IN THE MATTER OF:

REPORT TO BUCKINGHAMSHIRE COUNCIL AS REGISTRATION AUTHORITY ON AN APPLICATION TO REGISTER:

LAND AT LYE GREEN, CHESHAM, BUCKINGHAMSHIRE AS A TOWN OR VILLAGE GREEN

PURSUANT TO SECTION 15 COMMONS ACT 2006

BUCKINGHAMSHIRE COUNCIL
LEGAL SERVICES
Walton Street Offices,
Walton Street,
Aylesbury, HP20 1UA

DANIEL STEDMAN JONES
(ACTING AS AN INSPECTOR ADVISING BUCKINGHAMSHIRE COUNCIL)

3 JULY 2023

Relevant documents have been appended to this Report as:
Appendices 1-6*)*

1. INTRODUCTION

1. I have prepared this report following two applications (together, "the **Applications**") received by Buckinghamshire Council, as registration authority, ("the **Registration Authority**") to register land at Lye Green, Chesham, Buckinghamshire, ("the **Application Land**") as a town or village green ("**TVG**"), pursuant to section 15 of the Commons Act 2006 ("the **2006 Act**"). Appendices 2-6 show the extent of the Application Land.

2. The report follows site visits and a non-statutory public inquiry which took place at the Flaunden Village Hall, Birch Lane, Flaunden HP3 0PT on 21-24 and 28-30 March 2023. Closing submissions took place on the final day of the inquiry, 30 March 2023, as a virtual event. I undertook an unaccompanied site visit prior to the start of the inquiry and then an accompanied site visit, with representatives of each of the parties and the Registration Authority on 29 March 2023.

3. The Applications were made by Brown Not Green Ltd ("the **Applicant**") on 31 October 2020. Two objections were received, from Geltex Properties Ltd ("**Geltex**") and W. J. and M. Mash Ltd ("**Mash**"). A further objection was received from Countryside Properties Ltd ("**Countryside**"). Countryside and Mash were both represented together at the inquiry.

4. The Application Land forms two distinct parcels. The first is owned by Geltex ("the **Geltex Land**" – Land Registry title no. BM20138). The second is owned by Mash ("the **Mash Land**" – Land Registry title no. BM334723). Appendices 2 and 3 indicate the extent of these separate parcels of land.

5. Receipt of the Applications was formally acknowledged by the Registration Authority on 31 October 2021. In particular, the Registration Authority confirmed at that stage that the Applications were not excluded by any trigger events pursuant to s. 15C of the

2006 Act. I will need to return to this matter following submissions which have been made to me by the parties.

2. THE APPLICATION LAND

6. The Application Land comprises an area of approximately 34.6 hectares of land. The Application Land includes the following fields:

    a) Lye Green Field – mainly pasture to the north-east of the land.

    b) Mushroom – agricultural land to the north west of the land.

    c) Slipes – agricultural land to the centre and west of the land.

    d) Bayman – agricultural land to the south of the land.

7. In addition, the Application Land partially includes, and is adjoined by, woodland at Gee's Spring to the west-centre of the Application Land and two further wooded areas in the southern portion close to Lye Green Road including Brick Field.

8. The location of the Application Land and its layout is shown on Maps A and B, which accompanied the Applications and are included with this report at Appendices 2-5.

9. The Geltex Land comprises Mushroom Field in the north and part of Slipes Field in the centre-west of the Application Land. It is an area of approximately 9.9 hectares. This is shown on Appendix 2.

10. The Mash Land comprises the remainder of the Application Land including part of Slipes and all of Bayman, Lye Green and Brick Fields. It is an area of approximately 24.5 hectares. This is shown on Appendix 3.

11. The Application Land is bounded by Lycrome Road to the north and by Lye Green Road to the south-east. Brushwood Primary School, Gee's Spring Woods and residential settlements of east Chesham border the Application Land to the west.

12. Several public rights of way ("**PROW**") cross the Application Land:

- Footpath CHS/62/1
- Footpath CHS/63/1
- Footpath CHS/64/1
- Footpath CHS/65/2
- Footpath CHS/67/1
- Footpath CHS/36/1
- Footpath CHS/37/1

3. THE APPLICATIONS

13. The Applications were made by the Applicant and submitted to the Registration Authority on 31 October 2020.

14. The first application ("**Application 140**") was made under s. 15 (2) of the 2006 Act. The second application ("**Application 141**") was made under s. 15 (3) of the 2006 Act.

15. The Applications each included:

a) a covering letter;
b) a sworn Form 44;
c) maps A and B;
d) additional OS plans (given titles 'C' and 'D');
e) Land Registry title details;
f) supporting user questionnaires, letters and/or statements of truth with OS plans and supporting materials;
g) A list of further witnesses;
h) a Statutory Declaration and appendices from [redacted] provided in relation to a previous application for listing as an Asset of Community Value;
i) a report from the Applicant of a 'Community Observation Exercise' which it conducted at the Application Land.

16. The Applicant submitted further evidence to the Registration Authority on 13 November 2020 including certain addenda to its original submissions, additional questionnaires and statements of truth.

4. PROCEDURAL MATTERS

17. The Registration Authority subsequently consulted the relevant local planning authorities as to the existence or otherwise of a relevant trigger event for the purposes of s. 15A of the 2006 Act. Buckinghamshire Council confirmed that there was no trigger event in terms of county minerals and waste planning on 10 June 2021 and in relation to strategic planning matters on 9 and 26 July 2021. The Planning Inspectorate confirmed the same on 28 June 2021. However, Buckinghamshire Council's Planning Policy team replied, on 16 July 2021, giving their view that a trigger event, and corresponding terminating event, had taken place, providing the following reasoning:

> "The area of land proposed as a village green was included in a wider area of land proposed for removal from the Green Belt in the Chiltern and South Bucks Local Plan 2036. The land was also allocated as a development site in the same Local Plan. see plans attached. The local plan had been published for public consultation and was at examination stage. However, the Local Plan was withdrawn 21st October 2020. Currently there are no Local Plan development allocations on this site."

18. Following the submissions of Mash on this issue, I return to address this matter below.

19. The Applications were processed in accordance with the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007/457 ("the **2007 Regulations**").

20. The Applications were published, notified and advertised in accordance with regulation 5 of the 2007 Regulations. A consultation period ran from 21 October 2021 to 1 December 2021. This consultation period was later extended. Following the conclusion of the consultation period, two objections were received from Geltex and Mash. Another objection, from Countryside Properties, who are party to an option agreement over the land with Mash, was also made, albeit representations were not received in

time. I allowed the late objection following a pre-inquiry meeting. As already noted, Countryside and Mash were then jointly represented at the inquiry before me.

21. Geltex and Mash both submitted detailed Objection Statements and associated evidence and documentation in March 2022.

22. The Applicant submitted a Response to the Objections on 1 April 2022 including a map indicating the neighbourhood in a locality upon which it relies. I return to the substance of this issue below.

23. Following its initial consideration of the evidence and submissions, the Registration Authority then decided to proceed to non-statutory inquiry. The Registration Authority made a formal decision to this effect on 19 December 2022.

24. I was then instructed as an independent Inspector to hear the evidence and make a recommendation to the Registration Authority as to whether the Application Land should be registered as a TVG.

25. I held a Pre-Inquiry Meeting with the parties on 10 January 2023 and issued directions for the filing and serving of statements of case and legal principles relied upon, bundles and legal authorities. The inquiry was then held on the dates set out above in March 2023.

26. At the inquiry, the Applicant was represented by Matthew Dale-Harris. Geltex was represented by Richard Ground KC and Mash by Douglas Edwards KC. A list of appearances is contained at Appendix 1. I wish to thank all representatives for their admirable assistance in this case. I would also like to thank Claire Sturgeon and Helen Francis of the Registration Authority for their assistance in organising, facilitating and hosting the inquiry and managing the process.

5. PRELIMINARY ISSUE: TRIGGER EVENT

27. While, as noted above, following consultation with the relevant local planning authorities, the Registration Authority considered that a trigger event and a

corresponding terminating event had taken place over part of the Mash Land such that Application 141 was valid, following the Pre-Inquiry Meeting and before the inquiry, Mash raised an issue regarding whether this was in fact the case. I set out below the background to this issue and the applicable legal principles before summarising the parties' submissions and providing my own view as to whether a trigger event has occurred in this case. I then discuss the implications of my conclusions for the Applications.

Relevant Background

28. In April 2019, Proposed Changes to the Adopted Policies Maps for the draft Local Plan 2016-2036 ("the **Draft LP**") was published by Chiltern and South Bucks District Councils. Within Chesham, a portion of land was proposed to be removed from the Metropolitan Green Belt. It is not disputed that the land to be removed from the Green Belt included Lye Green Field.

29. In June 2019, the Draft LP was published. Paragraph 10.1.4 (Draft LP, p. 149) stated that:

> "National policy allows for Green Belt boundaries to be altered through the preparation of a Local Plan where exceptional circumstances exist. The Council has reviewed its housing and employment needs up to 2036 and has concluded that the locally identified needs cannot be met without some Green Belt release."

30. Policy SP PP1 of that plan (Draft LP, p. 150), observed that 7.83km of land, including Lye Green Field, was removed from the Green Belt in order "to help meet identified housing and employment needs." The stated purpose of that release was to "(1) enable development at the locations referred to in Policies SP DP2 to SP DP14" and "(2) enable minor windfall development within the defined boundaries of the following villages that have been removed from the Green Belt."

31. Additionally, Paragraph 11.3.1 of draft Policy SP BP2 for Chesham stated:

> "Land nearest the urban edge of Chesham is allocated for residential-led use to provide approximately 500 new homes and associated facilities. Land at the boundary of the allocation towards Lye Green is protected from development and to maintain the openness between Chesham and Lye Green."

32. The ordnance survey map accompanying SP BP2 specified the site allocated for potential development (Draft LP, p. 157). Lye Green Field is not included within the boundaries of the site allocation. However, the allocation does comprise Mushroom, Slipes and Bayman Fields. It also included Brick Field and associated land to its West enclosed by points 18-21 on the plan at Appendix 6.

33. On 29 July 2019, an application to deposit a map and statement pursuant to section 15A (1) of the 2006 Act was made by Oliver Thompson on behalf of Mash in relation to an area of land, including Lye Green Field. The application was date-stamped as having been received by the Registration Authority on 31 July 2019. It was agreed between the parties that this application had also been properly notified by the Registration Authority following the production of photographic evidence of the same by Ms Francis of the Registration Authority to the inquiry on 22 March 2023.

34. The Draft LP was subsequently withdrawn from public examination on 21 October 2020.

35. The Applications were then made on 31 October 2020.

Legal Framework

36. Section 15A of the 2006 Act provides so far as relevant as follows:

> "(1) Where the owner of any land to which this Part applies deposits with the commons registration authority a statement in the prescribed form, the statement is to be regarded, for the purposes of section 15, as bringing to an end any period during which persons have indulged as of right in lawful sports and pastimes on the land to which the statement relates.
>
> […]
>
> (6) Where a statement is deposited under subsection (1), the commons registration authority must take the prescribed steps in relation to the statement and accompanying map and do so in the prescribed manner and within the prescribed period (if any)[.]"

37. Section 15C of the 2006 Act provides so far as relevant as follows:

"(1) The right under section 15(1) to apply to register land as a town or village green ceases to apply if an event specified in the first column of the Table set out in the relevant Schedule has occurred in relation to the land ("a trigger event").

(2) Where the right under section 15(1) has ceased to apply because of the occurrence of a trigger event, it becomes exercisable again only if an event specified in the corresponding entry in the second column of the Table set out in the relevant Schedule occurs in relation to the land ("a terminating event").

[…]

(8) For the purposes of determining whether an application under section 15 is made within the period mentioned in section 15(3)(c), any period during which an application to register land as a town or village green may not be made by virtue of this section is to be disregarded.

(9) In this section "the relevant Schedule" means—

(a) Schedule 1A, in relation to land in England[.]"

38. Schedule 1A identifies inter alia the following trigger event and corresponding terminating events:

3. A draft of a development plan document which identifies the land for potential development is published for consultation in accordance with regulations under section 17(7) of the 2004 Act.	(a) The document is withdrawn under section 22(1) of the 2004 Act. (b) The document is adopted under section 23(2) or (3) of that Act (but see paragraph 4 of this Table). (c) The period of two years beginning with the day on which the document is published for consultation expires.

39. In *R (Cooper Estates Strategic Land Ltd) v Wiltshire Council* [2019] EWCA Civ 840, the Court of Appeal considered that the term, "identifies the land for potential development", should be construed broadly and may be distinguished from a site allocation for a particular development:

"[37] […] "Potential", as the judge pointed out, at para 65: "is a very broad concept, is not qualified, and is not to be equated with likelihood or probability."

> 38. In the context of town and country planning, it can, for example be contrasted with "allocation" where a site is allocated for a *particular* use or development: see regulation 2(1) of Town and Country Planning (Local Development) (England) Regulations 2004 (SI 2004/2204).
>
> […]
>
> 44. In addition, I also consider that there is force in Mr Jones's submission that a narrow interpretation of the trigger event would itself cause difficulties in the formulation and adoption of a development plan document. Such a document may go through many iterations in the course of its preparation and examination. Suppose that a draft plan proposes development in particular areas, in terms similar to Core Policy 1 and Core Policy 2. Different sites may be proposed for allocation for development at different stages of the process. If an application for registration of a TVG could be made before the stage of allocation, the mischief which the change in the law was designed to prevent would recur."

40. The issue was further considered more recently by Holgate J in *R (Bellway Homes Ltd.) v Kent County Council* [2022] EWHC 2593 Admin. In *Bellway*, Holgate J confirmed, as had Lewison LJ in *Cooper Estates* (at para [43]) that the draft plan under consideration must be read as a whole (para [35]). He also appears to have accepted a submission (see para [79] of the judgment) that for a policy to identify a site for potential development, its effect must be to "encourage" development rather than merely have a neutral or negative effect – see para [99] of the judgment.

<u>Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013/1774 ("2013 Regulations")</u>

41. Regulation 2 (1) of the 2013 Regulations materially provides as follows:

> "(1) This regulation applies to any application made on or after 1st October 2013
>
> […]
> (c) to deposit a statement under section 15A(1) of the 2006 Act."

42. Regulation 3 (1) of the 2013 Regulations provides as follows:

> "(1) A statement under section 15A(1) of the 2006 Act shall be treated as having been deposited with a commons registration authority when an application to deposit such a statement which complies with regulation 2 is given to that authority."

43. Regulation 4 of the 2013 Regulations provides as follows:

> "(1) As soon as practicable after receiving an application made in accordance with regulation 2, the appropriate authority must –
>
> > (a) Send an acknowledgement of receipt to the applicant; and
> > (b) publicise notice of receipt of the application in accordance with paragraphs (2) and (3).
>
> (2) An appropriate authority must –
>
> > (a) publish notice of the application on the authority's website;
> > (b) serve notice of the application by email on any person who has previously asked to be informed of all applications and who has given the authority an email address for that purpose; and
> > (c) in respect of an application to which regulation 2(1)(c) applies so as to bring it to the attention of users of the land, post notice of the application for not less than 60 days at or near at least one obvious place of entry to (or, if there are no such places, at or near at least one conspicuous place on the boundary of) the land to which the application relates.
>
> (3) The notices required under paragraph (2)(a), (b) and (c) must be in the form set out in Schedule 2, or in a form substantially to the same effect, with such insertions or omissions as are necessary in any particular case.
>
> (4) Where a notice posted under paragraph (2)(c) is, without any fault or intention of the appropriate authority, removed, obscured or defaced before the period of 60 days referred to in that paragraph has elapsed, the authority shall be treated as having complied with the requirements of that paragraph."

The Parties' Submissions

44. The Applications were made on 31 October 2020. The Applicant's case is that the publication of the Draft LP was a "trigger event" per sections 15C (1) of the 2006 Act and the subsequent withdrawal constituted a "terminating event" per section 15C (2). Per section 15C (8) of the 2006 Act, the Applicant averred that the restraining effects of the trigger event paused the commencement of the one year period to make an application under section 15 (3) of the 2006 Act. Accordingly, the right to register the Application Land as a TVG became exercisable again following the terminating event.

45. In particular, the Applicant contends that Lye Green Field was "identified for potential development" within the meaning of the legislation by virtue of being, a) removed from

the Green Belt and, b) becoming subject to the presumption in favour of sustainable development identified in Draft LP Policy SP PP1. Mr Dale-Harris, for the Applicant, relied on the Court of Appeal's judgment in *Cooper Estates* that the phrase "identified for potential development was to be construed broadly for his submission that the situation in this case was sufficiently similar to that which pertained in that case. He further pointed out that the Court of Appeal, at para [38] of its judgment in *Cooper Estates*, noted the distinction in planning law between an allocation and identification for potential development to support the Applicant's submissions that a trigger event had in fact taken place.

46. It is Mash's case that the Local Plan did not amount to a trigger event per section 15C (1) of the 2006 Act for the purpose of Lye Green Field because there was no draft plan identifying Lye Green Field as "land for potential development" per paragraphs 3 and 4 of Schedule 1A of the 2006 Act.In particular, Mash submits that Lye Green Field was not "identified for potential development" as alleged. Rather, supporting text to Draft LP Policy SP BP2, at paragraph 11.3.1 of the Draft LP, supports the opposite conclusion by emphasising that Lye Green Field is to be "protected from development." Mr Edwards KC further submitted that the local planning authority's answers to questions from the examining inspector during the local plan examination underlined this point. He submitted on behalf of Mash that, per Holgate J's apparent acceptance of the submission in *Bellway Homes*, for a trigger event arising from a development plan to be engaged, the development plan must "encourage" development on identified land and that a development plan which is "neutral or negative" in respect of identified land will not suffice (see paras [79] and [99] of Holgate J's judgment, cited above).

47. Consequently, on the Objector's case, the section 15A statement deposited on 31 July 2019 was effective in bringing the qualifying period for persons to have indulged as of right in lawful sports and pastimes ("**LSP**") to an end. As a result, Mash submitted that Application 140 must be rejected because qualifying user did not continue for a full period of twenty years and Application 141, made under section 15 (3) of the 2006 Act, is out of time and should also be rejected.

Discussion

The Extent of the Trigger Event

(i) Does the land identify Lye Green Field for "potential development"?

48. The question of whether land has been identified for "potential development" was considered by the Court of Appeal in *Cooper Estates.* It was observed (at para [37]) of that case that "potential" should be understood to be a very broad concept, not to be equated with likelihood or probability. It could include, but did not need to be equated with, a site-specific allocation for a particular development (at paras [38] and [42]). The High Court expanded upon this point in *Bellway* (at para [86]):

> "'Potential' means 'possible as opposed to actual; having or showing the capacity to develop into something in the future' (Oxford English Dictionary). But although 'potential' has a broad meaning, we are not here dealing with artificial possibilities. The policy underlying section 15C of the 2006 Act is that a conflict between the recreational use of land and its potential for development should be resolved through the planning system and not, in effect, pre-empted by an application and decision to register a TVG. But Parliament can only have intended to deal with conflicts on issues of this nature which are real. In other words, a realistic, rather than a theoretical, approach should be taken to whether a development plan identifies an area of land for potential development."
>
> [Emphasis added]

49. In *Cooper Estates,* the land was sufficiently identified for potential development by being located within the town's settlement boundary in the Strategy and having regard to the relevant core policies (at para [40] of the judgment). In the present case, the Applicant relies on Policy SP PP1 and the April 2019 release (Map 1) for its submission that Lye Green Field was identified for potential development when the larger parcel of land encompassing it was released from Green Belt protection. However, as in *Bellway,* "care is needed when dealing with policies which apply to defined areas within the countryside larger than a site allocation" (at para [95] of the judgment).

50. The features of the policy language in *Cooper Estates* which led to the land being treated as identified for potential development are different from the language of Policy SP PP1. In that case, the Strategy did identify the application site for potential development because Core Policy 1 and 2 identified settlements where sustainable development *will* take place. Primarily, in the instant case, and by contrast, there are no

words with a positive effect stating that development "*will be* permitted." Rather, "enable" communicates only that the restrictions upon development will be removed.

51. While I acknowledge the removal of green belt status may be seen to enable certain specified development and the evident intention of Policy SP PP1 was to clarify that the release was completed with a view to future development, it cannot equally be said that the entire area encompassed within the boundary of the release was identified for "potential development". Taking the policy as a whole, it is only those "locations referred to in Policies SP DP2 to SP DP14" and the twelve villages listed where "development" and "minor windfall development" are respectively intended to be enabled. In this regard, the policy must be construed carefully.

52. Lewison LJ also observed in *Cooper Estates* (at para [43]) that the 2006 Act requires the court to look at the development plan document as a whole to see what it provides, because it could contain policies which except the land from identification for potential development. Having regard to the policy wording of SP PP1 and SP BP2 and its supporting text, the Draft LP treats Lye Green Field differently to the allocation: "land at the boundary of the allocation towards Lye Green is protected from development to maintain the openness between Chesham and Lye Green." While I accept that the supporting text is not the policy itself, as Mr Dale-Harris submits, it is nevertheless relevant to the interpretation of the policy itself. In a conflict between the text, the policy would trump the supporting text but no such conflict is apparent here. Considering the policies together, the better interpretation of policies SP BP2 and SP PP1 is that Lye Green Field was not identified for "potential development" in the Draft LP because it is not identified in policy SP BP2 or in any other of the policies within the Draft LP. In my view, it cannot be said that the policy "encourages" or directs development and, when the supporting text is considered, it is not neutral either.

53. I note that the Applicant seeks to rely on the presumption in favour of sustainable development set out in SP SP1 and the "titled balance" derived from the National Planning Policy Framework. In my view, this takes matters no further. This is a generic policy which has default application across the district subject to specific restrictive policies. In the absence of the identification of land for potential development, that overarching presumption cannot override the policy language in the text of SP PB2 read

with SP PP1. I therefore reach the conclusion that the Draft LP does not identify Lye Green Field for potential development. On that basis, my advice is that there was no trigger event for the purpose of that parcel of land.

(ii) The Implications of the Absence of a Trigger Event re Lye Green Field

54. On 29 July 2019, Mash deposited a statement pursuant to section 15A(1) of the 2006 Act with the Registration Authority. That statement was received and date-stamped by the Registration Authority on 31 July 2019. As was properly accepted in Mr Dale-Harris's Closing submissions, the Registration Authority properly complied with the notification requirements of the 2013 Regulations.

55. The effectiveness of the section 15A of the 2006 Act deposit has two consequent effects on the Applications:

a. The qualifying period of activity for the purpose of section 15(2) of the 2006 Act stopped running on 31 July 2019 and Application 140 in respect of the Mash Land under that provision must be rejected. It cannot be said that the inhabitants were indulging in the relevant activity for a period of twenty years at the time of the application on 31 October 2020.

b. Application 141 in respect of Lye Green Field under section 15(3) of the 2006 Act must be out of time. Pursuant to section 15(3)(c) and 15(3A) of the 2006 Act, the application was required to be made by 31 July 2020. Application 141 was therefore three months out of time in relation to the Lye Green Field and cannot therefore be entertained.

Conclusion on the 'Trigger Event' Issue

56. There was no trigger event with regards to Lye Green Field. The Applications in respect of that part of the Application Land must, in my view, therefore be unsuccessful in light of the submissions made by the parties to this inquiry. I advise the Registration Authority to revisit its consideration of the trigger event issue on this basis.

6. THE OUTSTANDING ISSUES: S. 15 OF THE 2006 ACT

57. I now turn to consider the remaining issues in relation to the Applications.

The Evidence

58. The Applications were accompanied, and supplemented, by a large number of written statements with annotated plans from witnesses attesting to use across the twenty-year period, and in many cases for many years previously. The Registration Authority also received several letters of support for the Applications in addition to the material and evidence presented by the Applicant itself. I have considered and had regard to all of this material, as well as all the evidence provided by the Applicant, the Objectors and the Registration Authority, in reaching my conclusions in this report. However, as is to be expected, the live evidence was more valuable and holds more weight, given that witnesses could be subject to cross-examination and questions from me.

59. Accordingly, it is not necessary or helpful for me to summarise all of the written evidence, which was extensive and broadly accords with, or was further explained by, the oral evidence given by witnesses. The evidence detailed below is a summary of the combined written and oral evidence given by witnesses before the inquiry.

The Case for the Applicant

60. The Application in this case was supported by the evidence of 181 residents of the area around the Application Land and the Brushwood School who submitted responses to the Applicant's online surveys and Buckinghamshire Council questionnaires, with some of these individuals also submitting letters and Statutory Declarations for the inquiry. The Application was also supported by various other documents including maps and photographs, as described above.

61. What follows is my summary of the evidence heard from the witnesses at the inquiry, in the order in which they appeared. Sixteen witnesses gave live evidence to the inquiry on behalf of the Applicant. It is not intended to be a verbatim or exhaustive account but

rather I summarise the main points in the evidence provided by each witness before the inquiry, both written and oral.

[redacted]

62. [redacted] lives at [redacted]. She has lived in Chesham for 87 years, and has lived in her current house at Lye Green since 1937.

63. In addition to her statement to the inquiry, [redacted] completed a Bucks Council Questionnaire on 31 October 2020 and sent a letter to the Applicant with some personal photographs on 24 April 2019.

64. She has been familiar with the Application Land since being a young girl. Her grandparents were employed by the Mash family farm, and she was taken to the Application Land frequently as a young girl. [redacted] recalled cricket matches being played from the mid-1930s until the 1950s, by farm staff and residents of the surrounding area. She recalled people walking across the Application Land to the Black Cat Pub. A cricket shed/hut used for scoring was also placed upon the Application Land by the cricket club and this was not removed until around the late 1980's / early 1990's.

65. In terms of access to the Application Land, [redacted] recalled there being a hedge across Slipes, but with a large gap in it to allow people to walk down to Chesham. This hedge was removed in the 1990s. [redacted] also recalled a stile at the rear of the Black Cat Pub, which was removed in the 1950s.

66. Since cricket ended in the 1950s, [redacted] had observed people using the Application Land for walking or dog-walking, with friends and family. She said she had often seen them taking circular routes around the Application Land. She had also seen people picking blackberries, which were to be found all over the Application Land, and has regularly seen children playing, including running, chasing each other, skipping and playing ball.

67. She said that she was aware of the agricultural use of the land, and that people seemed to respect the farming activity and keep dogs on leads or under control near livestock. She said that people avoid trampling crops when they are growing, although occasionally she had seen people walking on the cultivated areas too.

68. [redacted] confirmed in cross-examination that she was last on the Application Land in the 1970s, and as such was not on the Application Land during the relevant time periods. However, she said that she can see part of Lye Green Field from her house, [redacted] and did see people walking around and across the Application Land. She also agreed that she would have avoided the crops and wouldn't have trampled them. But she only remembered cattle on the fields in those times when she was on the Application Land.

[redacted]

69. [redacted] lives at [redacted] She has lived in Chesham for 65 years, since 1958. She has lived in her current house for 44 years.

70. In addition to her statement to the inquiry, [redacted] completed a Bucks Council Questionnaire in October 2020.

71. [redacted] also co-owns a small area of land attached to Sycamore Road, jointly with her husband and some other local people. This portion of land is part of Nalders Wood. She uses this land to access the Application Land. She has seen other people similarly accessing the subject land through the woodland of Gee's Spring and Nalders Wood, describing this area as largely unfenced and providing easy access into the Application Land.

72. [redacted] said that she has known the Application Land since she was a young girl and has used it for informal recreational purposes "periodically" throughout her life, especially since acquiring her first dog in 1980. She said that she uses the Application Land daily, and also observes others using it daily. This use is principally walking and dog walking, once or twice a day. She takes a number of circular routes, although

sometimes walked across to the Black Cat pub when it was open or to the former farm shop at Bayman Manor. She said that she walks on the tractor tracks when the crops are low, if the tractor tracks are less muddy than the perimeter path. She said that she enjoyed "the whole of the land and the countryside views". She said that she uses each of the fields for walking and would stop to talk to people that she knew.

73. When her children were young [redacted] would take them to the Application Land to play, although this would have been before 1999. She now does so with her grandchildren too. She recalled that her children would play or picnic on the fields after crops or hay had been harvested. She also recalled seeing other children playing on the Application Land. She also picked mushrooms, usually around Lye Green Road and on the areas where the cattle had been.

74. The other activities that [redacted] had observed taking place on the Application Land were blackberrying, largely around Slipes but all over as well, sloe-picking, drawing and painting. She said she "occasionally" saw people flying kites, although not that she could recall within the past year. In cross-examination, it was put to her that such kite-flying was "really just children walking along with kites", and that this was the same as with balls, and she agreed with this. She said she "very occasionally" saw people cycling or bird-watching.

75. [redacted] stated that there is no formal public footpath near to where she regularly enters, and that she uses "all parts of the surrounding fields within the Application Land other than the cultivated areas when crops are growing when I confine my use of the outer boundaries of the fields". She said she would "occasionally" cross the cultivated areas when crops are growing, or when there is snow/frost. She recalled [redacted] painting on the edge of Lye Green Field "regularly" although, when asked in cross-examination, she was not aware that [redacted] was employed by the Mashes,.

76. In common with many other witnesses, [redacted] confirmed in cross-examination that most people respect the farming activity and avoid trampling crops when they are growing or they keep dogs on leads or under control near livestock. She mostly used the outer boundaries of the fields. She stated that she would stay away from cows when they were in the fields and did not walk through the fields when cattle were present.

She did not at first remember a barbed wire fence containing cattle in Mushroom or Slipes but then confirmed in cross examination by counsel for Mash that one was present in Bayman but you could always get round it. She said there was gap through which you could get into Mushroom and two stiles. She stated that she would not have attempted to get through an electric fence.

77. [redacted] had never sought permission for using the Application Land, nor did she recall ever being either given permission or told to leave. She did recall having heard about other people being asked to leave the Application Land "a few years ago", for a "brief period", but had not experienced this herself and not heard such stories recently.

78. [redacted] was pressed in cross-examination regarding her use of the tractor tracks, counsel for Geltex pointing out that her evidence on this point was not consistent with her written evidence. However, she confirmed that she would mainly stick to the outer edges albeit that she "always" had used the tractor tracks. This evidence seems exaggerated as [redacted] also agreed when the proposition was put to her that given the farmer's regular visits to the Application Land without seeing any use of the tractor tracks, it would have to have been "breathtakingly rare" for people to have been using them.

79. [redacted] noticed new fencing being erected in mid-2019 and gaps by gates being closed. Nevertheless, she stated that she had "never had difficulty accessing the land and [had] observed people entering or leaving the land from a variety of points around the boundaries of the land as well as via the public footpaths."

[redacted]

80. [redacted] lives at [redacted]. He has lived in Chesham with his wife for 45 years, in his present house for 26 years.

81. In addition to his statement to the inqury, [redacted], completed the Applicant's online Smart Survey on 19 November on behalf of both of them.

82. [redacted] his wife have used the Application Land for informal recreation purposes since 1996, together with their children when they were young. They used the Application Land almost daily until their last dog died, this being several years ago. Since then, they use it once or twice a week, or more often when their son visits and brings his own dog.

83. [redacted] explained that he and his wife access the Application Land through Gee's Spring, using the informal footpaths. They also access it or see others accessing via PROWs, informal openings in hedges and fences, and via private garden gates which adjoin the Application Land. [redacted] said that he and his wife have used the informal footpaths across and around the Application Land, as well as the formal footpaths. They normally walk circular routes around various parts of the Application Land. In cross-examination he conceded that he only walked across Slipes on the odd occasion, for example when it was frosty. He stated that he walked across Lye Green Field rather than around the edge of it but used the footpaths to do so.

84. In the online Smart Survey, [redacted] specified that they used all parts of the Application Land including grazing areas, but not where crops were growing, and that they walked "Around all the outer boundaries of the land", and "beside or near to the PROW but straying from the PROW footpaths / cutting corners etc".

85. [redacted] said that while using the Application Land, he "invariably" sees other people also walking on areas that are not public footpaths. In cross-examination, he said that he had seen people walking in tractor tracks, particularly on Slipes, but conceded that people tend to walk around the outer boundaries of the fields. In summary, he said that "people seem to use the land for similar purposes to myself and my family, namely walking with dogs or in small groups around all the fields though most stay away from the areas planted for crops and stick to edges."

86. He said that he "regularly" sees people running, and "occasionally"/"very occasionally" sees children playing (on Slipes and in Gees' Spring) or people foraging. He "believes" people also nature-watch on the Application Land. He also remembers seeing hikers doing Duke of Edinburgh awards, sticking to public footpaths.

87. Like all other witnesses, he stated that most people respect the farming activity and avoid trampling crops when they are growing or they keep dogs on leads or under control near livestock. Asked about rapeseed and peas, he repeated that he would not walk through crops or furrowed fields and assumed that others did the same.

88. Also in common with all other witnesses, he said that he had never sought permission for using the Application Land. He had not been approached by anyone telling him to leave the land. Other than during the Foot & Mouth disease outbreak in 2001, he could not recall signs telling people not to use the Application Land. But, asked by Counsel for Geltex, he remembered the barbed wire fence across but could not remember whether it was in the 2005-2007 period.

89. In the online Smart Survey, [redacted] indicated that she agreed that those households living around Lye Green and Brushwood School within Hilltop Ward & Newtown Ward was the locality or neighbourhood area that most closely related to the proposed Village Green, this being the proposed 'neighbourhood' within the Application. When questioned by Applicant's Counsel, [redacted] said that the people from Hilltop Ward were probably most "attuned to the use of the land". He agreed with the suggestion that the uplands area of Hilltop Ward had a distinctive feel.

[redacted]

90. [redacted] lives at [redacted] He has lived in Chesham for over 49 years and purchased his house from his mother in 1968. He is a serving police officer.

91. In addition to his statement to the inquiry, [redacted] responded to the Applicant's online Smart Survey on 18 November 2022.

92. [redacted] described himself as "very familiar" with the Application Land. He stated that he uses it for informal recreation purposes, mainly walking alone or with friends. He estimated that he currently uses the Application Land several times a week, although this has increased or decreased over the years. He used to take his children to the Application Land when they were smaller, to go and see the farm machinery.

93. [redacted] current dog is 14 years old, and he used the Application Land to play with her from when she was a puppy. He mainly uses Slipes, and sometimes Mushroom when the dogs want to go that way. He uses Bayman and Lye Green Field less, but has used them on occasion. When he uses the Application Land, he normally sees other people walking there, and "occasionally" cycling or jogging, children playing and people sketching or taking photos. [redacted] stated that he enjoyed the Application Land and scenery as a whole. In cross-examination, he stated that this photography was by people taking photos as they went along on their walk, photographing "anything particularly pretty".

94. [redacted] stated that he had accessed the Application Land via public footpaths, through the woods, or via informal gaps in the hedge and field boundaries. But he said that his use of it was not confined to public footpaths. In the online Smart Survey, he indicated that he walked "around all the outer boundaries of the land", and "across other informal paths upon the land that are not adopted PROW footpaths". In cross-examination, he agreed that he and others tended to use the outer boundaries, and that he would not trample into the crops. But he stated that if he walked in the middle of the fields it would be on the tramlines, which were sometimes drier than the outer edge path. He stated that when his children [redacted]) were younger, they would run down the tramlines to play and look at insects but would not go into the crops themselves which was a "big no no". In common with all other witnesses, he stated that most people respect the farming activity and avoid trampling crops when they are growing or they keep dogs on leads or under control near livestock.

95. Also in common with all other witnesses, [redacted] said that he had never sought permission for using the Application Land. He had not been approached by anyone telling him to leave the Application Land. He did remember the barbed wire on the land at some point but didn't think it had been there for long. He thought in his time he had probably climbed over the barbed wire but couldn't say when. He didn't remember when cattle were in the fields between 2005-2007 ("the **Cattle Years**").

96. In the online Smart Survey, he indicated that he agreed that those households living around Lye Green and Brushwood School within Hilltop Ward & Newtown Ward was

the locality or neighbourhood area that most closely related to the proposed Village Green, this being the proposed 'neighbourhood' within the Application. He indicated that he himself was most closely associated with Hilltop Ward.

97. [redacted] stated that he did feel that the surrounding area constituted a neighbourhood, particularly because of Brushwood Primary School, which he himself attended as a child and [redacted]. (This was with reference to the Brushwood Primary School catchment area, but his comments would apply equally to the neighbourhood eventually advanced by the Applicant.) He stated that he had lots of friends in the area.

[redacted]

98. [redacted] He has lived in Chesham for 34 years, since 1989, in the same house. He described himself as "very familiar" with the Application Land.

99. In addition to his statement to the inquiry, [redacted] completed a Bucks Council Questionnaire on 31 October 2020.

100. He uses the Application Land for walking – with his wife when she was able, or with friends or his granddaughter. In more recent years (the past 6-8 years), his use has been curtailed by his wife's health. He stated that he has used the Application Land 2 or 3 times since his wife's health deteriorated. When he did use it, he used Slipes, but not Mushroom.

101. He said that he mainly used the Application Land for walking "because the outer edges of the fields provide an enjoyable number of a circular routes that I can take in order to exercise and enjoy the countryside and to get some fresh air, whilst enjoying open countryside rather than walking along busy roads or pavements." He had also used the Application Land occasionally to walk to the Black Cat Pub, when it was open. In cross-examination, he agreed that he used the outer edges of the fields. He said this was to be considerate and not trample the crops.

102. [redacted] normally saw others using the land by walking, sometimes with dogs. He stated that he had "very occasionally" seen people cycling on the land.

103. He stated that he accesses the Application Land via the public footpath at the end of his road, by Brushwood School. He stated that he only became aware of it being a public footpath after the threats of development of the land emerged in 2015 and after listening to members of the Applicant talk about the public footpaths that cross the Application Land. Prior to that, he had assumed that all of the paths and tracks were public footpaths as they were so well used. Due to this, he stated, that he thought that this use of the Application Land had not been confined to public footpaths.

104. In common with all other witnesses, [redacted] stated that most people respect the farming activity and avoid trampling crops when they are growing or they keep dogs on leads or under control near livestock. He remembered cattle in Slipes and in Bayman but couldn't remember the years. He couldn't remember the barbed wired fence.

105. Also in common with all other witnesses, he said that he had never sought permission for using the Application Land. He had not been approached by anyone telling him to leave the Application Land. Other than during the Foot & Mouth disease outbreak in 2001, he could not recall any restrictions upon his use.

106. He stated that he did feel that the Brushwood Primary School catchment area was a neighbourhood, but justified this with reference to people living together "in a locality", rather than by reference to any services or community feel.

[redacted]

107. [redacted] moved to the area in 1992. [redacted] He moved there in 2015. Previously, he lived in [redacted]. In his Statement of Truth, he stated that he had "lived in Chesham for over 43 years". However, from 1992 to 2009 he lived further away after separating from his ex-wife. First, he lived in [redacted] (about 20/25 minutes away by car), and then off[redacted]

[redacted] Chesham. This meant that he was not on the Application Land at all during the Cattle Years. However, he insisted that he was "always in the area" over those years while he lived further away, in order to visit his children.

108. In addition to his statement, [redacted] completed a Bucks Council Questionnaire in October 2020, a Statement dated 29 October 2020, a previous Statement of Truth submitted to the former Chiltern & South Bucks District Council on 24 April 2019, and the Applicant's Smart Survey that he completed on 12 December 2022, as well as the Statement of Truth submitted for the inquiry dated 12 January 2023. He then submitted a further Statement of Truth on 6 March 2023, rebutting Mr Harvey Mash's Statements.

109. [redacted] stated that he was "very familiar" with the Application Land. He said that, when he lived nearby, he used it most days for informal recreation purposes. This was mainly for dog walking, but he said that he had also used it with his boys when they were younger when they would play or occasionally have picnics. He stated that he used both the formal and informal footpaths , there being many informal tracks around the Application Land, and some crossing it.

110. He stated that while most people walk around the edges of the fields that are used for cultivating crops, people do also walk directly across mushroom field. He believed that people respected the farming activities and walked or played around the edges of the fields, but he said that people do "occasionally" cut corners or walk directly across the cultivated areas. In cross-examination, he put this figure at "at least once a week, on all fields", and accepted that people's use of the middle of the fields was "occasional".

111. He said that he and other people walked up the tramlines. He maintained this under cross-examination, saying that he would walk down the tramlines even when this was made less pleasant by the Oilseed Rape crop, a[redacted] so the tramlines provided the "quickest and easiest route to go and enjoy the land". He insisted that he would even walk through the fields after they had been ploughed.

112. He stated that most people used the Application Land for walking as well as jogging/running, cycling, drawing or painting, picnicking, children playing, picking blackberries, throwing a rugby ball and occasionally flying kites or model planes. He recalled that, a few years ago, "there was a person regularly flying a remote control model aircraft on the land and more recently I have occasionally seen several people flying radio controlled drones too." He stated that he had seen one man ride his bicycle down the middle of Mushroom.

113. He also recalled that his own children used to play on the Application Land, especially in the overgrown areas. The rope swing on which they used to play was just outside the Application Land, in Nalders Wood, but his children used to walk across to play there (in the 1990s, before the relevant 20-year period). He believes that the rope swing is still popular with local children, as is another one which he believes is within Gee's Spring.

114. In common with other witnesses, he said that he was drawn to the Application Land due to its open and tranquil nature.

115. [redacted] did not claim to know any of the Mash family personally very well, although he knew the family generally and had spoken to the farmer or farm staff occasionally over the years.

116. [redacted] has used various access points to get onto the Application Land. Both his current house and his house on Lye Green Road had rear garden gates giving access. When he was living at [redacted], he would access the Application Land via the public footpath next to Brushwood School, and/or via the informal access point at the end of Hillcroft Road.

117. [redacted] stated that the inner fence set back from the boundary of the rear garden fences of Deer Park Walk, inside Mushroom field, had always been in a "very poor condition with several gaps and loose wire until a couple of years ago at around the time of the Applicant's ACV Nomination in 2019, when this fence was repaired/restrung by farm staff." He explained that "this inner fence has always been set back from the boundary of the rear garden fences of Deer Park Walk by between

1.5 to 2 metres ever since I have lived here. It also only runs along the eastern boundary of that northern field beside my house. Accordingly, any resident in Deer Park Walk (like myself) with a rear garden gate, can still access the field and walk the boundary as people can and do, also lift the barbed wire and duck under this rudimentary fencing to access the land." He reported that there was a spot on the fence where electrician's tape had been wrapped around the barbed wire, to allow people to hold the wire, pull it apart and duck through it. He reported that people other than Deer Park Walk residents would normally "stay on the field side of the fence and then walk around the boundary to the north and west as part of most people's circular walk".

118. He recalled the agricultural gates frequently being left open and not being locked even when shut. Even when locked, he said that people would climb over the agricultural gates or go around gaps to the side.

119. In the years when sheep were being grazed on mushroom, he recalled an electric fence being installed inside Mushroom, following an incident when a dead sheep was found in [redacted] back garden. Apparently, this electric fence did not prevent a number of further escapes by sheep into the neighbouring gardens [redacted]. This electric fence still allowed people to walk the outer boundary of Mushroom.

120. He said that he had never been asked to explain what he was doing on the Application Land nor asked to leave. He recalled that once, in the autumn of 2019 whilst he was walking his dog in Mushroom, he was challenged by one of the farm staff and asked to leave.

121. In July of 2019 he received a letter from a Mr Fitzgerald representing Geltex Properties asking him to remove a couple of items of garden furniture that he stored on the field side of his rear garden fence. He had stored them there for "many years", and had done the same at his former home, apparently without complaint. He removed the items when asked.

122. In 2019, in response to the Applicant's initial ACV application, he heard of friends being challenged in their use of the Application Land, and heard of some gaps in fences

being closed off. He characterised this as a "temporary display of diligence" since he had "not heard of any similar incidents since early 2020".

123. Other than this, the only time he could recall restrictions upon use of the Application Land was during the Foot & Mouth epidemic.

124. He stated that he had never seen any s.15A Notice placed upon the Application Land in August 2019.

125. In his rebuttal Statement of Truth, [redacted] rebutted several points made by Mr Harvey Mash regarding access points and private property signs. Without reciting the detail of these, his evidence was that access had always been available into the fields via various gaps in the hedge or besides agricultural gates, without needing to resort to using private gates or the private driveway retained by Mr Mash besides 104 Lye Green Road.

126. [redacted] also submitted a number of photographs, with both his statement of January 2023 and March 2023, showing use of the Application Land. These included photographs both on and off the footpaths. Several included his dog [redacted], and members of his family. [redacted] described these photos as showing the non-footpath use of the Application Land. Other photographs showed other people using it. These included people using footpaths, and at least two people crossing the middle of the fields when they were covered in snow. A series of photographs showed his house on Lye Green Road from the adjoining field, and his dog [redacted] running in the tramlines of that field. Another pair of photographs showed [redacted], his wife and [redacted] sat on hay bales, which [redacted] believed was away from the footpath in Slipes.

127. [redacted] maintained that the Application Land was used by a neighbourhood and he identified that as the Newtown/Hilltop neighbourhood.

[redacted]

128. [redacted]. He stated that he had lived on [redacted] from 2000-2023.

129. In addition to his statement, [redacted] responded to the Applicant's online Smart Survey on 22 November 2022.

130. [redacted] kitchen window overlooks Mushroom, so his knowledge and experience was mainly of that field. However, he said that he also regularly walks around Slipes. He had occasionally walked around Bayman. [redacted] estimated that he uses the Application Land several times a week.

131. [redacted] said that his main use is walking alone or with friends. He said that his use was not confined to the public footpaths. In cross-examination, he said that although he wouldn't walk in crops or a wet ploughed field, he might cross a "dry ploughed field". However, he conceded that this would most likely just be shifting "maybe 50 yards" off the footpath to use the tractor tracks instead, if the path was blocked by brambles or nettles.

132. [redacted] said that he enjoys the Application Land "and scenery as a whole". He confirmed that, when using the Application Land, he normally sees other people also using it. He mainly sees people walking alone, in groups, or with dogs. He said that these people do not confine themselves to the public footpaths but tend to walk around all the outer boundaries or on the other informal paths.

133. Like all other witnesses, he said that "most people respect the farming activity and keep to the edges of the planted fields to avoid trampling crops and keep dogs under control near livestock." In his online survey, he indicated that people walk "Over all parts of the land including grazing areas but NOT where crops grow", "Around all the outer boundaries of the land", "Across other informal paths upon the land that are not adopted PROW footpaths", and "Beside or near to the PROW but straying from the PROW footpaths / cutting corners etc." In examination in chief, [redacted] said that the crops tended to restrict where people would walk, but that people walked on the tractor-made tramlines.

134. [redacted] was clear that people walked diagonally across Mushroom, saying that this was "more common" than going around it. He thought this was present even during the

crop years since 2011. He recalled being able to walk a perimeter path around Mushroom when livestock were in the field with an electric fence. He remembered cattle in the field which he thought wasn't for long and he assumed it was just before slaughter.

135. [redacted] also said he sees people running/jogging, children playing, blackberry picking and "occasionally" people cycling or drawing/sketching and taking photographs. He mainly recalled these activities occurring in Mushroom, this being the area that he sees the most. However, he said that he also sees these activities in Slipes, and somewhat less in Lye Green Field. He added that there are "often" children playing in the scrub area in Brick Field within Lye Green Field. He said that he has seen people "regularly" stop to talk to other people who are also using the land.

136. [redacted] said that he has accessed the Application Land either from a rear gate that adjoins it, or via the woods, or via formal and informal access points, or via the farm gates when unlocked.

137. In common with all other witnesses, he said that he had never sought permission for using the Application Land. He had not been approached by anyone telling him to leave the Application Land. Other than during the Foot & Mouth disease outbreak in 2001, he could not recall any restrictions upon his use.

138. In the online Smart Survey, he indicated that he agreed that those households living around Lye Green and Brushwood School within Hilltop Ward & Newtown Ward was the locality or neighbourhood area that most closely related to the proposed Village Green, this being the proposed 'neighbourhood' within the Application. He indicated that he himself was most closely associated with Hilltop Ward.

139. [redacted] had, in 2016, sold an L-shaped portion of the garden of his house to Geltex. This means that the exact boundaries between Mushroom field and his private garden were not finalised until 2016. He said that the top/northern part of his garden was fenced while it was private land, and that the bottom/southern part had a more derelict fence (he called it a "suggested fence").

[redacted]

140. [redacted]. In total, he has lived in Chesham for 40 years, and moved to his present house in 1993.

141. In addition to his statement, [redacted] completed the Bucks Council Questionnaire on 30 October 2020.

142. [redacted] stated that he uses the Application Land mainly for dog walking, as he and his wife used to take in rescue dogs. Until 2019 when his last dog died, he would sometimes use the Application Land as much as twice a day. He would occasionally walk his wife's dog after his own dog died, but not as frequently. He also uses the Application Land for plane spotting. During cross-examination he said that he had been doing this for years, and explained that he would sometimes go onto the field to spot specific aircraft due to pass overhead. Pressed on why he hadn't mentioned this in his questionnaire, he said he had filled it in in a rush.

143. [redacted] said in his written Statement that, when walking, he would take a variety of semi-circular or orbital routes around the fields. He said that he uses informal tracks as well as public footpaths to do so. In examination in chief, he expanded on this to say that if the field was ploughed or had "stubble" on it, rather than there being a crop growing, he and his wife would go across the field in a variety of different ways.

144. He said that the other people he saw using the Application Land were mainly doing so in a similar way – ie walking. However, he said that he also "regularly" sees people using the Application Landland "away from public footpaths". In addition to walking, he has seen people "jogging/running, riding bicycles, photography, sketching/pointing, picking blackberries, children playing and occasionally flying kites or in more recent years, flying radio-controlled drones." He has also seen people using metal detectors "very occasionally".

145. [redacted] said in examination in chief that there was a rise in people using the fields during the coronavirus pandemic, since getting outside was vital for mental health.

146. He said that he accesses the Application Land from the public right of way beside Brushwood School.

147. Like all other witnesses, [redacted] stated that most people respect the farming activity and avoid trampling crops when they are growing or they keep dogs on leads or under control near livestock. He didn't remember the cattle. However, he did say that he would have climbed through the barbed wire into the fields containing cattle.

148. Asked to comment on the issue of neighbourhood, [redacted] agreed that the Brushwood School catchment area was a neighbourhood. He said, however, that he would add the Botley Road area. In cross-examination, he agreed that it was a neighbourhood of people who use the Application Land. When asked about Botley Road users, [redacted] said that people from that area used it along with dogwalkers coming from Crossway, via Codmore.

149. He had never sought permission for using the Application Land, nor did he recall ever being either given permission or told to leave. He did recall some signs being put up in 2019 in an attempt to restrict public access to the non-footpath areas of the field, and recalled the restrictions in 2001 during the Foot & Mouth epidemic.

[redacted]

150. [redacted]. He has lived in that house since 1998.

151. In addition to his statement, [redacted] submitted a response to the Applicant's online Smart Survey on 18 December 2022. He submitted two written statements: one dated 14 January 2023 and a second dated 4 March 2023 in rebuttal to some of the matters raised in Mr Mash's Statement of 22 February 2023.

152. [redacted] stated that he has used the Application Land for informal recreation purposes, mainly walking. He said that he enjoys it as a whole, enjoying the walks and the countryside.

153. He estimated that he uses the Application Land several times each week, and uses each of the fields but does not generally go into the Brick Field area.

154. He confirmed that he consistently sees other people using the Application Land as well, mainly walking. He said that he "often" sees people picking wild blackberries or sloes at the appropriate time of year, and that he also sees people sketching or taking photographs or birdwatching.

155. He said that he and others do not confine themselves to the public footpaths, but tend to walk the outer boundaries and other informal paths around the edges of the fields. He said that he saw people cutting corners "occasionally".

156. In his second Statement, he asserted that whilst he "will always take care to avoid damaging any crops that are growing, I have occasionally walked in or across the fields and will do so if the edges of the fields are muddy and slippery from excessive footfall." He also stated that he would only enter the crops via tramlines, but that he would be less constrained when crops are not growing or when the ground is frozen.

157. As with other witnesses, [redacted] stated that most people respect the farming activity and avoid trampling crops when they are growing or they keep dogs on leads or under control near livestock. He didn't remember the Cattle Years but acknowledged it is possible cattle was there then. He did remember cattle in Bayman and Lye Green Field and he remembered sheep in 2017-2019, which during cross-examination he said had been unusual.

158. [redacted] said that he has accessed the Application Land either from the woods, or via formal and informal access points.

159. In his second written Statement, [redacted] asserted that Bayman was accessible after 2006, as he himself had accessed that field, and saw others doing so. One could get into

Bayman through a gap in the hedge, or by walking up the drive by Bayman Manor to a gate that was accessible until 3 or 4 years ago. When the South West corner of Bayman was fenced, in 2013, one could access the Application Land by going through the gap beside the gate and "hopping" over the wooden fence.

160. [redacted] said that he had never sought permission for using the Application Land. He had not been approached by anyone telling him to leave. He recalled the Foot & Mouth disease outbreak in 2001, and recalled when additional fence posts were erected at the gate into Bayman to restrict access that way.

161. In the online Smart Survey, [redacted] indicated that he agreed that those households living around Lye Green and Brushwood School within Hilltop Ward & Newtown Ward was the locality or neighbourhood area that most closely related to the proposed Village Green, this being the proposed 'neighbourhood' within the Application. He indicated that he himself was most closely associated with Hilltop Ward. But he agreed in cross-examination that the neighbourhood relied upon was a circle drawn on a map.

[redacted]

162. [redacted] at [redacted]. He stated that he has lived in Chesham for 53 years, having moved into his current house in June 1971.

163. [redacted] provided two written statements – one dated 15 January 2023, and a second dated 6 March 2023. He responded to the Applicant's online Smart Survey on 22 November 2022 and the Bucks Council Questionnaire on 30 October 2020.

164. [redacted] stated that he uses the Application Land most days, mainly for walking whilst enjoying the scenery, open space and wildlife. He said that he enjoys the Application Land and the scenery "as a whole", and it "provides an excellent variety of circular routes to walk". He normally sees other people walking. He "often" sees children playing or riding bikes, and "occasionally" flying kites. He also sees people picking wildflowers or blackberries, and he "sometimes" sees people jogging, either around the outside of the field or in the woods.

165. He stated that he recalled some people riding horses in the field more than 30 years ago. He also recalled hot air balloons landing on the Application Land.

166. [redacted] often accesses the Application Land via either the PROW beside Brushwood School or the informal access point on Hillcroft Road, and confirmed in his second witness statement that this latter access point has "always" been available. He has also accessed the Application Land via the woods, or via other formal and informal access points, or via the farm gates when unlocked. He has seen others doing the same, as well as entering from rear garden gates.

167. In his second witness statement, he clarified that "there has always been an informal track along [the] entire boundary" of Slipes beside Brushwood School and the western boundary of Slipes.

168. He said that he and others do not confine themselves to the public footpaths, but do tend to walk the outer boundaries and other informal paths around the edges of the fields. He said that he saw people cutting corners "occasionally". He disputed Mr Mash's assertion that the crops can, at certain times of year, prevent people from walking in or around the fields. In his second statement, he said that although wet or muddy ground may discourage some walkers, it does not seem to prevent walking. He said that people will walk around the fields even when there is "stubble, mud or even growing crops", because people will walk the "uncultivated edges", or walk in the tractor tracks. He said that people would walk in the middle of the field when the fields were dormant or growing grass.

169. While he himself did not make much use of Mushroom field, he said that others did do so, although only on the perimeter. He said that people did not walk diagonally across Mushroom, the diagonal path across being caused by a tractor rather than people. He said that nobody would walk through Slipes field, as this would not be pleasant.

170. In common with all other witnesses, he said that he had never sought permission for using the Application Land. He had not been approached by anyone telling him to leave. He recalled the Foot & Mouth disease outbreak in 2001, and he recalled a period "a few years ago" when some of the informal access points were closed, some fences were put

up, and some other individuals were asked to leave. However, this had not happened to him personally, and he had heard of no such incidents recently.

171. In the online Smart Survey, he indicated that he agreed that those households living around Lye Green and Brushwood School within Hilltop Ward & Newtown Ward was the locality or neighbourhood area that most closely related to the proposed Village Green, this being the proposed 'neighbourhood' within the Application. He indicated that he himself was most closely associated with Hilltop Ward.

172. He agreed that the relevant area was a neighbourhood, saying that it is walkable, and that the Hilltop estate fits in well with the surrounding area. (At the time of giving evidence, the area being advanced as a neighbourhood was the Brushwood School catchment area, but his comments would apply also to the application neighbourhood as eventually advanced.) In response to questions from the inspector and in examination in chief, he said that the neighbourhood had character because it hadn't changed much over the 53 years he had lived there, and because Chesham was known for pubs and leisure activities. He also thought that people came from a long way away to live in the area, particularly Hilltop and Chessmount. However, in cross-examination, he conceded that the main thing bringing people in that area together was their use of the Application Land.

[redacted]

173. [redacted]. He has lived in Chesham for 37 years, in the same house. He is one of the [redacted].

174. [redacted] previously completed the Bucks Council Questionnaire on 31 October 2020. He provided two written statements to the inquiry, the first dated 16 January 2023 and a second rebuttal statement dated 6 March 2023.

175. He says that he and his family have used "various parts of the land" for informal recreational purposes. His children would "habitually" play on the Application Land at an early age, and he mentions them building snowmen or sledging in the winter, or

playing in the fields and cycling around them in the summer. He says that as teenagers they would "make camp in the woods", accessible via the informal footpaths. His children are now aged 25 to 39 years old, and they enjoyed these activities until teenagerhood, so around a decade, their usage of the Application Land falls within the relevant period. His more recent activities have been mainly confined to dog walking or walking with his wife.

176. When walking on the fields, he uses the outer edges of the fields, which provide "an enjoyable variety of orbital routes" even if they are not public footpaths. In his view, this means that he enjoys the whole of the Application Land even though he "mainly only walk[s] around the edges of it". He mainly walks on Slipes and Mushroom.

177. In his rebuttal statement he clarified that there had been an informal track running beside the eastern edge of Brushwood School and the western side of Slipes field throughout the time that he had lived at his property.

178. He says that he "invariably" sees others using the Application Land, for walking (not just on the public footpaths) or "occasionally" cycling, or children playing, "sometimes" kicking a ball around and "occasionally" flying kites. In cross-examination, he specified that the football games he mentioned took place on uncultivated area where the path broadens out between Slipes and Bayman, where the ground is dry.

179. He said that his son, [redacted], used to ride his horses through the fields, entering from the gate at the northern edge of Mushroom and riding down to the stables at Mash Court to use their clippers to trim the horses. He said that this took place around 2000/2001.

180. Although the frequency of his use of the Application Land fluctuates with work ([redacted] when he is home he uses it "several times a week if not daily".

181. Like all other witnesses, [redacted] said that most people respect the farming activity and avoid trampling crops when they are growing or they keep dogs on leads or under control near livestock. But he rejected the suggestion that crops or stubble rendered the fields inaccessible, saying that he sees people continuing to walk around the edges of

the fields or in tramlines within the fields even when crops are growing or the ground is ploughed.

182. In common with all other witnesses, he said that he had never sought permission for using the Application Land. He had not been approached by anyone telling him to leave. He said that he is sure the farm staff have seen him on the Application Land as he has been there when there are tractors working on the fields many times, but none ever approached him to ask him to leave.

183. He accesses the Application Land via public rights of way beside Brushwood School or via the informal access point at the end of Hillcroft Road. Prior to Brushwood School being re-fenced, he and his family were also able to access the Application Land via their back garden. He has never had any difficulty accessing it. He specifically noted in his rebuttal statement that people have been able to access the fields from Hillcroft Road throughout the time that he has lived nearby. He did recall that some of the informal access points were "briefly" closed off in 2019 although people still used the Application Land.

[redacted]

184. [redacted].

185. [redacted] appears to have been the driving force behind the TVG application and has led the process to gather the evidence and materials put in with the Applications. Aside from coordinating and compiling the evidence for the application overall, his own evidence was extensive, including multiple statutory declarations and written statements (dated 25 September 2020, 4 April 2022, 29 December 2022, and 16 January 2023, totalling around 60 pages excluding the various annexes), as well as submitting over 100 photographs in evidence. It is not possible to recite all of this but I have taken it all into account. The summary below comprises the key points of his evidence with specific reference to the making of the Applications and his use and knowledge of the Application Land.

186. [redacted] is one of the Applicant's volunteer co-directors, and has been since 2016. He is a Chartered Planning and Development Surveyor. He says that he has provided "a lot of advice" to the Applicant's Board regarding seeking ACV or TVG registration of the Application Land. His Statutory Declaration of 25 September 2020 sets out the history of the various nominations/applications relating to the Application Land, as well as the Applicant's composition and finances.

187. [redacted] moved to the area in 1999, and estimates that he has used the Application Land between 2 to 4 times a month on average, although more frequently in the last 7 years due to involvement with the Applicant.

Data collection and analysis

188. [redacted] was instructed by the Applicant to submit two DMMO applications to secure footpath usage. These were submitted in August 2019.

189. [redacted] personally undertook 22 different half hour observation periods upon the Application Land, over a period of 17 months between April 2019 and August 2020. He used this data to calculate the number of people using the Application Land and the proportion of their usage which was on PROWs or unadopted paths. He noted that the weather and ground conditions (unsurprisingly) have an effect upon usage. His conclusions were:

a. At least 301 people per day use the various footpaths (both formal and informal) upon the Application Land.

b. During the most restrictive periods of the Covid-19 "lockdown" (between April & late June 2020) the average number of people using the Application Land was almost 400 people per day.

c. The majority of those coming onto the Application Land (61%) did not confine their use to just the PROW's and used both adopted and unadopted tracks.

d. 39% of people appeared to use only the adopted PROWs.

e. Over 30% of people used only the unadopted footpaths.

190. [redacted] then undertook the analysis of the data collected by the 12-hour community observation exercise organised by the Applicant in August 2020. His conclusions of this were:

a. Just under 22% (48 people) only used the public footpaths or PROW.

b. Nearly 32% (70 people) only used the unadopted tracks or desire lines upon the Application Land.

c. The majority, over 46% (101 people) were seen using both the public footpaths and the unadopted tracks upon the Application Land.

191. [redacted] also oversaw an exercise involving movement activated cameras around 5 different points of the Application Land. The exercise and the results are described in his Statement dated 29 December 2022. His overall summary was: "Collectively the images from all Locations A to E inclusive, illustrate that the public use different access points to get onto or to exit the land. The images suggest that many people's uses of the land are "non-linear" and involve a variety of recreational uses." He noted that the photographs and conclusions were consistent with the 12-hour observation exercise and [redacted] own 22 half-hour surveys, and corroborated the most popular public uses ie walking and dog-walking.

192. [redacted] also oversaw the Applicant's online Smart Survey exercise which ran between the start of November and end of December 2022 and received 181 completed responses. This process is summarised in his Statement dated 29 December 2022.

Personal usage and observation of usage

193. [redacted] says that he sees people walking, running/jogging, cycling, picking blackberries and children playing on the Application Land. He says he has "occasionally" seen people flying kites or drones (details of such instances being given

in his Statement of 29 December 2022). He has also seen people sketching or taking photographs. He also sees people stopping to walk with others while on their walks.

194. His children used to borrow a neighbour's dog and go for walks on the Application Land when they were teenagers, from mid/late 2000s-2010s. Aside from going onto the Application Land for the Applicant, he uses it mainly for walking. He says that his use of the Application Land has not been confined to the footpaths because there are many informal tracks which he and others use.

195. He says that he regularly sees others using both the informal and formal footpaths, mostly sticking to the edges of the fields, walking "close to the boundaries or upon the informal tracks that have become established upon the land out of respect for the agricultural uses [of] the land". In common with all other witnesses, he said that the public generally try to avoid trampling crops, and control their dogs when in proximity to livestock. He noted that he had "occasionally" seen people walking in the middle of the fields when crops are not growing, but acknowledges that this was "rare" when crops were growing. In cross-examination, he concluded that "most of the walking is confined to the boundary edges, but you do get the occasional person walking down the tramlines or across the fields".

196. Details of routes taken around the perimeter of the fields are given in his Declaration of 25 December 2020. He notes that there is physical evidence of such usage in the form of worn paths on the ground which are not part of the PROW network, and vehemently denied the suggestion that such tracks on the ground were caused by cattle. Various photographs and Google Earth screenshots showing such worn paths are annexed to, and described within, [redacted] evidence. These were drawn to my attention during live evidence, and the possible routes on those worn paths discussed.

197. He stated that, in his analysis, when undertaking circular walks on the Application Land people are using and enjoying it "as a whole", as they enjoy the openness and nature of the whole area. He noted the importance of this for mental health and wellbeing, particularly during the Coronavirus pandemic.

198. In 2019, he was told by various people that they were being challenged when using the Application Land. He said that some people "complained they felt intimidated". Some of the informal boundaries that had been used for access were also being closed off.

Access to the Application Land

199. [redacted] has normally accessed the Application Land via the public footpath behind Deer Park Walk. He gave extensive evidence regarding his observations of how other people access the Application Land, and the availability of various formal and informal access points.

200. He asserted that the four agricultural farm gates are not always kept locked. In his Statement of Truth dated 29 September 2022, he detailed the various months during which he has personally observed each gate being left open. In examination-in-chief he noted, with reference to the photographs annexed to his Statement, that there were prolonged periods when gates A (in the north-west of Mushroom) and D (in the south of Bayman) were left open despite no farm work occurring at that time. Most of these photographs were taken outside of the relevant time-period, but [redacted] stated that they were representative of his observations over the years. He acknowledged that the gates were shut with more diligence once Mr Harvey Mash took over the running of the farm, but said that it was still not uncommon to find padlocks left unlocked and/or gates left open for long periods.

201. Even when they are locked, there are a variety of other formal and informal access points around the Application Land. [redacted] stated that, in addition to the PROW access points, there are at least 18 private gates and 3 private stiles. People can also "simply stray from the public footpaths", having used a PROW to access the Application Land.

202. He also noted that there were various points at which the perimeter fences were dilapidated or had gaps in them. He noted that some, but not all of these access points were closed off, either temporarily or permanently following the Applicant's's (temporary) success in securing ACV status for the Application Land in 2019. For example, he noted (and supplied photographs of) various gaps from Gee's Spring /

Nadler's Wood, some of which had been closed off since 2019 but many of which remained open.

203. He said he had been informed that some local residents have periodically cut back the grass or overgrowth of hedges in order to keep tracks open and accessible.

204. He acknowledged that Brick Field within Lye Green Field is not easily accessible – to enter it, somebody would have to go over or through barbed wire fences (not that this is necessarily difficult, the wire sagging low in places).

205. In common with all other witnesses, he said that he had never sought permission for using the Application Land. He had not been approached by anyone telling him to leave. He recalled temporary restrictions around the Foot and Mouth epidemic in 2001, but other than that he had never seen notices requiring the public to keep out of the land or confine themselves to the PROWs.

206. He said, agreeing with Mr Mash, that during the Cattle Years, in Mushroom, Slipes and Bayman there was a barbed wire inset into the fields, leaving a 'corridor' around the outer edges. It was his recollection that when there were sheep in Mushroom, Slipes and Bayman they were kept to only a part of each field and penned in with an electric wire, which was moved with the sheep every week or two.

Neighbourhood or locality

207. In his evidence at the inquiry, [redacted] explained that the distinguishing factor between the areas inside and outside the application neighbourhood within Chesham was the "style" and "feel" of the houses. He explained that there was a degree of cohesiveness between all of the homes in the area, which sat on the top of the chalk escarpment. He also volunteered that the area outside of Chesham, in the northern part of the application neighbourhood, was "distinctly different" from Chesham. After some coaxing from Counsel, he suggested that there was a natural boundary created within Chesham by the hill and allotments.

208. He did not manage to give any features of the area as a whole – including the Preston Hill site, the site of the former Wycombe College, and so on – which gave the whole of the application neighbourhood a unified feel. He suggested that the unifying feature may be proximity. He acknowledged that there were not many services serving the application neighbourhood. He suggested that the Application Land was itself the common focus of the application neighbourhood, although in cross-examination maintained that the Application Land was not the sole reason for drawing the neighbourhood boundaries in the way that they were drawn.

209. In cross-examination, it was pointed out by Counsel for Mash that there were numerous points at which the application neighbourhood boundary cut off neighbouring houses from each other, bisected streets, or seemed to take arbitrary turns. This was accepted by [redacted], and put down to difficulties with the computer programme that he had used to draw the map. [redacted] accepted that there was no difference between the neighbouring houses or houses on opposite sides of the road in those locations. In re-examination, [redacted] explained that he had been trying to represent the southern boundary of the Hilltop Ward on the south side of the application neighbourhood, and the boundary between Hilltop and Newtown on the north-eastern side of the application neighbourhood.

[redacted]

210. [redacted]. She moved into her current house with her husband in March 1997, which overlooks the Application Land and from many parts of house she can see it.

211. In addition to her statement, [redacted] submitted a Bucks Council Questionnaire along with her husband on 3 November 2020.

212. She has used the Application Land regularly for walks with her husband, her four children, and two dogs. Her children would play in the woods when they were younger, which were accessible “all around” through gaps in the hedge.

213. She has also fostered children from 11 years. Many of these children have suffered abuse or neglect, and many have never seen the countryside before. She says that the "ability to take them all around the Application Land on a regular basis and to enjoy the Application Land as a whole with its open spaces, abundant wildlife whilst also being able to observe a working farm, has been educational, therapeutic and an important factor in improving their general wellbeing." Furthermore, aside from providing space to walk and exercise, the Application Land has been a place of tranquillity and "a place where they have played, foraged for blackberries, flown kites and interacted with other children as well as (where appropriate) provided a safe place to walk either too or from school." She spoke about the importance of wide open spaces to allow anxious children or children with ADHD to "let rip".

214. There are a variety of circular walks available on the Application Land. [redacted] normally accesses the Application Land from the public footpath to the right of Deer Park Walk. She said that she knew that many of the other paths used were not PROWs, but that she had never been discouraged from using them.

215. She accepted in cross-examination that most people walked around the edges/perimeter of the fields, but said that she had seen people walk along the tractor tracks. She said that other people were like her in this, using paths that were not just PROWs but generally following orbital routes around the edges of the fields. She said that she has seen people cycling, children playing, football and people flying kites.

216. She denied the suggestion in cross-examination that the gate into Mushroom being shut would prevent access, and also denied that the path down the western side of Mushroom being grassy and overgrown would have prevented her from walking down it. She said the gate into Mushroom from Lycrome Road was sometimes locked and sometimes not.

217. She participated in the continuous 12-hour observation exercise in August 2020, and stated that 88% of the people she observed did not just use the public footpaths.

218. In examination-in-chief, she spoke about the community feel of the neighbourhood, and how her children had friends in the Hilltop area.

[redacted]

219. [redacted] She has lived in Chesham for 30 years.

220. As well as her statement, she supplied a response to BNG's online Smart Survey on 23 November 2022.

221. [redacted] has used the Application Land for walking, or picking blackberries. She walks it several times each week. She normally sees other people walking. She said that she uses the Application Land because she enjoys it and its scenery as a whole, and it provides circular walking routes.

222. She has accessed the Application Land via the woods, PROWs, or the informal openings in the hedges such as at the end of Hillcroft Road.

223. Like the other witnesses, [redacted] said that people respected farming activity and kept to the edges of the planted fields.

224. Like all other witnesses [redacted] said she had never sought permission to use the Application Land. However, she recounted one incident (she thought in 2021) when she had been walking on the boundary of the field close to Hillcroft Road, and somebody she believed to be the farmer's son got out of his tractor and came over to her to tell her that she was not on a PROW. She said that this was the first time that she was aware that the field boundary was not a PROW.

225. Other than this, [redacted] has never had difficulty accessing the Application Land, apart from during the Foot and Mouth epidemic.

226. In the online Smart Survey, [redacted] indicated that she agreed that those households living around Lye Green and Brushwood School within Hilltop Ward & Newtown Ward was the locality or neighbourhood area that most closely related to the proposed Village Green, this being the proposed 'neighbourhood' within the Application. She

indicated that she herself was most closely associated with Hilltop Ward. She said it was an easy area to walk around and has its own schools. She said people go down the hill to the shops and that there is a residential care home and a special needs school.

[redacted]

227. [redacted].

228. In addition to her statement, [redacted] completed a Bucks Council Questionnaire in October 2020.

229. [redacted] has known the Application Land for 30 years, having previously lived within the [redacted]. She then moved away until 2012, at which point she and her family moved into their present house on [redacted]. She said that she continued to use the Application Land 'sporadically' between 1998-2012. She now uses it most days.

230. [redacted] is a keen birdwatcher, and spoke with a great deal of knowledge and enthusiasm about the (50 different) bird species which can be seen from the Application Land. This is her primary reason for using it. She mainly birdwatches on Lye Green Field, but will go onto Slipes if there are particular bird species which she hasn't ticked off her list yet (for example, she would go onto Slipes specifically to look for skylarks).

231. [redacted] also uses the Application Land for walking, and for watching other wildlife such as badgers, foxes and hedgehogs. She goes onto Mushroom at blackberrying time, to pick blackberries around the perimeter of the field. She said that she does not confine her walking to public footpaths, and said that "one can wander over all parts of the grazing area of the land [meaning Lye Green Field] but where crops are cultivated, I try only to follow the routes around the perimeter of the fields to avoid damaging any crops." She was clear that on Lye Green Field "people just go anywhere and everywhere … It's a big meadow, you can't really see where the footpaths are [on Lye Green Field]." She can see Lye Green Field from her back windows, and said that every time she looks out of her window she sees people walking or jogging on the Application

Land. She says that people "just walk straight across" Lye Green Field, and that the cows take no notice.

232. With regards to the other fields, [redacted] said that she mainly sees other people walking perimeter walks, although she has occasionally seen people riding bicycles and playing with children. Many people pick blackberries in the right season. She said that children (particularly her son) might cut across the fields if this was possible without trampling crops.

233. [redacted] participated in the 12-hour observation exercise in August 2020.

234. In examination-in-chief, [redacted] agreed that the neighbourhood was cohesive. She said that she had a lot of friends in the area, and that there were local newspapers, quizzes at the Black Cat Pub and so on.

[redacted]

235. [redacted] He has lived in Chesham for 29 years. However, he lives slightly outside of the neighbourhood.

236. In addition to his statement, [redacted] completed a Bucks Council Questionnaire in November 2020.

237. [redacted] said that he mainly uses the Application Land for walking, or running/jogging. He "invariably" sees others using the Application Land too, and neither he nor they confine their activities to the PROWs.

238. [redacted] has accessed the Application Land via the PROWs or various informal access points.

239. In common with all other witnesses, [redacted] said that people respect the farming activities and avoid trampling crops.

240. He said that he had never sought permission to use the Application Land, and had never been told that he could not use it, nor had anybody told him to leave it. He has never had difficulty in accessing the Application Land, although he noted that some of the informal access points were closed off in 2019 although he still saw people continuing to use it.

241. Despite living outside the Applicant's claimed neighbourhood, [redacted] nevertheless said that he is "very involved" in the neighbourhood and that he "wouldn't put a red line in between me and the neighbourhood", denying any difference between his local area and the neighbourhood area and saying that it is "all one community".

[redacted]

242. [redacted] gave evidence to the inquiry orally, as a member of the public who had not previously been listed as a witness. She had previously submitted a letter to the inquiry, dated 26 April 2023. [redacted] gave evidence in between the Objectors' witnesses on Friday 24 March 2023.

243. [redacted]. Her house overlooks the Application Land, and she says that she sees "people walking, running, exercising their dogs freely over the land not just using the footpaths", every day. She says that, at the weekends and holidays, children play football and occasionally fly kites. She herself uses the Application Land recreationally, for walking, foraging, meeting friends and nature watching.

244. She said that the local community view the area "as a sort of park", and emphasised the preciousness of this in the 21st century.

245. She believes that the popularity of the Application Land increases demand for houses in the neighbourhood.

The Case for the Objectors

246. Three witnesses gave evidence to the inquiry for the Objectors.

[redacted]

247. [redacted]

248. [redacted] provided a Witness Statement dated 21 February 2023.

249. Her knowledge of the Application Land comes from her time living at [redacted] until 2000, while married to [redacted], as well as her experience running the livery yard that was operated from the former dairy building that is now Henry Mash Court.

250. She recalled that, while she lived at [redacted], "[redacted] would get very annoyed that some residents whose gardens backed onto land at Lye Green had put gates in their rear gardens or would deposit garden waste on the field edges."

251. She never rode her own horses on the fields of the Application Land, because there are no bridleways on which to ride. She was clear that any horse-riding which took place there would not have been by members of the public, but customers who kept their horses at the stable yard, paid livery fees and rode their horses on the Application Land with the permission of the livery yard. She had never seen nor had reported to her any incidence of members of the public riding their horses on the Application Land. She was also clear that it would be dangerous to ride a horse in a field where other horses were grazing.

252. When [redacted] assertion about riding his horse across the Application Land was put to her, she said that she could not see how or why he would have done so given the direction he would have been coming from, but could not refute it entirely as she was not present at the time.

253. Once she and [redacted] divorced in 2000, she moved from [redacted] to Berkhamsted. She was no longer involved in the livery yard at that point, so had no reason to go onto the Application Land. However, she said that she would drive along

both Lycrome Road and Lye Green Road on the daily school run from September 2000 through to June 2007, and did not see anything unusual, although she admitted in cross-examination that as the fields were hedged she would only have had limited opportunity to see what was going on in the fields.

254. In 2019, during the ACV application, she went to have a look at the Application Land from the private driveway onto Bayman, and was confronted by [redacted], a resident who lives in one of the properties along Lye Green Road at the southern end of Bayman Field, who told her that only the farmer was allowed to use that driveway, and asked her to leave.

[redacted]

255. [redacted]. He started doing the agronomy full time for Mash in February 2016. He had visited the Application Land previously while training, but had no detailed recollections of the Application Land from before 2016.

256. [redacted] explained that as spring and autumn are the busiest months as an agronomist, during those months he would visit the farm at least once every two weeks. During the summer and winter he would visit roughly every month, depending on need and weather. During his visit, he would inspect the crops for things such as pests, diseases, weeds and nutritional requirements. If needed, he would make a "recommendation" for intervention and identify necessary actions.

257. Torrington Farm has five blocks. Mushroom, Slipes and Bayman are part of one block (the Brockhurst Block), along with four other fields. (Lye Green Field is not an arable field so is not included in the block.) [redacted] explained that when he inspected, he would enter by Bayman field on the south-eastern side, and then walk each of the fields.

258. [redacted] explained that, as he travelled up from Kent each time, he tried to be very thorough when he was at the farm and to cover as much land as possible, to avoid needing to make repeat visits. In cross-examination, however, he accepted that, as he would be looking at the whole of Torrington Farm on each visit, his time on the

Application Land in particular was quite limited, likely around 20-30 minutes on each occasion.

259. [redacted] mostly walks the fields on his own, but occasionally Mr Harvey Mash or some of his employees might join. In his experience, the gates have been kept locked unless Harvey is in the field. [redacted] gave the dates on which he was on the Application Land, which he had calculated with reference to his company's car milage forms. He also gave detailed explanations of how large each of the crops would have been at different times of year on the respective years, based on his recommendations from those years (recorded on Gatekeeper) which were attached as appendices to his Witness Statement. This was elaborated on in examination-in-chief.

260. In examination-in-chief, [redacted] said that he did not recall seeing anybody walking in the crops or down the tramlines at any point, nor any evidence of anybody having trampled the crop. He explained that he would have been able to see footprints in the tramlines if people had been walking down them in any great number, and would have seen trampled paths if people had been walking through the crops to access the tramlines. He said that the only evidence he saw of people walking anywhere other than the footpath was a slight widening of the path in places, or where people had strayed slightly off the path to avoid wet patches of the path.

261. [redacted] accepted in cross-examination, however, that, when inspecting the crops, he is mainly in the middle of the fields rather than around the edges, and is more focused on the crops themselves rather than on walkers' activities around the edges of the fields. He accepted that there may be crop damage from walkers around the edges of the field which he may miss, but he wouldn't expect to miss any crop damage in the middle of the fields.

262. [redacted] said that the tramlines would, in the winter, likely be wetter and slimier than the rest of the field. In summer, the crops would be high, so walking down the tramlines would mean brushing against the crop and likely accumulating damp or insects on your clothing as a result. He accepted in cross-examination that it would not be physically impossible to walk down the tramlines, but said that it would not be enjoyable to do so in his opinion.

[redacted]

263. [redacted] is the managing director of Mash. He provided two Witness Statements, one for each of the Objectors. These contained a great deal of detailed evidence regarding specifics of farming crops, cattle and sheep on the Application Land, particular paths and access points to the Application Land, and the condition of the perimeter fences at various points. These have been noted and taken into consideration. The summary below is of the key points of [redacted] evidence, taken broadly chronologically.

264. [redacted] grew up on Torrington Farm, and spent a lot of time on the Application Land as a child. He left school in July 2004. He chose to live on the farm at that point, and spent a year working there. He did not recall seeing people walking or playing across the middle of the fields in that year, only on the perimeter.

265. Looking at aerial photos from 1999, he said that he could see a tight path around the edges of the fields on which people walked. He said that this "is expected, as people who walk through the countryside are generally respectful of cropped fields." Regarding the aerial photographs from 2001-2003, [redacted] said that he could see tractor-made tramlines and places where people have walked on the perimeter of the fields, but no evidence of people walking in the middle of the fields.

266. In 2005 and 2006 [redacted] was helping out with the redevelopment of Henry Mash Court. From September 2005 until June 2007, he attended Moreton Morrell College in Warwickshire, and would work on the farm on weekends and holidays.

267. During 2006 and 2007 cattle were grazed on the land. With regards to the fencing in those years, [redacted] explained that "there was barbed wire fencing all around the perimeter of Mushroom field. … The way the fence was put in allowed people to walk from Hillcroft Road along the northern boundary of Slipes field to join the public footpath next to Deer Park Walk. The fence runs along the boundary at the eastern edge and the southern edge of Slipes field and around the perimeter of Bayman field. The only boundary that wasn't a barbed wire fence was the one that separates the fields from the Brushwood Junior School. This was, in any event, a secure fence." [redacted] says

that he saw people walking in the 'corridor' left by the barbed wire fencing on the northern edge of Slipes, but that he did not see anybody walking within the fields where the cattle were. In examination-in-chief, he said that, as far as possible, [redacted] tried to make it possible for people to continue walking around the perimeter of the land safely. Nor did he see the wire having been cut in order to access the fields. [redacted] said that the diagonal lines across Mushroom visible in aerial photographs from these years were caused by vehicles driving across Mushroom to go out to check on the cattle once a day.

268. Between September 2007 and early 2009, [redacted] attended Harper Adams Shropshire Agricultural University.

269. After the harvest in 2009, [redacted] went travelling, and then worked on the farm full time from early 2010 until autumn 2010. He then worked for a builder for 6 months in autumn 2010 after the harvest and through the winter, then spent 6 months working for Philip Matthews Agricultural Contractors. After that he returned to the farm, and has been there until the present day. He estimated that he was on the Application Land roughly 40 times a year on average – slightly more than once a week in spring, but less in the winter.

270. [redacted] took over management of the arable side of the farm from late summer 2011 and took over full management of the farm in 2015. From 2011, he changed the way the arable fields were managed, grouping them into blocks in order to make farming more efficient. This meant that Mushroom, Slipes and Bayman would be planted with the same crop, allowing fields close together to be worked on at the same time.

271. [redacted] said that he would generally leave the agricultural gates open while he worked on the fields, and may leave them open while he waited for the weather to change or during periods when he was consistently coming in and out of the fields (during spring), but would not leave them open for more than a week or two at a time. He was certain in examination-in-chief and cross-examination that, aside from such periods, the gates would be locked unless he or his staff were working in the fields, except perhaps for the occasional mistake by his newer staff. In the winter he would not be taking his tractor into the fields so the gates would remain locked.

272. [redacted] provided a full cropping history from 2011-2023, showing which crops were growing and harvested in which years. In his statement, he outlined the crops on the fields as follows:

> "The cropping history for the field known as Mushroom is as follows:
>
> (a) 2011: Wheat Winter
> (b) 2012: Barley Winter
> (c) 2013: Rape Winter
> (d) 2014: Wheat Winter
> (e) 2015: Peas Dried/Combining
> (f) 2016: Wheat Winter
> (g) 2017: Barley Winter
> (h) 2018: Westerwold Ryegrass
> (i) 2019: Westerwold Ryegrass
> (j) 2020: Oilseed Rape and then Peas
> (k) 2021: Winter Wheat
> (l) 2022: Winter Oats
> (m) 2023: Winter Wheat
>
> […] The cropping history for Slipes is as follows:
>
> (a) 2011: Wheat Winter
> (b) 2012: Barley Winter
> (c) 2013: Rape Winter
> (d) 2014: Wheat Winter
> (e) 2015: Peas Dried/Combining
> (f) 2016: Wheat Winter
> (g) 2017: Barley Winter
> (h) 2018: Westerwold Ryegrass
> (i) 2019: Westerwold Ryegrass
> (j) 2020: Oilseed Rape and then Peas
> (k) 2021: Winter Wheat
> (l) 2022: Winter Oats
> (m) 2023: Winter Wheat"

273. He gave detailed written evidence of what each crop would have been like at various times of year, both in writing and in oral evidence.

274. In terms of people's overall use of the fields, he said as follows: "Prior to 2017, the general public were very respectful and in general knew how to behave in the countryside. People did not come into the fields where the crops were or into the fields where the animals were. People stuck to the same routes around the edges of the fields.

I genuinely didn't see exceptions to this until 2019 when the ACV application emboldened people to act differently including damaging fencing or removing signs from the Application Land. I am protective of my land and in my lifetime (across all of the fields of my farm [ie not just the Application Land]) I have probably only needed to tell people to get out of the fields about 20 times. Two or three of these occasions, when I had to speak to someone about walking through the middle of the fields, happened in Mushroom, Slipes, or Bayman fields."

275. In examination-in-chief, [redacted] recalled only one incident of seeing anybody walking down the tramlines prior to 2019. He explained that the tramlines would narrow as the crops grew over the course of the year. He said that one would not normally be able to walk down the tramlines in the summer without brushing against the crop, and avoiding treading on the crop would be difficult. He said that, consequently, he would have seen evidence of trampling if people had been walking down the tramlines in any great number, and that he saw no such evidence. It became clear in cross-examination that there would have been periods of the year during which it was more appealing to walk down the tramlines than other times, but that the windows of time during which the tramlines would have made for pleasant walking were short and irregular.

276. [redacted] said that he has never seen anybody using Brick Field within Lye Green Field at all. It is closed off by fencing on three sides, although it is open to the north-west.

277. [redacted] described how, in his recollection, people's usage of the land changed in 2019 in response to the ACV application. He said that he started to notice that people had put more gates from the back gardens into the fields, and began noticing various places where the fencing had been damaged. He said that he and his team put in new fencing along the boundary between Deer Park Walk and the fields, and along the northeast corner of Slipes field next to the PROW, but that within days this fencing was damaged or removed. The wire around the agricultural gate into Bayman field was frequently damaged, and in response [redacted] installed wooden posts next to the gate to create a physical barrier preventing people cutting through the wire to enter the field. In live evidence, various photographs were referred to of these areas, and of other areas of damaged and repaired fencing, with reference to specific map locations. [redacted] and

his land agent sent a letter to the properties with gates into the fields or who were suspected of cutting the fencing (attached to his Witness Statement as an appendix).

278. [redacted] also recalled that, in general, people were less friendly while the ACV application was ongoing, being less inclined to respond to him saying hello or waving when he saw them walking around the fields. [redacted] recalled one particular incident of confrontation between himself and a woman walking in the fields, in early summer 2019. His recollection was that "I was in the field with my tractor and a woman deliberately left the footpath and stood in my tractor's path. I told the woman to get out of the field and she responded back something to the effect of "what are you going to do about it?" and I think I told her I'd have to take civil action or something to that effect. During this, the woman used a raised voice and was confrontational. I wasn't particularly surprised. I understood the Applicant was stirring people up to use the land."

279. However, he said that "most people very quickly went back to their original behaviour" once the ACV application had been concluded, returning to walking around the perimeter of the fields. Since then he has had no further instances of padlocks going missing, fencing wires or posts being cut/removed, or people walking across the cropped areas of the fields.

280. Having summarised the evidence heard at the inquiry, I now turn to the relevant law before considering and reaching my conclusions on the evidence.

8. APPLICABLE LEGAL PRINCIPLES

281. The applicable legal principles relevant to the Applications are well-established and not in dispute between the parties in this case. I summarise them as follows.

The Statutory Test

282. Section 15 of the 2006 Act provides so far as material as follows:

"15 Registration of greens

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

(2) This subsection applies where–

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
(b) they continue to do so at the time of the application.

(3) This subsection applies where–

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
(b) they ceased to do so before the time of the application but after the commencement of this section; and
(c) the application is made within the relevant period

(3A) In subsection (3), *"the relevant period"* means—

(a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b)[.]"

283. In order to succeed in an application to have land registered as a new TVG, each and every part of the statutory test under s. 15 of the 2006 Act must be satisfied – per Lord Bingham at [2] in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889. The burden of proof for all of the elements of the statutory test fall on the applicant. The standard of proof is the civil standard of the balance of probabilities.

284. The Application's evidence therefore needs to be assessed carefully against each requirement.

285. The requirements are:

a. A significant number of the inhabitants;
b. of any locality, or of any neighbourhood within a locality;
c. have indulged as of right;
d. in lawful sports and pastimes on the land;
e. for a period of at least 20 years; and

f. they continue to do so at the time the application was made.

286. Any consideration of user that may be referable to recreational use of a TVG is a matter of degree to be determined by the decision-maker on the facts of each specific case – *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25; [2006] 2 AC 674 ('*Trap Grounds*').

287. The courts have been loath to issue prescriptive guidance other than to point out that the key test is an objective one of how the local inhabitants' use of the land may have appeared to the reasonable landowner – *R (oao Laing Homes Limited) v Buckinghamshire County Council* [2003] EWHC 1578 Admin; [2004] 1 P&CR 36; *Trap Grounds*. The House of Lords/Supreme Court have reiterated in cases following *Sunningwell* that the test is objective and it matters not the subjective viewpoint of any particular user – see, for example, *R. (on the application of Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* [2007] UKHL 28; [2008] 1 AC 221; and, *R (Lewis) v Redcar* [2010] UKSC 11; [2010] 2 AC 70, per Lords Walker and Hope.

288. In *R (Lewis) v Redcar*, Lord Hope, at [67] of his judgment, said that the use of land must be "of such amount and in such manner as would reasonably be regarded as being the assertion of a public right." At [36], Lord Walker considered the matter thus:

> "36 In the light of these and other authorities relied on by Mr Laurence I have no difficulty in accepting that Lord Hoffmann was absolutely right, in Sunningwell [2000] 1 AC 335, to say that the English theory of prescription is concerned with "how the matter would have appeared to the owner of the land" (or if there was an absentee owner, to a reasonable owner who was on the spot)."
>
> [Emphasis added]

A. Significant Number

289. At [71] of his judgment in *R (oao Alfred McAlpine Homes Ltd) v Staffordshire County Council* [2002] EWHC 76 (Admin); [2002] 2 PLR 1 Sullivan J defined "significant" for the purposes of s. 15 of the Act as meaning "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."

B. Neighbourhood/Locality

290. A neighbourhood within a locality need not be a recognised administrative unit but it must not be any area arbitrarily delineated on a map. As Sullivan J (as he then was) explained at [85]-[86] in *R (oao Cheltenham Builders Limited) v South Gloucestershire District Council* [2003] EWHC 2803 (Admin); [2004] JPL 975:

> "85. It is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood. For the reasons set out above under "locality", I do not accept the defendant's submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word "neighbourhood" would be stripped of any real meaning. If Parliament had wished to enable the inhabitants of any area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so.
>
> 86. The parties are agreed that Parliament, in enacting the 2000 Act, was attempting (unnecessarily the defendant would say) to make it less not more difficult to establish class (c) village green rights. Parliament might have provided that land would fall within sub−section (1A) if it had been used for not less than 20 years by a significant number of the inhabitants "of any locality or of any neighbourhood", but for whatever reason, it did not do so. If a "neighbourhood" is to be relied upon, it must be a neighbourhood within a "locality". Thus, the need to identify a locality has not been removed[.]"

291. As the above passage suggests, a registration authority must instead be satisfied that the proposed area has a sufficient degree of cohesiveness otherwise the word "neighbourhood" would be devoid of meaning – [86] of *Cheltenham Builders*. It is also necessary, as Sullivan J pointed out, for a neighbourhood to be within a locality. Both elements of the test must be satisfied.

292. Cohesiveness should be seen in the context of the recent amendments introduced into the Act in 2006, the new neighbourhood within a locality limb, which was drafted with "deliberate imprecision" – per [27] of Lord Hoffmann's judgment in *Trap Grounds*.

There is no need for a neighbourhood to have a name – R (on the application of *NHS Property Services Ltd) v Surrey County Council and Jones* [2016] EWHC 1715 (Admin); [2016] 4 WLR 130.

293. A neighbourhood carries an easily understood, ordinary meaning, which is clearly defined in the *Oxford English Dictionary* as "a district or portion of town", "a small but relatively self-contained sector of a large urban area" and "the nearby or surrounding area, the vicinity" – [99] *Leeds Group Plc v Leeds County Council* [2010] EWHC 810 (Ch). In *Leeds*, at [103], Judge Behrens said that Sullivan J's references to cohesiveness have to be read in the light of Lord Hoffmann's judgment in *Trap Grounds*, the overall purpose of the Act and the plain meaning of the word. The relevant part of Judge Behrens judgment in *Leeds Group Plc* was approved by Sullivan LJ in the Court of Appeal – *Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438; [2011] Ch 363.

294. A locality does not need to be a local government administrative unit and the users do not need to come from a single neighbourhood or a single locality for the purposes of the "neighbourhood within a locality" test – [96]-[97] in *Leeds Group Plc* (also endorsed in the Court of Appeal). There is no requirement in the wording of the Act for there to be a spread of users from throughout the locality, nor was there any need to imply such an additional test – see [32] in *Lancashire CC v SS for DEFRA* [2016] EWHC 1238 (Admin).

295. In *Laing Homes*, Sullivan J said inter alia as follows:

> "143. […] The Registration Authority should, subject to considerations of fairness towards the applicant and any objector to, or supporter of, the application, be able to determine the extent of the locality whose inhabitants are entitled to exercise the right in the light of all the available evidence."

296. The cases have therefore repeatedly emphasised that the current requirement in the 2006 Act that users must be from a locality or a neighbourhood within a locality amounts to a relaxation of the requirements of the test in order that more putative town or village greens can avoid falling foul of an over-rigid definition in terms of the

location of users. However, a locality or neighbourhood within a locality cannot be arbitrary.

C. As of Right

297. As of right does not require the user to have a legal right. Rather the user must have been engaged in the activities on the land unopposed by the landowner and nec vi, nec clam nec precario (not by force, nor by stealth, nor by licence) - *R v Oxfordshire County Council, Ex p Sunningwell Parish Council* [2000] 1 AC 335; *R (Lewis) v Redcar*; and, *R (Barkas) v North Yorkshire CC* [2014] UKSC 31; [2015] AC 195.

298. Of particular relevance to the instant case is when user may be vi, or by force. In *R (Lewis) v Redcar*, Lord Rodger said:

> "88. The opposite of "peaceable" user is user which is, to use the Latin expression, vi. But it would be wrong to suppose that user is "vi" only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant contexts vis was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner had told him not to do it. In those circumstances what he did was done vi. See, for instance, D.43.24.1.5–9, Ulpian 70 ad edictum, commenting on the word as used in the interdict quod vi aut clam.
>
> 89. English law has interpreted the expression in much the same way."

299. In the analogous context of easements by prescription, the Court of Appeal in *Winterburn v Bennett* [2016] EWCA Civ 482; [2017] 1 WLR 646 said:

> "37. Mr Gaunt put his case in a number of ways. First he said that there must, quoting Bowen J, be "continuous and unmistakeable protest" by the servient owner. The circumstances must indicate that the owner objects and continues to object to the parking. I agree that the circumstances must indicate to persons using the land that the owner objects and continues to object to the parking. As Patten LJ put in *Betterment* [2012] 2 P & CR 3 , para 30 the issue is whether the owner has taken sufficient steps so as to effectively indicate that the unlawful user is not acquiesced in. On the facts of the present case, the presence of the signs in my judgment clearly indicated the owner's continuing objection to unauthorised parking. Mr Gaunt submitted that the protest needs to be proportionate to the user. Again I would accept that but in my view the continuous presence of the signs asserting that it was private property for use by the club's patrons only was a proportionate protest. Mr Gaunt submitted that, in

> the face of parking by those not entitled to do so, there should have been additional signs ordering such parking to cease. I can see no reason why such further signs should be required. Any reasonable person, whether in the position of the owner of the land or those unlawfully parking on it, would understand the meaning and effect of the signs to be that persons other than the club's patrons were not allowed to park on the car park and should not do so. Nor, in my judgment, does it matter that the signs were in place before the claimants went into occupation of the fish and chip shop. It surely cannot make a difference that the signs were erected a week before they went into occupation or a week after they went into occupation, or that the claimants would be in a weaker legal position if the signs had been erected only after they or their suppliers and customers started to park unlawfully in the car park.
>
> 38. Mr Gaunt submitted that where, as was obvious in the present case, the signs were being ignored, it was incumbent on the owner of the land to take such further steps as were practicable. He accepted that if a sign was all that could practically be done, then a sign would be sufficient. But where, as here, the owner knew that the claimants (and their suppliers and customers) were unlawfully using the land, the owner must communicate directly with the claimants. He submitted that a stiff letter from the secretary of the club or its solicitors every year would have been sufficient.
>
> 39. In his skeleton argument, Mr Gaunt submitted that there was a power in the owner of the car park to stop the user "by the simple expedient of erecting a chain across the entrance to the car park, or objecting orally, or writing letters of objection, or threatening or commencing legal proceedings, but the owner conspicuously abstained from doing any of these". In the course of his oral submissions, Mr Gaunt suggested that, if one level of protest was insufficient to stop the unlawful parking, a more potent step should be taken, leading ultimately to the commencement and the prosecution of legal proceedings.
>
> 40. In my judgment, there is no warrant in the authorities or in principle for requiring an owner of land to take these steps in order to prevent the wrongdoers from acquiring a legal right. In circumstances where the owner has made his position entirely clear through the erection of clearly visible signs, the unauthorised use of the land cannot be said to be "as of right". Protest against unauthorised use may, of course, take many forms and it may, as it has in a number of cases, take the form of writing letters of protest. But I reject the notion that it is necessary for the owner, having made his protest clear, to take further steps of confronting the wrongdoers known to him orally or in writing, still less to go to the expense and trouble of legal proceedings."

300. Deference, or civility, on the part of the public while engaging in lawful sports or pastimes as of right does not amount to confirmation that this exercise was by licence of the landowner – *R (Lewis) v Redcar*. While excluding the public completely from the Land can amount to interrupted use (*Betterment Properties (Weymouth) Limited v Dorset County Council* [2010] EWHC 3045 (Ch) and [2012] EWCA Civ 250, give and

take and the coexistence of two rights are insufficient without more to defeat, and are not inconsistent with, qualifying user as recreational user referable to a TVG. At [74-75] of his judgment in *Redcar* Lord Hope explained the issue of how to interpret the deference by the public in the following terms:

> "74. I agree that care needs to be taken in drawing conclusions from cases about the creation of a right of way by dedication. But the concepts of partial dedication and the coexistence of rights on both sides appear to me to be capable of being applied generally. Lord Hoffmann would not have mentioned give and take in the Oxfordshire case [2006] 2 AC 674 if he had thought that it had no application to town and village greens. If it were otherwise it would in practice be very difficult, if not impossible, to obtain registration in cases where the owner is putting his land to some use other than, perhaps, growing and cutting grass for hay or silage. There being no indication in the statute to the contrary, I would apply these concepts to the rights created by registration as a town or village green too.
>
> 75. Where then does this leave deference? Its origin lies in the idea that, once registration takes place, the landowner cannot prevent use of the land in the exercise of the public right which interferes with his use of it: the Laing case [2004] 1 P & CR 573, para 86. So it would be reasonable to expect him to resist use of his land by the local inhabitants if there was reason to believe that his continued use of the land would be interfered with when the right was established. Deference to his use of it during the 20-year period would indicate to the reasonable landowner that there was no reason to resist or object to what was taking place. But once one accepts, as I would do, that the rights on either side can coexist after registration subject to give and take on both sides, the part that deference has to play in determining whether the local inhabitants indulged in lawful sports or pastimes as of right takes on an entirely different aspect. The question is whether the user by the public was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right. Deference by the public to what the owner does on his land may be taken as an indication that the two uses can in practice coexist."

301. TVG use has been held to be compatible with a variety of other land uses: a working harbour, *TW Logistics Ltd (appellant) v Essex County Council and another (respondents)* [2021] UKSC 4; [2021] AC 1050; shorelines, *Newhaven Port and Properties v East Sussex CC* [2015] UKSC 7; [2015] AC 1547; and golf courses, *R (Lewis) v Redcar*.

302. Notwithstanding the potential for co-existence of uses on TVGs, in *R (Lewis) v Redcar*, Lord Walker discussed the concept of deference and agriculture as follows:

“21. The respondents' case is that although Sullivan J, in his judgment in Laing Homes [2004] 1 P & CR 573, was indeed the first judge to speak in terms of “deference” shown by local residents, he was not striding into entirely unknown and uncharted territory. Earlier authorities (including those mentioned in the passage of Lord Hoffmann's opinion in *Sunningwell [2000] 1 AC 335*, 350–351 quoted in para 19 above) suggest that although the local residents' private beliefs as to their rights are irrelevant, the same is not true of their outward behaviour on the land in question, as it would appear to a reasonable owner of the land. It is relevant, on this argument, to look at what might today be called the residents' attitude or body language (this thought is elaborated in an imaginary example given by J G Riddall, “Miss Tomkins and the Law of Village Greens” [2009] Conveyancer and Property Lawyer 326). I propose to look next at Laing Homes [2004] 1 P & CR 573 itself, and then to consider how far the respondents can claim much more long-established roots for the doctrine of deference which Laing Homes articulates.

22. Laing Homes was concerned with three adjoining fields (“the application area”), extending in all to 38 acres, on the edge of Widmer End in Buckinghamshire. This land, together with three smaller fields not affected by the application for registration, had been acquired by Laing Homes, a house-builder, and held in its “land bank” since 1963. The land was subject to a grazing licence from 1973 to 1979, when the farmer stopped using it for grazing because of repeated troubles with trespassers. In the course of time footpaths were established round the three fields in the application area (cutting some corners) and these were officially recognised as public footpaths in June 2000. An application for registration of the application area was made in August 2000. The registration authority's decision to register the land as a village green was challenged by way of judicial review on various grounds (including human rights grounds on which Sullivan J did not find it necessary to rule).

23. In his judgment Sullivan J listed, in para 50, the four main grounds on which Laing Homes was attacking the inspector's report (and the registration based on it). The first ground was that there was insufficient evidence of the use of the whole of the application area for lawful sports and games over the 20-year period. The second was the inspector's conclusion that the use of the fields for an annual hay crop (from about 1980 until the early 1990s) was not incompatible with the establishment of village green rights. Sullivan J considered the second ground first. He discussed it at some length and differed from the inspector. He did so primarily on the view he took of the perception of a reasonable landowner, although he was also influenced by the point (no longer relied on) as to the Victorian statutes, at para 86:

“Like the inspector, I have not found this an easy question. Section 12 of the Inclosure Act 1857 acknowledges that animals may be grazed on a village green. Rough grazing is not necessarily incompatible with the use of land for recreational purposes: see Sunningwell. If the statutory framework within which section 22(1) of the Commons Registration Act 1965 was enacted had made provision for low-level agricultural activities to coexist with village green type uses, rather than effectively preventing them once such a use has become established, it would have been easier to adopt the inspector's approach, but it

did not. I do not consider that using the three fields for recreation in such a manner as not to interfere with [the farmer's] taking of an annual hay crop for over half of the 20-year period, should have suggested to Laings that those using the fields believed that they were exercising a public right, which it would have been reasonable to expect Laings to resist."

24. I have to say that I am rather puzzled by Sullivan J's summary of the evidence about hay-making, and the discussion of it (both by the inspector at paras 56 and 57, and by the judge himself at paras 59–63). There is a detailed description of the local residents keeping off the fields for a few days in spring when they were harrowed, rolled and fertilized, and again for a few days during hay-making. But there are only the most passing references by the judge (in paras 59 and 111) to the further need for people to keep off the fields for many weeks while the crop was growing, if it was to be worth the farmer's while to get it in. The length of this period would vary with the quality of the land and the seasonal weather, but would usually, I imagine, be of the order of three months. The evidence was that the farmer generally got well over 2,000 bales of hay from the application area. So it seems that the local residents must, in general, have respected the hay crop.

25. The puzzle is partly explained by Sullivan J's consideration of the first ground (evidence of use of the whole application area) which follows at paras 88–111. In para 111 the judge commented that there was an overlap between the two grounds, because the existence of public footpaths round the three fields (cutting some corners) provided an alternative explanation of the local residents' use of the fields. It seems likely that they used the perimeter paths and kept off the hay while it was growing, although their dogs may not have done, as the judge discussed at some length, at paras 103–110.

26. There are some dicta about Laing Homes in Lord Hoffmann's opinion in *Oxfordshire [2006] 2 AC 674*. Lord Rodger and I expressed general agreement with Lord Hoffmann, but did not comment on this point. Lord Hoffmann observed, at para 57:

"No doubt the use of the land by the owner may be relevant to the question of whether he would have regarded persons using it for sports and pastimes as doing so 'as of right'. But, with respect to the judge, I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes for the purposes of section 22 if in practice they were not."

27. There was some discussion in the course of argument of what Lord Hoffmann meant by the first sentence of this passage. In the *Court of Appeal [2009] 1 WLR 1461*, para 45, Dyson LJ took it to mean inconsistency between competing uses manifested "where the recreational users adjust their behaviour to accommodate the competing activities of the owner (or his lessees or licensees)". I am rather doubtful about that. I think it just as likely that Lord Hoffmann had in mind, not concurrent competing uses of a piece of land, but successive periods during which recreational users are first excluded and then tolerated as the owner decides. An example would be a fenced field used for

intensive grazing for nine months of the year, but left open for three months when the animals were indoors for the worst of the winter.

28. Whether that is correct or not, I see great force in the second sentence of the passage quoted. Taking a single hay crop from a meadow is a low-level agricultural activity compatible with recreational use for the late summer and from then until next spring. *Fitch v Fitch (1797) 2 Esp 543* is venerable authority for that. That is not to say that Laing Homes [2004] 1 P & CR 573 was wrongly decided, although I see it as finely-balanced. The residents of Widmer End had gone to battle on two fronts, with the village green inquiry in 2001 following a footpaths inquiry two or three years earlier, and some of the evidence about their intensive use of the footpaths seems to have weakened their case as to sufficient use of the rest of the application area."

303. Lord Hope thought that in principle two uses could co-exist by means of give and take but acknowledged, at para [76], that "the position may be that the two uses cannot sensibly coexist at all".

D. Lawful Sports or Pastimes on the Land

304. Lord Hoffmann shed light on the meaning of "sports and pastimes" in his judgment in *Sunningwell*. At page 357D of his judgment in *Sunningwell*, his lordship said the following:

"As a matter of language, I think that "sports and pastimes" is not two classes of activities but a single composite class which uses two words in order to avoid arguments over whether an activity is a sport or a pastime. The law constantly uses pairs of words in this way. As long as the activity can properly be called a sport or a pastime, it falls within the composite class. As for the historical argument, I think that one must distinguish between the concept of a sport or pastime and the particular kind of sports or pastimes which people have played or enjoyed at different times in history. Thus in Fitch v. Rawling (1795) 2 H.B1. 393, Buller J. recognised a custom to play cricket on a village green as having existed since the time of Richard I, although the game itself was unknown at the time and would have been unlawful for some centuries thereafter: see Mercer v. Denne [1904] 2 Ch. 534, 538-539, 553. In Abercromby v. Town Commissioners of Fermoy [1900] 1 I.R. 302 the Irish Court of Appeal upheld a custom for the inhabitants of Fermoy to use a strip of land along the river for their evening passeggiata. Holmes L.J. said, at p. 314, that popular amusement took many shapes: "legal principle does not require that rights of this nature should be limited to certain ancient pastimes." In any case, he said, the Irish had too much of a sense of humour to dance around a maypole. Class c is concerned with the creation of town and village greens after 1965 and in my opinion sports and pastimes includes those activities which would be so regarded in our own day. I agree with Carnwath J. in Reg. v Suffolk County Council ex parte Steed

> (1995) 70 P. & C. R. 487, 503, when he said that dog walking and playing with children were, in modern life, the kind of informal recreation which may be the main function of a village green. It may be, of course, that the user is so trivial and sporadic as not to carry the outward appearance of user as of right."

305. As a matter of principle, socialising, dog-walking and playing with children will be quintessential modern lawful sports and pastimes for the purposes of qualifying TVG user. These are just as applicable activities as the more traditional sports such as football, cricket, and rugby, or indeed, traditional pastimes such as maypole dancing and the like.

306. A common-sense approach should be taken to the use of the land. In *Cheltenham Builders*, the court said as follows:

> "[29] […] the applicants had to demonstrate that the whole, and not merely a part or parts of the site had probably been used for lawful sports and pastimes for not less than 20 years. A common sense approach is required when considering whether the whole of a 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."

307. In the *Trap Grounds* case, Lord Hoffmann considered a site in which only approximately 25% of the land was used on the evidence, and made the following comments at [67]:

> "[…] If the area is in fact intersected with paths and clearings, the fact that these occupy only 25% of the land area would not in my view be inconsistent with a finding that there was recreational use of the scrubland as a whole. For example, the whole of a public garden may be used for recreational activities even though 75% of the surface consists of flower beds, borders and shrubberies on which the public may not walk."

308. Where user appears to be referable to use as a right of way, whether emergent or established, as opposed to as a TVG, that user will not be qualifying user for lawful sports and pastimes for the purposes of section 15 of the 2006 Act.[1] The user must be looked at as a whole and a common-sense approach should determine whether it is

[1] Per Patterson J in *R (Alloway) v Oxfordshire CC* [2016] EWHC 2677 at [54].

referable to use as a right of way or as a TVG. In *Trap Grounds* at first instance, Lightman J explained, at [102]-[103], as follows:[2]

> "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."

[2] These comments were approved by Lord Hoffmann in the House of Lords [2006] UKHL 25; [2006] 2 AC 674.

309. Public right of way user may be for a circular, as well as a purely linear, route – see Dyfed CC v Secretary of State for Wales (1990) 59 P&CR 275. Public right of way user can include uses which are incidental, or ancillary, to that use – see *DPP v Jones* [1999] 2 AC 240.

E. For not less than 20 Years

310. An applicant must prove on the balance of probabilities that the land in question is a green and thus that the whole, and not merely a part or parts, have probably been used for lawful sports and pastimes for not less than 20 years – per Sullivan J at para 29 in *Cheltenham Builders*.

311. Sullivan J said that a common-sense approach should be taken to the question of whether the whole of a site has been used. Lightman J endorsed these comments in *Trap Grounds* (at first instance at [95] of this judgment) and added that:

> "In my view… the registration authority must first decide on a common sense approach whether the whole of the land the subject of the application was used for the 20-year period for the required recreational purposes. For this purpose it is necessary to have in mind the physical condition of the land during the relevant period"

312. Use of the land must not be so "trivial or sporadic so as not to carry the outward appearance of user as of right", per Lord Hoffmann in *Sunningwell* at 357D. *Gadsden on Commons and Greens* (3rd Edition) suggests inter alia at [15.54] that the frequency of user for lawful sports and pastimes necessary for compliance with the 20 year requirement should be considered as follows:

> "It will be a matter of fact and degree in the circumstances of any individual case. What matters is that the user should enable a reasonable landowner to know that local inhabitants are carrying out activities on his land. For if the use is so infrequent that it is hardly noticeable, local people cannot be said to be asserting any kind of right to use the land that is capable, should the landowner choose, of being resisted or licensed."

F. And continue to do so when the Application was made

313. This requirement only applies in respect of s. 15 (2) of the 2006 Act and means that the enjoyment as of right for local sports and pastimes must be still continuing at the time when the Application was made.

9. ASSESSMENT AGAINST THE STATUTORY CRITERIA

314. As noted above, the Applications were received on 31 October 2020, meaning that, subject to the trigger event issue addressed above, the relevant periods being considered by this inquiry are thus 31 October 2000 to 31 October 2020 in respect of the Geltex Land and 31 July 1999-31 July 2019 in respect of the Mash Land ("together, the **Application Periods**").

315. It is necessary to assess the foregoing evidence presented for and against the Applications against the statutory criteria. As noted above, the requirements are:

(1) A significant number of the inhabitants;

(2) of any locality, or of any neighbourhood within a locality;

(3) have indulged as of right;

(4) in lawful sports and pastimes on the land;

(5) for a period of at least 20 years; and

(6) they continue to do so at the time the application was made.

316. Each of these must be satisfied if registration is to be justified.

1. A SIGNIFICANT NUMBER

317. First of all, as noted above, the Applications presented a very large amount of evidence from local inhabitants who have used the Application Land over many years but, in

particular, for varying amounts of the Application Periods. Oral evidence in support of the Applications was given by 17 people (16 for the Applicant and one member of the public), all of whom attested to their own use, and that of many others, of the Application Land. The extent of this evidence of use during the Application Periods was not seriously challenged by the Objectors. On the basis of the evidence presented, I have no hesitation in finding that the Application Land has been used by a significant number of local people.

318. In my view the "significant number" requirement of section 15 of the 2006 Act has been satisfied. The precise location and character of this use and, in particular, whether it can be considered qualifying use for the purposes of the statutory test, must be assessed in detail. Accordingly, this finding is necessarily subject to the considerations below, especially in relation to the locality/neighbourhood within a locality limb of the test, to which I now turn.

2. OF LOCAL INHABITANTS OF ANY LOCALITY, OR OF ANY NEIGHBOURHOOD WITHIN A LOCALITY

319. The Applicant's case on neighbourhood/locality changed several times. The neighbourhood was not illustrated by a map accompanying the original Applications nor fully described in the Applications, but a full account was set out in the Applicant's Response to Objections in April 2022. In this document, the Applicant's case was advanced on the basis of a neighbourhood comprised of those households living around Lye Green, the former Wycombe College site, and Brushwood School (all within Newtown Ward), and in Hilltop Ward, a map of which was originally attached to the Applicant's online Smart Survey. The map was also provided at p.1917 of the Applicant's bundle.

320. On the first day of the inquiry, the Applicant applied to amend their neighbourhood to be the Brushwood School catchment area within the localities of Newtown/Hilltop wards. This was not contested by the Objectors, and was accepted by the inquiry. However, on the third day of the inquiry the Applicant resiled from this position and applied to change its proposed 'neighbourhood' back to its former position. Again, this was not formally opposed by the Objectors, although both noted that the first two days

of the inquiry had been conducted on the basis of a different neighbourhood. This application to revert to the former neighbourhood was accepted.

Evidence for application neighbourhood

321. There was minimal support given by any of the witnesses to the existence of a coherent neighbourhood within the boundaries proposed.

322. Only a small number of witnesses spoke of a feeling of community within that neighbourhood – notably [redacted] also explained that the school was a unifying feature. However, most of the other witnesses, when asked by Counsel for the Applicant what made that area a 'neighbourhood', gave answers based purely on the proximity of the houses to one another and the Application Land.

323. Particularly notable was [redacted] evidence of how the neighbourhood had been drawn. The unifying features of the neighbourhood which he suggested were a) the proximity of the houses to each other, b) their location on or near the chalk escarpment, c) the fact that people within that area attended Brushwood Primary School, and d) the Application Land itself. Other than the Black Cat Pub (now closed), a car mechanic and parts of the former Wycombe College site, there were no services cited specifically by witnesses for that neighbourhood. [redacted] was unable to give any unifying features of the application neighbourhood as a whole – he insisted that use of the Application Land was not the only unifying feature, but from the substance of his evidence, it did seem to be the most significant unifying feature. The precise boundaries of the application neighbourhood were, even on [redacted] explanation of them, arbitrary. They were an (inaccurate) attempt to follow the ward boundaries, and [redacted] accepted in cross-examination that there was nothing distinguishing between the houses immediately on either side of the boundary.

324. I accept the point made by Counsel for the Applicant in closing submissions that consideration of what constitutes a 'neighbourhood' should not be overly technical, following *Trap Grounds* and *Cheltenham Builders*. Equally, there is no investigative duty on a registration authority to reformulate an applicant's case. The critical issue is

fairness to all parties. I also accept that use of the Application Land should not be entirely discounted as a factor unifying people within a neighbourhood, even if it cannot be the sole defining characteristic of that neighbourhood. As Sullivan J put it in the *Cheltenham Builders* case, "I do not accept […] that a neighbourhood is any area of land that an applicant for registration chooses to delineate on a plan."

325. However, even considering the evidence in this holistic non-technical manner, the evidence presented falls short, in my view, of establishing a neighbourhood within the boundaries as presented by the Applicant. There is not the degree of social cohesiveness, level of service provision, or clear distinction between the homes in the application neighbourhood as opposed to those outside of it which can be seen defining the neighbourhoods in other TVG Reports. The neighbourhood boundary is, even on [redacted] case, arbitrary. It was intended to follow administrative ward boundaries, rather than being a meaningful boundary around a socially and functionally cohesive neighbourhood capable of meaningful description.

326. I therefore could not recommend registering the land as a TVG on the basis of the application neighbourhood advanced by the Applicant.

327. Two further submissions were made by the Applicant in this regard. Firstly, that it is open to the Registration Authority to consider the application on the basis of either any amended neighbourhood which it identifies (which could either exclude part of the neighbourhood or include a further area) and, secondly, on the basis of just the locality of Hilltop Ward.

328. Taking the first of these submissions, in my view, it would be taking matters too far in this case for me (or, by extension on my advice, the Registration Authority) to seek to identify an alternative neighbourhood. I say this for three reasons. The first, substantive, reason is that this is a very large (indeed, unusually so for a TVG application) area of land surrounded by a number of distinct collections of residential and other development. It is incumbent on an Applicant, even on a non-technical basis, to prove its case, and the Registration Authority is entitled to deal with the application and evidence presented to it by the parties – see *Gadsden* at [15.28]. In the present case I have not been assisted by the Applicant's scattergun approach such that it would be

straightforward to identify alternative neighbourhood(s) upon which the Applications may rely and no such alternative(s) were properly put forward in the inquiry. While I note and accept that it is possible for an applicant to rely on more than one neighbourhood, per the *Leeds Group* case, the evidence has not obviously yielded one or more neighbourhood(s) of a clear description, and with the sufficient degree of "cohesiveness" that the law demands.

329. The second and third reasons why it would be inappropriate for me to advise the Registration Authority that it is possible to identify an alternative neighbourhood or neighbourhoods are related. The second reason is that I bear in mind that, as already noted, there is no investigative duty upon the Registration Authority to find or formulate such a neighbourhood or neighbourhoods. The third reason is that, while the Objectors took a sensible position in not objecting to the previous two amendments to the Applicant's case on this issue, in my view, if I were to advise that the Registration Authority should identify of its own motion, yet another basis for this element of the statutory test, the Objectors would be substantially prejudiced. The Objectors are entitled to expect to meet the case that was presented to them and, in the absence of the emergence of an obvious alternative during the inquiry, it would be unfair for the Registration Authority to determine one after all the evidence has been heard. While in theory it would be possible to reopen the inquiry to consider such matters, as I have said, no such alternative or alternatives emerge with any force from the evidence and the Applicant had multiple opportunities to re-formulate its own case in the course of the application process (including at the inquiry).

<u>Alternative locality – Hilltop Ward</u>

330. As to the Applicant's other submission on this issue, Counsel for the Applicant suggested in closing that, if the application neighbourhood was not accepted as a qualifying neighbourhood, then the application should be considered on the basis of a locality. The proposed locality on which the application is advanced in the alternative is Hilltop Ward.

331. Counsel for the Objectors submitted that it would not be proper or necessary for me as inspector to re-formulate and re-investigate the Applicant's case for them, following

the guidance of Lord Hoffmann in *Trap Grounds*. As I have already emphasised, I accept this. However, Hilltop Ward was advanced by the Applicant as a locality on the basis of which the TVG could be registered, so considering this submission would not be reformulating or re-investigating the Applicant's case.

332. Unfortunately for the Applicant, the case for registering the Application Land using Hilltop Ward as a locality is even weaker than the case for registration using the application neighbourhood. Many of the key witnesses who gave evidence to the inquiry – most significantly [redacted] and a number of others – do not live in Hilltop Ward. Stripping out their evidence from the user evidence heard would significantly weaken the Application evidence. Re-considering the Applications on the basis of Hilltop Ward as a locality would, in my view, make it even less likely that the Application Land could be deemed registrable. A larger number of people would be needed to demonstrate that a "significant number" of local inhabitants of Hilltop Ward had used the Application Land. I note, on the basis of Mash's Objection Statement, that Hilltop Ward has a population of 4,646. I further note, in light of the need for "cohesiveness" and the ability to identify a distinct and identifiable community as described by Sullivan J in *Cheltenham Builders*, that no significant evidence was produced by the Applicant on these points in relation to Hilltop Ward. Given this, I do not consider that the Applicant's alternative submission based on a locality of Hilltop Ward is tenable.

333. I therefore find that the Applicant has failed to demonstrate this element of the test.

3. HAVE INDULGED AS OF RIGHT

334. For user of the land to be qualifying user, it must be user as of right, meaning use by local inhabitants without force, stealth or permission. No significant issues of stealth or permission arise in this case, but there is a dispute over whether some, or all, of the use of the land was by force.

335. The annotated map below (provided by the Applicant as Plan G) indicates the locations of four field gates into the Application Land.

336. In addition to these field gates, the Application Land can be accessed via a number of stiles and informal access points, some connecting to PROWs (these access points often having signage from the road) and others not. There was considerable evidence of gaps in the boundaries, through hedges or fencing, which allowed relatively unimpeded access to the Application Land including from Lycrome Road into Mushroom and Lye Green Field, from Deer Park Walk, from the Black Cat Pub, from Lye Green Road to the east and south of the Application Land, into Bayman and Slipes from Hillcroft Road and Brushwood Road, and from Gee's Spring Woods.

337. Despite access to the Application Land being easier or harder at some locations or times as compared to others, in my view, the evidence was clear that members of the public were able to access the Application Land from various directions at all times. This was facilitated by the numerous access points onto the PROW, from multiple informal access points on every side of the Application Land combined with access between fields. Nevertheless, there were two periods at which access to the Application Land became markedly more restricted.

338. The first period was when Mr Harvey Mash took over management of the land from his father, in 2011. Prior to 2011, the evidence was that field gates were generally left

unlocked and/or open. There was broad agreement among witnesses that once Mr Harvey Mash took over management of the Mash farm in 2011, the gates – in particular Gate A into Mushroom, which was the subject of much discussion before the inquiry – were generally kept locked, albeit that they may have been left open for several hours or possibly even days at a time when Mr Mash or his staff were working on the fields.

339. The second period at which access to the land became more restricted was following the ACV application made by the Applicant on 26 April 2019. At this point, a number of informal access points were closed off by Mr Mash, most notably Gate D from Lye Green Road into Bayman. Prior to 2019, there appears to have been informal access into Bayman through a gap between gate and hedge immediately to the right (facing into the field from the road) of this gate. This gap was initially closed off with three strands of barbed wire, which were cut or pushed aside by members of the public to facilitate access through the gap into Bayman. Subsequently, three new wooden posts were inserted into this gap by Mr Mash / his staff to prevent walkers from accessing the field that way. In addition, there was some evidence that Mr Mash and his staff began challenging people using the paths around the fields which were not PROWs.

340. The Objectors accordingly submitted that there was a period of 4-5 months in 2019, following the ACV application, when use of the Application Land was by force and contentious. Their submission is that this disrupts the 20 years use 'as of right' of the Application Land. I do not accept this submission, because access to the Application Land was still possible throughout this period via the numerous remaining informal access points and stiles which allowed access without force. It is true that cutting through or ducking under barbed wire to enter the Application Land would have been use 'by force' – however, many access points onto PROW and unofficial footpaths remained available, and most witnesses said that they had never been told to leave the land or experienced confrontation from farm staff.

341. I note that, in at least two places, the barbed wire fence around Deer Park Walk had gaps cut or the wire modified (by means of tape wrapped around the barbed wire to allow it to be pulled aside), to permit access to the Application Land. This happened repeatedly, even after Mr Mash repaired the fence. Such access alone would indeed be use by force. However, in the context of there being non-forceful entry points only a

very short distance away by foot (both stiles and informal access points), the cutting/modification of the barbed wire is reproachable, and would disqualify those particular instances of use as being by force, but such intermittent actions do not, in my view, render overall use of the Application Land using other access points 'forcible'.

342. As submitted by the Objectors, any use by force must be discounted when considering the totality of the evidence because such forcible use is, by definition, not use 'as of right'. It is clear that there were individual instances of people accessing the Application Land by force by cutting through the barbed wire or avoiding locks installed by Mr Mash. This is highly regrettable, and these instances should indeed be stripped out of the use being considered. However, since there were many other non-forcible access points to the Application Land, it would be practically impossible to separate out those instances of forcible use from the non-forcible, the latter being, in my view, the bulk of the user. Therefore, in considering the evidence of user of the Application Land, I bear in mind an appropriate reduction in the overall volume of user to account for instances of use which were by force, particularly following April 2019, but will not discount any portion of the user entirely. Notwithstanding an appropriate reduction, I find, and so advise the Registration Authority, that the user of the Application Land was, for the most part, 'as of right' and not by force.

4. IN LAWFUL SPORTS AND PASTIMES ON THE LAND

343. The test, as made clear by the authorities cited above, is whether the user of the land evidenced was of an amount and manner so as to make it clear to a reasonable landowner that a public right to use the land as a TVG was being asserted. To this end, there must have been LSP occurring over the whole of the Application Land, taking a common-sense view, throughout the Application Periods.

344. In the course of evidence, as noted in relation to [redacted] above, it became apparent that an L-shaped portion of the Application Land had in fact, for most of the applicable 20-year period in respect of the Geltex Land, been part of [redacted] garden. The Applicant consequently sought permission, unopposed, to amend Applications accordingly. I accept this minor amendment and consider the Applications on that basis.

345. I remind myself that the Application Periods over which use is being examined are, respectively:

31 July 1999 – 31 July 2019 in relation to the Mash Land; and

31 October 2000 – 31 October 2020 in relation to the Geltex Land.

346. I turn to consider the evidence in respect of these periods.

Use of the land: summary of evidence

347. The majority of the use of the Application Land was for walking or dog-walking. The Applicant's case is that in addition to this there was also a variety of other LSP which have taken place regularly on the Application Land. The Objectors submit that the use is ascribable to footpath use rather than LSP in the manner of a TVG, such that it would not have been clear to a reasonable landowner that there was a right to TVG use being asserted. Rather, a reasonable landowner would have seen only use of footpaths or aspiring footpaths; and the agricultural cultivation of parts of the Application Land was not in any event compatible with TVG use.

348. The main activities which were evidenced to have taken place on the land were:

(i) Recreational walking and dog-walking;
(ii) Cycling;
(iii) Jogging;
(iv) Horse-riding;
(v) Bird and nature watching;
(vi) Plane spotting;
(vii) Children playing;
(viii) Photography and sketching;
(ix) Socialising;
(x) Blackberrying, mushroom and sloe picking; and
(xi) Kite, drone and model aircraft flying.

349. Not all of these uses need to have occurred over the whole 20-year period in order to qualify as LSP for the purposes of asserting a TVG right – for example, drone flying as a new technology could only ever have taken place in recent years. The user can be taken as a whole to see if, overall, it gives an objective appearance of TVG user 'as of right'. As stated by Lightman J in *Trap Grounds* at first instance, "*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*" [at 103]. Use which is "*trivial and sporadic*" even when taken as a whole would not carry the appearance of TVG user 'as of right' (per Lord Hoffmann, *Sunningwell*, at [357D]).

Walking and dog-walking

350. The recreational walking and dog-walking was well evidenced for all of the fields. With regards to the agricultural fields (Mushroom, Slipes and Bayman), almost all witnesses gave evidence that they had confined their walking to the perimeter of the agricultural fields whenever there were crops growing. All of the witnesses were asked in cross-examination, and agreed, that they would respect farming activities and would not trample on crops when they were visible.

351. There was a dispute between the parties as to whether walkers also used the tramlines / tractor tracks which ran within the fields. A number of witnesses were clear that they did indeed walk down the tram lines (for example [redacted]), while others said that they saw other people doing so even if they did not do so themselves (for example [redacted]). The inquiry was taken to aerial photographs in the bundle which showed small tracks having been trampled through crops from the edge of a field to the closest tramline. The clearest such path was from [redacted], but there were also equivalent paths visible from the back gates of houses on the south side of Bayman. Such paths were presumably caused by and for people trying to walk down the tramlines.

352. [redacted] said that he had never seen anybody walking down the tramlines, nor had he or [redacted]) ever seen evidence on the ground of people

having done so in any significant number. However, it was fairly pointed out by Counsel for the Applicant during cross-examination, and accepted by both [redacted], that they would have been paying attention primarily to the crops and focusing on the centre of the fields, rather than paying particular attention to signs of people walking in tramlines closer to the perimeter of the fields.

353. [redacted] and various witnesses for the Applicant (notably [redacted] were questioned on whether walking down tramlines would have been pleasant or even possible without trampling the crops at various times of year in relation to various crops. For example, Counsel for Geltex made much during his questions in cross-examination of how unpleasant the Oilseed Rape crop (harvested in 2020) would have been to walk down in winter (being slimy), and how much yellow pollen it would have produced to cover walkers in spring. Similarly, much was made of the difficulty of walking among peas (2015 and 2020), which have tendrils that make walking difficult. The inquiry was also informed by [redacted] that tramlines can be muddier and more water-logged in the winter than paths, being more compacted – although a couple of witnesses disagreed and stated that they sometimes found the tramlines drier and easier to walk on when the perimeter path was muddy. The broad point made by the Objectors was that walking down tramlines, even were it to have occurred, would have realistically been necessarily confined to only a few weeks per year, at least in certain years when crops were present.

354. In 2005, 2006 and 2007, the Objectors' evidence was that cattle were grazed in Mushroom and Slipes. While the Applicant witnesses in the main could not remember the specific dates, there was little challenge that cattle had been present for periods. As such, I prefer the specific evidence of the Objectors, who after all would have more reason to remember the details of the way in which the fields were farmed. During the Cattle Years there was a barbed wire fence erected within these fields, set a little distance inside of the outer boundary of the fields to allow people to walk around the edges of the fields. Witnesses uniformly agreed that they confined their walking to this corridor which had been left around the edges of the fields and did not climb over or through the barbed wire fence into the middle of the fields when cattle were present.

355. Overall, in my view, the evidence was clear that most people did not go down the tramlines for the vast majority of the time, but rather tended to walk on the paths around the perimeters of the agricultural fields. While I accept that some people may have ventured down the tramlines at the times of year when this was appealing or possible, such ventures were generally accepted by the relevant witnesses to be "occasional".

356. With regards to Lye Green Field, which was not in agricultural cultivation, it is less clear that people stuck to defined paths. In light of my conclusions regarding the trigger event issue, Application 141 fails in relation to Lye Green Field. But in case I am wrong about that issue, Lye Green Field is functionally an open field with various adopted and unadopted footpaths running around and across it. A number of witnesses (for example [redacted] described people "wandering" all over Lye Green Field. It seems that most people were unaware of where the defined footpaths on Lye Green Field were, which is unsurprising given the wide-open nature of the field and the numerous smaller tracks trodden by walkers and cows that cross it.

Other activities

357. A number of witnesses gave evidence that they had been, or seen, nature-watching on the Application Land. For example, [redacted] gave evidence that she had used the Application Land (particularly Mushroom, being closest to her house) to familiarise both her birth children and her foster children with plants and insects, and to teach them respect for nature. [redacted] gave evidence of her extensive bird-watching activities over the years, particularly on Lye Green Field.

358. Most of the witnesses spoke about picking blackberries and sloe berries and foraging for mushrooms, at the appropriate times of year, over Mushroom, Slipes and Lye Green Field.

359. The inquiry did not hear evidence from any individual who testified that they personally had ever cycled, jogged, ridden horses, picnicked, sketched or flown drones, kites or model aircraft upon the Application Land, although many witnesses said that they had sometimes seen others doing some or all of these activities in their questionnaire and survey responses, and in written and oral evidence. Certain of these activities were

carried out only by one or two specific people. There was one boy (who was not named) who appears to have been known to sit and sketch, on Bayman in particular. Another lady, [redacted], apparently would use the fields to paint, although this appears to have been with permission. [redacted] gave live evidence that his son, [redacted], used to ride his horse on the Application Land, although this was disputed by the Objectors and in any event would only ever have been while Henry Mash Court was in use as a livery stables. One witness, [redacted], gave evidence that he personally used the Application Land for his long-standing hobby of plane spotting.

360. A number of witnesses said that they took photographs during their walks, and many such photographs were introduced as evidence. However, such photography was a part of those walks (pictures being taken of particularly aesthetic scenes or particularly memorable moments), not an activity for which people went to the Application Land to engage in specifically. Only one person ([redacted]) said that he had gone onto the Application Land specifically to take photos (on Bayman), and this only on one occasion.

361. Similarly, several witnesses talked about 'bumping into' friends while on walks on the Application Land and stopping to chat. Again, in my view, this was, in the language of the court in *DPP v Jones*, incidental to those walks.

362. The final category of activity advanced by the Applicant was 'children playing'. Many witnesses said that their children had played in the Gee's Spring Woods and Nalders Woods when they were younger, and there was evidence of one rope swing in those woods which was close to the boundary of the Application Land, another which was further into Nalders Woods. There was not much evidence (either oral or in written statements) of children playing within the fields rather than the woods, other than reports of the odd football game which may have occurred on the edge of Slipes and Bayman fields where the perimeter path widened out.

363. Having considered the evidence on the above activities, I have come to the conclusion that these activities would not have given the outward appearance of use of the land for LSP sufficient to justify TVG registration, for two key reasons:

Reason 1: Compatibility with agricultural use

364. There was dispute between the parties as to whether the agricultural use of Mushroom, Slipes and Bayman precluded their registration as a TVG, turning on whether such agricultural use was incompatible with LSP occurring on the land, as a matter of fact.

365. Counsel for the Applicant submitted that the uses detailed above amounted to LSP which were compatible with the agricultural use of the land. The suggestion was that this was a situation of give and take akin to *R (Lewis) v Redcar*. As was put in closing, the "Applicant's case has always been that the community enjoy the Land as a whole whilst trying to avoid damaging crops by keeping to the edges of the cultivated areas".

366. Counsel for the Objectors conversely submitted that the uses of the land were not LSP, but rather footpath-type use of the perimeter of the fields, since LSP were functionally precluded across much of the Application Land, for most of the year, by the crops. The Objectors, amongst other things, relied on the comments of Lords Walker and Hope, also in *R (Lewis) v Redcar*. The Objectors also pointed to the approach of other inspectors in similar cases.

367. The inquiry was taken through the various uses of the agricultural fields over the years, with reference to the crop history helpfully provided by [redacted] and the evidence on cattle and sheep farming. In summary:

> 2005-2007: Slipes and Mushroom used for cattle farming. As mentioned above, during these years there was a barbed wire fence around Mushroom and Slipes, with a corridor left between the barbed wire and the edge of the field to the north of Slipes and between Slipes and Mushroom. None of the witnesses said that they had scaled the barbed wire fence to enter the middle of the field containing the cattle.
>
> 2011-2023, except 2018-2019: Slipes and Mushroom used for agricultural cultivation.

> 2018-2019: Mushroom and Slipes were planted with Westerwold Ryegrass and sheep were put out to graze in the fields. In these years, the overall evidence was that the sheep would be in one field at a time, and the whole of that field would be enclosed with an electric fence. The sheep would be moved to the other field after a number of weeks, and the electric fence moved with them. As with the barbed wire, no witnesses said that they had climbed over or through the electric fence to access the middle of the field with the sheep.

368. While there were certain times of year during the years of crop cultivation when the middle of the fields did not have crops visibly growing, and possibly also were frosted over, such that the middle parts of the arable fields were walkable without difficulty or damage to crops, these times were short and intermittent. For the majority of the time during the 2011-2020 period, the middle of the arable fields was inaccessible, either by reason of crops growing (none of the Applicant's witnesses saying that they trampled over growing crops) or being enclosed for the grazing of cattle and sheep (none of the Applicant's witnesses saying that they climbed into the enclosed spaces over or through the barbed or electrical wire fences).

369. There is scope within the authorities for the possibility of agricultural uses and TVG use coexisting on the same land, but the practical likelihood of this coexistence has been doubted (see Lord Walker, cited above in *R (Lewis) v Redcar*). The authors of *Gadsden* say:

> "In the case of arable crops, registration may be thought to be highly unlikely as a matter of fact, people are less likely to risk damaging arable crops once they are growing, and when ploughed or with crops growing the land will be quite difficult physically to use for sports and pastimes."
>
> [15-34]

370. Mr Ground on behalf of Geltex submitted, in response to being asked by me how such coexistence *could* occur 'as a matter of fact' as meant by the authors of *Gadsden*, that such a thing would require people walking up the tramlines and among the crops as part of their use of the land. As discussed above, although it does seem that some people walked up the tramlines on occasion, I find that the frequency of this is not sufficient, in my view, to be any more than 'trivial and sporadic' in the terms of Lord Hoffmann

in *Sunningwell*. Such infrequent use would not have given the outward appearance of user 'as of right' of that part of land. This conclusion is consistent also with the conclusions of, for example, Alun Alesbury in his report on the Heybridge TVG, on very similar facts, to which my attention was drawn by Geltex.

371. This case should be distinguished from the *Trap Grounds* case, in which it was held that portions of the land being inaccessible did not prevent the Application Land from being registrable as a TVG. The undergrowth and foliage preventing access to much of the small subject land in that case was part of the appeal of the land, but was interspersed with clearings where people could engage in LSP. In contrast, the Application Land in this case is a large area with only a narrow accessible corridor around the perimeter of three of the fields (Mushroom, Slipes and Bayman) for considerable portions of the Application Periods.

372. Consequently, even though it may be hypothetically possible for LSP and agriculture to coexist on the land, in this case agriculture has precluded the use of much of the Application Land for LSP, for large parts of the relevant 20-year periods. It cannot be said therefore, in my judgment, that the whole of the Application Land has been used for LSP for the relevant time.

<u>Reason 2: activities referable to footpath use rather than LSP</u>

373. Counsel for the Objectors submitted that the activities evidenced were incidental to footpath use, such that a reasonable landowner would have seen people using the Application Land for footpaths rather than for LSP on a TVG. Counsel for the Applicant submitted that the activities were rather LSP enjoyed upon the Application Land.

374. It is necessary, when considering whether use of the land has amounted to TVG use, to distinguish between footpath use and LSP use before coming to a decision as to the amount and quality of the user (*Laing Homes*). Use of footpaths which cannot give rise to a presumption of dedication at common law as a public highway may well qualify as LSP use for TVG registration (*Trap Grounds*). However, in the present case, there is a separate application from the Applicant to register many of the perimeter paths on

the Application Land as public footpaths – and, on the Applicant's own presentation of the facts, those paths should give rise to the presumption of dedication as a public footpath. In my view, those applications are telling. They confirm the evidence heard at this inquiry, namely, the use of those paths was not of such a nature as to amount to LSP engaged in upon the Application Land but was rather referable to a footpath use.

375. This conclusion is not affected by the various routes which people described that they had taken. People can take different routes along interconnected footpaths.

376. It is also clear from the authorities that a wide range of activities may be considered reasonable uses of a footpath. For example, retrieving a dog who has wandered off the path is clearly incidental to using that path to walk a dog (*Laing Homes*, at [102], [107], [110]-[111]). Even activities such as photographing, picnicking, children playing and nature watching are reasonable activities for which a footpath can be used (*DPP v Jones*, at [255H]-[256A], [257D], [279D-E]).

377. Some of the activities evidenced in this case were clearly activities engaged in for their own sake, rather than as part of using the footpath for a walk. For example, [redacted] gave evidence that he would go onto the Application Land specifically to spot certain aeroplanes, and [redacted] said that she would go to particular points on the Application Land to spot specific bird species. However, the question is how these activities would have appeared to a reasonable landowner. If there is doubt as to whether the uses evidenced were asserting a right to use the land as a TVG or a right to use a footpath, the presumption is that it is the less onerous right that is being asserted (the *Trap Grounds* case, per Lightman J at [102]). Similarly, Lord Carnwath in the Supreme Court in *Barkas v North Yorkshire CC* [2014] UKSC 31; [2015] AC 195 said that: *"It follows that in cases of possible ambiguity the conduct must bring home to the owner not merely that a right is being asserted but that it is a village green right."* (at [65])

378. The use of the Application Land which was not associated with footpaths was occasional at best. I accept the submission of Counsel for the Objectors that 'occasional' can be taken as synonymous with 'trivial and sporadic' in the terms of Lord Hoffmann in *Sunningwell*. This does not mean that the activities were not

important and emotionally fulfilling to those witnesses – for example, [redacted] spoke with obvious passion about her birdwatching. However, the question is how such activities would have appeared objectively to a reasonable landowner. From that perspective, the non-footpath activities on the agricultural fields were quite rare, confined to a number of individuals with particular hobbies, and were overall insufficient to make it clear that a TVG right was being asserted upon the Application Land.

379. As a result, the use of the agricultural fields had, in my view, the outward appearance of footpath use rather than TVG use, a quality of user which in my opinion, and I so advise the Registration Authority, would not amount to qualifying use for the purposes of registration of the Application Land as a TVG.

380. The position is less clear with respect to Lye Green Field. The Applicant did not suggest that I should separate out Lye Green Field and recommend registering Lye Green Field as a TVG even if the other fields were not registerable. As already noted, the Registration Authority is not under any duty to re-formulate the Applicant's case for them, to provide them with an alternative case should the majority of the Application Land not be registrable. But it is open to the Registration Authority to register land in part as a TVG. For the sake of fairness and completeness, and in case I am wrong about the trigger event issue, I consider whether Lye Green Field may be registrable alone.

381. The area of Brick Field within Lye Green Field was not used at all. This is a wooded area in the southern-most corner of Lye Green Field, enclosed on three sides by barbed wire. The only evidence of any activities occurring within Brick Field was a number of beer cans and bottles left on the ground. [redacted] suggested that this was a result of, loosely defined, 'picnicking'. However, illicit (possibly underage) drinking is not an activity which should properly be considered an LSP. Furthermore, food/drink rubbish left in an area is not necessarily evidence that somebody used that area for anything other than dumping their rubbish. As such, in my view, the area of Brick Field would not be registrable as a TVG, even if the rest of Lye Green Field would be registrable with Brick Field removed.

382. The rest of Lye Green Field is an open field, which was not in agricultural cultivation (due to being too awkward a shape to cultivate efficiently). As a result, people were able to, and did, 'wander' over the middle of Lye Green Field. However, there are adopted footpaths, and informal tracks trodden into the grass, around and across the field, and people tended to walk on these formal and informal paths. Walkers would divert from tracks across the fields to avoid cattle, especially if the walkers had dogs, but the evidence given by witnesses with reference to the points on a map (see Appendix 6) was that people tended to walk along the adopted and unadopted paths within Lye Green Field rather than meandering over the untrodden grass.

383. People's subjective opinion is less important than the objective appearance of their activities, but it is noteworthy that on Lye Green Field as on the other fields, witnesses were generally unaware of which paths were formal footpaths / PROWs, and which were not. There was also significant continuity in the walks taken by people moving between Lye Green Field and the agricultural fields, adding to the impression that they used the footpaths in Lye Green Field in much the same way as they used the paths around the perimeter of the other fields, albeit that people were able to walk across paths in the middle of Lye Green Field rather than being confined only to the edges.

384. Most of the activities besides walking to which witnesses attested – picnicking, bird-watching, blackberry picking, children playing and so on – took place on Lye Green Field at least as much as on other fields, if not more than the other fields by reason of there being more space on either side of the footpath. As such, it is less clear that the use of Lye Green Field was predominantly use ascribable to footpaths than it is on the other fields.

385. As is clear from the *Trap Grounds* case, users do not need to use or walk on every inch of the relevant area in order to qualify has having used the 'whole' of it for LSP. Meandering around a network of paths, and using the land on either side, may well qualify as using the land as a TVG.

386. Nevertheless, all of the above discussion with regards to the 'occasional' occurrence of these other activities, the possibility of doing them on footpaths, and the presumption in cases of ambiguity that it is the less onerous right that is being asserted, applies to

Lye Green Field as well as to the agricultural fields. The case is more finely balanced with respect to Lye Green Field than it is with respect to the Application Land overall. I remind myself again of the guidance of Lightman J in the *Trap Grounds* case at first instance:

> "102. The answer [when there is use of tracks which may or may not qualify as LSP] 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. … 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. … [W]here 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."

387. On balance, I think that the outward appearance given to a reasonable landowner would have been that the right being asserted on Lye Green Field was, as with the other fields, the right to use footpaths upon the land rather than the right to use the land as a TVG. There is certainly evidence of other activities taking place on the Application Land but the majority of these activities are activities for which a footpath can be used, as discussed above – nature-watching or photography while on a walk, for example – and the remainder of the activities, after stripping out these footpath-related activities, appears to have been, at best, "occasional".

388. On the evidence as it stands available to me, even were a trigger event to have occurred in relation to it, I would not recommend registering Lye Green Field as a TVG separately from the other fields.

5. FOR A PERIOD OF AT LEAST 20 YEARS

389. The user evidence encompasses a period of use that stretches back to the 1930s. There are users who have used the Application Land for the entire Application Periods and many years before. There are many others who have used the Application Land for portions of the Application Periods. In my view, the Application Land has been used for a period of at least the 20 year Application Periods and, in fact, for much longer. However, I have found that this user was prevented across much of the Application Land by agricultural use of Mushroom, Slipes and Bayman for significant periods, with which it was incompatible during crop cultivation. I have also found that the user was not qualifying LSP user for the purposes of registration as a TVG for the reasons I have given above.

390. Consequently, in my view, this element of the statutory test under s. 15 of the 2006 Act is not satisfied.

6. AND THEY CONTINUE TO DO SO AT THE TIME THE APPLICATION WAS MADE

391. This requirement only applies to Application 140. In relation to that application, I find that use of the Application Land continued at the time of that application. However, that use was not qualifying user for the reasons already given.

392. Therefore, this element of the statutory test is also not satisfied.

9. CONCLUSIONS AND RECOMMENDATION

393. In summary, my conclusions are that:

a) In relation to the Preliminary Issue, a trigger event did not occur in relation to Lye Green Field; and

394. In relation to the Outstanding issues, s. 15 of the 2006 has not been satisfied for any part of the Application Land. In particular, the Applicant has failed to prove on the balance of probabilities that:

a) there has been use of the Application Land by inhabitants of a qualifying locality or neighbourhood within a locality for the purposes of the 2006 Act,

b) the whole of the Application Land was used as a TVG during all of the period between 2011-2020, during which Mushroom, Slipes and Bayman fields were in intensive agricultural cultivation for crops; and

c) The Application Land was used for qualifying LSP, as opposed to being in a use which is referable to use as a footpath.

395. Accordingly, my conclusion and recommendation, on the evidence heard, is that the Applications must be rejected and registration of the Application Land as a TVG refused.

APPENDIX 1

List of Appearances

Counsel

For the Applicant:	Matthew Dale-Harris
For Geltex:	Richard Ground KC
For Mash:	Douglas Edwards KC

Witnesses (in order of appearance): for the Applicant

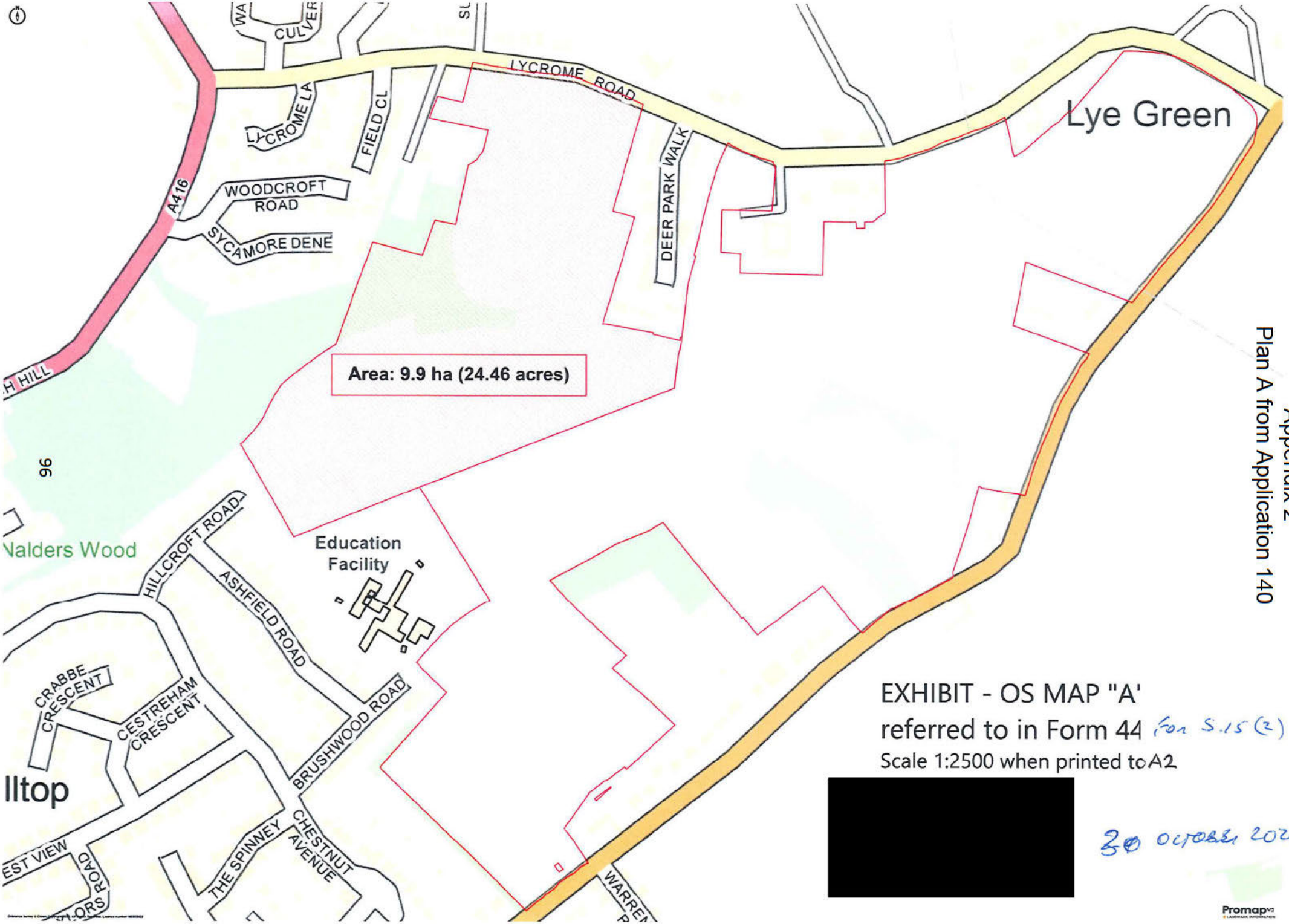
[redacted]

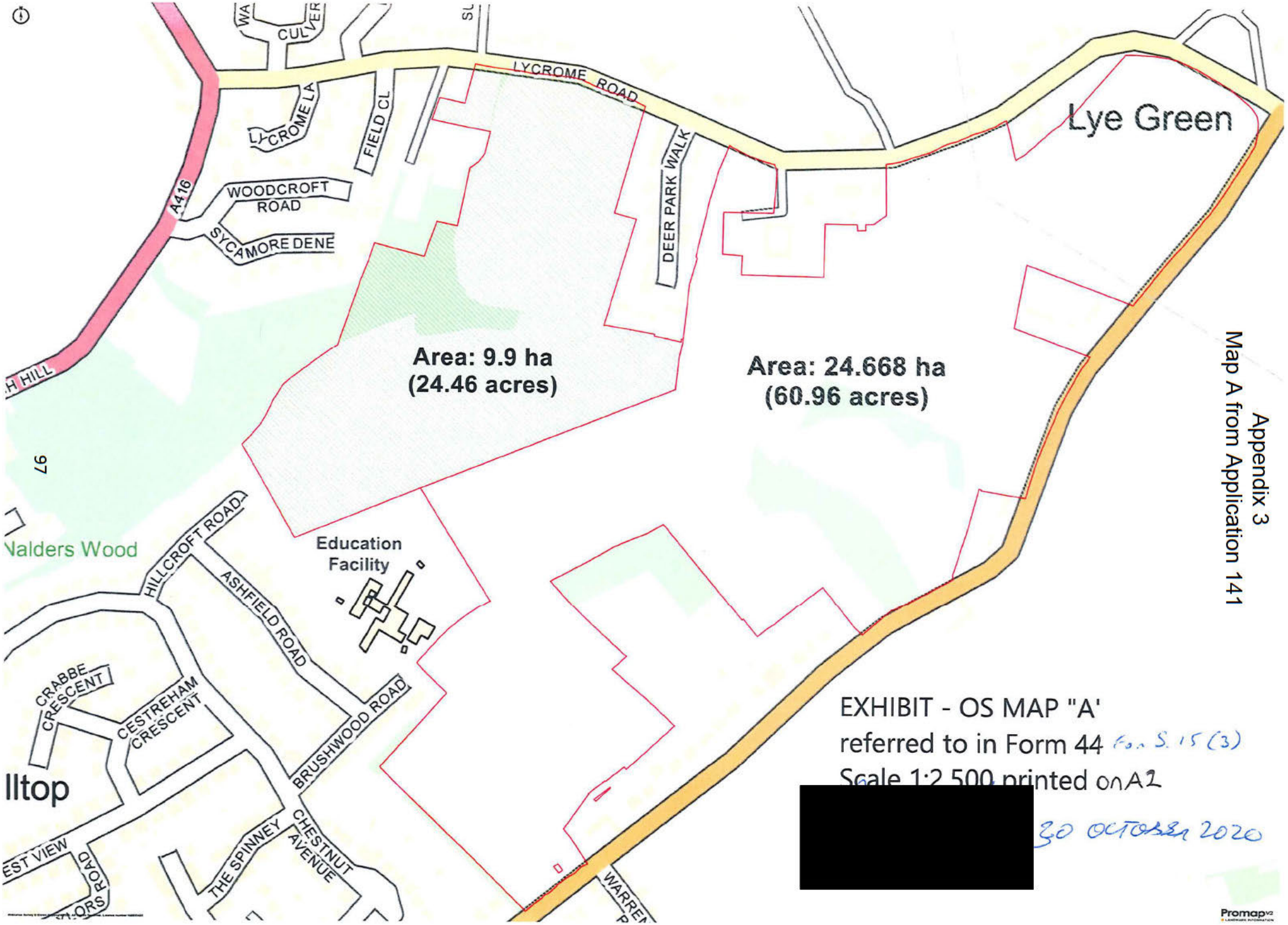
Member of the Public (in support of the Applications)

[redacted]

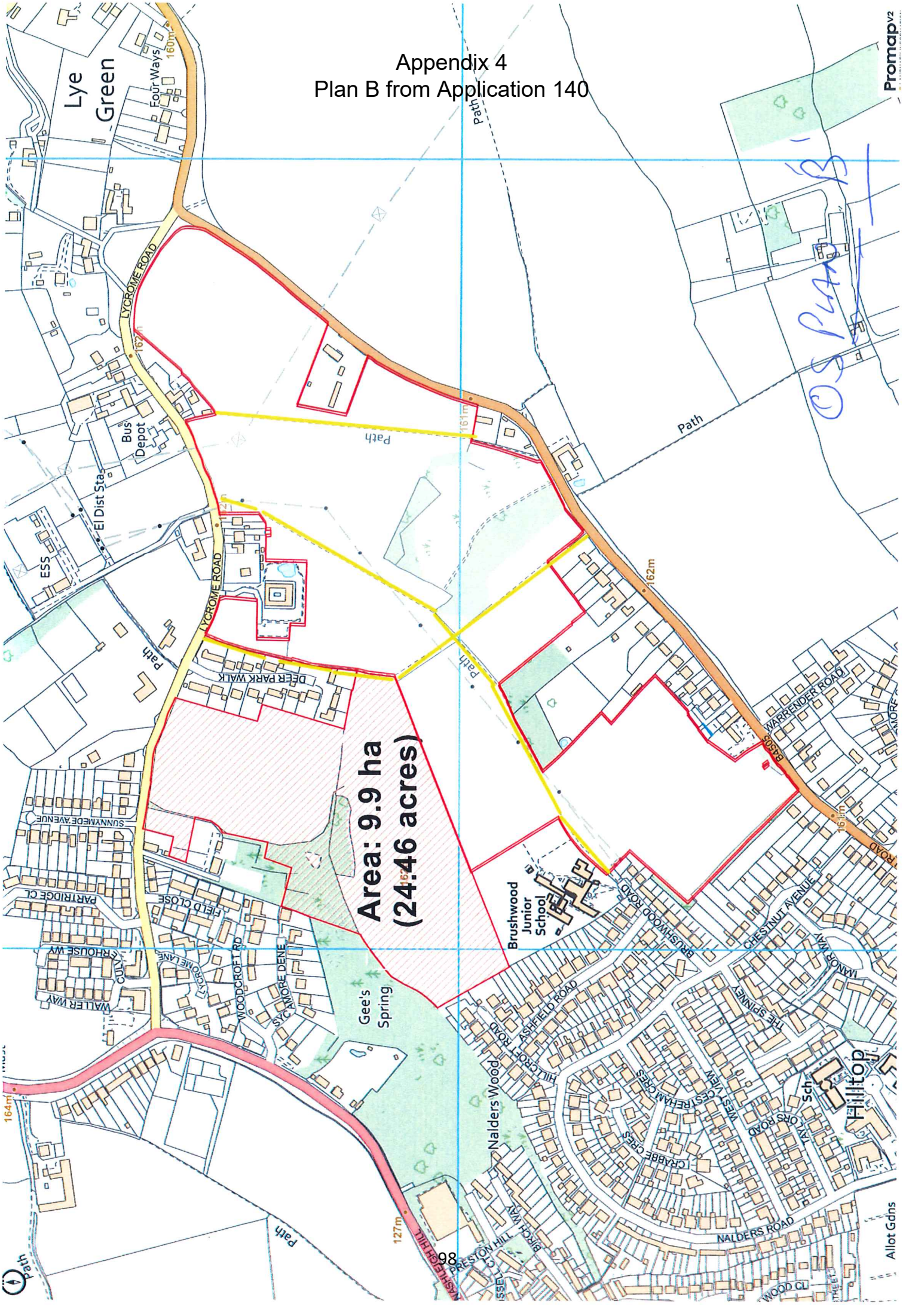
Witnesses (in order of appearance): for the Objectors

[redacted]

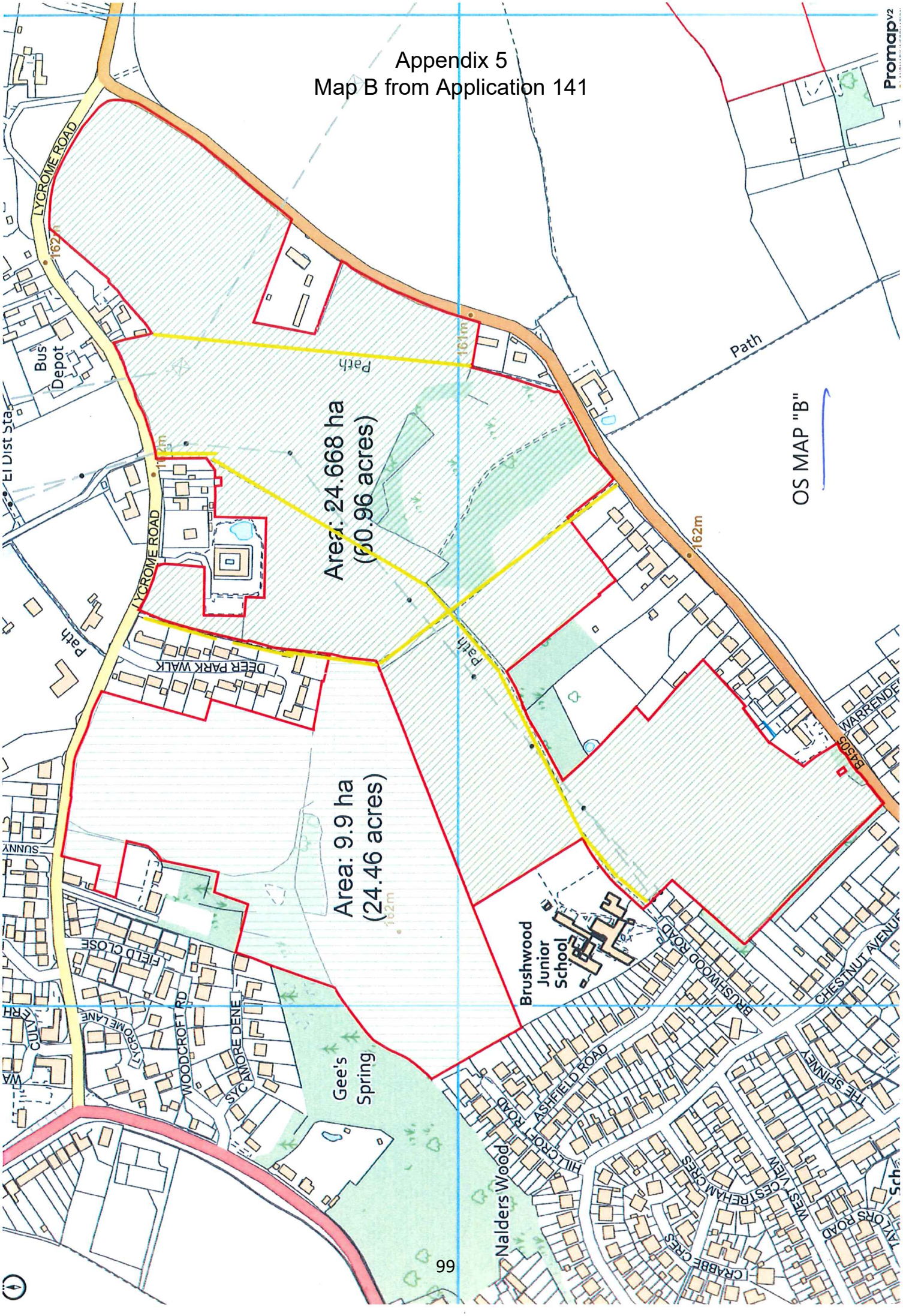

LYCROME ROAD
Lye Green
LYCROME LA
FIELD CL
WOODCROFT ROAD
SYCAMORE DENE
A416
DEER PARK WALK
Area: 9.9 ha (24.46 acres)
Education Facility
HILLCROFT ROAD
ASHFIELD ROAD
BRUSHWOOD ROAD
CRABBE CRESCENT
CESTREHAM CRESCENT
THE SPINNEY
CHESTNUT AVENUE
WARREN
Appendix 2
Plan A from Application 140
EXHIBIT - OS MAP "A'
referred to in Form 44 for S.15(2)
Scale 1:2500 when printed to A2
[redacted]
20 October 2020
Promap

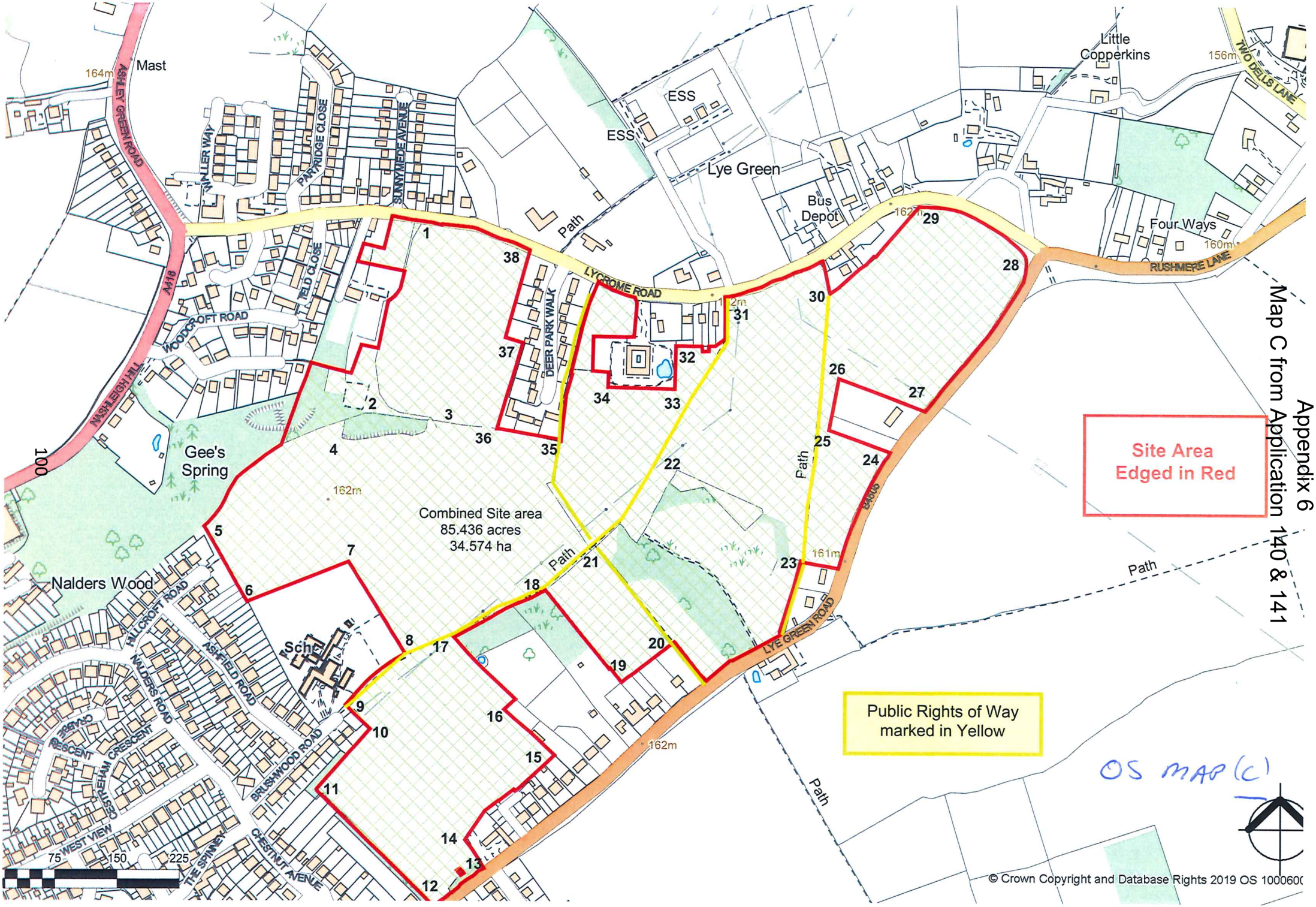

LYCROME ROAD
Lye Green
LYCROME LA
FIELD CL
DEER PARK WALK
A416
WOODCROFT ROAD
SYCAMORE DENE
Area: 9.9 ha
(24.46 acres)
Area: 24.668 ha
(60.96 acres)
Education Facility
HILLCROFT ROAD
ASHFIELD ROAD
BRUSHWOOD ROAD
CRABBE CRESCENT
CESTREHAM CRESCENT
THE SPINNEY
CHESTNUT AVENUE
WARREN
Appendix 3
Map A from Application 141
EXHIBIT - OS MAP "A'
referred to in Form 44 For S. 15 (3)
Scale 1:2,500 printed on A2
30 OCTOBER 2020
[redacted]
Promap

Appendix 4
Plan B from Application 140



Appendix 5
Map B from Application 141




Appendix 6
Map C from Application 140 & 141
Site Area
Edged in Red
Public Rights of Way
marked in Yellow
Combined Site area
85.436 acres
34.574 ha
OS MAP (C)
Mast
164m
Little
Copperkins
156m
TWO DELLS LANE
ESS
ESS
Lye Green
Bus
Depot
Four Ways
160m
RUSHMERE LANE
LYCROME ROAD
DEER PARK WALK
ASHLEY GREEN ROAD
A416
NASHLEIGH HILL
WOODCROFT ROAD
FIELD CLOSE
PARTRIDGE CLOSE
SUNNYMEDE AVENUE
MILLER WAY
Path
Gee's
Spring
100
162m
Nalders Wood
FULLCROFT ROAD
NALDERS ROAD
ASHFIELD ROAD
BRUSHWOOD ROAD
CHESTNUT AVENUE
THE SPINNEY
WEST VIEW
CRESCENT
CRESCENT
School
LYE GREEN ROAD
Path
Path
Path
161m
162m
75
150
225
© Crown Copyright and Database Rights 2019 OS 1000600