

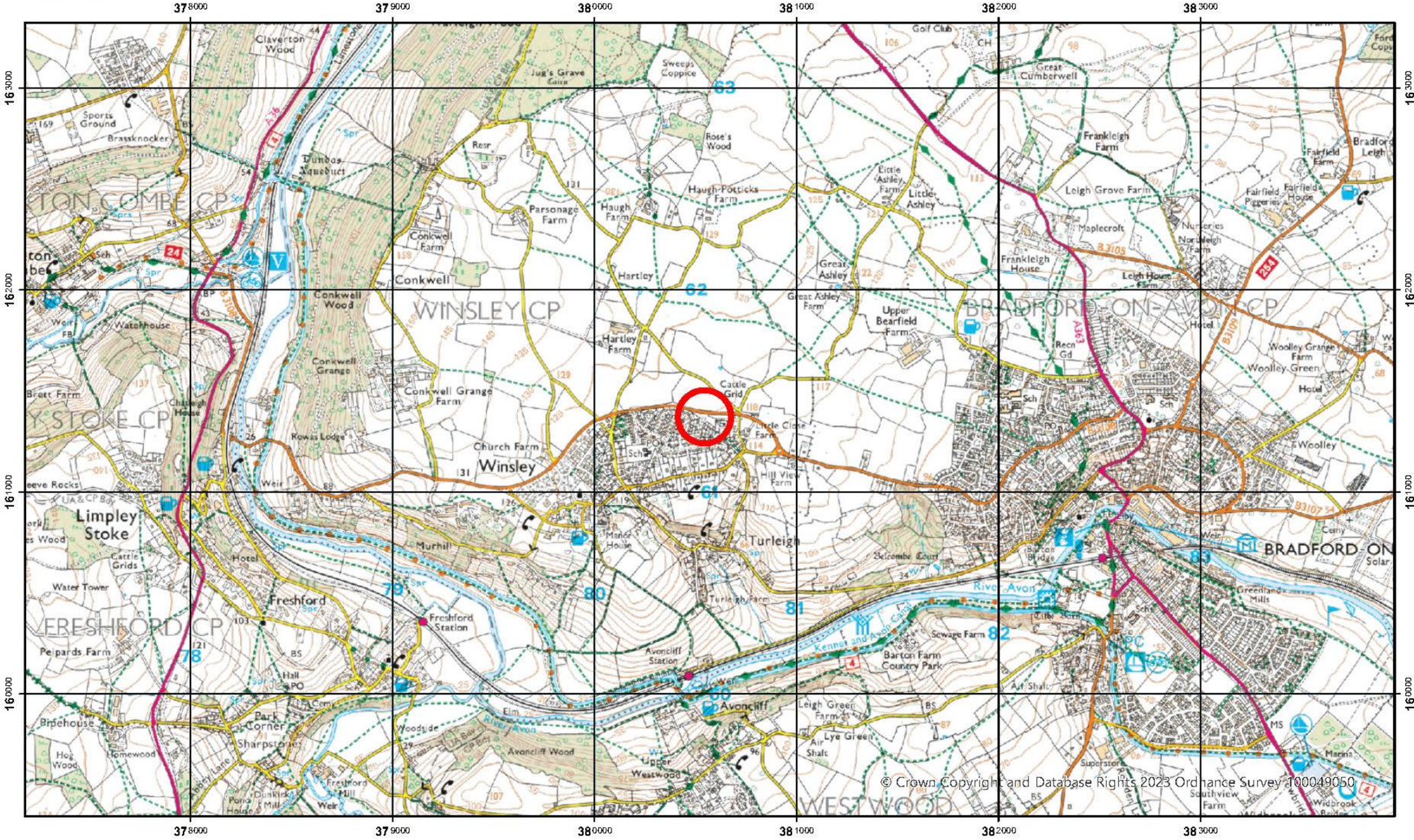
**COMMONS ACT 2006 – SECTIONS
15(1) & (2) – APPLICATION TO
REGISTER LAND AS A TOWN OR
VILLAGE GREEN – NORTHFIELD
PLAYING FIELD, WINSLEY
(APPLICATION NO: 2021/01TVG)**

**AGENDA ITEM NO.7
WESTERN AREA PLANNING COMMITTEE:
5 JUNE 2024**

**JANICE GREEN – SENIOR DEFINITIVE MAP
OFFICER**

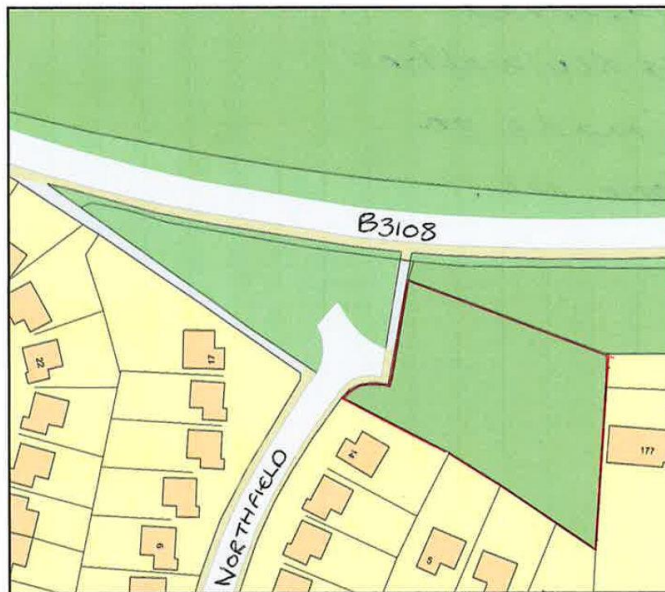
Location Plan

APPENDIX 1 - LOCATION PLAN NORTHFIELD PLAYING FIELD, WINSLEY



Application Plan – Northfield Playing Field, Winsley (Application no.2021/01TVG)

Northfield Playing Field

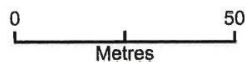


~~Green A~~

~~Map~~

EXHIBIT A

- Boundary of
Northfield Playing
field



Plan Produced for: Winsley Parish Council

Date Produced: 28 Feb 2021

Plan Reference Number: TQRQM21059144557323

Scale: 1:1250 @ A4

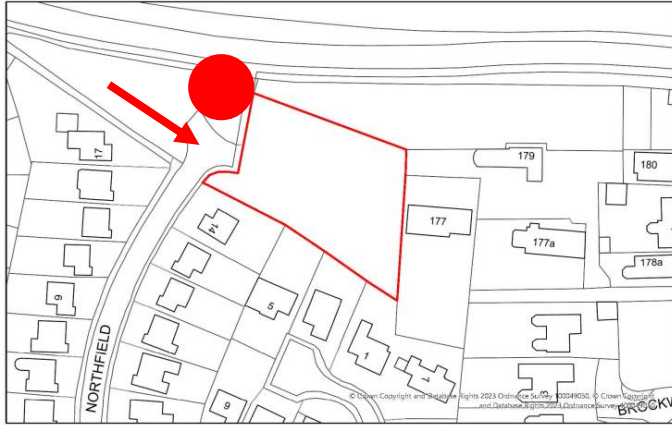
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Application land looking generally south-east

Wiltshire Council

Northfield Playing Field, Winsley



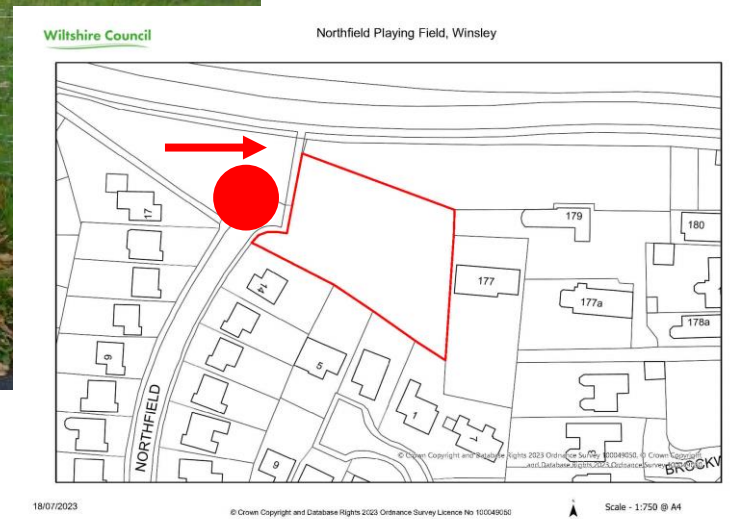
18/07/2023

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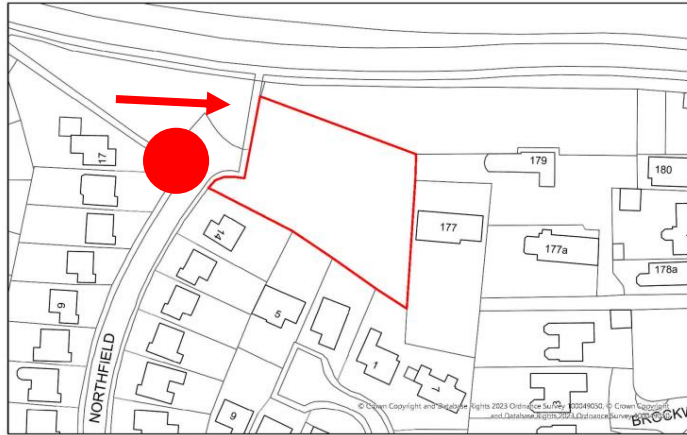
Application land looking generally east. The land is now fenced, but at the time of application in March 2021, the land was open to the highway Northfield



The application land looking generally east

Wiltshire Council

Northfield Playing Field, Winsley



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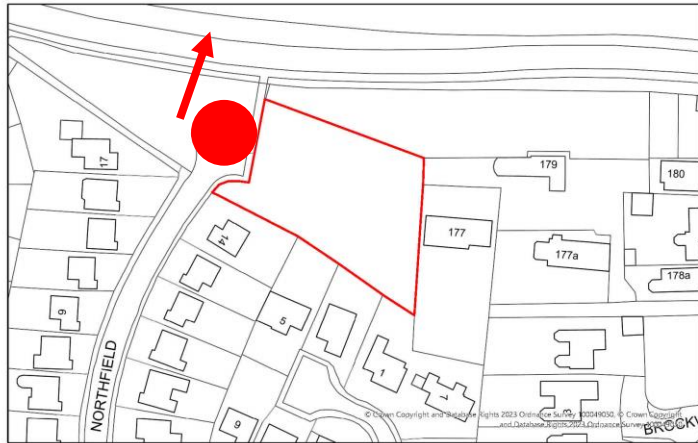
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Adjacent to the application land, looking generally north towards the B3108 Road, Winsley Bypass

Wiltshire Council

Northfield Playing Field, Winsley



18/07/2023

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Scale - 1:750 © A4



The Legislation

Application to register land as a Town or Village Green (TVG), Northfield Playing Field, in the parish of Winsley, is made under sub-sections 15(1) and (2) of the Commons Act 2006:

Sub-section 15(1) states:

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.

The Legislation

Sub-section 15(2) states:

(2) This subsection applies where –

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

Where the application is made in 2021, the 20 year user period in question is 2001 – 2021, with use continuing at the time of application.

The Application

- The application is made by Winsley Parish Council.
- The application is date stamped as received by Wiltshire Council as the Commons Registration Authority (CRA): Application no.2021/01TVG, 1st March 2021.
- The application land is located within the parish of Winsley, to the west of Bradford-on-Avon and north-west of Trowbridge.
- The application land is known as Northfield Playing Field, located at the northern end of Northfield, on the Tynings Estate, to the south of the B3108 Winsley bypass.
- The land is in the registered ownership of BK Land and Estates Ltd (BKLE), who purchased the land in March 2021.
- 171 parties provide evidence in support of the application.
- There are 2 objections to the application:
 - (i) on behalf of the landowner BKLE
 - (ii) Mr B Cooper
- Wiltshire Council as the CRA must remain neutral and determine the application in a manner which is fair and reasonable to all parties.

Planning Trigger and Terminating Events

Growth and Infrastructure Act 2013 Section 16 – insertion of Section 15C into Commons Act 2006 - the removal of the right to apply to register land as a TVG where specified planning “trigger” events have occurred, e.g:

- An application for Planning Permission in relation to the land is first publicised
- A Draft Development Plan which identifies the land for potential development is published for consultation
- A Development Plan which identifies the land for potential development is adopted

Right to apply to register land as TVG is revived where corresponding planning “terminating” events have occurred, e.g:

- Planning Permission is refused and all means of challenge by legal proceedings in the UK are exhausted and the decision upheld
- A Draft Development Plan is withdrawn, or adopted
- A Development Plan is revoked, or a policy contained in the document which relates to the development of the land in question is superseded

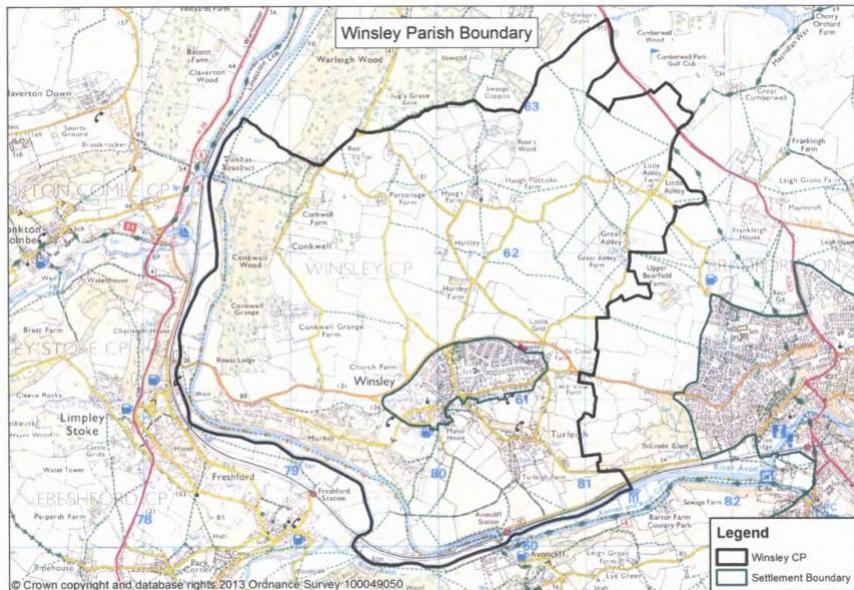
List is not exhaustive and a full list of planning trigger and terminating events is included at Schedule 1A of the Commons Act 2006 (as amended)

In the Winsley case, the Planning Authorities have confirmed that there are no planning trigger events in place over the land which would extinguish the right to apply to register the land, or any part of it, as a TVG.

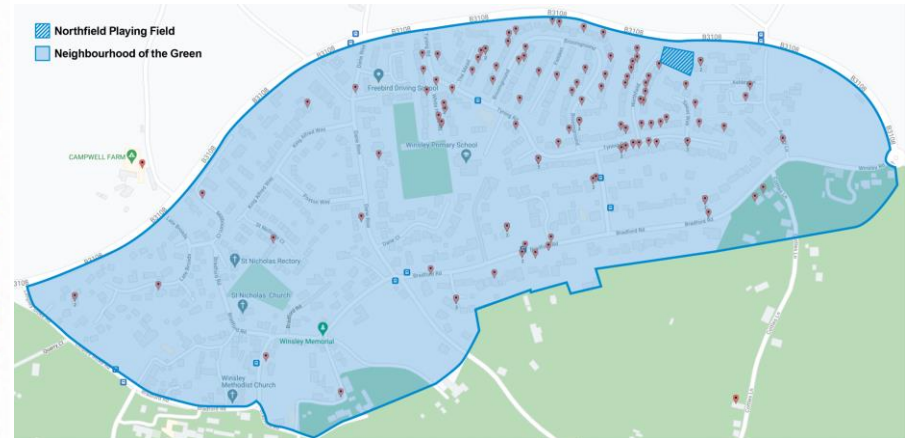
Neighbourhood Within a Locality

- The Applicant has identified Winsley Settlement Boundary, (with some additions), as the relevant neighbourhood within the locality of Winsley Parish.
- 171 parties provide evidence, including 153 current inhabitants and 13 former inhabitants of the Winsley settlement area identified, (where addresses are provided).

Locality – Winsley Parish:



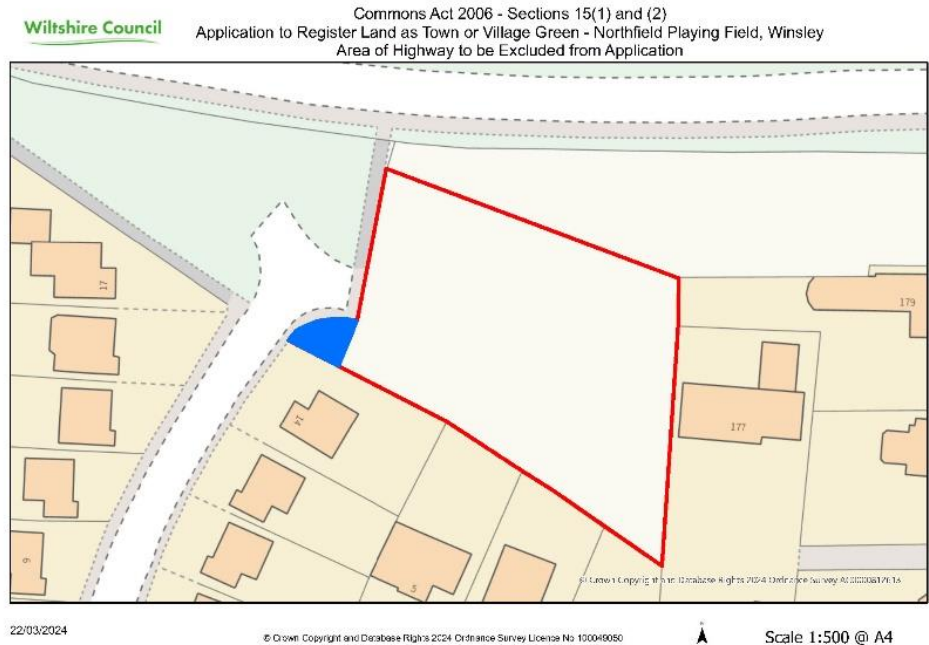
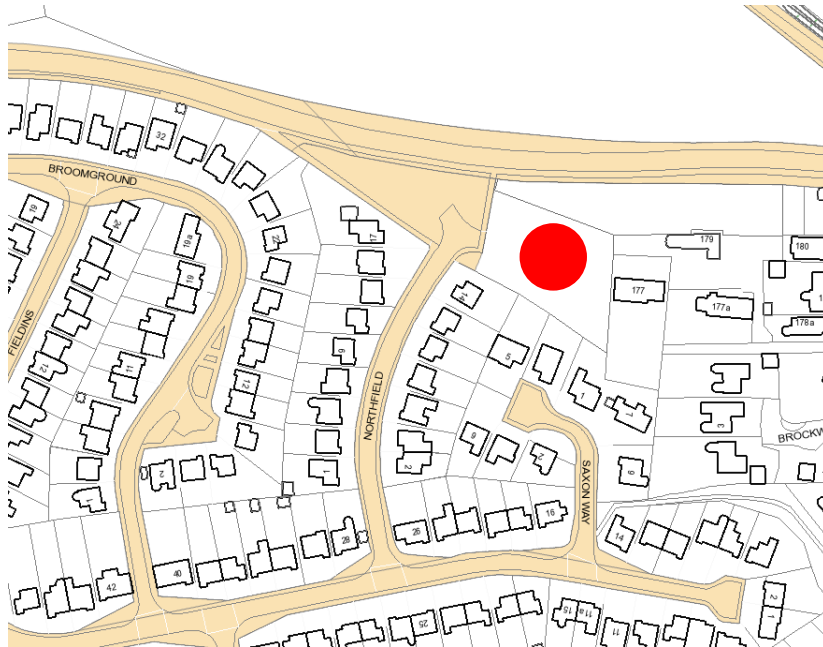
Neighbourhood – Winsley Settlement Boundary (with some additions):



Extent of Highway

- It is not possible to register highway land as a TVG where the exercise of highway rights would be use “by right” and not qualifying use “as of right” to support TVG registration.
- Officers consider that for the purposes of the TVG application it is possible to rely on the current highway record:

Current Highway Record:



- A small section of the land within the red application boundary, is recorded as highway (shaded blue). If the land is successfully registered as a TVG, it will be necessary to exclude this section of highway from the registration.

The Burden of Proof

- In order for an application to be successful each element of the legal test (sub-section 15(2) of the Commons Act 2006), must be satisfied, where it is no trivial matter for a landowner to have land registered as a green, (*R v Suffolk County Council ex parte Steed* [1996] 75 P & CR 102).
- The burden of proof lies with the applicant.
- The CRA has no investigative powers.
- The standard of proof is the balance of probabilities.

The Evidence

Evidence is key and no other matters may be taken into account in the determination of the application.

The evidence of whether a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years, with use continuing at the time of application, is disputed by the Objectors.

3 main grounds of objection:

- i) Identification of Locality or Neighbourhood Within a Locality;**
- ii) User 'as of right';**
- iii) Sufficiency of evidence to satisfy statutory test.**

Non-Statutory Public Inquiry

- It is the duty of the CRA to determine the application in a fair and reasonable manner.
- It is open to the CRA to hold a non-statutory public inquiry where there is substantial dispute of fact, which is likely to be resolved by hearing from the witnesses, or the matter is of great local interest:
R (on the Application of Whitmey) v Church Commissioners
[2004] EWCA Civ 951
- An Inspector appointed by the CRA to preside over the inquiry will hear evidence from all parties and produce a recommendation to the CRA, to assist in its determination of the application. There is no requirement for the CRA to follow the Inspectors recommendation, however, any alternative decision must be supported by clear evidential reasons.
- Oral evidence provided at a public inquiry may be given weight where it is subject to cross examination.

Officers' Recommendation

To appoint an independent Inspector on behalf of the Commons Registration Authority (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 regarding the application to the Western Area Planning Committee to assist the CRA in its determination of the application to register land known as Northfield Playing Field, Winsley, as a Town or Village Green, as soon as is reasonably practicable.

Decision

- **The Committee is acting in its Regulatory function which requires the Committee to act in a quasi-judicial capacity.**
- **When a Committee acts in its quasi-judicial capacity, it must follow a proper procedure which accords with the requirements of natural justice and the right to a fair hearing.**
- **If the Committee uses its power to determine the application against the Officers recommendation to hold a non-statutory public inquiry, the Committee must give legally valid reasons for this determination, which must be supported by evidence.**