

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)

Birmingham | Bristol | Cardiff | London | Manchester | Southampton | **Taunton**  
Blackbrook Gate Blackbrook Park Avenue Taunton TA1 2PG

Details of how we use your information can be found on our [website](#)



[Subscribe to our updates](#)

Please consider the environment before printing this email

---

**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]

**\*\* This is an external email, please forward any concern with it to 'Information Security Incident' \*\***

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)

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)

Follow Wiltshire Council



Follow Wiltshire Countryside



---

**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)

Birmingham | Bristol | Cardiff | London | Manchester | Southampton | **Taunton**  
Blackbrook Gate Blackbrook Park Avenue Taunton TA1 2PG

**Details of how we use your information can be found on our [website](#)**



**Subscribe to our updates**

 **Please consider the environment before printing this email**

**Fraudsters target law firms and their clients in an attempt to divert funds to their own bank accounts or to obtain confidential information. If you receive a suspicious or unexpected email from us, or purporting to have been sent on our behalf, please do not reply to the email, click on any links, open any attachments, or comply with any instructions contained within it. Instead, please telephone your Clarke Willmott contact to verify the email, and any account details that are provided if applicable. Clarke Willmott cannot take responsibility for any losses arising from your transfer of funds or disclosure of confidential information.**

Clarke Willmott LLP is a limited liability partnership registered in England and Wales with registration number OC344818. It is authorised and regulated by the Solicitors Regulation Authority (SRA Number: 510689), whose rules can be found on the SRA website. Its registered office is 1 Georges Square, Bristol, BS1 6BA. Any reference to a 'partner' is to a member of Clarke Willmott LLP or an employee or consultant who is a lawyer with equivalent standing and qualifications and is not a reference to a partner in a partnership.

Information contained in this email is confidential to the intended recipient and may be covered by legal professional privilege. If you receive this email in error, please advise by return email before deleting it; you should not retain the email or disclose its contents to anyone. Clarke Willmott LLP has taken reasonable precautions to minimise the risk of software viruses, but we recommend that any attachments are virus checked before they are opened. Thank you for your cooperation.

Any offer contained in this communication is subject to Clarke Willmott LLP's standard terms of business. Clarke Willmott LLP does not accept service of proceedings by e-mail. It may monitor e-mail communications in accordance with applicable law and regulations. Clarke

Willmott LLP's VAT registration number is GB 129 9130 60.

-----

This email originates from Wiltshire Council and any files transmitted with it may contain confidential information and may be subject to Copyright or Intellectual Property rights. It is intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the sender and delete the email from your inbox. Any disclosure, reproduction, dissemination, modification and distribution of the contents of the email is strictly prohibited. Email content may be monitored by Wiltshire Council to ensure compliance with its policies and procedures. No contract is intended by this email, and any personal opinions expressed in this message are those of the sender and should not be taken as representing views of Wiltshire Council. Please note Wiltshire Council utilises anti-virus scanning software but does not warrant that any e-mail or attachments are free from viruses or other defects and accepts no liability for any losses resulting from infected e-mail transmissions. Receipt of this e-mail does not imply consent to use or provide this e-mail address to any third party for any purpose. Wiltshire Council will not request the disclosure of personal financial information by means of e-mail any such request should be confirmed in writing by contacting Wiltshire Council.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd.**

## 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**