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"

<u>The questions to be answered</u>

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 sending 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.

<u>Relevant correspondence and other communications</u>

31. The application to register the land, in this case, was enclosed with a letter dated 13 August 2013[4] 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 2013[5] 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 2013[8], 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 2013[9] 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 2013[10] 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 2013[11] 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 been 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 2013[13] 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.

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[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 2013[14] 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 2013[15] 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-mails[18] 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 2014[19] 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 2014[22], 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 has 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 2014[23] 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 pubic 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 2016[27] 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 2016[29] 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 2013[32] 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 2013[35] and compared it to the revised statutory declaration which was sworn before a Justice of the Peace on 20 February 2016[36] (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 submitted[37] 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.

<u>February 2016 submission: analysis</u>

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 1A[38]] 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.

<u>1045 Application in May 2013</u>

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 <u>in relation to</u> 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 Plan[44], Design Access Statement[45], and Drawing 560/PL/01[46] 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 declaration[47] 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 it is 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 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.

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

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.

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

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 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.

<u>Claire Ditchfield of "Glenview", Town End, Norton St. Philip [A3/263] [EQ/271]</u>

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 Dichfield 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 Dichfield 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 though 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.

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

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.

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

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 pubic 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.

<u>Dr Wahid Anwan [A3/220] [EQ A3/222]</u>

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.

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

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 we 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 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 I8. 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.

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

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 of 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 can'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.

<u>Linda Oliver [A3/ 338]</u>

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 privates 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."*

<u>Mrs Gail Baker of 33 Bloomfield Close, Timsbury, Bath [O13]</u>

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 an 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 Hopkin'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 Hopkin'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 Fearns 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 the 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

<u>Sian Blackmar of 3 Norton Grange, Norton St. Philip [O25]</u>

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.

<u>Alice Pullin of Pear Tree Farm, Pilning Street, Bristol [O268]</u>

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 as 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].

<u>"Lawful sports and pastimes"</u>

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 seem 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 a 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 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 Ditchfied'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 twos 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.

<u>Laila Jhaveri</u>

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 furtherest 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 referrable 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: I8 – I9. 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 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 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 gone 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 it 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 consistant 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

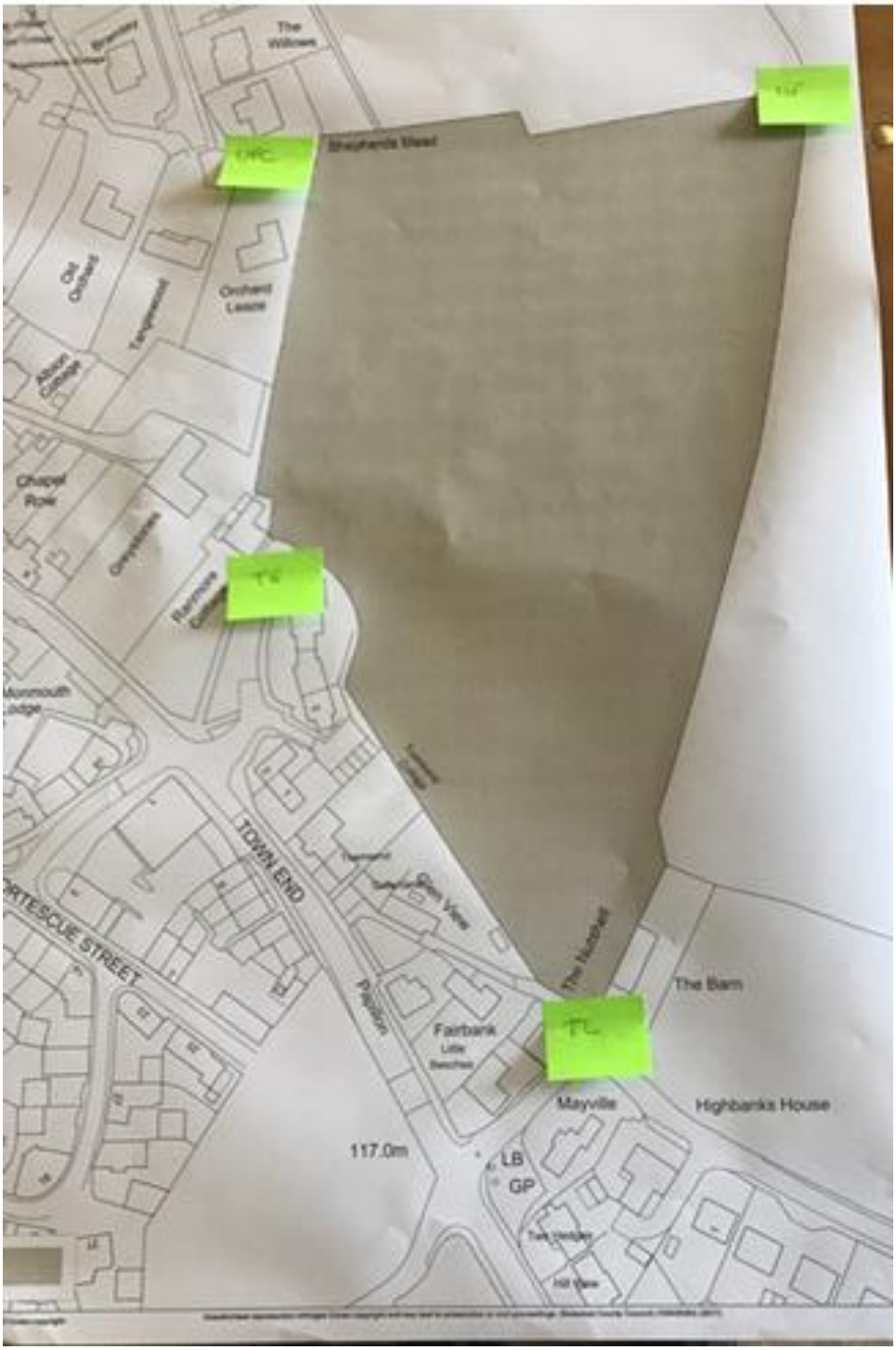
20/02/2018

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.

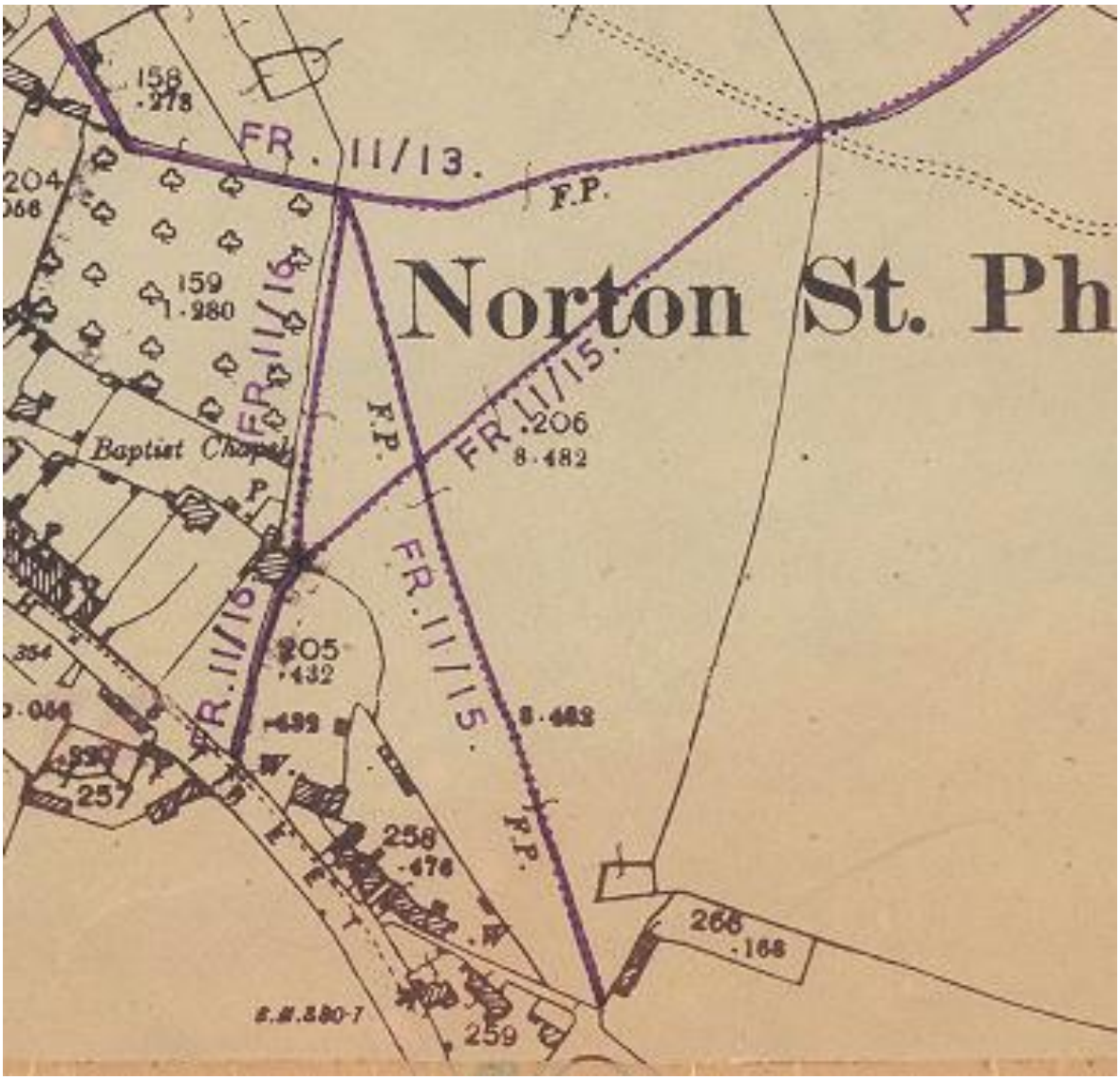
Appendix 1

Annotated Plan of the Application Land



Appendix 2

Extract of the Definitive Map



Appendix 3

Village green cases

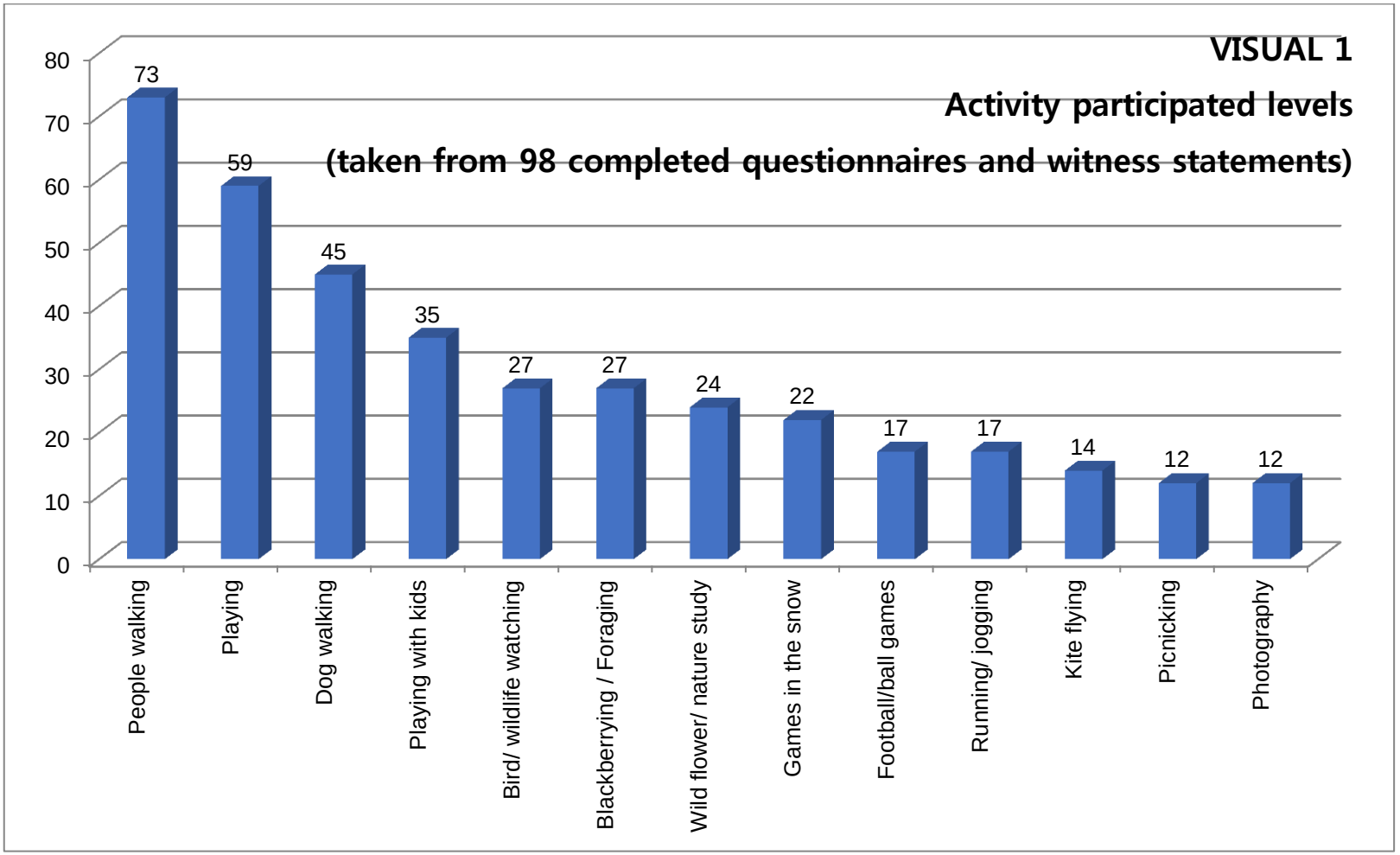
The following may be cited in the text of this Report

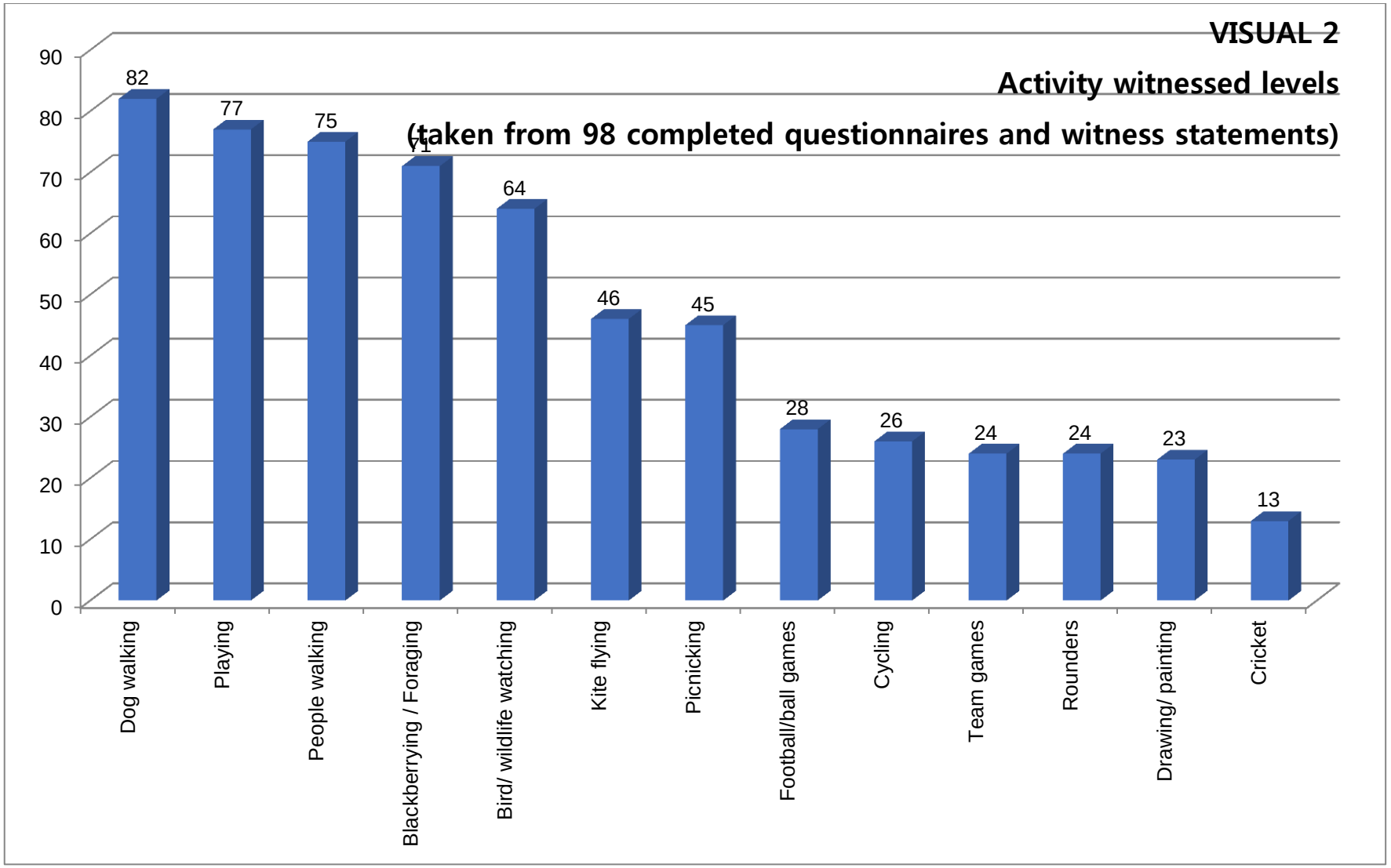
Case name	Commonly called	Judge / Court	Citation
New Windsor Corp v Mellor	*New Windsor*	Court of Appeal	[1975] Ch. 380
Ministry of Defence v Wiltshire CC	*MoD*	Harman J	[1995] 4 All ER 931
R v Suffolk CC ex p Steed	*Steed*	Carnwath J	(1995) 70 P&CR 487
R v Suffolk CC ex p Steed	*Steed*	Court of Appeal	(1996) 75 P&CR 102
R v Oxfordshire CC ex p Sunningwell PC	*Sunningwell*	House of Lords	[2009] 1 AC 335
R (McAlpine) v Staffordshire CC	*McAlpine Homes*	Sullivan J	[2002] EWHC 76
R (Laing Homes Ltd) v Bucks CC	*Laing Homes*	Sullivan J	[2004] 1 P. & C.R. 36
R (Cheltenham Builders Ltd) v S Gloucestershire DC	*Cheltenham Builders*	Sullivan J	[2004] 1 EGLR 85
R (Beresford) v Sunderland CC	*Beresford*	House of Lords	[2004] 1 AC 889
Oxfordshire CC v Oxford CC	*Trap Grounds*	Lightman J	[2004] Ch 253
R (Whitmey) v Commons Commissioners	*Whitmey*	Court of Appeal	[2005] QB 282
Oxfordshire CC v Oxford CC	*Trap Grounds*	Court of Appeal	[2006] Ch 253
Oxfordshire CC v Oxford CC	*Trap Grounds*	House of Lords	[2006] AC 674
R (Lewis) v Redcar and Cleveland BC	*Redcar*	Sullivan J	[2008] EWHC 1813 (Admin)
Betterment Properties (Weymouth) Ltd v Dorset CC	*Betterment*	Court of Appeal	[2009] 1 W.L.R. 334
R (Lewis) v Redcar and Cleveland BC	*Redcar*	Supreme Court	[2010] AC 70
R (Oxfordshire & Bucks Mental Health Trust) v Oxfordshire CC	*Warneford Meadow*	HHJ Waksman DHCJ	[2010] 2 E.G.L.R. 171
Leeds Group PLC v Leeds City Council	*Leeds*	HHJ Behrens DHCJ	[2010] EWHC 810 (Ch)
Leeds Group PLC v Leeds City Council	*Leeds (No1)*	Court of Appeal	[2011] Ch 363
Betterment Properties (Weymouth) Ltd v Dorset CC	*Betterment*	Morgan J	[2011] 1 E.G.L.R. 129
BDW Trading Ltd v Spooner	*Barratt Homes*	HHJ Llewellyn DHCJ	[2011] EWHC B7 (Ch)
Paddico Ltd v Kirkless Metropolitan Council	*Paddico*	Vos J	[2011] EWHC 1606 (Ch)
Leeds Group PLC v Leeds City Council	*Leeds (No2)*	Court of Appeal	[2012] 1 W.L.R. 1561
Paddico Ltd v Kirkless Metropolitan Council	*Paddico*	Court of Appeal	[2012] EWCA Civ 262
Betterment Properties (Weymouth) Ltd v Dorset CC	*Betterment*	Court of Appeal	[2012] 2 P. & C.R. 3

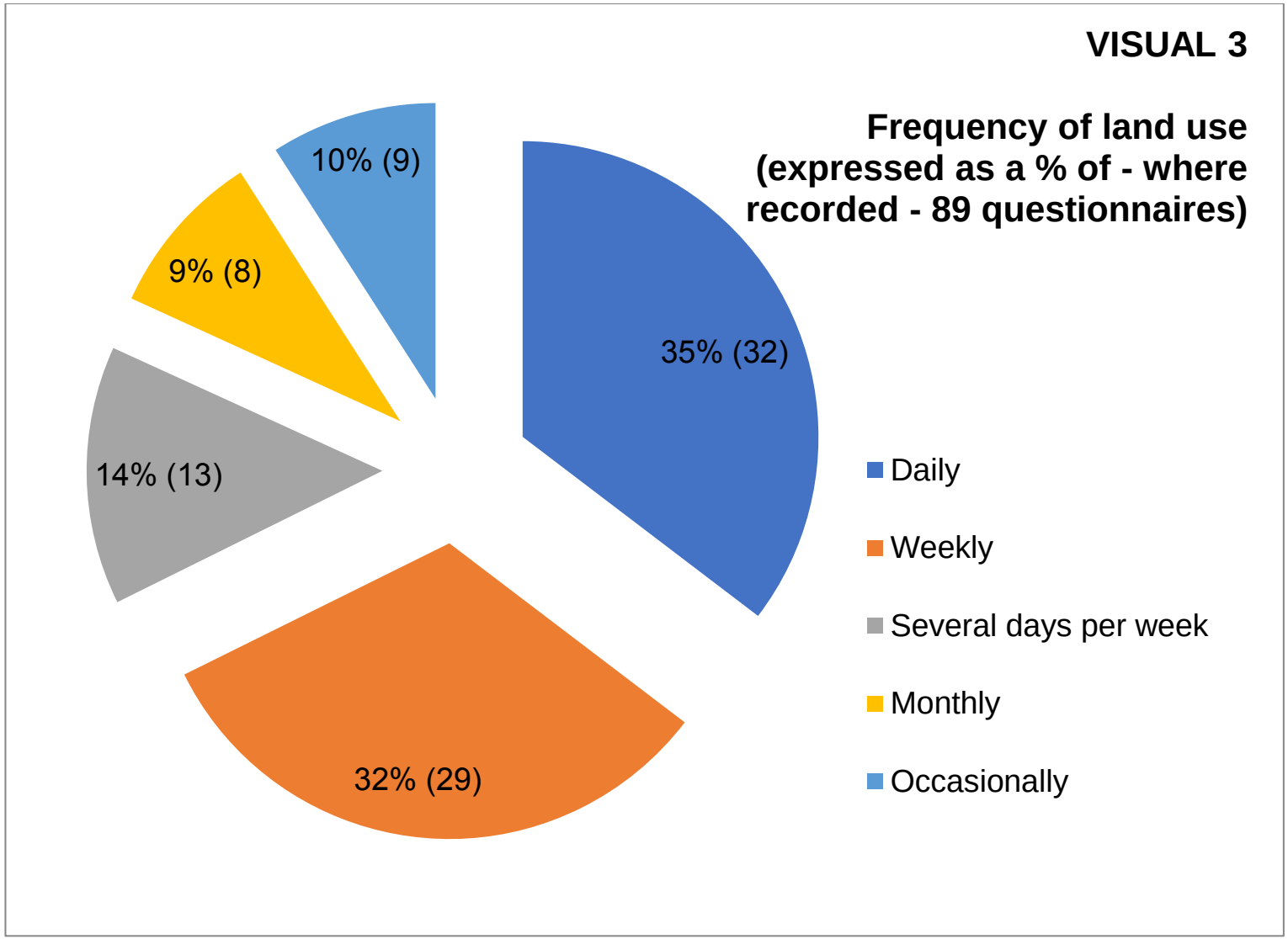
R (Mann) v Somerset CC	*Mann*	HHJ Owen DHCJ	[2012] EWHC B14 (Admin)
R. (Malpass) v Durham CC	*Malpass*	HHJ Kaye DHCJ	[2012] EWHC 1934 (Admin)
R. (Barnsley MBC) v Secretary of State for Communities and Local Government	*Barnsley*	Foskett J	[2013] P.T.S.R. 23
R (Newhaven Port & Properties Ltd) v East Sussex County Council	*Newhaven*	Court of Appeal	[2014] QB 186 & 282
R (Barkas) v North Yorkshire CC	*Barkas*	Court of Appeal	[2013] 1 W.L.R. 1521
Adamson v Paddico Ltd & Betterment Properties (Weymouth) Ltd v Dorset CC	*Betterment & Paddico*	Supreme Court	[2014] 2 W.L.R. 300
R. (on the application of Church Commissioners for England) v Hampshire CC	*Church Commissioners*	Court of Appeal	[2014] EWCA Civ 634
R (Barkas) v North Yorkshire CC	*Barkas*	Supreme Court	[2014] UKSC 31
R. (on the application of Newhaven Port and Properties Ltd) v East Sussex CC	*Newhaven*	Supreme Court	[2015] A.C. 1547
R. (on the application of Goodman) v Secretary of State for Environment, Food and Rural Affairs	*Goodman*	Dove J	[2016] 2 All E.R. 701
Somerford PC v Cheshire East BC	*Somerford*	Stewart J	[2016] 2 All E.R. 701
Lancashire CC v Secretary of State for the Environment, Food and Rural Affairs	*Lancashire*	Ouseley J	[2016] EWHC 1238 (Admin)
R (on the application of NHS Property Services Ltd) v Surrey CC	*NHS Property Services*	Gilbart J	[2016] 4 W.L.R. 130
R. (on the application of Allaway) v Oxfordshire CC	*Allaway*	Patterson J	[2016] EWHC 2677 (Admin)
TW Logistics Ltd v Essex CC	*TW Logistics*	Barling J	[2017] EWHC 185 (Ch)
Regina (Master, Fellows and Scholars of the College of Saint John the Evangelist in the University of Cambridge) v Cambridgeshire County Council	*Meadow Triangle*	Sir Ross Cranston	[2017] WLR (D) 469

Appendix 4

Applicant's analysis of EQs




VISUAL 2
Activity witnessed levels
(taken from 98 completed questionnaires and witness statements)
90
80
70
60
50
40
30
20
10
0
82
77
75
71
64
46
45
28
26
24
24
23
13
Dog walking
Playing
People walking
Blackberrying / Foraging
Bird/ wildlife watching
Kite flying
Picnicking
Football/ball games
Cycling
Team games
Rounders
Drawing/ painting
Cricket


VISUAL 3
Frequency of land use (expressed as a % of - where recorded - 89 questionnaires)
10% (9)
9% (8)
35% (32)
14% (13)
32% (29)
Daily
Weekly
Several days per week
Monthly
Occasionally