger event consultation letter with plans, I would be very grateful for your reply by Tuesday 21<sup>st</sup> July 2020.

Thank you for your help in this matter, I look forward to hearing from you.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
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Date: 1 July 2020

Janice Green  
Rights of Way & Countryside Team  
Communities and Neighbourhood Services  
County Hall  
Bythesea Road  
Trowbridge  
Wiltshire BA14 8JN

County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

JG/PC/171 & PC/208

Dear Ms Green

**Commons Act 2006 – Sections 15(1) & (2)**  
**Application to Register Land as a Town or Village Green – Southwick Court Fields,**  
**Southwick and North Bradley**

I refer to your letter dated 22 June 2020 in connection with the above.

Having considered the application I am writing to confirm that trigger point 4, as defined in Schedule 1A to the Commons Act 2006 has been engaged.

The land, the subject of the above application, forms part of an allocation for development (Site H2.6) set out in the Wiltshire Housing Site Allocations Plan (the WHSAP) which was formally adopted by the Council on 25 February 2020.

The adoption of the WHSAP was not challenged through the courts and hence the document is recognised as forming part of the development plan for Wiltshire.

Yours sincerely

Geoff Winslow  
Spatial Planning Manager

Enc.



**Commons Act 2006 – Section 15(1) & (2)**  
**Application to Register Land as a Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

I confirm that <u>no trigger or terminating event has occurred</u> on the land	
I confirm that <u>a trigger event has occurred, but no corresponding terminating event has occurred</u> on the land	X
I confirm that <u>a trigger event has occurred but a corresponding terminating event has also occurred</u> on the land	
<p>Further information (please use this box to explain the type and date of the trigger or terminating events):</p> <p>The land, the subject of the Town or Village Green application, has been allocated for development within the Wiltshire Housing Site Allocations Plan (WHSAP). The WHSAP was formally adopted by full Council on 25 February 2020.</p> <p>The adoption of the WHSAP was not challenged through the courts and hence the document is recognised as forming part of the development plan for Wiltshire.</p> <p>Having considered the application I conclude that trigger point 4, as defined in Schedule 1A to the Commons Act 2006 has been engaged. Therefore, in the opinion of the Spatial Planning team, the application to register the land the subject of this application should be dismissed.</p>	
<p>Details of Officer completing this form:</p> <p>Name: Geoff Winslow  Address: Spatial Planning Policy, County Hall, Wiltshire Council, Trowbridge  Email: <a href="mailto:geoff.winslow@wiltshire.gov.uk">geoff.winslow@wiltshire.gov.uk</a>  Telephone: 01225 713414</p>	

**From:** [Dickson, Hannah](#)  
**Sent:** 02 October 2020 12:09  
**To:** [Green, Janice](#)  
**Subject:** FW: Commons Act 2006 - s.15(1) & (2) Application to Register Land as TVG, Southwick Court Fields - Planning Trigger Event Consultation  
**Attachments:** [Trigger Event Consult June 2020 - Southwick \(Planning Inspectorate\).pdf](#)  
[Application Plan\\_Redacted.pdf](#)  
[Application Plan \(June 2020\).pdf](#)

---

Dear Janice,

Further to your email below, I can confirm that PINS holds no work (Local Plans examinations, appeals or NSIPs) on this site. Therefore there are no trigger/terminating events.

Thanks

Hannah

Hannah Dickson  
Customer Team Manager

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**From:** Green, Janice <janice.green@wiltshire.gov.uk>  
**Sent:** 22 June 2020 19:00  
**To:** Enquiries <Enquiries@planninginspectorate.gov.uk>  
**Subject:** Commons Act 2006 - s.15(1) & (2) Application to Register Land as TVG, Southwick Court Fields - Planning Trigger Event Consultation

Dear Sir or Madam,

-  
**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as a Town or Village Green – Southwick Court Fields, Southwick and North Bradley, Wiltshire**

Wiltshire Council are in receipt of an application to register land in the parishes of Southwick and North Bradley, known as Southwick Court Fields, as a Town or Village Green. Please find attached planning trigger event consultation letter with plans, I would be very grateful for your reply by Tuesday 21<sup>st</sup> July 2020.

Thank you for your help in this matter, I look forward to hearing from you.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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DPC:76616c646f72



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iii) Planning Trigger and Terminating Event Consultation Dated 7th December 2020

**From:** [Wilmott, Mike](#)  
**Sent:** 14 December 2020 11:54  
**To:** [Green, Janice](#)  
**Cc:** [Clampitt-dix, Georgina](#)  
**Subject:** RE: Application to Register Land as TVG - Southwick Court Fields, Southwick & North Bradley

---

Janice,

I'm not convinced that the person making the representations has read the relevant statutory instruments that govern trigger events.

The planning application referred to was submitted in January and is still with us as negotiations continue. It is a legal and valid application. As such, it is a trigger event and no corresponding terminating event has taken place.

Similarly with the Wiltshire Housing Sites Allocation Plan. As you say, this was adopted by the Council in February 2020, and no corresponding terminating event has taken place since then. It has not been 'dis-established, laid aside or invalidated'. The five year land supply situation is not a relevant consideration in terms of trigger events and terminating events.

Regards,

Mike Wilmott  
Head of Development Management  
Economic Development & Planning

**Wiltshire Council**

---

**From:** Green, Janice <janice.green@wiltshire.gov.uk>  
**Sent:** 07 December 2020 14:30  
**To:** Wilmott, Mike <Mike.Wilmott@wiltshire.gov.uk>  
**Subject:** Application to Register Land as TVG - Southwick Court Fields, Southwick & North Bradley

Dear Mike,

**Commons Act 2006 – Sections 15(1) & (2)**  
**Application to Register Land as Town or Village Green – Land at Southwick and North Bradley, Southwick Court Fields**

-  
We have received a new application to register land as a town/village green, please find trigger event consultation letter attached. This application will be familiar as it is now submitted for a third time, we have previously returned this application twice on the grounds of there being planning trigger events



in place over all or part of the land. The application was last returned on 7<sup>th</sup> October 2020 on the grounds that the land was allocated within the WHSAP as formally adopted on 25<sup>th</sup> February 2020 and planning application no.20/00379/OUT in place over a large part of the land.

The applicant in this case contests the existence of planning trigger events over the land and I have attached the applicants representations on this point. I am therefore re-submitting the trigger event consultation for the attention of Spatial Planning, I would be very grateful if you could consider and comment upon the representations made by the applicant.

Thank you for your help in this matter, I look forward to hearing from you.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

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**From:** [Enquiries](#)  
**Sent:** 24 February 2021 11:35  
**To:** [Green, Janice](#)  
**Subject:** Application to Register Land as Town / Village Green - Southwick Court Fields, Southwick & North Bradley, Wiltshire  
**Attachments:** [Trigger events letter December 2020 \(Planning Inspectorate\).pdf](#)

---

Dear Ms Green,

Firstly, my sincere apologies for the extreme delay in responding to your request in the attached letter. We have been experiencing backlogs and as a result delays.

Our casework teams have confirmed that **PINS holds no casework of any kind that could affect that this address**. Your own records should also reflect this, although please let me know if they don't.

Although I am happy to provide you with the above information, I do not feel able to select the correct option from those listed below:

- I confirm that no trigger or terminating event has occurred on the land
- I confirm that a trigger event has occurred, but no corresponding terminating event has also occurred on the land
- I confirm that a trigger event has occurred but a corresponding terminating event has also occurred on the land

If we hold no casework that could affect the site, my assumption is that option 1 is correct, however I will need to be guided by you on this.

I hope this email response is sufficient for you to continue to deal with the application.

Regards,

Hannah Dickson  
Customer Team Manager

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**From:** Green, Janice <janice.green@wiltshire.gov.uk>  
**Sent:** 07 December 2020 14:56  
**To:** Enquiries <Enquiries@planninginspectorate.gov.uk>  
**Subject:** Application to Register Land as Town / Village Green - Southwick Court Fields, Southwick & North Bradley, Wiltshire

Dear Sir or Madam,

**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as Town or Village Green – Land at Southwick and North Bradley, Southwick Court Fields, Wiltshire**

Wiltshire Council are in receipt of a new application to register land as a town/village green under Sections 15(1) and (2) of the Commons Act 2006 – Land in the parishes of Southwick and North Bradley, Wiltshire (Southwick Court Fields), please find trigger event consultation letter attached.

This application is now submitted for a third time, we have previously returned this application twice on the grounds of there being planning trigger events in place over all or part of the land. The applicant in this case contests the existence of planning trigger events over the land and I have attached the applicants representations on this point. I am therefore re-submitting the trigger event consultation for the attention of the Planning Inspectorate, I would be very grateful if you could consider and comment upon the representations made by the applicant.

Thank you for your help in this matter, I look forward to hearing from you, I would be grateful for your reply by Monday 25<sup>th</sup> January 2021.

Yours faithfully,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN



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**From:** [Enquiries](#)  
**Sent:** 16 March 2021 15:09  
**To:** [Green, Janice](#)  
**Subject:** RE: Application to Register Land as Town / Village Green  
- Southwick Court Fields, Southwick & North Bradley,  
Wiltshire

---

Hi Janice,

Thanks for your email.

Although I note your point, our view is that we were correct in stating that we didn't currently hold any casework which would affect the site because, at the time you sent the enquiry, the Inspector's jurisdiction had ended with the issuing of the report, and later, in Feb 2020, Wiltshire Council adopted that plan, thus placing the ball back in your half, so to speak.

Does that make sense? Any problems or further queries please let me know.

Yours sincerely,

Ian Goodall  
Customer Team Advisor

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**From:** Green, Janice <janice.green@wiltshire.gov.uk>  
**Sent:** 15 March 2021 10:29  
**To:** Enquiries <Enquiries@planninginspectorate.gov.uk>  
**Subject:** FW: Application to Register Land as Town / Village Green - Southwick Court Fields, Southwick & North Bradley, Wiltshire

Good morning Hannah,

**Application to Register Land at Town/Village Green – Southwick Court Fields, Southwick & North Bradley, Wiltshire**

Thank you for your e-mail dated 24<sup>th</sup> February on this matter, with apologies for the delay in getting back to you.

I note your reply that *“PINS holds no casework of any kind that could affect this address. Your own records should reflect this, although please do let me know if they don’t.”* Just to confirm that I have now made further enquiries with the Wiltshire Council Spatial Planning Team who have confirmed that PINS should have a record of the Wiltshire Housing Sites Allocation Plan, which was examined in April 2019, I have attached a link to the Inspector’s report:

[https://www.wiltshire.gov.uk/media/4543/Inspector-s-Report/pdf/Inspectors\\_Report.pdf?m=637347432770400000](https://www.wiltshire.gov.uk/media/4543/Inspector-s-Report/pdf/Inspectors_Report.pdf?m=637347432770400000)

I would be very grateful if you could reply again to the planning trigger even consultation, in the light of the above information.

Thank you for your help.

Kind regards,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge  
BA14 8JN

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**From:** Enquiries <[Enquiries@planninginspectorate.gov.uk](mailto:Enquiries@planninginspectorate.gov.uk)>

**Sent:** 24 February 2021 11:35

**To:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>

**Subject:** Application to Register Land as Town / Village Green - Southwick Court Fields, Southwick & North Bradley, Wiltshire

Dear Ms Green,

Firstly, my sincere apologies for the extreme delay in responding to your request in the attached letter. We have been experiencing backlogs and as a result delays.

Our casework teams have confirmed that **PINS holds no casework of any kind that could affect that this address**. Your own records should also reflect this, although please let me know if they don't.

Although I am happy to provide you with the above information, I do not feel able to select the correct option from those listed below:

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- I confirm that a trigger event has occurred but a corresponding terminating event has also occurred on the land

If we hold no casework that could affect the site, my assumption is that option 1 is correct, however I will need to be guided by you on this.

I hope this email response is sufficient for you to continue to deal with the application.

Regards,

Hannah Dickson  
Customer Team Manager

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**From:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Sent:** 07 December 2020 14:56  
**To:** Enquiries <[Enquiries@planninginspectorate.gov.uk](mailto:Enquiries@planninginspectorate.gov.uk)>  
**Subject:** Application to Register Land as Town / Village Green - Southwick Court Fields, Southwick & North Bradley, Wiltshire

Dear Sir or Madam,

**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as Town or Village Green – Land at Southwick and North Bradley, Southwick Court Fields, Wiltshire**

-  
Wiltshire Council are in receipt of a new application to register land as a town/village green under Sections 15(1) and (2) of the Commons Act 2006 – Land in the parishes of Southwick and North Bradley, Wiltshire (Southwick Court Fields), please find trigger event consultation letter attached.

This application is now submitted for a third time, we have previously returned this application twice on the grounds of there being planning trigger events in place over all or part of the land. The applicant in this case contests the existence of planning trigger events over the land and I have attached the applicants representations on this point. I am therefore re-submitting the trigger event consultation for the attention of the Planning Inspectorate, I would be very grateful if you could consider and comment upon the representations made by the applicant.

Thank you for your help in this matter, I look forward to hearing from you, I would be grateful for your reply by Monday 25<sup>th</sup> January 2021.

Yours faithfully,

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
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[Redacted]

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**From:** [Winslow, Geoff](#)  
**Sent:** 11 March 2021 13:55  
**To:** [Green, Janice](#)  
**Cc:** [Clampitt-dix, Georgina](#)  
**Subject:** RE: Application to Register Land as TVG - Southwick Court Fields, Southwick & North Bradley  
**Attachments:** [Southwick Court TGV application Dec 2020.doc](#)

---

Hi Janice

I received this application this week, but apologies for the delay in responding. I hope the attached assists with this application.

Regards

*Geoff Winslow*

Manager – Spatial Planning

Spatial Planning

Tel: 01225 713414

Email: [geoff.winslow@wiltshire.gov.uk](mailto:geoff.winslow@wiltshire.gov.uk)

Website: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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**From:** Clampitt-dix, Georgina <[georgina.clampitt-dix@wiltshire.gov.uk](mailto:georgina.clampitt-dix@wiltshire.gov.uk)>  
**Sent:** 09 March 2021 10:00  
**To:** Winslow, Geoff <[Geoffrey.Winslow@wiltshire.gov.uk](mailto:Geoffrey.Winslow@wiltshire.gov.uk)>  
**Subject:** FW: Application to Register Land as TVG - Southwick Court Fields, Southwick & North Bradley

Sorry another, I thought we had responded to this also but evidently not, can you please arrange for a response to be sent...it is likely just to be a case of reiterating our earlier response.

Kind regards

**Georgina Clampitt-Dix**  
**Head of Spatial Planning**  
Economic Development and Planning

**Wiltshire Council**

Tel: 01225 713472  
Email: [georgina.clampitt-dix@wiltshire.gov.uk](mailto:georgina.clampitt-dix@wiltshire.gov.uk)  
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**From:** Green, Janice <[janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)>  
**Sent:** 03 March 2021 14:49  
**To:** Clampitt-dix, Georgina <[georgina.clampitt-dix@wiltshire.gov.uk](mailto:georgina.clampitt-dix@wiltshire.gov.uk)>  
**Subject:** FW: Application to Register Land as TVG - Southwick Court Fields, Southwick & North Bradley

Hi Georgina,

Just looking at my files, it looks as though we have not yet received a reply from Spatial Planning regarding the attached trigger event consultation, with regard to the application to register land as a town or village green – Southwick Court Fields, Southwick and North Bradley.

This one will be familiar as it is the third time the application has been submitted, the applicant disputes the existence of planning trigger events on the land, please find attached applicants representations on this matter, with the trigger event consultation letter (and my original e-mail below).

Thank you for your help, I look forward to hearing from you.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
Trowbridge

BA14 8JN

**Wiltshire Council**

Telephone: Internal 13345 External: +44 (0)1225 713345

Email: [janice.green@wiltshire.gov.uk](mailto:janice.green@wiltshire.gov.uk)

Information relating to the way Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

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**From:** Green, Janice

**Sent:** 07 December 2020 14:25

**To:** Clampitt-dix, Georgina <[georgina.clampitt-dix@wiltshire.gov.uk](mailto:georgina.clampitt-dix@wiltshire.gov.uk)>

**Subject:** Application to Register Land as TVG - Southwick Court Fields, Southwick & North Bradley

Dear Georgina,

**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as Town or Village Green – Land at Southwick and North Bradley, Southwick Court Fields**

-  
We have received a new application to register land as a town/village green, please find trigger event consultation letter attached. This application will be familiar as it is now submitted for a third time, we have previously returned this application twice on the grounds of there being planning trigger events in place over all or part of the land. The application was last returned on 7<sup>th</sup> October 2020 on the grounds that the land was allocated within the WHSAP as formally adopted on 25<sup>th</sup> February 2020 and planning application no.20/00379/OUT in place over a large part of the land.

The applicant in this case contests the existence of planning trigger events over the land and I have attached the applicants representations on this point. I am therefore re-submitting the trigger event consultation for the attention of Spatial Planning, I would be very grateful if you could consider and comment upon the representations made by the applicant.

Thank you for your help in this matter, I look forward to hearing from you.

Kind regards,

Janice

Janice Green  
Senior Definitive Map Officer  
Rights of Way and Countryside  
Wiltshire Council  
County Hall  
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BA14 8JN



Telephone: Internal 13345 External: +44 (0)1225 713345

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Date: 11 March 2021

Janice Green  
Rights of Way & Countryside Team  
Communities and Neighbourhood Services  
County Hall  
Bythesea Road  
Trowbridge  
Wiltshire BA14 8JN

County Hall  
Bythesea Road  
Trowbridge  
Wiltshire  
BA14 8JN

Your ref: JG/PC/171 & PC/208

Dear Ms Green

**Commons Act 2006 – Sections 15(1) & (2)  
Application to Register Land as a Town or Village Green - Southwick Court Fields,  
Southwick and North Bradley**

I refer to your letter and enclosures dated 7 December 2020 in connection with the above matter.

Having considered the application and supporting documentation I am writing to confirm that trigger point 4, as defined in Schedule 1A to the Commons Act 2006 has been engaged.

The land the subject of the application, forms part of an allocation for development (Site H2.6) as set out in the now adopted Wiltshire Housing Site Allocations Plan (February 2020). As this Plan and the allocations therein have not been revoked, or superseded by any new proposals, no termination event has been invoked.

For the reason set out above, the application should be dismissed.

Yours sincerely

*Geoff Winslow*

Manager – Spatial Planning  
Spatial Planning  
Tel: 01225 713414  
Email: [geoff.winslow@wiltshire.gov.uk](mailto:geoff.winslow@wiltshire.gov.uk)  
Website: [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

**Wiltshire Council**

**Commons Act 2006 – Sections 15(1) & (2)**

**Application to Register Land as a Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

I confirm that <u>no trigger or terminating event has occurred</u> on the land	
I confirm that <u>a trigger event has occurred, but no corresponding terminating event has occurred</u> on the land	<b>X</b>
I confirm that <u>a trigger event has occurred but a corresponding terminating event has also occurred</u> on the land	
<p>Further information (please use this box to explain the type and date of the trigger or terminating events):</p> <p>The land the subject of this allocation comprise part of a designated allocation for development within the now adopted Wiltshire Housing Site Allocations Plan (February 2020). As such, the application should be dismissed.</p>	
<p><b>Details of Officer completing this form:</b></p> <p><b>Name:</b> Geoff Winslow</p> <p><b>Address:</b> Wiltshire Council, Spatial Planning, Economic Development and Planning</p> <p><b>E-mail:</b> geoff.winslow@wiltshire.gov.uk</p> <p><b>Telephone:</b> 01225 713414</p>	

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**Commons Act 2006 – Sections 15(1) and (2)**

**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

**Application no.2020/02TVG**

**Appendix 12 – Documents Relied Upon**

- 1) Application dated 13<sup>th</sup> January 2020 (Received by Wiltshire Council as the CRA 30/11/2020), including:
  - i) Statutory Declaration
  - ii) Application Plan
  - iii) Petition – use as informal recreation space
  
- 2) Revised Application dated 23/08/2021
  
- 3) Planning Trigger Event Replies (Consultation dated 07/12/2020):
  - i) Development Control (Wiltshire Council) – 14/12/2020
  - ii) Planning Inspectorate – 24/02/2021 & 16/03/2021
  - iii) Spatial Planning (Wiltshire Council) – 11/03/2021
  
- 4) Representations:
  - i) P Allsop - 13/12/2021
  - ii) T Allsop - 12/12/2021
  - iii) H Chamulewicz - 12/12/2021
  - iv) J Dennis - 19/12/2021
  - v) M Dennis - 19/12/2021
  - vi) P & S Elphick - 10/12/2021
  - vii) D Goodship - 17/12/2021
  - viii) C Hill - 14/12/2021
  - ix) Cllr G Hill - 15/12/2021
  - x) R Hunt - 17/12/2021
  - xi) B Jones - 12/12/2021
  - xii) J & B Keltie - 12/12/2021
  - xiii) North Bradley Parish Council - 04/01/2022 & 14/01/2022
  - xiv) M Noutch - 12/12/2021
  - xv) M & J Oliver - 12/12/2021
  - xvi) Savills on behalf of Waddeton Park Ltd - 09/11/2021
  - xvii) Southwick Parish Council - 16/12/2021 & 20/01/2022
  - xviii) M & L Stevens - 13/12/2021
  - xix) N & A Swanney - 13/12/2021
  - xx) Cllr D Vigar - 15/12/2021
  - xxi) M & G Whiffen - 10/12/2021
  - xxii) S & P Willcox - 12/12/2021

- 5) Objection:  
Clarke Wilmott LLP on behalf of Landowner – 17/12/2021
  
- 6) Applicants comments on Objections:
  - i) Mr N Swanney – 05/04/2022
  - ii) Cllr G Hill – 05/04/2022
  
- 7) Objectors comments on Representations:  
Clarke Wilmott LLP on behalf of Landowner – 23/05/2022
  
- 8) Replies to Planning Application no.20/00379/OUT - which may be viewed in “Comments” section using the following link:  
[Planning Application: 20/00379/OUT \(wiltshire.gov.uk\)](https://www.wiltshire.gov.uk/planning-application/20/00379/OUT)

**Commons Act 2006 – Sections 15(1) and (2)**

**Applications to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley**

**Appendix 13 – Summary of Witness Evidence**

	Name	Locality	Petition 1	Petition 2	Years used / known	How used	Events	As of right	Comments
1	P Elphick	Sandringham Rd Trowbridge	✓		Lived here since 1973	Use the fields proposed for development and beyond that for recreational purposes. We are 2 of many who walk the area – to keep us fit and mentally refreshing and invigorating.			Part of our garden adjoins brook which forms Trowbridge boundary. So many others including dog walkers would gain from village green status, giving all residents within the boundary a sizeable area protected from future development. Benefits for young and old.
2	S Elphick	Sandringham Rd Trowbridge	✓		As above (joint e-mail)	As above (joint e-mail)			As above (joint e-mail)
3	S Willcox	Sandringham Rd	✓	✓	Lived in Southwick 1977 – 1997, North Bradley until 2016, then current address. (Petition 2 – 35 yrs)	Throughout this time regularly walked around and across the area with our children and dog. Also used for exercise and recreational purposes.	We have organised community walks through the fields.	Use without let or hindrance.	



						Provided social contact with other residents enjoying the open space and ability to forage for wild food and observe wildlife.			
4	P Willcox	Sandringham Rd	✓	✓	As above (joint e-mail) (Petition 2 – 35 yrs)	As above (joint e-mail)	As above (joint e-mail)	As above (joint e-mail)	
5	K Brown	Sandringham Rd	✓						
6	M Brown	Sandringham Rd	✓						
7	G Bruce	Balmoral Rd Trowbridge	✓						
8	M Bruce	Balmoral Rd Trowbridge	✓						
9	M Hughes	Holyrood Close Trowbridge	✓						
10	J Law	Westmead Crescent Trowbridge	✓						
11	C Mitchell-Tibbert	Balmoral Rd Trowbridge	✓						
12	R G Tibbert	Balmoral Rd Trowbridge	✓						
13	L White	Holyrood Close, Trowbridge		✓	51 yrs				
14	R Brice	Church Fields, Trowbridge		✓	50 yrs				
15	B Goodship	Sandringham		✓	49 yrs				

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		Road, Trowbridge							
16	S White	Holyrood Close, Trowbridge		✓	44 yrs				
17	E Stevens	Spring Meadows, Trowbridge		✓	35 yrs				
18	K Brice	Church Fields, Trowbridge		✓	35 yrs				
19	Matthew Stevens	Spring Meadows, Trowbridge		✓	30 yrs				
20	S Walker	The Poplars, Trowbridge		✓	23 yrs				
21	S Hunt	Frome Road, Trowbridge		✓	23 yrs				
22	A Hunt	Frome Road, Trowbridge		✓	21 yrs				
23	H Chamulewicz	Balmoral Rd Trowbridge	✓			Residents of all ages plus those who drive to enjoy walks around the field, with and without dogs. In summer many sit on the grass and soak up surroundings. Fly a kite, throw a ball, a swing attached to a substantial tree was popular this year.		Land immense benefit to hundreds of local people. Benefit to community of exercise and fresh air away from main streets, for physical and mental health.	

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						Surrounding hedges are a mass of blackberry bushes, I pick large quantity each year, which I have enjoyed doing since childhood. Sloes in hedgerows.			
24	M Dennis	Balmoral Rd Trowbridge	✓		Lived in area for 10 yrs	Many walks – dog walking and walking for fitness and to just enjoy peace and tranquility of countryside without traffic. I have enjoyed observing and listening to nature which helps me relax.			
25	J Askins	Balmoral Rd Trowbridge	✓						
26	J Dennis	Balmoral Rd Trowbridge	✓		Many years	Used to walk the dog. After dog just walking and enjoying fresh air. Walk for health, mental and physical – throughout lockdowns this			

						area was a lifesaver. Picked elder flowers to make cordial and local blackberries for puddings and pies – no traffic pollution. Meeting and chatting to other people from the local area.			
27	M Roberts	Boundary Walk Trowbridge	✓						
28	G Hill	Balmoral Rd Trowbridge	✓		As resident - 18 yrs	Regular & constant use by residents and visitors who walk or drive to Westfield Crescent, Sandringham & Balmoral Rd's and walk from there. Both my children and grandchildren played in the field. Observed use for the activities contained within this document (application and petition).		Land descriptions and definitions from WC documents – majority of these refer to land as having amenity value, its place in the landscape and value to the community or repeated definition as “informal recreational land” – documents scrutinised by WHSAP Inspection, including WHSAP Sustainability Appraisal Report,	Trowbridge Town Councillor – Grove Ward. As resident never canvassed or made aware of other resident being canvassed in respect of their desires for or use of this land – breach of County Policy and renders any data presented in objection to this application by official bodies null and void. Conversations with residents – desire for TVG and its recent move into Trowbridge Community Area is evidence that this is wish of Town Council and also County Council. Application is the will of the residents. Planning consultation sites in North Bradley and planning

								<p>all available to landowner and Agent/Advisors, no challenge to this repeated description as informal recreation land. Conclusion that there is now tacit approval of the land being in the public realm. Presumed acceptance in last 2 years – sections of fence removed to facilitate access for the general public along the notified footpaths and gates previously used to retain cattle being left open or removed – desire to give unrestricted access to the land by the landowner.</p>	<p>applications at Elm Grove, Church Lane, all included within the Examination of the HSAP. Strategic Plan – rejects further development on southern fringes of Trowbridge. Designating this portion of the buffer between Trowbridge and the villages of North Bradley and Southwick is greater protection in law to support this policy. Core policy 29 – requires maintenance of buffer Trowbridge and villages of North Bradley and Southwick to enable them to retain unique identity. Position of VG assists in ensuring continues existence of the buffer. Support for 5 yr HLS – WC has shortfall in housing land to satisfy government requirements, designation safeguards greenfield site.</p>
29	C Hill	Balmoral Rd Trowbridge	✓		19 years	My family have enjoyed exploring this wonderful landscape. Children and grandchildren			<p>Village Green would ensure boundary between Trowbridge and Southwick is preserved in perpetuity. Much loved and valued green space preserved for future generations.</p>

					<p>spent many hrs picking blackberries and sloes from hedgerows and identifying birds and habitats. Daily walks throughout year – learning about countryside, a valuable education and many family adventures. Flora &amp; fauna constant source of joy – watching and documenting the changing seasons has been inspiration for hrs spent drawing, painting and crafting. Opportunity to spend extended periods of time in the fresh air. Covid restrictions - opportunity to explore green landscape has had positive impact on my family's life and</p>			
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						those of our local community.			
30	L J Law	Westmead Crescent	✓						
31	G Whiffen	Holyrood Close Trowbridge	✓	✓	25 years (Petition 2 – 26 yrs)	My wife and I exercising dogs in the area for over 25 years, as well as using the area for recreational and health purposes. Utilising area for the benefit of our 4 grandchildren for the last 10 years – instilling in them the pleasure and health benefits of clean open air; how important it is to manage the countryside and utilise the fruits such as blackberries and sloes from hedgerows and also damsons from Axe and Cleaver Lane.			
32	M Whiffen	Holyrood Close Trowbridge	✓	✓	As above (joint e-mail) (Petition 2 – 26	As above (joint e-mail)			

33	N M Swanney	Balmoral Rd Trowbridge	✓	✓	yrs) Lived in area for more than 38 years. (Petition 2 – 38 yrs)	Attest to regular and constant use of the land by local residents and a large number of visitors who either walk or drive to Westfield Crescent, Sandringham Rd or Balmoral Rd and enter the fields from there. Our children and grandchildren have played in the field. We have observed it in use for a wide variety of activities including: Walking Jogging Dog walking Blackberry picking Bird watching Model plane flying Drone flying Hot air balloon landing.		The landowner has allowed us access to these fields without stay or impediment over all this time.
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						We have used the fields for more than 38 years.			
34	A L Swanney	Balmoral Rd, Trowbridge		✓	As above (joint letter) (Petition 2 – 38 yrs)	As above (joint letter)		As above (joint letter)	
35	P Allsop	Spring Meadows			Resident Summerdown Walk 1980's Currently living in Spring Meadows	In the 1980's and for last 7 yrs walked dogs nearly every day on permitted footpaths through fields around Boundary Walk, Southwick Court and through to Southwick. Vital during covid lockdown as allowed me to get exercise without driving to another location with dogs. My wife and I picked blackberries for pies and sloes for gin from hedgerows on many occasions.		Landowner fully aware of my activities and has allowed this without stay or impediment, on occasion spoken to him whilst out walking.	
36	T Allsop	Spring				Walk dogs daily		On occasions had	

		Meadows				<p>on permitted footpaths through fields around Boundary Walk, Southwick Court and beyond.</p> <p>Life saver during covid lockdowns – enabled me to get exercise without need to interact with other or have to go in car to similar area.</p> <p>Made pies and jam from blackberries in hedgerows.</p>		<p>conversations with landowner whilst out walking.</p>	
37	D Goodship	Sandringham Rd, Trowbridge		✓	<p>Live opposite fields for over 45 yrs (Petition 2 – 49 yrs)</p>	<p>Myself and family have used fields for walking, running and picking blackberries. Grandchildren also now enjoy walking fields.</p>		<p>Without “stay or impediment” by landowner.</p>	
38	R Hunt	Frome Road, Trowbridge		✓	<p>Since moved to Trowbridge in 1999. (Petition 2 – 23 yrs)</p>	<p>I and my family have used these fields daily for last 22 years, valuable source of exercise for us</p>		<p>Fields available for walking without stay or impediment for as long and I have lived here.</p>	

						all. Annually foraged for blackberries and elderflowers, using the products to make cordials, crumbles and jams.			
39	B Jones	Summerdown Walk, Trowbridge			Used for best part of 40 years, since I first moved to this part of Trowbridge.	Dog walking, general exercise for well being purposes, picking wild fruit, blackberries etc. and being able to observe wildlife.		Used without let or hindrance.	
40	J Keltie	Westmead Crescent, Trowbridge			We have lived here since 1987 – used for 34 years	Used land on daily basis for last 34 years – walking, dog walking, general exercise and enjoyment. Picked blackberries, sloes and damsons when in season from hedgerows. Wellbeing.		Use without let or hindrance.	Want to continue to enjoy access.
41	B Keltie	As above (joint e-mail)			As above (joint e-mail)	As above (joint e-mail)		As above (joint e-mail)	As above (joint e-mail)

42	North Bradley Parish Council								Councillors resolved to support this application.
43	M Noutch	Boundary Walk, Trowbridge			Moved here in 1987	Recreation. Especially good during lockdown for my physical and mental well-being.			
44	M Oliver	Residents of area			Residents for 45 years	Brought up 4 of our children here and made use of the many rights of way for walking, jogging and playing as well as enjoying the pleasures of the green fields, trees and shrubs, picking blackberries and watching wildlife.			Addition of VG with pathways suitable for wheelchairs, mobility vehicles, park benches and picnic tables, will extend these benefits to the elderly and disabled, and probably providing a childrens public playground which is sorely needed by young families in this part of Trowbridge. Part of the green could be fenced off with facilities for dog walkers. The site could be planted with a variety of trees and shrubs to attract birds and smaller animals for habitats and contribute to lowering our local carbon footprint.
45	J Oliver	As above (joint e-mail)			As above (joint e-mail)	As above (joint e-mail)			As above (joint e-mail)
46	Southwick Parish Council								Members resolved to support the application.
47	Mark Stevens	Sandringham Road, Trowbridge		✓	Lived in the area for over 40 yrs	During this time we have regularly		Used without stay or impediment	

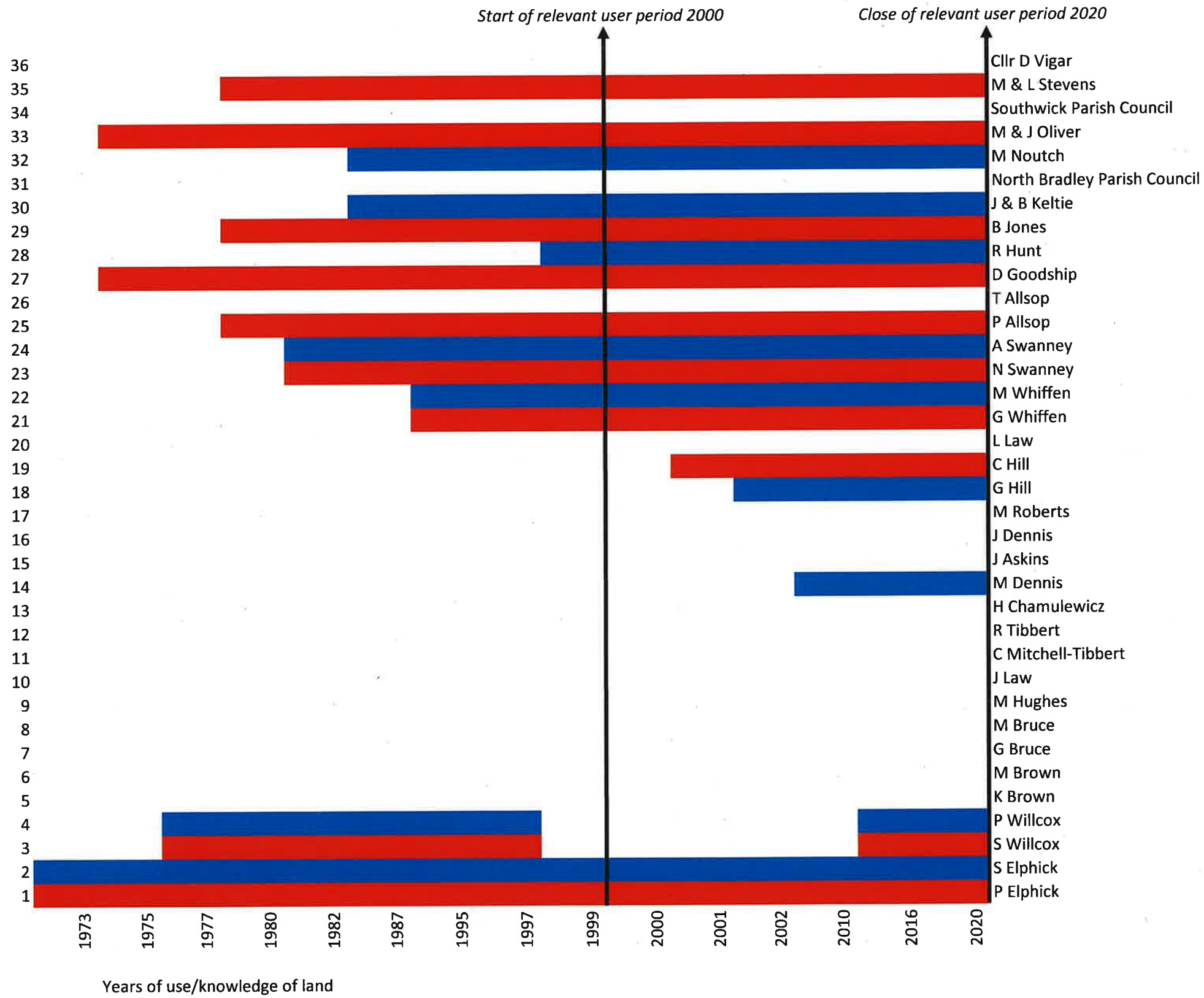


					(Petition 2 – 45 yrs)S	walked and exercised in this area with out 2 children and now 5 grandchildren. Annual blackberry picking session continues every year with all of the family. Walks with the youngsters over the years to teach them of the nature and wildlife in the area.			
48	L Stevens	As above (joint email)		✓	As above (joint email) (Petition 2 – 45 yrs)	As above (joint email)		As above (joint email)	
49	Cllr D Vigar								I believe this plan offers the opportunity to provide conclusive protection for a strategic area of recreational land in a context where the ambiguities of planning policy are leading to developments taking place on valuable green spaces. I support the VG proposal: Conformity with legislative criteria – site qualifies for registration, submissions made by local residents are providing the necessary evidence cited in the notice

									<p>of application, demonstrating that the land has been used for recreational and social purposes as of right, without stay or let for a period exceeding 20 years.</p> <p>Alignment with Local Plan – Proposed VG lies next to Southwick Court Fields site – H2.6 in WHSAP. WC current draft Local Plan reiterates objective of retaining undeveloped land on edge of town to act as a green infrastructure corridor and preserve the separate identities of villages such as Southwick. Supports WC Core Policy 29. The VG proposal would help combat the “urbanising effect” of H2.6.</p> <p>Wildlife and heritage protection – Southwick Court contains Medieval moat and farmstead.</p>
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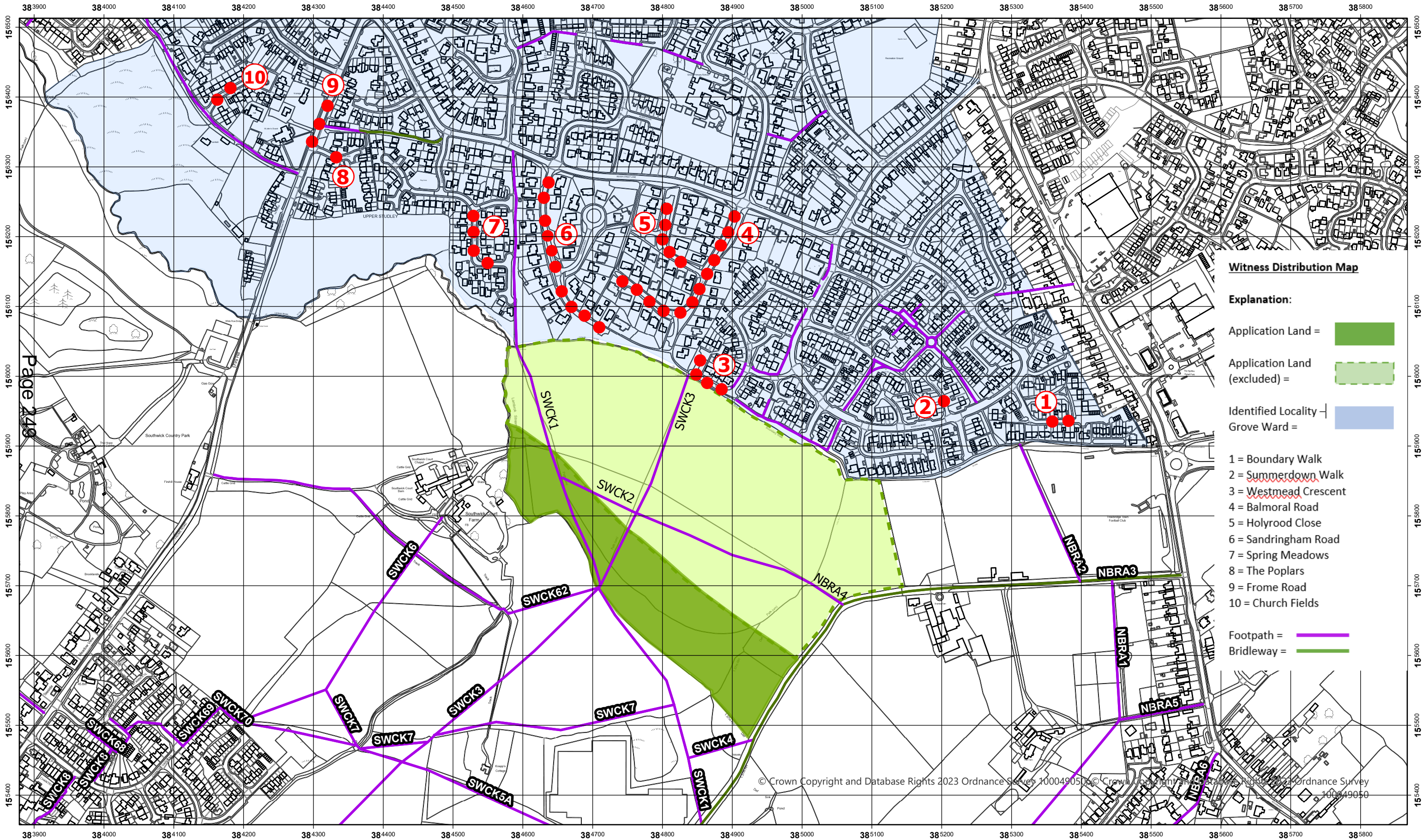
Appendix 14 - User Evidence Chart



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Appendix 15 - Witness Distribution Map



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**Appendix 16 – Planning Application no.20/00379/OUT- Summary of Relevant Planning Application Replies**

Planning Application no 20/00379/OUT – Land South of Trowbridge, Wiltshire:  
Outline planning permission with all matters reserved except access for the erection of up to 180 residential dwellings (Use Class C3); site servicing; laying out of open space and associated planting; creation of new roads; accesses and paths; installation of services; and drainage infrastructure.

Please note that planning application comments may be viewed in full on the Wiltshire Council website using the following link:

[Planning Application: 20/00379/OUT \(wiltshire.gov.uk\)](https://www.wiltshire.gov.uk/planning-application/20/00379/OUT)

Use of Land	Flooding
<p>Cllr Vigar report 10/06/22 – Quotes Local resident: “These fields are where we grew up and what I want my children to enjoy...”</p> <p>“Valued green space which has been used by thousands of local people and others for walking, exercise and recreation over many decades.”</p>	<p>L Hartley 11/06/22 – “During at least 7 months of the year the fields are sodden and waterlogged in the majority of the area/fields.”</p>
<p>S Barkwill 15/06/2022 – “We as a family use these fields daily, as do so many others. The green space is so important for the surrounding community...Its also a lovely walk towards the farmhouse inn in Southwick...”</p>	<p>S Barkwill 15/06/2022 “...the fields flood regularly...”</p>
<p>Mr D Mizen 15/06/22 – “My wife and I recently moved to the village and one of the aspects of why we decided to move here was the open spaces available for enjoying and walking and spotting wildlife.</p> <p>Having explored the walks around the area, the particular walk for us which we frequent takes us up to and across the land that is now being proposed for development.</p> <p>We have spent many walks across that area of land enjoying the country air, the abundant wildlife and getting to know our new surroundings”</p>	<p>Tracy Allsop 10/06/22 – “Having walked these fields daily for the last 8 yrs, I have noticed that the degree of flooding has increased considerably.”</p>
<p>G Whiffen 09/06/2022 “...this unofficial recreation</p>	<p>G Whiffen 09/06/2022 – “We have used the fields</p>

<p>area has been in constant use for over half a century, dog walkers, leisure walkers, joggers, even cyclists camper's and golf practice berry picking etc with no objections from the owners."</p>	<p>in the planning application for in excess of 26 years whenever possible except when the lower portion has been flooded, this is a regular occurrence most years and prevents use of the lower stiles and footpath..."</p>
<p>N Swanney 04/12/21 – "Used by over 200,000 per year."</p>	<p>J Law 07/06/2022 – "This land is subject to flooding, which with our now more common wet winters, is something which happens quite frequently."</p>
<p>Y Fawcett 02/12/21 – "...a well used and much appreciated tract of historic open countryside which provides large numbers of residents with amenities they value...Simply leaving a footpath through a housing estate will be no substitute."</p>	<p>Cllr G Hill 07/06/22 – "Regular well documented flood events."</p>
<p>R Fawcett 02/12/21 – "The present path across open fields is enjoyed by local residents who value and benefit from the informal countryside recreation this natural environment provides."</p>	<p>M Uttridge 04/06/22 – "...the drainage is so bad and the rain sits in puddles on the surface, even when it hasn't been really heavy rain."</p>
<p>S Kelly 02/12/21 – "...local people who love this space to walk dogs, socialise and generally enjoy the outdoors away from main roads. It is a sanctuary for this side of Trowbridge where the Country Park at Southwick is regularly very busy already with people."</p>	<p>B Johnson – 16/11/21 Flood Warden for Southwick "These two streams [Lambrok and tributary] combine to become what the Environment Agency has classed as a main river, causing an extensive Flood plain (flood zone 2/3) after heavy rainfall. Fields and neighbouring gardens in Blind Lane and fields and roads in Brookmead have severely flooded at least 5 times since the year 2000 and probably many years before then. In 2014 flooding was experienced in both January and July...To utilise this floodplain in the past, medieval farmers sited ridge and furrow field workings here...'Groundwater flooding' has been mentioned but I understand that this is found where the underlying ground formation is of chalk. In this area the soil is of heavy clay construction. When the surface becomes saturated, the underlying clay prevents subsequent rain fall or flooding from being absorbed and it lays on the surface as fluvial</p>

	<p>flooding or surface water flooding, this is what is experienced here, not groundwater flooding...a number of photos from local residents have shown substantial fluvial and surface water flooding here, often twice a year and in subsequent years...It seems probable, as local residents have suggested that flooding has occurred here far more frequently than records suggest...On the evening of 9<sup>th</sup> August 2021 Southwick Village suffered surface water flooding in what all agencies agreed was an extreme weather event, when homes, numerous gardens, roads, (including the A361 Frome Road) and sewers flooded and the Chantry Gardens pumping station was at 97% capacity.”</p>
<p>P Weeks 19/11/21 – “The whole estate relies on this open space for exercise, dog walking etc.”</p>	<p>Southwick Parish Council 25/02/21 – “...the fields proposed for the development flood on a regular basis and are permanently water logged.”</p>
<p>B Johnson 16/11/21 – “This area is valued for the environmental and recreation benefit, supporting the physical and mental health of residents from such a wide area.”</p>	<p>North Bradley Parish Council 07/11/21 – “The fields south of Trowbridge are ancient water meadows and are regularly flooded by the Lambrok stream from both the horizontal watercourses that skirt the grounds of Southwick Court house and the vertical watercourse that joins that stream from the direction of North Bradley.”</p>
<p>H Williams 16/11/21 “I object to...loss of existing green space for recreation and well being of local people.”</p>	<p>N Swanney 04/12/21 – “The land is a Level 1,2,3a and 3b flood plain and its development will only greatly exacerbate the existing flooding across the town.”</p>
<p>K Williams 16/11/21 “...will rob local people of the green space and natural environment that is so well used and loved by all in this area.”</p>	<p>Y Fawcett 02/12/21 – “The land designated for this development is prone to flooding...Local residents have photographic proof that flooding is not just a probability but is already a reality...”</p>
<p>Jean Marshall 16/11/21 – “This has been used for recreational use for years by many (dog walkers, children etc)...”</p>	<p>R Fawcett 02/12/21 – “...recognised flood plain...”</p>
<p>R Williams 16/11/21 – “...beautiful much loved and well used popular green space valued by the local community (estimated usage as per</p>	<p>P Mills 18/11/21 – “...floodplain...”</p>

previous assessments explained in previous comments submitted to be between 35000 – 40000 people visits per year to these fields for recreational use of green open space)...”	
J Marshall 16/11/21 – “...much used open space...”	S Tesler 17/11/21 – petition “The new development submissions claim that “no groundwater flooding incidents have been recorded within the vicinity of the proposed development”. This is nonsense. There have been numerous incidents of severe flooding in both Southwick and Trowbridge, even in just the past two years.” Signed by 174
G Coy 16/11/21 – “It is a green area where local people can walk and experience the natural world...”	K Williams 16/11/21 – “The Southwick Fields area...suffers with flooding both within the fields and from the lambrok tributaries that run along the edge...In August 2021, one property alone in Sandringham Road had 18,000 gallons of waste water pumped from the property due to flooding.”
S Broadhead 15/11/21 – “Southwick Court fields is an area of open countryside enjoyed by locals for many generations.”	Cllr G Hill 16/11/21 – petition “Clear evidence of flooding occurring frequently across the area covered by the three [planning] sites...” Signed by 226
Cllr Vigar 15/11/21 - “This site is distinctive in being open to the public with several rights of way existing across it. It has been enjoyed by the public for decades. The recreation value of the fields is demonstrated by the comments made by residents in the comments recorded here, such as: “These fields are where we grew up and where I want my children to enjoy. I am heartbroken that you are considering allowing developers to take this away from the next generation.” A ‘field day’ in July attracted nearly 100 people showing their appreciation of the open space. This develop [sic] will destroy a place to “relax and recreate.”	R Williams 16/11/21 – “...existing flooding...”
R McCartney 15/11/21 - “...a valuable recreational facility.”	J Marshall 16/11/21 – “...it regularly floods...”
S Glover 14/11/21 – “Have lived here for 42 years & enjoy walking dog over beautiful fields...”	G Coy 16/11/21 – “...land that frequently floods and is waterlogged for part of the year.”

<p>R &amp; J Eldridge 13/11/21 – “...these fields, which to our knowledge has been used by generations of residents of all ages and for a great many years. Personally we have enjoyed the green open spaces for half a century. <b>This has been in harmony with previous landowners who have continued agricultural use...</b> It is a haven for dog walkers, ramblers, nature lovers, model plane enthusiasts and generally adults and younger wishing to keep reasonably fit.”</p>	<p>S Broadhead 15/11/21– “...flooding is a frequent occurrence...”</p>
<p>D McDonald 09/11/21 – “It is also a considerable amenity for those people in the area...”</p>	<p>Cllr G Hill 15/11/21 – “Empirical evidence proves flooding on a serious, regular and escalating timescale...There is clear evidence of ongoing flooding...”</p>
<p>G Whiffen 08/11/21 – “...I have used these fields for in excess of 25 years...it would deprive thousands of residents who use the fields regularly.”</p>	<p>M Stevens 14/11/21 – “I have seen numerous incidents of flooding of the development area concerned...”</p>
<p>M Coates 08/11/21 – “...why take away one of the few green, safe and open spaces this town has to offer!! These fields were a saving grace for me and my family during lockdown.”</p>	<p>S Glover 14/11/21 – “...Constantly flood...”</p>
<p>F Bell 08/11/21 – “I’ve lived here my whole life, my childhood was being able to walk into these fields to play, my children now have the opportunity to use them as a fresh air space...I have many friends locally who use this area as a great safe space to walk their dogs, which was invaluable especially during the lockdowns...Please leave the fields as they are for the wildlife, for the people and community who use them daily.”</p>	<p>M Nouch 14/11/21 – “Drainage in the field and our garden is already poor.”</p>
<p>S Oliver 07/11/21 – “I use these fields regularly as they are close to where I live. I have a severely autistic son who enjoys walking on the fields as they provide space for him.”</p>	<p>R &amp; J Eldridge 13/11/21 – “From personal experience I can verify the fact that a large part of these fields flood annually.”</p>
<p>A Oliver 07/11/21 – “We have enjoyed this amazing green space with our families for many years.”</p>	<p>C Kempster 13/11/21 – “Ongoing flooding across the site and further downstream.”</p>
<p>K Player 17/06/21 – “I grew up leaving down</p>	<p>C Hill 12/11/21– “...recent flooding issues in</p>



<p>Kingstown road and spent a lot of my childhood playing in the local field.”</p>	<p>Kingsdown Road, College Road and Sandringham Road to name but a few. It must be noted that these incidents are not isolated events but occur on a regular basis. In August 2021 road systems and gardens were overwhelmed by the watercourse (Lambrok) being inundated with water...Site H2.6 has been proved to have historic and ongoing issues pertaining to flooding and drainage...”</p>
<p>C Jones 17/06/21– “These fields have been used by families and children for years...These fields are where we grew up and where I want me [sic] children to enjoy...”</p>	<p>J Keltie 12/11/21 &amp; B Keltie 12/11/21 – “Clear evidence of flooding occurring frequently across the area covered by the three [planning] sites...ongoing flooding across the sites and further downstream...”</p>
<p>S Martin 17/06/21 – “The land is possibly one of the most populate and utilised green spaces that side of town.”</p>	<p>J Dommett-Knight 11/11/21 – “I have seen numerous incidents of flooding of the development area concerned...”</p>
<p>P Smith 07/04/21 – “...well used and loved park.”</p>	<p>L Rendle – 10/11/21 – “The ongoing flooding across the sites and further downstream.”</p>
<p>A J Hill 27/03/21 - “The present owners and occupiers of the Barn conversions and Southwick Court Farm (not to be confused with Southwick Court itself) have commendably always been insistent on no permitted public access to the parts of the Parklands field north or their access track and west of the former farmyard...Elsewhere the applicants indicate that the new estate borders land with an extensive network of statutory and permitted footpaths...These paths are used by residents and visitors to connect between the Town, the Villages and the 152 acre Country Park to the west of the A361.”</p>	<p>S &amp; C Tesler 09/11/21 - “The fields south of Trowbridge are ancient water meadows and are regularly flooded by the Lambrok stream, from both the horizontal watercourse that skirts the grounds of Southwick Court house, and the vertical watercourse that joins that stream from the direction of North Bradley. This year alone has seen a series of dramatic flooding events from the Lambrok stream, two of which, during August were very severe indeed, causing significant damage to houses and gardens on which is currently the southern border of Trowbridge.”</p>
<p>S Humphries (Friends of Southwick Country Park) 13/03/21 - “...well-known, well-walked rural landscape...”</p>	<p>G Cooper 09/11/21 &amp; I Bushell 03/11/21 - “The new development submissions claim that “no groundwater flooding incidents have been recorded within the vicinity of the proposed development”. This is nonsense. There have been numerous incidents of severe flooding in both Southwick and Trowbridge, even in just the</p>

	past two years. In some cases, as in August 2021, these floods have resulted in an overflow of raw sewage into people's homes and gardens after the existing watercourses were overwhelmed...fields that have served as a natural flood plain for hundreds of years..."
N Pickering 23/03/21 – “The area was already a well used amenity space prior to the pandemic which just reinforced the importance of maintaining these sort of spaces for social wellbeing.”	D Oaten 09/11/21 – “This meadow becomes flooded quite easily during the wet season.”
M Surry 23/03/21 – “As a regular walker in the Westmead Crescent area...”	D McDonald 09/11/21 – “This area holds considerable amounts of water...”
H Lambert 23/03/21 – “...open space which is used by local residents for their exercise and mental well-being.”	G Whiffen 08/11/21 – “...the site is partially a flood plain...”
R Williams 23/03/21 – “It is a much loved recreation area. We have done a second survey of users over the last month (the first one was sent with our first objection to this site a couple of years ago), in weather that has not been brilliant, being the depths of February / March but even though this may have put people off walking across the fields we have counted 3,545 people going into the fields between the hours of 08:00 – 16:00 over the period. The dates reviewed were 8 <sup>th</sup> February to 8 <sup>th</sup> March and included people of all ages. The first survey showed that there were an average of over 25,000 people using the fields for recreation every year, but this second survey shows that the annual figure would be nearer 42,000 people a year. The fields are a wonderful source of wildlife and natural walking surfaces with historic and uninterrupted views of the Westbury White Horse and Bratton Hill Top.”	A Hunt 08/11/21 – “An abundance of evidence has been supplied to suggest that flooding is a regular and serious occurrence, both for the site and the surrounding area.”
S Pisarewicz 23/03/21 – “The fields south of Trowbridge are ancient water meadows and are regularly flooded by the Lambrook stream, I know this because I walk them regularly in the Summer when they are firm. I avoid them as they are	D Wye 07/11/21 – “...issues of flooding in the fields at present...”

<p>marshy and water logged throughout the Autumn and Winter especially at the end of Spring Meadows...”</p>	
<p>S Wain 23/03/21 – “I know these fields fairly well as I walk around them every day in the summer. I tend to avoid them in winter as they are so waterlogged, for days after heavy rain there are large puddles all over the place.”</p>	<p>P Allsop 03/11/21 “...the west part of the area proposed for development floods on a regular basis. Several times each year it is impossible to access the public footpath across the proposed development site from the footbridge at the lower end of Spring Meadows. The water can be over 600mm deep in the field where you step down off the footbridge. This is caused by excess water, that does not drain through the heavy clay soil on the site, flowing to the west side of the proposed site...The Eastern part of the proposed development site is regularly covered with 30-75mm of surface water...”</p>
<p>B Moth 23/03/21 – “...heavily used by the local community to exercise and maintain mental health.”</p>	<p>S Tesler 01/11/21 – “I am amazed to read that “no groundwater flooding incidents have been recorded within the vicinity of the proposed development”.” [pictures of flooding enclosed]</p>
<p>J Bennett 23/03/21 – “...you can walk for miles across the fields, hopefully footpaths will have to stay by law.”</p>	<p>Cllr G Hill Report sent 01/11/21 - “The photos are genuine and give visual evidence that flood events not only occur, but do so on a regular basis...the combination of fluvial and surface water flooding events generally occur a handful of times each year.”</p>
<p>T Culshaw 23/03/21 – “...it is a valuable space that is enjoyed by all members of the community.”</p>	<p>Cllr G Hill 26/10/21 - “...Policy H2.6 clearly defines the need not to exacerbate flooding downstream, thereby <b>confirming the existence of current flooding.</b>”</p>
	<p>M Roberts 23/08/21 - “Please find attached two images showing flowing water taken on 09 August 2021 through bungalow window adjacent to kissing gate towards eastern boundary of site. These clearly show that flooding occurs now...Image 09.082021A indicates lying water which actually flows from south to north. Image 09.082021B reveals that water flows from south to north along extreme eastern edge of site then westerly towards Lambrok Stream.”</p>

	Cllr C Winterbourne 27/03/21 - "The land is based on a flood plain fed by a flooding brook at one end."
	49 signatories 12/03/21 - "The fields south of Trowbridge are ancient water meadows and are regularly flooded by the Lambrok stream from both the horizontal watercourse that skirts the grounds of Southwick Court house, and the vertical watercourse that joins that stream from the direction of North Bradley. Anyone who walks there knows that they are marshy and water logged throughout the Autumn and Winter especially at the end of Spring Meadows..."
	B Johnson 26/03/21 – "...the effects of climate change have been increasingly apparent in Southwick. This is an area known as the 'clay vale' that has always suffered from fluvial and surface water flooding hence the present [sic] of numerous medieval and post medieval water meadows. In recent years prolonged periods of heavy rainfall have resulted in numerous instances of flooding in connection with the Lambrok waterway. No longer just 'more than once in 30 years' but now several times every year and the areas of flooding have also increased."
	H Lambert 23/03/21 – "The proximity of the Lambrok stream frequently make the fields boggy and waterlogged..."
	R Williams 23/03/21 – "The fields are a flood plain that protects the houses of Sandringham Road and Boundary Walk and Spring Meadows from water ingress from the Lambrok River. Lots of surface water collects in this area as the water table is very high here and the sewers cannot cope when it rains hard."
	S Pisarewicz 23/03/21 – "The fields south of Trowbridge are ancient water meadows and are regularly flooded by the Lambrok stream, I know

	<p>this because I walk them regularly in the Summer when they are firm. I avoid them as they are marshy and water logged throughout the Autumn and Winter especially at the end of Spring Meadows...”</p>
	<p>Cllr D Vigar 23/03/21 – “The EA notes that this application includes a Flood Zone 3b (functional floodplain), which is land defined by the Local Authority Strategic Flood Risk assessment as having a high probability of flooding – as this photograph confirms.”</p>
	<p>S Wain 23/03/21 – “I know these fields fairly well as I walk around them every day in the summer. I tend to avoid them in winter as they are so waterlogged, for days after heavy rain there are large puddles all over the place.”</p>
	<p>Cllr D Vigar Report 10/06/22 – “...parts of the site lie within Flood Zones 2 and 3...The government inspector who reviewed the WHSAP concluded that: “The site is subject to several constraints relating to heritage, drainage and biodiversity...”  “...includes areas Flood Zone 2 and Flood Zone 3b (functional floodplain), which is defined by the Local Authority Strategic Flood Risk Assessment as having a “high probability of flooding”, as well as areas including Flood Zones. The flooding is not so much a probability as a fact, as evidenced by photographs taken by local residents...a report in April 2021 from JH Groundwater Ltd stated: “In discussion with WCC, it is understood that no groundwater flooding incidents have been recorded within the vicinity of the Proposed development.” This is clearly wrong as all local residents know...”  The 3 planning sites identified in the WHSAP: “They experience regular flooding.”</p>
	<p>Mr D Mizen 15/06/22 – “...there is flood plain in the vicinity...”</p>
	<p>B Johnson 03/05/22 – “...evidence of extensive medieval ridge and furrow earth workings and</p>

	<p>post medieval water meadows...In some areas close to the Lambrok Stream evidence of water meadows can still be found today (The Lambrok is now classified as a main river by the Environment Agency). In the Collins dictionary, the definition of a water meadow is given as ‘a meadow that remains fertile by being periodically flooded by a stream.’ This landscape of open green fields, a meandering waterway and often extensive flood plains that surround the 16<sup>th</sup> Century Southwick Court Manor House and this proposed development, has probably remained intact and unaltered since medieval times when as part of Southwick Court Farm, these water meadows were established to utilise the ‘periodic flooding’. Surely this reinforces the fact that flooding has always been experienced here as in other areas adjacent to the Lambrok waterway and is only likely to increase in the future due to climate change.”</p>
	<p>B Johnson 07/03/22 – “...whole area...was covered by post medieval water meadows and some medieval ridge and furrow earth workings...does this not suggest (despite the land or more recent evidence of flooding here) that this area was historically considered wet, regularly, often over long periods of time and probably will continue to be so.”</p>

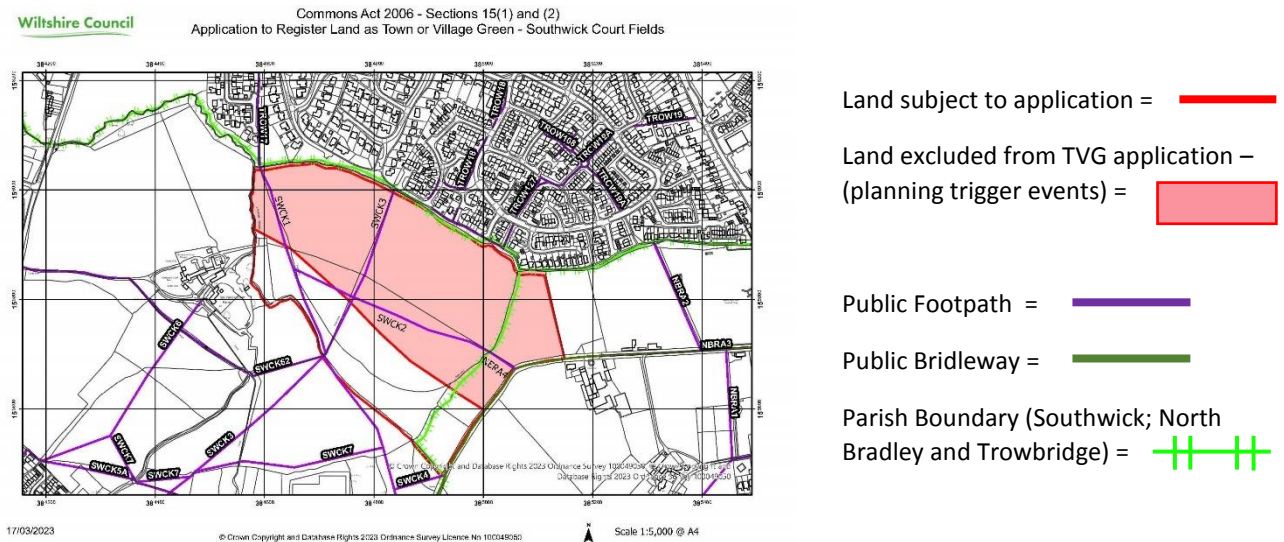


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**Commons Act 2006 – Sections 15(1) and (2)**  
**Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley – Application no.2020/02TVG**

**Appendix 17 – Officers’ Consideration of the Legal Tests**

**The Application Land**



**Right to Apply**

1. The Growth and Infrastructure Act 2013 introduced a series of provisions to make it more difficult to register land as a TVG. This included, at Section 16, the insertion into the Commons Act 2006, of Section 15C “Registration of greens; exclusions”, i.e. the removal of the “right to apply” to register land as a TVG where specific planning “trigger” events have occurred in relation to the land, e.g:
  - Where an application for planning permission, which would be determined under Section 70 of the Town and Country Planning Act 1990 is first published in accordance with requirements imposed by a development order by virtue of Section 65(1) of that Act, or
  - A draft development plan document which identifies the land for potential development is published for consultation in accordance with regulations under Section 17(7) of the Planning and Compulsory Purchase Act 2004, or
  - A development plan document which identifies the land for potential development is adopted under Section 23(2) or (3) of the 2004 Act.

2. The right to apply is revived where a corresponding “terminating event” has taken place, e.g:
  - The withdrawal of the planning application; a decision to decline to determine the application is made under Section 70A of the 1990 Act; where planning permission is refused and all means of challenging the refusal by legal proceedings in the UK are exhausted and the decision is upheld; or where planning permission is granted and the period within which the development to which the permission relates must be started, expires without the development having begun, or
  - The draft development plan document is withdrawn under Section 22(1) of the 2004 act; the document is adopted under Section 23(2) or (3) of that Act; or the period of two years beginning with the day on which the document is published for consultation expires, or
  - In the case of a development plan, the document is revoked under Section 25 of the Planning and Compulsory Purchase Act 2004; or a policy contained in the document which relates to the development of the land in question is superseded by another policy by virtue of Section 38(5) of that Act.

(A full list of planning trigger and terminating events is included at Schedule 1A of the Commons Act 2006, as added by Section 16 of the Growth and Infrastructure Act 2013 and amended to extend the list of events).

3. This alters the way in which the CRA deals with new applications to register land as a TVG. DEFRA has issued interim guidance to Registration Authorities which recommends that upon receipt of an application the CRA should write to the local planning authorities and the Planning Inspectorate, to seek confirmation of whether or not there are planning trigger/terminating events in place in relation to all or part of the application land, (The DEFRA Guidance, see **Appendix 6**).
4. In the Southwick Court Fields case, as per the guidance, the CRA wrote to the Planning Inspectorate; Spatial Planning and Development Control at Wiltshire Council on receipt of the application, using the letter template as set out within The DEFRA Guidance (**Appendix 6**), including a map of the application land and links to the list of trigger and terminating events and amendments to the list, (please see **Appendix 11** for trigger/terminating events consultation replies from the Planning Authorities).
5. Wiltshire Council as the CRA, have accepted the application in part only, based upon replies from the relevant Planning Authorities that there are valid planning trigger events in place over part of the application land which exclude

the right to apply to register land as a TVG, over that section of the application land, i.e:

- i) Part of the land subject to the application is affected by planning application no.20/00379/OUT – Land South of Trowbridge, Wiltshire: Outline planning permission with all matters reserved except access for the erection of up to 180 residential dwellings (Use Class C3); site servicing; laying out of open space and associated planting; creation of new roads, accesses and paths; installation of services; and drainage infrastructure, valid date 15 January 2020.
- ii) Part of the land subject to the application forms a designated allocation for development within the now adopted Wiltshire Housing Site Allocations Plan (WHSAP) (adopted February 2020).

The CRA continues to determine the TVG application over the unaffected application land, please see application plan accepted area at **Appendix 3**.

6. Since the first application in January 2020, part of the land, (the northern section), has always been affected by a planning trigger event, although the type of trigger event has changed since first submission of the application, the effect is materially the same. Dispute of the CRA's interpretation of the extent of planning trigger events and their effect is not maintained by the Applicant or the Objector in this case.

### **Main Considerations for the Council**

7. Under Section 15(1) of the Commons Act 2006, it is possible, (where the right to apply is not extinguished), for any person to apply to the Commons Registration Authority (CRA) to register land as a Town or Village Green (TVG) and under Section 15(2), where a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of 20 years or more and they continue to do so at the time of application, (please see legislation attached at **Appendix 6**).
8. The legal test set out at Section 15(2) of the Commons Act 2006, can be broken down into a number of components, each of which must be satisfied in order for the application to succeed. It is no trivial matter for a landowner to have land registered as a green.

## Significant number of inhabitants

9. The meaning of the word “significant” has never been defined but was considered at the High Court in *R v Staffordshire County Council, ex parte Alfred McAlpine Homes Ltd* [2002] EWHC 76 (Admin). It was held that this did not mean a considerable or substantial number, as a small locality or neighbourhood may only have a very small population, but that the number of people using the land must be sufficient to show that the land was in general use, by the local community, for informal recreation, rather than just occasional use by individuals as trespassers.
10. The requirement is that users should include a significant number of inhabitants of the claimed locality or neighbourhood within a locality, in order to establish a clear link between the locality or neighbourhood and the proposed green, even if these inhabitants do not comprise most of the users.
11. In this case, 49 witnesses/parties (including the Parish Council’s of Southwick and North Bradley), have provided evidence/statements in support of the application, including:
  - 7 joint responses;
  - 23 witnesses who have signed a petition accompanying the application (Petition 1);
  - 20 witnesses who have signed a second petition submitted with correspondence dated 5 April 2022, (Petition 2).

The application identifies the locality or neighbourhood within a locality as “Grove Ward, Trowbridge” as shown on the map at Exhibit B of the application form:



*“Exhibit B – Boundary map of Grove Ward, Trowbridge – Locality, or neighbourhood within a locality, in respect of which this application is made.”*

12. Trowbridge Grove ward population figures are as follows:

2001 – 4,351  
2011 – 4,495  
2020 – (estimate) 4,458

Area 1.239 km<sup>2</sup>  
(Source: City Population).

13. Certainly 49 witnesses out of an area having an estimated population of 4,458 in 2020 does not, at first glance, represent a significant number of inhabitants, however, witnesses refer not only their own use of the land, but also to use by others:

H Chamulewicz – *“The land is of immense benefit to hundreds of local people...In Summer many sit on the grass and soak up the surroundings. Fly a kite, throw a ball even a swing was popular this year attached to a substantial tree.”*

J Dennis – *“...enjoyed meeting and chatting to other people from the local area...”*

P & S Elphick – *“We are two of many who walk the area and it helps keep us fit...So many others including numerous dog walkers, would also gain from Village green status that would give all residents within the boundary a sizeable area that would be protected from future development. The benefits will be immeasurable for both young and old alike.”*



A & N Swanney – “...we have observed it in use for a wide variety of activities...”

S & P Willcox – “We have also organised community walks through the fields...”

Cllr G Hill – “I can attest to the regular and constant use of the land by residents from within my Ward and by a large number of visitors who either walk or drive to Westfield Crescent, Sandringham Road or Balmoral Road and walk from there...I have observed it in use for the activities contained within this document.”

14. 11 statements make reference to use of the land with family members, including:

D Goodship - “I have lived opposite these fields for over 45 years, during this time myself & family have used them...I am pleased to report that my Grandchildren also now enjoy walking them...”

M Stevens - “My wife Lin and I have lived in this area for over 40 years and during this time we have without stay or impediment regularly walked and exercised in this area with our two children and now five grandchildren.”

C Hill - “My family have enjoyed exploring the wonderful landscape for over nineteen years...Our children and grandchildren have spent many hours picking blackberries and sloes from the hedgerows and identifying birds and habitats. Learning about the countryside and enjoying daily walks throughout the year has provided a valuable education and many family adventures.”

15. The numbers of users are supported in the responses to planning application no.20/00379/OUT – Land South of Trowbridge, Wiltshire: Outline planning permission with all matters reserved except access for the erection of up to 180 residential dwellings (Use Class C3); site servicing; laying out of open space and associated planting; creation of new roads; accesses and paths; installation of services; and drainage infrastructure, as included at **Appendix 16**, (please note planning application comments may be viewed in full on the Wiltshire Council website using the following link):

[Planning Application: 20/00379/OUT \(wiltshire.gov.uk\)](https://www.wiltshire.gov.uk/planning-application/20/00379/OUT)

In particular, Mr N Swanney (04/12/21) refers to use by over 200,000 people per year and R Williams (16/11/21) quotes use to be between 35,000 – 40,000 people visits per year based on survey results, as detailed below in his previous correspondence on this matter, dated 23/03/21:

*“We have done a second survey of users over the last month (the first one was sent with our first objection to this site a couple of years ago), in weather that has not been brilliant, being the depths of February / March but even*

*though this may have put people off walking across the fields we have counted 3,545 people going into the fields between the hours of 08:00 – 16:00 over the period. The dates reviewed were 8<sup>th</sup> February to 8<sup>th</sup> March [2021] and included people of all ages. The first survey showed that there were an average of over 25,000 people using the fields for recreation every year, but this second survey shows that the annual figure would be nearer 42,000 people a year; and the responses certainly give the impression of a well used recreation area and for a long period of time.”*

16. In correspondence regarding the TVG application dated 5 April 2022, the Applicant, states:

*“To apply a little perspective to the figures supplied within the Application: If one takes a median daylight length of 12 hours, the number of people using the application site would have to reach the giddy heights of 25 people per hour. This would necessarily reduce during wintertime, plateau during spring and autumn, but increase exponentially in the summer months. The estimate of 300 visits per day is therefore on the lower end of reasonable and, lacking any evidence to the contrary, must stand.”*

17. The Applicant includes with this correspondence a second petition:

*“We the undersigned wish to register our continued support for the Village Green Application on Southwick Court fields (ref.2020/02 TVG (Southwick Court Fields, Southwick and North Bradley Parishes). We have used the land identified in the attached map without stay or let for the number of [years] indicated below. This access has not been restricted by any party. This includes not only the marked footpaths, and identified trackways. Access has been continuous including the occasional time that cattle have been present, prior to their withdrawal in 2020.”*

This petition includes 20 names of residents, (not signed), including the “Number of YEARS familiar with the use of the fields”, 5 of whom have already signed the first petition included with the application and provided an additional witness statement in support of the application.

18. The Objector makes the following representations on the “significant number” point, (17 December 2021):

*“7.2 The applicant claims that “a recent survey” of activity has been undertaken. The applicant goes on to state that the survey indicated “an average use of the field by 300 distinct visits/uses per day. This sum equates to approximately a third of a million separate visits each year.*

*7.3 This statement lacks credibility for a number of reasons.*

*7.4. First, from the landowner's first-hand knowledge of the site, this appears to be a significant exaggeration of the year round use of the Land.*

*7.5 Second, no details of the survey (for example, when it was carried out, by whom or the methodology followed) have been provided. It is reasonable to assume that the use of the footpaths on the Land would be far more frequent during the summer. Use would have also been far more frequent during recent "lock down" periods when many more people have been accessing public rights of way in the countryside. Therefore, there is insufficient detail to confirm whether the survey is broadly representative of "average" conditions as claimed.*

*7.6 Third, the nature of the use has not been recorded. If a person was accessing the land to walk the public footpaths, this use must be discounted when considering the use of the land for lawful sports and pastimes (as explained above).*

*7.7 Therefore, the evidential value of this statement is very low at best."*

19. Officers agree that the evidence submitted in the form of the surveys and petitions, are lacking in detail regarding the nature of the individuals' use of the land and therefore their evidential value is low. There are four recorded public footpaths over the application land: Southwick 1, 2 and 3 and North Bradley 4, (see Application Land above), as well as numerous unrecorded tracks, including a circular route around the perimeter of the fields, (including the northern section of the land now severed from the TVG application where there is a valid planning trigger event in place), (see map provided by Applicant at paragraph 58 and aerial photographs at **Appendix 5**), however, the use of recorded public rights of way and unrecorded tracks, leads to a number of issues which are addressed later in this report, including, most importantly, how such use would have appeared to a reasonable landowner, i.e. attributable to the exercise of a right of way or to recreation over a wider area of land.

**Significant number of inhabitants:**

The application is supported by 49 individuals, who give differing levels of evidence:

Petition 1 = 23 witnesses;

Individual witness statements = 21 (including 7 joint statements and 2 Parish Council replies);

Petition 2 = 20 witnesses.

The population figures of the identified neighbourhood within a locality of Grove Ward, is estimated at 4,458 in 2020.

The Applicant speaks to use by a significant number of residents and surveys which demonstrate such use. Additionally a number of the witnesses refer to seeing others using the land and/or their own use with family.

However, the Objector disputes use by a "significant" number of inhabitants, given

the landowners own knowledge of the use of the land and insufficient evidence provided within the surveys/petitions regarding the nature of use. Where there is dispute of the evidence it is considered that hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry, would assist the CRA in its determination of the application, where all elements of the legal test to establish a new green, must be satisfied, on the balance of probabilities.

### **Of any locality or neighbourhood within a locality**

20. A TVG is subject to the rights of local inhabitants to enjoy general recreational activities over it. The “locality” or “neighbourhood within a locality” is the identified area inhabited by the people on whose evidence the application relies, (although it is acknowledged that there is no requirement for most of the recreational users to inhabit the chosen “locality” or “neighbourhood within a locality”, as long as a “significant number” do, other users may come from other localities and/or neighbourhoods). However, it is the people living within the identified locality or neighbourhood who will have legal rights of recreation over the land if the application is successful.
21. The definition of “locality” and “neighbourhood within a locality” were reiterated in the case of *Paddico (267) Ltd v Kirklees Metropolitan Council & Ors* [2011] EWHC 1606 (Ch) (23 June 2011) as follows: a “locality” being an administrative district or an area with legally significant boundaries, such as a borough or parish, whilst a “neighbourhood” does not need to be an area known to law, but must be a cohesive area which is capable of meaningful description, such as a housing estate. So, for example, a housing estate can be a neighbourhood, but not just a line drawn around the addresses of the people who have used the claimed green.
22. In this application, the identified locality or neighbourhood within a locality in respect of which the application is made, is Grove Ward, Trowbridge. The Applicant has not identified whether this area is a locality or a neighbourhood within a locality, however, if the definitions set out in *Paddico* above, are followed, Grove ward is an administrative area or ward with defined boundaries and its own elected Councillor and division within Wiltshire Council. Electoral wards are set by the Local Government Boundary Commission for England (LGBCE) to ensure that each Councillor has the same number of electors, they also aim to ensure that wards reflect community ties and identify and promote effective and convenient local government ([lgbce.org.uk](http://lgbce.org.uk)). Officers therefore suggest that Grove Ward is a locality.
23. In correspondence dated 17 December 2021, the Objector includes population numbers for Grove Ward, (as paragraph 12 above), however, in correspondence date 5 April 2022, the Applicant suggests the following:

*“Population numbers for Grove Ward are unnecessary and irrelevant. The nature of the Village Green application requires the applicant to identify a Community Area which the application will serve. The truth of this application is that many visitors to the area in question travel to the vicinity for their recreation. This is partially as a result of good permeability into the field system in question via footpaths, trackways and bridle paths and partly due to the availability of parking adjacent to those aforementioned routes.*

*The number of residents in the nearby Ward has been estimated and used as “evidence” that numbers are exaggerated. If they are submitted to imply usage then no consideration has been made for footfall from other Wards such as Drynham or Central, Villages such as North Bradley and Southwick, or the many who drive to the boundaries from not only the Town to reach the most accessible green infrastructure, but as far as Frome.*

*Grove Ward is only identified as nearest conurbation and place of residence of Applicant as required in the Village Green Application. Should the Application be successful, there will be no restrictions for access based on postcode and the current use of the land will be maintained and protected in Law.”*

24. In fact the identification of a locality or neighbourhood within a locality is of much greater importance than that suggested by the Applicant. Whilst it is acknowledged that not all users will come from the identified locality, if the land is successfully registered as a TVG, it is those residents only who will have a legal right to use the land for the purposes of recreation, (although the recorded footpaths are open to the whole of the general public). The identification of a locality seeks to establish a link between the land subject to the application and the locality, so rather than being included only as the *“nearest conurbation and place of residence of the Applicant”*, it should identify where the users come from. It perhaps suggests in this case that the locality is incorrectly identified as Grove Ward when the locality should perhaps be a much wider area. In response to planning application no. 20/00379/OUT, Cllr D Vigar, Wiltshire Councillor for Trowbridge Grove Division submits a Report dated 10<sup>th</sup> June 2022, which quotes the Wiltshire Core Strategy statement: *“It is recognised that the villages surrounding Trowbridge, particularly Hilperton, Southwick, North Bradley and West Ashton, have separate and distinct identities as villages. Open countryside should be maintained to protect the character and identity of these villages as separate communities.”* It is possible for there to be more than one identified locality or neighbourhood within a locality in relation to a TVG application.
25. In additional correspondence dated 23 May, the Objector makes the following comment regarding this legal test:

*“7.4. It is, therefore, clear that the applicant, when preparing the application has misunderstood the relevant statutory tests. Rather than ensuring that the evidence is drawn from the “locality” (to demonstrate use by a significant number of the inhabitants of the locality specified in the application), the applicant has assumed that the evidence should relate to use by any persons who might, in the future, wish to use the TVG should it be registered. The evidence relating to the use of the site has, therefore, been drawn on a far wider range of users of the site than should have been the case. This is an important and material error.*

*7.5. If, as stated by the Applicant, the locality of Grove Ward has been considered to be “irrelevant” when preparing the evidence, the relevance of the evidence to the statutory tests must be doubted.”*

26. The witnesses refer to use by local residents:

*S & P Willcox – “Land provided social contact with other residents enjoying the open space.”*

*J Dennis – “...enjoyed meeting and chatting to other people from the local area...”*

As well as those who are visitors from outside the area:

*H Chamulewicz – “The land is of immense benefit to hundreds of local people and that is not only those of us that live in the vicinity, and all ages young and old alike, plus those who drive to enjoy walking the fields. Some with dogs some without.”*

*G Hill – “Regular and constant use by residents and visitors who walk or drive to Westfield Crescent; Sandringham and Balmoral Roads and walk from there.”*

*N & A Swanney – “Attest to regular and constant use by local residents and a large number of visitors who either walk or drive to Westfield Crescent, Sandringham Road or Balmoral Road and enter the fields from there.”*

27. It can be seen from the witness distribution map (**Appendix 15**) that the users of the land providing witness evidence are from the Grove Ward area of Trowbridge, (44 witnesses out of 49 where addresses are known), there are no witnesses from the outlying villages of Southwick and North Bradley to support additional use by inhabitants of additional localities or neighbourhoods within a locality, although the Applicant and other witnesses suggest use from a much wider area.



**Locality:**

The locality identified within the application is Grove Ward, as the area from which a significant number of users of the land come from. The identification of the area is important as it is the residents of this area who will have a legal right to use the land for lawful sports and pastimes. The Applicant's claim that the Grove Ward locality has been identified simply for convenience as the closest conurbation and the area where the Applicant resides, is not sufficient to form a link between the land and the locality.

The Applicant also suggests that this does not take account of use from a much wider area outside the identified locality, so is the locality in this case wrongly identified and should it relate to a much wider locality or more than one locality/neighbourhood within a locality, although witness evidence is provided only by inhabitants of Grove Ward.

The distribution of those giving evidence residing in the identified locality assists in forming a link between the land and the locality.

The Objector considers that the identification of Locality and its significance has been misinterpreted by the Applicant.

Where there is dispute of the evidence it is considered that hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry, would assist the CRA in its determination of the application, where all elements of the legal test to establish a new green, must be satisfied, on the balance of probabilities.

**Have indulged as of right**

28. Use "as of right" means use without force, without secrecy and without permission. In the TVG case of *R v Oxfordshire County Council Ex p Sunningwell Parish Council* [2000] 1 AC 335, Lord Hoffman commented on use as of right:

*"It became established that such user had to be, in the Latin phrase, nec vi, nec clam, nec precario: not by force, nor stealth, nor the licence of the owner...The unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right – in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited time."*

29. The Objector states in correspondence dated 17 December 2021: *"Given the vague nature of the evidence that has been submitted, the landowner cannot offer further comment as to whether the claimed use would be "as of right". Therefore, the landowner must reserve its position in this respect."*

## Without permission

30. Witnesses provide the following evidence that use of the land has been without permission:

Petition 1 (submitted with the application) – *“Access and recreation has taken place without stay or let from the landowner and without any form of notified restriction from said landowner. It has been established over this period that such access and activity has become defined as “as of right”.*” (Signed by 23 individuals).

Petition 2 (submitted with correspondence dated 5 April 2022) – *“We have used the land identified in the attached map **without stay or let** for the number of [years] indicated below. This access has not been restricted by any party. This includes not only the marked footpaths, and identified trackways.”* (List of 20 individuals).

The application itself at “7. Justification for application to register land as a town or village green” states:

*“The unfettered use of the land has been unchallenged over this period and is symbolised by the footpaths and trackways formalised upon it. Divergence from these footpaths and/or trackways has not been challenged either formally or informally. Maintenance and enhancement of access points have been supported by both the landowner and Wiltshire Council as demonstrated in attached photographs and documents.”*

P Allsop - *“The landowner has been fully aware of my activities and has allowed this without stay or impediment, on occasion I have spoken to him whilst out walking.”* The activities which Mr Allsop refers to are as follows: *“I lived in Summerdown Walk in the early 1980’s and currently live in Spring Meadows. Both in the 1980’s and for the last seven years I have walked our dogs nearly every day on the permitted footpaths through the fields around Boundary Walk, Southwick Court and through to Southwick...My wife and I have picked blackberries, for pies and sloes, to make sloe gin, from the hedgerows on many occasions.”*

T Allsop - *“I have on occasions had conversations with the land owner whilst out walking”.* She refers to the activities of walking her dogs daily on the *“...permitted footpath through the fields around boundary walk, southwick court and beyond...I have made pies and jam from the plentiful blackberries that grow in the hedgerows.”*

D Goodship – *“I have lived opposite the fields for over 45 years, during this time myself & family have used them for walking, running and picking blackberries, “without stay or impediment” by the landowner.*

*I am pleased to report that my Grandchildren also now enjoy walking them, again “without stay or impediment” by the landowner.”*

*C Hill – “My family have enjoyed exploring this wonderful landscape for over nineteen years without stay or impediment.”*

*Cllr G Hill, Town Councillor, Grove Ward - “The historic use “as of right” has not been to my knowledge as a resident for some eighteen years, been directly challenged or restricted in that time.”*

*“Evidence of this presumed acceptance has been seen over the past two years. This has taken the form of sections of fencing being removed to facilitate access for the general public along the notified footpaths, and gates previously being used to retain cattle being left open, or even removed. All these changes indicate a desire to give unrestricted access to the land by the landowner and represent moves to that end.”*

*R Hunt – “The fields in questions [sic] have been available for walking without stay or impediment for as long as I have lived here.” (moved to Trowbridge 1999).*

*M Stevens – “My wife Lin and I have lived in this area for over 40 years and during this time have without stay or impediments regularly walked and exercised in this area with our two children and now five grandchildren.”*

*A & N Swanney – “We have lived in the area and used the fields for more than 38 years and the landowner has allowed us access to these fields without stay or impediment over all this time.”*

*S & P Willcox – “Throughout this time [living in Southwick 1977-1997] we have regularly walked around and across the area concerned with our children and dog without let or hindrance.”*

31. The Objector states in correspondence dated 17<sup>th</sup> December 2021:

*“6.1. It is an established legal principle that ‘as of right’ means not by force, nor stealth, nor the licence of the owner (as confirmed by the House of Lords in the Sunningwell case).*

*6.2. As noted above, a number of activities claimed to have been undertaken on the Land have been with the express consent of the landowner. Again any such use would not be “as of right” as the user has the licence of the owner.”*

They observe that the scattering of ashes is claimed to have been carried out with the express consent of the landowner, the petition submitted with the application agrees that this is done with the full knowledge and permission of the landowner, and as such, it is not qualifying user “as of right”.

32. In correspondence dated 5 April 2022, the Applicant states:

*“The lack of restrictions placed on any of the named activities, including berry-picking without specific permission from the landowner, but undisputed in the Objection, demonstrates one aspect of “as of right”. There has never been any form of restriction placed nor permission sought for this activity. There is no evidence for any restriction ever having been placed on this foraging which has clearly taken place with the knowledge of the landowner. In order to be valid, the Objection must eliminate all such use to be valid.”*

33. In the witness evidence set out above, the activity of using the “permitted footpaths”; walking and berry picking (the latter at the edges of the field), without further detail, suggests perhaps use of the recorded public rights of way and unrecorded tracks over the fields and at the field edges. In a previous TVG application considered by Wiltshire Council: Commons Act 2006 Application to Register Land Known as ‘Church Field’ at Hilperton as a Town or Village Green (Application no.2017/01), the Inspector, Mr William Webster, 3 Paper Buildings, in his advisory report dated 19 November 2020, considers:

*“...the main issue in such cases is whether the use would appear to a reasonable landowner to be 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.”*

Users may have remained unchallenged by the landowner where it may have appeared to them that the public were on the land exercising an existing right in the use of recorded public rights of way “by right” rather than “as of right” and “emergent” rights of way, rather than the use being attributed to use of a wider area of land for lawful sports and pastimes. Would the landowner have been aware of such use of the land for lawful sports and pastimes, to challenge such use if they so wished?

### **Without Force**

34. In the Planning Inspectorate publication “Wildlife and Countryside Act 1981 - Definitive Map Orders Consistency Guidelines”, (updated 16 March 2021) it is stated that: *“force would include breaking of locks, cutting of wire or passing over, through or around an intentional blockage such as a locked gate.”*

35. In correspondence dated 23 May 2022 the Objector claims:

*“5.7 In very recent years, cows have not been present on the site. However, there is a good reason for this change. Around 2-3 years ago, fences and gates began being regularly damaged. Fences were cut with wire cutters and gates were broken (presumably by people wishing to access the land). The*

*cost of repeatedly repairing and replacing the fences outweighed the revenue that could be generated from the use of the land for cattle grazing. Therefore, the cattle were moved elsewhere. However, before this point, cattle were present on the land during the summer months.*

*5.8 It was due to the increasing level of vandalism and breaking of gates and fences that it was necessary to padlock a number of gates on the site (as shown in Mr Swanney's photographs).*

*5.9 In this respect, it is relevant to note that in order to be "as of right", the use must be without force, stealth or permission. The breaking of gates, cutting of fences and other acts of vandalism to access the site amounts to access by force. The use of the site by any person carrying out such acts or by others who are benefitting from those acts cannot be taken into account.*

*5.10 For the sake of completeness, we should note that cattle could be returned to the application land at any time."*

36. Officers consider that there are entry points onto the land from existing public rights of way, i.e. Footpath no's 1, 2 and 3 Southwick; Footpath no.4 North Bradley and Bridleway no.3 North Bradley, (Axe and Cleaver Lane), (please see Witness Distribution Map at **Appendix 15**), the obstruction of which would be an offence under the Highways Act 1980, therefore it is not considered that force was necessary to access the land. Of course if additional access was gained via the breaking of gates and cutting of fences as claimed by the landowner, access gained in this manner would not be qualifying user "as of right". Witnesses provide little evidence about how they gained access to the land and additional evidence on this point would assist the CRA in its determination of the application.
37. Use by force does not refer just to physical force, but also where use is deemed contentious, for example by erecting prohibitory notices in relation to the use in question. In the Supreme Court Judgement R (on the application of Lewis) (Appellant) v Redcar and Cleveland Borough Council and another (Respondents) (2010), Lord Rodger commented that:
- "The opposite of "peaceable" user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is "vi" only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant context vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner has told him not to do it. In those circumstances what he did was done vi."*
38. At Exhibit 5.1 of the Application "Land description", the Applicant states: "At no point during the past twenty years has any notice appeared restricting either access or activity to or on the land."

In correspondence dated 5 April 2022, the Applicant adds:  
*“As explained elsewhere the grazing of cattle was spread across at least six discrete fields in the ownership of the landowner. The small section in question of this Application was never closed to any form of access and was utilised mainly throughout the time when agriculture was in place as a source of winter fodder.*

*The location of the Village Green application was never out of bounds, nor restricted by any signage or activity or even practically placed out of use with the exception of the two part-days when mowing and then baling took place. Even on those days it was just a case of avoiding the progress of the tractor and not related to any formal or informal exclusion.”*

39. The Objector provides no evidence that signage or other measures which would deem the use contentious, have ever been in place.

### **Without Secrecy**

40. Mr P Allsop, (please see above), states in evidence that the landowner was fully aware of his activities and he and T Allsop have spoken to the landowner on occasion whilst out walking. The activities which Mr and Mrs Allsop refer to are walking with dogs on *“the permitted footpaths through the fields”* and blackberry/sloe picking from the hedgerows. If Mr and Mrs Allsop were using the “permitted paths”, which suggests use of the recorded public rights of way over the land, these routes carry an existing public right and the landowner would have no reason to challenge members of the public whilst using these routes. Without further details regarding the uses being undertaken when seen by the landowners, it is not possible to separate the use of linear routes (i.e. recorded/unrecorded public rights of way), which may appear to a reasonable landowner to be user “by right” (recorded rights of way), or emerging public rights of way, from use of the wider land for lawful sports and pastimes to establish TVG rights, in which case, as set out by the Inspector previously in the Hilperton case above, where the appearance of use is *“...ambiguous, then it shall be ascribed to a lesser right, i.e. a right of way.”* Would the landowner have been aware of such use of the land for lawful sports and pastimes, to enable them to challenge that use if they so wished?
41. The Objector in correspondence dated 23 May 2022, refers to one camping incident which the landowner is aware of, *“The users knew that should not have been camping on the site (as evidenced by the fact that they fled when it appeared that they would be challenged). The user was intended to be “by stealth” even if the campers failed to achieve this.”*

#### **As of Right:**

There are access routes onto the land, e.g. via existing public rights of way, the obstruction of which would be an offence under the Highways Act 1980, therefore it is not considered that users would have been required to use force to enter the land and there is no evidence of notices prohibiting access which would have



rendered user by force.

As the Objector points out, there are some activities which appear to have taken place with the landowner's permission, e.g. the scattering of ashes, but it appears that not all activities have taken place with the landowner's permission.

There is no statement from the landowner to suggest that activities were taking place with secrecy, other than the referenced camping incident, and no evidence provided regarding incidents of challenge by the landowner.

The use of existing public rights of way, as recorded on the definitive map and statement is not qualifying user for TVG registration, where a right for the public is "by right" rather than "as of right" and there would be no reason for the landowner to challenge or obstruct such user. The use of recorded rights of way/unrecorded tracks and linear routes over the land may appear to a reasonable landowner to be attributable to the use of public rights of way and not wider use of the application land for lawful sports and pastimes: i) if this use is ambiguous it should be attributed to the lesser right, i.e. public rights of way, and ii) is use of the land for lawful sports and pastimes sufficient to bring to the attention of a reasonable landowner that a right is being asserted against them, to enable them to challenge such user if they so wished.

Further information regarding use "as of right" would assist the CRA in its determination of the application, i.e. hearing direct evidence from witnesses and the cross-examination of witnesses on this point at a public inquiry, where all elements of the legal test to establish a new green, must be satisfied, on the balance of probabilities.

### **Lawful sports and pastimes**

42. The application includes a petition which lists a number of activities taking place on the land, (Petition 1) as follows:

*"We the undersigned formally attest that the land known locally as Southwick Court fields (OS reference ST84801 55856 and defined on the attached maps) has been consistently in use as an informal recreation space for a minimum of twenty years. These activities have taken place both on the network of paths and trackways illustrated in this application and between them..."*

*Activities which have historically, and which continue to occur include:*

- *Rambling*
- *Exercise and fresh air*
- *Foot traffic via notified pathways to outlying villages*
- *Berry picking*
- *Drone and model aircraft flying*
- *Children camping out*
- *Childhood games*
- *Dog walking*
- *Landing and takeoff paragliders*

- *The scattering of ashes of locals with the knowledge and blessing of the landowner*
- *Protecting property from severe flooding as a functional flood plain”*

43. The petition is signed by 23 individuals, (witness evidence forms available from the Open Spaces Society have not been completed in this case). Whilst the petition is helpful in identifying the activities taking place on the land, it does not assist in whether or not those individuals have indulged in those activities themselves and which of these activities they have observed taking place on the land, a point which is considered by the Objector (correspondence 17 December 2021):

*“4.2. Document 7.1. appended to the application is a form signed by 23 people giving their names and addresses. The front page of the form makes a number of vague statements regarding the use of the Land for recreational purposes. However, the form provides no details as to the duration, location or frequency of the claimed activities.*

*4.3. No information is given as to how long the signatories have lived at the listed address or how the relevant person claim to know of the alleged use of the Land (e.g. it is unclear whether the signatories would assert that they have carried out the uses claimed, seen the uses taking place by others or have simply heard third hand that some people claim to use the Land for the uses claimed).*

*4.4. Therefore, the evidential value of the signed form is very low.”*

44. Officers agree with this statement that on its own the petition is of very low evidential value, however, 9 of the individuals who have signed the petition, have also submitted statements at the formal consultation stage. These individuals provide evidence of their own / observed use of the land for:

<b>Witness</b>	<b>Use / Use Observed</b>
P & S Elphick	Recreational purposes - walking
S & P Willcox	Regularly walked around and across the area with children and dog. Also exercise and recreational purposes. Social contact with other residents. Forage for wild food. Observe wildlife.
H Chamulewicz	Residents enjoy walks around the field with/without dogs. In summer many sit on the grass and soak up surroundings. Fly a kite. Throw a ball. Swing attached to substantial tree popular this year.

	I pick a large quantity of blackberries each year since childhood (surrounding hedges). Sloes in hedgerows.
M Dennis	Many walks – dog walking and walking for fitness. Observing and listening to nature.
J Dennis	Used to walk the dog. After dog walking just walking and enjoying fresh air. Picked elderflowers to make cordial and blackberries for puddings and pies. Meeting and chatting with other locals.
G Hill	Regular and constant use by residents and visitors – walking. Both my children and grandchildren played in the field. Observed use for activities contained within this document (i.e. application and petition).
C Hill	My family have enjoyed exploring this wonderful landscape. Children and grandchildren – picking blackberries and sloes from hedgerows. Identifying birds and habitats. Daily walks throughout year. Watching and documenting changing seasons has been inspiration for hours spent drawing, painting and crafting. Extended periods of time in the fresh air.
G & M Whiffen	Exercising dogs. Use for recreational and health purposes. Utilising area for the benefit of 4 grandchildren for last 10 years. Utilise fruits such as blackberries and sloes from hedgerows and damsons from Axe and Cleaver Lane.
N Swanney	Attest to regular use by local residents and visitors. Children and grandchildren have played in the fields. Observed: walking, jogging, dog walking, blackberry picking, bird watching, model plane flying, drone flying, hot air balloon landing.

45. Others who have not signed the petition, but have submitted statements in the consultation period, include the following activities:

<b>Witness</b>	<b>Use / Use Observed</b>
A Swanney	As N Swanney above (joint statement).
P Allsop	In 1980's and for last 7 years walked dogs nearly every day on permitted footpaths through fields to Southwick. Wife and I picked blackberries for pies and sloes for gin from hedgerows.

T Allsop	Walk dogs daily on permitted footpaths through fields and beyond. Made pies and jam from blackberries in hedgerows.
D Goodship	Walking. Running. Picking blackberries. Grandchildren now enjoy walking fields.
R Hunt	I and my family have used fields daily for last 22 years for exercise. Annually foraged for blackberries and elderflowers to make cordials, crumbles and jams.
B Jones	Dog walking. General exercise for well being. Picking wild fruit – blackberries etc. Observe wildlife.
J & B Keltie	Daily – walking, dog walking. General exercise and enjoyment. Picked blackberries, sloes and damsons when in season from hedgerows.
M Nutch	Recreation.
M & J Oliver	Brought up 4 children here and made use of many rights of way for: Walking. Jogging. Playing. Picking blackberries. Watching wildlife.
M & L Stevens	Regularly with 2 children and now 5 grandchildren: Walked. Exercised. Annual family blackberry picking session.

<b>Activities undertaken/observed</b>	<b>No. of witnesses</b> <i>(those providing written statement only – petitions not included)</i>
Walking (with/without dogs)	19
Exercise (not qualified)	6
Recreation (not qualified)	4
Blackberry / sloe / elder flower / elder berry picking	16
Social contact	3
Observing Wildlife	8
Sit on grass	1
Fly kite	1
Throw ball	1
Swing	1
Playing	4

Running / jogging	4
Model plane flying	2
Drone flying	2
Hot air balloon landing	2

46. The majority of these activities qualify as lawful sports and pastimes, (with the exception of model plane/drone flying and hot air balloon landing, which may or may not be lawful, as discussed later). The main activities undertaken and observed are dog walking, walking and picking wild fruit and produce such as blackberries, sloes, elderberries, elder flowers and damsons.

### **Camping:**

47. The Objector disputes camping by Local Children, (correspondence dated 17 December 2021), based on no detail of the frequency or location of this use or how it was practically or safely achieved, being provided:

*“The site owner rejects the suggestion that there has, at any time, been a camping use of the Land. If any such use has been carried out it has either been on a covert basis (thus failing the “as of right” test) or has been so trivial or infrequent as to have been undiscoverable by the land owner (thus failing the “quality of user” test).*

*5.9 ...It is presumed that the Applicant would only seek to claim that the camping took place during the summer. This is when the Land is actively used for cattle grazing. It is implausible to suggest that parent would allow their children to camp on Land when cattle are present. Such a use would have risked the children being trampled in addition to risking harm to the cattle.”*

48. The Objector considers that this use is likely to have taken place on the northern section of the application land, closest to the settlement and within sight of parents, i.e. the land excluded from the Application where a planning trigger event is in place, however, this is disputed by the Applicant in correspondence dated 5<sup>th</sup> April 2022, stating that camping does take place and assumes that children would want to be *“...as far away from adult censure as possible as evidenced by the bottles and cans which are cleared by users of the field and that the Southern portion of the field, as applied for, is the preferred location. If cattle were present this activity could not take place...”*

49. In the Objector’s correspondence dated 23 May 2022 (supplementary):

*“5.12 The landowner is aware of one camping incident occurring. The “campers” were on site for one night and then fled the scene leaving their tents, some clothes and various other items which were then disposed of. 5.13. The use was clearly not “as of right”. The users knew that should not have been camping on the site (as evidenced by the fact that they fled when it*

*appeared that they would be challenged). The user was intended to be “by stealth” even if the campers failed to achieve this.”*

50. Whilst “*Children camping out*” is listed as an activity taking place on the land in Petition 1, the more detailed written statements of witnesses do not refer to camping taking place. Petition 1 does not give sufficient detail regarding the location, frequency and by whom camping was being undertaken.

#### **Paragliders and Hot Air Balloons:**

51. In correspondence dated 17 December 2021, the Objector considers the landing and taking off of para-wings (believed by the Objector to be reference to paragliders) and hot air balloons “...*it is difficult to see how any such thing could take off from the Land. The Land is flat.*” They consider the landing of hot air balloons to be covered by aviation law and therefore not user “as of right”, even if it were this use is “...*so trivial and sporadic as not to carry the outward appearance of user as of right’ and should, therefore, be ignored for the purposes of the application.*”
52. The Applicant claims that “*Landings and take-offs occurred regularly pre-Covid.*”, however, the Landowner has no recollection of this use ever taking place and the use is not accepted by them. Officers agree that reference to the landing of hot air balloons is limited to the joint written statement from Mr and Mrs Swanney only, as an observed activity, and other than the petition submitted with the application, there are no references to paragliders landing and taking off in witness evidence.

#### **Trail bikes:**

53. In correspondence dated 17 December 2021, the Objector states that there is only one reference to use of the land by trail bikes in the Land Description, (Exhibit 5.1 submitted with the application), where it is listed as an activity taking place on the land, therefore no evidence has been provided to support this claim. Officers would agree that this activity is not supported by inclusion in Petition 1 accompanying the application, or written testimony from witnesses.

#### **Scattering of ashes:**

54. The Objector, in correspondence dated 17 December 2021, observes that the scattering of ashes is claimed to have been carried out with the express consent of the landowner and as such, it is not qualifying user “as of right”, as it is with permission. Officers agree that Petition 1 states that the scattering of ashes of locals has taken place “...*with the knowledge and blessing of the landowner.*” which suggests that any such use cannot be considered as qualifying user “as of right” where it was undertaken with the permission of the landowner.



### Children playing:

55. With regard to children playing on the land, the Objector considers that no evidence regarding frequency; duration or areas of claimed use, are provided to support this claimed use.
56. References to playing on the land are low in number amongst witnesses who have provided written statements, i.e. fly kite (1); throw ball (1); swing (1); playing (4); recreation – not qualified (4). Certainly additional information on this point, as suggested by the Objector regarding the location, duration and frequency of play on the land, would assist the CRA in its determination of the application, for example the Objector suggests in correspondence dated 23 May 2022, that the swing referred to by H Chamulewicz “...a swing was popular this year attached to a substantial tree...”, was attached to an oak tree located on the boundary closest to the housing on that part of the land now excluded from the TVG application where there is a planning trigger event in place.

### Walking/Dog Walking:

57. Dog walking and walking appear to have taken place on a daily basis and very regularly. Certainly when Officers from the CRA visited the site in 2021, there were a number of walkers/dog walkers using the field. However, the use of linear routes may not be sufficient evidence to establish TVG rights, as the Objector comments in correspondence dated 17 December 2021:

*“5.20. Evidence of the use of the Land for walking should be discounted.*

*5.21. The Courts have been clear that the use of footpaths must be distinguished from use for sports or pastimes.*

*5.22. In Oxfordshire County Council v Oxford City Council Lightman J held that where the claimed use relates to defined tracks over land, this will generally only establish public rights of way, unless the user is wider in scope or the tracks are of such character that users of them cannot give rise to a presumption at common law as a public highway.*

*5.23. As Lightman J stated:*

*“If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).” [102]*

*“The critical question must be how the matter would have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a public footpath, user for recreational activities or both.” [103]*

5.24. *The Application refers to the use of the Land for general walking, (for example, to access the outlying villages) and dog walking. The Applicant appends an aerial photograph (Exhibit C) showing the walking routes around the site. Therefore, the Applicant's claim regarding walking use is limited to the routes shown on that plan.*

5.25. *The Land is crossed by a number of public rights of way. Any use of those public rights of way will be use "by right" rather than "as of right". Therefore this use must be discounted. There is also a circular route around the field which is marked on OS maps as a path.*

5.26. *The use of these routes for walking with or without dogs would not suggest any use to a reasonable owner other than use of paths as a public right of way. This use would in no way suggest to a landowner that the users believe that there were exercising a right to indulge in lawful sports and pastimes across the whole of the field.*

5.27. *Accordingly, in the circumstances, where people have walked paths that traverse the Land, it would not be reasonable to expect the landowner to object to a dog owner's use of the footpaths due to the fact that their dog may be trespassing off lead on the rest of the Land.*

5.28. *Therefore, the use of these routes for walking (with dogs or otherwise) is insufficient to amount to use of the Land for lawful sports and pastimes and should be discounted."*

58. In correspondence dated 5 April 2022, the Applicant states:

*"As evidenced by the trackways map and photo in appendix c), the designated footpaths are supplemented by a series of trackways and meander lines which cover the entirety of both the application site and the allocated portion of the land."* The Applicant provides Appendix C, which records established pathways, recorded and unrecorded over the land:

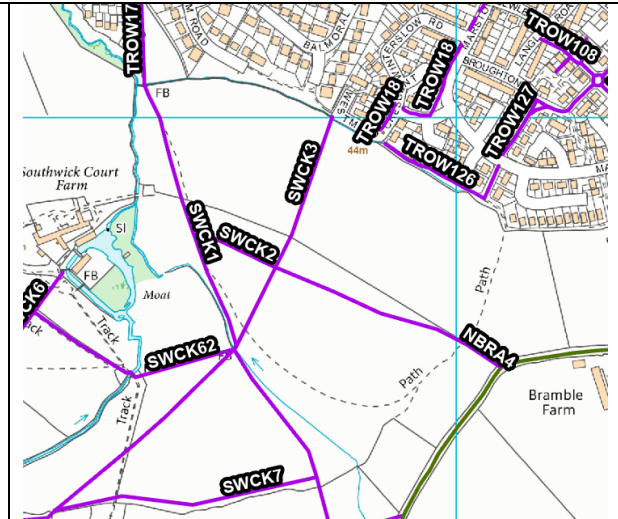
**Current footpaths and trackways**

Whilst photographs exist taken from ground level, this is the clearest representation of the numerous paths and trackways in us at the current time.



Current footpath/trackways key:

Black	Principal circular path
Yellow	Secondary "internal" paths running either side of the remains of the fencing and the Southern perimeter.
Blue	Right is the path from the kissing gate, Left follows the high water line of the flood zone.
Orange	The principal North-South footpath.
Red	Blocked off pathway
Purple	Right access to bridleway, left access onwards to Southwick, North Bradley and Hoggington.
White	Dog walker route



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Extract from working copy of definitive map of public rights of way:  
 Purple line = Footpath  
 Green line = Bridleway

59. Witnesses provide evidence of the use of recorded footpaths/tracks over the land:

P Allsop – "...walked our dogs nearly every day on the permitted footpaths, through the fields around Boundary Walk, Southwick Court and through to Southwick."

T Allsop – "I walk my dogs daily on the permitted footpaths through the fields around boundary walk, southwick court and beyond."

M & J Oliver – "...made use of many of the rights of way for walking, jogging and playing..."

S & P Willcox – "We have also organised community walks through those fields..."

60. There is some evidence that the land itself is a destination for undertaking lawful sports and pastimes, i.e. walking and dog walking as Cllr G Hill; H Chamulewicz and A & N Swanney provide testimony of the fields being a destination for others from outside the area who walk or drive and park in neighbouring streets, to walk in the fields. The TVG Application states in the "Land Description" at Exhibit 5.1 of the Application – "There are three formal access points on the Northern edge and one each on the southern and Western fringes...The disparity between the number of access points from the

*Northern edge and those on the Western and Southern boundaries argue strongly for the land functioning as a destination in and of itself and not simply for access to points beyond...Within the confines of the field further footpaths and trackways link the paths defined by stiles and gates. This further argues for the site being a destination in and of itself...*

61. The Objector in correspondence dated 23<sup>rd</sup> May 2022, states:

*“5.2. Further we note that a number of the statements and representations submitted in December relate to uses of the land which should be discounted when considering use as of right in the context of the TVG application. For example, express reference is made to ‘walking permissive pathways” and use of the “rights of way”. The majority of the claimed uses are walking (with or without dogs) or running. It is reasonable to assume that such uses would have taken place on the pathways and should, therefore, be discounted.”*

62. There are four recorded public footpaths over the application land Southwick 1, 2 and 3 and North Bradley 4, as well as numerous unrecorded tracks, as set out above at paragraph 58. The aerial photographs at **Appendix 5**, show that since 2001, (aerial photographs dated 2001; 2005/06; 2014 and 2020/21), the trackways across the land have remained consistent. In the Wiltshire Council Hilperton TVG application (2017/01), the Inspector, in his advisory report dated 19 November 2020, considers the difficulties which 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 potential acquisition of new, public rights of way rather than rights sufficient to support a TVG registration.”* He then points to the cases which address this matter, i.e. *“... 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 at [102]-[110]. The guidance in these cases was approved by Lord Hoffmann in the Oxfordshire case at [2006] 2 AC 674 at [68] [Oxfordshire County Council v Oxford City Council [2006] UKHL 25] and was also followed more recently in R (Allaway) v Oxfordshire County Council [2016] EWHC 2677 (Admin).”* and the helpful overview provided in the report of Vivian Chapman QC at Radley Lakes (13/10/2007) at [304]-[305] *“...who said 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...”*

63. Certainly additional evidence on this point would assist the CRA in its determination of this application and address the main points here. i.e:

- i) how use would have appeared to a reasonable landowner;
- ii) is use of the land for walking/dog walking user “as of right”, i.e. the use of recorded public rights of way “by right”;

- iii) was use of the land for lawful sports and pastimes sufficient to bring such use to the attention of the landowner to challenge that use if they so wished;
- iv) if the use of recorded/unrecorded public rights of way is removed as qualifying user, is the remainder of the use for lawful sports and pastimes too trivial/sporadic to lead to support registration.

### **Berry Picking:**

64. The Objector states:

*“Berry Picking*

*5.18 Again, no evidence is given regarding the frequency or duration of this use. It can be assumed that this use was limited to the periphery of the Land as there are no berry-bearing plants elsewhere on the Land. However, whether this claimed use is limited to the northern part of the Land nearest the settlement (which is subject to the trigger event) is wholly unclear.*

*5.19. In any event, such use does not demonstrate a general use of the entire Land for lawful sports and pastimes. The use would be confined to the extreme margins of the periphery of the Land.”*

65. 16 witnesses refer to picking wild produce on the land. The picking of fruit and wild produce is seasonal in nature, however, in this case there appear to be a number of types of produce taken, i.e. blackberries (very approximately late August – early September); Sloes (late October – early November); Elderflowers (late May – Mid June); Elderberries (mid August – mid September) and damsons (August to October), an activity which covers a large part of the year from late May to early November, (excluding July), depending on weather conditions etc.
66. Certainly Mr and Mrs Whiffen, in their joint statement, suggest that they collected damsons from Axe and Cleaver Lane, which could be a reference to the northern section of the land not subject to the live TVG application where the entrance to the fields from Axe and Cleaver Lane is located. Where the fruits etc, are located at the edges of the land, as confirmed by the Objector, it may be that use of the unrecorded perimeter route may not have appeared to a reasonable landowner to be attributable to the wider use of the land for lawful sports and pastimes, thereby bringing such use to the attention of the landowner for them to be aware that TVG rights were being asserted against them and to enable them to challenge such use if they so wished.

### **Drone / Model Aircraft Flying:**

67. The personal use of drones and model aircraft in the UK is governed by the Civilian Aviation Authority Air Navigation Order 2016 and there are certain rules, including for example: staying below 400ft; keeping the drone in sight and not flying a drone within 50m of a person, vehicle or building not under

your control, however, a licence is not required for operating a drone weighing less than 250g. Without further details of the drone/aircraft and the manner in which it was being flown, it is not possible to consider the drone/model aircraft flying as a lawful sport or pastime here and this use must be excluded.

68. The Objector states that *“No evidence is given as to the duration or frequency of this claimed use, the location where it is claimed to have occurred or the people who are claimed to have undertaken this use. Again, we assume that the use is likely to have occurred nearer the dwellings in the northern part of the Land (which is subject to a trigger event).”*
69. Further, in addition to reference in the petition submitted with the application, the evidence of incidents of drone/model aircraft flying is low, confined only to the joint written statement of Mr and Mrs Swanney as an “observed” activity.

**General:**

70. The Objector states in correspondence dated 17 December 2021:

**“Lawful Sports and Pastimes**

*5.1. It is not sufficient simply to assert that the land has been used for various lawful sports and pastimes. The nature and quality of the use must be such that it can be taken into account in support of the Application.*

*5.2. A number of principles have been established by the Courts in this respect including:*

*5.2.1. “the user must be shown to have been of such character, degree and frequency as to indicate an assertion by the claimant of a continuous right, and of a right of the measure of the right claimed” (White v Taylor (No.2) (1969) 1 Ch 160 at 192)*

*5.2.2. The use must be to a sufficient extent. Use which is ‘so trivial and sporadic as not to carry an outward appearance of user as of right’ is to be ignored (R v Oxfordshire County Council, ex parte Sunningwell Parish Council [2000] 1 A.C. 335, 375D-E)*

*5.2.3. The decision maker should be concerned with ‘how the matter would have appeared to the owner of the land’ (R (Lewis) v Redcar and Cleveland Borough Council (No 2) [2010] 2 AC 70)*

*5.2.4. The onus is on the applicant to prove that the whole, and not merely a part or parts of the Land, have been used for lawful sports and pastimes (Cheltenham Builders v South Gloucestershire Council [2003] EWHC 2803 (Admin) at [29])*



5.3. *The submitted evidence does not address any of the requirements above. The evidence submitted in support of the application does not contain any details regarding the extent of the Land used or the frequency or duration of each claimed use...*

71. In this case there is a lack of evidence regarding regular/organised/community events taking place on the land which might further support general use of the land by the local community for general recreation. In the Inspector's Advisory Report on "Applications to Register Land Adjoining Seagry Road at Lower Stanton St Quintin, Nr Chippenham as a New Town or Village Green", dated 9<sup>th</sup> January 2023, the Inspector Mr William Webster considers limited community events taking place on the land, but places only limited weight on these, (paragraph 35): "...events were somewhat infrequent anyway and would have been of only limited duration on the day. It is not as if, for instance, the application land was the location for the annual village fete or was a place where the annual Remembrance Day service took place each year..." In the Southwick case there is no evidence of "events" taking place on the application land.

#### **Lawful Sports and Pastimes:**

The main use of the land has been for the purposes of walking/dog walking and fruit picking. The lawful sports and pastimes claimed lead to a number of questions, including how such use would have appeared to a reasonable landowner; user "as of right" and sufficiency of user to support registration of the land as a TVG.

There is no evidence of regular/organised/community events taking place on the land.

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

#### **On the Land**

72. The Application, at Exhibit 5.1. "Land description (in respect of which this application is made)", gives the following description of the land:

*"The proposed Village Green is on the immediate southern boundary of Trowbridge..."*

*The land is bordered on its Northern edge by hedgerow defined as "Important" by the 1997 hedgerows act. This designation is confirmed on a number of levels and documented fully.*

*The Eastern and Southern boundaries of the site are defined by Lambrok Stream. This watercourse contributes to the Environment Agency determination of those boundaries of level 1, 2 & 3 flood plain. The site is*

*also subject to surface water ingress from the Northern and Southern boundaries as demonstrated on Wiltshire Council flow analyses.*

*The current use of the land is for a sustained blend of cattle grazing and informal recreation and is defined as such by Wiltshire Council. There is a network of footpaths which appear on a series of maps. There are three formal access points on the Northern edge and one each on the southern and Western fringes. These access points have been formalised with the knowledge and support of the landowner. The most recent improvement has been the replacement of a stile with a kissing gate. This work was completed with the knowledge of and blessing of the landowner. The disparity between the number of access points from the Northern edge and those on the Western and Southern boundaries argue strongly for the land functioning as a destination in and of itself and not simply for access to points beyond.*

*All access points to the site consist of formalised stiles except for the aforementioned kissing gate. A wire fence which subdivides the Northern and Southern portions of the land for grazing confinement purposes contains a further stile and additional gate. Within the confines of the field further footpaths and trackways link the paths defined by stiles and gates. This further argues for the site being a destination in and of itself...”*

73. The southern, eastern and western sides of the application area are enclosed by mature hedging and trees, whilst the northern side of the land is partly fenced and partly open to the adjoining land, (which originally formed part of the TVG application, but which was excluded where there were planning trigger events). The land subject to this application has access via a footbridge with stile from the point at which Footpaths 62; 1 and 3 Southwick converge on the southern perimeter and Footpaths 1 and 3 enter the application land. On the northern boundary, Footpath no.1 leaves the TVG application area via a stile, (please see photographs below). Other access points on recorded public rights of way are located outside the TVG application area, i.e. within the excluded area - Southwick Footpath 3 and North Bradley Footpath 4 (which links to Bridleway no.3 North Bradley (Axe and Cleaver Lane):

1



Footbridge with stile at entrance of Footpath no.1 and no.3 Southwick into application area on southern perimeter.

2



Stile at entrance of Footpath no.1 Southwick into TVG application area on north side.

3



Stile at entrance of Footpath no.3 Southwick, (outside application area), to north of application land.

4



Entrance of Footpath no.4 North Bradley via open gate off Axe and Cleaver Lane (Bridleway no.3 North Bradley), outside application area to the north-east.

74. The Objector states in correspondence dated 17<sup>th</sup> December 2021:

*“5.5 The application states that the “current use of the land is for a sustained blend of cattle grazing and informal recreation”. This is not the case. The field is currently solely used for agriculture. During the summer months (usually April to September), the field is used for grazing cows. During the winter months the field is allowed to recover from grazing. It does not have “recreational” use.*

*5.6 As explained below, much of the claimed use of the Land is inconsistent with the current use of the land. Indeed the carrying out of various activities would be impossible in light of the presence of cattle during the summer months.”*

Additionally, in correspondence dated 23 May 2022, the Objector confirms that *“In very recent years, cows have not been present on the site...”*

75. The condition of the field from the aerial photograph dated 2001 suggests some kind of agricultural practice taking place on the land (**Appendix 4**), and the land appears to be laid to grass in aerial photographs dated 2005/06; 2014 and 2020/21, (on a site visit in 2021 Officers’ found the fields to be laid to grass). The action of low-level agricultural activities was considered in the case of *R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] where it was held in the High Court that the annual gathering of a hay crop was incompatible with use of the land as a village green and as a result the decision to register the green was quashed. However, in *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25, Lord Hoffman commented on that earlier decision saying: *“I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes...if in practice they were not.”* Therefore, where there has been use of the land for agricultural purposes throughout or at some time during the relevant user period, each case must be determined on an individual basis on the degree of interruption to user and the extent to which the agricultural activity is consistent with that use. In the *Southwick Court Fields* case there are no references to interruption to user caused by the production and gathering of the silage crop, spraying or the keeping of cattle on the land. The agricultural activities appear to have had little impact upon user and the two activities have co-existed, as Mr Swanney suggests, when mowing and baling took place on two-part days, it did not prevent use, users simply avoided the progress of the tractor.
76. Section 12 of the Inclosure Act 1857 *“Protecting from nuisances town and village greens and allotments for exercise and recreation”*, makes it an offence to carry out any act to the injury of the green or to the interruption of the use or enjoyment thereof as a place for exercise and recreation, and under Section 29 of the Commons Act 1876, *“Amendment of law as to town and village greens”*, any encroachment on or inclosure of a green and also any erection thereon or disturbance or interference with, or occupation of the soil thereof, which is made otherwise than with a view to the better enjoyment of the green, is deemed a public nuisance, (the Victorian Statutes). Following the *TW Logistics Ltd v Essex County Council* [2021] 1050 case, it is now established that after registration of land as a TVG, a landowner is entitled to continue to undertake activities of the same general quality and level as it did during the qualifying period and also to undertake new activities which do not interfere with the public’s recreational right, whilst members of the public must exercise their rights reasonably and with respect to a landowner’s use, i.e. the landowners activities are not criminalised by the Victorian statutes in respect of their continuation of those activities after the registration of the land.
77. The Applicant suggests in correspondence dated 5 April 2022 that *“No change to the use of the land is desired or suggested. Should the cattle return*

*at some point in the future on the same basis as when the land **was** partly in agricultural use there shall be no impediment to that occurring. Historically, the multiple streams of use on the land have coexisted harmoniously.” This is echoed by Cllr Graham Hill who agrees, in correspondence dated 5 April 2022, that “...NO change to current free use, access, and possible future cattle grazing (if a return to mixed use happens) is proposed, and that the Application serves only to meet the requirements of policy whilst retaining unfettered use of the application site for residents and local population as a whole. The landowner stands to lose nothing.”*

78. There is a question over whether the whole of the application land has been used for lawful sports and pastimes where the main user of the field has been for walking and dog walking – perhaps the use of linear routes and picking produce at the boundaries of the field, rather than use of the whole of the application land. With regards to berry picking, the Objector states:

*“...It can be assumed that this use was limited to the periphery of the Land as there are no berry-bearing plants elsewhere on the Land. However, whether this claimed use is limited to the northern part of the Land nearest the settlement (which is subject to the trigger event) is wholly unclear.*

*5.19. In any event, such a use does not demonstrate a general use of the entire Land for lawful sports and pastimes. The use would be confined to the extreme margins of the periphery of the Land.”*

Mr and Mrs Whiffen, in their joint statement, suggest that they collected damsons from Axe and Cleaver Lane, which could be a reference to the northern section of the land not subject to the current TVG application where the entrance to the fields from Axe and Cleaver Lane is located.

79. On dog walking and general dog walking, it is noted that there are several recorded rights of way over the land and aerial photographs suggest a series of unrecorded routes, (see **Appendix 5**). The Applicant provides a map of the recorded and unrecorded paths as included at paragraph 58. In evidence several of the witnesses refer to using paths on and around the land and some refer to routes leading over the land and beyond, for example, to Southwick. The application itself at “7. Justification for application to register land as a town or village green” states:

*“The unfettered use of the land has been unchallenged over this period and is symbolised by the footpaths and trackways formalised upon it.*

*Divergence from these footpaths and/or trackways has not been challenged either formally or informally.*

*Maintenance and enhancement of access points have been supported by both the landowner and Wiltshire Council as demonstrated in attached photographs and documents.” (Officer’s emphasis added).*

P Allsop – “I have walked our dogs nearly every day on the permitted footpaths through the fields around Boundary walk, Southwick Court and through to Southwick.” (Officer’s emphasis added).

T Allsop – “I walk my dog daily on the permitted footpaths through the fields around boundary walk, southwick court and beyond.” (Officer’s emphasis added).

M & J Oliver – “We have brought up four of our children here and made use of many of the rights of way for walking, jogging and playing, as well as enjoying the countryside pleasures of green fields, trees and shrubs, picking blackberries and watching wildlife.” (Officer’s emphasis added).

S & P Willcox – “We have also organised community walks through those fields...”

80. Officers agree that the use of recorded public rights of way over the land to traverse the land is not qualifying user, where use is “by right” rather than “as of right”, such use would not have appeared unreasonable to the landowner, as the Inspector Mr W Webster sets out in his advisory report regarding the Hilperton TVG application:

*“18. ...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’.”*

81. The Objector also makes the point at 5.29 of their correspondence dated 17 December 2021 that where the application refers to the improvement of points of access to the land, including the replacement of stiles with a kissing gate, “It would be a criminal offence for the Owner to stop up the access points to the public rights of way. Therefore, the presence of the access points, (including the carrying out of works to make access points safe or more widely accessible) should be discounted.” Officers agree that where there are rights of way recorded on the definitive map of public rights of way, improvements to the access points may be in relation to those rights of way and not necessarily in relation to wider access to the whole of the land. It may have appeared to



the landowner that the public were exercising their right to use the legal rights of way which cross the land. In correspondence dated 5 April 2022 the Applicant refers to photographs in evidence (please see **Appendix 9**) which *“...appear to show the stopping up of access points. This would appear to be run contrary to the point made within the Objection.”*

82. Witnesses do not include a map of the area of land upon which they have carried out and/or observed activities taking place and in this case the northern section of the land is excluded from the application where there is a current trigger event in place, without a corresponding terminating event, there is no representation or evidence presented to dispute the CRA's findings on the trigger event point. Mr and Mrs Elphick state:

*“We use the fields where the development is proposed, and beyond that, for recreational purposes.”*

However, the Objector makes the following point (correspondence dated 17 December 2021):

*“3.2 It should be noted that the trigger event applies to the vast majority of the Land covered by the Application. The trigger event applies to the land closest to the housing and the locality which is alleged to have used the land for lawful sports and pastimes.*

*3.3. As the Application was made with reference to the whole site, the evidence submitted does not differentiate between the use made of the northern part of the site which is now subject to a trigger event or the southern part of the site which is much further away from the settlement. Therefore, it is wholly unclear what use is claimed to have been made of the southern part of the Land.*

*3.4. The weight to be attached to the representations must therefore necessarily be reduced. It is reasonable to assume that, if the claimed activities did occur, they would have been focussed on the northern part of the land nearest the settlement.”*

83. On this point, the Applicant states, in correspondence dated 5<sup>th</sup> April 2022:

*“3.4. All representations made during the consideration of the application were submitted specifically in reference to the Southern part of the land currently standing as an active Town or Village green Application. Earlier submissions only reinforce the access to the entire site which has been, and continues to be, fully open for public use. The assumption that the responses relate to the Northern part of the land is made without any evidence or justification. Clearly long-time users of the land have been aware of where they were in relation to the cardinal points of the compass.”*

84. It is true that the evidence submitted with the application is likely to refer to the whole of the application land which was subject to the original application, however, following the discovery of planning trigger events which excluded part of the land from registration as a TVG, the acceptance of the application only in part, (i.e. the southern part of the land), was advertised and comments submitted at the consultation stage are likely to be in reference to the southern section as set out in the notice of application.

The Objector's correspondence dated 23<sup>rd</sup> May, states:

*"3.1. The application had been submitted in respect of the whole site. However, following the Council pointing out that the northern part of the site (i.e. closest to the housing) had been subject of a trigger event, the application has been amended and further evidence has been submitted.*

*3.2. Nonetheless, it remains the case that it is wholly unclear whether the majority of the supporting evidence still relates to the whole site (which was subject to the original application) or just the southern part (which is now the subject of the application).*

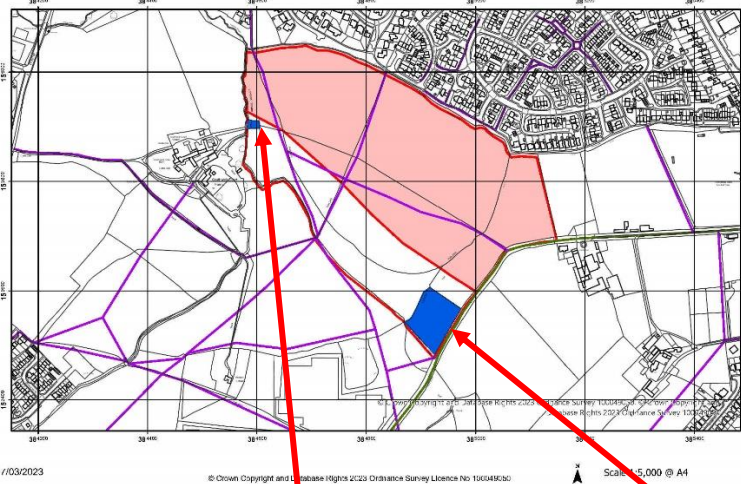
*3.3. By way of example, reference is made in one of the supporting representations to a swing ("even a swing was popular this year attached to a substantial tree.") [H Chamulewicz e-mail dated 12/12/2022] The substantial tree in question is a boundary oak tree located on the boundary closest to the housing. This is outside the area which is now the subject of the TVG application.*

*3.4. Therefore, there is evidence that at least some of the respondents have misunderstood the extent and nature of the revised application.*

*3.5. It remains the case that the vast majority of evidence is ambiguous as to where uses are claimed to have taken place. Accordingly, as before, the weight of such evidence must necessarily be reduced."*

85. As the Inspector points out in the Hilperton TVG application case, *"The real difficulty with the written statements is that...the evidence does not deal with the precision that is required as to where these witnesses walked when they were on the land..."* There is insufficient detail given in the user evidence provided, to establish which activities were taking place on which parts of the land and hearing from the witnesses at a public inquiry would provide additional information. However, even if the northern section of the land is excluded from the application land, there are recorded rights of way over the northern section over which the southern area and the identified locality are linked and accessible. There is also access to the southern section of the application land the from Axe and Cleaver Lane to the south, and from existing rights of way and highways in order that the locality and the southern section of the land, remain linked.

86. The separate field identified in the map below, appears to have no available access point, being surrounded by mature hedges on all sides to the land around it forming the main part of the application land and a ditch to the western side, other than a gate on Axe and Cleaver Lane, which was locked when Officers from the CRA carried out a site inspection in November 2021. Climbing over the gate would result in use by force, which is not user as of right and must be discounted for the purposes of the town/village green application land. No evidence has been provided regarding the gate and it is not clear how long it has been present/locked, there is no further evidence of how long this section of the land has been inaccessible. Certainly aerial photographs date 2001; 2005/06; 2014 and 2020/21, (see **Appendix 5**), show this as a separate field. Additionally at the north-west side of the land there is an area of pens, which appear to be inaccessible to the public in November 2021 at least, again there is no evidence of how long the area has been made up of pens and how this may have affected use by local inhabitants, (climbing over the gates/fences would be attributable to user by force and not qualifying user “as of right”). This feature does appear on aerial photographs 2001 – 2020/21, (see **Appendix 5**):



Inaccessible areas of land – proposed to be excluded from TVG application =



Pens area which appears to be inaccessible for use by local inhabitants in the exercise of lawful sports and pastimes.



Padlocked gate into separate field (part of TVG application land), off Axe and Cleaver Lane (Bridleway no.3 North Bradley).

87. Therefore, Officers suggest that the area capable of being registered as a TVG is reduced and the separate field and penned areas of the land, as shown in blue on the plan above, should be excluded from the area of application land, if it is successfully registered as a TVG, where the application and the evidence is silent on access and activities taking place on these sections of the application land.
88. It is clear from the planning application no.20/00379/OUT replies (**Appendix 16**), that the land, forming part of the ancient water meadows system around Southwick Court Fields and adjacent to the Lambrok, is subject to flooding as identified by numerous respondents. As B Johnson, Flood Warden for Southwick sets out (16 November 2021), *“These two streams [Lambrok and tributary] combine to become what the Environment Agency has classed as a main river, causing an extensive Flood plain (flood zone 2/3) after heavy*

*rainfall. Fields and neighbouring gardens in Blind Lane and fields and roads in Brookmead have severely flooded at least 5 times since the year 2000 and probably many years before then. In 2014 flooding was experienced in both January and July...To utilise this floodplain in the past, medieval farmers sited ridge and furrow field workings here...‘Groundwater flooding’ has been mentioned but I understand that this is found where the underlying ground formation is of chalk. In this area the soil is of heavy clay construction. When the surface becomes saturated, the underlying clay prevents subsequent rain fall or flooding from being absorbed and it lays on the surface as fluvial flooding or surface water flooding, this is what is experienced here, not groundwater flooding...a number of photos from local residents have shown substantial fluvial and surface water flooding here, often twice a year and in subsequent years...It seems probable, as local residents have suggested that flooding has occurred here far more frequently than records suggest...On the evening of 9<sup>th</sup> August 2021 Southwick Village suffered surface water flooding in what all agencies agreed was an extreme weather event, when homes, numerous gardens, roads , (including the A361 Frome Road,) and sewers flooded and the Chantry Gardens pumping station was at 97% capacity.”*

*B Johnson 26 March 2021 – “...the effects of climate change have been increasingly apparent in Southwick. This is an area known as the ‘clay vale’ that has always suffered from fluvial and surface water flooding hence the present [sic] of numerous medieval and post medieval water meadows. In recent years prolonged periods of heavy rainfall have resulted in numerous instances of flooding in connection with the Lambrok waterway. No longer just ‘more than once in 30 years’ but now several times every year and the areas of flooding have also increased.”*

*North Bradley Parish Council 7 December 2021 – “The fields south of Trowbridge are ancient water meadows and are regularly flooded by the Lambrok stream from both the horizontal watercourses that skirts to ground of Southwick Court house and the vertical watercourse that joins that stream from the direction of North Bradley.”*

*Cllr G Hill - Report sent 1 November 2021 - “The photos are genuine and give visual evidence that flood events not only occur, but do so on a regular basis...the combination of fluvial and surface water flooding events generally occur a handful of times each year.”*

89. The comments reflect the area as a recognised floodplain, subject to regular and increasing flood events. It is not clear from the evidence provided in the TVG application, how the flooding of the land may affect use by local inhabitants, there is no mention of flooding, only the planning application replies reveal any evidence that this flooding might prevent use, e.g:

*S Wain – “I know these fields fairly well as I walk around them nearly every day in the summer. I tend to avoid them in winter as they are so*

*waterlogged, for days after heavy rain there are large puddles all over the place.”*

*S Pisarewicz – “The fields south of Trowbridge are ancient water meadows and are regularly flooded by the Lambrok stream, I know this because I walk them regularly in the Summer when they are firm. I avoid them as they are marshy and water logged throughout the Autumn and Winter especially at the end of Spring Meadows...”*

90. However, the survey of users of the fields as set out in the planning application replies from Mr R Williams, (please see paragraph 15 above), suggests heavy use of the land in February/March, i.e. 3,545 recorded visits in one month. Although the planning replies are made in relation to development of the excluded area of the application land, photos reveal the flood area extending into the active TVG application land.

**On the Land –**

The northern section of the land is excluded from the application by the presence of planning trigger events, which is not in dispute. However, the Objector disputes the existence of and validity of any evidence relating to use of the southern part of the land still capable of registration, given the exclusion of the northern section.

The smaller field, which is not accessible from the remaining land or Axe and Cleaver Lane, appears incapable of registration, although it is not clear how long the current gate has been in place and locked and further evidence on this point would assist the CRA in its determination of the application.

The question of whether or not the whole of the application land has been used for lawful sports and pastimes remains, where the main user is walking; dog walking and picking wild produce, perhaps utilising only linear routes, recorded/unrecorded footpath across the fields and the field edges.

The land appears to be liable to flooding, it is not clear to what extent this has prevented/interrupted user of the land for lawful sports and pastimes.

It is considered that hearing evidence from witnesses and the cross-examination of witnesses on these points, in relation to the land, at a public inquiry, would assist the CRA in its determination of this application, where all elements to establish a new green must be satisfied, on the balance of probabilities.

**For a period of at least 20 years**

91. To satisfy the 20 year user test, with use continuing at the time of application, the user period in question is November 2000 – November 2020. Please see user evidence chart at **Appendix 14**.
92. There is no requirement for all of the witnesses to have used the land for a full period of 20 years, rather the evidence may have a cumulative effect to demonstrate public user for a period of 20 years. In this case 19 witnesses have used the land within the identified user period 2000-2020 and 14



witnesses have used the land for the full 20 year user period. There is also use prior to the relevant 20 year user period, the earliest being from 1973.

93. Mr Swanney mentions cattle being present and agricultural activities taking place on the land, which appear to have had little impact upon use and the two activities have co-existed, i.e. there is no evidence provided within the TVG evidence of a significant interruption/s to the period of user which would stop the clock ticking on the acquiring TVG rights over the land. The ploughing of the land would not be consistent with user for the purposes of lawful sports and pastimes. However, there is evidence of flooding events taking place on the land in the planning application responses, it is not clear what effect these events have had on use of the land for lawful sports and pastimes and any interruption they may have caused, further information on this point is required.

94. The Objector states (17 December 2021):

*“4.1. None of the evidence submitted claims to cover the necessary 20 year period.*

*4.2. Document 7.1 appended to the application is a form signed by 23 people giving their names and addresses...the form provides no details as to the duration, location or frequency of the claimed activities.*

*4.3. No information is given as to how long the signatories have lived at the address...*

*4.5. The only piece of evidence which provides details as to how long the person making the statement has lived in the locality is the letter from Graham Hill (Document 7.2). Mr Hill states that he has been resident in the locality for 18 years. This is insufficient for the purposes of meeting the criteria of the Commons Act.”*

95. In order to try to address this point, the Objector writes on 5 April 2022:

*“In reply to Clarke Willmott’s dismissive comments over the ‘20 year’ issue...I have asked a selection of neighbours to state exactly how many years they have used the fields and have been familiar with the lack of restrictions on access...*

*It must be noted at this point that the application for the land as marked on the submission validated by Wiltshire Council Officers need only be submitted by **one** individual. The presentation of additional sworn statements only serves to add validity to the applicant and illustrate the quantity and use of the identified site. Any comment seeking to undermine the presented Application by a criticism of these additional voices is irrelevant to the consideration of the application.*

*The comments within this section of the objection are ill-founded and without any basis of fact. The Objection should therefore be summarily rejected in this particular.*

*4.1. Submissions from residents sworn and countersigned by a solicitor are contained within the original application. These specify “over 20 years”. This objection is groundless.*

*4.2. This is the document referred to in 4.1. [Petition 1] and meets the criteria for evidence as published. It leaves no room for doubt about the minimum period of 20 years.”*

96. Petition 2 submitted with the Applicant’s comments on the objections (5 April 2022), states:

*“We the undersigned wish to register our continued support for the **Village Green Application** on Southwick Court fields (ref. 2020/02TVG (Southwick Court Fields, Southwick and North Bradley Parishes). We have used the land identified in the attached map **without stay or let** for the number of [years] indicated below. This access has not been restricted by any party. This includes not only the marked footpaths, and identified trackways. Access has been continuous including the occasional time that cattle have been present, prior to their withdrawal in 2020.”*

The petition is then completed (not signed) by 20 individuals, giving address (all residents of the identified locality, Grove Ward), and “*Number of YEARS familiar with the use of the fields*”, ranging between 21 and 51 years. However, the individuals do not sign the document and they are asked only to clarify the length of time familiar with the use of the field, it is not clear from the petition for what years they have known the land, whether they have used the land themselves during that period or observed use of the land by others and for what purposes have they used/observed use of the land. The timescales listed in Petition 2 are not included in the user evidence chart at **Appendix 14**, as there are no dates referred to for the time periods quoted. 10 of the individuals have, however, submitted additional written statements of their knowledge of the land and in the case of those individuals this petition is certainly supportive of those evidence statements, i.e. S Willcox; P Willcox; G Whiffen; M Whiffen; N Swanney; A Swanney; D Goodship; R Hunt; M Stevens and L Stevens. This petition has only limited value in the case of the remaining individuals who have not submitted other evidence of their knowledge of the land. It is noted that in correspondence dated 5 April 2022, Cllr Graham Hill states “...*should this process continue beyond May of 2022 I can declare that I have enjoyed unrestricted use of the Application site for 20 years.*”

97. In correspondence dated 23 May 2022, the Objector responds as follows:

*“4.3. Mr Swanney’s April statement contains a table containing 20 names. The final column of the table is headed “Number of YEARS familiar with the use of the fields”. “Familiarity” with the fields is not sufficient to demonstrate use for the purposes of a TVG application. Evidence needs to be provided to demonstrate use for lawful sports and pastimes (with a sufficient quality of user) as of right by a significant number of the inhabitants of the locality. The table does nothing to assist with proving such use.*

*4.4. Of those 20 names, many appear to be from the same household (although the names have been split up to reduce this impression). 6 out of 20 people listed have provided separate written representations. It is important that they are not counted twice.*

*4.5. During the pandemic, many people began accessing their local countryside more frequently (due to lockdown restrictions). This phenomenon was seen in edge-of-town countryside locations around the country. Therefore caution should be exercised in taking the evidence relating to the use of the site since March 2000 as being representative of the use of the site over the preceding period. The landowner has noticed a very significant increase in both the use of the site and the instances of damage being caused to fences and gates during this period.*

*4.6. This makes it even more important to have regard to evidence of the frequency and nature of the claimed uses in the earlier part of the 20 year period. The evidence relating to that period is insufficient to meet the statutory requirements.”*

**For a period of at least 20 years:**

The user period in question in this case is 2000-2020, with application to register the land as a TVG being made in November 2020 and use claimed to be continuing at the time of application.

There is evidence of use/knowledge of use of the land during the relevant period, as shown on the user evidence chart **at Appendix 14**.

However, the landowner, as the Objector, disputes the level of evidence for 20 years use, particularly in relation to the early part of the 20 year user period, given increased use, seen nationally at countryside locations, during the covid lockdowns.

Where the evidence is disputed, it is considered that hearing direct evidence from all parties and the testing of the evidence through the process of cross-examination at public inquiry, would assist the CRA in its determination of the application, where all elements to establish a new green, must be satisfied, on the balance of probabilities.

## Use continuing

98. The application is made under Sections 15(1) and (2) of the Commons Act 2006, with use continuing at the time of application. On a site visit in 2021, after the submission of the application, Officers of the CRA observed the field to be well used, by walkers/dog walkers, although it is not known if these individuals were local inhabitants. The Objector in fact points out that use of the fields has increased since covid lockdowns, (please see comments at paragraph 97 (4.5) above), and some users point towards their children and grandchildren now using the fields, i.e. generations of families, (please see paragraph 14 above). The user evidence chart attached at **Appendix 14**, shows that 19 witnesses were continuing to use the land at the time of application. There appears to be no event or interruption which has prevented use of the land, however, more detail regarding flooding events and their impact on use of the land are required.

### Use continuing –

There is no dispute in the evidence that use is continuing at the time of application in November 2020, however, additional information regarding flooding events taking place on the land would assist the CRA in its determination of the application.

## Comments / Objections on other matters

### Planning and Policy:

99. At 5.2 of the TVG application the Applicant lists “*Wiltshire Council official description of land*” including the Wiltshire Housing Site Allocations Plan (WHSAP) Sustainability Appraisal Report, Annex 1 A.9 Trowbridge Principal Settlement (May 2018), which makes several references to the land as open space/informal recreation space, as follows:  
*To the east/north-east of the site are a series of open fields used as pasture and informal recreation...*  
*The site comprises two large agricultural fields used for livestock grazing and informal recreation...*  
*The site comprises greenfield, agricultural land/informal open space...*  
*The site functions as a green infrastructure corridor...*  
*The land is currently greenfield and trafficked by walkers/dog walkers using the footpaths and fields for recreation...*
100. Cllr G Hill sets out in correspondence dated 15 December 2021 that “...all of the documents were included in the Examination library for the 2019 WHSAP Inspection. The documents were therefore open to scrutiny and challenge by the proposed developer of the adjacent site H2.6 and the landowner and his agents/advisors.”

Cllr Hill considers that where the WHSAP Sustainability Appraisal Report *“repeatedly classifies the area as “informal recreation land”*, there is no challenge to this description, in his view the only reasonable explanation for this being that the Landowner and their advisors saw no fault in this description. This acceptance is demonstrated by the removal of sections of fencing to facilitate access to the public along the notified footpaths and gates, previously used to retain cattle being left open or removed: *“All these changes indicate a desire to give unrestricted access to the land by the landowner...”*

101. Part of the proposed TVG application land is identified as site H2.6 in the WHSAP and is removed from the TVG application land where it is subject to a planning trigger event, therefore the land descriptions above, as set out within the WHSAP are not directly applicable to the remaining land, although given the similar nature of the land, access points and presence of public rights of way on the land, the use is likely to be similar. As Cllr G Hill states in correspondence dated 5 April 2022, *“The Application in no way interferes or hinders the allocation site of H2.6.”* and the Applicant states, in correspondence dated 5 April 2022 – *“3.2 None of the land included in the Application impinges in any way shape or form on the WHSAP allocation. There is no element of the application which has anything but a positive impact on the allocation, supporting as it does declarations made in the Outline Planning Application, the amended DAS and existing Wiltshire Council Policy.”*

102. The Objector claims in correspondence dated 17 December 2021 that *“1.3 It is clear that the application to register the land has been made in an attempt to frustrate the development of the Land. Much of the submitted “evidence” is simply an attempt to re-open the planning merits of the development. Such representations are irrelevant to an application to register the land as a TVG.”*

And in correspondence dated 23 May 2022 *“...where material is irrelevant to the TVG application (such as continued references to the planning process or erroneous allegations the land should be considered to be “public realm”), we have refrained from commenting on such material. We are content to rely on the decision maker to disregard such content.”*

103. Cllr G Hill sets out that *“...the Strategic Plan, albeit in the final stages of consultation, has from its inception rejected any further development on the Southern fringes of the Trowbridge Community Area. By designating this portion of the buffer between Trowbridge and the villages of North Bradley and Southwick as a Village Green greater protection will exist in Law to support this Policy.”*

104. Cllr D Vigar sets out in correspondence dated December 2021 that *“The draft Planning for Trowbridge document presented as part of Wiltshire Council’s current draft Local Plan reiterates (para 35) the objective of retaining undeveloped land on the edge of the town to act as a green infrastructure*

*corridor and preserve the separate identities of villages such as Southwick. This supports Wiltshire Council's Core Policy 29 which requires the maintenance of a buffer zone between Trowbridge and the villages of North Bradley and Southwick."*

105. Cllr G Hill in correspondence dated 5 April 2022 expands on Policy CP29 *"The Application supports Wiltshire Council Policy with direct reference to CP29 (CP29 is a policy in the CS which protects the character and identity of Southwick and North Bradley as separate communities. Integral to this is the preservation of the undeveloped countryside that lies between them.), and also CP51 (detail below). The replacement of any land with unrestricted access being replaced by a higher quality and quantity of land. The Westernmost part of the allocation alone fits neither of these criteria."*
106. The TVG application at 7.4 also refers to County Policy in the Wiltshire Council Leisure and Recreation Development Plan Document, the Applicant states: *"It is believed that this application enhances to policies and aims within the document."* Officers believe this to be a reference to the West Wiltshire District Council Leisure and Recreation Development Plan Document, adopted February 2009, to provide a spatial planning framework for the immediate future provision of leisure and recreation open space in the district including the allocation of additional sites. Although not specific to the TVG application land, the provision of additional public open space by TVG registration, would meet the identified need set out within the document, to promote healthy lifestyles and greater physical activity and to improve opportunities for people to access recreation including parks, open and water spaces.
107. Whilst the registration of the land as a TVG could assist Wiltshire Council in meeting certain planning and leisure policies, these are not considerations permitted in the determination of an application made under Section 15(2) of the Commons Act 2006. It is only possible to consider the evidence of use of the land by local inhabitants for lawful sports and pastimes, as of right for a period of 20 years or more.

### **Wildlife and Heritage Protection**

108. There is support for the application for the purposes of:
  - i) Wildlife protection, including The Trowbridge Bat Mitigation Strategy (TMBS), as identified by Cllr G Hill *"The TBMS is a Policy adopted by Wiltshire Council subsequent to the adoption of the WHSAP. The establishment of a Village Green along the East-West arm of the Lambrok ensures that that element of the acknowledged Bat Corridors will remain inviolate and secured."* The site lies in a yellow zone and is particularly important for its population of Bechsteins bat.



- ii) Heritage protection, i.e. Southwick Court as a grade II\* listed building with gatehouse and bridge over the moat, and the ancient water meadows.

However, these are not considerations permitted in the determination of an application made under Section 15(2) of the Commons Act 2006 to register land as a TVG. It is only possible to consider the evidence of use of the land by local inhabitants for lawful sports and pastimes, as of right for a period of 20 years or more.

## **Conclusion**

109. In the Southwick Court Fields case, the evidence of whether a significant number of inhabitants of any locality, or neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, with use continuing at the time of application, is in dispute. Matters of particular conflict within the evidence include the main use of the land identified as walking, with or without dogs, and fruit/produce picking at the perimeter of the application land, taking place on recorded public footpaths over the land and unrecorded tracks and pathways, which raises a number of issues:
  - i) Whether the use would appear to a reasonable landowner to be attributable to the exercise of a right of way along a defined route, or wider use of the land for lawful sports and pastimes.
  - ii) Qualifying user “as of right”:
    - the use of recorded public rights of way “by right” rather than “as of right”;
    - was use of the land for lawful sports and pastimes sufficient to bring such use to the attention of the landowner to challenge that use if they so wished.
  - iii) If the use of recorded/unrecorded public rights of way is removed as qualifying user, is the remainder of the use for lawful sports and pastimes sufficient to support registration.
110. As there is a significant dispute regarding the facts of the case, which are likely to be resolved by hearing from the witnesses, it is proposed that an independent Inspector be appointed on behalf of the CRA to preside over a non-statutory public inquiry at which the evidence of all parties will be heard and tested through cross-examination, and to provide a report and recommendation to assist the CRA in its determination of the application to register land known as Southwick Court Fields, Southwick and North Bradley, as a TVG, as soon as is reasonably practicable.