

Regulation Committee

Thursday 14 June 2018
2.00 pm Luttrell Room - County Hall,
Taunton



To: The Members of the Regulation Committee

Cllr J Parham (Chair), Cllr N Hewitt-Cooper (Vice-Chair), Cllr M Caswell, Cllr J Clarke, Cllr S Coles, Cllr M Keating, Cllr A Kendall, Cllr M Pullin and Cllr N Taylor

Issued By Scott Wooldridge, Strategic Manager - Governance and Risk - 6 June 2018

For further information about the meeting, please contact Michael Bryant on 01823 359048 or mbryant@somerset.gov.uk

Guidance about procedures at the meeting follows the printed agenda **including public speaking at the meeting.**

This meeting will be open to the public and press, subject to the passing of any resolution under Section 100A (4) of the Local Government Act 1972.

This agenda and the attached reports and background papers are available on request prior to the meeting in large print, Braille, audio tape & disc and can be translated into different languages. They can also be accessed via the council's website on www.somerset.gov.uk/agendasandpapers



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AGENDA

Item Regulation Committee - 2.00 pm Thursday 14 June 2018

**** Public Guidance notes contained in agenda annexe ****

1 **Apologies for Absence**

2 **Declarations of Interest**

3 **Accuracy of the Minutes of the meeting held on 12 April 2018** (Pages 7 - 14)

The Committee will consider the accuracy of the attached minutes.

4 **Public Question Time**

The Chair will allow members of the public to present a petition on any matter within the Committee's remit. Questions or statements about the matters on the agenda for this meeting will be taken at the time when the matter is considered and after the Case Officers have made their presentations. Each speaker will be allocated 3 minutes. The length of public question time will be no more than 30 minutes.

5 **Section 15, Commons Act 2006: Application to Register Land as a Town or Village Green at Shepherds Mead, Norton St Philip** (Pages 15 - 302)

6 **Proposed New Primary School on Land at Nerrols Farm** (Pages 303 - 354)

7 **Erection of a secondary SEN school and primary school on land at the former St Augustine of Canterbury School** (Pages 355 - 394)

8 **Any Other Business of Urgency**

The Chair may raise any items of urgent business.

Regulation Committee – Guidance notes

1. Inspection of Papers

Any person wishing to inspect Minutes, reports, or the background papers for any item on the agenda should contact Michael Bryant, Tel: (01823) 359048 or 357628, Fax (01823) 355529 or Email: mbryant@somerset.gov.uk

2. Members' Code of Conduct requirements

When considering the declaration of interests and their actions as a councillor, Members are reminded of the requirements of the Members' Code of Conduct and the underpinning Principles of Public Life: Honesty; Integrity; Selflessness; Objectivity; Accountability; Openness; Leadership. The Code of Conduct can be viewed at: <http://www.somerset.gov.uk/organisation/key-documents/the-councils-constitution/>

3. Notes of the Meeting

Details of the issues discussed and decisions taken at the meeting will be set out in the Minutes, which the Committee will be asked to approve as a correct record at its next meeting. In the meantime, details of the decisions taken can be obtained from Michael Bryant, Tel: (01823) 359048, Fax (01823) 355529 or Email: mbryant@somerset.gov.uk

4. Public Question Time

At the Chair's invitation you may ask questions and/or make statements or comments about **any matter on the Committee's agenda**. You may also present a petition on any matter within the Committee's remit. **The length of public question time will be no more than 30 minutes in total.**

A slot for Public Question Time is set aside near the beginning of the meeting, after the minutes of the previous meeting have been signed. However, questions or statements about the matters on the agenda for this meeting will be taken at the time when that matter is considered.

The Chair will usually invite speakers in the following order and each speaker will have a maximum of 3 minutes:

1. Objectors to the application (including all public, parish council and District Council representatives)
2. Supporters of the application (including all public, parish council and District Council representatives)
3. Agent / Applicant

Where a large number of people are expected to attend the meeting, a representative should be nominated to present the views of a group. If there are a lot of speakers for one item than the public speaking time allocation would usually allow, then the Chair may select a balanced number of speakers reflecting those in support and those objecting to the proposals before the Committee.

Following public question time, the Chair will then invite local County Councillors to

address the Committee on matters that relate to their electoral division.

If you wish to speak either in respect of Public Question Time business or another agenda item you must inform Michael Bryant, the Committee Administrator **by 12 noon on the last working day prior to the meeting (i.e. by 12 noon on the Wednesday before the meeting)**. When registering to speak, you will need to provide your name, whether you are making supporting comments or objections and if you are representing a group / organisation e.g. Parish Council. Requests to speak after this deadline will only be accepted at the discretion of the Chair.

You must direct your questions and comments through the Chair. You may not take direct part in the debate.

Comments made to the Committee should focus on setting out the key issues and we would respectfully request that the same points are not repeated.

The use of presentational aids (e.g. PowerPoint) by the applicant/agent or anyone else wishing to make representations to the Committee will not be permitted at the meeting.

An issue will not be deferred just because you cannot be present for the meeting.

The Chair will decide when public participation is to finish. The Chair also has discretion to vary the public speaking procedures.

Remember that the amount of time you speak will be restricted, normally to three minutes only.

5. Substitutions

Committee members are able to appoint substitutes from the list of trained members if they are unable to attend the meeting.

6. Hearing Aid Loop System

To assist hearing aid users, the Luttrell Room has an infra-red audio transmission system. This works in conjunction with a hearing aid in the T position, but we need to provide you with a small personal receiver. Please request one from the Committee Administrator and return it at the end of the meeting.

7. Late Papers

It is important that members and officers have an adequate opportunity to consider all submissions and documents relating to the matters to be considered at the meeting, and for these not to be tabled on the day of the meeting. Therefore any late papers that are to be submitted for the consideration of the Regulation Committee, following the publication of the agenda/reports, should be sent to the Service Manager – Planning Control, Enforcement and Compliance (Philip Higginbottom) via planning@somerset.gov.uk in respect of Planning and Town and Village Green items, and to the Senior Rights of Way Officer (Richard Phillips) in respect of Rights of Way items, and should be received no less than 48 Hours before the meeting.

8. Recording of meetings

The Council supports the principles of openness and transparency, it allows filming, recording and taking photographs at its meetings that are open to the public providing it is done in a non-disruptive manner. Members of the public may use Facebook and Twitter or other forms of social media to report on proceedings and a designated area will be provided for anyone who wishing to film part or all of the proceedings. No filming or recording will take place when the press and public are excluded for that part of the meeting. As a matter of courtesy to the public, anyone wishing to film or record proceedings is asked to provide reasonable notice to the Committee Administrator so that the relevant Chairman can inform those present at the start of the meeting.

We would ask that, as far as possible, members of the public aren't filmed unless they are playing an active role such as speaking within a meeting and there may be occasions when speaking members of the public request not to be filmed.

The Council will be undertaking audio recording of some of its meetings in County Hall as part of its investigation into a business case for the recording and potential webcasting of meetings in the future.

A copy of the Council's Recording of Meetings Protocol should be on display at the meeting for inspection, alternatively contact the Committee Administrator for the meeting in advance.

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The Regulation Committee

Minutes of a meeting of the Regulation Committee held on Thursday 11 April 2018 at 14.00 in the Luttrell Room, County Hall.

Present

Cllr J Parham (Chairman)

Cllr J Clarke	Cllr A Kendall
Cllr S Coles (substituting for Cllr T Lock)	Cllr D Ruddle
Cllr N Hewitt-Cooper	Cllr N Taylor
Cllr M Keating	

Other Members Present: Cllr P Ham, Cllr L Leyshon

The Chairman welcomed everyone to the meeting, outlined the meeting procedures, referred to the agendas and papers that were available and highlighted the rules relating to public question time.

1 **Apologies for Absence** – agenda item 1

Cllr M Pullin and Cllr T Lock

2 **Declarations of interest** – agenda item 2

Reference was made to the following personal interests of the Members of the Regulation Committee which were published in the register of members' interests which were available for public inspection in the meeting room:

Cllr S Coles	Member of Taunton Deane Brough Council Member of the Devon and Somerset Fire and Rescue Authority
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Cllr N Hewitt Cooper	Member of Mendip District Council
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Cllr A Kendall	Member of South Somerset District Council Member of Yeovil Town Council
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Cllr J Parham	Member of Mendip District Council Member of Shepton Mallet Town Council
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Cllr D Ruddle	Member of South Somerset District Council Member of Somerton Town Council
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Cllr N Taylor	Member of Mendip District Council Member of Cheddar Parish Council
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Cllr Nigel Taylor declared a personal and prejudicial interest in respect of agenda item 6 as he is a member of the Institute of Explosive Engineers and of the Institute of Quarry Engineers and also the Chair of the Mendip Hills AONB Committee. Cllr Taylor further informed the Members that he would address the Committee regarding the application as part of the public question time agenda item and would leave the room prior to the Committee's consideration of item 6.

3 Accuracy of the Minutes of the meeting held on 8 March 2018 – agenda item 3

The Chairman signed the Minutes of the Regulation Committee held on 8 March 2018 as a correct record, subject to the following amendments to Members declarations of interests – Cllr Dean Ruddle as a Member of South Somerset District Council and Cllr Terry Napper as a Member of Mendip District Council.

4 Public Question Time – agenda item 4

(1) There were no public questions on matters falling within the remit of the Committee that were not on the agenda.

(2) At the Chairman's invitation Cllr Nigel Taylor addressed the Committee regarding the Moons Hill Quarry application and raised a number of points including: the importance of supporting local industries and the local community; employment at Callow Rock quarry; that the quarry brings one million pounds annually to the local economy; the need for the quarry's rock; his role as the Mendip AONB Chair; and the importance of protecting the AONB through appropriate conditions.

(3) All other questions or statements received about matters on the agenda were taken at the time the relevant item was considered during the meeting.

5 Construction of three Replacement Tips at Moons Hill Quarry - agenda item 5

(1) The Case Officer with the use of maps, plans and photographs outlined the application for three replacement tips at Moons Hill Quarry, bringing to members attention both the proposed site profiling and bund location. The Case Officer highlighted the late paper, informing the Committee that this included additional informatives and planning conditions. The Committee were further informed that: the application site is to the NE of Shepton Mallett; and the nearest residential properties are also to the NE including some listed buildings.

The Case Officer highlighted the key issues for consideration, including: the principle of development; highways; amenity including noise, light and dust; visual and landscape character impact; ecology; and water management. The Case officer further highlighted: the site restoration plans, including bio diversity enhancements, specifically grasslands, ponds, woodland and

hedgerows; that no highways movements were required; and the inclusion of attenuation ponds for surface water run-off.

In conclusion the Case Officer informed the Committee that it was recommended the permission be granted subject to the conditions detailed in both the officer report the late paper.

(2) The Chair noted that Committee members had visited the application site.

(3) The Committee heard from Mr Peter Barkwell, the Managing Director of John Wainwright and Company Ltd, who spoke in support of the application and raised a number of points including: Wainwrights is an independent business and has been trading since 1891; Moons Hill Quarry has an annual turnover of £15m and offers 90 jobs; that the quarry is strategically important to the County; the extracted material is used for road surfacing due to its anti-skid properties; environmental impacts if material were brought to the County from further afield; and that the quarry is included in the County Minerals Plan as being of a particular importance.

(4) The Committee heard from Wayne McKeown, the Moons Hill Operations Director, who spoke in support of the application and raised a number of points including: he had spent all of his working life in the quarry industry; he had worked at Moons Hill since 2005 in various roles; he represented the quarry workforce; employment at the quarry; John Wainwright and Company Ltds respect for the local community and the environment; he had overseen the construction and maintenance of 6 tip schemes in the past 13 years; the importance of building safe tips and returning sites to agricultural use; and ensuring the design of the tips has the minimum possible impact.

(4) The Committee heard from Mr Paul Bishop, a Stoke St Michael resident and quarry employee, who spoke in support of the application and raised a number of points including: he had worked at the quarry for a number of years; he knew the company to be a good caring employer; the contribution of the quarry to local schools and the local community; his son had recently secured an apprentice at the quarry; and the importance of the application being granted planning permission.

(5) The Chair proceeded to read a statement on behalf of the residents of Three Ashes, raising a number of points including: their homes are the main residential properties affected by this application, being 150m from the application site; they have a cumulative occupancy of over 150 years; consideration of the size and scope of the application; on-going changes in legislation; alternative uses for spoil materials; consideration of tip stability; monitoring of work programmes and aftercare; and extending the aftercare period.

(6) The Committee heard from Nick Dunn, speaking on behalf of the applicant, who spoke in support of the application and raised a number of points including: the project first started in 2012; the applicant has worked

closely with Somerset County Council; the Council's advice was to submit a single application to prevent further piecemeal planning applications; consultation with local residents; ensuring the tips fit into the local landscape; ecological benefits; the environmental impact assessment; demonstrating tip stability in the short, medium and long term; that there had been no objection from any of the statutory consultees; and compliance with the National Planning Policy Framework.

(7) The Committee heard from Cllr Philip Ham, the divisional member, who spoke in support of the application and raised a number of points including: highlighting his letter which had been circulated to committee members; his role as the chairman of the Moons Hill Quarry Liason Group; the application was borne over 5 years ago; SCC had been in possession of the application for over 2 years; the delays in determining the application were unacceptable; the quality of the Moons Hill stone; the operators care for the community and their workforce; that the importance of the application outweighs the points raised by the residents of Three Ashes; and that he recommended the application be approved.

(8) At the Chair's invitation the Case Officer responded to the points raised by members of the public noting: there was a regular review process for mineral planning permissions; and the Quarry Regulations 1999 included requirements regarding tip stability post cessation of operations and subsequent transfer to the Mineral Planning Authority.

(9) The Committee proceeded to debate during which a number of questions were asked by Members including: the operators relationship with the local community; the strategic importance of the extracted rock; the environmental impacts of exporting the stone from elsewhere; the importance of assuring local residents of the checks in place to ensure tip stability and safety; employment and job security at the quarry; and flood mitigation measures.

(10) At the Chair's invitation the Case Officer responded to a member question regarding flood mitigation measures, noting that there had been no objection from any of the statutory consultees.

(11) Cllr Nigel Taylor proposed the recommendations as detailed in the officer report and this was seconded by Cllr Dean Ruddle.

(12) The Committee resolved in respect planning application no. 2016/0665/CNT that planning permission be **GRANTED** subject to the conditions set out in section 10 of the officer's report, together with the amended condition regarding Landscaping & Rights of Way, the additional condition regarding the footpath diversions and the two informatives regarding a proposed bridleway circuit and the existing rights of way, all as detailed in the late paper.

The Committee further resolved that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be

delegated to the Service Manager, Planning Control Enforcement & Compliance.

At this point Cllr Taylor left the meeting.

6 Northern Lateral extension to the existing quarry, consolidation and regularisation of existing operation and associated development at Callow Rock Quarry – agenda item 6

(1) The Case Officer with the use of maps, plans and photographs outlined the application for a northern lateral extension to the existing quarry, consolidation and regularisation of existing operations and associated ancillary development. The Committee were informed: the quarry was near to Cheddar; the site was located next to the Mendip Area of Outstanding Natural Beauty and a Site of Special Scientific Interest; existing rights of way would be affected by the proposed development; and a site restoration plan had been proposed by the applicant.

The Case officer further highlighted the land ownership of the applicant, including those areas which had been identified for ecological off-setting; the proposed S106 Agreement regarding the cessation of extraction at Shipham Quarry; proposed site restoration plans and mitigation bunds; the scale of the proposed development; and the conditions attached to the application as included in the officer report, and as amended and supplemented in the late paper.

(2) The Committee heard from Mr Clive Panchaud, who spoke against the application and raised a number of points including: he was representing local residents; highway concerns including the 'magic roundabout' and increased traffic in the local area; an outstanding highways feasibility study; housing developments in the local area; the importance of ensuring the local road network is suitable; the S106 Agreement recommended by Shipham Parish Council; and funding for road improvements.

(3) The Committee heard from Mr Paul Fineran, speaking on behalf of Cheddar Parish Council, who spoke against the application and raised a number of points including: the failure to properly mitigate the impacts of this application; the Somerset Minerals Plan and protecting the quality of life for local residents; the figures used in the transport statement; the reduction in lorry movements if the quarry were to close, and resultant transport impacts if the quarry were to remain operational; increases in lorry sizes; and the Parish Council's request for S106 funding to improve the junction known as the 'magic roundabout'.

(4) The Committee heard from Mr Stuart Howlett, speaking on behalf of South Somerset District Council, who made a number of observations including: the quarry location had been established; traffic congestion in Cheddar village; the requirements for improvements to the 'magic roundabout'; and housing and employment growth in the local area.

(5) The Committee heard from Mr Reg Minty, spoke in support of the application. Mr Minty informed the Committee that he was an engineer at Callow Rock Quarry and was a Morris dancer. Mr Minty raised a number of points including: his grandchildren may be looking for employment at Callow Rock Quarry in the future; that he had worked in the quarrying industry for 48 years; changes in the quarrying industry; that he had previously been a parish councillor; that his employment had allowed him to contribute to society through paying taxes and national insurance; and that he had various hobbies and interests including Morris dancing. Mr Minty asked Members to look favourably on this application giving future generations the opportunity to dance in their own way.

(6) The Committee heard from Mr John Penny, speaking on behalf of the applicant, who spoke in support of the application and raised a number of points including: there had been mineral extraction at Callow Rock since the 1900's, with modern quarrying starting in 1961; the proposed extension covers an area of 12ha; continuing to work the existing quarry would sterilise the potential extension areas; the application was not seeking to increase output from the quarry, and as such there would be no increase in HGV movements; the importance of landscape protection given the quarry is located in the Mendip AONB; the quarry contributes more than one million pounds annually to the local economy; employment at the quarry; and accordance with the National Planning Policy Framework.

(7) At the Chair's invitation the Case Officer responded to the points raised by members of the public noting: there had been no objections from any of the statutory consultees and would be no increase in vehicle movements. The Case Officer noted that in his professional opinion it would be unreasonable to impose a S106 agreement regarding road network improvements, and highlighted the additional planning condition included in the late paper.

(8) At the Chair's invitation the Service Manager – Rights of Way addressed the Committee highlighting: the existing Callow Drove footpath; and an application to modify the definitive map and upgrade the footpath to bridleway status. Members were informed of the importance of determining the bridleway application before development commences, and that consideration should be given to determining the application 'out of turn' to ensure it is investigated as a priority.

(9) The Committee proceeded to debate during which a number of questions were asked by Members including: ensuring the status of Callow Drive is determined as soon as possible; the importance of the bund in the north west corner of the site; and the economic benefits of the quarry.

(10) Cllr Simon Coles proposed the recommendations as detailed in the officer report and this was seconded by Cllr Nigel Hewitt-Cooper.

(11) The Committee resolved in respect planning application no. 1/17/16/083 that planning permission be **GRANTED** subject to:

a) the imposition of the conditions in section 10 of this report, together with the additional condition regarding footpath AX 13/7 and the two planning informatives regarding the existing right of way and the application to modify the definitive map, all as detailed in the late paper.

b) the signing of a Section 106 Legal Agreement to include the following:

- The securing and delivery of compensatory land for the Grassland Ecological Network (GEN) to provide alternative GEN land for that which would be lost as a result of this development;
- To ensure the adjacent reserves identified as / written agreement that no extraction of mineral reserves are to take place at Shipham Hill Quarry to the east of Callow Rock Quarry for the duration of extraction at Callow Rock Quarry.

And that authority to undertake any minor non-material editing, which may be necessary to the wording of those planning conditions be delegated to the Service Manager, Planning Control Enforcement & Compliance.

The Committee further noted its support for application 820M to modify the Definitive Map being prioritised.

7 Any other business of urgency – agenda item 7

There was no other business.

(The meeting closed at 15.31)

Chair, Regulation Committee

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Somerset County Council
Regulation Committee

Application Number: **CLR/VG17**
Date Registered: **16 August 2013**
Parish: **Norton St Philip**
District: **Mendip**
Member Division: **Frome North**
Local Member: **David Fothergill**
Case Officer: **Andrew Saint**
Contact Details: **01823 359796**
asaint@somerset.gov.uk

Description of Application: **SECTION 15, COMMONS ACT 2006: APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN AT SHEPHERDS MEAD, NORTON ST PHILIP**
Grid Reference: **ST 7763 5579**
Applicant: **Norton St Philip Parish Council**
Location: **Shepherds Mead, Norton St Philip**

1. Summary of Key Issues and Recommendation(s)

1.1. On 13 August 2013 Norton St Philip Parish Council submitted documents purporting to be an application to register Shepherds Mead, Norton St Philip as a Town or Village Green. Those documents were received by the County Council on 16 August 2013. Following a number of amendments (discussed further below) they were confirmed as a duly made application. The extent of the application land is shown on the plan which accompanied the application (included here as appendix 1).

1.2. Objections were received to the application. The nature of those objections were such that they necessitated the holding of a non-statutory public inquiry.

1.3. The inquiry was held between 13 and 28 March 2017. Both the applicant and the objector called a number of witnesses and presented detailed submissions as to both the validity of the application and the sufficiency of the supporting evidence.

1.4. A copy of the Inspector's report is attached as appendix 2.

1.5. Based on the Inspector's findings, and for the reasons set out in his report, it is recommended that the application to register land known as Shepherds Mead, Norton St Philip as a town or village green be:

- i) accepted in so far as it relates to the land edged red on plan H9-2018-1 (appendix 3¹) and that that land be registered as town or village green; and
- ii) rejected in so far as it relates to the rest of the application land.

2. Background

2.1. By virtue of section 4 of the Commons Act 2006 (the 2006 Act) the County Council is a commons registration authority, in which capacity it is obliged to keep a register of town or village greens and to determine applications to register land as a town or village green.

2.2. Applications to register land can be made under Section 15 of the 2006 Act. However, since April 2013, the right to make an application has been restricted so that it no longer applies to land which is subject to a 'trigger event'.

2.3. Trigger events are defined in the 2006 Act² but typically relate to planning matters. For example, a town or village green application cannot be made in relation to land following the publicising of an application for planning permission relating to that land.

2.4. Following a trigger event, the right to make a town or village green application would only become exercisable again if/when there is a terminating event. As with trigger events, terminating events are defined in the 2006 Act³. In the planning application example of a trigger event given above, a relevant terminating event would be the withdrawal or refusal of the planning application. Whether or not any trigger events relate to Shepherds Mead is discussed in more detail below.

2.5. The application in the present case has been made under section 15(1) of the Commons Act 2006 where the circumstances in section 15(2) apply. This means that, in order to grant the application, the Committee has to be satisfied that a significant number of inhabitants of a locality, or of a neighbourhood within a locality, have indulged "as of right" in lawful sports and pastimes on the land which is the subject of the application for a period of at least 20 years and that they continued to do so at the time of the application.

2.6. The decision as to whether or not the land is registerable has to be made on the basis as to whether each of the elements in section 15(2) have or have not been satisfied on the balance of probabilities. There is no place therefore, in coming to its decision, for the Committee to have regard, for example, to the desirability or the suitability of the land for use as a town or village green. It must therefore disregard any such matters. This is a quasi-judicial process and the Committee does not have any administrative discretion in making its decision.

¹ This plan has been jointly provided by the applicant and the objector. They have both agreed that the red line accurately represents the area that the Inspector has recommended be registered as a town or village green. This agreement should not necessarily be taken as confirmation that either party accept the recommendation to be correct; only that the plan accurately reflects the geographical area described by the Inspector.

² Schedule 1A of the Commons Act 2006.

³ Schedule 1B of the Commons Act 2006.

2.7. There is no statutory right of appeal against the decision. It can only be challenged on ordinary public law grounds by way of judicial review or by way of an application to rectify the register to the High Court under section 14(b) of the Commons Registration Act 1965.

2.8. The effect of registration of land as a town or village green is that its status as such is conclusively established. That status cannot thereafter be changed on the basis that the landowner has other plans for the land which would be inconsistent with its status as a town or village green. The relevant owner continues to be the owner of the land after registration but their use of it is subject to the primary right of the local inhabitants to indulge in lawful sports and pastimes

2.9. At its meeting on 3rd February 2009 the Regulation Committee endorsed the County Council's process for assessing and determining applications to register land as a town or village green. This provides that, where the evidence does not at the outset clearly indicate a particular course of action, a full assessment of the evidence, for and against the application, should be carried out by an independent Inspector at a non-statutory public inquiry. Whilst such inquiries are not a legislative requirement under the Commons Act 2006, they may be carried out under ancillary powers contained in section 111 of the Local Government Act 1972. The Courts have indicated their approval of this being a reasonable means of assessing an application. The Court of Appeal in *R (Whitney) v Commons Commissioners (2004)* commented that, where there was a serious dispute, the practice of conducting a non-statutory public inquiry should be followed 'almost invariably'.

2.10. Where, as in this case, an inquiry is held it is not the role of the Inspector to determine the application but to advise the Council on its proper determination. Having held the inquiry, they submit their report containing their findings and conclusions to the Council with a recommendation as to whether or not, in their opinion, the application should be granted. The Council is not bound by the Inspector's recommendation, it is for the Committee, on behalf of the County Council as Commons Registration Authority, to make the decision on the application, having regard to the Inspector's report. However, in circumstances where a legally qualified and experienced inspector has heard all the evidence and reached a reasoned conclusion, it is suggested that the County Council would need a very good reason to make a decision which was contrary to the recommendation.

3. The Application

3.1. Documents purporting to be an application were received from Norton St Philip Parish Council on 16 August 2013. However, at that stage the County Council were unable to accept it as 'duly made'. Significantly the map which accompanied the application was not to the prescribed scale.

3.2. In accordance with Regulation 5(4) of the Interim Regulations⁴ the applicant was given an opportunity to remedy those deficiencies which had been highlighted to them. They revised their forms and submitted them to the County Council on 4

⁴ The Commons (Registration of Town and Village Greens)(Interim Regulations)(England) Regulations 2007.

September 2013. At this stage the application was confirmed as duly made (sometime later a further flaw in the application was identified, however this is discussed further below).

3.3. Having received the application, the County Council asked Mendip District Council and the Planning Inspectorate to confirm whether or not there were any trigger or terminating events affecting the application land. Both confirmed that no trigger events had taken place.

4. The Application Land

4.1. The Parish Council's plan showing the extent of the application land, known as Shepherds Mead, is included at appendix 1. The site is situated in Norton St. Philip and comprises approximately 4.82 hectares. The land slopes gently downhill from east to west with the slope being greater at the north end of the land and levelling out in the south. Until recently, there has been a mound of earth in the southern end of the land and some trees.

4.2. During the relevant period the land has, at times, been used variously to take a hay crop and to keep animals (sheep, cows and horses).

4.3. There are 4 main entrance or exit points onto the application land. These are located on Tellisford Lane, Town End and Upper Farm Close and in the north east corner of the site. Each of these access points, together with those rights of way shown on the Definitive Map as crossing the land, are shown on appendix 4.

5. Consultation and Objections

5.1. Following receipt of the application there was a statutory 6 week objection period during which time one letter of objection was received. That letter was written on behalf of both Ms Ford, the landowner, and Malcolm Lippiatt Homes Limited who have an agreement with Ms Ford to develop part of the application land.

5.2. The grounds for objection were lengthy and detailed but can broadly be summarised as follows:

- i) That the application was not properly made on account of discrepancies with the statutory declaration and accompanying map.
- ii) Notwithstanding point (i), the TVG application was not properly made until 4 September when it was resubmitted with additional evidence. By that date there was a planning application (ref: 2013/1821) affecting part of the site which would have acted as a trigger event.
- iii) Even if the planning application referred to in (ii) did not act as a trigger event an earlier planning application (ref: 2013/1045) would have done despite the TVG application land falling outside of the 'red line'.
- iv) That there is insufficient 'as of right' use to satisfy the criteria set out in section 15 of the 2006 Act.

5.3. The applicant put forward counter arguments in response to all of the above points.

5.4. As a result of the representations, and in particular the conflict in evidence relating to the level of 'as of right' use of the application land, the County Council considered it necessary to hold an independent inquiry.

6. The Inquiry

6.1. Mr Wilmshurst, a barrister specialising in town and village greens, was appointed by the County Council as inspector to conduct the inquiry. The inquiry ran from 13 – 28 March 2017 during which a considerable amount of evidence was heard. In addition both parties (i.e. the applicant and the objector) put forward very detailed submissions on various points of law. The evidence and submissions are discussed in some detail in the Inspector's report (appendix 2). It is important that the report is read and understood in full prior to any decision on this matter being made. However, in order to assist, some of the main issues considered at the inquiry and the Inspector's conclusions are briefly summarised below.

Was the application duly made

6.2. As mentioned above, application forms were initially submitted in August 2013. However, they were found at the time to be defective and the applicant was given an opportunity to correct them.

6.3. Amended documents were submitted in September 2013. At the time these documents were confirmed as a duly made application. However, by 2016 it had become apparent that the statutory declaration which accompanied the September 2013 documents was flawed. The applicant was given a second opportunity to correct their application by providing a properly worded statutory declaration. They submitted revised documents within one month of being informed of the flaw; i.e. by February 2016. At the inquiry it was argued that the revised February 2016 statutory declaration was also flawed and that therefore, even by March 2017, there was still not a duly made application relating to the application land.

6.4. Having considered all the arguments put to him and the relevant case law, the Inspector agreed with the objector that the documents submitted (i.e. those from August 2013, September 2013 and February 2016) did not amount to a duly made application. However, he did not agree that the applicant had already had nearly two and a half years to put the application right. On those occasions where errors had been highlighted the applicant put had updated their application within the timeframes that had been required of them; this had amounted to a total of less than two months. In light of this the Inspector went on to conclude that the applicant had not exceeded a reasonable opportunity to amend their application and should be given a last chance to perfect it (i.e. to provide an appropriately worded statutory declaration and plan to accompany their application).

6.5. On 22 March 2018 the County Council wrote to the applicant offering them a further opportunity to correct their application in line with the Inspector's recommendation. A correctly made statutory declaration accompanied by a plan to the correct scale was received by the County Council on 4 April 2018. The application is therefore deemed to have been duly made. Importantly, the various corrections have a retrospective effect in that, despite it containing errors, the

application is now considered to have been duly made on the date that it was first received by the County Council (i.e. 16 August 2013).

Trigger events

6.6. As referred to above, the objector identified two planning applications which they considered to be trigger events and which, in their view, were sufficient to remove the right to apply in relation to at least some of Shepherds Mead.

6.7. The first of these (referenced 2013/1045) was received and publicised by Mendip District Council in May 2013; i.e. prior to the TVG application being made. Planning application 2013/1045 sought permission for the erection of houses and garages within an area outlined red. None of that red area touched upon the village green application land. However, it was contended that the implementation of planning application 2013/1045 would have required the installation of a foul sewer connection across the claimed village green. Furthermore, the proposed development would also involve the construction of a new permissive footpath on the village green application site.

6.8. In relation to the first of these, the Inspector found that the location of the foul sewer connection would not have been ascertainable from the face of the application and that it therefore did not result in a trigger event.

6.9. In relation to the second matter, the Inspector found that no planning application was being made in relation to the area crossed by the proposed new permissive footpath. The construction of the path was simply a suggested condition within the application. This being the case it did not result in a trigger event

6.10. Irrespective, of the above arguments the Inspector also concluded that reference to the foul sewer connection and the permissive path within the planning application did not constitute a trigger event because they fell outside of the area identified as necessary for the proposed development (i.e. the area outlined in red) in the planning application. This being the case planning application 2013/1045 did not 'relate' to the village green application land and so could not be a trigger event for the purposes of the current village green application.

6.11. The Inspector was able to deal with the second planning application in a quicker fashion. That application does relate to a large part, but not all, of the village green application land. However, it was not received by Mendip District Council (the planning authority) until 28 August 2013, two weeks after the village green application had been made. A planning application only acts as a trigger event if it is received and publicised prior to a village green application.

6.12. In light of the evidence and submissions that he heard, the Inspector concluded that there were no trigger events which would have removed the right of the Parish Council to make their application on 13 August 2013.

Foot and Mouth

6.13. During the inquiry it was contended that, as a result of various orders and regulations, it was made a criminal offence to use the public rights of way in and

around the application land during the 2001 Foot and Mouth outbreak. It was argued that, as access to the application land was predominantly along these rights of way, that access would inevitably have involved a criminal offence. Based on this the objector went on to argue that use during the time of the rights of way closures would not qualify for the purposes of the current application. This would clearly be material to the question of whether or not the land had been used for lawful sports and pastimes during the 20 years prior to the application (i.e. 1993 to 2013).

6.14. The Inspector agreed with the objector that, during much of the foot and mouth outbreak, use of the footpaths would have been a criminal offence. However, section 15(2) of the 2016 Act (under which the application was made) does not require a would-be town or village green to benefit from a lawful access. While use of the footpaths may have been temporarily criminalised during foot and mouth, it was not an offence to use the rest of the land. As such, use of that land could continue to qualify for the purposes of town and village green registration.

Sufficiency of evidence

6.15. As mentioned above, in order for the application land to be registered the applicant needs to demonstrate that a significant number of inhabitants of a locality, or of a neighbourhood within a locality, have indulged “as of right” in lawful sports and pastimes on the land which is the subject of the application for a period of at least 20 years and that they continued to do so at the time of the application.

6.16. In this case the suitability of the parish of Norton St Philip as a ‘locality’ was not disputed. Argument in relation to the sufficiency of the evidence therefore related to whether or not the inhabitants of the parish of Norton St Philip had used the application land as of right, for lawful sports and pastimes during the period 1993 to 2013.

6.17. The applicant submitted 96 user evidence forms to the inquiry many of which were supported by additional statements. Of those who completed forms, 15 also gave oral evidence at the inquiry.

6.18. The objector submitted statements from 16 individuals of whom 10 gave oral evidence.

6.19. Much of the evidence from both parties related to the level and nature of use of the application land. Having considered that evidence, the Inspector concluded that more often than not use of the land constituted walking on ‘defined routes’ (by which the Inspector was referring to both the public rights of way shown on the Definitive Map and the walked routes around the perimeter of the field).

6.20. In some circumstances it is possible for use of defined routes to be qualifying evidence in terms of a town or village green application, but this is by no means inevitable. In determining whether or not use of a defined route is qualifying, one must consider how the matter would have appeared to the owner of the land. Would it have appeared as if a right was being asserted over the whole land? Use of defined routes must therefore be considered in the context of other use of the land. In this case, the Inspector was of the view that:

‘a reasonable landowner on the spot would not have understood in respect of the northern and central areas that a right was being asserted over the whole of the land. What was described by the oral witnesses in cross-examination simply did not convince me that I could make a finding that there was sufficient off path activity going on. What is left is use which is in my view in the nature of a right of way⁵’

6.21. In other words the Inspector found that the evidence was not sufficient to demonstrate that the northern and central areas of the application land had been sufficiently used for lawful sports and pastimes during the relevant 20 year period. As a result that part of the application land did not meet the criteria set out in section 15 of the Commons Act 2006 and was not capable of being registered as a town or village green.

6.22. However, the southern tip of the land, while part of the same field as the central and northern parts discussed above, was considered to be a distinct area which was used in a different way to the rest of the application land. The extent of the ‘southern tip’ is shown outlined red on the plan attached as appendix 3.

6.23. Evidence was presented to the inquiry that the grass in the southern tip was generally shorter than that on the rest of the field. In addition, there was a small mound⁶ which was an attraction particularly for children playing various games. Furthermore, this area was generally more intensively used by families.

6.24. In light of this the Inspector concluded that:

‘In contrast to the central and northern sections where I found that there was little off path activity going on, in the south I find that a reasonable landowner would have clearly understood that [the] more varied and mixed pattern of walking...combined with the persistent general use by local children (and parents) of the mound and the area south of it ... was an assertion of rights across the whole of that section.’⁷

6.25. The Inspector further concluded that

‘...I am satisfied on the balance of probabilities that the southern part of the land was used by a significant number of the inhabitants of the locality for lawful sports and pastimes. Further that such use was *as of right*⁸’.

7. Conclusion

7.1. The validity of the Parish Council’s application to register Shepherd’s Mead as a town or village green has been challenged on a number of grounds. Of particular note is the contention that:

⁵ Paragraph 713 of the Inspector’s report.

⁶ There was some dispute as to the origins of the mound. However, it was a significant feature which was on site throughout the 20 year period.

⁷ Paragraph 729 of the Inspector’s report.

⁸ Paragraph 731 of the Inspector’s report.

- i) the application land (or parts therefore) were effected by trigger events which meant that an application was not capable of being made; and
- ii) the application forms (including the necessary statutory declaration) had not been correctly completed and so the application was not duly made.

7.2. Having heard detailed submissions from both parties, the Inspector concluded that there had in fact been no trigger event. He did however agree with the objector that the statutory declaration accompanying the application had not been duly made.

7.3. There is provision within the regulations governing applications to register town and village greens for applicants to be given an opportunity to correct errors within their applications⁹. In light of this, and in accordance with the Inspector's recommendation, the Parish Council were given an opportunity to perfect their application. This has now been done and so it is considered that there is a duly made application to be determined.

7.4. Having accepted the application as duly made, the County Council is under a duty to determine whether a significant number of inhabitants of a locality, or of a neighbourhood within a locality, have indulged "as of right" in lawful sports and pastimes on the land which is the subject of the application for a period of at least 20 years and that they continued to do so at the time of the application.

7.5. A considerable amount of evidence relating to the use of the application land was heard over the 14 days that the inquiry sat. Having heard and considered all of that evidence in some detail, the Inspector concluded that there had been insufficient qualifying use of the northern and central parts of Shepherds Mead to satisfy the statutory criteria set out in section 15(2) of the Commons Act 2006.

7.6. However, the nature of the use in the southern tip of the land (shown outlined in red on appendix 3) differed from that of the rest of the site. Here the evidence was of a more varied and mixed pattern of walking together with persistent general use by local children and their parents. The inspector found the level of 'as of right' use by the inhabitants of Norton St Philip over the relevant 20 year period to have been sufficient to have led a reasonable landowner to understand that a right to lawful sports and pastimes was being asserted over the whole of the southern tip.

7.7. In light of his findings the Inspector has recommended that:

"Bearing in mind the type of activities which I have found to have been taking place I should think that the most appropriate recommendation would be the [Commons Registration Authority] to register as new town or village green all the land south of a point 2 metres to the north of the mound [as shown on plan H9-18-1].

My recommendation in respect of the rest of the land is that it should be rejected for the reasons I have set out above. However, this is all subject to the my recommendation at paragraph 89 above. At the current time the application

⁹ Regulation 5(4) of The Commons (Registration of Town and Village Greens)(Interim Regulations)(England) Regulations 2007

is, in my view, not duly made but the Applicant is entitled to a further period of 14 days to perfect the application.

The CRA should give reasons for its decision deal with the application in the way I have indicated. Those reasons can be described as “for the reasons set out in the Inspector’s Report.”¹⁰

7.8. Officers attended the inquiry and have subsequently given careful consideration to the Inspector’s report. The Inspector has had the opportunity to hear witnesses giving evidence and to ask questions of them himself. He has also been able to evaluate the documentary evidence and legal submissions presented to him. In light of his findings and conclusions, officers fully endorse the Inspector’s recommendations and these are reflected in the recommendation to the Committee.

8. Recommendation

8.1. That the application to register land known as Shepherds Mead, Norton St Philip as a town or village green be:

- iii) accepted in so far as it relates to the land edged red on plan H9-18-1 and that that land be registered as town or village green; and
- iv) rejected in so far as it relates to the rest of the application land.

¹⁰ Paragraphs 732-734 of the Inspector’s report.

List of Appendices

1. Plan showing the application land
2. The Inspector's report
3. Plan H9-18-1 showing the extent of the land recommended for registration
4. Plan showing access points and rights of way.

All other background papers including the application and the full submissions from both the applicant and objector are available on request from the relevant case officer.

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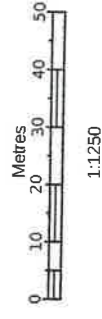


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In the Matter
of an Application to Register
Land Described as
"Shepherd Mead", Norton St Philip, Somerset
As a New Town or Village Green

REPORT
of Mr Paul Wilmshurst

INTRODUCTION

1. This Report concerns an application purportedly made by the Norton St. Philip Parish Council ("the Applicant") as long ago as 2013 to register land described by it as "*Shepherd Mead, Norton St. Philip*" ("*the land*" or "*application land*") as a new town or village green pursuant to s.15(2) of the Commons Act 2006 ("CA 2006"). The application to register the land relies on s15(2) CA 2006 which provides that any person may apply to the relevant commons registration authority to register land as a village green where:

"(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and

pastimes on the land for a period of at least 20 years; and (b) they continue to do so at the time of the application.”

2. There are two objections to the registration of the land as a village green which put forward the contention that the requirements of s.15(2) CA 2006 are not made out. One objection is from Mrs Devina Ford (who prefers to be known as “Mrs Bina Ford”). The other objection is from Malcolm Lippiatt Homes Limited (“Lippiatt Homes”). Mrs Ford is the registered proprietor of the land, which is described in the office copy entry as being *“land on the south side of Longmead Close, Norton St. Philip, Bath, BA2 7NS.”*
3. The application land, situated in the charming Somerset village of Norton St. Philip, comprises about 4.82 hectares and slopes gently downhill from east to west with the slope being greater at the north end of the land. The land gradually levels out moving towards the south end of it. Until recently, there was a mound of earth in the southern end of the land and some trees. The application land has at all times been physically separate to the land to the north, now developed, which was variously referred to as *“the paddock”* or *“the teaching field”* by the parties depending on which part of it was being referred to.
4. For many decades the application land and the land to the north of it had been in the ownership of Mrs Ford’s family. Mrs Ford’s mother and father handed it down to her. For many years Mrs Ford, who is a lady who has devoted her life to equestrian sport, had stables, cared and trained horses in the land to the north that I have described above and in some land adjacent but still further north. There used to sit in this area also a large house called Longmead House where Mrs Ford’s family lived.

Over the years Mrs Ford was able to gradually facilitate development of the land bequeathed to her but carried on with her horses until 2011 when she moved away from the village that had been her home since she was young. The development of the paddock and the training field has ensued. Following on from this, Mrs Ford seeks to enable some development of the northern section of the application land and has an agreement with Lippiatt Homes to that effect. The details and merits of the proposed development do not matter at all with respect to s.15(2) CA 2006 but suffice to say the backdrop to this case is that local people who are against the development of the application land have applied to have it registered as a village green with a view to preserving it in its current state.

5. There are 4 main entrance or exit points onto the application land. During the inquiry these were given shorthand names to makes the recording of the evidence easier. There is an entrance at Tellisford Lane ("TL"), off of Town End near to Ranmore Cottage ("TE"), off of Upper Farm Close ("UFC") and then in the north-eastern corner of the land ("NE"). I include a copy of the annotated plan as **Appendix 1**.
6. The Definitive Map and Statement shows that, in the relevant period, there were a number of footpaths which ran across the land. There is a) FR/11/13 which runs from UFC to NE and b) FR/11/16 which runs from UFC to TE and (c) FR/11/15 which runs diagonally across the land from UFC to TL and from NE to TE. I include a copy of the definitive map as **Appendix 2**.
7. The land has never been used to grow crops, but everyone is agreed that in some years hay has been taken by a local farmer. Everyone is also agreed that there have

been some animals (sheep and cows and horses) kept on the land. There has at times been some disagreement about how often that has happened.

8. I should note in passing that I refer to the land as being *described* by the Applicant as “*Shepherd’s Mead*” because it is not agreed that this is what it is known as.¹ I have also referred above to the application as being *purportedly* made because an additional line of argument pursued in opposition to the application is that, as a matter of law, there is not any validly made application under s.15(2) CA 2006 at all.
9. I was appointed by Somerset County Council, as commons registration authority (the “CRA”), to convene a non-statutory public inquiry into the application and to make a recommendation as to whether it should be rejected or accepted. However, as above, I have also been asked to consider whether there is, as a matter of law, any validly made application. This argument arises in broadly two ways:
 - Firstly, that the Applicant failed to comply with the requirements of Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (“the Interim Regulations”).
 - Second, planning law related trigger events had occurred prior to the submission of any application such that there was no right to apply to register the land in light of the amendments introduced into the CA 2006 by the Growth and Infrastructure Act 2013 (“GIA 2013”).

¹ RA 266 – 267.

10. This second argument relating to so-called trigger events relies upon section 15C of the CA 2006 which provides: “*The right under section 15(1) to apply to register land as a... village green ceases to apply if an event specified in the first column of the Table set out in [Schedule 1A] has occurred in relation to the land (“a trigger event”).*” The first “*trigger event*” listed in Sch 1A is: “*An application for planning permission in relation to the land which would be determined under section 70 of the 1990 Act is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act.*” I will return to these provisions later.
11. I note in passing that none of the parties dissented from the CRA’s instructions to me to hold an inquiry covering all of the issues I have outlined above. For my part I was quite satisfied that it was necessary to hold a public inquiry with regard to the *dicta* in ***Cheltenham Builders Limited*** per Sullivan J at [34 – 40]; ***Whitmey*** per Arden LJ [29] and [30], Waller LJ at [66] and ***Trap Grounds*** per Lord Hoffmann.
12. Throughout this Report I will, as I just have, be referring to a number of decided court cases. Usually these cases are well known “village green cases” and where that is the case I will refer to them by the short-hand name which they are commonly called. In the **Appendix 3** to this Report there is a table with the full relevant citation.
13. At the inquiry, which was held on weekdays between 13 March - 28 March 2017 the Applicant was represented by Mr Martin Edwards of counsel. Mrs Bina Ford was represented by Mr Richard Honey of counsel. Lippiatt Homes did not appear but maintained its objection (although in fact Mr Malcolm Lippiatt himself attended much of the inquiry and was called as a witness). Simply for ease of expression I will

refer to Mrs Ford as “the Objector” herein although if the context is one in which she was personally giving evidence I refer to her as Mrs Ford. I should add that, as its customary, I conducted an accompanied site visit of the land and also visited a number of the homes of the Applicant’s witnesses to inspect the views of the land.

14. I pause here also to express my gratitude to both counsel for all their assistance during the inquiry and the very full submissions that they both made (which ran into hundreds of pages and included submissions made in writing on some outstanding issues after the inquiry had concluded). I would also like to express my gratitude to the officers of the CRA for all their assistance with respect to organising the public inquiry.
15. Throughout this Report page references in the bundles are referred to as follows: O123 is a reference to Objector’s Bundle at page 123. A3/333 is a reference to the Applicant’s Bundle, volume 3, page 333. References, for example, to I23 is a reference to a bundle of documents produced throughout the inquiry and kept in separate bundle.

THE VALIDITY OF THE APPLICATION: HAS THE APPLICATION BEEN “DULY MADE”

The questions to be answered

16. The Objector’s submission to me in closing was that when first submitted in August 2013 the application to register the land was defective because it did not comply with the Interim Regulations. Secondly that, when in September 2013 a modified application was submitted to the CRA, a) this should be treated as a fresh application and not a “*putting in order*” of the August 2013 submission or b) even if that is

wrong, it was still defective. Thirdly, with respect to a statutory declaration requested by the CRA and provided by the Applicant in February 2016 this also failed to render the application valid - but in any case, the period of time the Interim Regulations allows (a “*reasonable opportunity*”) to put an application in order had long since been exceeded. Aside from challenging these points the Applicant made a general submission that the CRA had previously made a determination about whether the application was “*duly made*” that can and should have been challenged within the normal judicial review time-limits.

17. I will explain all this in further detail below but before doing so I wish to examine the Interim Regulations and the relevant case law concerning them.

The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (“the Interim Regulations”)

18. Regulation 3 of the Interim Regulations provides as follows:

“3.— Application to register land as a town or village green

(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.” [emphasis added]

19. It was suggested by the Applicant in the course of the inquiry that the Interim Regulations do not prescribe any particular scale of map. However, that is clearly wrong as there are further requirements established by Regulation 10 which sets out (as relevant) that:

“(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...

(3) Any Ordnance map accompanying the 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."

20. By Regulation 4(1)(a)-(b) a commons registration authority must, on receipt, allot the application a distinguishing number, mark it with that number and stamp it indicating that date. Regulation 5(1) provides for notification to the landowner by using "form 45" (together with advertisement of the application) but this obligation arises only, in my opinion, where the application is "duly made" under Regulation 5(4). Regulation 5(2) specifies time limits for objections to be made after notification has occurred. In case of notification to an owner by the post it is six weeks from the date of receipt.

21. Regulation 5(4) provides as follows:

"(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."

22. The Court of Appeal's judgment in **Church Commissioners** provides me guidance in how apply Regulation 5(4) and it is common ground in this case that where a

commons registration authority receives an application which is defective because, for example, it does not meet the requirements of Regulation 3, then the applicant concerned should be given a “*reasonable opportunity*” to put that application in order. As the words of Regulation 5(4) indicate, the duty of the CRA is to identify to an applicant the particular action required. It appears to me that unless and until the CRA identifies the action required it could not be said that an applicant has had any opportunity at all to correct the defect, let alone the “*reasonable opportunity*” that it is required to offer.

23. If an applicant takes the opportunity afforded to him and corrects the application, the application will be considered to be “*duly made*” for the purposes of s.15(2) CA 2005 when it was originally received by the commons registration authority. It retains its original date, so that the amendments that are made to the application are to be taken as being back-dated to that original date: see ***Church Commissioners at [6 – 7] per Arden LJ; [71 – 72] per Richards LJ and [75] per Vos LJ***. In this way, the corrected version of the application has retrospective effect. Curiously, as Richards LJ explained at [71]:

“There is no provision for its resubmission, renumbering or further date-stamping at the time when it is put in order. The process contemplated is simply one of putting in order the original application. It is implicit, in my judgment, that an application put in order in that way is to be treated under the Regulations as having been made at the date when it was originally received.”

24. I pause here to note that the lack of any clear procedure for re-submission and perfection of applications is leading, in this area of the law, to regular instances of confusion amongst commons registration authorities and applicants. As in this case, working out the effect of what may or may not have been done after the event can become a messy business.
25. It was held in ***Church Commissioners*** at [43] and [59] that because there is no obligation in the Interim Regulations to inform a landowner of an application until the application is considered “*duly made*” the period of time allowed as part of a reasonable opportunity will be a short one. If this period is exceeded, the opportunity to put the application in order will have been lost and the application will be rejected under Regulation 5(4). As Richards LJ again explained at [72]:

“The Regulations contain no provision for putting an application in order after such period as may be allowed by way of reasonable opportunity given under regulation 5(4). If an application is not put in order within that period, the possibility of turning it into a duly made application effective as at the original date of receipt has been lost. If the defects are remedied at a later date, the result will at best be a fresh application to which a new number and new date-stamp should be applied.”

Of course, in many cases it will not then be possible to submit a fresh application because a planning related trigger event has subsequently been brought about or the period of grace allowed under s.15(3) CA 2006 has expired.

26. The majority decided also that what constitutes a reasonable opportunity is not a matter to be assessed on ordinary principles of public law (i.e. reasonableness) but is a question of law, albeit a balancing exercise “*conducted on the concrete facts of the case*”²: see [47]; [50 - 53]. In ***Church Commissioners*** the Court of Appeal held the following to be examples of factors to take into account in determining whether the opportunity had been exceeded:

- The fact that applicants are private individuals, often acting without professional advisors: see [53].
- Whether there was a pressing need to determine the land in light of potential development: see [53].
- Reference was had to the seriousness of any default by an applicant: see [15].

In ***Church Commissioners*** itself it was held that a reasonable opportunity had been exceeded after the applicant had been given 9 months to correct her application in circumstances where the applicant had failed without good reason to comply with deadlines (see Arden LJ at [5]). The application in that case was originally filed on 30 June 2008. The applicant was informed of defects in a letter dated 1 July 2008, returned the application form (without retaining a copy) and gave six weeks for the applicant to respond. On 11 August 2008 the applicant resubmitted the application. On 28 October 2008 the registration authority informed the applicant that the application was still defective. The applicant then asked the registration authority for clarification on a number of matters on 8 December 2008, which was given in a

² Rather than in the abstract

letter dated 22 December 2008. On 3 February 2009 the registration authority wrote and asked for a reply by 1 March 2009, failing which it would reject the application as not duly made. On 12 February 2009 the applicant said that she would send the application "*in due course*." On 8 April 2009 the registration authority assisted the applicant (with the consent of the landowner) and gave the applicant a plan on the correct scale. The applicant was given until 1 May 2009 to submit the application. She did re-submit the application on 1 May 2009 but it did not contain a re-sworn statutory declaration. A re-sworn declaration was requested on 16 July 2009 and this was provided on 20 July 2009.³

27. It might be thought that a period of 9 months is not "*short*" but nevertheless I am bound, I think, to follow this Court of Appeal authority. Although, every case will turn on its concrete facts it seems to me that as the issue is one of law (and not reasonableness) if similar facts come along again then a similarly generous period should be allowed.
28. After the close of the inquiry in the present case Sir Ross Cranston handed down his judgment in ***Meadow Triangle***. This case centred on the issue of whether a reasonable opportunity could encompass more than one opportunity. Any remarks about the length of the period to be allowed must therefore be regarded as *obiter*.

As described in the judgment at [46] it was submitted by the Claimant that:

³ Apart from the lack of a re-sworn statutory declaration the registration authority had considered the application not to be "*duly made*" for the following reasons:

- The application form failed to delete para. 4 which related to applications by landowners to register their own land.
- The application failed to identify the relevant locality or neighbourhood.
- The application failed to specify a termination date less than 5 years before the date of the application: it spoke of "*during the summer of 2003*."
- The accompanying map identifying the application land was not to the required scale of not less than 1:2,500.

“... the registration authority must comprehensively identify the action an applicant is required to take to put the application in order, and the applicant has to correct the defects so identified within the short period of time which the authority must specify. Mr Laurence accepted that where the registration authority gives an applicant what it comes to think was not a sufficient period of time to take action, it can extend the time for taking action. What it cannot do, however, is to give the applicant a separate, later opportunity to take some different action.” (see also [47])

29. It is to my mind worth setting out Sir Ross Cranston’s rejection of the last two sentences of that argument, at [51] – [57] in full:

“...the regulation in my view falls naturally into two limbs:

“[limb 1] 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 [limb 2] 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.”

52 The first limb is intended to cover situations where, on a preliminary consideration, the application is seriously defective and as such can be summarily rejected. The applicant may be advised to start again. The registration authority has a discretion in this regard. In reaching its decision it

will balance its obligation to accept a valid application against its obligation to reject an application which does not comply with the statutory requirements: Church Commissioners for England v Hampshire County Council , [50], per Arden LJ. A decision to reject is subject to judicial review on ordinary public law principles.

*53 The second limb of regulation 5(4) is designed to cover situations where, as the words provide, it appears to a registration authority that, albeit that the application is defective, it can be put right. **In that event the authority must offer the applicant a reasonable opportunity of taking the remedial action identified. Preliminary consideration does not enter into consideration under the second limb. There is nothing in the language to suggest that the applicant can be afforded only one opportunity to remedy a not duly made application.** Regulation 5(4) would have undesirable consequences if it were to be read in this way.*

54 Take the example of the applicant who happens to lodge her application to register on the eve of the expiration of the one year period mentioned in section 15(3)(c) of the 2006 Act, with an Ordnance map to the scale of 1: 50 000, and not the 1: 25 000 required by regulation 10(3)(a) . The Council officer points this out and gives her the opportunity to resubmit the application with a map to the correct scale. She obtains the correct map to the larger scale and returns the next day, but in the rush has forgotten to mark the map as an exhibit to her statutory declaration as required by regulation 10(3)(c) . Again the Council officer spots the defect and the next day it is readily remedied and

resubmitted. On the College's interpretation of regulation 5(4) this second opportunity for the applicant to remedy her application would be forbidden, the application would be rejected and any new application would fall outside the time limit laid down in section 15(3)(c) . That cannot be right when applications for registration are often being made by laypeople.

55 Or to continue with this example, assume the applicant did mark the Ordnance map correctly as an exhibit to her statutory declaration when it was resubmitted. The applicant has had one opportunity to ensure that her application is duly made. The Council sends the landowner the Form 45 notice under regulation 5(1) of the 2007 Regulations, and displays and advertises it as required by that regulation. In its formal objection the landowner identifies (as in this case) a defect in the Form 44 which the Council has not spotted. On the College's interpretation, the Council could not offer the applicant the chance to remedy the defect - even though this might be easily be done - because it would be a second opportunity and only one is allowed.

*56 Notice as well that this example puts paid to the College's submission that offering the applicant the opportunity to remedy the defect more than once can prolong the process interminably to the detriment, potentially enormous, of the landowner. First, there are time limits built into regulation 5 . In this respect I accept Mr Laurence's submission that the wording of regulation 5(1) , "on receipt of", means that notification, display and advertisement of an application must follow soon after receipt, subject to regulation 5(4) . Further, consistently with *Church Commissioners for England v Hampshire County**

Council , applicants may be given only relatively short periods under regulation 5(4) within which to remedy defects. In this case the College suggested that Mr Davis should be given 21 days, although he was given a month, which in the circumstances seems appropriate.

57 Secondly, where a registration authority has not identified defects which render an application not duly made, the landowner has every incentive to uncover them after receiving the Form 45, in the hope that the authority might consider that, in light of their nature, the applicant should not be given the opportunity to remedy them, or that if she is given the chance, she will either fail to correct the defects, or fail to do this timeously. In other words, the bleak picture drawn by the College of endless delay if regulation 5(4) is interpreted in the way the words suggest, and which I regard as the correct interpretation, does not reflect the reality.” [emphasis added]

30. I should also set out that in my view Sir Ross Cranston makes it very clear (correctly in my view) that the question of merits does not come into the question of whether the application is “*duly made.*” I would venture to suggest that that principle should be upheld strictly.

Relevant correspondence and other communications

31. The application to register the land, in this case, was enclosed with a letter dated 13 August 2013⁴ and signed by Mr Robin Campbell as clerk to the Applicant. The letter

⁴ RA 43.

and face of the application were stamped by the County Solicitor as being received on 16 August 2013.

32. In a letter dated 21 August 2013⁵ Miss Wendy Burge, Rights of Way – Definitive Maps Team, wrote back to the Applicant and stated as follows:

“I have now had an opportunity to look at your application and supporting documents in detail.

Unfortunately, I am unable to deem the application as ‘duly made’ for the reasons given below:

- 1. Every supporting document should be endorsed by a solicitor with a certificate to say that it has been checked against the original and is a true copy. You also need to state where the original can be examined. It is helpful to note on the photo’s [sic] who took them, the date and the location e.g. looking west from the entrance towards main road.*
- 2. On page 4 of the application at point 6 Locality or neighbourhood within a locality you have described the locality as Norton St Philip and also ticked the box to say you have marked the locality on a map. I cannot find this exhibit in the documentation.*
- 3. The map is on which you [sic] the application site is too small a scale; it should be not less than 1:2500 scale. The map you have attached as exhibit A appears to be an enlarged version of the 1:25000 Explorer Map.*

⁵ RA 44.

4. *Although you have provided 31 statements, some of them are only 3 or 5 lines it would add more weight to your application if user evidence forms were completed. They should be completed as fully as possible in order to give a more accurate picture of how and when the land has been used.*

I believe the deficiencies in the application can be remedied and am prepared to give you an opportunity to be put the application in order. I consider 8 weeks to be a reasonable time period in which to do this."

I note at this juncture that Miss Burge gave no specific guidance on how to submit the map (in the required scale showing the extent of the application land). She said nothing about any new statutory declaration with respect to the same although a general reference was made to DEFRA guidance on completing application forms.

33. On 31 August 2013 Mrs Oliver wrote as *"chair of the Norton St. Philip Parish Council."*⁶ It is clear from this correspondence, in my view, that Mrs Oliver was not writing in any personal capacity but was following up Miss Burge's earlier letter, in an official capacity. This, I think, described as including a series of questions about how the Applicant should go about complying with Miss Burge's 4 requests set out in the letter of 21 August 2013. Mrs Oliver said: *"I tried to call you on the 28th August but was advised you would not be back in the office until the following Monday. I was trying to check with you my understanding of what exactly was required."* Mrs Oliver also asked whether instead of a solicitor a Justice of the Peace could *"witness*

⁶ RA 46.

and certificate the other supporting documents as well, i.e. maps and photos.”

[emphasis added]

34. There was apparently a phone call between Ms Oliver and Miss Burge before an e-mail from the later to the former on 2 September 2013.⁷ Miss Burge said *“Further to our telephone conversation I thought it might be helpful to clarify the points made in your e-mail of 31 August 2013.”* Miss Burge then expanded upon the 4 deficiencies that she had previously identified in the letter of 21 August 2013. For present purposes, it is enough to recite that in respect of neighbourhood / locality she stated *inter alia*:

“1. Any documents submitted in support of your application, excluding user evidence forms, need to be endorsed by a JP or a Solicitor to confirm they are a true copy of the original and should give details of where the original can be viewed....

2. The neighbourhood / locality issue is a difficult one but as my colleague said is quite important to the application. Point 6 of the application refers, whilst Norton St. Philip is a civil parish so would be acceptable as a locality you have omitted to send a plan marking the locality. If you could send a map showing the Parish boundaries that would be helpful.”

35. In a letter, emblazoned with the letterhead of the Applicant and dated 3 September 2013⁸, Mrs Oliver wrote to Miss Burge. Mrs Oliver generally thanked Miss Burge for

⁷ RA 45 – 46.

⁸ RA 47.

her help in understanding what was required for the application to be “*duly made.*” She stated that she did not consider that “*we are infringing any of the ‘trigger factors’ outlined in the guidance.*” She also said this:

“I understand your department is very busy with limited resources. If it is at all possible to process our application at your earliest convenience this would be much appreciated. If there is anything else you need to ensure our application is considered ‘duly made’ it would really helpful if you could let us know immediately. Hopefully, you will not need anything else and we will soon run out time... Please feel free to ring or e-mail me or Robin Campbell at any time.”

Finally, Mrs Oliver said in relation to witness statements: “*With more time and the ability to openly seek statements from local residents who use Shepherd’s Mead we would have been able to submit many more. Hopefully, the quality is sufficient for you [sic] our application to be ‘duly made’.*”

36. There was a separate letter dated 3 September 2013 from Mr Campbell, the Clerk to the Applicant, which began *we now resubmit our application to register Shepherd’s Mead, Norton St. Philip as a Village Green.*” The letter included a list of the enclosures with little stars next to items indicating that they had been “*witnessed by a Justice of the Peace.*” The letter concluded: “*Please let us know as soon as possible if this revised application is in order and can be considered duly made.*”

37. In an e-mail dated 4 September 2013⁹ Mrs Oliver wrote to Miss Burge and said that she had posted *“our application back to you yesterday by special delivery and it is guaranteed to get to the offices by 9am today.”* Indeed, on 4 September 2013¹⁰ the CRA received (and stamped as such) the above-mentioned letter from Robin Campbell including the revised application.
38. In an e-mail to Ms Oliver of 5 September 2013¹¹ Miss Burge acknowledged receipt of the *“amended village green application for Shepherd’s Mead, Norton St. Philip.”* She stated that she would be in contact *“as soon as it has been checked to confirm whether or not it is now duly made.”*
39. Mrs Oliver then chased Miss Burge about whether the application could be considered as *“duly made”* on 10 September 2013. Miss Burge replied on 11 September 2013 that she was hoping to go through the application that day.¹²
40. On 17 September 2013¹³ Miss Burge e-mailed Mrs Oliver and *inter alia* said that *“... before the application can be deemed to be duly made enquiries have to be made of the local Planning Authority and the Planning Inspectorate regarding planning/local plan development proposals for the land. This is as a result of the Growth and Infrastructure Act 2013 which came into effect in April this year.”* She then said that she had written to Mendip District Council and the Planning Inspectorate and would revert when they had replied.

⁹ RA 45 – 46.

¹⁰ RA 49.

¹¹ RA 45.

¹² RA 50.

¹³ RA 51

41. Miss Burge was good to her word and in a letter, this time to Mr Campbell as clerk, dated 11 October 2013¹⁴ she wrote as follows:

“I have now been advised by the Planning Inspectorate and Mendip District Council Planning Department that there are no ‘trigger’ events under the Growth and Infrastructure Act 2013 which would prevent me from accepting your application to register the above land as a Village Green. The application appears to be in order and I therefore deem it to be ‘duly made’, the date on which the application was received i.e. 16 August 2013 is the relevant date.”

Miss Burge then went on to describe the next steps that she was going to take, pursuant to the Interim Regulations, such as informing the landowner and advertisement. In a further letter dated 30 October 2013¹⁵ to Mr Campbell, clerk to the Applicant, Miss Burge asked him to display a copy of “form 45.”

42. In late October and early November 2013 the landowner was informed by the CRA of the application.¹⁶ There was a request for more time to make submissions to the CRA and time was extended to 3 February 2014.¹⁷
43. There were a series of e-mails¹⁸ between Miss Burge and representatives of the Applicant in relation to potential costs flowing from a village green inquiry and also in relation to possible rights of way which might be added to the Definitive Map and Statement. Although the existence of footpaths is a matter that might be relevant to

¹⁴ RA 52 - 53

¹⁵ RA 55

¹⁶ RA 194 – 195; RA 264; RA 269 -270.

¹⁷ RA 196.

¹⁸ RA 58 – 62.

the merits of the application it is not something that is relevant to whether the application to register land as a green was validly made.

44. In letter to Mr Campbell of the Applicant dated 7 February 2014¹⁹ Miss Burge said that the 6-week objection period had closed and that she had received representations from Wards Solicitors. She asked for comments by 7 March 2014 but this was subsequently extended to 28 March 2014.²⁰ The Applicant then filed a response in conformity with this deadline.²¹

45. The representations from Wards Solicitors referred to above, on behalf of Bina Ford and Malcolm Lippiatt Homes Limited, covered a whole range of issues but addressed the issue of whether the application had been properly made as follows:

- It was said that there were *“significant irregularities in connection with the completion of the application form and, in particular, the statutory declaration.”*
 - The declaration (exhibit A), it was pointed out, was made on 13 August 2013 whereas exhibits B(i) and (ii) were both declared on 2 September 2013. Exhibit B (ii), a map showing the civil parish boundaries of Norton St. Philip, it was also pointed out, was date stamped by the CRA as being received on 16 September 2013.
 - It was submitted that the Regulations require *“... the application is accompanied by, or by a copy of, every document relating to the mater. It is impossible to see how documents which are declared as part of the*

¹⁹ RA 63

²⁰ RA 65

²¹ RA 67 – 71; RA 199; RA 200 – 206.

application on different dates, so accompanied it. Hence there was a clear breach of the mandatory requirements of the Regulations.” The letter went on to suggest that the application was not made until, at the very earliest, 4 September 2013 or “*more probably*” on 16 September 2013. The relevance of this it was suggested was that these dates post-dated trigger events (which I will address separately below).

- An attempt was also made to distinguish what at that time was the first instance decision in ***Church Commissioners***. It was noted that there was an extant appeal to the Court of Appeal. Indeed, it would serve little purpose for me to recite the legal submissions made in the letter on this point because we now have the benefit of that Court of Appeal judgment. It is important to note however that the letter suggested that the Applicant had not perfected a defective application but had made a re-submission which should be treated as a fresh application.

46. The Applicant’s retort to what I have described above (there was also a lot of detail of the rebutting the alleged trigger events and other matters), as submitted on 28 March 2014²², in accordance with Miss Burge’s deadline, was as follows:

- “*As the chronology of events laid out by the objectors show one application and one application only has been made by the PC. It is dated 13/08/2013.*” It was said that Miss Burge had given the Applicant an opportunity to put the application in order and that as such “*The application was not therefore*

²² RA 67 – 101.

rejected but was held open to allow lay people as we are to put in order the minor deficiencies – not the substance of the application. These were minor deficiencies and were remedied quickly with Miss Burge confirming receipt of all in order documents on 5 September 2013.”

- The Applicant attached an Opinion from Mr Martin Edwards which stated that in his view the application had been properly made and that the first instance decision in **Church Commissioners** clearly showed that the date of the application, which has been corrected, is the date of original submission. He did not consider **Church Commissioners** at first instance could be distinguished in the manner suggested in the letter from Wards Solicitors. He also stated that he was aware of a pending appeal.
- An annotated version of the Ward Solicitor’s letter was also provided. It set out:

“On 3/9/13 the PC returned the application (the same application) within the allocated time with the deficiencies duly remedied, including additional and witnessed documents which are listed in an accompanying letter (Enclosure L) is a copy of a note that all documents listed were sent to SCC by signed-for-next day delivery on 3/9/13. It was established on 5/9/13 that the package had been received. Miss Burge wrote on 11 October the ‘application to be in Order and I therefore deem it be ‘duly made.’, the date on which the application was received i. 16 August 2013 is the relevant date.” It was stressed that, under the **Interim Regulations**,

the Applicant was entitled to a “reasonable opportunity” to put the application in order: which had been given and taken.

- In response to the allegations made in the Wards Solicitor letter about the various exhibits and the date at which they were submitted it was said:

“Only those elements of the application identified by the registering authority as requiring amendments were ‘declared’, where necessary, subsequent to 13/8/13. The remainder stood...”

and

“We were asked to remedy those parts of the application which were deficient, which we did, to the satisfaction of the registering authority and in line with the regulations.”

47. There was then some correspondence in which Wards solicitors indicated that there were to be representations made on the Applicant’s submissions. In a letter dated 26 June 2014²³ Wards Solicitors made some limited comments on planning applications but stated that they supported having a public inquiry as soon as possible.
48. As is often the case in these cases, after this point, not much of any note happened for a considerable period of time. There are many reasons why there is often a delay at this point, importantly including the limited resources available to public

²³ RA 209.

authorities to convene public inquiries.²⁴ By late 2015 the CRA informed Mrs Oliver that an inquiry might not take place until 2017.²⁵ There was some correspondence between the RA, Wards Solicitors and the Applicant about exactly when an inquiry might be held and the extent to which the application could be allowed expedition.²⁶

49. However, on 21 January 2016²⁷ Mr Andrew Saint of the CRA wrote a letter of some importance to the Applicant:

"I write in relation to Norton St. Philip Parish Council's application to register land at Shepherd's Mead as a village green. Having recently been passed this case I am now reviewing the file with a view to preparing it for a possible public inquiry. In doing this I have noticed a slight inconsistency in the application which I was hoping you might be able to resolve.

This statutory declaration which accompanied the application is dated 13 August 2013. Point three of that declaration refers to a map showing the land in respect of which the application was being made. After the application was made it came to light that the original map was not to correct scale and so a 'second map' was submitted on 4 September. The second map was endorsed as exhibit A by Mr R Beer J.P with the following statement:

'This is the exhibit referred to in Paragraph 3 of the statutory declaration made this second day of September 2013 before me Mr R J W Beer J.P.'

²⁴ See also comments made on this issue by the CRA in letter dated 8 April 2015: RA 211

²⁵ RA 112

²⁶ RA 210 – 215.

²⁷ RA 118 - 119

However, as far as I can tell from our file the statutory declaration of 2 September 2013 was not received by this office. The only declaration that we have from the Parish Council is dated 13 August 2013 and, as mentioned, it refers to the first map drawn at an incorrect scale. We therefore have no declaration which references a map of the correct scale.

In light of this the Parish Council will need to either provide a copy of the statutory declaration dated 2 September 2013 or, if that statutory declaration no longer exists, make a new declaration....”

It was then said that the statutory declaration had to conform to the Interim Regulations with necessary amendments made. The CRA advised the Applicant to get legal advice. A deadline for a response was set as being 25 February 2016.

50. I pause at this juncture to say that at the inquiry (based on the evidence which I summarise below and on a general review of the papers) it became apparent that no new statutory declaration had been filed with the CRA in September 2013. What had been filed was a map (to an appropriate scale and otherwise acceptable) showing the extent of the land claimed as a green. The map had the following statement signed by Beer JP: *“THIS IS THE EXHIBIT REFERRED TO IN PARAGRAPH 3 OF THE STATUTORY DECLARATION MADE THIS SECOND DAY OF SEPTEMBER 2013 BEFORE ME, MR R J W BEER JP.”*

51. Continuing with the chronology that followed after Mr Saint’s letter. Mrs Oliver wrote back on behalf of the Applicant seeking advice and eventually asked for

comment on a draft statutory declaration, but Mr Saint, on behalf of the CRA, responded at best he could within the constraints of neutrality.²⁸

52. In a letter dated 22 February 2016²⁹ the new clerk to the Applicant, Ms Nicola Duke, wrote to the CRA enclosing, in response to Mr Saint's letter of 21 January 2016, a "*... further statutory declaration, duly endorsed by JP, Rodney Beer on the 22nd February.*" It was stated that: "*This statutory declaration appropriately makes reference to the map of the correct scale, the map showing the extent of Locality of the Civil Parish of Norton St. Philip, map showing location of Shepherd's Mead within Civil Parish of Norton St Philip, and other documents submitted in support of the application. All of which were endorsed by a JP on the 2nd September 2013 and sent to Miss Wendy Burge with an accompanying letter (copy attached) dated 3rd September 2013.*" The new map introduced in February – called exhibit A(i) – had another statement signed by Beer JP on it that read as follows: "*AN EXACT COPY OF THIS MAP WAS DECLARED BEFORE ME ON 02/09/2013. THIS EXHBIT A(I) IS REFERRED TO IN CLAUSE 3 OF THE STATUTORY DECLARATION MADE ON THIS SAME DAY OF 22ND FEBRUARY 2016.*" I will look more closely at that statutory declaration below.

53. In a letter dated 24 March 2016 the CRA was informed that Mrs Bina Ford and Malcolm Lippiatt Homes had instructed Battens Solicitors.³⁰

²⁸ RA 117 – 119.

²⁹ RA 122.

³⁰ RA 218.

The witness evidence to the public inquiry

54. I heard evidence from a number of witnesses whose evidence touched upon the submission and subsequent handling of the application. While those witnesses gave evidence about other issues, I will deal with that later in my Report.
55. First, there is Mr Robin Campbell, the Clerk to the Applicant at the time of the first submission of the application in August 2013. He said in cross-examination that he considered it his duty to submit the application. There had been, he recalled, a resolution in respect of the application in July 2013 but he could not recall the wording. At the conclusion of Mr Campbell's evidence a series of minutes, including the resolution referred to, were produced to me.³¹ He also explained that when the application was sent back to the CRA in September 2013 it contained roughly 40 evidence questionnaires that were not previously part of the application.
56. Also, in cross-examination Mr Campbell confirmed that the application to be found at A1/12 – 24 was the entire complete application that was submitted in August 2013. Although not entirely clear from the correspondence Mr Campbell also stated that he could recall that the CRA sent the original August submission back to the Applicant. He referred to the words in the letter dated 21 August 2013³² indicating that the application was enclosed. He also referred to his letter of 3 September 2013 as indicating those documents which were included as part of the September submission.

³¹ INS 1 – 7.

³² A1 25

57. Mr Honey asked Mr Campbell to compare the August 2013 submission with the submission in September 2013.³³ He agreed, no doubt because it is obvious, that the September application had also included an amended "*Justification Statement*." (compare from A1/17 – 20 to A1/34 – 37). However, the differences to my mind did not change the basis of the application in any way but were clearly directed to the merits and in particular to making an argument that the land had been well used for lawful sports and pastimes. The September submissions included a new heading "*Compendium of quotations from respondents demonstrating use of Shepherds Mead for Recreational Activities*." Mr Campbell agreed that there was a difference in the substance (by which I did not take him to mean legal materiality) in some places.
58. Mr Campbell went onto to explain that the statutory declaration included as part of the August 2013 submission at A1 16 – 17 was made at Mr Beer's house and he was sure that no fee was paid. He also said that he made no further statutory declarations. I accept Mr Campbell's evidence on these issues which he gave in a straightforward manner.
59. Second, there is Mrs Linda Oliver, who was co-opted as parish councillor in 2009 (and served until 2015). It is obvious to me from all the evidence in the case that she has been very involved in bringing forward the Applicant's case to the inquiry. I have to bear in mind when approaching Mrs Oliver's evidence that she was prone to getting a little carried away with her own thoughts about particular issues which sometimes resulted in her going off in tangents. This sometimes had the effect of confusing the essential issues that she was being asked about. Mrs Oliver told the

³³ A1 26

inquiry that she has been a member of the Applicant's "*Village Green Working Group*" since about May or August 2015. Mrs Oliver described to me how together with Mr Robin Campbell, the clerk to the Applicant, she had submitted the application. I have noted above the correspondence to the CRA in relation to the application that she engaged in her capacity as Chair of the Applicant. When the issue was raised in cross-examination, Mrs Oliver made it clear to me that she has been working, at all times, with the permission of the Applicant although terms of reference for the working group were not approved until 2 March 2016.³⁴

60. Mrs Oliver further described how the application then went into a queue but later "*jumped the queue.*" She said that she went to see a rights of way officer and she saw on his computer that there were applications "*on the screen that nobody knows about.*" It would in my view have been inappropriate for Mrs Oliver to have been shown confidential files but this admission does not to my mind (importantly) appear to be material and further, I am conscious of my general impression of Mrs Oliver as a witness and that I have not heard any evidence from the officer concerned. I say no more about this other than to express some surprise.

61. In cross-examination, Mr Honey took Mrs Oliver to the statutory declaration contained in the application received by the CRA on 16 August 2013³⁵ and compared it to the revised statutory declaration which was sworn before a Justice of the Peace on 20 February 2016³⁶ (sent after in response to Mr Saint's letter of 21 January 2016). Mrs Oliver clarified that she personally re-drafted the statutory declaration.

³⁴ These terms of reference were at the request of Mr Honey, produced to the inquiry: see I 32.

³⁵ A1 12

³⁶ A1 49

Mr Honey went through those differences in cross-examination. Both declarations were made by the clerk to the Applicant but in 2013 that position was held by Mr Robin Campbell but by 2016 Ms Nicola Duke had taken over.

62. Paragraph 1 of the statutory declaration originally read: *"I am the person who has signed the foregoing application."* As changed it read: *"Robin Gordon Campbell signed the application dated 13 August 2013 on behalf of the Parish Council a Copy of which is annexed to this Declaration marked "Exhibit ND1."*
63. Paragraph 2 originally read: *"The facts set out in the application 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."* Mrs Oliver changed the beginning of this sentence to: *"Except as referred to in Clause 3 the facts set out in this application form are to the best of my knowledge and belief fully and truly stated.."* Mrs Oliver told the inquiry that she was trying to comply with what she was asked to do by Mr Saint.
64. Paragraph or clause 3 (as referred to above) was also changed by Mrs Oliver. Originally it simply read: *"The map now produced as part of this declaration is the map referred to in part 5 of the application."* It was amended so as to be quite astonishingly complex:

"I now produce as part of this declaration and the application dated 13 August 2013, copies of photographs that were subsequently on 2nd September

2013 declared true copies of the originals held by Mr Campbell (Exhibit ND 2), Dr Awan Exhibit (ND 3) & Mrs Cox (Exhibit ND 4). These were documents referred to in part 10 of the application dated 13 August 2013. In addition, I now produced as part of this declaration and the application dated 13 August 2013 copies of the maps annexed marked "Exhibit A", "Exhibit B (i) and "Exhibit B (ii)" all of which were originally declared before Mr R J W Beer J.P on the 2nd September 2013. Exhibits B (i) and B (ii) both dated 2nd September were in addition to the documents submitted on 13 August 2013 and Exhibit A dated 2 September 2013 was in substitution for the Exhibit A dated 13th August, referenced in part 5 of the application dated 13th August 2013. For clarity, a copy of Exhibit A dated 2nd September is produced as part of this declaration and application dated 13th August 2013. This additional Exhibit A (i) has been endorsed in support of this statutory declaration by Mr R J W Beer JP."

In cross-examination Mrs Oliver said that this amendment was because they had submitted additional evidence questionnaires and it was intended to mean that everything in the original application form was correct *"apart from the things that we were asked to correct."* Most of Mrs Oliver's actions in relation to the application and how it was made are in fact documented and I accept that she was at all times trying to do her best to fulfil the requirements of the CRA as she understood them to be. She is obviously very passionate about the land and the effort she has put into the application is consistent with those feelings. I have of course studied very carefully all the correspondence from Mrs Oliver to the CRA which I have referenced

above. I do not find that it was reasonable for Mrs Oliver to have formed the impression that such drastic re-drafting of the statutory declaration was being required by the CRA.

The August 2013 submission: analysis

65. The August 2013 submission was said not to be duly made by Miss Wendy Burge in her letter of 21 August for 4 reasons. In my view, it is clearly the case that 3 of those reasons were not, on a proper view, reasons to regard the application as not being “*duly made*” for the purposes of the Interim Regulations. To the extent that the Objector contended otherwise I reject that submission.
66. Firstly, the Interim Regulations simply do not provide that every supporting document (such as photographs or whatever) is certified by a solicitor as being a true copy of the original. That is the end of that point. Secondly, although it is true that a map showing the Parish of Norton St. Philip was not enclosed with the application despite the Applicant ticking the box to say it had been, in my view, that is of no significance. There is, again, no requirement in the Interim Regulations for the Applicant to provide a map showing the boundary of the locality relied upon (*cf* Regulation 10 in respect of the extent of the application land). The claimed locality is clearly named in part 6 of the application form submitted in August 2013. I pause here to note that, whether or not “*the Parish of Norton St Philip*” is a locality for the purposes of s.15(2) CA 2006 is clearly to my mind a question going to the ultimate merits as opposed to the validity of the application. The Interim Regulations do provide, as I have set out, for the application to be “*in form 44.*” Note 6 on form 44 sets out:

*“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 described 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 clearly marked.” [emphasis added]*

67. So can the application be said to be defective because the box is ticked (in error or for whatever reason) in circumstances where the information in the application form would be clearly acceptable if it had remained un-ticked? In my view the answer must be that the tick in the box does not undermine the validity of the application and I find that on this issue, with reference to the Interim Regulations, there was no defect either.
68. Thirdly, Miss Burge’s criticism of the number of statements provided and the amount of detail in them clearly in my opinion forms no part of the CRA’s duty under the Interim Regulations. This is the same error that was committed by the commons registration authority in the ***Meadow Triangle*** case and which was agreed by all sides in that litigation as being irrelevant to the question of whether an application is *“duly made.”* Sir Ross Cranston was very clear in his judgment in that case that an assessment of the merits forms no part of the decision on that issue.
69. So that leaves Miss Burge’s criticism of the map. It is quite clear to me that the map that was included and referred to as *“EXHIBIT A REFERRED TO IN THE STATUTORY DECLARATION OF ROBIN CAMPBELL SHEPHERD’S MEAD MARKED IN GREEN MADE THIS THIRTEENTH DAY OF AUGUST 2013 BEFORE ME, MR R JW BEER [SIGNED RJW BEER JP]”* was not compliant with Regulation 10 of the Interim Regulations as it is

not the correct scale nor, seemingly, an ordnance map. As such in my opinion, at this juncture, the application was not *"duly made."*

The September 2013 submission: analysis

70. The Objector argues that the application form submitted by Mr Campbell to the CRA on 4 September 2013 was *"a revised application and not a putting in order of the first application."* The Objector relies on the fact that, as Mr Campbell told the inquiry, that the CRA did not retain the August 2013 application form but instead sent it back to the Applicant.

71. I will say at once that I do not find there to be any merit in this argument as it requires one to read the correspondence in a way that no reasonable person would understand it. Miss Burge's letter of 21 August 2013 was clearly an invitation to remedy the defects in the submitted application within 8 weeks. On 4 September 2013 Mrs Oliver e-mailed Miss Burge to say that she had *"posted our application back to you yesterday.."* Miss Burge acknowledged herself the receipt of the *"amended village green application"* in her e-mail of 5 September 2013. The covering letter from Mr Campbell which enclosed the amended application referenced Miss Burge's letter of 21 August 2013 which made the request to remedy the defects and stated that *"we now re-submit the application."* I note also that in **Church Commissioners** the registration authority did not retain a copy of the application. Although, as canvassed above there were additional evidence questionnaire and a significantly amended *"compendium of quotations"* there was in my view really just additional information and evidence directed, as I have said, towards the merits rather the requirements of the Interim Regulations.

72. It is then submitted by Mr Honey, on behalf of the Objector that in any event the September 2013 submission was also defective. Reliance was placed upon Mr Campbell's evidence in cross-examination that the September 2013 submission did not contain any new statutory declaration but instead merely included the August 2013 statutory declaration again. It is submitted that there is no evidence to support the existence of a statutory declaration dated 2 September 2013. I agree and find that there was no statutory declaration dated 2 September 2013, although it seems that Beer JP had been asked to sign a map on that date. I find that it was probably the provision of this signed map which caused Miss Burge of the CRA to conclude that the application was "*duly made*." It appears to me that, although there is not clear narrative, there may have been some misunderstanding by the Applicant, Mrs Oliver and/or Beer JP as to what amounted to a statutory declaration as compared to some kind of certification of original documents.
73. I am afraid that I do not agree with Miss Burge's decision that the application was "*duly made*" at this point. Although the Applicant had submitted an appropriate map to Miss Burge showing the extent of the land claimed as a green, Regulation 10 requires that that be exhibited as a part of a statutory declaration. The simple point is that the map submitted³⁷ in September was not so exhibited. The Applicant just re-submitted, I find, the statutory declaration from August 2013 without amendment. So on this point I agree with the conclusion of the Objector that the application was not duly made.

³⁷ A1 39

74. The position at this point is, I think, close to Sir Ross Cranston's example in the ***Meadow Triangle*** case of an applicant who in a rush to re-submit an application failed to mark a map as an exhibit to statutory declaration. However, in the present case, there seems to have been a fundamental error of thinking – that extended to the Justice of the Peace - about what a statutory declaration should consist of. However, the Applicant was not asked to remedy this error at the time and, on the contrary, was told by Miss Burge that the application was now considered to be "*duly made*" by the CRA in the communication of 11 October 2013.

February 2016 submission: analysis

75. Although it was not clear to Mr Saint – as shown by his letter - when he took over from Miss Burge, why there was not a statutory declaration dated 2 September 2013, I have found above, as a fact, that none existed. Mr Saint's letter to the Applicant should I think be construed to be the granting of a second, time-limited opportunity to perfect the application. However, the Objector submits that there are 3 reasons why the Applicant's February 2016 revision failed again to render the application duly made.
76. First, it is submitted the February 2016 submission did not comply with Regulation 3(3) because the statutory declaration was not made by the person who signed the application on behalf of the Applicant. I remind myself that Regulation 3(3) provides as follows:

"(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.”

In the instant case, as explained in the evidence Mr Campbell (who made the declaration in 2013) had been succeeded by Nicola Duke as clerk to the Applicant. I am not willing to construe the Regulations to mean that Mr Campbell had to make the declaration. There may be instances elsewhere where death or other incapacity means that it would be impossible to comply with this construction. What then? To hold that an application in those circumstances could not be perfected would in my view be absurd. In the present case it is not as if Mr Campbell made the declaration in his personal capacity and I see no reason why an ex-Clerk should volunteer to make declarations (and he may not be indemnified to do so even if specially authorised). I note that in Regulation 3(3)(c) it does not say that the solicitor must be the same solicitor who made an earlier declaration. I also see that Note 12 to statutorily prescribed form 44 states that 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 take all these things into account when my arriving at my view that the word *“person”* in Regulation 3(3)(c) should be construed to include a successor to an authorised officer in circumstances where an application is being modified in order to render it duly made. Accordingly, I dismiss the contention put forward by the Objector.

77. Second, the Objector submits that the text of the statutory declaration was wholly inadequate to do what was required by the Regulation 3(2)(a) and 3(2)(d)(i) which

requires that the application must be “*made in form 44*” and supported “*by a statutory declaration as set out in form 44, with such adaptations as the case may require.*” It is said by the Objector that the main thing that the text of the declaration in Form 44 requires is that the statutory declaration swears that the facts set out in the application are fully and truly stated: and further that that is where the February 2016 submission falls down.

78. The Objector’s complaint here is that Mrs Oliver drafted a statutory declaration which did not swear the facts set out in the application were fully and truly stated because of the caveat in paragraph 2 which, as set out above, contained the phrase “*except as referred to in Clause 3.*” I do not regard paragraph 2 on a proper reading as giving rise to a declaration that all the facts are true except as in paragraph 3. It is necessary to read the whole of paragraph 2 with the appropriate emphasis:

*“Except as referred to in Clause 3 the facts **set out in this 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.” [emphasis added]*

I have already criticised Mrs Oliver’s drafting. The items set out in paragraph 3 are a series of maps which were being produced as part of the statutory declaration. I do not regard it as a common-sense interpretation that the Applicant was saying that the documents produced in paragraph 3 were somehow untrue and moreover Mrs Oliver’s exception applies to the whole of paragraph 2 (i.e. the whole sentence) and

not just to the first part. In any event, the August 2013 statutory declaration had already sworn that the facts set out in the application form were true. In my view there was no material departure from those facts required by the Interim Regulations and in any case the CRA could have simply continued to process the justification statement as originally submitted (presumably on the basis that there is no unilateral right of amendment): but see *obiter* remarks in ***Meadow Triangle*** at [64] – [65].

79. I now come to the Objector's third complaint which is that paragraph 3 of the statutory declaration failed to swear that the map produced as part of the declaration (and marked as such) being map A(1) was the map referred to in part 5 of the application. This fundamental element of Form 44 was wholly absent it is suggested. I have tried to test this proposition by seeing whether the words used Mrs Oliver on behalf of the Applicant can be construed to fulfil this function. This is a difficult psychological exercise for the reason that if one studies the papers produced since 2013 it is beyond obvious to any sensible person what the extent of the land is that the Applicant is applying to register. It would have been obvious to Miss Burge when she received an appropriate map, but frankly the original map submitted was also clear enough. However, that is not the test to apply and in my view it is clearly a requirement of Regulation 3 and 10 that the statutory declaration – being a very formal document – has an appropriate map of the land marked as an exhibit in such a way that makes clear that it is the map "*referred to in part of [form 44].*" Part 5 of form 44 itself contains the statement as to the particulars of the land that it is "*Shown in colour on the map which is marked to the statutory declaration.*"

80. I have tried to test whether it is possible to interpret paragraph 3 of the February 2016 statutory declaration as meeting the above requirements either expressly or implicitly. I am afraid to say that I think paragraph 3 makes very little sense. Although with extrinsic information about the no doubt benevolent intentions of Mrs Oliver one can trace through map A(i) being a replacement for map A, even then it is necessary to strip out the reference to the non-existent statutory declaration of 2 September 2013. To the reasonable reader who does not have the benefit of all this inadmissible material there is no help either at all to be found in the words endorsed by Beer JP on the maps themselves. All this is probably fatal but I also find that it especially fatal that nowhere is it said in the statutory declaration that map A(i) is being produced with reference to part 5 of the application form. The reader is not informed that anyone is making a statutory declaration with an exhibited map showing the extent of the land which is subject of the application (and as it happens exhibit A is not marked as an exhibit to the February 2016 statutory declaration).
81. As I result of the above, I would hold that Mrs Oliver's decision to re-draft the February 2016 statutory declaration has the consequence that the application was not duly made within the meaning of the Interim Regulations. I accept the Objector's submissions to that extent. I find that this is the strict legal position notwithstanding that, as above, the extent of the land subject to the application has been obvious at all material times.

Is the Objector precluded from disputing whether the application was “duly made” by operation of public law principles?

82. The Applicant submitted that the Objector failed to challenge, in good time (that is to say within the usual judicial review time limits), the determination of the CRA on 11 October 2013 that the application was “*duly made*” and so as lost the right to challenge it now. I do not agree with this contention. Wards Solicitors had, at the earliest opportunity, raised the submissions (which I have set out above) with the CRA about the validity of the application and the CRA had been content to extend time so as to receive these at the end of January 2014. There was then, at Miss Burge’s request, submissions in return from the Applicant. It seems to me to have been implicit that the CRA were considering those submissions and had not reached a decision about them. But in any case, irrespective of a decision by the CRA to proceed to advertise and send form 45 notices to the owner under Regulation 5(1) of the Interim Regulations (a decision which necessarily involves deciding the application is duly made) it seems to me that the effect of Mr Saint’s letter of 21 January 2016 was to raise the possibility of the CRA revoking that earlier decision to advertise under Regulation 5(1): as happened in ***Meadow Triangle***. That possibility was then expressly raised when the CRA instructed me to consider the validity of the application. I am in effect being asked whether the decision taken by Miss Burge, that the application had been rendered duly made, should be revoked. As such, I do not think that reliance in argument on judicial review time-limits gets the Applicant anywhere. The Objector on the other hand was entitled, for all these reasons, to wait until the conclusion of the inquiry and my recommendation before bringing any

legal proceedings (if desired). I agree also with Mr Honey that the Court of Appeal has made it clear in ***Church Commissioners*** at [66] and [77] that it is appropriate for these sorts of issues, at least at first, to be dealt with through the inquiry procedure (see also at first instance *per* Collins J at [15]).

Consequences of application not being duly made

83. The Objector submitted that in any event, the third purported application was too late to put the application in order. It is said that a period of “*nearly two and a half years*” to put right an application made in 2013 would plainly not be short and would not be reasonable. I take it from this submission that the Objector would be of the same view if a third opportunity was to be now given to the Applicant to get the application in order.
84. I do not agree that the Applicant has taken nearly two and half years to attempt to put the application order. Miss Burge first wrote to the Applicant and asked that defects (as she saw them) be rectified on 21 August 2013. By 4 September 2013, the CRA had a re-submitted application form. It is clear from the correspondence from that time that the Applicant was extremely keen to hear whether there was anything further that it needed to do in order to put the application in order. On 11 October 2013 Miss Burge came to the conclusion that the application was duly made. As I have set out above, in my view the Interim Regulations place a duty on the CRA to identify actions that need to be taken to put an application order. Accordingly, I conclude that:

- The CRA did not fulfil that duty in relation to the map. Miss Burge's instructions in 2013 did not spell out that it needed to be marked as an exhibit to a fresh statutory declaration. Worse still the matter was somewhat confused by the erroneous instruction to swear every document (including maps) as being a true copy before a solicitor or JP. Bearing in mind the unrepresented Applicant, this meant that the required action had not been comprehensively identified by the CRA.
- As the CRA had informed the Applicant in the communication of 11 October 2013 that the application was duly made it had failed in its duty to identify to the Applicant that it was a requirement the map be attached to a valid statutory declaration. In my view this would not have been a difficult thing to have pointed out.

Consistent with this I also find that it would not be legally correct to count the small time between 21 August 2013 and 4 September 2013 against the Applicant. However, as the time is small it is unlikely that this finding can make any difference to the outcome.

85. However, I also conclude and find that it would be incorrect to count the time between 11 October 2013 and Mr Saint's letter of 21 January 2016 against the Applicant either. There was no reason for the Applicant to take an action at all in that period as none had been identified to it or required of it by the CRA. If the required action has not been identified then in my view the authorities support the conclusion that this is tantamount to no opportunity being given (which of course cannot logically be counted as a reasonable one).

86. However, I do find that Mr Saint's letter of 21 January 2016 did fulfil the CRA's duty under the Interim Regulations. The response from the Applicant was made on 22 February 2017 which was, as it had been before, within the time limits set by the CRA. However, for the reasons set out above the Applicant failed to render the application duly made.

87. It is of course a matter of regret that this was not immediately realised, but I make no criticism in respect of this. By now the position, as is seen from what I have set out above, had become very confused with the passage of time, personnel, subject to legal submissions from all sides and (to add to the complexity) a changing jurisprudential background. The question for me now is whether a further opportunity should be afforded to the Applicant. I have come to the conclusion that it should be. The relevant time frames have been:

- 21 August 2013 (request by CRA) – 4 September 2013 (resubmission by Applicant)
- 21 January 2016 (request by CRA) – 22 February 2016 (resubmission by Applicant)

It can be seen that the Applicant has in fact, even if these times are held against it, (and as above I do not think the first one should be) not taken anything like the 9 months that was afforded to the applicant in the ***Church Commissioners*** case. It is not even 2 months. No further request has been made of the Applicant after its last submission in 2016. It is striking that in 2013 the Applicant was keen to do anything that was required of it to render the application duly made.

88. I appreciate and take fully into account that the Applicant is culpable - through its re-drafting of the statutory declaration – for the latest failure. I also take into account the general failure to submit an appropriate map in the first place. There is some evidence of a need to determine the fate of the land in question in light of development proposals (but as things have turned out I will go on to consider those in this Report in any event). I also think that it is a concrete fact of this case that there can be no ambiguity in anyone’s mind – at any time - as to the extent of the land which is intended to be subject to the application. What one is dealing with here in my opinion is a pure technicality of the Interim Regulations.

89. Considering my reasoning above and the guidance from **Church Commissioners** and **Meadow Triangle** I consider that the Applicant (by its own conduct) has not exceeded a reasonable opportunity and should be given a last chance to perfect the application within 14 days in accordance with clear instructions from the CRA. This means, it seems to me, that the Applicant must provide a suitable map, in accordance with the Interim Regulations, showing the extent of the application land which is exhibited to an appropriately worded statutory declaration. I should think that that declaration need only diverge from the standard form provided in the Interim Regulations in a limited number of ways. It needs to:

- Make clear the position as to the Clerk who signed the original application dated 13 August 2013 having been succeeded (if an instructed solicitor is not to sign).
- References to the application form need only add that that is the application dated 13 August 2013.

- The words “*or provided as part of the public inquiry which had been held*” can be added to the end of paragraph 2.
- Delete, as before, unnecessary provisions as to voluntary registration.

TRIGGER EVENTS

Introduction and relevant statutory provisions

90. Where a so-called “*trigger event*” has occurred in relation to land, it is not possible, after the occurrence of that trigger (because of the legislation to which I will herein refer), to make an application to register land as a village green. It is the Objector’s submission that:

“Two trigger events applied to the TVG Application Land: (i) application 2013/1045 (an application for outline planning permission, received by Mendip District Council on 7 May 2013) (‘1045 Application’); and, (ii) application 2013/1821 (an application for outline planning permission, received by Mendip District Council on 28 August 2013) (1821 Application)’”

[footnotes removed]

91. The pertinent provisions of the CA 2006 to these submissions are put forward by Mr Honey are as follows:

“s.15 Registration of greens

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

(2) This subsection applies where – 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 they continue to do so at the time of the application.

Section 15C(1) CA 2006 then provides as follows:

“The right under section 15(1) to apply to register land as a... village green ceases to apply if an event specified in the first column of the Table set out in [Schedule 1A³⁸] has occurred in relation to the land (“a trigger event”).”

The first “trigger event” in Schedule 1A is:

“An application for planning permission in relation to the land which would be determined under section 70 of the 1990 Act is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act.”

92. It is common ground that the right to apply to register land which has become subject to a “trigger event” is restored if a corresponding “terminating event” occurs. However, I received no submissions that I should consider any such events. If a trigger event only relates to part of the application land then the clear interpretation of the statutory provision is, in my view, that the application should proceed as normal with respect to the unaffected land: see on this also DEFRA’s Interim Guidance to Commons Registration Authority on Section 15C of the Commons Act

³⁸ Words in square brackets inserted to refer to the “Relevant Schedule.”

2006: (Exclusion of the right to apply under section 15(1) of the Commons Act 2006 to register new town or village green) dated April 2013 at [47].³⁹

93. The relevant “*development order*” at the time of both the 1045 and 1821 Applications was the Town and Country Planning (Development Management Procedure) (England) Order 2010/2184 (“the 2010 DMPO”).
94. There has been, as of yet, no decided court case which concerned disputed trigger events. However, it is widely known at the Bar that there was a compromised judicial review concerning the South Bank Centre in London: see also ***Simon Adamyk, A red light for village greens? Lessons from the South Bank J.P.L. 2015, 4, 397-408.*** The London Borough of Lambeth, in its capacity as commons registration authority, decided that there were trigger events that precluded the making of a village green application to register land known as the “*Undercroft.*” The skeleton arguments and other written materials submitted to the Administrative Court by the eminent counsel involved in that case have, shall I say, gone into circulation amongst members of the Bar. I myself was in possession of some papers but Mr Honey was able to add to the collection and provide copies to Mr Edwards. I was keen to ensure that both counsel were on notice of the arguments raised in the South Bank Centre litigation save I needed to refer to them in this Report.

1045 Application in May 2013

95. The 1045 Application to which I have been referred was made on a form entitled “*Application for Outline Planning Permission With Some Matters Reserved. Town and*

³⁹ The guidance is not binding.

*Country Planning Act 1990.*⁴⁰ The 1045 Application, I am satisfied, was received by Mendip District Council (“Mendip DC”) on 7 May 2013. In a letter dated 13 May 2013 Mendip DC acknowledged the application as being valid from 8 May 2013.⁴¹ There is no dispute that the outline planning application was publicised before any village green application was submitted to the CRA.

96. The applicant for the above planning permission was “*Malcolm Lippiatt Homes Ltd.*” The proposal was described as “*Erection of houses and garages and associated works.*” The “*Site Address Details*” were recorded as “Land to the South of Longmead Close” with grid references “*Easting 377575*” and “*Northing 155971.*” When asked about the existing “*use of the site*” it was recorded as “*Paddock.*” The area of the site was listed as being “*00.49 hectares.*” A location plan was provided: drawing number 560/PL/02. There can be no dispute that the red-edging shown on that plan which surrounded land labelled as “*Proposed Housing Development Site*” did not include the village green application site. Instead, the red-edging encompassed land to the north of the village green application site.⁴² The application land is however wholly encompassed within blue edging but that edging also surrounds land still further north to the red-edged land.

97. I should also record that the 1045 Application contained the answer “*YES*” to the following listed questions:

- Is a new or altered vehicle access proposed to or from the public highway?

⁴⁰ O299

⁴¹ O311 – 312.

⁴² O305

- Is a new or altered pedestrian access proposed to or from the public highway?
- Are there any new public roads to be provided within the site?
- Are there any new public rights of way to be provided within or adjacent to the site?

The form then says *“If you answered Yes to any of the above questions, please show details on your plans/drawings and state the reference of the plans(s)/drawing(s)”*

The answer to this request was *“PLAN 560.PL.01 AND 560.PL.02.”*

98. The submission of the Applicant is that the 1045 Application only granted planning permission in connection with land which *“does not touch”* the village green application site and is therefore irrelevant. The Objector contends that, on the contrary, the 1045 Application meets the statutory definition of an *“application for planning permission in relation to the land [subject to the village green application]⁴³”* It is suggested to me that the statutory construction of the words *“in relation to”* does not mean that the planning application site and the village green application site must be identical, or even that they must overlap. The phrase covers, so Mr Honey submits, a situation where some development that would occur pursuant to the planning permission applied for would take place on the village green application site.

⁴³ My square-brackets and emphasis

99. The Objector then submits that there are two ways in which Application 1045 meets this interpretation:

- First, that the foul drainage required for the development would have to be constructed on the village green application site.
- Second, that as shown on the Location Plan⁴⁴, Design Access Statement⁴⁵, and Drawing 560/PL/01⁴⁶ the development would involve the construction of a new permissive footpath on the village green application site.

So it seems to me I need to first decide for myself, to the extent necessary, what the proper statutory construction is and then separately consider whether, in any event, these two claimed matters would bite.

Statutory construction

100. In support of his client's interpretation of the words "*in relation to*" Mr Honey made reference to a number of cases from across the jurisprudential spectrum including for example ***Selim Ltd v Bickenhall Engineering Ltd [1981] 1 WLR 1318 at 1323B; R v Smith [1975] QB 531 at 542B and R v Maidstone Crown Court ex p Gill [1986] 1 WLR 1405 at 1408C – 3***. I am unconvinced that they really assist me very much with the task of statutory interpretation before me. In my opinion the task of statutory interpretation is one in which context is everything and regard must be had to the particular legislation. For example, Mr Honey also relied on s.226 of the Town and Country Planning Act 1990 which provides:

⁴⁴ O305

⁴⁵ O309 (at paragraph 2.5.0 – 2.5.3)

⁴⁶ O310

“(1) A local authority to whom this section applies shall, on being authorised to do so by the Secretary of State, have power to acquire compulsorily any land in their area [...] 1 –

(a) if the authority think that the acquisition will facilitate the carrying out of development, re-development or improvement on or in relation to the land.”

[my underling]

I was then referred to the Encyclopaedia of Compulsory Purchase and Compensation at B-1443.1 which indicates that the underlined words above were introduced to extend the power (exercised in order to facilitate the achievement of objects set out in s.226(2)) such that the proposed development, redevelopment or improvement need not necessarily take place on the land which is subject to the compulsory purchase order. Mr Edwards suggests that in this context the phrase may have been introduced to cater for the scenario where other land needed for the proposed development is already within the ownership of the proposed development. That may well be so but I am, as with respect to the other cited cases, unconvinced that they help me much to understand the particular provisions of the Schedule 1A of the CA 2006 which have nothing to do with extending exercisable powers.

101. Mr Edwards suggests that I should have reference to the other sorts of trigger events – draft development plan documents, development plans, neighbourhood plans. The scheme of these other trigger events appears to be that the relevant document or plan *“identifies the land for potential development.”* I agree that it is useful, to a limited extent, to look at the overall structure of Schedule 1A as an aid to construction. Although the arguments that arise in respect of the other triggers

would be different to those concerned with planning applications, it seems to me that it would not be correct to say that land which was not specifically identified in, for example, a development plan could fall within the embrace of the trigger if it were – to use Mr Edwards’ example – to be later said that it was desperately needed for the drainage that would facilitate development on the land that had been specifically identified.

102. The proper starting point it seems to me is to record that the 2010 DMPO requires that a planning application be accompanied “*by a plan which identifies the land to which the application relates.*” Mr Edwards says that this is essential as otherwise the result might be, in an outline application such as we have in the case, it would be possible to argue that houses could be constructed on the land edged in red or the land edged in blue. Mr Edwards also refers to the Planning Portal where readers are advised that a location plan should “*Show application site boundaries and all land necessary to carry out the proposed development i.e. land required for access to the site from the road, outlined in red.*” I am reliably informed this is based upon the Government’s own guidance in the National Planning Practice Guidance which itself sets out at [024]:

“The application site should be edged clearly with a red line on the location land. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings). A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site.”

103. Mr Edwards also submits that it would stretch beyond breaking point the definition of the phrase "*in relation to the land*" if it were to encompass any land outside the red-line area that might be utilised in developing the planning permission land (should the developer so wish). Turning to the compromised South Bank case which I have referred to above it appears that the red line in the relevant planning application there may have been drawn to cover the entire site, rather than just the land on which "*four skateable structures*" were to be placed: Combined Statement of Fact and Grounds at [66] – [68]. The arguments of the Claimant in that case were then focused on convincing the court that despite this widely drawn area the planning application should be construed as to only related the small areas that were intended to be covered by skateable structures. In other words, as Mr Edwards points out to me, precisely the opposite situation to the present case where he is advancing, on behalf of his client, an argument that the planning application should be strictly confined to that red line area.
104. Without reciting the entire history of the litigation, I do note that in a "*Further Joint Opinion*" to the Lambeth Borough Council Mr George Laurence QC and Mr Simon Adamyk appear to advise that a commons registration authority is "*entitled to identify*", for the purposes of paragraph 1 of Schedule 1A CA 2006, the extent of the land in relation to which there has been a planning application made by reference to the red line shown on the relevant application plan: see [27] and also see [17].
105. Mr Honey, on the other hand, suggests to me that it is perfectly appropriate for planning conditions to govern the development of land outside the "*red-line*" application site. He correctly, I think, says that where conditions govern work to be

carried out on land outside area edged in red, they constitute a grant of planning permission for that work: see Planning Encyclopaedia at [72.27-27 - 28].

106. There was a significant debate amongst counsel about whether this was the sort of case that Parliament intended the provisions to bite. Mr Edwards further submits that it would defeat the whole object of s.15C CA 2006 which is to strike a balance between the landowner's interests and those of the local inhabitants seeking registration of the land as a green. I do not propose to assess the legislation at such an abstract level and there was no submission that it was so unclear that resort must be had to Hansard. In closing, Mr Honey made submissions about the subjective intentions and understanding of the Applicant (including by reference to the evidence of, for example, Mr Hasell and Mrs Oliver) and tried to link them together with the legislative intention of Parliament. I do not think that these submissions are of any relevance to the issue of whether a trigger event has occurred such as to preclude an application to register the land as a village green.

Application 1045: the foul drainage

107. Mr Malcolm Lippiatt gave evidence to the inquiry. At [2.13] in his statutory declaration⁴⁷ he said this:

"From my knowledge of the foul drainage system in the area and the difference between the level of the land (Longmead House being on land that was higher than the land on the other side of the ha-ha wall) I was certain that any new development on the land edged blue on the plan at Appendix

⁴⁷ O217

ML1 would not be able to drain by gravity to the foul sewer in Farleigh Road and that the drainage authority Wessex Water would not agree to a pumping station if a gravity system was available. For this reason it was both necessary and always the plan to lay a new foul sewer connection to the public main in the highway at Town End. That meant crossing the land edged blue and the land edged green on Plan ML1. It was always necessary and proposed that the sewer would have to be constructed over the application site as part of the development for which we sought planning permission in May 2013. The subsequent approval of the foul drainage scheme (which is appended to the statutory declaration of Mike Swinton) shows a new sewer crossing the blue and green land and discharging to the public sewer in Town End. That sewer has now been laid. The work was carried out by our contractor, Brandwells Construction.”

108. I have no reason to doubt that this was Mr Lippiatt’s subjective intention and I formed an impression of him during his evidence as being a well organised and experienced man who no doubt would have foreseen the practical challenges in bringing forward his company’s development of the land edged in red on the plan attached to Application 1045.

109. Consistent with Mr Lippiatt’s evidence, his planning advisor Mr Swinton also gave written evidence (not tested in cross examination) in relation to Application 1045 to the effect that:

“Because of the lay of the land and difference in levels it was necessary for foul drainage for that development to be constructed across the [village

green] application land. It was envisaged at the time the planning application was made that the foul drainage would be constructed across the application land. There was no other option but to construct the drainage across the application land. Details of the drainage scheme were secured by condition (condition 8) in the appeal decision..."

110. However, when one looks at the Appeal Decision of the Planning Inspector Mr Johnathan Manning dated 29 January 2014 it does not disclose anything which could, in my view, be said to be an outward expression of Mr Lippiatt's intentions. In respect of the conditions imposed Mr Manning said at [36]: *"To further ensure highway safety and to prevent the pollution of the water environment, I will impose a condition that requires the submission of details of all drainage."* So the matter appears to have been up in the air. The text of the condition that Mr Swinton referred to in his evidence provided that:

"No development shall commence until a drainage scheme for the site showing details of gullies, connections, soakaways and means of attenuation on site is submitted to and approved in writing by the local planning authority. The drainage works shall be carried out in accordance with the approved details."

111. When one looks at the other documents appended to Mr Swinton's statutory declaration namely: (a) Reserved matters approval (10 July 2014); b) Approval of details (29 October 2014) and c) Approval of Details (June 2014), they are consistent with Mr Lippiatt's evidence and the Planning Inspectorate's conditions being pursued. In examination-in-chief Mr Lippiatt confirmed to me that the plan at O341

shows the foul sewer going across the village green application site and connecting into the public sewer. Mr Lippiatt said in cross-examination that he could not recall whether the off-site foul sewer plan at O341 was the first sewer route plan that had been drawn up. He couldn't recall whether something similar went in with his planning appeal. I have to conclude from the evidence that even by the time of the appeal before Mr Manning there was no publicly available documentation which would have disclosed Mr Lippiatt's intention to use the village green application site for foul drainage.

112. But that is not all. In cross-examination Mr Lippiatt was taken to the questions about foul sewage in Application 1045 and agreed that all that was stated was the foul sewage was to be disposed of via the mains sewer. Although he was at pains to say that it was "*purely outline*" at this stage he specifically agreed in cross-examination that in Application 1045 itself there was no indication the drainage would go through the village green application site. Mr Lippiatt said such details about the drainage would be a reserved matter. It appears to me that, consistent with my impression of Mr Lippiatt as a very straightforward witness, the answers he gave to these questions were really the only reasonable interpretation that one could place upon the documentation (which of course is an objective exercise). Indeed, it is the interpretation that I have concluded that I should place upon the documentation.

113. Mr Edward's submission closely followed his cross-examination points which I have outlined above albeit he also correctly observed that the Design and Access Statement makes no mention of drainage at all. Mr Edwards also pointed out that the Design and Access Statement actually positively said at [2.1.2]: "*The site is free*

*from any infrastructure constraints.*⁴⁸ Similarly, Mr Langford's Report says nothing of materiality on the issue.⁴⁹

114. Leaving aside for one moment the debate about the importance of the red edging (which will no doubt find its way into the courts at some juncture) I am of the view that for the reasons set out above the planning application of May 2013 cannot sensibly be taken to relate to the application land on the basis of the drainage in circumstances where the location of it would not have been ascertainable from the face of the application. The village green application land in this case, I find, was not identified for development and accordingly there is no trigger under this head.
115. If I am wrong about that then I would also hold that it is necessary but not, in my view, always sufficient that the land which is identified for development is shown within the land edged red on the plan. In other words, it may well be that in the case of land edged red in too broad a fashion (as arguably the case in the South Bank case) it would be necessary to show that the application was one which genuinely sought the development of the would-be village green application site. I find that the 2010 DMPO requiring a plan identifying the land on which development is sought and the guidance which informs that in practical reality for those concerned with planning are clear as to the importance of identifying **all** the land which is required for the development and in relation to which planning permission is sought. The fact that Mr Lippiatt, on advice, drew the red area tightly so as to avoid further obligations gives me comfort in that conclusion. It might be thought that parliament

⁴⁸ O317

⁴⁹ O313

legislated with the commonly understood practice in mind, but even leaving aside that point, I would come to the same conclusion.

Application 1045: the new permissive footpath

116. In relation to the permissive footpath which was to be surfaced the Design and Access Statement sets out a [2.5.2] that:

“2.5.2 In addition, the applicant is proposing to provide a new surfaced pedestrian access from the southern boundary of the site to the B3110. This is to allow residents from this area to access the new village shop without having to use the existing highway network that is deficient in safe and satisfactory conditions.

2.5.3 The route of the proposed footpath is shown as points A-F on plan 560.PL.02. ”

117. When one looks at the accompanying plan at O310 this only shows A-E and not E-F. The plan at O305 shows the route of the existing (unsurfaced) footpath E-F. A report, of a planning officer, Mr Carlton Langford, noted that the proposed development for which permission in the application was sought was one *“including a permissive footpath linking the existing right of way with the proposed network.”*⁵⁰ Mr Langford’s Report states that *“The applicant has stated that there is a willingness to provide a new pedestrian route (permissive footpath). Whilst there are no objections*

⁵⁰ O313

to the path, at this stage there is not sufficient detail to ensure how feasible it is in terms of alignment and adoption. However, this can be dealt with by condition.”

118. First, leaving aside the issue as to the red edging it seems to me that while the plan at O310 provides sufficient information to identify the proposed width of the route between A-E, this not so in relation to A-F. It might be ascertainable with reference to the existing width of the route. Leaving aside this difficulty, it seems to me that there was in fact no planning application being made in relation to this area. The Design and Access Statement was *suggesting* that the matter be dealt with by condition. Although I accept that where conditions are imposed they constitute planning permission, I do not accept that where there is a mention of a potential condition in the application relating to land outside the planning application site that this operates as a trigger event.
119. Second, I would anyway hold for the reasons set out above that this was not a trigger event because it was not within the area shown to be required for the development and edged red on the plan accompanying the planning application.
120. Third, I think there may well be another problem with Mr Honey’s submission arising from the extracts of the Planning Encyclopaedia at [72.27-27 - 28] which he provided to me. It appears that the courts have, in a long line of cases, taken the view that conditions can be imposed on land not embraced by the planning application only where the applicant has control of that land. In the present case, the footpaths over which the surfaced route was to run were maintainable at the public expense and so vested in the highway authority. It appears to me that

Malcolm Lippiatt Homes Ltd had neither ownership or control over these areas. But this point was not canvassed at the inquiry and I do not reach a conclusion on it.

121. Fourth, and in any case, even if I am completely wrong, I would restrict the trigger event to the area of land required to implement the surfaced footpath. I do not think that it would be at all appropriate to say that the trigger event related to the entire application land in circumstances where the land required would clearly be of limited scope no matter what alignment the planning authority might decide on (in terms of condition).

Application 1821 in August 2013

122. It is conceded by the Applicant that Application 1821 does concern an application for planning permission in respect of the village green application land. However, the Objector submits that the earliest that planning application 1825 caused a trigger event to occur at the earliest on 28 August 2013.
123. In light of my other findings about the putting in order of the application, I consider this limb of the Objector's case has fallen away. The planning application is accordingly, in my view, incapable of acting as a trigger event.

THE EVIDENCE

124. There was a great mass of evidence produced at the public inquiry. The summary of that evidence that I set out below is not intended, nor should it be considered, a transcript of that evidence but rather only a summary of what seemed to me to be

the most important and relevant points arising from the evidence of each witness and the other documents produced to me.

125. I need to say something about how I will be approaching the evidence. It appears to me that the onus of proof in the case lies with the Applicant and that each qualifying element of s.15(2) CA 2006 must be "*properly and strictly proved*": **Steed** at p. 111 per Pill LJ; cited with approval in **Beresford** at [2] *per* Lord Bingham. Lord Bingham also said in that passage, as Mr Honey reminds me, that it was no trivial matter for a landowner to have his land registered as a village green. To my mind however all of this does not denote a standard of proof other than the normal civil standard of proof: on the balance of probabilities. This is the standard that I have applied where required in this case. The House of Lords held in **Trap Grounds** at [61] that the registration authority has no investigative duty in relation to town or village green applications which requires it to find evidence or to reformulate the Applicant's case.
126. I mention here also that in closing Mr Honey suggested that, because the Objector's witnesses had produced statutory declarations rather than witness statements (as directed by me), I should give their evidence more weight. This seems to be based on the notion that if they are shown to have knowingly stated something false in the statutory declaration it is offence under s.5 of the Perjury Act 1911 that carries a prison sentence of up to 2 years. I reject Mr Honey's submission. It seems to me that the practice of producing statutory declarations, in defiance of directions that the evidence will be unsworn, is a tactic that one increasingly sees amongst landowners with the apparent aim of securing a procedural advantage. But of course, the oral evidence given under examination does not itself form part of any statutory

declaration and is unsworn. I prefer to weigh up the evidence (written and oral) of all the witnesses called by the parties (and members of the public) on its merits rather ascribe it more weight simply because a lawyer has advised that all the witnesses should make a statutory declaration. It seems to me that if the position were otherwise it would create some kind of arms race for statutory declarations, even though, as above, a lot of oral evidence would still be given. Indeed, as everyone knows, it is often the oral evidence and the impression a witness gives that is the most important evidence. It must also be recalled that this is a case covering decades and where there might be good reasons for differing recollections. There might be merit in taking evidence under oath and I know of one barrister (acting as Inspector) who does this but in general my experience is that this is not done. I received no submission from any of the parties in this case at the Directions stage that I should take evidence on oath.

127. Of course, in respect of witnesses who were not called to give oral evidence and therefore subjected to cross-examination I cannot sensibly accord that evidence the same weight as those witnesses whom had submitted written evidence only.

128. In what follows below I will sometimes refer to an "EQ" of a witness. That is a reference to an evidence questionnaire filled out by the witness.

WITNESSES GIVING ORAL EVIDENCE FOR THE APPLICANT

Mrs Shelia Brewis - previously of Ranmore Cottage, Norton St Philip [A3/230] [EQ A/233]

129. Mrs Brewis' evidence in chief including the written evidence made jointly with her husband, set out that they had moved to Ranmore Cottage in 1980. A number of

photographs taken by Mrs Brewis over the years were produced. The property backs onto the application land. The land is so close that the horses used to come up to the windows and rub their noses on the glass. When they moved in, their son was 3 years old and their baby daughter 8 months old. 3 years after that they had another baby daughter. As the children grew up the application land was a safe place for the children to let off steam and avoid traffic and narrow pavements in the village. Many village children used it in this way and still do so today.

130. It was clarified that Ranmore Cottage was rented out from 2011 and sold in September 2016. But from 2011 they still visited once every 6 weeks. It was said that to access the land the Brewis family would go in via a stile or a fence. They could see the whole field (apart from a small area in the southern tip) from the breakfast room and from the kitchen and from the 1st floor. The application land was always referred to as "*Shepherd's Mead*" or the "*field at the back*" amongst the family.
131. Asked about question 8 of the EQ Mrs Brewis said that "*In 1980 our children were smaller so we did not let them in the field by themselves but as they grew older we let them into the field by themselves.*" She noticed that when the number of houses increased in Norton St. Phillip "*far more people used the field.*"
132. The Brewis' son used to spend "*day after day in the field*" especially during the holidays. He would play with other friends, making dens, playing numerous games, flying kites, frisbee, bowling practice, making bows and arrows and catapults. The photograph at A3/231 shows him "*beating the nettles*" and this is the kind of activity he would have been doing in 1993. He also had a kite but it was easier to run with it along the path: "*He didn't do it a lot but he did it.*" As he grew older he used the field

for practising his casting technique for fishing and fitness training by running around the perimeter.

133. The daughters would use the field a lot as well, mainly for gathering *“nature treasures and insects from the hedgerows and tree lines but also for tennis volleying between themselves, games of chase, other ball games and teddy bears picnics.”* Mrs Brewis’ daughters would also paint and draw.
134. Mrs Brewis herself would also jog around because the land was so convenient. Mushrooms were picked as well, once or twice a year. When the snow fell the land was used for short toboggan runs, snowmen were built and snowball fights were had. Buttercups and spring flowers were collected by children as in the answer to question 21 in the EQ. Spring flowers on the eastern and lower western boundary. And Elderflowers on the upper western boundary. Butterflies were caught in and around the western and the eastern boundary.
135. Mrs Brewis told me that it is a beautiful piece of land and you can just wander around, with a row of trees abutting open farmland. On the west side, she said, you can look down across the roof tops to *“the George.”* It is a natural open space. Referred to RA279, Mrs Brewis said that she walked on route horizontal from FE 11/16 to the eastern boundary and then up or down along that boundary. Then back on herself. Then with reference to question 14 in her EQ and RA279 Mrs Brewis said that her jogging was along 11/16; 11/13; on the 11/15 diagonal or down along eastern boundary. She would run around only once.

136. Mrs Brewis said she wouldn't be able to say how many people use the fields. The field was used more in the evening, weekends, school-holidays and bank-holidays. In the school-holidays a lot of children used it. There was always a regular stream of people - walking across the boundary with their dogs. As to question 21 in the EQ blackberries were to be found in the south-eastern corner but Mrs Brewis knew this only because others had said they had done it.
137. Mrs Brewis said that there were some trees in the southern tip but she hadn't visited there for 6 months. This is where the dens were. In the summer there were picnics and the children took some biscuits and had their picnics in the dens. Referred to question 22 in the EQ Mrs Brewis said that playing included: hide and seek; creating dens; running up and down the mound; kicking a football around; taking a tennis racket and hitting the ball while staying on the path (her daughter used to do that quite a lot). She would see lots of children from the village.
138. Mrs Brewis said that there was a mound that appeared at the bottom end of the field by 1993. She assumed that the landowner had made it. Football was played around this mound. Tennis would be played to the east of footpath 11/15. The grass on the field would die down in the winter. As spring and summer came the grass would grow. Then it would be mown and hay-bales formed. Mrs Brewis said that she has seen the dog-walkers on a daily basis but "*we are not a doggie family.*" She would see people walking daily and they didn't just stick to the paths. But some people stuck to the paths. If they had a purpose to walk somewhere else, they would walk around the perimeter. Cyclists would stick to the paths because it was easier.

Horse riding was observed, it was by Bina Ford or people associated with her. There were no horse jumps on the application land.

139. Mrs Brewis also said that she would see cows and other animals on the land but she still used the land at those times: she posed the rhetorical question "*why wouldn't you?*"
140. In cross-examination it was suggested that the EQ and written statement reported what 2 people had seen and done. Mrs Brewis said that everything apart from the stewarding at the Rebellion (a large event in the village) had been either done or seen by herself. She clarified that her son was born 1977 and so was 16 in October 1993. She accepted that that would not be making dens when he was 16 years old but one of her daughters was born in January 1984 and she would have made dens and had picnics at the age of 10.
141. Mrs Brewis said the main people using the land are people from the village and her evidence does relate to anyone outside the village.
142. Asked about access Mrs Brewis accepted that there had been gates and stiles on entrances. She had never noticed people with gates in the back of their boundaries. She accepted that walls and hedges were generally effective to keep animals in.
143. Mrs Brewis explained how she had witnessed one attack from a dog on a sheep in the field. Dogs were not usually on a lead and often ran around. She never witnessed any other problems with the sheep. She knew Terry Mills the farmer. She assumed that the farmers or the owner would look after the animals. Mrs Brewis wouldn't keep away from the cattle in the field and she emphasised that the cattle didn't put

the children off. They would have been at a reasonable distance. Equally, she could not remember children not going into the field because of the horses.

144. Mrs Brewis knew of Bina Ford but not very well. She didn't know anything about how well she looked after her horses or the fields available to her. Bina Ford would be seen in the teaching field. Mrs Brewis recalls there were sometimes horses put out into the application land. She didn't see Bina riding her horse around the field every day as she did not stand at the window *"24 hours a day."*

145. Asked about hay cropping, Mrs Brewis said it was *"certainly done once a year."* It was a big event and was fantastic. The Brewis family breakfast room was set below the height of the grass and Mrs Brewis said she could not wait for the grass to be cut. The tractor would do it in a day. Baling would be done in a day as well. People would have to keep out of the way of the tractors - but it would have been done by the evening. People would have been able to walk their dogs in the evening. In the autumn months, the grass would be short. But the grass would be growing long from spring.

146. When implicitly challenged, Mrs Brewis said *"we wouldn't have kicked rows of grass out of the way or dropped litter."* She would have picked up litter if she saw any. We respected the field and the animals. She then added however that *"Perhaps we didn't respect the owner of the land on reflection. We never deeply considered whether it was against the law deeply and we took advantage of it."*

147. Asked about the foot and mouth outbreak, Mrs Brewis said that she was there in 2001 and could remember it vaguely. She couldn't remember signs locally. She

added that "*we were involved*" in issues arising from the chicken factory burning down and "*everything else paled into insignificance.*" She did remember reading in the news about the problems with foot and mouth. She could not remember whether there were animals on the application land during foot and mouth. She thought that she could remember some footpaths being closed during the outbreak. She agreed that her walks out on to the application land would have always begun and ended on a public right of way.

148. Mrs Brewis agreed that when going from A to B there is a tendency to follow a straightforward route. She could not be exact as to when the circular route emerged but she remembered it was there when the children were teenagers and she was jogging round. Asked about the mound, she had considerable difficulty in estimating the size of it and she said that perhaps it seemed bigger than it was.
149. Mrs Brewis was asked about how ball games were played when the grass was long. Her response was that the grass was clumpier in the middle but not so long near to the dens. In the north, the grass was thick but not in the south-corner. She had a supply of second-hand tennis balls and said that her daughters restricted themselves to the paths so the balls bounced. She didn't know whether the children ever lost their footballs.
150. Mrs Brewis accepted that if activity was taking place on the application land they would have seen it and heard it in the paddock and the teaching field. People would have seen kites in the field from the teaching field but it wasn't done every day. Mrs Brewis' son resorted to going down to Churchmead to fly kites in the end because it would have been easier under foot. Her son, when he got older (i.e. between 14 – 16

years old), went up Plyon Hill to go sledging in the snow: it was steeper there.

151. Asked about mushroom picking Mrs Brewis said she got them in the autumn. They eat them and would collect them during walks. They would not specifically go out to find them.
152. In re-examination Mrs Brewis said that she didn't remember any foot and mouth signs in Norton St. Philip during the outbreak. She said that she simply did not remember whether the field had animals in it during this time and she could not remember whether there were people in the field during this time either.
153. In answer to questions posed by me, Mrs Brewis said the attack on the sheep by a dog was after 1998, possibility 2000. She rang Terry Mills to tell him. In general, she could remember the field having lots of sheep in it after spring time, but not so many cows. The cows were never in the field for all that long, perhaps 1 – 2 months but she said "*I might be way out.*" Often there would be between 2 – 4 horses in the field.
154. As to the length of the grass, Mrs Brewis said it could get as high as half a metre and in the south above ankle height.

Mr Saddiq of 2 Upper Farm Close, Norton St Philip [A3/350]

155. Mr Saddiq said in his evidence in chief, including the written statement he made, that he had lived in the village with his 5 young children for 11 years (but this was written in 2013). They have enjoyed using the application land during this time. The open green space provides an invaluable safe supervised play environment for our

children. The access to Churchmead in the centre of the village involves navigating dangerous roads and contending with heavy traffic. Mr Saddiq said that he had accessed the land at the north-west corner.

156. Mr Saddiq said that, over the years, his family has used Shepherd's Mead for a number of activities including jogging, flying kites, ornithology (because the land hosts a range of different birds including kestrels, sparrow hawks, buzzards and barn owls), picnics and ball games. He explained that he has 5 children ranging from 21 to 8 years old.

157. The land has also been used on a daily basis as a safe route to school, the local shop and other parts of the village. He attached some photographs of his children using the land. They show his daughters and were taken about 4 or 5 years ago. The photos are useful to me because they show the growth of the grass.

158. Mr Saddiq explained that he is a chemical engineer and he works away during the day. His use of the field is therefore limited to evenings, weekends and holidays. He was pointed to A4/725 which is the EQ of his wife. He said he agreed with the contents of that evidence questionnaire but said there were a few things he would like to add. Mr Saddiq then explained that: *"When we moved from Manchester we were attracted by the green space. With hindsight it was one of the best decisions we have ever made as a family. My oldest daughter Serena, as a result of seeing wildlife on the field, has decided to study biology. There are rare and striking birds of prey. She has rescued pigeons from the field."* The land has been of great benefit to the family.

159. In cross-examination Mr Saddiq again said that he was happy to adopt his wife's EQ. He did accept though that his wife did probably have a greater experience of the field than him. It would invariably fall on his wife to look after the children. He accepted his wife would have seen things that he did not see.
160. Mr Saddiq was referred to his annotated map at A353. He said there was a mound in that diamond area. He thought this might have been an area where children played but he couldn't recollect. He could recollect the picking of berries from the eastern boundary. He had not seen anything happening in the rectangle (drawn in the north of the land).
161. Mr Saddiq said, when questioned, that he would use the land maybe once or twice a month prior to 2013. That would be to go to Churchmead or to escort children to friends. Churchmead, he said, is a park or recreation ground. It is a largely flat area of mown grass with a cricket and football pitch. There is a play-area. He went with his children up to the age of 5 or 6. However, "*on occasions*" he had been in the field when his children have been playing in the field. His children have used the field for jogging on the circular path around the edge of the field. He remembered that they were running when it was dry. Occasionally, his eldest son has run across the field and then onwards to the A36 and back again.
162. Mr Saddiq did not see anyone or anything happening in the paddock / training field. He could vaguely remember jumps in the training field. He had seen sheep and horses in the field but not all the time. He had never seen the horses being ridden. They have never had a dog.

163. Asked whether the photo at A3/351 shows typical use of the land, Mr Saddiq said that he had asked his daughters what they were doing but they could not tell me. He didn't know if they are going across a path.
164. Asked about the Countryside Code Mr Saddiq said: *"I don't know anything about the usual conventions that are observed when out in the countryside. I am a city boy."* He didn't know the owner of the field personally. He thought that his wife once spoke to the owner of the field about horse-riding lesson and understood that the owner of the field has a business keeping horses.
165. Mr Saddiq accepted that his wife would use a path along the western boundary to take children to school and that this was along a right of way, going from gate to gate.
166. Blackberry bushes he said had been consistently found across the whole boundary. They would go out picking every year. It was a highlight for the children: *"we'd go out with a carrier bag."*
167. In response to questions from me, Mr Saddiq said that he has occasionally seen others using the land.

Jeremy Kay of Fairbank Townsend, Norton St Philip [A/3305] [EQ A3/307]

168. Mr Kay evidence said in his evidence in chief, including the written statement he made, that he has (together with his wife) lived in Fairbank since 1998. He runs a small engineering supplies business. He said he could see the field from where he lives and the vendor of his house told him prior to the purchase that children had

played on the field for generations. The Kays have themselves two children aged 15 (daughter) and 19 (son). The children grew up using the application land as their playground and used it every day. It was within easy and safe reach of the family home, which enabled Mr Kay and his wife to keep an eye on the children when they were in the field. It was like a big garden to the children as it was so near to the home. When Mr Kay's wife worked he would pick the children up from school 2 days a week and they would go into the field.

169. Mr Kay's son had friends who also played in the field. They were from the village. Mr Kay remembers Matthew Caddywood from Tellisford Lane, Matthew Philips from the High Street, Rory Batham from Bell Hill and Sam Long from North Road. The boys would play football, cricket, climb the tree close to the mound and play on the hilly mound, fly kites, sledge down the mound when it snowed (which has probably happened about 10 times in the Kay's time in the village).
170. Mr Kay's daughter would run all around the field when she was little. Mr Kay's wife would jog all around the land when she was training. They would use the field to go and see friends traversing on the public footpaths but also off of those footpaths. Blackberries were picked regularly from the hedgerow. A circular route was used for jogging, walking and getting exercise. Mr Kay said the views from the land – being the highest point of the village – were stunning.
171. Sheep, Mr Kay told me, *"never used to be on the land as much as they have been since the Village Green Application was made..."* In the past the land has been covered by wildflowers. He did not recall cows being on the land many times. Horses have been on and off the land over the years but not in such quantity since the

village green application was made.

172. Mr Kay has used the Tellisford Lane entrance to gain entry. He usually goes over the stile and occasionally through the gate (if they wanted to take a bike in: at the time the children were learning to ride a bike). This was on the pathways, where it was flat.
173. In cross-examination Mr Kay said that had *"no idea whether the owner checked on the animals"* in the field but when the sheep and cows were delivered or collected from the field it used to infuriate him as the farmer parked across his drive so that he couldn't get out. This happened 2 or 3 times a year. But sometimes there would be 2 or 3 years without any animals on the field. Mr Kay remembered seeing horses in the teaching field, but he did not know Bina Ford. He said that the *"horses were kept up at the top near to her area."* Mr Kay said that, with reference to the application land, the children would mainly play around the bottom area, away from the horses.
174. When pressed by Mr Honey on whether it would be dangerous for cattle and children to mix, he said that the cattle were to be found at the top of the field and the children were playing at the bottom.
175. He considered that Mrs Brewis had a better re-collection than him about hay-cropping.
176. Mr Kay could not remember any signs about foot and mouth. He did not appear to have a good recollection of whether paths were closed on the application land, or whether there were animals on the land during the foot and mouth outbreak although he accepted the cross-examination point that as paths were closed

throughout Somerset it *"would have included paths over this land."* He would not say that he accepted Terry Mill's evidence that there were animals there during the period as there were animals coming in and out all the time. He has seen Terry Mill's Land Rover but he couldn't say if he visited during foot and mouth. He couldn't remember if there were horses in the field.

177. On the map attached to his statement he marked up the routes over the land that he would have used. He accepted that all of these would have begun and ended on a public right of way. He said that that there were worn paths over the land. 10 years ago, his wife did a half-marathon. She trained, at the start, by doing circuits of the field. When she got better she used a longer route which did not include the field. Asked about the mound, he said it was about 6 foot high.

178. As to blackberry picking Mr Kay said again, that he did it yearly. There were always quite a few people trying to get them but there were blackberries throughout the village. On the application land there were blackberries on the eastern boundary. Blackberry pies were made. There was also a sloe bush.

179. Mr Kay had played football with his children, but this would take place in southern tip of the land: *"It wouldn't be full-scale 11 a-side but there would be for example 3 a side."* Flying kites was not a regular activity.

180. Mr Kay agreed, when it was put to him, that people in the paddock or the training field would have been able see people walking, playing games etc.

181. When asked about Churchmead as an alternative place to go, Mr Kay said that his son did go there from about the age of 9 or 10. There is a playground there which

has always been there – although the equipment has changed. But he said, you have to cross a busy road to get there. The application land was close by, and children might bring friends home from school and then go in the field. When children go older, he accepted they were more likely to go further afield to play. Mr Kay then said of the activity *“Everything going on was in the southern tip. We could hear them or walk 2 seconds and see what they were doing in there.”*

182. In re-examination Mr Kay clarified that he had not seen any of the Objector’s evidence to the inquiry. In answer to my question, he clarified that it was only about 3 to 4 years ago that he understood that there were public rights of way over the land.

183. Mr Kay said in answer to a question from me that 80-90% of the activity took place in the southern tip. He explained that the grass in the southern tip would get more worn down as it was where Mr Mills would deliver and collect his animals, and that this was also where the mound and the tree were.

Claire Ditchfield of “Glenview”, Town End, Norton St. Philip [A3/263] [EQ/271]

184. Mrs Ditchfield in her evidence in chief, which included a written statement, said that she moved to the village with her husband and two daughters in August 2011. When they moved to the village there were cattle on Shepherd’s Mead. The family loved the open countryside which was literally over the other side of their new back garden. The previous owners of their house had openly told the Ditchfields about how the field was used and how they had used it. That was Mr and Mrs Scott who had lived there for 6 years and had 3 children.

185. Over the years the family have regularly gone onto the application land via the gate/stile by the Barn (which is owned by a neighbour). The girls, Mrs Ditchfield tells me, have seen the land as an extension to the garden and feel very protective of it and all its lovely wildlife. They refer to it as *"Our field."* Mrs Ditchfield said that she had an awareness that she was bringing her children up with an understanding of wildlife. She understood that the village has its quota of houses to build. She said that she had bought her house because of the land and how it is now, which she said *"works quite well as it is."* She said that she was at the inquiry to protect the field and prevent development of it.
186. Mrs Ditchfield marked the family's *"usual routes"* on a map supplied with her statement. But this just shows a circuit route with the entire land hatched green. Mrs Ditchfield told me that this was to indicate that they have used all the land. Mrs Ditchfield then explained that: *"although we have walked and run about quite freely across the entirety of the land (the large mound/hill is always an area my daughters love to run up and down for fun)." [sic]* She went on to say that she found the erection of the signs informing users to stick to footpaths, on 19th October 2013, to be quite intimidating and, since that time, they did try to stick to footpaths. However, she told me that subsequently everyone then just used the land as before.
187. Mrs Ditchfield explained that both her daughters ride and they have absolutely loved going to see the horses grazing on the land over the years.
188. Mrs Ditchfield produced a very large number of photographs and videos. She explained to me that these showed the typical use of land. I will deal with these separately below.

189. Mrs Ditchfield was unable to recall many animals on the land after 2012. The mound was removed in 2016. With reference to her husband's height, Mr Ditchfield said she estimated the height of the mound to have been 6 feet tall.
190. Paragraph 4 is referring to the owners of the horses not of the land. She said that she had used the whole of the land.
191. Mrs Ditchfield said that, when the hay-making was going on, the family didn't go on. The farmer would come and cut the grass and there would be *"a contraption to put it into rows and then it would be baled up. Then they would come and take it away."*
192. In cross-examination, Mrs Ditchfield said that she had arrived in August and not in July of 2011. She accepted therefore that she had not been present at all during the period that Bina Ford was operating the stables. Mrs Ditchfield explained that her two girls were around 7 and 1 years old in 2011. They would never have been allowed out the land by themselves until the age of about 13.
193. Mrs Ditchfield said that her husband goes onto the field to take photos. She goes with him. They take the children. The family walks together and appreciates the views. In addition, most of the windows in the house have views out onto the field. The family do not have dogs, but both sets of grandparents to her children do.
194. Mrs Ditchfield said she had seen cattle for a very short period in 2011 but she couldn't remember a time after that. She could recall sheep after 2011 but by 2012 there not many animals at all. She could recall horses and said that it was apparent to her when horses were being grazed on the field because the owners block the entrance when checking on their horse. Mrs Ditchfield said that she had seen up to

about 6 horses on the land and sometimes they were to be seen being exercised around it. She saw two girls being dropped off from school to look at the horses but apart from them she could not remember other riders.

195. Mrs Ditchfield was aware that there had been what she described as "*an electric fence*". It enclosed a square area of land near to the eastern boundary and was there for a couple of weeks. Mrs Ditchfield wasn't entirely sure of the year it was there but said perhaps it was 2012. The area was fenced off for a couple of weeks.
196. Mrs Ditchfield said that she has seen dogs off leads, but she did not know the people that did this. She added that most people are respectful of the field. She had never seen a dog attacking or worrying a sheep. The dogs tended to stick with their owners she said.
197. Asked about the hay cropping, Mrs Ditchfield said that it occurred annually. It would happen during the school holidays in August and was "*an event for the girls.*" The process lasted a couple of weeks. When the hay was lying in rows, the family would not walk through it. Mrs Ditchfield could not recall the rows being messed up by users of the land. During this time, after the hay was cut, the family would walk in a circular route.
198. Asked about the use of footpaths, Mrs Ditchfield said that, when her girls were running across, they didn't keep to the paths. The girls would also play hide and seek, tag and wouldn't stick to paths doing that. They would go under a tree and make dens. She agreed that, from time to time, the girls would be on a path but she added that "*they would go off the paths - messing around and playing.*"

199. Mrs Ditchfield said that her girls enjoyed running up and down the mound and she agreed that southern tip is where most of the action was taking place. But, she added, *"they have enjoyed going up to the north-east corner."* Mrs Ditchfield has never gone running in the field herself but her husband does and he takes the children. Mrs Ditchfield has picked blackberries and taken a bag out for the purpose. The family have tried to fly a kite only on a hand-full of occasions.
200. Mrs Ditchfield said that as far as she knew the users of the land all used public rights of way to get onto the land. Mrs Ditchfield said that, with reference to A262, that *"a fair amount of people do use the loop. Some people go off the paths."* She would see people walking there regularly. She added that one man with a leg-problem uses the circular route. She would also see the odd dog walker in the main thick of the field.
201. Mrs Ditchfield said that there are times when the field is busy and times when it is quiet. There are people, first thing in the morning, who can be seen walking along. Some of it, she agreed, is purely getting from A-B but some of the walking is recreational and includes dog walking. Mrs Ditchfield said that she has a near neighbour who goes 4 times a day round the field.
202. When asked about it, Mrs Ditchfield said that a couple of occasions she has allowed her 13 year old girl out to Churchmead. She has been to the shop a couple of times to be more independent. But sometimes she would take her daughters to the play-park at Churchmead. It was often not that busy. The photos produced to the inquiry are representative of the cycling that has gone on. Cycling was backwards and forwards on the worn path on the northern boundary. She couldn't specially recall anyone else on the field when cycling.

203. In response to my questions, Mrs Ditchfield said that the electric fence enclosing an area of land that she would ordinarily use but did not interfere with the area that the children used. It was in the way of the walking route.
204. She clarified to me that the circular route around the field was unaffected when the hay was lying in rows. Mrs Ditchfield said that she didn't really understand the rights of way until the process started. There weren't any signs but she said that a stile to her mind indicates that there was a right of way.
205. Mrs Ditchfield clarified that she would see dog walkers in the middle of the field when the grass was low or high. Sometimes the field was quiet, sometimes the field was busy. She would see couples going around the field. She could see the field being busy and quiet at different times - both looking out of her window. I would see couples going around. She had seen other children playing on the land: she knows a lady in Tellisford Lane who goes there with her children. She has a view from her house. Mrs Ditchfield said that she did not think that there were any areas of the field where she saw people more than others. The family had gone into the northern section of the field, sometimes to avoid the sheep. Bike riding would take place in the north. Blackberries would be picked on the lower western side. The children would *"just run around like on the video."*
206. Mrs Ditchfield's photos and video were very instructive. Of the great number produced I will mention those I found useful. I found A3/267 to be instructive as to the length of the grass when it began to get taller and how the footpath may have appeared on the ground. Mrs Ditchfield said of this photo: *"My daughter is not on the path but soon will be I think."* A3/268 (reverse side) is instructive as to the length

of the grass and general appearance of the land in the southern corner. The photo at A3/269 (back of) shows Mrs Ditchfield's mother-in-law, who comes over quite regularly and takes the children out. Mrs Ditchfield said that they would have got through the Tellisford Lane entrance. Mrs Ditchfield produced a photo of her daughter onto top of the mound: A270. Mrs Ditchfield produced also some useful photos showing the aftermath of the hay being cut and the position of the temporary fence referred to in her evidence.

207. I was particularly impressed by some video footage from 2013 (a series of short clips) showing Mrs Ditchfield's daughters playing in the southern end of the land. In some of these videos a dog walker is also present. The grass is long outside of what appears to be a worn track. The children are running along the path but Mrs Ditchfield explained that in her view they would probably run off the path at some point. Indeed, there is evidence of this in one of the clips. The clips show the mound.

208. Mrs Ditchfield also produced video footage from March 2016 and December 2012. In the 2016 video it shows one her daughter's running along the eastern boundary. What is interesting about this is the length of the grass is quite low and clearly very easy for users to walk over. The 2012 video again shows the mound area with one of the daughter's running back from there towards the camera. Again, I find it instructive to think about the length of the grass in this video.

Alan Bishop of 25 Springfield, Norton St Philip [A3/227]

209. Mr Bishop set out in his evidence in chief, including by way of written statement, that he has lived in Springfield for 17 years and had a dog for 13 years. He explained

that *“living at the bottom of Norton St. Philip village, Shepherd’s Mead is situated halfway round the daily walks we take our dog.”* Mr Bishop said that he moved to the village with his wife to retire. When they arrived, they investigated all the walks that they could do. On clear cold days, he said, there is the *“enduring pleasure of watching the sunset on the horizon.”*

210. Mr Bishop’s written evidence was predicated on it being the evidence of his wife Patricia as well. They say they have always known the land as *“Shepherd’s Mead”* and knew that a lady owned the paddock area that is next to Shepherd’s Mead. They did not know her name until the village green application was made. He found out initially that she owned the land by talking to others on the land.

211. Between 2000 and 2004 they did not have a dog and so used the land once a week. After 2004 they acquired a dog and so use the land about twice a week. They would use the entrance near to Ranmore Cottage. There is a routine. Usually Mr Bishop walks the dog in the early morning (about 7:30am in the summer) and in the afternoon (about 4:30pm) he walks the dog with his wife. They pass through Shepherd’s Mead, doing a circular route. It was said that *“we generally follow the route round the field alongside the hedgerow and often use the logical connection routes to get to where we wish to be. We are aware that these routes are not part of the PROW, and neither is the hedgerow route which is clearly much walked and where the blackberries are located.”*

212. When using the land, they would see others doing a circuit and, on most days, they would see people going through the mead or running in it. Mr Bishop said: *“I don’t think there was many times that I went there where we didn’t see people. They*

would follow the routes that he indicated on the plan at A3/229."

213. Mr Bishop saw kite flying about 3 or 4 times but it was *"spectacularly unsuccessful."* He had seen others blackberry picking and he had done it himself. He has seen children on the land, but not teenagers. He has seen young families. He has seen couples enjoying a picnic on about 2 or 3 occasions.
214. When the Bishops first went to the land there were cows on it and Mrs Bishop refused to go on it. They would generally avoid using the land if there were cows on it, but that was in the earlier period of their use. There had been, at times, about 4 or 5 horses on the land but these were used for riding and so were unaffected by people. He said he had never seen anyone riding a horse. With the sheep, this was not a problem as the dog was on a lead and the sheep would move out of the way.
215. Mr Bishop said that he had seen the results of the mowing and baling but he never saw the machinery. The cutting of the grass occurred in late summer. The hay making did not cause any change in the Bishop's routine as, Mr Bishop explained, they could walk around the edges.
216. In cross-examination, Mr Bishop clarified that, after they got a dog, he would be using the application land 10 times per week. He would use other routes around the village, but he favoured a circular route which included the application land.
217. Mr Bishop said of the entrances that there were stiles for most of the relevant period but gates had been put in *"recently."* He did not recall fingerpost signs or other footpath signs: *"They could have been there but I might not have noticed it."* He did not see the signs shown at A5/794, A5/817 or A5/797. He accepted his

memory is defective in that respect and said *“because you see things so often you block them out from your mind.”*

218. When pressed about not seeing horse riding, Mr Bishop said that he could remember seeing horses in the training field but he never thought about what they were doing.
219. He said that he could remember the foot and mouth outbreak but could not recall any signs. During that time the Bishops kept away from paths. But, in general, if cattle were in the field, Mrs Bishop would not go in anyway.
220. Mr Bishop clarified that the blackberries were to be found on the eastern side – next to a worn path. He clarified that the written evidence submitted to the inquiry was produced by the Bishops sitting down and writing it together.
221. In re-examination, Mr Bishop said that he wouldn't have used the land if there were cows in it during the foot and mouth outbreak. In answer to my question Mr Bishop said that he had conversation with a friend and that made them stop using the footpath.

Gary Stretton of 5 Tellisford Lane, Norton St Philip [A5/355]

222. Mr Stretton in his evidence in chief, including a written statement, explained that, although he did not have an EQ, his wife Jenny Robinson had filled one in (see A5/511). Mr Stretton explained that he works at home so in the evening and weekend he walks around the application land.
223. Mr Stretton moved to Tellisford Lane in 2006 and began living with his wife there in

2008. They have 3 children of school age – born in 2005, 2008 and 2010. Mr Stretton first became aware of Shepherd’s Mead when he met his new neighbours and villagers. He understood from them that it was used by residents for a variety of activities by residents of all generations. In 2006, Mr Stretton used the land primarily to view the sunsets from the highest point of the village and as a route for accessing the public rights of way to walk cross country to the farm shop of Farlegh Road. This was a 20 – 30-minute walk.

224. Mr Stretton said that: *“I have never been challenged by anyone for using Shepherd’s Mead, whether I have been on a public right of way or in the middle of it retrieving a ball, Frisbee, child or dog.”* He went on: *“I have witnessed and assisted children playing hide and seek, war games, flying gliders and kites which sometimes included the recently defunct mound of earth close to the Tellisford Lane gate. My wife’s statement includes a photo of this mound. We have sledged in, albeit, rare snow and believe creative play such as this is essential to our children and the perfect antidote to watching TV or being on a computer. Unlike Churchmead, which is on the other side of the High Street and accessed by crossing the increasingly busy main road, Shepherd’s Meadow is a stone’s throw for us and therefore offers more spontaneous walks and play for us and our family whatever the weather. In addition, it is much flatter than Church Mead and therefore ideal for smaller walks with younger children or our elderly relatives and neighbours.”*

225. Mr Stretton said the regular walks on application land has allowed the family to observe wildlife including birds of prey, bats and annual starling murmurations, voles, mice, elephant moth caterpillars, miners bees, oil beetles and many other

creatures. He produced to the inquiry a series of photos which demonstrates, he said, his understanding that the land had always been a "*deliberate wild meadow.*" There are photos from July 2014 which shows children playing in trampled down grass which is otherwise long on both sides and forms an obvious path. I was also shown photos of play in the snow during early 2013. Mr Stretton pointed to blackberry picking shown in A3/354. I also viewed a video.

226. Mr Stretton said that the land was rarely used for animal grazing historically compared to the position now. He described the application land as one of the two lungs of the village. The application land is more informal, wild, open than Churchmead. If it is lost, Mr Stretton thinks it cannot be replicated.

227. In cross-examination, Mr Stretton said that he has had a dog since 2008. Mr Stretton agreed that it was correct that he didn't want any development at all on the Mead. Mr Stretton clarified that he used to get into the land on Tellisford Lane. It is a maximum of 300 yards from his house.

228. Asked about cattle, Mr Stretton said that "*sometimes you see them and sometimes you don't. I can't say exactly when the cattle were there.*" He added that the family went to other land to see the horses as they were more frequently on there rather than the application land. He did not recollect horses at all between 2006 - 2010. He couldn't remember sheep and said that if there had been sheep in the field then he wouldn't have walked in there. Mr Stretton said, when pushed, that there were sheep in the field on only a handful of times a year.

229. Mr Stretton had a recollection of hay-cropping occurring on one occasion but

admitted that he did not have a good recollection of it. He may have been on holiday when it was done. "I may have missed the cutting". It was a detail of village life that he didn't pick up on. He could remember one of the girls asking: "*where the grass has gone daddy?*" He agreed that, more often than not, the grass was very long. It was long and then short after cutting.

230. Mr Stretton said that there had always been worn paths on the land and he had marked them on the plan attached to his statement. He explained his route around the village when he was walking his dog and which either included Shepherd's Mead or Churchmead. He would, when using the application land, walk once or twice around the perimeter, diagonal (alternated) and then out through the middle gate and onwards to Church Mead.

231. Mr Stretton was pressed about the photos before the inquiry:

- A3/356: This he said shows worn path and was taken in the north bit of the eastern perimeter path.
- A3/512. This shows another worn path.
- A3/513 – This shows blackberry picking, it was said, on the southern part of the eastern path. Mr Stretton added that he thought that the eastern path was a public right of way until saw evidence for the inquiry.
- A3/358: This is "*representative of a snowy day.*" The mound is in the background. Mr Stretton couldn't remember if there was anyone else on the field. He estimated the height of the mound as about 6 feet.

232. Mr Stretton added that he regularly meets people on Shepherd's Mead and there

are people he only knows from bumping into in them in this way.

Paul Franz of Prior Cottage, North Street, Norton St Philip [A3/278] [EQ/283]

233. Mr Franz in his evidence in chief, including a written statement, told the inquiry that he was born in the village and has lived in the village all of his life. He lived first with his parent and 2 brothers at 14 Tellisford Lane until he was 21. When he was 23 or so he moved to Prior Cottage, North Street where he now lives with his wife and 3 daughters (twins aged 13 and the eldest aged 16). He said that the evidence he gave the inquiry covered the entirety of his experience of the land, which he has always known as "*the horses field.*"
234. In cross-examination, he agreed that much of his statement (forming paragraphs 2, 3 and 4) addressed matters before 1993.
235. It was put to Mr Franz that, by reference to Catherine Franz's EQ, she had had riding lessons with Bina Ford. Mr Franz said that he had not read any statements from her so did not know about it.
236. Mr Franz said that he had not had a dog but he had walked his brother's dog. He said: "*I would go up there at the weekend and me and girls would take him for a walk. Dog died about 5 years ago. We couldn't take him very far - so horses field was good for him. We'd do a circuit of the field. We'd go on the worn path.*" He confirmed that the worn path has always been there. To gain access to the land he said he would use the stile on Tellisford Lane.
237. Mr Franz said that he could recall cows there on one occasion and that was about 6

or 7 years ago. He thought it was unusual to see the cattle. He estimated that it occurred in about 2010 but could not be sure that was accurate. Mr Franz said he recollection was clear because the cattle turned the ground up.

238. Mr Franz said that he knew Bina Ford as Bina Hawk when he was growing up but he did not know how she made her living. He remembered horses on application land, as they were always there and they looked gorgeous. Mr Franz said that he could remember that before 1993: *"The horses were always up at the north of the field. They were not in the south. I can never remember more than 3 horses in there. The horses were chilled out and they would come up and allow them to be stroked."* Mr Franz said that after 1993 he would always be walking through the land. Sometimes to visit his mother, as it reminds him of fond memories.

239. Mr Franz explained that there are quite a few worn paths over the land and he referred to maps marked up by his wife and brother showing them. There are quite a few worn paths on the eastern side (near to where he could remember Mr Swift hitting his golf balls) and there are diagonal paths.

240. Mr Franz said that he knew Terry Mills well as, when they were children, they helped with the baling of hay. However, he did not know that Terry Mills was keeping his animals in the field. He did know that Terry Mills kept sheep next door to his house.

241. Mr Franz explained that he had picked blackberries in his youth on the eastern boundary. Mushrooms were picked up in the north-eastern area. He recalled that his brother would eat them.

242. In answer to my questions, Mr Franz said that he had seen around 2 – 3 horses in the

field at a time. He had not seen people riding horses. He had seen sheep, since 1993, only once a year.

Mr Robin Campbell - formerly of 3 Town Barton, Norton St. Philip and now of 4 Monmouth Paddock, Norton St. Philip [A3/238] [EQ A3/241]

243. Mr Campbell, in his evidence in chief which included a written statement, said that he moved to Norton St. Philip (to 3 Town Barton) in July 1984. Prior to that he lived somewhere else which is about 2 miles away. Upon moving to the village in 1984 Mr Campbell soon began to use the field to run across, walk in and stroll round when he needed to think (about matters relating to his job in book publishing). His two daughters were born in the following three years and, once they were toddling, they would play regularly on the land. He moved to his present address in 2006 and has continued to make use of the application land. Before the construction works, he had a full view of the paddock. Since the construction of "*Shepherd's Mead*" he has an obstructed view.

244. In 1993 his two daughters were 8 and 6. At Christmas 2016 his daughter, walking across the land with him, asked where the "*hill*" was. He told her that he thought it had been levelled when the drainage was laid earlier in that year. He reminisced with her about chasing her up and down the mound (which was in the southern corner of the field). They tobogganed on it when it snowed.

245. He was aware that the land belonged to the "*Hawkes/Ford family*" but always felt welcome to use it before the village green application was made. He now knows that others felt the same way and has come to understand that their use stretches back

many decades.

246. Mr Campbell confirmed that the pattern of his use has remained "*basically the same*" down the years. He pointed out that now, as opposed to before, there are signs asking people to stick to the footpaths. The signs about rights of way, he said, appeared after the application to register as a green was made.
247. He described himself, with reference to the plan, as using the "*top-left and the bottom right entrances.*" Further, that when he had "*spasmodic attempt to keep fit*" he would run from top-left to bottom right. He did not necessarily do this on a footpath. When the field was wet or long he would follow the defined routes, however.
248. Asked about his EQ he told me that reference to "*the early years*" in EQ refers to the years pre-1993. He clarified that, until 2006, he would be using the land every 10 days.
249. Asked about his "*wildlife study*" activity he responded that that would be a very grand term for it. He set out that his family would be "*looking at the field, we would pick flowers. For the children it was a place of imagination. We would spend quite a lot of time poking around looking at things.*"
250. In 2003 Mr Campbell divorced his wife and she moved out of the matrimonial home. His younger daughter continued to keep a base at the matrimonial home until 2006 (although there was some "*boxing and coxing*" between there and her mother's new home.

251. Asked about the Monmouth Rebellion commemorations Mr Campbell recollection that it first occurred in 2006 or a bit later. He was the clerk to the Parish Council and his recollection was that the land was used as a car park. He also recalled that there was an earlier commemoration but he couldn't be sure of when. He told me that the Monmouth Rebellion itself was related to a skirmish in the town that led to the feared Judge Jeffreys coming to town and sentencing many to death.
252. Mr Campbell said that, in relation to the height of the mound, for little children it was high enough for them to enjoy in the snow. Asked about seeing children generally he said that he did not see battalions of them but he had seen children playing (sometimes alone) regularly. They would play near to the southern-tip, near the mound but not so much at the top end of the field.
253. He had seen dog-walking. They had walked around the edge and diagonal across. He had seen dogs with leads and dogs off the lead. He had seen balls being thrown by on a limited basis. He had seen blackberries being picked long the eastern hedge but more towards the northern boundary. He had seen football being played but he said that was a grand term to use for an unorganised game with jumpers for goal posts or just children playing "keepie-uppy." He had seen bird watching by which he meant people using binoculars. He had watched birds but without binoculars. He had been kite-flying but he cannot say that he saw anyone else flying a kite. In the relevant period Mr Campbell had a number of kites – one of which came to grief quite quickly. Kite flying was a thing of enthusiasm and was only enjoyed for a short period. It was only sometimes that occurred over a matter of weeks. He referred to photos that were taken in August 2013 for the purpose of the application.

254. Mr Campbell said that the people that he saw walking over the land were mostly villagers. He had seen them on the eastern boundary. He had seen them on the northern boundary. He had seen them over the route of footpath 11/15. He said that he had seen them: *"All over really. It depended really on the time of year and the state of the grass as whether people were walking on or off the paths. The fact that the grass was short meant it was more likely that they would walk off the path but this would not preclude them walking on the paths as well."*
255. Mr Campbell said he had seen Bina Ford exercising her horses in the paddock but could not remember her doing this on the application land or indeed walking on it. He knew Mrs Ford because, when you move to a community, you gradually piece together the information. He saw Bina Ford out riding and as an extension of that he gradually picked up that she owned the application land.
256. In cross-examination, Mr Campbell said that he was not the clerk to the Parish Council during the foot and mouth outbreak in 2001.
257. Questioned about the continuity of his use Mr Campbell said that when he moved to his current house he did use the land less and his use has varied in general over the period. He said that the Shop had opened in 2015 but there was an earlier version in about 2012-14. He couldn't be sure about that but he was clear that when the Shop opened he walked through the land to get to it.
258. He was referred to his annotated plan at A3/244 and said that (1) shows the position of the mound and at (2) when the children were very little there was an old wheelwright's hoop at the start of the footpath. He agreed when it was posed to him

that in general it would have looked to people in the paddock that we were on or close to the public rights of way. He agreed that at point (3) people in the paddock would have been able to see him. He added that he had not seen Bina Ford jumping in the training field or being pre-occupied with another activity: *"I have not seen horses jumping in the application land. There is not a picture in my mind of her."* He accepts that if she had been riding in the application land then she would have been able to see him. Mr Campbell said that he knew Bina Ford by sight and would have smiled at her in the post-office. Mr Campbell said he did not know her well but he understood that she had horses and a horse box where she lived (at what now is the beginning of Longmead Close) and taught people horse-riding skills. He did not know that the application land was the only land available to her for grazing. He accepted that she made a living through the horses and agreed she would therefore have taken good care of them.

259. Mr Campbell said that in general he would stick to the paths if horses were on the land. He accepted the point that people behave differently when the horses were there compared to when they were not. His recollection was that the older children knew the horses and their different characters. They did not see the horses as a danger. But parents such as himself were more careful of the horses.

260. Mr Campbell remembered more sheep than cattle: *"I don't think they were ever there for a long period. I remember a lot of occasions hearing the cattle - I believe that they were being separated from their young."*

261. Mr Campbell had never seen the haycropping taking place but, on a number of occasions, he would see that it had been cut. He could not remember whether it was

cut once a year or not.

262. Mr Campbell remembered the outbreak of foot and mouth. Taken to O192 he couldn't recall any signs about Norton St. Philip. He could not recall access to the field being barred. He could remember signs in Hardington but not in Norton St. Philip. Taken to O116 he reiterated he couldn't recall any interruption to usage. But taken to O167 Mr Campbell said "*It is reasonable thing to say that the observations in the papers would have been observed.*" Taken to O188 he agreed it was plausible that people in the village would have known about Government advice. Taken to a photo of Stonehenge with a closure sign Mr Campbell said that he had not seen anything like this during the outbreak. He had listen to the topic being addressed by a number of witnesses and he had no memory of anything like it. He could recall piles of carcasses on television.
263. When it was put to Mr Campbell that there was an almost total shutdown of the countryside he reiterated his previous answers and said that neither could be sure that he was using the land in February or March as the weather may have been bad.
264. Ultimately Campbell's position was that he was not competent to say whether people did use the application land or did not use it. He did not know whether the paths were closed and he did not know whether there were animals on it at the time. Pressed still further he could not recall cattle, sheep or horses in the specific period of the outbreak. He had no evidence that he could find on the issue.
265. In response to question from me he described his spasmodic attempts to get fit as being about 5 or 6 sessions for a month at a time spread over 1994 – 2000. In

relation to ball games he told me that if the grass were long then the children would stick to defined route but less likely if the grass were short. Football took place from the mound south wards as the grass was generally shorter in that area.

266. He clarified that he did not intend to say that the wheelwright's hoop was on the application land.

267. Mr Campbell further clarified that the typical animals that he would have seen on the application land were horses, sheep and cattle. Sheep would have been there for a week or 10 days when the grass was shorter. Cattle were there on the land less frequently than the sheep but were there for a longer period of time.

Clive Parker of Orchardleaze, Upper Farm Close, Norton St Philip [A3/347]

268. Mr Parker said that he moved into Orchardleaze in 1978 with his wife and two boys. He explained that the family home is located adjacent to Shepherd's Mead and the front garden backs on to it and all of the windows look over it. Mr Parker said that he does not close his bedroom curtains and gets up early every morning to enjoy a cup of tea overlooking the meadow. The sunrise is amazing. In the evening he sits with his wife in his conservatory at the back of the house that overlooks Shepherd's Mead.

269. Mr Parker said this in his written statement: *"I cannot begin to convey how many people we see and have seen since we moved into the village using the meadow for all types of recreational activities. The list is endless and since we have a 'birds eye' view of the meadow we feel confident in stating what that use has been. Personally I have practiced casting my fishing line in the meadow, regularly exercised and trained*

my numerous gun dogs over the years in the meadow."

270. Mr Parker has had gun-dogs all of his life and he has trained them on the application land. He has been shooting since a young boy and runs two syndicates nearby.
271. Mr Parker said he would *"go in at Upper Farm Close."* He would have 4 dogs with him at any one time. He would see Bina Ford on her land – by which he meant *"the training field."* However, he added that he has seen her everywhere both on the application land and on the training field.
272. Mr Parker remembered the foot and mouth outbreak. He was worried shooting might be affected but it never was. I never saw signs restricting access. He did not stop using the application land. Specifically, he did not stop using the application land between February 2001 and May 2001.
273. Mr Parker explained how he had repaired the stile at the Tellisford Gate a number of times: *"The farmer he told me – who was using the field – had removed it to get his equipment in but had not put it back well."*
274. Mr Parker said he had practiced fly-fishing over land. He would stretch the line out the day before going fishing and he goes fishing once a month.
275. Mr Parker said that he'd seen horses regularly on the land. He remembered also sheep *"I have seen them every year. I would see them in spring. I would hazard a guess at 30 sheep at a time. I would see them until after lambing in the spring."* He remembered cows and he had had them break into his garden in 2004.
276. Mr Parker said that his children and his grandchildren had played on the land. He has

seen other children playing. He has seen other dog walkers on and off lead “*all over.*” He has seen kite flying half a dozen times. He has seen bird watching – kestrels, barn owls and tawny owls. He has seen picnicking. He has seen children foraging and looking for things on the ground – he couldn’t say what. He has seen people walking and jogging – even by torch light. When he has looked out at the land from his house he has regularly seen people running around the perimeter. He has seen cyclists on bikes. He didn’t know what sort of bikes. He has seen bikes on many occasions.

277. He expanded on his remarks about Mrs Ford. He had seen her on the land very often. He had spoken to her.

278. In cross-examination, he explained that his bathroom window has frosted glass so one cannot see out. He explained that there is a difference in the levels such that the Parker’s house is much lower than the level of the field, with the garden being about 18 inches lower than the application land. He said that from his conservatory he could see down as far as the mid-point of the land but not so far as the eastern boundary.

279. In response to Mr Honey’s questioning he confirmed that all the written materials he submitted relate to the position since the 1970s. In 1993 his sons would be 32 and 28 years old and references to the boys’ activities in his statement were references to before 1993. He sons left home in 1984 and 1986.

280. Mr Parker made clear that he wanted the application land preserved for the purpose of recreation. He told me about the extent of his knowledge of the planning

application and permissions. He said he was unaware of various planning permissions and Inspector's decisions but did not have a good recollection of the detail.

281. Questioned about golf practice on the land Mr Parker said that he'd seen several people doing this but the last one was about 6 or 8 years ago roughly. They took about 30 minutes doing it and would hit the balls from near to the Upper Farm Close entrance towards Tellisford Lane and then back again. After some confusion in the questioning, Mr Parker said that he could not remember seeing people pick the balls up but imagined that they would do so. On one occasion his dog found a golf ball in the field.

282. He remembered a horse-shelter next to his house but was not totally sure if it was there in 1985. He was asked by Bina Ford whether he minded it being there. He accepted he might be wrong about when it was there.

283. Asked about notices, Mr Parker said that about 3 years ago he had put up notices encouraging people to pick up after their dogs. He said there had been notice before about picking up litter and keeping dogs under control and they were there during the 20-year period on a number of gates, albeit he could not help with how long they had been there for.

284. Mr Parker, when asked about foraging, said that he had seen children looking for insects or flowers, particularly in the north-east hedge. He had seen children looking for blackberries.

285. Mr Parker said that his wife retired in 2000 and he retired from engineering in 1999.

He worked shifts of 12 hours at a time. One week he would work 2 shifts and the following week he would work 5 shifts. There was not a particular time of day that he trained his dogs – he would go out in the morning or the afternoon. The dogs were not a business, just a hobby. A hobby that cost him a lot of money. He would also visit other land for shooting, with his gun dogs.

286. When on the land Mr Parker spoke to other people from the village. He spoke for instance to Mrs Moore, Linda Oliver and John Oliver. He spoke to another lady he knew as Brenda.

287. He had not read the files submitted to the inquiry on behalf of the Applicant. But he spent a couple of hours reading some of the evidence submitted with the application. Mr Parker read his wife's EQ but he could not recall reading anyone else's EQ.

288. Mr Parker could not remember Bina Ford ever seeing him train his dogs. He did not, he offered by way of explanation, remember her perhaps because he didn't pay much attention. He agreed it would have been obvious to Bina Ford if he was training his dogs. Mr Parker said that she might not have been interested in what he was doing because he was in the field all the time.

289. Mr Parker also added that he would walk around the whole area of the application land with his dogs and he would also walk out on Tellisford Lane and around the village. He did not have a regular route. He might go through the centre of the village and would often go to Churchmead. It would depend on how the mood took him. But all events he would only go out dog walking once a day. He accepted that all of

his routes over the application land would begin and end on a right of way.

290. Mr Parker remembered - when asked by Mr Honey - horses, sheep and cattle on the land and he said that he knew Terry Mills. He was not sure if they were Terry Mill's sheep on the land. The sheep were last there about 12 – 18 months ago. He could recall walking through the field when the sheep were there. He could not describe a mental picture of walking through the field with the sheep. There were sometimes 20 – 30 and they would shelter near to the Parker's house. Mr Parker did not have a mental picture of the cattle on the land and how he would have used it when they were on there but there could be about 15 or 20 at any one time. It was a common thing to see 2 or 3 horses.

291. Asked more about Bina Ford Mr Parker said that he thought she had jumps in Shepherd's Mead in the north-east corner. He then said: *"The jumps were there all the time. I am absolutely sure that these jumps were there. There is a remains of one there now. I am sure of that."* [sic] He could not identify these on aerial photos however. It was a wooden bar Mr Parker described, supported by drums. It was there in the 1990s. He couldn't remember when it was taken away.

292. Mr Parker reiterated that despite his involvement with a number of local shoots, he could not remember any restrictions being imposed on where he could shoot. He could not recall any Order closing the footpaths. There were never any footpaths closed at any of his shoots. He did not know about Somerset but in Norton St. Phillip there were no footpath closures. He did not recall any advice being given about the local area although taken to O188 he readily accepted that the matter was being discussed in the media. He recalled hearing about footpaths being closed in the

general press and also through his attendance at country game fairs.

293. Mr Parker could not say whether there were cattle or sheep on the land during 2001.

He would have been using the land then and had not been told he could not use the land. Mr Parker was keen to point out that he lived next door to the land and he has never stopped walking through it. He did not have a specific recollection about the period of 4 months put to him by Mr Honey. He rejected the contention that he must be hopelessly confused about the issue. He reiterated that he did not stop using footpaths in the foot and mouth outbreak.

294. Mr Parker said he was confused about the effect of the Regulations that were put to him by Mr Honey but he said he was not confused at all about the period of time that he has used the land for. He could not recall there being an infected premises within Norton St Phillip.

295. A gap in Mr Parker's evidence allowed him to come back to the inquiry and informed me that he had measured the distance that a could see from his conservatory and he could see 130m downwards along the eastern boundary. He said that if you stand up in his conservatory you can see all of the them.

296. Mr Parker clarified that his two grandsons were born in 1986 and 1981. They came over to visit every 2 or 3 weeks up until the age of about 15 or 16.

Dr Wahid Anwan [A3/220] [EQ A3/222]

297. Dr Anwan used to be a GP but he is now retired (since December 2001). In his evidence in chief to inquiry, including a handwritten statement, he said had lived at

his present house in Longmead Close since 2001 (but he in fact bought the property in 2000). He has used Shepherd's Mead for walking his dogs, going for a walk with grandchildren. He has seen children playing ball games and in the snow during the winter months (which included making an "igloo" in January 2013). He has used the field for watching birds and taking photos of birds and different grasses and wild flowers (a number of photos were produced showing this which were taken along the eastern boundary and the boundary between Tellisford Lane and Town End). He has observed the different birds using the land. He said he has seen and spoken to Bina Ford and she has never objected to his visits to Shepherd Mead.

298. He clarified that he accessed the land near to the entrance by Upper Farm Close. Asked about his answer to his question 13 in the EQ he said that he mostly uses the application land twice a day. He mostly goes in the morning and sometimes in the afternoon. Sometimes Dr Awan would visit with his wife or she would go alone. Dr Awan's daughter divorced her husband and for a while came to live at her parent's house. The children would sometimes go to the land with their grandparents.
299. Dr Awan said that he took the snow photo at A225 when he was out with his dog. The photo of the boy and the dog shows Dr Awan's grandson. He estimated that he was on the footpath which goes from Tellisford Lane to Upper Farm Close (about 2/3rd of the way along). He described that the boundary to the south of Upper Farm Close it was full of nettles and thistles. There was a footpath near to the wall but it was not possible to use it because it was overgrown. The route therefore went along a curved line.
300. In cross-examination, Dr Awan said that when he retired he did do some work for

the Benefits Agency from February 2002 for a period of 18 months.

301. Dr Awan was pressed on the “igloo” photo and he explained that when he saw the igloo it was between 2½ to 3 feet high but the particular photo does not show the igloo at that height. Dr Awan said he didn’t know all of the children involved in the project – he asked a couple of them where they lived and two of them said Ranmore Cottage. This occasion was the only time he saw children building an igloo.
302. Dr Awan said that his daughter moved in with him and his wife in 2011 and were there was for a couple of years at least.
303. Asked about his question 13 on the EQ Dr Awan clarified that the Rebellion did not take place on the field. The field was, he was told, for parking cars. He did not actually see any cars parked on the land.
304. More or less, Dr Awan clarified, he went in at the entrance at Upper Farm Close. He agreed that cattle sheep and horses had been on the land but he could walk through them. Although sometimes he avoided doing that if he had a dog with him (which he would place on a lead). Occasionally, Dr Awan would let his dog loose if there were no animals on the land.
305. Dr Awan accepted that the grass got longer in summer and said that the land was not suitable for letting horses on the whole time: *“Bina being an expert in her field did let them out at certain times because they were very special horses.”*
306. Dr Awan said that the sheep were there for only 2 or 3 weeks at a time. The sheep came once a year and sometimes twice a year (and on one occasion he had seen the

farmer taking the sheep in). The land was not however, Dr Awan said, used permanently for cattle or sheep. The farmer had access to a number of fields in the village Dr Awan said but then added this, when under sustained questioning from Mr Honey: *"I can only say that the sheep were there for 2 - 3 weeks in a year. More or less. I know that. I live there. I go to that field. I still have my faculties. I remember it. I look at things. I like to observe things. I notice. I have been involved with animals myself. I kept horses myself when I lived in Halifax. I had a little bit of an involvement with horses because my son kept his in Bath."*

307. Dr Awan said that he could remember the hay cutting which happened once a year. He noticed it happened a few times. There was a machine pulled by a tractor. I saw it being baled with the baler. I think this was done by a contractor. After cutting it was laying out drying for 2 - 3 days. If not then a few weeks if it had rained.
308. Later Dr Awan said, under cross-examination, that the sheep could be there on two occasions a year but not any more times than that. He would see them in the spring and sometimes after the hay had been taken which would be in July or August. He saw young sheep and if they had their lambs late they would be there as well but there wouldn't be any fresh lambs in the field. Dr Awan, whose son and grandson have some farming experience and once had a small holding himself, said that he hadn't seen any lambs in the field that required human supervision.
309. Asked about dog walking Dr Awan said that some people would walk the same way that he did and others would let the dogs loose even if the animals were there. He had never seen any dogs causing a problem. He knows lots of local users of the land by face if not name.

310. Bina Ford had about 2 – 4 horses on the land for a couple of hours at a time. They were not there all the time. Pushed on this by Mr Honey Dr Awan said *“I watch that place that is the reason why I can say that the horses were there for only part of a day. I could see the Mead from my house. I went twice a day.”* He accepted that there were blind-spots that he could not see from his house.
311. After her heart attack Bina Ford did not, Dr Awan said, ride as much as she did before. There were other girls that rode the horses. Dr Awan said that there were other horses on the land that did not belong to Bina Ford. After Bina Ford left in 2011 Dr Awan said that there were no other horses.
312. In answer to my question Dr Awan said that he could not recall seeing cattle after 2011 and that it might have been the case that he was away on holiday when they were there. He was sure that Mr Parker was telling the truth about the cattle.

Mrs Helen Cox of the Old Shop, 5 High Street, Norton St Philip [A3/245] [EQ A3/250]

313. In her evidence in chief, which included a written statement, Mrs Cox said her family have lived in Norton St Philip for 23 years after moving in February 1993. They moved because it was a quiet little village with plenty of green space surrounding it and a good place to raise a family. She stated that: *“Since the moment of our arrival we have used Shepherd’s Mead constantly, hardly a day has passed in all that time when we have not used the land and at no time have we asked permission to use Shepherd’s Mead other than the PROW, and we have never been challenged for doing so.”*

314. Mrs Cox's daughter was 18 months old when the family moved to the village and throughout the years it has been a constant source of interest to her watching the seasons unfold. She has played in the snow and then watched spring flowers appear. Mrs Cox added: *"Horses and sheep would graze giving opportunities to become familiar with animals other than household pets and to learn not be afraid of them."* In the summer the hay would be cut and hay bales appeared. In autumn blackberries were picked. Mrs Cox described also how the land was a safe space to practice rounders and that it was a great benefit to be able to access the land easily.
315. Mrs Cox described how her family had had a dog who they have walked across the land to access longer country walks or to do a circuit of the field when the weather was grim or time short. Mrs Cox said that her dog, Woody, was not on the PROW in one of the photos that she provided to the inquiry. She identified the area of trampled down grass shown in the photo as being in the middle of the top north-east quadrant. Mrs Cox did describe, by reference to a plan she produced, the straight line paths, well worn, which are visible across the field depending on the time of year.
316. Mrs Cox has seen people jogging around Shepherds Mead, walking their dogs, flying kites, bird watching, picnicking and playing ball games. She has seen girls on ponies trotting around the field.
317. In cross-examination Mrs Cox said that she first got a dog in 2005. She had no dog before then. She explained when challenged that she had produced two plans showing the features of the application land and despite some differences had intended them to be the same.

318. Mrs Cox said that she assumed that car parking for the rebellion was with the permission of the landowner.
319. Mrs Cox said that the application land would be “lost” if houses were built on it. She thought that building houses would be detrimental. She was giving evidence in order to achieve her goal of registration.
320. Mrs Cox had always entered and exited the land at the Upper Farm Close entrance. She said that she may exit by Town End or Tellisford Lane and then do another circuit, but she would then always exit by Upper Farm Close to go back home. Mrs Cox spent 50 per cent of the time walking in a circuit of the field or diagonally across it and 50 per cent generally around. Mrs Cox said that there was no difference to the route – both with and without the dog she was walking the same route. She did mention that, after she got her dog in 2005, she has been walking more: now on a daily basis.
321. Mrs Cox said that she would go with her daughter after school, or at the weekends: *“If the weather was fine I’d always try and go for a walk after school. But not in the winter so then just at weekends. I would be out walking the dog whatever the weather.”* She said that this was her preferred way of walking with the dog. If the weather was bad, she would do a short walk in the mead. If the weather was good, she would take a longer walk.
322. Mrs Cox remembered seeing horses on the land. She could not recall when, but she did recall that they were friendly or would be eating in the corner. Mrs Cox

remembered seeing sheep in the field at various times. The sheep would keep to themselves and everyone was able to *"jog along well with them."*

323. Mrs Cox said that her daughter would go to the land with a friend only from about the age of 8. Mrs Cox would walk them up there and then they would play for a bit. Mrs Cox said that, when her daughter was about 13 years old, she would go by herself. That was in 2005. Mrs Cox said that her daughter would not, very often, go down to Churchmead.

324. Mrs Cox did not know who owned the horses. She recalled seeing the horses and the jumps but did not recall any teaching going on. Mrs Cox recalled that, towards the end of the day, she would be there after 4pm (after school) and at weekends. She saw the jumps in the paddock next to Shepherd's Mead. Mrs Cox did not remember seeing children playing while the horses were out there.

325. Asked about the cutting of the grass Mrs Cox said that, on a fairly regular basis, she saw it being cut: *"I would see it laying - it didn't seem that long perhaps a week from cutting to baling."* She added *"You have to be careful when the hay was cut because it was cover over some of the paths. So I would use Upper Farm Close to Town End route. On this side of the boundary it was brambly and overgrown and so was not cut with the hay."*

326. Mrs Cox was asked about blackberry collecting which she had marked on the maps attached to her statement. She would get the blackberries on the eastern boundary. She would walk along and pick them. She would make blackberry and apple crumble.

327. Mrs Cox was asked about foot and mouth. She remembered how it was devastating. Taken to O166 she could not recall seeing notices like this. She did say that she would not have walked on farmland around this time. However, she could not recall whether the farmer had animals in the field during the outbreak.
328. In the end, Mrs Cox said that she could not remember whether she went into this field for a period of 4-5 months during the foot and mouth outbreak. She said that she is *“the sort of person that would not go into a field if I was not allowed - I am sure that I would have obeyed the rules.”*
329. Mrs Cox was asked about sledging on *“the mound”* and the photo she had produced at A3/248 which shows this. She said that it was good for children because *“If you are only small you build up quite a whoosh going down it.”* Mrs Cox said that, in a period of 10 years, she had the sledge out about 4 times. She said that the snow would hang around for a few days. There is a photo of Mrs Cox’s daughter in 2005 – 6 using the sledge but she would have most enjoyed it when she was about 7 or 8 years old in 1999 or 2000.
330. Asked about kite flying Mrs Cox said: *“The idea was all very well but you don’t get much of a lift in the field. The enthusiasm lasted about 2 years.”* She said that she would stand at the top of the mound and wait for the wind to come.
331. Mrs Cox said that she did not tick picnicking on the EQ but she did on reflection remember picnicking small children with rugs after school time. She had seen this 3 years running during the summer period: but thought that it could be only 2 or 3 times that she had seen this and only in the area just in from the Town End entrance.

Ms Brenda Graham of 11 Longmead Close, Norton, St Philip [A3/286] [A3/289]

332. In her evidence in chief, which included a written statement, Ms Graham told the inquiry that she has been an inhabitant of Norton St. Philip since November 2011. Prior to that she lived about 3 miles away and had visited the village and the land.
333. Since moving to the village in November 2011 Ms Graham, her husband, son, family and friends have made extensive use of the application land. It is only a very short walk from their house. It is the only route to an open space that her son and his friends could independently access as it is the only route that does not involve road crossings. When the family moved to the village her son was 9 years old. Ms Graham said that her son has gone to the field by himself and accompanied.
334. Ms Graham said that she personally would be on the land every day. She is an economic development consultant and has done that at home for the last 17 years. She works in relation to developing brown-field sites and the grants available.
335. Ms Graham informed the inquiry that it was *“difficult to mark routes as many activities on Shepherd’s Mead necessitated walking/running across the entirety of the land numerous times up until 19th October 2013.”* Since October 2013 there have been signs which indicates the owner did not want users to use the land for recreation or go off the footpaths – so the family have done their best to stick to the footpaths.
336. Mrs Graham explained that, prior to October 2013, as a family at least two of them used the application land once a day for recreational purposes. Ms Graham explained that she often went running there and also trained/exercised the dog. The

family have often played hide and seek near the mound. The mound provided a good vantage point when the grass was long. Her son also played “*castle*” or tag using the mound. Her son often went to Shepherd’s Mead just to “*hang out*” and have some independence. The family have flown kites, practiced with remote controlled airplanes, flown rockets (several forms, including a stump rocket), played Frisbee, play catch and tennis – “*all the usual father and son and general family activities.*” Often Ms Graham has seen people watching the sunset in the evening which she said can be very spectacular (and I was provided with a photo to show this).

337. I was provided, I should also say here, with some useful photos showing the state of the land (and length of the grass on what I was told was the western boundary: see A3/292) in May 2012 and September 2012 (close to what I was told was the north-east boundary). Ms Graham clarified when referred to her annotated plan showing routes over the land that this was merely indicative and that she had “*walked over every grade blade of grass.*” Ms Graham also said that she would access and egress via all the entrances and exits. She described her “*round the block walk*” that would involve using the land but also visiting other places in the village such as Churchmead, going past the George Inn or visiting the Shop. On a Saturday or Sunday her walk around the village might also be extended to visit the Farm Shop. But she added the caveat that this would be her use of the application land, if the family were going there it would be as part of a longer walk as opposed to going to the land for its own sake. Ms Graham explained that when she bought the family home a big factor was the ability to use the field as her garden is small. Indeed,

when she first bought the house she would have gained access by climbing the 'pickety' fence. Ms Graham remembered that Steve Nelson, who built the houses but was also incidentally her next-door neighbour said nothing about it. In short, the family had used the application land like it was their back garden.

338. Ms Graham remembered a scarecrow trail where people put up scarecrows all around the village. She said that the scarecrow trail wasn't there when she was in the village but she heard of it by talking to people. She thought that it used to be an annual event.
339. Ms Graham said that she built snowmen and had snowball fights in the first two years she lived there. Ms Graham had picked (from the eastern boundary) and ate blackberries. Ms Graham had seen children playing all over the land. She had also seen joggers and dog walkers. But Ms Graham said that, since October 2013 when the signs went up, there has not been so much activity. Ms Graham had seen people bird-watching. She remembered that there are kestrels and owls towards the eastern boundary. Ms Graham recalled having seen picnicking twice. Ms Graham said that she has flown kites and seen others doing this only once. Ms Graham said that it is not very windy on the land.
340. Ms Graham said that three quarters of the time she walks onto the Shepherd's Mead she would also visit Churchmead. Ms Graham said that she walked at 7:30am and then in the mid-afternoon and at 7-8pm. She said that she would see people on the land all the time.

341. Ms Graham had seen a couple of people riding horses. I recalled an older lady doing this once. Ms Graham said that she discovered that Bina Ford owned the land by speaking to Mr Lippiatt and her next-door neighbour. Ms Graham had never met Mrs Ford and was embarrassed when her next-door neighbour asked whether she could keep her dog on a lead, around about the November after the signs went up and recalled someone saying that they were the owner of the land and forcibly ejecting her from it.
342. In cross-examination, Ms Graham said that she loves dogs. When she first moved, she would also walk her neighbour's dog. Ms Graham remembered that Budgen's opened (and so was included as part of her walk) in Autumn 2012 but it shut in 2015 so was open for about 2 years. She said that the new Co-Op opened up about 6 months ago.
343. Ms Graham said that she had a tendency to do research and so had asked Mr Lippiatt whether there were plans to develop the land. He had said that "*There was no plans to develop the land in my lifetime.*" Mr Lippiatt later apologised to her when planning was applied for. Ms Graham said that she was against building houses on it because she wanted to maintain it as it is used now.
344. Ms Graham said that she would look out of her bedroom window and could see right to Tellisford Lane gate. If her son was out, she would be able to see them enter by Upper Farm Close. She said that, if she looks out of her window and can see right down to Tellisford Lane and can see about 50% of the land.

345. Ms Graham reiterated that the photo at A293 does not show footpath use. Ms Graham said that she used the phrase "*permissive footpath*" because this was what someone said. She did not know what it meant.
346. Referred to RA61 – 62 Ms Graham said she was enquiring as to whether the stated portion of the route could be added but she did not recall looking into this further and did nothing further to pursue this.
347. Asked questions by me, Ms Graham said that she spent two thirds of the time on the defined routes and one third of the time off the paths or defined route. She said that she would go off the path if she saw someone or something. But when she was with her son in the evening or at a weekend she would be off the paths or defined routes two thirds of the time, Ms Graham said that most of the people she would see would be on the worn routes by which she meant two thirds of the users. However, she estimated that only one third of the children would be playing on the paths. She would see people "*Running about the place*" at the weekend, in other words they would be more likely to be off the path at those times.

Simon Knibbs [A3/318] [EQ A3/319 and [EQ A3/323]

348. Mr Knibbs, in his evidence which included a written statement, informed the inquiry that he has lived in the village with his wife Elizabeth since 1982. They moved to the village as a young couple. Although in oral evidence he referred to his EQ where he had stated he moved to the village in 1983. In any case, he recalled, they moved to the village when he was 25 years old.

349. Mr Knibbs produced some family photos taken on the land in what he estimated was about 1993 (judging by the age of the children). He said that he thought these photos were taken roughly in about the middle. They show children playing in the field which is scattered with yellow flowers.
350. Mr Knibbs said that he could not see the land from where he lives. Mr Knibbs clarified that he gains access from Tellisford Lane entrance. He explained orally to the inquiry: *"I did just about everything that you would do with small boys. I follow them in from the Tellisford Lane entrance. They would run in different directions, just going for it. I would pursue them. We would go in that the central and northern area where the buttercups were - where the open space is basically."* Mr Knibbs said that he had seen other children playing but remarked that his children seemed to run around more than others. Mr Knibbs said that he would see about two thirds of the children with a ball in the southern part of the land where the grass was shorter.
351. Mr Knibbs said that he got his first dog in 1994/1995 which died about 2 - 3 years ago. His second dog he got later than 1994/5 but it died in the same year as his first dog. Mr Knibbs said that, when he went dog walking, he would go through Tellisford Lane entrance in a direction towards Upper Farm Close corner. He said that, if dogs were coming towards him, he would tend to go the other way, along the perimeter towards the NE corner. Mr Knibbs said that the dog walking was on a circuit. Mr Knibbs said that, if there were animals in the field, he would keep the dogs on the lead but, if there were no animals on the field, he would let the dogs off the lead. He said that his dog would head off into the long grass but would return when he called him.

352. Mr Knibbs had picked blackberries on the eastern perimeter. He said that he would do it occasionally and he would see others doing it but not very often. Mr Knibbs ticked this activity but "*it was not a big deal.*" Mr Knibbs said that his wife was more interested in birdwatching than he was. He recalls seeing a lot of buzzards. Mr Knibbs said that he had certainly picnicked but could not say with certainty that he had seen others. Mr Knibbs said that he had occasionally flown kites but would not get further than the first southern half. Mr Knibbs had not seen anyone else flying kites.
353. When asked about people walking without dogs, Mr Knibbs said that he generally kept to the footpaths as he tended to be going somewhere: TL to UFC or to TE. He said that, occasionally, he would go for an evening walk and do a circuit of the land, usually when asked by his children.
354. Mr Knibbs said that he had played frisbee in the middle part of the land. Typically again he would get to the centre point but that this depended on the time of year. Mr Knibbs said that there was no point in trying to do some activities that you can only do when the grass is short. Mr Knibbs recalled showing his grandson how to throw a frisbee in the southern part recently but that this was outside the relevant period.
355. In relation to foot and mouth, Mr Knibbs saw no notices on any of the entrances. Had he seen any he would not have gone in. Mr Knibbs said that the foot and mouth outbreak did not affect his use of the land. The frequency and purposes of use were unchanged.

356. Mr Knibbs said that people also knew the field as the "*sheep field.*" but pointed out that seeing sheep in there was infrequent. Mr Knibbs said that he would more frequently see horses and that he could not recall seeing any cattle on the land but could not say without absolute certainty that they were not on the land just that he could not remember an occasion where he saw them.
357. Asked about hay-cutting, Mr Knibbs said he would play on the land with the children when the grass was up to knee height and at that time it "*looked fantastic.*" Then, he said, it was all gone but he did not witness it being cut, collected or taken away.
358. In relation to horses he said that local neighbours have horses in stable yard to the south of his house and that he has seen them lead their horses down onto the application land. This has occurred the whole time he has lived in the village. It happens in the winter period.
359. Mr Knibbs said that he does not know the owner of the land and has not met her knowingly. However, he heard second-hand from his wife on one occasion that the lady on horseback was the owner. This was the explanation for the answer on the EQ at A3/325 about ownership. Mr Knibbs thought this had occurred during the 20 year period.
360. In cross examination Mr Knibbs said that, with reference to the plan at O62, his house was about 100m from the Tellisford Lane entrance. Asked about his multiple EQs and the differences between them he said that, as to the activity of rounders, he had only remembered this when filling in the second EQ.

361. He said he was sure that the photos at O318 showed the middle of the land because he could see, in the middle picture, a “*barn*” near Tellisford Lane.
362. When asked about his grandchildren, Mr Knibbs said that two of his three grandchildren live at his house. His twin granddaughters (born December 2011) live at his house for 3 days a week. His other grandchild, Liam (born in 2009), lives outside of the village.
363. Mr Knibbs said that he got his first dog in about 1998 and his second dog in about 2000.
364. Mr Knibbs said that he was going to the land about once a week on average, depending on the season of the year, in that he would go once a week in the more pleasant months. Mr Knibbs said that, when the weather is half-decent, the field is fantastic but when it is ‘blowy’ it can get cold. Mr Knibbs said that he would never leave it more than a couple weeks without going. He said that there were some periods where he would be there very regularly and once every two weeks would probably be too infrequent as an average. If there was something unusual on the land, such as cattle, Mr Knibbs felt that he would have remembered it. Mr Knibbs said that it was not a common thing otherwise he would have had a good recollection of it.
365. Mr Knibbs said that he would see sheep regularly and horses more commonly than sheep. Mr Knibbs said that, in general, the field is empty from animals but, invariably, they would be sheep and horses. Mr Knibbs said that seeing sheep was infrequent and that most of the time of the field was empty with families going

about doing things in the field. Mr Knibbs said that, *"if it had been like a farmer's field then I would have been put off going in. I wouldn't have gone in."*

366. Mr Knibbs said that, most recently, there have been the girls from down TL taking the horses on the land. Mr Knibbs had seen jumps beyond the northern fence of the application land and had seen them there training or practising but this was not something of interest to him. Mr Knibbs said that he saw someone trotting on a horse did not see riding in the field. Pushed on this, Mr Knibbs said that he did not see *"a big deal"* in the northern field. He would occasionally see riding but would not stop to look.

367. Asked about his use, Mr Knibbs would go often at weekends. Mr Knibbs said that he would do a longer walk around the village (and he described in some detail his route) and would use the land as a short-cut. He would mainly be on the land at weekends and would not go there during working hours. He would not be there early in the morning. Mr Knibbs said that he would go out on the land on a Sunday morning. He would sometimes *"go all over the place"* on the land. Mr Knibbs agreed that his walks on the land would start on a public right of way which would include walking over the rights of way as they are all over the land. This was the pattern throughout the years and did not change over the period. He added that: *"once we were on the land we'd always be on the PROW at some point - we would generally just use it [the land] randomly."*

368. Mr Knibbs did not recall a field shelter either being built or being on the land and taken to O376 - 377: he said that he did not recall the field shelter shown on these aerial photos. Mr Knibbs did not recall a taped off enclosure. He had a faint

recollection of the photo at 18. He said that periods of a month did go by without him being on the land. He felt sure he would have seen it.

369. Mr Knibbs said that he could not remember the date of the foot and mouth outbreak. He first thought it was around 2010 or 2012. Mr Knibbs said that it did not affect him particularly because he did not have any involvement with farm animals. Mr Knibbs remembered it being on the news and sighing with relief when it was off the news. Mr Knibbs felt like the outbreak continued for 2-3 years, he knew it felt like a long time, but this was a guess. Mr Knibbs remembered in general some wheel-washing and some signs. Mr Knibbs used the field as he normally would. Mr Knibbs could not recall any period of change in the numbers of horses or any change in the presence of sheep.

370. Taken to documents showing information about the foot and mouth outbreak Mr Knibbs insisted in the face of Mr Honey's questions that he could not remember a general footpath closure in the immediate vicinity to where he lives in the village. It was revealed that Mr Knibbs worked away during the week between 1996 and 2000. Taken to O190 – 192 Mr Knibbs insisted that there were no posters at the Tellisford Lane entrance – adding that he had driven past every day and gone to the shop. Mr Knibbs was not aware of any provision, or regulation banning the use of the footpaths at this time and stuck to his answer that he would have been using the land during the 4 ½ months of outbreak. The same applied to his wife. Mr Knibbs said that he did not see anything to indicate that so using would be a criminal offence. It would have been common chit-chat that the footpaths were closed if they had been.

371. Pursued on foot and mouth, Mr Knibbs said that if there had been livestock in the field he wouldn't have gone in it if there was a sign restricting access. Even if there had been there a sign restricted access alone. He would not have gone in. As far as he was concerned things carried on as normal. Mr Knibbs said that he did not see signs in Norton St. Philip in that period other than at Chatley Farm.
372. Mr Knibbs disagreed that he was reckless in giving his evidence or that his evidence was incredible on the foot and mouth issue. He agreed that at the time there was a *"big noise"* and there was *"bad stuff on the TV"* but added that he was generally unaffected.
373. In answer to a question from me Mr Knibbs said that the Chatley Farm entrance was controlled but could not remember how. Mr Knibbs said that signs were put up and there were wheel-washes. It was apparent that you had to beware because of the signage erected there. Mr Knibbs did not have any friends who are farmers.
374. Mr Knibbs could not specifically name other users of the land but said that he knew many by sight and would nod to them when he saw them.

Ian Hasell [A3/296] of 7 Monmouth Paddock, Norton St. Philip [EQ A3/300]

375. Mr Hasell gave evidence in chief, which included a written statement, and set out that together with his wife they moved to the village in 1979. At that time his sons were 10 years old and 8 months. They quickly settled into village life – loving the community feel. The family has been heavily involved in community life throughout the 37 years they have been in the village.

376. Both Mr Hasell and his wife, I am told, have walked often across the field over the years. They have not just stuck to footpaths. Mr Hasell referred to his annotated plan at A3/298 and said it was meant to indicate that he used the whole of the land. The family have enjoyed the wonderful panorama's to be seen from the land and particularly south west across the Mendips to the 960 feet high transmitter on Pen Hill and south east to the Westbury White Horse and Salisbury Plain.
377. Mr Hasell confirmed that A4/623 is his son's EQ and A4/624 is his wife's EQ. He confirmed he didn't fill in an earlier EQ than that produced along with his statement.
378. Mr Hasell has lived at the same address the whole time, which is about 100m from the land. He said that he is aware of the public rights of way and the location of them. He has continually walked over them. There are some public rights of way that are more difficult to walk on – for example on the western edge from Ranmore Cottage to Upper Farm Close. As a consequence of that there is clear evidence that another path has developed.
379. Upper Farm Close is Mr Hasell's primary access, Town End is the next most used, followed by Tellisford Lane and then NE. He wished to add that: *"As a family we have always been very keen walkers - until my knee gave out runners. I have always been interested in maps. I have been well aware of good map reading and obeying the countryside code."*
380. Mr Hasell said his children have used the land. They were always into ball games. One thing he could particularly remember is his son had friends in Tellisford Lane: often he would go down to their houses to play and also meet up on the land.

381. Mr Hasell has never had a dog and a consequential requirement to walk at a specific time of day. His use has changed over time because of the age of the children etc. and then because of the seasons of the land but he stressed that that he has used the land "*continually without interruption.*"
382. The use by his eldest son has ceased but he has a daughter and Mr Hasell's wife is the principal carer for her 2-3 days a week. Mr Hasell's granddaughter has become friends with the daughter of Mr Franz. From about 3 years old they would meet once a week and as they got older they would use the application land as a place to meet.
383. Mr Hasell's younger son decided in 2000 to enter the fire service or the police. He took to running for the entrance fitness qualifications for the police. He used to run with a rucksack loaded with rocks. He ran in a few places and this involved using the land. Mr Hasell used the land to train for half marathons for a while.
384. Mr Hasell said it depends on the time of the year as to whether the defined routes are visible. It has not always been possible to walk around the footpaths. On the western path the brambles have been so high as to prevent that.
385. As to animals - primarily the land is empty. It is empty more often than it has any livestock on it. Mr Hasell said he'd seen horses in small numbers occasionally. Never more than 3 horses. He has never come across anyone riding on the land. Mr Hasell said he was uninterested in horses to the land to north of the site but he knew there were jumps there. He'd seen cattle occasionally: "*Cows are seen much more rarely on the land such that it would be a surprise to see them. There would be a small herd*"

perhaps - a dozen cows." As to sheep these have been the most regular occupiers of the land.

386. Mr Hasell said that primarily, we have seen a "typical meadow cycle" which he described as meaning that there is never anything on it during the winter. *"We would get a flock of sheep - a small flock of 30 or 40 sheep. The sheep would be on the land for several weeks - the grass would then grow. It would then grow higher until it was cut, put in rows and baled. Pretty much every year this is the cycle that has occurred. Only last year - in 2016 - the cycle was broken. Every year the wild flowers were a delight. You can only see that if the grass is left to grow to that condition and it cannot be continually grazed."*

387. Mr Hasell said he would see children playing all over the land but there are obvious places where they congregate because there are a few dips and depressions. He has seen ball games in the middle of the northern section. Mr Hasell had not seen cricket but he had seen rounders (not often but in the southern section). He said football can be played anywhere in the middle section. Once the weather improves he told me, the children would be running all over wherever playing tag and all sorts. Although Mr Hasell admitted that his use of the land has been irregular it had not stopped him from seeing children playing on it throughout that time.

388. Mr Hasell said that there are always people walking dogs on it. *"You see dogs on and off the lead. They do tend to walk the perimeter. dogs might go off and run around. Dog walking was seen - it was one of the more regular activities that is to be seen."*

389. As to team games like tag or football, it was never anything official. The land does not lend itself to that sort of activity, but when children are young and to kick around with jumpers for goalposts it is ideal. Blackberries, Mr Hasell said were to be found all over the eastern boundary. As to bird watching, there have been many birds of prey such as kestrels etc and he has seen a couple of bird watchers each year.
390. Asked about picnics, Mr Hasell said they were not formal and they consisted of *“young kids taking out a ground-sheet when the weather is good in summer.”* Usually this took place where they could find a nice part of shelter more particularly on the southern side. As to kites, this was weather dependent but would never be seen more than a few times a year.
391. Mr Hasell said that he had seen people all over the land. There is a walked route all along the eastern edge. There is also a curved route towards the north east corner and people use that as if it were a public right of way.
392. Referred to A3/296 and photographs of the mound Mr Hasell said that he thought it may have been constructed in the 19th century in connection with water for livestock. For young children, using the mound is an ideal introduction to sledging as Churchmead is too steep.
393. Mr Hasell said that in 1985 there was a re-enactment of the Rebellion and, in 2005, there was another re-enactment. He was able to produce a leaflet for the 2005 event, which he said he knew more about. He recalls that none of the car-parks were filled to their capacity and to his knowledge it did not affect people’s ability to walk

on the application land.

394. As to foot and mouth he knew that none of the Applicant's witnesses had mentioned foot and mouth so it was a surprise to see it in the Objector's evidence. Referred to O190 and O192 he could not recall seeing any signs in the village or on the land. Mr Hasell said the he recalled seeing the news reports about foot and mouth but it was a non-event in the village. He added that the whole focus was on the chicken factory site. A few years previous the chicken factory had burnt down. There were two planning applications for development of the chicken factory site which caused a great stir in the village. Mr Hasell said that towards the end of 2001 he became a parish councillor and represented the village at the inquiry in 2001. He became a District Councillor in 2003.

395. In cross-examination, Mr Hasell said that his wife's answers in her EQ to questions 3 and 13 were correct.

396. Mr Hasell described his involvement with the village green application, which he said only started in the Autumn of 2015. He was not involved prior to the application being submitted.

397. Asked whether he was against development in the village Mr Hasell said that: "*No I don't want to stop development.*" He said that the Town and Country Planning System is flawed and he wants to protect the land. He is specifically not happy for any houses to be built which are outside the village development limit and specifically if they do not have the approval of the village. There was some discussion of whether Mendip District Council have understood the housing supply

figures when they granted permission for the development of the land and he claimed that Planning Inspector had been misled.

398. Mr Hasell said in 1993 his two sons were the following ages: Nick was 25 and Dom 15. Evidence about their use relates to when they were younger. His evidence includes visitors but the Hasell family would have accompanied them. He said again that the Hasell family have never had a dog.

399. Asked about access he said that the access points all have had a stile on them, except that Upper Farm Close and Town End now have gates. He couldn't recall when the gates were installed. He couldn't say even which decade. He denied that he was treating his evidence like a game. He said that he was taking the inquiry seriously when challenged and repeated that he could not remember which decade the gates were installed.

400. Mr Hasell said that he did have a vague memory of the Shetland Pony enclosure. It accorded with the evidence of Mrs Day except he didn't know the fence wasn't electrified. Mr Hasell could recall a field shelter being constructed but going after 2 or 3 years. He understood from hearsay that it had been rebuilt on the training field.

401. Mr Hasell said that he had not read the Objector's evidence - apart from a skim read that he did in January. The files were not kept at his house and Mrs Oliver had volunteered to read the Objector's evidence. Other than Mrs Oliver he was not aware that any of the Applicant's witnesses had read through the evidence.

402. Recently a map showing the public rights of way went up in the village on the wall of a pub near to Churchmead. He did not know who did that. Mr Hasell couldn't recall

when the finger-post sign was erected near to the entrance at Upper Farm Close. He couldn't remember if it had been there the whole time. He couldn't recall any footpath directions signs on the stiles, he knew where he was going so did not need to look.

403. Taken to I13 and asked about foot and mouth signs, Mr Hasell said there are other examples of the Parish Council intending to do things but not doing them. He has no recollection of whether Terry Mills had animals in the field at the time of foot and mouth. He did not notice any impact of foot and mouth in the immediate locality at all.

404. If there had been an outbreak within 5 miles there would have been enormous publicity. He didn't see anything relating to any farms in the local area. He couldn't recall seeing anything which was connected to foot and mouth outbreak. He didn't recall anything in the local paper. He then said that he remembered using the footpaths without any problem.

405. Taken to O192 Mrs Hasell said that he would have expected that there would a subsequent minute to confirm the erection of the signs. He was taken to a chronology showing the date of the revocation of the powers to impose footpath closures at O141.

Linda Oliver [A3/ 338]

406. Mrs Oliver, in her evidence in chief which included a number of written statements, said that she came to the village in 2007 and has lived close to the application land so she can access the land without crossing any dangerous road quickly via the right

of way. She tells me that there have been at least 4 established walking routes apart from the rights of way.

407. Mrs Oliver attended the entire inquiry and was keen to tell me that she had read every single page of the Objector's evidence. Mrs Oliver has previously been involved in a village green application in Kent. Mrs Oliver said in cross-examination that when she submitted the village green application "*we did not know about the prospect of development*" and then added "*I am not stupid.*" However, she then added, when taken to OB233, that it was inference that development might occur because anyone with a bit of planning knowledge would know there was the opportunity.
408. She said that she knows the "teaching field" as "paddock. Mrs Oliver said that she always accesses by the entrance at Upper Farm Close.
409. Mrs Oliver said that she was in fact responsible for securing the finance for the gates at Upper Farm Close entrance. Some older residents asked her to do this because they were struggling to get over the stile. The gates were installed around about the time that Budgens opened in the village in March 2013. This, she told me, is now the Co-Op. Budgens closed because the proprietor, Mrs Oliver claimed, had committed a criminal offence.
410. Mrs Oliver said that she did a bit of walking and running as part of an attempt to try intensity exercise. She walks every day, sometimes 3 times a week and gets into a jog or a run.

411. She said that she had picked blackberries in the western tip and along the eastern boundary of the land. She said they grow over the field from other land. Mr Oliver eats them. Mrs Oliver takes a bowl and purposively picks them. You must leave the footpath and cross over a small area of land in order to get to the blackberries. There have also been sloes and rose hips but Mrs Oliver has not picked these.
412. Mrs Oliver has picked up litter from the land, as is her practice and she owns a couple of litter pickers. She told me she became a Parish Councillor and remained as such up to May 2015. She had joined soon after arrival. There was lots of debate about a wind turbine near the church. She thought it might have been about 2009. She has also been a District and a County Councillor. She has been on various committees.
413. Mrs Oliver told me that she has never met Terry Mills although she obtained his phone number from someone else. Mrs Oliver said that when she was in the field and a horse was present, she would put the dog on the lead. In 2009 Mrs Oliver saw Bina Ford on a horse and the two stopped to chat. Bina Ford, Mrs Oliver informs me, asked what type of dog she had.
414. Mrs Oliver has been involved in the process of obtaining evidence and became quite emotional when speaking of witnesses who have subsequently died. Mrs Oliver explained that she had some evidence about the origin of the name Shepherd's Mead. There were times in the mid-1970s when village cricket was played on the Shepherd's Mead, Mrs Oliver claimed.
415. Referred to question 12 of the EQ Mrs Oliver explained that she went on to the land

for personal exercise. She said that where she walks is not always on the public rights of way. For example, she told me, it has never been possible to access the route along the western top boundary as there are nettles and weeds. The nettles have now been chopped back but its brown on the ground. In addition, she would not walk diagonally across but always on a curve. She referred to the aerial photo at O379 for an example of how the route “*snaked round.*” Mrs Oliver was surprised to see the aerial photographs in the Objector’s evidence. She says the photographs show that there were no animals. She added there is one photo that shows something that might be an animal: O377 she said might show sheep.

416. Mrs Oliver produced a photo showing young children using the land but said that it was not her photo. It depicts what she would have seen. She pointed out the worn grass around the mound which she said was due to dog training.
417. Mrs Oliver claimed that she contacted Terry Mills each year to ask him to come and cut the grass – which he willingly did. Terry Mills’ cutting of the grass and the baling of the hay never interfered with the use of the land. Mrs Oliver told me of her concern that Terry Mills did not put the stile back properly and she has taken it upon herself to fix it.
418. Mrs Oliver described a grass mound in the corner of the land which is a “*magnet for the children in our family and visitors’ children.*” She said they had run up it, slide down and generally played on it as children do. They have also run across the whole field playing hide and seek, picking wildflowers, chasing butterflies and generally having fun.

419. Mrs Oliver said that she has seen Bina Ford on the land crossing the A36 with two or three horses. Upper Farm Close is Mrs Oliver's entrance point. She avoids High Street in the village. With a dog, she told me, you could get hit. She would also walk around the village so as to avoid as many roads as possible. Mrs Oliver said that at one stage she was running around the application land up to 3 times a week.
420. Mrs Oliver said she has seen children screaming with delight running the middle of the land. They have been seen playing. This is more so when the grass is high and full of grasses and buttercups. She has seen older children and teenagers using the land and pointed to examples in the evidence. Mrs Oliver said it was important to express the activities changed depending on the state of the ground and because it changed all the time.
421. Mrs Oliver said that she has never bird watched but she has seen people doing it. She has seen birds of prey who have landed in her garden with dead pigeons. She used to hear the owls but not now.
422. Mrs Oliver said she seen Mr Parker on the land practicing his fishing and with a golf ball. Mrs Oliver said that she has seen kite flying on 6 separate occasions. As to picnics, she said she has seen one couple and knew them from her work as a councillor.
423. Mrs Oliver clarified that her dog walking is around the land but not the footpaths. She has walked across the land and thrown balls. She said: *"We were both all over the place."*
424. Mrs Oliver said that she only saw local people walking on the land. She knew as well

that some people drove up to the land to go walking with dogs. An example would be Alan Bishop. Mrs Oliver says she knows that this happens because they park up and block the turning circle by her house and she *“is sort of the custodian of the turning circle.”*

425. Mrs Oliver had seen the small taped off area. She investigated the issue and apparently had some conversations with people about it. She didn't know that it wasn't electrified.

426. More generally, Mrs Oliver had seen between 20 – 25 sheep on the land. *“Never baby lambs - they were junior lambs. They were independent of their mothers. They would make quite a bit of noise. They were never on the land all the time. They were not there very often.”* Mrs Oliver doesn't accept the Objector's evidence on sheep. Terry Mills has other fields where he keeps his sheep, including a large area across the B3110.

427. Mrs Oliver said that she had seen cattle on one occasion only. She did not know the exact date. A friend came over with her two dogs 2010/11 and Mrs Oliver went for a walk over the land. She was shocked to see about 10 cows. It did not stop her using the land. Her friend is an experienced dog owner. She could not remember how long the cows were present for.

428. Mrs Oliver has seen horses on the land but most of the time they were on the paddock. She saw a horse on the land when I saw Bina riding it. Most of the time horses were in the middle area and occasionally up at the Upper Farm Close gate. Some of the horses were very friendly and Mrs Oliver stroked them. One of the

ponies that was on the land once was aggressive and Mrs Oliver thought that that was not right so she contacted Barbara Day. Mrs Oliver then said that prior to 2012 it was rare to see horses on the land. The horses were taken to stables and this meant that they were often not there in the morning but maybe the afternoon. She said that as she had a dog she would notice horses.

429. Mrs Oliver understood that there was a shelter on the land for a time but Mr Parker was asked to move it by Bina Ford. This was based on a conversation with Mr Parker.

430. In cross-examination Mrs Oliver said that she moved down from Kent in 2007 but we got a dog in November 2009. She was training the dog the whole time for an intense period of 2 or 3 years. She joined the Parish Council in 2009. Mrs Oliver understood from the bundles of evidence that Bina Ford came to the village when she was 13 years old.

431. Mrs Oliver clarified that she had met Bina Ford in the area around the mound. She had put her dog on a lead when the horse approached. Prior to that Mrs Oliver knew there was someone with stables in the village. In 2009 Bina Ford made a planning application, Mrs Oliver said, in respect of the paddock. The Parish Council looked at the application and considered the history. Mrs Oliver disputed that Bina Ford's business was being run down from 2007 onwards. In the Design & Access Statement Mrs Oliver said that she would be teaching for 5 days a week. Mrs Oliver also claimed that Bina Ford did not have "*official permission to run her business.*"

432. Mrs Oliver explained that there was a scarecrow trail which was set out once a year. Families with push chairs would enjoy it. Permission has been sought to place a

scarecrow on the land, but the use was on the public right of way. She accepted that route from UFC to TL joins the same two points that are on the right of way.

433. Mrs Oliver said that in her statement she did not draw a distinction between visitors and inhabitants when giving her written evidence.
434. Asked about cycling Mrs Oliver said that she was referring to little children on bicycles mainly. They come in through the Tellisford Lane entrance. Their bikes have stabilisers on. They would go around the land but cut the north-east corner around the land. Mrs Oliver has come to understand that the children that she has seen doing this are the Ditchfield's children and the Stretton/Robinson children.
435. Referring to the aerial photos beginning at O370 Mrs Oliver disagreed that it shows animals as it could be people shown. As to O371 she agreed that this shows animals. As to O377 and O379 Mrs Oliver said that she couldn't see the whole the field. She said: *"I do know that there were sheep in these fields."* Mrs Oliver agreed that although the evidence of Mr Mills had told her that he kept the sheep in Wadham's Field or Shepherd's Mead she personally knew that he kept sheep elsewhere. Mrs Oliver said in 2007 Terry Mills had stopped using the land apart from occasionally. She agreed that she saw sheep occasionally.
436. As to the Shetland ponies referred to by Mrs Day, Mrs Oliver said she was surprised by the date given. She claimed that the pictures show a larger area cordoned off than she saw on the ground. She said it was remnants of something white on the land and that it was originally attached to the hedgerow and then it wasn't anymore.

In the end, Mrs Oliver said she had no reason to doubt Mrs Day and she knows best her evidence.

WITNESSES CALLED BY THE OBJECTOR TO GIVE ORAL EVIDENCE

Claire Newport of 8 Kissing Batch, Frome, Somerset [O/262]

437. Miss Newport in her evidence in chief, including a statutory declaration, informed the inquiry that she is a letting negotiator and works from Frome. She lived with Bina Ford when she was 21 and again (at 6 Longmead Close) for 16 months from September 1995 to January 1997. During that time Miss Newport worked as a groom for Bina Ford. Bina Ford had 4 horses at that time but there was at least 1 other horse in her stables belonging to someone else. Before moving to live with Bina Ford in 1995, Miss Newport was living in Bristol but she would come to stay for a week at a time with Bina Ford for intensive training.

438. Miss Newport said that she had been told that local residents are claiming that, as well as walking on the land, their children have played on the land, they have come onto the land for picnicking and kite flying, blackberry picking, drawing and painting and nature observation, etc. Miss Newport said that these claims were a surprise to her because of her knowledge of the land.

439. Miss Newport identified an area edged blue on the plan attached to her statement which she called "the teaching field." This land lies to the north of the application land Miss Newport said there was in her experience a low-level fence between it and the application land. Miss Newport remembered having clear views of the application land from here (upon exiting a barn that situ on the land).

440. When Miss Newport worked for Bina Ford she had a range of duties such as grooming of the horses in the stables, helping with lessons, exercising the horses, collecting dung, repairing jumps and boundary fences. When Bina Ford was teaching, Miss Newport would help put jumps up and down and move them around. The teaching was mainly done in the summer months from March through to September or October. Bina Ford would teach up to 3 or 4 times a day and, in the summer, this meant being in the teaching field for large parts of the day. Miss Newport was working for Bina Ford most days, including weekends.
441. Miss Newport said that the application land was used to get horses fit and occasionally to graze horses on. She once grazed her horse on the application land for about a month and whenever horses were grazing she would check them. When she was working for Bina Ford Miss Newport said that she often saw sheep on the application land.
442. Once a week Miss Newport would ride on the application land. Normally this would happen first thing in the morning, but times varied depending on other factors and the time of the year. She rode around the whole application land for about 1 hour. Miss Newport continued to visit Bina Ford for jumping lessons every couple of weeks from March through to October for about 5 years until 2003. In 2003 Miss Newport stopped riding but would thereafter still see Bina Ford at horse shows.
443. Miss Newport said the only people she saw on the application land were people walking their dogs (on and off leads). She said she saw on average 1 or 2 walkers a day walking on the paths mainly with their dogs. These people, she told me, were walking on the paths, mainly on the path from Upper Farm Close to the exit at

Tellisford Lane but she also saw people on the path running from Upper Farm Close to the fields in the north east corner. She could remember people saying hello to her when they were walking past the teaching field and she was painting or repairing the low wooden fence. Miss Newport says that she never saw anyone else using the land for any other purpose or activity other than walking on the paths and she feels sure if they were doing anything else she would have seen them because she was in the teaching fields for such large parts of the day (including school holidays).

444. She never saw any litter in the application land or any children playing on it. She suggests to me that the application land is by its topography unsuitable for this kind of activity and also there were animals grazing in it *“for much of the time.”* She thinks that a child running in the field could have broken an ankle. She was not aware of any blackberry bushes and never saw anyone picking fruit. She could not *“imagine anyone wanting to come and picnic on the land because of the presence of livestock.”*
445. In cross-examination, she said that she was giving evidence to the inquiry because she was contacted last year and asked to do. She could not remember the title of the man that asked her. She could not remember his name. She was asked in an e-mail to complete a questionnaire. She posted the questionnaire back. She was then contacted later by Battens Solicitors, who contacted her by telephone to ask whether she would give a statement. The initial questionnaire from the gentleman told Miss Newport what had been claimed by the residents.
446. She was asked by Mr Edwards whether there was a similarity between her statement and another of the Objector’s witness. Specifically, she was taken to paragraph 3 of Helen Fearn’s statement at O31: *“The application is a surprise to me*

because in all the times I went for lessons to Bina I did not see anyone on the application land.” Miss Newport said that they may have put in words.

447. Asked about her work habits at the Bina Ford’s centre she said that for 50 per cent of the time she would be working in the stables.
448. Miss Newport said that before 1993 she had never been to the application land. During the working week she would be grooming the horses in the stables, brushing them off before riding them, mucking out for about an hour and generally helping around the yard.
449. Miss Newport clarified that she would ride in the teaching field and in the application field depending on what was being done with the horses. Miss Newport said that she never used the application land for any non-horse related activity. When she was assisting Bina Ford with lessons in the teaching field she admitted in her focus and attention would be on the jumps, as the horse went round. She explained that she would be positioned by the low fence looking into the teaching field and the jumps, facing away from the application land. Riding lessons would last for about 1 to 1.5 hours.
450. Once a horse had been ridden it would be walked in order to cool it down. This would be down for 20 – 30 minutes depending on how warm the horse was.
451. As to the work down to the fence fronting onto the application land Miss Newport said that it would be painted twice a year in spring and autumn. She recalled that she did this 3 times during her employment.

452. In re-examination Miss Newport reiterated that she had never heard any playing on the application land or recreation. She said that she could recall using the word “*surprised*” to person taking her statutory declaration.

Malcolm Lippiatt of Greystones, Ashton Hill, Corston, Bath [O214]

453. Mr Lippiatt in his evidence in chief, which included a statutory declaration, informed me that he is a director of Malcolm Lippiatt Homes Ltd. The company is based near Bath and concentrates its business on private housing in villages and towns around the cities of Bristol and Bath. He has been involved in the construction industry for 48 years. He made it clear that Battens Solicitors were not representing him, although earlier in the proceedings Wards Solicitors had acted for the company.

454. Mr Lippiatt told the inquiry that there is a development agreement in place with Bina Ford relating to the development of the application land. As such he said straightforwardly that he had a financial interest in the outcome of the application. He said his “*hands were tied*” by this agreement in that it required him to “*maximise development potential.*”

455. In cross-examination, Mr Lippiatt described his knowledge of the application land as “*minimal.*” Mr Lippiatt described to me the history of the development in the immediate vicinity of the application land, specifically that which has occurred to the north of the application land. He assisted Mr Clarke and Mr Hawkes (the late father of Bina Ford) to obtain planning permission for what has become 1-5 and 10 Longmead Close.

456. In 2007/8 Mr Lippiatt worked on an application for planning permission for the

demolition of Longmead House and the construction of 8 new dwellings (land edged red on the plan attached to his statement). At weekends during November 2007 through to February 2008 he spent time with Spencer Gregory and Steve Nelson clearing the land on which it was proposed to develop and meeting with the architect and drainage engineer. He had visited 2 or 3 times before that period however. Mr Lippiatt explained to the inquiry that a 2008 survey plan *“shows the levels on the site, and along the southern boundary is shown the wall and the elevation of the land above and below the wall. There is a difference of at least 1 metre between the two, with the lower level being on the south side of the wall which is generally referred to as the ‘the ha-ha.’ That structure did exactly what it was supposed to do in that it provided a physical boundary between the garden of Longmead House and the land to the south whilst providing an uninterrupted view of the southern land.”* Mr Lippiatt produced to me a photo at O227 showing a view from Longmead House toward the application land sited to the south. It was taken in February 2010. He explained that the application land is beyond the tree stumps on the photo. Mr Lippiat said this photo was taken by standing in front of Longmead House and the distance to the application land was *“about an 8 iron.”* The occupation of Longmead House had ceased before November 2007.

457. Asked for more information about the weekends he spent on the site, Mr Lippiatt said that he only ever worked on a Saturday and not on a Sunday from the first week in November to the end of February. He was on site between 9am and 3pm. He saw horses on the application land (perhaps a couple) but no sheep.
458. Mr Lippiatt also produced a photo showing a different viewpoint at O215. He said of

the photos that they *“demonstrate that anybody in the garden of Longmead house would have clearly seen any activities on the land to the south, including that land subject of the application for village green status.”* In cross-examination, Mr Lippiatt clarified for the inquiry that the “ha-ha” is to the north of the teaching field and paddock. He referred to O224 which shows the difference in levels which he again said was about 1m on average.

459. Mr Lippiatt said that as the teaching field/paddock was on land that was at a lower level one could clearly observe any activity taking place there or on the application land. The only activities that he recalls were horses grazing on the application land and the occasional walker using the public footpaths. He then said this: *“As I had in mind that land, including the application land, could be development in the future, I am sure I would have noticed if the land was being use for anything more than that.”* He later clarified, in answer to a question by me, that the further away parts of the application land would be obscured by the small mound and the trees. Further, that on an overcast day one could still see the whole field but not if foggy. Pushed in cross-examination Mr Lippiatt agreed that what he said he saw must be taken in the context of what the focus of his attention was at the time.

460. Mr Lippiatt said that in 2007 and 2011 Bina Ford was still operating her riding school. He clarified in cross-examination that he had met Bina Ford twice in the period 2007 – 2011, going once into the training field and once into the application land to have a look at a horse.

461. By 2013 Mr Lippiatt was visiting once a week to keep an eye of the development of the land edged blue on the plan at O219. His trips would have between 1 hr and

3hrs. His focus was troubleshooting and agreed this was the focus on attention albeit reiterated that the land was all visible. Also in 2013, Mr Lippiatt said he went into the application land to fly a drone. There was no storage facility for the camera on the drone in those days.

462. Mr Lippiatt addressed, throughout his evidence, various planning documents, but it seems to me that these stand to be interpreted as a matter of law and not based on any subjective interpretation of Mr Lippiatt. I address these documents elsewhere as appropriate. Mr Lippiatt was keen to stress that when it came to planning matters he relied on his advisors. However, I think it is worth recording that Mr Lippiatt says in his written evidence that: *"It was always necessary and proposed that the sewer would have to be constructed over the application site as part of the development for which we sought planning permission in May 2013. The subsequent approval of the foul drainage scheme... shows a new sewer crossing the blue and green land and discharging to the public sewer in Town End. That sewer has now been laid. The work was carried out by our contractor, Brandwells Construction."*

Mrs Gail Baker of 33 Bloomfield Close, Timsbury, Bath [O13]

463. Mrs Gail Baker in her evidence in chief to the inquiry, which included a statutory declaration, explained that she is a self-employed riding instructor and a British Show Jumping judge of some 11 years' experience. She is 54 years old and has lived in Timsbury for around 17 years. Timsbury is about 9 or 10 miles from Norton St. Philip. Mrs Baker appeared at the inquiry with an injured hand and I was grateful to her for giving her evidence despite, it seemed, being in some discomfort.

464. Mrs Baker worked for Bina Ford on her land at Norton St. Philip for a period of 18 months to 2 years between 1999 and 2001. She was a groom and her duties included grooming the horses, riding the horses and attending events with Bina Ford. Mrs Baker has actually known Bina Ford since she was 18 years old. Before 1999 she visited her *"quite a bit"* on a social basis and she then started taking her daughter Nikki to have lessons with her. Nikki was having lessons with Bina Ford about once a week for three or four months. Nikki was competing in equestrian events from a very early age. Nikki left school at 11 years old to be home schooled and to be able to compete in equestrian events.
465. When Mrs Baker started working with Bina Ford in 1999 she took all of her daughter's ponies to Bina Ford's land for them to be stabled there. Nikki would come and ride the ponies every day. She had 2 or 3 ponies stabled on Bina Ford's land between 1999 and 2001. Mrs Baker stopped working for Bina Ford some 3 or 4 months after the latter had had a heart attack in 2001.
466. Mrs Baker referred to the claims that local residents were making about how they had used the application land: including walking, playing, picnicking, kite flying, blackberry picking, drawing, painting and nature observation. She set out that *"The application and the claims are a surprise to me because of my knowledge of Bina's land."*
467. During the time that Mrs Baker worked for Bina Ford she told the inquiry she was on her land every day, including weekends and during the winter. She knew the land very well. She described to me *"that after passing the stables in front of Bina's house you had to walk through a barn to get to the land"* which she edged blue on an

attached plan. She went on: *“This field had a lunging area for exercising horses; on the right (with the barn behind you) there were two or three fenced off paddocks where we grazed horses that were in training for short periods, and on the left was an area for jumping horses.”* This is what Mrs Baker referred to as the *“teaching field.”*

468. Mrs Baker told the inquiry that she would go onto the application land when there were horses which had been turned out that needed checking. She said that she would go into the teaching field numerous times a day and that there were good views of the application land from here. She recalled that there was a slope on the teaching field, from which the views of the application land were even better.

469. Mrs Baker said that she was in the stables and the yard in front of the stables for large parts of the day but went into the teaching field frequently. This would be to help move jumps around or when Nikki was *“working her horse”* there. Mrs Baker set out that working a competition horse means doing various movements with the horses like trotting and walking sideways to keep the horse fit and supple. Different things would be done to exercise the horses such as lunging and riding or jumping. At one point in this period Mrs Baker told the inquiry that there were 15 horses (including ponies) being trained. In the winter time when there was very little teaching, Bina Ford continued show jumping (as the competitions and events moved indoors) and Mrs Baker continued to assist with looking after the horses.

470. In the summer months from April to September, Mrs Baker said, Bina Ford spent a lot of time teaching. There would not be many days when Bina Ford would not be doing any lessons in the teaching field. She would teach into the evenings. At

weekends Bina Ford often attended equestrian events and most of the time Mrs Baker would attend these with her.

471. Mrs Baker told me that during the whole time that she has known of the application land she has, apart from seeing people walking across the application land, never seen any of the activities the people are now claiming have occurred: *"The only people I have ever seen using the application land, other than Bina and her students, were people walking their dogs. I think had anything else been going on I would have seen it This is because I was frequently going into the teaching field during the day and in the evenings in the summer months and because the application land is so visible from the teaching field I am sure that I would have noticed any children playing on the application land or any other recreational use of the land."* Mrs Baker says also that she would have been concerned to ensure that nothing happened on the application land which would have put the competition horses at risk.
472. Mrs Baker added: *"Bina and I were used to people walking their dogs on the paths on the application land, which they did even when horses were turned out on the application land. I knew there were footpath on the land but I did not know the legal routes of the paths. I do not recall there ever being an issue because of people walking on the paths on the application land."* She added that she was sure that Bina Ford would have confronted anyone straying from the route of the paths as she would have been anxious to ensure the safety of her animals and to *"assert her authority over the land."*
473. Mrs Baker said that foot and mouth occurred during her time working for Bina Ford. She recalled that they had to be careful about disinfecting the lorries that the horses

were being moved in. She said that she knew people locally kept away from land which had animals in it.

474. In cross-examination, Mrs Baker clarified that she started taking her daughter for riding lessons in 1998. The lessons were once a week. They lasted about 1 hr or so. Sometimes they would have stayed for the afternoon but other times not. However, as she was long standing friend of Bina Ford, Mrs Baker would have visited her before 1998 but the visits would not have lasted the whole day.

475. Once Mrs Baker started working for Bina Ford it was a 7 days' a week job. There would be a combination of activities: working in the field and in the stables. She would be pulling weeds and thing like that. On a competition day, the day would start at 4am and, Mrs Baker said, "*we might not get back to midnight the next day.*" On a normal day she would start at 7:30am and go home when everything was done.

476. Mrs Baker told me that if horses were on the application land they would check 3 or 4 times a day. Asked about other animals in the application land, Mrs Baker referred to a flock of sheep. She couldn't remember how many sheep but she understood at the time that Terry Mills owned the sheep. She knew Terry Mills well enough to speak to.

477. In cross-examination, Mrs Baker couldn't remember when the foot and mouth crisis was although she confirmed that she was working for Bina Ford. She could not remember whether she turned out the horses onto the application land at this time. She said that she accessed the application land from the training field and didn't walk around Norton St. Phillip so she was unable to help about foot and mouth signs.

478. She confirmed that she did not know where the legal routes over the land were and accepted that it was a fair comment that she would have not known at the relevant time either. She said however that *"I believe and KNOW that Bina would have challenged people."* Mrs Baker explained the process by which she made her statutory declaration and confirmed that she had not discussed her evidence with her daughter.
479. In response to questions from me, she said again that she was surprised about the claimed use because other than people walking dogs she had not seen anything else. She said that she had no need to discuss with Bina Ford how people were walking their dogs.

Miss Nicola Baker of 5 Rushgrove Gardens, Bishop Sutton [O20]

480. Miss Baker in her evidence in chief, which included a statutory declaration, she said that she is the daughter of Mrs Gail Baker. Miss Baker is 27 years old. She show jumps professionally and has been riding horses and competing at equestrian events from a very early age. In 2008 she had serious injury. About 20 months ago she became a mother. In addition to the show jumping Miss Baker was employed looking after a girl who has autism once a week.
481. Miss Baker said that between 1999 and 2011 she spent a considerable amount of time at different times at Bina Ford's land in Norton St. Philip. Bina Ford she told me, is an international show jumping champion and her guidance and expertise has been enormously helpful to developing her own career.

482. Miss Baker set out when referring the claimed use of the land by local residents: *“The application and these claims are a surprise to me because for all the times I have been to Bina’s land I cannot recall seeing anyone on the application land apart from walkers.”* Miss Baker started going to Bina Ford’s land from the age of about 10 for lessons. Lessons would take place on the field adjoining the application land. In 1999 Mrs Baker moved Miss Baker’s ponies to Bina Ford’s stables until 2001. Home schooling was arranged in order to allow her to focus on her eventing.
483. Miss Baker said that: *“Every day in the summer months (from April to September) she rode her 3 ponies on the application land to help get the ponies fit. I would gallop around the field for about 45 minutes per pony. When my mother moved the ponies back home in 2001, I continued to go to Bina’s land for lessons once a week or once every couple of weeks. I would ride my horse in the jumping field also known as the training field...”* Bina Ford rode on the application land but not with Miss Baker. She can remember the mound at the southern end of the field.
484. When Miss Baker was 16 years old she moved away from home for a job but visited Bina Ford about once a month socially. She moved back home when she was 18 in 2006 and kept her horse for about 2 years until 2008 at Bina Ford’s stables. In this period 2006 – 2008 Miss Baker would spend large parts of the day at Bina Ford’s land including on the application land. In the summer months she would be riding her horse on the application land 5 days a week *“normally and sometimes every day; it depended on what was going on.”* When not riding Miss Baker would be assisting with yard duties such as mucking out the stables or grooming the horses.

485. In both periods of 2006 – 2008 and then 2008 – 2011 Miss Baker said that she couldn't remember seeing anyone on the application land apart from the occasional dog walker on the footpaths. She remembered seeing sheep. Miss Baker said that she competed in equestrian events most weekends. In the winter months she would train her horse at the riding school at Norton House on the other side of Farleigh Road.
486. In cross-examination, it was clarified that before Miss Baker started lessons she would have visited Bina Ford socially with her mother as a very young child. Miss Baker told me that she used the application land to gallop around: *"I would be going around for 1 hr or 2hrs. It could be different times every single day."* However, she also then said that she could not remember galloping around the field when there were sheep in the field. I couldn't remember cows. Miss Baker would be riding in the application land from around February if the ground was up to it. Miss Baker said that there was a route between NE - TE. This is the only place that she saw people walk.
487. Miss Baker said that her horses were stabled with Bina Ford between 1999 and 2001 but she could not be exact with what happened after that. However, even once the horses were moved she said that she would still come to see Bina Ford after 2001 for between 45 minutes to an hour.
488. Asked about foot and mouth Miss Baker said: *"I can't remember much about the foot and mouth outbreak and we carried on as normal."* Asked how she came to give evidence, Miss Baker said that she was contacted by Bina Ford's people and spoke over the phone.

489. Miss Baker informed me that she would ride in the application land for about 1 hour and in the morning (maybe first thing) or afternoon (although she had a job looking after someone with Cerebral Palsy for one morning and two afternoons a week). She told me that in the years 2006 – 2008 the latest she would be riding in the field would have been 7pm.
490. Asked about the route used by dog walkers, Miss Baker said she was familiar with the route NE to TE and UFC to TL. Miss Baker added that kite flying “spooks horses” as would children playing games and football. Miss Baker said that she couldn’t ever recall seeing anyone without a dog. Miss Baker said it was a “total shock” to be told of the application but she could not remember whether she used the word “surprise” to describe how she felt.

Steve Nelson of 87 West Street, Oldland Common, Bristol and formerly of 10 Longmead Close, Norton St. Phillip [O246]

491. Mr Stephen Nelson, in his evidence in chief which included a statutory declaration, explained to the inquiry that he is a director of Malcolm Lippiatt Homes. He has been involved in the house building industry for some 43 years.
492. Mr Nelson explained that, during the period from November 2007 through to February 2008 he worked in the gardens of Longmead House along with his business partner Mr Lippiatt and a tree surgeon called Spencer Gregory. They were clearing away trees and undergrowth in preparation for development of the land which he showed edged red on his exhibited plan. That is the land which is broadly to the north of the “training field” and/or the paddocks and the application land. During

this period, Mr Nelson told me, Bina Ford was resident at what is now known as 10 Longmead Close. Mr Nelson said that the whole extent of the land to the south (edged green and blue on his plan and including the whole of the application land) was visible from Longmead House (i.e. the land edged red on his plan). Mr Nelson said that this was because the rear (south facing) windows of Longmead House looked over the relevant land and because the land was at a lower level with no obstructions to visibility.

493. During the time between November 2007 and February 2008 Mr Nelson tells me that the only activities that he saw on the application site were *“people walking across the field on paths, sometimes with a dog, especially on the east west path, that I now know to be a public footpath. Had there been any recreational activity taking place on the application land at the time I would have seen it in the way that I saw people walking on the paths.”*

494. Mr Nelson further explained that he purchased 10 Longmead Close from Bina Ford in January 2011 and moved in with his wife to make it their home. For the whole of 2011 up to the end of 2014 he lived at this address and worked on the demolition of Longmead House and the erection of 6 – 9 and 11 – 15 Longmead Close. This meant that he was on site during the week between 7:30am and 5:30pm and frequently on Saturdays as well. Construction began in 2011 and finished in 2013. They worked from north to south. He again described to me that his had a clear view of the application land from the site during this time and he says that he only saw *“the grazing of horses, with the occasional person walking along the footpaths sometimes with a dog and usually on a lead.”*

495. In 2014 Mr Nelson began to work on construction of 8 houses over the land edged red on his plan – which is the land immediately to the north of the application land (i.e including the training field). Mr Nelson said this: *“In 2016 I moved from Longmead Close to live at my current address in Bristol, but I have continued to work at Longmead Close and I continue to work there today. During the period working on this project I have seen a marked increase in the number of people walking on application land. It now seems to me that people tend to walk around that field, particularly from the entrance points at Upper Farm Close and Ranmore Cottage, rather than across it to reach the land to the east or Tellisford Lane to the south.”*

496. Mr Nelson produced 3 photographs showing Longmead House (before demolition) and the views from Longmead House pre and post demolition. He explained that as to the photo at O254: he couldn't remember exactly when it was taken but it was prior to the February 2010 demolition. As to the photo at O255: he explained that the photograph showed a fire in the foreground and in the distance what he described as about 10 people walking. In his written statement, Mr Nelson had described these people a *“group of ramblers using the east-west path.”* He said that this was the most people that he ever saw in the field during the development of the land edged red on plan. As to O256 he said that this showed demolition material from the stables.

497. Mr Nelson said in cross-examination that he started work on the development on the development in March 2011. He was the site manager and also a director of the business. He had day to day duties on the site such as liaising in respect of inspection and so on. Mr Nelson said that he would have generally have been onsite would

have been on site but also in the office sometimes looking at drawings and taking calls. He would spend times also discussing matters with plumbers, carpenters, electricians and so on: especially as there were 3 different house types being built. It took 4 – 5 months to build each house. At that time, Mr Nelson said that there was also another project in Bristol being undertaken and so from 2012 onwards the company employed Tim Cull to take over the role of site manager in Norton St. Philip. However, Mr Nelson continued to have overall supervision of the jobs in Bristol and Norton St. Philip. Mr Nelson pointed out that, at the time of the development, he was also living in Norton St. Philip (from 2011) and so would walk around to have a look out of hours. He agreed that any observations he made of the application land would be fitted in around his work schedule.

498. Mr Nelson said that he never saw any cattle during the period of time that he lived in Norton St. Philip and it was only after 2013 that he saw sheep on the application land. He only saw two horses in the latter years – by which he meant after 2013. Mr Nelson agreed that he would have seen people walking along the “*northern path*” from Upper Farm Close to the North East corner. He also saw people walking along from Upper Farm Close to Town End. He saw people walking with dogs and sometimes with extendable leads.

499. Mr Nelson also explained that he bought the house at Longmead Close and could see the application land until July 2011 when the building blocked the view.

500. In re-examination, Mr Nelson said that, during that time he was living at Longmead Close he had walked over the application land with his grandchild to look back and view the application land. He walked out over the application land with his wife less

than 10 times. He had walked out by himself less than 10 times. He had walked along the footpath, having gone in at UFC. Once or twice he had used the route from Upper Farm Close to Town End. He also recalled walking off of "*the defined route*" with Bina Ford, having accessed the land through the training field. He did not have a conversation with Bina Ford about any walking on or off of the defined routes. He said that he walked off of the defined routes just once as there was "*too much dog mess*" on the application site.

Laila Jhaveri of Battens Solicitors, Mansion House, 54-58 Princes Street, Yeovil [O106]

501. Miss Jhaveri, in her evidence in chief which included a statutory declaration, set out that she is a solicitor at Battens Solicitors. She is instructed by the Objector and was present throughout the inquiry.

502. Miss Jhaveri had no personal knowledge of the application land and to some extent therefore her evidence verged on submission upon the evidential effect of the documents that she exhibited. I do not find it useful to describe all of these submissions in detail and in cross-examination it seemed to me that Miss Jhaveri's evidence simply became an argument between her and Mr Edwards about matters that (obviously) neither of them had any personal knowledge of. In other words, inferences from documents or their legal effect which were in the purview of Mr Honey's closing argument.

503. Miss Jhaveri produced documentation which she said was "*strong evidence* that any "*use of the application land by local residents ceased during the foot and mouth crisis in 2001.*" She produced a timeline from the BBC in January 2002 which said the crisis

began on 19 February 2001 and ended on 15 January 2002. There was a large amount of material which demonstrated the severity of the foot and mouth outbreak.

504. Miss Jhaveri produced extracts from a National Audit Office Report which set out various control measures the Government put in place to address the crisis, such as restrictions on the movement of livestock. Miss Jhaveri states from her investigations (see Appendix 1 and Figure 32 of the Audit Report) that *“it appears that Norton St. Philip was outside any high risk area. In and around Norton St. Philip livestock could have been moved for welfare reasons (from March 2001) and then for general management (from April 2001) under licence...”*

505. Miss Jhaveri says that although it is difficult with the passage of time, she has identified from newspaper reports that there was an infection at an abattoir in Bromham, Wilshire on 26 February 2001. Bromham is 16 miles from Norton St. Philip. She states, by reference to a map showing the sites of all infected premises, that there *“were no infected premises in Norton St. Philip.”*

506. By 2 July 2001 there were 8 confirmed cases in Somerset which were reported to Somerset County Council’s Executive Board (see report at O173). In the Report to the Executive Board Miss Jhavari refers to section 6 in which it is reported that Somerset County Council exercised emergency powers and made a declaration to close all footpaths, bridleways and cycle ways outside urban area on 1 March 2001. At paragraph 6.2 it is recorded, Miss Jhaveri summarises, that there was publicity to inform the public about the closure of the paths and to erect “Keep Out” notice where appropriate. The declaration was replaced with regulations made by the

County Council on 13 March 2001 and the regulations remained in place until 1 June 2001. The effect of the declarations continued until replaced with Regulations. Miss Jhaveria had not seen the Regulations cited in the Executive Report as the time of making her statutory declaration (see below). Miss Jahveri clarified that the earliest opening date would have been June. Minimum closure period of 3 months. 1st March 2001 until 1st June 2001.

507. Miss Jhaveri set out that there was no evidence to suggest the application land had been subject to any statutory closure under the Foot-and-Mouth Disease Order 1983 SI 1983/1950. She understood that a statutory closure is a legal mechanism by which the whole of the land is closed and not just the footpaths.
508. It is convenient here to record another document produced. A minute of the Norton St Philip Parish Council was produced of a meeting of the Parish Council held on 15 March 2001. It recorded that, in relation to the item listed as *“Foot and Mouth Posters”* that *“It was agreed that these would be erected at the weekend.”*
509. In cross-examination, Miss Jhaveri said that she had been to the application land about 2 or 3 times since last March. She confirmed that her statement was based on research on the internet and of County Council files. She did not actually go the County offices as Mr Roy Clarke (not an employee of Battens) went to obtain the documents. Miss Jhaveri said that upon considering the material she did not consider there was a need for any further investigation. She agreed that she could not be definitive about any of the dates which she says the footpaths were *“closed”*: see paragraphs 4.3 and 6.5 of the statutory declaration.

510. In re-examination, Miss Jhaveri said that the evidence she had uncovered about the restrictions on moving horses were indicative of there being more restrictions than suggested in the evidence of Miss Baker.

511. Asked whether she would produce to the inquiry an evidence questionnaire which some of the Objector's witnesses had filled in (referred to in their evidence) she said that it was covered by client confidentiality and privileged. She would only release it if instructed to do so. Miss Jhaveri had some input into the production of an early draft of this questionnaire but it emerged that it was not supplied to the witnesses by her.

Daniella Hopkins of Penrose, Tytherton Lucas, Chippenham and formerly of Devizes,

Wiltshire [O105(i)]

512. In her evidence in chief, including a statutory declaration, Mrs Hopkins set out that she works in pharmaceutical sales. She first went to Bina Ford's land for show jumping lessons in 2006 – probably in about April or May. She finished having lessons after 2010. However, the lessons on Bina Ford's land ended each year in September and in winter other arrangements were made on an artificial surface (and Bina Ford came to Mrs Hopkin's facility). At the time of these lessons Mrs Hopkins was living in Devizes, Wiltshire but she moved to Chippenham in 2013.

513. Mrs Hopkins explained that she used to compete at equestrian events as an amateur. The frequency of the lessons varied and it depended on how often she needed to take lessons. Sometimes she would go once a week for 3 or 4 weeks in a row and other times she would have the lessons every fortnight or even only once a

month. The lessons took place between April and September, lasted 45 minutes and took place at various times to fit around Mrs Hopkins's work schedule. However, Mrs Hopkins would be on Bina Ford's land for about 1 - 2 hours because the horse needed to be washed down after the lesson.

514. Mrs Hopkins's recalled that there were stables in front of Bina Ford's house and that you had to go through a barn to get to the fields to the south. She recalled that upon walking through the barn there was a lunging ring and in front of that were fenced off paddock areas for the grazing of horses. On the left side of the field (with Longmead House behind you) was the area where Bina Ford taught show jumping: "*the teaching field.*" Like other witnesses, Mrs Hopkins produced a suitable plan identifying the land. Mrs Hopkins said that the surface of the teaching field was quite rough and she remembered there being a slope from the eastern boundary down to where you entered the field at the barn. There was a low fence separating the teaching field and the application land. She recalls having good views of the application land and that the views improved as she went down to the jumping area where Mrs Hopkins spent most of her times during lessons. The horse would be warmed up by riding around and then some jumps would be attempted, Mrs Hopkins and her horse would then stop for a while before jumping some more.

515. Mrs Hopkins explains that she is aware of the claims made by the Applicant as to how the application land has been used. Mrs Hopkins set out: "*The application is a surprise* to me because when I was having lessons I do not recall every seeing anyone on the application land." Mrs Hopkins said that "*I am certain I would have*

remembered seeing anyone on the application land had they been there. This was because there were such good views of the application land from the teaching field."

516. In cross-examination, Mrs Hopkins said that she never went on the application land as she never had a reason to do so when she had her riding lessons. Mrs Hopkin's horse was not stabled with Bina Ford. In the summer months, the horse would be hosed down in the yard.

517. Mrs Hopkins also added that the process of putting together her statutory declaration involved speaking to a solicitor 2 or 3 times on the phone. There was an opportunity to add or amend. She said "*I think that's my words*" when asked about not seeing anything on the application land. She was surprised to be contacted.

Hillary Newman of Dillybrook Farm, Wingfield, Trowbridge, Wiltshire [O257]

518. In her evidence in chief, including by way of statutory declaration, Mrs Newman told the inquiry that she runs a business with her son (later clarifying in cross-examination that it is a portable toilet business). Her daughter, Laura, has been competing in equestrian events since a very young age. In 2005 Laura started going to Bina Ford's land in Norton St. Philip for show jumping lessons. Laura was 21 in 2005 and the lessons continued until 2011 when Bina Ford moved away from the land. In 2006 Laura started working for Bina Ford. Mrs Newman always took Laura to the land for lessons or work as Laura had not passed the test for driving light lorries. Mrs Newman did not know either Mrs or Miss Baker and had never met Mrs Hopkins either.

519. Mrs Newman set out that she was aware of Applicant's application and the claims made in it. She said: *"The application and these claims are a surprise to me because for all the times I have been to Bina's land I cannot recall seeing anyone on the application land."*
520. Mrs Newman explained that there were stables in front of Bina Ford's house and that you had to go through a barn to get to the fields to the south. She recalled that upon walking through the barn there was a lunging ring and in front of that were fenced off paddock areas for the grazing of horses. On the left side of the field (with Longmead House behind you) was the area where Bina Ford taught show jumping: *"the teaching field."* (identified on a plan). Mrs Newman said that there was a *"boundary fence"* separating the teaching field and the application land. She remembers having good views of the application land.
521. Mrs Newman said that Laura's lessons would continue through the winter months (weather permitting) The lessons would be between 45 minutes and 1 hour. The lesson time would vary but generally they were in the afternoon. Mrs Newman then said this: *"I am pretty sure I would have noticed if anyone had been there because the views from the teaching field over the application land were very good. Also if anyone had been walking on the application land with a dog (in particular if they were walking along the boundary between the two fields) I am sure my dog would have barked so I would have noticed them."*
522. In cross-examination, Mrs Newman said that she was contacted by a lady solicitor and asked whether she would be willing to give evidence. Then nothing much

happened and she was sent a draft statement. Then the statement was brought to my home to be sworn.

523. Mrs Newman said that she has had a lot of contact with Bina Ford as she is her friend and her daughter worked for her. They have been to each other's homes. She did not put this in her statutory declaration because she was not asked about whether they were friends or not.

524. When the similarity of expression between her statutory declaration and other of the Objector's witnesses was put to Mrs Newman, she said that it was a surprise when the solicitor called her. She did not think that the during the whole time she visited Bina Ford at her land they discussed the application land or people going on it: *"It wouldn't come into our conversation. We'd be far more likely to be talking about dogs."*

525. Mrs Newman admitted that she was not familiar with village green application but made it very clear that she thought that the application was a *"bloody cheek"* and that she'd be *"bloody furious if someone said they were going to play cricket on my land."* The application land was a piece of land for grazing horses and Mrs Newman said that Bina Ford had now suddenly been told that someone else was using the land. She did not think that there were other people on that land. However, Mrs Newman said that she was not aware that the land had public rights of way over it or that there were footpaths over it.

526. Mrs Newman said that she never saw any animals on the land, including horses.

527. Mrs Newman clarified that she had intended to say earlier that Laura would drive

herself to Bina Ford's land for work 7 days a week but Laura's horses were at home and she could not drive the horse box. Laura worked mornings only.

528. Mrs Newman also clarified that she had previously said and thought that lessons were enjoyed on the land throughout the year but, having listened to Mrs Hopkin's evidence, she now realised that she did not go all year round.

529. In answer to questions from me, Mrs Newman said that she couldn't remember whether she had used the word "*surprised*" herself as it appears in her statement. She had never received from anyone any written materials about the village green application.

Helen Fearn of Henley Hill Barn, Ashwicke, Chippenham [O31]

530. Mrs Fearn, in her evidence in chief which included a statutory declaration, explained that she is now a housewife and was previously a nurse. She rides horses as a hobby and competes in equestrian events as an amateur. She started going for lessons at Bina Ford's land when she 10 years old in 1978. She was living, at that time, with her parents in Wellow near Bath. Over the years from 1979 onwards and including the period 1993 to 1999 she has continued to go for lessons albeit the frequency has varied.

531. Mrs Fearn qualified as a nurse in 1992 and got married in 1994. For a few years prior to 1992 Mrs Fearn was living in London and going for lessons on an ad hoc basis. After qualifying she moved with her husband to the Bahamas and then to the Channel Island (1994 – 1996). When living abroad she would return to have lessons on an ad hoc basis. In 1996 the Fearn's moved to Salisbury and stayed until 1999

whereupon they moved abroad yet again. During the time Mrs Fearn was in Salisbury she went to have lesson with Bina Ford quite a lot.

532. In the years 1994 – 1996 Mrs Fearn had lessons twice a month over the spring and summer months by which she meant from March through to September or October. She did not have lessons in the winter months. The times of day that the lessons took place varied and could have been either morning or afternoon. At the time Mrs Fearn had two young children and she would either drop them in the nursery or take them with her to the lessons. The lessons lasted 1 hour.

533. Mrs Fearn set out that there were stables in front of Bina Ford's house and that you had to go through a barn to get to the fields to the south. She recalled that upon walking through the barn there was a lunging ring and in front of that were fenced off paddock areas for the grazing of horses. On the left side of the field (with Longmead House behind you) was the area where Bina Ford taught show jumping: "*the teaching field.*" She recalled that the teaching field sloped from the eastern boundary down to where one would enter the field at the barn. There was a low fence separating the application land from the teaching field. There were progressively good views of the application land as one walked towards the jumping area.

534. Mrs Fearn explained that she is aware of the claims made in respect of the use of the application land. She said: "*The application is a surprise to me because in all the time I went for lessons to Bina I did not see anyone on the application land.*" Mrs Fearn did say that she saw sheep on the application land. She added that: "*I am certain I would have remembered seeing anyone on the application land had they been there. This is*

because there are very good views of the application land from the teaching field and I would not have wanted my horse distracted by anything happening in the next field. I am certain that I never saw any recreational activity, such as children playing or picnicking or anything like that. I am sure that I would have noticed if anyone had been there. I am very surprised that people are claiming they have been coming onto the land for recreational activity."

535. In cross-examination Mrs Fearn said that she has been to Bina Ford's land since 1999 but only to pop in. She couldn't recall the last occasion.
536. She accepted that her memory of the application land was about 18 years old. She confirmed that she had never actually gone onto the application land during the relevant period and would have viewed it from what she described as "*the showjumping field*." She said that she could "*see a field*" and did not know that there were rights of way on the field. She did not "*particularly notice*" the mound but said the land "*reaches a peak*."
537. During her time abroad Mrs Fearn explained, she would always bring the children back for long summer holidays, spending at least 2 months in the UK.
538. Mr Fearn explained how a man called Roy had contacted her but she couldn't remember whether by phone or e-mail. He explained the situation. Mrs Fearn said she was surprised.
539. Mrs Fearn had seen sheep about 30 - 40 times.
540. In response to questions from me, Mrs Fearn clarified that she had not been sent

anything in writing by Roy. She clarified that when referring the land reaching “*a peak*” she was referring to the show jumping field. She recalled the application land as “*undulating*” but admitted that she hadn’t viewed it for a long time. She volunteered that her focus was on the show jumping field.

Devina Ford, aka “Bina Ford” of Karma, Downhead, Shepton Mallet [O36]

541. Mrs Ford in her evidence in chief, which included a statutory declaration, set out that she is the registered owner of the application land. Originally, her family owned the land to the north of the application land upon which sat the now demolished Longmead House and grounds.

542. Mrs Ford sets out that in her opinion the attempt to register the application land as a village green is an attempt to thwart further housing development.

543. Mrs Ford lived in Norton St. Philip from the age of 13 to the age of 60. In 1964 her mother Diana Hawkes purchased Longmead House and surrounding land. This included land which is no longer in her ownership and which has subsequently been developed for housing and sold. At the time Longmead House was acquired there was no Longmead Close, there just the house, a barn and a single garage. Initially Mrs Ford lived with her parents but moved out when she got married and for a few years resided in a mobile home within the grounds of Longmead House. When Mrs Ford’s mother passed away her father became the owner of Longmead House in its entirety and she owned the vast majority of the remainder of the land. In 1986 Mrs Ford constructed a bungalow on land shown edged red on a plan exhibited to her statement. She lived in it until 1991 whereupon she sold the land edged red on the

plan for development – “phase 1.” Longmead Close was constructed and, as part of this development, the developer built Mrs Ford a house on the land shaded orange of her plan. She moved into 10 Longmead Close in 1992 (although at that time it was known as 6 Longmead Close). Mrs Ford lived at this address until 2011 whereupon she moved out of the village.

544. With her father’s permission “phase 2” of the development plan started in 2011 with the selling off and development of the site of Longmead House. Mrs Ford explains *“So I could bring forward further development on the land where I had my stables, in 2009 I applied for planning permission... to erect stables and a manege on the field that I was using for teaching”* (shown blue on her plan). This was the land immediately to the north of the application land. There was a condition restricting use to personal use which Mrs Ford says led to her negotiating with Malcolm Lippiatt Homes to develop the land for housing. Planning permission for the development of his land was granted in January 2014 and actual work commenced in 2015.

545. Mrs Ford tells me that she has always had a great love for horses. She had, before the age of 15, been teaching children and charging them to learn riding on her New Forest pony called Cracker. By age 17 she had commenced an equestrian business from the family land. She acquired a reputation for breaking in horses in the local area. She trained horses, taught riding and competed at horse trials and events. Mrs Ford produced a number of newspaper clippings which clearly demonstrated her success. She proudly told the inquiry that she been very lucky in that she has been able to work with 4 Olympic medallists and she can name 3 of those who have come for lessons with her.

546. Mrs Ford built an indoor riding school in about 1986 and created a manège on the land shown edged red on her plan. She had 11 stables which were occupied to about 70 per cent capacity all of the time and included 4 of her own horses. Horses would normally stay around 3 or 4 weeks and they would come and go all the time. The field edged blue, to the south of Longmead House and adjoining the application land had a lunging area and two fenced off paddocks and a jumping arena which was constructed each spring and dismantled in the autumn from 1968 to 2011. Mrs Ford calls this land "*the teaching field.*"
547. Mrs Ford provided the inquiry with various photographs of the buildings discussed in her statutory declaration, including one taken around 2003 showing her house at 6 Longmead Close with the stables and yard in front of her house. The photograph shows the barn, which could be walked through to get to the fields to the south. The photo conveniently also shows the paddock area and the lunging areas on the other side of the barn. From 1992/3 until 2011 Mrs Ford tells me, access to the fields to the south was through the barn. At the same time 8 stables plus housing for 2 ponies was constructed and these were also conveniently shown on Mrs Ford's plan.
548. In September 2004 Mrs Ford erected a field shelter on the application land on an area she has shaded pink on her plan (being adjacent to the boundary with Orchard Leaze) although I am told that in order to comply with planning laws it had to be moved about from time to time. This shelter was "*primarily to house horses on the application land.*" I am shown a photograph of the shelter and told that it stayed on the application land until about 2007 when it was moved to the teaching field. Mrs Ford has been told by the builder that it was blown down and demolished in about

January 2012.

549. Mrs Ford told the inquiry that as to her teaching, she only taught people who had their own horses. The lessons were designed to prepare the students for 3-day eventing. Lessons were given from March to October every year. Mrs Ford described her daily routine between March and October. She would go out riding her horses early in the morning and then, if the weather was fine, she would teach after lunch (but the timing varied). In the summer, teaching extended often into the early evening. She would teach during the working week for 3 hours on average but often more. The lessons were mostly one-to-one.
550. Mrs Ford then set out that she *“normally competed once or twice a week, at the weekend. Normally all the events I went to took place within a 100 miles radius of my land.”* However, in 2001, 2003 and 2004 she went away for a week to France. Competing means the horses have to exercise regularly and this means being ridden daily. Mrs Ford said that her use of the application land for this purpose varied over the years but it would have been around once or twice a week. If she had horses grazing on the application land she would walk down to check them.
551. After experiencing back problems in 2008 the teaching side was wound down but some teaching continued, even after moving away from the land in 2011. After Mrs Ford moved away she still returned occasionally to check the land.
552. In the 1980s Mrs Ford said that she had jumps on the application land and used them for teaching but from the 1990s onwards most the general riding lessons took place on the land immediately to the north of the application land and edged blue

on Mrs Ford's plan. The jump is still there so she gathers.

553. Mrs Ford described the application land as forming about 4.82 hectares and sloping from east to west in a gentle fashion. The land gradually levels out towards the south end of the land. Mrs Ford produced photographs of the land with large amounts of nettles along the boundaries, including the west and south west boundaries. The eastern boundary she says is characterised by a low fence and trees and hedges. There has never been much of interest, Mrs Ford says, by way of fauna and flora on the application land. Until recently there was a heap of topsoil from previous building works on the land at the south eastern corner of the land. Close to the mound there used to be a pond, but this was filled in before Mrs Ford's family came to own the land. The mound of earth was removed in 2016. Mrs Ford says the land is very uneven, particularly at the north end of the field.
554. Mrs Ford told the inquiry that the application land is enclosed on all sides – on the west by a wall and on the east by a low-lying fence and trees and on the north boundary by a fence (erected in the 1980s). A photograph is produced of this and Mrs Ford says she used to jump it with her horses but there was gate in it (in the marked position on the plan). The only access to the land is via the footpaths and there are 4 access points: Upper Farm Close, Town End (by Ranmore Cottage), Tellisford Lane and in the North East Corner.
555. Mrs Ford describes the route of the footpaths over the land and she adds: *"In addition, people have been walking along the eastern boundary of the application land... to complete a circuit of the field. I saw very few people walking this circuit route and I certainly challenged anyone I did not know as it was not a public footpath*

along the eastern boundary. Since I have been away, from 2011 onwards, it is fair to say that a path appears to have been more worn by walking on the application land along the eastern boundary.”

556. Mrs Ford suggested that the photographs she produced shown the lines worn by the people using paths. She said the legal line of path 11/16 is today obscured by nettles. There is very little evidence of the use of the footpath 11/15. The land is worn at the beginning and end of footpath 11/15 but there is little evidence of use of the middle section of this path. The land is worn along the route of footpath 11/13. Mrs Ford informed me that the signs on the stiles and gates as shown on photographs produced were erected by Malcolm Lippiatt Homes but after August 2013.

557. Mrs Ford explained that she also let other people graze their horses on the application land. In 2001 and 2007 due to Mrs Ford’s ill health she put her horses into the application land so she would not have to feed them during her recovery. The period of ill health in 2001 related to a heart attack which caused hospitalisation for a week and a full year of recovery. However, Mrs Ford said that within 6 weeks she was back driving, teaching and training horses: *“it was business as usual.”* Mrs Ford says that there was no problem keeping the horses on the application land during the foot and mouth crisis. In 2007 Mrs Ford had an operation on her back and she once again put horses into the field to graze – although this time only for approximately 4 weeks.

558. Mrs Ford also explained that since the 1980s she has allowed a local farmer called Terry Mills keep his livestock on the application land. This included sheep and cattle. Mrs Ford said that *“During the foot and mouth crisis in 2001 his livestock was on the*

application land for many months because he could not move the animals.” Terry Mills also took a cut of the grass a few times in the summer. Terry Mills occasionally put livestock on the land in the winter months and only stopped in 2011. But this was because Mrs Ford allowed Sian Blackmar, a local resident, to graze her horses in 2012 until August 2015. Mrs Ford recalls seeing up to 7 horses and ponies there on that account. Other friends of Mrs Ford have grazed horses on the application land in the 2000s as well including a friend from New Zealand. Mrs Ford clarified in oral evidence that she needed to have involved Terry Mills in order to keep the land under control as she had no machinery.

559. Mrs Ford says that during foot and mouth people were not supposed to go near animals, even if there were public footpaths. She said *“I was vigilant during this time due to the risk of infection and am certain that I would have spotted anyone on the application during the foot and mouth outbreak, but never saw anyone on the application land during the outbreak over the many months it lasted, even on the public footpaths. I assume that people in the village respected the advice not enter fields containing the animals during the outbreak.”* Mrs Ford states that *“I did not see any use by the public of the application land, even on the public footpaths, for the majority of 2001.”*

560. Horses were not affected by foot and mouth but various measures had to be put in place so that the disease was not spread. Mrs Ford said that even for some time afterwards she avoided training near to livestock. As an additional measure during the crisis Mrs Ford used the manège of one her neighbours.

561. Mrs Ford also listed a number of people who have acknowledged that they had her

permission to be on the application land. This included to repair boundary walls, or parking for the Monmouth Rebellion. Mr Rich was given permission for gated access on the application land for walking their dogs on the paths. Mrs Ford referred to the "scarecrow trail." She said she was asked whether she had any objections to them coming onto the land. She said that it was ok as long as they stick to the rights of way. The land has not, Mrs Ford said, been used for a re-enactment.

562. Mrs Ford says in her written statement that she has never seen any recreational use of the land. However, she then goes on to address a number of matters.

563. As to walking (with and without dogs) Mrs Ford says that *"I did see people walking on the footpaths, some with dogs, including people from the village I knew. They almost always kept to the route of the public footpaths or sufficiently close to them that there was no point in complaining. I may have seen one or two people each week walking on the paths with or without dogs and the dogs were generally on leads. When, very occasionally, I saw people straying from the paths, including when I saw anyone walking along the eastern boundary, I would challenge them. I felt very territorial about the land."*

564. As to children playing, Mrs Ford says that in all her years she has only seen children playing on the land on a few occasions, and that was only a couple of children having a kick-about with a football in a small area near to one of the footpaths: *"All this happened it only lasted a very short space of time before the boys left, otherwise I would have gone and stopped it. It was really nothing more than boys kicking a football around while walking through the land on the paths."* Mrs Ford referred to the topography of the land (*"bumpy"* and not very even *"particularly at the north*

end of the site") and presence of animals rendering the land unsuitable for ball games. Mrs Ford referred to the purpose built recreation ground created in 1972 as being suitable. Had children have been playing in the school holidays then Mrs Ford would have seen it as she was teaching during this time. Mrs Ford said that she only ever saw a few children bring bicycles onto the land and use them on the footpaths. Mrs Ford said that she has only ever seen people with cricket bats and balls on a couple of occasions and then they were walking on paths with them, she assumed on the way to the recreation ground. She has never seen any cricket being played on the land. She has never seen any blackberry picking or picnicking.

565. Mrs Ford concludes that she has not seen anything else other than that stated in her statutory declaration and further that it was "*impossible*" to use the land for recreational purposes. But Mrs Ford ends her statutory declaration by stating that she is prepared to accept that things might have changed after she moved away in 2011 and especially in the summer months when Sian Blackmar did not really use the land for her horses.
566. In oral evidence Mrs Ford clarified that the view she would have a clear view from the training field of the mound and the tree. She would be able to see straight to the gate to Tellisford Lane.
567. In cross-examination, Mrs Ford explained that when getting a horse fit for a show one would easily ride it 7 days before. Mrs Ford said "*it has to be a total obsession as it is a way of life.*" Looking after the horses was a lot of work. She explained that she would aim to ride for about 1 hour approximately. You could get away with producing a show-jumping horse with 1 hour of riding per day. During the relevant

period the highest number of horses she was training was 7. The working of the horses in the morning would not be affected by the weather. She would like to have ridden her horses by lunch-time and she said that sometimes she was up very early to work the horses. She said that she would want to get it done early because of the horse flies and also she is a morning person.

568. Mrs Ford would ride on the flat of the application land all year round. She would ride around the footpaths a couple of times a week minimum so she told me. It depended on the horses and what work they needed to do. She would be on the application land from as early as 5am. The application land would be used in connection with the training. She would canter around the perimeter: *"the worn area that the walker's adopted was an area that I had trampled with the horses."* She used to ride around the mound.

569. Mrs Ford also said under examination that she spent a lot of time in the paddocks and training field area. *"Students would jump the same route more than once so we would go out and move the jumps."* Pupils would go out and then carry jumps around and move them. Mrs Ford would be there about 5 days a week – that is any day that she wouldn't be at a competition or event. She would be there from lunchtimes onwards. It was a fair summary to say that the bulk of the teaching took place the training field.

570. Mrs Ford said that she never saw Mr Parker training his dogs.

571. Mrs Ford said in oral evidence that she could I remember the foot and mouth outbreak as she was about to make her debut in a British team and it could have

stopped her going to France. She had to have 3 fit horses to take. She did not ride them on her own land because of Terry's Mill's stock. All horses got ridden or lunged in my neighbours manège.

572. Mrs Ford accepted that as she owns the land she has a financial interest in the outcome of the application. At first, she was reluctant to say she had a development agreement with Malcolm Lippiatt Homes but she then confirmed that he was right to say that the latter is bound to maximise the value of the land.

573. Asked about Roy Clarke and whether he stood to gain from the development of the application land Mrs Ford said that he *"hasn't gained yet and that she doesn't know whether he stands to gain."* Roy Clarke is her financial advisor and a friend. He was instrumental in getting the first development going. Mrs Ford repeated that she is not sure whether Roy Clarke will gain if the current development proceeds. She confirmed that Mr Clarke has no written authority to act on her behalf.

574. Asked about whether she knew any of the many people that gave evidence in the form of a witness statement or evidence questionnaire Mrs Ford made the following remarks about those that she did know:

- Mr Geoff Angell [A4/537]: *"I know Geoff Angell very well."*
- Mrs Jane Brewis [A4/A555]: *"I knew the Brewis family."*
- Mr Fred Du Plessis [A4/595]: Mrs Ford knew this gentleman and the correct pronunciation of his name.
- Mr Tim Hanney [A4/617]: *"I don't know him well. I knew him in that he*

cleaned my windows twice or three times."

- Mr D Leber [A4/648]: *"I'm thinking that he might have done some gardening for my mother."*
- Mr Richard Williams [A4/661]: *"He had had permission. He is a lovely guy that I chatted to and he used to come up to the application land every day."* The EQ dated 04/09/2013 says "Yes" to the question of whether permission had ever been asked for. It states that he asked *"Bena Ford [sic] – to walk dogs – 6 yrs ago."*
- Mr Dennis May [A4/661]: *"He did the gardening."*
- Mr David Millet [A4/673]: *"Yes, know the name but not be sight."*
- Mr Christopher Nixon [A4/695] *"I'd say no but the surname Nixon rings bells. Know the name."*
- Mr Palmer [A4/699]: *"Yes."*

575. When it was put to Mrs Ford, she agreed that: *"It is not unfair to say that I don't know that many people in the village. I keep myself to myself and I agree I don't immerse myself in village life."*

576. Asked about what she knew of the witnesses that had given oral evidence Mrs Ford said she only knew Mrs Brewis, she knew Mr Franz's father (*"He was a great character who one had laugh with. We had a mutual friend who was a headteacher at the local school. She was called Jacqueline."*), Dr Awan, Mrs Day (by face because

she had a pony at some point) and Mrs Oliver (whom she had met twice). Mrs Ford also said that she knew Mr Parker as his wall abuts her land and she has seen him building his wall. She didn't know when he started but explained that that there was a mutual agreement to move the wall out into the application land. It was a boundary agreement. Mr Clarke revoked the agreement. In an outburst of anger Mrs Ford said *"My feeling is that the villagers have run amok. I just take it out on anyone – it doesn't have to be recorded as such but I'm entitled to feel that way."*

577. Taken to aerial photographs of the land in various years Mrs Ford commented as applicable. In 1991 I had a bungalow near to Longmead House and the stables were to the south of the bungalow. She could have had 8 horses in those stables. I can't see any animals in the land, the grass is short but one can see the nettles or rough areas that she knew about based on her knowledge of the land. In 1994, it is possible to see the horse box, the grass is short and nobody is on the training field. In 1998 there are sheep on the application land, there is a parked horse box. In 1999, the image is of poor quality and can't say about the animals, shows the 4 paddocks. In 1999, the photo shows that Mrs Ford had a visitor as someone is parked where people coming for lessons would park. In 2002, there are no animals. In 2004 there are no animals. In 2005 it looks as though some hay has been taken. In 2006 there are no animals on the land and the field shelter is next to the Parker's house. In 2010, it is snowing but Mrs Ford used to ride in the snow. Longmead House is gone, as it was demolished in February. No animals can be seen.
578. Mrs Ford made clear that she did not keep any records of when the sheep were on the land.

579. Mrs Ford reiterated in cross-examination that her whole life has been dedicated to horses. She said that between March and October she would be out with the horses at 5am or even earlier if off to a show. She would be riding at that time either on the training field or the application land. She would ride each horse for 1 hour.
580. Mrs Ford said she did not erect any signs on the application land as she felt people did not wander from the footpaths. There were footpath signs installed by the County Council. She accepts that people have walked on the footpaths. From the teaching field she would see a maximum of 2 people per day on the footpaths. Often between lessons she would relax out in the training paddock although if it wasn't a nice day Mrs Ford would come in. She would plan a gap of about 30 minutes to 1 hour between lessons.
581. When Ford said that on the application land she tended to ride the eastern boundary. If it was a hot day she would get some shelter from the sun or indeed from the rain. Mrs Ford said that she thought that the designated footpaths ran from *"NE – TE, UFC – TE and UFC – TL. People could walk there while I rode my horse on the eastern boundary."* There were nettles from Upper Farm Close to Ranmore Cottage / Town End.
582. Mrs Ford said that there were not any blackberries on the land. Prior to 2010 she never saw a blackberry.
583. As to foot and mouth Mrs Ford said that Miss Baker was wrong and that during the crisis there were no horse shows. Mrs Ford said she didn't know about seeing any signs about foot and mouth. She recalls not being able to ride on the roads or on the

application land.

584. Asked about seeing children playing, Mrs Ford said that she had only seen it on "*a few occasion*" (3 times) by Ranmore Cottage. They were kicking around a ball. They would "*hot foot it if they saw me coming.*"
585. Mrs Ford said that when she read the EQs she imagined that it was being claimed that there was a cricket match on the land. She said that her definition of recreational activities was playing cricket football and netball etc. I was extremely doubtful that Mrs Ford had any real understanding of the legal meaning for the purposes of the Commons Act 2006.
586. Mrs Ford agreed that there were birds of prey to be seen on the application land.
587. When it was put to her that she was not at all concerned about people using the land until the development agreement came into the picture Mrs Ford said that she didn't agree with that. She said: "*I would always challenge people. I would always challenge. There were so few people on the land. Their word against me.*"
588. In re-examination, Mrs Ford said that with respect to her "*taking it out on people*" she said that when she read the EQs it made her think of her parents buying the property and it meant an awful lot to her.
589. During foot and mouth, she was across the road at Norton House to ride her horses. Miss Baker wouldn't have had anywhere else to ride her two ponies but she would have known at the time that we did not go onto the application land. Mrs Ford didn't know whether the accident has affected Miss Baker's recollection of this but

intimated that this is sometimes talked about generally by her family.

590. In respect to the children playing by Ranmore Cottage who "*hot footed it*" this was a one-off incident that took place quite a long time ago. Mrs Ford was riding and rode in their direction. There were 2 children there, close to the footpath.

591. I asked Mrs Ford about the dilemma facing me in the evidence. I explained, in summary, that the position was that there were a good number of people who say that they used the land, including some whom Mrs Ford had said nice things about. I asked Mrs Ford whether she could assist me with whether there was any reason that she could think of as to why she might not have seen people using the land in way claimed. Mrs Ford's answer was "*If they came at the weekend.*"

WITNESSES FOR THE OBJECTOR GIVING WRITTEN EVIDENCE ONLY

Sian Blackmar of 3 Norton Grange, Norton St. Philip [O25]

592. Ms Blackmar has lived in Norton St. Philip since 2004. She rents about 5 acres of land in Tellisford Lane for horse related purposes. From April 2012 until August 2015 she also grazed horses and ponies on the application land for practical reasons which pertained to the time. There was an informal oral agreement for grazing. She paid Bina Ford a rent on monthly basis. In practice, however, the land was used for this purpose between September and April. The horses were not fenced in and roamed over the application land. As the field was her responsibility she kept on eye on it (visiting twice a day) over the winter and also visited a couple of times a week during the summer months in order to allow the children to ride their ponies.

593. Ms Blackmar said that, on average, she regularly saw people walking over the application land. On average she would see 1 person every time she visited. Mainly these people were walking dogs, often off the lead. Generally, she saw people walking around the field and along the eastern boundary.
594. As to children playing, Ms Blackmar says she never saw this on the application land. She has never seen picnicking, blackberry picking or nature observation. She denigrates the land as being suitable or attractive for these purposes. She never saw any signs of these activities either (e.g. lost balls, damage done, remains of dens etc).

Barbara Keevil [O204]

595. Ms Keevil's family owns Eden Vale Farm in Beckington, Frome. She lives on the farm with her partner Mr Terry Mills. Mr Mills is a sheep farmer. They farm together. Sometimes, since 2000, she has gone with Mr Mill's to check the livestock when it has been in the application land. She is aware of the application and the claims made and states: *"The application and these claims are a surprise to me because, apart from in the last year or so (which I describe below), I cannot recall seeing anyone on the application land all the other times I have visited Bina's land."*
596. Over the summer months for a period of about 10 years between 1980 and 1990 Ms Keevil came to Bina Ford's land for pony club show jumping rallies which she organised. The rallies were in the evening when there was light but in the school holidays sometimes they were held during the day.
597. Starting in 1998 Ms Keevil's daughter started having show jumping lessons with Bina Ford. She accompanied her daughter to the land. The lessons went on until 2003 and

were between March and September.

598. The views from the teaching field were *“very good”* Ms Keevil states but she says that *“the mound”* obscured views of the gate at the southern end of the application land.

599. Ms Keevil states that *“Until I started helping Terry check his livestock, I never saw anyone on the application land when I helped with the pony club rallies and when I accompanied Charlotte when she was having lessons.”* In 2000 Ms Keevil never saw anyone walking in the field but in the last year or so she has noticed people walking mainly on along the eastern boundary of the land. Ms Keevil denigrates the quality of and attractiveness of the land for recreational activities.

Annabel Kerby of Hayhouse Farm, Langham, Gillingham [O210]

600. Ms Kerby is 53 years old but when she was younger she had a passion for show jumping and went to Bina Ford for lessons between 1977 and 1992. Ms Kerby says she understands the alleged use of the application for recreational purposes and says this: *“The application is a surprise to me because in all the times I went for lessons to Bina I did not see anyone on the application land.”* Ms Kerby explains the layout of Bina Ford’s house *vis* the stables, barn, paddock and lunging ring in almost identical words used by other witnesses called to give oral evidence. She says that there were good views of the application land from where she was jumping her horse. The lessons Ms Kerby enjoyed occurred once a week or every couple of weeks and were at various times depending on availability. The lessons lasted for between 1 hours and 1 hour 30 minutes. Ms Kerby then says this: *“I am certain I would have*

remembered seeing anyone on the application land, because the views from the teaching field were so good and myself and my horse would have become distracted from our lesson."

Terrence Mills [O236]

601. Terrence Mills has been living with his partner Ms Keevil at Eden Vale Farm in Beckington, Frome since 2000. Together Ms Keevil and Mr Mills farm about 300 acres of land. Since spring 2016 Mr Mills farms only sheep. Before Mr Mills moved to Eden Vale Farm to be with Ms Keevil he had a farm in Farleigh Hungerford.
602. Mr Mills says that he has been told about the alleged use of the application land and says this: *"The application and these claims are a surprise to me because I have visited the land many times over the years to attend to my livestock and I have only ever seen people walking on the paths on the land."*
603. Mr Mills says that he has known Bina Ford for many years. He would sell her hay sometimes. In the late 1980s Mr Mills approached her and asked whether he could use the application land for grazing because at the time he was renting a field next to the application land. Mr Mills thereafter used the application land continuously from about 2007/2008 and then between 2007/2011 occasionally over the winter months and then again from 2015. The livestock were allowed to roam all over the land during this period. He brought the livestock in through a gate at Tellisford Lane and put a lock on it which stayed in place until 2001 even when there wasn't livestock on the land. The arrangement was informal and Mr Mill kept no records of when sheep were placed on the land.

604. Mr Mills set out *"The only downside with the application land is the number of paths running across the land, although this was not a major issue. Over the years there have only been a couple of times when dogs off the lead have killed one of my sheep."*
605. Mr Mills said that he brought the sheep onto the land with their lambs in March of every year and he let the sheep graze there until October. There were about 25 sheep. If the winter was dry then he would also keep the sheep there over the winter (a dozen times prior to 2007/2008). For approximately 10 years from the late 1990s he kept 10 or 15 cows on the application land, so he informs me, from March to October.
606. When Mr Mills used the application land he explains that he moved his sheep between it and another field (but gives one example). He says it depended on the time of year and the growth of the grass as to how often he moved the sheep. He said that he moved the sheep typically once a fortnight. But he said this: *"I did not move the cattle, the cattle tended to stay put."*
607. Mr Mills says that he has taken a hay crop 4 or 5 times since he has been using the application land. He has never had any trouble *"People just kept walking on the paths as they always did."* Mr Mills says he visited the animals on the application land every day and normally between 6pm and 8pm in the summer months. In the winter he visited between 10am and 11am. He stayed for 30 minutes. He would sometimes see Bina Ford in the other field teaching.
608. Mr Mills said that Norton St. Philip was not an area infected with foot and mouth.

People were told to stop walking through fields with animals in them and this was generally obeyed. When the crisis happened in early 2001 Mr Mills said that he had 20 sheep and less than 10 cows in the application land. He could not move them out for quite some time and they stayed until movement restrictions were lifted in about late 2001 if not 2002. He did not apply for a licence to move the animals sooner.

609. Mr Mills recalls seeing footpath closure signs around the countryside but he cannot recall for certain whether there were any closure signs on the public footpaths where they enter and exited the application land. He said he is certain that people in the village would have known not to come onto the land. Mr Mills says that had anyone been on the land during this period of time he would have done something about it. He is confident that he did not see anyone on the land at this time.

610. Apart from the crisis period Mr Mills says that when he visited the land he would occasionally (maybe once a week) see someone walking on it, usually with a dog and mostly but not always on a lead. They would always be on one of the worn paths. More recently he has seen people walking on the eastern boundary. He has never seen, he states, children playing on the land or bike riding and denigrates the suitability and attractiveness of the land for this. He has never seen picnicking. On a couple of occasions Mr Mills state that he has seen a family with a kite on the land. They were standing by the gate at Tellisford Lane, near to a path.

Alice Pullin of Pear Tree Farm, Pilning Street, Bristol [O268]

611. Ms Pullin is 30 years old now but when she was younger she went to Bina Ford's land for show jumping lessons between the ages of 13 and 18 (1999 – 2004). She was

living near Frome at the time. She had lessons about once every 3 weeks in the months of April through September.

612. Ms Pullin says that she is aware of the claimed use of the land and states this: *“This application is a surprise to me because when I was having lessons I do not recall ever seeing anyone on the application land.”* The lessons could take place at any time from 8am. In school time the lessons were in the late afternoon. Ms Pullin described, using virtually identical words as other witnesses called to give oral evidence, the layout of the teaching field. She said that she remembered having good views of the application land. She could only recall seeing sheep on the application land and feels certain she would have seen someone if they were there. The horses would have become distracted by someone walking on the *“closest half of the application land.”*

Michael Swinton [O273]

613. Mr Swinton holds a Diploma in Town Planning and from 1973 to 2014 was a Member of the Royal Town Planning Institute. He has been advised Malcolm Lippiatt Homes Ltd on town planning matters since 2007 and with respect to Norton St. Philip since 2012.
614. Mr Swinton has lived in Holcombe since 1975, a village 9 miles away from Norton St. Philip. He has visited the application land several times between 2012 – 2013 and on all occasions he has not seen any member of the public.
615. Mr Swinton produced information from Mendip District Council showing that over the relevant period of 1993 – 2013 an additional 95 houses have been built in Norton St. Philip. Mr Swinton also refers to census information to the effect that the

population of the Parish increased from 820 (1991) to 848 (2001) and then to 858 (2011). Mr Swinton's rough estimate of the current population is at least 900.

616. Mr Swinton goes through his subjective experience of the planning application made in May 2013. I do not find it necessary to set out his evidence on this issue as when it comes to an assessment of trigger events it is my view that the documents speak for themselves. I do however note that Mr Swinton does say *"My instinct was to minimise the issues and potential delays at any appeal and for that reason I advised on restricting the scale of the initial application to one that was below the threshold for the provision of affordable housing and contributions to other facilities. By adopting this approach we also avoid the need for any section 106 agreements/undertakings which could delay the appeal process."*

MEMBERS OF THE PUBLIC

Mrs Barbara Day

617. Mrs Day lives at North Street, Norton St. Phillip. She had lived there for 33 years since 1983. Mrs Day had come to the public inquiry and heard comments about an electric fence which was described as a white taped enclosure. Mrs Day said that it was close to the gate at the Tellisford Lane entrance, against the hedge. Mrs Day said that Sian Blackmare had *"rented"* the field to graze two Shetland ponies (one belonging to Mrs Day) in the winter months from 2012. So the enclosure was set up in 2012. The ponies were in the white-taped enclosure for less than a month. The enclosure was not electrified but the uprights were plastic and electric tape was used in order to keep people out. Although if someone had wanted to have got in, they could have. Mrs Day also said that Sian Blackmar rode in Shepherd's Mead.

APPLICANT'S WITNESSES WITH WRITTEN STATEMENTS NOT CALLED TO GIVE ORAL

EVIDENCE

618. I was also provided with a number of statements from Applicant's witnesses who did not give oral evidence. I do not think it would be helpful to expand the length of this already long Report by setting out in detail the substance of these statements. Suffice to say that I have read them all and had particular regard to the photographic evidence produced. In general terms they were consistent with the other written statements produced by the Applicant in tone and character. I have also noted where the advocates made submissions on them, but in general terms (perhaps unsurprisingly) the focus was on those who gave oral evidence.

EVIDENCE QUESTIONNAIRES

619. The Applicant provided me with a large number of EQs from witnesses who have not produced a further statement. I will have to form a view about what conclusions to draw from these bearing in mind the appropriate weight that should be ascribed to such evidence.

620. Spearheaded by Mrs Oliver the Applicant produced some sophisticated tables showing the information contained in some 96s EQs (together with a number of additional statements) and even then provided me with graphical breakdowns of the evidence. The Objector was not able to fully agree these documents. However, I include them as **Appendix 4**. I am grateful for the extremely long hours that it must have taken Mrs Oliver to produce such documents and, despite the lack of complete agreement, I have found them very useful. I will assess the import of this sort of

evidence below.

PHOTOGRAPHIC EVIDENCE

621. I was helpfully provided with a bundle of consolidated photographs from the Applicant: see A5. I have had regard to all of these photographs and the photographs produced by the Objector.

622. I was provided with aerial photographs of the land throughout the relevant period and during the inquiry better quality versions were supplied. I have had regard to these (and have already referred to some of them above). The interpretation of aerial photographs is a matter sometimes for expert evidence and so I caution myself about trying to interpret too much for myself from them.

THE LAWFULNESS OF ACCESSING THE LAND DURING THE FOOT AND MOUTH OUTBREAK

623. It was common ground between the parties that the foot and mouth outbreak in 2001 did not fall within the ambit of s.15(6) of the Commons Act 2006 because access to the land was not prohibited by any enactment.

624. Despite this the Objector contends there is some law relating to foot and mouth which has a fatal effect on the application. This is entirely separate it seems to me from the issue about whether or not, as a matter of fact, the application land was used during the outbreak.

625. The starting point for this argument is the Executive Board Report of Somerset County Council of 2 July 2001 which set out at [6.1]:

“The first emergency powers to local authorities to close rights of way were contained in the Foot and Mouth Disease (Amendment) (England) Order 2001 which was made on 27th February 2001. It required the County Council to consult with the Minister before making any declaration to close footpaths etc. We consulted the Minister about a declaration closing rights of way on 28th February the declaration was made on the 1st March 2001..”

and then at [6.3]

“On the 2nd March the Government revoked the 27th February Order and replaced it with new regulations making powers. We subsequently replaced our Declaration with Regulations covering footpaths, bridleways, cycleways....” The new regulations were made on the 13th March 2001 and remained in place across most of the County until the 2nd June 2001.” See also [6.7] as the “general reopening.”

626. The Objector contends that that use of the application land would necessarily involve criminal offences between 2 March 2001 – till June or July 2001. The Objector’s contentions, containing the full (and rather convoluted) legislative history, were well summarised by Mr Honey in his closing argument:

“As is recorded in the SCC Executive Board report dated 2 July 2001, a declaration closing rights of way was made by SCC on 1 March 2001, pursuant to the provisions of the [Foot-and-Mouth Order 1983] which were inserted by the Foot-and-Mouth Disease (Amendment) (England) Order 2001 (SI 2001/571). SI 2001/571 came into force at 2pm on 27 February 2001.

158. *The SCC declaration was made under Article 35B of the 1983 Order, as inserted by SI 2001/571. It was made on 1 March 2001 (I13). The declaration provided that “with effect from 2 March 2001” all public footpaths in the county were closed and the movement of any person on any such right of way was prohibited. The only exception was in paragraph 2, namely those footpaths lying wholly within urban areas. [omitted]*

159. *Paragraph 3 of the declaration recorded that contravention of the declaration was a criminal offence under s73 of the Animal Health Act 1981. This was also noted in the explanatory notes to SI 2001/571.*

160. *Although the Foot-and-Mouth Disease (Amendment) (England) (No 2) Order 2001 (SI 2001/680) substituted a differently drafted Article 35B in the 1983 Order as from 2 March 2001, which allowed regulations to be made by local authorities, Article 3 of SI 2001/680 provided for the continuing effect of a previously made declaration. Article 3 provided that any declaration made by a local authority under Article 35B of the 1983 Order prior to its substitution by SI 2001/680 would continue to have effect. The SCC declaration had been made on 1 March 2001. It was therefore unaffected by the change made by SI 2001/680. SI 2001/680 was expressed to come into force at 7pm on 2 March 2001 (Article 1).*

161. *SCC then did make regulations under the substituted Article 35B on 13 March 2001 applying to all of Somerset except the urban areas. As is recorded at paragraph 6.3 of the Executive Board report, SCC made regulations which replaced the 1 March 2001 declaration on 13 March 2001.*

The declaration clearly continued in effect until it was replaced by the 13 March 2001 regulations. Contravention of the regulations would also have been a criminal offence under s73 of the Animal Health Act 1981, as the explanatory notes to SI 2001/680 made clear.

162. *It appeared to be suggested in the XX of Ms Jhaveri that SI 2001/680 removed the power conferred by SI 2001/571 before it could be exercised. This is plainly wrong for two reasons. First, as Ms Jhaveri said in XX, the declaration was made by SCC on 1 March 2001 before SI 2001/680 was made on 2 March 2001.*

163. *Secondly, it is well-established that where a provision is said to come into force on a particular day, it takes effect at the beginning of that day. 2 March 2001 began immediately after midnight on 1 March 2001. The 1 March 2001 SCC declaration would therefore have come into effect at the first moment of 2 March 2001, as the clock ticked past midnight into 2 March 2001, some 19 hours before SI 2001/680 took effect at 7pm on 2 March 2001.*

164. *The Foot-and-Mouth Disease (Amendment) (England) (No 4) Order 2001 (SI 2001/1078) was made on 16 March 2001. SI 2001/1078 removed the power in Article 35B of the 1983 Order but took effect from 11pm on 16 March 2001 (Article 1). As is recorded in the Executive Board report, SCC made its regulations under Article 35B on 13 March 2001. Again, there was a transitional provision. Article 3 of SI 2001/1078 provided that any restrictions on access to footpaths imposed under the 1983 Order before it was amended by SI 2001/1078 would continue.*

165. *As is clear from the statutory provisions and also from the SCC Executive Board report, all footpaths outside urban areas in Somerset were closed from March 2001 onwards without a break. There would have been no period when SCC did not have an effective order (whether declaration or regulations) in place. The declaration ran from 2 to 13 March 2001 and the regulations ran on from 13 March 2001. The contemporaneous documentation shows that all footpaths in Somerset outside urban areas were closed from 2 March 2001 through to June or July 2001. In this case, the closure of the PROWs on the AS was effective from 2 March 2001 through to 14 July 2001.*" [square brackets added]

627. The Regulations of 13 March 2001 proved to be elusive to the parties but Mr Saint of the CRA was (with the consent of all) able to uncover them: they are the Somerset County Council (Foot-and-Mouth Disease) Regulations 2001 of 13 March 2001. There was a prohibition on the movement of any person onto any public footpaths in Somerset other than those footpaths lying wholly within urban areas. The regulations confirm that contravention of the Regulations was an offence under s.73 of the Animal Health Act.

628. The Applicant brought into question whether the declaration, due to take effect on 2 March 2001, was ever published as required. This is a reference, as I understand it, to the requirement in the version of the Art 35B of the 1983 Order which applied at the relevant time for the "*declaration to be published in such manner as it sees fit.*" I do not think that the evidence supports such a contention. The Executive Board Report is good positive evidence (drafted by well informed public officials close to

the time in question) that the declaration was made and I do not think it would be right for me to infer irregularity: see on the presumption of regularity ***Calder Gravel Ltd v Kirklees MBC [1989] 60 P&CR 322*** at p.399 (*per* Sir Nicholas Browne-Wilkinson V-C). Although made just the day before, it seems to me, that there would have been time enough for publication of some kind. The Applicant also submitted that the phrase “*urban areas*” was so uncertain as to render the declaration meaningless. I disagree that the words “*urban areas*” are inherently vague and in any case no-one could think that Norton St. Philip, the village, is within an urban area.

629. But in any case, the Regulations introduced on 13 March 2001, remove any uncertainty on this issue. Those Regulations took effect on 14 March 2001. On 16 March 2001 the underlying power was revoked. There were saving provisions as set out by Mr Honey. I agree with Mr Honey’s analysis. The matter is simple and it seems to me and I find that use of the footpaths over the application land would have been a criminal offence (consistent with the evidence) until 2 June 2001.

630. However, pausing at this juncture, I think that it is convenient to say that I agree with Mr Edwards and find that there may have been some confusion at the time consistent with the National Audit Office Report at O141 which records on 16 March 2001 the “*Power for local authorities to impose large-scale footpath closures revoked.*” This might explain why the planned posting of signs recorded in the Parish Council minute of 15 March 2001 (O192) may not have been put into being on Saturday 17 or Sunday 18 March 2001.

631. I do not think that this is the end of the matter however. In my view, none of what I have set out above made use of the application land off the footpaths a criminal

offence. I do not agree with the Applicant's submission that use for village green purposes did not constitute "*movement*" within the meaning of Regulations. Someone is either walking along a path or not, I do not think it would be a defence to say that the purpose was merely recreational. I do not think that accessing the application land to enjoy recreational activity on the field would have been a "*lawful excuse*" and I was not pointed to any learning which brought such activities within the scope of this defence. However, as Ouseley J said in **Newhaven** (upheld in the Court of Appeal on this ground):

"94 This is another issue in relation to which I see no substance in NPP's arguments. As the judge said, the existence or otherwise of a public right of access to the beach might be relevant to, but could not be determinative of, the question whether there had been use of the beach as of right."

632. In the present case the issue is not user *as of right* but I nevertheless find **Newhaven** to be persuasive for the proposition that there is no additional requirement for there to be a lawful access to a would-be village green. It seems to me that proper question here is whether, leaving aside the criminal use of the footpaths during the period 2 March 2001 to 2 June 2001, the requirements of s.15(2) CA 2006 are nevertheless made out.

LOCALITY: THE LAW

633. In my view, it is now settled by the Court of Appeal's judgments in **Leeds** and **Paddico** that s.15(2) of the 2006 Act should be read so as to require an applicant to show the requisite use by users "*of the inhabitants of any [single] locality or any*

neighbourhood [or neighbourhoods] within a locality [or localities].” (see also **Paddico** at first instance at [91] and the *obiter dictum* of Lord Hoffmann in **Trap Grounds** at [27]).

634. This is a single locality case. The Applicant relies upon the Parish of Norton St. Philip. It is clear from the authorities that the primary meaning of “locality” is some legally recognisable administrative division of the country such as a borough, parish (civil or ecclesiastical) or an electoral ward: see Sullivan LJ in **Paddico** who cited with approval the first instance judge (Vos J) at [106] of that judgment. The Objector did not dispute that the Applicant’s choice of locality and I am satisfied that it is qualifying for the purposes of the CA 2006.

THE REQUIRED USER (QUANTITY AND QUALITY): THE LAW

635. I will now examine the statutory requirements of s.15(2) CA 2006 relating to quantity and quality of use required to make out a case for registration of land.

“a significant number”

636. The term “*significant number*” has never been defined but in **McAlpine Homes** Sullivan J said at [64] that “*significant*” did not mean a considerable or a substantial number. He further stated that what is important:

“... is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.”

637. It was also said that the conclusion under this head is a “*matter of impression*” for the inspector at inquiry rather than being some kind of mathematical exercise. However, a number factors were said to be evidentially significant and I have categorised them as follows:

- Evidence of earlier periods can be relevant to findings about later periods if there is nothing to suggest that there has been a material change of circumstances (e.g. gates locked or a change in the physical state of the land).
- The written evidence of those not cross-examined, where it is consistent with and supportive of oral evidence given to the inquiry.
- The accessibility of the green (e.g. the distance to the centre of town or whether there are footpaths leading to it).
- All the surrounding circumstances that can reasonably be used to support the conclusion reached: realising that the evidence will often be a patch-work that needs to be fitted together.

638. In addition, in ***Redcar*** in the Supreme Court at [75] it was said that the recreational use must be “*reasonably be regarded as being the assertion of a public right.*” If the use is less than the assertion of a public right then it will not be of such a sufficient quantity or quality to put a landowner on notice that rights are being asserted over the land. I agree with Mr Honey that this *dictum* was reinforced in ***Barkas*** when it went to the Supreme Court: see Lord Carnwath at [61].

“Lawful sports and pastimes”

639. Lawful sports and pastimes was held in **Sunningwell** to be a composite class and in practice use of the land for dog walking, children's play and general informal recreation will normally suffice as qualifying user. Mr Honey submits that picking blackberries is more in the way of a profit-à-prendre. I do not agree that blackberry picking is incapable of falling within the composite class. This submission is, I think, inventive and novel. However, it flies in the face of many previous village green cases where such use has been counted. For example, Lord Hoffman opened his judgment in **Sunningwell** by setting out:

“Local people use the glebe for such outdoor pursuits as walking their dogs, playing family and children's games, flying kites, picking blackberries, fishing in the stream and tobogganing down the slope when snow falls.”

I wonder where the point would take Mr Honey in the end as it would perhaps also be open to argue that the owners of nearby properties had the benefit of an easement for recreation. The imposition of such private rights over land can be very onerous. There is no mechanism for the discharge of a profit such as there is for restrictive covenants. There is no mechanism similar to exchange and de-registration as for village greens or commons. Accordingly, land can be effectively sterilised for development by the imposition of rights over it (as is often seen for example in the case of shooting rights). I should, I think be slow, to infer such an onerous right as a profit by prescription and I did not receive detailed submissions on the point.

640. It is also necessary and important in the present case to set out that it is often raised as a defence to an application that use made of land has been more in the nature of a right of way rather than for lawful sports and pastimes. There are a number of

cases that speak to this issue. In ***Trap Grounds*** at first instance Lightman J held at [102] – [104]:

“102 The issue raised is whether user of a track or tracks situated on or traversing the land claimed as a green for pedestrian recreational purposes will qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green. If the track or tracks is or are of such character that user of it or them cannot give rise to a presumption of dedication at common law as a public highway, user of such a track or tracks for pedestrian recreational purposes may readily qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green. The answer is more complicated where the track or tracks is or are of such a character that user of it or them can give rise to such a presumption. The answer must depend on how the matter would have appeared to the owner of the land: see Lord Hoffmann in the Sunningwell case [2000] 1 AC 335 , 352h-353a and 354f-g, cited by Sullivan J in the Laing case [2003] 3 PLR 60 , 80, paras 78-81. Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential green will ordinarily be referable only to exercise of a public right of way to the green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential green may be recreational use of land

as a green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. 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).

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

104 The second scenario is where the track is already a public highway and the question arises whether the user of the track counts towards acquisition of a green. In this situation, the starting point must be to view the user as referable to the exercise (and occasional excessive exercise) of the established right of way, and only as referable to exercise as of right of the rights incident to a green if clearly referable to such a claim and not reasonably explicable as referable to the existence of the public right of way."

641. In ***Laing Homes*** Sullivan J suggested that a useful test is to discount walking, including dog-walking, on the footpaths in order to determine whether the other activities over the remainder of the land were of such a character and frequency as to indicate an assertion of a right over the whole of the application land. It was also noted by Sullivan J at [104] that he did not consider that a dog's wanderings or the owner's attempts to retrieve his errant dog would suggest to the reasonable landowner that the dog walker believed he was exercising a public right to use the land beyond the footpath for informal recreation.

642. When ***Trap Grounds*** went to the House of Lords Lord Hoffman approved of the guidance on this issue offered by Lightman J and Sullivan J but added this at [68]:

"But any guidance offered by your Lordships will inevitably be construed as if it were a supplementary statute. There is a clear statutory question: have a significant number of the inhabitants of a locality or neighbourhood indulged in sports and pastimes on the relevant land for the requisite period? Every case depends upon its own facts and I think that it would be inappropriate for

this House in effect to legislate to a degree of particularity which Parliament has avoided.”

643. More recently, there has been the case **Allaway** (where an Inspector’s Report was challenged on the basis that he had not applied the cases correctly to the facts in hand). However, it does not appear to me that the judgment discloses any new principle.

“on the land”

644. The CRA has a power to register any portion of the application land: **Trap Grounds** at [61]. An applicant must prove, that it is more probable than not, that the whole (as opposed to merely part) of the application site satisfies the statutory requirements for registration as a green: but in approaching this question a “*common sense*” approach is required - see **Cheltenham Builders Ltd** at [29]:

“A common sense approach is required when considering whether the whole of the site was so used. A registration authority would not expect to see evidence of use of every square foot of a site, but it would have to be persuaded that for all practical purposes it could sensibly be said that the whole of the site had been so used for 20 years.”

645. In **Trap Grounds** itself only 25 per cent of the total area was accessible to the hardy walker but this was a decision on the facts and not a principle of law.

“as of right”

646. The requirement for the users to have enjoyed the land *as of right* has been subject of significant debate in the jurisprudence. The term is familiar to those dealing with rights of way and easements.⁵¹ It is well established that user *as of right* will satisfy the tripartite test in that such users will have been present on the land *nec vi, nec clam, nec precario* (without force, secrecy or permission). In **Redcar** at [87] Lord Rodger thought that the sense was better captured by putting things positively: “*the user must be peaceable, open and not based on any licence from the owner of the land.*”
647. In **Beresford** it was said by Lord Walker at [72] that the *as of right* requirement is better understood to mean “*as if of right.*” Also in **Beresford** Lord Bingham opined at [3] that user *as of right* does not mean that the inhabitants should have a legal right since the question is whether a party who lacks a legal right has acquired one by using the land for the stipulated period. Since **Sunningwell** it has been settled that the subjective belief of the users as to whether they had a right to be on the land is irrelevant.
648. As explained in **Betterment** “*force*” does not just mean physical force. Use is by force in law if it involves climbing fences or gates or if it is contentious or under protest. If use is forcible, the landowner is not acquiescing in the use. Use that is secret or by stealth will not be use *as of right* because it would not come to the attention of the landowner. He is therefore not acquiescing in the use. Use that is by permission of the landowner does not appear to the landowner to be the exercise of a right. Such

⁵¹ For an example of the cross-over of village green jurisprudence and easements see *London Tara Hotel Ltd v Kensington Close Hotel Ltd* [2011] EWCA Civ 1356

permission can be express (e.g. by erecting notices which in terms grant permission to local people to use the land) or (in some circumstances) implied.

649. In the present case there was no submission that use in general was contentious or permissive. However, there were one or two individuals whose use was said to be permissive or contentious. I will address those later in this Report as I see necessary bearing in mind that this was only pursued by the Objector as a way to discount particular users.

“for a period of at least twenty years”

650. In the case of an application under s.15(2) of the CA 2006 the relevant period of 20 years is the period immediately preceding the application with the final day of the period being the day on which the application is received by the registration authority. Accordingly, in the instant case the relevant 20-year period is between 16 August 1993 – 16 August 2013.

651. I accept Mr Honey’s submission that there is a need under s.15 CA 2006 for the use to have been continuous and uninterrupted. The question is what does that mean? It cannot mean, it seems to me, that the land needs to be in use 24/7/365. In my view the extent of the use needs to be sufficient enough to put the reasonable landowner on notice that a continuous right is being asserted against him: see discussion of an annual bonfire on Guy Fawkes Day in *Redcar* at [47] *per Lord Walker*.

652. Mr Honey takes me to two further cases in his Skeleton Argument. First, the *Betterment* case where the Court of Appeal upheld the decision of Morgan J that there had been an interruption in circumstances where works had taken place on

one part of the land for a period of 4 months: see [70] – [71]. Second, the *Naylor* case where the court agreed with the Inspector that, on the particular facts found, a 3-month period of substantial works amount to an interruption in user. To those cases I would add that in *Newhaven* it was held by the Court of Appeal that a beach could be registered as a village green notwithstanding that it was wholly covered by water for 40% of the day and only wholly uncovered by water for a few minutes each day.

THE ORAL WITNESSES: ASSESSMENT OF THEIR EVIDENCE

653. Having set out above the evidence that was given by the witnesses for the Applicant and Objector, I now wish to firstly make some comment about the oral witnesses that I heard from.

Sheila Brewis

654. Mrs Brewis and her family had easy access to the land, living as they did at Ranmore Cottage. I accept that from 1980 while their children were growing up and in the case of her youngest daughter, into the 1990's that the Brewis children made extensive use of parts of the land for recreational activity. I accept Mrs Brewis's evidence that she considered it to be a safe place for the children to play and that she saw other children from the village using the land in a similar way. I accept that in the 1980's her son was in the field day after day playing with his friends, playing numerous games, flying kites, frisbee, bowling practice, making bows and arrows and catapults. I also accept that the Brewis's daughters used the land for finding insects in the hedgerows, volleying tennis balls, games of chase and other ball

games. I accept that when it snowed children would have been attracted to the field to build snowmen and toboggan. I also accept generally that the field was used more in the evenings, weekends and school holidays.

655. I have no reason to doubt the evidence and it seemed to me that she was an honest witness doing her best to assist the public inquiry. However, I got the impression from the evidence that the majority of the activities enjoyed by children occurred in the southern corner of the land. I accept her evidence that football was played around the mound and that there were dens also in the southern area. I accept that in general the grass was clumpier in the middle but not so long in the southern corner of the land and that this made playing ball games easier. However, I also accept that Mrs Brewis saw other users of the land including dog walkers and that some of these people would have stuck to the defined paths but others would have not. Her evidence only gave me a limited insight into the extent of on and off path use. I accept her evidence that the walkers or dog walkers were more likely to be found walking around the perimeter or along the paths if they had somewhere else to go and for transit purposes. I also note and accept that Mrs Brewis made use of the footpaths during his jogging sessions.

Mr Mohammed Saddiq

656. I got the impression that Mr Saddiq's actual first hand experience of using the land was somewhat limited to his occasional trips with his children. The majority of these occasional trips were, it seems to me, to accompany his children transiting the land. However, I accept that Mr Saddiq has been in the field playing with his children

during the 11 years he has lived in the village prior to making his written statement. I accept that the trips in general have been limited to the holidays at evening and weekends. I also accept that Mr Saddiq has good grounds for informing the inquiry that his children have used the land for the wide variety of activities claimed. I was unable to tell from the photographic evidence produced whether his two daughters were on a path or not but I note and accept that Mr Saddiq's children have made some use of the circular path around the edge. I accept that blackberries have been picked.

657. I found it somewhat difficult to marry together the annotated map B which Mr Saddiq put together with his evidence. Mr Saddiq seemed to be a little unsure as to whether or not children had played in the diamond shape and when asked about the rectangle shape in the north of the land he said that he couldn't remember anything taking place in that area. However, he was very clear about the position of the blackberries on the eastern boundary of the land. I think that this probably stemmed from Mr Saddiq only having made a limited number of trips to the land for recreational purposes. It was difficult from Mr Saddiq's statement and his oral evidence to get some measure of how frequent the family trips to the land were. However, Mr Honey in cross examination did not appear to pursue Mr Saddiq on the answer of his wife in her evidence questionnaire that the family used the land most weeks. I accept Mr Saddiq's evidence that his wife was in a better position to inform the inquiry as to the recreational use that has been made by his children. However, I found it very difficult to take much away from Mr Saddiq's evidence which would allow me to get some idea of the extent to which the children went off the paths

other than noting that some activities such as ball games, picking blackberries would necessarily have involved going off of the paths. So I accept Mr Saddiq's evidence but with caution about the points that I have set out above. I think he may have been filling in some of the gaps in his own knowledge from his discussions with his daughters and wife.

Jeremy Kay

658. I found Mr Kay to be a perfectly straightforward witness obviously doing his best to assist the public inquiry. I was particularly impressed that Mr Kay picked up his children two days a week from school and had good knowledge of his son's friends who played in the field with his son. I was also impressed that Mr Kay was able to name those friends. I accept that those boys played football, informal cricket, climbed trees close to the mound and played on the mound itself, flew kites and when it snowed sledged down the mound. Mr Kay was particularly forthright with respect to where the children were playing. He said and I accept, that the majority of the children's play activity was going on in the southern tip. I accept however also Mr Kay's evidence of activities that took place in other areas of the land, including his daughter running all over it and Mrs Kay jogging all around it when she was training. I also accept that they saw friends both on and off of the public footpaths but I struggled to get a picture of how frequent seeing each would be. I accept that there were attractions on the land on the eastern side and towards the middle of the land (the views).

659. In light of Mr Kay's clear evidence I find it notable that Mr Kay had no positive memories of the foot and mouth outbreak. I accept Mr Kay's evidence about the

presence of animals on the land and note that he had a good reason to have a better understanding that most about how often Mr Mills was moving the animals on and off the land. I did not get the impression that Mr Kay gave much evidence that the bulk of the northern section of the land, off of the footpaths, had been used to the same extent as the south. I note that several times during his evidence he referred to the animals that were present on the land, including horses.

Claire Ditchfield

660. I found Mrs Ditchfield to be an extremely helpful witnesses. Although the Ditchfields have only lived at their current address since 2011 I take into account how the Ditchfields have used the land in the context of the evidence of others as to greater time periods and also in relation to how their predecessors in title may have used the land. I accept that the family have used the land as an extension of their garden and that "routes" have been used all over the land. However, I think that the claim that the family have used the entirety of the land off of the footpaths or defined routes (see Mrs Ditchfield's approach to Map) must be taken with a certain amount of reservation. Although I accept that Mrs Ditchfield and her family have used the whole of the land, I found it notable that she especially mentioned the "mound / hill" as an area where her daughter especially enjoyed running. I got the impression that was as Mrs Ditchfield said herself "where most of the action is taking place." Mrs Ditchfield's evidence was impressive as to the fact that her daughters would not stick to the paths but would use the area generally. I found it a little difficult to get a measure however of how many people would go off of the paths generally speaking and I noticed Mrs Ditchfield's specific mention of those using the perimeter. I

noticed that she was only able to say that she saw the “odd dog walker” in the thick of the field and this bolstered my impression that she was not able to give as impressive evidence in relation to the central and northern areas of the land as compared to the south. Although Mrs Ditchfield had a view of the land from her house (as it is adjacent)

661. I found Mrs Ditchfield’s photograph and video evidence to be quite instructive on the issue of the sorts of activities that might be possible for children to enjoy in the southern tip, depending on the length of the grass and the time of the year. Indeed, I found it instructive generally as to how the land might look at different times of the year.

Alan Bishop

662. I accept Mr Bishop’s evidence that when he moved to the village he used the land about once a week but that after he acquired a dog some 13 years ago, the number of visits to the land has gone up very significantly. I accept that these visits have occurred in the morning at around 7.30 and in the afternoon around 4.30pm and that they have included his wife. In this context, I am not too perturbed by the fact that the written statement was a joint effort between husband and wife. I note and accept that when the Bishops went to the land in the morning and in the afternoon they saw others walking around the land doing a circuit but also saw people off of the paths. I did not get the impression that the off-path activity was the first thing that came to Mr Bishop’s mind. I accept that there were not many times that the Bishops went to the land and saw nobody. I think that given the times of day that the Bishops went to the land it is not surprising that the evidence was that Mr Bishop

had seen children on the land but not teenagers. I accept Mr Bishop's evidence that when he goes to the land its usually after a longer walk around the village with his dog but I also accept that this has included walking along the eastern section. I accept that the Bishops have walked with their dog as part of a longer route through the village and as part of this they have adopted a circular route around the land which is not the quickest route out and I think that the Bishops did this because they appreciated the environment of the land and the sights that could be seen. I accept that the presence of animals has never impeded Mr Bishop's use. I also accept that Mr Bishop appears to have stopped using the land during the foot and mouth outbreak because of a conversation that he had with a friend.

Gary Stretton

663. I formed the impression that Mr Stretton was somebody who has personally used the land to walk around the perimeter of it and diagonally across it. I also formed the impression that Mr Stretton has enjoyed this activity largely on the paths of the land and which he helpfully set out in his annotated map B. I also accept Mr Stretton's evidence that in using the land he has ventured into the more central areas. I accept that he has witnessed and assisted children to play hide and seek, ball games, flying gliders and kites and that these activities have involved the mound in the southern tip. In fact I think that it is notable that Mr Stretton described these activities with reference to that mound. I do not think the Stretton family have entirely kept to the paths and this is shown for example if one looks at the photographs produced where children can be seen straddling the paths whilst enjoying blackberry picking. I accept that the family have picked flowers and enjoyed the land when the grass has been

longer and more wild. I certainly formed the impression that the Stretton family's use of the paths was not generally for transit purposes. That is to say they were not using the land to get somewhere else although that does appear to have been closer to the position of how Mr Stretton used the land himself.

Paul Franz

664. I accept the evidence of Mr Franz and specifically that he has known the land since his childhood, as a resident of the village for all of his life. I was impressed by his recollection of picking blackberries in his youth and I also note that he picked mushrooms in the north eastern area. I accept that Mr Franz has gone to the land at weekends to walk his brother's dog with his daughters. I also accept that in doing this Mr Franz would walk a circuit of the field along worn paths. However, it seems that Mr Franz's post 1993 use has been closer to transit type use.

Mr Robin Campbell

665. I accept Mr Campbell's evidence that since 1984 he has used the land, gone across it and around it. I got the impression from Mr Campbell's evidence that he would perhaps have walked on the footpaths and taken routes around the perimeter of the land when the grass was long and when it was short he would go off of the footpaths. I was particularly struck by his description of his two daughters who were aged eight and six in 1993. I accept that those girls would have played in and around the mound and that that is why his daughter asked him where "*the hill*" had gone in 2016. I also accept that Mr Campbell has used that area of the field. I think that Mr Campbell was balanced in his description of how many children he had seen over the

years. I accept that Mr Campbell has seen other people walking their dogs around the perimeter of the land diagonally across. I also accept that whether or not these people would be walking on the paths or off of them, would be a function of the time of the year. I accept that Mr Campbell has picked blackberries. I got the impression and I accept and find that his use has not been interrupted by the presence of animals on the land.

Clive Parker

666. I am satisfied that Mr Parker is a man who, by his long residency of a property with good views out over the application land and easy access to it, is a witness to whom I should have particular regard. While of course, his own two sons were in their adulthood in 1993. I have no hesitation in accepting that the Parkers used the land as claimed. But Mr Parker is exceptional in that he has a hobby of training gundogs. It's a hobby that he has had all of his life. As such I accept that he has been out on the application land training those gundogs on a very regular basis. I was impressed that Mr Parker was able to name other people from the village but I am also impressed with Mr Parker's recollection of what he could see including Mr Parker providing a very vivid description of how he would wake up every morning and look over the meadow. I am satisfied that he would have a good idea of what was going on. I accept that he has seen children playing, dog walkers (dogs on lead and off lead). I accept that Mr Parker has seen children around the perimeter on bikes but I do not take it that this was a common occurrence. I am satisfied that the presence of animals on the land did not interfere with Mr Parker's use of the land. I am satisfied that Mr Parker has used routes on the land which are not paths on the

definitive map. I think that Mr Parker had a good recollection of the animals present on the land and would have remembered if the foot and mouth crisis had temporarily interfered with his use. I did however find it difficult from Mr Parker's evidence to form a clear view about the number of other people who went off the paths and I also thought that on occasion when asked about matters that he did not recall as well as those I have set out above he was susceptible to filling in gaps with speculative answers.

Dr Wahid Anwan

667. I found Dr Anwan to be a witness who had a particularly good memory. I accept that he has used the land as he claims for walking his grandchildren. I accept also that he has seen children playing in the snow. I accept that he has enjoyed the wildlife and the flowers which are to be seen on the land. I am satisfied that since his retirement, he has been a regular visitor to the land. I am happy that he has been there mostly twice a day. I accept Dr Anwan's evidence that he has seen people letting their dogs loose even if there were animals there. I accept that Dr Anwan has used the routes he has marked on his plan and that he saw the children building the igloo. When the grass was high his use of the land, it seems to me has been more restricted.

Helen Cox

668. I am satisfied that Mrs Cox has since moving into the village in 1993, enjoyed as a central part of her family life, using the field. I am satisfied that she is a witness whose recollection is good and her vivid description of her daughter's use on the

field can be relied upon. I therefore accept that she has played in the snow with her daughter, enjoyed the spring flowers, been attracted by the presence of horses. I accept the family found the hay cutting interesting, picked blackberries and also enjoyed recreational pursuits such as rounders on occasion. I did not get the impression that any of these activities occurred frequently in the northern part of the land although it was difficult to get a good idea of exactly where the activity was taking place. I note Mrs Cox's evidence about the mound. I accept that Mrs Cox, after she got a dog would sometimes do circuits of the land and I think that when the grass was not long this would have been not necessarily on the paths shown by the photograph produced. I accept Mrs Cox's evidence about the proportions of her use. I think that once she got a dog she must undoubtedly have gone to the land more often and I accept that she would go to the land after school and at the weekends. I accept that Mrs Cox has seen activities taking place. I accept she picked blackberries from the eastern boundary. I accept she has no positive memory of being affected by the foot and mouth outbreak. I thought that she seemed genuinely worried about the idea that she may have committed a criminal offence during the foot and mouth outbreak. I think that this fear put her into a defensive mode of answering Mr Honey's hypothetical questions about how people "would" have behaved even though I am quite satisfied that she had no material recollection of the period viz the application land.

Brenda Graham

669. I found Ms Graham to be a pleasant, clear and reliable witness whose evidence, although it only runs from late 2011, is of some considerable assistance. Ms Graham

by working at home as she has done for many year and as such she is more familiar with the land than she might otherwise have been. I accept that she has used the land for running around and that the family have been playing hide and seek near the mound, flying kites (although very occasionally), and enjoying the other activities as set out. I accept Ms Graham's partner has enjoyed all the usual father and son activities. I found the photographs produced to be instructive as to the length of the grass and the ability to use the land off of the defined routes. I accept Ms Graham's evidence about the proportions of time spent on path as opposed to off path. I was struck by her description of seeing people "*running about the place*" but I noticed that it was easier for her to describe routes over the land that she would have seen others using. I have regard to Ms Graham's map B on which she marked numerous routes across the land. I also note that Ms Graham only acquired her dog in June 2013.

Simon Knibbs

670. I found Mr Knibbs's to be a helpful witness. I was interested to see and I found very instructive, the photographs that he produced of his children playing in the field. I accept that these photographs were taken roughly in the middle. I accept his evidence that he enjoyed a variety of different activities with his children. I also note that Mr Knibbs is quite clear about the focus of children's activity being in the southern tip. I was satisfied that he has picked blackberries and that his wife has enjoyed birdwatching. I accept that he has played frisbee in the middle of the field but I also accept that when the grass has been longer Mr Knibbs would not have attempted certain activities (which he would have done when it was shorter). He

was quite clear about activities enjoyed regularly. Even though he was able to describe this off path activity Mr Knibbs walked, I accept, with his dog (after he acquired it) on a circuit but *sometimes* went off of the circuit. I accept that Mr Knibb's had no positive recollection of the foot and mouth crisis affecting the land and I accept that if the land had been closed it would have become local gossip.

Ian Hasell

671. Mr Hasell has been very involved in the bringing forward of the application to the public inquiry and was present for its entirety. Mr Hasell adopted a defensive strategy which sometimes led to argumentative answers. However, this is something which one sees sometimes when someone has been so involved in bringing forward a case and knows all the lines of cross examination and I caution myself against holding it against Mr Hasell. In fact I am satisfied that he has used the land in the way that he claimed to use it in his evidence.

672. I am satisfied that Mr Hasell and his wife have walked over the land and have not just stuck to the public footpaths. I am equally satisfied that Mr Hasell has used on a frequent basis the defined routes around the land and/or public footpaths. As above, I formed the impression that Mr Hasell was so well versed in the cross examination topics that he had already thought about his answers in some detail. For example, when asked about children using the land Mr Hasell volunteered that he had seen children playing ballgames in the northern section of the land. I did not get the impression that this was something that Mr Hasell would have regularly seen. Yet Mr Hasell volunteered it because he well understood by this stage that one of Mr Honey's themes was that the use would have been restricted to the southern

tip. Equally Mr Hasell used unnatural phrases such as that he had used the land “*continually without interruption*” which again demonstrated that he well understood the nature of the application and the relevant law.

673. Those criticisms aside when one thinks about Mr Hasell’s evidence in some detail, he was not an unreasonable witness. For example, Mr Hasell freely admitted that the interruptions in his use of the land but said that this had not stopped him from forming an impression about how the children used it over time. I accept that Mr Hasell saw the uses that he specified in his evidence including football, team games and tag. I note that Mr Hasell was quite forthright in saying that the land doesn’t lend itself to activities being organised in a formal way but that informal activities such as football with jumpers for goalposts was perfectly possible. I accept that there were blackberries seen on the eastern boundary. I accept that there were birds of prey that could be seen on the land.

674. Mr Hasell did not seek to exaggerate either, for example, the number of people were flying kites over the land but nevertheless said that he had seen it. It strikes me, that this kind of balanced evidence is not the evidence of somebody who would be willing to say anything at all to further their cause. Mr Hasell did not seek to say that he had not used defined routes over the land for example although I got the impression that the primary use was using defined routes around the the land or on the public footpaths. I accept Mr Hasell’s evidence that he was not interrupted by anything during the foot and mouth crisis and I accept his evidence that he cannot recall any signage on the land during this period. I accept that Mr Hasell has seen dog walkers using leads and not using leads. I accept that Mr Hasell is correct that some of the

footpaths over the land during the relevant period of the application do not seem to follow the route shown on the definitive map. I obviously take into account that some of Mr Hasell's evidence relates to the use of his family when the children were young and that that would be before 1993.

Linda Oliver

675. I am afraid to say that I found Mrs Oliver to be a very difficult witness to follow. She undoubtedly feels very passionately about the application and I did form the impression that this has led her to view things and recall things that she may have seen with somewhat rose tinted glasses.

676. Unfortunately, Mrs Oliver is obviously so emotionally engaged in local affairs and has been privy to so much information about the land and its use, for example by interviewing witnesses (including those who are sadly no longer alive – a matter which caused her distress). It appears to me that all this information has somewhat overloaded her and that she has now got to the position where she finds it often very difficult to distinguish and separate between those memories that she has herself and those pieces of information that have come her way over the course of her investigations. Mrs Oliver found it very difficult to answer questions that were posed to her and I had to intervene on several occasions to try and elicit the answer to the question. I do not think for one moment that Mrs Oliver was seeking to avoid answering the questions deliberately and as I have said already I think that there were a combination of factors at work which unfortunately created a situation where Mrs Oliver would often get carried away with herself or get to a position where she felt that she was being accused of being "stupid" or singled out. I do of

course accept that Mrs Oliver has used the application land and no doubt she has picked the blackberries in the way she described. I have no doubt either that she has seen children running around and over the land but I find it difficult to accept in this context, what seemed to be a repeated tendency, to simply say that she was using all of the land and was all of over the place without much reference or regard to anything else.

Claire Newport

677. There are several matters which cause me to have some concern about Ms Newport's evidence. Firstly, her statutory declaration uses materially similar language to express her surprise at hearing about the application and the claims made by the local people within it as other Objector witnesses. Secondly, Ms Newport explained to me that she received a questionnaire from a gentleman who was not the Objector's solicitor. Ms Newport, I accept, was told about the claims that were being made by the residents by this gentleman. The fact that I have not seen what she was told about the claims by this third party combined with the fact that she uses materially similar language to other objector's witnesses to describe her surprise at hearing about it is a cause of some concern to me.

678. However, I am satisfied that Ms Newport's recollection, as described to me, about seeing people on the land is an honest one. I accept that on average she recalls having seen for herself one or two walkers mainly with their dogs on each day she was working at Bina Ford's land. I accept that she would have seen people mainly in the area from Upper Farm Close to the exit at Tellisford Lane but I am not confident that she in fact knew whether these people were on a footpath or a defined route or

gave this any real thought at the time. It seems that she was friendly towards those people that she saw in the field and said hello to them. I am also concerned about the use of similar phrases to describe clear views over the application land, as compared to other objector's witnesses.

679. As above, I am not entirely sure from the evidence of Ms Newport that she would have been able to discern exactly where those people were with reference to the public footpaths running diagonally across to the Tellisford Lane exit. I also bear in mind that my firm impression of Ms Newport's evidence is that during the time that she spent at Bina Ford's she would have been extremely busy tending to the horses and carrying out miscellaneous activities connection to them. She did not spend more than half of her time in the teaching field. When she was in the teaching field on her own account her attention and focus would have been on the jumps as the horse went around. In addition, she explained to me and I accept that she would have positioned herself in such a way as to be facing away from the application land. So I accept Ms Newport's evidence but I formed an impression about her limited ability and extent to inform me as to the use of the application land. I found her oral evidence more useful than the statutory declaration.

Malcom Lippiatt

680. I previously explained that I found Mr Lippiatt to be a very straightforward and practical witness. As is often the case, the oral evidence was much more straightforward than his written materials. I agree with Mr Lippiatt that the photograph that he produces showing the view from Longmead House could be described as a clear view. However, I am not satisfied that the view shown from the

photograph is good evidence that the view was so clear that someone who was otherwise occupied or concerned with other matters would necessarily obviously have the presence of people using the application land thrust to the forefront of their mind. Moreover, I think it would be difficult to place the exact position of people on the land. Mr Lippiatt was very clear in oral evidence in explaining that in actual fact his views of the southern end of the application land would have been obscured by a small mound and trees. I note that Mr Lippiatt spent the winter of 2007 into the early months of 2008 on the site and I think it would be right to take into account also in relation to Mr Lippiatt's evidence the likelihood of the type of weather that one would see at that time of year. Mr Lippiatt said you could not see the whole field if it was foggy but you could if it was overcast. I gained the impression that Mr Lippiatt was, in the period, a very busy businessman. At the time that he was in and around the application land I am satisfied that his focus would not have been on the application land and I have to take his evidence in that context. Indeed, Mr Lippiatt in his typically fair manner agreed that that would be an appropriate way to place his evidence.

Gail Baker

681. In relation to Mrs Baker's evidence I am again concerned about the similarity of expression used in her statutory declaration when compared to the language used by other of the Objector's witnesses. I am however satisfied that Mrs Baker could, with one or two exceptions, be relied upon to do her best in giving her evidence. I accept that she has only ever seen people walking in the field with their dogs. However, I note that in her evidence Mrs Baker was very clear that although she

knew there were footpaths on the land, she did not know the legal route of those paths. I was not satisfied with Mrs Baker's answer that despite not knowing either now or at the time where the routes of the path went that she understood that Ms Bina Ford "*would*" have challenged people if they had strayed from those routes. I got the impression that Mrs Baker was not in fact able to assist me with placing exactly where the people were on the land. By that I mean in relation to the defined routes or public footpaths.

682. I am however satisfied and accept that Mrs Baker when she was working for Bina Ford had what can only be described as a gruelling schedule which would have involved carrying out a great deal of work. Happily that work was concerned with the passion for horses that she apparently shared with Mrs Ford. That work would have kept her very busy when she was on the land to the north of the application site. It would have, I accept, also necessitated being away for most of the weekend.

683. In relation to the contention made by Mrs Baker that Bina Ford would have wanted to challenge people straying from the routes of the paths in order to ensure the safety of her animals, I was perplexed by this. The animals on her own account, the horses, were left to graze in the application land without being enclosed in any way and were therefore free to roam over the land and over any defined route or public footpath. I do not think a horse would respect a public right of way. I do however accept Mrs Baker's evidence that she could not remember anything material about the foot and mouth crisis. But in the context of her accepting that she was working for Bina Ford, the fact that she could not remember whether she turned out the

horses on to the application land at this time I think does diminish the overall reliability of her evidence.

Nicola Baker

684. Like other witnesses, it gives me cause for concern about Miss Baker's evidence that she has used materially similar phrases in her statutory declaration to express her surprise about the application and the claims made. Miss Baker was however I think an honest witness who was doing her best to assist the inquiry. I think that I have to bear strongly mind that Miss Baker was only a child when she started going to Bina Ford's land for lessons. For example, she remembered that everything carried on seemingly as normal during the foot and mouth outbreak. In this respect her fond childhood memories of being at Bina Ford's land do not bear relationship to the more difficult issues facing the adults at that time.

685. I accept that her honest recollection is in the later years that she has been galloping around the application land in the morning or the afternoon and that she can only recall seeing people along the eastern boundary. I will need to assess whether this was the only activity taking place on the land during the course of those days gathering together other evidence.

686. I bear in mind that when Miss Baker was not riding horses she was also very busy helping out with various tasks relating to the horses. Miss Baker was also riding on the training field as well. I do not think that Miss Baker's attention would have been necessarily drawn to anyone using the application land at those times. She did not tell me that when she saw people on the application land it was an unusual sight or

anything which would cause her to be alarmed. Later on, in her oral evidence having previously suggested that the only place that people walked was along the eastern boundary, Ms Baker did inform me that she was aware of the route from Upper Farm to Tellisford Lane. I was also a little concerned to see that at first Ms Baker recalled seeing sheep in the application land but then stated that she couldn't remember them when she was galloping around the land. Matters such as this relate to the observation of things that were going on the application land and are directly relevant to the weight which I can accord to Ms Baker's evidence. In addition, Ms Baker was away at weekend on shows and chose to ride somewhere else in the winter months.

Steve Nelson

687. I have no reason to think that Mr Nelson was anything other than an honest witness when he gave his evidence to the public inquiry. In terms of his observations of the application land over the years it appears to me that I have to bear in mind that Mr Nelson was observing the land because he was nearby and involved in construction. It was my impression that it was in that context that he was able to tell me that he occasionally saw people using the land. However, I also take into account that Mr Nelson's evidence was that he didn't actually know at the time where the defined routes, that is to say the public footpaths, went over the land and he has only come later to understand that. I accept Mr Nelson's evidence that he saw people using the east-west path in the far north of the land. However, I note that in his earlier evidence he very much put the focus on that route but it later transpired that he was aware and had seen people walking from Upper Farm Close to Town End as well. I

note as well that Mr Nelson used the land himself including with his wife, although I accept that he may have had a work-related reason to go to the land on some occasions.

688. I am not quite sure that I accept the implication of Mr Nelson's evidence that since 2014 he has become aware of a greater number of people using the land. Although I accept that Mr Nelson has since 2014 been much more aware of what is going on the land, no explanation was provided to me as to why there would be such an increase in use at this time. Going back to the earlier periods of time, I also find it difficult to accept the implication in Mr Nelson's evidence that the use was really only very occasional and by a limited number of people when he produces to me a photo showing ten people walking the east-west path. I find it very surprising indeed, that the photograph could be produced showing such a high number of people using the land to support the implication that the use of the land has in fact been by only one or two people and then only very occasionally. The photograph is also extremely useful because it shows to me (albeit from the position it was taken), even from the beneficial position from which it's taken that the visibility of the individuals, even on the east-west path would have been difficult but clearly visible. This draws into question the extent of the views of the southern tip of the land.

Laila Jhaveri

689. Ms Jhaveri largely produced documents and as I have previously made clear she then sought really in her evidence to make submissions upon them. I will assess the importance of the documents that she produces on the basis of those submissions made to me during the inquiry and on a fair reading of the documents themselves.

Ms Jhaveri was asked about the document which it seems was sent to a number of the objector's witnesses, apparently by a Mr Clark. Although it seems that Ms Jhaveri had some input into the production of an early draft of this document or questionnaire I am not convinced that the document is covered by client confidentiality or privilege. It seems to me that this document was sent by a third party to people who were considering giving evidence on behalf of the Objector.

Tanya Hopkins

690. Like other witnesses, the fact that Mrs Hopkins' statutory declaration contained materially similar phrases about her surprise at the claims made in the application and the views that she would have had of the application land gives me cause for concern. However, I actually think that in her oral evidence Mrs Hopkins was a very clear witness. I have no reason to think that Mrs Hopkins is being anything other than honest when she says that she never saw anybody on the application land during her many visits to Bina Ford in the period 2006 to 2010. I have to bear in mind, I think, that the reason that Mrs Hopkins was there on the land was to have showjumping lessons with Bina Ford. I was not entirely sure that I got much useful information about whether the lessons took place largely at any particular time of day other than to say they took place at various times. I am not really convinced that Mrs Hopkins would have remembered seeing anyone on the application land if they had been there for the simple reason that she had no reason to focus on anybody on the application land or to think anything of it at the time. It seems to me that she would have been focussed on her lesson and jumping her horse.

Hilary Newman

691. I am given, again, cause for anxious thought in relation to Mrs Newman's statutory declaration and the use of materially similar language to that of other objector's witnesses in relation to her surprise at hearing about the application and indeed about the views that she had of the application land. However, I note that Mrs Newman has added some words to her description which do not appear in other witnesses' statutory declarations. Those words relate to the theory that she has that her dog would have barked at people if they had walked on the path adjacent to the boundary between the application land and the training field. I accept Mrs Newman's evidence that she has never seen anybody on the application land. I consider that Mrs Newman was being honest when she gave her evidence. However, I need to record some of the limitations of Mrs Newman's evidence as it appears to me. It seems to me that, when Mrs Newman was close by to the application land she had a number of things that were preoccupying her in relation to the horses and her daughter. I also note that Mrs Newman has been for many years a good friend of Bina Ford. I found it very instructive and accept that in the whole time that Mrs Newman has been visiting Bina Ford, they have not once discussed the application land or people going on to it. I have to also bear in mind, as it appears to me, that Mrs Newman's knowledge of the application seems to be limited. She was not aware that there were public right of way over the land or that there were footpaths over it. In addition, I note that Mrs Newman seems to have not ever seen animals on the land, even horses. These are matters which draw into question the reliability of the evidence in forming a picture overall of the use of the land relying upon Mrs Newman's evidence. However I do accept that Mrs Newman was honestly providing information to the inquiry albeit that it was my perception that she may have

allowed her feelings of sympathy towards her friend to somewhat take over her description such that it may have been expressed in terms that would have been otherwise less forthright. It seems to me that had Mrs Newman been in a position standing on the land with Bina Ford and have been capable of seeing somebody on the application land, it may not have stuck in her memory. She would have had no reason to note the presence of anybody on the land, and as she says herself, Bina Ford never mentioned anything relating to that topic to her.

Helen Fearn

692. Mrs Fearn's experience of the land in and around the application land appeared to me to be intermittent over the decades. However, it is fair to say that for some number of years in the 1990s Mrs Fearn was a regular attendee to Bina Ford for lessons. As with other witnesses it is a matter of cause for anxious thought and a reason for some concern that materially similar words are used to express her surprise at the claims being made in the application. Although I note that Mrs Fearn saw sheep on the application land, I am not satisfied that the choice of the word "*certain*" is one which is really apt to describe the experience of Mrs Fearn in terms of whether or not she would have seen or remembered, should I say, anyone using the application land. It is difficult for me to accept that she would be certain of having seen anybody using the application land in circumstances where she would have had no reason to have remembered seeing somebody or to have looked for somebody on the application land. It seems to me that she would have been focussed on her lessons at the time and jumping on her horse. Although she says she would not have wanted anything to distract her horse, to that extent I do accept that

she would have recalled if there were, for example, children playing at least on the northern section of the land. But I find this concern for horse distraction hard to square with the other Objector witnesses who did remember seeing (limited) users.

693. In forming an overall view of Mrs Fearn's evidence I note that she didn't know that there were rights of way over the field and that she did not particularly notice, to use her words, the mound. I also note that Mrs Fearn is one of the witnesses who was contacted by a man called Roy on behalf of Bina Ford who explained the claims that were being made by the local people. However, she didn't give any further information save to say that she could not remember whether it was by phone or e-mail that she was contacted. She did, in answer to my question, clarify that she had not been provided anything in writing. I pay particular attention to the fact that she frankly admitted that she hadn't viewed the application land for a long period of time and that her focus was, as I have indeed formed the impression it was, on the show jumping field. It seems to make perfect sense that somebody learning how to do show jumping would be focussing on that activity.

Bina Ford

694. I found Mrs Ford to be a honest witness who was doing her best to assist the inquiry. I accept her evidence except would comment as follows. The application and its potential effect on her have obviously been a great strain on her. It may have been only during giving her evidence that Mrs Ford was able to consider the reasons why she may not have seen the quantity of use claimed. Although Mrs Ford feels very bitter about the evidence put forward by the Applicant's behalf, she had to accept that some of that evidence was being given by people that she has known for many

years in circumstances where she has, in general terms, only had positive things to say about them. I was also not really convinced by Mrs Ford's explanation as to her challenging people using the land. I think that had Mrs Ford been regularly challenging people using the land then I would have heard more about it in evidence and it sits uncomfortably with her evidence that sometimes she would see people sufficiently close to the footpaths and would not challenge them: as above, I find that, particularly as one goes towards the southern end of the land, it would have been difficult to pinpoint whether a user was following the route of a public footpath or not.

695. I consider and find that there were good reasons why Mrs Ford would not have been in the best position to assess the quantity of use. Although I am of the view that there were sometimes long days I got the distinct impression that Mrs Ford is and has been a morning lark. Put shortly, Mrs Ford was often up at extremely early working her horses, did not always use the application land and by lunchtime would have had her focus on the training field and the stables beyond. As Mrs Ford would have been used to seeing people using the land she would not have thought there was anything unusual or noteworthy about their presence. I do not think that Mrs Ford spent 20 years or more worrying herself with the issue and, on the evidence, did not mention anything about it (even to friends). It may well be that this had something to do with the way in which the inhabitants used the land both in terms of sticking to defined route in the north of the land and general pattern of use in the south (in the former case Mrs Ford could not have legally objected as she knew and in the latter case such use was furthest away from the paddock and the training

field and thus less likely to be an interference with her or come to her attention). As Mrs Ford explained in her oral evidence, the views of the land towards the south were obscured.

696. When Mrs Ford was not working with her own horses she was concerned with teaching her many students and often at a very high level. This kind of activity, in my view, requires focus and dedication of the sort Mrs Ford well described at the inquiry. I find that Mrs Ford's recollection is her genuine recollection but that, as above, there are good reasons why she simply would not have noticed many of the users on the land. I was very impressed by Mrs Ford's candour in relation to the fact that she would not have seen people using the land at weekends because she was always away.

Mrs Day

697. I accept Mrs Day's evidence and it seems to me she was in good position to explain those matters that her evidence was restricted to.

OVERALL CONCLUSIONS

698. The inquiry over which I presided was a hard-fought affair with robust cross-examination and submissions being made on both sides. Both Mrs Ford and the Applicant's witnesses have understandably strong and clearly visible views about whether or not the application land should be developed. In respect of the Applicant's witnesses, although there were sometimes difficulties in giving evidence of the nature I have set out above, I accept they did their best to assist me with their recollections of using the land. I regard it as important to remember that it is

perfectly possible for one user to have used the land in different ways to others or even the majority of users. Take Mr Parker and his gun dogs for a good example. In respect of Mrs Ford I equally find that her strong feelings did not lead her to give evidence which was anything other than honest albeit it may have hindered her ability to consider the possibility that she may not have seen all of the activity on the land (although in oral evidence she reasonably made some concessions on that front).

699. I remind myself generally also that honest recollections may not always be reliable or may not always give reliable answers to the questions that I must address. I have set out critical analysis of the witnesses I heard from above and I now need to draw matters to a conclusion with reference also the written evidence before me.

700. As I found above, I did not find that Mrs Ford and her witnesses were in the best position to gauge the full extent to which the land was being used. It is a matter of common sense and I find based on the evidence that I heard that recreational activity (including walking through the land) would have been higher at weekends when Mrs Ford and her witnesses would have been away pursuing equestrian activities.

701. I should say here that Mr Honey submitted that using the land when the owner was known to be away would be *clam*. There was no evidence that that any witness knew anything of Mrs Ford's itinerary or that they acted in such a way even if they may have understood that she was the owner of the land. It would be on the face of things be an astonishing and unlikely conspiracy for the fluctuating class of inhabitants of this village to pull off over a 20-year period. I reject this argument.

702. As to what could be observed on the land by the Objector's witnesses, for the reasons I have set out above in relation to individuals who gave evidence, I also think that there were good reasons why Mrs Ford's witnesses would not have seen the full extent of use that the local inhabitants were making of the land. These witnesses variously only attended for lessons to varying extents and degrees, spent time working away from the training field, were very busy with horse related tasks, busy with building related tasks or focused on Mrs Ford's equestrian instruction.
703. As above, I had real concerns about the similarities in the statutory declarations produced by Mrs Ford's witnesses and the certainties that were professed within them (I notice the word "*certain*" regularly appears). But I place much more emphasis on the oral evidence given by these witnesses which I accept as being more reasonable and save for the odd occasion, balanced. This gives me further reassurance in my findings that there were good reasons why these witnesses would not have seen all the activity going on the field.
704. So despite the limitations of Mrs Ford's evidence and of her other witnesses, the fact that some *were* able to let me know that they did see people using the land is I think of evidential value. Mr Nelson even went so far as to produce a photograph showing about 10 people walking on the northern most footpath. I find that the evidence of the Objector has the result that, even taken by itself, use would be placed as a matter of common-sense, some way above that which it was submitted to be. In other words, I find that the Objector's witnesses did not observe all that there was to observe. I am reinforced in this view by the fact that there is some conflict between some of Mrs Ford's witnesses to the extent that some of them say they saw

nothing at all but others say that they did see occasional users (albeit placing them on the footpaths). In addition, the places on the land the Objector witnesses state that they saw people are sometimes different. Again, I find this to be supportive of the fact and my finding that the use was in fact greater than that reported by any one of them. In weighing matters up I have also considered, where it speaks to this issue, those Objector's witnesses who only gave written evidence in the form of statutory declarations but given my overall concern about the nature of this evidence and the fact they were not cross-examined I am unable to give it much weight.

705. Much was said of the views over the land that Mrs Ford and her witnesses would have had. I was much assisted in this respect by the photographs produced and by the site visit. I agree that the views were clear but, as I have recited in relation to some of the witness evidence, I do not think that that is a complete description. I consider that it would *not* have always been possible for someone in the training field or the paddock to have confidence in stating whether the particular user was exactly on or off of a defined route. But the views were certainly clear enough to see whether activities such as games were being enjoyed. I further find that this limitation quite obviously got worse the further south the user or users were. In fact, consistent with the evidence of Mrs Ford and Mr Lippiatt, I accept and find that the views of what has been called the southern tip of the land were not good enough for the presence of users (perhaps even more so if just children) to have regularly come to the attention of people stationed in the paddock and/or training field or indeed those stationed further north. Specifically, the small mound and trees, on the

account of everyone asked, obscured the view. I note in relation to this finding that in closing Mr Honey was constrained to say that on the basis of the photos at O227, 255A and 256 that the views were good, except "*perhaps the southern tip and the far end behind the mound and the tree.*" I find that this was the position during the qualifying period.

706. I should also add that the recollections of Mrs Ford and her witnesses are even more explicable when one considers the type of use that was going on. Although some of Mrs Ford's witnesses had no idea, at the time, where the public footpaths ran I have accepted their evidence and more particularly that of Mrs Ford that the users would have appeared to be following routes which can be said to roughly equate to those routes in the context of it being sometimes hard to always place user's position on the land.

707. I turn now to the Applicant's evidence. How does it fit together with the Objector's witness if at all? I have accepted the evidence put forward by the Applicant's witnesses with the qualifications set out above. When assessing this evidence I think that it is right for me to take account of matters which occurred in years immediately before the qualifying period as it is of some limited evidential value to proving matters in the qualifying period. I have no reason to think that anything drastically changed, although I accept that there is some evidence that the population has increased over time. So in that context, cross-examination about the ages of children in 1993 is not a knock-out blow although it diminishes the weight of the evidence progressively with the ticking clock of time.

708. To my mind the matter is one of overall impression of how the land was used. My impression is that, first, I am satisfied that access was achieved by local inhabitants throughout the qualifying period via the 4 stiles at UFC, NE, TL and TE. There were one or two exceptions to this (e.g. Mrs Ditchfield sometimes climbed over her fence) but I am satisfied that these were so minor in comparison to overall use of the land so as to make no difference to the overall assessment of use.

709. Second, I am satisfied that the almost annual hay crop did not affect user's use of the land as they stuck to the worn paths around or across the land. Mr Honey says this reflects how use must have taken place when the grass was long and was perhaps why so many of the Applicant's witnesses described the land "*a meadow.*" I accept this submission but I think it must be subject to the caveats as follows:

- There would have been some off path activity in certain areas of the land when the grass was long – for example, as shown in the photographs produced by Mr Knibbs. Children and parents would have walked through flowers and/or tall grass.
- The often repeated and unchallenged evidence from the Applicant's witnesses, which I accepted, was to the effect that the grass was generally shorter in the southern tip.

710. Third, my impression and finding is that the users of the land were more often than not to be found walking (including with dogs – which formed a large number of the users) on "*defined routes.*" I use the phrase "*defined routes*" as a way of including both those routes which are on the definitive map as public footpaths but also the

routes around the rest of the perimeter that formed in many case the circuit that many of the Applicant's witnesses enjoyed using (often to walk their dogs). I accept the evidence of the Applicant's witnesses that they used these routes in the manner which I have recorded above. I was struck by the ease by which the Applicant's witness were able to describe "the routes" that they used over and around the land and how these were recorded on the Map B belonging to each witness. These were, I find, exactly how they witnesses described them to be: routes.

711. I find that the Applicant's witnesses who produced a "*Map B*" showing the areas of the land that they used are to be approached with caution where they implied that the whole of the land was used including that off of the paths or defined routes. For example, in the north of the land routes used would be very close to a public right of way or otherwise be a route which served the same purpose as the nearby public right of way. There was an abundance of routes. I am not satisfied that those users who just, for example, cross-hatched the entire application land in that area can be safely accepted as meaning that they used every blade of grass. I think that the evidence, as explored orally shows that vast majority of use was along the defined routes. Indeed, it was a limitation of much of the Applicant's witness evidence that it was difficult to get a sense of how often and in what numbers the users departed from routes around and through the land. My overall impression is that this is because the principal use of the land (save as described below) was for walking on routes.

712. Fourth, it may well be, following the guidance in *Laing Homes* and *Trap Grounds* at first instance that use of defined routes can in some circumstances form part of

qualifying use for a village green. However, in the instant case, I struggle to see how in the north and central sections of the land that there was anything like enough evidence produced to prove to the required standard that such off-path activity was taking place. I think Mrs Ford and her witnesses would have seen much more of it if it was taking place in this area of the land *with sufficient frequency* (in other words of sufficient quantity to approach meeting the relevant statutory tests in s.15(2) CA 2006).

713. Indeed, I find that a reasonable landowner on the spot would not have understood in respect of the northern and central areas that a right was being asserted over the whole of the land. What was described by the oral witnesses in cross-examination simply did not convince me that I could make a finding that there was sufficient off path activity going on. What is left is use which is in my view in the nature of a right of way. To the extent that that use is actually on a public right of way it must in my view be discounted: the users had a legal entitlement to use the highway in that fashion. Mr Edwards submits that it is relevant that the rights of way as recorded in the definitive map do not match the routes found on the ground during the qualifying period. I disagree with this for the general reason that a reasonable landowner would have concluded the use was in the nature of (even if not pursuant to) a right of way. The users were following a route. This would have included those walking around the edge to complete a circuit. So the lack of a sufficient quantity of off path activity in the northern and central areas, is the prime factual reason which is destructive of the application in respect of those parts of the land. I do not think, for the avoidance of doubt, that simply walking along the eastern perimeter or

picking a few blackberries from its perimeter can amount to the assertion of a right across the whole the land to the western boundary. For completeness I should say that I do not accept Mr Honey's submission that a reasonable landowner would have concluded that the use on the slightly diverted routes was referable to the actual public highway routes because that would have involved consideration of the definitive map and it seems to me that if one uses a slightly different route for 20 years then new public highway rights may emerge.

714. In view of these findings, the issue about criminality of use during the foot and mouth falls away except in relation to the bottom half of the diagonal footpath 11/15 going to the Tellisford Lane entrance. However, to avoid a finding of interruption of qualifying use (the period was certainly long enough in my view) of the central and northern sections the (legal) user off of the "closed" public footpaths would have had to have stood by itself. So the cards were as it were stacked against the Applicant in any event.

715. As to the fenced area along the eastern boundary which Mrs Day referred to I am satisfied that it was in place for about 4 weeks or so. It would have been difficult to making finding as to the exact area that this covered, even bearing in mind the photographs produced of it: 18 – 19. In any case, it covered a small area of the field and would not in my view, as a matter of fact and degree, be enough to amount to an interruption in the use and the assertion of a right over the whole of the land. In any case however, it is clear to me and I find that the fenced area did not intrude on any point south of the mound. The point falls away (see also below).

716. Fifth, I find that local inhabitants use of the application land was not, as a matter of fact, materially affected by foot and mouth. The Objector says this finding would not be credible. I disagree. While I accept Mrs Ford's evidence about the animals present on the land during the foot and mouth outbreak, none of Mrs Ford's witnesses nor Mrs Ford herself had any recollection of signs within the village, let alone on the application land. I am of the view that had there been signs erected warding people off of the application land then it is likely that Mrs Ford would have recalled them and so would have the local inhabitants. In this context and the context of the Applicant's witnesses having no recollection of signs and in some cases positively saying that they continued to use the land, I am not able to find that there was any deterrent to using the land. I bear in mind that as Mrs Ford used other land to train her horses during this period her evidence about the application land during that period is somewhat limited. I find that it is more likely than not in view of this evidence that no signs were erected over the weekend of 17/18 March 2001 (see paragraph 630 above) and happily find that none were erected on the application land. This might have been related to the apparent winding down of precautionary measures about this time. I accept the Objector's evidence that there was a nationwide scare about foot and mouth at the time but the Objector very fairly put forward evidence showing that there was no outbreak in and around the immediate vicinity of the Norton St Philip. I find that the use of the land continued without change during the progression and recession of the outbreak or at worst decreased by such a small amount that it would make no difference to the overall assessment (because of the occasional person like Mr Bishop being more reluctant to go onto the land).

717. Sixth, I find that in general terms the use of the land was not particularly affected by the presence of animals. Mr Honey submitted that the oral evidence given by the Applicant's witnesses generally accords in many respects with that in the statutory declaration from Mr Terry Mills as the presence sheep and cows. However, although not cross-examined, it seems to me that Mr Mills was claiming that animals were in the field more frequently than that advanced by the Applicant's witnesses and indeed some of Objector's witnesses. I accept Mr Edwards point about the infrequency of animals being shown on the aerial photographs. I have some concerns about Mr Mill's evidence and have to limit its weight in light of the lack of cross examination. Although there was evidence that some users altered behaviour in terms of putting dogs on leads, it was my impression that in general that use continued. It may be, as was mentioned by one witness, that this had something to do with the tendency of the animals to congregate in the north of the land. I cannot imagine that in a relatively small community that if there had been a persistent problem in relation to the animals and use of the field that this would not have been brought to the farmer's attention: indeed Mrs Brewis gave evidence of such an occasion. My central finding however is that I accept the Applicant's evidence that the use of the land was not affected by the presence of animals during the qualifying period.

718. I have dealt with the northern and central areas of the land, but I now turn to the southern tip of the land, by which I mean in broad terms that land which is to the south of the mound. The starting point might be said to be Mr Honey's closing submissions which *inter alia* were constrained to say that the southern tip was a

“distinct area” of the application land (whose use can not be attributable to the rest of the land):

“256. The southern tip is where it is claimed that dens were made (and the related picnics were claimed to happen) and the tree that was played in. The area of the mound and the tree was the focus for the great majority of the other claimed activities eg children’s play. Mrs Oliver described the mound as a “magnet” for children. Mr Hasell said in XIC that the mound was used as a play area. Mr Stretton described the mound as being the “HQ” when children played games on the AS. Mrs Ditchfield accepted in XX that the southern tip was where all the interest was and described the use of the mound and the “derelict” tree in the southern tip.

257 In response to questions from the Inspector, Mrs Brewis said that the playing happened down in the south-east corner. Mr Knibbs said much the same in XIC. Mrs Brewis said in XX that children tended to play in the southern corner, where the tree was, and that this was where dens were made. Mr Campbell said in XIC that he had seen children playing around where the mound was, in the southern tip, but not up the top where the grass was longer (ie the northern part of the AS). In IQs he described children playing and mucking around on the mound and south of the mound, because the grass tended to be shorter there.”

and then again at [262]:

“262. As the only things of any interest on the AS were in the southern tip – the mound and the tree – and because the southern tip was the area where the

grass was less long, it is perhaps credible that this area was used for some recreation. The southern tip of the AS would have been furthest away from the areas used by Bina Ford – both the north-eastern part of the AS and the teaching field – and therefore less likely to be seen and heard. It was also to an extent screened by the mound and the tree. “

719. I accept and find that a reasonable landowner on the spot would have regarded the southern area of the land as distinct area over which village green rights were being asserted by local inhabitants if such a hypothetically present person had seen all the activity going on over this section. I will now say something for myself about the findings that lead me to this conclusion.

720. With regard to the playing in the snow (photos of which were supplied) there was some evidence to suggest that this was not a regular occurrence during the qualifying period in any event it is clearly not enough to found a registration by itself. However, in my view it needs to be added to the total use. As the photographic evidence and oral evidence shows that the mound would have been the centre of attention (although the snow may have also encouraged some broader use of the field that would not have taken place at other times). I find that the mound was particularly suitable for sledging by young children.

721. I also accept the repeated evidence given by the Applicant’s witnesses (supported by photographic evidence) that the mound was an attraction to children when it was not snowing and find that it was certainly the centre of attention. I have already set out above that I accept that in the southern tip of the land the grass was shorter. I have recorded and set out at length the evidence of the Applicant’s witnesses who

describes activity going on in that area which is generally to the south of the mound in broad terms. I will not list all that evidence out again I find and accept that all manner of children's games (including football) was played in this area. I also formed the impression that this area would be generally more intensively used by families, which is why witnesses were able to fondly remember using the land with their children. That is not to say that these same users did not go further afield (see Mrs Ditchfield's characterisation of this), but as above, going off of the paths or defined routes as part of this would have been a rare occurrence. So although Church Mead would be tempting for those older children who wanted to play more intensely, I am quite satisfied that high numbers of children from the village, particularly those who were in their younger years, enjoyed informal activity over this area over the qualifying period.

722. Thinking about the off-path activities, I should add that there were a plethora of less frequent activities taking place on the land: but all of them must be held in account with the total. I find that it would have been a rare occurrence for picnics to have occurred, but I find that those witnesses who say they saw them did indeed see what they say they saw. Some of what is described as a picnic might not fit any romantic notion of such an event. The Objector points to the evidence of Mrs Brewis to the effect that when her children made dens they would take rucksack with biscuits in it: this would have placed the children in the southern tip of the land. In the same bracket as picnics, is kite flying. I find that kites were flown very infrequently as claimed on the application land but in truth it adds very little if nothing to the case

for registration. None of the witnesses sought to claim that it was anything but, what I took to be, a fleeting phase that their children were passing through.

723. The picking of blackberries consumed quite a lot of time at the inquiry. I will try to deal with it briefly by way of conclusion. It seemed to be suggested by the Objector at times the picking did not occur and/or there were no blackberries on the land during the qualifying period. If this is seriously persisted with then I will say here that I prefer the evidence of the Applicants and find that they have enjoyed blackberry picking across the eastern boundary as claimed and throughout the relevant period. My impression was that this was something enjoyed by quite a few of the users and they were candid about how often they did it. I do not think that it could possibly be said to be enough to justify registration of the land, but it certainly occurred more frequently than picnics over the land and forms in my view a small part of the overall picture of use. Of course, because the blackberries were on the eastern boundary it could not be said to be of itself, I find, an assertion of a right over the central areas of the land. I find however, that some blackberry picking would have occurred on the eastern boundary and would have formed part of the overall use of the southern area of the land as would have been seen by the hypothetical reasonable owner on the spot.

724. In coming my overall conclusion, I have taken account of the EQs produced to me. Mr Honey set out a whole list of reasons why I could not place any weight at all of the evidence questionnaires which included it being impossible to discount the use of public rights of way, other transit use and numerous questionnaires from the same families. It was equally said that some questionnaires did not speak to the

relevant period of time and had been prepared jointly. I accept that these and the other criticisms level by Mr Honey are legitimate points and generally speaking the questionnaires are a form of evidence that has limitation but I do not agree that I should place no weight at all on the evidence questionnaires. I accept also the EQ contain leading questions in some respects, for example providing a list of activities for people to tick.

725. A very useful table was produced by Mrs Oliver. It is not accepted by the Objector. I am informed by the Objector that there are 56 questionnaires in tab 3 of Volume 4 of the Applicant's Bundle. I further reliably informed that 91% (51) say they had never seen cricket; 84% (47) had never seen bicycles; 82% (46) had never seen rounders; 75% (42) had never seen team games; 73% (41) had never seen football; 64% (36) had never seen picnics; 59% (33) had never seen kites. On the other hand Mrs Oliver's analysis which was said to take into account the 96 EQs in A3 and A4 (and two statements) suggests walking (73), dog walking (45) play (59) and playing with children (35) are high on the list of those activities. Consistent with **McAlpine Homes** I shall not get into some kind of mathematical assessment. I generally find that that this information is consistent with my impression of how the southern tip was used (see below).

726. It is said that it is impossible to draw conclusions from the EQs about whether the claimed use would in all the circumstances have been referable to the exercise of actual and potential public rights of way. *"All the evidence from the questionnaires and the witness statements is at best ambiguous."* I am satisfied that I can take it that the oral evidence given at the inquiry would have been in large measure the

same as that that would have been given by the authors of the EQ. To find otherwise I think I would need to address why Mrs Ford and her witnesses did not see it. Of course, some of the EQs were filled in with more details than others and I take that into account. I am satisfied that while some of the Applicant's witnesses may have peculiarities that caused them to go to the land more often than others in general terms they can be taken to be a cross-section of the overall users of the land. Accordingly, with full recognition of the limitations of the evidence, I think I can for example use the EQ and I find they are supportive of higher quantities of users from the village using the land for walking over the defined route and for higher quantities of children playing on the land than would be disclosed by restricting myself to an assessment of the oral evidence heard at the inquiry. I do not mean to imply that they all used the land at the same time. I also took account of the Applicant's additional written statements and I think that they similarly can be taken to be evidence of quantity of use which can and should be assumed to be that of the sort described by the witnesses at the public inquiry.

727. In conclusion, I find that the southern area of the land, by which I mean in broad terms that to the south of the mound, has been used for a variety of different activities. As above, that has included children's informal play of wide description but it has also included walking with and without dogs in this area (through it, across it and around the perimeter - including the eastern boundary). In my view also, the use of the lower part of the diagonal footpath FR 11/15 is not something I can take into account as part of the whole. In the case of FR 11/15 I remind myself of Lightman J's dictum that: "*the starting point must be to view the user as referable to*

the exercise (and occasional excessive exercise) of the established right of way, and only as referable to exercise as of right of the rights incident to a green if clearly referable to such a claim and not reasonably explicable as referable to the existence of the public right of way.” In my view a reasonable landowner on the spot would have considered users on this footpath to be using a route across the land as users on it would have appeared to merely utilising the route. Consistent with **Laing Homes** I have discounted use of this route from my analysis. Many local users would have cut across the route when enjoying other activities, but they would have been on the route for such a short period of time that this makes no difference to the overall assessment. The criminality point advanced by Mr Honey is of no import as a result of these findings.

728. However, some of those users as I have set out above, did not in fact simply use the quickest route across the land. Many of the witnesses visited the land because they found it an attractive place to be. Looking carefully at the routes which were described to me during the inquiry and those set out on the “Map B” exhibited by the witnesses it clear to me, as above, that the southern parts of the land was in use in a way that would have brought it home to the reasonable landowner that it was not merely rights of way that were being asserted. When the grass was short there would not have, I find, been any necessity to stick to a single defined route and this a matter which would have lead to the multiplicity of routes being utilised in the same area: see for example: A5/862. That is consistent with those users who would go across (east-west) the southern section in a number of places (see Mr Bishop, Mrs Cox, Mr Kay and Mr Knibbs for example). There were others would went through the

centre of the section in a number of places (see Mr Campbell for example). Then there were those who used more of the perimeter (see Mr Saddiq for example) and those who went up the eastern boundary. Some of this use may or may not have been part of a circuit of the whole land or other route around. There is also evidence of some walking around the mound. Mr Honey said that the aerial photos show increasingly intensive use of the worn paths in 2010 and 2013. I have to be cautious about aerial photos showing “worn paths” in the context of the lack of expert evidence and the likelihood of more varied use leaving marks that would be ascertainable for such evidence. In general, I prefer the evidence of the Applicant’s on this issue of use, which supports the contention that there was no real change in the way the land was used over the qualifying period.

729. In contrast to the central and northern sections where I have found that there was little off path activity going on, in the south I find that a reasonable landowner would have clearly understood that this more varied and mixed pattern of walking (including with dogs) combined with the persistent general use by local children (and parents) of the mound and the area to the south of it (including the trees) was an assertion of rights across the whole of that section. I cannot think that this could have been regarded simply as an assertion of right akin to public rights of way. I am also satisfied that some of the walking (including with dogs) fitted the description of meandering from side to side: see A5/857 for example. There would have been, I find, some use of the defined routes for children’s games as well: such as the bouncing of tennis balls on the footpath as described by Mrs Brewis. That would have contributed to the overall picture. As I have stated before, all of this use did not

necessarily take place at the same time but the hypothetical reasonable landowner on the spot would have seen all of it (as it was openly enjoyed) and could not have come to a conclusion, in my view, that people were simply enjoying the use of the solitary right of way that runs through the southern section.

730. When the grass was taller then I consider that the use would have changed, as Mr Honey contends. However, it seems to me that the long grass actually served not as a deterrent but as an attraction to many users who went to the land. For young children, I find that they would have continued to use the southern area of the land (including the mound) as the grass grew tall. They would have use trampled down tracks as shown in Mrs Ditchfield's videos - with children liable to run off the track and around the land. I find that children would have been seen using the land in the manner depicted by Mr Knibbs photos: see A5/868-9. In my view therefore it cannot be said that the use ceased (I do not think that was a contention of Mr Honey) during the summer months before the grass was cut. Adult walkers (including was dogs) would also, I find, have continued to use the land on the routes claimed and there was, of course, many of them who were attracted by the flowers and other items of nature that might be seen on the land during the summer months.

731. I satisfied that the overwhelming majority of this use was by the inhabitants of the village and that they had been using the land like this *as of right* since at least the beginning of the 1980s and probably before that. With regard to the size of the locality and the numbers of people who have given evidence of some description and especially that given orally by users who were able to tell me what they saw others do I am satisfied on the balance of probabilities that the southern part of the

land was used by a significant number of the inhabitants of the locality for lawful sports and pastimes. Further that such use was *as of right*. Fixing the boundaries of the area is most appropriate by reference to the mound which has now been removed. It will require some work to establish the position on a suitable plan.

RECOMMENDATION

732. Bearing in mind the type of activities which I have found to have been taking place I should think that the most appropriate recommendation would be the CRA to register as new town or village green all the land south of a point 2 metres to the north of the mound. This may require the parties and the CRA to work together to implement this.
733. My recommendation in respect of the rest of the land is that it should be rejected for the reasons I have set out above. However, this is all subject to the my recommendation at paragraph 89 above. At the current time the application is, in my view, not duly made but the Applicant is entitled to a further period of 14 days to perfect the application.
734. The CRA should give reasons for its decision deal with the application in the way I have indicated. Those reasons can be described as *"for the reasons set out in the Inspector's Report."*

Paul Wilmshurst

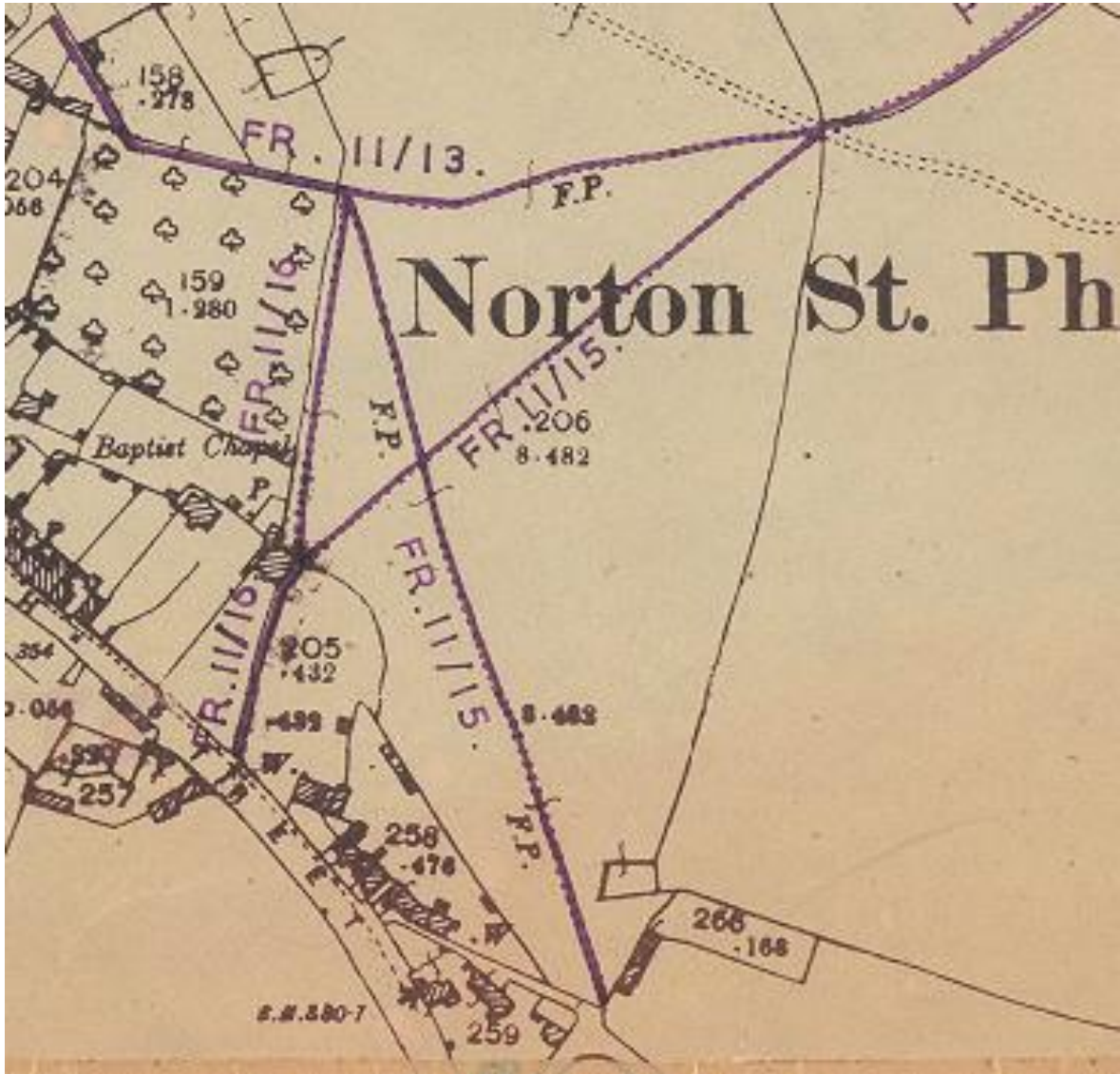
20/02/2018

9 Stone Buildings, Lincoln's Inn, London, WC2A 3NN

Postscript: After seeing a draft copy of this Report which I asked the parties to look at for the purposes of typographical errors the Applicant submitted as follows: *“The Inspector comments in paras. 592-616 on the written evidence from the Objector’s witnesses who only gave written evidence, but as he points out in para. 618, did not comment similarly on the written statements from the very many Applicant’s witnesses who only gave written statements. The Inspector gave his reasoning at para. 618, which we request you to look at. We recognise the kind of judgements which the Inspector must make in dealing with a great deal of material, but would ask whether CRA is satisfied that the way in which the two sets of written evidence have been treated in the Report is fair.”* I would emphasise that I did consider, amongst the vast quantity of material, the Applicant’s written statements. However, the Applicant’s additional written statements went in the main towards the issue of the quantity and type of use which had been enjoyed over the land. Inevitably, the evidence of use (with some particular features for the individuals concerned taken into account) is going to be broadly repetitive. I found nothing in the written statements of those witnesses not cross-examined which caused me to take a different view of the Applicant’s witnesses who were cross-examined and as explained I found that the evidence was supportive to a degree of the Applicant’s case (albeit for a partial registration). However, I considered that it was worthwhile setting out the Objector’s written statements in greater detail because, as it seemed to me, the evidence they were giving was more varied (e.g as to why and when the person would have cause to be viewing the application land). I of course took account, as best I could, of all of the evidence from all of the parties.

Appendix 2

Extract of the Definitive Map



Appendix 3

Village green cases

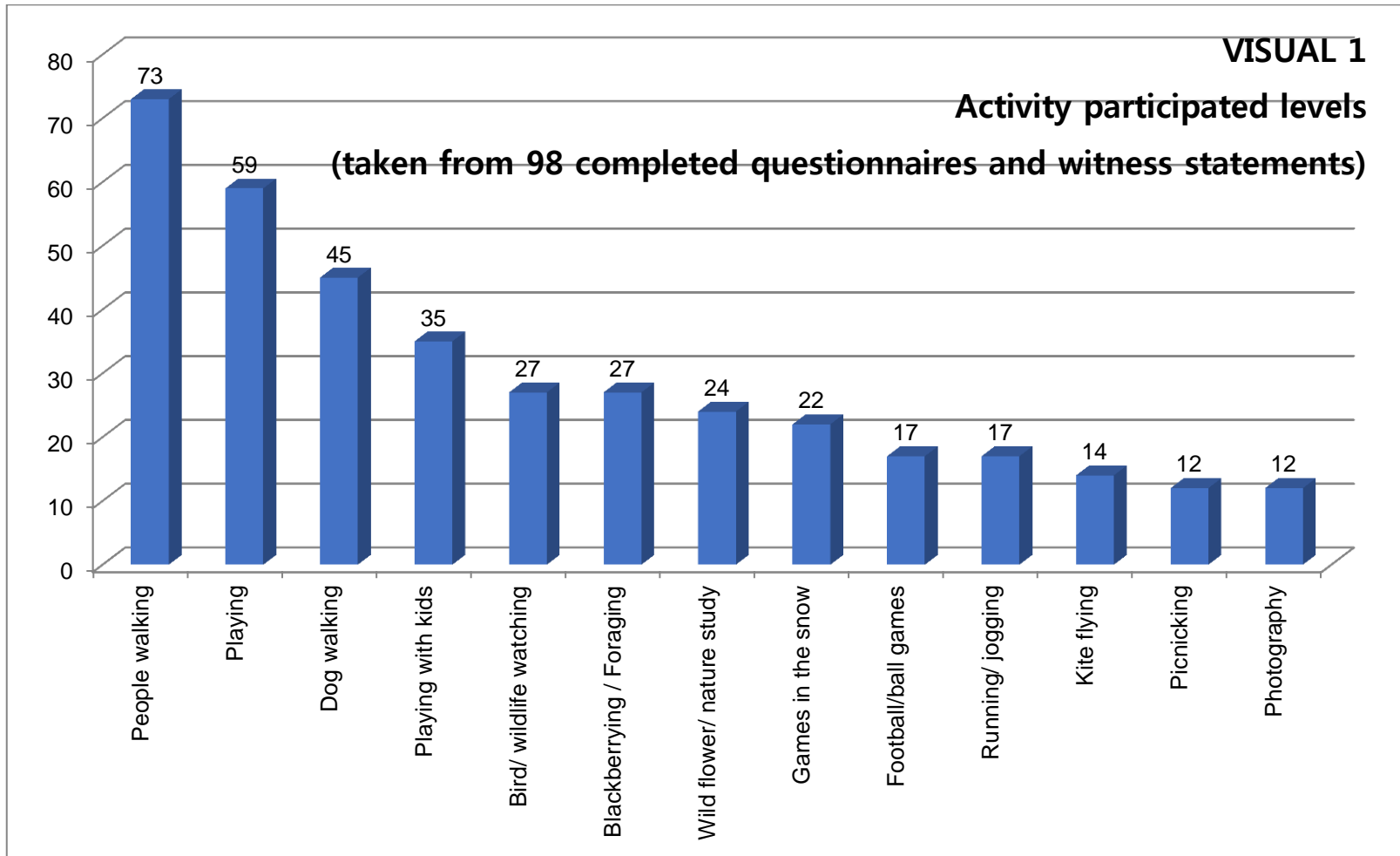
The following may be cited in the text of this Report

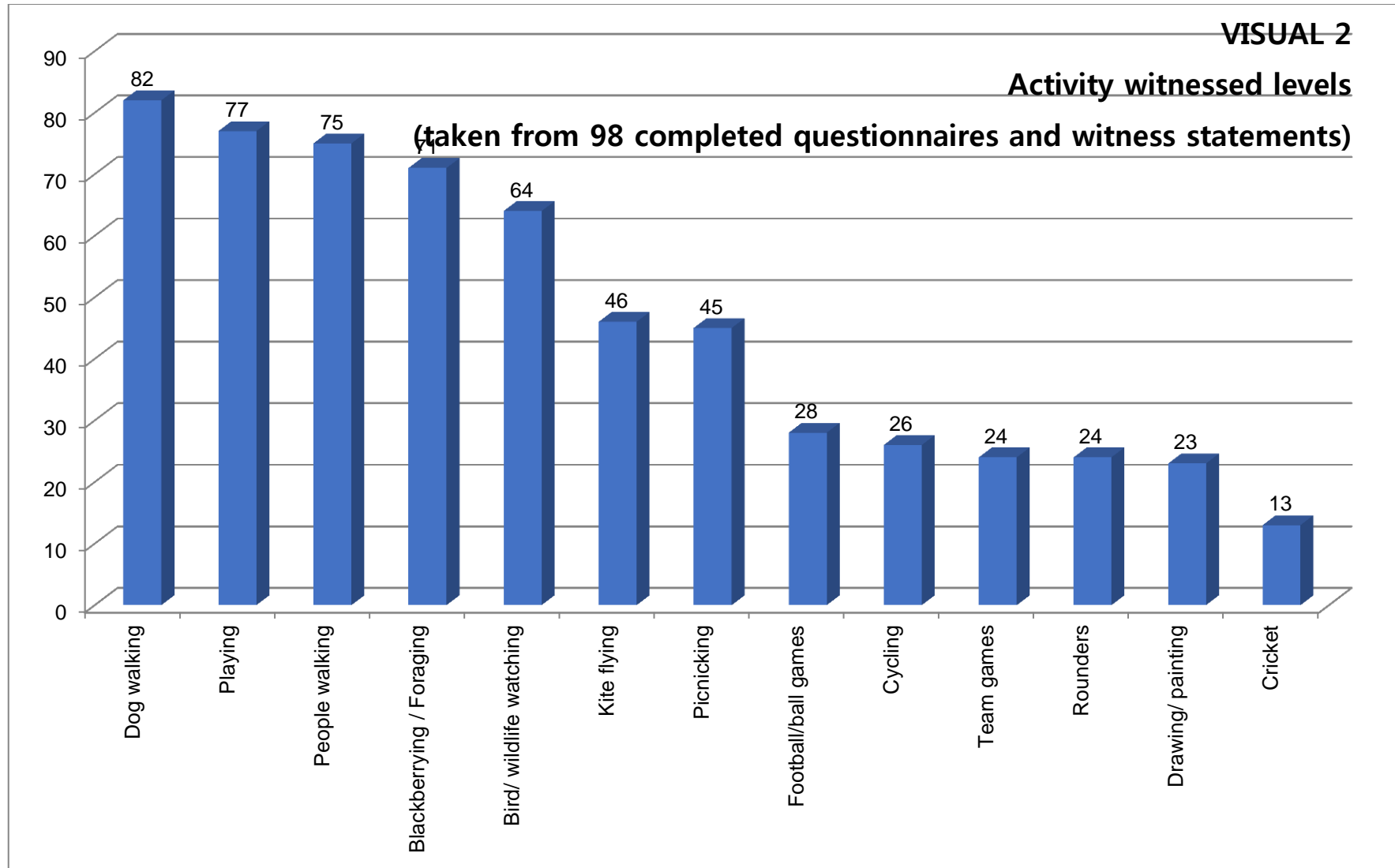
Case name	Commonly called	Judge / Court	Citation
<i>New Windsor Corp v Mellor</i>	<i>New Windsor</i>	Court of Appeal	[1975] Ch. 380
<i>Ministry of Defence v Wiltshire CC</i>	<i>MoD</i>	Harman J	[1995] 4 All ER 931
<i>R v Suffolk CC ex p Steed</i>	<i>Steed</i>	Carnwath J	(1995) 70 P&CR 487
<i>R v Suffolk CC ex p Steed</i>	<i>Steed</i>	Court of Appeal	(1996) 75 P&CR 102
<i>R v Oxfordshire CC ex p Sunningwell PC</i>	<i>Sunningwell</i>	House of Lords	[2009] 1 AC 335
<i>R (McAlpine) v Staffordshire CC</i>	<i>McAlpine Homes</i>	Sullivan J	[2002] EWHC 76
<i>R (Laing Homes Ltd) v Bucks CC</i>	<i>Laing Homes</i>	Sullivan J	[2004] 1 P. & C.R. 36
<i>R (Cheltenham Builders Ltd) v S Gloucestershire DC</i>	<i>Cheltenham Builders</i>	Sullivan J	[2004] 1 EGLR 85
<i>R (Beresford) v Sunderland CC</i>	<i>Beresford</i>	House of Lords	[2004] 1 AC 889
<i>Oxfordshire CC v Oxford CC</i>	<i>Trap Grounds</i>	Lightman J	[2004] Ch 253
<i>R (Whitney) v Commons Commissioners</i>	<i>Whitney</i>	Court of Appeal	[2005] QB 282
<i>Oxfordshire CC v Oxford CC</i>	<i>Trap Grounds</i>	Court of Appeal	[2006] Ch 253
<i>Oxfordshire CC v Oxford CC</i>	<i>Trap Grounds</i>	House of Lords	[2006] AC 674
<i>R (Lewis) v Redcar and Cleveland BC</i>	<i>Redcar</i>	Sullivan J	[2008] EWHC 1813 (Admin)
<i>Betterment Properties (Weymouth) Ltd v Dorset CC</i>	<i>Betterment</i>	Court of Appeal	[2009] 1 W.L.R. 334
<i>R (Lewis) v Redcar and Cleveland BC</i>	<i>Redcar</i>	Supreme Court	[2010] AC 70
<i>R (Oxfordshire & Bucks Mental Health Trust) v Oxfordshire CC</i>	<i>Warneford Meadow</i>	HHJ Waksman DHCJ	[2010] 2 E.G.L.R. 171
<i>Leeds Group PLC v Leeds City Council</i>	<i>Leeds</i>	HHJ Behrens DHCJ	[2010] EWHC 810 (Ch)
<i>Leeds Group PLC v Leeds City Council</i>	<i>Leeds (No1)</i>	Court of Appeal	[2011] Ch 363
<i>Betterment Properties (Weymouth) Ltd v Dorset CC</i>	<i>Betterment</i>	Morgan J	[2011] 1 E.G.L.R. 129
<i>BDW Trading Ltd v Spooner</i>	<i>Barratt Homes</i>	HHJ Llewellyn DHCJ	[2011] EWHC B7 (Ch)
<i>Paddico Ltd v Kirkless Metropolitan Council</i>	<i>Paddico</i>	Vos J	[2011] EWHC 1606 (Ch)
<i>Leeds Group PLC v Leeds City Council</i>	<i>Leeds (No2)</i>	Court of Appeal	[2012] 1 W.L.R. 1561
<i>Paddico Ltd v Kirkless Metropolitan Council</i>	<i>Paddico</i>	Court of Appeal	[2012] EWCA Civ 262
<i>Betterment Properties (Weymouth) Ltd v Dorset CC</i>	<i>Betterment</i>	Court of Appeal	[2012] 2 P. & C.R. 3

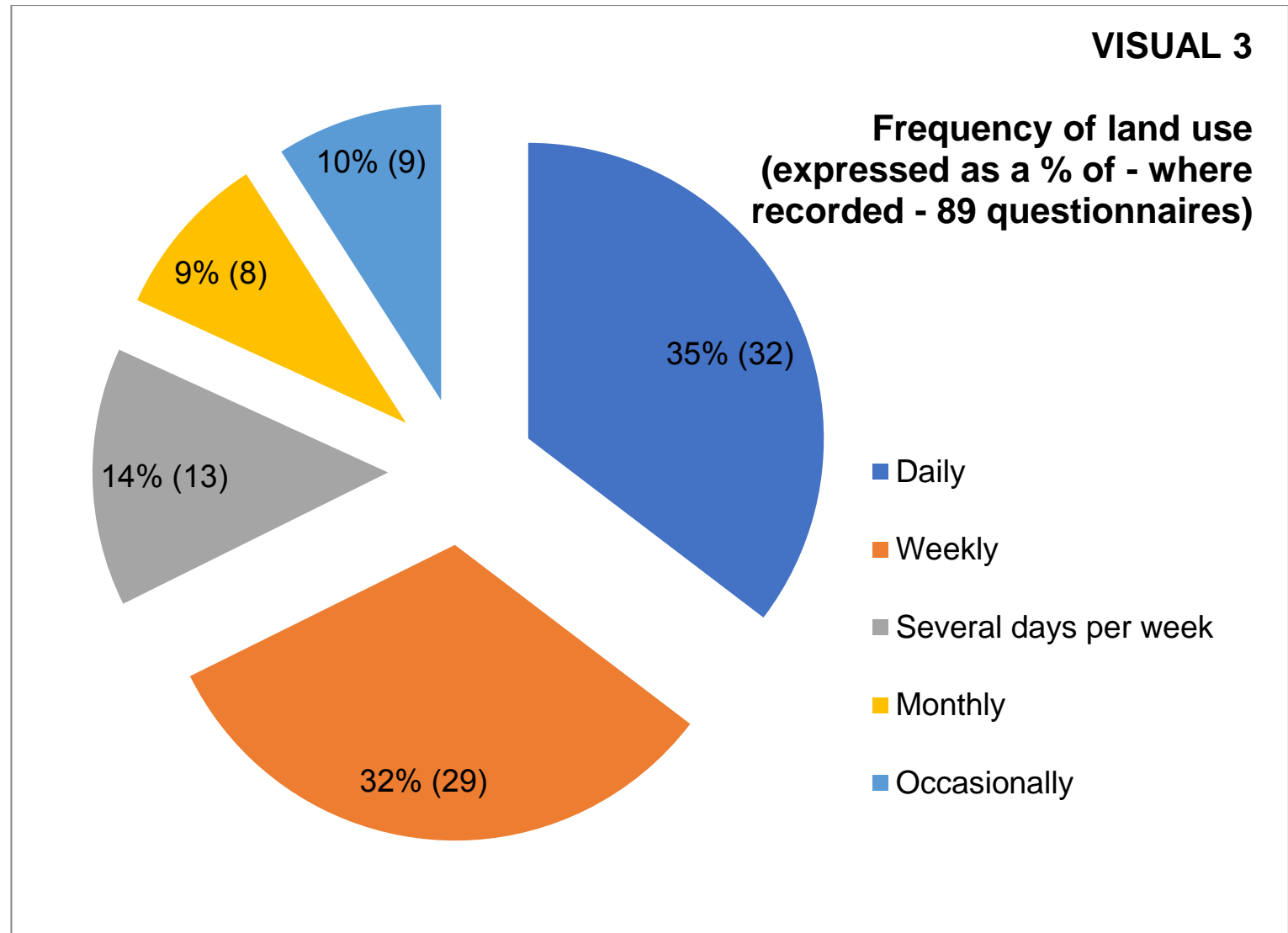
<i>R (Mann) v Somerset CC</i>	<i>Mann</i>	HHJ Owen DHCJ	[2012] EWHC B14 (Admin)
<i>R. (Malpass) v Durham CC</i>	<i>Malpass</i>	HHJ Kaye DHCJ	[2012] EWHC 1934 (Admin)
<i>R. (Barnsley MBC) v Secretary of State for Communities and Local Government</i>	<i>Barnsley</i>	Foskett J	[2013] P.T.S.R. 23
<i>R (Newhaven Port & Properties Ltd) v East Sussex County Council</i>	<i>Newhaven</i>	Court of Appeal	[2014] QB 186 & 282
<i>R (Barkas) v North Yorkshire CC</i>	<i>Barkas</i>	Court of Appeal	[2013] 1 W.L.R. 1521
<i>Adamson v Paddico Ltd & Betterment Properties (Weymouth) Ltd v Dorset CC</i>	<i>Betterment & Paddico</i>	Supreme Court	[2014] 2 W.L.R. 300
<i>R. (on the application of Church Commissioners for England) v Hampshire CC</i>	<i>Church Commissioners</i>	Court of Appeal	[2014] EWCA Civ 634
<i>R (Barkas) v North Yorkshire CC</i>	<i>Barkas</i>	Supreme Court	[2014] UKSC 31
<i>R. (on the application of Newhaven Port and Properties Ltd) v East Sussex CC</i>	<i>Newhaven</i>	Supreme Court	[2015] A.C. 1547
<i>R. (on the application of Goodman) v Secretary of State for Environment, Food and Rural Affairs</i>	<i>Goodman</i>	Dove J	[2016] 2 All E.R. 701
<i>Somerford PC v Cheshire East BC</i>	<i>Somerford</i>	Stewart J	[2016] 2 All E.R. 701
<i>Lancashire CC v Secretary of State for the Environment, Food and Rural Affairs</i>	<i>Lancashire</i>	Ouseley J	[2016] EWHC 1238 (Admin)
<i>R (on the application of NHS Property Services Ltd) v Surrey CC</i>	<i>NHS Property Services</i>	Gilbart J	[2016] 4 W.L.R. 130
<i>R. (on the application of Allaway) v Oxfordshire CC</i>	<i>Allaway</i>	Patterson J	[2016] EWHC 2677 (Admin)
<i>TW Logistics Ltd v Essex CC</i>	<i>TW Logistics</i>	Barling J	[2017] EWHC 185 (Ch)
<i>Regina (Master, Fellows and Scholars of the College of Saint John the Evangelist in the University of Cambridge) v Cambridgeshire County Council</i>	<i>Meadow Triangle</i>	Sir Ross Cranston	[2017] WLR (D) 469

Appendix 4

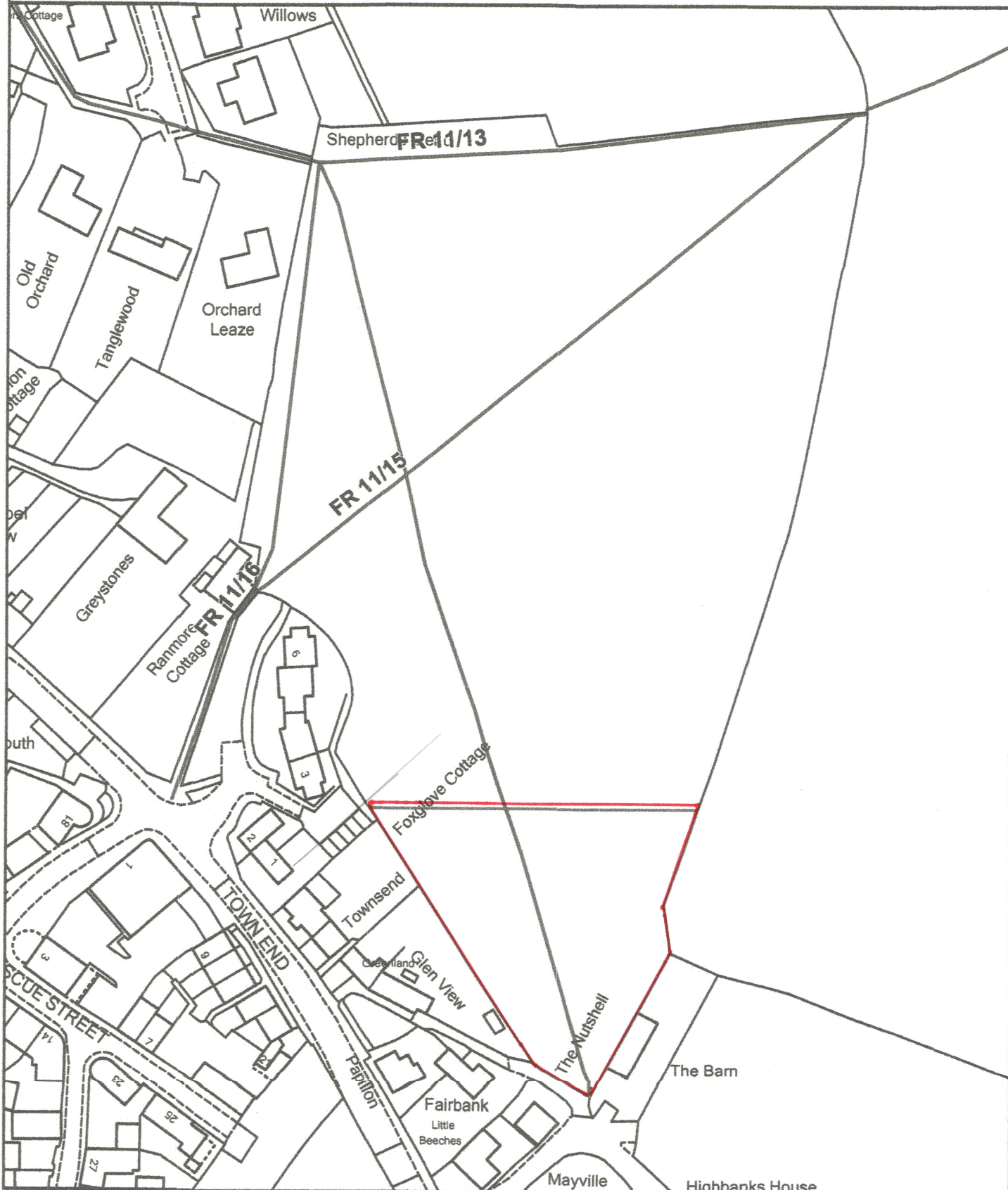
Applicant's analysis of EQs







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Parish: Norton St Philip
 District: Mendip
 Date: 27/03/2018
 Drawing No: H09-2018_1
 Drawn By: MHardwill
 Centre Grid Ref: 377641 155809
 Scale: 1:1250

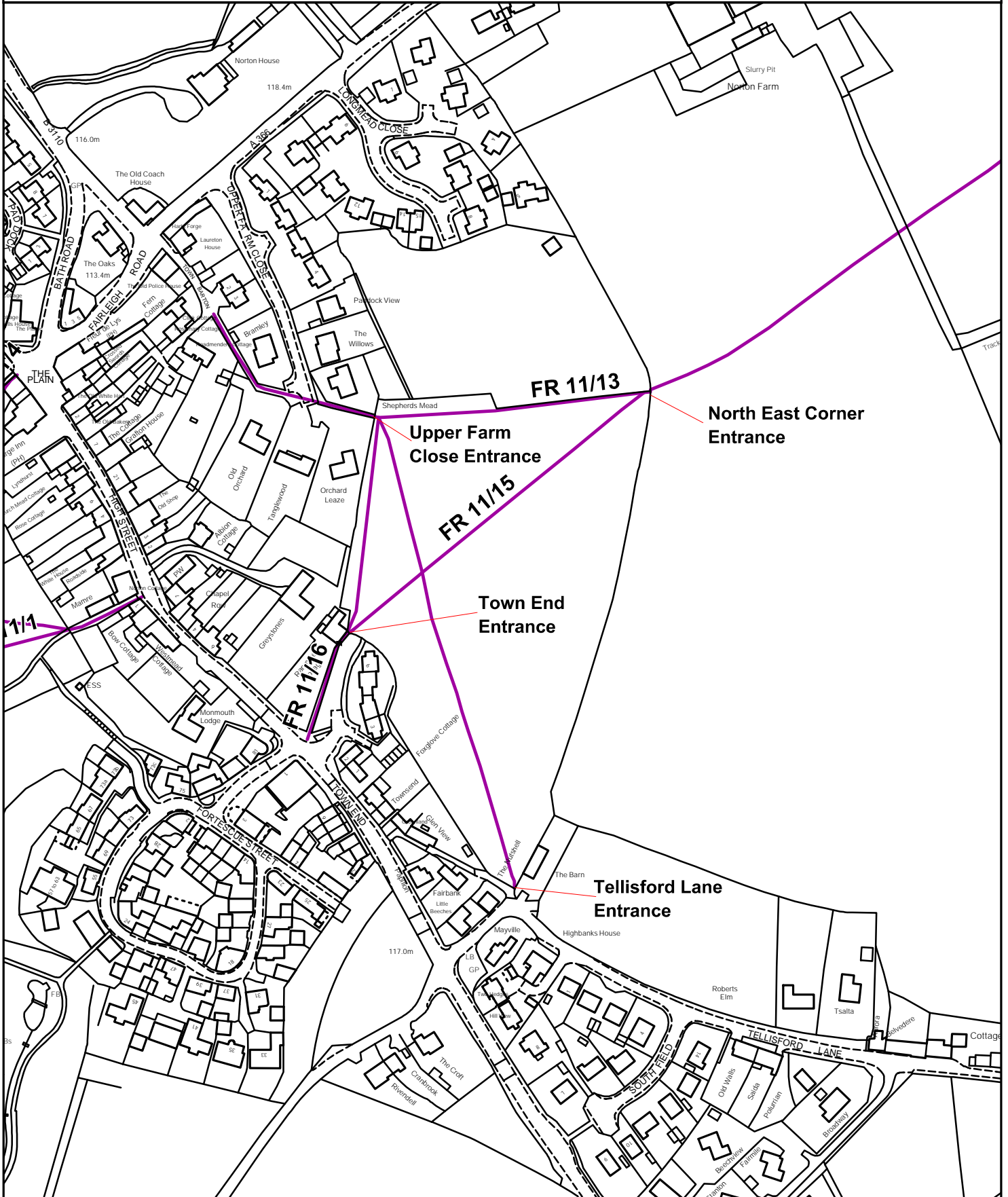
Land to the south of a point 2 metres
to the north of the mound



Definitive Footpath



The precise line of a Right of Way can only be determined by reference to the Definitive Map (1:10560 scale) and the attached plan has been produced by transposing the Rights of Way Definitive Map onto a larger scale. The County Council can accept no responsibility for any error or inaccuracy which may arise from the transposition of the Rights of Way Definitive Map to a different scale.

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	Parish: Norton St Philip District: Mendip Date: 18/05/2018 Drawing No: H09-2018_2 Drawn By: MHardwill Centre Grid Ref: 377641 155809 Scale: 1:2500	Entrance points to Shepherd's Mead
		Definitive Footpath 

The precise line of a Right of Way can only be determined by reference to the Definitive Map (1:10560 scale) and the attached plan has been produced by transposing the Rights of Way Definitive Map onto a larger scale. The County Council can accept no responsibility for any error or inaccuracy that may arise from the transposition of the Rights of Way Definitive Map to a different scale.

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Somerset County Council
Regulation Committee – 14th June 2018
Report by Service Manager - Planning Control,
Enforcement & Compliance : Philip Higginbottom

Application Number: 4/08/18/0004/OB
Date Registered: 23 January 2018
Parish: Cheddon Fitzpaine
District: Taunton Deane
Member Division: Taunton North
Local Member: Giuseppe Fraschini
Case Officer: Philip Higginbottom
Contact Details: 01823 356939
Description of Application: Construction of a 2 form entry Primary School and Nursery, including associated access arrangements, car parking, 3G sports pitch and hard and soft landscaping.
Grid Reference: 324287-126446
Applicant: Somerset County Council
Location: Nerrols Farm Primary School, Nerrols Drive, Cheddon Fitzpaine, Taunton, TA2 8QE

1. Summary of Key Issues and Recommendation(s)

The key issues for Members to consider are:-

- Whether the principle of development is acceptable
- Whether the proposal represents sustainable development
- The need for the development
- Whether the design of the development is acceptable
- Impact of the proposal on the highway network
- Impact of the proposal on residential amenity
- Impact of the proposal on biodiversity
- Impact of the proposal on flood risk
- Impact of the proposal on the existing Public Right of Way (PRoW)

It is recommended that planning permission be GRANTED subject to the imposition of the conditions in section 9 of this report and that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Service Manager - Planning Control, Enforcement & Compliance.

2. Description of the Site

- 2.1 The site is a relatively flat parcel of land equal to 1.23 hectares located on Taunton's north-east urban edge. It is approximately 2.5 kms from Taunton Town Centre. A single tree is accommodated within the south east portion of the site, with the remainder being scrubby grassland. It would appear that the site is currently utilised as an informal site compound associated with the residential development currently being constructed to the north and north-east of the site.
- 2.2 The site is bounded to the north by residential development currently being constructed, to the east by an existing Public Right of Way (PRoW) reference T5/14, which is a single track land known as Nerrols Lane and which separates the site from an existing local business (dealing in farm machinery) and associated dwelling known as Crosslands Yard, and further residential development currently being constructed; to the south by a vacant site with outline planning permission for commercial uses; and to the west by Nerrols Drive public highway, with the existing residential development known as Priorswood beyond.

3. The Proposal

- 3.1 The submitted application form describes the proposed development as follows:

'Construction of a 2-form entry primary school and nursery, including associated access arrangements, car parking, 3G sports pitch and hard and soft landscaping.'

- 3.2 It is proposed that both the primary school of 420 pupils and nursery of 26 children would be accommodated within a single two storey building. To the ground floor, teaching areas for nursery, reception, and Years 1 and 2 ages would

be provided, as well as a library, the main hall, kitchens, therapy room, sleep room, and other ancillary functions associated with the proposed use. To the first floor, it is proposed that teaching areas for years 3, 4, 5 and 6 would be provided, as well as a food science /DT room, the staff room, a small hall, and ancillary functions.

- 3.3 It is proposed that the building would occupy a broadly 'L' shaped footprint within the site, with the frontage of the building measuring approximately 55 metres. The external walls to the building would be constructed from exposed brickwork and through coloured render in off-white, with the proposed flat roof to be constructed from 3 layered roofing felt over tapered insulation. Windows and doors would be constructed from powder coated aluminium, finished in grey, with red coloured panels also introduced between random windows. A covered walkway projecting approximately 3.5 metres from the building would extend the entire length of the building's frontage and wrap around its south-western corner before terminating adjacent to the secondary entrance on the southern elevation. It is proposed that lettering would be installed above the walkway reading 'Nerrols Primary School'.
- 3.4 The remainder of the site would be used to accommodate a 3G artificial grass sports pitch; hard sports area; informal soft play areas; wildlife habitat areas; nursely outdoor play area; staff car parking area comprising 30 car parking spaces; secondary parking area comprising 2 x disabled spaces, 2 x motorcycle parking, and 3 x standard spaces; 50 cycle storage spaces; and the site access.
- 3.5 The site access is located on Nerrols Drive, on the western site boundary, and would facilitate access from the public highway to the main vehicular entrance at the site's southern boundary. It is anticipated that it would serve the school, as well as the commercial area to the immediate south of the site, once it is developed. The access was granted planning permission as part of the outline planning permission reference 08/10/0024 and has now been constructed. Consequently it does not form part of this application.
- 3.6 It is proposed that the existing boundary vegetation would be retained where possible, which would be complemented by new boundary treatments and on-site hard and soft landscaping.

4. Background

- 4.1 Taunton Deane Borough Council's Core Strategy adopted 2012 sets out the Borough's strategic sites and their broad locations. In this regard, Policy SS 2 identifies Priorswood / Nerrols as a site for 'a new sustainable neighbourhood' to include among other things:
- 900 dwellings, 25% of which must be affordable, at an average of 35-40 dwellings per hectare;
 - A mixed use local centre incorporating retail; financial and professional services; restaurants and cafes; drinking establishments; live/work units; dwellings; and community facilities;
 - A new primary school;

- A country park;
 - Bus rapid transit infrastructure;
 - A highway link;
 - An energy centre;
 - Strategic SUDS infrastructure;
 - A green necklace providing allotments, outdoor recreation and wildlife habitat.
- 4.2 The Core Strategy also includes a Concept Plan to accompany Policy SS 2, which identifies a broad location for a primary school. It is noted that the location is some way to the north of the application site that has come forward as the current application.
- 4.3 Taunton Deane Borough Council granted outline planning permission, with all matters reserved for future consideration except access, on 14 December 2012 for the erection of up to 630 residential dwellings, live-work units, retail space, other mixed use development and open space to include play areas and linear park, and associated landscaping at land off Nerrols Drive, Taunton. A Section 106 legal agreement accompanied the planning permission; Plan 2 of which identified the site for the new primary school as being the site that is the subject of this planning application (the 'Primary School Land'). For the avoidance of doubt; the planning permission did not grant outline planning permission for the school.
- 4.4 Taunton Deane Borough Council subsequently granted Reserved Matters planning permission on 17 March 2016 for *'approval of reserved matters following outline application 08/10/0024 in respect of appearance, landscaping, layout and scale for the erection of 260 no dwellings with associated works on land off Nerrols Drive, Taunton'*. This planning permission relates to the part of the wider development site to the immediate north and north-east of the application site. Again, the planning permission does not include the new school that is subject of this current application.
- 4.5 Subsequent to the above, the current application for the new school has been submitted by Somerset County Council for consideration.

5. The Application

5.1 Documents submitted with the application

- Location Plan
- Existing Site Plan
- Ground floor plan
- First floor plan
- Roof plan
- Elevations
- Site sections 1 of 2
- Site sections 2 of 2
- Landscape general arrangement
- Boundary treatment plan

- Planting plan
- Cover letter
- Application form
- Planning, Design and Access Statement
- Transport Assessment
- Interim Travel Plan
- Site Waste Management Plan
- Environmental Noise Report
- Arboricultural Impact Assessment and Arboricultural Method Statement
- Utility Statement;
- Revised Construction & Environmental Management Plan Rev.01, prepared by Wilmott Dixon dated 09/04/18;
- Preliminary Ecological Appraisal Update Survey
- CIL Liability form
- Flood Risk Assessment
- Geotechnical Statement
- Foul and Surface Water Drainage Strategy
- Construction & Environmental Management Plan (revised)

6. Environmental Impact Assessment (EIA)

- 6.1 An assessment of the proposed development in the context of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 has demonstrated that the proposal falls within Schedule 2, specifically project type 10(b); 'Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;' and that the proposal exceeds the applicable thresholds and criteria insofar that the development includes more than 1 hectare of urban development which is not dwellinghouse development. As such, it is necessary to screen the proposal to determine whether or not the effects on the environment associated with the development are likely to be significant. The screening process determines whether or not the proposal represents EIA development, and therefore whether or not an Environmental Statement is required.
- 6.2 The screening exercise has been undertaken using the selection criteria for screening Schedule 2 development, which is set out at Schedule 3 of The Regulations. As such, the characteristics of development; location of development; and types and characteristics of the potential impact have all been assessed. The appropriate design of the development; absence of sensitive areas; relationship between the site and residential properties in the locality; development of the wider area surrounding the site; and potential to use appropriate conditions to avoid, manage or mitigate the effects associated with the development, all combine to indicate that the effects would be unlikely to have a significant impact on the environment in this instance.
- 6.3 Taking account of the above, and for the reasons discussed, it has been concluded that the proposed development is Schedule 2 development; but that the associated effects on the environment are not considered to be significant.

Accordingly, the proposed development is not EIA development and an Environmental Statement is not therefore required. An EIA Screening Opinion has been completed, issued and placed on the Public Register accordingly.

7. Consultation Responses Received

External Consultees

7.1 Taunton Deane Borough Council –

Following the receipt of amended details for and subject to the suggested condition to ensure the provision of access mitigation works to include the provision of a N-S footpath and cycle link along the unnamed highway to the east of the site I formally withdraw the current objection and support the proposal.

Design

The building will be a flat roofed two storey structure with a rendered upper section and brick lower section. This is out of keeping with the general development of the area which tends to be more simplistic without horizontal divisions of materials but there is a valid argument that buildings with a civic purpose should be different in order to stand out as key buildings within an area as I am sure this will. The materials are not specified but I consider that a local orange/red brick of high quality should be used in order to ensure a good standard to the finished structure.

Transport consultants have established that the greatest distance for pedestrians to walk to the site (without the eastern link in the approved masterplan) would be 680m, but this is 80m in excess of this Councils maximum walking distances to primary schools (policy A5). The provision of an easterly footpath and cycle link would reduce these distances to approx. 590m, within those maximums.

Noise

The submitted noise report does not identify any unacceptable noise implications on the new school however I cannot find any reference to considerations of the effect of noise from the school on the amenity of existing residential occupants, which was a significant problem at West Monkton Primary School, and I consider that this should be rectified.

Landscape and Boundaries

The western boundary of the site comprises a landscaping belt which was planted in association with the new Nerrols Drive highway. This has now become well established and provides a visual screen to the applications site. The proposal would retain a small proportion of the original planting (at the north and south) removing approx. 20m along the mid section in order to facilitate the provision of staff parking spaces. It is proposed to plant 8 new Acer trees equidistance along the "gap" up to the new western pedestrian access gates.

The buffer planting was introduced in order to strengthen the boundary between the edge of Taunton and open countryside beyond. Whilst this planting serves a valuable purpose the use of the land to the west is about to change to a public

service (education) one where the facility itself demands a presence within the area.

It is considered that with the hedge and tree along the boundary the impact on the street scene will be mitigated.

The northern boundary of the site borders the rear gardens and sides of residential properties developed as part of the allocated site. The proposal is to introduce hedging and additional trees along that boundary where the dwellings back onto the site to soften the visual impact of the proposal when viewed from those properties and low level planting adjacent to the side boundaries where the impact on the amenity is less.

Educational buildings have a requirement for secure sites in order to protect the environment for use by young people. The proposal is for a loop topped metal railing to be placed along the boundary of Nerrols Drive and the road to the south with a mixture of 1.8m weld mesh fencing along the remaining boundaries except for a section of 4.5m high weld mesh ball stop fencing along the eastern boundary adjacent to the playing pitch.

Conclusion

The NPPF (para 72) established that the Government attaches great importance to ensuring that there are a sufficient choice of school places to meet the needs of existing and new communities and Planning policy – Planning for Schools establishes a presumption in favour of the development of State Funded Schools. The need for a new primary school was identified within the site allocation SS1 and the site secured through a S106 agreement attached to the relevant outline planning permission. Since that permission the requirement for additional primary school capacity to cater for the new developments in the area has increased beyond that originally expected to the extent that this site, with permission for a 7 classroom school is being used to provide a two storey 14 classroom school. It is therefore considered to be acceptable in line with the NPPF presumption in favour and policy in principle. The layout of the buildings does not respect the existing highway layout but the fact that the buildings are set back from Nerrols Drive with landscaping along the boundary would reduce the importance of this within the street scene considerations and given the importance of the provision of the school this is considered to be acceptable.

In preparing this report the planning officer has considered fully the implications and requirements of the Human Rights Act 1998.

7.2 Taunton Deane Borough Council Landscape and Biodiversity Officer

Landscape

The development is rather cramped on this small site. I have concerns regarding the amount of vegetation removal required to accommodate the proposal. In fact I understand that a lot of vegetation has already been removed which may have impacted on the wildlife on site (nesting birds and reptiles).

Please consult with the tree officer on the encroachment of the retained tree and other TPO trees on site.

Why is the main vehicular access to the site from a temporary access road?

Full landscape details are required.

Biodiversity

A preliminary ecological appraisal update survey was carried out by Abricon in January 2018. Findings were as follows

Badgers

The surveyor found no badger activity although a disused sett was identified on site. This sett should be rechecked prior to the commencement of any development.

Bats

The retained oak tree has features that may be used by bats. No works should take place on the tree without an aerial inspection. There should be no light spill on this tree in fact external lighting should be controlled due to the proximity of Hestercombe Sac to the site.

Birds

Birds are likely to use vegetation on site.

Reptiles

Previous reports identified reptiles on site. The surveyor recommended a translocation exercise. The report recommends that an ecological Management Plan be put in place prior to commencement of works on site.

7.3 Taunton Deane Borough Council Tree Officer –

It's a shame that much of the nicely-established native tree and shrub planting on the west side has to go, but presume no other layout possible? Otherwise, subject to the mature oak being properly fenced during construction, no objection from me.

7.4 Cheddon Fitzpaine Parish Council –

The Parish Council of Cheddon Fitzpaine met on Thursday 8 February 2018. The following comments are made:

- The Parish Council understands the requirement for the new primary school and for the increase in class size from 7-14 classes.
- The Parish Council support the project as a whole.
- The Parish Council supports school activities such as forest school, and other outdoor activities, to ensure the healthy development of the children. Therefore with the new country park opening on the East side of the school & the Northwalls Grange development, the Parish Council believes that there

should be a provision in the application for a footbridge to be installed over the Maiden Brook to encourage a safe route for children to and from the country park and the school;

- Parking Spaces, whilst the Parish Council understands the need to limit parking spaces at the school, we believe it is important that the residents of Northwalls Grange & Nerrols are not impacted by parents blocking the roads to drop their children off at school. Provision needs to be made to ensure that the highways, especially the residential roads are protected for residents;
- Outside lighting: Reference to the Joint Neighbourhood Plan with West Monkton requires that 'Dark Skies' to be taken into account. Local residents request car park lights not to be lit overnight.

7.5 Sport England –

The proposal is for the construction of a 2 form entry Primary School and Nursery, including associated access arrangements, car parking, 3G Sports Pitch and hard and soft landscaping

Sport England has assessed the application in the light of Sport England's Land Use Planning Policy Statement 'Planning for Sport Aims and Objectives'. A copy of which can be found at:

<http://www.sportengland.org/facilities-planning/planning-for-sport/aims-and-objectives/>

The statement details Sport England's three objectives in its involvement in planning matters:

- Protect existing facilities;
- Enhance the quality, accessibility and management of existing facilities;
- Provide new facilities to meet demand;

By providing a new pitch and new sports facilities that could help address established demand and deficiencies, the proposal would meet objective 3, and therefore Sport England supports this application in principle.

Is the scale of the facility and support accommodation right? For good community use we recommend adequate storage with foyer/reception for community use, changing and toilet accommodation. Some showers in cubicles. Facilities for disabled people, provision for first aid, cleaners store. Ease of circulation space, no long narrow corridors.

We note the proposed football pitch is artificial grass, also known as 3G when constructed with a football bias. The dimensions are unclear but it appears to be aimed at youth football. The dimensions would need to be checked against the FA recommended pitch sizes (see below).

What is the proposed specification for the 3G pitch? 40mm is not the preferred pile length for football. Hockey have a mandate not to play on 3G. It will have limited community access if it does not have sports lights as it will be busiest for the community in the dark months to aid any business plan for the 3Gs maintenance and management.

Distance to and from the 3G to the changing. Well lit? Signage? Mitigate contamination of the 3G?

Some sports require a grass surface and once grass is lost the chances of the land ever returning to grass are extremely remote. Artificial surfaces do not necessarily provide a direct replacement for grass pitch use as they only make a limited contribution to competitive grass pitch sports use. They are expensive to provide and require a significant revenue support. It is necessary to allocate significant budgets for on-going maintenance requirements. In addition a year on year sinking fund is required to ensure facilities are replaced when they are "worn out".

The MUGA / hard sports area should be built in accordance with Sport England's technical guidance notes. Sport England would expect that the proposed MUGA is fenced, would use a porous MacAdam surface with non-slip coat and identifiable line markings for different pitch and court sizes in line with our guidance Comparative sizes of sports pitches and courts, September 2015 <https://www.sportengland.org/facilities-planning/tools-guidance/design-and-cost-guidance/artificial-sports-surfaces/> . SAPCA also has some useful technical guidance on MUGAs <http://www.sapca.org.uk/technical-guidance/multi-use-games-areas-mugas>

Will the MUGA have lights to aid community use and support a 'back to netball' type physical activity intervention?

The Main Hall (180 sqm) – will the indoor space cater for fitness classes / martial arts etc?

Parking (cars and cycle) / signage lighting to the community use entrance. Is the proposed acceptable or will it need to be improved? It is hard to make an assessment on the submitted information.

The Football Foundation, on behalf of The FA, advise that there is limited information on the planning application in relation to the 3G football turf pitch (FTP) and therefore it is not clear if the plans presented would be compliant for grassroots football. Please ensure that the below is met and consistent with the below design principals for a 3G FTP:

Construction Quality – Ensure the pitch is constructed to the FIFA Quality Concept for Football Turf – FIFA Quality (old FIFA 1*) accreditation or equivalent International Match Standards (IMS) as a minimum and meets the recommend pitch size of (including run-offs) 100x(106m) x 64m(70m). It is not clear from the planning application what the pitch dimensions are for the 3G FTP, therefore we

recommend the following 3G FTP dimensions to be constructed depending on the size/format of the pitch:

The FA Guide to 3G Football Turf Pitch Design Principles and Layouts

Summary of Key FA Technical Standards

- Where football is the primary sport, all new 3G FTPs should be constructed to one of the following FA recommended sizes:

The FA Recommended Pitch Sizes		Recommended size without runoff (safety area around pitch)				Recommended size including runoff (safety area around pitch)				Recommended size of goal posts			
Age grouping	Type	Length x width (metres)		Length x width (yards)		Length x width (metres)		Length x width (yards)		Height x width (metres)		Height x width (ft)	
Mini-Soccer U7/U8	5v5	37	27	40	30	43	33	46	36	1.83	3.66	6	12
Mini-Soccer U9/U10	7v7	55	37	60	40	61	43	66	46	1.83	3.66	6	12
Youth U11/U12	9v9	73	46	80	50	79	52	86	56	2.13	4.88	7	16
Youth U13/U14	11v11	82	50	90	55	88	56	96	61	2.13	6.40	7	21
Youth U15/U16	11v11	91	55	100	60	97	61	106	66	2.44	7.32	8	24
Youth U17/U18	11v11	100	64	110	70	106	70	116	76	2.44	7.32	8	24
Over 18 (senior ages)	11v11	100	64	110	70	106	70	116	76	2.44	7.32	8	24

- The FA advise organisations solely looking to develop small-sided commercial FTPs to adhere to the design principles within this document; to maximise the

Testing – That the 3G pitch is tested and subsequently FA registered on completion and then every three years for grassroots football and every 1 year for football in the National League System. This will enable the 3G to be used for league matches and therefore help the 3G pitch to be used to its maximum potential by programming matches at peak times.

Pricing - Pricing policies must be affordable for grass roots football clubs and should be agreed with the Somerset County Football Association. This should include match-rates at weekends equivalent to the Local Authorities price for natural turf pitches.

Sinking fund - Ensure that sinking funds (formed by periodically setting aside money over time ready for surface replacement when required – FA recommend £25k per annum (in today's market for a full size pitch) are in place to maintain 3G pitch quality in the long term. When a 3G FTP is not a full-size the following sinking fund amounts must be ringfenced for the replacement of a 3G FTP at the end of its usable life: -

U13 / U14 (88m x 56m) = £18,000 per annum

9v9 (79m x 52m) = £15,000 per annum

Mini-Soccer (60m x 40m) = £10,000 per annum

Design:

General – 3G AGP designs to be in line with FA recommendation and should be checked against The FA Guide to Football Turf Pitch Design Principles and Layouts.

Line marking – We recommend that over-marking are made to allow different formats of football (e.g. 5v5, 7v7, 9v9 and 11v11). Over-marking should adhere to The FA Guide to Football Turf Pitch Design Principles and Layouts and can be painted on.

Recessed fencing – We recommend that the fencing is recessed to allow for safe and easy goal storage.

Fence height – The FA recommend fence height on all sides of a 3G AGP is 4.5m.

Run-off - A minimum safety run off 3m should be provided.

No flood lights – To maximise community use, the 3G AGP should be floodlit.

Strategic Need – We need to understand further information on what the current demand would be for this facility to serve the local community.

Community Use Agreement - That a community use agreement is agreed with Sport England and Somerset County FA in line with the intended usage levels of the facility.

In order for The Football Foundation, on behalf of The FA to comment on this scheme and make a clear recommendation we would require further information as identified above.

Making better use of existing resources contributes to sustainable development objectives by reducing the need for additional facilities and the potential loss of scarce resources such as open space. The practice of making school sports facilities available to wider community use is already well established and has been government policy for many years, but there are further opportunities to extend this principle within the education sector through programmes such as Academies and to other privately owned sports facilities, to help meet the growing demand for more and better places for sport in convenient locations.

Sport England promotes the wider use of existing and new sports facilities to serve more than one group of users. Sport England will encourage potential providers to consider opportunities for joint provision and dual use of facilities in appropriate locations.

Sports facilities provided at school sites are an important resource, not just for the school through the delivery of the national curriculum and extra-curricular sport, but potentially for the wider community. There are also direct benefits to young people, particularly in strengthening the links between their involvement in sport during school time and continued participation in their own time. Many children will be more willing to continue in sport if opportunities to participate are offered on the school site in familiar surroundings. Many schools are already well located in terms of access on foot or by public transport to the local community and so greater use of the sports facilities outside normal school hours should not add significantly to the number of trips generated by private car.

Use Our School is a resource to support schools in opening their facilities to the community and keeping them open. It provides tried and tested solutions, real life practice, tips from people making it happen, and a range of downloadable resources. <https://www.sportengland.org/facilities-planning/use-our-school/>

Conclusion

Sport England recommends, based on our assessment, that there a number of issues to address to ensure the proposal is fit for purpose in relation to sport and in particular community sport.

If the Council is minded to approve the application, the following planning conditions should be imposed.

1. Prior to the bringing into use of the [named sports facility)(a Management and Maintenance Scheme for the facility including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England. (For AGP's add: The approved Management and Maintenance scheme shall include measures to ensure the replacement of the artificial surface within a specified period) The measures set out in the approved scheme shall be complied with in full, with effect from commencement of use of the [named sports facility].

Reason: To ensure that new facility/ies is capable of being managed and maintained to deliver a [facility] which is fit for purpose, sustainable and to ensure sufficient benefit of the development to sport (National Planning Policy Framework (NPPF) para 74) and to accord with LP Policy **

2. No development shall commence [or such other timescale] until a community use scheme has been submitted to and approved in writing by the Local Planning Authority [after consultation with Sport England]. The scheme shall apply to [describe facilities] and shall include details of pricing policy, hours of use, access by non-educational establishment users/non-members, management responsibilities, a mechanism for review and a programme for implementation. The approved scheme shall be implemented upon the start of use of the development [or other agreed timescale] and shall be complied with for the duration of the use of the development.

Reason: To secure well managed safe community access to the sports facility, to ensure sufficient benefit to the development of sport and to accord with LP Policy **.

The absence of an objection to this application in the context of the Town and Country Planning Acts, does not in any way commit Sport England's or any National Governing Body of Sport's support for any related application for grants funding.

We would be grateful if you would advise us of the outcome of the application by sending us a copy of the decision notice.

7.6 Environment Agency –

No response.

7.7 Highways England –

No response.

INTERNAL CONSULTEES

7.8 Cllr Guiseppe Fraschini –

No response.

7.9 Ecology –

A Preliminary Ecological Appraisal of the proposed primary school site was carried out in 2017 by Abricon. The purpose of the Preliminary Ecological Appraisal was to provide an updated ecological assessment of the site, since previous ecological survey work had been carried out in 2009 to 2015 as part of the whole Nerrols residential development area.

The site of the proposed development consists of improved grassland, scattered trees, scattered scrub, fence and bare earth; bounded by mature hedgerows. Other habitats identified within the 2017 survey area include semi-improved neutral grassland and marshy grassland. The field was formerly in arable use but for the last two years has become fallow with a long sward of 50cm.

The report correctly identifies that the site lies within 2km of the Hestercombe House SAC, which is designated for its population of lesser horseshoe bats. A Habitats Regulations Assessment was carried out for the whole Nerrols site (Taunton Deane Planning Application 08/10/0024) in 2011 and included the land on which the proposed school is planned. The result of the HRA required that 3.15ha of replacement habitat be planted to mitigate the effects of the loss of habitat caused by the whole residential development. It also required the planting of a 20 metre woodland buffer around the outer edges of the development. This application is for an area of land enclosed by residential development, which I consider has already been assessed in the Habitats Regulations Assessment carried out in 2011 and that replacement habitat should have already been provided. Therefore, I do not intend to carry out a 'test of likely significant effect' for the application.

An oak tree along the southern boundary of the proposed school site has been identified as potentially supporting bat roosts. However, no roost survey has taken place to determine whether it is actually used by bats or not. According to submitted plans the oak tree is to be retained within the playing field for the school so was considered by Abricon to be unnecessary provided the tree is left untouched by the development. However, I consider that there are potential effects from disturbance to individual bats from construction activity in the vicinity

of the tree and subsequently from any lighting installed at the school. Individual bats are protected from intentional or reckless disturbance under the Wildlife and Countryside Act 1981 (as amended). I would recommend that the following are conditioned:

- Prior to the commencement of any groundworks and vegetation clearance a bat roost survey of the oak tree located on the southern boundary of the development hereby permitted shall be carried out and the results along with any mitigation actions to avoid disturbance to individual bats during construction works will be submitted to and approved in writing to the County Planning Authority.

Reason: A pre-commencement condition in the interests of protected species

- Prior to occupation, a “lighting design for bats” shall be submitted to and approved in writing by the local planning authority. The design shall show how and where external lighting will be installed (including through the provision of technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design. Under no circumstances should any other external lighting be installed without prior consent from the County Planning Authority.

Reason: in the interests of the Favourable Conservation Status of populations of European protected species

Abricon reported that, ‘No new badger activity was found on site, with the outlier sett identified underneath the mature oak showing no signs of recent activity’. It was considered that ‘Replacement habitat has been implemented within the wider development site and therefore it is considered highly unlikely that badgers will be impacted by the proposed works’. However, given the dynamic nature of badgers occupying setts I would recommend that the following is conditioned:

- Prior to the commencement of any groundworks and vegetation clearance a survey for badger setts shall be carried out for the development hereby permitted to ensure that no new badger activity has occurred by a competent ecologist. A letter will be sent by the ecologist confirming the results of the survey and of any mitigating actions that might be required to the County Planning Authority

Reason: A pre-commencement condition in the interests of protected species

The boundary hedgerows, scattered scrub and trees offer suitable habitat for nesting and foraging birds. It is understood that the majority of this habitat is to be retained. Without mitigation, the removal or management of the vegetation may

result in the destruction of nests and could result in killing, injury, and disturbance of birds and/or dependent young if they are present at the time. The following should be conditioned:

- No removal of hedgerows, trees or shrubs that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the County Planning Authority.

Reason: in the interests of nesting wild birds

Between the 2009 and the 2015 survey a low population of slow-worms have been identified on the application site, with a low population of common lizard being identified within the land to the south of the application site, along with grass snakes known to be present in this area due to a slough being identified. Without mitigation, there is potential for an adverse impact on reptile species due to animals being killed or injured as a result of site clearance and development activities. In addition, without mitigation there is a potential for an adverse impact on reptile species present within the habitat south of the application site due to the proposed development, reducing habitat connectivity from the reptile habitat remaining within south of the application site to the replacement reptile mitigation habitat within the wider development site.

- Prior to the commencement of any groundworks and vegetation clearance a "reptile mitigation strategy" shall be submitted for the development hereby approved and adjoining land to the south within the developer's control and submitted to the County Planning Authority for written approval. Where translocation is required the site shall be identified, surveyed to ensure the absence of reptiles to avoid habitat crowding, and described. No groundworks shall commence until the "reptile mitigation strategy" has been implemented in full.

Reason: A pre-commencement condition in the interests of protected species

7.10 Local Highway Authority –

With reference to the above mentioned planning application received on 26th January 2018, sufficiently revised plans received thereafter (12th March 2018) and following a site visit the Highway Authority has the following observations on the highway and transportation aspects of this proposal.

Land off of Nerrols Drive 08/10/0024

The Highway Authority has previously commented on the outline and subsequent reserved matters applications with regards to phase one of development at

Nerrols. The principle of development set out in 08/10/0024 was accepted by the Planning and Highway Authority dated 01/12/2011 and a resolution to grant in December 2012. Whilst the traffic impact of the proposed school was not included within the 08/10/0024 the land was provided as part of the s106.

A Transport Assessment (TA) has been produced by Curtins, to support the proposed application. It should be noted that some of the information within the TA is not considered accurate; however, this is not considered to significantly alter the Highway Authority's view on the proposal and overall recommendation.

Site Location

The site is located within the Nerrols Allocation where a new development of up to 630 dwellings are currently being built out. The site is bordered by Nerrols Drive and Bossington Drive to the west. To the north and north east of the site the new Nerrols development known as North Walls Grange is under construction. The school site is located to the north of the A3259 / Venture Way roundabout. Vehicular Access from Nerrols Drive into the school and commercial area was secured within the 2010 application and has been constructed as part of the North Walls Grange application.

Existing conditions

Access to the school from the main road will be gained from Nerrols Drive as mentioned above. Internally there will be a school access which is considered within this response. Nerrols Drive is subject to a 30mph speed limit, recent works along Nerrols Drive in association with consented developments have predominantly reduced the width by building in right turning lanes for the North Walls Grange development. The A3259 which runs to the southeast of the site is subject to a 40mph speed limit. Two toucan crossings have recently been installed connecting the Priorswood and Summerleaze areas with the school across Nerrols Drive in the south, the second crossing connects Waterleaze to the Nerrols Site across the A3259, both of which are considered to be beneficial to the proposed school.

Accidents

A number of Personal Injury Accidents (PIA's) have been recorded surrounding the site. A number of accidents involved cyclist, the increased provision of facilities for pedestrians and cyclists in relation to the Nerrols allocation is considered appropriate in reducing such accidents. Therefore no further mitigation is required.

Proposed development

The development proposal consists of a new two-form entry primary school with a nurse, on site kitchen, hard play areas and staff parking. The school building is proposed over two-storey's comprising of 2,390 sqm, accommodating up to 420 school students and 26 places and 40 members of staff. The school is proposed to open for the start of the 2019/20 academic year. It is anticipated that the county will stagger the school enrolment over three to four academic years. It is

assumed given the Somerset County Council's two tier school system, the school will cater for aged children of 4 to 11 and rather than age 9 outlined within the planning documents.

Operating hours

It is proposed that the school's opening hours will be typical of other schools in Somerset with the school day commencing around 9am and school finishing around 3:30pm. With breakfast and afterschool clubs, operating one hour before school and two hours after the school day ending. The arrival of staff and pupils of the proposed school will predominantly impact on the AM peak. Deliveries should be restricted outside of the school start and finish times to reduce conflict of movements, which should be secured by planning condition.

Access

Access to the school is proposed to be in the form of a simple priority junction. The proposed commercial development access will be provided under a separate application; the access to the school is not considered to preclude the commercial access and should be secured by planning condition. Therefore a condition is required as the General Arrangement Plan Rev.P23 does not show appropriate carriageway alignment and footway provision.

The access to this school will be gated which will open inwards and the carriageway width will be 5.5 metres with a turning radius of 6 metres. Visibility splays are to be provided in line with Manual for Streets (MfS), and will provide 25 metres to both the east and west from a setback of 2.4m which is compliant with MfS based on a speed limit of 20mph which is considered appropriate in this location.

The delivery of the access and footpaths will need to be secured within an appropriate licence or legal agreement.

Drop off and pick up strategy

Reference is made to the car park being designated for staff only, which is accepted. Limited spaces for nursery drop off and pick up should ideally be provided. Reference has been made to a Park and Stride for the school; however, how this will be delivered is not clear. This should form part of the Travel Plan, if it is considered deliverable.

Pedestrian and cycle connections

Three pedestrian access points are detailed on the Landscape General Arrangements Plan Revision P23. However limited reference is made to the third gate which is located to the east of the site (through the spectating area) this gate and link is considered essential to ensure connectivity and encourage walking to school from the whole development. This should be secured by planning condition.

Section 4.2.7 of the TA makes reference to requests from SSC Highways officers to connect North Wall Grange with the school site by foot (this is assumed that this is the eastern boundary). The TA mentions that the eastern link would have

little benefit given the Nerrols Drive detour, however, the Highway Authority disagree and believe this is essential to meet the required walking distance to school.

The TA appears to overlook the benefits of the segregated eastern Link that was detailed with the wider Nerrols Allocation Masterplan. The role of the eastern link was proposed to provide a convenient safe and direct foot/cycle access to the school and local commercial centre which was the reason it was incorporated into the masterplan, which has not been mentioned in this section but reference elsewhere in the TA. The consented Reserved Matters residential layout precludes delivery of the masterplan route. Therefore the Highway Authority have no objection in principle to the utilisation of the existing public right of way and highway to the east of the site for access (subject to sufficient mitigation mentioned subsequently within this response). It should be noted that mitigation measures will be required to ensure a safe route is delivered which will need to appropriately accommodate pedestrians, as in its current form walking would not actively be promoted at the south end of the Lane. It is recommended that improvements to the 'green link' will form a planning condition.

Proposed car and cycle parking

It is acknowledged that the capacity of car parking spaces provided within the development proposal is adequate and future management of these should occur. The SCC policy states that the car parking allocation equates to 15 staff spaces. On this occasion the Highway Authority accept the recommended 30 spaces, given the amount of staff who will be working on site and its location. Cycle parking provision has been accepted that 52 spaces. This should be safe, secure, sheltered and accessible. Scooter parking should also be provided.

Travel Plan

A Travel Plan accompanies this application which has been reviewed by the SCC Travel Plan Team. There are a few minor amendments required to this document, which should include the measures and commitment to the Park and Stride. The Highway Authority will issue the Travel Plan Audit to the Transport consultant for review. 12 months after occupation of the primary school, the school should carry out their first school travel survey and then update/produce a school travel plan. An annual update should then be submitted to the Travel Plan team, outlining what measures will be implemented and details of pupil locations.

Within 12 month of opening a revised, updated school Travel Plan based on actual travel patterns will be conditioned to be provided.

Traffic Forecasting

Traffic counts and junction analysis at a number of junctions which were agreed with the Highway Authority have been undertaken. The assessments and traffic growth factors are considered robust and appropriate. A number of assessments have been undertake to test the development scenario in the opening and future years. All junctions with the exception of the Obridge Roundabout operate within theoretical capacity with and without the school development. The Obridge Roundabout currently operates at or over theoretical capacity in the both AM and

PM peaks. Traffic associated with the school is not considered to significantly add to the existing queue and delay at the junction. There are some improvements proposed in line with the wider Nerrols allocation at the Obridge Roundabout, and future proposals to improve a high quality bus provision which will offer an alternative to private car travel. With minimal impact at the junction mitigation is not requested in association to the school application.

The proposed trip generation for the site has been calculated using TRICS (an industry recognised data base) and is considered reasonable. The Travel Plan proposals will aim to reduce the number of single occupancy car trips and the location of the school being in close proximity to a number of residential areas encourage people to walk or cycle to school.

Distribution

It is proposed that 50% of pupils are expected to reside on the Nerrols site with the other 50% residing on surrounding estates, which is considered a reasonable assumption. The TA goes on to specify Travel Areas, some of these areas are not considered to typically draw to schools in this area, however with the school only having a catchment criteria if it is oversubscribed based on distance there could be some cross town travel. As mentioned above safe routes to school should be addressed providing an eastern link.

Drainage

I acknowledge receipt of the Flood Risk Assessment, Ref. C-07437 issue 3 dated January 2018, and the only observation I have is that this report is constrained to an assessment of the Flood Risk to/from the development and doesn't extend to propose any drainage strategy. It is important that the highway authority is afforded the opportunity to comment on any subsequent surface water management strategy that is developed.

Construction and Environmental Management Plan

I have reviewed the submitted Construction and Environmental Management Plan, dated 08 January 2018, and would comment on the contents as follows: further clarification is required regarding the proposed measures to manage the parking associated with the construction phase of this development to prevent parking occurring on Nerrols Drive. Due to the configuration of right turn lanes, central hatching, splitter islands and pedestrian crossing points along Nerrols Drive, any on street parking along this route could compromise the safety of road users and this Management Plan needs to recognise and manage this risk. Because amendments are required to this document a condition is recommended.

Conclusion

The application as submitted is not expected to have a substantial impact upon the local highway network or highway safety. In light of the above the Highway Authority raise no objection to the proposal subject to the following conditions:

- Prior to commencement of the development detailed plans of the school access (link to Nerrols Drive, footways, visibility splays, gates, etc) shall be submitted to and approved in writing. The access shall therefore be

- constructed in accordance with the approved plans prior to first occupation.
- No development shall commence unless a Construction and Environmental Management Plan has been submitted and approved in writing by the Planning Authority. The works shall be carried out strictly in accordance with the approved plan. The plan shall include:
 - Construction vehicle movements and number of vehicles per day;
 - Construction operation hours;
 - Construction vehicular routes to and from the site;
 - Construction delivery hours;
 - Car parking for contractors;
 - Specific measures to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice;
 - A scheme to encourage the use of Public Transport amongst contractors; and
 - Measures to avoid traffic congestion impacting on the Strategic Road Network.
 - The applicant shall ensure that all vehicles leaving the site during construction are in such condition as not to emit dust or deposit mud, slurry or other debris on the highway. In particular (but without prejudice to the foregoing), efficient means shall be installed, maintained and employed for cleaning the wheels of all lorries leaving the site, details of which shall have been agreed in advance in writing by the Planning Authority and fully implemented prior to commencement of development and thereafter maintained until the construction of the site discontinues.
 - The proposed pedestrian accesses (3) shall incorporate pedestrian visibility splays on both its sides to the rear of the existing footway / carriageway based on co-ordinates of 2.0 metres x 2.0 metres, with an obstruction above 300mm. Such splays shall be fully provided before the accesses hereby permitted are first brought onto use and shall thereafter be maintained at all times.
 - A Travel Plan shall be submitted to and approved in writing by the Planning Authority. All the recommendations within the approved Travel Plan shall be implemented in accordance with the timetable therein. Thereafter the development shall operate the Approved Travel Plan or any variation of the Travel Plan agreed in writing by the Local Planning Authority. Within 12 months of opening a revised, school Travel Plan based on actual travel patterns will be conditioned to be provided.
 - Details of the pedestrian access to Nerrols Farm Lane shall be submitted to and approved in writing by the Planning Authority. This access shall then be delivered in accordance with the approved drawings prior to first occupation of the school and shall remain in place until such a time as an alternative east/west link is provided.
 - No work shall commence on the development site until an appropriate right of discharge for surface water has been obtained before being submitted to

and approved in writing by the Local Planning Authority. A drainage scheme for the site showing details of gullies, connections, soakaways and means of attenuation on site shall be submitted to and approved in writing by the Local Planning Authority. The drainage works shall be carried out in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.

- The Development hereby permitted shall not be commenced until, 30 parking spaces for the school site and associated uses and a properly consolidated and surfaced turning space for vehicles have been provided and constructed within the site in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority. Such parking and turning spaces shall be kept clear of obstruction at all times and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.

ADDITIONAL COMMENTS RECEIVED 16.4.18

School parking is always a concern in residential areas. The Travel Plan has a commitment to reduce signal occupancy car trips and the TA states that 50% of pupils are expected to reside at North Wall Grange with the remaining 50% expected to reside within walking distance. There is also reference to a park and stride and in time the commercial centre is likely to accommodate some of the trips associated with the school.

There is not a known parking issue in the surrounding in the area at present. Therefore at this stage the Highway Authority would not recommend a TRO without evidence to support that it would be required (due to cost, enforcement, etc).

The commitment with the Travel Plan will expect the school to adhere to the measures and targets. Once occupied the school's TPC will encourage parents and staff to respect the local community, and each driver as part of the Highway Code has the responsibility to follow the code and park respectfully and sensibly. Whilst for some residents increased parking might not be ideal this is roughly a 15 minute twice a day inconvenience.

If the parking does become an issue when the school is open for use then the Traffic Management team will look in to measures to prevent this. However other than the school yellow zigzags, there are many schools that I can think of (in residential areas benefit from yellow lines or other enforced measures).

ADDITIONAL COMMENTS RECEIVED 25.4.18

In response to consultation on a revised proposed Construction Environmental Management Plan, the LHA requires a highway condition survey of the highway surface to be undertaken prior to work starting on site, as an amendment to the revised Construction Environmental Management Plan.

7.11 Planning Policy –

No response.

7.12 Rights of Way –

I can confirm that there is a public right of way (PROW) recorded on the Definitive Map that runs adjacent to the site at the present time (public footpath T 5/14). I have attached a plan for your information.

We have no objections to the proposal, but the following should be noted:

1. Specific Comments

Any proposed hedgerow planting adjacent to the PROW will need to be maintained to ensure that there is no encroachment on the PROW.

2. General Comments

Any proposed works must not encroach on to the width of the PROW.

The health and safety of the public using the PROW must be taken into consideration during works to carry out the proposed development. Somerset County Council (SCC) has maintenance responsibilities for the surface of a PROW, but only to a standard suitable for the public use. SCC will not be responsible for putting right any damage occurring to the surface of a PROW resulting from vehicular use during or after works to carry out the proposal. It should be noted that it is an offence to drive a vehicle along a public footpath, public bridleway or restricted byway unless the driver has lawful authority (private rights) to do so.

If it is considered that the development would result in any of the outcomes listed below, then authorisation for these works must be sought from Somerset County Council Rights of Way Group:

- A PROW being made less convenient for continued public use.
- New furniture being needed along a PROW.
- Changes to the surface of a PROW being needed.
- Changes to the existing drainage arrangements associated with the PROW.

If the work involved in carrying out this proposed development would:

- make a PROW less convenient for continued public use; or
- create a hazard to users of a PROW,

then a temporary closure order will be necessary and a suitable alternative route must be provided. For more information, please visit Somerset County Council's Rights of Way pages to apply for a temporary closure:

<http://www.somerset.gov.uk/environment-and-planning/rights-of-way/apply-for-a-temporary-closure-of-a-right-of-way/> .

7.13 **SCC Acoustics Advisor –**

No noise objection to this development subject to the imposition of two planning conditions to cover use of the external sports facilities and to adopt the proposed Construction & Environmental Management Plan.

I have raised with you the following concerns/comments:

- The planning need for more detail on noise from the use and construction of the school and my concerns with potential increased use of pitches.
- The noise measurements provided by the consultants had been made at a representative building location and were therefore closer to Nerrols Drive than the A3259 and the position was not equidistant from these roads as stated.
- The missing indication of the monitoring location on the plan arose when an earlier plan was replaced in the draft report.
- It did not appear that pitch layout was known when the noise report was undertaken.
- I raised my concern with the assumption that an allowance, that might be applied to the assessment of IANL (+5dB on Table 1 IANLs when under natural ventilation), had been wrongly applied to define the guidance limits that might suggest whether designs could simply incorporate natural ventilation in the presence of such external noise. This has no consequence to the residential impacts of the development but may have consequence to achieving the required BB93 performance of the development.

The comments made by the agent as to potential new home owners having prior knowledge of a primary school development are of little consequence when dealing with any noise complaints if they were to arise from untypical noise impacts. However, clearly the identified development of a primary school will include an expectation for the presence of noise typical of a primary school. In my view this would include limited use of external features during a school day for both supervised periods of PE and play.

It would appear the details of sports facilities were not initially specified and as such housing development may not have taken consideration of any associated noise impacts at the housing design stage. It remains unclear if the buyers of housing would be aware of these sports facilities at the time of purchase however they probably have an expectation for a primary school with typical facilities. In my view typical facilities would not be expected to require flood lit sports areas and as such the installation of basic infrastructure to enable convenient installation of lighting at a later date did raise my concern.

Even without lighting it is my view that there will remain a risk that noise disturbance could arise if extended use of these facilities were not to be restricted before more detailed consideration could be made. I therefore recommend that operational constraints on the use of the external sports facilities be defined in any consent. The email of 7/3/18 now indicates that pitch location was dictated by the oak tree and this would seem logical once the location of the school had been

chosen. It is now also clarified that both flood lighting and community use of sports facilities is not anticipated and as such a condition limiting use to typical primary school operations would not appear to conflict with developer intention. Such a condition would, in my view, still be helpful to remove any uncertainty with regard to the issues that might arise with a potential escalation of sports facility use. As such I suggest the following condition:

Use of external sports facilities

The provision of external sports facilities shall be restricted to educational uses during weekday term-time periods between 08:30-17:00.

Reason – To limit the noise impacts on residential amenity

While information on expected primary school use of sports facilities has not been given, I would expect this will be limited to lesson periods within the teaching day, with late afternoon, evening and weekend use not required. While I would expect the noise from children using the pitch to be audible at nearest housing, I would think it unlikely for this noise to give rise to annoyance based on these expectations for its overall presence and regularity. Under such conditions of use I would not raise a noise objection to the development.

The prediction of construction noise impact has not been detailed however it would not be possible to avoid some noise impacts. Willmott Dixon have provided a comprehensive Construction & Environmental Management Plan (8/1/18) that details 7:30-18:00 weekday and 8:00-13:00 Saturday working hours along with sufficient noise and vibration mitigation measures. I therefore propose that this Plan form the agreed noise mitigation scheme to be adopted by the contractors prior to commencement of the development. To ensure this occurs I suggest the following condition:

Noise control and mitigation scheme

The developer shall minimise the noise impacts of construction by abiding with the details of the Construction & Environmental Management Plan of Willmott Dixon dated 8/1/18. Any requirement to deviate from this Plan shall first receive the written approval of the County Planning Authority.

Reason – To limit the noise impacts on residential amenity

Finally I would agree with the view that community use of the internal sports hall would not be likely to give rise to significant noise impact. As such I consider this use could be permitted within reasonable hours so as to minimise the risk of late night noise from vehicle movements in the car park close to housing.

7.14 Archaeology –

No response.

7.15 Local Lead Flood Authority (LLFA) –

The development indicates an increase in impermeable areas that will generate

an increase in surface water runoff. This has the potential to increase flood risk to the adjacent properties or the highway if not adequately controlled.

The applicant has indicated an intention to utilise onsite attenuation in the form of attenuation basins and buried cellular storage. the discharge will be to the existing watercourse controlled via a hydrobrake type system to greenfield Qbar rate for all storms up to an including 1:100 year plus 3-0%CC. However, they have not provided detailed designs, calculations and plans to support the application.

As you may already be aware, the West Of England SUDS guide puts a strong emphasis on providing multi-benefits within proposed SUDS schemes. This means that the scheme should not just be about providing water storage but about creating more naturalistic drainage features which have wider benefits to the environment and the community.

There is a really great opportunity here for a well thought out design that would enhance the school environment as well as providing for outdoor learning and play. The proposals appear to be limited to the provision of a detention basin and an attenuation tank. There is currently no details given on the use of the hierarchy of treatment stages and how these might be used to enhance the space around the school. This is one of the fundamental principles of designing SuDS (refer to the table below) and seeks to incrementally improve water quality at each stage of the scheme.

Table 2 The hierarchy of treatment stages within the management train.

Prevention	Site housekeeping measures including removal of soil and other detritus from hard-surfaces to reduce impact on water quality downstream. Use design to prevent polluted run-off from entering system. Scale: individual buildings.
Source control	Controlling rainfall at or very close to source by using e.g. permeable paving, green roofs, rain gardens and filter strips. Incorporates rain-harvesting features such as water butts. Scale: individual buildings.
Site control	Controlling run-off received from source control features in detention and retention basins, swales or other surface features. Scale: small residential or commercial developments.
Regional control	Controlling and storing the cleanest run-off received from the site. Scale: large housing developments, multiple sites which can be targeted for larger 'community-scale' SuDS features such as a wetland or group of wetlands. This is the final treatment stage and where there is any discharge via a controlled outflow to a stream or river, there should not be any negative impacts on water quality. Ideally, the discharge should improve stream water quality.
Conveyance features	Move water between the different treatment stages. This should be done using above-ground features such as swales and channels to maximise wildlife and people benefits.

The scheme needs to really review the site as a whole, take into consideration the natural topography and flow paths and then utilise these to create linked SUDS systems across the site – with the above management train in mind. There appears to be limited source control measures currently proposed as part of the scheme and no consideration for above ground conveyance features.

Consideration could be given to raingardens, small raised ponds and reed beds

with these interconnected to swales and other detention features further down the management train. This could, in turn, be linked through to perhaps a small habitat area. The best schemes incorporate a range of habitats that are good for water management and wildlife. Heather moorland, broadleaved woodland, wildflower meadows and reed beds all serve as natural sponges. Collection of water from roofs and hard surfaces can be linked by creative use of surface channels, rills and linear wetlands to move water around the school. Incorporating features such as cascades, spouts and water chutes can also add a sense of playfulness and visual interest in the context of the school environment.

Whilst the efforts made to incorporate some level of SUDS in the scheme is welcomed, more can be done to really make this an exemplar site for SUDS– not just for the school but for the wider community. These features needn't be expensive, and in fact, can often prove cheaper than alternative underground storage solutions such as attenuation tanks and underground conveyance systems such as drainage pipes.

There are some great examples out there for schools which we can provide further information on if you think this might be helpful.

Additionally, the connectivity of the ditch downstream needs to be confirmed prior to commencement – does it connect to the sewer as assumed? Is this connection intact? We would also like to see a plan that shows exceedence flow routes across the site and an implementation plan which shows how and when the stages of development will be progressed to ensure no short term risk of flooding.

The Management and Maintenance Plan is sufficient for the purposes of the pre-commencement condition.

The LLFA has no objection to the proposed development, as submitted, subject to the following drainage condition being applied.

Condition: No development shall be commenced until details of the surface water drainage scheme based on sustainable drainage principles together with a programme of implementation and maintenance for the lifetime of the development have been submitted to and approved in writing by the Local Planning Authority. The drainage strategy shall ensure that surface water runoff post development is attenuated on site and discharged at a rate and volume no greater than greenfield runoff rates and volumes. Such works shall be carried out in accordance with the approved details.

Reason: To ensure that the development is served by a satisfactory system of surface water drainage and that the approved system is retained, managed and maintained in accordance with the approved details throughout the lifetime of the development, in accordance with paragraph 17 and sections 10 and 11 of the National Planning Policy Framework, Paragraph 103 of the National Planning Policy Framework and the Technical Guidance to the National Planning Policy Framework (March 2015).

7.16 Public Consultation

Seven letters of objection have been received from members of the public in respect of the proposals, all of which raise one or more of the following points:

- Support the principle of a new school;
- Parking issues on roads within surrounding area;
- Lack of parking / drop off area on-site;
- Narrow width of Nerrols Drive could be an issue;
- Highway safety concerns;
- Measures to reduce speed on Nerrols Drive should be considered;
- Will proposed sports pitches be floodlit or used outside school hours;
- Will the mature Oak Tree be retained;
- Concerned about lorries turning in Nerrols Farm Lane;

8. Comments of the Service Manager – Planning Control, Enforcement & Compliance

8.1 The key issues for Members to consider are:-

- Whether the principle of development is acceptable;
- Whether the proposal represents sustainable development;
- The need for the development;
- Whether the design of the proposal is acceptable;
- Impact of the proposal on the highway network;
- Impact of the proposal on residential amenity;
- Impact of the proposal on biodiversity;
- Impact of the proposal on flood risk;
- Impact of the proposal on the existing Public Right of Way (PRoW).

8.2 The Development Plan

Planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the:

- Taunton Deane Core Strategy adopted 2012
- Taunton Deane Site Allocations and Development Management Plan (SADMP) adopted December 2016

8.3 Material Considerations

Material considerations to be given due consideration in the determination of the application include the following:

- National Planning Policy Framework March 2012 (NPPF)
- Chief Planning Officer's Letter: Policy Statement: Planning for Schools Development dated 15 August 2011
- Planning permission reference 08/10/0024 dated 14 December 2012 issued by Taunton Deane Borough Council for the erection of up to 630 residential dwellings, live-work units, retail space, other mixed use development and

open space to include play areas and linear park, and associated landscaping at land off Nerrols Drive, Taunton;

- Planning permission reference 08/15/0012 dated 17 March 2016 issued by Taunton Deane Borough Council for approval of reserved matters following outline application 08/10/0024 in respect of appearance, landscaping, layout and scale for the erection of 260 no dwellings with associated works on land off Nerrols Drive, Taunton.

8.4 Principle of development

Policy SS 2 of Taunton Deane Borough Council's adopted Core Strategy (hereafter referred to as 'the Core Strategy') allocates the area of Nerrols / Priorswood for a new sustainable neighbourhood. The policy requires, among other things, that a new primary school will be delivered. The accompanying Concept Plan in the Core Strategy identifies a broad location for the school as being to the north of the application site.

Outline planning permission was granted for the development of this allocated area by Taunton Deane Borough Council under reference 08/10/0024 on 14 December 2012. The Section 106 agreement accompanying the permission dated 26 November 2012 identifies the application site as being the site for the new school (the 'Primary School Land') on Plan 2 attached to the Section 106 agreement.

Taking account of the above, it is concluded that the principle of development of a new school on the application site is acceptable.

8.5 Does the proposal represent sustainable development?

Policy SD 1 of the Core Strategy reflects the presumption in favour of sustainable development contained within the National Planning Policy Framework (NPPF) and confirms that planning applications that accord with the policies in the Local Plan (and, where relevant, with policies in neighbourhood plans) will be approved without delay, unless material considerations indicate otherwise.

In this particular case, it is considered that the following assessment demonstrates that the proposal represents sustainable development, by reason that it satisfies the relevant planning policies within the Development Plan bolstered incidentally by the cited material considerations. Consequently, it is considered that the proposal accords with Policy SD1 of the Core Strategy.

8.6 The need for the development

The NPPF clarifies at paragraph 72 that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. To achieve this aim, paragraph 72 goes on to state that Local Planning Authorities should give great weight to the need to create, expand or alter schools.

- 8.7 The CLG Policy Statement: 'planning for schools development' reiterates the Government's stance, stating that it is firmly committed to ensuring that there is sufficient provision to meet growing demand for state-funded school places. To

this end, the planning system should operate in a positive manner when dealing with proposals for the creation, expansion and alteration of state-funded schools, and Local Planning Authorities should therefore take a positive approach towards proposals of this kind.

- 8.8 Policy SP2 of the Core Strategy anticipates that the Taunton urban area will accommodate at least 13,000 new homes and 9,500 new jobs over the plan period up to 2028. The policy notes that to achieve balanced and sustainable mixed-use communities, it will be necessary for the provision of (inter alia) school development to come forward. Core Strategy Policy CP5, which seeks to ensure that development proposals contribute to creating cohesive communities, is considered to be complied with in that the proposed school would provide essential infrastructure in helping to create part of a wider development that will create a social cohesive and inclusive community, and address accessibility to education facilities.
- 8.9 Taking account of the above, it is considered that there is clear policy support at national and local level for the type of development proposed and that there is an identified need within the area. On this basis, the proposal is considered to accord with the NPPF, and Core Strategy policies SP2 and CP5.
- 8.10 **Design of the proposal**
Policy DM 1 of the Core Strategy states that the appearance and character of any affected landscape, settlement, building or street scene must not be unacceptably harmed by the development; whilst Policy D7 of the Taunton Deane Site Allocations and Development Management Plan (SADMP) adopted December 2016 (hereafter referred to as 'the SADMP') requires development to create a high standard of design quality and sense of place.
- 8.11 The submitted plans show that the proposed school building would occupy a broadly 'L' shaped footprint within the site, with the frontage of the building measuring approximately 55 metres. The external walls to the building would be constructed from exposed brickwork and through coloured render in off-white, with the proposed flat roof to be constructed from 3 layered roofing felt over tapered insulation. Windows and doors would be constructed from powder coated aluminium, finished in grey, with red coloured panels also introduced between random windows. A covered walkway projecting approximately 3.5 metres from the building would extend the entire length of the building's frontage and wrap around its south western corner before terminating adjacent to the secondary entrance on the southern elevation. It is proposed that lettering would be installed above the walkway reading 'Nerrols Primary School'.
- 8.12 It is considered that the proposed building is of appropriate scale and massing for the site. The siting of the building back into the site, and the simple form of the building, would assist in reducing the perception of scale. This would ensure that the building would form an appropriate relationship with the site and within the wider streetscene. It is noted that the prevalence of render to the building's elevations is not replicated elsewhere within the immediate locality; however as noted in Taunton Deane's consultation response there is a valid argument for

civic buildings to stand out from other development to signpost the building's civic function. It is recommended that a planning condition be attached to any forthcoming planning permission to require samples of external materials to be approved by the County Planning Authority, to ensure that they are of suitable aesthetic quality.

- 8.13 In terms of the remainder of the site; it is considered that the various distinct areas are well laid out to ensure that they will function as intended. Comment has been made by Taunton Deane's Landscape and Biodiversity Officer that the site appears rather cramped; however given that the only major structure on the site would be the school building itself, it is considered that the site would not appear cramped when viewed from any surrounding public areas.
- 8.14 It is noted that Taunton Deane Borough Council originally objected to the proposal on the basis that it did not include a north-south segregated footpath and cycleway along and within the school site's eastern boundary as required by the approved masterplan for the wider Nerrol's development and that this absence would create a barrier to the movement of residents from the new development accessing the new school. Taunton Deane was concerned that this would result in walking distances in excess of those set out at Policy A5 of the SADMP and would be likely to result in the increased use of the single track to the east of the site, contrary to highway safety, as well as increased use of the private car, contrary to the Core Strategy Policy CP6.
- 8.15 In this regard, it is noted that Taunton Deane has approved a layout (reference 13137/5000 Rev E) for the residential development to the north of the site (David Wilson Homes' development) under reference 08/15/0012 that precludes the provision of the northern end of that planned segregated footpath and cycleway. The outline planning permission showed a segregated footpath and cycleway; however layout was not a matter for consideration at that time and so instead formed part of the reserved matters application. The layout drawing now approved by Taunton Deane Borough Council shows dwellings in the area where the footpath and cycleway was previously shown as part of the outline permission, with the result that that section can no longer be delivered. In the event that provision was made for this within the application site, there would be no corresponding off-site footpath and cycleway to connect into, although a breach in the school site's eastern boundary could be formed to connect into Nerrol's Farm Lane.
- 8.16 This school proposal therefore provides a pedestrian link onto Nerrol's Farm Lane at the site's eastern boundary, albeit further south, as to provide a north – south segregated footway/cycleway within the school site would take land essential for the provision of the requisite playing pitch area. Instead, it is proposed that pedestrians and cyclists would use a section of Nerrol's Farm Lane and the existing Public Right of Way reference T 5/14. The Highways Authority has been consulted in respect of the application and has advised that there is no objection in principle to the use of the existing public right of way and highway to the east of the site for access, subject to conditions requiring the approval of the specification of the pedestrian access, and mitigation measures to combat Taunton Deane

Borough Council's residual minor concerns regarding safe routes to schools the wording of which has been agreed with Taunton Deane Borough Council resulting in the withdrawal of their objection. There is also a Traffic Regulation Order (TRO) that was approved in 2018 that will limit the possible vehicle movements in the lane to the east of the site, thereby further improving highway safety. It is noted that the Rights of Way Team do not raise an objection to the proposals.

- 8.17 In addition, it is considered that the area to the south of the application site, allocated for commercial uses, would be capable of being accessed by pedestrians from the residential development to the north. This area is not within the control of Somerset County Council; however it would appear to be possible to provide a pedestrian link at the eastern side of the planned commercial centre and connect to the existing PRoW in a similar way as proposed by this application.
- 8.18 Taking account of the above, it is not considered possible to provide the segregated link referred to by Taunton Deane Borough Council. In any case, the Highways Authority has not raised objection in this regard, and it is apparent that the walking distances would be increased negligibly (approximately 2-3m) and are considered to comply with those required by SADMP Policy A5. With these measures conditioned, it is considered that the proposal would not be likely to result in the increased use of the private car or be prejudicial to highway safety.
- 8.19 Finally, Somerset County Council's Acoustic Specialist has advised that he has no objection to the proposals subject to two conditions being attached to any forthcoming planning permission. It is therefore considered that the proposal is acceptable from an acoustic perspective. It is also noted that the acoustic quality of the development would be controlled by Building Regulation requirements, although the applicant is urged to give careful consideration to acoustics planning in the design and intended uses of the buildings.
- 8.20 Taking account of all of the above; it is concluded that the design of the proposed development is acceptable and that the proposal therefore accords with Policy DM 1 of the Core Strategy and policies A5 and D7 of the SADMP.
- 8.21 **Impact of the proposal on the highway network**
Policy CP 6 of the Core Strategy sets out a number of measures to achieve the policy's stated aim of reducing the need to travel, improve accessibility to jobs, services and community facilities, and mitigate and adapt to climate change; whilst Policies A1, A2, A3 and A5 of the SADMP address issues relating to parking, travel planning, cycle networks and accessibility.
- 8.22 The application is accompanied by a Transport Assessment (revised following a request from the Highway Authority) and Travel Plan.
- 8.23 As discussed earlier, the Highways Authority has been consulted in respect of the proposals and has confirmed that they have no objection to the proposed development subject to a number of conditions to be attached to any forthcoming planning permission. The Highways Authority has confirmed that the level of on-

site parking (including cycle storage) is considered appropriate given the site's location and staff numbers; that the submitted Travel Plan is broadly acceptable subject to some minor amendments that can be addressed by way of a condition attached to any forthcoming planning permission; that the proposal would not result in pressure being placed on the highway network; and that the drainage strategy and construction environmental management plan can be addressed by way of conditions. The Highway Authority has confirmed that the proposed development is not expected to have a substantial impact upon the local highway network or highway safety including pedestrian and cyclist access at the school's eastern boundary, subject to a number of conditions.

- 8.24 It is noted that seven representations, all of which are considered to constitute objections, have been received in respect of the proposal. They raise concerns in respect of the potential for the development to result in on-street parking issues within the existing residential area to the west of the site; specifically within Summerleaze Crescent and Cashford Gate. The Highway Authority has commented that formal control measures such as a TRO would not be recommended without evidence to demonstrate that such measures are needed, noting however that the Traffic Management Team would be able to consider this issue if it were to become problematic. The Highway Authority has also advised that there is not a known issue at present, and that the submitted Travel Plan includes a commitment to reduce single occupancy car trips, which will assist in reducing potential highways issues and any conflict with local residents. Lastly, it is noted that this potential effect would occur for two relatively short periods (drop off and pick up times on weekdays during term time only).
- 8.25 The content of the April 2018 revised Construction Environmental Management Plan is noted in that it addresses the many of previous concerns of the Local Highway Authority, particularly surrounding the construction phase of the development. The only outstanding construction –related issue is the condition of the public highway and the risk of damage being caused to it by construction traffic during the construction phase. Based on the recent experience of the Local Highway Authority in the vicinity of the school site where damage to the public highway has been caused, it is considered there is sufficient justification for a pre- and post-construction survey of the road condition to be undertaken to ensure any unreasonable wear and tear due to construction vehicle activity is recorded and rectified. To that end, and in the absence of such provision within the revised Construction Environmental Management Plan, it is considered appropriate to impose a planning condition to secure the same.
- 8.26 Taking account of all of the above, it is considered that the proposal's impacts would not be unduly problematic and consequently the proposal is acceptable from a highways perspective and that the proposal accords with Policy CP 6 of the Core Strategy and Policies A1, A2, A3 and A5 of the SADMP.
- 8.27 **Impact of the proposal on residential amenity**
Policy DM 1 of the Core Strategy seeks to ensure that development does not cause harm to the amenities of the occupants of residential dwellings.

- 8.28 In this regard, it is noted that the areas that would be most likely to be affected by the proposed development are the existing residential development known as Priorswood to the west of the site and the residential area to the north and north-east of the site that is currently being constructed. In particular, recently constructed dwellings border the site at its northern edge.
- 8.29 Firstly, and as discussed above, it is noted that seven representations have been received in respect of the application. As explained above, they raise concerns in respect of the potential for the development to result in on-street parking pressures within the residential area to the west of the site. This issue is discussed in full at paragraphs 8.21 – 8.26 above and it is concluded that the impact of the development would be acceptable in terms of highway safety and inconvenience to local residents.
- 8.30 In terms of the potential for noise nuisance; the County Council's Acoustic Advisor has confirmed that there is no objection to the proposal subject to conditions to be attached to any forthcoming planning permission. The first of these would restrict the use of the external sports facilities to the hours of 08.30 – 17.00 for school use only. It is noted that Sport England advocates the use of new and existing sports facilities by the community. This objective is laudable in that such dual use would facilitate community cohesion and integration, offer opportunities to improve personal health and wellbeing and potentially make such facilities more cost effective thereby reducing the overall cost of providing and maintaining such facilities to the public purse. That said, community use of facilities needs to be considered and balanced against issues of child safeguarding and operational feasibility for the applicant and it should be noted that whilst there is an argument based on noise impact disturbance on residential amenities grounds for not permitting community use of the outdoor sports facilities and restricting the school use of those facilities to reasonable daytime hours, community use of the school's indoor facilities is not considered would generate unacceptable impacts or indeed a material change of use in terms of traffic impact, and other residential amenity impacts such as noise disturbance, and so is not recommended to be prevented.
- 8.31 The second noise-related condition would require the construction of the development to be in accordance with the submitted construction environmental management plan. It is agreed that both of these conditions would assist in reducing the potential for noise nuisance to within acceptable levels.
- 8.32 There is the potential for other adverse effects such as dust to be generated during the construction period. In this regard, and as discussed above, it is suggested that a condition be attached to any forthcoming planning permission to secure an appropriate construction environmental management plan for the development. This would ensure that any such adverse effects can be effectively controlled.
- 8.33 Lastly, it is noted that there would be an absence of built form along the majority of the site's northern boundary. Consequently, it is considered that there would not be a feeling of overbearing when the development is viewed from the dwellings to the immediate north of the site. Further, the orientation of the school

building is such that overlooking from the school to the dwellings to the north would not be likely.

- 8.34 Taking account of the above, it is concluded that the proposed development would not be likely to result in unacceptable harm to the amenities of the occupiers of nearby dwellings and that the proposal therefore accords with Policy DM 1 of the Core Strategy.
- 8.35 **Impact of the proposal on biodiversity**
Policy CP 8 of the Core Strategy sets out a number of measures to ensure the protection of the natural environment, whilst Policy DM 1 of the Core Strategy states that development proposals must not lead to harm to protected wildlife species or their habitats. Similarly, Policy ENV1 of the SADMP seeks to protect flora and fauna integral to the character of the area's landscape and wildlife by minimising impacts on trees, woodland, orchards, historic parklands and hedgerows of value, and Policy ENV2 of the SADMP seeks to achieve additional/replacement planting in the interests of biodiversity and landscape or public amenity.
- 8.36 The submitted application includes a Preliminary Ecological Appraisal Update Survey.
- 8.37 The County Ecologist has been consulted in respect of the application and has advised that the purpose of the Preliminary Ecological Appraisal was to provide an updated ecological assessment of the site, since previous ecological survey work had been carried out in 2009 to 2015 as part of the whole Nerrols residential development area.
- 8.38 The County Ecologist notes the proximity of the site to the Hestercombe House SAC, which is designated for its population of lesser horseshoe bats, and that a Habitats Regulations Assessment was carried out for the whole Nerrols site (Taunton Deane Planning Application 08/10/0024) in 2011 and included the land on which the proposed school is planned. As a result of this, 3.15ha of replacement habitat was required to be planted to mitigate the effects of the loss of habitat caused by the whole residential development. It also required the planting of a 20 metre woodland buffer around the outer edges of the development. Consequently, the County Ecologist has confirmed that a 'test of likely significant effect' is not required.
- 8.39 The County Ecologist has advised that the retained Oak Tree has the potential to support a bat roost and that construction activities could potentially disrupt bat activity in the area, as well as any external lighting. Consequently, conditions are suggested to require a bat roost survey to be undertaken and a 'lighting design for bats' to be submitted to and approved by the County Planning Authority. It is agreed that these conditions would ensure that potential adverse effects would be appropriately controlled to within acceptable levels of impacts.
- 8.40 Conditions are also suggested in respect of a badger sett survey; restrictions relating to removal of hedgerows, trees or shrubs that may be used by breeding

birds, a landscape planting scheme, and a reptile mitigation strategy for the protection of slow worms, common lizards and grass snakes. It is agreed that these conditions would also ensure that potential adverse effects would be appropriately controlled.

- 8.41 Taking account of the above, it is concluded that the proposal would not be likely to result in adverse effects on protected species or their habitats, providing the conditions suggested by the County Ecologist are attached to any forthcoming planning permission. It is therefore considered that the proposal accords with policies CP 8 and DM 1 of the Core Strategy and policies ENV1 and ENV2 of the SADMP.
- 8.42 **Impact of the development on flood risk**
Policy CP 8 of the Core Strategy seeks to direct development away from areas that are at risk of flooding and to ensure that development does not exacerbate the potential for flooding through increased surface water flows.
- 8.43 A Flood Risk Assessment has been submitted as part of the application. The Environment Agency (EA) has been consulted in respect of the proposals; however no reply has been received. The site is located within flood zone 1 as defined by the EA. It is therefore considered that the site is not likely to be affected by flooding.
- 8.44 The Local Lead Flood Authority (LLFA) has been consulted in respect of the application, and has confirmed that there is no objection in principle to the development, subject to a condition being attached requiring a surface water drainage scheme based on sustainable drainage principles to be submitted to and approved in writing by the County Planning Authority. The applicant has submitted this scheme whilst the application has been considered and the LLFA was re-consulted.
- 8.45 The LLFA has advised that the development's Sustainable Urban Drainage Scheme should go beyond just providing water storage by creating more naturalistic drainage features, which have wider benefits to the environment and the community. It is noted that the LLFA advocates further discussion and negotiation towards that aim but is fundamentally satisfied that an acceptable scheme is achievable and both the applicant and LLFA are content to see the recommended planning condition imposed on any forthcoming planning permission and to continue such discussions in the meantime to that end.
- 8.46 Taking account of the above, it is concluded that the proposal would not be at risk of flooding, nor would it exacerbate surface water flows. It is therefore considered that the proposed development is in accordance with Policy CP 8 and Policy I4 of the SADMP as adequate foul drainage/sewage treatment facilities and surface water disposal shall be secured.
- 8.47 **Impact of the development on the existing Public Right of Way (PRoW)**
An existing PRoW, reference T 5/14, runs parallel to and outside of the eastern boundary of the site. Somerset County Council's Public Rights of Way Service has been consulted in respect of the proposal and has confirmed that there is no

objection, provided that suitable arrangements are in place for the maintenance of any hedgerow planted alongside the PRoW. In certain specified circumstances there would also be a requirement for the applicant to obtain approval from Somerset County Council Rights of Way Group.

- 8.48 The maintenance of the hedgerow would be addressed through the condition relating to the landscaping scheme for the first 5 years following the scheme's implementation, with maintenance to prevent incursion onto the PRoW continuing to be the responsibility of the landowner (currently SCC) beyond that 5 year period. It is therefore concluded that the proposal would not adversely affect the existing PRoW.

8.49 Conclusion

It is considered that the above assessment demonstrates that the proposal accords with relevant policies in the Development Plan and that the effects associated with the proposal can be effectively avoided or mitigated through the design of the development and / or the use of conditions attached to any forthcoming planning permission.

- 8.50 It is noted that seven representations have been received in respect of the proposal, all of which raise concerns in respect of the potential for the proposed development to create on-street parking pressures in the existing residential area to the west of the development. These are valid planning concerns. However the Highways Authority has specifically considered this issue and has advised that there is no objection in this regard, for the reasons set out in full earlier.
- 8.51 It is also noted that an objection, which had been received from Taunton Deane Borough Council, has now been withdrawn in light of agreement to provide adequate highway safety impact mitigation measures, the exact details of which are to be submitted and approved under condition.
- 8.52 Taking all of the above into account, it is concluded that the proposals are acceptable in planning terms subject to the conditions set out below, and that the proposal accords with the Development Plan and there are no material considerations that indicate otherwise.

9. Recommendation

- 9.1 **It is recommended that planning permission be GRANTED subject to the imposition of the following conditions and that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Service Manager - Planning Control, Enforcement & Compliance.**

1 **Time Limit (3 years implementation)**

The development hereby permitted shall be commenced within three years of the date of this permission.

Reason: Pursuant to Section 91 of the Town and Country Planning Act 1990 (as amended).

2 Completion in accordance with the approved details

The development hereby permitted shall be carried out in strict accordance with the approved plans:-

- Location Plan reference 151271-STL-00-00-DR-L-ZZZZ-09010 Revision P20 prepared by Stride Treglown dated 11.1.18;
- Existing Site Plan reference 151271-STL-00-00-DR-L-ZZZZ-09020 Revision P20 prepared by Stride Treglown dated 11.1.18;
- GA plan – GF reference PL150 Revision 5 prepared by Hunter South Architects dated 11.12.17;
- GA plan – FF reference PL151 Revision 4 prepared by Hunter South Architects dated 11.12.17;
- GA Roof Plan reference PL152 Revision 2 prepared by Hunter South Architects dated 11.12.17;
- GA Elevations reference PL155 Revision 3 prepared by Hunter South Architects dated 11.12.17;
- Site Sections – sheet 1 of 2 reference 151271-STL-00-00-DR-L-ZZZZ-09601 Revision P20 prepared by Stride Treglown dated 11.1.18;
- Site Sections – sheet 2 of 2 reference 151271-STL-00-00-DR-L-ZZZZ-09602 Revision P20 prepared by Stride Treglown dated 11.1.18;
- Landscape General Arrangement reference 151271-STL-00-00-DR-L-ZZZZ-09001 Revision P23 prepared by Stride Treglown dated 8.3.18;
- Planting Plan reference 151271-STL-00-00-DR-L-ZZZZ-09140 Revision P20 prepared by Stride Treglown dated 11.1.18;
- Boundary Treatment Plan reference 151271-STL-00-00-DR-L-ZZZZ-09180 Revision P23 prepared by Stride Treglown dated 8.3.18;

and specifications:-

- Planning, Design and Access Statement reference 151271_R_171205_PDAS Revision P1 prepared by Stride Treglown dated March 2018;
- Transport Assessment reference 065668 Revision V00 prepared by Curtins dated 5.1.18;
- Site Waste Management Plan reference GP-FM-EM-260 Revision A prepared by Wilmott Dixon dated 17.12.17;
- Environmental Noise Report reference 6708/PP/pw Revision B prepared by Acoustic Consultants Ltd dated 4 January 2018;
- Arboricultural Impact Assessment and Arboricultural Method Statement reference NerrolsFm_AIA_AMS_29122017_SRv2 prepared by Assured Trees dated 29.12.17;
- Utility Statement reference C-07416-C prepared by Hydrock dated 6.10.17;
- Construction & Environmental Management Plan Rev.01, prepared by Wilmott Dixon dated 09/04/18;

- Preliminary Ecological Appraisal Update Survey reference 003STTR100 prepared by Abricon dated 5.1.18;
- Flood Risk Assessment reference C-07437-C prepared by Hydrock dated 11.1.18;
- Geotechnical Statement reference C13872/008 prepared by Hydrock dated 22.9.17;
- Planning application form prepared by Stride Treglown dated 11.1.18;

and with any scheme, working programme or other details submitted to and approved in writing by the County Planning Authority in pursuance of any condition attached to this permission.

Reason: To enable the County Planning Authority to deal promptly with any development not in accordance with the approved plans.

3 **Commencement**

Written notification of the date of commencement shall be given to the County Planning Authority within seven days of the commencement of the development hereby permitted.

Reason: To enable the County Planning Authority to monitor compliance with conditions.

4 **Vehicular Access**

Before the commencement of the development hereby permitted, detailed plans of the school vehicular access (link to Nerrols Drive, footways, visibility splays, gates/fencing, and construction and surface dressing details) shall be submitted to and approved in writing by the County Planning Authority. The access shall thereafter be laid out, constructed and properly consolidated and surfaced in accordance with the approved plans before the development hereby permitted is first brought into use, and shall thereafter be maintained as such for the duration of the development hereby permitted.

Reason: To ensure that the development is appropriately accessed in the interests of highway safety.

5 **Safe Routes to Schools Impact Mitigation Scheme**

Before the development hereby permitted is first brought into use, a Safe Routes to Schools Impact Mitigation Scheme, comprising the following measures to create a safe walking and cycling link along Nerrol's Lane to the school site's pedestrian/cyclist access on its eastern boundary comprising the following:

- Appropriate signage on Nerrol's Lane to the south and north of the pedestrian gateway between the school site's proposed eastern boundary and Nerrol's Lane, warning of pedestrians/cyclists on the highway (Nerrol's Lane);

- Appropriate signage approaching the pedestrian gateway between the school site's proposed eastern boundary and Nerrol's Lane, warning of vehicular traffic on Nerrol's Lane, when approaching from within the school site,

shall be submitted to and approved in writing by the County Planning Authority. Once approved, the Impact Mitigation Scheme shall be implemented in full and be fully operational at the point the development is first brought into use, and shall thereafter be maintained as such for the duration of the development hereby permitted.

Reason: To ensure that the development is appropriately accessed in the interests of highway safety and transport sustainability.

6 Public Highway Surface Condition Surveys

Within a month prior to the commencement of the development hereby permitted, a public highway surface condition survey shall be undertaken of the public highway 50m in either direction of any permanent and temporary construction vehicular access, the details and results of which shall be submitted to the County Planning Authority prior to the commencement of the development hereby permitted for approval. Within 1 month of the date of completion of the construction phase of the development hereby permitted, a public highway surface condition re-survey of the same piece of public highway shall be undertaken, the details, results and any proposed repair works including timings shall be submitted to and approved in writing by the County Planning Authority before the development hereby permitted is first brought into use

Reason: To ensure that highway safety and operation is not compromised.

7 Pedestrian Accesses

The three proposed pedestrian accesses onto Nerrol's Drive and Nerrol's Farm Lane shall incorporate pedestrian visibility splays on both sides to the rear of the existing footway / carriageway edge based on dimensions of 2.0 metres x 2.0 metres, with no obstruction above 300mm. Such splays shall be fully implemented before the accesses and the development hereby permitted are first brought into use and shall thereafter be maintained for the duration of the development hereby permitted.

Reason: To ensure the safety of pedestrians accessing the development hereby permitted.

8 Eastern Boundary Pedestrian Access

Before the commencement of the eastern boundary treatment, details of the pedestrian access onto Nerrol's Farm Lane shall be submitted to and approved in writing by the County Planning Authority. Once approved, this access shall be provided in accordance with the approved details including those secured under Condition No. 5 'Safe Routes to Schools Impact Mitigation Scheme', and shall be fully operational at the point at which the development hereby permitted is first brought into use, and shall thereafter be maintained as such for the duration of the development hereby permitted.

Reason: To ensure an appropriate link between the school and the existing Public Right of Way (footpath) reference T5/14, in the interests of sustainable transport.

9 **Travel Plan**

Before the development hereby permitted is first brought into use, a Travel Plan shall be submitted to and approved in writing by the County Planning Authority. Once approved, the Travel Plan shall be implemented in full in accordance with the timetable therein. Within 12 months of the development hereby permitted first being brought into use, a revised Travel Plan based on actual travel patterns shall be submitted to and approved in writing by the County Planning Authority. Thereafter the development hereby permitted shall operate in accordance with the approved Travel Plan, or any subsequent variation to the Travel Plan agreed in writing by the County Planning Authority for the duration of the development hereby permitted.

Reason: To promote sustainable travel options.

10 **On-site parking provision**

Before the development hereby permitted is first brought into use, 30 car parking spaces and a turning space for vehicles for the school site and associated uses shall be properly consolidated and surfaced within the application site in accordance with details which shall have been submitted to and approved in writing by the County Planning Authority. Such approved parking and turning spaces shall be kept clear of obstruction at all times, shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted, and shall be maintained in accordance with the approved details for the duration of the development hereby permitted.

Reason: To ensure the delivery of the on-site parking and turning provision

11 **Bat Roost Survey**

Prior to the commencement of any groundworks or vegetation clearance a bat roost survey of the oak tree located within close proximity to the southern boundary of the development hereby permitted shall be carried out and the results along with any mitigation actions and timings to avoid disturbance to individual bats during construction works shall be submitted to and approved in writing to the County Planning Authority. The development shall be carried out in accordance with the approved mitigation actions and maintained as such for the duration of the development hereby permitted.

Reason: In the interests of protected species

12 **Lighting Design for Bats**

Before the installation of any temporary or permanent artificial lighting associated with the development hereby permitted, a "lighting design for bats" scheme shall be submitted to and approved in writing by the County Planning Authority. The design shall show how and where external lighting is proposed

to be installed (including through the provision of technical specifications) to demonstrate that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. Once approved, all external lighting shall be installed in accordance with the specifications and locations set out in the lighting design for bats scheme, which shall be maintained thereafter for the duration of the development hereby permitted. Under no circumstances shall any other external lighting be installed without prior consent from the County Planning Authority.

Reason: in the interests of the Favourable Conservation Status of populations of European protected species.

13 Badger Setts Survey

Within a month prior to the commencement of any groundworks or vegetation clearance within the application site, a survey for badger setts within the application site shall be carried out by a competent ecologist to identify any new badger activity and any proposed badger impact mitigation measures. A letter shall be sent by the ecologist confirming the results of the survey and of any mitigating measures that might be required to the County Planning Authority for approval. Only once approved shall any groundworks or vegetation clearance within the application site be undertaken, and any such groundworks or vegetation clearance shall be carried out in strict accordance with the approved mitigation measures, and shall be maintained as such for the duration of the development hereby permitted.

Reason: In the interests of protected species

14 Vegetation Removal

No removal of hedgerows, trees or shrubs that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the County Planning Authority.

Reason: in the interests of nesting wild birds

15 Reptile Mitigation Strategy

Before the commencement of any groundworks or vegetation clearance, a "reptile mitigation strategy" shall be submitted to and approved in writing by the County Planning Authority. Where translocation of any identified reptiles is required, the site shall be identified, surveyed and described to avoid habitat crowding. No groundworks or vegetation clearance shall commence until the "reptile mitigation strategy" has been implemented in full, and the strategy shall be implemented for the duration of the construction phase of the development hereby permitted.

Reason: In the interests of protected species.

16 Use of external sports facilities

The external sports facilities at the development hereby permitted shall not be used except between the hours of 08:30h and 17:00h during weekday term-time periods only, and shall only be used by the school during those permitted hours.

Reason – To limit the noise impacts on residential amenity.

17 Noise control and mitigation scheme

The developer shall minimise the noise impacts of construction by complying with the details as set out of the Construction & Environmental Management Plan of Willmott Dixon dated 8/1/18, and which shall be sought as part of the revised Construction Environmental Management Plan that is required to be submitted and approved under Condition No.6 above. Any requirement to deviate from those details shall first receive the written approval of the County Planning Authority.

Reason: To limit the noise impacts on residential amenity

18 Surface Water Drainage

Before the commencement of the development hereby permitted, details of the surface water drainage scheme based on sustainable drainage principles together with a programme of implementation and maintenance for the lifetime of the development shall be submitted to and approved in writing by the County Planning Authority. The drainage strategy shall ensure that surface water runoff post completion of construction of the development is attenuated on site and discharged at a rate and volume no greater than greenfield runoff rates and volumes. The development shall be carried out in accordance with the approved details and maintained as such for the duration of the development hereby permitted.

Reason: In the interests of sustainable water and flood risk management in accordance with paragraph 17 and sections 10 and 11 of the National Planning Policy Framework, Paragraph 103 of the National Planning Policy Framework and the Technical Guidance to the National Planning Policy Framework (March 2015).

19 Landscaping Scheme

Before the commencement of the development hereby permitted a scheme of landscaping, which shall include details of the following:

- Proposed finished levels or contours;
- Hard surfacing materials;
- Minor artefacts and structures (eg furniture, play equipment, refuse or other storage units, signs, lighting);
- Proposed and existing functional services above and below ground (eg drainage, power, communication cables, pipelines, etc, indicating lines, manholes, supports etc);

- Planting plans;
- Written specifications (including cultivation and other operations associated with plant and grass establishment);
- Schedules of plants, noting species, planting sizes and proposed numbers / densities where appropriate;
- Implementation timetables;
- 5 year maintenance details.

shall be submitted to and approved in writing by the County Planning Authority. Once approved, the scheme shall be implemented in full, and any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the County Planning Authority, seriously damaged or diseased, shall be replaced within the next available planting season with others of species, size and number as originally approved, unless the County Planning Authority gives its written consent to any variation.

Reason: In the interests of the character and appearance of the area and to provide an appropriate landscape setting for the development hereby permitted.

20 **Material Samples**

Before the commencement of any above ground building or structures construction associated with the development hereby permitted, samples and details of the materials to be used in the construction of the external surfaces of the buildings and structures hereby permitted shall be submitted to and approved in writing by the County Planning Authority. The development shall be carried out in accordance with the approved details and maintained as such thereafter for the duration of the development hereby permitted.

Reason: To ensure the appropriate appearance of the development hereby permitted and to ensure the use of sustainable materials.

INFORMATIVES

If it is considered that the development would result in any of the outcomes listed below, then authorisation for these works must be sought from Somerset County Council Rights of Way Group:

- A PROW being made less convenient for continued public use.
- New furniture being needed along a PROW.
- Changes to the surface of a PROW being needed.
- Changes to the existing drainage arrangements associated with the PROW.

If the work involved in carrying out this proposed development would:

- make a PROW less convenient for continued public use; or
- create a hazard to users of a PROW,

then a temporary closure order will be necessary and a suitable alternative route must be provided. For more information, please visit Somerset County Council's Rights of Way pages to apply for a temporary closure:

<http://www.somerset.gov.uk/environment-and-planning/rights-of-way/apply-for-a-temporary-closure-of-a-right-of-way/> .

10 Relevant Development Plan Policies

- 1 The following is a summary of the reasons for the County Council's decision to grant planning permission.
- 2 In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004 the decision on this application should be taken in accordance with the development plan unless material considerations indicate otherwise. The decision has been taken having regard to the policies and proposals in:-
 - Taunton Deane Core Strategy adopted 2012
 - Taunton Deane Site Allocations and Development Management Plan (SADMP) adopted December 2016

The policies in the development plan particularly relevant to the proposed development are:-

Taunton Deane Core Strategy adopted 2012

SD1: Presumption in favour of sustainable development
SP2: Realising the vision for Taunton
SS2: Priorswood / Nerrols
CP5: Inclusive communities
CP6: Transport and accessibility
CP8: Environment
DM1: General requirements

Taunton Deane Site Allocations and Development Management Plan (SADMP) adopted December 2016

A1: Parking requirements
A2: Travel Planning
A3: Cycle network
A5: Accessibility of development
I4: Water infrastructure
ENV1: Protection of trees, woodland, orchards and hedgerows
ENV2: Tree planting within new developments
D7: Design quality

- 3 The County Planning Authority has also had regard to all other material considerations.
- 4 **Statement of Compliance with Article 35 of the Town and Country Development Management Procedure Order 2015**

In dealing with this planning application the County Planning Authority has adopted a positive and proactive manner. The Council offers a pre-application advice service for minor and major applications, and applicants are encouraged to take up this service. This proposal has been assessed against the National Planning Policy Framework, the saved Policy 6 of the Structure Plan, Core Strategy and SADMP policies, which have been subject to proactive publicity and consultation prior to their adoption and are referred to in the reasons for approval. The County Planning Authority has sought solutions to problems arising by liaising with consultees, considering other representations received and liaising with the applicant/agent as necessary. Where appropriate, changes to the proposal were sought when the statutory determination timescale allowed.

The proposal is in accordance with the Development Plan and in particular the following policies:

Taunton Deane Core Strategy adopted 2012

Policy	Description	Policy Consideration
Policy SD1	Presumption in favour of sustainable development	In accordance as the proposal meets all planning policy requirements, as discussed above. Further, there are no other material considerations that indicate that planning permission should not be granted.
Policy SP2	Taunton Policy	In accordance as the development of the new school will support the anticipated growth within Taunton, thereby assisting in the creation of a balanced and sustainable, high quality mixed-use community.
Policy SS2	Priorswood / Nerrols	In accordance as the allocation of the wider development site requires one primary school to be delivered as part of the overall mixed use development.
Policy CP5	Inclusive Communities	In accordance as the proposed development is a key part of a wider development that will create a social cohesive and inclusive community, and address accessibility to education facilities.
Policy CP6	Transport and Accessibility	In accordance as the proposed development will reduce the need to travel to access education facilities for the existing and future residents of the wider mixed use development.
Policy CP8	Environment	In accordance as the sensitive design of the proposed development, and use of conditions, will ensure the conservation of the natural

environment. In addition, the proposed development will not exacerbate flood risk.

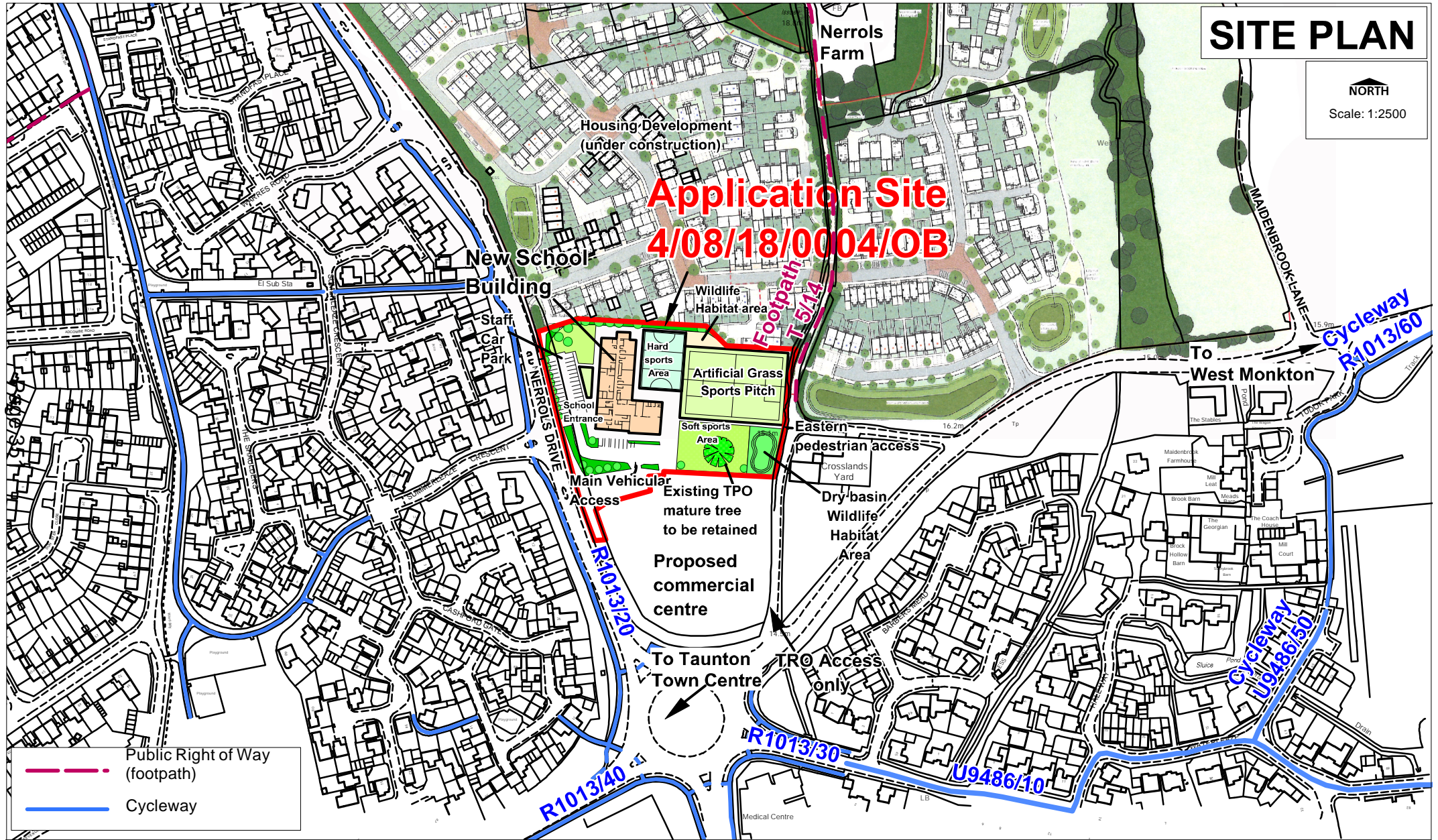
Policy DM1	General Requirements	In accordance as the proposed development represents the effective and efficient use of land; will not result in unacceptable adverse highways impacts; will not harm wildlife or their protected habitats; will not unacceptably harm the established streetscene; will not unacceptably harm public health, safety or amenity; will not be subject to pollution or nuisance from existing development; and will be appropriately served by necessary utility services.
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Taunton Deane Site Allocations and Development Management Plan (SADMP) adopted December 2016

Policy A1	Parking requirements	In accordance, as the Highways Authority has confirmed that the level of proposed on-site parking is appropriate given the number of staff on site and the site's location. Appropriate levels of car parking are also proposed.
Policy A2	Travel planning	In accordance as the proposal is accompanied by a Travel Plan that will encourage more efficient travel patterns and behaviours.
Policy A3	Cycle network	In accordance as the proposal will deliver an appropriate level of cycle parking facilities.
Policy A5	Accessibility of development	In accordance, as the proposal is likely to be accessible within walking distance or by public transport to a majority of its potential users.
Policy I4	Water infrastructure	In accordance, as a scheme for surface water disposal based on SUDS principles will be submitted to and approved by the County Planning Authority prior to the commencement of development.
Policy ENV1	Protection of trees, woodland, orchards and hedgerows	In accordance, as the existing tree on site will be retained as part of the development and suitably protected during the construction phase.
Policy ENV2	Tree planting within new developments	In accordance, as the proposal includes tree planting that will deliver benefits in terms of wildlife and biodiversity; landscaping; and public amenity.
Policy	Design quality	In accordance, as the development incorporates a

D7

high standard of design quality and will create a sense of place.



SOMERSET
County Council

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Service Manager
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County Hall TAUNTON TA1 4DY

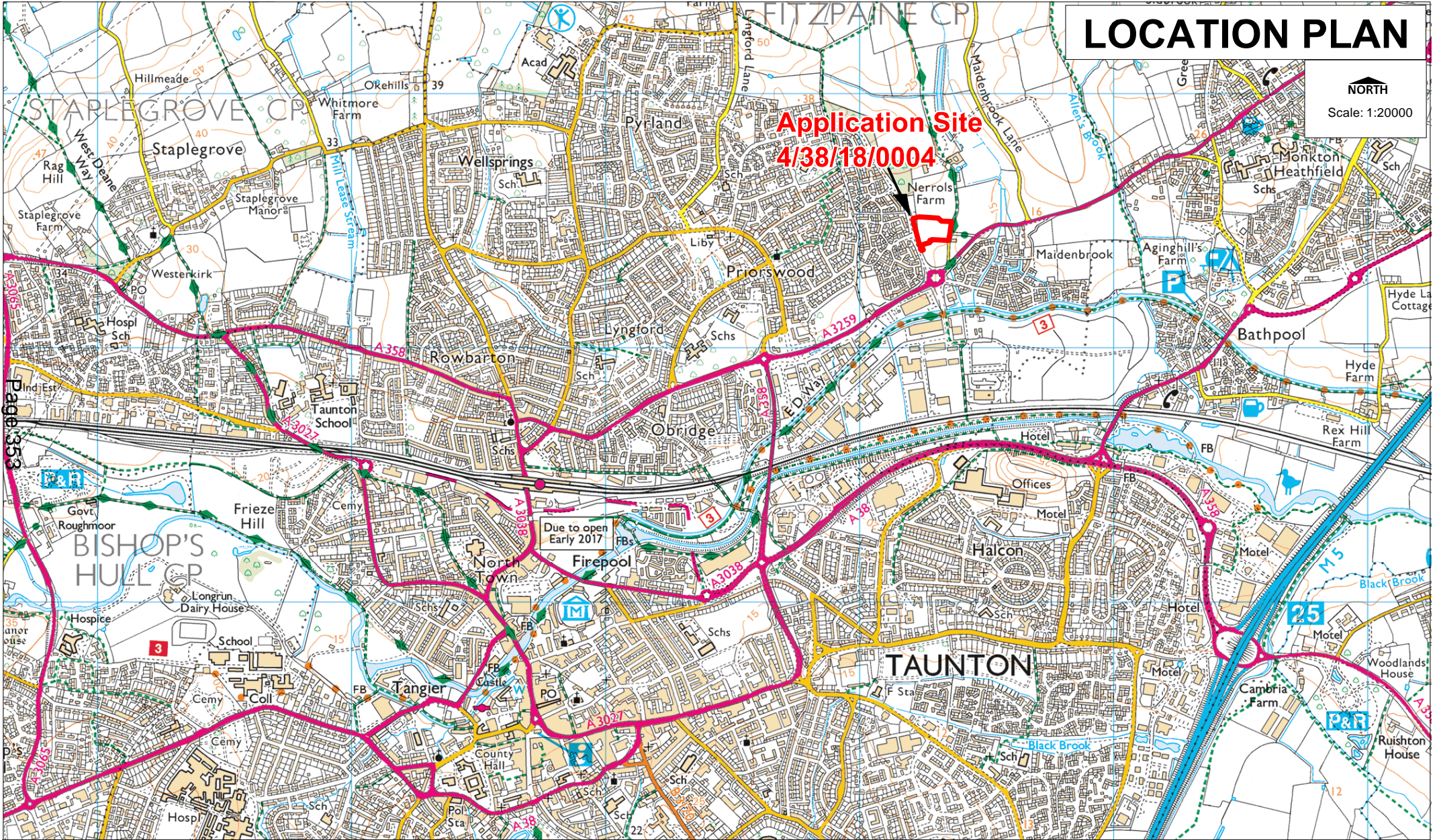
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Site Name:
Proposed New Primary School on Land at Nerrols Farm


Planning Control
Drawn by: P Silvers

Dated: 31 May 2018

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Site Name: Proposed New Primary School on land at Nerrols School	Planning Control Drawn by: P Silvers	Dated: 31 May 2018
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Somerset County Council
Planning Control, Enforcement & Compliance Service
PP B2 S4
County Hall, Taunton
Somerset, TA1 4DY

Application Number: 4/38/18/0040/OB
Date Registered: 22nd January 2018
District: Taunton Deane
Member division: Taunton North
Local Member: Cllr Guiseppe Frashini
Case Officer: Frances Gully
Contact Details: FCGully@somerset.gov.uk Tel: 01823 359168

Description of application: Erection of a secondary Special Education Needs (SEN) school and a primary SEN school; along with alterations to the access, landscaping, drainage and associated infrastructure; of which full permission is sought for the secondary SEN school (Use Class D1) with all matters to be determined, and outline permission for the primary SEN school (Use Class D1) with all matters reserved

Grid reference: 323376/125995

Applicant: Somerset County Council

Site location: Land at the former St Augustine of Canterbury School, Lyngford Road, Taunton, TA2 7EF

1. Summary of Key Issues and Recommendations

1.1. The key issues for members to consider are:

- Accordance with the development plan;
- Material Considerations;
- Playing Field provision;
- Educational need;
- General development, design and crime prevention;
- Transport and parking;
- Landscape and ecological impact.
- Flood risk, surface water design and outfalls to watercourse

1.2. This is a Regulation 3 application which requires that it be determined by Somerset County Council as Local Planning Authority.

1.3. It is recommended that planning permission be GRANTED subject to the imposition of the conditions in section 11 of this report and that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Service Manager - Planning Control, Enforcement & Compliance.

2. Description of site and location

2.1. This application relates to land on the former St Augustine of Canterbury School (St Augustine's), Lyngford Road, Taunton, TA2 7EF (grid Ref: 323298 - 125966) located in the north of Taunton within a residential area, between Lyngford Road (to the west), Priorswood Road (to the south) with Sky College, a specialist education provider, to the north-east.

2.2. Most of the former school has been demolished. Access to the former school library which remains on site along with the Cadet Hut is from an existing entrance, in the north of the site, off Lyngford Road and within the red line boundary.

2.3. A central production kitchen (and associated services yard) is also on the site. However, this is outside the red line boundary and is unaffected by this application.

2.4. To the south of the red line boundary, and north of Priorswood Road, is open space associated with the former school. This has a dual-culverted main watercourse (named the Kingston Stream) which travels south of the applications site's red line boundary but within land within the applicants control, then back into the east of the site where it joins with another culvert and exits under Eastwick Road. From historical records it appears that one culvert carried foul water, and that is why they were culverted in the 1950s.

2.5. The application site comprises 2.8ha in total; the secondary SEN school site (the full application) is 1.8ha of brownfield land and the land for the primary school (the outline application) is 1.0ha of greenfield land (former playing pitches).

3. Site History

3.1. St Augustine's merged with Ladymead Community School in 2010 to form the Taunton Academy. The buildings were in a bad state of repair and a detailed condition survey, carried out in 2015, demonstrated that the buildings were beyond economical repair. Buildings, identified as blocks A, B and D on site plan P17051_107_170511 of application number 4/38/17/0437/OB, were demolished in December 2017.

3.2. St Augustine's, has mostly been demolished, save a few outbuildings including the former library building which is being retained close to the entrance. The former St Augustine's secondary school catered for up to 264 pupils and closed in July 2010.

4. The Proposal

- 4.1. The proposal is for the erection of a secondary Special Education Needs (SEN) school and a primary SEN school. Full permission is sought for the secondary SEN school (use class D1) with all matters to be determined, and outline permission for the primary SEN school (use class D1) with all matters reserved. There will be alterations to the access, landscaping, drainage and associated infrastructure.
- 4.2. Phase 1 of the scheme, for the secondary school, is proposed to be operational by September 2019 and is anticipated to accommodate a maximum of 100 secondary school children with 90 FTE staff. The primary School proposed as phase 2 would be to accommodate a maximum of 80 children and approximately 90 FTE staff, to be developed if required within the planning permission timescale.

Proposed vehicle parking for 90 full time equivalent staff, and other parking as follows;

- 45 car spaces
- 2 visitor spaces
- 5 mini bus space
- 4 disability spaces
- 28 cycle parking spaces (14 sheffield stands/cycle hoops)

- 4.3. The scheme is proposed to be served via an existing upgraded junction from Lyngford Road. The altered vehicle and public access from the public highway, would improve visibility and safety for traffic and pedestrians into the site and there would be new service/circulation roads within the site.
- 4.4. The application states that the development would incorporate areas to store and aid the collection of waste with separate storage and collection of recyclable waste. Foul sewage would be disposed of via the mains sewer and would be connected to the existing drainage system.
- 4.5. The area of the site which would have the proposed school buildings is not within an area at risk of flooding. Surface water would be disposed of via a sustainable drainage system.
- 4.6. Documents submitted with the application:
- 1 APP Application form;
 - Ownership letters Ref: MH/GC/8695;
 - Existing Site Plan AWW3900_P17059_0101 rev P02;
 - Site location plan AWW3900_P17059_0100 rev P02;
 - Proposed Site Block Plan AWW3900_P17059_0110 rev P02;
 - Proposed Ground floor Plan AWW3900_P17059_0200 rev P02;
 - Proposed First Floor Plan AWW3900_P17059_0201 rev P02;
 - Hazelbrook Campus Selworthy School: Design and access statement updated version Rev 3 (February 2018);
 - Statement of community involvement (contained within DAS);

- Arboriculture report (September 2017);
- Tree removal Plan AWW3900_P17059_v1_zz_DR_A_0161_P01;
- Updated Arboricultural Impact Assessment (AIA) (February 2018) report No. RT-MME-127092-02 Rev A;
- Ecological Appraisal, First Ecology ref. 1073_2017_34 (September 2017);
- Landscape Infrastructure Plan Dwg no. 890-01B;
- Landscape Strategy (Bridges Design Associates Ltd. 18th January 2018);
- Flood Risk Assessment (FRA) Wilmott Dixon Rpt no. RT-MME-127092-02 Rev A;
- FRA Hydroc ref: C-08289-C (January 2018);
- Foul & Surface Water Drainage Strategy ref: HCSS-HYD-00-ZZ-RP-C-0001_P1 (January 2018);
- Water efficiency statement – SDS Engineering consultants, Plymouth;
- Energy statement - SDS Engineering consultants, Plymouth Doc. 4191P – SDS – X0 –XX – RP – ME- 01-S3 – P0.3;
- Acoustics Report updated ref:180312-259 (20 March 2018);
- Ground conditions Desk Study report ref. HCss-HYD-XX-DS-RP-G-1000 P1(January 2018);
- Historic Environment Desk-Based Assessment Ref: 201460.01 (January 2018);
- Planning statement, MH/GC/86956 (January 2018);
- External Lighting: SDS Plymouth ref. 04191P rev P02 (15th January 2018);
- Transport assessment;
- Travel Plan Ref: B067050/TP;
- Non-motorised users report & updated version rev V03 issue dated 22 February 2018;
- P17059-AWW-ZZ-ZZ-DR-A-SK24-2a Lyngford Road_P01.pdf
- Culvert Conn Detail RevP01
- SuDS Report Hazelbrook April 2018 Rev 2.pdf

5. Environmental Impact Assessment (EIA)

5.1. An assessment of the proposed development in the context of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 has found that the proposal falls within Schedule 2, project type 10(b); 'Urban development projects, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas;' The thresholds and criteria relevant to this project type are:

- (i) The development includes more than 1 hectare of urban development which is not dwelling house development; or
- (ii) the development includes more than 150 dwellings; or
- (iii) the overall area of the development exceeds 5 hectares.

The site area is 2.8ha; which is in excess of applicable threshold (i).

5.2. Given that the development exceeds the site size threshold, it is necessary to screen the proposal to determine whether or not the effects on the environment associated with the development are likely to be significant. The screening

process determines whether or not the proposal represents EIA development, and therefore whether or not an Environmental Statement and EIA is required.

- 5.3. An Environmental Impact Assessment (EIA) Screening Opinion has been undertaken using the EIA 2017 Screening matrix and issued. The EIA Screening Opinion is a matter for the County Council as the Local Planning Authority to determine and is not something that is publicly consulted upon. It is sent to the Borough Council to be placed on the Part 1 register and made available for public inspection for a period of two years.
- 5.4. The conclusion is that this development is not EIA development and therefore an ES is not required to be submitted with the application.

6. Consultation Responses Received

6.1. External consultees

6.1.1. Taunton Deane Borough Council (TDBC): No objections and no comments or suggested conditions from the Development Management team.

6.1.2. TDBC Policy Team: Summary

Even with phase one and two SEN schools there is the opportunity to have some playing pitches (at least junior/7v7/etc.) south and south-east of the proposed buildings with a foot access off Priorwood Rd or Lyngford Lane. Bringing former pitches back into use is an economical (cost and resources) solution to resolving pitch capacity and provision shortfall in the Borough. Renting out pitches would also generate an income for the site occupants or freeholder. It is therefore not clear why this simple and significant opportunity appears to have been discounted.

6.1.3. Environment Agency (EA)

The EA has no objection to this proposal, subject to conditions and notes to cover their interests.

Taking each point in order, as per the letter of 02 May 2018, the EA now comment as follows:

1. Whilst the additional flood mapping provided on the AWW drawing indicates that the higher flood risk areas at the site lie towards the southern boundary of the site, we still feel that the main access/egress point could be subject to some flood risk, principally from overland surface water routing along Lyngford Road. However, this is likely to be fairly shallow and infrequent from an inspection of the surface water flood maps, and something that we feel could be incorporated into a flood warning and emergency response plan for the school. Rather than condition the need for a subsequent Flood Risk Assessment revision, which could be *ultra vires* as a planning condition, we would **advocate a condition that requires the provision of a flood warning and emergency response plan to be submitted and approved prior to use of the SEN school buildings.** As part of this plan, should any additional emergency access/egress point become desirable as further analysis of flood risk is undertaken, then we

would simply expect this to be provided in the completion of phase 1 works, or delivered via any phase 2 extension.

2. Agreed already.

3. Agreed already.

4. The additional surface water drainage connection details illustrated in concept on Hydrock drawing HCSS-HYD-00-XX-DR-C-7150 Rev P01 suggests that it will be technically possible to make a viable gravity discharge point for the site attenuation system to the Kingston Stream culverts. However, it is felt that the saddle detail shown may not be acceptable to our Asset team, who favour a new manhole chamber to be formed at the proposed connection point. Any new connection to the Kingston Stream Main River culverts will be subject to a separate Flood Risk Activity Permit (FRAP) from ourselves, and we suggest that this can be discussed further at the time of application to us. In light of these comments, we would **advocate a condition that requires the submission and approval of a suitable surface water drainage connection to the Kingston Stream (Main River) culvert(s) to be made prior to any construction of the attenuation tank taking place on site.**

5. Whilst it is disappointing to curtail exploratory discussions around the re-opening of the Kingston Stream culverts at this time, we do not feel that our current objection to this application should be sustained on this point. Nevertheless, we would welcome any opportunity for future discussions should the sports pitch delivery not be required, or there are other reasons to pursue these environmental outcomes at the site. This is particularly relevant in light of the very limited sustainable drainage measures that have been incorporated into the current surface water drainage designs for the school site. This outcome is a lost opportunity for the council to be showcasing good practice and enhancing the environment of the town of Taunton, especially considering its Garden Town Status, and as it is your Council's role in promoting these via new development.

6.1.4. Sport England

It is understood that the proposal prejudices the use, or leads to the loss of use, of land being used as a playing field or has been used as a playing field in the last five years, as defined in The Town and Country Planning (Development Management Procedure) (England) Order 2015 (Statutory Instrument 2015 No. 595).

Sport England has considered the application in light of:

- The National Planning Policy Framework (particularly Paragraph 74); and
- Sport England's Playing Fields Policy and Guidance (March 2018), (www.sportengland.org/playingfieldspolicy); and
- The Taunton Deane Playing Pitch Strategy (PPS) for the area. The PPS seeks to protect the site for playing pitch use across the Strategy period of 2017-2019.

As currently submitted the application does not accord with Paragraph 74 of the NPPF. Sport England's policy is to oppose the granting of planning permission for any development which would lead to the loss of, or prejudice the use of, all/part of a playing field, unless one or more of the five exceptions stated in their playing fields policy document apply, and the applicant has not demonstrated that the exceptions apply. In addition the application does not

provide justification for the deviation from the Taunton Deane Playing Pitch Strategy (Policy F90), relating to the St. Augustine site. Therefore Sport England **Object** to the proposal as submitted.

Following a rebuttal from the applicant's agent Sport England's following comment was:

Sport England's comments dated 20 February 2018 remain valid and an **objection** has been lodged. The playing fields when in operation were quality playing surfaces. They should be protected and be brought back into community use, alternatively a replacement playing field is created in line with Exception 4 of the above Playing Fields Policy which states:

The area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field:

- **of equivalent or better quality, and**
- **of equivalent or greater quantity, and**
- **in a suitable location, and**
- **subject to equivalent or better accessibility and management arrangements.**

We would not want the Council misguided by comments related to '5 years' and the site being last used circa 2010. To be clear Sport England draws your attention to *what is a playing field*, *what is a playing pitch* and *what is meant by land last used as a playing field* (within the Playing Fields Policy & Guidance March 2018):

Conclusion

In light of the above, Sport England maintains the **objection** to the application because it is not considered to accord with any of the exceptions to Sport England's Playing Fields Policy or with Paragraph 74 of the NPPF. Sport England would suggest that the proposed layout is revised so that new buildings and car parking is located only on the brownfield element of the site. And that the playing field land is retained and opened up to community use in accordance with the Playing Pitch Strategy.

The applicant's agent provided a desk top study to show potential playing fields which could be retained.

Sport England's final response indicates that they do not consider the proposal as meeting Exception 4 of the Playing Fields Policy & guidance (March 2018).

A solution could be that the application is withdrawn and re-submitted just showing Phase 1 the SEN on brownfield land. Thus safeguarding the playing field land for future use as required by the TD Borough Playing Pitch Strategy 2016-2028 (adopted 2017). Sport England would not object to that application.

6.1.5. Wessex Water

- The site shall be served by separate systems of drainage.
- The Drainage Strategy (Hydrock, Jan 2018) proposes surface water disposal to the culverted watercourse running west to east through the site. This will be subject to agreement with the riparian owner and approval from the lead local flood authority with flood risk measures.
- Surface water connections to the public foul/ combined sewer network will not be permitted.
- For discharge of foul flows, the foul drainage strategy proposes an indirect connection to the public foul sewer, which we accept in principle.
- If there are any existing surface water connections to the existing foul drainage system these must be redirected upon re-development.
- Redundant drains and laterals should be sealed at the point of connection to the public sewer.
- Land drainage run-off shall not be permitted to discharge either directly or indirectly to the public sewerage system

5.1.5 Crime Prevention Design Advisor

Comments were provided on the following issues

- Perimeter Security
- Entrances at the Perimeter
- Vehicle Parking (incl. 2-Wheeled)
- Bin Stores
- External Lighting
- Landscaping/Planting
- Building Shell Security
- Internal Layout
- External Door sets
- Windows
- Access Control
- CCTV
- Intruder Alarm Systems
- Secured by Design(SBD) – if planning permission is granted, the applicant is advised to consult the additional comprehensive guidance available in the police approved SBD '**New Schools 2014**' design guide available on the SBD website – www.securedbydesign.com

The Applicants agent responded and provided a new drawing no. 890-01B – landscape infrastructure – A0

The crime prevention design advisors final comments are that the new information does satisfy the initial comments /concerns.

7. Internal consultees

7.1. Somerset Ecological services – Ecology

Following the submission of the ecological survey report, produced by First Ecology in September 2017 which includes bat activity and reptile surveys, the county ecologists had further discussion with the applicants, and an updated ecology report (from First Ecology) gives an additional recommendation for lighting control with regard to bat activity.

The existing field boundaries within the site should be retained and protected during development, i.e. the northeast boundary of Phase 1 and the north and eastern boundaries of Phase 2. Some beneficial habitat creation, such as wildflower meadow is shown within the landscape design for Phase 1. In order that this, and retained habitats, are managed for the benefit of bats and other wildlife the ecologist recommends that the following is conditioned:

- A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and be approved in writing by, the County Planning Authority prior to the occupation of Phase 1 of the development. The content of the LEMP shall include the following:
 - a) Description and evaluation of features to be managed;
 - b) Ecological trends and constraints on site that might influence management;
 - c) Aims and objectives of management;
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) Details of the body or organisation responsible for implementation of the plan; and
 - h) On-going monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally submitted ecological scheme. The plan will be implemented in accordance with the approved details.

Reason: in the interests of the 'Favourable Conservation Status' of populations of European protected species

In addition although the bat species recorded are fairly light tolerant it is preferable that habitat used by bats, especially with regard to the potential presence of *Myotis* species, are kept dark. Therefore, I would recommend that the following be conditioned:

Prior to occupation, a “lighting design for bats” shall be submitted to and approved in writing by the County Planning Authority. The design shall show how and where external lighting will be installed (including through the provision of technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design. Under no circumstances should any other external lighting be installed without prior consent from the County Planning Authority.

Reason: in the interests of the ‘Favourable Conservation Status’ of populations of European protected species

When Phase 2 comes forward I would advise that the design must include at least a 10-metre buffer of the boundary hedgerows. This then should be managed as long grassland for the abundance of prey species for bats. It would also need to be kept dark.

In accordance with the updated document, the following condition in line with the report’s recommendations on potential harm to badgers is recommended as follows:

Any trenches left exposed overnight during the construction phase will have a means of escape for badgers and other animals. This will comprise a shallow sloped edge or board (of at least 30cm width) set at an angle of no more than 30°.

Reason: In the interests of a protected species.

7.2. Lead Local Flood Authority (LLFA)

This proposal includes a betterment of 40%, however, given the site will be an educational campus it is considered that an opportunity is missed to create best practice Sustainable Urban Drainage System (SuDS) through high quality above ground drainage features providing environmental (water quality and biodiversity) amenity benefit and educational opportunities.

Using EU and Somerset Rivers Authority funding the LLFA are embarking on a series of SuDS retrofit schemes across Taunton to create showcase sites. This work also complements the town’s status as a Garden Town. The Wildlife and Wetland Trust is promoting the SuDS for Schools project, working in partnership with the EA and Thames Water, to build SuDS in ten schools within a particular catchment. The officer in charge of the scheme has been contacted to see if they might have some further advice/ suggestions with regards to the approach to this school.

The LLFA have encouraged the applicant to review their proposals and consider opportunities to enhance the ecological and amenity benefits that could be achieved for this development, noting the designs will also need to carefully consider the safety of pupils. The applicant has designed a further

drainage design which better fits with the principals of sustainable drainage, but as it is considered that further design work is required they have suggested the following condition to ensure the best design is submitted prior to development.

No development shall commence until a surface water drainage strategy, based on sustainable drainage principles, is submitted to and approved in writing by the local planning authority. The scheme shall include details of gullies, connections, swales and other means of attenuation, together with details of how the scheme shall be managed and maintained for the lifetime of the development. The scheme shall subsequently be implemented in accordance with the approved details.

REASON: To prevent any increased risk of flooding to the development, to improve and protect water quality and to improve habitat and amenity.

7.3. Local Highway Authority

There is no objection in principle to the proposed school on this site, given that the previous use of the land was also for education purposes. This response therefore concentrates on the technical submission and the detail that is provided to accompany the proposal.

Transport

There will be a change to the nature of the traffic associated with this site, compared to that of the previous secondary school; however the submitted Transport Assessment has demonstrated that the impacts of traffic associated with the SEN school will not be considered 'severe' in terms of the National Planning Policy Framework. The Highway Authority has no reason to challenge this conclusion.

It is noted that the majority of students will be brought to the site by mini-bus and that as such the majority of movements will be associated with staff travel.

Travel Plan

A Travel Plan has been submitted as part of this proposal. The Travel Plan focusses on staff as the potential for mode shift, as the ability to influence how the pupils travel is very limited. This is accepted.

It is unclear however, how the Targets that have been set for short, medium and long term (covering 5 years) will be achieved. There is no explanation of how the baseline was derived to support the targets and this should be demonstrated to ensure that the targets are reasonable and achievable.

The Travel Plan includes a commitment to undertake annual surveys (section 8.3 with key questions in 8.3.2) but this survey and these questions should be undertaken now with existing staff, to help establish the baseline and inform the assumptions. This would be of use, given that a number of staff will be relocating from the existing Selworthy School to this site, should permission be granted.

There is no information regarding staff origin locations and this will be necessary to explore the possibilities of Car Share, or to achieve a shift to other modes (dependant on their home locations). A plot of staff home postcodes should indicate where this may be possible and a range of suitable measures identified.

The Travel Plan will need to contain more information on how pupil transport will be managed. Whilst a basic drop off/pick up strategy has been included, there is no explanation of how many vehicles are being used, how long they take to load/unload or how the car park will be managed. This is a key area of any SEN School and a robust strategy should be included within the Travel Plan.

A good range of measures have been considered however 'park and stride' would normally be suggested for pupils rather than staff. To encourage this as a measure for staff, a suitable parking location should be identified to prevent indiscriminate and antisocial parking in the local area, in the event that the proposed parking in conjunction with an appropriate Travel Plan is insufficient.

Other measures should be explored, once a robust baseline is established, and it is recommended that the provision of pool bikes is used for inter-site journeys.

Given the points made herein in relation to the Travel Plan, amendments to the document will be required in order to make it acceptable. It is therefore recommended that this is included as a condition.

Car & Cycle Parking

Car parking provision has been provided in line with the adopted Somerset Parking Strategy, at a level of 1 space for two Full Time Equivalent staff, plus visitors, disabled spaces and mini-bus parking.

Cycle parking is shown as slightly below the minimum requirement and this should be addressed. A secure shelter for cycles should also be provided, especially where cycling will be the primary means of transport for some staff.

Access

The existing site benefits from three points of access to the highway, however it is proposed that only one will be utilised for the new school. This access is to be modified to accommodate the proposed development and this is acceptable but will necessitate the works being undertaken by either agreement or licence (depending on the technical detail).

There is sufficient circulatory space proposed within the site, that vehicles can enter the site and find parking/turning arrangements, clear of the public highway. This is however, dependent on the access gates being left open during operational hours for the school. If a different arrangement is

anticipated, this should be discussed with the Highway Authority to ensure that highway safety is not compromised.

Conditions

- Before works commence to alter the existing access, details shall be submitted to and approved in writing from the Planning Authority. These works shall then be complete in accordance with an approved specification before the development hereby permitted is first brought into use.
- The area allocated for parking and turning on the submitted plan, shall be kept clear of obstruction at all times and shall not be used other than for the parking of vehicles in connection with the development hereby permitted
- Prior to the commencement of the development, the Travel Plan shall be amended, submitted to and approved in writing by the Planning Authority. The measures within the approved Travel Plan will then be implemented in accordance with a timetable which shall also be submitted for approval. The development shall not be occupied until the agreed measures have been implemented.

7.4. Acoustics advisor

There is no objection to this application in terms of the expected noise impacts arising from the use of either the secondary school or the outline Phase 2 development of the primary school.

It is suggested that the noise impacts arising during construction of both Phase 1 and Phase 2 developments require further planning agreements to define and limit any potential impacts that might affect nearby housing and Sky College.

A condition for the requirement of a Noise Control Scheme is advised.

The following points regarding assumptions made in the supporting acoustic design report require clarification:

- The school design may need to more carefully consider its natural ventilation strategy and opening window alignment if it is to avoid excessive traffic noise ingress;
- While unlikely, it has not yet been clarified that extraction systems at the BAM Kitchen will not have consequence at the school;
- It is recommended that the acoustic needs and specification of this SEN development be discussed with the hearing support specialists within the SSE Sensory Team.

Condition

Prior to the commencement of construction of permitted Phase 1 development a Noise Control Scheme shall be submitted and approved by the planning authority. This scheme shall:

- Provide description and estimated duration of significant phases of development;
- Detail the periods and intended hours of site activities and any restricted aspects of those activities or phases of development;
- Identify the major expected sources of noise during each phase of development and any control measures adopted to minimise noise impacts;
- Identify a site representative with responsibility for investigating any issues associated with noise disturbance.

REASON: To minimise the risk of noise impact arising during the construction phase.

7.5. South West Heritage – Archaeology

There are limited or no archaeological implications to this proposal and therefore no objections on archaeological grounds, with no conditions or recommendations.

8. Public representations

8.1. 1 letter of objection has been received raising the following issues:

One objector raised the following points:

- The parking provision on the site is not enough for the amount of staff and visitors leading to the road being used as a car park;
- The amount of traffic using the single entrance will be considerably more than the previous school as there were two other entrances for the former school;
- There is no apparent bus parking;
- There is insufficient parent parking leading to obstructing the road at drop off and pick up times;
- Combined with the cadet parking three times per week in the afternoon this will increase parking issues;
- Lyngford Road is used as a cut through therefore there are higher pressures on this road than previously, and the further housing in the area will cause more traffic to use Lyngford road;
- The 20mph signs are not a reflection of the speed of traffic along the road, speed humps would help;
- A comprehensive calming plan should be developed (such as with Parkfield Road Primary School, Galmington) to ensure health and safety.
- The Objector understands that problems of this sort should be dealt with in the early stages of planning to prevent having a serious impact on Police time and resources, and for parking enforcement officers. The objector does not agree that the measures, including parking enforcement officers which could be employed when parking problems start, is the correct way to address issues.

- The existing entrance was not used on a regular basis as the old school entrance was a lot further down the road at a wider point. This is known as the objector's children went to the old St Augustine's School.
- There are gaps in the zig-zag lines where parking will happen and as there are no zig-zag lines on the opposite side of the road therefore parking will happen; which will obscure the view for residents when driving from their driveways.
- The amount of larger vehicles needed to transport the students to school and private cars (staff and parents and visitors to the school) will be significantly higher due to the number of students and ratio of staff for them.
- Due to the students Special Educational Needs the drop-off and pick-ups will be considerably slower which will cause possible tail backs to the entrance.

9. Comments of the Service Manager - Planning Control, Enforcement & Compliance

The key issues for members to consider are:

- Accordance with the development plan;
- Material Considerations;
- Playing Field provision;
- Educational need;
- General development, design and crime prevention;
- Transport and parking;
- Landscape and ecological impact.
- Flood risk, surface water design and connections to watercourse

9.1. The Development Plan

Regard is to be had to the development plan for the purpose of the determination of this planning application, which must be made in accordance with the Plan unless material considerations indicate otherwise. In this case the Development Plan documents consist of:

- Taunton Deane Core Strategy 2011–2028,
- Taunton Deane Site Allocations and Development Management Plan (SADMP) December 2016;

9.1.1. This proposal for development is considered to be in accordance with the Taunton Deane Core Strategy. Specifically in the following policies;

- **Policy SP1: Sustainable development locations**, as the strategic focus for growth in Taunton Deane as the district's largest and most diverse and multi-functional settlement, Taunton is its principal settlement, and therefore the focus for development.

- **Policy CP1: Climate Change**, aims to ensure development proposals should result in a sustainable environment, and that proposals demonstrate that the issue of climate change have been addressed.
- **Policy CP5: Inclusive communities**, provides the policy basis for the provision of land for educational use, with an assessment of the likely effects of implementing the proposal on young and disabled people. It states that ‘ Development proposals will make provision for (among other things):
 - Services, Community and Social facilities – providing a range of education, health, indoor sports, retail and meeting spaces as well as access to sustainable transport and high speed broadband; and
 - Recreational Space – improving health and interaction through provision of formal and informal green space such as play spaces, allotments, playing pitches, sports facilities as well as promoting walking and cycling
- **Policy CP6: Transport and accessibility**, aims to ensure development should contribute to reducing the need to travel, improve accessibility to jobs, services and community facilities, and mitigate and adapt to climate change

9.1.2. This proposal is in accordance with the above Core Strategy policies as it would provide a high quality SEND school development, incorporating many measures to ensure it is resilient to climate change which are incorporated in its design. It would ensure young and disabled people in Somerset can achieve their best by providing a specialist education facility, with community use in the main hall on site. The site is in a sustainable location for transport. The location of the site will improve accessibility by public transport, cycling and walking for students and staff to the facility. The robust evidence base in the Travel Plan and Transport Assessment ensures the development meets transport requirements. The proposal also retains space for playing fields and/or sports pitches to meet future demand for recreational space.

9.1.3. The proposal is in accordance with the SADMP relating to the following policies;

- **Policy C1: Reserved land for educational purposes**, in the SADMP details the application site as ‘**A. St Augustine School, Taunton**’; and overall will be a key development to help deliver the district’s housing requirements, and associated community infrastructure.
- The proposal (within the redline boundary) only relates to part of the overall site which point A. relates to as St Augustine’s school, Taunton, which is the former school boundary. However the whole proposal of phase 1 and 2 are for educational purposes and therefore accord with the policy.
- **Policy C3: Protection of recreational open space**, in the SADMP relates to this site as;

‘Proposals involving the loss of recreational open space facilities as shown on the policies Map will not be permitted unless: in the following points;

‘D. In the case of a school or college playing field only; the land is needed for the development of educational buildings and /or associated facilities, and adequate playing fields to meet statutory requirements would be retained or provided, and E. it is not required for other recreational uses.’

Phase 2 of the development does impact on an area of former playing fields, however in accordance with the above **policy point D**, the land is needed for educational buildings in phase 2, and adequate playing fields are retained on the other areas (within the application site and adjacent land within the landowners control). There are no statutory requirements to provide **‘other recreational uses’** for this type of SEN school development, as in **point E**. The playing fields could be available by agreement with the landowners outside the constraints of this planning application.

Sport England have a current objection regarding siting of the phase 2 development due to the loss of playing field space. However the site is in accordance with the ‘Taunton Deane SADMP policy C3’ as stated above in para 9.1.3, and Para 74 in the NPPF as stated below in para 9.3.2-9.3.3. Therefore, providing playing field areas are retained for future use and the siting of the phase 2 building is in accordance with Policy C3, as that piece of the land is required for educational use, the application is in accordance with the above planning policy.

9.1.4. This proposal is in accordance with Policies C1 and C3 of the SADMP, as the proposal is for much needed educational purposes on the allocated site of St Augustine. Land on the site used to be a playing field, and a small proportion is required for educational buildings. The land is not required for other recreational uses for the school and there is no statutory requirement to provide playing fields for SEND schools. Adequate playing fields will still be retained for other users which enables the proposal to be in accordance with material considerations as set out below.

9.2. Material considerations and other relevant policy for the proposal:

- National Planning Policy Framework (NPPF);
- Policy Statement: Planning for Schools Development (15th August 2011);
- Sport England’s Playing Fields Policy and Guidance (March 2018);
- Taunton Deane Borough Playing Pitch Strategy (2016-2028) Adopted 2017 (policy F90);
- Somerset Children and Young Peoples Plan April 2016- March 2019 (SCC) -2016 May 11 Item 5 Paper A, Appendix 1.

9.3. Playing Field Provision

9.3.1. Paragraph 74 of the NPPF states that:

‘Existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless:

- an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements;
- the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location;
- the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.’

9.3.2. The Playing Fields Policy and Guidance indicates that Sport England will oppose the granting of planning permission for any development which would lead to the loss of, or would prejudice the use of:

- All or any part of a playing field, or
- Land which has been used as a playing field and remains undeveloped, or land allocated for use as a playing field,

Unless, in the judgement of Sport England, the development as a whole meets with one or more of five specific exceptions.

Exception 4 states: the area of playing field to be lost as a result of the proposed development will be replaced, prior to the commencement of development, by a new area of playing field:

- Of equivalent or better quality, and
- Of equivalent or greater quantity, and
- In a suitable location, and
- Subject to equivalent or better accessibility and management arrangements

9.3.3. The Taunton Deane Borough Playing pitch Strategy (PPS) 2016-2019 (adopted 2017) provides spatial strategy with a vision to secure the protection and enhancement of future and current provision of good quality outdoor sports. It provides an audit of the quality, quantity and accessibility of playing pitches, establishes demand and protects forward demand. It provides recommendations of which there is one action for the St Augustine site as follows:

- *St Augustine School – Local authority and NGB to work with pitch owner to find solutions to bring back into use or replace provision on alternative site. Would require opening up or creation of changing facilities on-site. Until resolution, protect the pitch for potential future use during the strategy period to accommodate future demand. Consider options to use playing field for other sports use (for example baseball)*

This recommendation is in italics in the strategy (pg31) which represents playing fields [which require further discussion with regards to their

deliverability], which indicates that the strategy acknowledges that these playing fields may never be deliverable and therefore, this site is not included in quality enhancements to be undertaken. Presumably due to the pitches always being in private use and not in use over the last 10 years.

- 9.3.4. The above PPS written for Taunton Deane could be considered to be an assessment which shows the open space, or land surplus to requirements as required by Para 74 of the NPPF and Exception 1 of the Playing Fields Policy & Guidance. However, as the Strategy has not been produced by the applicant, I have not relied on this to ensure the proposal meets with planning policy and material considerations.
- 9.3.5. The small loss of playing field area, resulting from the proposed indicative foot print of phase 2 of the development, would be replaced by better provision of playing fields in terms of the area having the ability to be available for community use, subject to agreement with the landowners and school. Therefore as the land would be open to community use, compared to the previous school, in the same suitable location, of similar quantity and equal quality, this is alternative recreational provision which clearly outweighs the loss of playing fields, which were not available previously to the public, or at all for the last 10 years (and possibly surplus to requirements as the Taunton Deane PPS suggests they may not be deliverable). Therefore providing further pitch space and playing fields to Taunton Deane Borough increasing provision for community use.
- 9.3.6. In response to Sport England's (SE) objection the applicant has discussed the site with the Estates team in Somerset County Council and they have agreed that it is possible to retain the open space in and outside the redline boundary of the application where former playing pitches were located. This land will be kept free from development apart from the indicative footprint of the phase 2 primary school. And any desire of TDBC and SE or community groups and sports clubs or schools to use this area for playing fields and sports pitches are welcomed subject to discussion and arrangement with SCC Estates team.
- 9.3.7. The SEN Schools do not have a statutory requirement to provide playing fields. Therefore the playing field areas to the East of phase 2 and the south of the redline boundary will be retained in accordance with NPPF policy 74, the Sport England playing fields policy and guidance, the Taunton Deane Borough PPS and policy C3, point D in the SADMP..
- 9.3.8. SE continue to object to the proposal as they believe that the application still does not accord with the NPPF para 74, Exception 4 of the Playing Fields policy and Guidance and TDBC Playing Pitch Strategy policy F90. Although the Playing pitch strategy indicates that this site has not been included as a deliverable option therefore any retained space would be providing capacity to reduce the need for additional new pitches in Taunton.

9.3.9. To ensure the loss is fully and appropriately replaced a condition in section 11 of this report relating to Phase 2 of the development for the reserved matters is imposed to ensure compensatory provision (in a suitable location) is to be approved and implemented prior to development of phase 2.

9.4. Educational need

9.4.1. Paragraph 72 of the NPPF (regarding promoting healthy communities) states that:

‘The government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. They should:

- give great weight to the need to create, expand or alter schools
- work with schools promoters to identify and resolve key planning issues before applications are submitted.’

9.4.2. The ‘Policy Statement: Planning for Schools Development’ sets out the government’s commitment to support the development of state-funded schools and their delivery through the planning system.

9.4.3. There are 94 pupils currently on roll at Selworthy School in buildings suitable for around 70 pupils. As a result, post 16 provision is delivered off site in a number of venues, increasing costs for the school but still leaving the school over capacity.

9.4.4. There is a need to separate the primary and secondary aged pupils into purpose built modern facilities in line with government guidance. The proposal will enable the secondary aged children from Selworthy (who are currently offsite in different venues) to move into this purpose built development, and the Selworthy school will remain for the primary aged children only, until phase 2 of the development is completed.

9.4.5. Taunton has become one of the main areas for housing expansion in Somerset. The new schools at this site would deliver school spaces for children from Taunton and surrounding areas. This is in accordance with the Somerset Children and Young Peoples Plan 2016-2019 which states the following:

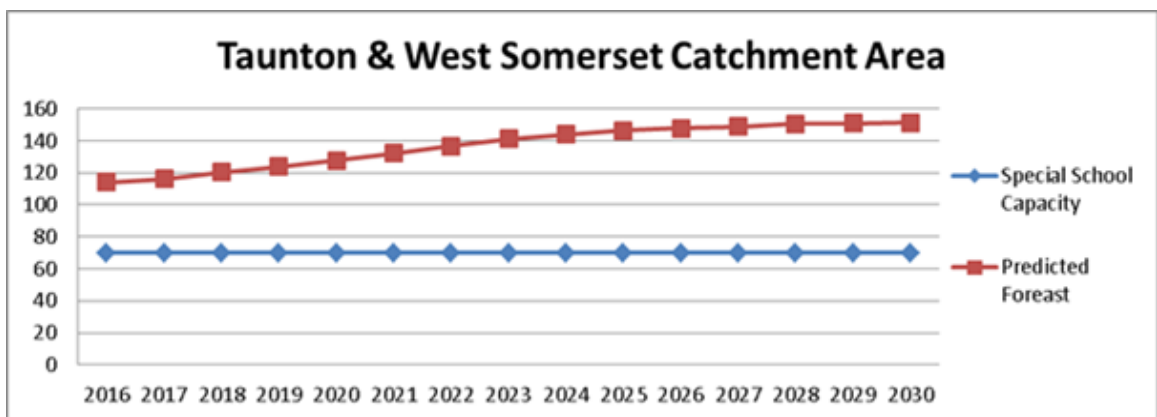
‘An SCC aim for 2018-19 is to enable most Somerset children and young people with SEND to be educated in appropriate local education provision.’ (Section 4. Pg 27).

‘Every child in Somerset will achieve well above expectations and not be held back by their social and personal backgrounds, special educational needs or disabilities (SEND).’(pg 13 table & pg 25)

- 9.4.6. The above quotes support the need for the development of a SEND secondary and SEND primary for the future in Taunton.
- 9.4.7. The Local Authority have produced a number of themed work streams to improve the SEND offer across Somerset.
- 9.4.8. Theme 3 deals with SEND infrastructure and one workstream was to develop capacity to meet future demand. Taunton, with a single generic special school (Selworthy) and a rapidly growing population, is under-provisioned in terms of special school places. The expansion would deliver an additional 80-100 places and meet projected demand for the next 10-15 years.
- 9.4.9. The current pupil numbers 2017/2018:

Years 0-6: 42 pupils
Years 7-11: 37 pupils
Post-16: 15 pupils

- 9.4.10. All of the pupils at the school have a learning difficulty or disability and will have been issued a Statement of Educational Need (Statement) or an Education, Health & Care Plan (EHCP). Placements of children currently in the schools will not be immediately affected although once the proposed school is open, pupils in years 7-11 and post-16 provision would move to the new site.
- 9.4.11. Pupils in Selworthy School's virtual catchment area are already being educated at other special schools, with 18 attending Penrose School and Elmwood School in Bridgwater. This then has the knock-on effect of displacing children in Sedgemoor, who have to be transported to Brookside Academy or Avalon School in Street.
- 9.4.12. The drive for expansion is fuelled by projection data which shows a significant increase in demand over the next 13 years:



Projection data: source – SCC Service Manager; Specialist Provision & School Transport

- 9.4.13. This proposal is in accordance with Para 72 of the NPPF and the Policy statement in para 8.4.2. above. The development of this secondary

SEND school, is a much needed facility to address issues of displaced pupils across Somerset and provide a separate secondary facility which would be specifically designed to address the needs of the pupils. This would therefore widen the choice in education provision, providing sufficient spaces to meet the identified need. Phase 2 of the development would ensure a high quality primary facility for future use to address the increased need of SEND school places in Somerset.

9.5. General development, design and crime prevention

9.5.1. The TDBC Core Strategy has the following Development Management policies to guide development design which relate to this proposal:

- Policy DM1 - General requirements
- Policy DM5 - Use of resources and sustainable design
Taunton Deane SADMP
- Policy D8 - Safety

Paragraphs 56-68 of the NPPF also aim to promote good design.

9.5.2. The design of the school building in phase 1 has been a result of stakeholder engagement including the school senior management team, governors, neighbours and the local community.

9.5.3. There are no objections or comments on the application regarding the overall siting, massing, scale and appearance of the proposed building for phase one. The outside design of the landscaping and play areas are considered to be well thought out and would be interesting, educational and fun areas for the pupils to be in.

9.5.4. Paragraphs 56-68 of the NPPF set a clear national policy framework for promoting good design as a key element to achieving sustainable development and emphasises the indivisible link between good design and good planning.

9.5.5. Noise has been assessed by the SCC's Acoustics Advisor, and it is concluded that there would be no adverse impacts of noise to the users of the site or to the surrounding residents and the neighbouring Sky College subject to the recommended conditions in section 11 of this report.

9.5.6. The proposal meets the good design required by the NPPF and the criteria of DM1 in terms of effective and efficient use of land, the proposal not leading to any harm or negative impacts to the environment from noise, pollution or appearance and character or health and safety. The site will also be served by necessary utility services.

9.5.7. The applicants have submitted an energy statement in relation to policy DM5 to ensure that appropriate design criteria for energy and water efficiency has been incorporated into the building. The recommendation in the report considers that photovoltaic panels are considered viable and preferable as a cost-effective means to achieve compliance with policy DM5. Therefore the proposal meets the requirements of that policy.

- 9.5.8. Taunton Deane SADMP Policy D8: Safety indicates how sites can be designed to ensure safe environments. The crime prevention officer has provided comprehensive advice to the applicants on improving the crime prevention for the site. The applicant has taken this advice into account and changed the location of some aspects of the design and altered others as detailed in the letter dated 15th March 2018 including confirming the safety standards of windows and doors, cctv and fence height and type. The changes have been incorporated into the Landscape plan update dwg. No. 890-01B-Landscape Infrastructure-A0. Therefore the proposal is in accordance with Taunton Deane SADMP policy D8: Safety.
- 9.5.9. Boundary treatment was commented on by the Crime Prevention Design Advisor and a member of the public who's garden abuts the school boundary. A new plan of the boundary treatment has been submitted showing the retention of the existing fence, and the repositioning of the proposed fence further back from the boundary to allow for maintenance between the two fences to overcome all those concerns. This is detailed in dwg no. P17059-AWW-ZZ-ZZ-DR-A-SK24-P01.

9.6. Transport and parking

- 9.6.1. Sustainable transport and parking are discussed in the NPPF, and specifically relating to developments in para 32-40, requiring a Transport Assessment, a Travel Plan and appropriate parking standards.
- 9.6.2. The Taunton Deane SADMP has the following policies regarding transport and parking;
- Policy A1 - Parking standards (in Appendix E.)
 - Policy A2 - Travel Planning
 - Policy A3 - Cycle network
- 9.6.3. The parking standards for secondary schools, in Appendix E of the SADMP, are 1 space per 2 FTE employees plus 2 visitor spaces. This is exactly what is proposed, as stated in para 4.2 above.
- 9.6.4. There is a transport assessment submitted with the application which demonstrates that the impacts of the proposal will not be considered 'severe' in terms of the NPPF. The majority of movement will be associated with staff as the children will mostly arrive in mini buses as they do at present.
- 9.6.5. The travel plan submitted with the application is required to have further clarity on the following:
- Baseline information on travel planning to ensure reasonable and achievable targets
 - Plot of staff home postcodes and suitable measures of mode shift to e.g. car-share opportunities
 - Management of pupil transport strategy i.e. how many vehicles in drop off/pick up, load/unload timescale

- Pool bikes for inter-site journeys
- 9.6.6. The applicant has confirmed in an email dated 29 May 2018 that *'the Travel Plan prepared to support the new Hazelbrook Campus is a Framework Travel Plan (FTP). Framework Travel Plans set out the framework for a full Travel Plan to be prepared, once a development has been completed and fully occupied'*
- There are expected to be 16 FTE staff members who will transfer from the Selworthy School to the Hazelbrook campus
 - A total of 74 new staff members are anticipated to be employed at the new Hazelbrook campus. The travel patterns of these new staff are not yet known
 - Future annual travel surveys would be carried out at the school, once fully occupied, to establish the ongoing modal split of the site
 - Drop-off existing modal split for pupils is estimated at five mini bus trips (assuming 8 pupils per minibus). The proposal provides 5 minibus spaces. It is estimated that proposed loading and unloading times will be unrestricted.
 - The applicant is prepared to explore the provision of pool bikes further, following all the new staff members being surveyed
- 9.6.7. The Local Highway Authority has no objection in principle to the development, subject to conditions for amendments to the travel plan to include points above in 9.6.5, further detail on the access improvements and to ensure parking and turning area is not obstructed. Subject to these conditions, in section 11 of this report, there are no issues relating to traffic and transport which require further information.
- 9.6.8. There are still some remaining concerns from an objector regarding the following:
- Lack of parking provision
 - The single entrance being insufficient for the level of traffic
 - Potential obstruction of Lyngford road due to parking, and obscuring residents view out of driveways
 - Need for a comprehensive traffic calming plan
 - Risk of tailbacks out of entrance due to drop/off pick up timescales
- 9.6.9. As described in the highways authority comments above the traffic into the site will have different impacts compared to the previous secondary school which closed, as most of the traffic movements will be staff rather than students as the students will predominantly arrive in mini-buses.
- 9.6.10. Secure cycle parking is proposed within the site which is in accordance with TDBC SADMP A3: Cycle network, and where relevant should provide for point C. of the policy 'Convenient and secure cycle parking facilities'.
- 9.6.11. The applicant notes that no pupils are anticipated to cycle and the existing modal split suggests 'that the new Hazelbrook Campus would

only be associated with approximately three cycle trips. Cycle parking and the number of cycle trips made to the school will be monitored as part of the Travel Plan and ongoing travel surveys. The need for additional cycle parking would be reviewed as a result.'

- 9.6.12. In conclusion the proposal, subject to condition in section 11 of this report meets all planning policy relating to transport and parking.

9.7. Ecological Impact

- 9.7.1. The National Planning Policy Framework is clear that pursuing sustainable development includes moving from a net loss of biodiversity to achieving net gains for nature, and that a core principle for planning is that it should contribute to conserving and enhancing the natural environment and reducing pollution.
- 9.7.2. Taunton Deane SADMP, Policy ENV 1: protection of trees, woodland orchards and hedgerows seeks to minimise impact on trees, hedgerows or wildlife and provide a net gain where possible.
- 9.7.3. Policy ENV 2: Tree planting within new developments requires development to provide a broad mix of native and non-native trees, with proper management of the resource.
- 9.7.4. The application has made a high quality proposal, in terms of the landscaping and planting scheme. There are areas of beneficial habitat creation, such as the pond area in phase 1, and high quality play space for the children including a bike track, a variety of planting creating different areas and spaces for quiet play or sensory education. There are suggested conditions in section 11 of this report to enable a clear landscape management plan and bat protection (light) to ensure no negative impacts on ecology, and to enhance the landscape and ecological benefits as much as possible.
- 9.7.5. The proposal is in accordance with the NPPF and the Taunton Deane SADMP in terms of effective planting of trees, protection of hedgerows and existing trees, and the implementation of new habitat areas and other planting. The conditions imposed will ensure protection of wildlife and management of the ecological benefits presented in the landscape scheme.

9.8. Flood risk, surface water design and outfalls to main watercourse.

- 8.8.1. The NPPF sets strict tests to protect people and property from flooding, the tests are designed to ensure that if there are better sites in terms of flood risk, or a proposed development cannot be made safe, it should not be permitted.

- 8.8.2. The Taunton Deane SADMP, policy I4: water infrastructure ensures that new proposals have adequate surface water and foul water drainage designs, and that surface water drainage is designed as a sustainable drainage system.
- 8.8.3. A flood risk assessment was submitted with the application and following discussion, the Environment Agency (EA) have no objections to the proposed development, The EA state that the operation (regarding the connection of surface water to the culvert) will require an Environmental permit, and they have other guidance which is in section 12 of this report.
- 8.8.4. The LLFA have discussed the surface water design with the applicants and are now satisfied that a sustainable drainage system is able to be incorporated. They still require some improvements to the scheme to ensure that flood water attenuation, water quality protection and ecological enhancement are all provided within the design. The imposition of the condition in Section 11 of this report which shall be submitted and approved prior to development commencing will ensure the design is appropriate, and meets policy I4 and the wider aims of the NPPF.
- 8.8.5. This proposal, subject to conditions does meet the requirements of the NPPF and the Taunton Deane SADMP, the EA and the LLFA have no objections to the development. Wessex water are also clear that a suitable foul water design would be developed.

9.9. Conclusion

- 9.9.1. I have considered the development plan and the potential impacts from the proposal. The principle of a school development in this location is set by Policy C1 in the Taunton Deane SADMP, and the proposal of a specifically designed school to address the needs of SEND children in the Taunton Dean Area and beyond will meet the requirements of the Policy statement for Planning for Schools development 2011, and paragraph 72 of the NPPF.
- 9.9.2. The secondary school building in phase 1 would be predominantly a one storey building, with some 2nd storey elements for staff and offices. The school development would be acceptably designed and sympathetically landscaped to address the needs of the users. Ecological habitats will be created and incorporated in the landscaping and surface water drainage. The development would be respectful of the District Council's policy on use of resources and sustainable design DM5 in the core strategy by including photovoltaic panels on the roof providing onsite electricity.
- 9.9.3. The development would be sensitive to the residential amenities of the area, particularly those of existing properties along Lyngford road, and the boundary of the school to the north. An appropriate level of transport infrastructure is existing as it was present for the previous school, with

some changes to the entrance to the school and an appropriate level of off street car parking in line with the published 'Somerset Parking Standards'. Management measures would be deployed to acceptably serve the development and not cause unacceptable transport impact.

- 9.9.4. The primary school outline proposal in Phase 2 is also addressed in Policy C1 of the SADMP because the whole site of the previous St Augustine school is allocated for school development although the proposal (phase 1 and phase 2) only accounts for approx. two thirds of the allocated St Augustine site. Therefore the principal of the SEN Primary school is also acceptable under policy C1 of the TDBC SADMP, subject to the recommended outline conditions.
- 9.9.5. The remaining objection from Sport England relates to the phase 2 area of the application, as that land was used for playing fields for the previous secondary school 10 years ago, and the indicative primary school building encroaches on that open area. The rest of the area which were former playing fields is outside the red line boundary of this application site. Playing pitches and fields are not a requirement for SEND schools, however the NPPF, the Playing fields policy and guidance and the TDB Playing pitch strategy all seek to retain these assets. The applicant has therefore discussed with the landowner (SCC) the ability to retain playing field space in the phase 2 area and outside the redline boundary to the South. This space will be retained and because it is not required for the proposed development it can therefore be available for community use or schools and sports organisations subject to agreement. This therefore meets the requirements of the above planning policy and guidance and strategy.
- 9.9.6. I conclude that the proposal is in accordance with the development plan and in accordance with other relevant material considerations. The decision should be made in accordance with the development plan, and I recommend approval of the application subject to conditions for the full application and for the outline application as submitted.

10. Recommendation

- 10.1. **It is recommended that planning permission be GRANTED subject to the imposition of the following conditions and that authority to undertake any minor non-material editing which may be necessary to the wording of those conditions be delegated to the Service Manager - Planning Control, Enforcement & Compliance.**

11. Conditions

1 Time Limit (3 years implementation)

The development hereby permitted in Phase 1 (Dwg no. P17059-AWW-ZZ-ZZ-DR-A-0111 rev P03) shall be commenced within three years of the date of this permission.

Reason: Pursuant to Section 91 of the Town and Country Planning Act 1990 (as amended).

2 Completion in accordance with the approved details

The development hereby permitted shall be carried out in strict accordance with the approved plans and specifications:-

- Existing Site Plan AWW3900_P17059_0101 rev P02;
- Site location plan AWW3900_P17059_0100 rev P02;
- Proposed Site Block Plan AWW3900_P17059_0110 rev P02;
- Proposed phasing plan P17059-AWW-ZZ-ZZ-DR-A-0111 rev P03
- Proposed Ground floor Plan AWW3900_P17059_0200 rev P02;
- Proposed First Floor Plan AWW3900_P17059_0201 rev P02;
- Hazelbrook Campus Selworthy School: Design and Access statement updated version Rev 3 (February 2018);
- Statement of community involvement (contained within DAS);
- Arboriculture report (September 2017);
- Tree removal Plan AWW3900_P17059_v1_zz_DR_A_0161_P01;
- Updated Arboricultural Impact Assessment(AIA) (February 2018) report No. RT-MME-127092-02 Rev A;
- Ecological Appraisal, First Ecology ref. 1073_2017_34 (September 2017);
- Landscape Infrastructure Plan Dwg no. 890-01;
- Landscape Strategy (Bridges Design Associates Ltd. 18th January 2018);
- Flood Risk Assessment (FRA)Wilmott Dixon Rpt no. RT-MME-127092-02 Rev A;
- FRA Hydroc ref: C-08289-C (January 2018);
- Foul & Surface Water Drainage Strategy ref: HCSS-HYD-00-ZZ-RP-C-0001_P1 (January 2018);
- Water efficiency statement – SDS Engineering consultants, Plymouth;
- Energy statement - SDS Engineering consultants, Plymouth Doc. 4191P – SDS – X0 –XX – RP – ME- 01-S3 – P0.3;
- Acoustics Report updated ref:180312-259 (20 March 2018);
- Ground conditions Desk Study report ref. HCss-HYD-XX-DS-RP-G-1000 P1(January 2018);
- Historic Environment Desk-Based Assessment Ref: 201460.01 (January 2018);
- Planning statement, MH/GC/86956 (January 2018);
- External Lighting: SDS Plymouth ref. 04191P rev P02 (15th January 2018);
- Transport assessment;
- Travel Plan Ref: B067050/TP;
- Non-Motorised Users report & updated version rev V03 issue dated 22 February 2018;
- P17059-AWW-ZZ-ZZ-DR-A-SK24-2a Lyngford Road_P01.pdf

and with any scheme, working programme or other details submitted to and approved in writing by the County Planning Authority in pursuance of any condition attached to this permission.

Reason: To enable the County Planning Authority to deal promptly with any development not in accordance with the approved plans.

3 Noise Control Statement

Before the commencement of development hereby permitted a construction Noise Control Scheme shall be submitted and approved by the planning authority. This scheme shall:

- Provide description and estimated duration of significant phases of development;
- Detail the periods and intended hours of site activities and any restricted aspects of those activities or phases of development;
- Identify the major expected sources of noise during each phase of development and any control measures adopted to minimise noise impacts;
- Identify a site representative with responsibility for investigating any issues associated with noise disturbance.

REASON: To minimise the risk of noise impact arising during the construction phase.

4 Construction Environmental Management Plan

Before the commencement of the development hereby permitted a Construction Environmental Management Plan shall be submitted to and approved in writing by the County Planning Authority. The plan shall include:

- *Construction vehicle movements;*
- *Construction operation hours;*
- *Construction vehicular routes to and from site;*
- *Construction delivery hours;*
- *Expected number of construction vehicles per day;*
- *Car parking for contractors;*
- *Specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice, notably dust, noise and vibration;*
- *A scheme to encourage the use of Public Transport amongst contractors; and*
- *Measures to avoid traffic congestion impacting upon the Strategic Road Network;*
- *Arrangements for the immediate removal of the consented stand alone route once the S.106 road works have been completed.*

The development hereby permitted shall be carried out in strict accordance with the approved details for the duration of its construction phase.

Reason: In the interests of the residential amenities of the area.

5 Landscape and ecological Management Plan

A Landscape and Ecological Management Plan (LEMP) shall be submitted to, and approved in writing by, the County Planning Authority prior to the occupation of the secondary SEND (Phase 1) of the development, hereby permitted. The content of the LEMP shall include the following:

- a. Description and evaluation of features to be managed;
- b. Ecological trends and constraints on site that might influence management;
- c. Aims and objectives of management;
- d. Appropriate management options for achieving aims and objectives;
- e. Prescriptions for management actions;
- f. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- g. Details of the body or organisation responsible for implementation of the plan; and
- h. On-going monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally submitted ecological scheme. The plan will be implemented in accordance with the approved details.

Reason: in the interests of the 'Favourable Conservation Status' of populations of European protected species

6 Lighting

Before the development hereby permitted is first brought into use, a "lighting design for bats" shall be submitted to and approved in writing by the County Planning Authority. The design shall show how and where external lighting will be installed (including through the provision of technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All external lighting shall be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design. Under no circumstances should any other external lighting be installed without prior consent from the County Planning Authority.

Reason: in the interests of the 'Favourable Conservation Status' of populations of European protected species

7 Site Access

Before commencement of the development, hereby permitted, details to alter the existing access, shall be submitted to and approved in writing by the County Planning Authority. These works shall be completed in accordance with an approved specification before the development hereby permitted is first brought into use and shall thereafter be maintained as such for the duration of the development hereby permitted.

Reason: In the interest of safety

8 Parking and Turning

The area allocated for parking and turning on the approved plan, shall be kept clear of obstruction at all times and shall not be used other than for the parking of vehicles in connection with and for the duration of the development hereby permitted.

Reason: In the interests of safety

9 Cycle parking

A plan with the location of a secure parking shelter for cycles shall be submitted to and approved in writing by the County Planning Authority.

Reason: To ensure the design meets with the requirements of the Somerset Parking Strategy

10 Travel Plan

Before the development hereby permitted is brought into use a revised Travel Plan shall be submitted to and approved in writing by the County Planning Authority. The measures within the approved Travel Plan shall include;

- A dedicated travel plan co-ordinator
- Pick-up/drop off strategy
- Implementation and monitoring strategies
- A commitment to undertake staff travel surveys six months after occupation and annually thereafter

These details shall then be implemented in accordance with a timetable which shall have been included within the Travel Plan submitted for approval.

Reason: To ensure appropriate sustainable travel patterns for site users (e.g. car share and pool bikes) and to determine and review modal shift targets

11 Community Use

The community facilities provided and illustrated on plan 'Proposed Ground floor Plan AWW3900_P17059_0200 rev P02' shall be made available for use by the community within 28 days of the development hereby permitted first being brought into use, in line with details regarding the operation of the community facilities that shall have been submitted to and approved in writing by the County Planning Authority. Once approved, the community facilities shall be managed in accordance with those details for the duration of the development hereby permitted.

Reason: In the interests of community cohesion and health and well-being.

12 Species protection

Any trenches left exposed overnight during the construction phase will have a means of escape for badgers and other animals. This will comprise a shallow sloped edge or board (of at least 30cm width) set at an angle of no more than 30°.

Reason: In the interests of a protected species

13 Surface water design and connection

Before the commencement of the development hereby permitted a surface water drainage strategy, based on sustainable drainage principles, shall be submitted to and approved in writing by the County Planning Authority. The scheme shall include details of gullies, connections to the Kingston Stream (Main

River) culvert(s), swales and other means of attenuation, together with details of how the scheme shall be managed and maintained for the lifetime of the development. The scheme shall subsequently be implemented in accordance with the approved details and maintained as such for the duration of the development hereby permitted.

REASON: To prevent any increased risk of flooding to the development, to improve and protect water quality and to improve habitat and amenity.

14 Flood warning and emergency response plan

A flood warning and emergency response plan shall be submitted to and approved in writing by the County Planning Authority prior to the first use of the Secondary SEN school buildings (phase1).

Reason: to ensure the safety of the pupils and staff in the event of high flood risk.

15 OUTLINE APPLICATION CONDITION FOR PHASE 2

“The development hereby approved in outline (known as ‘Phase 2’) shall not be commenced unless and until written approval of the details of the means of access, siting, scale and external appearance of buildings, and the landscaping of the site (hereinafter called "the reserved matters") have been submitted to and approved by the County Planning Authority for the entire development that is subject to the outline element of the development hereby permitted.

Application(s) for approval of the matters reserved by this planning permission must be made not later than the expiration of 5 years from the date of this decision notice; and development must be begun not later than the expiration of 2 years from the final approval of reserved matters for ‘Phase 2’.

Reason: The application was submitted in part as an outline application in accordance with the provisions of Article 5(1) of the Town and Country Planning (Development Management Procedure) Order 2015. In accordance with the provisions of Section 92 of the Town and Country Planning Act, 1990 (As amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

16 Compensatory Playing Field provision

The development hereby approved in outline (known as ‘Phase 2’) shall not be commenced unless and until written approval of the details of the area of playing field to be lost as a result of the proposed development will be replaced and implemented, prior to the commencement of development, by a new area of playing field:

- Of equivalent or better quality, and
- Of equivalent or greater quantity, and
- In a suitable location, and
- Subject to equivalent or better accessibility and management arrangements.

Reason: to ensure appropriate playing field provision is retained in Taunton Deane Borough Council

12. Informatives

1 *Pollution Prevention During Construction*

Safeguards should be implemented during the construction phase to minimise the risks of pollution and detrimental effects to the water interests in and around the site. Such safeguards should cover the use of plant and machinery, oils/chemicals and materials; the use and routing of heavy plant and vehicles; the location and form of work and storage areas and compounds and the control and removal of spoil and wastes. We recommend the applicant refer to our archived Pollution Prevention Guidelines, which can be found at: <https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>.

2 *Hedgerow Buffer*

When Phase 2 comes forward I would advise that the design must include at least a 10-metre buffer of the boundary hedgerows. This then should be managed as long grassland for the abundance of prey species for bats. It would also need to be kept dark.

13. Policy Analysis

Subject to a resolution to permit the development, the following is a summary of the reasons for the County Council's decision to **GRANT** planning permission.

In accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004, and section 70(2) of the Town and Country Planning Act 1990, this decision has been taken with due regard to the Development Plan unless material considerations indicate otherwise. The decision has been taken having regard to the policies and proposals in:

- Taunton Deane Borough Council Adopted Core Strategy (2011-2028); and
- Taunton Deane Borough Council Site Allocations and Development Management Plan (SADMP) 2016.

The proposal is in accordance with the Development Plan and in particular the following policies:

Taunton Deane Borough Council Adopted Core Strategy (2011-2028)

Policy CP1	Climate Change	This development is in an allocated site in Taunton so therefore a sustainable location reducing the need to travel. The design of the building meets current design standards in terms of energy efficiency, and following improved SW design, water conservation and recycling measures the proposal protects water quality and water resources. The landscaping scheme and improved SuDs scheme also enhances biodiversity on site and suitable conditions will ensure appropriate design.
Policy CP5	Inclusive communities	This development would provide services, community and social facilities through the educational facility as parts of it are to be for community use. The SEN school is for the disabled and the outline permission for a regular primary therefore the proposal does support and promote personal well-being and accessibility to education for these groups.
Policy CP6	Transport and Accessibility	An adequate TA and TP and associated information has been submitted with the application which the highways team has approved in accordance with the Travel plan SPD and in accordance with suitable conditions.

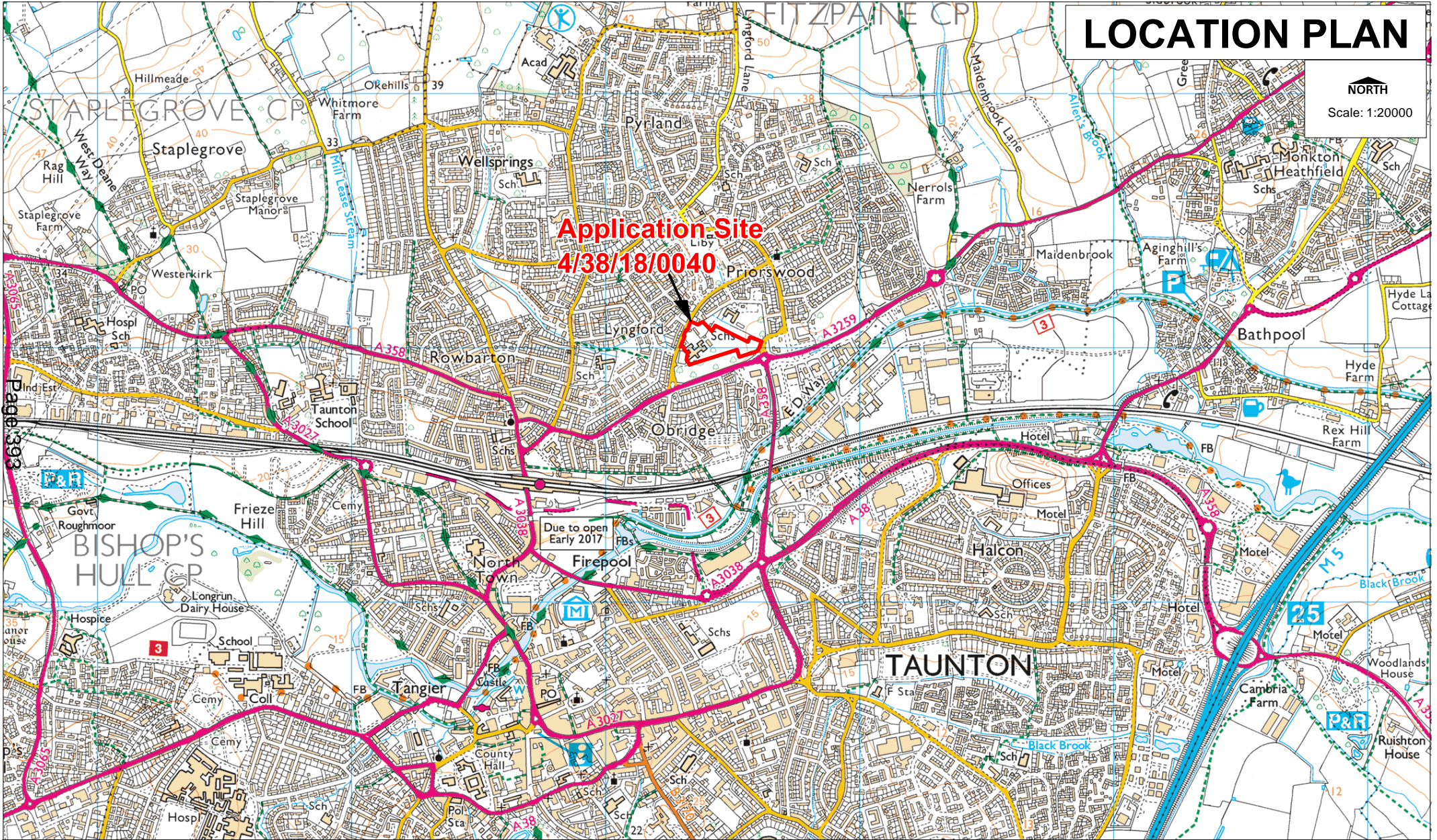
Policy SP1	Sustainable Development Locations	Taunton is the strategic focus for growth, and this development is proposed in the most accessible and sustainable location.
Policy DM1	General requirements	The site makes effective and efficient use of the land for the schools is in a sustainable location, the road traffic
Policy DM5	Use of resources and sustainable design	In accordance as the proposed buildings minimise the use of energy, using sustainable materials. Independent assessment of standard of build demonstrating compliance with new technical standards.

Taunton Deane Borough Council Site Allocations and Development Management Plan (SADMP) 2016

Policy C1	Reserved land for educational purposes	A: St Augustine's school, Taunton is reserved by this policy for educational purposes, which this proposal is in accordance with. It also supports policy CP5 of the Core Strategy as above which provides the policy basis for the provision of land for educational use.
Policy C2	Provision of recreational open space	The increased demand for recreational open space due to the new residential housing in the Priorswood and Nerrols area have appropriate levels of recreational space planned for, therefore no further land is required to be brought forward by this development for this purpose.
Policy C3	Protection of recreational open space	Proposals involving the loss of recreational open space facilities as shown on the policies map will not be permitted unless D. in the case of a school or college playing field only; the land is needed for the development of educational buildings and/or associated facilities, and adequate playing fields to meet statutory requirements would be retained or provided,... therefore the proposal is in accordance as the educational buildings are required and adequate playing areas are retained for the purpose of the SEN school, with addition provision for community use (following agreement) outside the redline boundary, and one pitch in the phase 2 area of the application.
Policy A1	Parking standards	Parking provision proposed is in accordance with Appendix E of the SADMP

Policy A2	Travel Planning	The submitted Travel Plan is in accordance with the requirements of this policy, subject to a suitable condition
Policy A3	Cycle network	This proposal is in accordance with this policy as demonstrated through the NMU submitted document
Policy D8	Safety	The design of this development does incorporate measures to reduce the likelihood of crime, and is in accordance with, parts C-E of the policy.
Policy I4	Water Infrastructure	The foul water system is adequate for Wessex waters purposes, and the surface water drainage will be appropriately designed to meet the requirements of the LLFA, subject to a suitable condition.
Policy ENV1	Protection of Trees, woodland, orchards and hedgerows	An appropriate landscape and arboriculture report has been submitted to SCC to meet the requirements of this policy, and an appropriate condition to enable the proposal to be in accordance.
Policy ENV2	Tree Planting within new development	Appropriate planting is demonstrated within the proposal boundary.

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 Philip Higginbottom
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Planning Control, Enforcement & Compliance
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Site Name:
Former St Augustine School

Planning Control
Drawn by: P Silvers

Dated: 15 May 2018

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