IN THE MATTER OF:

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

LAND AT MOUNT PLEASANT, STOKE HAMMOND MK17 9EX 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)

22 JULY 2023

(Relevant documents have been appended to this Report as:
Appendices 1-3*)*

1. INTRODUCTION

1. I have prepared this report following an application (Application 2020/139 – "the **Application**") received by Buckinghamshire Council, as registration authority, ("the **Registration Authority**") to register land at Mount Pleasant, Stoke Hammond, Buckinghamshire, MK17 9EX ("the **Application Land**") as a town or village green ("**TVG**"), pursuant to section 15 (3) of the Commons Act 2006 ("the **2006 Act**").

2. The report follows a non-statutory public inquiry which took place at Stoke Hammond Community Centre on 28 February 2023 and 1-3 March 2023. The inquiry was adjourned on 3 March until further representations could be made regarding the potential for a trigger event to have taken place in relation to the Application Land ("the **Trigger Event Issue**").

3. The Application was made by [redacted] on behalf of local residents ("the **Applicant**") on 25 November 2020. One objection was received, from the landowner, [redacted] ("the **Objector**")

4. I undertook an unaccompanied site visit before the inquiry began and then an accompanied site visit on day four of the inquiry, on 3 March 2023.

2. THE APPLICATION LAND

5. The Application Land comprises approximately 0.2ha of land adjacent to Leighton Road (the A4146). It is surrounded by residential development, including especially the Mount Pleasant housing estate.

6. The Application Land (Land Registry title no. BM285305) is owned by the Objector.

7. The location of the Application Land and its layout is shown on Maps A and B, which accompany the Application (see **Appendices 2** and **3**). It is bounded by Mount Pleasant Housing Estate on three sides, and Leighton Road/A41446 to the east.

3. THE APPLICATION

8. The Application was made by [redacted] ("the **Applicant**") on 19 November 2020. The Application included Form 44 and a statutory declaration by [redacted], plans and maps, photos, related planning documents (including an extant planning permission dated October 1989 – the precise date is obscured by the signature of the decision-maker – and two appeal decisions in respect of development near the Application Land dated 19 July 1996 and 6 May 2004, a planning decision notice refusing planning permission for 2 dwellings at Land off Mt Pleasant dated 10 February 2003) and land registry information.

9. The Application was made pursuant to section 15 (1) and (3) of the 2006 Act.

10. The Application was date-stamped as received by the Registration Authority on 25 November 2020. The Application was processed in accordance with the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007/457 ("the **2007 Regulations**").

11. As a result of the Registration Authority's acceptance of the Application, the relevant period for the purposes of determining the Application is therefore the 20 year period immediately preceding the date that the Application was received, being 19 October 2000 to 19 October 2020 ("the **Application Period**").

4. PROCEDURAL MATTERS

12. Following receipt, 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.

13. Buckinghamshire Council's Minerals and Waste Planning Department confirmed that there was no trigger event on 25 February 2021. The Planning Policy Team for Aylesbury Vale confirmed the same on 2 June 2021.

14. Consequently, the Registration Authority wrote to the Applicant to confirm that no trigger event had occurred, stating as follows:

> "I write to confirm that your right to apply for the registration of land at Mount Pleasant, Stoke Hammond as Town or Village Green is not excluded set out in Schedule 1A to the Commons Act 2006 by the Growth and Infrastructure Act 2013. I can now officially acknowledge receipt of your application; your application number is 139."

15. I return to address this matter below.

16. The Application was publicly advertised, and site notices erected, in accordance with the procedure laid down by the 2006 Act and the 2007 Regulations. A consultation period ran from 5 October 2021 to 17 November 2021.

17. I held a pre-inquiry meeting with the parties on 3 January 2023 and issued directions for the filing and serving of statements of case and legal principles relied upon, bundles and legal authorities.

18. At the inquiry, the Applicant represented himself. The Objector was represented by Ms Rowena Meager. A list of appearances is contained at **Appendix 1**. I wish to thank both representatives for their very helpful 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

19. As noted above, following consultation with the relevant local planning authorities, the Registration Authority considered that a trigger event had not taken place over the Application Land such that Application 139 was valid. Following the Pre-Inquiry Meeting and before the inquiry, the Objector belatedly raised an issue regarding whether this was in fact the case. The Objector had originally objected on 15 November

2021 but did not raise the Trigger Event Issue. Instead, it was first raised very late while the parties were preparing for the public inquiry, and shortly before it was due to begin. As a matter of fairness, at that stage, I directed that the Trigger Event Issue and a process for its proper consideration would be laid down at the public inquiry. At the inquiry, the Objector submitted strongly that the inquiry should not proceed on the basis that a trigger event had occurred. However, I determined that the Applicant and Registration Authority should have an opportunity to respond to the points being made by the Objector and a timetable was set down, and duly met, by all the parties, each of whom submitted written representations to me. In inviting submissions, I also asked the parties to consider the following potentially relevant matters:

a) the jurisdiction of the Registration Authority in circumstances where it has proceeded to accept, consider and determine to hold a public inquiry into the Application;

b) the principle of retrospectivity as it may apply to the Application;

c) the potential relevance of s.2 of the Planning (Consequential Provisions) Act 1990; and

d) case law.

20. I have now considered these representations. 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 Application.

Relevant Background

21. On 30th June 1989, planning permission (APP/1640/89 – "the **Permission**") was granted under the Town and Country Planning Act 1971 ("**TCPA 1971**"), permitting "*erection 14 dwellings, land adjacent Hunters Lodge, Stoke Hammond."* The land subject to the planning permission encompasses the Application Land. The eighth condition of the planning permission reads as follows:

"(8) The amenity open spaces shown on the plan attached to its permission shall remain undeveloped and be retained and laid out as open amenity areas as part of the estate as a whole and shall thereafter be maintained as such as an integral part of the development."

22. The Applicant made the application to register the Application Land as a TVG, which was received by the Council of 25th November 2020.

23. Section 15 of CA 2006 deals with the circumstances in which a person may apply to register land as a TVG. Subsections (1), (3), and (3A) provide:

"(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.
…
(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);
(b)in the case of an application relating to land in Wales, the period of two years beginning with that cessation."

24. Regulations 4 and 5 of the 2007 Regulations provide as follows:

"**4.— Procedure on receipt of applications**

(1) On receiving an application, the registration authority must—
(a) allot a distinguishing number to the application and mark it with that number; and
(b) stamp the application form indicating the date when it was received.

(2) The registration authority must send the applicant a receipt for his application containing a statement of the number allotted to it, and Form 6, if used for that purpose, shall be sufficient.

(3) In this regulation, "Form 6" means the form so numbered in the General Regulations.

5.— Procedure in relation to applications to which section 15(1) of the 2006 Act applies

(1) Where an application is made under section 15(1) of the 2006 Act to register land as a town or village green, the registration authority must, subject to paragraph (4), on receipt of an application—

(a) send by post a notice in form 45 to every person (other than the applicant) whom the registration authority has reason to believe (whether from information supplied by the applicant or otherwise) to be an owner, lessee, tenant or occupier of any part of the land affected by the application, or to be likely to wish to object to the application;
(b) publish in the concerned area, and display, the notice described in sub-paragraph (a), and send the notice and a copy of the application to every concerned authority; and
(c) affix the notice to some conspicuous object on any part of the land which is open, unenclosed and unoccupied, unless it appears to the registration authority that such a course would not be reasonably practicable.

(2) The date to be inserted in a notice under paragraph (1)(a) by which statements in objection to an application must be submitted to the registration authority must be such as to allow an interval of not less than six weeks from the latest of the following—

(a) the date on which the notice may reasonably be expected to be delivered in the ordinary course of post to the persons to whom it is sent under paragraph (1)(a); or
(b) the date on which the notice is published and displayed by the registration authority.

(3) Every concerned authority receiving under this regulation a notice and a copy of an application must—

(a) immediately display copies of the notice; and
(b) keep the copy of the application available for public inspection at all reasonable times until informed by the registration authority of the disposal of the application.

(4) Where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it without complying with paragraph (1), but where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action.

(5) In this regulation, "concerned area" means an area including the area of every concerned authority.

(6) A requirement upon a registration authority to publish a notice in any area is a requirement to cause the document to be published in such one or more newspapers circulating in that area as appears to the authority sufficient to secure adequate publicity for it.

(7) A requirement to display a notice or copies thereof is a requirement to treat it, for the purposes of section 232 of the Local Government Act 1972 (public notices), as if it were a public notice within the meaning of that section.

25. In the present case, the requirements of regulations 4 and 5 of the 2007 Regulations were met by the Registration Authority, which proceeded to accept the Application as valid and one to which s. 15 of the 2006 applies.

26. The 2006 Act was amended by the Growth and Infrastructure Act 2013 ("**GAIA 2013**"). A new s. 15C was introduced to the 2006 Act which excludes the right to apply for the registration of land as a TVG where any one of a number of prescribed planning-led events ("trigger events") has occurred in relation to the land. The right to apply for TVG registration under s. 15 of the 2006 Act only becomes exercisable again if a corresponding terminating event has occurred in relation to that land. The relevant subparagraphs of s. 15C of the 2006 Act provide 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") […]

(5) The [appropriate national authority] may by order amend [the relevant Schedule] so as to –

(a) specify additional trigger or terminating events;
(b) amend or omit any of the trigger or terminating events for the time being specified in the Schedule.

(6) A trigger or terminating event specified by order under subsection (5)(a) must be an event related to the development (whether past, present or future) of the land.

(7) The transitional provision that may be included in an order under subsection (5)(a) specifying an additional trigger or terminating event includes provision for this section to apply where such an event has occurred before the order is made or before it comes into force and as to its application in such a case.

(8) For the purpose 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."

27. The trigger events and terminating events are set out in Schedule 1A of the 2006 Act (as inserted by Schedule 4 to GAIA 2013. The first paragraph provides as follows:

"Trigger Events	Terminating Events
"1. An application for planning permission, or permission in principle, in relation to the land which would be determined under section 70 of the 1990 Act is first publicized in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act.	(a) The application is withdrawn. (b) A decision to decline to determine the application is made under section 70A of the 1990 Act. (c) In circumstances where planning permission or permission in principle is refused, all means of challenging the refusal in legal proceedings in the United Kingdom are exhausted and the decision is upheld. (d) In circumstances where planning permission is granted, the period within which the development to which the permission relates must be begun expires with the development having been begun.

[Emphasis added]

28. The trigger event in issue in this case is para 1 (above) in Schedule 1A. Here, planning permission was granted so, if para 1 can be held to apply to a planning application

advertised and granted under the TCPA 1971, the only corresponding terminating event would be (d) above, which is not applicable to the Permission.

29. The Planning (Consequential Provisions) Act 1990 governs the continuity and construction of references to the Town and Country Planning Acts of 1971 and 1990 ("**TCPA 1990**"). Section 2 provides:

> "(1)The substitution of the consolidating Acts for the repealed enactments does not affect the continuity of the law.
>
> (2)Anything done or having effect as if done under or for the purposes of a provision of the repealed enactments has effect, if it could have been done under or for the purposes of the corresponding provision of the consolidating Acts, as if done under or for the purposes of that corresponding provision.
>
> (3)Any reference, whether express or implied, in the consolidating Acts or any other enactment, instrument or document to a provision of the consolidating Acts shall, so far as the context permits, be construed as including, in relation to the times, circumstances and purposes in relation to which the corresponding provision of the repealed enactments has effect, a reference to that corresponding provision.
>
> (4)Any reference, whether express or implied, in any enactment, instrument or document to a provision of the repealed enactments shall be construed, so far as is required for continuing its effect, as including a reference to the corresponding provision of the consolidating Acts."

Jurisdiction/Functus Officio

30. The principle of functus officio will arise where a judicial, ministerial, or administrative actor has performed a function in circumstances where there was no power to revoke or modify it (***R (Commissioner of Police of the Metropolis) v Independent Police Complaints Commission*** [2015] EWCA Civ 1248; ***Piffs Elm Ltd v Commission for Local Administration in England***; [2022] EWHC 1547, [2023] EWCA Civ 486). The first step is to consider whether the body in question has "performed" the relevant function, and then if that is the case, whether they are entitled to modify or revoke it (per Williams J in *Piffs Elms* (HC)*,* §63). In ***Piffs Elm***, at para [74], Williams J set out the following:

> "74. I will not attempt to identify an exhaustive list of relevant matters, and the particular statutory provisions and context will always be of central importance.

> However, these authorities do indicate certain factors that are likely to assist in determining whether a public authority has an implied power to re-take a particular action or decision or it is functus officio once it has exercised the relevant function, in particular:
> (i) Whether the statutory provisions create a comprehensive and detailed code in respect of that function;
> (ii) Whether the statutory scheme is consistent with re-taking the particular action or decision;
> (iii) Whether a power of withdrawal would promote or undermine the legislative scheme;
> (iv) Whether the function in question determines or impacts upon substantive rights;
> (v) Whether a measure of discretion and/or informality is involved;
> (vi) Whether express provision is made for more limited circumstances in which an action or decision may be withdrawn and re-taken;
> (vii) Whether there is an apparent reason for the absence of an express power;
> (viii) Whether the existence or absence of an implied power would result in practical difficulties and/or undue complexity, delay or expense; and
> (ix) The extent to which attaining finality is of particular importance in that context."

DEFRA Guidance

31. DEFRA Guidance to Commons Registration Authorities (August 2016)[1] provides guidance as to the best-practice approach for the determination of applications, although is not binding. Para [79] advises registration authorities to write to each local planning authority for the land to which the application relates and the Planning Inspectorate to confirm whether any trigger or terminating event has occurred in relation to the land. Para [82] states "*if a trigger event has occurred but a corresponding terminating event has not, then the right to apply is excluded, in which case you must refuse to accept an application."*

32. In response to the question as to whether an application needs to be formally accepted before the right to apply is excluded, the guidance states as follows:

> "87. No, you are advised to seek confirmation on whether the right to apply is excluded in relation to the land prior to formally accepting or acknowledging receipt of an application. This is because if the right is excluded then the application should not be accepted, and this extends to written confirmation of receipt of the application.

[1] DEFRA Guidance to CRAs (August 2016).

> 88. The rationale for this approach is to avoid time and money being spent advertising and making representations in relation to an application where it subsequently turns out there was no right to apply.
>
> 89. However, as a matter of courtesy, you may wish to call the applicant to confirm physical receipt of the documents. In doing so, you should make it clear that this does not constitute formal acceptance or acknowledgement that the application is valid. You can explain that advice from each local planning authority and the Planning Inspectorate is needed before your authority can reach a view on whether or not to accept the application."

Retrospective Effect

33. There is a general presumption at common law that statutes are not intended to have retrospective effect. Generally, Parliament will be presumed not to have intended to legislate retrospectively, but that presumption can be rebutted by express words or necessary implication (***Sunshine Porcelain Potteries Pty v Nash*** [1961] AC 927). The question of whether a statute is intended to have retrospective effect is answered by looking at all of the circumstances of the case, having general regard to the principle of fairness, per Lord Mustill in ***L'Office Cherifen des Phosphates v Yamashita-Shinnihon Steamship Co Ltd, The Boucraa*** [1994] 1 AC 486, at 524-525. The greater the unfairness arising from the provision's retrospective operation, the stronger presumption that Parliament would not have intended it and therefore the greater the clarity of language required to rebut it.

34. In principle, this presumption operates straightforwardly, however difficulties arise as to its application, particularly where, as in the present case, a statute has effect for the future but with reference to past events. The distinction between "legislating to alter events in the past" and "legislation providing for the future consequences of past events" was illustrated in the following passage of Buckley L.J. in ***West v Gwynne*** [1911] 2 Ch. 1:

> "Retrospective operation is one matter. Interference with existing rights is another. If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. That is not this case … As a matter of principle, an Act of Parliament is not without sufficient reason taken to be retrospective. There is, so to speak, a presumption that it speaks only as to the future. But there is no like presumption that an Act is not intended to interfere with existing rights. Most Acts of Parliament, in fact, do interfere with existing rights."

35. In ***Secretary of State for Social Security v Tunnicliffe*** [1991] 2 All ER 712*,* the court clarified that the presumption against retrospectivity operates as a matter of degree (emphasis added):

> "In my judgment, the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather, it may well be a matter of degree – the greater the unfairness, the more it is expected that Parliament will make it clear if that is intended."

The Parties' Submissions

36. The Registration Authority submitted, relying on the DEFRA Guidance and *Gadsen on Commons & Greens* (3rd Edn.), that, given the wording of s. 15C of the 2006 Act, it continued to have power to reconsider whether a trigger event had taken place in relation to the land. In view of the stage of the process, however, the Registration Authority considered that it should await the parties' submissions on the point and my report before reconsidering the issue. Citing case law on retrospectivity, including the *Boucraa* case referred to above, the DEFRA Guidance and the relevant provisions of s. 15C, the Registration Authority submitted that the GAIA 2013 amendments expressly contemplates trigger events having taken place in the past, including before the date the legislation came into force and that it therefore seemed unlikely that there should be a distinction between planning permission granted under the TCPA 1990 and predecessor legislation. It submitted that this was further supported by the Planning (Consequential Provisions) Act 1990. Finally, the Registration Authority submitted that the *Coopers Estates* and *Bellway* cases were of some but limited assistance in that they indicate the underlying policy behind the GAIA 2013 Amendments and highlight the appropriateness of an independent inspector's consideration of trigger events.

37. The Applicant essentially made three submissions. Firstly, the Applicant contended that the Application is not the sort of application, targeted largely at preventing development, to which the GAIA 2013 amendments to the law were directed. Secondly, the Applicant submitted that those amendments did not contemplate the situation of this

case, where a planning permission is in place in respect of the land but has been "built out". Thirdly, the potentially retrospective or part-retrospective impact of s. 15C of the 2006 Act in this case would be grossly unfair.

38. The Objector submits that this is a simple case of an error having been made by the Registration Authority such that it wrongly considered that no trigger event applied. The Objector submits that since, in its view, the Permission is a trigger event for the purposes of s. 15C and para 1 of Schedule 1A of the 2006 Act, the Application is not valid because s. 15 of the 2006 ceases to apply to it. Consequently, the Objector's case is that the Registration Authority must reconsider its original view that a trigger event has not occurred and must reject the Application without further consideration.

Discussion

39. Before going any further, while I have great sympathy with the Applicant's situation given the stage matters have reached, the question of whether this application is a "worthy" one in terms of the aims of the GAIA 2013 amendments to TVG law is not a material consideration for the Registration Authority in this case. I cannot therefore recommend this as a relevant matter for the Registration Authority's determination.

40. There are three critical relevant questions, in my view, which arise out of the Trigger Events Issue:

(1) What is the jurisdictional position of the Registration Authority in circumstances where it has already accepted an application, advertised it, and progressed the application? ("**the Jurisdictional Question**")

(2) Does a trigger event occur under Schedule 1A of CA 2006 in circumstances of a planning application having been advertised, and planning permission being granted, under the predecessor legislation to the TCPA 1990? ("**the Retrospectivity Question**")

(3) If yes, has there been an application for planning permission "in relation to the land" that is the subject of the TVG Application? ("**the Trigger Event Question**")

The Jurisdictional Question

41. S. 15C of the 2006 Act provides that the right to register land as a TVG "*ceases to apply"* where it is subject to a specified trigger event with no corresponding terminating event. However, the 2006 Act does not set out a procedure to be followed for the determination of trigger event issues. A recommended procedure is set out in DEFRA Guidance to Commons Registration Authorities in England, excerpted above, providing that the Registration Authority should first investigate whether any trigger events or terminating events have occurred in relation to the land, before determining whether to accept the application for consideration. Once a trigger event is identified, an application cannot be accepted by a registration authority. Ambiguity arises, however, where an application is accepted and a trigger event, or the possibility thereof, is subsequently discovered.

42. Having regard to the principle of *functus officio,* it must be considered whether (i) the Registration Authority has "performed" the relevant function by accepting and processing the Application, and (ii) whether the Registration Authority was entitled to revisit the decision to accept and proceed with the Application.

43. On the first question, the Registration Authority ostensibly performed the function of making a determination as to the existence of a trigger event when the Application was accepted and the parties notified. This action followed the Registration Authority's consultation with the local planning authorities.

44. As regards the second question, there is no express power to reconsider the existence of a trigger event, so it must be considered whether one is implicit in section 15C. I note that both the Applicant (at para 18 of its Response to the CRA submission on this point) and the Objector accept that the Registration Authority can reconsider whether a trigger event and/or terminating event has occurred. In my opinion, the Registration Authority is implicitly entitled to reconsider any decision previously reached. Taking

into account the factors elaborated by Williams J in ***Piffs Elm***, in my view, for the Registration Authority to do so is justified because:

a. there is no complete statutory code in respect of the procedure to adopt in cases where trigger events/terminating events may be present;

b. the statutory code is nevertheless consistent with the Registration Authority having such a power in circumstances where s.15C is *unambiguous* that the right to apply for land to be registered as a TVG "ceases to apply" where a trigger event is unaccompanied by a corresponding terminating event, as here;

c. such a power would thereby promote the legislative requirement of disapplication where a trigger event may exist;

d. while the function in question determines or impacts upon substantive rights, this is equally applicable to both Applicant and Objector;

e. the absence of a prescribed legislative procedure for the determination of trigger event matters militates towards there necessarily being an element of discretion involved on the part of a registration authority;

f. no express provision is made for more limited circumstances in which an action or decision may be withdrawn and re-taken;

g. there is no obvious reason for the absence of an express power other than the cumulative effect of the above;

h. in the circumstances, in my view, and taking into account what is said in the DEFRA Guidance, the absence of an implied power would result in practical difficulties and/or undue complexity, delay or expense because it would prevent the correction of error in circumstances where the question of the application of the right to apply under s. 15 of the 2006 Act is binary – it either applies or, per s. 15C (1), it ceases to apply; and

i. attaining finality is therefore, in my view, of particular importance in that context.

45. Accordingly, even if a final decision had been reached with regards to the first question, in my view the Registration Authority would not be functus officio if it subsequently emerged that there has been a fundamental error in respect of their acceptance of the application. I therefore conclude that the Registration Authority retains jurisdiction in such circumstances (discussed below).

The Retrospectivity Question

Operation of the Presumption against Retrospectivity

46. The present case does not fall squarely within the retrospectivity principle. While the grant of the Permission predates the commencement of section 15C and Schedule 1A of the 2006 Act and was made pursuant to the predecessor legislation, TCPA 1971, the application to register post-dates commencement. Accordingly, section 15C is not retrospective in the true sense of the word. However, it has an element of retrospectivity to the extent that amendments made by GAIA 2013 altered the rights previously accrued or in the process of accrual over land which otherwise would have been eligible for the consideration of an application to register as a TVG.

47. Having regard to the circumstances, I note that the interference with the accrued rights is significant. Pursuant to para 1 of Schedule 1A of the 2006 Act, once a valid planning application is deemed to have been made to the local planning authority, the land the subject of that application becomes the subject of the planning system. That is unless the proposal is no longer live, for example where a planning application is withdrawn or all means of appeal are exhausted and it is not granted. In the case of paragraph 1, if planning permission is granted and implemented, then there will be no terminating event and the right to apply to register the land as a green under section 15(1) of the 2006 Act is excluded.

48. Ultimately, the GAIA 2013 amendments exclude very considerable amounts of land from the TVG statutory code by altering the significance of historic rights which may

have accrued over a long period of time. It follows, in my view, that the retrospectivity principle is engaged, at least to a limited extent, under such circumstances. Having regard to the significant effects of the amendments, it must be sufficiently clear that Parliament intended for such exclusions to occur.

Parliamentary Intention

49. As a starting point, GAIA 2013 is clear that the legislative "trigger" has retrospective effect (in the broadest sense) on events that preceded its commencement. Per section 16(4):

> "For the purposes of the application of section 15C of the Commons Act 2006 (as inserted by subsection (1) above, it does not matter whether an event specified in the first column of Schedule 1A to that Act occurred before or on or after the commencement of this section."
>
> [Emphasis added]

50. It is therefore expressly the case that events which occurred prior to the commencement of section 15C of the 2006 Act will have effect as a trigger event.[2] Such is rendered even more abundantly clear in the Government Explanatory Notes for the GAIA Bill 2013:

> "85. For the purposes of the exclusion of the right to apply for registration of a town or village green in new section 15C(1) it does not matter whether a trigger event occurred before or after the commencement of section 16. However, under section 16, the exclusion in new section 15C does not apply in relation to an application for registration of a green which is sent before the day on which section 16 comes into force[…]"

51. Equally, as the Objector submitted in its representations and as the DEFRA Guidance further supports, it was evidently the intention of Parliament for trigger events to have a disqualifying effect on applicants seeking to register a TVG which had previously been subject to an application for planning permission.

[2] See also DEFRA Guidance on GAIA 2013, Chapter 2.

52. Ultimately, in my view, the logical result of the GAIA 2013 amendments is that Parliament intended to render large portions of land ineligible for TVG status by virtue of coming within the purview of the planning system. That is the effect of s. 15C and Schedule 1A of the 2006 Act. Paragraph 1 provides expressly that its exclusions attach to all land the subject of a pending or granted planning permission application under TCPA 1990. However, as the ambiguity of the present case reveals, it is less obvious to what extent Parliament intended Section 15C and Schedule 1A of CA 2006 to operate retrospectively in relation to predecessor legislation.

Planning (Consequential Provisions) Act 1990

53. As a provision supporting the transition from TCPA 1971 to TCPA 1990, the Planning (Consequential Provisions) Act 1990 is directed towards preserving "the continuity of the law" following the repeal of TCPA 1971. Section 2(1) expressly states such a purpose, resolving any lacuna following the law's repeal in favour of the status quo.

54. On the other hand, section 2(2) preserves the effect of "*anything done or having effect as if done under or for the purposes of a provision of the repealed enactment."* In the present case, the relevant provision of the repealed enactment are ss. 26 and 29 of TCPA 1971, which previously provided for the advertisement and determination of planning permission applications. Per the transitionary provision, ss. 26 and 29 TCPA 1971 will only have effect if "*it could have been done under or for the purposes of the corresponding provision of the consolidating Acts, as if done under or for the purposes of that corresponding provision."* That "corresponding provision", or provisions, are ss. 65 and 70 of TCPA 1990, as referred to in schedule 1A of CA 2006.

55. Accordingly, section 2(2) calls for consideration of whether an application for planning permission under TCPA 1971 could equally have been made and determined under TCPA 1990. On its face, it is unclear whether this assessment looks only to the law, asking whether something "done" under s. 26 or 29 TCPA 1971 could have been "done" under s. 65 or 70 TCPA, *or* whether it looks more closely at the factual circumstances of each case and whether the law could have reached the same outcome on application. As a matter of logic and in my view, the former approach must be correct. Put simply, section 2(2) clarifies that planning permission previously granted

under TCPA 1971 will continue to be effective planning permission for the purpose of TCPA 1990. The alternative would ostensibly require a redetermination of all permissions previously granted under TCPA 1971, which would obviously be incorrect.

56. At the same time, sections 2(3) and 2(4) govern the harmonious interpretation of the 1990 and 1971 Acts where reference to enactments under either occurs. In particular, section 2(3) considers the extent to which references (impliedly or expressly) to the TCPA 1990 may be treated as references to the TCPA 1971, in relation to the "*times, circumstances, and purposes"* for which the TCPA 1971 continues to have effect. It is worth observing the correspondingly close relationship between sections 2(2) and 2(3): the repealed provisions of TCPA 1971 considered to be effective by section 2(2) may equally be treated as references to the corresponding provisions under TCPA 1990, "**so long as the context permits**."

57. As far as I am aware, and I was not taken to any legal authority on the point, the meaning of "the context" has not been clarified in case law concerning the application of section 2 of the Planning (Consequential Provisions) Act 1990. In my view, "the context" would seem to relate to the context in which the reference to the consolidating act, TCPA 1990 occurs. Per section 2(3) the relevant references are capable of arising in "*the consolidating Acts or any other enactment, instrument or document."* Evidently, "any" captures a broad scope of enactments, instruments or documents and is not specifically limited in time to those made on, before, or after commencement. It follows that while section 2(3) is a transitionary provision between TCPA 1971 to TCPA 1990, its operation extends to all circumstances where a reference to the TCPA 1990 occurs.

58. Further, I consider that "permits" may be read as "allows"– i.e. the relevant construction should be allowed to the extent that a reference to the repealed legislation would *make sense* in the application/interpretation of the referring legislation, the 2006 Act in this case. For instance, if a construction produced a legally absurd or inconsistent outcome, then that construction would evidently fall afoul of section 2(3) of Planning (Consequential Provisions) Act 1990.

59. In the present inquiry, the relevant "context" is a TVG application caught by Schedule 1A of the 2006 Act. In my view, paragraph 1 of Schedule 1A of the 2006 Act permits a construction that would include applications previously made under TCPA 1971 without producing an absurd result. Reading sections 2(2) and 2(3) of Planning (Consequential Provisions) Act 1990, section 16(4) of GAIA 2013, and paragraph 1 of Schedule 1A, CA 2006 together, such an interpretation is open to the reader.

60. I must note, of course, the application of the presumption against retrospectivity. On this point, it is relevant that no reference to the 1971 Act was made in paragraph 1 of Schedule 1A, CA 2006, despite such a reference clearly being available to the drafter. On the principle of statutory construction, *expression unius est exclusio alterius,* the expression of one thing is the exclusion of another, the reference to the TCPA 1990 alone could be taken as an exclusion of other TCPA regimes. Further, having regard to the extensive impact on applicants' rights and the self-evident significance of excluding all land previously subject to planning permission under TCPA 1971 from the TVG system, a greater degree of clarity as to parliamentary purpose may arguably be needed.

61. In my view, it is compelling that the drafters had the benefit of the Planning (Consequential Provisions) Act 1990 at the time GAIA 2013 was written. In this light, no ambiguity arises as to parliamentary purpose because no reference to TCPA 1971 was necessary. Put simply, by making reference to TCPA 1990, the drafter of paragraph 1 was by extension making reference to TCPA 1971. While the effect is to extend the retrospectivity of section 15C of the 2006 Act back even further, such an outcome would appear to be broadly consistent with the express parliamentary purpose of GAIA 2013, as outlined above.

62. An alternative understanding of section 2(3) may be open to a reader. It may be that extending the application of section 15C of the 2006 Act to applications made under TCPA 1971 would raise such an objectionable retrospectivity and be so unfair, that an even greater degree of clarity is needed. That is certainly a possible alternative conclusion – but I note that, notwithstanding the stark nature of the GAIA 2013 amendments in particular cases, I see no reason in principle, as I have explained above, for applications made under the 1990 Act to be treated differently from applications made under the 1971 Act. It may equally be the case that such differences in treatment

would raise their own objections of unfairness. My judgment, therefore is that an alternative narrower construction of the relevant provisions would not be the correct interpretation and I so advise the Registration Authority.

63. To conclude, the reference to TCPA 1990 in paragraph 1 of Schedule 1A of the 2006 Act should be read as including corresponding provisions under TCPA 1971, even in light of the general presumption against retrospectivity.

The Trigger Event Question

64. Having concluded that planning permission granted under TCPA 1971 is capable of being a trigger event for the purpose of section 15C, CA 2006, it remains to be considered whether the planning permission granted on 30th June 1989 was "*in relation to the land"* which forms the basis of the TVG application.

65. It is uncontroversial that the Application Land is contained within the land subject to the Permission. As noted above, the eighth condition of the permission identifies amenity open space as part of the relevant development. Considering MAP1, MAP2, and MAP3 together, the "amenity open space" is the same as, or virtually overlaps, the Application Land.

66. I note for completeness the Applicant's submission that because Condition 8 specifically identifies the Application Land for residential amenity, the Application Land is not caught by the trigger event because it has been protected from development and set aside for residential amenity. However, there is no requirement for the land to have been developed or to have been designated for development in order for a trigger event to occur under paragraph 1 of Schedule 1A. The phrase "in relation to" is a wide phrase, which should be given its ordinary meaning. In particular, the approach in *Gadsen* on this point is instructive*:*

> "The phrase "in relation to" is a wide phrase when given its ordinary meaning. The phrase essentially means "connected with". In this context, that would mean that there was some connection between the planning application and the land. Even on a narrower rather than broader reading of the phrase, it would still mean at least "affecting". The phrase "an application for planning permission in

> relation to the land" would therefore mean an application connected with the land, where there is a relationship of some sort between the planning application and the village green application site. It would, for example, encompass a situation where part of the works necessary for or comprised in the development would take place on the land. It is notable that in Sch. 1A Parliament did not use a more specific phrase such as "for the land" or "on the land." It chose to adopt a wide phrase, namely, "in relation to the land."

67. In my view, there is no doubt that the Permission was in relation to the Application Land for the purposes of the legislation and I agree with the Objector that the operation of condition 8 means that the Application Land remains within the purview of the planning system albeit that the Permission has been otherwise "built out".

Conclusion on the Trigger Event Issue

68. Ultimately, my view is that a trigger event has occurred in relation to the Application Land. The right to apply to register the Application Land as a TVG has therefore ceased to apply and the Application must, on that basis, be rejected.

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

69. Without prejudice to my conclusion on the Trigger Event Issue as set out above, and in case I am wrong about it, I now turn to consider the remaining issues in relation to the Application, upon which the bulk of the evidence to the inquiry focused.

THE EVIDENCE

70. The Application was supported by a number of written statements with annotated plans from witnesses attesting use of the Application Land for all or part of the Application Period, and in some cases for several 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 carries more weight, given that witnesses could be subject to cross-examination and questions from me.

71. 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

72. 17 witnesses gave evidence to the inquiry in support of the Application. They are summarised below in the order in which they appeared.

[redacted]

73. [redacted] lives at [redacted]. She has lived there since 2004. [redacted] (a summary of his evidence is below) provided a questionnaire, completed by himself, and a witness statement, completed jointly with [redacted], in support of the application. [redacted] gave oral evidence at the inquiry.

74. In their joint statement, the [redacted] said that prior to living at [redacted]. [redacted] when their children were aged [redacted] The [redacted] enjoyed use of the Application Land with dogs on a daily basis, both walking across and training their dogs on the Application Land. The [redacted] children have enjoyed playing games and sports, flying kites and playing chase with their friends on the Application Land. They also describe the Application Land being used for fireworks parties and a gathering for VE day celebrations. They state that there have been other similar events, which they did not attend.

75. The [redacted] said that there were no signs or fences obstructing their use of the Application Land apart from part of a picket fence adjoining Leighton Road. They also stated that they have never been challenged as to their use of the Application Land in the 18+ years that they have lived in the area.

76. In her cross-examination, [redacted] reaffirmed that she was not aware of any fencing in June 2004, nor any concrete or fenceposts.

77. [redacted] further gave evidence that she assisted her husband, [redacted], in making the application for TVG status. [redacted] states the redline on the map was taken from documents they had when they moved in. In cross-examination, [redacted] initially stated that the red line included the residents in the [redacted] area, but then accepted that it did not contain all of the houses in [redacted]. When asked about the significance of the red line, she was unsure, but stated that it was the area of [redacted] as she understood it at the time. She would disagree with her husband's answer to Q67 (on the submitted questionnaire) now, insofar as it states that the red line contains the boundaries of the locality.

78. [redacted] was unsure of the extent of neighbourhood watch within the area. [redacted] accepted that her child, [redacted] stopped making use of the Application Land when he went to university, but his use resumed when he returned at 22. Her other children, [redacted] ceased making use at 18. [redacted] accepted that her daughter would play with children from outside [redacted] and the village. The [redacted] could not say what use was made in the period between dogs. [redacted] recalled the VE day celebrations as being the only community event that took place.

[redacted]

79. [redacted] below) and have lived there since [redacted]. They have provided a witness statement (completed jointly), eight photographs, and a questionnaire completed by [redacted] in support of the Application. Both gave oral evidence to the inquiry.

80. [redacted] She said that the Application Land in question has always appeared open to, and used by, locals, which made it an attraction when they decided to move there. Their children have used the Application Land as a recreational area throughout their lives. The Application Land has also been enjoyed

by the family as a space to exercise and train their dog. The family also attended the socially distanced VE day celebrations.

81. [redacted] has observed children playing, dog walking, bonfire parties, bicycle riding, team games, football, cricket, tennis, people walking, meetings between persons, kite flying, community events, bird watching and picnicking on the application land. There are three photos attached of children playing in the snow, dated February 2012. There are a further three photos attached of persons making snowmen, dated December 2017. Finally, there are two photos attached depicting the VE day celebrations, dated May 2020.

82. In cross-examination, [redacted] was asked about the dotted line in the map accompanying the questionnaire. [redacted] could not explain what the dotted line was. [redacted] additionally accepted that her home was not within the red line of the map attached to the Application. She considered that it was related to the first phase of the development at Mount Pleasant.

83. [redacted] first stated that she could not recall fencing going up around the time she was pregnant in April 2004. She then remarked that she could recall a fence, but would be unable to say what kind, but accepted it was more than the picket fence which has been present throughout the period.

84. [redacted] stated that her children would use the Application Land for exercise and would often play with children after being dropped off by the school bus. This was five days a week, with between four and six mums present, until the children reached the age when they could play independently. [redacted] also stated that they had a dog which they walked and trained on the Application Land until October 2015. The walk across the green was not necessarily part of a longer walk, sometimes it was sufficient to only take the dog to the green. [redacted] states that there were ten households involved in the VE day celebrations which she knows because [redacted] [redacted] could not recall bonfire night celebrations having previously taken place.

85. In re-examination, [redacted] remarked that the wind turbine campaign was another organised activity between residents of Mount Pleasant.

[redacted]

86. [redacted] and has lived there since [redacted]. Ms. Constable has provided a witness statement in support of the application. She gave oral evidence to the inquiry.

87. [redacted] placed an offer on [redacted] which was accepted the same day. She played on the green when she visited that day. When they returned in November 2020, the application land was fenced off. [redacted] children now play on the road but have tried to collect conkers using a fishing net near the edge of the fence. [redacted] described the community of Mount Pleasant as very welcoming; people share fruit and vegetables and if a house alarm goes off, people will rally around.

88. In cross examination, [redacted] accepted that she had not made use as an active resident before the fence came up.

[redacted]

89. [redacted] whose evidence is summarised above.

90. [redacted] made less use of the Application Land with [redacted], he made more use with [redacted], including kicking a ball around and flying a kite. Mr. [redacted] described fireworks as generally taking place seasonally but described one specific time in 2004 when fireworks had taken place at the Hyash School enclosure, with sparklers on their return. Upon further questioning, [redacted] could not describe any further fireworks events or similar events. [redacted] described Christmas parties as also taking place among residents. When asked about what else made Mount Pleasant

cohesive, [redacted] described acting in a campaign against turbines which had been proposed.

91. [redacted] stated that he copied the map for the application from the original development plan map. He called this an "inadvertent mistake" as it excluded the later development at Mount Pleasant. He said that the red line therefore has no significance in marking out the area. [redacted] stated that he informed the community at Mount Pleasant how to obtain questionnaires for the TVG application.

[redacted]

92. [redacted] completed the evidence questionnaire and submitted two photos and a witness statement in support of the Application. She gave oral evidence to the inquiry.

93. [redacted] purchased the property at [redacted] with her husband and daughter, who have enjoyed using the Application Land for exercise and play. [redacted] daughter and grandson moved away in March 2020, but prior to that period would make use of the Application Land for recreational activities 4-5 times a week. [redacted] grandson, [redacted], has also provided a written statement for this case. [redacted] describes kite flying, conker collecting and picking wild grasses as activities he enjoyed on the application land. [redacted] has supplied two photos of her grandson playing with a kite in the green area, dated 15 June 2017.

94. [redacted] husband trimmed the outside boundary hedge between [redacted] and the Application Land between 2016 and 2020. [redacted] has removed ragwort and stinging nettles from the area. [redacted] and her husband joined in the socially distanced VE day celebrations in May 2020. [redacted] stopped making use of the Application Land area on 19 October 2020, when a fence was erected.

95. In cross-examination, [redacted] gave evidence that her daughter and grandson returned to Mount Pleasant following the COVID lockdown for 6-7 weeks. There have been no other organized events like VE day in her time residing at Mount Pleasant.

96. [redacted] evidence in cross examination was that she didn't understand the significance of the line on the map and thought it related to the Application Land. She accepted that there was no formal Resident's Association or Neighbourhood Watch at Mount Pleasant, but that there was a WhatsApp group. [redacted] also described Mount Pleasant as a close community, where neighbours would help each other out.

[redacted]

97. [redacted] and continue to do so [**AB/69-80**]. [redacted] have also provided a jointly completed questionnaire and four photographs. [redacted] gave oral evidence at the inquiry.

98. [redacted] moved to Mount Pleasant when their daughter was 3 and they were expecting their second child. Their children have enjoyed using the Application Land as a recreational area, playing with friends and their dog, building snowmen, collecting conkers, and exploring. As adults, their family joined in the VE day celebrations. There are two photos attached of the VE day celebrations, and another photo attached of two young girls sitting on the green, undated. There is also a photo of children playing with leaves, dated 2016.

99. [redacted] gave evidence that the use of the Application Land by his children changed as they grew older and were able to use the space more independently. He also described the community as organising drinks and socials more generally, including Christmas eve drinks. At the latter event, he stated that each member of the estate had been present at least once. Additionally, [redacted] noted that various residents of Mount Pleasant had been involved in the executive of the wind turbine campaign.

100. [redacted] could not recall any fireworks events but stated that most events tended to be informal. His sight of them was limited because he did not have a window which overlooked the Application Land. But he said that it was an ideal place to stop and chat and the Application Land was somewhere that you would see people.

101. In his cross-examination, [redacted] was asked about their completion of the questionnaire and what they understood the map to represent. [redacted] had assumed that the red line encompassed those who were making the TVG app, but thought the questionnaire was asking about the boundary of the Application Land. He was further asked why he would describe his neighbourhood as Mt. Pleasant and not Stoke Hammond. [redacted] stated that he would describe both as a neighbourhood but the Mount Pleasant community as a smaller, integral neighbourhood in itself. He would not differentiate between a community as opposed to a neighbourhood. He also stated that all houses of Mount Pleasant are a part of the neighbourhood.

[redacted]

102. [redacted]. He has provided a witness statement and questionnaire in support of the Application and gave oral evidence to the inquiry.

103. [redacted] states that the Application Land has always been used by the residents of Mount Pleasant for leisure purposes, namely young children and dog walkers and those out walking. When his children were younger, they used to play ball games on the green. Now [redacted] uses the application land as a shortcut for walking. [redacted] house does not look out on the Application Land, but when walking/driving nearby he has seen other residents making use of it. [redacted] has not participated in any community events. [redacted] acknowledged that he had not made use of the Application land without his children.

104. [redacted] has described two occasions when use has been prevented on the Application Land. The first occurring when a fence was up for a "*matter of a week or two*", but "*was so flimsy it fell over and was subsequently removed completely*". The second was when fencing went up prior to the Application.

105. In cross-examination, [redacted] recalled fencing having gone up during the Application Period in 2003. He was directed to a photo by [redacted], which shows

the Application Land with some wooden posts. [redacted] recalled the fence being made of wooden posts and wire, but did not see it go up. [redacted] remarked that the fence looked flimsy when he went to see it, but did not pay attention to the structure. [redacted] suggested that it might have been a few kids "on it", but that it came down gradually. There was first a gap by No. [redacted], and it then became loose and deteriorated. [redacted] suggested that the fence might have become ineffective as a barrier within the space of a week.

106. [redacted] was further asked about question 3 of the questionnaire and acknowledged that he had not seen the map at the time of answering. He had assumed that the neighbourhood was the sixteen houses and the locality was Stoke Hammond. On question 12, [redacted] stated that the use of the Application Land as a shortcut when walking was only one of the uses by the residents. [redacted] accepted that he made no use of the Application land post 2005.

107. [redacted] stated that there was a sense of community in Mount Pleasant, neighbours would share mowing the lawn and would look out for each other. [redacted] had also attended Christmas Eve drinks.

[redacted]

108. [redacted]. His evidence was similar to [redacted] summarised above.

109. [redacted] remembered seeing people kicking a rugby ball from one place to another on the Application Land. He worked from home and remembered playing with the kids and getting more involved as they wanted play football. He didn't remember organised events on the Application Land apart from the VE day celebrations.

110. [redacted] didn't remember fencing on the Application Land.

111. He described the neighbourhood as being the whole of Mt. Pleasant. He said it was characterised by good friendships and said that they have been away with friends that they have met in the neighbourhood. When pushed in cross-examination, [redacted] said

that he lives in a village (Stoke Hammond) and that his neighbourhood was Mt Pleasant, a part of that village.

[redacted]

112. [redacted] to the present. She provided a witness statement, photograph, questionnaire and excerpt from a decision letter dated 19 July 1996 from the Planning Inspectorate, to which she pointed as referring to the Application Land as a "village green". She gave oral evidenct to the inquiry.

113. [redacted] moved to Mount Pleasant when her children were 3 and 7 years old. Her children often enjoyed the Application Land, congregating with other children after school, on weekends, and through school holidays to play various games, including football, cricket and golf. [redacted] taught her youngest child to ride his bike on the Application Land. In the undated photograph provided, there are persons playing on the snow in what appears to be a snowball fight and poles are visible, which appear to relate to a fence constructed by [redacted]

114. [redacted] described birthday parties, bonfire parties, fireworks, a safari party, and VE day celebrations as community events which previously took place on the Application Land. She states that she was previously informed by the developers that the space would remain a public amenity, therefore permission was never required.

115. In cross examination [redacted] was asked about fencing that briefly went up around the Application Land. [redacted] said that she did not see the fence go up, but it disappeared within a day or two. She said there was no gate or sign. [redacted] was unsure when the photograph was taken, but her best guess was 2002. [redacted] stated that her children stopped making regular use of the Application Land around 2005. After this, she made use of the Application Land by walking across it by herself or with a dog.

[redacted]

116. [redacted] to the present. [redacted] has provided a witness statement, questionnaire, and six photographs in support of the application. He gave oral evidence to the inquiry.

117. [redacted] children and grandchildren have enjoyed the Application Land as a recreational area. Regarding consistent use of the green space by children, [redacted] commented "*there has always been a handover from one generation to another"*. The use identified included rugby and football on the application land. Additionally, [redacted] and his wife began training hearing dogs for deaf people in 2018 on the Application Land.

118. In his questionnaire, [redacted] remarked that he had witnessed the Application Land fenced off on two occasions, the first in October 2002. He believes this was after a planning application was submitted in 2002. The other was before the present application.

119. He provided a photograph showing four people standing in front of a row of trees, dated summer 1995. [redacted] explained this to be the location of their property at [redacted], prior to its construction. There are two photos attached to his evidence of [redacted] family playing in the snow, dated December 2010. There are two further photos of two young children on the green, dated 7 April 2013 and 8 July 2015. Finally, there is a photo of [redacted] socialising a hearing dog on the green, dated spring 2018.

120. [redacted] was asked about the earlier appearance of a fence. He recalled substantial poles being put up that were around for a short period. He suggested the fence may have come down in one day. [redacted] stated children had attempted to put the fence back but it fell down. [redacted] agreed by reference to photos that the poles were visible on the date they were taken. At his best guess, [redacted] suggests that the fence would have disappeared by the time when the planning inspector was visiting in 2004.

121. In cross-examination, [redacted] accepted that his children stopped making use of the Application Land around 2002. [redacted] also noted that he had a dog between 2018 and 2019, which made use of the Application Land. When asked whether he could recall periods of time when children were not making use of the Application Land, [redacted] responded that there were always at least some children from the households of Mount Pleasant making use of the area.

122. [redacted] took responsibility for the selection of the map for the Application. He accepted it was in error but said in response to cross-examination that he had obviously meant that the whole of Mt. Pleasant should be included within the neighbourhood.

[redacted]

123. [redacted] has lived at 11 Mount Pleasant since 1994. [redacted] has given a witness statement in support of the application. [redacted] gave oral evidence at the inquiry.

124. [redacted] describes the Application Land as being enjoyed by the children of Mount Pleasant and the village. She stated it was enjoyed through playdates, picnics, ball-playing, building snowmen, and snowball fights. [redacted] also states that her brother had a football themed birthday party on the Application Land.

125. [redacted] states that the Application Land has been used by her family with neighbours to celebrate large events like VE celebration day, as well as being a place to gather with friends for picnics and drinks upon return from university, London or living abroad. [redacted]' children, nieces, and nephews enjoyed football, running around, flying kites and riding balance bikes on the application land on a frequent basis, at least four times a week.

126. In cross-examination, [redacted] stated that use stopped when her children turned 16/18.

127. She stated that there had been no other events organised in the same manner as VE day.

[redacted]

128. [redacted]. [redacted] has provided a witness statement in support of the Application and gave oral evidence to the inquiry.

129. [redacted] made use of the Application Land when he grew up in Mount Pleasant, playing many games of 5-a-side football with friends. He would come back during his university years during the holidays, in 2001-2004. After moving out of Stoke Hammond, he has often seen children playing on the Application Land when he visits his parents.

130. In cross-examination, [redacted] noted that he would play football with children from Mount Pleasant and wider Stoke Hammond. Between 2008 and 2020, he said he would generally visit his parents once a month.

[redacted]

131. [redacted] to the present. [redacted] has provided a witness statement, questionnaire, and photograph in support of the Application. He gave oral evidence to the inquiry.

132. [redacted] family made use of the Application Land throughout the childhood of his two children. [redacted] listed playing kites, kicking football and rugby balls, playing rounders and cricket as activities which have taken place on the Application Land. The photograph provided shows a child playing with a football post. [redacted] further accepted in cross-examination that the children who played with his son included footballers from the wider village community.

133. Since 2006, [redacted] stated that he had at least weekly walked his dogs across the Application Land, and played and trained with their current dog. [redacted] noted that fireworks took place on millennium eve and that he had also participated in the VE day celebrations.

134. [redacted] described previously trying to acquire the Application Land in 2004, but was unsuccessful. Since 2004, and up until the gate was constructed in October 2020, [redacted] paid for the Application Land to be mowed approximately seven times per annum. He also trimmed the trees, cleared fallen branches, arranged and paid for fencing contractors to maintain the roadside fence.

135. In his questionnaire, [redacted] described a fence erected in 2004 which briefly prevented access until it was vandalised shortly after being erected. However, in his examination-in-chief, [redacted] read out the contemporaneous letters that he wrote about the fence. In a letter dated 10th September 2003, [redacted] wrote to Aylesbury Vale District Council about a fence that appeared at the Application Land as follows:

> "Contractors appeared on site today to fence off the remaining two sides of the green. Presumably this is in an effort to demark the land in their ownership, to prevent access and to give the Inspector the impression of derelict land. For the record, I should like it noted that since the very first houses were occupied in Mount Pleasant this green has been used by residents and villagers alike, without let or hindrance, for leisure purposes…"

136. A letter dated 11th September 2003 goes on to say:

> "My copy letter refers to a fence erected yesterday. Whether it will still be standing at the time of your inspection remains to be seen. On my return from work last evening three posts had already fallen down. This was not due to vandalism as may be held. On the contrary, two children were trying to replace the posts using a mallet. The posts have fallen because they were not erected properly in the first place. On inspection, they appear to be only some 5-6cm in the ground. Even with regard to the current ground conditions this is shoddy workmanship. A good wind will see the whole lot fall."

137. [redacted] noted that he did not see the fence go up or come down. He accepted that it was different from what he had answered in his questionnaire, but stated that the letters must be a more accurate statement of events. He also noted the fence in 2003 had no signage and no gate.

138. In his cross-examination, [redacted] was further asked about the fence. He accepted that he had not seen the fence fall down, so could not explain what caused it. [redacted]

[redacted] was directed to photos, which he was told showed the fence set in concrete. [redacted] responded that he had no knowledge of concrete being used in the fence. [redacted] additionally confirmed that posts from the fence could be seen in photos from the time. When asked about what he thought the fence meant, [redacted] responded that it could only mean "*keep in, keep out, or denote a land boundary"*. In re-examination, [redacted] commented that the fence from 2003 was there in part in photos from 2004 and had been "*rolled up*".

139. [redacted] stated that he did not see the Application map when he completed his questionnaire, but that he would have selected a different one to demonstrate the community/neighbourhood. In his opinion, the correct boundary would have been drawn around Mount Pleasant, which is a ring-fenced community.

[redacted]

140. [redacted] and has provided a witness statement in support of the application. He gave oral evidence to the inquiry.

141. [redacted] stated that the Application Land is a significant element of the character of Stoke Hammond. [redacted] explained that the council decided to object to an application to build on the Application Land in March 2021 because the council concluded that the open space should be maintained and there was no identified shortfall in housing for any age group in the village.

142. In cross-examination, [redacted] accepted he had not used the Application Land himself.

[redacted]

143. [redacted] provided a joint witness statement and seven photographs. [redacted] has additionally completed a questionnaire and gave oral evidence at the inquiry.

144. [redacted] moved to Mount Pleasant when their son, Tom, was 17 months old. The Application Land was used by their son and daughter as a recreational space, including football, running around, picking conkers, building snowmen and playing in the snow. The children would often play on the Application Land after school. The Application was also used again by their children, now teenagers, as an outdoor space during various COVID-19 restrictions, and by the community when people were clapping for the NHS. It was a close neighbourhood where they all get along very well.

145. [redacted] stated that use was regular between 2010 and 2015. Additionally, their nanny also made use of the Application Land between 2012 and 2015, with her toddler. [redacted] also described an annual Christmas party taking place at the Humphreys.

146. In her questionnaire, [redacted] describes two distinct informal pathways that were established across the Application Land by residents of Mount Pleasant to access Leighton Road for local walks and amenities in the village. She also notes her children making use of the Application Land as teenagers through exercise.

147. The photographs provided include two pairs of photographs, dated February 2007 and February 2012, depicting children playing in the snow. Additionally, two photographs were provided of the May 2020 VE day celebrations and another photograph showing a group of children in the Application Land, dated summer 2020.

148. In cross-examination, [redacted] accepted that there was less use post 2015, when her children no longer went to the primary school. [redacted] also described looking after her sister's dogs since 2006 for 12 weeks a year, other friends' dogs, and her own dog from November 2020. [redacted] additionally described VE day as the first organised event.

[redacted]

149. [redacted] previously resided, with her husband [redacted] [**AB/121**]. They have provided a witness statement (completed jointly) in support of the Application. [redacted] gave evidence at the inquiry.

150. [redacted] enjoyed use of the Application Land throughout the childhoods of their three children, all of whom were born while they lived at the property. They also enjoyed fireworks on the Application Land for millennium night, when fireworks were used, albeit this is outside the Application Period.

151. In cross-examination, [redacted] was asked about a fence going up during her time residing at Mount Pleasant. [redacted] recalled a fence going up, but did not see people putting it up or why it was put up. She agreed that the fence had not been there very long. [redacted] was taken to the photos and stated that she was not sure about concrete being used for the fence, but none of the posts were snapped. She stated the posts had fell over near No. 1 Mount Pleasant in the space of a few days. The collapse of the fence happened in stages, as one by one each post fell over.

[redacted]

152. [redacted] provided joint evidence with her husband, Alan, whose evidence is summarised above. She also gave oral evidence to the inquiry.

153. [redacted] said her children used the Application Land when they were young, up to the ages of 10-11. She said that they enjoyed picking up the autumn leaves, playing a leaf-flowing competition, and would put them in the brown bin. They have also done it on the road.

154. She said that Mount Pleasant was a community and people are always friendly and socialise. They have drinks together and go to the pub (in Stoke Hammond). She said that people from both Mount Pleasant and the wider Stoke Hammond village use the Application Land. The only formal event she remembered was the VE day celebration.

[redacted]

155. [redacted] has lived, with his wife [redacted]. They have provided a witness statement (completed jointly) and questionnaire (completed by [redacted] gave oral evidence at the inquiry.

156. [redacted] family have enjoyed the Application Land as a recreation area for their children, including play with frisbees, balls, and snowmen, and as an area for their dog. They also remark that after the fence was erected all the way around the Application Land in October 2020, the area became poorly maintained and became an eyesore. Prior to this, the land was properly maintained and the grass regularly cut during the spring and summer seasons.

157. [redacted] discussed the Stop Dorcas Lane Turbines campaign that a significant number of people from Mount Pleasant were involved in around 2011. [redacted] also stated that fireworks had occurred four times, 2010, 2011, 2013, and 2014.

158. In cross-examination, [redacted] remarked that it was just a small box of fireworks, not a large amount. [redacted] clarified that there were three members of the core group against the wind turbines, but there was a wider group involved in fundraising. [redacted] also stated that their children still made use of the green at ages 14 and 16.

The Case For The Objectors

159. Four witnesses gave evidence to the inquiry in support of the Objector.

[redacted]

160. [redacted], who lives at [redacted] provided a witness statement in opposition to the Application and gave oral evidence to the inquiry.

161. [redacted] and purchased the Application Land in Mount Pleasant in late 2003 for £100,000. In his witness statement, he stated that the land was fenced off in May/June 2004 after he lost a planning appeal to develop on the Application Land. Subsequently, he received a communication from [redacted] stating that the fence around the Application Land had suffered vandalism. [redacted] then visited the land and saw the wire fencing had been pulled down and some of the concreted posts broken off. He contended that this was caused by vandalism and not bad weather.

162. [redacted] also stated that he spoke to elderly residents living in front of the Application Land who had seen the fencing being pulled down and vandalised, but "*did not want to pressure them to take the matter further… as they were elderly… and I felt they would be vulnerable if asked to do so"*.

163. [redacted] explained that he chose not to erect another fence after the first fell because he expected it would be pulled down again and it would cost thousands of pounds. [redacted] sold the land to MAW in 2008, who then sold to the Objector in 2014. He has been involved in the planning application for the Objector as a planning consultant.

164. [redacted] was asked about the discrepancy between the letters between [redacted] and the Council describing the fence being erected in September 2003 and [redacted] evidence that it was in May/June 2004. [redacted] responded that it was his understanding that the fence only went up after the application was rejected. He gave evidence that the fence took a week to put up because the concrete had to settle and the wire had to be put through. He stated that when he inspected the fence for vandalism the wire had been cut.

165. In cross-examination, [redacted] could not explain the discrepancy between dates for the fence. He stated that the first fence took three people, including a driver. When asked about the elderly residents he had spoken to, [redacted] could not state who they were and explained that he would be unable to identify them today. He explained that the elderly residents told him they did not want to get involved. It was accepted that there were no communications with Mount Pleasant.

[redacted]

166. [redacted]. He provided a witness statement in opposition to the Application and gave oral evidence to the inquiry.

167. [redacted] worked as a foreman for [redacted] in 2003, building two houses in Great Brickhill which had view of Stoke Hammond. [redacted] averred that he was asked with his workers to erect a fence and locked gate around the Application Land

with signage saying "private property, keep out". The fence was made of wooden posts, concreted into the ground with sheep wire and strands of wire. He noticed after a few weeks that the fence had been vandalised.

168. [redacted] described the fence as taking 4-5 days to erect. When asked about the process by which he said the fence was vandalised, [redacted] responded that he had identified the wire as sagging after a few weeks, which should have normally remained tense. He noticed this when driving past.

169. Additionally, [redacted] said that during the period working in the area between June 2003 and September/October 2004, they never witnessed any person using the Application Land at Mount Pleasant. But in cross-examination, he accepted that he would only have been driving through relatively infrequently (once a day) and would not have gotten out of his car. [redacted] suggested that he did not get out of the car to check why the fence was sagging because he did not need to and the fence was clearly falling over. He stated that there were 20-25 posts put up.

[redacted]

170. [redacted]. He has provided a witness statement in opposition to the Application and gave oral evidence to the inquiry.

171. [redacted] is a rural property and land consultant. The Application Land was sold by his father in late 2003 and purchased by [redacted] through Civil Utilities Limited. He stated that shortly after the purchase, a plain wire fence with wooden posts was erected and gated with a locked gate. He stated that he noticed the removal of the wire and posts after a short period.

172. [redacted] that the fence came down over a period of many months. The top wire was described as coming off first, then the drooping wire. Then the posts seven to eight months later were found moved to a pile to the west of the site. [redacted] only had sight of this from his car and did not get out to look at the piles.

173. In cross-examination, [redacted] stated that he would drive past the Application Land when he visited the field three times a week and when he visited the village every day. He accepted that when he passed the green in his vehicle, he would only have sight of the Application Land for a few seconds.

[redacted]

174. [redacted] He has provided a witness statement in opposition to this application and gave oral evidence to the inquiry.

175. [redacted] stated he had previously lived in Stoke Hammond for three years and Bletchley beforehand. Generally, he has lived and worked in the area for over thirty years. Throughout these periods, he said that he had not seen the Application Land being used for recreational or social activities by anyone.

176. In cross-examination, [redacted] acknowledged that he had previously sold land to [redacted]. He accepted that he would only pass the Application Land for seconds each time, but stated he went past it sometimes two-three times a day.

APPLICABLE LEGAL PRINCIPLES

The Statutory Test

177. 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) […]*
>
> *(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);
(b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation."

178. 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.

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

180. The requirements of s. 15 (3) of the 2006 Act 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. the application is made within the relevant period.

181. 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*').

182. 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.

183. 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 [redacted] 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) "a significant number of the inhabitants"

184. Whether the users of the land amounted to a "significant number" of the locality or neighbourhood is generally a matter of impression, but must "*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*" per Sullivan J at [71] in *R (oao Alfred McAlpine Homes Ltd) v Staffordshire County Council* [2002] EWHC 76 (Admin); [2002] 2 PLR 1.

185. Additionally, it will not be fatal to an application that people other than inhabitants of the requisite locality or neighbourhood have also been using the land for the requisite purposes, *R v Oxfordshire CC Ex p. Sunningwell Parish council* [1999] 3 W.L.R. 160, HL.

(b) "of any locality, or of any neighbourhood within a locality"

186. A locality is an administrative district of an area with legally significant boundaries, such as a borough, parish, manor.

187. A neighbourhood must be more than an arbitrary area delineated on a plan, with a "sufficient degree of cohesiveness" that is capable of definition (*R (on the application of Cheltenham Builders Ltd) v South Gloucestershire DC* [2003] EWHC 2803 (Admin). An application may be successful on the basis of user by inhabitants of more than one neighbourhood within a locality and by user within one or more localities (*Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438).

188. In *R (on the application of Lancashire CC) v Secretary of State for the Environment, Food, and Rural Affairs; R (on the application of NHS Property Services Ltd) v Surrey CC* [2018] EWCA Civ 721, Lindblom LJ described "cohesiveness" at §104 as "*a distinctly impressionistic and protean concept, which allows ample scope for differences of judgment*." In *R (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and another) v. Oxfordshire County Council ("the Warneford Meadow case")* [2010] LGR 631, the court rejected an argument that a neighbourhood need not have defined boundaries and said that to qualify as a neighbourhood an area must be capable of meaningful description and have "pre-existing cohesiveness."

189. The DEFRA Guidance to the 2006 Act for commons registration authorities specifically comments on the Warneford Meadow Case, observing (at §6.10.28) "*that would seem to mean that the attribute of cohesiveness should have predated the period of use relied on and should not be dependent on use of the claimed green – in other*

words, it is not enough that the only unifying feature of the claimed neighbourhood is its inhabitants use of the claimed green."

190. At [15-44] of *Gadsen*, the meaning of neighbourhood under other statutory regimes was also considered:

> "The cases on what constitutes a neighbourhood under other legislation have asked whether particular areas are "sufficiently distinctive to constitute a neighbourhood of its own" and whether they have a feeling of a community or neighbourhood. In one case [*Sainsbury's Supermarkets Ltd v National Appeal Panel for Entry to the Pharmaceutical Lists* (2003) S.L.T. 688], the evidential factors which were noted as being helpful to identifying whether or not an area comprised a neighbourhood included: whether it had natural boundaries or distinct boundaries formed by a large road such as a motorway; the presence or otherwise of facilities which might be expected to exist in a given neighbourhood, including shops, primary schools and a post office; differences in housing types and standards; and differences in socioeconomic circumstances. The court stressed that these were only relevant indicators and the absence of or difference between certain factors did not prevent an area being a neighbourhood."

191. A housing estate is capable of being a neighbourhood, *R (McAlpine) v Staffordshire County Council* [2002] EWHC 76 (Admin).

(c) "indulged as of right"

192. User "as of right" requires that the use by the requisite inhabitants has been "*nec vi, nec clam, nec precario*", i.e. not contentious or secret, and without permission of the owner, *Sunningwell*. In *R (on the application of Lewis) v Redcar and Cleveland Borough Council and another,* the Supreme Court clarified that "as of right" meant that user was being conducted "*openly and in the manner that a person rightfully entitled would have used it."* However, "as of right" does not require subjective belief on the part of the users in the existence of the right (*Sunningwell*).

193. Use by force is not user as of right, whether force is exerted by physical means or in defiance of notices prohibiting such use. In *Betterment Properties (Weymouth) Ltd v Dorset County Council* [2012] EWCA Civ 250, the court considered whether the requisite user had been established in circumstances where C had erected signs warning

the public that the land was private, but the signs had been repeatedly taken down or vandalised. At §§49-52, Patten LJ considered:

> "49 All the relevant authorities in this area proceed on the assumption that the landowner must take reasonable steps to bring his opposition to the actual notice of those using his land. Disputes about whether the wording of the notices was sufficient to make it clear that any use of the land was not consented to and would be regarded as a trespass would be irrelevant if the landowner did not have to make his position known. They assume that some process of communication is necessary. If the landowner keeps his opposition to himself and makes no outward attempt to prevent the unauthorised use of his land he may be taken to have acquiesced.
>
> 50. … What Judge Waksman refers to as the putative knowledge of the reasonable user means (as he explains) what the reasonable man standing in the position of the actual user should have realised. It does not attribute knowledge to the reasonable user which the actual user walking over the land at the relevant time would not have had. Users of the land are therefore treated as more perceptive than they might actually have been but they are not deemed to have seen things which were not there.
>
> […]
>
> 52. I agree with the judge that the landowner is not required to do the impossible. His response must be commensurate with the scale of the problem he is faced with. Evidence from some local inhabitants gaining access to the land via the footpaths that they did not see the signs is not therefore fatal to the landowner's case on whether the user was as of right. But it will in most cases be highly relevant evidence as to whether the landowner has done enough to comply with what amounts to the giving of reasonable notice in the particular circumstances of that case. If most peaceable users never see any signs the court has to ask whether that is because none was erected or because any that were erected were too badly positioned to give reasonable notice of the landowner's objection to the continue use of his land."

194. Additionally, the Court addressed the question of "*whether the physical disruption to public use caused by fencing off of the site for about four months was sufficient to interrupt user of that land*" (per Patten LJ, §70). At §71, Patten LJ observed:

> "71. It seems to me that for the actions of a third party to be taken into account there must be a physical ouster of local inhabitants from the land and the disruption must be inconsistent with the continued use of the land as a village green. If the two competing uses can accommodate each other (as they did in *Redcar (No 2*)) then time does not cease to run. But here the exclusion was complete and the use of the land for the drainage scheme was not compatible

with it remaining in use as a village green. The judge was therefore correct in my view to hold that there had not been twenty years' user of the works site."

195. The authorities do not require that an owner support their objection to the inhabitants' use by effective physical obstruction or legal action – see *Winterburn v Bennett* [2016] EWCA Civ 482 at [36]. Richards LJ went on to explain that "As it seems to me, the decision of this court in *Betterment [2012] 2 P & CR 3* is inconsistent with these propositions. The court there accepted that the erection and re-erection of signs was all that the owner needed to do to bring to the attention of those using the land that they were not entitled to do so."

196. *Gadsden* states, at [15-61], in relation to fencing on the land, as follows:

> "The erection of fencing is usually an indication that the landowner is denying local inhabitants access to, an thus use of, his land. A person who crosses or breaks a fence undertakes an act which is forceful and thus any use he makes of the land will not be "as of right". Subsequent users of the land, who may themselves have entered without direct force through a broken opening, will nevertheless also enter forcibly to the extent that they have knowledge that their entry is contested. There will, however, come a time where their knowledge of the landowner's objection will fade, and thus the landowner could be expected to re-erect broken fencing regularly. Similarly, if the fencing has gaps, or is broken down, or gates or stiles have been erected, its message to users of the land may be equivocal, and thus fail adequately to contest the user."

(d) "in lawful sports and pastimes on the land"

197. The composite phrase "lawful sports and pastimes" has long been understood to include informal recreation, such as dog walking and playing with children (*Sunningwell*)[3] and informal recreational walking and wandering (*TW Logistics Ltd Essex CC* [2017] EWHC 185 (Ch)). However, this must be distinguished from walking along paths or other routes across the land (ibid), as the court observed in *R (on the application of Laing Homes Limited v Buckinghamshire County Council* [2003] EWHC 1578 (Admin), at §102:

> "… it is important to distinguish between use which would suggest to a reasonable landowner that the users believed they were exercising a public right

[3] At 356F-357E.

> of way – to walk, with or without dogs, around the perimeter of his fields – and use which would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of his fields."

(e) "for a period of at least 20 years"

198. 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*.

199. It was noted by the court in *Naylor v Essex CC* [2014] EWHC 2560 (Admin) at para [71] that "the relevant question is whether the use of any land for lawful sports and pastimes has continued uninterrupted during the relevant 20 year period."

(f) "the application is made within the relevant period"

200. This requires that an application to register land as a TVG is made within one year of the cessation of use of the Application Land.

Amendments to TVG Applications

201. The 2006 Act does not make provision for the withdrawal or amendment of applications, or the registration of only part of an application site. In *Laing Homes*, Sullivan J said at [143] in respect of the predecessor legislation to the 2006 Act:

> "143.. He reiterated this conclusion in paragraph 13.1 of the Report when dealing with "Locality". I agree with the Inspector. The purpose of giving notification of an application to the owner and occupier and to the public (see Regulation 5 of the Regulations, above) is to elicit further evidence and information, in addition to that contained in the application. Form 30 is not to be treated as though it is a pleading in private litigation. A right under section 22(1) is being claimed on behalf of a section of the public. 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."

202. In *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674, another case relating to the previous legislation, Lord Hoffmann held at §61 (emphasis added):

> "[61] There remain, however, more general questions about the power of the registration authority (acting by its inspector) to allow amendments to the application form and to register an area of land different from that originally claimed. It is clear from the New Land Regulations that the procedure for registration was intended to be relatively simple and informal. The persons interested in the land and the inhabitants at large had to be given notice of the application and the applicant had to be given fair notice of any objections (whether from the land owner, third parties or the registration authority itself) and the opportunity to deal with them. Against this background, it seems to me that the registration authority should be guided by the general principle of being fair to the parties. It would be pointless to insist upon a fresh application (with a new application date) if no prejudice would be caused by an amendment, or if any prejudice could be prevented by an adjournment to allow the objectors to deal with points for which they had not prepared. I agree with the approach taken by [redacted] and the general remarks of Carnwath LJ *[2006] Ch 43*, 73–75. In case there should be any doubt, I add two footnotes. First, there is no rule that the amended application must be for substantially the same land as the original application. If it relates to a larger or different piece of land, the inspector or registration authority may well think that fairness requires republication of a new application. But the matter remains one for the exercise of their discretion. Secondly, the registration authority has no investigative duty which requires it to find evidence or reformulate the applicant's case. It is entitled to deal with the application and the evidence as presented by the parties."

Discussion

203. The Application Land is identified in the Application and has clearly defined and fixed boundaries. The area identified as the green was consistent across oral and written witness evidence. Additionally, there is no dispute in any of the evidence that the area of land comprises "land" within the meaning of section 15(3) of the 2006 Act. Accordingly, the Application Land is capable of registration as a TVG.

204. The Application states that use as of right ended on 19th October 2020. Therefore, as noted above the Application Period, the relevant 20-year period for the Application, is 19th October 2000 until 19th October 2020.

1. A SIGNIFICANT NUMBER OF THE INHABITANTS

205. What constitutes a significant number has to be assessed in the context of the locality or neighbourhood within a locality relied upon, but should be sufficient to indicate general use. In my view, that requirement has been met in the circumstances of the Application, wherein evidence was provided of user by previous or current residents of each of the sixteen households in Mount Pleasant. The Objector has taken no point challenging whether a significant number has been met.

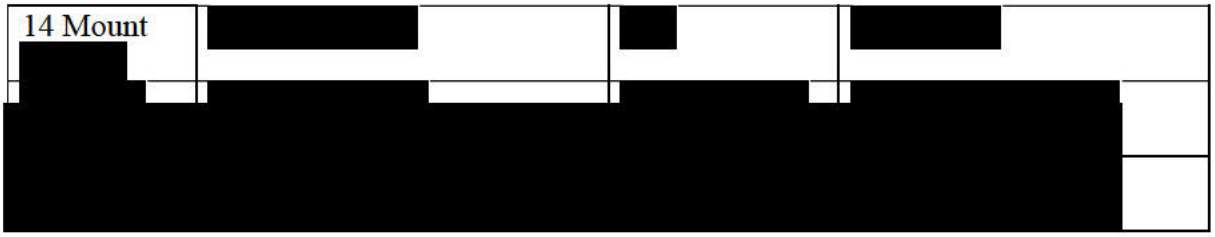
2. OF ANY LOCALITY, OR OF ANY NEIGHBOURHOOD WITHIN A LOCALITY

Locality and Neighbourhood: Procedure

206. The Application dated 19th November 2020 identifies the Application Land and "locality or neighbourhood within a locality" by way of an attached map (**Appendix 2**). This map shows the Application Land outlined in black and a larger area outlined in red. The red boundary contains some but not all of the houses at Mount Pleasant and dissects the property at 6A Mount Pleasant.

207. I have made the following table to illustrate which addresses are included and excluded by the red boundary, and how it corresponds to the Applicant user evidence.

RED BOUNDARY	NON-RED BOUNDARY
1 [redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]



208. In the Objector's summary of legal arguments, at [27], and in its Closing submissions at [7]-[30], it was contended that the Application was defective because it did not properly identify the locality or neighbourhood on behalf of which the Application was being made. The point was made forcefully that, per Lord Hoffmann at [61] in the 'Trap Grounds' case, the Registration Authority is not under any investigative duty to find evidence or reformulate the Applicant's case. The Objector points out that both *Laing Homes* and 'Trap Grounds' related to the predecessor legislation and so are not applicable to the requirement to use Form 44 under the current regime. The Objector also highlights the further enquiries made in this respect by the Registration Authority during which the Applicant confirmed the basis of its neighbourhood within a locality as being the red line area.

209. The point was further addressed in the course of the inquiry and I asked the Applicant whether he wanted to make an application to amend the Application in order to clarify which neighbourhood was being relied upon. The Applicant chose not to make any application to amend, instead pointing to Lord Hoffmann's comments in the 'Trap Grounds' case to support the view that the Registration Authority could consider the evidence and determine the question on that evidence subject to considerations of fairness and prejudice to all parties. The Applicant relied on the principle that a drafting error or mistake should not, on its own, defeat an otherwise valid application.

210. The central basis of the Objector's contention that the Application is defective in terms of the claimed neighbourhood is regulation 3 of the 2007 Regulations which requires applications to be made on Form 44. However, it does not follow, in my view, from the use of the word "*must*" in regulation 3 that errors in an application must render it invalid, with no possibility of amendment or consideration on the substance of the evidence submitted or heard. Neither regulation 3, nor any other regulation in the 2007 Regulations deals with the ability to make amendments to the application.

211. On the other hand, the ability of a registration authority to determine an alternative locality was considered by the court in *Laing Homes* and the possibility of amendments was dealt with in 'Trap Grounds', where Lord Hoffman held that the registration authority may allow amendments to the application, but should be guided by the general principle of fairness. In my view, the Objector's contention that an application becomes invalid if the locality and/or neighbourhood is not properly identified is too technical a point upon which an entire application might be defeated. The courts have repeatedly emphasised that the relaxation of the statutory test in relation to neighbourhood/locality was intended to assist applicants from this kind of technical issue becoming fatal to an application. Rather, in my judgment, it must be considered whether fairness requires the Applicant to be confined to the information stated on the Application, or whether, subject to the evidence supporting and objecting to the Application, an alternative neighbourhood within a locality may be determined in light of the evidence as a whole.

212. On the power to amend, I note the distinction drawn by the Objector between the facts of *'Trap Grounds'* and the present case. In *'Trap Grounds',* Lord Hoffman was dealing with the ability to allow amendments *on application,* while an amendment in the present case would *originate with the Inspector*. While that may be the case, I see no reason in principle why the power to determine an alternative neighbourhood should only be exercisable when an application is made – particularly where no application procedure is provided for by the TVG regime. Such a power is inherent in the Registration Authority and as observed by Lord Hoffmann, limited by principles of fairness.

213. Having regard to the principle of fairness, I note firstly that the Applicant had ample opportunity to consider whether an amendment to the application was needed. In correspondence between the Applicant and Buckinghamshire Council dated 16 to 26 May 2022, it was clarified that the locality was Stoke Hammond and queried whether the red boundary in MAP 1 (**Appendix 2**) was the "neighbourhood" for the purpose of meeting the statutory requirements. By way of email dated 26 May 2022, the Applicant affirmed twice that the original outline red boundary was the neighbourhood and declined to include the residences at 12 Bragenham Side, Moat Farm, and Bridge Farm in the Application's identification of the relevant neighbourhood. Additionally, I queried this point again on the first day of the inquiry and the Applicant was asked

whether he might wish to make an application to amend the neighbourhood relied upon. The Applicant declined that invitation the following day.

214. It was only in his oral evidence that the Applicant explained the reason for the error: he had copied the map for the application from the original development plan map. He called this an "inadvertent mistake" as it excluded the later development at Mount Pleasant. This was reiterated by Ms. Mahoney under cross-examination. However, the map used for the Application appears to depict all of the homes constructed at Mount Pleasant as it has illustrations for sixteen homes, some including their numbers. It is unclear to me how such a mistake could occur, even if the homes included in the red boundary may correspond to those within the "first phase" of Mount Pleasant development. Accordingly, this does not appear to me a be a satisfactory explanation for the mistake.

215. However, despite the Applicant's initial assertions to the contrary and the fact that no application to amend was ever made, it is clear in my view that the neighbourhood within the Application was originally intended to refer to the homes at 1 to 16 Mount Pleasant. In section 7 of the application, the second paragraph referred to sixteen dwellings within Mount Pleasant and the Application was supported with questionnaires completed by residents of those dwellings, including houses outside the red boundary. Likewise, in his correspondence with the Council, the Applicant stated that "*all the user evidence forms were submitted mainly by the users of houses 1 to 16 in Mount Pleasant. I'm assuming that is the area in red."*

216. While the Objector submits that an amendment to the neighbourhood articulated in the Application would be prejudicial, no such prejudice has been articulated. Indeed, the Objector appears to acknowledge, at para [20] (iv) of its Closing Submissions, that the point is a technical one. The evidence corresponding to user outside the red boundary was provided prior to the inquiry and the Objector has had ample opportunity to respond and cross-examine on it, and indeed has done so. In my view, the principle of fairness supports a final resolution of the Application on the basis of the neighbourhood for which evidence was provided and disregarding the red boundary drawn. It would be pointless and contrary to fairness to insist that the Applicant be confined to the evidence

contained within the red boundary, where written and oral evidence has already been provided by the residents of Mount Pleasant outside that boundary.

217. Accordingly, I find on the basis of the evidence submitted and heard by me at the inquiry that the locality identified by the Application is Stoke Hammond and the neighbourhood within that locality, in light of the evidence as a whole, should be determined to be 1 to 16 Mount Pleasant. The Application should be considered on the merits of the evidence before me and not rejected on the basis of a purely technical point in circumstances where no real, as opposed to technical, prejudice has been shown by the Objector.

Locality and Neighbourhood in Law

218. Stoke Hammond is an area with legally significant boundaries, being a village and a parish, and accordingly meets the definition of "locality."

219. Following clarification of the Application, the Applicant puts forward the sixteen houses of Mount Pleasant as a neighbourhood within the locality of Stoke Hammond. While "neighbourhood" is an ambiguous term, the courts have held in this context that it refers to an area that is recognisable as having a sufficient degree of cohesiveness such that people would recognise it as being separate or different from the areas immediately surrounding it. As the Objector highlights, it cannot be an area within any line drawn on a map. Generally, neighbourhoods and cohesiveness are a matter of impression for the decision-maker.

220. However, as the Objector identifies, the relevant neighbourhood should have a cohesiveness that pre-exists the Application Land. This means that it would not be sufficient if the Application Land was the only unifying feature between all the residents. However, "pre-existing" does not mean that evidence of cohesiveness should be disregarded if it involves use of the village green. Rather, it is a question of fact, taking all the circumstances into account, whether cohesiveness is *dependent* solely upon the existence of the green.

221. As a starting point, I note that the sixteen properties are collectively referred to as "Mount Pleasant" and share a common address. Having regard to the plots of land that pre-existed the grant of the Permission, I note that the area was identified as "land adjacent to Hunters Lodge" but was identified as Mount Pleasant in the map relied upon (see **Appendix 3**). Accordingly, Mount Pleasant may be described as historically cohesive, having acquired a collective description.

222. Evidence was given at the inquiry that Mount Pleasant is a ring-fenced community with no public rights of way across it. There is just one point of entry to Mount Pleasant for vehicles on Leighton Road and all the residential properties were constructed in a broadly similar style. The residences of Brook Farm Close back up onto the properties of 11, 12, 14, and 16 Mount Pleasant but are separated by a boundary wall and are, in my view, of a noticeably different character and design. The properties of 4 to 10 Mount Pleasant similarly border the properties of Hunters Lodge, Hunters Lodge Cottage, Hunters Barn, and Hunters Stables (**AB/15**), but there also appears to be a separating boundary wall and the properties are of different design and character. Equally, the properties of Hunters Lodge are accessible by a different point of entry on Leighton Road. Accordingly, I am satisfied that Mount Pleasant is visually distinct and identifiable as an enclosed estate of houses.

223. I note that there are no community facilities like a post office or shop that would indicate a small self-contained community. While there are undoubtedly a number of facilities available in the immediate area, including shops and a primary school, these facilities serve a much wider catchment. Additionally, I note that there is no formal Resident's Association or Neighbourhood Watch serving only Mount Pleasant.

224. Unfortunately, there was a substantial degree of confusion both prior to and throughout the inquiry as to the significance of the red boundary in the map attached to the original application. However, I find it significant that the oral evidence given as to the extent of the neighbourhood was broadly consistent across the witnesses. When asked, most witnesses agreed that the extent of the neighbourhood were the sixteen houses contained within the boundaries of the fence that encloses Mount Pleasant.[4]

[4] Evidence [redacted]

225. Further, there was consistent evidence across witnesses as to the community activities which have taken place in Mount Pleasant. The large majority of witnesses reported attending a community-organised celebration for VE day on the Application Land[5] and there were multiple accounts of millennium celebrations (albeit that this occurred before the Application Period) and fireworks.[6] Additionally, consistent evidence was given that the Application Land was used by the residents of Mount Pleasant collectively for birthday parties, drinks, playing football and other sports, and congregating before and after school.

226. The Objector's primary submission with respect to the status of Mount Pleasant as a neighbourhood is that the Application Land is the unifying factor between the residences and accordingly falls afoul of the *Warneford Meadow* requirement that cohesiveness be pre-existing. In particular, the Objector observes that the Application Land "is the focal point of residents to come together." However, I note again that, as affirmed in *Leeds Group Plc* (at §27), "neighbourhood" is not intended to set a high bar for applicants to surpass. Rather, the amendment which introduced the words "or of any neighbourhood within a locality" into the old definition of a green (retained in s. 15 of the 2006 Act) was intended to remove unnecessary technical obstacles to TVG registration.

227. In any case, even if the community activities which took place on the Application Land were disregarded in this respect, there is nevertheless evidence of a strong sense of community between residents of Mount Pleasant. [redacted] gave evidence that he organises an annual Christmas party at his residence and every resident of Mount Pleasant had been present at least once. [redacted] likewise corroborated their attendance of the Christmas drinks. Evidence was also given that members of the Mount Pleasant community help each other out. [redacted] recounted that neighbours would help mow the lawn for each other, [redacted] described neighbours sharing produce, and [redacted] gave evidence that

[redacted]

she helps run the community WhatsApp. It is unnecessary to recount the full extent of the evidence here, but in the circumstances, it seems to me very unlikely to me that the "cohesiveness" of Mount Pleasant is *dependent* upon the use of the Application Land and not to the community spirit among the residents.

228. In conclusion on this point, the requirement for "cohesiveness" has in my view obviously been met and Mount Pleasant is a neighbourhood for the purposes of the statutory test. Primarily, I note that Mount Pleasant is identifiable as a cohesive collection of houses of similar design and build. Secondly, there was consistent evidence given of the shared use of the Application Land by the community. Finally, the cohesiveness of the community does not appear to be dependent upon the use of the Application Land but rather on the identity of Mt Pleasant as a neighbourhood in its own right, distinct from the wider village of Stoke Hammond.

3. INDULGED AS OF RIGHT

229. For the use of the Application Land to have been "as of right" for the 20-year period it needs to have been without secrecy (*nec clam*), without force (*nec vi*) and without permission (*nec precario*). There is no allegation that the use of the Application Land was carried out in stealth or with the permission of the landowner. Accordingly, only *nec vi* remains in issue.

230. With regard to use without force, it should both be considered whether use was *by force* and whether it was *contentious.* Per *Betterment Properties,* it has to be considered whether [redacted] took reasonable steps as landowner to bring his opposition to the actual notice of those using the Application Land. Was his response, and those of subsequent landowners including the Objector, commensurate with the scale of the problem they faced in relation to the Application Land. What matters is what "*the reasonable man standing in the position of the actual user*" would have understood.

231. It is the Objector's case that a fence and locked gate was constructed which prevented access to the Application Land in September 2003 for a period and a warning sign was put up. While there was substantial confusion in the evidence at the inquiry as to when the fence was constructed, a letter written by [redacted] indicates that the

fence was constructed on 10th September 2003. This was confirmed by the evidence of title, which indicated that [redacted] acquired the Application Land on 4 August 2003 and disposed of it to the Civic Utilities Limited two days later on 6 August 2003.

232. While the Objector could not give evidence as to precisely when the fence became no longer fit for purpose, it is the Objector's case that the fence was vandalised by residents of Mount Pleasant at some point in the weeks after. As a consequence, it is contended that use after the 10th September 2003 was contentious for a significant period as it was by force and incapable of contributing to the test of user "as of right".

233. In my view, three issues arise concerning the construction of the fence:

i. Whether the fence interrupted the twenty-year period of use by preventing access to the land;
ii. Whether the construction of the fence included a gate and sign;
iii. Whether there was vandalism of the fence;
iv. Whether use of the Application Land thereafter was contentious?

(i) Prevention of Entry

234. It is accepted by the Applicant that a fence was previously constructed to prevent access to the Application Land. However, the Applicant avers that the fence did not interrupt user because the fence fell down shortly after construction, within a matter of a day or days, as opposed to months or longer.

235. In my view, the letters written by [redacted] to the Council on 10th and 11th September 2023 are particularly persuasive. By the letter dated 10th September 2003, [redacted] wrote:

> "Contractors appeared on site today to fence off the remaining two sides of the green. Presumably this is in an effort to demark the land in their ownership, to prevent access and to give the Inspector the impression of derelict land. For the record, I should like it noted that since the very first houses were occupied in Mount Pleasant this green has been used by residents and villagers alike, without let or hindrance, for leisure purposes…"

236. The "two sides" of the Application Land were those necessary to build a fence around in order to prevent access. The second letter from [redacted] to the Council dated 11th September 2003 goes on to say:

> "My copy letter refers to a fence erected yesterday. Whether it will still be standing at the time of your inspection remains to be seen. On my return from work last evening three posts had already fallen down. This was not due to vandalism as may be held. On the contrary, two children were trying to replace the posts using a mallet. The posts have fallen because they were not erected properly in the first place. On inspection, they appear to be only some 5-6cm in the ground. Even with regard to the current ground conditions this is shoddy workmanship. A good wind will see the whole lot fall."

237. It must be noted that these letters are the only contemporaneous evidence of the fence's construction, and are evidently quite significant for establishing when the fence began to come down. There are however, some inconsistencies with the oral and written evidence given by the Applicant. [redacted] recalled the fence having disappeared within a day or two, and [redacted] likewise suggested that the fence may have come down after one day. On the other hand, [redacted] and [redacted] describe the posts falling over in stages, starting with the posts near 1 Mount Pleasant.

238. Reconciling the Applicant's evidence, on the balance of probabilities, I find that the fence most likely came down in stages. [redacted] is clear that three posts had fallen down after the space of a day. As a matter of logic, whether or not vandalism took place, it makes sense that a fence would come down in stages as opposed to all at once.

239. In my view, it is unlikely that the construction of the fence created a physical ouster of the local inhabitants from the Application Land, but that the fence started to come down in stages shortly after being constructed. As there was no disruption inconsistent with previous use, Mount Pleasant use of the Application Land continued. However, as discussed further below, it does not follow that use *as of right* continued. That must be considered in relation to the evidence of what happened next.

(ii) Gate and Sign

240. In his evidence, [redacted] stated that he was instructed to erect a fence and locked gate around the Application Land, which was built over four to five days. This was

repeated at the inquiry, there were five witnesses at the inquiry who were living in Mount Pleasant at the time the fence was constructed: [redacted]. These witnesses gave consistent evidence that there was no sign and gate constructed with the fence, or that they could not recall one. In the circumstances, I consider it unlikely that witnesses for the Applicant would not have recalled the sign and gate if they were there and I found the evidence of the witnesses on this point to be credible.

241. I have been provided with various pictures in the Objector's Bundle showing evidence of what the Objector says is the fence. I was also pointed to such evidence on the site visit. These pictures generally relate to a fence on the Application Land, but it is unclear to me whether they relate to the fence as constructed in 2003. In one photo, there is a fence with metal wire and wooden posts against which a pitchfork is leaning and here is a small hole of overturned dirt nearby. The next image shows a hole with what appears to be concrete in the ground. Having regard to those images in the context of all the evidence, it seems to me most likely that the concrete shown in the photos and shown to me on site relates to the fence built in 2003.

242. Ultimately, in light of the consistent evidence given by witnesses for the Applicant and otherwise lack of photographic evidence confirming a sign was erected, or written evidence from the Objector verifying that a sign was instructed to be erected, I would conclude that no sign was erected, though on the basis of the concrete shown to me, it appears likely that some or all of the fencing may have been set in concrete. In relation to a gate, it does seem likely to me, on the balance of probabilities, that some form of access or gate would have been constructed as part of the fencing though its precise location is not evidenced.

(iii) Vandalism

243. The Objectors suggest that the fence was vandalised by the residents of Mount Pleasant and such vandalism was used to gain entry to the Application Land by force. The posts for the fence were, according to [redacted], concreted into the ground when they were erected and being secure, the Objector contends, would not have fallen down by themselves or weather. As I have found, the photo described above, and the physical

evidence seen on site, supports the Objector's contention that concrete was used to build the fence.

244. By contrast, there is little evidence supporting the Objector's assertion that the fence was vandalised. The Objector relies on the evidence of [redacted], [redacted] in support of vandalism, but [redacted] evidence is unsubstantiated and the [redacted] evidence is repetitious. Additionally, it is not clear in any of the evidence whether vandalism was actually witnessed.

245. I note that both [redacted] state they reported vandalism to [redacted] they each accepted in cross-examination that they had not inspected the fence themselves. Rather, they had made their observations from a distance while travelling in a moving car. In any case, their identification of sagging/drooping wires is equally consistent with an explanation of poor workmanship or low-quality or inadequate materials which were not fit for purpose.

246. In reality, the basis of the Objector's evidence of vandalism is the evidence of [redacted] who stated that he visited the Application Land and saw the wire fencing pulled down and some of the concreted posts broken off. However, broken concreted posts were not identified by either [redacted]. Dunn, which may well have been easier to identify than a drooping wire. Nor are broken posts reported in the evidence of any other witness. In oral evidence, [redacted] suggested that the wire had been cut, but this point was not substantiated by him or the evidence of [redacted] additionally stated he spoke to elderly residents living in front of the Application Land who had seen the fencing being pulled down and vandalised, but upon questioning, was unable to identify who they were. These residents did not provide any evidence to the inquiry and so I do not place significant weight on this evidence.

247. While the Objector suggests that the posts were set in concrete, it seems equally possible that only some were set in this way or that, during the process of settling, some of the posts were blown over by a wind, providing access to the Application Land. On this point, [redacted] gave evidence that the fence could take a week to put up

because the labourers would have to wait until the concrete settled before being able to put the wire through the posts. Additionally, [redacted] contemporaneous letter is again particularly significant, having identified the construction of the fence to be of poor quality almost immediately after it was completed and reporting three posts to have been blown over in the space of a day. [redacted] previously suggested that the fence may have become damaged by children playing on it or attempting to put it back up, but in cross-examination accepted that he had not seen whether vandalism occurred.

248. Additionally, the Applicant's case that the fence was faulty is supported by its quick disappearance in the months after. There is a photo of three children playing in the snow some months later where only one small wooden post is visible. There appears to be no sheep wire in use. Likewise, another photo taken through the trees that shows a series of wooden posts around the Application Land, with no wire apparent. The photo index which corresponds to the Applicant's photos states that these photos were taken in January 2004. I note also that [redacted] remarked that the posts had disappeared by the time of the Inspector's visit in March 2004.

249. On the other hand, while vandalism was likely not used to gain entry, it seems likely to me that members of Mount Pleasant interacted with the fence in some respect, after parts of it began to fall. Unfortunately, there is a limited explanation available across the evidence as to how the fallen posts or wire were removed. In particular, there was no evidence from either party that anyone returned to the sight to manage the breaking fence. This is consistent with the evidence that children were seen playing on the fence and [redacted] evidence that the posts were found in a pile to the west of the site seven to eight months after construction. Whether such interactions amount to vandalism of itself is a separate issue, not relevant to whether use was by force.

(iv) Contentious Use

250. Where the owner of the Application Land makes their position about use clear, use of the Application Land will not be "as of right", per *Betterment Properties.* The authorities do not require that an owner support their objection to the inhabitants' use by effective physical obstruction or legal action (see *Winterburn v Bennett*).

251. The photographic evidence, combined with the consistent evidence of many of the witnesses confirms, in my view, the Objector's evidence as to what the fence would have looked like, i.e. wooden posts wrapped in sheep wire. While the presence of such a fence, even without a sign or gate may have indicated an intention to block access to the Application Land, in my view, the question in this case, applying the principle drawn from the caselaw in *Betterment Properties* is whether the erection of such fencing was, absent any other intervention in the Application Period was commensurate with the problem the landowner(s) faced at the Application Land.

252. In my view, the evidence is clear that the fencing came down quickly. It was possible for users to access the Application Land, as they had incontrovertibly been doing for many years prior, within a few days at most. The fencing thereafter came down in stages, as I have already found. Although the evidence suggests that the posts for the land were upwards for a long period and even if parts of the wire were removed, inhabitants of Mount Pleasant could be forgiven for not understanding the actions of the landowner in fencing the Application Land to be unequivocal in circumstances where no further attempt was made to restrict or block access or the widespread use of the Application Land that in fact happened.

253. On this point, it is highly relevant that the landowner never returned to the Application Land after discovering that the fence had fallen into a state of disrepair and did not communicate with the residents of Mount Pleasant directly to express his opposition to their use. I note that this principle has been held not to extend beyond that which is required to make the landowner's position *clear,* per *Winterburn.* However, in my view, the single erection of fencing without more is not effective. Local inhabitants continued to use the Application following a few days uninterrupted and for the whole of the rest of the Application Period.

254. It is important, in my view, that both *Betterment Properties* and *Winterburn* were signs cases. Moreover, in both cases, erection was followed by further episodes of re-erection. I accept that the landowner does not need to do the impossible, does not have to back up his opposition with physical obstruction or with legal action but, in my view, I find on the facts of this case that the landowner's actions in erecting fencing once,

lasting for a matter of mere days, across the whole Application Period do not demonstrate a commensurate response to the problem faced on the Application Land.

255. I therefore find on the basis of all the evidence that use continued "as of right" through the Application Period.

4. IN LAWFUL SPORTS AND PASTIMES ON THE LAND

256. The phrase "lawful sports and pastimes" captures a wide scope of recreational activity, including that described by witnesses for the Applicant. The evidence includes:

a) dog walking,
b) children playing;
c) playing football and other ball games,
d) kite flying,
e) bonfire parties,
f) picnicking, and
g) games/competitions.

257. It is not a point taken by the Objectors that any of the named activities fall outside the definition.

5. FOR A PERIOD OF AT LEAST 20 YEARS

258. Pursuant to the application to register, written user evidence was provided and oral user evidence heard from thirty-three current or former inhabitants of Mount Pleasant. While some witnesses were able to provide evidence of user of the Application Land as far back as 1990, the relevant period for this application is between 19th October 2000 and 19th October 2020.[7] In order to assess the Application against this statutory requirement, this report considers the evidence from (i) user witnesses in support of the Application and (ii) the rebuttal evidence submitted by the objector.

[7] This also excludes the evidence provided by Jack and Jessica Constable, who moved to 2 Mount Pleasant after the Application Land was enclosed on 19th October 2020 and use ceased.

259. Additionally, I reach my conclusion in this section without prejudice to my conclusion that a trigger event has occurred in relation to the Application Land, as outlined above.

(i) User Evidence

260. A [redacted] all gave oral evidence which related to the entirety of the relevant period. This was supported by the written evidence of [redacted] who were also able to comment on the entirety of the twenty-year period. As noted above, however, greater weight attaches to those who were able to give live evidence to the inquiry, which could be tested under cross-examination.

261. [redacted] describes use of the Application Land playing with her children and walking her dog, and frequent recreational use by her children after school. To this effect, M[redacted] provided a witness statement in support of the Application describing frequent use as a child up until he left for university in 2005. On this point, the Objector challenged that either of [redacted] sons made use of the green after 2005, a point [redacted] accepted in cross-examination. However, [redacted] stated that she continued to make use of the Application Land by walking across it and around it with her dog. While the Objector seeks to have this evidence excluded on the basis that it amounts to "thoroughfare" use, [redacted] was clear that she did not merely pass through the Application Land with her dog on the way to another destination, but made use of it for shorter walks. Dog-walking is a classic example of a permitted use for TVG applications, per Lord Hoffmann in *Sunningwell* (at 347A and 357D). In my view, [redacted] has given good evidence of user across most of the Application Period.

262. [redacted], when they were 2 years 11 months and 2 months old respectively. Like [redacted] describes making use of the Application Land with his children and his children playing

with others there frequently, including football, rugby, and occasionally mowing a strip of grass to play cricket. Since 2006, [redacted] states that he has walked his dogs across the Application Land on a weekly basis, and has trained and played with his current dog there since September 2017.[8] Like [redacted], the Objector challenges [redacted] user evidence after 2006 on the basis that it was "thoroughfare" use with his dog since 2006 and until 2017. That objection seems correct in principle, as [redacted] does not otherwise describe recreational walking around the green (in the sense of *TW Logistics*). However, it seems reasonable to me that his children would have made use of the Application Land after 2006 as well, although neither [redacted] state precisely when their children's use ceased, nor was that question put to [redacted] in cross-examination. In my view, it is fair to assume that use would have continued until their youngest child turned eighteen in November 2013, when that child might have gone to university or otherwise moved away. [redacted] qualifying user evidence therefore goes to the period of approximately 2000 to 2013 and 2017 to 2020.

263. The Applicant further relies on the user evidence of [redacted] for the entirety of the twenty-year period. Regarding consistent use of the green space by children, [redacted] commented "*there has always been a handover from one generation to another"*. I found this a compelling description of the evidence that I heard, when taken as a whole. The specific use identified by [redacted] included rugby and football on the Application Land. Additionally, [redacted] and his wife began training hearing dogs for deaf people in 2018 on the Application Land. However, in cross-examination, [redacted] accepted that the primary use of the Application Land before they started caring for their dogs had been by his children, which largely ended after 2002. This is consistent with the evidence of [redacted] [**AB/111**], who left for university in the summer of 2001. It follows that [redacted] evidence primarily goes to the periods of 2000 to 2002 and 2018 to 2020.

264. As regards [redacted] evidence, the Objector fairly identifies in closing submissions that [redacted] was not making use of the Application Land for the entirety of the twenty-year period. In particular, [redacted] was not an inhabitant of Mount Pleasant while she was at university between 2003 to 2008, living in London

[8] Evidence of when dog obtained taken from Objector's closing submissions.

2008-2013, living in Bletchley and then the United States after 2015. Likewise, I note that [redacted] provided written evidence as an inhabitant of [redacted] with [redacted], but this evidence did not have the opportunity to be tested in cross-examination. It follows that, with the exception of evidence for the periods 2000-2003 and 2013-2015, [redacted] evidence may be accorded little weight.

265. I note that the only other "twenty-year user" is [redacted], who was the first resident of Mount Pleasant in 1992 and provided written evidence by a questionnaire and is relied upon as use for the entirety of the relevant period. However, the Applicant's bundle states that [redacted] "now lives elsewhere in the village, but remains a friend of her old neighbours." Additionally, the evidence of [redacted] was provided only by questionnaire with short answers to limited questions, unsupported by a corroborating account by another resident of [redacted]. Having regard to the quality of the evidence, [redacted] evidence may be accorded less weight, but would still go to the entirety of the twenty-year period.

266. The Objector's further take issue with [redacted] In his oral evidence, [redacted] acknowledged that he had made no use of the Application Land after 2005 after his children's use ceased. It follows that [redacted] user evidence is limited to 2002 to 2005.

267. On the other hand, [redacted] and [redacted] there since. Together, they gave good evidence which covered the entirety of the twenty-year application period. [redacted] gave evidence orally that use was made of the Application Land by her children throughout the period 2000 to 2004. Likewise, [redacted] described their children using the Application Land as a recreational area throughout their lives.

268. Additionally, I note that [redacted] each gave good evidence of user for the period from 2004 to 2020 as inhabitants of [redacted]. [redacted] have five children, all of whom made use of the Application Land until they turned eighteen, their youngest turning that age in 2017. Additionally, the [redacted] had two dogs in 2005, and obtained a new dog in 2020 after two died in autumn 2019.

[redacted] specifically gave evidence that he has enjoyed use of the Application Land with his dogs on a daily basis, both through recreational walks across the land and training.

269. [redacted] gave evidence that their children used the green as a recreational space throughout this period, but [redacted] accepted in cross-examination that the use lessened after 2015. It follows that the [redacted] evidence largely goes to 2006 to 2015.

270. I likewise note that the following witnesses gave good evidence orally at the inquiry in relation to their periods of use:

a. [redacted] described use of the green by their children as a recreational space, which continued even as they became older.

b. [redacted] described their children making use of the Application Land as a play area and as a regular spot to play with their dog, which they have had since 2013.

c. [redacted], gave evidence of use with her husband, daughter, and grandchild, including exercise, play, and kite flying. In particular, her grandchild made use of the Application Land roughly four to five times a week while he lived at home with them between 2016 and 2020.

(ii) Objector's Rebuttal Evidence

271. [redacted] stated in his witness statement that for the period between June 2003 to October 2004, when he was working in the area for Civil Utilities Ltd, he never witnessed any person using the Application Land. [redacted] stated that he would drive past the area between 7-7.30am and 4.30-5pm. [redacted] likewise provided a witness statement stating that he could not recall seeing anyone making use of the

Application Land, despite passing by the area regularly. Importantly, [redacted] accepted in cross-examination that there was no real evidence that inhabitants of Mount Pleasant were making no use of the Application Land, but that it was merely the impression from passing the land for a few seconds each time.

272. [redacted] also suggested that he had not seen anyone using the Application Land before when he had driven past on previous occasions. In cross-examination he accepted that this would have been a matter of seconds to glance at the Application Land, but stated that he sometimes passed the Application Land three times a day. [redacted] likewise supported the Objector's case, offering rebuttal evidence that she has lived at an address in Stoke Hammond which requires her to pass the Application Land every week, but had never seen the Application Land being used by anyone. Ms. Edwards did not attend the inquiry to give evidence orally and thus her evidence could not be tested in cross-examination.

273. Ultimately, the Objector's rebuttal user evidence is of poor quality. There is no reliable evidence from an individual living in the vicinity of Mount Pleasant who could refute daily use by the inhabitants. To the contrary, all of the rebuttal evidence comes from individuals who would have been passing the Application Land for a few seconds at a time at irregular hours and viewing from a distance. Finally, in my view, it seems unlikely that the no sight would have been made of any person using the Application Land over this period, particularly in light of the substantial evidence from the Applicant indicating that use was in fact regular. Therefore, I find the rebuttal evidence on this point to be unreliable.

(iii) Conclusion on User Evidence

274. I find that the Applicant's evidence of twenty-year user should be preferred to that of the Objector's witnesses. Having regard to the evidence of witnesses and the challenges to the Applicant's evidence in cross-examination and closing submissions, the Applicant would have proved twenty years of continuous use throughout the relevant period, but for my conclusion that a trigger event has occurred in relation to the land such that the Applicant's right to apply to register the Application Land as a TVG has ceased to apply.

CONCLUSION

275. In my view, the Application Land should not be recommended for registration as a TVG. I reach that conclusion on the basis that, as addressed in detail above in relation to the preliminary Trigger Event Issue, a trigger event has occurred in relation to the Application Land and the Applicant's right to apply for TVG registration does not apply.

276. Without prejudice to that primary conclusion, and in case I am wrong about the Trigger Event Issue, in summary I reach the following conclusions for each aspect of the statutory test:

a. there was a significant number of inhabitants making use of the Application Land;

b. Mount Pleasant is a neighbourhood within the locality of Stoke Hammond;

c. use was as of right and not contentious across the Application Period;

d. use was for a lawful and recreational nature; and

e. the qualifying use continued for the entirety of the twenty-year Application Period.

DANIEL STEDMAN JONES

22 July 2023

39 ESSEX CHAMBERS
81 Chancery lane
London WC2A 1DD

APPENDIX 1

LIST OF APPEARANCES

Representatives

The Applicant – represented himself with support from other local residents including [redacted]

The Objector – represented by Ms. Rowena Meagher of counsel.

The Applicant's Witnesses (in alphabetical order)

[redacted]

The Objector's Witnesses

[redacted]

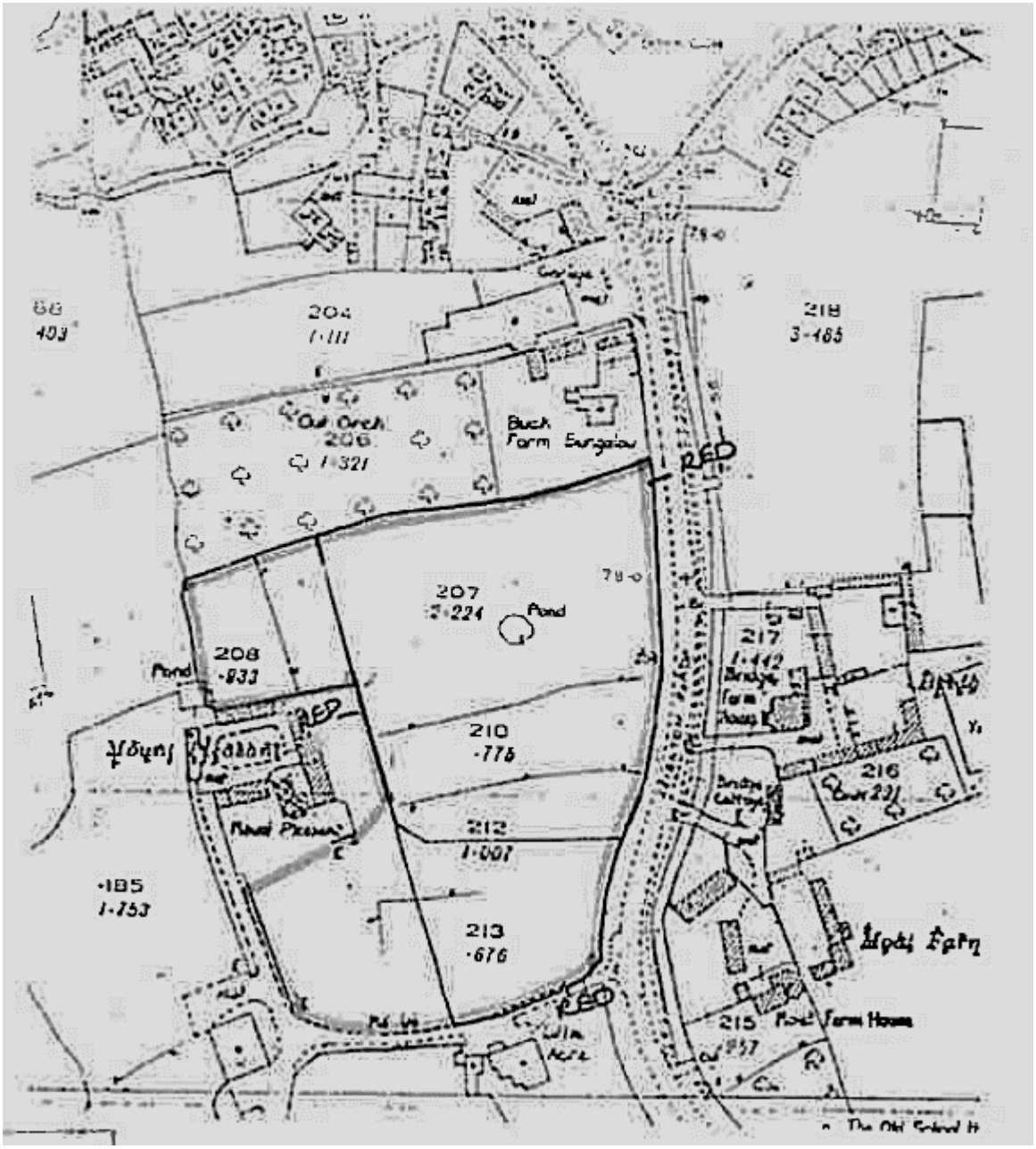
[redacted]

APPENDIX 2

MAP 1 (AB/12)

Application Land

MAP (OB/41)



Land Subject of Planning Permission (APP/1640/89)