

**INDEX TO REPORT – APPLICATION TO REGISTER LAND KNOWN AS
THAMESFIELD, WRAYSBURY AS A NEW VILLAGE GREEN (VG102)**

Page Numbers	Documents
7 - 13	Report
14 – 18	Appendix 1 Background Summary
19 – 71	Appendix 2 Application
19 – 27	i) Form 44 and statutory declaration
28	ii) Exhibit A plan showing Parish of Wraysbury edged red
29	iii) Exhibit B1 plan showing application site edged red
30 – 52	iv) Exhibit D forms showing agreement for Su Burrows to submit application
53 – 54	v) Exhibit E1 Aerial photo 1976
55 – 57	vi) Exhibit E2 Aerial photo 1987
58	vii) Exhibit E3 Aerial photo 2008
59	viii) Exhibit E4 letter of authenticity for photos
60 – 64	ix) Exhibit F documents pertaining to footpath diversion as noted in statement
65 – 66	x) Exhibit G title deeds (but excluding title plan)
67 – 71	xi) Exhibit H miscellaneous photos of field in use
	PLEASE NOTE THAT EXHIBIT B (map showing signatures of supporting evidence forms and homes marked 'x'), EXHIBIT C (Open Space Evidence Forms) and EXHIBIT G (title plan) are not annexed to this report due to the size of such however the documents may be viewed upon request and will be available at the meeting)
72 – 91	Appendix 3 Miss Wood's Decision on Preliminary Issues 31 May 2012
92 – 184	Appendix 4 Inspector's Report dated 25 February 2013
185 - 213	Appendix 5 Comments received in respect of the Inspector's Report
185	i) Comments received from Mr F McDonagh 08/03/13
186 – 199	ii) On behalf of the Applicant – Submissions from Paul Wilmshurst Counsel for the Applicant dated 25/02/13
200 – 211	iii) On behalf of the Applicant - Submissions in respect of the issue of 'locality' - Email from Public Law Solicitors dated 17/04/13 with annexures
212 – 213	iv) On behalf of Mr and Mrs Gates and Mr and Mrs Smith – Letter from Moran Surveyors dated 28/03/13
214 – 218	Appendix 6 - Further Report of Inspector dated 3 May 2013

219 – 223

Appendix 7 - Comments received in respect of additional evidence submitted by the Applicant's representatives (email 17 April 2013)

- 219 i) On behalf of the Applicant - Submissions in respect of the issue of 'locality' - Email from Public Law Solicitors dated 17/04/13 (annexures are attached at Appendix 5 pages 200 – 211)
- 220 ii) Comments received from Mr McDonagh 10/05/13
- 221 iii) On behalf of Worby Estates Sales Limited – Letter from Blake Laphorn dated 16 May 2013
- 222 - 223 iv) On behalf of Mr and Mrs Gates and Mr and Mrs Smith – Letter from Moran Surveyors dated 16/05/13

224 – 226

Appendix 8 - Second Further Report of Inspector dated 18 May 2013

Report for: ACTION/INFORMATION – <i>delete</i> <i>as appropriate</i>
Item Number: 5



Contains Confidential or Exempt Information	NO – Part I
Title	APPLICATION TO REGISTER LAND KNOWN AS THAMESFIELD, WRAYSBURY AS A NEW VILLAGE GREEN (VG102)
Responsible Officer(s)	Maria Lucas
Contact officer, job title and phone number	Emma-Jane Brewerton (Solicitor, Shared Legal Solutions, Wokingham Borough Council) 07824 527588
Member reporting	
For Consideration By	Rights of Way and Highway Licensing Panel
Date to be Considered	4 June 2013
Implementation Date if Not Called In	Immediately
Affected Wards	Horton and Wraysbury
Keywords/Index	Village Green Application Thamesfield Wraysbury VG102

Report Summary

1. This report deals with an application (VG102) to register land known as Thamesfield, Wraysbury as a new Village Green.
2. It recommends that the application fails and should be rejected.
3. This recommendation is being made because the Inspector has, on the evidence submitted, determined that use of Thamesfield for lawful sports and pastimes by a significant number of local people for more that 20 years became contentious and ceased to be use 'as of right' in July 2007, and, as the application to register the land as a new village green was not made within two years of that cessation the application fails to meet the statutory criteria required.
4. If adopted, the key financial implication for the Council is that the applicant could apply for the decision to be judicially reviewed.

If recommendations are adopted, how will residents benefit?	
Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
1. The current position will be unchanged as the land known as Thamesfield will not be subject to statutory rights under the provisions of s15 of the Commons Act 2006	

1. Details of Recommendations

RECOMMENDATION: That the application for registration of a new town or village green in respect of land known as Thamesfield, Wraysbury should be rejected as it fails to meet the test for registration under section 15 of the Commons Act 2006 for the reasons set out in the Inspector's Report dated 25 February 2013, Further Report of 3 May 2013 and Second Further Report of 18 May 2013.

Thamesfield, Wraysbury should therefore not be registered as a new village green.

That written notice of the outcome giving reasons for the decision be given to the Applicant and to the objectors and that notification be published on the Council's website.

2. Reason for Recommendation(s) and Options Considered

The Council appointed an independent Inspector, Miss Lana Wood ('Miss Wood'), experienced in new village green applications to consider the application, the evidence and the relevant law. Following a pre-inquiry meeting, Miss Wood provided an initial decision on preliminary issues on 31 May 2012 ('Decision on Preliminary Issues' Appendix 3 pages 72 - 91).

Following the Decision on Preliminary Issues, but prior to the holding of a non-statutory public inquiry, Miss Wood accepted a judicial position and Mr Vivian Chapman QC ('the Inspector') was appointed as inspector in her place. After the inquiry and consideration of the evidence, the Inspector was required to provide the Council with a written report ('the Inspector's Report' Appendix 4 pages 92 - 184) containing a recommendation based on the evidence and the legal requirements for registration.

At the inquiry:-

- The Applicant was represented by Paul Wilmshurst of counsel, instructed by Public Law Solicitors.
- Worby Estates Sales Limited were represented by Miss Karen Jones of counsel, instructed by Blake Laphorn.
- Mr and Mrs Smith and Mr and Mrs Gates were represented by Mr Andrew Moran FRICS.
- Mr McDonagh appeared in person.

Section 15(1) of the Commons Act 2006 ('the Act') enables any person to apply to a Commons Registration Authority to register land as a new town or Village Green where it can be shown that:

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

In addition to the above, any application must meet one of the following tests:

- Use of the land has continued 'as of right' until at least the date of application (section 15(2) of the Act); or
- Use of the land 'as of right' ended no more than two years prior to the date of application, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
- Use of the land 'as of right' ended before 6th April 2007 and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).

The Inspector's Report details the law in respect of applications to register land as new town or village greens in more detail at paragraphs 9 – 25 (pages 97 – 101).

The Inspector determined that the application fails to pass the statutory tests and recommended that the application for registration should be rejected.

The Inspector's findings of fact in respect of the application is detailed at paragraphs 298 – 335 (pages 173 – 184) of the Inspector's Report and the Inspector's conclusion and recommendation is detailed at paragraphs 336 – 337 (page 184) of the Inspector's Report.

In summary, the Inspector found that:-

- i) Wraysbury was a 'locality' at all relevant times (please see paragraph 299, page 173 of the Inspectors Report, paragraphs 5 – 7, page 216, of the Further Report and paragraph 6, page 226, of the Second Further Report)
- ii) Thamesfield has been used for lawful sports and pastimes (paragraph 300 page 173) of the Inspector's Report)
- iii) Thamesfield has been used by a 'significant number' of the inhabitants of Wraysbury for lawful sports and pastimes (paragraph 301, page 173) of the Inspector's Report)
- iv) Thamesfield has been used for lawful sports and pastimes by a significant number of the inhabitants of Wraysbury since at least 1975 therefore satisfying at least 20 years use (paragraph 302 – 303, page 174) of the Inspector's Report) .
- v) Use of Thamesfield by local people for lawful sports and pastimes became contentious in July 2007 and such use was therefore not 'as of right' after July 2007 (paragraphs 304 – 332, pages 174 – 183) of the Inspector's Report, further considered in light of the Applicant's submissions by email dated 17 April 2013 (Appendix 5) and affirmed in the Further Report paragraphs 8 – 15 pages 216 – 218)

The Inspector states (paragraph 333, page 183) of the Inspector's Report) the application cannot succeed:-

- under s15(2) of the Act because qualifying use did not continue until the date of application, 15 March 2010
- under s15(3) of the Act as the application was made more than two years after the cessation of use (use as of right ceased July 2007 and the date of application was 10 March 2010)
- under s15(4) of the Act as qualifying use ceased after the commencement of the section on 6 April 2007

Option	Comments
1. Reject the application	Counsel experienced in new town and village green applications has considered the evidence and determined that the application fails to pass the statutory criteria. The applicant could apply for the decision to be judicially reviewed.
2. Accept the application	The Council would be rejecting the findings of an expert after consideration of the evidence and the relevant law. It would therefore be necessary to record clear reasons for the Council to do so. The objectors could apply for the decision to be judicially reviewed.
3. Do nothing	The Council as Commons Registration Authority for the Borough is legally obliged to consider the evidence and the relevant law and must make a decision based on such. Either party could apply for judicial review of the matter if the Council did not make a decision in respect of the application.

3. Key Implications

By accepting the Inspector's report the Council will have acted in accordance with its own published procedure for dealing with disputed new town or village green applications.

4. Financial Details

The Commons Registration Authority has to bear the costs of dealing with the Application.

There will be no immediate future financial impact upon the budget: however if the applicant / objectors judicially review the Council's decision further costs will be incurred.

5. Legal Implications

The Council as the Commons Registration Authority for the Borough is by virtue of s15 of the Commons Act 2006 legally obliged to determine applications for new town or village greens. It has dealt with the application in accordance with DEFRA guidelines and its own published procedure for disputed applications.

6. Value For Money

The Commons Registration authority has to bear the costs of dealing with the application. As the application was disputed an Inspector was required to be appointed and before such an appointment was made estimates of legal fees were obtained from various Counsel experienced with applications for new village greens.

7. Sustainability Impact Appraisal

Not applicable

8. Risk Management

The Council, as Commons Registration Authority, has to be impartial and consider all the evidence to ascertain if the application has been successful in passing the legal tests for registration. As the application was disputed, the Council in accordance with its published procedure appointed an independent expert with substantial expertise in town and village green applications and non-statutory public inquiries to consider the evidence (both written and oral) and determine the validity of the application as to whether the Council should accept or reject the application.

The applicant and objectors were given the opportunity to comment upon the Inspector's report. As a consequence further advice was received in respect of the such comments by way of the Further Report dated 3 May 2013 ('Further Report' – Appendix 6).

Pursuant to paragraph 7 of the Further Report the additional evidence submitted by the Applicant's representatives, under cover of email dated 17 April 2013 from Public Law Solicitors, was circulated to active parties to the inquiry and comments were invited. The comments received are annexed hereto at Appendix 7 and a Second Further Report dated 18 May 2013 was received from the Inspector following consideration of the comments ('Second Further Report' - Appendix 8).

The Inspector concluded that he maintained the findings and recommendations made in the Inspectors Report and Further Report (paragraph 8, page 226 of the Second Further Report)

9. Links to Strategic Objectives

This is not applicable as there is a statutory obligation for Council as Commons Registration Authority to determine the application.

10. Equalities, Human Rights and Community Cohesion

Government Guidance (Advice on the implementation and commencement of section 15 of the Commons Act 2006 Registration of new town and village greens) (Department for Environment Food and Rural Affairs revised March 2007), 'Frequently asked questions' number 28 states that the measures in the Commons Act 2006 are compliant with the Human Rights Act 1998

No EQIA has therefore been undertaken.

11. Staffing/Workforce and Accommodation implications:

Not applicable

12. Property and Assets

Not applicable

13. Any other implications:

Not applicable

14. Consultation

The application was advertised in accordance with regulations and objections and comments requested. The non-statutory public inquiry held was advertised and took place in Wraysbury in September and November 2012. The applicant objectors and members of the public had the opportunity at the inquiry to make representations to the Inspector.

15. Timetable for Implementation

Not applicable

16. Appendices

1. Background Summary

2. Application

- i) Form 44 and statutory declaration
- ii) Exhibit A plan showing Parish of Wraysbury edged in red
- iii) Exhibit B1 plan showing application site edged red
- iv) Exhibit D forms showing agreement for Su Burrows to submit application
- v) Exhibit E1 Aerial photo 1976
- vi) Exhibit E2 Aerial photo 1987
- vii) Exhibit E3 Aerial photo 2008
- viii) Exhibit E4 letter of authenticity for photos
- ix) Exhibit F documents pertaining to footpath diversion as noted in statement
- x) Exhibit G title deeds (but excluding title plan)
- xi) Exhibit H miscellaneous photos of field in use

PLEASE NOTE THAT EXHIBIT B (map showing signatures of supporting evidence forms and homes marked 'x'), EXHIBIT C (Open Space Evidence Forms) and EXHIBIT G (title plan) are not annexed to this report due to the size of such however the documents may be viewed upon request and will be available at the meeting)

3. Miss Wood's Decision on Preliminary Issues 31 May 2012

4. Inspector's Report dated 25 February 2013

5. Comments received in respect of the Inspectors Report

- i) Comments received from Mr F McDonagh 08/03/13
- ii) On behalf of the Applicant – Submissions from Paul Wilmshurst Counsel for the Applicant dated 25/02/13
- iii) On behalf of the Applicant - Submissions in respect of the issue of 'locality' - Email from Public Law Solicitors dated 17/04/13
- iv) On behalf of Mr and Mrs Gates and Mr and Mrs Smith - Letter from Moran Surveyors dated 28/03/13

6. Further Report of Inspector dated 3 May 2013

7. Comments received in respect of additional evidence submitted by the Applicant's representatives (email 17 April 2013)

- i) On behalf of the Applicant - Submissions in respect of the issue of 'locality' - Email from Public Law Solicitors dated 17/04/13 (enclosures annexed at Appendix 5
- ii) Comments received from Mr McDonagh 10/05/13
- iii) On behalf of Worby Estates Sales Limited – Letter from Blake Laphorn dated 16 May 2013
- iv) On behalf of Mr and Mrs Gates and Mr and Mrs Smith – Letter from Moran Surveyors dated 16/05/13

8. Second Further Report of Inspector dated 18 May 2013

17. Background Information

Commons Act 2006

Department for Environment Food and Rural Affairs publication 'Advice on the

implementation and commencement of section 15 of the Commons Act 2006

Registration of new town and village greens' revised March 2007 and February 2010

(The application when received was published on the Council's website)

18. Consultation (Mandatory)

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
Internal				
Cllr Burbage	Leader of the Council	20/5/13		
Mike McGaughrin	Managing Director	20/5/13		
Maria Lucas	Head of Legal Services Council's Commons Registration Officer	17/5/13		Legal
Andrew Brooker	Finance partner	20/5/13		Financial
External				

Report History

Decision type:	Urgency item?
Non-key decision	No

Full name of report author	Job title	Full contact no:
Emma-Jane Brewerton	Solicitor (Shared Legal Solutions)	07824 527588

APPENDIX 1 - THAMESFIELD NEW VILLAGE GREEN APPLICATION

1. SUMMARY

- 1.1.1 Under the Commons Registration Act 1965 the Council since 1 April 1998 is the commons registration authority for common land and village greens within the Borough. The Council is now required to consider any applications for new town or village greens under section 15 of the Commons Act 2006 ('the Act') and regulations made thereunder.
- 1.1.2 The Council received an application under s 15 of the Act ('the Application' annexed as Appendix 2) to register the land known as 'Thamesfield', Wraysbury as a new town or village green.
- 1.1.3 Consequent to the publication of the Application, objections were received from the landowners affected by the Application. In accordance with the Council's procedure (the Procedure') for dealing with disputed applications, an independent inspector Miss Lana Wood ('Miss Wood') was appointed by the Council to consider the application and all relevant evidence and to provide a report ('Report upon the Preliminary Issues and on the Applicant's Application to amend' annexed as Appendix 3 'Miss Wood's Report') following a review of the preliminary issues arising.
- 1.1.4 Miss Wood, as inspector was appointed by the Council to hold a non-statutory public inquiry into the Application. However, before the holding of the public inquiry, Miss Wood accepted a judicial position and Mr Vivian Chapman QC ('the Inspector') was appointed to replace Miss Wood.
- 1.1.5 Following consideration of the application, the relevant evidence both written and that given orally at a non-statutory public inquiry into the Application held over 9 days in September and November 2012 and the relevant law, the Inspector produced a report ('the Inspector's Report' annexed as Appendix 4).
- 1.1.6 Officers have considered the Inspector's Report, and further comments made on the Inspector's Report by several of the parties, and make the recommendation pursuant to the Inspector's advice.

2. SUPPORTING INFORMATION

2.1 Background

2.1.1 The Application

The Council received the Application to register land known as 'Thamesfield' Wraysbury ('the Application Site') as a new town or village green , on 11th March 2010, from local resident Mrs Su Burrows (the Applicant).

The Application was made on the grounds that the Application Site has become a village green by virtue of free use of Thamesfield for community purposes for over 30 years continuously. The Applicant stated that the use had been free, unstopped and without permission.

The Application included 149 user evidence questionnaires from local residents.

The Council considered that there were various defects in the Application which required correction and the Application was not date stamped as received until 17 January 2011 and the Application was allocated the number VG102.

The Pre-Inquiry Meeting and Decision on the Preliminary Issues and on the Applicant's Application to Amend, Miss Wood, dated 31 May 2011

A pre-Inquiry meeting was held in relation to the Application on the 23 March 2012. and Miss Wood directed that the following issues be determined in advance of the Inquiry:-

- i) The date on which the application or applications were received for the purposes of regulations 4 and 5 of the Commons (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007
- ii) Whether if there has been more than one application, any of those applications has purportedly been rejected or withdrawn
- iii) If any of those applications have purportedly been rejected as not duly made whether in fact that application remains live, as a matter of law, on the basis that the decision that it was not duly made was incorrect

Miss Wood also invited submissions on the Applicant's application to amend the Application to rely on subsections 15(3) and (4) in the alternative to subsection 15(2) and application to amend the Application Site to exclude the land to the rear of 38 and 40 Wharf Road

Miss Wood, in Miss Wood's Report concluded that:-

- i) the date on which the application was made for the purposes of section 15 of the Commons Act 2006 is 11 March 2010 (paragraph 4, page 74). This conclusion was also affirmed by the Inspector in the Inspector's Report (paragraph 32, page 103)
- ii) that the amendment to the application to permit the application to be made in the alternative under the different criteria contained in section 15(2), (3) and (4) be permitted (paragraphs 39 and 40, page 88). This conclusion was also affirmed by the Inspector in the Inspector's Report (paragraph 29, page 102).
- iii) That the amendment to exclude the land to the rear of 38 and 40 Wharf Road be refused (paragraph 49, page 91). The Inspector reviewed this conclusion and, in light of withdrawal of objection to this amendment, considered it appropriate to allow the amendment to exclude the land to the rear of 38 and 40 Wharf Road from the Application Site (paragraph 30, page 102 of the Inspector's Report)

2.1.2 The Application Site

The Application Site is known locally as Thamesfield, and is situated on the western side of the village of Wraysbury. It is a large expanse of open land of approximately 13 acres (see paragraphs 1 – 4, pages 94 -95 of the Inspector's Report)

The majority of the Application Site is owned by Worby Estate Sales Limited ("WESL") who are registered with freehold title under BK414185 although it is clear from the registered title plan that a number of plots within the Application Site have been sold to third parties.

2.1.3 The legal requirements of the Application

Section 15(1) of the Act enables any person to apply to a Commons Registration Authority to register land as a new town or Village Green where it can be shown that:

'a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years'

In addition to the above, any application must meet one of the following tests:

- **Use of the land has continued** 'as of right' until at least the date of application (section 15(2) of the Act); or
- **Use of the land 'as of right' ended no more than two years prior to the date of application**, e.g. by way of the erection of fencing or a notice (section 15(3) of the Act); or
- **Use of the land 'as of right' ended before 6th April 2007** and the application has been made within five years of the date the use 'as of right' ended (section 15(4) of the Act).

The Inspector's Report details the law in respect of applications to register land as new town or village greens in more detail at paragraphs 9 – 25, pages 97 - 101.

2.1.4 The Inquiry and conclusion

The Application was accompanied by 149 completed Open Spaces Society Questionnaires and other letters in support. The Application was publicised and notices placed on the Application Site on 4 March 2011 and in addition, the Application was placed on the Council's website (excluding two large plans)

Objections were received by:

- i) WESL
- ii) Mr Smith and Miss Hunt (now Mrs Smith) of 38 Wharf Road who purchased a small piece of Thamesfield from WESL as an extension of their garden
- iii) Mr and Mrs Gates of 40 Wharf Road who also purchased a small piece of Thamesfield from WESL as an extension of their garden

- iv) Mr Frank McDonagh, the owner of a piece of Thamesfield fronting the Coppice Drive entrance and lying in the gap between the houses in Wharf Road and the houses in Ouseley Road
- v) Dr Peter Enwere
- vi) Mr Niaz Faiz

The Procedure outlines the steps to be followed when dealing with applications for a new town or village green. In accordance with the Procedure, as objections to the registration were received, following consultation with the Head of Legal Services and the then Strategic Director of Environment and Deputy Chief Executive, a non-statutory public inquiry was agreed to be held.

Miss Wood, being Counsel with experience in considering such applications, was originally appointed by the Council to act as the independent inspector to judge the evidence given in support of or against the application by all interested parties. However, after a meeting to consider the preliminary issues but before the holding of the non-statutory public inquiry ('the Inquiry'), Miss Wood accepted a judicial position and Mr Vivian Chapman QC was appointed inspector in her place. After consideration of the evidence, the Inspector was required to provide the Council with a written report ('the Inspector's Report') containing a recommendation based on the evidence and the legal requirements for registration.

The Inquiry took place over 9 days in September and November at two locations in Wraysbury (paragraph 8, page 96 of the Inspector's Report).

The Applicant was represented by Paul Wilmshurst of counsel, instructed by Public Law Solicitors.

WESL was represented by Miss Karen Jones of counsel, instructed by Blake Laphorn.

Mr and Mrs Smith and Mr and Mrs Gates were represented by Mr Andrew Moran FRICS.

Mr McDonagh appeared in person.

36 witnesses (including the Applicant) gave oral evidence in support of the application (paragraphs 36 – 204, pages 104 - 139 of the Inspector's Report). The Applicant also submitted extensive written user evidence (paragraphs 205 – 209, pages 139 - 148 of the Inspector's Report)

5 witnesses gave oral evidence on behalf of WESL (paragraphs 210 – 241, pages 148 - 157 of the Inspector's Report) with additional written evidence (paragraph 249, p160 of the Inspector's Report)

Mr and Mrs Smith and Mr and Mrs Gates did not appear at the Inquiry but they submitted written statements (paragraphs 250 – 252, pages 160 – 161 of the Inspector's Report) and were represented by Mr Moran.

Mr McDonagh was present at the Inquiry but did not serve any evidence in

accordance with the Inspector's Directions; however he did produce some documents to the Inquiry (paragraph 253, page 161 of the Inspector's Report).

Neither Dr Enwere or Mr Fiaz provided evidence to, appeared at or were represented at the Inquiry

Both the Applicant and WESL relied upon expert evidence analysing aerial photographs of Thamesfield (paragraphs 254 – 271, page 161 - 165 of the Inspector's Report)

The Inspector made two site visits to the Application Site the latter being accompanied by the Applicant WESL and other parties.

Following review of the evidence submitted to the Inquiry the Inspector made findings of fact (paragraphs 272 – 297, pages 166 - 173 of the Inspector's Report)

The law and procedure relating to applications for new town or village green applications is detailed in paragraphs 9 – 25, pages 97 - 101 of the Inspector's Report. At paragraphs 298 – 335, pages 173 - 184 of the Inspector's Report the Inspector applied the law to the facts.

The Inspector's conclusion and recommendation is contained paragraphs 336 – 337, page 184 of the Inspector's Report.

In accordance with the Procedure, a copy of the Inspector's Report was sent to the active participants in the Inquiry (the Applicant, representatives of WESL, representative of Mr and Mrs Hunt and Mr Smith and Miss Hunt (now Smith) and Mr McDonagh.

Comments have been received in respect of the Inspector's Report and are annexed hereto at Appendix 5.

The Inspector issued a Further Report, following consideration of the comments, dated 3 May 2013 which is annexed hereto at Appendix 6.

Pursuant to paragraph 7, page 216 of the Further Report the additional evidence submitted by the Applicant's representatives, under cover of email dated 17 April 2013 from Public Law Solicitors, was circulated to active parties to the inquiry and comments were invited. The comments received are annexed hereto at Appendix 7 and a Second Further Report dated 18 May 2013 was received from the Inspector following consideration of the comments ('Second Further Report' - Appendix 8).

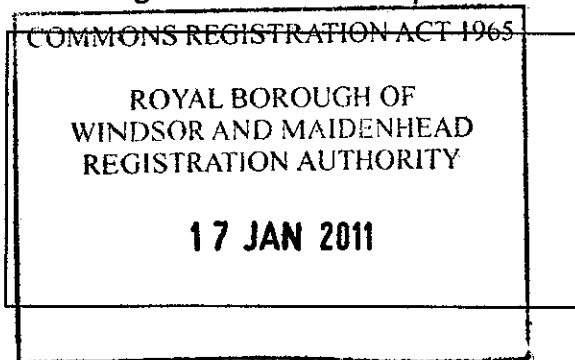
The Inspector concluded that he maintained the findings and recommendations made in the Inspectors Report and Further Report (paragraph 8, page 226 of the Second Further Report)

Having carefully considered all of the evidence submitted in relation to this application and comments raised, and having regard to the findings of the Inspector in his thorough and detailed report, the Application has not met the relevant tests for a recommendation that the Application Site should be registered as a town or village green.

Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:



Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1-6 and 10-11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7-8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

1. Registration Authority

To the

ROYAL BOROUGH OF WINDSOR AND
 MAIDENHEAD

Note 1
 Insert name of registration authority.

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

2. Name and address of the applicant

Name:

Full postal address:

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

Name:

Firm:

Full postal address:

Telephone number:
(incl. national dialling code)

Fax number:
(incl. national dialling code)

E-mail address:

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

** Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

Thamesfield

Location:

Field bordered by FRIARY ROAD, WHARF ROAD and FAIRFIELD APPROACH, in WRAYSBURY. TW19.

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

* Only complete if the land is already registered as common land.

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

The Parish of Wraybury.

Shown on Exhibit A map attached.

Tick here if map attached:

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

The residents of Wraysbury have enjoyed free use of Thamesfield for Community purposes, as shown in the attached statements, for over 30 years, continuously.

This has been freely, unstopped and without permission.

On this basis we submit our application.

See attached further statement.

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

TITLE DEED : BK414185
Most of Thamesfield is owned by Worby Estate Sales Limited, except those areas shown in GREEN on the Title Plan (attached).
40 WHARF ROAD own the plot behind their house.
All other owners are unknown.

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

10. Supporting documentation

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

EXHIBIT 'A' - MAP SHOWING PARISH BOUNDARY OF WRAYSBURY
EXHIBIT 'B' - MAP SHOWING SIGNATURES OF SUPPORTING EVIDENCE FORMS AND HOMES MARKED 'X'
EXHIBIT 'B1' - MAP SHOWING THAMESFIELD MARED IN RED - AS REQUESTED
EXHIBIT C - OPEN SPACE EVIDENCE FORMS
EXHIBIT D - FORMS SHOWING AGREEMENT FOR S. BURROWS TO SUBMIT APPLICATION
EXHIBIT E1 - AERIAL PHOTO, 1976
EXHIBIT E2 - AERIAL PHOTO, 1987
EXHIBIT E3 - AERIAL PHOTO, 2008
EXHIBIT E4 - LETTER OF AUTHENTICITY FOR PHOTOGRAPHS E1, E2, E3
EXHIBIT F - DOCUMENTS PERTAINING TO FOOTPATH DIVERSION AS NOTED IN ATTACHED STATEMENT
EXHIBIT G - TITLE DEEDS AND TITLE PLAN
EXHIBIT H - MISC PHOTOS OF FIELD IN USE

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

11. Any other information relating to the application

The land is for sale in small plots, some up for auction within September. We expect Worby Estate Sales Limited to oppose the application.

Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

13th September 2010

Signatures:

SC Burrows

REMINDER TO APPLICANT

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name
(and address if not
given in the
application form).

Susanna
Grace Burrows.....¹ solemnly and sincerely declare as follows:—

² Delete and adapt
as necessary.

1.² I am ((the person (one of the persons) who (has) (have) signed the foregoing application)) ((the solicitor to (the applicant) (³ one of the applicants)).

³ Insert name if
Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in
the case of
voluntary
registration (strike
through if this is not
relevant)

~~4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:~~

- ~~(i) a declaration of ownership of the land;~~
- ~~(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have~~

~~SGBurrows .~~

Cont/

⁴ Continued

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

SG Burrows
M. Lenton

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said

Susanna Grace Burrows

at 92 Welley Road,
Wraybury, TW19 5EP

this ~~twelfth~~^{12th} ~~scb~~ day of January
2011

SG Burrows

Signature of Declarant

Before me *

Signature: M. Lenton MRS M. LENTON

Address: 92, Welley Road, Wraybury, Nr. Staines
Middlesex. TW19 5EP

Qualification: Justice of the Peace for the Royal County of
Berkshire.

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

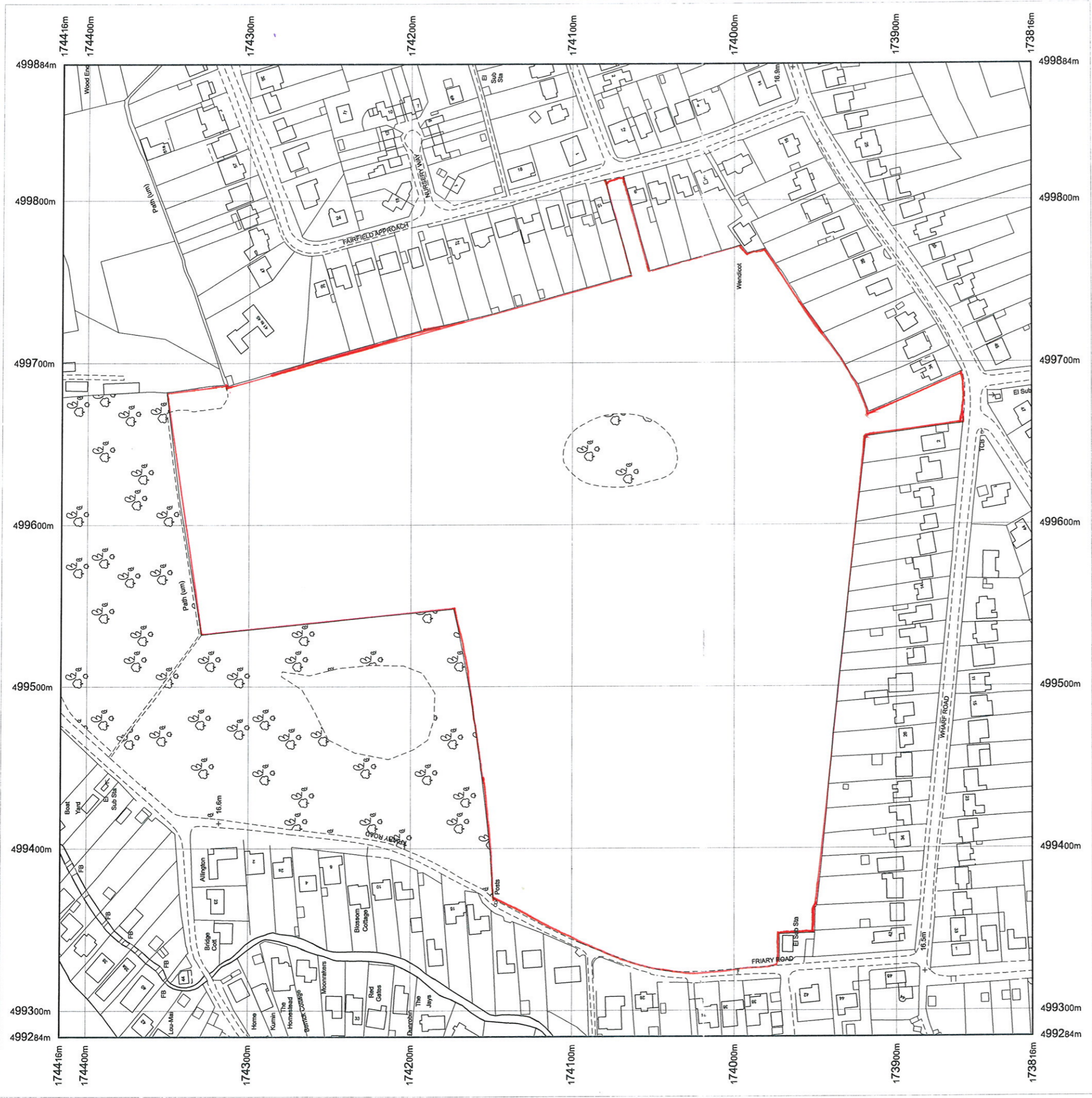
Please initial all alterations and mark any map as an exhibit

EXHIBIT 'A' - Showing Parish of Wraybury bordered in red





B1



Produced 11.12.2010 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date. © Crown Copyright 2010.

Reproduction in whole or part is prohibited without the prior permission of Ordnance Survey.

Ordnance Survey, the OS Symbol and OS Sitemap are registered trademarks of Ordnance Survey, the national mapping agency of Great Britain.

The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.



Supplied by: **A Boville Wright Ltd**
 Serial number: 09969900
 Centre coordinates: 499584 174116

Further information can be found on the OS Sitemap information leaflet or the Ordnance Survey web site:
www.ordnancesurvey.co.uk

This is the exhibit marked 'B1' referred to in the statutory declaration of Susanna Grace Bunons made this twelfth day of January 2011 before me

N. Lenton J.P.

EXHIBIT 'D'


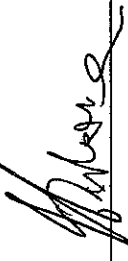
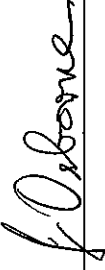

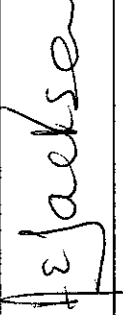


WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Harold Hutt	18 Poppins, Fairfield Approach	<i>H. Hutt</i>	1.3.10
Keith Gibson	Windicott, Fairfield Approach ON ANOTHER FORM	_____	_____
Karen Driver	10 Fairfield Road	<i>K.D.</i>	1-3-10
Clifford Warren	14 Fairfield Road	<i>Clifford Warren</i>	1/3/10
L Owen	16 Fairfield Road	<i>L Owen</i>	1/3/10
Jacqueline Hanson	19 Fairfield Road	<i>J Hanson</i>	1/3/10
Jane Glen	14 Nurseryway	<i>J Glen</i>	1/3/10
John Horner	16 Nurseryway	<i>J Horner</i>	1/3/10






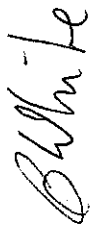


WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Leonard Blofeld	32 Old Ferry Drive		1-3-2000
James Osborne	5a Old Ferry Drive		---
Judy Osborne	5a Old Ferry Drive		---
Anthony Jackson	7 Old Ferry Drive		1/3/00
Alison Jackson	7 Old Ferry Drive		-
Barbara Williams	7a Old Ferry Drive		1/3/00
Cedric Williams	7a Old Ferry Drive		1 st March 2000

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Karen Hesford	Paddock Loft, Welley Road		1 Mar 10
Jonathan Hesford	Paddock Loft, Welley Road		1/3/10.
Rev Simon Douglas Lane	55 Welley Road		1/3.2010
Jan Burrows on Another form	53 Welley Road		
Christine White	4 Welley Road		4/3/10
Roger Moffatt	31 Welley Road		6/3/10
L Moffatt	31 Welley Road		10

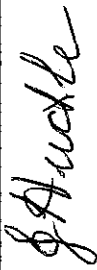

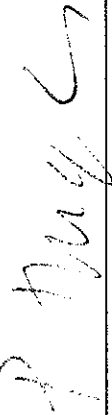

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Brian Badcock	95 Ouseley Road	<i>BB</i>	7.3.2010
Rona Pitt	Briarlea, 81 Ouseley Road	<i>J. R. Pitt</i>	7.3.10
Daphne Rix	Shenandoah, Ouseley Road	<i>Daphne Rix</i>	7-3-10





WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
JANE HUCKLE	66 OUSELEY RD WRAYSBURY TW195JH		8.3.2010
KEITH HUCKLE	66 OUSELEY RD WRAYSBURY TW195JH		8.3.2010
PHILIP HUSHES	24 FRANKY LANE WRAYSBURY		8.3.2010
DAVE ROLFE	40, FLAARLY ROAD WRAYSBURY		8.3.2010








WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Elsie Stephenson	14 Riverside Wraysbury Staines TW19 5JW		4/3/10
JANE BUNNELL	7 COPPICE DRIVE, WRAYSBURY,		09/03/10
JENNY GAZDAR	5 POULCOTT WRAYSBURY		9/3/10
35 ROSEL CHAPMAN	12 OVERSEY ROAD WRAYSBURY		9/3/10

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Graham Hobbs	16 Acacia Avenue (off The Avenue)		2/3/10
S Turner	12 The Avenue		2/3/10
Robin Nichols	26 Park Avenue		2/3/10
F L Fuller	29 Park Avenue		2/3/10
Lee Mallinson	42 Park Avenue		2.3.2010
Cheryl Mallinson	42 Park Avenue		2/3/10
Alicia Mallinson	42 Park Avenue	Averay	2/3/10
Lauren Mallinson	42 Park Avenue		2/3/10

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
J T Graham	1 Hill View Road	<i>J.T. Graham</i>	1-3-2010
Lady Archer of Sandwell	Highcroft, Hill View Road	<i>Margaret Archer</i>	1 st March 2010
Lord Archer of Sandwell	Highcroft, Hill View Road	<i>Brian L Sandwell</i>	1 March 2010
Eileen Short	Little Orchard, Hill View Road	<i>E. Short</i>	1/3/2010
Carolyn Urwin	The Tiny Grange, Hill View Road	<i>Carolyn</i>	11/3/2010
Robin Urwin	The Tiny Grange, Hill View Road	<i>Robin Urwin</i>	1/3/2010
Neil Hayman	Woodend, Hill View Road	<i>Neil Hayman</i>	1/3/2010
Marilyn Hayman	Woodend, Hill View Road	<i>Marilyn Hayman</i>	01/03/2010





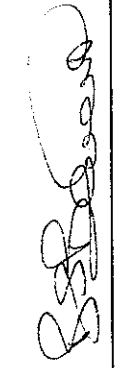
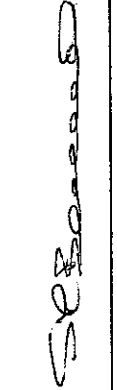
WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Marie Cornish	16 The Drive	<i>M. Cornish</i>	2.3.10
Matthew Price	29 The Drive	<i>Matthew Price</i>	2.3.10
Isabelle Price	29 The Drive	<i>Isabelle Price</i>	2.3.10
Diana Hughes	4 The Drive	<i>Diana Hughes</i>	2.3.10
Carl Hughes	4 The Drive	<i>Carl Hughes</i>	2.3.10
George Burgess	8 The Drive	<i>George Burgess</i>	2/3/10
Ann Burgess	8 The Drive	<i>Ann Burgess</i>	2/3/10

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green.

NAME	ADDRESS	SIGNATURE	DATE
Jan Freeborn	133 Coppermill Road		2/3/10
Mitchell Freeborn	133 Coppermill Road		2/3/10
Catherine Jones	11 Station Road		2.3.10
Debra Keen	68c Staines Road		2/3/10
Mr B Bennett	7 Magna Carta Lane		2/3/10
Mrs S Bennett	7 Magna Carta Lane		2/3/10.

WRAYSBURY ACTION GROUP




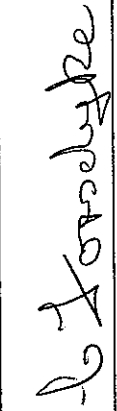
We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Christie Painter	5 Garson Lane	<i>Christie Painter</i>	01/03/10
Jack Painter	5 Garson Lane	<i>Jack Painter</i>	01/03/10
Roger Painter	5 Garson Lane	<i>Roger Painter</i>	01/03/10
SALLY MORLEY	LAVENDER COTTAGE	<i>S. Morley</i>	01/03/10

HILL VIEW ROAD .
 " " "
 " " "
 5A THE EMBANKMENT.
 GRAHAM MORLEY
 Peter J. Macquinn
 01/03/10
 8/3/10

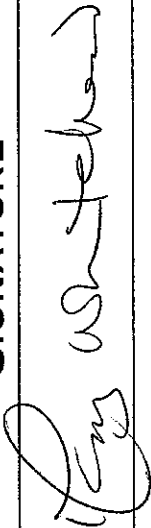

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
M Willey	15 Windsor Road		1/3/10
Michael North	7 Windsor Road		1/3/10
Carole North	7 Windsor Road		1/3/10
C Fordyke	21 Poulcott		1.3.10

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Mary Whitehead	29 The Green		2/3/10
Clare Whitehead	29 The Green		2/03/10

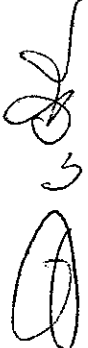



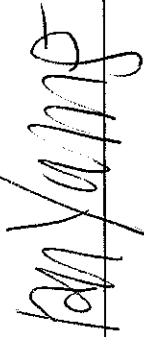
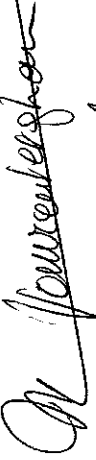

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Jonathan Parker Ann Taylor	21 15 Fairfield Approach	Jonathan Parker.	2/3/10
Anthony Habicht-Britton	17 Fairfield Approach	AB Habicht-Britton	2/3/10
Susan Habicht-Britton	17 Fairfield Approach	S. Habicht-Britton	2/3/10
Ann Taylor Jonathan Parker	¹⁵ 21 Fairfield Approach	Ann Taylor	2/3/10
Dawn Funnell	21 Fairfield Approach	Dawn Funnell	2/3/10
Nicole Mills	25 Fairfield Approach	N. Mills	2/3/10
Mrs Mills	25 Fairfield Approach	D. Mills	2/3/10
Hazel Searle	29 Fairfield Approach	H. Searle	1/3/10
Mark Searle	29 Fairfield Approach	M. Searle	1/3/10

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Roger Chapman	42 Ouseley Road	signed other form	
David Clark 07836 636901	30 Ouseley Road		20/3/2010
Daniel Young	41 Ouseley Road		07/03/10
Zoe Young	41 Ouseley Road		07/03/10
June Young	41 Ouseley Road		7.3.2010
Ian Young	41 Ouseley Road		7.3.2010
Muriel Carey	44a Ouseley Road		
Marleen Vanrenterghem	45 Ouseley Road		20/03/2010
Iain Hanson	45 Ouseley Road		20/03/2010

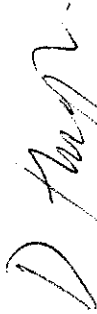


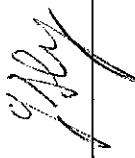

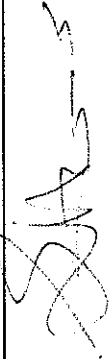
WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Derek Gleed	5 Coppice Drive	<i>Derek Gleed</i>	7-3-10
Owen Jeffries	9 Coppice Drive	<i>Owen Jeffries</i>	7.3.10
Barbara Jeffries	9 Coppice Drive	<i>B. A. Jeffries</i>	7-3-10
Karin Straka	27 Coppice Drive	<i>K. Straka</i>	4/3/10
Su Burrows	21b Coppice Drive	<i>Su Burrows!</i>	4/3/10
Henry Perez	21a Coppice Drive	<i>H Perez</i>	20/3/10
Elizabeth Perez	21a Coppice Drive	<i>E Perez</i>	20.3.10





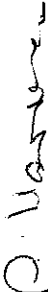


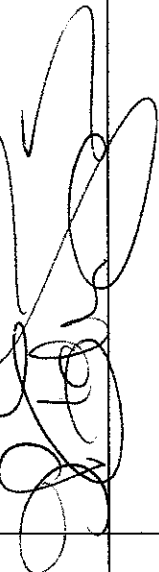
WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Diane Hughes	24 Friary Road		7-3-10
Jasmal Chehal	28 Friary Road		20.3.10
Eileen Carter	32 Friary Road		20.3.10.
Jeremy Casey	36 Friary Road		7-3-10
<input checked="" type="checkbox"/> D Rolfe	40 Friary Road		
Ron Oakman	42 Friary Road		7.3/10
Lynda Horner	46 Friary Road		7/3/10

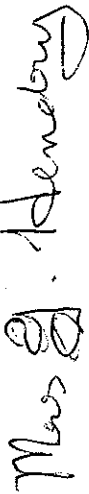




WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Susan Nicholls	10 Wharf Road		11/03/10
Karen McLachlan	11 Wharf Road		7.3.10
Val Weir	24 Wharf Road		09.3.10.
Michael Harrison	32 Wharf Road		7.3.10
Pauline Harrison	32 Wharf Road		7.3.10
Anne Gates	40 Wharf Road		7/3/10
David Gates	40 Wharf Road		7-3-10
Iris Elderfield	8 Wharf Road		9-3-10.

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
June Hendry	5 Friary Island		7/3/2010
Paul Hewson	Dragonflies, Friary Island		20/3/2010
Denise Woodley 483 280	Tansley, Friary Island		
Joan Whillans 482221	Wildflower, Friary Road		
Jane Whillans	Wildflower, Friary Road		
Frederick Pilditch	6 Friary Road		
Bianca Evans-Hassan 07956 327834	14 Friary Road		10/3/2010
Mr Satja Swaroop Issar SATYA	16 Friary Road		10/3/2010
Phillip Hughes	24 Friary Road		7/3/10






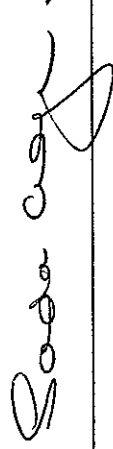
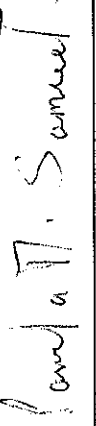
WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
John Gray	11 Riverside	<i>John Gray</i>	09/03/10
Kenneth Keeble	11 Riverside 32	<i>Keeble</i>	30/3/10
Rob Ettridge	5 Riverside	<i>Rob Ettridge</i>	09/03/10
Sharon Ettridge	5 Riverside	<i>Sharon Ettridge</i>	07/03/2010
Mr M H Gollidge	River House, Riverside	<i>M H Gollidge</i>	07/03/2010
Mrs M H Gollidge	River House, Riverside	<i>M H Gollidge</i>	07/03/2010
Mr P J MacDonald	5a The Embankment	<i>P J MacDonald</i>	

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
Linda Renouf	46 Ouseley Road		10/3/10
Helen Rodd	48a Ouseley Road		7/3/2010
Carol Howard	6 Ouseley Road		7/3/2010
Peter Howard	6 Ouseley Road		07/03/10
<input checked="" type="checkbox"/> Keith Huckle	66 Ouseley Road		
<input checked="" type="checkbox"/> Jane Huckle	66 Ouseley Road		
Glen Coyne	69 Ouseley Road		10-3-10
Sandra Coyne	69 Ouseley Road		10.3.10.
Pam Samuel	75 Ouseley Road		7-3-10

WRAYSBURY ACTION GROUP

We the undersigned confirm that we have no objection to and hereby authorise Su Burrows as the Chairman of Wraysbury Action Group to disclose the information on the completed Open Spaces Society questionnaire or letters we the undersigned have completed or provided to Su Burrows to anyone reasonably entitled to receive a copy in relation to Su Burrows' application on behalf of ourselves and the Wraysbury Action Group for the registration of 'Thamesfield', Wraysbury, Middlesex (Berkshire) as a Town or Village Green

NAME	ADDRESS	SIGNATURE	DATE
HANNAH HUGHES	34 FIJARY ROAD	[Signature]	28/02/10
PATRICK HUGHES	"	P.A. Hughes	8/3/10
ADAM HUGHES	"	[Signature]	10/03/10
NORMA HUGHES	"		

Sent: Monday, February 15, 2010 2:14 PM
Subject: Re: Thamesfield and the ongoing battle ...

Vogel Family
61A Fairfield Approach
Wraysbury TW19 5DR

To whom it may concern

We have lived in Wraysbury since 1975.

All my family have used the cornfield nearly every day for various activities, including just walking and enjoying the natural environment, taking our dogs for a run, horse riding, taking a picnic for the afternoon.
The list can go on and on.

May I ask that this precious space is kept for future generations to enjoy and not become another statistic of folly.

Sincerely
The Vogel family of 3 generations



7607/7-731

May 27th, 1976

Scale 1:10,000

Available as digital image
(original from Blue Sky) on request.

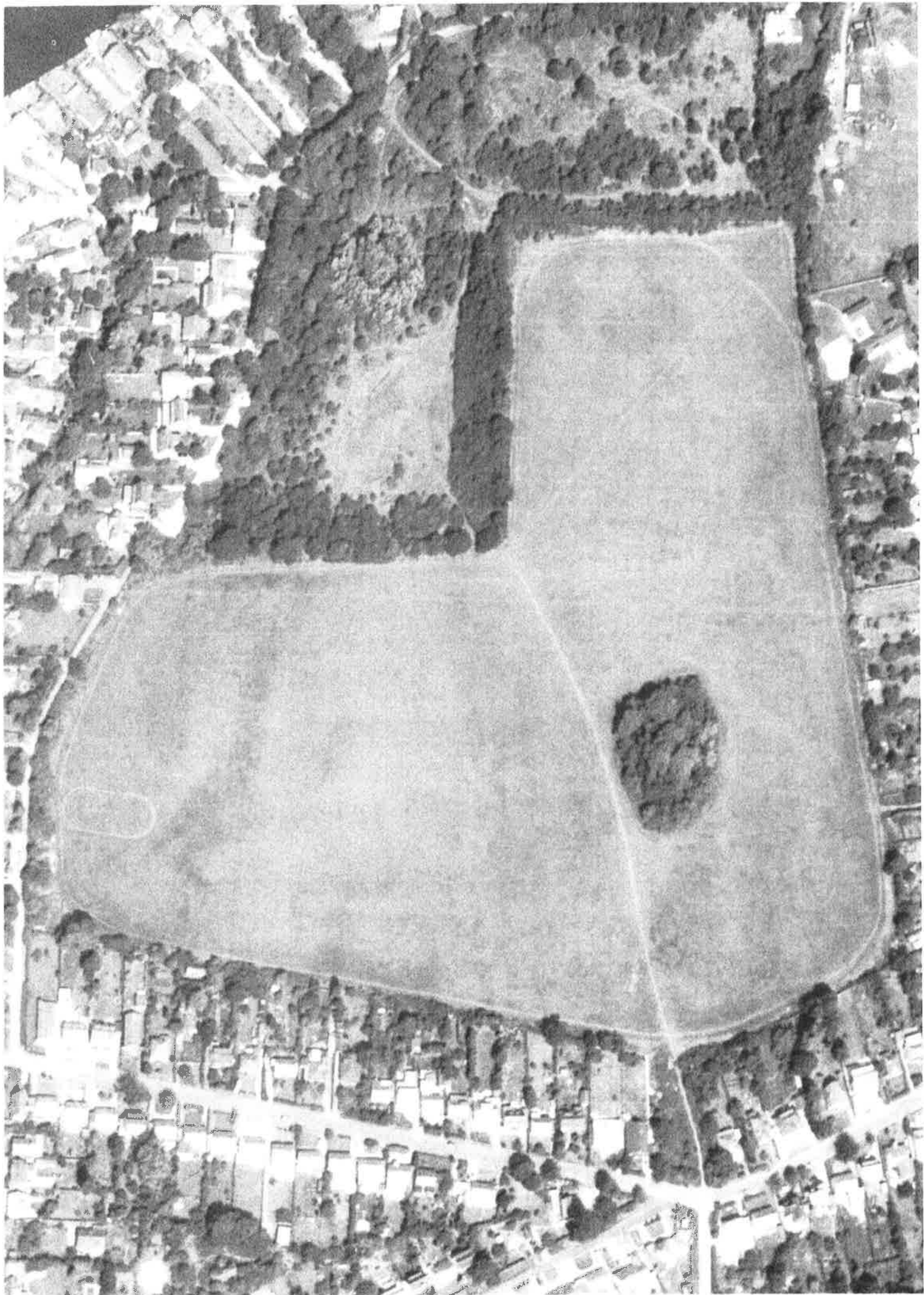
1987

EXHIBIT E2 : 1987

AF/87/95_7747



Digital original from Bluesky
available on request .





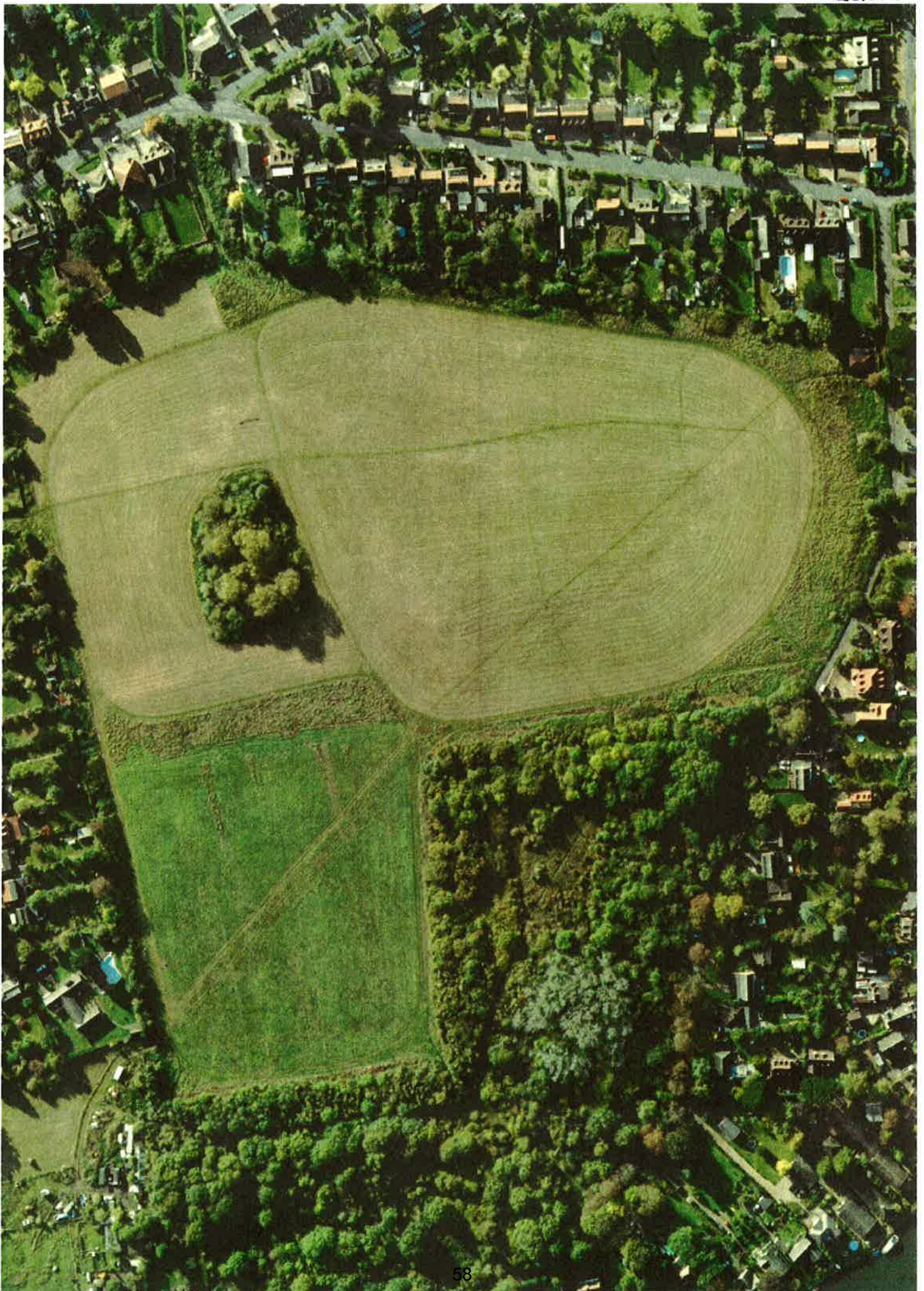


EXHIBIT E4: Letter of Authenticity
for aerial photographs



Ms Susanna Burrows
21B Coppice Drive
Wraysbury
Middlesex
TW19 5GJ

28th May 2009

Dear Ms Burrows,

RE: Date for Aerial Photography of a location in Wraysbury, Middlesex, TW19 5JG.

We hereby confirm that the following Aerial Photographs supplied on CD by Bluesky International Ltd to Ms Susanna Burrows on May 28th 2009 showing the site at Wraysbury in Middlesex, TW19 5JG were captured on the following dates:

UCX12-081008_0312 was flown on **October 8th 2008** at a resolution of 10cm

AF/87/95_7747 was flown on **August 20th 1987** at a scale of 1:16,000

7607/7_731 was flown on **May 27th 1976** at a scale of 1:10,000

The supplied digital images are either scanned directly from the original films or transferred directly from the camera and the images have not be digitally enhanced or manipulated in any way.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ralph Coleman".

Ralph Coleman
General Sales Manager

Countersigned

A handwritten signature in black ink, appearing to read "Rachel Tidmarsh".

Rachel Tidmarsh
Managing Director

EXHIBIT F: Letters showing diversion of public
footpath.

Royal County of Berkshire



Department of Planning

Shire Hall Shinfield Park Reading RG2 9XG
Telephone Reading (0734) 875444

Your reference

My reference 40/80/40. WRAY/GW/SB

When calling ask for Mr. G. Walters
Ext. 4939

26th April, 1984.

M Maidenhead
(0628) 33155

Dear Madam,

FOOTPATH & WRAYSBURY

Thank you for your letter of 19th April 1984 concerning the above.

Today I telephoned Mr. Jeffcock, the Southern Area Enforcement Officer for Windsor and Maidenhead Borough Council, about this matter. Apparently he has visited the site and taken note of conditions, although Mr. Gunderman was not at home. He has assured me that he will be dealing with this as soon as he could. Should there be any further work undertaken here I suggest you contact Mr. Jeffcock direct.

Yours faithfully,

Graham Walters

for County Planning Officer.

e

Mrs. S. Hegi,
53 Fairfield Approach,
Wraysbury,
Staines,
Middx.

53 Fairfield Approach
Wraysbury
Staines
Middlesex

19 April 1984

Mr. Walters
Department of Planning
Shire Hall
Chinfield Park
Reading

Dear Mr Walters

YOUR REF 40/80/40 WRAY SW/Sb 31.8.83

Further to my telephone call to your office this afternoon when you were away I am writing to confirm that the footpath on your map which you sent to me at field number 7045 has now been diverted at point "B", by Mr Gunderman of 7 Old Ferry Drive. The fence along the footpath is now running straight from point "A" to point "D" and it is no longer possible to pass along to point "C" from point "B". In effect the field has been enlarged to include the triangle CBD into the field 7045.

I also informed the Planning Office at the Town Hall Maidenhead, and spoke to Mrs Morgan who has also written to me in December last regarding the unauthorised erections etc by Mr Gunderman on the same field. She transferred me to the enforcement officer who also seemed to be aware of Mr Gunderman's activities. However, he continued with his task for the remainder of the day and once again he seems to have accomplished his business. As you stated in your letter the owner of the path would be subject to prosecution should he divert the legal path, I hope this will be done as soon as possible and the path returned to its original position.

Yours sincerely

Susan Hegi (Mrs)

53 Fairfield Approach
Wraysbury
Staines
Middlesex

19th August 1983

Planning Department
Berkshire County Council
Shire Hall
Shinfield Park
Reading

Dear Sir

PUBLIC FOOTPATH BETWEEN FAIRFIELD AND OLD FERRY DRIVE, WRAYSBURY

I would like to draw your attention to what seems to be unauthorised interference with the public footpath which runs between the end of my garden and a field which fronts onto Old Ferry Drive.

A few months ago the person who dwells in the field moved the posts and barbed-wired fence outward from the field by two or three feet, thus narrowing the width of the footpath and enlarging the field. Yesterday a massive clearance of trees and undergrowth took place, which would seem to be paving the way for redirecting the footpath and enlarging the field still further.

I understand that there are strict laws concerning any alterations in public footpaths and as I have not seen any mention of this one changing its course either at the village office or in the local press, I should be grateful if an inspection could be made as a matter of urgency before it becomes a fait accompli.

I am not sure which department is responsible for bye-ways and footpaths, and would ask you please to forward this information to the one concerned.

Yours faithfully

Susan Hegi (Mrs)



Royal County of Berkshire

Department of Planning

Shire Hall Shinfield Park Reading RG2 9XG
Telephone Reading (0734) 875444

Your reference

My reference 40/80/40. WRAY. GW/SB

When calling ask for Mr. G. Walters
Ext. 4935

Mrs. S. Hegi,
53 Fairfield Approach,
Wraysbury,
Staines, Middx.

M. ad 0628
33155

31st August, 1983.

Dear Madam,

FOOTPATH 8, WRAYSBURY:

Thank you for your letter of 19th August 1983, concerning the above.

I enclose a copy of an Ordnance Survey 1:2500 sheet with the footpath marked thereon. I would be grateful if you could return this to me indicating the length of path which you believe has been narrowed by relocation of the fence. There did not appear to be any readily apparent evidence that this had been done when I visited the site. However, I noted that the path is now quite narrow and the barbed wire fence may be likely to be injurious to persons using the path. I do not appear to have any recorded width for the path as it crosses field 7045, so I would also be grateful if you could inform me of its width before the alleged narrowing.

I also noted the clearance to the rear of the Fairfield Approach properties but that the legal line of the path would not appear to be obstructed at the moment.

Should the owner of the field obstruct the path, he would be liable to prosecution. If he wishes to divert the path, he would need to apply for a Diversion Order through the Borough Council, the confirmation of which can be time-consuming and not necessarily guaranteed. Until a Diversion Order is confirmed, the current line of the path should not be obstructed.

I am writing to the Borough Council to establish whether they have received an application for the diversion, whether there is planning permission for the land or whether they have any other relevant information about this matter.

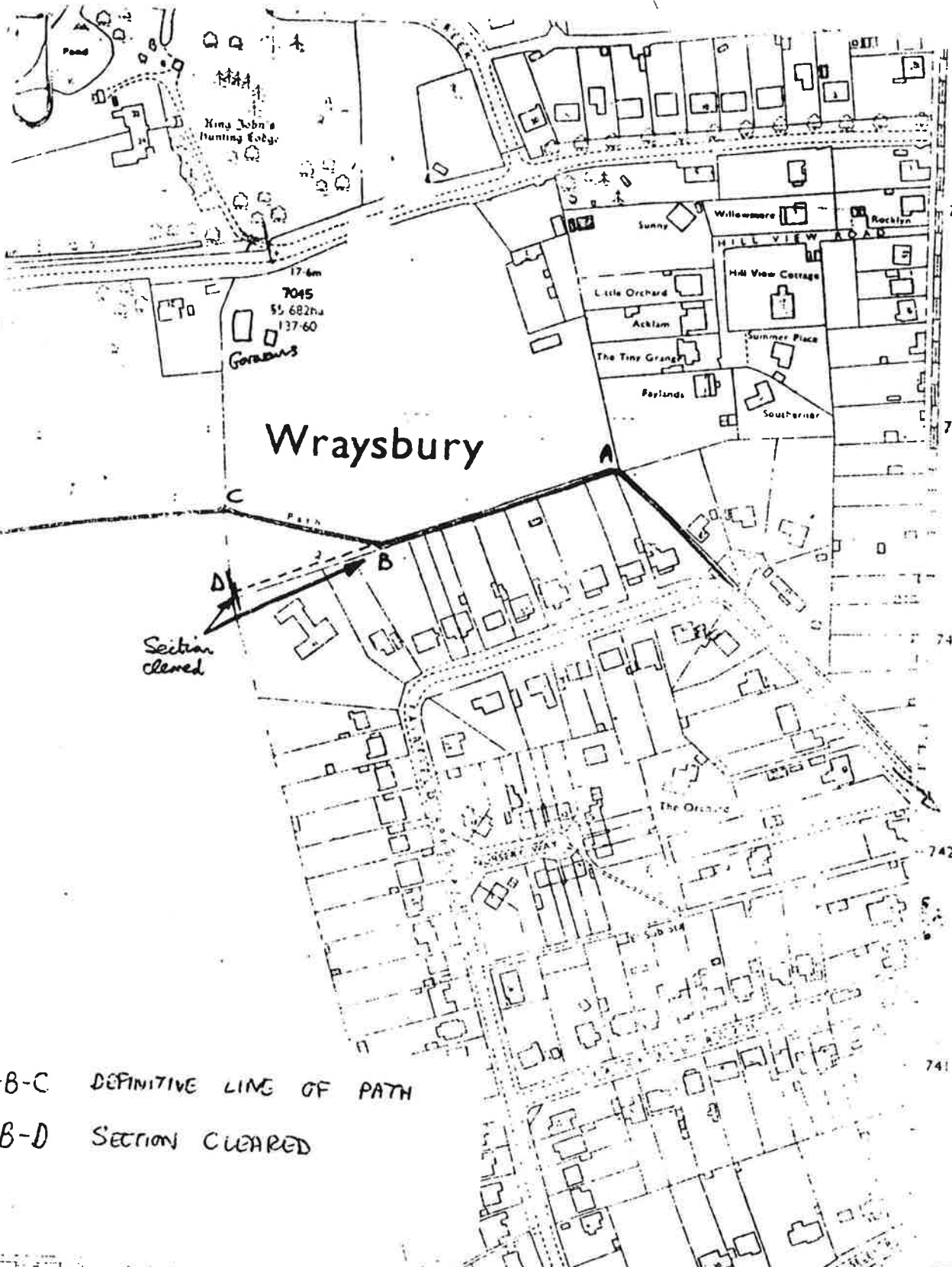
Since Mrs. Broadway of 49 Fairfield Approach has also reported this matter, I have copied this letter to her. Should the path become obstructed, I would be grateful if you could inform me as soon as possible.

Yours faithfully,

Graham Walters

for County Planning Officer.

TO 0074-0174
ETON RD



Wraysbury

Section cleared

A-B-C DEFINITIVE LINE OF PATH
B-D SECTION CLEARED

996

997

998

999

7400m

BEACONSFIELD CO CONST

50000m

Made and published by the Director General of the Ordnance Survey, Southampton

AREAS

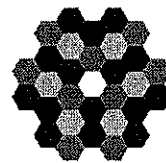
Area measurement is to plan edge only
Hectares (ha) and acres is shown within each parcel of land

EXAMPLE

parcel number
area in hectares
area in acres

When identifying a parcel it is important to specify the number of the plan on which it falls
The number of hectares and acres is shown within each parcel of land

849974



Official copy of register of title

Title number BK414185

Edition date 23.02.2009

- This official copy shows the entries in the register of title on 16 February 2010 at 09:40:08.
- This date must be quoted as the "search from date" in any official search application based on this copy.
- The date at the beginning of an entry is the date on which the entry was made in the register.
- Issued on 22 February 2010.
- Under s.67 of the Land Registration Act 2002, this copy is admissible in evidence to the same extent as the original.
- For information about the register of title see Land Registry website www.landregistry.gov.uk or Land Registry Public Guide 1 - *A guide to the information we keep and how you can obtain it.*
- This title is dealt with by Land Registry Gloucester Office.

A: Property register

This register describes the land and estate comprised in the title.

WINDSOR AND MAIDENHEAD

- 1 (19.06.2007) The Freehold land shown edged with red on the plan of the above title filed at the Registry and being Land at Thames Field and Coppice Field, Wharf Road, Wraysbury, Staines.
- 2 (27.05.2009) The land tinted green on the title plan has been removed from this title and separately registered.

B: Proprietorship register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

- 1 (09.01.2009) PROPRIETOR: WORBY ESTATES SALES LIMITED (Co. Regn. No. 6575011) of 36 Elmers Court, Post Office Lane, Beaconsfield, Buckinghamshire HP9 1QF.
- 2 (18.02.2009) RESTRICTION: No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction is to be registered without a certificate signed by Anne Elizabeth Mary Worby of 1 Benson Court, Lower Road, Forest Row, RH18 5HE and Keith Graham Worby of 39 Highfield Road, Cove, Farnborough GU14 0RB or by their conveyancer or by their authorised signatory David Worby of 102 Freshfield Bank, Forest Row, East Sussex RH18 5HN that the provisions of the Agreement dated 3 October 2008 have been complied with.

C: Charges register

This register contains any charges and other matters that affect the land.

- 1 (19.06.2007) The land tinted blue on the title plan is subject to the rights as mentioned by a Conveyance of the land in this title and other land dated 1 October 1962 made between (1) Alfred Reffell and (2) Albert Edward Worby.

NOTE: Copy filed.
- 2 (19.06.2007) REGISTERED CHARGE to secure the moneys charged on the land under section 16(6) of the Legal Aid Act 1988 or section 10(7) of the Access to Justice Act 1999.
- 3 (19.06.2007) Proprietor: LEGAL SERVICES COMMISSION (reference 11019204648/A/Z/1) of Land Charge Department, 13th Floor, Exchange Tower, 2 Harbour Exchange Square, London E14 9GE and of DX100170 Docklands 2.
- 4 (09.01.2009) Option contained in a Deed dated 22 October 2008 made between (1)Worby Estate Sales Ltd and (2) Anne Elizabeth Mary Worby and Keith Graham Worby upon the terms therein mentioned.

NOTE:-Copy filed.
- 5 (27.05.2009) The footways and footpaths are subject to rights of way.

End of register

EXHIBIT H: Misc pictures of use of field



1994

Courtesy of Jan Brown



1994

Courtesy of Jan Brown



1994

Courtesy of Jan Brown





In the Matter of
Application VG102 to register
land known as Thamesfield, Wrasbury,
as a Town or Village Green

DECISION ON THE PRELIMINARY ISSUES
AND ON THE APPLICANT'S APPLICATIONS TO AMEND
MISS LANA WOOD, INSPECTOR
31st MAY 2012

Royal Borough of Windsor and Maidenhead
Shared Legal Services
P.O. Box 151
Shute End
Wokingham
Berkshire
RG40 1WH

Ref: Sean O'Connor

In the Matter of

Application VG102 to register

land known as Thamesfield, Wrasbury,

as a Town or Village Green

DECISION ON THE PRELIMINARY ISSUES
AND ON THE APPLICANT'S APPLICATIONS TO AMEND
MISS LANA WOOD, INSPECTOR
31st MAY 2012

Preliminary issues

1. At the pre-inquiry meeting in relation to this application held on 23rd March 2012, I directed that the following issues would be determined as preliminary issues in advance of the inquiry on written submissions:
 - (1) The date on which the application or applications were received for the purposes of regulations 4 and 5 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.
 - (2) Whether if there has been more than one application, any of those applications has purportedly been rejected or withdrawn.
 - (3) If any of those applications have purportedly been rejected as not duly made whether in fact that application remains live, as a matter of law, on the basis that the decision that it was not duly made was incorrect.

Material considered

2. I have received, in accordance with my directions, copies of all correspondence between the Registration Authority and the Applicant prior to 17th January 2011. I have received written submissions from the Applicant and from the Lead Objector, Worby Estate Sales Limited. I have also received a witness statement of

Su Burrows, the applicant, exhibiting two unstamped application forms: an application form dated 10th March 2010, supported by a statutory declaration declared on 11th March 2010 and an application form dated 13th September 2010, supported by a statutory declaration declared on 30th September 2010 and an application form dated 13th September 2010, supported by a statutory declaration declared on 12th January 2011, which has been date stamped with the Registration Authority's stamp bearing a date of 17th January 2011,

3. I have also made inquiries of the Registration Authority, pursuant to the query raised in the Applicant's submissions, as to whether Ms Emma-Jane Brewerton had delegated authority pursuant to section 101 of the Local Government Act 1972 to make a decision to reject an application as not duly made under regulation 5 of the 2007 Regulations.

Conclusions

4. For the reasons which follow my conclusions are:

(1) An application was received by the Registration Authority for the purposes of regulation 4 of the 2007 Regulations on 11th March 2010. That application should have been date stamped pursuant to regulation 4(1)(b) by the Registration Authority as received on that date.

It is not necessary for me to consider the range of documents which might be recognised by a Registration Authority as an application under section 15 of the 2006 Act. On the facts of this case the application form received by the Registration Authority on 11th March 2010 was clearly recognisable as an application under section 15 and should have been date-stamped pursuant to regulation 4 on receipt.

I consider that an application is "made" for the purposes of regulation 5 of the 2007 Regulations and section 15 subsections (3), (4) and (5) of the Commons Act 2006 when it is received by the Registration Authority. I do not consider that in order for an application to be "made" for the purposes of those provisions or for the purposes of determining whether qualifying use continues

“at the time of the application” for the purposes of subsection 15(2) the application has to pass the further test of being “duly made” within the meaning of Regulation 5.

(2) Having examined the correspondence carefully, in the light of the submissions, I conclude that there was only one application: that made on 11th March 2010. The applicant did not at any time agree to withdraw that application. The further application form dated 13th September 2010, supported by a statutory declaration declared on 30th September 2010 and the application form dated 13th September 2010, supported by a statutory declaration declared on 12th January 2011, ought properly in my judgment to be regarded not as further applications, but as attempts by the applicant to put her 11th March 2010 application in order.

(3) The officer who dealt with the matter did not have delegated authority to reject the application as not duly made. Having considered the correspondence, in the light of the submissions, I am not in any event satisfied that the officer did purport to reject the application as not duly made: rather in my view it is clear that what she was doing was giving the applicant a reasonable opportunity to put her 11th March 2010 application in order.

Detailed reasons

5. This application concerns an application under section 15(1) of the Commons Act 2006. Any application made under section 15(1) of the 2006 Act within the area for which the Royal Borough of Windsor and Maidenhead is the registration authority made since 6th April 2007 must be made in accordance with the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (see regulations 2(1) and 3(1) of the 2007 Regulations). Regulations 3, 4 and 5 of the 2007 Regulations provide:

“Application to register land as a town or village green

3.—(1) An application for the registration of land as a town or village green must be made in accordance with these Regulations.

(2) An application must—

- (a) be made in form 44;
 - (b) be signed by every applicant who is an individual, and by the secretary or some other duly authorised officer of every applicant which is a body corporate or unincorporate;
 - (c) be accompanied by, or by a copy or sufficient abstract of, every document relating to the matter which the applicant has in his possession or under his control, or to which he has a right to production;
 - (d) be supported—
 - (i) by a statutory declaration as set out in form 44, with such adaptations as the case may require; and
 - (ii) by such further evidence as, at any time before finally disposing of the application, the registration authority may reasonably require.
- (3) A statutory declaration in support of an application must be made by—
- (a) the applicant, or one of the applicants if there is more than one;
 - (b) the person who signed the application on behalf of an applicant which is a body corporate or unincorporate; or
 - (c) a solicitor acting on behalf of the applicant.

Procedure on receipt of applications

- 4.—(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.

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

- 5.—(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(3) (public notices), as if it were a public notice within the meaning of that section.”

6. In construing these requirements, in my judgment it is necessary to have regard to the advice to Registration Authorities concerning the administration of applications made under the earlier but substantially similar Commons Registration (New Land) Regulations 1969 contained in the judgment of Carnwath LJ in the Court of Appeal at paragraphs 102-111 and in the opinion of Lord Hoffman in the House of Lords in the case of *Oxford City Council v. Oxfordshire County Council*¹ at paragraph 61. The salient points of that advice are as follows. The procedure for registration is intended to be relatively simple and informal. The regulations should not be construed in a technical manner. Although the procedure is initiated by an application and the applicant therefore bears the primary responsibility for getting it right and producing the evidence to support it, the procedure also has a public element. The objectives of the regulations are (1) to give persons interested in the land and the inhabitants at large notice of the application and (2) to give the applicant fair notice of any objections (whether from the landowner, third parties or the registration authority itself) and the opportunity to deal with them. The registration authority should therefore be guided by the general principle of being fair to the parties. There is no absolute right in the applicant to amend or withdraw an application, but a

¹ [2005] EWCA Civ 175 and [2006] UKHL 25, respectively.

registration authority may permit amendment in an appropriate case. It would be a pointless waste of resources for a registration authority fully to process an application that the applicant did not wish to pursue whether wholly or in part unless there were some good reason to do so. Similarly, 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.

7. I also have regard in reaching my decision to the fact that the Registration Authority is a creature of statute, and can only make decisions in accordance with its statutory powers. Section 101 of the Local Government Act 1972 provides (as relevant):

“101 Arrangements for discharge of functions by local authorities

(1) Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions—

- (a) by a committee, a sub-committee or an officer of the authority; or
- (b) by any other local authority.

...

(2) Where by virtue of this section any functions of a local authority may be discharged by a committee of theirs, then, unless the local authority otherwise direct, the committee may arrange for the discharge of any of those functions by a sub-committee or an officer of the authority and where by virtue of this section any functions of a local authority may be discharged by a sub-committee of the authority, then, unless the local authority or the committee otherwise direct, the sub-committee may arrange for the discharge of any of those functions by an officer of the authority.

...

(4) Any arrangements made by a local authority or committee under this section for the discharge of any functions by a committee, sub-committee, officer or local authority shall not prevent the authority or committee by whom the arrangements are made from exercising those functions....”

8. The Registration Authority, at its meeting held on 22nd September 2009, resolved that the power to determine whether an application for a new town or village green was in an acceptable form for acceptance by the Council as Commons Registration Authority for the borough and to either reject the application for non-compliance with the regulations or take appropriate action in accordance with statute and regulations in force at the time of such application with regard to publication etc., should be delegated to the Head of Legal Services. A copy of the Minute of the Council’s meeting and of the officer report to the meeting is

appended* to this report. Although the wording of the resolution does not follow the wording of the regulations exactly, I am satisfied that the intention of the Council was to delegate the power to reject an application as not duly made without publication under regulation 5 to the Head of Legal Services.

9. Under the Registration Authority's constitution where a function has been delegated to a specified officer, that function may also be exercised by any officer authorised by the officer to whom the function is delegated. Any such authorisations are to be recorded and held by the officer making the authorisation. A copy of an extract from the Council's Constitution (December 2011 version) is appended* to this report. I am instructed that the provisions of the Council's Constitution in force throughout 2010 and 2011 were in every material respect identical to the December 2011 version of the Constitution. I am further instructed that the Registration Authority's Head of Legal Services has not authorised her officers to reject a TVG application, so the delegated power to reject any application under regulation 5 as not duly made remains with the Head of Legal Services. The Head of Legal Services could have made the decision to reject the application herself, but did not do so. Had Ms Brewerton wished to reject the application as not duly made, she would have required the written authority of the Head of Legal Services to do so, and she did not have that authority.

10. This consideration of the powers of the officer dealing with the applicant in this case simplifies the situation: in my judgment it follows that the Registration Authority did not purport to reject the application received on 11th March 2010. This conclusion is in any event clear from the correspondence: Ms Brewerton's email of 17th May 2010 offers to return the application "to enable a revised application to be made". In her email of 17th June 2010 Ms Brewerton suggests that she should "make arrangements to return the application [to Ms Burrows] for rectification". Ms Brewerton's letters of 8th July 2010 and 2nd September 2010 both refer to the "revised application". In my judgment the natural meaning of the words used is that the application will be a revised version of the existing application, rather than a new application.

11. Ms Burrows did not at any stage purport to withdraw her application: she merely sought clarification as to how it had to be revised in order to comply with the officer's requirements. My conclusion that the original application remained extant and was being revised is further supported by Ms Brewerton's letter of 2nd September 2010 in which she asks "If, however, it is not your intention to now proceed with the application could you please confirm this to me." In my judgment it is clear from the language used here that Ms Brewerton regarded the application as outstanding as at that date. After the application was re-submitted, again Ms Brewerton referred to it as a "revised application" in her email of 25th November 2010, and, after having raised further requirements and returned it again to Ms Burrows, referred again to the anticipated re-submission in her letter of 2nd December 2010 as the submission of "the revised application". No new Form 44 was required (see the email of 6th January 2010), rather the form originally delivered to the Registration Authority on 11th March 2010 was to be revised. I therefore conclude that there was only one application.

12. I turn next to consider the question of on what date the application was received for the purposes of regulation 4. In my judgment an application may be "received" by a Registration Authority for the purposes of Regulation 4 in spite of the fact that it might not comply strictly with each and every requirement of regulation 3 and the notes to Form 44 as long as it is recognisably an application under the Regulations. To hold otherwise would be to invite technical arguments of the type expressly disapproved in *Oxfordshire*.

13. A comparison of regulation 4 and regulation 5 shows clearly that there is a stage between receipt and publication at which the Registration Authority must consider whether an application is duly made. If satisfied that the application is duly made, the authority is obliged to advertise in accordance with regulation 5(1) and (2). If it is not so satisfied, the authority must give the applicant a reasonable opportunity to remedy any defects. If the defects identified in the application which cause it not to be duly made are rectified, the registration authority must then proceed to advertise the application. It is only if the applicant does not remedy the defects that the authority may reject the application without publication.

14. I can see no justification, in the scheme of the Regulations, for delaying the date-stamping until after an officer of the Registration Authority has had the opportunity to consider whether the application is duly made. It may be some weeks or months before the officer has that opportunity. It may then (as here) be some further weeks or months before the applicant is able to remedy the perceived defects in the application to the satisfaction of the officer. To delay the date-stamping until that time is in my judgment contrary to the scheme and policy of the legislation and invites satellite litigation as to whether or not the officer (who may not have any delegated authority to reject the application as duly made) has made the correct decision in law as to whether the application is or is not duly made. To construe the regulations in this way would, in my judgment, introduce an unacceptable degree of uncertainty and complication into what is intended to be a simple and straightforward procedure.
15. I come therefore to the question of when the application is made for the purposes of regulation 5 and section 15 of the 2006 Act.
16. Where any defects identified in the application are remedied by the applicant, in my judgment, the date on which the application was “made” for the purposes of section 15 must relate back to the date on which the application was received by the Registration Authority. I do not agree with the conclusion of Mr Edwards Q.C. contained in the Advice supplied by the Applicant that the date on which an application is “made” for the purposes of section 15 is the date on which it is “duly made” for the purposes of regulation 5, rather than the date on which it is “received” under regulation 4. I do not consider that it is likely that a court would construe the regulations as suggested by Mr Edwards.
17. The wording of regulation 5(1) refers to the situation “where an application is made under section 15(1)” and provides that where an application is made it must, subject to paragraph (4), be published. As a matter of construction, it seems to me, the effect of this language is that an application which falls to be treated under paragraph (4) is also “made”, despite the fact that it is not “duly made”.

18. This conclusion is supported, in my judgment by a consideration of the policy behind the regulations: the regulations ought to be construed using a common sense approach to produce, where possible, a procedure which is simple and clear. The purpose of date-stamping as required by regulation 4 must in my judgment be to provide evidence of the date on which the application is “made” for the purposes of section 15. Date-stamping on receipt provides certainty both to the applicant and to the landowner and any other interested parties. The date on which the application is “duly made” may be unknown to the objector, and may, even with the benefit of all correspondence between the registration authority and the applicant, as a matter of law, be unclear. One may, as here, get arguments that the Registration Authority was mistaken in its judgment that the application was not duly made.
19. Further, if the time at which the application is “made” is when it is “duly made” under regulation 5 rather than when it is received under regulation 4, the time taken by the Registration Authority to proceed to preliminary consideration of an application might result in an applicant who has submitted his application under section 15(2) while use is continuing or under section 15(3) within a short period of qualifying use ending and within the two year time limit, being able to remedy any defects which render the application not “duly made”, but nevertheless being unable to pursue an application under section 15(3) or (4) because the relevant time has expired before the application was “duly made”. This cannot have been the intention of Parliament. In my judgment in order to be fair to the applicant one must take the date on which his application form was received by the Registration Authority as the date on which the application was made.
20. It is therefore not necessary for me to consider when the application was “duly made” for the purposes of regulation 5.
21. I therefore conclude that the application submitted to the Registration Authority on 11th March 2010 has not been rejected and remains live, and that that application is the only extant application. The application should have been date stamped 11th March 2010 pursuant to regulation 4. The date on which the

application was made for the purposes of section 15 of the 2006 is 11th March 2010.

Application to amend to rely on subsections 15(3) and (4) in the alternative to subsection 15(2)

22. The Applicant has applied to amend her application to rely on the criteria contained in subsections 15(3) and 15(4) of the 2006 Act in the alternative to subsection 15(2). Those subsections provide:

(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 period of two years beginning with the cessation referred to in paragraph (b).

(4) This subsection applies (subject to subsection (5)) 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 commencement of this section; and
- (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).

23. The applicant seeks to amend to rely on the following dates as the dates on which use as of right came to an end:

- for the purposes of subsection 15(3): 11th March 2008
- for the purposes of subsection 15(4): 11th March 2005

24. It is obvious that these dates do not represent a positive case advanced by the applicant as to the date on which use as of right ceased, but rather they represent the earliest possible dates which could have been specified as that date in an application submitted on 11th March 2010. The applicant takes this stance because, she says, the question of when use as of right ceased is a mixed question of fact and law, and until the conclusion of the evidence, she will not be in a position to make submissions as to at what date the Registration Authority ought to determine use as of right of the application land ceased.

25. There was no suggestion in the application form or in the supporting statement that the applicant wished to rely in the alternative on the criteria set out in either subsection 15(3) or subsection 15(4). The first occasion on which the applicant indicated that she intended to apply to amend her application was in her reply to the objectors' submissions dated 1st September 2011, in which she indicated that she sought permission to amend to rely on the criteria set out in subsection 15(3). The first occasion on which she indicated that she intended also to seek permission to rely on subsection 15(4) was in her solicitor's letter to the Registration Authority dated 16th March 2012.
26. The question of whether the applicant ought to be given permission to amend was raised at the pre-inquiry meeting. The Objectors submitted that the applicant should be required to "pin her colours to the mast" and specify a date on which she said that use as of right came to an end. She should not be allowed to amend to rely on the earliest possible date which could have been specified in the application submitted on 11th March 2010.
27. I have set out the guidance to Registration Authorities in relation to amendments above in detail. There is no absolute right in the applicant to amend an application, but a registration authority may permit amendment in an appropriate case. The registration authority should be guided by the general principle of being fair to the parties. It would be a pointless waste of resources for a registration authority fully to process an application that the applicant did not wish to pursue whether wholly or in part unless there was some good reason to do so. Similarly, 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.
28. I am satisfied that there will be no procedural disadvantage to the objectors in allowing the application: the application to amend has been made at a reasonably

early stage, and well in advance of the public inquiry which is scheduled to be heard in September 2012 and the objectors have a fair opportunity of adducing evidence to meet the case as amended.

29. The prescribed form under the 2007 regulations, Form 44, purports to offer the applicant a choice between making his application under the criteria set out in subsection 15(2) or under the criteria set out in subsection 15(3) or under the criteria set out in subsection 15(4): the marginal note reads: “If the application is made under section 15(1) of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case” [emphasis as original].
30. DEFRA’s guidance note² describes the criteria as alternatives, and contemplates that the application being made under one only of the three criteria. The disclaimer to the guidance notes states that the guidance notes are non-statutory and have no legal effect. DEFRA states that the guidance should therefore not be regarded as definitive and points out that it is for commons registration authorities to interpret the legislation in determining applications for the registration of new greens.
31. In this instance the Lead Objector’s case, as set out in its objection, is that there have been attempts to control access to the application land over the years, but that June 2007 marked the start of a significant increase in the degree of control exercised by the landowner over pedestrian access to the field, such that, by the latest, June 2008, any use of the application which had not been expressly authorised by the landowners was contentious and therefore not as of right.
32. Where two or more of the statutory criteria might on the facts of a particular situation be applicable, if it is right that the form may only be completed so as to make an application relying on a single criterion, two or more forms would have to be completed and submitted to the registration authority. This appears to me to be to be an inconvenient and impractical result. In my judgment a court would

² Section 15 of the Commons Act 2006: Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green outside the pilot implementation areas

seek to construe the form so as to allow an application to be made relying on two or more criteria in the alternative, so that where the facts give rise to a potential issue as to which criterion is likely to be applicable, it would be open to the registration authority to accept an application in the alternative, and, as a matter of convenience, to accept those alternative applications on a single form. I am therefore satisfied that a registration authority can, in an appropriate case, permit an application to amend to rely on two or more of the statutory criteria.

33. I have considerable sympathy with the applicant's difficulty in identifying the date on which use as of right ceased at this stage. In my judgment, in the circumstances of this case, there could have been no objection to an application submitted at the same time as the original application and made in the alternative under sections 15(3) or 15(4) which specified the earliest possible date according to the statutory test as the date on which use as of right ceased.

34. The above points were canvassed at the pre-inquiry meeting, and I am satisfied that the parties had a sufficient opportunity to make submissions on them. However, there is a further point, which was not fully addressed, which is relevant to the application, and which troubles me. The further point is whether an application to amend made some time after the original application ought to be permitted in a form which will enable the applicant to benefit from an earlier date than the date which she could have specified in a fresh application made on the same date as the application to amend.

35. The practical effect of the amendment as sought would be as follows:

- If use as of right was determined to have ceased on or after 11th March 2010, an application under section 15(2) might succeed;
- If use as of right was determined to have ceased on a date between 11th March 2008 and 10th March 2010, an application under section 15(3) might succeed;

- If use as of right was determined to have ceased on a date between 11th March 2005 and 5th April 2007, an application under section 15(4) might succeed.

36. However, the earliest date which could have been specified as the date on which use as of right ceased in a new application relying on section 15(3), submitted on the date on which the application to amend was made, would have been 1st September 2009. Similarly, the earliest date which could have been specified as the date on which use as of right ceased in a new application relying on section 15(4), submitted on the date on which the application to amend was made, would have been 16th March 2007. Had new applications been made at the dates on which the applications to amend were made, the practical effect of the current application together with the two new applications under subsections 15(3) and 15(4) would have been:

- If use as of right was determined to have ceased on or after 11th March 2010, an application under section 15(2) might succeed [this period is unaffected];
- If use as of right was determined to have ceased on a date between 1st September 2009 and 10th March 2010, an application under section 15(3) might succeed;
- If use as of right was determined to have ceased on a date between 16th March 2007 and 5th April 2007, an application under section 15(4) might succeed.

37. It is therefore apparent that if the amendment as currently proposed is allowed, rather than the Registration Authority insisting on fresh applications with new application dates being made, the objectors' chances of defeating the application by showing that use as of right ceased on a date which means that the qualifying criteria are not met will be reduced. I do not consider that I can fairly decide this application without giving the objectors the opportunity to make submissions as to whether the earliest dates which should be allowed to be inserted by amendment are the dates which could have inserted on the date the application was made, or

alternatively whether the earliest dates which should be allowed to be inserted by amendment should be the dates which could have been inserted on a new application made on the dates on which the applications to amend were made.

38. Rather than invite further submissions on this point at this stage, in view of the proximity of the inquiry, I consider that the most convenient course is for me to direct that the evidence for the inquiry should be prepared to meet the application as it would be if permission to amend were granted as sought, but to permit the parties to make further submissions during the course of the inquiry as to the dates which should be inserted by amendment as the dates on which use as of right ceased.

Conclusion

39. I am satisfied that it would be appropriate in the circumstances to allow an amendment to the application to permit the application to be made in the alternative under the different criteria contained in section 15(2), (3) and (4), and that it would be permissible, as the question of when use as of right ceased is a mixed question of fact and law the outcome of which it is not possible to determine at this stage, for the applicant to give as the date at which use as of right ceased for subsections 15(3) and (4) the earliest date on which she is entitled to rely, having regard to the statutory criteria and the date of the application. However, I do not think that the objectors have had a sufficient opportunity to make submissions as to whether the date of the application for these purposes should be the date of the original application (March 2010) or the date of the applications to amend (respectively 1st September 2011 and 16th March 2012).
40. I therefore direct that the evidence for the inquiry should be prepared to meet the application as it would be if permission to amend were granted as sought, but I will permit the parties to make further submissions during the course of the inquiry as to the dates which the authority ought to permit to be inserted by amendment as the dates on which use as of right ceased.

Application to amend the application land to exclude the land to the rear of 38 and 40 Wharf Road

41. In relation to this application, I am guided by the observation of Carnwath LJ in *Oxfordshire*, with whose remarks Lord Hoffman agreed, that it would be a pointless waste of resources for a registration authority fully to process an application that the applicant does not wish to pursue whether wholly or in part unless there were some good reason to do so. In my judgment the correct approach to take in considering whether the authority ought to permit this application is to consider whether there is any good reason for insisting that the application land should continue to include the land to the rear of 38 and 40 Wharf Road.
42. In the application form dated 10th March 2010 the application land was described as the land known as Thamesfield, bordered by Friary Road, Wharf Road and Fairfield Approach, Wraysbury. No mention was made in this part of the form of any part of the field being excluded. However in part 8 of the form (where the applicant is asked to supply the names and addresses of those with an interest in any part of the land claimed to be a TVG), the applicant wrote “Mr Gates owns behind his house @ 40 Wharf Road which is not to be counted as part of application”. The red line on the 1:5000 map sent with the application showing the boundary of the application land ran along the original rear fences of the houses on Wharf Road and to the rear of the electricity sub-station to the rear of 42 Wharf Road, but there was a manuscript annotation on the map in the area to the rear of 40 Wharf Road “please note section fenced here not included”. In her supporting statement to the application (the “important note” at the end of the first section of the supporting statement) the applicant stated that there were a number of plots in the corner shown on the map that were owned by Mr Gates and his neighbours which were fenced before the Removal of Permitted Development Rights was unanimously agreed by the Council in September 2009. She continued “as this fencing was put up prior to the Article 4 and prior to our application we would like to remove this area from the area to be considered for allocation to village green. It should also be noted that the Gates family are in support of our Village Green application.”

43. It is thus apparent that the original intention of the applicant was to exclude the fenced areas to the rear of 40 Wharf Road from the application land. Ms Burrows sets out the circumstances in which her decision to exclude this land came to be made in paragraph 9 of her statement dated 16th April 2012. These areas would not in any event have qualified for registration under the criteria contained in section 15(2) upon which the applicant, at that stage, relied.
44. When the revised application was submitted in September 2010, the annotation had been deleted, and the supporting statement had been changed. The “important note” now explained that the annotation excluding the land to the rear of 40 Wharf Road had been made after the map had been signed by the supporters of the application (to signify their agreement with the area shown), and therefore the applicant wished to include the whole of the field within the application land, without exclusion. The annotation was deleted and the deletion signed by Ms Burrows and dated 30th September 2010.
45. When the re-revised application was submitted in January 2011, the 1:2500 map exhibited to Ms Burrows’ statutory declaration showed the boundary of the application land running as along the original rear fences of the houses on Wharf Road and to the rear of the electricity sub-station to the rear of 42 Wharf Road. The supporting statement remained the same as the supporting statement submitted with the revised application submitted in September 2010.
46. Now that the applicant seeks also to rely on the criteria contained in subsections 15(3) and (4), it is apparent that these areas might qualify for registration under the criteria contained in section 15(3) or (4). The applicant applies to remove those areas from the application land.
47. The lead objector argues that there appears to be no reason of principle for excluding the areas to the rear of 38 and 40 Wharf Road, and contends that the only reason for excluding these areas is to ensure that the residents of 38 and 40 Wharf Road cease to be objectors and in fact will become supporters: in effect the applicant has done a deal with these residents. This submission is supported by the facts as set out in Ms Burrows’ statement in relation to her original decision to

exclude the land behind 40 Wharf Road: Ms Burrows states that she was prepared to exclude the land from the application land because Mr and Mrs Gates asked her to exclude it because they had bought it legally and had it fenced before the Article 4 order as put in place, and had their planning application for change of use from agricultural to garden use accepted. She considered that it would be alright to exclude the area because it was small, and near the pumping station in the corner of the field.

48. It is apparent in my judgment that Ms Burrows' decision was not based on any reason of principle or recognition that the application would not succeed in relation to this area, but rather on sympathy with the position of residents who had paid good money for it, and otherwise were supportive of the application.

Conclusion

49. On balance I am satisfied that the fact that there is no reason of principle behind the application is a good reason for refusing to allow the amendment. The land behind 38 and 40 Wharf Road will continue to form part of the application land.

LANA WOOD
9 Stone Buildings
Lincoln's Inn
31st May 2012

In the Matter
of an Application to Register
Land Known as Thamesfield, Wraysbury,
Royal Borough of Windsor and Maidenhead
As a New Town or Village Green

REPORT
of Mr. VIVIAN CHAPMAN Q.C.
25th February 2013

Royal Borough of Windsor and Maidenhead,
Shared Legal Services,
PO Box 151, Shute End,
Wokingham,
Berkshire RG40 1WH
Ref Sean O'Connor/Catherine Woodward
VRC/13/10/WP/S4/Thamesfield Report

In the Matter
of an Application to Register
Land Known as Thamesfield, Wraysbury,
Royal Borough of Windsor and Maidenhead
As a New Town or Village Green

REPORT
of Mr. VIVIAN CHAPMAN Q.C.
25th February 2013

EXECUTIVE SUMMARY

This report concludes that although Thamesfield has been used for lawful sports and pastimes by a significant number of the local people for more than 20 years, such use became contentious and ceased to be use “as of right” in July 2007 and that the application fails because it was not made within two years of that cessation.

CONTENTS

Section	Title	Paragraph
1.	Thamesfield	[1]
2.	The TVG application	[5]
3.	New TVGs: law and procedure	[9]
4.	Amendment of TVG application	[26]
5.	When was the TVG application “made”?	[31]
6.	Approach to the evidence	[33]
7.	Evidence for applicant	[36]

8.	Evidence for WESL	[210]
9.	Evidence for Mr. & Mrs. Smith and Mr. & Mrs. Gates	[250]
10.	Evidence for Mr. McDonagh	[253]
11.	Expert evidence	[254]
12.	Findings of fact	[272]
13.	Applying the law to the facts	[298]
14.	Conclusion and recommendations	[336]

1. Thamesfield

[1] Wraysbury is a village to the west of London in the Royal Borough of Windsor and Maidenhead (RBWM). It lies on an unusual site largely surrounded by water. To the east of the village are a series of massive reservoirs which lie beside the M25 as it skirts Heathrow Airport. To the north, west and south of the village is the River Thames, which makes a great curve around the village.

[2] On the western side of the village there is a large expanse of open land known as Thamesfield. This land is about 13 acres in area. It is roughly in the shape of a “V” with one arm pointing north and the other arm pointing west. The land is fairly flat. The vegetation is mostly grass although the edges are overgrown to a variable depth with brambles and bushes. In the south-eastern sector of the land there is an oval shaped copse of trees. It is obvious from the grassy character of most of the land that it has been cultivated or mown until relatively recent years as it lacks the scrub and self-sown trees of long neglected land. There is a well-worn track which runs roughly around the perimeter of Thamesfield inside the overgrown belt. Other paths, of varying width and definition, criss-cross Thamesfield.

[3] The boundaries of Thamesfield can be described as follows:

- To the south, the boundary consists mostly of the back garden fences or walls of houses in Wharf Road (to the west) and Ouseley Road (to the east). Where Wharf Road and Ouseley Road meet, opposite the entrance to Coppice Drive, there is a gap between the houses in Wharf Road and the houses in Ouseley Road and Thamesfield extends between the houses to the roadside. This area is about the size of a house plot and is overgrown. This gap between the houses is blocked from the road by double metal gates on which there is a sign reading:

*“PRIVATE PROPERTY
Access to this land is by permission of the owners”*

I will call this the Coppice Drive entrance to Thamesfield.

- The eastern boundary of Thamesfield consists mostly of the back garden fences or walls of houses in Fairfield Approach, a road which leads northwards from Ouseley Road. Towards the south end of Fairfield Approach, opposite the entrance to Fairfield

Road, there is a gap between the houses backing onto Thamesfield. There is a low earth bund across the gap and a well-trodden path crosses the bund to give access to Thamesfield from Fairfield Approach. I will call this the Fairfield Approach entrance to Thamesfield. Before it reaches the northern end of Thamesfield, Fairfield Approach first turns to the east and then, after a few houses, turns to the south-east to join Welley Road. At the second turn, a public footpath (FP8) leads north off Fairfield Approach and then passes westwards along the backs of the houses and then to the north of Thamesfield. An unofficial diversion of this public footpath gives access to Thamesfield near its north-eastern corner.

- The northern boundary of Thamesfield is of an irregular shape, consisting of the northern end of the north-pointing arm of the “V” and the inside of the two arms of the “V”. This boundary adjoins a wooded area known as the Kayles, which has recently been registered as a new town or village green (TVG). On the northern side of the Kayles, there is a road called Old Ferry Drive, which leads westwards off Welley Road. A public footpath (a continuation of FP8) runs from Old Ferry Drive to the north-western corner of the northern arm of Thamesfield and then runs eastwards just inside the boundary of the Kayles to join the part of FP8 coming from Fairfield Approach described above. At the north-western and north-eastern corners of the northern arm of Thamesfield there are informal entrances to Thamesfield from the public footpath.
- The western boundary of Thamesfield immediately adjoins a road called Friary Road. There are no houses on the eastern side of Friary Road between the road and Thamesfield. The boundary between Friary Road and Thamesfield is unfenced but a low earth bund, with some vegetation on top, and a shallow ditch run along most of this boundary. There are two gaps in the bund and ditch giving easy access to Thamesfield from Friary Road. One is towards the northern end of this boundary near The Kayles. The other is towards the southern end of the boundary near a brick-built pumping station on the east side of Friary Road. Friary Road runs north to meet Old Ferry Road although access between the two roads is blocked to vehicles by bollards.

[4] There are a number of other minor accesses to Thamesfield, either by way of numerous gates in the rear boundaries of houses backing onto Thamesfield or through the porous boundary between Thamesfield and The Kayles but the seven main entrances are as described above:

- The Coppice Drive entrance from the south
- The Fairfield Approach and FP8 diversion accesses from the east
- The two entrances at the western and eastern ends of the northern arm of Thamesfield from the north, and
- The two entrances through gaps in the bund along Friary Road from the west.

Of these entrances, only the one at Coppice Drive is gated and has a notice on it. The other entrances are all open, without notices and appear to be well used for access to Thamesfield.

2. The TVG application

[5] In 2010, Miss Su Burrows, the Chairman of the Wraysbury Action Group (WAG), applied to the RBWM as the relevant commons registration authority (CRA) to register Thamesfield as a new TVG under s. 15(2) of the Commons Act 2006 (CA 2006). The justification for the application was said to be that “[t]he residents of Wraysbury have enjoyed free use of Thamesfield for community purposes for over 30 years continuously...freely, unstopped and without permission”.

[6] The RBWM publicised the application and objections were received from the following persons:

- Worby Estate Sales Ltd. (WESL), a company which owns most of Thamesfield
- Mr. Smith & Miss Hunt (now Mrs. Smith) of 38 Wharf Road, who purchased a small piece of Thamesfield from WESL as an extension of their garden
- Mr. & Mrs. Gates of 40 Wharf Road, who also purchased a small piece of Thamesfield from WESL as an extension of their garden
- Mr. Frank McDonagh, the owner of a piece of Thamesfield beside the Coppice Drive entrance and lying in the gap between the houses in Wharf Road and the houses in Ouseley Road.
- Dr. Peter Enwere
- Mr. Niaz Faiz

[7] The RBWM appointed Miss Lana Wood of counsel as an inspector to hold a non-statutory public inquiry into the application. Miss Wood gave rulings on certain preliminary issues and issued directions about the conduct of the public inquiry. However, before the holding of the public inquiry, Miss Wood accepted a judicial position and I was appointed inspector in her place.

[8] The public inquiry took place in Wraysbury over 9 days in September and November 2012. Appearances and representation at the public inquiry was as follows:

- Miss Burrows was represented by Mr. Paul Wilmshurst of counsel, instructed by Public Law Solicitors
- WESL was represented by Miss Karen Jones of counsel, instructed by Blake Laphorn
- Mr. & Mrs. Smith and Mr. & Mrs. Gates were represented by Mr. Andrew Moran FRICS
- Mr. McDonagh appeared in person

Dr. Enwere and Mr. Diaz took no part in the public inquiry. After the conclusion of the public inquiry, counsel for Miss Burrows and WESL made written closing submissions. Mr. McDonagh also sent written closing submissions. The last of the written submissions were received by me on 24th December 2012. WESL’s solicitors commented on the applicant’s closing submissions by a letter dated 7th January 2013 and the applicant’s solicitors responded by a letter dated 10th January 2013. I would like to express my gratitude to the parties and their representatives for presenting their respective cases at the public inquiry in a helpful and constructive way. I would also like to express my appreciation to all the officers

of RBWM who organised the public inquiry with great efficiency: in particular to Mrs. Catherine Woodward, on whom the daily administrative burden chiefly fell, Mr. Sean O'Connor, who had overall supervision of legal matters and attended on the first day and Mrs Joan Lamprell who attended on most days.

3. New TVGs: law and procedure

[9] It is convenient at this stage to summarise my understanding of the relevant law and procedure relating to the registration of new TVGs.

Law

[10] At common law a TVG could only be created by custom. This required use since time immemorial. The Commons Registration Act 1965 (CRA 1965) introduced the concept of a new TVG created by 20 years' use. The definition of a new TVG in the CRA 1965 was:

“land...on which the inhabitants of any locality have indulged in [lawful] sports and pastimes as of right for not less than twenty years”.

The requirements for registration of a new TVG were relaxed by s. 98 of the Countryside and Rights of Way Act 2000 (CRoW Act 2000). The new definition was:

“land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either –

(a) continue to do so, or

(b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions.”

No order was ever made implementing para. (b).

[11] The previous legislation was replaced by the current law to be found in s. 15 of the CA 2006, which further relaxed the requirements for registration of a new TVG. Section 15 of the CA 2006 was brought into force in England on 6th April 2007. The section contains the following material provisions for the registration of new TVGs:

“Registration of greens

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

(2) This subsection applies where –

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

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

- (3) *This subsection applies where –*
- (a) *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
 - (b) *they ceased to do so before the time of the application but after the commencement of this section; and*
 - (c) *the application is made within the period of two years beginning with the cessation referred to in paragraph (b).*
- (4) *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 commencement of this section; and*
 - (c) *the application is made within the period of five years beginning with the cessation referred to in paragraph (b).*
- ...
- (7) *For the purposes of subsection (2)(b) in a case where subsection (2)(a) is satisfied –*
- (a) *...*
 - (b) *where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.*

The meanings of the various expressions used in CA 2006 s. 15 have been the subject of numerous court decisions.

...a significant number...

[12] “Significant” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers¹. In my view, use must not be merely trivial or sporadic. It must be enough to signify to the reasonable landowner that a right is being asserted and ought to be resisted if the right is not recognised.

...of the inhabitants of any locality or of any neighbourhood within a locality...

¹ *R (McAlpine) v Staffordshire CC* [2002] EWHC 76 (Admin) at para. 77

[13] The legislation provides for the recreational users of the application land to be a significant number of the inhabitants of either

- “any locality” (limb (i)) or
- “any neighbourhood within a locality” (limb (ii)).

The current jurisprudence is that the word “locality” may have different meanings in limbs (i) and (ii). However, it is limb (i) that is relied upon in this case.

[14] A locality means an administrative district or an area with legally significant boundaries. See the *Paddico* case at first instance². When the *Paddico* case went to the Court of Appeal³, it was said that a locality also had to have some community of interest on the part of its inhabitants.

...have indulged as of right...

[15] Although the statutory creation of a new green by 20 years’ use does not depend on the inference or presumption of a grant or dedication, the expression “as of right” echoes the requirements of prescription in relation to easements and public rights of way. In both cases, qualifying use must be “as of right” because the inference or presumption of a grant or dedication depends fundamentally on the long acquiescence of the landowner in the exercise of the right claimed⁴. The subjective intentions of the users are irrelevant⁵. The traditional formulation of the requirement that user must be “as of right” is that the user must be without force, secrecy or permission (or in the Latin phrase *nec vi, nec clam, nec precario*).

[16] “Force” does not just mean physical force. Use is by force in law if it involves climbing or breaking down fences or gates or if it is contentious or under protest⁶. An important issue in this case is whether and, if so, when, use of Thamesfield by local people for informal recreation became contentious. I will need to consider this point in more detail in due course.

[17] Use that is secret or by stealth will not be use “as of right” because it would not come to the attention of the landowner.

[18] “Permission” can be express, e.g. by erecting notices which in terms grant temporary permission to local people to use the land. Permission can be implied, but not by inaction or acts of encouragement by the landowner⁷. It was held in the *Beresford* case that permission

² *Paddico (267) Ltd. v Kirklees Metropolitan Council* [2011] EWHC 1606 (Ch) at para. 97(i)

³ *Adamson v Paddico* [2012] EWCA Civ 262

⁴ *Dalton v Angus & Co.* (1881) 6 App. Cas. 740 at 773 as cited by Lord Hoffmann in *R v Oxfordshire County Council ex parte Sunningwell Parish Council* [2000] 1 AC 335 at p. 351B and by Lord Walker in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 at para. 76

⁵ *Sunningwell*

⁶ *R (Lewis) v Redcar & Cleveland Borough Council* [2010] 2 AC 7 per Lord Rodger at paras. 88-90 and see *R (Oxfordshire & Buckinghamshire NHS Trust & anor) v Oxfordshire County Council* [2010] EWHC 530 (the *Warneford Meadow* case)

⁷ *Beresford*

must be revocable or time limited: permission that is unlimited and irrevocable amounts to acquiescence.

...in lawful sports and pastimes on the land...

[19] The words “lawful sports and pastimes” (LSP) form a composite expression which includes informal recreation such as walking, with or without dogs, and children’s play⁸. It does not include walking of such a character as would give rise to a presumption of dedication as a public right of way⁹.

...for a period of at least twenty years...

[20] In the case of an application under CA 2006 s. 15(2), the period of 20 years is normally the period of 20 years immediately before the making of the application¹⁰. In the case of an application under CA 2006 s. 15(3) or (4), it is the 20 years immediately before the cessation of qualifying use. It is immaterial that the statutory test for qualifying user may have changed during the 20 year period¹¹.

Procedure

[21] In most of England, including the RBWM, procedure on applications to register new greens under the CA 2006 is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. The 2007 Regulations closely follow the scheme of The Commons Registration (NewLand) Regulations 1969 which governed applications to register new greens under s. 13 of the CRA 1965. Those regulations proved quite inadequate to resolve many disputed applications and CRAs have had to resort to procedures not contemplated by the Regulations to deal with such applications.

[22] The prescribed procedure is fairly simple:

- anyone can apply without fee to the relevant CRA in prescribed Form 44 to register any land within the CRA area as a new TVG (reg. 3)
- unless the CRA rejects the application on preliminary consideration on the ground that it is not “duly made”, the CRA proceeds to publicise the application in prescribed form 45 inviting objections (reg. 5)
- anyone can submit a statement in objection to the application,
- the CRA then proceeds to “further consideration” of the application and any objections and decides whether to grant or reject the application (reg. 6).

[23] The most striking feature of the regulations is that they provide no procedure for an oral hearing to resolve disputed evidence. The regulations seem to assume that the CRA can determine disputed applications to register new TVGs on paper. A practice has grown up,

⁸ *Sunningwell* at pp 356F-357E

⁹ *Oxfordshire County Council v Oxford City Council* [2004] Ch 253 (the *Trap Grounds* case) at paras 96-105

¹⁰ This may be different where CA 2006 s. 15(7)(b) applies.

¹¹ *Redcar*: Lord Rodger at paras. 120-121, *Leeds Group plc v Leeds City Council* [2011] Ch 363 at paras 108-110.

repeatedly approved by the courts, whereby, in an appropriate case, the CRA appoints an independent inspector to conduct a non-statutory public inquiry into the application and to report whether it should be accepted or not. A non-statutory public inquiry has no power to summon witnesses, order disclosure of documents or award costs. The CRA is not bound by the inspector's recommendation.

[24] A number of important procedural issues have been decided by the courts:

- **Burden and Standard of Proof.** The onus of proof lies on the applicant for registration of a new TVG, it is no trivial matter for a landowner to have land registered as a TVG, and all the elements required to establish a new TVG must be “properly and strictly proved”¹². However, in my view, this does not mean that the standard of proof is other than the usual civil standard of proof on the balance of probabilities.
- **Defects in Form 44.** The House of Lords has held in the *Trap Grounds* case that an application is not to be defeated by drafting defects in the application form. Subject to the overriding requirement of fairness to the parties, the issue for the CRA is whether or not the application land has become a new TVG
- **Part registration.** The House of Lords also held in the *Trap Grounds* case that the CRA can register part only of the application land if it is satisfied that part but not all of the application land has become a new green. Indeed, the House thought that a larger or different area could be registered if there was no procedural unfairness¹³.

[25] The Growth and Infrastructure Bill, now before Parliament, will reform the law relating to the registration of new TVGs, in particular by providing for planning considerations to trump TVG applications in certain circumstances. However, it will not affect the law applicable to the present application.

4. Amendment of TVG application

[26] Miss Burrows applied for permission to amend her TVG application in two respects:

- To rely in the alternative on CA 2006 s. 15(3) and (4), and
- To exclude the land acquired by Mr. & Mrs. Smith and Mr. & Mrs. Gates.

[27] Miss Wood invited written submissions on the application. In her Decision dated 31st May 2012, she gave permission for the first amendment but refused permission for the second amendment. However, she left open for further argument the question whether the first amendment should be retrospective in the sense that it would allow the applicant to rely on a cessation of qualifying use earlier than the date that would have applied if the TVG application had been made on the date of the application to amend.

¹² *R v Suffolk CC ex p Steed* (1996) 75 P&CR 102 at p 111 per Pill LJ approved by Lord Bingham in *Beresford* at para. 2

¹³ Lord Hoffmann at paras 61-62, Lord Scott at para 111, Lord Rodger at para 114, Lord Walker at para 124 and Lady Hale at para 144.

[28] I was invited to reconsider Miss Wood's Decision. I consider that I should do so, since an inspector instructed to hold a non-statutory public inquiry is not a decision-maker but is merely advising the CRA on the correct disposal of the TVG application. There is no finality until the CRA either registers the application land as a new TVG or formally resolves to reject the TVG application. If I considered that Miss Wood's advice to the CRA was wrong, I would be bound to say so.

[29] In relation to the application to amend the application to rely in the alternative on CA 2006 s. 15(3) or (4), I agree with Miss Wood, for the reasons given by her, that the applicant should be allowed to amend her TVG application to rely in the alternative on CA 2006 s. 15(3) and (4). On the question left open by her, I would approach that question from a slightly different angle. It seems to me that the whole point of seeking to amend the TVG application rather than making a new application is that the amendment should be retrospective. If it would be unfair to the objectors to allow an amendment which had retrospective effect, the application to amend ought to be refused and the applicant left to make a fresh application. The core question is whether it would be unfair to the objectors to permit the applicant to amend her application with retrospective effect. I do not think so. The issue raised by the TVG application was whether the application land was registrable as a new TVG as at the date of the application. Form 44 is drafted in a way that suggests that the applicant must elect between s. 15(2), s. 15(3) and s. 15(4). For the reasons given by Miss Wood, I agree that an applicant does not have to elect and can rely on the three subsections in the alternative. I cannot see that the objectors are prejudiced by the amendment since it simply allows the CRA to consider more fully whether the application land was registrable as a new TVG as at the date of the application under either of the three subsections of s. 15. The objectors have had ample notice of the amendment in order to prepare themselves for the public inquiry.

[30] In relation to the application to amend the TVG application to exclude the land owned by Mr. and Mrs. Smith and Mr. & Mrs. Gates, the position before Miss Wood was that WESL opposed the application. This seems to have been a tactical move by WESL to discourage the Smiths and the Gateses from supporting the amended application. However, at the end of the public inquiry, WESL withdrew its objection to this amendment. The present position is therefore that no one opposes the proposed amendment. The land acquired by the Smiths and the Gateses was, as appeared at the public inquiry, part of the overgrown belt of scrub alongside the boundary of Thamesfield with little recreational value to local people. In these circumstances, I consider that it would be appropriate to allow the applicant to amend her application to exclude the land owned by the Smiths and the Gateses.

5. When was the TVG application "made"?

[31] The date on which an application under CA 2006 s. 15 is made is very important since it is the date up to which the 20 years' qualifying use must normally be calculated under s. 15(2) and the date back from which the two and five year periods must be calculated under s. 15(3) and (4). In the present case, the position is complicated by the fact that although an application was originally received from Miss Burrows by the CRA on 11th March 2010, the

CRA considered that there were various defects in the application which required correction, and a Form 44 application was not date stamped as received by the CRA until 17th January 2011.

[32] Miss Wood invited submissions on this point and, in her Decision of 31st May 2012, held that the date on which the TVG application was made in the present case was 11th March 2010. I was invited to reconsider her decision on this point. I have done so. I agree with Miss Wood that the application was made on 11th March 2010 for the reasons given by her in her Decision. In particular, I agree with Miss Wood that it is clear from the wording of the 2007 Regulations that it is not correct to suggest that a TVG application is not “made” unless it is “duly made” for the purposes of reg. 5(4). Miss Jones referred me (but not I think Miss Wood) to the case of *R (Winchester College) v Hampshire County Council* [2008] 3 All ER 717 in support of the proposition that a defective TVG application was not made until it was perfected. However, I think that the *Winchester* case turned on the special wording of s. 67(6) of the Natural Environment and Rural Communities Act 2006 and cannot be applied to CA 2006 s. 15: see the discussion in *Fortune v Wiltshire Council* [2012] 3 All ER 797 at paras. 150-163.

6. Approach to the evidence

[33] The applicant called a very large number of local witnesses to give oral evidence to the public inquiry about use of Thamesfield. She also submitted written statements from an even larger number of local witnesses and some documentary material. WESL called a number of witnesses of fact, submitted written statements from other witnesses and also submitted some documentary evidence. The Smiths and the Gateses submitted written evidence of fact but no oral evidence. Mr. McDonagh submitted written evidence of fact but did not give oral evidence. The other objectors did not submit any evidence. In addition to the evidence of fact, WESL called an expert in aerial photography who gave oral evidence and Miss Burrows submitted a written expert report commenting on the aerial photographs and WESL’s expert’s report.

[34] I propose to deal with all this evidence as follows:

- First, I will consider the evidence of fact adduced by the applicant in the following order:
 - Evidence of witnesses who gave oral evidence
 - Evidence of witnesses who gave only written evidence
 - Other documentary evidence
- Second, I will consider the evidence of fact adduced by WESL in the same order
- Third, I will consider the written evidence adduced by the Smiths and the Gateses
- Fourth, I will consider the written evidence adduced by Mr. McDonagh
- Finally, I will consider the expert evidence adduced by WESL and the applicant.

[35] In each category, I will consider witnesses in alphabetical order rather than in the order in which they gave evidence. This makes it easier for the reader to find my consideration of the evidence of any particular witness. My summary of the evidence of

witnesses is no more than a selection of what I considered to be the most salient points of their evidence. It is not a transcript of their evidence. However, in reaching my conclusions, I have, of course, taken account of the whole of my notes of evidence.

7. Evidence for applicant

Witnesses who gave oral evidence

Gena Ashwell

[36] Gena Ashwell produced a very short written witness statement¹⁴. She was born in 1984 and lived with her family in Wraysbury until 2000/2001. She lived in Fairfield Approach until about 1986 when she moved to Coppice Drive. In about 1998 she moved to the Harcourt Estate in Wraysbury. In about 2000, she moved to Windsor although she still rode in the field sometimes. Her mother kept a horse in the back garden in Fairfield Approach. In Coppice Drive, Miss Ashwell had a pony which lived in the back garden or a rented field. She also had a dog. The dog was walked daily in Thamesfield and she rode her pony in the field several times a week. She walked the dog and rode the pony all over the field: there was no usual route. She jumped her pony both in the Kayles, where there were some natural jumps, and also over jumps set up in Thamesfield. At the period when she rode in Thamesfield, there was a lot of horse riding all over the field. She entered Thamesfield from various different entrances. About 6 or 7 years ago (i.e. 2005-2006), she noticed that the Coppice Drive entrance had become blocked.

[37] Cross examined by Miss Jones, she said that she rode or walked the perimeter path about half the time but otherwise rode and walked all over the field. She said that she recollected that the northern end of Thamesfield was ploughed more than once when she was a kid. She and other teenagers rode across the ploughed land although adults probably would not have done so. The field was cut for hay, but that did not prevent use of the field for horse riding: indeed, she remembers jumping her pony over the hay bales.

[38] Cross examined by Mr. Moran, I found her evidence rather confused as to whether she had used the Smiths' and Gateses' land or not. At one point she seemed to be saying that she had and then that she had not. I think that she was probably just uncertain on the point.

[39] Cross examined by Mr. McDonagh, she said that she had not used the Coppice Drive entrance since she left Wraysbury.

[40] My general impression of Miss Ashwell was that she was an honest witness. I do not hold against her the confusion about use of the Smiths' and Gateses' land, since that land is a very small part of Thamesfield which is difficult to envisage very clearly from a map and appears to have been part of the largely overgrown edge of Thamesfield before it was purchased and fenced. She was not resident in Wraysbury during the critical period in the second half of the 2000s when WESL was trying to stop public use of the field.

¹⁴ R/3/1 (i.e. Red Bundle Volume 3 page 1)

Leonard Blofeld

[41] Mr. Blofeld produced an OSS¹⁵ evidence questionnaire¹⁶ and a written witness statement¹⁷. There were photographs attached both to the evidence questionnaire and to the witness statement. Mr. and Mrs. Blofeld have lived in Old Ferry Drive since 1952. They have three children (now in their 50s) and eight grandchildren. In his evidence questionnaire, Mr. Blofeld said that he had used Thamesfield since 1954 although in his witness statement he said that he had used it since 1990. Since his retirement in 1990, he has walked in Thamesfield several times a week, usually walking along FP8 across the Kayles and then into Thamesfield. He walked around the perimeter of Thamesfield or along the many paths criss-crossing the field. When he was younger, he jogged in Thamesfield. He saw many other people using the field for informal recreation such as walking, horse riding and flying model aircraft and kites. Most people walked around the perimeter path but he and other people also went off the paths. He recognised many users as local people. His use of the field was never challenged. He knew Mr. Gunderman as the tenant of the field and spoke to him many times but Mr. Gunderman never said that he was trespassing. In April 2008, a large earth bund was placed across the Fairfield Approach entrance. He took a photograph¹⁸ of it. Subsequently, the height of the bund was reduced. Mr. Blofeld asked Mr. Gunderman about the bund and Mr. Gunderman told him that he had erected the bund and had reduced its height because people had complained about it. Subsequently, a fence was erected along the top of the bund. There was no gate in the fence. People then knocked down part of the fence to get into Thamesfield and later the whole fence was knocked down.

[42] Cross examined by Miss Jones, Mr. Blofeld said that he could not remember when he first started using Thamesfield. There were cattle in the field in the 1950s but they kept escaping. He could not remember how the field was farmed in the 1960s. He thought that, from the 1970s, the field was generally cut for hay once a year. Children used to play in the cut grass and on the baled hay. There was a period of 2 or 3 years when the northern part of the field was cultivated and kale was grown, but he could not recall the dates. In that period, people walked around the perimeter of the cultivated land. He recalled a Thames Water pipe being laid across Thamesfield in about 2000. The work took 2-3 years. The excavation was about 15 feet wide and was fenced but it did not block the perimeter path. There was a storage compound near the Coppice Drive entrance. Mr. Blofeld has not seen any notices forbidding entry to Thamesfield. Shown a photograph of the sign on the Coppice Drive entrance gates, he said that he had not seen that sign but hardly ever goes round to that entrance.

[43] Cross examined by Mr. Moran, Mr. Blofeld had no clear recollection of using the land acquired by the Smiths and Gateses.

¹⁵ i.e. the Open Spaces Society, which has produced a standard form of evidence questionnaire for use by witnesses in support of a TVG application

¹⁶ R/4/23

¹⁷ R/4/1

¹⁸ R/4/21

[44] Cross examined by Mr. McDonagh, Mr. Blofeld said that he could not recall using the Coppice Drive entrance for many years, and certainly not since 2005.

[45] I accept Mr. Blofeld's evidence subject to one qualification. I would be surprised if he did not see the "Private Property" sign erected in July 2007 on the access to Thamesfield from FP8 since the evidence suggests that it was in place for about a month. However, he denied seeing any sign there. The date when he started using Thamesfield for recreational purposes was never really clarified, although I am satisfied that he was using it several times a week after he retired in 1990.

Russell Bremner

[46] Mr. Bremner produced a completed WAG¹⁹ evidence questionnaire²⁰ and a written witness statement²¹, the latter being made jointly with his wife, Lindy. Mr. and Mrs. Bremner have lived in Friary Road, overlooking Thamesfield since 1999. Their chief use of Thamesfield has been to walk their dogs. Mrs. Bremner usually walked the dogs in the week and Mr. Bremner at weekends. Mr. Bremner also flew a model aeroplane in the field. Two of their children still lived with them from when they moved to Friary Road until about 2007. Their daughter used to run and cycle in the field to keep fit and their son sometimes walked the dogs in the field. They now have six grandchildren, aged between 4 and 7, who are often brought over to play in the field. Mr. Bremner normally accessed Thamesfield through one of the two entrances from Friary Road. When he moved to Friary Road there was a ditch along the Friary Road frontage of Thamesfield, although it did not stop pedestrian access. When Thames Water installed a pipe across Thamesfield, they built a bund along the Friary Road frontage, leaving one of the accesses and moving one of the accesses where they placed a new pumping station. Local people have used Thamesfield daily for recreation since he has known it. He sees people when he uses the field, from his house and when driving along Friary Road on his way to work. He has seen dog walkers, joggers and horse riders. When he first moved to the area, there was a bund across the Coppice Drive entrance although pedestrians could walk around it. When Thames Water was laying their water main across Thamesfield, they erected double metal gates at the Coppice Drive entrance. In his evidence in chief, he said that he had never seen any signs forbidding access to Thamesfield. When he first moved to Friary Road, the grass on Thamesfield was cut once or twice a year and baled, although the bales were not always collected.

[47] Cross examined by Miss Jones, he said that he thought that dog walkers, joggers and cyclists predominantly (say 80%) used the perimeter path. His recollection was that the Thames Water pipe excavation was not fenced. Contrary to his evidence in chief he said that he was aware of the "Private Property" sign on the Coppice Drive entrance gates although he could not recall when it was erected. He maintained that he had not seen any other signs forbidding entry to Thamesfield.

¹⁹ WAG produced a home-made form of evidence questionnaire which was used by a number of witnesses.

²⁰ R/4/53

²¹ R/4/39

[48] Cross examined by Mr. Moran, Mr. Bremner said that he could not remember using the land acquired by the Smiths or the Gateses.

[49] Cross examined by Mr. McDonagh, Mr. Bremner said that, although he generally used the Friary Road accesses, he had used the other accesses. He had not used the Coppice Drive entrance since it was gated, although he found difficulty in putting a date on his last use of that entrance.

[50] My view was that Mr. Bremner was basically a witness of truth. However, I was concerned that he said in chief that there were no signs but readily accepted in cross examination that there was a “Private Property” sign on the Coppice Drive entrance gates. I think that part of the problem lies in the very unsatisfactory wording of the home made evidence questionnaire which WAG used to collect evidence from Mr. Bremner and a number of other witnesses. Para. (b) of that evidence questionnaire was pre-printed with the words:

“I am not aware of there being any signage or landowner prohibiting or consenting to the uses of the field I have mentioned”

Thus, WAG put the words into the mouth of their witnesses that there was no signage when many members of WAG must have known full well, at the very least, of the long-standing Coppice Drive entrance sign. In effect, WAG was suggesting to its witnesses that they should deny the existence of the Coppice Drive entrance sign. This does underline the danger of placing reliance on the written evidence of witnesses who do not give oral evidence to the public inquiry. I would also be very surprised if Mr. Bremner did not see the “Private Property” sign erected by WESL at Friary Road in July 2007 since the evidence suggests that this sign was in place for at least a month.

Ann Burgess

[51] Mrs. Burgess produced an OSS evidence questionnaire²² and a written witness statement²³. Mr. and Mrs. Burgess have lived in The Drive, Wraysbury since 1987. They have two children and five grandchildren:

- a daughter (Mrs. Turton) who also gave evidence. Mrs. Turton has lived in Fairfield Approach since 1987 with her husband and her two children, who are now in their 20s
- a son, who lives in Englefield Green and has three daughters, two in their 20s and one aged 8. The Burgesses looked after the older granddaughters a lot during school holidays between 1994 and 2004 and the younger granddaughter now spends most of the school holidays with the Burgesses as both her parents work.

The Burgesses have always had dogs, as many as eight at one time. The four older grandchildren played in Thamesfield as children and the youngest grandchild is still taken

²² R/4/65

²³ R/4/55

there to play. The dogs were walked in Thamesfield. At one stage, Mrs. Burgess was walking twice a day in Thamesfield and still walks there twice a week on average. She has walked all over the field, and not just on the paths. Other walkers and joggers use the field. She usually enters Thamesfield by the Fairfield Approach entrance or along the public footpath at the north end of Fairfield Approach. She has never seen any signs on the field or been asked to leave it. In 2009, a fence was put up at the Fairfield Approach entrance in an attempt to prevent or discourage use of the field²⁴.

[52] Cross examined by Miss Jones, Mrs. Burgess said that she thought that the main use of Thamesfield was for walking dogs. When she took the children, they ran off the paths. She remembers the construction of a sewer across the field but did not think that the excavation was fenced. She was not sure whether the route of the pipe was all excavated at the same time. She saw the field being cut for hay.

[53] Cross examined by Mr Moran, Mrs. Burgess was not sure whether she had used the land now owned by the Smiths and the Gateses.

[54] Cross examined by Mr. McDonagh, Mrs. Burgess said that she did not think that she had ever used the Coppice Drive entrance.

[55] I accept Mrs. Burgess's evidence subject to one qualification. It would be odd if she did not see the "Private Property" sign erected at the Fairfield Approach entrance in July 2007, since the evidence suggests that it was in place throughout the month of July. Of course, it is possible that she was away in that month.

Su Burrows

[56] Miss Burrows produced an OSS evidence questionnaire²⁵ and a written witness statement²⁶ with numerous exhibits. She has lived in Coppice Drive since 2005 with her partner, Stephen Hart, and her son, now aged 15. Between 2001 and 2005, she lived out of Wraysbury, but her son went to a child minder in Old Ferry Drive. During this period, she did know of Thamesfield and occasionally walked or ran in the field. However, her main use started in 2005. Until 2008, Miss Burrows worked full time in an office and used Thamesfield at weekends and in summer evenings for walking and running. In her evidence questionnaire she said that she only used the field until 2007. In 2007, she suffered a serious riding accident which prevented her use of the field for a while. However, in her witness statement, she said that, in 2008, she started to work from home and acquired a dog which she walked occasionally in the fields. In any event, she did not use the field after March 2009 because she heard that people were being challenged aggressively in the field. Until 2008, her son played in the field with his friends. While she was using the field there were numerous other people using the field for recreation such as dog walking and children's play. She walked on and off the paths.

²⁴ EQ: Q31

²⁵ R/4/193

²⁶ R/4/77

[57] Miss Burrows did not access the field at the Coppice Drive entrance, because it was gated and overgrown and she did not know that it had been an access to Thamesfield. She thought that it was just access to the plot of land immediately behind the gate. She gained access to the field at various points:

- the Fairfield Approach entrance, where there was an earth bund with a path going over it
- Friary Road, where there was an earth bund with two paths through gaps in the bund
- by FP8 from Fairfield Approach: that path appeared to lead straight into the field
- through the Kayles.

There were no notices at any of these entrances.

[58] In the summer of 2008, Miss Burrows learned through a neighbour that Thamesfield and Coppice Field (another field owned by WESL off Coppice Drive) had been put up for sale in plots. Miss Burrows got hold of a copy of the WESL circular letter of 10th June 2008²⁷. Mr. Hart, her partner, telephoned to enquire about the sale but, on learning the asking price, did not take the matter any further. Mr. Hart attended the parish council meeting of 16th June 2008 at which the sale was discussed. Miss Burrows said that she was told by her partner that the discussion was about the sale of the fields in plots rather than access to the fields (although the topics seem to me to be inextricably intertwined). In February 2009, Miss Burrows set up WAG as a vehicle to express the concern of local people about the division and development of the fields. Sometime in 2009 (the exact date was not clear), WAG applied for a direction under article 4 of the Town and Country Planning (General Permitted Development) Order 1995. An article 4 direction was subsequently made. A copy of the direction was not produced but I understand that it limited internal fencing in the field. In about April 2009, Miss Burrows began to receive telephone calls from residents complaining that they had been asked to leave Thamesfield in an aggressive manner. In June 2009 WAG applied to RBWM to modify the definitive map and statement under s. 53 of the Wildlife and Countryside Act 1981 to show five public footpaths crossing Thamesfield. On 20th June 2009, WAG had a stall at the Wraysbury Village Fair seeking signatures to a petition in support of the application for an article 4 direction and a petition for the compulsory purchase of Thamesfield. Miss Burrows then learned from talking to Mr. Pilditch and Mr. Blofeld about the possibility of registering Thamesfield as a new TVG. She then set about gathering evidence in support of a TVG application. There was a well-attended meeting in the Baptist Church Hall on 18th February 2010 at which many evidence forms were filled in. After that meeting, she received many telephone calls asking for an evidence form. The TVG application was submitted on 11th March 2010.

[59] Cross examined by Miss Jones, Miss Burrows thought that the predominant use of Thamesfield was on the paths, of which about half was on the perimeter path. She did not notice that hay was harvested from the field. It was after WAG was formed that she learned that the Coppice Drive entrance had been an entrance to Thamesfield. She went to look at the

²⁷ B/2/106

entrance and saw the “Private Property” sign on the gates. She does not know how long the sign had been up before then. Although she did not see a fence and sign at the Fairfield Approach entrance she was told about them sometime after March 2009. Miss Burrows prepared the TVG application form without legal assistance. By the time she submitted it she knew of the sign at the Coppice Drive entrance and that users of the field were being challenged. She could not put a date on the time when use of the field first became contentious.

[60] Cross examined by Mr. Moran, Miss Burrows said that it was not her intention to apply to register the Smiths’ and Gateses’ land as a TVG. It was a result of a muddle in the application process.

[61] Cross examined by Mr. McDonagh, Miss Burrows said that she had never used the plot of land now owned by Mr. McDonagh behind the Coppice Drive entrance.

[62] The impression that I got was that Miss Burrows had not used Thamesfield a great deal herself. However, she was clearly the driving spirit behind WAG and I accept her evidence about the activities of WAG. She claims not to have seen the “Private Property” signs erected by WESL in July 2007, but she may not have been using the field at that time after her riding accident.

Muriel Carey

[63] Mrs. Carey produced an OSS evidence questionnaire²⁸. She has lived in Ouseley Road since 1971. She has two children, who got married and moved away in the early 1980s. She now has four grandchildren. She has always had a dog and walked it daily in Thamesfield. She meets friends walking their dogs in the field. She takes her grandchildren into the field to play. The field is used by people for informal recreation such as walking, children’s play and picking blackberries. She used to enter the field by the Coppice Drive entrance but that was closed off. She could not remember when. For a while there was a small gate at that entrance through which people could enter the field. She did not recognise the “Private Property” sign on the metal double gates that are now at that entrance. Since the Coppice Drive entrance was blocked, she has entered Thamesfield from Friary Road. She has never seen a “Private” sign at Friary Road. She can remember that, at some stage (she could not remember when), there was fencing and a “Private” notice at the Fairfield Approach entrance, although the notice had gone the next time she went that way. The field was cut for hay. Within the last five years, she has spoken to the farmer, Mr. Gunderman, on the field. He passed the time of day about the weather or the dogs. Most people did not walk over the hay crop. She remembers a kale crop being grown in the north eastern corner of the field.

[64] Cross examined by Miss Jones, Mrs. Carey said that most of her own use of Thamesfield, and that of other dog walkers (about 80%), was on the perimeter path but people did walk across the middle of the field. She remembers the installation of the Thames

²⁸ R/4/203

Water pipe. The work went on for over a year. People stayed away from the excavation but you could still walk around the perimeter path.

[65] Cross examined by Mr. Moran, Mrs. Carey could not remember using the land acquired by the Smiths and the Gateses.

[66] Cross examined by Mr. McDonagh, she did not think that she had used the area behind the Coppice Drive entrance gates now owned by Mr. McDonagh after that entrance was blocked off.

[67] Mrs. Carey was rather vague on dates, but I accept her evidence. She may not have seen the “Private Property” sign erected in Friary Road in July 2007 since she came from Ouseley Road and thus probable entered Thamesfield by the southern entrance in Friary Road whereas the sign was nearer the northern entrance.

Stephen Cooke

[68] Mr. Cooke produced a WAG evidence questionnaire²⁹ and a written witness statement³⁰. Mr. and Mrs. Cooke have lived in Ouseley Road, near its junction with Welley Road, since 1999. They have two children, now aged 13 and 15. They acquired a dog in 2001. They usually walk the dog in Thamesfield every day. They also picked berries in the field. From about 2004 to 2010, their children rode their bikes around the field. In 2009, Mrs. Cooke accompanied the local school on a history walk which included a walk around Thamesfield. Mr. Cooke believes that this is an annual event. When it snowed, the family made snowmen and had snowball fights in the field. Other people used the field for recreation. He recalled that model aeroplane enthusiasts flew their aircraft in the field. For a couple of years, he saw archers set up a stuffed deer in the field and use it for archery practice. He usually entered and left Thamesfield by the Fairfield Approach entrance or FP8 from Fairfield Approach. He walks both on and off the paths. His dog is very bouncy and he tries to avoid horses. The dog runs and the children play all over the field. The field was cut for hay until about 2008. In his written evidence, he said that he had never seen any sign restricting entry to Thamesfield.

[69] Cross examined by Miss Jones, Mr. Cooke said that the majority (60-65%) use of Thamesfield was for walking, with or without dogs. Dogs on leads tended to stay on the paths, although dogs off leads went everywhere. There are numerous paths and their positions change from time to time. There was an earth bund at the Fairfield Approach entrance from about 2000, although this did not prevent pedestrian access. Subsequently, he saw the remains of a fence at the Fairfield Approach entrance although it did not prevent pedestrian access. In about 2009 he saw a “Private Property” sign at the Fairfield Approach entrance. He has not seen a sign on any other entrance.

[70] Cross examined by Mr. Moran, Mr. Cooke said that he had not accessed the land acquired by the Smiths and Gateses in recent years.

²⁹ R/4/255

³⁰ R/4/251

[71] Cross examined by Mr. McDonagh, Mr. Cooke said that he had never used the Coppice Drive entrance or used the area of Thamesfield now owned by Mr. McDonagh behind that entrance.

[72] It is a matter of great concern that Mr. Cooke should state positively in his written evidence in chief that he never saw any signs restricting entrance to Thamesfield whereas he accepted readily in cross examination that there was a “Private Property” sign at the Fairfield Approach entrance in 2009. I think that part of the explanation of the problem is the very unsatisfactory wording of para. (d) of the WAG questionnaire which committed witnesses to a statement that there were no signs. Any careful and honest witness should refuse to sign the WAG evidence questionnaire, or would amend it, if its contents were incorrect. I am also very surprised that he claims not to have seen the “Private Property” sign erected by WESL at the Fairfield Approach entrance in July 2007. However, giving full weight to this concern, and having seen Mr. Cooke give oral evidence, I do not doubt his evidence concerning recreational use of Thamesfield by himself and others.

Glen Coyne

[73] Mr. Coyne produced an OSS evidence questionnaire³¹ and a written witness statement³². Mr. Coyne moved to Wraysbury in 1986 with his wife and two children. He has lived in Ouseley Road since 1986. He has owned a succession of dogs. Neighbours used Thamesfield to walk their dogs and so Mr. Coyne did the same. He walked his dog in Thamesfield most days, usually entering at the Coppice Drive entrance and walking a circuit of the field. The Coppice Drive entrance was an open entrance, about as wide as a housing plot. Mr. Coyne saw other people walking their dogs in Thamesfield. At weekends and school holidays there were children playing in the field. On several occasions he saw a tractor in the field harvesting the grass. He occasionally saw horse riders in the field. There were two other open entrances, one at Fairfield Approach and the other off Friary Road. A metal fence was erected across the Coppice Drive entrance by a utility company which was laying a pipe across the field. That was at some point after 2000. At the same time, a small wooden gate like a garden gate was installed at the Coppice Drive entrance. It had a latch but was not locked. Mr. Coyne thought that it was installed to stop children and dogs running onto the road and not to stop access to Thamesfield. At some time after 2008/9 a sign appeared on the metal fence saying “Private Property”. Mr. Coyne thought that this referred to the small plot of land between the houses on either side of the Coppice Drive entrance. The small “garden gate” was blocked. After the sign was erected, he used the Fairfield Approach entrance. There was a low earth bund at that entrance but no gate or sign. He thought that the bund was to stop vehicles getting onto the field. In 2009, Mr. Coyne heard during a meeting of the WAG that people had been approached on the field and told not to use it. Mr. Coyne then stopped using the field and walked his dogs elsewhere.

[74] Cross examined by Miss Jones, Mr. Coyne said that most users of Thamesfield were dog walkers who mostly used the perimeter path. He himself used the perimeter path 85% of

³¹ R/4/267
³² R/4/259

the time although he walked in the centre of the field if he saw big dogs coming towards him. People tended to stay off grass that was cut by the farmer. He did not remember any of the field being ploughed or used to grow a crop of kale. He received a letter from WESL asking if he wanted to buy part of the field. This could have been in about 2008. He found the letter odd and suspicious. He did not recall seeing any fence or signs at the Fairfield Approach entrance, nor any increase in the height of the bund.

[75] Cross examined by Mr. Moran, Mr. Coyne said that he did not recollect the land purchased by the Smiths and Gateses being significantly overgrown.

[76] Cross examined by Mr. McDonagh, Mr. Coyne said that he thought that he used the field for about a year after the small gate at the Coppice Drive entrance was blocked.

[77] I found Mr. Coyne to be a bit hazy about dates. The Coppice Drive entrance was closed and signed in 2007 and not 2008/2009. It is very odd that he did not recollect that part of Thamesfield had been ploughed and kale grown in the first half of the 1990s, but perhaps he was not concerned about agricultural use of Thamesfield which did not materially affect his dog walking and has simply forgotten about it. I do find it very curious that he claims not to have seen the “Private Property” sign erected in July 2007 at the Fairfield Approach entrance since he started using that entrance when a similar sign appeared at the Coppice Drive entrance.

Audrey Darbyshire

[78] Mrs. Darbyshire produced an OSS evidence questionnaire³³, a written witness statement³⁴, and two additional witness statements³⁵. Mr. and Mrs. Darbyshire have lived in Fairfield Approach since 1986. They have two children, now aged 43 and 44, both of whom lived with their parents for various periods of time between 1986 and 2000. The Darbyshires have had a series of dogs while they have lived in Fairfield Approach and usually walked them in Thamesfield twice a day. They normally entered the field along FP8 from Fairfield Approach but used the Fairfield Approach entrance when the footpath was muddy. Mrs. Darbyshire also picked berries and fruit in the field and collected materials for nature study classes at the school where she taught. Her husband took photographs in the field. Her children walked and jogged in the field and now take their own children to play in the field when visiting their parents. There were usually several other people in the field, mostly dog walkers but also people using the field for informal recreation such as jogging or flying model aircraft. She knew Mr. Gunderman, whom she understood to be the tenant of Thamesfield. He cut the grass in the field and baled it for hay. Children used to play on the bales. One year, he sprayed the field with slurry. It was smelly and one had to walk around the outside of the field, but it soon dissipated after a couple of showers of rain. At one point, Mr. Gunderman grew kale on part of the field for a couple of years to feed his pigs. You had to walk around the outside of the kale. Mr. Gunderman never asked her to leave the field or

³³ R/4/285

³⁴ R/4/275

³⁵ R/4/279A&B

said that she was trespassing. In her witness statement, Mrs. Darbyshire said that entry to the field was never restricted. In her evidence questionnaire, she wrote that some fencing was erected in May 2009.

[79] Cross examined by Miss Jones, Mrs. Darbyshire accepted that she had seen a “Private Property” sign at the Fairfield Approach entrance at some point, although it was only up for a few days. People put up signs about missing dogs and cats and “there were always signs appearing and disappearing”. She also saw the remains of a fence at the Fairfield Approach entrance although she was not sure of the date. At some stage, the question of access to Thamesfield became general gossip in the village but she could not say whether that was prompted by the WESL letter of 10th June 2008³⁶ saying that the field was private land and that it was being offered for sale in plots. Mrs. Darbyshire remembered walking down to the kale to look at it. She did not walk over the ploughed land or the growing kale. She did not walk on the grass after it was cut for hay and before it was baled.

[80] Mr. Moran was not present when Mrs. Darbyshire gave her evidence. Cross examined by Mr. McDonagh, Mrs. Darbyshire said that she could not recollect a small side gate at the Coppice Drive entrance.

[81] I was unhappy that Mrs. Darbyshire had not mentioned signs and fencing in her witness statements. I think that she played down her recollection of signs at the Fairfield Approach entrance and I suspect that she saw the “Private Property” sign erected there in July 2007 as well as the fencing and signage erected there in July 2009. However, I accept her evidence about use of the field by herself, her family and other recreational users.

Karen Driver

[82] Mrs. Driver produced an OSS evidence questionnaire³⁷, a written witness statement³⁸ and some photographs³⁹ of her daughter riding her horse in Thamesfield in 2001. The photographs show the horse being ridden both on the perimeter path and in the middle of the field. The appearance of the grass is consistent with regular use for hay making. Mrs. Driver first used Thamesfield when her parents-in-law moved to Coppice Drive in 1991. In 1997, Mrs. Driver moved to Fairfield Road with her husband and three children. Since then, she has used the field daily to walk her dogs. She walks all over the field and not just on the paths. The nearest entrance is in Fairfield Approach, which is only 20 metres from her house. However, she sometimes uses other entrances, i.e. through the Kayles or along FP8 from Fairfield Approach. Her answer to Q13 of the evidence questionnaire was that she gained access to the field “from a public footpath”, which did not seem consistent with her written statement and oral evidence. As well as dog walking, Mrs. Driver picks berries in Thamesfield. Her husband jogs round the field several times a week. Her daughter kept a horse in Wraysbury from 2000-2003 and rode in the field once or twice a week. Her sons

³⁶ B/2/106

³⁷ R/4/303

³⁸ R/4/297

³⁹ R/4/311

played football and climbed trees in the field as children. She sees other people walking their dogs in the field and children playing there. The grass was cut for hay until about 2009.

[83] Cross examined by Miss Jones, Mrs. Driver said that she walked about 75-80% of the times on paths including the perimeter path. The routes of the paths changed from time to time. She saw Mr. Gunderman cut the grass for hay. He sometimes gave her a cheery wave. She still walked in the area that was cut although she avoided actually walking on the cut hay. When the hay was baled, children played on the bales. Sometimes the bales were left in the field to rot. She vaguely remembers that the northern part of the field was ploughed although she thought that it was only once. Asked about signs at the Fairfield Approach and Friary Road entrances, Mrs. Driver was a bit vague, saying that there might have been signs but she could not remember them. She remembers that the earth bund at the Fairfield Approach entrance was increased in height at one stage, but people made a path around the side of it. She remembered that a fence was erected at the Fairfield Approach entrance which completely blocked the entrance. There was a “private” sign on it. The fence only lasted a couple of days. A neighbour told her that the entrance had to be kept open for emergency access. After WESL offered plots for sale on the field there was a meeting of local people and a lot of people turned up because they were concerned about the field. When the WAG was started, they applied to register public footpaths over Thamesfield. She signed a petition about the field.

[84] Cross examined by Mr. Moran, Mrs. Driver said that the land purchased by the Smiths and Gateses formed part of an overgrown area that was never cut.

[85] Cross examined by Mr. McDonagh, Mrs. Driver said that she had not used the land behind the Coppice Drive entrance now owned by Mr. McDonagh since the small side gate had been blocked or removed. She could not remember when that was.

[86] Despite the odd answer to Q13 of her evidence questionnaire, I broadly accept Mrs. Driver’s evidence although her recollection of dates was a bit hazy. She was rather coy about signage at the Fairfield Approach entrance and I think that she probably saw the “Private Property” sign erected at that entrance in July 2007.

Begum Evans-Hassan

[87] Mrs. Evans-Hassan produced an OSS evidence questionnaire⁴⁰, a written witness statement⁴¹ and some photographs⁴². She has lived in Friary Road with her husband and three children (now aged 12-9) since 2001. She has used Thamesfield since she moved to Friary Road. She pushed her children in pushchairs around the field when they were young. She produced a photograph of a push chair being pushed along a path in the field. When the children were older the children played in Thamesfield. She produced some photographs of her children playing in the field. Some of her relatives owned dogs and she sometimes walked them in the field. She usually entered the field from Friary Road but she used the

⁴⁰ R/4/321

⁴¹ R/4/315

⁴² R/4/329

other entrances as well. She can see part of the field from her house. There were many other people who used the field for informal recreation such as dog walking, horse riding, cycling, flying kites and model aircraft. The field was cut (although she never actually witnessed it being cut) and there were sometimes haystacks on the field. Kids used to play on the haystacks. Her use of the field was never challenged.

[88] Cross examined by Miss Jones, Mrs. Evans-Hassan agreed that she had given evidence at the public inquiry into the application to register the Kayles as a new TVG. She agreed that, at that public inquiry, she had said that she and her children frequently used the Kayles for informal recreation. However, she said that that evidence was not inconsistent with her evidence about Thamesfield. She and her children had used both Thamesfield and the Kayles. She thought that most people probably stuck to the paths in Thamesfield, of which the perimeter path was the most popular, but people did not only use the paths: they went all over the field. She had never seen the farmer in the field. Shown a photograph of the “Private Property” sign on the Coppice Drive entrance gates, she explained that she did not pass that entrance often since her house was north of the bollards in Friary Road and the vehicular approach was by Old Ferry Drive. I was not clear whether she was saying that she had, or had not, seen that sign at the Coppice Drive entrance but she said that she had never seen a similar sign in Friary Road. So far as she was concerned, access to Thamesfield was never an issue although she did hear from gossip in the village that the owner of the field was selling off parts of the field. She said that she had not seen installation of the Thames Water pipe.

[89] She was cross examined by Mr. Moran on why her evidence questionnaire had claimed use of Thamesfield from 1999 although she did not move to Wraysbury until 2001. She offered no real explanation.

[90] Cross examined by Mr. McDonagh, Mrs. Evans-Hassan said that she never used the Coppice Drive entrance.

[91] Mrs. Evans-Hassan gave her evidence towards the end of an evening session of the public inquiry when I think that everyone was understandably rather weary. Her evidence was therefore not as fully probed as that of some other witnesses. However, I generally accept her evidence about use of Thamesfield. I am however surprised that she claimed not to have seen the “Private Property” sign erected in Friary Road in July 20007, since that was quite close to her home.

Keith Gibson

[92] Mr. Gibson produced an OSS evidence questionnaire⁴³ and a written witness statement⁴⁴. He has lived in a house called Windicott in Fairfield Approach since 1983. His house backs onto Thamesfield and he has a gate in his back fence through which he can enter the field. His main use of the field has been to mow a firebreak about 30 feet wide at the back of his garden and to burn rubbish. During the time that he has lived in his house he has seen

⁴³ R/4/343

⁴⁴ R/4/341

the field used for all sorts of informal recreation, such as walking, with or without dogs, children's play, horse riding and flying model aircraft. Dog walkers generally stick to the perimeter path. On 12th July 2012, he carried out his own survey of use of the field between 6.45am and 9pm. It was a cold and drizzly day. He counted 32 dog walkers. The grass in the field was cut nearly every year by Mr. Gunderman until about three years ago.

[93] Cross examined by Miss Jones, Mr. Gibson said that he saw kids play on the bales a couple of times. Mr. Gibson recalled that the north eastern end of Thamesfield was ploughed and used for growing kale. Most people would respect the crop but dogs ran over it and people would go on it to recover their dogs. He had used all the entrances to the field at some time or another but he rarely used entrances other than his own gate. He had installed that gate when he erected the back fence in 1983: previously there had been no fence. He did not see any signs at the entrances, but he heard about the signs when they were put up, although he could not remember the date. He drives by the Coppice Drive entrance but cannot recall a sign there. He did not receive the letter from WESL about sale of plots in the field but he heard about it from people who lived around the field. They were concerned that the field would be sold in plots and that their access would be stopped.

[94] Cross examined by Mr. Moran, Mr. Gibson said that the 32 dog walkers were all different people.

[95] Cross examined by Mr. McDonagh, Mr. Gibson said that he had not used the Coppice Drive entrance for many years.

[96] I accept Mr. Gibson's evidence. In particular, it is not surprising that he did not see any signage in 2007 or 2009 since he normally entered Thamesfield from his back garden, which is well away from the main entrances and did not stray far from his own back gate. I should add that I noticed on viewing the application land that it is hard to reconcile the boundaries of the application land as shown on the plan to the TVG application with the actual boundaries of Mr. Gibson's garden. It looks as though Mr. Gibson's garden includes part of the application land. Mr. Wilmshurst told me that it was not the intention of the applicant to register any part of Mr. Gibson's enclosed garden as a TVG. It seems to me that Mr. Gibson's garden is not registrable as a TVG on any basis since it has been enclosed from the field since 1983. If Thamesfield were to be registered as a new TVG it would be necessary to exclude from registration any part of the application land which coincided with the fenced garden of Windicott.

Pauline Harrison

[97] Mrs. Harrison produced an OSS evidence questionnaire⁴⁵ and a written witness statement⁴⁶. Mrs. Harrison has lived with her husband since 1986 in Wharf Road, in a house backing onto Thamesfield. They have two children, who are now grown up. She has owned a number of dogs since 1986 and has usually walked them in Thamesfield three times a day. She has a gate at the bottom of her garden and can enter Thamesfield through that gate. She

⁴⁵ R/3/201
⁴⁶ R/3/195

has also used most of the other entrances to the field. She sees other people in the field, walking dogs, jogging, cycling and playing football in the summer. She estimated that 95% of the people came from Wraysbury. The farmer cut the grass and baled it for hay in the summer. In the early years, the grass was cut to the edge of the field but, in latter years, only part of the field was cut. She often spoke to the farmer but he never asked her to leave the field. Her use of the field was never challenged or obstructed.

[98] Cross examined by Miss Jones, Mrs. Harrison said that she usually walked on the paths. The perimeter path was the most popular path with dog walkers. About 80% of the dog walkers that she saw were on the perimeter path. The field has not been cut for hay in the last 3-5 years. When it was cut and drying in the field, people mostly avoided walking on it. The farmer was Mr. Gunderman. She remembers that he planted something in the northern part of Thamesfield. She cannot remember whether Mr. Gunderman ploughed that part of the field, but, if so, she would have walked around rather than across ploughed land. She recalled the laying of the Thames Water pipe. They excavated half the route and installed the pipe and filled in the excavation before excavating the rest of the route. Temporary bridges were installed for people to walk over. The excavation was fenced. She used to use the Coppice Drive entrance. When they installed the pipe in the field, Thames Water installed double metal gates at the Coppice Drive entrance. However, there was a small side gate through which one could walk into Thamesfield. The side gate was blocked up about 5 years ago (i.e. c. 2007) and she has not used that entrance since. There has been a "Private Property" sign on the double gates at the Coppice Drive entrance for a number of years, but Mrs. Harrison thought that it was not installed at the same time as the double gates but some years later. She has not seen a "Private Property" sign at any of the other entrances to Thamesfield. Mr. and Mrs. Harrison received a letter⁴⁷ dated 10th June 2008 from WESL offering to sell Thamesfield in plots. The letter said that there was no right of access to Thamesfield. Mr. and Mrs. Harrison did buy a plot adjacent to their garden although they have not fenced it.

[99] Cross examined by Mr. Moran, Mrs. Harrison did not think that she had used the plots bought by the Smiths and Gateses after the pumping station was built beside Friary Road as part of the Thames Water works.

[100] Cross examined by Mr. McDonagh, Mrs. Harrison said that she had not used the Coppice Drive entrance since the side gate was blocked about five years ago.

[101] Mrs. Harrison can be criticised for saying in her evidence in chief that she saw no notices to say that Thamesfield was private and that her entrance to the field was never obstructed, whereas she accepted in cross examination that the Coppice Drive entrance was blocked about five years ago and that there has been a "Private Property" sign at the Coppice Drive entrance for a number of years. She may not have seen the other "Private Property" signs erected in July 2007 since she was able to enter Thamesfield directly from her own back garden. However, in relation to her evidence about use of Thamesfield, I thought that her recollection was pretty clear and accurate and I am inclined to accept it.

⁴⁷ B/2/106

Neil Hayman

[102] Mr. Hayman produced an OSS evidence questionnaire⁴⁸, an evidence questionnaire in a home-made form devised by the WAG⁴⁹, a written witness statement⁵⁰ and five photographs⁵¹. Mr. and Mrs. Hayman have lived in Hill View Road since 1977. Hill View Road is a cul-de-sac leading westwards off Welley Road between Old Ferry Road and Fairfield Approach. When they moved in, they had two young children, then aged 4 and 2. Mr. Hayman's evidence in chief about when he started to use Thamesfield was inconsistent. In his WAG evidence questionnaire, he said that he started using Thamesfield in 1976. In his witness statement, he said that he started using the field in the late 1970s. In his OSS evidence questionnaire, he said that he started using the field in 1980. However, it appears from his witness statement that his frequent use of Thamesfield started in 1985, when he acquired a Springer Spaniel puppy. From 1985 until the dog got too old in 2001, he or another member of his family walked the dog in Thamesfield nearly every day. His children also used the field for recreational activities until they left home for university in 1992 and 1996. His son used Thamesfield for bike riding and flying his remote controlled aircraft. His daughter used the field for horse riding with a friend who kept her horse in her back garden in Fairfield Approach. When he used the field, he saw other people using the field for informal recreation such as dog walking and children playing. He never saw any indication that the land was private or that entry was not allowed. He usually entered Thamesfield from FP8, which he could access from a gate at the rear of his garden.

[103] Cross examined by Miss Jones, he said that when the grass was wet he usually walked the perimeter path. 70% of the people he saw were on the perimeter path. However, if the grass was dry, he walked across the centre of the field, not necessarily on a beaten path. He recalled that the northern part of Thamesfield was ploughed and a crop of kale was grown. This was over a period of 2-3 years. He did not damage the crop but there were ways through and around the crop while it was growing. The crop did not affect use of the field after it was harvested. Mr. Hayman knew the farmer, Mr. Gunderman, who made hay on the field. He thought that the haymaking started after 1985 and continued throughout the 1990s. He did not see Mr. Gunderman at work but he saw that the grass had been cut, that it was baled and that the bales were subsequently collected. He did not avoid the areas that had been cut for hay but walked between the rows of cut grass. He rarely used the Fairfield Approach entrance. However, he remembers that there was a time when an earth bund was put across the entrance. It was about 3 feet high and it was not difficult for pedestrians to walk over it.

[104] Cross examined by Mr. Moran, Mr. Hayward said that he could not recollect using the land now owned by the Smiths and the Gateses.

⁴⁸ R/4/363
⁴⁹ R/4/361
⁵⁰ R/4/353
⁵¹ R/4/357

[105] Cross examined by Mr. McDonagh, Mr. Hayward said that he had rarely used the Coppice Drive entrance, did not know that it was gated and had not used the area of Thamesfield immediately behind the Coppice Drive entrance now owned by Mr. McDonagh.

[106] I considered that Mr. Hayman's memory was a little unreliable on dates. Also, I think that it was odd that he did not mention the Fairfield Approach entrance bund in his evidence in chief whilst emphasising the lack of any barrier to entry into Thamesfield. However, I accept his evidence that he and his family used Thamesfield frequently for informal recreation from the mid-1980s until the start of the 2000s and saw many other people doing the same. He did not mention the signage erected in July 2007 or the fence and signage erected at the Fairfield Approach entrance in July 2009, but he may have been using the entrance from FP8 from Fairfield Approach at the critical time. That entrance was never obstructed nor had any signage.

Paul Hewson

[107] Mr. Hewson submitted an OSS evidence questionnaire⁵² and a written statement⁵³ made jointly with his partner, Lorna Craig. They are both retired and have lived since 2005 on Friary Island, which is just west of Friary Road. They have had a dog for the last three years. He or his partner walks the dog in Thamesfield, several times a day in summer and less often in the winter. They enter the field through one of the Friary Road entrances. He is often on the field for an hour. He sees other dog walkers and has seen people flying model aeroplanes, picking blackberries and flying kites in the field. About 15 local dog walkers hold a Christmas party in the field and walk around the field with their dogs. There were no signs in the field and entry was unrestricted.

[108] Cross examined by Miss Jones, Mr. Hewson said that people walked on and off the paths. He could not say in what percentages. The grass was cut every year until about three years ago and, since it ceased to be cut, people have tended more to stick to the paths. He agreed with Miss Jones that he may not have seen any signs because they were pulled down before he had an opportunity to see them.

[109] Cross examined by Mr. Moran, Mr. Hewson said that he was not sure whether he had walked on the land now owned by the Smiths and Gateses. He recollected horses being led on the field to graze.

[110] Cross examined by Mr. McDonagh, Mr. Hewson said that he had never used the Coppice Drive entrance.

[111] I am surprised that Mr. Hewson claims not to have seen the "Private Property" sign erected in Friary Road in July 2007 since the evidence suggests that the sign was up for about a month and it would have been necessary to pass it when walking from Friary Island to the Friary Road entrances into Thamesfield. Subject to this, I accept his evidence.

⁵² R/4/375

⁵³ R/4/373

Lynn Holden

[112] Mrs. Holden produced a written witness statement⁵⁴. Mr. and Mrs. Holden have lived in St. John's Close, Wraysbury since 1985. St. John's Close leads north off Old Ferry Drive opposite the Kayles. Until two years ago, she had a succession of dogs, and walked them in Thamesfield every day. Their son, who is now aged 24, used to play in Thamesfield. She used all the entrances to the field. She walked all over Thamesfield and not only on the paths. Since 2001, she has been a teacher at Wraysbury Primary School and has taken children for geography trips onto Thamesfield. The field was used by many other local people. In the early 1980s, gymkhanas were held on the field. She never saw any "Private" signs on the field. The Coppice Drive entrance was blocked at some stage, but she could not remember the date. Nor could she remember seeing a sign there. An earth bund was built at the Fairfield Approach entrance. She thought that it was to prevent travellers entering the field but the bund did not prevent pedestrians from entering the field. She never saw a fence or sign at that entrance. She did not know that the land was privately owned until she learned that it had been put up for sale in plots.

[113] Cross examined by Miss Jones, Mrs. Holden recalled that Thamesfield was occasionally cut for hay. She did not remember any part of the field being ploughed or kale being grown.

[114] Mr. Moran was not present to cross examine Mrs. Holden.

[115] Pressed by Mr. McDonagh as to the date when the Coppice Drive entrance was blocked, she could not say more than that it was a long time ago, probably before 2007.

[116] I found Mrs. Holden to be particularly vague on dates. I found it very surprising that she did not remember the northern part of Thamesfield being ploughed and used to grow kale, particularly since she must have often walked to Thamesfield through the Kayles. I accept that she did use Thamesfield for recreation from 1985 onwards and saw many other people doing the same. However, I am surprised that she claims not to have seen the "Private Property" signs erected in July 2007 since one of these signs was situated on the entrance to Thamesfield from the Kayles if one crosses the Kayles on FP8.

Jane Huckle

[117] Mrs. Huckle produced an OSS evidence questionnaire⁵⁵ (completed jointly with her husband) and a written witness statement⁵⁶. Mr. and Mrs. Huckle have lived in Ouseley Road since 1964. They have two children, who lived with them until they grew up and left home in the early 1990s. They have three grandsons, aged 13-9. She has walked her dogs several times a week in Thamesfield for 45 years. Her daughter rode horses in the field from about 1981 to 1987. There was a circle in the grass near Friary Road where people schooled their horse. For a couple of years in the 1990s, Mrs. Huckle ran in the field several times a week to

⁵⁴ R/4/387

⁵⁵ R/4/400

⁵⁶ R/4/393

keep fit. She picks blackberries around the sides of the field each year. She takes her grandsons to play on the field. She sees other people in the field enjoying informal recreation such as dog walking, horse riding and children's play. Her use of the field has not been challenged: indeed she used to see the farmer, who acknowledged her. She used to enter Thamesfield by the Coppice Drive entrance, but that entrance was fenced off and, afterwards, she entered from Friary Road. She could not remember when the Coppice Drive entrance was fenced off. In answer to Q31 of her evidence questionnaire, she said that the Wharf Road entrance (i.e. the Coppice Drive entrance) was blocked up for 2 days in 1998 and then in 2008. This was not explored in cross examination but it seems inconsistent with the rest of her evidence and the evidence of other witnesses.

[118] Cross examined by Miss Jones, Mrs. Huckle said that, when she first moved to Wharf Road, Thamesfield was used for growing corn. People walked around the outside of the crop. Later it was used for grazing cattle and a horse. She could not remember the northern part of the field being ploughed in more recent years. When Mr. Gunderman cut the grass for hay, people did not walk on the crop. She nearly always walked on the paths since she had a small dog, but did not confine herself to the perimeter path. She remembered the installation of the Thames Water pipe but could not remember whether the excavation was fenced or how long it took. After a little hesitation, Mrs. Huckle recognised the "Private Property" sign on the Coppice Drive entrance gates. She thought that it had been there a long time. She used to enter the field by that entrance but it was blocked up and she stopped using that entrance.

[119] Cross examined by Mr. Moran, she gave no evidence of using the land acquired by the Smiths and the Gateses, other than that she recalled that Mr. Gates invited her to pick blackberries on his land before it was fenced.

[120] Cross examined by Mr. McDonagh, Mrs. Huckle said that she thought that the Coppice Drive entrance was originally blocked off by Mr. Butler of 2, Wharf Road because he complained about having his windows broken and did not like people using that access. Mrs. Huckle last used that entrance years ago.

[121] Mrs. Huckle's evidence about the Coppice Drive entrance was rather contradictory. In the end, I think that her recollection was that that entrance was blocked and the "Private Property" sign erected at that entrance quite some years ago, although she could not say exactly how long ago. It is odd that she cannot recollect the ploughing of the northern part of the field in relatively recent times, but she may not have walked to that end of the field. She may not have seen the 2007 signage or the 2009 signage at the Fairfield Approach entrance since she would normally have entered Thamesfield from the more southerly of the Friary Road entrances. I accept the rest of her evidence about the use of the field by herself and others.

Diane Hughes

[122] Mrs. Hughes produced an OSS evidence questionnaire⁵⁷, a written witness statement⁵⁸, some photographs⁵⁹ and a sketch map of various features on Thamesfield⁶⁰. Mr. and Mrs. Hughes have lived in Wraysbury since 1981. They lived on Friary Island until 1987 and then at two addresses in Friary Road. They have two children, now aged 26 and 24. All three houses have been very close to Thamesfield and their present house overlooks the field. Apart from a couple of years in the mid-1990s, they have always had dogs and a member of the family has walked them in the field every day. They took the children to play in the field for about 10 years from 1988 to 1998, and subsequently the children played in the field with friends. Usually, she entered the field through a gap in the bund on the Friary Road edge of the field. She and the children went all over the field: not just the paths. Mrs. Hughes has walked less in the field since 2009 as her husband now does most of the dog walking. She sees many other people using the field, mostly for dog walking. She recognises many of them as local people from the village, although some people come by car and park in Friary Road. Many houses backing onto the field have gates onto the field: she counted 17 last year. At weekends and in school holidays, there are often children playing in Thamesfield. She was aware that the Coppice Drive entrance was closed in about 2009 but she thought that this was just to prevent access to the building plot behind the gate. The grass on the field was cut for hay sporadically until the about 2003. She produced a photograph⁶¹ dating from the early 1970s showing the grass cut and drying in lines on the field. She walked between the lines of hay.

[123] Cross examined by Miss Jones, Mrs. Hughes said that she had walked up to the north eastern end of Thamesfield when the ground was ploughed and planted. She did not normally use the Fairfield Approach or Coppice Drive entrances, although she remembers her dog chasing a cat or fox out of the Fairfield Approach entrance after 2009. She drives past the Coppice Drive entrance and is aware of the “Private Property” sign at that entrance although she cannot remember how long it has been there. She has never seen such a sign at the Friary Road entrances or the entrances from the Kayles. Shortly after the pumping station was built, she saw a sign saying “Dog walkers this way” at the Friary Road entrance beside the pumping station.

[124] Cross examined by Mr. Moran, Mrs. Hughes said that she had used the land now owned by the Smiths and Gateses in the 1990s.

[125] Cross examined by Mr. McDonagh, Mrs. Hughes said that she had not used the land that he owned behind the Coppice Drive entrance since at least 2005.

[126] I think that Mrs. Hughes may have been mistaken about the “Dog walkers this way” sign since no other witness mentioned it and there seems no logical reason why anyone should erect such a sign. I found her recollection of the agricultural use of Thamesfield to be rather vague. However, I accept her evidence relating to her own use of the field and that of

⁵⁷ R/4/419 (a page containing Qs27-35 was missing but a copy was handed in as R/4/424A)

⁵⁸ R/4/407

⁵⁹ R/4/429

⁶⁰ R/4/439

⁶¹ R/4/429

her family and other local people. I am however surprised that she claims not to have seen the “Private Property” sign erected in Friary Road in July 2007.

Hannah Hughes

[127] Miss Hughes produced a completed evidence questionnaire⁶² in OSS form and a written witness statement⁶³. She is aged 23. Her family home was in London Road, Wraysbury from 2000 to 2006 and, since then, in Friary Road, although, at present, she lives in France. From 2000 until she moved to France (the date of the move was unclear), she used Thamesfield daily for dog walking and running. She does not always stick to the paths. There are always other dog walkers in the field and often joggers. There has been nothing to prevent or discourage use of the field by local people except that, according to her evidence questionnaire (dated February 2010), some paths were blocked by trees in the “past few months”.

[128] Cross examined by Miss Jones, Miss Hughes said that she thought that users predominantly (80-90%) stuck to the paths although not only the perimeter path. The Coppice Drive entrance was pretty popular until it was blocked. She recognised the “Private Property” sign on the Coppice Drive entrance gates although she could not remember how long it had been there.

[129] Cross examined by Mr. Moran, she did not think that she had ever used the land purchased by the Smiths and the Gateses.

[130] Cross examined by Mr. McDonagh, she said that she had not used the Coppice Drive entrance for at least 5 years.

[131] I was concerned that Miss Hughes had not mentioned the Coppice Drive entrance gates and sign in her evidence in chief and, indeed, had given evidence in chief inconsistent with the existence of the gates and sign. I cannot see any good reason why she gave this evidence. It is also odd that she claimed not to have seen the “Private Property” sign erected in Friary Road in July 2007. Nonetheless, I do accept her evidence about her own (and other people’s) use of Thamesfield, which seems consistent with the evidence of many other witnesses.

Phillip Hughes

[132] Mr. Hughes produced an OSS evidence questionnaire⁶⁴ and a written witness statement⁶⁵. Mr. Hughes has a wife, Diane, and two children, now aged 26 and 24. They moved to Wraysbury in 1981, living in a house on Friary Island (just west of Friary Road). They moved to Friary Road in 1989, where they lived at No. 18 until 1989 and, since 1989, at No. 24. Their present house looks over Thamesfield and about two-thirds of the field is visible from the house. They almost always enter Thamesfield along a well-trodden path from

⁶² R/4/477

⁶³ R/4/475

⁶⁴ R/4/459

⁶⁵ R/4/443

Friary Road leading through a gap in the bund and ditch which mark the Friary Road boundary of Thamesfield. They have had a dog since 1981, with a gap in 1995-97. The dog is usually walked in Thamesfield several times a day. Mr. Hughes jogged in the field several days a week until 1997. Their children played in the field when they were young. They often saw the farmer, Mr. Gunderman, but he never objected to their use of the field. There are almost always other people in Thamesfield walking their dogs. Mr. Hughes knows many of them as local people from the village. In the summer and at weekends he sees children playing in Thamesfield. He was aware that the Coppice Drive entrance was fenced off but thought that this was to stop vehicles accessing the field. There were no other obstructions to pedestrian access to the field. He received a letter from WESL in June 2008 concerning sale of Thamesfield in plots but thought that the scheme was unrealistic, if not deceptive. On 4th February 2010 he saw two men, one of whom he later discovered to be Marcus Kendrick, telling an elderly lady to leave Thamesfield. He intervened but was told to leave the field, and was pushed and verbally abused. Mr. Kendrick called the police and several policemen arrived. They said that it was a civil matter but advised Mr. Hughes to leave the field, which he did. He took some photographs of the incident⁶⁶ and sent an email⁶⁷ to the police the next day complaining of assault. The police did not prosecute Mr. Kendrick or Mr. Hughes.

[133] Cross examined by Miss Jones, Mr. Hughes said that he generally walked on the paths. Although his usual entry point was from Friary Road, he has used the other entrance points. There is a sign at the Coppice Drive entrance saying “Private Property”. It has been there two or three years. He has not seen any other signs at entrances to the field. The letter from WESL of 10th June 2008⁶⁸ was general knowledge: people knew that access to Thamesfield was in issue.

[134] Cross examined by Mr. Moran, Mr. Hughes said that he would have walked the land sold to the Smiths and the Gateses since he walked every inch of Thamesfield.

[135] Cross examined by Mr. McDonagh, Mr. Hughes said that he did walk on the land behind the Coppice Drive entrance a couple of years ago but he could not remember when he walked that part of the field before that.

[136] As for the incident of 4th February 2010, I discouraged cross examination about it since it seemed to me to be enough for present purposes that Mr. Hughes’s use of the field was clearly contentious after that incident. I do not therefore propose to apportion blame for that incident. I was concerned that Mr. Hughes had not mentioned the Coppice Drive entrance sign in chief. I am surprised that he claims not to have seen the “Private Property” sign erected in Friary Road in July 2007. However, I accept Mr. Hughes’s evidence about use of Thamesfield by himself and others.

Nicola James

⁶⁶ R/4/465-6

⁶⁷ R/4/455

⁶⁸ B/2/106

[137] Mrs. James produced a written witness statement⁶⁹. She has lived in Fairfield Approach since 2005 with her husband and children. She now has 5 children aged between 17 and 4. The family also has a dog. She and her family walk their dog in Thamesfield and her children have frequently played in the field. She estimates that she personally uses the field at least once a fortnight and that her family use the field 3-4 times a week on average. They go all over the field, although her children have tended to play in the southern part of the field. When she is on the field, there are usually a number of other people using the field for dog walking or other informal recreation. She recognises many of them as local people. She usually enters the field at the Fairfield Approach entrance and has never been prevented from using the field.

[138] Cross examined by Miss Jones, Mrs. James said that she did not use the access points from Friary Road, but she sometimes used the access points into the Kayles and sometimes left the field by the Coppice Drive entrance. In or about 2008/9, she tried to leave the field by the Coppice Drive entrance and found the way blocked by gates with a “Private” notice. She did not use the Coppice Drive entrance after that. She saw no fences or signs at any other entrance that she used. There was an earth bund at the Fairfield Approach entrance and it was made bigger 2 or 3 years ago. She thought that it was intended to keep travellers off Thamesfield and she and her children were always able to walk in at that entrance. The grass on the field was cut for hay every year until a few years ago. They kept off the grass that had been cut for hay while it was lying on the ground, although her children played on the bales.

[139] Cross examined by Mr. Moran, Mrs. James said that she had not used the land acquired by the Smiths and the Gateses.

[140] Cross examined by Mr. McDonagh, Mrs. James said that, in the early years, there may have been gates at the Coppice Drive entrance that were open. She walked straight down the path towards the Coppice Drive entrance but did not otherwise use the area of land behind the Coppice Drive entrance now owned by Mr. McDonagh.

[141] I found Mrs. James to be rather vague on dates. I accept her evidence about use of the field by herself, her family and others. Her recollection of the Coppice Drive entrance seemed particularly woolly but I accept that she left the field that way a few times and then found that she could not get out there. I am surprised that she claims not to have seen the “Private Property” sign erected at the Fairfield Approach entrance in July 2007. I am also surprised that she did not see even the remains of a fence at the Fairfield Approach entrance, which was her main entrance, as there is convincing evidence that a fence was erected there in 2009, although it was quickly vandalised.

Barbara Jeffries

[142] Mrs. Jeffries produced an OSS evidence questionnaire⁷⁰ and a written witness statement⁷¹. Her parents-in-law lived in Fairfield Road and she first got to know Thamesfield

⁶⁹ R/4/485

⁷⁰ R/4/501

⁷¹ R/4/489

in 1957, when she began courting her future husband. She moved to Wraysbury with her husband and two children in 1962. They lived in Fairfield Road. She had another child in 1965. In 1986, the family moved to Cornwall but returned to Wraysbury in 1994. Since 1994, they have lived in Coppice Drive. In the 1960s and 1970s she and her family walked and played in Thamesfield. In the 1970s, she and her daughter had horses which they rode daily in the field. At that time, many horse riders used the field. On returning to Wraysbury, Mrs. Jeffries and her husband frequently walked across Thamesfield to visit her mother-in-law in Fairfield Road. She died in 1998. After that, they walked in the field about once a month. There were always dog walkers in the field. The Coppice Drive entrance was originally completely open land. Some time after the Jeffrieses moved back to Wraysbury, the Water Board erected double metal gates at that entrance. However, it was still possible to walk round the side of the gates. Some time later a small side gate was installed, but it was not locked and it was still possible for pedestrians to enter Thamesfield through the side gate. Still later, the side gate was locked. Mrs. Jeffries heard from neighbours that it had been locked by Mr. Butler, who lived next to the Coppice Drive entrance and that Mr. Butler would supply a key. However, she did not ask for a key and never used that entrance again. Shortly after the side gate was locked, it was blocked off with hoardings. Then the hoardings were replaced with proper fencing. Mr. Gunderman helped Mr. Butler erect the new fence. She could not remember a sign at that that entrance when it was blocked off. She thought that it was blocked off in 2008 or 2009. Asked in chief about agricultural use of Thamesfield, Mrs. Jeffries said that the field was cut for hay about once a year. It was baled but often the bales were left in the field. One lot of evil-smelling fertilizer was put on the field. She could not remember any arable crops being grown in the field since the 1960s.

[143] Cross examined by Miss Jones, Mrs. Jeffries accepted that she was rather hazy on dates. She walked and rode both on and off the paths. The exact position of the paths varied over the years. For example the perimeter path was now less close to the sides of the field. One tended to use the paths more when the grass was long. Contrary to her evidence in chief, Mrs. Jeffries said that she did recall a crop of kale being grown in part of the field after she returned to Wraysbury in the 1990s. When she first knew the Fairfield Approach entrance it was flat and open. Mr. Gunderman erected an earth bund there in the 1980s. You could walk round the side of it. Later, the bund was built up more but you could still walk over it. At some stage there was some broken fencing at that entrance, but she could not recollect a sign. Mr. and Mrs. Jeffries received a letter from WESL about sale of the field. She could not remember whether it was the letter of 10th June 2008⁷². She went to a parish council meeting in 2008. There were a lot of people there. There was discussion about the Worbys trying to stop access to Thamesfield.

[144] Cross examined by Mr. Moran, Mrs. Jeffries thought that the land bought by the Smiths and Gateses had been overgrown by brambles and inaccessible for at least 10 years.

⁷²⁷²

B/2/106

[145] Cross examined by Mr. McDonagh, Mrs. Jeffries thought that she may have picked blackberries in the land now owned by Mr. McDonagh behind the Coppice Drive entrance, but not since the side gate was locked.

[146] Mrs. Jeffries's memory for dates was admittedly rather hazy and her evidence about the kale crop was inconsistent. Perhaps she had genuinely forgotten the kale crop before questioned about it in cross examination. Certainly, I accept her evidence about her own use of the field and what she saw of other people's use. She did not recall the "Private Property" signs erected in July 2007, but her visits to Thamesfield do not appear to have been very frequent and the signs may have been torn down before she had an opportunity to see them.

Karen McLachlan

[147] Mrs. McLachlin was born in Wraysbury and lived there from 1954 to 1976, when she got married and moved away. In those days, Thamesfield was farmed and grew corn. Mr. and Mrs. McLachlin moved back to Wraysbury in 1988 with their three daughters, who were born in 1981, 1984 and 1986. They have lived in Wharf Road since 1988. Her daughters got interested in horse riding, and from 1990 to 2011 they had a variety of ponies which they stabled in the garden. The girls used to ride their ponies in Thamesfield several times a week. They had a group of friends who also had ponies and rode in the field. She told the girls not to ride on the grass when it was cut for hay, but they rode everywhere when the grass was growing. The riding tailed off from about 2002. The family also walked in the field and the children played there when they were young. They used all the entrances to the field. At some point, the Coppice Drive entrance was blocked off. She was a bit hazy about the details. There were double gates at that entrance with a side gate. You could enter the field through the side gate. Then, the side gate was barricaded and she stopped using that entrance. In her witness statement she said that the gate was blocked in 2009 and that she stopped using the field after that.

[148] Cross examined by Miss Jones, Mrs. McLachlin she said that she could not really remember when the Coppice Drive entrance was blocked off, but that she continued to use the field by entering at Fairfield Approach, where there was an earth bund which you could walk or ride over. She stopped using the field after a letter dated 10th June 2008 from WESL⁷³ was dropped through her door. The letter said that Thamesfield was private land and offered to sell it in plots. There were no fences, gates or signs at any of the entrances except at the Coppice Drive entrance. She did see a sign there but could not remember when. The majority use of Thamesfield was by dog walkers of whom about 50% were on the perimeter path, although it varied according to the length of the grass. Children played all over the field.

[149] Cross examined by Mr. Moran, Mrs. McLachlin could not remember whether she and her family used the parts of Thamesfield now owned by the Smiths and Gateses.

⁷³

B/2/106

[150] Cross examined by Mr. McDonagh, Mrs. McLachlin confirmed that she did not use the Coppice Drive entrance after it was blocked although she could not remember the date when it was blocked.

[151] I accept Mrs. McLachlin's evidence concerning use of Thamesfield by herself and her family and others. However, I think that she was mistaken in her witness statement in saying that she stopped using the field when the Coppice Drive entrance was blocked in 2009. It was clear from her oral evidence that she stopped using the field on receipt of the WESL letter of 10th June 2008⁷⁴ and that the Coppice Drive entrance had been blocked some time before then. I am surprised that she did not see the "Private Property" sign erected at the Fairfield Approach entrance in July 2007.

Jesse Mills

[152] Mr. Mills produced a written statement⁷⁵. Mr. Mills has lived in Fairfield Approach since 2009. His house backs onto Thamesfield and he has direct access to the field through a gate at the bottom of his garden. This is his usual access to the field although he sometimes uses the Fairfield Approach entrance. He has a dog which he walks in Thamesfield at weekends and two or three times during the week. He usually walks on the paths but his dog is a bit of a character and he tries to avoid other people by walking in the middle of the field if there are a lot of people about. In 2009, the grass in Thamesfield was cut but it has not been cut in the last few years.

[153] Cross examined by Miss Jones, Mr. Mills said that he normally used Thamesfield in the evenings as he worked during the day. He saw model aircraft being flown in the field shortly after he moved to Fairfield Approach in 2009. He never saw a fence at the Fairfield Approach entrance, but he usually entered Thamesfield by way of the gate from his garden.

[154] Mr. Moran did not cross examine Mr. Mills.

[155] Cross examined by Mr. McDonagh, Mr. Mills said that he knew the Coppice Drive entrance but it had never been open in his time. He has never walked down to the gate from the field although his dog probably ran down there and he may have chased his dog down there.

[156] I accept Mr. Mills's evidence.

David Pitt

[157] Mr. Pitt produced a written witness statement⁷⁶. He was born in Wraysbury in 1965. His parents lived in Ouseley Road and he lived there with them until he left home in 1990. He remembers walking as a child in Thamesfield with his parents and grandparents and playing in Thamesfield with friends. After leaving Wraysbury, he still visited his parents in Wraysbury every few weeks and sometimes walked the dog around Thamesfield. He got

⁷⁴ B/2/106

⁷⁵ R/4/529

⁷⁶ R/4/559

married and moved back to Ouseley Road (next door to his parents' house) in 1997. He has two sons now aged 15 and 12. Since moving back, he was walked with his children in the field at weekends. In 2009, he got a new dog and, since then, walks the dog every day in the field for 30-45 minutes, usually, but not always, around the perimeter path. There has been no challenge to his use of the field. When Thames Water laid a pipe across the field, they installed double gates at the Coppice Drive entrance to secure their plant. He thought that that was in about 1996/7 (although the evidence is that it was in the early 2000s). After that, he tended to use the Friary Road entrances.

[158] Cross examined by Miss Jones, Mr. Pitt said that about 70% of the users of Thamesfield were dog walkers. The majority stuck to the paths, but the paths went all over the field and changed position from time to time. He knew that Mr. Gunderman cut the field for hay, but he thought that stopped in 1997. Shown aerial photographs which suggested that the field had been cut for hay until at least 2008, Mr. Pitt said that maybe it was cut during a period of a few days when he did not walk in the field. Mr. Pitt acknowledged that the double gates at the Coppice Drive entrance had a sign saying "Private Property" but he thought that the sign had not been there long, perhaps 4-5 years. The sign was put up after the gates. He has not used the Fairfield Approach entrance in recent years. He has not seen a "Private Property" sign anywhere except at the Coppice Drive entrance. He received the letter dated 10th June 2008 from WESL⁷⁷ offering to sell plots in Thamesfield but he did not take it seriously. He had heard that an old guy had been challenged in the field and pushed into the bushes. This was a couple of years ago.

[159] Cross examined by Mr. Moran, Mr. Pitt said that the plots bought by the Smiths and the Gateses were within the uncultivated edge of Thamesfield.

[160] Cross examined by Mr. McDonagh, Mr. Pitt said that he had not used the Coppice Drive entrance recently and could not remember using the part of Thamesfield behind the Coppice Drive entrance now owned by Mr. McDonagh.

[161] I accept that Mr. Pitt sometimes walked and played in Thamesfield as a child. His mistakes about the date of the Thames Water pipe installation and the date when Mr. Gunderman stopped cutting the field for hay suggests to me that he made only occasional use of the field after returning to Wraysbury in 1997 and before acquiring a dog in 2009. This view is supported by the fact that he also seemed rather vague about the closure of the Coppice Drive entrance although he said that it had been his main access until it was blocked. Occasional use may explain why he did not see the "Private Property" sign erected in Friary Road in July 2007. I accept that he has used Thamesfield frequently since 2009.

Rona Pitt

[162] Mrs. Pitt produced an OSS evidence questionnaire⁷⁸ and a written witness statement⁷⁹. She has lived with her husband in Ouseley Road since 1962. Mr. and Mrs. Pitt

⁷⁷ B/2/21
⁷⁸ R/4/543
⁷⁹ R/4/537

have two children, Elizabeth and David. David also gave evidence to the public inquiry. They have four grandchildren, now aged between 18 and 12. They have had dogs since 1974. They have walked the dogs twice daily in Thamesfield. From 1974 to 1989, they also had a pony and horse, which their daughter rode in the field. They and their family also used the field for picnics, games and picking blackberries and mushrooms. From 1973 to 1985, she organised horse and dog shows for the Wraysbury Horse Club. They were held partly in Thamesfield with the permission of Mr. Keith Worby, the owner. Horse boxes used to enter the field by the Coppice Drive entrance. Mrs. Pitt was a teacher at Wraysbury School from 1972 to 1992 and she took parties of pupils into the field for nature study and rounders. She has never been challenged when using the field and all the entrances have always been accessible with the exception of the Coppice Drive entrance. Double metal gates were installed there when Thames Water installed a pipe across the field. She thought that was in 1996 but it might have been later. A small pedestrian gate was installed beside the double gates and that gate was unlocked until 2009 when the small gate was blocked and a “Private” sign erected at the Coppice Drive entrance. She did not take the sign seriously and continued to use the field, entering by one of the other entrances.

[162] Cross examined by Miss Jones, Mrs. Pitt said that the only farming use of Thamesfield that she could recall was after Mr. Gunderman took over. He cut the field for hay, although not every year and not in the last few years. When the field was cut, most people treated Mr. Gunderman’s cut grass with consideration and did not walk on it for three or four weeks until it was collected up. Mrs. Pitt vaguely remembers that Mr. Gunderman grew a crop of kale one year, but she rarely went into the part of the field where the kale was grown. She cannot remember any arable crop before that. The smaller horse shows were held in the Kayles, but the larger shows expanded into Thamesfield. She remembers that a father built a cross country course right round Thamesfield. Horse boxes were parked in the field near Friary Road. She received the WESL letter of 10th June 2008⁸⁰ concerning sale of Thamesfield in plots but she did not take it seriously. She was aware that the project of selling Thamesfield in plots provoked general discussion and controversy in the village.

[163] Cross examined by Mr. Moran, she could not recollect using the plots of land sold to the Smiths and the Gateses although her dogs may have run there. Cross examined by Mr. McDonagh, she said that she remembered a dung heap behind the Coppice Drive entrance, but it was on the side on the entrance path and did not prevent access. Since 2006, she has not walked so much in Thamesfield since she has had three knee replacements as well as falling and breaking her leg.

[164] I found Mrs. Pitt to be an honest witness, recounting the facts to the best of her recollection although her dates were not always correct, e.g. the date of the Thames Water pipe installation. It seems that she was not using the field much after 2006 and this may explain why she does not mention the “Private Property” signs erected in July 2007 or the fence and signs at the Fairfield Approach entrance in July 2009.

⁸⁰ B/2/106

Duncan Stott

[165] Mr. Stott produced a written witness statement⁸¹ and some photographs⁸². Mr. and Mrs. Stott have lived in Ouseley Road since 1992. Until 2003, they walked in Thamesfield about twice a month, usually entering by the Coppice Drive entrance. In 2004, they acquired a dog. At first, they walked it twice a day in the field, but it became aggressive towards other dogs and they tended to take it somewhere quieter. They got a new dog in 2008, and resumed twice daily walking in the field. There were usually other people in the field, walking dogs or enjoying a variety of other recreational activities. He recognised many of them as local people. The grass was cut for hay and Mr. Stott produced a photograph⁸³ showing some hay bales in the field in January 2008 (presumably uncollected after the summer crop of 2007). In about 2003/2004, the Coppice Drive entrance was blocked off and, after that, they used the Fairfield Approach entrance. In his written statement, Mr. Stott said that a fence was erected at the Fairfield Approach entrance in 2009 together with a private sign. In his oral evidence in chief, Mr. Stott confirmed that there was a fence as shown in photograph B/2/103 but said that he could not recall whether the sign was attached to the fence as shown in the photograph or not. In 2010 or 2011, he was challenged by a couple when he was leaving the Fairfield Approach entrance and told that Thamesfield was private.

[166] Cross examined by Miss Jones, Mr. Stott was inclined to think that it was in 2007 that the Coppice Drive entrance was blocked and a “Private Property” sign erected at that entrance. He sometimes entered Thamesfield by walking along FP8 through the Kayles, but he cannot recall there being a “Private Property” sign on that entrance to Thamesfield. When the WESL letter of 10th June 2008⁸⁴ was sent saying that Thamesfield was private land and offering to sell it in plots, there was general talk about it in the village and lots of people who walked in the field knew about the letter. He did see a “Private Property” sign at the Fairfield Approach entrance in 2007 but it only lasted a few days. Mr. Stott did not recall there being much general discussion about that sign. Mr. Stott did not recall there being a kale crop in Thamesfield although he recollected that the north eastern end of the field did look a bit different, but that was some time before 2007/2008. The hay was cut and baled in some years but Mr. Stott could not remember whether it was every year. He thought that people walked over the grass when it was cut for hay: you could not do much harm to drying grass. He thought that most people used the perimeter path but the cross paths were also well used. When it snowed, people went everywhere.

[167] Cross examined by Mr. Moran, Mr. Stott said that he thought that the land bought by the Smiths and the Gateses was always covered in brambles.

[168] Cross examined by Mr. McDonagh, Mr. Stott said that he did not use the land now owned by Mr. McDonagh behind the Coppice Drive entrance after it was blocked.

⁸¹ R/4/565
⁸² R/4/569/1-4
⁸³ R/4/569/1
⁸⁴ B/2/106

[169] I found Mr. Stott to be an honest witness, although rather unsure about dates. I think that he could not really recall exactly when the Coppice Drive entrance was blocked. However, he did see a “Private Property” sign at the Fairfield Approach entrance in about 2007 and a fence at that entrance in about 2009 although both were short-lived. I accept his evidence about recreational use of Thamesfield.

Karin Straka

[170] Mrs. Straka produced an OSS evidence questionnaire⁸⁵ and a written witness statement⁸⁶. She has lived with her husband and son in Coppice Drive since 2003. They took their son to play in Thamesfield nearly every day when the weather was suitable. They used the whole field and not just the paths. She often saw other people using the field for informal recreation, both on and off the paths. At first, they usually entered the field by the Coppice Drive entrance. There was a small gate like a garden gate which was shut but not locked. That gate was blocked by the man who lived next door to the Coppice Drive entrance. After that, they usually used the Fairfield Approach entrance where there was an earth bund that you could walk or cycle over. Mrs. Straka’s evidence in chief was rather inconsistent about when she stopped using the field. In paragraph 9 of her witness statement, she said that she stopped using the field in June/July 2008, when it was put up for sale by WESL. In her evidence questionnaire, she variously said that she was still using it in 2010 (Q8) and that she was prevented from using the field when the Fairfield Approach entrance was fenced off in summer 2009 (Q30).

[171] Cross examined by Miss Jones, Mrs. Straka thought that the small gate at the Coppice Drive entrance was blocked off in 2007 and a “Private Property” sign was erected at that entrance at the same time. She confirmed that it was in 2008 that she stopped using Thamesfield. After she received the letter of 10th June 2008⁸⁷ there was much talk locally about whether the owner could bar people from using Thamesfield. There was talk of incidents in which people were turned off Thamesfield. People said that they had used Thamesfield for many years. Mrs. Straka did not want her son to get into trouble by using the field. During the time that Mrs. Straka used Thamesfield, she and her family went all over it, including the copse in the middle. She once saw a tractor cutting the grass but did not see grass laid out to dry or baled. The other users of the field were mostly dog walkers or children playing.

[172] Cross examined by Mr. Moran, Mrs. Straka said that her son had been taken on the field for a field trip by his school, the Wraysbury Primary School.

[173] Cross examined by Mr. McDonagh, Mrs. Straka thought that she had walked on the land now owned by Mr. McDonagh behind the Coppice Drive entrance before that entrance was blocked off in April 2007. Pressed on the date, she said that she could remember that it was in April because the family had just come back from holiday.

⁸⁵ R/4/577
⁸⁶ R/4/571
⁸⁷ B/2/106

[174] Although her evidence in chief was rather confusing and inconsistent in certain respects, having heard her give oral evidence, I accept her evidence concerning recreational use of Thamesfield by herself, her family and others. I accept that her recollection is that the Coppice Drive entrance was blocked off in April 2007 and that she and her family stopped using the field immediately after receiving the WESL letter of 10th June 2008⁸⁸. I am however surprised that she did not see the “Private Property” sign erected at the Fairfield Approach entrance in July 2007.

Karen Tate

[175] Mrs. Tate has lived in Fairfield Approach since 1997, with her husband and son. Her house backs onto Thamesfield and she has a gate at the bottom of her garden opening onto the field. She walked occasionally in the field with her family after moving to Fairfield Avenue. However, they acquired a dog in 2006 and, since then, have walked the dog in the field several times a week. They throw a ball for the dog to retrieve. When her son was younger, he played in the field. She walks both on and off the paths. When the grass was short, it was easy to walk off the paths. Many other people walk dogs in Thamesfield. About 75% of the time, they are on the perimeter path. Some come by car but most come on foot. She can see them walking along Fairfield Approach to the Fairfield Approach entrance. She has seen people flying model aircraft in the field. She never saw any signs forbidding entry to Thamesfield.

[176] Cross examined by Miss Jones, she said that she used the Fairfield Approach entrance shortly after she acquired the dog in 2006. There has a hump but she was able to walk over it with the dog. She received the letter of 10th June 2008 from WESL⁸⁹ offering to sell Thamesfield in plots. Somebody knocked on the door to talk about it. They thought it was odd. They were told that they could not fence or hedge a plot if they bought one. She recognised Mr. Gunderman. He cut the grass for hay until about 2006. Her son climbed on the bales. Part of Thamesfield was ploughed. She still walked in the field but not across the ploughed land: she walked around it. She never used the entrances from Friary Road or the Kayles.

[177] Cross examined by Mr. Moran, Mrs. Tate was not very sure whether she had been on the land acquired by the Smiths and the Gateses before it was fenced.

[178] Cross examined by Mr. McDonagh, Mrs Tate said that she had never been through the Coppice Drive entrance or walked on the part of the field now owned by Mr. McDonagh immediately behind it.

[179] I find it odd that Mrs Tate did not see the “Private Property” sign erected at the Fairfield Approach entrance or the fencing and gates erected at the Fairfield Approach entrance in July 2009. It may be explained by the fact that she was able to use her own private entrance to Thamesfield. Otherwise, I accept the evidence of Mrs. Tate.

⁸⁸ B/2/106
⁸⁹ B/2/106

Suzanne Turton

[180] Mrs. Turton produced an OSS evidence questionnaire⁹⁰ and a written witness statement⁹¹ with annexed plan. She and her husband have lived in Fairfield Approach since 1987. They have two children, now aged 20 & 22, who still live at home. She has walked her dogs in Thamesfield every day since 1987. Sometimes, she used to walk them in the field twice a day. Since 1998 she has run in the field several times a week and her husband has run in the field once or twice a week since 1987. She has also picked berries in the field. Her children played in the field when they were younger and still sometimes walk the dogs in the field. Her usual access is by the public footpath from Fairfield Approach. Many other people have used Thamesfield for informal recreation and she has recognised many of them as local people. Her use of the field has never been challenged and she has seen no signs on the field although a fence was erected across the Fairfield Approach entrance on a couple of occasions in 2009. She did not mention any agricultural use of Thamesfield in her evidence in chief.

[181] Cross examined by Miss Jones, Mrs. Turton said that she thought that about 70% of the use of Thamesfield was for dog walking. About half the use was on the paths and half the use off the paths. Personally, she normally stayed on the paths. She remembered the Thames Water pipe being installed across the field. There was a gully and a fence although the field was never completely divided in two. On a couple of occasions, she saw a tractor in the field cutting the grass. She had never seen any part of Thamesfield ploughed or kale being grown in the field. In about 2008, she heard gossip that Thamesfield was going to be sold off in plots. She was concerned that access to the field would be under threat.

[182] Cross examined by Mr. Moran, she could not say whether she had ever used the land bought by the Smiths and Gateses.

[183] Cross examined by Mr. McDonagh, she said that she had never used the Coppice Drive entrance.

[184] I found it very odd that Mrs. Turton claimed to be a daily user of Thamesfield since 1987 but could not remember that the northern part of the field was ploughed and cropped with kale, particularly since her usual entrance was from the public footpath at the northern end of the field. However, the ploughing and cropping ceased more than 15 years ago, and it is possible that she has genuinely forgotten about it. I also found it odd that she did not know of the “Private Property” sign erected at the Fairfield Approach entrance in July 2007. I did not doubt her evidence about recreational use of Thamesfield by herself and others.

John van der Beeck

[185] Mr. van der Beeck produced a written witness statement⁹². Mr. van der Beeck owns a house in Old Ferry Drive and lived there from 1969 to 1971 and 1973 to 2011. He has used Thamesfield for walking and running and playing with his son. He usually entered via the

⁹⁰ R/4/601

⁹¹ R/4/589

⁹² R/4/613

Kayles and left either through the Kayles or out onto Friary Road. He saw other local people using the field. In his evidence in chief he said that he had never seen any agricultural use of the field. In 2008, he became aware that the field was being marketed in plots. He telephoned the selling agents three times and pointed out that he used the land.

[186] Cross examined by Miss Jones, Mr. van de Beeck said that most, but not all, walkers stuck to the perimeter path. He remembered that the grass was cut for hay most years. The crop was very sparse and he would not think anything of walking over it. He did not see any hay bales. He has not seen any fencing or “Private” signs at any of the entrances.

[187] Cross examined by Mr. Moran, Mr. van de Beeck said that he could not remember walking on the land sold to the Smiths and Gateses although he imagined that he would have done so.

[188] Cross examined by Mr. McDonagh, he could not remember using the Coppice Drive entrance for many years.

[189] My impression was that Mr. van de Beeck had used Thamesfield very infrequently, if at all, for many years. I accept that he has used the field in the past and that, when he used it, he saw other people using the field and that there was no restriction on access. However, I do not place much reliance on his evidence relating to physical features on the field in the last decade or so. It is curious that he did not see the “Private Property” sign erected in Friary Road and at the entrance from the Kayles to Thamesfield via FP8 but this may be explained by infrequent use of Thamesfield at those times.

Gaye Vogul

[190] Mrs. Vogul produced a written witness statement⁹³ and gave oral evidence. In her evidence in chief, she explained that she has lived with her husband in Fairfield Approach since 1981. From 1973 to 1981, they lived in Ouseley Road. Mr. and Mrs. Vogul have two daughters, now in their 40s. Mrs. Vogul and her daughters kept horses at home and used to ride almost daily in Thamesfield. After her daughters left home, Mrs. Vogul continued to ride in Thamesfield until she gave up horses in 2007. They rode all over the field and used the training circle made by horse riders near Friary Road. There is a gate in their rear boundary which opens onto the footpath which leads from Fairfield Approach to Thamesfield. However they used all the entrances to the field. Since 2007, Mr. and Mrs. Vogul have continued to walk in Thamesfield. Access was always open and she saw no signs to say that the land was private. Her use of the field was never challenged. The field was used for informal recreation by many local people. In the 1970s and early 1980s, horse shows were held on the field. In her evidence in chief, Mrs. Vogul made no mention of

- use of the field for hay-making or farming,
- the locked gate at the Coppice Drive entrance with a “Private Property” sign,
- the installation of a Thames Water pipe across the field in 2000/2001, or

⁹³ R/3/589

- receiving a circular letter⁹⁴ dated 10th June 2008 from WESL stating that Thamesfield was being sold in plots and that there was no public access to the field.

In her written witness statement, she said that she had also completed an evidence questionnaire, but (for some unexplained reason) this was not produced.

[191] Cross examined by Miss Jones, Mrs. Vogul maintained her evidence about recreational use of Thamesfield. On the matters not mentioned in her evidence in chief:

- she accepted that Mr. Gunderman cut the grass, but said that she thought that the land was abandoned by the true owners (the Worbys) and that Mr. Gunderman cut the grass without authority. The grass was poor quality and full of weeds. Often the bales were left in the field and children played on them. She could remember Mr. Gunderman's putting fertiliser down on the field which made it unpleasant to go on the field. She accepted that Mr. Gunderman grew a crop of kale or beet on the northern arm of the field one year in the 1990s, but she could not remember the land being ploughed and thought that the crop was sown directly into the unploughed ground. She would not have ridden over ploughed ground but would ride round the edge.
- She knew that the Coppice Drive entrance (which had been a popular entrance) had been blocked, but could not remember when. However, she had not seen the sign on the gate at the Coppice Drive entrance.
- She had no recollection of the installation of the Thames Water sewage pipe.
- In relation to the leaflet of 10th June 2008, she was aware of the leaflet but thought that she had used the land for years and would continue to do so.

[192] Cross examined by Mr. Moran, Mrs. Vogul said that she could not recall using the land now owned by the Smiths and Gateses.

[193] Cross examined by Mr. McDonagh, Mrs. Vogul said that she could not remember using the land behind the Coppice Drive entrance since it was blocked off although she could not remember when that was.

[194] I did not find Mrs. Vogul to be an entirely satisfactory witness. Her evidence in chief ignored anything that might be perceived as damaging to the TVG application. She tried to downplay the farming use of Thamesfield when questioned about it. The fact that she did not remember the installation of the Thames Water pipe suggests that there must have been a long period in 2000/2001 when she did not use the field at all. I accept that she has used the field for recreational purposes since the 1970s, that her use was not confined to specific paths and that she saw many other local people using the field for informal recreation. However, I suspect that her intensive use of the field was in the 1970s and 1980s when her daughters were young, living at home and riding in the field and that her use has been much more sporadic since her daughters grew up. This could explain her ignorance of the Thames Water pipe, vagueness about the blocking of the Coppice Drive entrance, and failure to mention

⁹⁴ B/2/106

either the “Private Property” signs erected in July 2007 or the fencing and signage erected at the Fairfield Approach entrance in July 2009.

Joan Whillans

[195] Mrs. Whillans produced an OSS evidence questionnaire⁹⁵ and a written witness statement⁹⁶. Mrs. Whillans has lived on Friary Island (which is west of Friary Road) since 1940. She has always had dogs (with the exception of a couple of years in the late 1990s) and she first recollects walking in Thamesfield with her dog in the early 1950s. Since then, she has walked her dog in Thamesfield nearly every day. Her daughter often visits from London with her dogs and they run in Thamesfield. She has walked in the field (and other places) with her granddaughter. She picks blackberries in the field in season. Mrs. Whillans usually enters Thamesfield from Friary Road or across the Kayles. Sometimes, she walks around the perimeter of the field and sometimes across the centre. She has got to know other local dog walkers who walk their dogs in the field. She has seen other people enjoying informal recreation on Thamesfield, such as walking and picking blackberries. She said in her evidence questionnaire that Thamesfield was used for haymaking. Her use of Thamesfield was never challenged until an incident when she was approached in the field by two men who told her not to trespass in the field. Her evidence about the date of this incident was rather contradictory but, in the end, she thought that it was in or about 2008. Mrs. Whillans told a few people about the incident but decided to keep on using the field.

[196] Cross examined by Miss Jones, Mrs. Whillans said that a hay crop was taken from the field periodically until 3 to 5 years ago. She could not remember whether it was taken every year. She recalled the installation of the Thames Water pipe.

[197] Cross examined by Mr. Moran, Mrs. Whillans thought that she did not walk near the land now acquired and fenced by the Smiths and Gateses.

[198] Cross examined by Mr. McDonagh, she said that she had not walked near the Coppice Drive entrance for 10 years.

[199] Mrs. Whillans was a little vague on dates. I am surprised that she did not see the “Private Property” sign erected on Friary Road in July 2007 since her route from Friary Island to Thamesfield would take her by it. However, I accept the rest of her evidence.

Trevor Woodham

[200] Mr. Woodham produced a WAG evidence questionnaire⁹⁷, a written witness statement⁹⁸ and a number of photographs⁹⁹ of himself and other members of his family in Thamesfield with their dogs dating from 1998 to 2011. Mr. and Mrs. Woodham have lived on Friary Island since 1998. Apart from two periods of six months, they have always kept retired

⁹⁵ R/4/623

⁹⁶ R/4/615

⁹⁷ R/4/653

⁹⁸ R/4/631

⁹⁹ R/4/641

greyhounds which they walk in Thamesfield every day. Normally, they enter Thamesfield through the Kayles or off Friary Road. The field is much used by other dog walkers, and is also used by joggers, children playing, horse riders and people flying model aircraft. People pick berries in the field. Mr. and Mrs. Woodham take their grandchildren, now aged 8 and 4, to play in the field. Mr. Gunderman used to cut the grass for hay every year. Children used to play on the bales. Mr. Gunderman also occasionally ploughed the northern part of the field. A water drainage pipe was laid across the field but it did not restrict walking except for the site of the excavation. He was aware that the owners planned to sell the field in plots.

[201] Cross examined by Miss Jones, Mr. Woodham thought that the majority use of the field was for dog walking. About 70% of dog walkers walked on the paths, of which 70% was on the perimeter path. He personally walked all over the field. People kept off the cut grass until it was baled. He has not seen any signs at the field entrances except for a sign at the Coppice Drive entrance. He very rarely uses that entrance but the sign has been there at least 3 years. There was a small earth bund at the Fairfield Approach entrance but that was to keep travellers out. At some stage, he saw some bits of fencing at the Fairfield Approach entrance but he does not remember that entrance ever being completely inaccessible. He first knew that access to the field was an issue in about 2008, when there was a meeting of dog walkers and he was asked to sign a form to be witnessed by a commissioner for oaths. He declined to sign.

[202] Cross examined by Mr. Moran, Mr. Woodham could not remember using the land purchased by the Smiths and the Gateses.

[203] Cross examined by Mr. McDonagh, Mr. Woodham said that he did not normally use the Coppice Drive entrance although he has at some time walked down there.

[204] I am surprised that he did not see the "Private Property" signs erected in Friary Road or on the Kayles in July 2007 since they were on his routes from Friary Island to Thamesfield. Subject to this point, accept Mr. Woodham's evidence.

Written user evidence

[205] In addition to the evidence of witnesses who gave oral evidence to the public inquiry in support of the application, the applicant submitted numerous written statements, some in the form of OSS and WAG evidence questionnaires, from witnesses who did not give oral evidence to the public inquiry. I view this evidence with considerable caution since much of the evidence is very vague and imprecise. I have not seen the witnesses and the objectors have not had the opportunity to test the evidence by cross examination. Also the OSS and WAG forms of evidence questionnaire are not very happily drafted in a number of respects, in particular by leading the witnesses on important issues. However, this evidence does carry some weight, particularly where it is consistent with the evidence of witnesses who did give oral evidence. I summarise the evidence relating to recreational use of Thamesfield as follows:

Name	Wraysbury inhabitant?	Claimed user period	Comments	Ref.
Margaret Lady Archer	Y	1984-1987		R/2/1
Lord Archer of Sandwell	Y	1984-1987		R/2/15
Brian Badcock	Y	1979-2012	Always kept to paths Short-lived fencing at Fairfield Approach entrance c. 2010	R/3/3 R/3/5
Brian Bennett	Y	1970-1977		R/3/13 R/3/17
S Bennett	Y	1970-77		R/2/27
Jessica Bremner	Y	unspecified		R/2/35
Lindy Bremner	Y	1999-2012		R/4/51
Eileen Brown	Y	1975-2010	Spoke to Mr. Gunderman and exchanged pleasantries	R/3/37 R/3/39
Jan Brown	Y	1973-2012	Recent (c. 2009-2010) obstructions and notices at Coppice Drive entrance	R/3/25 R/3/29
Karen Brown	?	1982-?	Evidence questionnaire mostly illegible	R/2/37
George Burgess	Y	1987-2009	Mentions recent fence at Fairfield Approach entrance in EQ of 4-8- 09	R/2/45
Jane Burnell	Y	1978-1988 2002-2008	Stopped using field when Coppice Drive entrance blocked by neighbour shortly before WESL letter of 10-6-2008. Fence put up at another entrance c. 2009	R/3/47 R/3/55
Anika Byrne	?	1982-2010		R/2/57
Jane Campbell	Y/N	1958-?	Parents live in Wraysbury. Lived with parents till 1981 and subsequently visited with children.	R/3/63
Michelle Campbell	N	?-2012	Grandparents live in Wraysbury	R/3/65
Eileen Carter	Y	1968-1998	Received WESL letter. Saw notice but not stated when or where	R/3/67 R/3/71
S Carter	Y	No personal	Received WESL letter	R/3/69

		use claimed		
Jeremy Casey	Y	1990-2010		R/2/65
Roger Chapman	Y	1990-2012	Fairfield Approach entrance fenced with notice in 2009: removed after a week	R/4/215 R/4/225
Tasmal Chehal	Y	1996-2010		R/2/77
David Clark	Y	1960-1968 1988-2010	Answers "U/K" to Q31?	R/2/85
Genna Clark	Y 1977- 1992, 1998, 1999-2001	1985-1997	Mr. Gunderman gave permission to install gate in back fence	R/4/233 R/4/249
Marie Cornish	Y	1973-2009	Mentions erection of wooden fence in March/April 2009	R/2/93
Sandra Coyne	Y	1986-2010	Mentions trying to block entrances with dirt or branches	R/2/99
Lorna Craig	Y	?-2012	Joint letter with Paul Hewson	R/4/373
Guido Cresto	Y	1978-1986 2006-2008	Bunds built at Friary Road and Fairfield Approach entrances in 1970s or 1980s. Short-lived "Private" sign at Fairfield Approach entrance c. 2007	R/3/83 R/3/95
David Cross	Y	1982-2010	Asked Mr. Worby for permission for daughter to ride horse in field	R/2/121
Sue Cross	Y	1982-2010	Asked Mr. Worby for permission for daughter to ride horse in field in 1990	R/2/111
William Darbyshire	Y	1986-2010	May 2009: attempts to discourage use June 2009: some fencing	R/3/107 R/3/113
Iris Delderfield	Y	1970-2012	Received WESL letter offering plots for sale Qs 27-35 missing from EQ	R/3/127 R/3/131
Simon Douglas Lane	Y	2005-2010	Recent fencing autumn 2009	R/2/129
Robert Ettridge	Y	2006-2012	Fairfield Approach entrance barricaded with earth and trees: unspecified date	R/3/139 R/3/147

			EQ jointly with Sharon Ettridge	
C Forsdyke	Y	1991-2010		R/2/137
Jan Freeborn	Y	2000-2010		R/2/149
?Mitchell? Freeborn	Y	2000-2010	Fence put up and locked	R/2/161
Dawn Funnell	Y	2001-2010	Fencing and notice in 2009 for a few days only	R/2/173
Katie Gardner	Y	unspecified		R/2/185
Anne Gates	Y	1996-2010		R/2/187
David Gates	Y	1996-2010		R/2/195
Jenny Glazzand	Y	1980-2009		R/2/203
Derek Gleed	Y	1967-2005	Gates were put across entrance. Mr. Butler said it's private	R/2/209
Jane Glen	Y	2007-2010	In 2009, entrance from Fairfield Approach was blocked off. In February 2010, told she was trespassing	R/2/217
Mark Gullede	Y	1999-2010	Joint EQ with Mrs. Gullede	R/2/229
JT Graham	Y	1983-2010		R/2/241
John Michael Gray	Y	1975-2010		R/2/249
Anthony Mark Habicht-Britton	Y	2007-2010	Fence put up for a few days after June 2008	R/2/257
Susan Habicht-Britton	Y	2007-2010	Fence and debris at Fairfield Approach entrance c. 2009 removed within short space of time	R/2/269
Iain Keith Hanson	Y	1985-2010		R/2/281
Jacqueline Hanson	Y	1967-2012	Coppice Drive entrance closed up in 2008 by neighbour. It "caused a bit of trouble". Fence at Fairfield Approach entrance (unspecified date). In 2009 told land being sold in plots.	R/3/159 R/3/167
Michael Harrison	Y	1986-2012	Spoke to farmer and never asked to leave	R/3/181 R/3/187
Pauline Harrison	Y	1986-2012	Spoke to farmer when hay making but not asked to leave	R/3/195 R/3/201

Marilyn Hayman	Y	1980-1998		R/2/293
Susan Hegi	Y	1980-2009		R/2/305
June Hendry	Y	1974-2010	Told that she was trespassing in 2009 & 2010	R/3/213 R/3/219
Jonathan Hesford	Y	1994-2010	Mentions unspecified "fences": see Q31	R/2/317
Karen Hesford	Y	1994-2010	Wooden posts put up summer 2009	R/2/325
Graham Hobbs	?	2006-2010		R/2/333
John Horner	Y	1934-2010	Fairfield Approach entrance blocked in 2009	R/2/347
Lynda Horner	Y	1989-2009	Coppice Drive entrance gated	R/2/359
Carol Howard	Y	1970-2012	Seen "Private" notice since WESL purchased field Recent (2010) attempt to block Fairfield Approach entrance	R/3/233 R/3/137
Peter Howard	Y	1970-2012	Seen "Private" notice since WESL purchased field Recent (2010) attempt to block Fairfield Approach entrance	R/3/231 R/3/245
Keith Huckle	Y	1964-2009	Joint EQ with Jane Huckle	R/4/400
Adam Hughes	Y	2006-2010		R/2/373
Carl Hughes	Y	1970-1982 1999-2010		R/2/381
Diana Hughes	Y	1965-2009		R/2/389
Norma Hughes	Y (since 2005)	1980-2012	Gate erected with short-lived "Private" sign at Coppice Drive entrance in 2009 Fairfield Approach entrance blocked by branches: unspecified date Received WESL letter 2008	R/3/265 R/3/275
Patrick Hughes	Y	1980-2012	"Private" sign erected at one entrance in 2009	R/3/253 R/3/257
Harold Hutt	Y	1964-2010	Recently barrier with hedging trees	R/2/397
Satya Swaroop Issar	Y	1986-2010		R/2/409

AE & AJ Jackson	Y	1988-2012		R/3/283
Owen Richard Jeffries	Y	1938-2010	Fencing 2008	R/2/421
Catherine Jones	Y	1987-2012		R/3/287 R/3/291
Kenneth Keeble	Y	2002-2012		R/3/302 R/3/305
Debra Keen	Y	1986-2012		R/3/317 R/3/319
Anne Lansiaux	Y	1961-2010		R/4/38A
Tamsyn Lay	N	1980s-2012		R/3/335
Frederick Lee	Y	1990-2012		R/3/339 R/3/341
Simon Lillywhite	Y	1999-2009	Recent attempts to prevent or discourage use: see Q31	R/2/437
John Luiting	Y	2011-2012		R/3/343
Peter John MacDonald	Y	1987-2010		R/2/449
Alicia Mallinson	Y	2002-2010	Fence at Fairfield	R/2/461
Lauren Mallinson	Y	2002-2010	Fence at Fairfield Approach but removed quickly	R/2/467
Lee Mallinson	Y	2002-2010		R/2/473
DMills	Y	2009-2010		R/2/483
Nicole Mills	Y	2009-2010		R/2/493
L Moffatt	Y	1977-2010		R/2/503
Roger Moffatt	Y	1975-2010		R/2/511
Graham Morley	Y	1976-2010		R/2/523
Sally Morley	Y	1976-2010		R/2/529
Martin Morris	Y	2001-2012	Received WESL letter of June 2008	R/4/533
Robin Nicholls	Y	1970-2010		R/3/357 R/3/359
Susan Nicholls	Y	1975-2012	Received WESL letter offering plots for sale. After letter, some people were challenged on the field Two entrances were fenced: date unspecified.	R/3/347 R/3/349
Carole North	Y	1975-2012	Bund at Fairfield Approach entrance: date unspecified	R/3/385 R/3/393
Michael North	Y	1975-2012	Bund at Fairfield Approach entrance many years ago. Coppice Drive entrance blocked: unspecified date	R/3/367 R/3/373

Ron Oakman	Y	1950-2010		R/2/535
James Osborne	Y	1994-2010		R/2/543
Judy Osborne	Y	1994-2010		R/2/551
Linda Owen	Y	1986-2012	WS para 12 suggests recent "Private" signs, fences and challenges to use of field EQ Qs 18-35 missing	R/3/405 R/3/411
Christie Painter	Y	1995-2010		R/2/563
Jack Painter	Y	1993-2010	Pathway blocked in 2009	R/2/571
Roger Painter	Y	1993-2010	"Recent" fencing	R/2/583
J Palmer	?	1998-2012		R/2/595
Jonathan Parker	Y	2001-2012	Received 2008 WESL letter offering plots for sale Short-lived fence and (possibly) sign at Fairfield Approach entrance 2009	R/3/431 R/3/433
Elizabeth Perez	Y	1982-2007	Now fenced off	R/2/597
Henry Perez	Y	1982-2007	Fencing since owners decided to sell off the land	R/2/605
Frederick Pilditch	Y	1984-2012	"Private" notice appeared c. 2008 but ignored and subsequently removed	R/3/445 R/3/449
David Pitt	Y	1997-2012	Coppice Drive access gates installed in c. 1997 by contractors but left open after works finished	R/4/559
Isabelle Price	Y	1961-1979 1990-2012		R/3/471 R/3/473
Matthew Price	Y	1995-2012		R/3/457 R/3/449
Linda Renouf	Y	1979-2012	Coppice Drive entrance blocked in 2009	R/3/487 R/3/489
Daphne Rix	Y	1974-2008		R/2/615
Helen Rodd	Y	2005-2010	Fencing summer 2009	R/2/623
D Rolfe	Y	1990-2010		R/2/631
Pamela Samuel	Y	1997-2010		R/2/639
Hazel Searle	Y	1974-2012	Coppice Drive entrance blocked sometime after 2002 Received 2008 WESL letter offering plots for	R/3/499 R/3/507

			sale One entrance temporarily blocked in May 2009	
Mark Searle	Y	1974-2012	Side gate at Coppice Drive entrance blocked 2008/9 Fence erected at one entrance in May 2009 but no longer there	R/3/521 R/3/529
Susan Shaw	Y	1985-2009	Fence panels and earth bank last 3 months: EQ 24-11-09	R/2/651
Anita Shepperson	Y	2007-2012	Fairfield Approach entrance blocked with earth in 2010	R/3/539 R/3/541
Eileen Short	Y	1980-2010		R/2/661
Graham Sinclair	Y	1997-2007		R/3/545
Elsie Stephenson	Y	1988-2010		R/2/669
Peter Tate	Y	1997-2012	Once approached and told he should not be in field	R/2/679 R/2/683
Ann Taylor	Y	1945-2010	Mentions unspecified fence	R/2/685
Raymond Taylor	Y	1974-2012		R/3/549
Susan Thomson	?	1981-2010		R/2/693
Lindsay Thuringer	Y	2009-2012		R/3/553 R/3/559
S Turner	Y	1971-2010		R/2/701
Matthew Turton	Y	1987-2012	Fairfield approach entrance fenced June/July 2009	R/3/569 R/3/575
Carolyn Urwin	Y	2007-2010		R/2/721
Robin Urwin	Y	2007-2010		R/2/709
Shirley van de Beeck	Y	unspecified		R/3/587
Marleen Vanrenterghem	Y	1985-2010	Mentions fencing "on Ouseley Road side"	R/2/733
Julie Vogul	Y	1982-2000		R/3/595
Clifford Warren	Y	1966-2006	First noticed attempt to discourage use in 2009/2010	R/2/741
Valerie Weir	Y	1964-2009	Received WESL letter in June 2008 Unspecified attempts to discourage use of field October 2009	R/3/597 R/3/603
Christine White	Y	1985-2010	Understands fence erected on part of land	R/2/765
Clare Whitehead	Y	1980-1995	Fencing at Coppice	R/2/777

			Drive entrance in 2007	
Mary Whitehead	Y	1979-closure	Now fenced off	R/2/785
Christine Whiting	Y	unspecified	Took school trips from Wraysbury Primary School onto field	R/3/611
Stephen Whiting	Y	1988-2010		R/2/793
Jane Willans	Y	1960-2010		R/2/753
Margaret Willey	Y	1967-2009		R/2/803
Barbara Williams	Y	1990-2010		R/2/811
Brenda Williams	Y	unspecified		R/2/819
Cedric John Williams	Y	1990-2010		R/2/821
Peter Williams	Y	unspecified		R/2/829
Denise Woodley	Y	2007-2010	Q27-35 missing from EQ	R/2/831
Daniel Young	Y	1985-2010	Coppice Drive entrance closed by neighbour since 2007	R/2/842
Ian Young	Y	1975-2010	Coppice Drive entrance blocked c. 2008	R/2/851
June Young	Y	1975-2010	Coppice Drive entrance blocked in 2007	R/2/859
Zoe Young	Y	1979-2012	Coppice Drive entrance blocked with debris in 2007. Sends email to David Worby 5-9-2007 "we can no longer access field" "Private" sign erected at unspecified date Heard of WESL letter of June 2008	R/3/613 R/3/619

Other written evidence in support of application

[206] The applicant produced certain other written evidence not dealing with recreational use of Thamesfield.

[207] The applicant produced a letter dated 23rd October 2012 from the Wraysbury Parish clerk stating that the boundaries of the parish had not changed for the 21 years that he had been clerk. A plan apparently showing the boundaries is attached to that letter as handed in to the public inquiry but is not verified by the letter and differs from the boundaries of the parish

as shown in plan A¹⁰⁰ attached to the TVG application. The evidence relating to the boundaries of the civil parish is therefore not satisfactory. Also, the evidence going back 20 years is not sufficient if reliance is placed on CA 2006 s. 15(3) or (4) since the relevant 20 year period may start more than 21 years ago. However, it seems to me that it ought to be easy enough to produce more satisfactory evidence.

[208] The applicant produced a letter dated 9th November 2012 from the vicar of St. Andrew's, Wraysbury to the effect that the boundaries of the ecclesiastical parish are the same today as they have been as long as can be remembered. It is unclear how long this means. A plan of the parish boundaries is on the reverse of the copy of the letter as handed in by the applicant but is not verified by the letter. Again, the evidence is unsatisfactory but it ought to be possible to produce more satisfactory evidence.

[209] The applicant produced a copy of:

- Mr. McDonagh's application dated November 2010 for planning permission to build a house on the plot that he had acquired behind the Coppice Drive entrance. It was proposed that a new public footpath should be created alongside the new house giving access to Thamesfield.
- The RBWM January 2011 refusal of this application

8. Evidence for WESL

Witnesses who gave oral evidence

Michael Busbridge

[210] Mr. Busbridge produced a written witness statement¹⁰¹.

[211] In 2007, he first became involved in a proposed joint venture with the Worby family, who owned Thamesfield and another field by Coppice Drive. The object of the joint venture was to sell the two fields. He visited Thamesfield in the late summer of 2007 to look at the land. He was told by David Worby that there was a problem of unauthorised access to the field. There was metal fencing and locked double metal gates at the Coppice Drive entrance with a sign reading "Private Property. Access to this land is by permission of the owners". There was an earth bund at the Fairfield Approach entrance and along the Friary Road boundary. From 2007, Mr. Busbridge visited the field on a number of occasions, although it was not clear how often he personally visited the land. His impression was that there were not many trespassers in 2007.

[212] In 2008, he was authorised to ask people to leave the fields and he did ask trespassers to leave Thamesfield. WESL was incorporated on 24th April 2008 as a vehicle for the joint venture. Subsequently, Thamesfield and Coppice Field were transferred to WESL, which is

¹⁰⁰ R/1/25

¹⁰¹ B/2/1

now the registered freehold proprietor. In May 2008, Mr. Busbridge, together with Mr. Kendrick and Mr. Fraser, had a meeting with Mr. Smith, the current chairman of the parish council, and Mr. Davies, the incoming chairman, to explain the proposal of WESL to sell the fields in plots. Neither objected to the proposal but they asked for a copy of the sales brochure, which was then in preparation. WESL then prepared a brochure¹⁰² promoting a scheme to sell Thamesfield and the Coppice Drive field in plots. A diagram¹⁰³ of the proposed division was included in the brochure. It involved splitting the land into a very large number of small plots with a network of access routes. WESL then hand delivered to local residents a letter¹⁰⁴ dated 10th June 2008 explaining that the fields were private property without any right of public access and offering plots for sale. It seems that the letters were delivered on or about 10th June 2008. Residents were given a deadline of 17th June 2008 to respond. The letter indicated that prices of plots varied according to size but would be £11,250 upwards. The letter was delivered to 147 addresses¹⁰⁵. 32 residents¹⁰⁶ approached WESL expressing interest. A number of residents telephoned to complain that the 7 day time limit was too short. The RBWM issued a press release¹⁰⁷ dated 11th June 2008 warning prospective purchasers to take advice before purchasing. There was a meeting of Wraysbury Parish Council on 16th June 2008. The minutes¹⁰⁸ record a lengthy discussion about the proposed sales. There was mention of three petitions, one calling for an archaeological survey, one calling for a wildlife survey and one calling for the establishment of public rights of way over the land. The parish clerk was instructed to write to RBWM asking for a direction removing permitted development rights. WESL had meetings with 25 prospective purchasers and a number of plots were sold.

[213] On 20th February 2009, WESL wrote¹⁰⁹ again to the same local residents renewing the offer to sell plots. In early 2009, the problem of unauthorised access on Thamesfield became worse. This coincided with the formation of WAG. Consideration was given to methods of making the field more secure. Some quotations were obtained for fencing the unfenced boundaries, but the cost was £10,000 to £20,000, which they considered prohibitive. They obtained a quotation of £2,100 from a local farmer for ploughing the field, but the farmer told them that there were rules about ploughing uncultivated land and WESL did not pursue the matter further. In March 2009, the earth bund at the Fairfield Approach entrance had been damaged (although Mr. Busbridge was vague about the details) and the bunds along Friary Road had been damaged. In July 2009, Mr. Busbridge helped a contractor to erect a fence across the Fairfield Approach entrance with signs saying “Private Property. Keep Out. No Public Access. No Public Right of Way”. Local residents approached them when they were putting up the fence to complain. The police were in attendance. Mr. Busbridge produced a

102 B/2/9
103 B/2/16
104 B/2/21
105 B/2/24
106 B/2/25
107 B/2/27
108 B/2/26
109 B/2/28

photograph¹¹⁰ of the fence and signs. The fence and signs were soon torn down. The signs were replaced but torn down again. Mr. Busbridge visited Thamesfield less frequently from 2009, because of the confrontational attitude of trespassers who were challenged on the field. In June 2009, WESL was notified¹¹¹ by the RBWM that applications had been made to establish public footpaths over Thamesfield.

[214] In May 2010, Mr. Busbridge became aware that an application had been made to register Thamesfield as a new TVG.

[215] In March 2011, WESL instructed Glyn Larcombe to make and install some new signs with the same wording as the sign at the Coppice Drive entrance. He was told by Mr. Larcombe that he had installed a sign at the Fairfield Approach entrance but had been confronted by local residents and felt that he could not install any more signs. The sign at the Fairfield Approach entrance was torn down the next day.

[216] Questioned by Mr. McDonagh, Mr. Busbridge said that he did not remember a small side gate at the Coppice Drive entrance when he first visited Thamesfield in the late summer of 2007. There was a heap of “stuff” behind the double gates which would have prevented access.

[217] Mr. Moran was not present to question Mr. Busbridge.

[218] Cross examined by Mr. Wilmshurst, Mr. Busbridge stood by his evidence in chief.

[219] I broadly accept Mr. Busbridge’s evidence subject to a couple of points. Firstly, I do not think that he personally visited Thamesfield very often and I consider that he considerably underestimated the amount of use made of the field by local people between 2007 and 2009. Secondly, I think that he greatly overstated the effect of the earth bunds at the Fairfield Approach entrance and along Friary Road. It seems to me that the effect of the evidence as a whole is that the bunds prevented vehicular access to Thamesfield but did not materially impede pedestrian access and did appear to be intended to prevent pedestrian as opposed to vehicular access.

Eugene Gunderman

[220] Mr. Gunderman produced a written witness statement¹¹². This was much amplified by oral examination in chief and materially modified in cross examination. I propose to set out the gist of Mr. Gunderman’s evidence as so amplified and modified.

[221] Mr. Gunderman lived at Old Ferry Farm from 1955 to 2009. Old Ferry Farm adjoins Thamesfield at the north eastern corner. Thamesfield was owned by Mr. Albert Worby. In 1986, Mr. Gunderman approached Mr. Albert Worby with a view to renting Thamesfield as it was no longer being farmed. Mr. Gunderman reached an informal agreement with Mr. Albert Worby that he could use Thamesfield in return for looking after it. There does not seem to

¹¹⁰ B/2/8
¹¹¹ B/2/30
¹¹² B/2/90

have been anything in writing. After Mr. Albert Worby died, the same informal agreement continued after a discussion with members of the Worby family. For about 3 years after taking over the field, Mr. Gunderman spread sewage slurry on the field each spring in order to fertilise it. The slurry took up to six weeks to soak in, depending on the weather. Each year, he grew a hay crop on the field. The process was as follows. In about March, he chain harrowed the field. This was about two days' work usually spread over a couple of weeks. In April, he rolled the grass. This was about a day's work. He cut the hay in about August. This took 6-7 hours. In later years, he often cut the grass at night. Then the grass was raked into rows and left to dry for a period of 2 days to over a week depending on the weather. Then he baled the hay and collected it up over about two weeks. He sometimes left defective bales in the field. For two years in about 1993/4, Mr. Gunderman grew kale in the northern end of Thamesfield. He ploughed in February. In the spring, he disked and harrowed the soil and then drilled the kale seed. The land was then harrowed again to cover the seeds. He harvested the kale through the winter to feed his pigs. He continued to grow hay in the rest of the field although there were three years in the mid-1990s when the hay crop was burned and he could not collect it in. After he stopped growing kale, he did not revert to growing hay on that part of the field and it became covered in wild chicory. From 2000 to 2005, he ran a haulage business and agreed with a friend that the friend could use the field for hay. During this period, Mr. Gunderman had little to do with the field. From 2005, Mr. Gunderman again began to grow hay on the field until he moved in 2009.

[222] Mr. Gunderman accepted that the public had been walking in Thamesfield since he started farming it in 1986 and that he had never taken any active steps to remove them. He thought that use of the field was confined to walking the perimeter path until the mid-1990s and that general use of the field grew after then. He said that the field was not used for a while after the slurry was spread and that people did not walk over or around the kale crop. Mr. Gunderman said that he stopped 3 or 4 people from flying model aircraft in the field, told children not to play with the hay bales and made a sarcastic comment if he saw dogs fouling his hay crop.

[223] Mr. Gunderman said that in 1986, there were about four "private" signs between the Kayles and Thamesfield which lasted for about a year. In the mid-1990s, he dug a trench along the Friary Road side of Thamesfield to keep caravans out. In the late 1990s and again in 2006, he built a bund at the Fairfield Approach entrance to prevent vehicular access. In the early 2000s, Thames Water installed a sewage pipe across the field. At the same time, Thames Water built a bund along the Friary Road frontage of Thamesfield and installed a fence with double metal gates and a side gate at the Coppice Drive entrance. In about 2002, Mr. Gunderman built a bund behind the Coppice Drive entrance gate and he helped Terry Butler (who lived by that entrance) to block the gate. This entrance was broken open after about 3 months. In 2007, he helped Terry Butler to block the entrance again. Not long after that, the Worbys put up "Private Property" signs at the Coppice Drive entrance, the Fairfield Approach entrance and the corners of the Kayles. Mr. Gunderman accepted that the ditch and bunds did not prevent pedestrian access to Thamesfield.

[224] Mr. Gunderman is well known and liked locally. I broadly accept his description of his farming practices on Thamesfield. I think that he much underestimated the extent of public use of Thamesfield, probably because local people mostly respected his use of the land and did not interfere with it, particularly when he was present on the field. I am not convinced that were “private” signs on the land in 1986: Mr. Gunderman seemed very unsure when asked about them and no other witness spoke of them. I accept that “Private Property” signs were erected in 2007.

Glyn Larcombe

[225] Mr. Larcombe was in the unusual position of having given written evidence both for the applicant and for the first objector, WESL. His evidence for the applicant was contained in an OSS evidence questionnaire¹¹³. In his evidence questionnaire, he said that he had known and used Thamesfield since 1956 for informal recreation such as dog walking, cycling and playing as a child. Other people used the field for informal recreation. He did not ask permission to use the field and his use was never challenged. In answer to Q31, he said that no attempt had ever been made, by notice or fencing, to discourage the use of the field by the local inhabitants.

[226] His written evidence for WESL was contained in a written witness statement¹¹⁴. He lives in The Grange, which is next to Manor Farm. He is in business as a printer and sign writer. He has lived there all his life, except for the years 1968-73. Manor Farm was owned by Mr. Albert Worby and included Thamesfield, a field in Coppice Drive known as the Coppice Field, and much other farmland in the village. Manor Farm used to be farmed by Albert Worby’s son, Keith, and Mr. Larcombe sometimes helped with the farming. In the 1970s most of Manor Farm was sold for development with the exception of Thamesfield and Coppice Field. In May 2007, he was asked to contact David Worby as he wanted some signs. He emailed David Worby on 16th May 2007¹¹⁵ and subsequently met Keith, David and Anne Worby at Thamesfield to discuss the wording and position of the signs. He said that it was in June 2007 that he erected four signs reading “Private Property. Access to this land is by permission of the owners”. Mr. Larcombe produced a plan¹¹⁶ showing the location of the signs and a number of recent photographs showing him holding a copy of the signs in the position in which they were erected in 2007. The signs were erected in the following positions:

- On the gates at the Coppice Drive entrance
- Towards the rear of the Fairfield Approach entrance facing towards Fairfield Approach
- At the entrance from FP8 at the north-western corner of the northern arm of Thamesfield facing the Kayles, and

¹¹³ R/2/429

¹¹⁴ B/2/117

¹¹⁵ B/2/121

¹¹⁶ B/2/122

- On Friary Road in the Kayles near the bollards in Friary Road a little way to the north of Thamesfield.

All the signs, except for the one at the Coppice Drive entrance, were soon torn down and only the sign at the Coppice Drive entrance now remains. In 2011, Mr. Larcombe was instructed to put up similar signs. He put up signs on the edge of the Kayles and in the Fairfield Approach entrance. He got some flak from local residents and did not put up any more signs. The signs that he did put up were soon torn down. Asked in chief how he could explain his answer to Q31 of the evidence questionnaire, Mr. Larcombe answered that (a) he probably did not read the question properly and (b) the signs did not discourage local residents from using Thamesfield: they were just legalities.

[227] Cross examined by Mr. Wilmshurst, Mr. Larcombe said that the signs did not discourage him from using Thamesfield. The signs referred to permission of the owners and he did not think that the owners would refuse him permission.

[228] Mr. Larcombe was not questioned by Mr. Moran.

[229] Questioned by Mr. McDonagh, Mr. Larcombe said that he did not notice a side gate at the Coppice Drive entrance in 2007.

[230] The discrepancy between Mr. Larcombe's evidence for the objector and his answer to Q31 of the evidence questionnaire is very concerning. I am bound to say that I found his explanation of the discrepancy extremely lame. Plainly, he should have referred to the 2007 signs in answer to Q31 of the evidence questionnaire. However, having seen him give evidence, and bearing in mind the corroboration of the 2007 email and of some of the other witnesses, I consider that he was telling the truth about the 2007 and 2011 signs. I also accept his evidence about recreational use of Thamesfield. As to the precise date of the erection of the 2007 signs, Mr. Larcombe's own email of 6th September 2007¹¹⁷ says that it was in early July 2007. Since this email was written in same year as the signs were erected, I think that it is likely to be more accurate than his current recollection that it was in June 2007.

Marcus Kendrick

[231] Mr. Kendrick produced a written witness statement¹¹⁸ and gave oral evidence to the public inquiry. Mr. Kendrick first became involved with Thamesfield in late 2007 when he started discussions with the Worby family about the marketing and sale of Thamesfield and Coppice Field. He visited Thamesfield on a few occasions with Messrs. Busbridge and Fraser. At the Coppice Drive entrance there were gates and fencing and a sign reading "Private Property. Access to this land is by permission of the owners" was mounted on the gates. At the Friary Road perimeter and at the Fairfield Approach entrance there were earth bunds. He said that he believed that the bunds prevented both vehicular and pedestrian access and that there was very little trespass on Thamesfield at that time. From then until 2009,

¹¹⁷ B/2/212

¹¹⁸ B/2/95

either he, Mr. Busbridge or Mr Fraser visited Thamesfield once or twice a week and, if they saw any trespassers, asked them to leave.

[232] WESL was formed as a vehicle to market and sell Thamesfield and Coppice Field. It was decided to divide the land into small plots and sell them. In May 2008, he, Mr. Busbridge and Mr. Fraser had a meeting with the chairman of the parish council and another parish councillor to discuss WESL's proposals. They reminded the councillors that there was no right of public access to the land. On 10th June, WESL wrote to local residents a circular letter¹¹⁹ offering to sell plots of the fields and reminding local people that the land was private land with no public access. The letter was hand delivered by himself, Mr. Busbridge and Mr. Fraser to local residents. He produced a list¹²⁰ of the addresses to which the letter was delivered. There were a substantial number of telephone responses and Mr. Kendrick produced a list¹²¹ of the addresses of those who responded. Mr. Kendrick understands that a meeting of the parish council was held shortly after at which the WESL proposals were discussed and a sub-committee set up to consider the proposals. Mr. Kendrick attended the first meeting of the sub-committee on 18th June 2008. The meeting was chaired by a local parish councillor, Mr. Jackson. Mr. Jackson threatened that, if WESL would not sell the land at a reasonable price to the parish council, the sale of the land would be obstructed by applications to register rights of way across Thamesfield. The meeting ended inconclusively.

[233] On 20th February 2009, WESL again hand-delivered a letter¹²² to the same local residents offering plots on Thamesfield for sale. The Wraysbury Action Group was formed in February 2009, and local people were actively incited to use Thamesfield. Use of the field then increased but Mr. Kendrick challenged trespassers less often because of the abuse that he received. On the first weekend in March 2009, Mr. Kendrick organised the re-establishment of the bunds at Friary Road and Fairfield Approach and signs were erected (although he was not specific about the wording of the signs). The bunds and signs were rapidly pulled down. WESL obtained quotations for ploughing or fencing the land. The quote for ploughing was £2,000 but he understood that there were "issues" with ploughing uncultivated land. The quotes for fencing were £10,000 to £20,000, which the directors of WESL thought was too expensive, especially as they feared that any fencing would be pulled down. On 13th July 2009, he and other directors of WESL arranged for the erection of close-boarded fencing with signage at the Fairfield Approach entrance. The fence and signs are shown in a photograph¹²³. The signs were of A4 size, yellow in colour and read "Private Property. Keep Out. No public access. No public right of way". The fence and signs were soon pulled down.

[234] In February 2010, Mr. Kendrick had a confrontation with Mr. Hughes when he asked him to leave Thamesfield and the police were called. I do not need to go into this incident in

¹¹⁹ B/2/106
¹²⁰ B/2/109
¹²¹ B/2/110
¹²² B/2/115
¹²³ B/2/103

detail save to say that there is no dispute that there was an argument between Mr. Kendrick and Mr. Hughes about access to Thamesfield.

[235] Mr. Kendrick was not cross examined by Mr. Moran or Mr. McDonagh. He was cross examined by Mr. Wilmshurst but broadly stuck to his evidence in chief.

[236] There were some aspects of Mr. Kendrick's evidence which I did not find very satisfactory. I think that he considerably played down the amount of use of the field by the public in 2007/2008. For example, the aerial photograph of 2008¹²⁴ shows that there were numerous well-defined paths around and across Thamesfield. I do not think that he can be correct in saying that, in 2007, the earth bunds at Friary Road and Fairfield Approach prevented pedestrian access. There was abundant evidence of use of those access points and the fact that people walked over or around the Fairfield Approach bund and through gaps in the Friary Road bund must have been obvious. Nor am I convinced that signs were erected at those entrances in March 2009. However, I do accept his evidence that the Coppice Drive entrance was closed and signed when he saw it in 2007 and that he helped arrange for fencing and signage at the Fairfield Approach entrance in July 2009. I also accept his evidence about letters to local residents and dealings with the parish council.

David Worby

[237] Mr. Worby produced a written witness statement¹²⁵ and gave oral evidence. His father, Albert Worby, bought Manor Farm, which included Thamesfield, in 1962. Mr. David Worby was not involved with running Manor Farm and moved away from Wraysbury in 1976. His father died in 1989. Mr. David Worby first became actively involved with Thamesfield and Coppice Field (which was all that was left of Manor Farm) in 2006. The family decided to sell the fields in that year and began to review the options for sale.

[238] At the Coppice Drive entrance to Thamesfield, there were metal gates and a fence which had been erected by Thames Water contractors at the time when a new sewer was laid across Thamesfield. In mid-2006¹²⁶, Mr. Gunderman put a bund behind the gates to prevent access through the Coppice Drive entrance to Thamesfield. Over the Easter weekend of 2007 (8th-9th April) a local resident damaged the fence because he considered that there was a public right of way through the Coppice Drive entrance which had been unlawfully obstructed. Mr. Worby reported the incident to the police and made a statement¹²⁷ to the police on 27th April 2007 although he did not press charges. Shortly after this incident, Mr. Terry Butler, who lived in No. 2, Wharf Road, beside the Coppice Drive entrance, arranged for the Coppice Drive entrance to be blockaded. This was not with Mr. Worby's specific authority, although he had let Mr. Butler know that he welcomed assistance in keeping the public off Thamesfield. The blockade created some local interest on the Wraysbury Watchdog Forum, which is an internet site on which the public can post their observations on matters of local interest. Some local people posted messages objecting to the closure of this

¹²⁴ B/2/86
¹²⁵ B/2/123
¹²⁶ B/2/140
¹²⁷ B/2/129

access to Thamesfield, on the ground that it had been used by local people for dog walking and horse riding for many years. Mr. Worby himself posted messages on the Forum stating that Thamesfield was private land to which the public had no right of access. It seems clear that access from Fairfield Approach and Friary Road was not affected¹²⁸. In May and June 2007, some local people wrote¹²⁹ to Mr. Worby requesting permission to reinstate the Coppice Drive entrance and to use Thamesfield. In April 2007, Mr. Worby was advised by his solicitors to put up signs at all the entrances to Thamesfield reading “This land is private property. Access to this land is by permission of the owners.” Mr. Worby then arranged for Mr. Larcombe, a sign contractor, to prepare and erect signs. The signs, which read “Private Property. Access to this land is by permission of the owners” were erected. Mr. Worby thought that they were erected in June 2007 but, in fact, they seem to have been erected in early July 2007, according to an email from Mr. Larcombe to Mr. David Worby¹³⁰. Mr. Larcombe submitted an invoice¹³¹ dated 13th June 2007, i.e. before the signs were actually erected. Four identical signs were erected, one on the Coppice Drive entrance gates, one at the Fairfield Approach entrance, one on Friary Road and one at the north-western corner of Thamesfield near the informal entrance from FP8. Except for the sign at the Coppice Drive entrance, the signs were soon torn down. The signs provoked some comments on the Wraysbury Forum in late July 2007. At least two local people perceived the signs as being posted at all entrances to Thamesfield¹³² although, of course, there were more than four entrance points. The date of the postings suggests that the signs were in place for at least a month.

[239] In April 2008, WESL was formed as a vehicle to sell the land. It was decided to offer the land for sale in plots and, on 10th June 2008, a letter¹³³ was written by WESL to all residents living near Thamesfield. The letter explained that the land was private property without any public access and that it was proposed to sell the land in plots. Offers were invited. Mr. Worby also posted a message¹³⁴ on the Wraysbury Watchdog forum on 13th June 2007 explaining the sale proposals. On 17th June 2008, a local parish councillor called Mr. Jackson, emailed¹³⁵ Mr. Worby to say that there had been a packed parish council meeting concerned about the proposed sale in small plots and about the exclusion from paths which the villagers had used for generations. The email also mentioned the existence of three petitions calling upon the RBWM to recognise long-standing footpaths over Thamesfield and to investigate the ecological and archaeological value of Thamesfield. The email said that the meeting had discussed the planning implications. The parish council had appointed a sub-committee to deal with the matter. The email concluded by suggesting that the village should buy the land collectively. On 18th June, Mr. Worby, Mr. Kendrick and Mr. Fraser of WESL had an inconclusive meeting with the parish council sub-committee. Mr. Jackson

¹²⁸ B/2/139

¹²⁹ B/2/145, 147 & 148

¹³⁰ B/2/212

¹³¹ B/2/152

¹³² B/2/155 & 157

¹³³ B/2/158

¹³⁴ B/2/161

¹³⁵ B/2/163

subsequently emailed Mr. Worby on 19th June 2008¹³⁶ and 13th March 2009¹³⁷ pressing for some agreement to resolve the dispute with local people. The latter email mentioned a bund erected that day at the Fairfield Approach entrance.

[240] In February 2009, WESL again circulated¹³⁸ local people promoting the sale of plots on Thamesfield. Later in 2009, Mr. Kendrick and Mr. Busbridge of WESL arranged for the erection of bunds, signs and fencing at Friary Road and Fairfield Approach, but Mr. Worby was not directly involved.

[241] Mr. Worby was cross examined by Mr. McDonagh and Mr. Wilmshurst (Mr. Moran not being present) but his evidence was not shaken. Much of Mr. Worby's evidence was supported by contemporaneous documentation and I accept his evidence, subject to the minor qualification about the erection date of the July 2007 signs mentioned above.

Written witness evidence for WESL

[242] WESL submitted to the public inquiry a number of witness statements by witnesses who did not attend the public inquiry to give oral evidence. Clearly, this detracts substantially from the weight of their evidence but such evidence must still be given appropriate weight.

Paul Baker

[243] WESL produced the statutory declaration¹³⁹ of Paul Baker. By arrangement with the Worby family, Mr. Baker used Thamesfield from 1975 to 1984 for haymaking. The only organised public use of the field in his time was a charity gymkhana held in 1979 with the permission of Mr. Keith Worby. In 1982, Mr. Baker erected fencing at the Fairfield Approach and Coppice Drive entrances but he does not describe the fencing, say whether it prevented pedestrian access or for how long it lasted. Mr. Baker said that he saw about 50 trespassers a year on the field and asked them to leave. Bearing in mind his relatively limited agricultural use of Thamesfield, it appears to me that, if he saw 50 trespassers a year, he must have seen trespassers nearly every time he was on the field and that this number indicates that there must also have been quite large numbers of trespassers that he did not see.

Terry Butler

[244] WESL produced the statutory declaration of Terry Butler. Since 1977, Mr. Butler has lived at 2, Wharf Road, which is immediately to the west of the Coppice Drive entrance to Thamesfield. He remembers horses being kept on Thamesfield in the late 1970s but the field was not fenced. He only recalls one gymkhana in Thamesfield and that was in 1979. He says that Mr. Gunderman grew hay in the field from 1986 until 2007 (although Mr. Gunderman himself says he grew hay until 2009 and the 2008 aerial photograph shows the field recently cut for hay). He recalls that Mr. Gunderman spread slurry on the field in the 1990s. In 2000/2002, contractors for Thames Water built a sewage pipe across the field. They also put

¹³⁶ B/2/166
¹³⁷ B/2/167
¹³⁸ B/2/168
¹³⁹ B/2/195

up a fence and metal gates at the Coppice Drive entrance with a small red gate to its side. They also installed a bund along Friary Road. After about 6 months the red gate was destroyed and replaced. A couple of months later, Mr Butler padlocked the side gate but people still climbed over. Subsequently (the precise date is unclear) he boarded up the gate but people still gained access. In 2007, local people tried to break down the fence. The police were called. Mr. Gunderman's son built a barricade of rubbish behind the entrance. In the middle of 2007, the sign that is currently on the gates at the Coppice Drive entrance was put up. It was torn down several times but Mr Butler reinstalled it. At the same time a similar sign was put up at the Fairfield Approach entrance. A bund was also installed at the Fairfield Approach entrance in 2007. A year or so later a fence and "Keep Out" signs were erected at the Fairfield Approach entrance. Similar signs were erected on Friary Road. The fence and signs were soon pulled down. In May 2009, Mr Butler bought from WESL the plot of land adjacent to his house (i.e. the plot now owned by Mr. McDonagh). When his offer to buy the plot was accepted, he replaced the red wooden gate with chain link fencing. As Mr. Butler did not give oral evidence and his written evidence was untested, I necessarily approach it with caution unless consistent with other evidence that I accept.

Daniel Fraser

[245] Daniel Fraser made a statutory declaration¹⁴⁰ which was produced to the public inquiry. Since it simply confirms the written statements of Mr. Busbridge and Mr. Kendrick (who did give oral evidence), it carries little or no independent weight.

Peter Sturgess

[246] A statutory declaration¹⁴¹ of Peter Sturgess was produced to the public inquiry. Mr. Sturgess is a solicitor who advised the Worby family. He visited the Coppice Drive entrance in 2006 and found fencing and a gate with a pile of earth behind. The fence and gate appeared to have been forced open. It is not clear whether he was referring to the main double gates or the side gate referred to by other witnesses. In 2007, he advised the Worbys that the wording of signs to be erected at the access points to Thamesfield should read "This land is private property. Access to this land is by permission of the owners – the Worby estate". He did not personally see any of the signs that were subsequently erected. Mr. Sturgess's evidence about the site view is not very detailed but this is not surprising since it took place 5 years before he made his declaration. There is no reason to doubt his evidence about the legal advice given to his clients.

Anne Worby

[247] A statutory declaration¹⁴² of Anne Worby was produced to the public inquiry. She is the widow of Albert Worby, who purchased Manor Farm in 1962. Albert's son, Keith, farmed the land until 1976. Mr. and Mrs. Worby moved to Norfolk in 1976 and her husband died in 1989. In 1976, signs saying words to the effect of "Keep Out. Private Property" were

¹⁴⁰ B/2/203

¹⁴¹ B/2/204

¹⁴² B/2/206

erected on Thamesfield but they were torn down and replaced on numerous occasions and the family gave up replacing them. In about 1986, an arrangement was made with Mr. Gunderman to use the field in return for looking after it. Mrs. Worby produced an interesting exchange of correspondence¹⁴³ with Mr. Gunderman in 1996 from which it appears that there was a great problem of trespass on the field. In 2000/2001, Thames Water contractors installed sewage pipes across the field. In connection with these works, they fenced and gated the Coppice Drive entrance. At the request of the Worby family, the contractors left the fence and gate and installed an earth bund along the Friary Road frontage of Thamesfield. In 2006, the family decided to sell Thamesfield and Coppice Field. In May 2007, Anne, Keith and David Worby attended a meeting with the chairman of the parish council to discuss their plans. At the meeting there was talk of putting up signs to prevent trespass. She and David then met Messrs. Butler and Gunderman and asked them to help keep people out of the field. A few weeks later, she, Keith and David Worby met Mr. Larcombe to commission signs to be installed at Thamesfield. WESL was formed in 2008 as a vehicle to sell the land. It did not appear to me that there was anything contentious in Mrs. Worby's evidence or any reason not to accept it.

Keith Worby

[248] WESL produced the statutory declaration¹⁴⁴ of Keith Worby. Keith Worby is the son of the late Mr. Albert Worby, who bought Manor Farm in 1962. By arrangement with his father, Keith Worby farmed Manor Farm, which included Thamesfield, from 1962 to 1975. The field was surrounded by residential housing. During this period, there was a problem with trespassers and 3-4 people a week were asked to leave the field. He grew barley, corn and potatoes in Thamesfield but many potatoes were stolen. By 1975, all the rest of Manor Farm except for Thamesfield and Coppice Field had been sold off and Mr. Worby ceased to farm the land. Thamesfield was then used for haymaking under an informal arrangement with Mr. Paul Baker under which Mr. Baker would look after the land and keep trespassers off. In 1976, signs were erected to say that Thamesfield was private land with no public access but they were torn down as soon as they were put up and the family gave up posting signs. In 1986, Mr. Worby moved away from Wraysbury and his father entered into an arrangement with Mr. Gunderman of Old Ferry Farm to look after the field in return for having use of it. Mr. Gunderman then used the land for haymaking. The main problem with the land was that trespassers were using the land for dog walking. The only organised activity on the field was a gymkhana in 1979, for which he, Keith Worby, gave permission. Keith Worby's father died in 1989. In 2000/2001, Thames Water installed a sewer pipe across Thamesfield, starting in about October 2000¹⁴⁵. For the purpose of the works, Thames Water installed a works compound near the Coppice Drive entrance and secured that entrance with double metal gates which remained after the end of the works. The agreement with Thames Water incorporated a schedule of condition to which was annexed a portfolio of photographs¹⁴⁶ taken in August 2000. All the photographs seem to me to show long meadow grass, although Mr. Worby says

¹⁴³ B/2/210-211

¹⁴⁴ B/2/170

¹⁴⁵ B/2/187

¹⁴⁶ B/2/180-186

that some show arable use. Thames Water was asked to construct an earth bund along the Friary Road frontage. Mr. Worby says that it was to keep out pedestrians as well as vehicles but all the evidence is that the bund was no obstacle to pedestrians as it had two paths through it. In 2006, the Worby family decided to market Thamesfield and Coppice Field and set up WESL as a vehicle to do so. In early 2007, he asked Mr. Gunderman to erect a bund at the Fairfield Approach entrance. In June 2007, he helped arrange for Mr. Larcombe to put up “Private Property” signs at the Coppice Drive entrance, at the Fairfield Approach entrance, at the north western corner of Thamesfield near FP8 and on Friary Road near the junction between the Kayles and Thamesfield. In fact, the signs seems to have been erected in early July¹⁴⁷. All but the sign at the Coppice Drive entrance were soon torn down. In 2009, fencing and “Private” signs were erected at the Fairfield Approach entrance but were soon torn down. Very little of Mr. Worby’s evidence seems out of line with the bulk of the other evidence presented to the public inquiry, and I accept it save as the two points that I query above, i.e. what is shown by the 2000 photographs and the date when the 2007 signs were installed.

Other written evidence produced by WESL

[249] WESL produced some other documentary evidence:

- Some emails and postings on the Wraysbury Watchdog Forum. A relevant email is that of 6th September 2007 from Mr. Larcombe to Mr. David Worby in which he says that the “Private Property” signs were erected “just after we sent the email to you on 2nd July.”
- Numerous documents relating to the applications made in 2009 by Miss Su Burrows to modify the definitive map to add public footpaths over Thamesfield. These applications were overtaken by the TVG application and I cannot see anything in these documents relevant to the TVG application.

9. Evidence for Mr. & Mrs. Smith and Mr. & Mrs. Gates

[250] Neither Mr. and Mrs. Smith nor Mr. and Mrs. Gates appeared at the public inquiry but they submitted written statements in support of their objections.

[251] The objection of Mr. and Mrs. Gates was supported by a written statement of Mr. David Gates¹⁴⁸. Mr and Mrs Gates live at 40 Wharf Road, having purchased it in 1996. Their property backs onto Thamesfield near the pumping station. Mr. Gates used Thamesfield to fly model aircraft. He was approached by Mr. Gunderman, who said that the land was private but granted him permission to use the land. When WESL offered plots for sale, the gates bought the plot at the rear of their garden. The date of purchase was May 2009. At that time the plot was part of the border of Thamesfield which was completely overgrown. Mr Gates produced a photograph¹⁴⁹ of the land which shows it covered in long grass, although not trees, scrub or

¹⁴⁷ B/2/212

¹⁴⁸ Bk/5 (i.e. Black Bundle page 5)

¹⁴⁹ Bk/12. NB I suspect that the photographs at Bk/12 & 13 have been transposed since photo 3 appears to show the plot closest to the pumping station, i.e. 40 Wharf Road.

bramble. He fenced the land in July 2009, before the article 4 direction, and subsequently obtained planning permission, on appeal, for change of use from agricultural to residential use. Miss Burrows told him that she would not be including his land in her TVG application and he was very upset to find that it was included. Subject to my query about the photograph, I accept Mr. Gates's evidence, which was not positively disputed at the public inquiry. Mr. Gunderman was not specifically questioned about his dealings with Mr. Gates but he did say that he spoke to a few people who flew model aircraft on Thamesfield.

[252] The objection of Mr. and Mrs. Smith (formerly Miss Hunt) was supported by a written witness statement¹⁵⁰ by Mr. Smith. Mr. and Mrs. Smith live at 38, Wharf Road. They bought the property in May 2007. It backs onto Thamesfield. When WESL offered plots in Thamesfield for sale, they purchased the plots behind 36 & 38 Wharf Road. Their neighbour at 36 did not want to buy a plot. They completed the purchase in April 2009 and subsequently fenced the plot. Mr. Smith produced some photographs of the plot¹⁵¹ (taken by Mr. Gates). These show that the land was very overgrown with bramble close to the pumping station (i.e. behind 40 Wharf Road, but only long grass further away from it. It is hard precisely to align the photographs with the plots and the photographs may have been transposed. Subject to this point, it was not suggested that this evidence was inaccurate and I accept it.

10. Evidence for Mr. McDonagh

[253] Mr. McDonagh did not serve any evidence in accordance with the Directions of Miss Lana Wood, but he did produce some documents to the public inquiry which seem previously to have been attached to his objection statement. He bought a plot of land at the Coppice Drive entrance by auction in March 2010. He had no personal knowledge of the land before 2010. He produced a copy of the first page of the auction particulars. This page contains a diagram of the land to be sold, which was a plot adjacent to 2, Wharf Road. A narrow track leading from the Coppice Drive entrance into Thamesfield is left between the plot and 34 Ouseley Road. There is also a photograph of the Coppice Drive entrance showing the double metal gates open with what appears to be a high fence on the west. A sign is visible on the western gate although too far away to be read. A mown track leads from the gates into Thamesfield. The plot itself looks rather overgrown but not much of it is visible. Mr. McDonagh has made an unsuccessful application for planning permission to build a house on the plot. None of this material appears contentious and I accept it.

11. Expert Evidence

[254] Both the applicant and WESL relied upon expert evidence analysing aerial photographs of Thamesfield. WESL produced an expert report¹⁵² dated August 2012 by Miss Christine Cox of Air Photo Services Limited. Miss Cox is a qualified and experienced interpreter of aerial photographs. Miss Cox appeared at the public inquiry, gave supplemental evidence in chief and was cross examined by Mr. Wilmshurst. The applicant produced an

¹⁵⁰ Bk/7
¹⁵¹ Bk/13
¹⁵² B/2/33

expert report dated 7th September 2012 prepared by three employees of Atkins Ltd., namely Don Martindale, Nick Chamberlain and Christopher Rance. All three had appropriate qualifications and experience to express a collective view on the effect of the aerial photographs. No one was called to give oral evidence in support of the Atkins report. However, there was not much disagreement between the experts and little of importance emerged in cross examination of Miss Cox. I therefore propose to summarise, in chronological order, the effect of the various aerial photographs that were considered by the experts. The experts viewed the photographs through specialised equipment to which I do not have access. To the very limited extent to which their interpretations of the photographs differed, I can record what I can see but, without the specialised equipment, am not in a position to say which expert was right.

30th October 1981

[255] This is a monochrome photograph¹⁵³. Thamesfield is under grass but any hay crop has already been taken. There are well-defined access points at the Fairfield Approach entrance, the Coppice Drive entrance, and at the south eastern corner of the Kayles. There is a perimeter track in the southern part of the field and two crossing tracks linking those accesses. There are other linear features which may or may not be tracks. An ovoid outline in the south western corner of the field is consistent with evidence of use of the field for riding horses and probably represents a circuit used for schooling horses.

25th November 1989

[256] This and nearly all subsequent photographs are in colour. The field is laid to grass but any hay crop has been taken. The southern part of the field shows signs of recent agricultural activity, e.g. spreading fertiliser. There are well defined access points at Friary Road, the Kayles, FP8 from Fairfield Approach, Fairfield Approach itself and the Coppice Drive entrance. There is a clear perimeter path around the entire field although less well defined in the northern arm. There is a well-defined crossing path from the Kayles to the Coppice Drive entrance. The ovoid feature in the south western corner is still visible. There is no evidence of pedestrian access off the defined paths.

14th July 1990

[257] The field is under short grass. There are clear access points at the Coppice Drive entrance, Friary Road (2 access points), the Kayles (3 access points), FP8 from Fairfield Approach and the Fairfield Approach entrance. There is a clear perimeter path around the whole field. Well-defined paths cross the field from Friary Road to the Fairfield Approach entrance and from the Kayles to the Coppice Drive entrance. A path also crosses from corner to corner of the northern arm of the field. The ovoid feature is still visible. There is no evidence of off-path pedestrian use of the field.

8th September 1991

¹⁵³ B/2/73

[258] The field is under grass, although the grass is shorter on the north and eastern sides of the field. It may be that hay was taken that year only from the north and eastern parts of the field, or had been taken only from those parts at the date of the photograph. There are very well defined access points at the Coppice Drive entrance, the Fairfield Avenue entrance and at the south eastern corner of the Kayles. There are less well used entrances from Friary Road and at the north east and north west corners of Thamesfield. A perimeter path is very visible around the whole field and there are prominent crossing paths from the Kayles to the Coppice Drive entrance, from the Fairfield Approach entrance to Friary Road and diagonally across the northern sector of the field. There are numerous fainter paths visible in the field, particularly in the longer grass, although it is not possible to say from the photograph whether they were created by people or animals. The Atkins report mentions seeing some people and a dog in the field.

18th May 1992

[259] The field is under grass, which appears not yet to have been cut for hay. The entrances and well-worn paths shown in the 1991 photograph are still visible and there is one additional worn path crossing the western sector of the field from the Kayles to meet the path crossing from Fairfield Approach to Friary Road. Atkins say that they can see another new worn path but I cannot see it. Atkins say that they can see other less worn tracks but Miss Cox says that she cannot. I cannot see them in the photograph.

7th June 1993

[260] The field is under grass not yet cut for hay. Entrances at Coppice Drive, Fairfield Approach and Friary Road and the perimeter path are visible but seem less worn than in 1992. The experts are agreed that the photograph shows fewer crossing paths than the previous year. The experts appear to be disagreed as to whether the two main crossing paths, from Coppice Drive to the Kayles and from Fairfield Approach to Friary Road are visible. I would have said that they were visible, but both experts agree that the quality of the photograph is lower than that of other photographs, apparently because of damage to the negative.

26th March 1994

[261] The south and west sectors of the field are under grass but the northern sector has been ploughed, leaving a narrow grass margin to the north, west and east. Entrances are apparent from Coppice Drive, Friary Road, the Kayles and Fairfield Approach but less clearly from the north end of the northern sector. The perimeter path is clear around the grassed part of the field but less clear around the ploughed part, although Atkins can see a walker on the grass margin. The main cross paths from Fairfield Approach to Friary Road and from Coppice Drive to the Kayles are clearly visible. Atkins can see some other internal paths but Miss Cox cannot see them and neither can I.

14th September 1996

[262] The previously ploughed part of the field is under some vegetation although it is not clear whether it is a crop or not. The rest of the field is mown grass. Entrances from Fairfield Approach, Coppice Drive, Friary Road and the Kayles are clearly visible, as are the perimeter track around both the grassed part and the formerly ploughed part of the field and the two main crossing tracks from Coppice Drive to the Kayles and from Fairfield Approach to Friary Road. There is a new track leading into the field from halfway along the southern side of the Kayles to a rectangular feature which may be a landing strip cut for model aircraft. Atkins notice a person on the perimeter track.

5th August 1998

[263] The vegetation falls into three distinct types. Most, but not all, of the previously ploughed land is covered in bright green vegetation. The south eastern sector of the field has recently been cut for hay. The rest of the field is longer uncut grass. Entrances from Coppice Drive, Fairfield Approach, the Kayles and Friary Road are visible as are the perimeter track around the whole field and the two main crossing tracks from Coppice Drive to the Kayles and from Fairfield Approach to Friary Road.

12th October 1999

[264] There are two types of vegetation, short mown grass to the west and south and longer uncut grass to the north and east. Entrances from Coppice Drive, Fairfield Approach, the Kayles and Friary Road are apparent as are the perimeter path and the crossing paths from Coppice Drive to the Kayles and from Fairfield Approach to Friary Road. A well-defined track also crosses the longer grass from east to west and north of the copse.

3rd September 2000

[265] The southern part of the field has recently been cut for hay. The lines of cut grass show as lines on the ground. The grass appears to have cut close to the boundaries obliterating the perimeter path. However, there still seem to be accesses at Friary Road, the Kayles, Fairfield Approach and Coppice Drive and the cross field paths between these entrances are still visible. The northern part of the field is under a dark green vegetation which Miss Cox identifies as grass with some different vegetation. There is no evidence of worn paths over this part of the land.

14th July & 3rd August 2003

[266] These two photographs are not materially different. All the field is grass, although the south eastern sector has recently been cut for hay. The Thames Water excavation, although filled in, is now very visible as a long line from the north eastern corner to the south-western corner of the field. Entrances at Coppice Drive, Fairfield Approach, the Kayles and Friary Road are visible. The perimeter path and the usual cross paths are visible as are some new crossing paths.

5th September 2004

[267] There are two photographs of this date one of which is monochrome and one in colour. My copies are very poor. The field is laid to grass although of three different lengths, probably indicating cutting at different dates. Entrances at Coppice Drive, Fairfield Approach, the Kayles and Friary Road are visible. The perimeter path and the usual cross paths are visible. There are some other minor cross paths.

8th October 2008

[268] The southern and eastern parts of the field have been cut for hay. The northern section is uncut grass. Entrances are visible at Fairfield Approach, the Kayles and Friary Road. The usual perimeter and crossing tracks are visible together with various other crossing tracks. A crossing track leads towards the Coppice Drive entrance, but the land behind that entrance is not mown and does not show the sign of a track although Miss Cox considered that it was still used to some extent. The overgrown area outside the perimeter track in the western sector of the land appears to have got wider.

22nd May 2010

[269] My copy of this map is poor. and Atkins did not have a copy. Miss Cox considers that the use is similar to that in 2008, although she notes that the track to the Coppice Drive entrance was more pronounced than in 2008.

23rd July 2012

[270] These are several photographs taken from an elevated platform. The field is laid to meadow grass and, so far as the limited scope of the photographs shows, the pattern of paths is the same as in 2010.

Conclusion on the photographs

[271] I conclude from the photographs that Thamesfield has been laid to grass and generally used for haymaking since at least 1981. In about 1994, the northern sector was ploughed although the photographs show no further ploughing of that sector, which seems to have reverted quickly to grass. There is evidence of public access to the field and use of a perimeter path around the field and of some informal paths across the field by 1981. The perimeter path seems to have been fairly constant over the years. The visibility of the cross paths has fluctuated over the years but they have tended to increase in definition and number. Visibility of cross paths may be influenced by the time of year that the photographs were taken and whether the grass had recently been cut. I do not regard the aerial photographs as being much help on the question of off-path use since it seems to me that such use could take place without leaving any evidence visible on aerial photography. Miss Cox accepted in cross examination that one cannot disprove off-path use by aerial photography. Use of the Coppice Drive entrance seems to have been interrupted in 2008. I do not find the aerial photography to be inconsistent with the applicant's case about use of the field by local people.

12. Findings of fact

[272] On consideration of the mass of evidence submitted to the public inquiry, I make the following findings of fact.

[273] Thamesfield formed part of Manor Farm, which was acquired by Mr. Albert Worby in 1962. From 1962 to 1975, Manor Farm, including Thamesfield was farmed by Mr. Keith Worby. He used Thamesfield to grow arable crops, comprising barley, corn and potatoes. Thamesfield was surrounded by housing and there was already a substantial problem with trespassers, including stealing potatoes from the field. Over these years, parts of Manor Farm were sold off, eventually leaving only Thamesfield and Coppice Field owned by Mr. Worby.

[274] In 1975, Mr. Keith Worby ceased to farm the remains of Manor Farm. An informal arrangement was made between the Worby family and Mr. Paul Baker under which Mr. Baker was allowed to use Thamesfield to make hay in return for looking after the field. This arrangement lasted until 1984. I find that it was during these years that local people started to use Thamesfield in substantial numbers for informal recreation, particularly dog walking. Mr. Baker estimates that he saw 50 trespassers a year. Since his agricultural use of the land was low-key, this suggests that there was a considerable amount of trespass. This view is supported by the aerial photograph of 1981 which shows that there were already visible access points, a well-worn perimeter path and evidence of use for horse riding. i.e. the ovoid feature which seems to me likely to a circuit used for schooling horses. I think that the factors which particularly encouraged local people to use Thamesfield for informal recreation after 1975 were:

- The existence of a large area of open land in the middle of a residential area
- An absentee landowner
- The land being used under an informal arrangement which gave Mr. Baker little standing or incentive to protect the land from trespass save insofar as it affected his use for hay-making
- The agricultural use being hay-making, which meant that the farmer did not need to visit the land constantly throughout the year and which provided a grassy surface which was highly suitable and attractive for recreational use, especially after the grass was cut for hay.

Mr. Baker said that he challenged the trespassers that he saw, but this is inconsistent with the body of evidence from local people. Since Mr. Baker did not appear at the public inquiry to support his evidence, I prefer the view that he did not challenge trespassers to any material extent. In 1979, there was a charity gymkhana in Thamesfield with the permission of Mr. Keith Worby.

[275] I am inclined to accept that the Worby family erected some prohibitory signs around Thamesfield in 1976, although there was no evidence about the size, situation or precise wording of these signs. However, they were quickly torn down and attempts to replace them were soon given up. The fact that they were repeatedly torn down in itself indicates that by 1976 there was already a determined trespassory use of Thamesfield. I find that there were no

further attempts to erect prohibitory signs around Thamesfield until July 2007. I am unconvinced by the evidence that such signs were still in place in 1986.

[276] After Mr. Baker gave up using the land, the Worby family entered into a similar informal arrangement with Mr Gunderman, who lived adjacent to Thamesfield in Old Ferry Farm. From 1986 until 2000 and from 2005 until 2009, Mr. Gunderman farmed Thamesfield. His primary agricultural activity was making hay and he made hay on at least part of Thamesfield every year he farmed the land until 2009, except for 3 years in the mid-1990s when the hay was set on fire. During the period from 2000 to 2005, Mr. Gunderman was running a haulage business and arranged with a friend to use Thamesfield for hay-making. The hay-making process, as carried out by Mr. Gunderman (and probably also by the friend who farmed from 2000 to 2005) involved the following sequence of activities:

- Fertilising the field. For the first 3 years after Mr. Gunderman took over the field, he spread slurry on the field. The slurry smelt unpleasant and took up to 6 weeks fully to sink in, depending on the weather. I doubt that it impeded recreational use of Thamesfield for very long.
- Chain harrowing. This was about 2 days' work, usually spread over a few weeks in March.
- Rolling. This was about a day's work in April.
- Cutting. This was about 6-7 hours' work, usually in August
- Raking into rows to dry. It was left to dry for 2-7 days, depending on the weather.
- Baling and collecting the bales. This took place over a couple of weeks. Broken bales may have been left in the field for longer.

For two years in about 1993-1994, Mr. Gunderman grew kale in the northern sector of the field. This involved the following activities:

- In about February, he ploughed the land that was to be used for kale
- In the spring, he disked and harrowed the soil.
- He then drilled the kale seed and harrowed again to cover the seeds
- The kale was harvested through the winter for animal feed.

[277] I am satisfied that, from at least 1975, Thamesfield was used for recreation by a significant number of local people from Wraysbury. There is overwhelming evidence to that effect from the applicant's witnesses (including the witnesses who gave written evidence only) which I have no hesitation in accepting. The evidence of the aerial photographs suggests that the volume of use increased over the years, but I am satisfied that recreational use of Thamesfield was by a significant number of local people from the start of this period. The predominant use was for dog walking and the predominant route for dog walkers was around the perimeter track. However, there was also use for many other types of informal recreation such as children's play, flying model aircraft and horse riding. I am satisfied that recreational use was not confined to the perimeter path or to the well-used cross paths which developed over the years, but extended to the whole of the land. No doubt, off-path use was

more attractive and popular after the hay was cut than immediately before it was cut but I have no hesitation in finding that local people walked, played and rode all over the field.

[278] Around the edge of Thamesfield there has been a belt of longer vegetation lying outside the perimeter path which has not been mowed for hay. The depth of this belt seems to have varied over the years. Judging by the aerial photographs, it tended to get wider over the years, except that, according to the 2000 aerial photograph, in that year the field was mowed much closer to the boundaries. Subsequent aerial photographs show it getting wider again. Behind the Coppice Drive entrance, there is an undeveloped rectangular plot of land adjacent to No. 2 Wharf Road which was eventually bought by Mr. McDonagh. According to the aerial photographs, this has never been cut for hay and has always looked pretty overgrown, although it is hard to assess its accessibility from aerial photographs. These overgrown areas were not physically divided from the mown areas. Clearly, they were much less attractive for informal recreation than the mown grassland. However, it appears to me probable that they were used to some extent for picking blackberries, exploration by dogs and adventure games by children. A few witnesses said that they used this land. I do not think that it is possible to treat the overgrown areas other than as part of Thamesfield viewed as a whole.

[279] As for the interaction of agricultural use and informal recreational use, I find that the position was as follows:

- In relation to hay making, local people did not generally interfere with the agricultural activities. The slurry doubtless deterred some recreational users for a while but people were not physically prevented from using the field. I do not think that people stayed off the grass before it was cut. When the grass was cut and raked into rows, considerate people kept off the cut grass but children and less considerate users did not. When the hay was baled, it seems to have been quite common for children to play on the bales. Children jumped their ponies over the bales.
- In relation to kale-growing, people were again not physically prevented from using the arable land, but most people were deterred from crossing land which was recently ploughed. However, some children rode their horses across the ploughed land and no doubt, dogs and children sometimes ran over it. While the crop was growing, considerate users did not trample over the growing crop although there was nothing to stop them doing so and no doubt some inconsiderate users, together with dogs and children, did so. As the crop was gradually taken over the winter, the arable land became available for recreational use again unless and until it was ploughed again.

I find that, in general, the agricultural and recreational uses of the field co-existed harmoniously. There was “give and take” as between Mr. Gunderman and the locals.

[280] I find that Mr. Gunderman tolerated informal recreational use of Thamesfield provided that it did not seriously interfere with his agricultural use. Mr. Gunderman was a well-known local resident who knew many of the recreational users of the field and, when he was on the field, often passed the time of day with them. Having seen Mr. Gunderman give evidence, I found him to be a mild mannered and non-confrontational character, and I am

quite satisfied that he did not pursue a general policy of challenging trespassers on Thamesfield. I find that he did object when people cut his grass to make a landing strip for model aircraft and when they allowed their dogs to foul the cut grass that was drying on the ground. However, his objection was in the mildest terms and I do not think that he ever actually ordered anyone off the field.

[281] Between 2000 and 2002, Thames Water constructed a sewer which crossed Thamesfield from the north-eastern corner to the south-western corner. The excavation was fenced but use of Thamesfield was not materially interrupted since the excavation was carried out in two stages and the perimeter path was always kept open. The contractors constructed a works compound near the Coppice Drive entrance and for security reasons installed a fence and double metal gates at that entrance. The reason seems to have been to control vehicular ingress and egress to the field, since they also installed a small side pedestrian gate beside the double gates and, in any event, there was unimpeded pedestrian access to the field at numerous other points. The contractors also installed an earth bund along the Friary Road side of Thamesfield. The bund impeded vehicular access to Thamesfield but did not restrict pedestrian access since there were two gaps in the bund and, in any event, pedestrians could simply walk over the bund. The Worbys said that this bund was installed at their request. This may have been so but I think that the contractors were probably also concerned in their own interests to prevent vehicular access to and egress from the field since that had machinery there. After the works were over, the contractors left the Coppice Drive entrance gates in place at the request of the Worbys. I think that the Worbys did this to keep unwanted vehicles, e.g. travellers' vans, off the land.

[282] The sequence of events at the Coppice Drive entrance between 2002 and 2007 is difficult to unravel because there is a plethora of vague and somewhat inconsistent evidence about it. It is particularly unfortunate that a key witness, Mr. Butler, did not give oral evidence. I find that the probable sequence of events is as follows. For a few months after Thames Water finished on site, the side gate was closed but unlocked and was used for general pedestrian access to Thamesfield. Then, for reasons that are obscure, Mr. Butler blocked the side gate and Mr. Gunderman placed an earth bund behind the gate. The gate was soon broken open and general pedestrian access was largely resumed, as shown in the 2003 and 2004 aerial photographs. This situation continued until about 2007. I do not consider that any of these activities between 2002 and 2007 could reasonably be construed as a challenge to general recreational use of Thamesfield since numerous other pedestrian accesses remained and local people continued to use the field for informal recreation without challenge. I think that Mr. Butler was generally perceived locally as a difficult man who did not want the public walking on the land beside his house. The blockading of the Coppice Drive entrance was reasonably perceived as preventing use of that access and asserting the privacy of the land immediately behind the Coppice Drive gates, rather than attempting to prevent use of Thamesfield as a whole.

[283] In 2006, the Worbys decided to sell Thamesfield and Coppice Field for the best price obtainable. In 2007, they agreed to form a joint venture with Messrs. Busbridge, Kendrick and

Fraser with a view to marketing the fields divided into small plots. In 2008, WESL was formed as a vehicle for the joint venture and the land was vested in that company.

[284] Shortly before Easter 2007, Mr. Butler blockaded the Coppice Drive entrance again. Over the Easter weekend of 2007 (8th/9th April 2007) a local resident broke down the entrance because he claimed that there was a public right of way through it. Mr. David Worby reported the incident to the police and made a formal statement on 27th April 2007 although he did not press charges. On 9th April 2007, a message was posted on the Wraysbury Watchdog Forum saying that the blockage of an access used for many years had caused a dispute amongst local people. Mr. David Worby posted a message on 11th April 2007 to the effect that Thamesfield was owned by the Worby Estate and he was dealing with blockages. Subsequently he posted messages that Thamesfield was private land. None of Mr. Worby's posts in terms said that Thamesfield as a whole was not available for public access until a post of 15th May 2007. In May and June 2007, some local people wrote to Mr. Worby asking permission to use Thamesfield. It is not clear how many people read the Wraysbury Watchdog Forum.

[285] In May 2007, the Worbys had a meeting with the chairman of the parish council to discuss the proposed sale of Thamesfield. It is not clear whether other local people were aware of this meeting. After taking legal advice, the Worbys then arranged for Mr. Glyn Larcombe to erect four signs around Thamesfield reading "Private Property. Access to this land is by permission of the owners". The evidence of Mr. Larcombe's email of 6th September 2007 strongly supports the view that the signs were erected in early July 2007 and I so find. The signs were erected in the following positions:

- On the gates at the Coppice Drive entrance
- Towards the rear of the Fairfield Approach entrance facing towards Fairfield Approach
- At the entrance from FP8 at the north-western corner of the northern arm of Thamesfield facing the Kayles, and
- On Friary Road in the Kayles near the bollards in Friary Road a little way to the north of Thamesfield and near the northern entrance from Friary Road to Thamesfield.

These signs were not placed at every entrance to Thamesfield. There was no sign at the entrance from FP8 at the north-eastern corner of Thamesfield, at the various entrances through the boundary with the Kayles or at the southern entrance on Friary Road. However, I am satisfied that, if those signs remained in place for any material length of time, the message conveyed by the signs would have been communicated to the vast majority of local people who regularly used Thamesfield for informal recreation, either by seeing the signs or being told about them by other users. The sign at the Coppice Drive entrance has remained in place ever since, although it has periodically been pulled down and reinstated by Mr. Butler. The evidence of postings on the Wraysbury Watchdog Forum dated 20th, 29th and 30th July 2007 shows that the other signs were in place until the end of July 2007. However, they were subsequently torn down and disappeared. I find that the July 2007 signs, other than the Coppice Drive entrance sign, were in place for about a month. It is true that there are many local witnesses who have given evidence that they were unaware of the July 2007 signs. It is

not possible to say of any one witness that he or she is not telling the truth about the 2007 signs because, in the case of every witness, there might be some good reason why he or she did not see or hear tell of the signs, e.g. being away on holiday or happening to access Thamesfield for a while by an entrance at which a sign was not erected. However, I find it wholly incredible that the vast majority of regular users of Thamesfield would not have seen or been told of these highly contentious signs, placed at four of the major entrances to Thamesfield, which challenged public use of the field which had been enjoyed unimpeded for so many years.

[286] On 10th June 2008, the directors of WESL hand delivered to a large number of local residents a circular letter stating that Thamesfield was private property, that there was no public right of access to the field and that it was going to be sold in lots. The letter was delivered *inter alia* to nearly all houses backing onto Thamesfield. This letter appears to have caused a local storm. On 11th June 2007, RBWM issued a press release warning prospective purchasers of plots to be careful and take advice. There was a packed parish council meeting on 16th June 2008 which discussed the situation at length. The meeting discussed three petitions which were being got up, one of them aimed at establishing a network of public rights of way over Thamesfield. The meeting received wide publicity. I find that it was generally known by users of Thamesfield by the end of June 2008 that the owner of Thamesfield was asserting that the public had no right to enter it and intended to sell it off in plots. The parish council decided to set up a sub-committee, which held an inconclusive meeting with four of the directors of WESL on 18th June 2008.

[287] The take up of the sales promotion appears to have been rather disappointing and WESL hand delivered another sales letter to local people on 20th February 2009. At about the same time, WAG was formed to oppose the division and sale of Thamesfield. At some stage in 2009, WAG successfully applied for a direction under article 4 of the Town and Country Planning (General Permitted Development) Order 1995 restricting the erection of internal fencing within Thamesfield.

[288] In the late 1990s, in 2006, in 2008 and again in March 2009, Mr. Gunderman did some work on the earth bunds at Fairfield Approach and Friary Road but I am not satisfied that any signs were erected at those times or that the bunds prevented pedestrian access or objectively appeared to be intended to prevent pedestrian access as opposed to vehicular access. I think that all the bunds erected by Mr. Gunderman would reasonably have been regarded by an objective observer as intended to keep vehicles rather than pedestrians off Thamesfield.

[289] At about this time, the directors of WESL considered what steps could be taken to keep trespassers off Thamesfield. They obtained a quotation of £2,000 for ploughing the field, but the farmer who gave the quotation thought that WESL would need permission to plough the meadowland. WESL took this idea no further. In particular, WESL did not investigate whether the farmer was right. The directors of WESL also obtained some quotations varying between £10,000 and £20,000 for fencing the unfenced boundaries of Thamesfield but they considered that the cost was too great and did not take the fencing

proposal any further. During the spring of 2009, directors of WESL also appear to have started to be more active in attending Thamesfield and challenging trespassers and Miss Burrows began to receive calls from local people complaining that they had been challenged when using the field. I think that the directors of WESL did occasionally challenge trespassers after the formation of WESL in 2008 but it was not until the spring of 2009 that challenges became frequent. Probably this was part of the agreed policy of WESL when the options of fencing and ploughing were rejected.

[290] In April 2009, Mr. and Mrs. Smith¹⁵⁴ of 38 Wharf Road purchased from WESL two plots of land in Thamesfield lying immediately behind 36 and 38 Wharf Road. They fenced the land in July 2009. At the time, the plots formed part of the belt of land outside the perimeter path which was overgrown. I find that this land was little used for recreation by local people although it was not impossible to scramble through it.

[291] On 18th May 2009, Mr. & Mrs. Gates of 40 Wharf Road purchased from WESL a plot of land on Thamesfield lying immediately behind their garden. They fenced this land in July 2009. At the time, the plot formed part of the belt of land outside the perimeter path which was overgrown. I find that this land was little used for recreation by local people although it was not impossible to scramble through it.

[292] In June 2009, WAG applied to RBWM for orders modifying the definitive map by adding a network of public footpaths over Thamesfield. These applications were not pursued after the present TVG application was made.

[293] In July 2009, a close-boarded wooden fence was erected at the Fairfield Approach entrance by contractors for WESL. The fence blocked the entrance to pedestrians as well as vehicles. Signs were erected on the fence reading "Private Property. Keep Out. No public access. No public right of way". The erection of the fence seems to have caused quite a local stir, with objectors attending at Fairfield Approach to question the landowner's right to block the entrance to Thamesfield and the police being in attendance. However, the fence and signs were soon torn down.

[294] On 4th February 2010, there was a confrontation in Thamesfield between Mr. Hughes and Mr. Kendrick in which Mr. Hughes was told to leave Thamesfield.

[295] The present application to register Thamesfield as a new TVG was made on 11th March 2010. I have discussed above why I find that the application was made on that date.

[296] On 31st March 2010, Mr. McDonagh purchased at auction the plot of land behind the Coppice Drive entrance which lay adjacent to No. 2, Wharf Road. I find that this plot of land had never been cut for hay and had been overgrown for many years, at least since the 1980s. I think it probable that this land was little used for recreation by local people although it was not impossible to scramble through it and people probably did so now and then.

¹⁵⁴ Mrs. Smith was then Miss Hunt

[297] In March 2011, Mr. Larcombe, on the instructions of WESL, erected a prohibitory sign at the Fairfield Approach entrance which was soon torn down.

13. Applying the law to the facts

[298] I now turn to apply the law to the facts that I have found. I propose to consider in turn the legal requirements of CA 2006 s. 15:

- The “neighbourhood/locality” requirement,
- The “LSP” requirement,
- The “significant number” requirement,
- The “20 years” requirement,
- The “as of right” requirement, and
- The “application date” requirement.

I will then consider the special position of Mr. and Mrs. Smith, Mr. and Mrs. Gates and Mr. McDonagh.

The “neighbourhood/locality” requirement

[299] The applicant relies on use by the inhabitants of a “locality” rather than by the inhabitants of a “neighbourhood within a locality”. There seem little doubt that Wraysbury is a locality as being either a civil or ecclesiastical parish. However, the evidence produced by the applicant on this topic is very unsatisfactory as explained in paras 207-208 above. If the application were otherwise successful, I would require the applicant to adduce further and better evidence to prove the existence and boundaries of the locality of Wraysbury during the relevant 20 year period before advising the RBWM to accede to the TVG application. I proceed on the assumption that such evidence could be obtained.

The “LSP” requirement

[300] I am satisfied that the sort of informal recreation that has been enjoyed on Thamesfield for many years, such as walking, with or without dogs, children’s play, flying model aircraft and horse-riding, amounts to LSP as that expression was construed in the *Sunningwell* case. In particular, I am quite satisfied that the use of Thamesfield has not been confined to the type of linear walking along defined routes which might qualify as giving rise to the creation of prescriptive rights of way. The fluctuating overgrown areas around the edge of Thamesfield have been used much less by local people for recreation but I consider it probable that they have been used to some extent, e.g. for picking blackberries and adventure games. In my judgment, Thamesfield, including the overgrown parts, has been used as a whole for informal recreation for many years.

The “significant number” requirement

[301] I am also satisfied that the use of Thamesfield for LSP has been by a “significant number” of the inhabitants of Wraysbury. A vast number of witnesses gave oral or written evidence to the public inquiry who had used Thamesfield for LSP and lived in Wraysbury.

This test cannot be applied on a mathematical basis but only as a matter of general impression. In my judgment, this was not occasional use by individuals as trespassers but general use by the local community. Such use was not trivial or sporadic and was clearly enough to signify to the reasonable landowner that a right was being asserted and ought to be resisted if it was not exercised.

The “20 years” requirement

[302] I am also satisfied that Thamesfield has been used for LSP by a significant number of the inhabitants of Wraysbury since at least 1975. This is more than enough to prove 20 years’ use for LSP whether under subsections (2), (3) or (4) of CA 2006 s. 15. I wholly reject the suggestion put forward by WESL that unauthorised recreational use of the field was something that only became significant in the last few years.

[303] The use of Thamesfield for hay-making and growing kale undoubtedly placed some limitations on the use of the field for LSP. However, in considering whether there was 20 years use of Thamesfield as a whole, it is not necessary for the applicant to prove incessant use of every inch of the field for 20 years. It seems to me that there is a close analogy with the test in *Hollins v Verney*¹⁵⁵ relating to the prescriptive acquisition of easements. The use of Thamesfield by local people was enough to carry to the mind of a reasonable owner or occupier of Thamesfield the fact that a continuous right to enjoyment was being asserted and ought to be resisted if such right was not recognised and if resistance to it was intended. After *Redcar*, it is not fatal to the TVG application that local people largely deferred to the agricultural use of the land.

The “as of right” requirement

[304] I have to consider whether use of Thamesfield for LSP has been “as of right” in the sense of being without force, secrecy or permission. I consider these three requirements in reverse order.

[305] There is evidence that the 1979 gymkhana was with Mr. Worby’s permission and that one or two people obtained permission from Mr. Gunderman to use the field. However, the vast majority of use of the field for LSP by local people was without express permission and was trespassory. Although the field was used for hay-making and growing kale, local people were not physically excluded from areas of the field while in use for agricultural purposes and I see no reason to construe the agricultural activities as impliedly granting permission to local people to use the field for LSP, even under the extreme ruling in *R (Mann) v Somerset County Council* [2012] EWHC B14 (Admin) and even if the farmer had power to grant such permission.

[306] There is no evidence to suggest that use of Thamesfield by local people for LSP was secret. On the contrary, the evidence suggests that the problem of trespass on Thamesfield was apparent and well-known to successive owners and occupiers since the 1970s.

¹⁵⁵ (1884) 13 QBD 314 recently applied in *Llewellyn v Lorey* [2011] EWCA Civ 37

[307] So far as force is concerned, there is some evidence that physical force was used to gain access to Thamesfield at the Coppice Drive entrance in the 2000s and at the Fairfield Approach entrance after erection of the July 2009 fencing. However, there is no evidence to suggest that entry by physical force was effected by more than a handful of local activists. I do not consider that walking over or around earth bunds can be regarded as forcible. I am satisfied that the vast majority of local people who used Thamesfield for LSP were peaceable folk who would not have dreamed of breaking down gates or fences but entered the field by way of open entrances, albeit that, in some cases, they may have previously been broken open by others.

[308] It seems to me that the critical issue at the heart of this case is whether, and if so when, use of Thamesfield by local people for LSP became “contentious” before the date of the TVG application and so treated as forcible in law. I consider that such use became contentious in July 2007 when WESL arranged for signs to be erected at four of the main entrances to Thamesfield. In reaching this conclusion, it is necessary to consider four preliminary legal questions:

- What is the meaning of the 2007 signs
- What does “contentious” mean?
- What is the effect of ignored prohibitory signs?
- What is the effect of signs that are torn down?

What is the meaning of the 2007 signs?

[309] The wording of the signs erected by Mr. Larcombe on the instructions of WESL in early July 2007 was as follows:

“PRIVATE PROPERTY

Access to this land is by permission of the owners”

The wording of the signs is not happy, since it is arguably ambiguous as to whether the signs are prohibitory or permissive signs. The wording is potentially capable of two alternative meanings. It could mean that, although Thamesfield is privately owned, the owner gives general permission to all and sundry to access the field. Alternatively, it could mean that no one is entitled to access Thamesfield without the permission of the landowners. The issue is what the signs would be understood to mean by the ordinary reasonable reader of those signs and is not determined by what WESL intended it to mean nor what any particular person reading the sign understood it to mean¹⁵⁶. I consider that the ordinary reasonable reader of the signs would understand them to be prohibitory signs. The words “PRIVATE PROPERTY” appear at the top of the sign in large capital letters. These words ordinarily carry the message that the public have no right to use the land. I do not think that any ordinary reader (unversed in the technicalities of the law relating to prescription) would understand the reference to permission as being other than a reinforcement of the message given by the “PRIVATE

¹⁵⁶ The *Warneford Meadow* case.

PROPERTY” heading by making it clear that no one was entitled to enter the land except with the owner’s permission.

What does “contentious” mean?

[310] In *Smith v Brudenell-Bruce* [2002] 2 P&CR 51 at para. 12 Pumfrey J. laid down the following test in a right of way case:

“It seems to me a user ceases to be user “as of right” if the circumstances are such as to indicate to the dominant owner, or to a reasonable man with the dominant owner’s knowledge of the circumstances, that the servient owner actually objects and continues to object and will back his objection either by physical obstruction or by legal action. A user is contentious when the servient owner is doing everything, consistent with his means and proportionately to the user, to contest and to endeavour to interrupt the user.”

[311] However, I consider that the *Brudenell-Bruce* test:

- places too heavy a duty on the landowner
- is an *obiter dictum*, and
- is not justified by an analysis of the authorities.

I consider that the true test, at least in TVG cases, is that user is contentious if the landowner takes steps which signify to the reasonable user that he does not acquiesce in the user. This is the test that is supported by a general analysis of the authorities. It is also right in principle. The underlying rationale of the law of prescription is that the court infers a legal basis for user of land in which the landowner acquiesces for a long time:

- *Dalton v Angus* (1881) 6 App. Cas. 740 at p. 773
- *Smith v Brudenell-Bruce* at para 9.
- *R v Oxfordshire County Council ex parte Sunningwell Parish Council* [2000] 1 AC 335 at p. 351B
- *Field Common Ltd. v Elmbridge Borough Council* [2005] EWHC 2933 (Ch) at para 35
- *Beresford* para. 76

[312] There is a distinction between private easement cases and TVG cases. In private easement cases, it is often possible to prove that the dominant owner actually knew of the servient owner’s objection to the relevant use. However, in TVG cases, this is rarely possible. There is often a mass of local witnesses who profess complete ignorance of any steps taken to discourage access to the AL. It is not usually possible to prove conclusively that any particular witness actually knew of the steps. At least in TVG cases, it seems to me that the test must be objective, i.e. whether the reasonable user would have been aware, at any point during the 20 year period, that the landowner was not acquiescing in his use.

[313] In *Eaton v Swansea Waterworks* (1851) 17 QB 267 the plaintiff claimed an easement to draw water from the defendant’s artificial waterway based on 20 years’ use under the Prescription Act 1832 (PA 1832). The trial judge:

- excluded evidence that the plaintiff's servant had been successfully prosecuted under the Swansea Waterworks Act for drawing off water from the waterway and that P had sent his son to the trial to defend him, paid the 1/- fine and did not appeal, and
- failed to leave to the jury the question whether the parties had been in a state of perpetual warfare for more than 20 years.

It is necessary to strip out the discussion of what amounts to one years' interruption under the PA 1832. The court recognized that user that was contentious was not "as of right". The court ordered a new trial on the grounds (a) of wrongful exclusion of evidence and (b) of failure to leave a relevant question to the jury. The judgment of Erle J. is particularly instructive. The court clearly thought that the successful prosecution could be enough in itself to preclude a finding of 20 years' user "as of right". A single incident during the 20 year period could be enough to show that the plaintiff knew that the landowner opposed and did not acquiesce in the user.

[314] In *Sturges v Bridgman*(1879) 11 Ch D 852 a confectioner had back kitchen premises in which he used a pestle and mortar which caused noise and vibration for many years. The neighbouring property was owned by a doctor who built a consulting room in his garden abutting the kitchen. The noise and vibration disturbed use of the consulting room and the doctor brought an action in nuisance. The confectioner relied on a prescriptive right to commit a nuisance. He failed, inter alia, on the ground that there was no nuisance until the consulting room was built. The Court of Appeal (at p 863) said that user was not *nec vi* (without force) if the owner contested the user and endeavoured to interrupt it since that negated acquiescence.

[315] *Dalton v Angus*(1881) 6 App. Cas. 740 was a case relating to the creation of a right of support by lost modern grant (LMG) which was argued twice before the HL, the second time in the presence of the judges, who gave their opinions to the House. Bowen J. touched on the present question. At p. 786 he said that user ought:

"...to be neither violent nor contentious. The neighbour, without actual interruption of the user, ought perhaps, on principle, to be enabled by continuous and unmistakable protests to destroy its peaceable character, and so to annul one of the conditions upon which the presumption of right is raised: Eaton v Swansea Waterworks Company".

Bowen J.'s comment proceeds on the footing that it is enough to make user contentious and not "as of right" if the landowner takes adequate action to signify to the user that the user is opposed. He did not think that physical interruption or litigation was necessary. Lord Penzance referred at p. 806 to *Webb v Bird* and said that a right could not be acquired by long user unless the landowner could have stopped the user without extravagant and unreasonable loss or expense. This seems to have been the origin of Pumfrey J.'s reference to "consistent with his means" in *Brudenell-Bruce* although Lord Penzance really seems to have had an objective test in mind, i.e. that a landowner should not be required to incur disproportionate expense in challenging the user to negative acquiescence.

[316] In *Lyell v Lord Hothfield*[1914] 3 KB 911 the plaintiff, as lord of the manor of Muker, claimed a prescriptive right of grazing over land belonging to the defendant. There had for many years been a dispute between the plaintiff and defendant as to whether the land belonged to one or the other. There had been disputes between the shepherds for the plaintiff and the defendant about entitlement to graze the land but the disputes had not led to blows or litigation because there was enough grass to go round. There was evidence of a letter from one of the defendant's solicitors. In reliance on *Eaton v Swansea Waterworks* and the comment of Bowen J. in *Dalton v Angus*, the judge held that user was contentious and not "as of right". This case is authority that physical interruption or litigation is not necessary to render user contentious. The shepherds' disputes and the solicitor's letter were enough to negative acquiescence by signifying to the plaintiff that the use was opposed.

[317] in *Newnham v Willison*(1988) 56 P&CR 8 the issue was whether the plaintiff could establish a prescriptive right of way under the PA 1832 over a "swept curve" on a driveway. The swept curve had been used for more than 20 years. The action was brought on 27th June 1984 and the Court of Appeal disregarded any "interruption" in the year before suit under PA 1832 s. 4. The question was therefore whether user was as of right before 27th June 1983. The following events happened before that date:

- the defendant erected a post obstructing the swept curve in May 1983 followed by a row of stones and lumps of hardcore. These obstructions were "transient" and the swept curve continued to be used until the fence was erected in August 1983.
- a solicitor's letter complaining about the obstructions was sent on behalf of the plaintiff's predecessors in title on 23rd June 1983.

Kerr LJ reviewed all the above authorities and said, at p. 19, that user was contentious (and not as of right) if the user knew that the landowner objected to the use and continued his use despite the objections. The Court of Appeal held that use was contentious and not as of right before 27th June 1983. The Court of Appeal was clearly not applying anything like as demanding a test as the *Brudenell-Bruce* test. If it had, it would have required the defendant to erect a fence before use became contentious. The Court of Appeal test was not whether the defendant did all he could to obstruct the use but whether he did enough to let the plaintiff (and his predecessor) know that he was not acquiescing in the use.

[318] In *Smith v Brudenell-Bruce* the claimant claimed a right of way under PA 1832 and by LMG over the defendant's land on a track leading to the Savernake Forest. The claimant used the track from 1975 until the date of the claim. In 1998, the defendant wrote to the claimant declaring the claimant *persona non grata* on the defendant's land. The judge held that user was contentious and not "as of right" after the 1998 letters. The claimant failed in his claim under the 1832 Act since there was not 20 years' use next before action, but succeeded under LMG since there was 20 years' qualifying user before 1998. Pumfrey J. analysed the authorities and came up with the test quoted above. However, on facts of the case, the judge found that user became contentious without physical obstruction or litigation. It was enough that the defendant had written two letters to the claimant forbidding use of the track. The

actual decision is therefore consistent with the proposition that user was contentious because the user knew that the landowner did not acquiesce in his use.

[319] In *Dennis v Ministry of Defence* [2003] 2 EGLR 121 the claimant sued the defendant for nuisance by aircraft noise. The defendant claimed a prescriptive right to commit nuisance. The claimant had written letters complaining about the noise. The judge held at para. 54 that the letters made use contentious and not as of right. Although the judge did not analyse the authorities (indeed it is not clear whether they were cited to him) he clearly took the view that user was contentious if the defendant knew that the claimant objected to it.

[320] In *R (Cheltenham Builders Ltd.) v South Gloucestershire District Council* [2004] 1 EGLR 85 the applicants made an application to register land as a new TVG. The application was withdrawn after letters of objection from the landowner. The applicant then made a second application which was accepted by the CRA without a public inquiry. The landowner sought judicial review on a number of grounds, including the contentiousness of the use after the objection letters to the first application. Sullivan J. discussed contentious use at paras. 62-71. "Perpetual warfare" was not necessary (para 71). The question whether user was contentious fell to be judged not by the subjective state of mind of the users but by how the matter would have appeared to the owner of the land (para. 69). On the facts, the two letters objecting to the first application for registration of the land as a new TVG followed by withdrawal of the application were enough to show that the landowner was not acquiescing in the use (para. 70). The judge was not applying the *Brudenell-Bruce* test. The test was whether the landowner had (objectively) signified that he was not acquiescing in the user.

[321] In *Field Common Ltd. v Elmbridge Borough Council* [2005] EWHC 2933 (Ch) the defendant claimed a prescriptive right to use a wider right of way than that to which it had paper title. The landowner had written letters objecting to the extended use. The judge (Lewison J.) held that use was not "as of right" because the landowner had protested: see paras 41-43. *Smith v Brudenell-Bruce* was not cited but it is clear that Lewison J was not applying as stringent a test as Pumfrey J. Otherwise, he would have required the landowner to fence the edge of the right of way (as in fact the landowner falsely claimed to have done).

[322] In *R (Lewis) v Redcar & Cleveland Borough Council* [2010] 2 AC 70 the issue of contentious user did not arise, but Lord Rodger nonetheless discussed it at some length at paras. 86-90. He said that English law interpreted *vi* in much the same way as Roman law under which it was enough if the person concerned had done something which he was not entitled to do after the owner had told him not to do it. This is far from the stringent test in *Smith v Brudenell-Bruce*.

[323] In *R (Oxfordshire & Buckinghamshire Mental Health Foundation Trust & Oxford Radcliffe Hospitals NHS Trust v Oxfordshire County Council & ors (the Warneford Meadow case))* [2010] EWHC 530 one issue was whether signs reading "No Public Rights of Way" erected by the landowner on the application land rendered contentious use of the whole of the application land or just an informal path crossing it. The judge (HH Judge Waksman QC) held, on the facts, that the signs did not render contentious use of the whole of the application

land. The judge referred (para 18) to *Smith v Brudenell-Bruce*. He had reservations about the means aspect of Pumfrey J's test (para. 22(5) note 1). However his own formulation was much simpler (para. 22(5)):

“The aim is to let the reasonable user know that the owner objects to and contests his user.”

The judge's approach was consistent with the proposition that user is contentious if the landowner takes steps which signify to the reasonable user that he does not acquiesce in the user. It was common ground between the parties that the erection of prohibitory signs would render use contentious and not as of right (see para. 17). The principles laid down by HH Judge Waksman QC proceed on the basis that the erection of a prohibitory sign without more renders use contentious.

[324] In *Betterment Properties (Weymouth) Limited v Dorset County Council & ors* [2010] EWHC 3045 (Morgan J) there was an application under CRA 1965 s. 14(b) to rectify the register to delete the registration of a new TVG effected under s. 13. The judge acceded to the application on the ground that the application land should not have been registered as a new TVG because use for LSP had been contentious and not as of right. This was a case where the landowners opposed a TVG application on the ground that they had made use by local people contentious and not as of right:

- by erecting prohibitory notices
- by repairing fences that were torn down, and
- by challenging trespassers.

Many local people had signed OSS evidence questionnaires claiming that no attempt had been made to prevent their use of the land by notice, fencing or any other means. See paras. 61 & 90. The judge carried out a comprehensive review of the cases on contentiousness (paras 99-119). However, the parties were in agreement that the test in *Smith v Brudenell-Bruce* “was a useful general test to be applied for this purpose” (para 121). The judge therefore did not have to consider whether that test was justified by the authorities.

[325] When the *Betterment* case went to the Court of Appeal as *Taylor v Betterment Properties (Weymouth) Ltd* [2012] EWCA Civ 250, the landowner did not resile from his acceptance at first instance that the *Brudenell-Bruce* test was a useful guide: see para 45. However, when one analyses the reasoning of Patten LJ, one sees that he is not applying the *Brudenell-Bruce* test: see, in particular paras 30, 38, 48, 50 & 52. The test propounded by Patten LJ can be summarised as follows: has the landowner done enough, commensurate with the scale of the problem, to bring to the attention of the reasonable user that he does not acquiesce in such use? *Betterment* was also a case where all the local witnesses gave evidence that they had not seen the prohibitory signs: see para. 27 & 33. Patten LJ accepted that a suitable prohibitory sign would render use contentious and not as of right: see para. 38. It did not matter whether the users misunderstood the notice or did not bother to read it (para. 41) or whether some users did not see the signs at all (para. 48).

[326] The view that I am expressing was accepted by a very experienced inspector in his report in the *Great Bookham* case (2011): see paras. 35-64.

[327] I conclude that there is nothing in the authorities to support the stringent test contained in the *obiter dictum* in *Smith v Brudenell-Bruce*. There is no requirement that:

- the landowner indicates that he “continues to object”,
- the landowner indicates that he will back his objection either by physical obstruction or by legal action, or
- the landowner is doing everything, consistent with his means and proportionately to the user, to contest and to endeavour to interrupt the user.

The true principle is that use is “contentious” if the landowner takes steps which would signify to the reasonable user that he does not acquiesce in the user. It does not matter whether those steps involve verbal dispute, physical obstruction, legal proceedings or just correspondence. Nor does it matter whether there are individual users who claim to have been unaware of those steps. As Sullivan J. pointed out in *Cheltenham Builders*, since *Sunningwell* the question is how the matter would have appeared to the landowner. Hence the reference in the *Warneford Meadow* and *Betterment* cases to the reasonable user.

What is the effect of ignored signs?

[328] In para. 72 of *R (Beresford) v Sunderland City Council* (HL)[2004] 1 AC 889, Lord Walker commented that a landowner who puts up prohibitory signs which are ignored is in a less strong position than a landowner who puts up permissive signs. This comment was *obiter* since there were no notices in the *Beresford* case and there is no report of any argument by counsel about the effect of notices. I must confess that I have some difficulty with this comment since it seems to me that, if a landowner erects prohibitory notices on his land, it is clear that he is not acquiescing in public use of his land with the result that such use is contentious and not “as of right”. I do not think that Lord Walker can have meant that prohibitory signs are ineffective if they are ignored. There are numerous cases where ignored prohibitory notices have been held to make unauthorised use of land contentious:

- In *Oxfordshire County Council v Oxford City Council* (the *Trap Grounds* case) (CA)[2006] Ch 43 prohibitory signs were erected after the date of the TVG application. It was accepted by the Court of Appeal that the signs put an end to the period of qualifying use, by ensuring that it could no longer be “as of right”: see para. 7. The point fell away in the House of Lords ([2006] 2 AC 674) since the House of Lords decided that the qualifying period of 20 years ended at the date of the TVG application.
- In the *Warneford Meadow* case, it was common ground between the parties that the erection of prohibitory signs would render use contentious and not as of right (see para. 17). It was not argued by the very experienced counsel involved in the case that the notices were, in any event, ineffective because they were ignored. The principles laid down by HH Judge Waksman QC proceed on the basis that the erection of a prohibitory sign renders use contentious. He does not suggest that it matters whether

the public ignore the sign. Indeed, if a prohibitory sign is obeyed, the question of registration of the land as a new TVG does not arise: see paras. 22 & 49(3). The *Beresford* case was before the judge: see para. 87.

- In the *Betterment* case at first instance, the judge found that the landowners erected prohibitory signs, although they were soon torn down (para.94). The judge referred to Lord Walker's comments in para. 72 of *Beresford* (see para. 113). He found that a reasonable user would have known that signs were erected and torn down: see para. 122. The judge's reasoning thus proceeds on the basis that prohibitory signs would render use of the application land contentious and not as of right, even if they were ignored.
- When the *Betterment* case went to the Court of Appeal, Patten L J accepted that a suitable prohibitory sign would render use contentious and not as of right: see para. 38. It did not matter whether the users misunderstood the notice or did not bother to read it (para. 41) or whether some users did not see the signs at all (para. 48).
- In the *Barrow-in-Furness* case (2012), local people used school playing fields for LSP despite prohibitory notices and challenges by members of staff. The very experienced inspector found that such use was contentious and not "as of right": see para. 95 for a helpful summary. There was a wide ungated access to the playing field throughout the relevant 20 year period: see paras. 52-55. By the ungated access there was a prohibitory sign (para. 57(2)). The users of the playing field deliberately ignored the sign (para. 74). The inspector found that such use was not as of right (para. 95). It is to be noted that the inspector specifically considered the dictum of Lord Walker in para. 72 of *Beresford*.

I conclude that prohibitory notices can be effective to render use of land contentious albeit that they are ignored by users.

What is the effect of signs that are torn down?

[329] In the *Betterment* case in the Court of Appeal, Patten LJ held that the applicant for registration of a new TVG could not rely on the unlawful activities of the minority who tore down signs or broke down fences (paras. 58-64). It seems to follow from this that one has to approach the question whether the July 2007 signs made unauthorised recreational use of Thamesfield contentious on the assumption that none of the signs had been torn down but had remained in place until the date of the TVG application.

Conclusions on contentious use

[330] I do not see anything during the 20 year period before the erection of the July 2007 signs which would have made unauthorised use of Thamesfield for LSP by local people contentious. In particular:

- I find that there was no relevant signage on or by the field during that period,

- I find that there was no significant challenge to recreational use of the field by Mr. Gunderman, the Worbys or the directors of WESL which made users generally aware that their use of the field was not tolerated,
- I find that the attempts to block the Coppice Drive entrance from about 2002 onwards were not reasonably perceived as a challenge to recreational use of Thamesfield as a whole, and
- I find that Mr. Gunderman’s works to create and enhance earth bunds were not reasonably perceived as a challenge to pedestrian as opposed to vehicular access to Thamesfield.

[331] However, I consider that the erection of prohibitory signs at four of the major entrances to Thamesfield, and their being in position for about a month, was sufficient to communicate to the generality of recreational users of Thamesfield that the landowner was not acquiescing in such use. Bearing in mind the frequency with which local people, especially dog-walkers, used the field and the amount of use made of those entrances, I consider that most regular users of the field, of which, on the evidence, there were very many, would have seen the signs or at least heard about them. In forming this view, I have not found it necessary to rely on the deemed continuation of the torn down signs under the principle explained by Patten LJ in the *Betterment* case in the Court of Appeal. However, if one were to factor in that principle, it seems to me that the position would be *a fortiori*.

[332] I therefore conclude that use of Thamesfield by local people for LSP became contentious in July 2007. Such use was therefore not “as of right” after July 2007.

The “application date” requirement

[333] The application cannot succeed under CA 2006 s. 15(2) because qualifying use did not “continue” until the date of the application. The application cannot succeed under CA 2006 s. 15(3) since the application was made on 11th March 2010, which is more than two years after the cessation of qualifying use. The application cannot succeed under CA 2006 s. 15(4) because qualifying use ceased after the commencement of the section on 6th April 2007. It follows that the application cannot fulfil the “application date” requirement and must fail on that ground.

The special position of Mr. and Mrs. Smith, Mr. and Mrs. Gates and Mr. McDonagh

[334] If the TVG application had otherwise been successful, I would have advised the CRA to allow the applicant to amend her application to omit the plots of land now owned by Mr. and Mrs. Smith and Mr. and Mrs. Gates for the reasons discussed above. In the absence of such an amendment, I would have advised the CRA that the land owned by those objectors should be registered as part of the new TVG. Although the plots were overgrown and little used for recreation, in my view they are to be regarded as subsidiary parts of Thamesfield which, viewed as a whole, was used for LSP: the *Trap Grounds* case.

[335] If the TVG application had otherwise been successful, I would have advised the CRA to register the plot of land owned by Mr. McDonagh as part of the new TVG. In my view,

this plot is on all fours with the Smiths' and Gateses' plots. Although overgrown and little used for recreation, it falls to be regarded as a subsidiary part of Thamesfield which was used for LSP, viewed as a whole, under the *Trap Grounds* principle.

14. Conclusion and recommendations

[336] I conclude that the application to register Thamesfield as a new TVG fails on the ground that qualifying use ceased in July 2007 when use for LSP by local people became contentious, and the application was not made until more than two years after that cessation.

[337] I recommend that the TVG application should be rejected. Under regulation 9(2) of the 2007 Regulations it is necessary for the CRA to give to the applicant written reasons for the rejection of her application. I recommend that the reason is stated to be "the reasons given in the inspector's report of 25th February 2013".

Vivian Chapman QC
25th February 2013
9, Stone Buildings,
Lincoln's Inn,
London WC2A 3NN

Comments received from Mr F McDonagh (8/3/2013)

Dear Mrs Woodward , Thank you for sending me the report i have now read the report of Mr Vivian Chapman QC and would make two comments 1, I agree with the report . 2, YIPPEE Frank Mc Donagh

IN THE MATTER OF AN APPLICATION TO REGISTER THAMESFIELD, WRAYSBURY AS A NEW TOWN OR VILLAGE GREEN

SUBMISSIONS OF THE APPLICANT UPON THE RECEIPT OF THE INSPECTOR'S REPORT DATED 25/02/13

I: OVERVIEW

1. The following submissions are made to the Registration Authority ("the RA"), more particularly its decision-making committee, in light of the two inter-related issues arising out of the Report of the Inspector dated 25/02/13. First, the as to the meaning and effect of the signage that the Inspector held were erected in July 2007. Second, as to the proper legal test to be applied for contentious user in village green cases.
2. As to the first issue, it is not accepted that that the signs were sufficiently clear in opposing the use of the land. The words "Private Property" do not imply that trespassory activity will be opposed or is even unwanted by the landowner. Further, even if the Inspector's interpretation at [311] of the reference in the sign to "permission" – "no one was entitled to enter the land except with the landowner's permission" – this cannot bring user *as of right* to an end. Even the rejection of a proposed written revocable licence cannot achieve that: *Bloor Inc. v. 1714104 Ontario Inc* 2013 ONCA 91 ("*Bloor Inc*") at [117 – 120] *per* Laskin JA.
3. As to the second issue, the RA will be aware that this is a matter that has received judicial attention in the recent *Betterment* litigation (where, it is understood, permission to appeal to the Supreme Court on the contentious user point has been refused). The proper interpretation of *Betterment* is determinative in this case as it is clear from the Report that the application would have succeeded under s.15(3)CA 2006 apart from the signage that the Inspector found was erected in July 2007.
4. The Applicant does not agree with the Inspector where he says at [311]: "I consider that the true test, at least in TVG cases, is that the user is contentious if the landowner takes steps which signify to the reasonable user that he does not acquiesce in the user." This is an incomplete statement of the law. Even the Inspector appears, in contrast to the test

he applies, to accept at [325] that in *Betterment* Pattern LJ propounded that the test is: “has the landowner done enough, commensurate with the scale of the problem, to bring to the attention of the reasonable user that he does not acquiesce in such use?”

5. The central issue here is that, even if (contrary to the Applicant’s case) the wording on the signs was prohibitory to any degree on the facts of this case – with such extensive and long established user – the landowner was required to do more (as its successor later did) to either be a) commensurate with the scale of the problem and/or b) satisfy the test used by Morgan J in *Betterment* (“the *Betterment* test”)
6. Even apart from this dispute about the status of what was said in *Betterment*, it is submitted that the Inspector ought to have held that this is a case within the four corners of Judge Waksman’s principles as set forth in in *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundaton Trust & Anor v Oxfordshire County Council* [2010] EWHC 530 (Admin) (“*Warneford Meadow*”) in that the erection of ambiguously worded signage cannot bring user *as of right* to an end without further steps being taken: and on the facts found by the Inspector it necessarily follows that the application ought to succeed under s.15(3) CA 2006 as the landowner did nothing further that even arguably brought user *as of right* to an end until after 11 March 2008.
7. After *Betterment* and *Warneford Meadow* it is not necessary for the RA to consider the matter “in principle” or by reference to historical cases dealing with private rights of way (or other easements). But if such matters are considered then it is apparent that there is a sharp distinction to be drawn between private rights of way and the acquisition of village green rights. Whereas there is authority (albeit authority subject to doubt by commentators) that one instance of opposition in the prescriptive period can suffice to end user *as of right* in the former, in the later this has not been followed in *Betterment* and, it is respectfully suggested, is wrong in principle.
8. These submissions are in addition to the submissions made to the Inspector dated 24/12/12 and deal with matters arising out of the Inspector’s Report. The decision-maker is asked to read both these submissions and those of 24/12/12.
9. It would clearly be *Wednesbury* unreasonable for the RA to disregard the Inspector’s Report and the views of the Inspector are entitled to much respect. However, the Applicant submits that the RA is required to consider the matter for itself and is not bound to follow the Inspector’s analysis of the law. In this instance there is a good

reason to depart from the Inspector's Report because, it is suggested, it is safer to adopt, without reservation, the approach of the court in *Betterment* where it was said by Carnwath LJ (as he then was) at [102] that Morgan J's conclusions at first-instance "show no error of law or approach."

II: ISSUES

10. The Applicant respectfully submits that:

- a. The Inspector has erred in construing the meaning and effect of the July 2007 signage.
- b. The Inspector's test for contentious user is not justified on a proper reading of the High Court and Court of Appeal's judgements in *Betterment*.
- c. Apart from *Betterment* the test applied by the Inspector is not justified by reliance on private right of way / easement cases.
- d. The Inspector's test is not justified as a matter of principle.

11. Arising from the above, it is submitted that the following issues arise

- a. Should the RA apply the *Betterment* approach to contentiousness?
- b. Do private right of way / easement cases invalidate the *Betterment* test?
- c. In light of the above, what is the legal effect of the words used on the signage?

III: THE LAW

A: The *Betterment* test should be applied.

12. It has already been submitted by the Applicant on 24/12/12 at [14] that the test applied in *Betterment Properties (Weymouth) Ltd v Dorset County Council & Anor* ("*Betterment*") by both Morgan J [2010] EWHC 2045 (Ch) at [121] and the unanimous Court Appeal [2012] EWCA is the correct test to apply for contentious user in the village green context. This is the test derived from *Smith v Brudenell-Bruce*[2002] 2 P & CR 4 ("*Brudenell-Bruce*") and modified by Morgan J. The very experienced counsel in the case agreed on behalf of their clients that the test was "a useful general test" in village green matters. The Applicant in this case agrees. The Inspector disagrees.

13. In summary it was submitted by the Applicant at [22 – 24] of her submissions to the Inspector dated 24/12/12 that:

- Morgan J did not say that his adapted test was agreed between the parties.
- It was very unlikely that Morgan J and the Court of Appeal would have applied this test without adverse judicial comment if they thought that it was wrong or inappropriate.
- That the court in any event had the power to disregard any agreement between the parties as the litigation was brought pursuant to s.14 of the Commons Registration Act 1965.
- That by applying and opining on the application of Morgan J's test the Court of Appeal had, on any view, raised it to the status of a binding precedent.
- Alternatively the Court of Appeal's judgment should be very persuasive, especially in light of Carnwath LJ (as he then was) statement that, in his view, Morgan J's conclusions "show no error of law or approach."

14. The RA should be loathe to depart from a case that considered contentious user at such a high level, so recently and where it is understood that permission to appeal was granted by the Supreme Court on the justice point only.

15. The Inspector in the instant case states at [311] that "I consider that the true test, at least in TVG cases, is that the user is contentious if the landowner takes steps which signify to the reasonable user that he does not acquiesce in the user." Whereas in *Betterment* Pattern LJ opined at [49] that "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."

16. Further, this statement of principle is merely the starting point in Pattern LJ's judgment. He goes on to refer to what was said by Judge Waksman QC in *Warneford Meadow*. It was submitted at [28 – 31] of the submissions dated 24/12/12 that *Warneford Meadow* offers further judicial support for the contention that the test derived from *Brudenell-Bruce* ought to be applied. The Inspector does not really address this point but deals with the case by suggesting, (albeit correctly) that that *Warneford Meadow* proceeded on the common ground that a prohibitory notice would be sufficient to end qualifying user: a

concession that must be questionable in light of the arguments put forward in *Betterment*.

17. The Applicant is respectfully contending here that the principles Judge Waksman outlines at [22] and particularly at [22(5)] are clearly based on *Brudenell-Bruce*. The principles outlined represent applicable law.

18. It is important also to take note of what Pattern LJ said in *Betterment* at [50]:

It is therefore important to read the tests set out by Pumfrey J [the judge in *Brudenell-Bruce*] and Judge Waksman as directed to what the landowner in any given case will be required to do in order to manifest his objections to the use of his land. [square bracket added]

19. Pattern LJ was clearly concerned to correctly apply and interpret what had been said in these cases. With respect, the Inspector's much lower test requires the RA to disregard what Pattern LJ considered important to read properly.

20. It is submitted, as indicated previously, that the Court of Appeal's application of the test used by Morgan J is extremely significant. The Inspector concludes at [327] that there is no requirement that:

- The landowner indicates that he "continues to object."
- The landowner indicates that he will back his objection either by physical obstruction or by legal action.
- The landowner is doing everything, consistent with his means and proportionately to the user, to contest and to endeavor to interrupt the user.

21. First, as to the requirement that the landowner "continues to object", this was implicitly accepted, the Applicant submits, by the Court of Appeal in *Betterment* in respect of the robust verbal challenges made by the landowner. Morgan J had found at first instance that trespassers were challenged with frequency and that they were clearly told to leave (sometimes resulting in arguments and abusive remarks): see [72], [74], [77], [78], [79], [80], [81], [83] and [95]. The challenges that were made were it seems were not made in an organised way but merely when a member of the Curtis family or their employees came across a trespasser. Pattern LJ said at [56] "that the occasions on which a member

of the Curtis family or one of their employees actually challenged someone using the land were too infrequent to be treated as sufficient in themselves to make the local inhabitants' user of the land contentious." The conclusion to be drawn, it is respectfully suggested, is that – on the facts – the Court of Appeal were implicitly holding that the landowner was required here to show some more permanent display of opposition to the continued use of the land. See also on this point Morgan J's rejection at [137 – 143] of the argument that an objection to a previous application (*Betterment* was a repeat application) was sufficient to finish user *as of right* – particularly at [137]:

The principal reason for this conclusion is that nothing changed on the ground in terms of the character or extent of the user. The October 1995 objection appears to have had no impact on the actual user. Further, the landowners did not take any physical steps to follow up their stance nor did they take any other steps to communicate the terms of the objection more widely.

The above is inconsistent with the Inspector's finding that there is no requirement that the landowner "continues to object." By expressly disregarding this factor there is a real danger that the analysis has become flawed.

22. Second, as to the landowner's requirement to back his objection by physical obstruction or legal action both of these requirements were considered by Morgan J¹ and the Court of Appeal. In respect of fencing, the Court of Appeal effectively disagreed with Morgan J's finding that the breaking of fences rendered user contentious where Pattern LJ said at [56] that:

In these circumstances the position in relation to the maintenance of the fences is, I think, secondary and not essential to the outcome of the appeal. The fencing was obviously important while the land continued to be used for grazing but, as Mr George points out, it did not really affect local inhabitants who obtained access to the registered land via the footpaths.

This was despite Morgan J having found as a fact at [122] that:

... a reasonable user of the land would have known that the fences and hedges had been broken down or cut. Many users of the land came on to the land by means of gaps in the fences and hedges. It would have

¹more extensively than on the repeat application point.

been clear enough to such a reasonable user of the land that one of the purposes of the fences and the hedges being there was to prevent the public accessing the land at those points.

It appears to the Applicant therefore that that the imposition of the current Inspector's test in *Betterment* would have led the Court of Appeal to have upheld, rather than disagree with, the judge's conclusion on tearing down of the fences. As the Court of Appeal's approach demonstrates, to disregard these potentially relevant factors – which will differ on the facts of each case – is to apply a filter that may well lead to an erroneous decision.

23. Pattern LJ also agreed at [58] with Morgan J that it was unnecessary – on the facts of the case – to bring legal proceedings. The point is however, that in contrast to the present Inspector's view of the jurisprudence, Pattern LJ engaged with the issue.
24. Finally, as to the requirement that the landowner is doing everything consistent with his means and proportionately to the user, to contest and to endeavor to interrupt the user. As to the key element of proportionality - Pattern LJ clearly endorsed this at [325] when he said: "has the landowner done enough, commensurate with the scale of the problem, to bring to the attention of the reasonable user that he does not acquiesce in such use?"
25. Even the Inspector appears to accept at [325] that in *Betterment* Pattern LJ propounded that the test is: "has the landowner done enough, commensurate with the scale of the problem, to bring to the attention of the reasonable user that he does not acquiesce in such use?" It is not understood why the Inspector has not employed this test.
26. It is accepted that neither means nor interruption (in the sense of physical obstruction) were considered by the *Betterment* court – on the facts - to be relevant (subject to the repeat application discussed above) but nevertheless it is easy enough to conceive of circumstances where it would be perfectly reasonable for a landowner to be expected to interrupt the user: for instance, if there is only one entrance and a pre-existing gate that needs merely to be locked to prevent access. If a landowner put a Private Property - Keep Out" sign up in such circumstances and, by his negligence did nothing else, it is suggested that the user would continue to be *as of right*: see *R (Beresford) v Sunderland City Council* (HL) [2004] 1 AC 889 ("*Beresford*") at [72] *per* Lord Walker. Similar principles, will apply in the instant case, where there were a greater number of entrances and signs, but the wording of the later was not, on any account, sufficiently clear.

27. In the current case the Inspector has found that the signs remained in place for about a month and it is submitted that it follows from this – and assuming for one moment the signs did have a prohibitory element - the absence of any evidence that they had any material impact on users means that they were *actually* ignored and produced no material change in behaviour. In the case of the Coppice Drive entrance the sign remains to this day and has been ignored and/or produced no material effect.
28. It is submitted that a landowner can not stand by and watch while a sign is ignored in the case of a potential village green. As the Inspector's findings of fact as to later periods show, further steps² could have been taken in July 2007 and afterwards. More weight ought to have been given to the fact that Mr. Gunderman was living adjacent to the application land between 2007 – 2009 and did nothing to oppose the use when it would have been easy to do so.

B: Other authorities concerning private rights of way and other easements are no justification for the Inspector's test.

29. The Inspector exhaustively reviews in his Report private right of way cases and other easement cases in support of the test that he applies and concludes that they justify the test he applies and, it appears from these cases, that a single incident of opposition during a 20 year period could be suffice to defeat a claim and/or that in any event the test to employed is not nearly as demanding as that in *Brudenell-Bruce*. Aside from the matters raised above it is possibly to deal with these authorities in a brief way.
30. These cases deal with the acquisition of very different property rights compared to the quasi-proprietary, public, legal rights that registration as a village green confers. Caution should be had when reading cases relating to a right to draw water from an artificial waterway, the right to commit a nuisance or the right of support. Even in the case of a private right of way sharp distinctions are to be drawn. This is why, it is strongly submitted, that Pattern LJ said in *Betterment* at [41 – 42] that in respect of the test in *Brudenell-Bruce* (a right of way case):

41. This requires to be unpacked a little. Assuming that the notice is in terms sufficiently clear to convey to the average reader that any use of the relevant land by members of the public will be treated as a trespass

²Which are not listed here in the interests of brevity.

then it will be irrelevant that individual users either misunderstood the notice or did not bother to read it. The inhabitants who encounter the sign have to be treated as reasonable people for these purposes to whom an objective standard of conduct and comprehension is applied. But the last sentence of this dictum suggests a wider test under which the owner who does everything reasonable to contest the user will thereby have made such user contentious regardless of the extent to which his opposition in fact comes to the notice of those who subsequently seek to establish the prescriptive right.

42. In the case of a private right of way, the situation is much less likely to arise because any sign erected along the route of a potential right of way will almost certainly come to the attention of the dominant owner and the judgments in the right of way cases have to be read in this context. But in the case of a town or village green where the area of land will often be much larger, the problems of visibility may be more common. [emphasis added]

31. What Pattern LJ said here throws light on the decision in *Newham v Willison* (1987) 56 P & CR 8 ("*Newham*") where it was held that a the purported removal by the plaintiff of the obstacles erected was sufficient evidence of the user no longer being without force or contention. The Inspector says of this case at [317] that if the *Brudenell-Bruce* test was employed the court would have required the erection of a fence. The Inspector also correctly points out that in *Brudenell-Bruce* itself the judge held that "It was enough that the defendant had written two letters to the claimant forbidding use of the track. The actual decision is therefore consistent with the proposition that user was contentious because the user knew that the landowner did not acquiesce in his use."
32. The Applicant submits this symmetry is merely a reflection of the nature of a right of way whereas in village green cases the factual matrix is more complex and the levels of use of an altogether different scale (in the present case the Inspector noted "the vast" number of witnesses who gave evidence) and continuous throughout the relevant 20 year period. Easements may be discontinuous in nature and merely enjoyed at regular intervals. In *Beresford* Lord Scott made the point strongly at [34]:

34 It is a natural inclination to assume that these expressions, "claiming right thereto" (the 1832 Act), "as of right" (the 1932 Act and the 1980 Act) and "as of right" in the 1965 Act, all of which import the three characteristics, *nec vi, nec clam, nec precario*, ought to be given the same meaning and effect. The inclination should not, however, be taken too far. There are important differences between private easements over land and public rights over land and between the ways in which a public right of way can come into existence and the ways in which a town or village green can come into existence. To apply

principles applicable to one type of right to another type of right without taking account of their differences is dangerous.[emphasis added]

33. In the Canadian jurisdiction, or at least in Ontario, the court in *Bloor In* tackled the question head on: “can a single act interrupt the prescriptive period?” The judgement of Chief Justice Laskin, which is to be preferred to his colleague the Applicant submits, neatly shows that in the context of a dispute between neighbours that the posting of two signs sufficed (on the facts) to end the prescriptive period. Laskin JA concluded at [125]:

The underlying policy considerations militate against the courts taking a narrow view of the meaning of “protest” in cases like this. We should not require servient owners to take expensive, drastic, or aggressive measures to assert their rights, so long as their actions clearly signify that the use is contested. The signs are enough, in my view, to show that Vilhena’s use of the lane after February 1987 was not without violence.

34. In *R (on the application of Lewis) v Redcar and Cleveland Borough Council and another* [2010] UKSC 11 (“*Redcar*”) Lord Walker also distinguished right of way case from village greens at [37 – 38] in the context of deference:

37 There is in my opinion a significant difference, on this point, between the acquisition of private and public rights. As between neighbours living in close proximity, what I have referred to as “body language” may be relevant. In a Canadian case of that sort, *Henderson v Volk* (1982) 35 OR (2d) 379 , 384, Cory JA (delivering the judgment of the Court of Appeal of Ontario) observed:

“It is different when a party seeks to establish a right-of-way for pedestrians over a sidewalk. In those circumstances the user sought to be established may not even be known to the owner of the servient tenement. In addition, the neighbourly acquiescence to its use during inclement weather or in times of emergency such as a last minute attempt to catch a bus, should not too readily be accepted as evidence of submission to the use.

It is right and proper for the courts to proceed with caution before finding that title by prescription or by the doctrine of lost modern grant was established in a case such as this. It tends to subject a property owner to a burden without compensation. Its ready invocation may discourage acts of kindness and good neighbourliness; it may punish the kind and thoughtful and reward the aggressor.”

38 That is, if I may say so, obviously good sense. But I do not think it has any application to a situation, such as the Court now faces, in which open land owned by a local authority is regularly used, for various different forms of recreation, by a large number of local residents. The inspector's assessment did in my opinion amount to an error of law. He misdirected himself as to the significance of perfectly natural behaviour by the local residents.[emphasis added]

35. The Applicant submits that to apply the rationale from English and Canadian rights of way cases is not good sense and the RA ought to decide to revert back to *Betterment* and *Warneford Meadows* discussed above: these cases are village green cases and do not come attached with the “health warnings” as discussed above.
36. Finally, it is necessary to bear in mind that much of the jurisprudence concerning easements under the Prescription Act 1832 is concerning with the difference and interplay between an interruption pursuant to s.4 (where special rules apply to continue the *as of right* use in the face of an obstruction) and user ceasing to be *as of right* (which is a separate requirement). As cited above, the important differences are mentioned in *Beresford* by Lord Scott in *Beresford* at [34]. In the further alternative the Applicant would reserve the right to argue that *Newnham* was wrongly decided on the basis put forward by the editors of *Gale on Easements* at [4-86] namely that:

The judgements in *Eaton v Swansea Water Works Co* are to the effect that interruption acquiesced in for less than a year may be of importance “on the question whether there ever was a commencement of an enjoyment *as of right* and may show “that the enjoyment never was of right” but do not suggest that such interruptions may be relied upon to defeat the claim on the ground that user *as of right* became “no longer *as of right*.”

In *Newham* the court treated interruption as if it was the same as contentiousness – and it is not clear that this is correct. However, it is not necessary for *Newham* to be reversed for the reasons that have been explained above. The criticism in *Gale on Easements* does demonstrate yet again, the Applicant respectfully suggests, the dangers of applying private right of way cases in the instant case to arrive at a different test for contentious user than that considered useful by the parties in *Betterment* and applied by the courts.

C: Conclusions on the legal effect of the signs

37. This case turns on the effect of the signage as it is clear that the landowner took no further material steps until after the commencement of the grace period under s.15(3) CA 2006.
38. In the first instance, if the RA were to take a different view to that taken by the Inspector at [309], and decide that the signs were not prohibitory at all then it is submitted then land ought to be registered as the landowner did not take any further sufficient acts to oppose use. Relevant matters for consideration are set out in the submissions of 24/12/12 at [42]. Interpretation of signs ought to be on the basis set out in *Warneford Meadow*. Turning to the Inspector's findings there is no magic to a reasonable reader in the words "Private Property." These words do not denote that trespassory activity will be opposed or is even unwanted by the landowner. The context was long user since 1975 by the village and is notable that the Inspector heard a "vast number of witnesses" on this point. To adapt what Sullivan J said in *Redcar* at first instance at [22] "it would have been very easy to erect notices saying, for example, "Thamesfield. Private property. Keep out."
39. As established in *Warneford Meadow* evidence of the actual response to the signs is relevant to whether a reasonable user would have understood that the landowner opposed their use. The signs were up for around 1 month. The Inspector says at [307] that "the vast majority of local people who used Thamesfield for LSP were peaceable folk who would not have dreamed of breaking down gates or fences..." The Report discloses no real evidence of any effect on behaviour as a result of the signs being erected. They were, together with the sign that remains, ignored.
40. The Inspector held at [309] that:

I do not think that any ordinary reader (unversed in the technicalities of the law relating to prescription) would understand the reference to permission as being other than a reinforcement of the message given by the "PRIVATE PROPERTY" heading by making it clear that no one was entitled to enter the land except with the owner's permission.

This is not understood, as it is not clear at all how any user would know how to go about seeking such a permission as no details are provided. Working on this logic - if the signs were an invitation to seek permission this cannot amount, it is suggested, to real *opposition* to use as the landowner is suggesting that there are circumstances under

which it would permit access (albeit it is not clear whether such permission would be revocable). In this context it is difficult to see how the sign can be said to represent “continued opposition” to use. Any user who did not gain permission would still, it is suggested be peaceable, and the sign underscores that they were there without permission.

41. Further or in the alternative, as a matter of law, even the rejection of a proposed written revocable licence cannot terminate user *as of right* – the landowner must take further steps:*Bloor Incat* [117 – 120] *per* Laskin JA. At [119] Laskin JA said:

[117] Gillese J.A. says that, by refusing to sign the agreement, Sochaniwskyj was, in effect, telling Vilhena that any future use of the lane would only be with his (Sochaniwskyj’s) permission. She writes at para. 77 of her reasons:

By refusing to sign the 1987 document, Dr. Sochaniwskyj refused to grant Mr. Vilhena an easement over the lane. The legal effect of his refusal was tantamount to saying to Mr. Vilhena “I will not give you any legal right to use the lane. I may permit you to use it, as I have in past, but only so long as I wish. By refusing to give you any legal right to use the lane, I am telling you that I can and will withdraw my permission at will.” In other words, in law, the refusal to sign the 1987 document (i.e. grant the easement) made it clear that any future use by Mr. Vilhena of the lane was solely at the discretion of the Sochaniwskyjs.

[118] And again at para. 79:

Here, as I have explained, the refusal to sign the 1987 document made it clear that Mr. Vilhena’s use was with the Sochaniwskyjs’ permission, and not as of right. Therefore, Mr. Vilhena’s use did not meet the definition of “as of right” in *Kaminiskas*.

[119] Respectfully, there is no evidence to support the conclusion that Sochaniwskyj’s refusal to sign the agreement meant that Vilhena’s later use, or indeed his previous use, was with Sochaniwskyj’s permission. If Vilhena had Sochaniwskyj’s permission, then presumably Sochaniwskyj would have told him so, or signed the agreement, or negotiated another agreement. But he did none of these things. If anything, Sochaniwskyj’s refusal to sign the agreement showed that Vilhena’s later use was not with Sochaniwskyj’s consent. And, indeed, the evidence of Sochaniwskyj’s subsequent conduct suggests that Vilhena’s later use was *without* Sochaniwskyj’s permission and against his will.

[120] Therefore, in my view, neither Vilhena’s proffering of the agreement nor Sochaniwskyj’s refusal to sign it stopped the running of the prescriptive period. To determine whether the prescriptive period was interrupted, we need to examine what actually happened after February 1987.

In the present case an invitation on a sign to seek permission ought not be held, of itself, have make user contentious or permissive. The principle appears to apply with greater force to a village green rather than a private right of way.

42. In general terms the actions and/or words on signs need to be sufficiently clear to users that they are put on notice that they ought to make an application to register their rights or risk losing them after the grace period expires.
43. The signs in the instant case were ambiguous and therefore further actions were required by the landowner whether one accepts merely a proportionality test or the full test used by Morgan J in *Betterment*. Disregarding, as a matter of law, the factors mentioned in these tests can change (and this this case does change) the outcome of an application. Against the backdrop of the scale and extent of established historical use it would have been easy in this case, for example, to put “Keep Out” signs on the land or to verbally challenge at least some of the users. Such actions would then have fallen for consideration in all the circumstances.
44. Accordingly, because nothing further was actually done by the landowner in the relevant time period after the erection of the signs it is respectfully suggested that the only lawful approach for the RA to take is to register the application land pursuant to s.15(3) CA 2006.

**Paul Wilmshurst
Counsel for the Applicant
5 April 2013**

**9 Stone Buildings,
Lincoln’s Inn,
London WC2A 3NN**

From: Alastair Wallace
Sent: 17 April 2013 17:11
To: Emma-Jane Brewerton
Cc: Catherine Woodward
Subject: Wraysbury VG102

Dear Emma-Jane,

Further to our submissions on the Inspector's report please find attached a copy documents which our client has obtained concerning the locality element of the registration criteria.

We refer to paragraphs 299 and 208 of the inspectors report. The inspector comments he has proceeded on the basis that Wraysbury is a locality being either a civil or ecclesiastical parish but that if the application were otherwise successful he would require further evidence of this.

We submit that the application should be successful and thus we consider it appropriate to submit the evidence. Our position is as follows:

1. we rely on the Ecclesiastical Parish of Wraysbury;
2. we attach a copy of a plan of the Parish as at 04/04/13 signed by a relevant officer of Church of England;
3. we also attach a letter dated 04/04/13 signed by the officer confirming that the boundaries of the Parish are unaltered since 14 May 1987;
4. the applicant relies on s.15(2) or alternatively s.15(3) of the CA 2006. The date of the application is found by the Inspector to be 11/03/2010. Accordingly, the earliest date of qualifying use relied upon by the applicant is 11/03/1988. From the evidence submitted it is apparent that there have been no changes to the locality during this period.

For completeness we have attached copies of the other documents referred to in the Church's letter of 4/04/13.

In view of the quality of the copy documents attached we will ask our client to file the originals with the RA.

Yours sincerely,

Alastair Wallace

Public Law Solicitors
8th Floor
Albany House
Hurst Street
Birmingham
B5 4BD

DX 711803 Birmingham 28

Tel: 0121 256 0326
Fax: 0121 622 1426

<http://www.publiclawsolicitors.co.uk>

- 4 JUL 1986

PASTORAL MEASURE 1983

AA/P

The Bishop of Durham

Darby

Edin with Eton Wick and Gouvery

Hildham

Taplow

Langley Marsh

Lytton cum Chawley

Saint Thomas, Chatterbox

Datchet

Wyandlingbury (historical name as Wyandlingbury)

Marble

Stoke Poges

Old Wokingham

in the diocese of Oxford.

PASTORAL ORDER

WHEREAS the Church Commissioners, acting in pursuance of the Pastoral Measure 1983, have prepared a draft Order to give effect to proposals for the annex of certain parishes to the diocese of Oxford and having caused the said draft to be submitted to the same to see

AND WHEREFORE I, Patrick, Bishop of Oxford, do make this Order under the Great Seal of Great Britain this 30th day of July 1986.

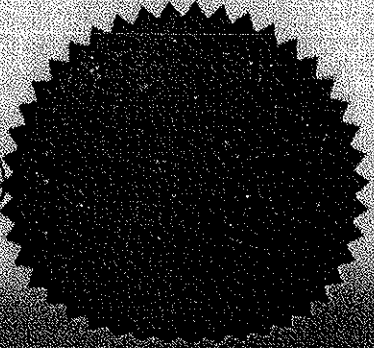
1. All that part of the petition of Trowbridge which is enclosed hereunto and which shall be transferred to the parish of Saint Andrew.

2. This Order shall come into operation upon the first day of the month following the date of the making hereof.

The COMMON SEAL of the Church Commissioners was hereunto affixed in the presence of-

[Signature]
SECRETARY

SIGNED by the Right Reverend Prelate, Bishop of Trow, and SEALED with his Episcopal Seal in the presence of-



*Patrick Gann
Bishop of Trow
Ridgeway Place
Trow, Trow
Hants*

*+ Mrs Jones
30 June 1986*

*I certify that this is a true copy of the original.
P. Jones (Clerk Jones) Mapping Section Church Commissioners
4/4/2013*

201 A

1. That part of the parish of Lorton near Chalkney which is colored pink and lettered B on the annexed map B shall be transferred to the parish of Lorton.

2. All that detached part of the parish of Stoke Poges which is colored pink and lettered C on the annexed map B shall be transferred to the parish of Stoke Poges.

3. All that detached part of the parish of Stoke Poges which is colored blue and lettered D on the annexed map B shall be transferred to the parish of Langley Marsh.

4. All that part of the parish of Horton which is colored blue green and lettered E on the annexed map B shall be transferred to the parish of Langley Marsh.

5. All that part of the parish of Horton which is colored purple and lettered F on the annexed map B shall be transferred to the parish of Saint Thomas Church.

6. All that part of the parish of Langley Marsh which is colored purple and lettered G on the annexed map B shall be transferred to the parish of Saint Thomas Church.

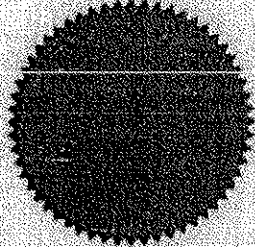
7. All those parts of the parish of Saint Thomas Church which are colored brown and lettered H and J on the annexed map B shall be transferred to the parish of Lorton.

All that part of the parish of Iwer which is coloured purple and letters A and B annexed map B shall be transferred to the parish of Saint Thomas, Dorchester.

All those parts of the parish of Oxtotek which are coloured yellow and letters K and L on the annexed map B shall be transferred to the parish of Overbury.

All that part of the parish of Dorchester which is coloured orange and lettered M on the annexed map B together with that part of the parish of Dorchester which is coloured orange and lettered O on the annexed map B shall be transferred to the parish of Horton.

All that part of the parish of Oke Rowston which is coloured yellow and lettered N on the annexed map B shall be transferred to the parish of Overbury.



THE COMMON SEAL of the Church Commissioners was hereunto affixed in the presence of-

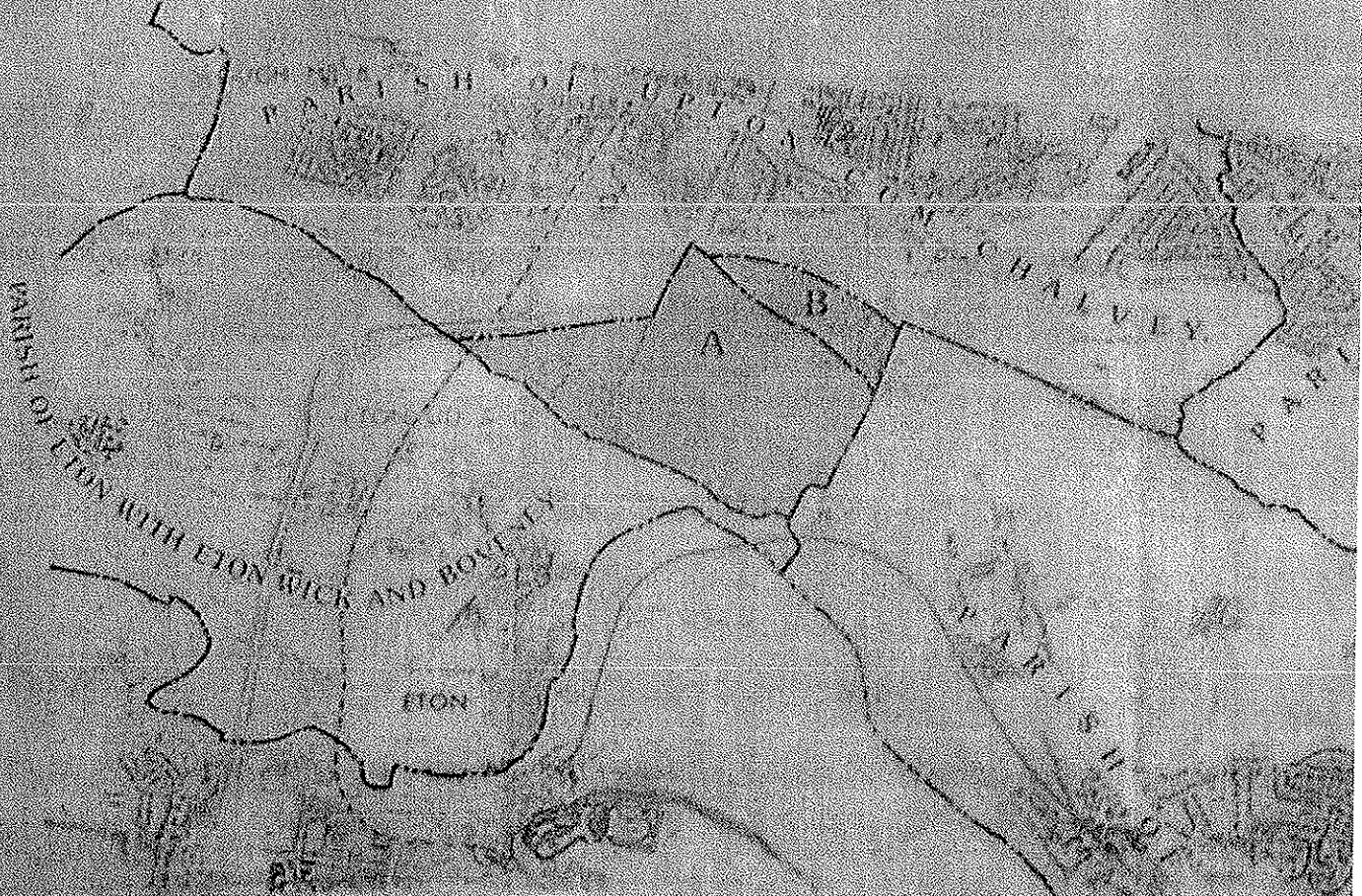
[Handwritten signature]

CERTIFICATE OFFICE

WITNESSED by the Right Reverend Bishop, Bishop of Oxford, and SEALED with His Episcopal Seal in presence of-

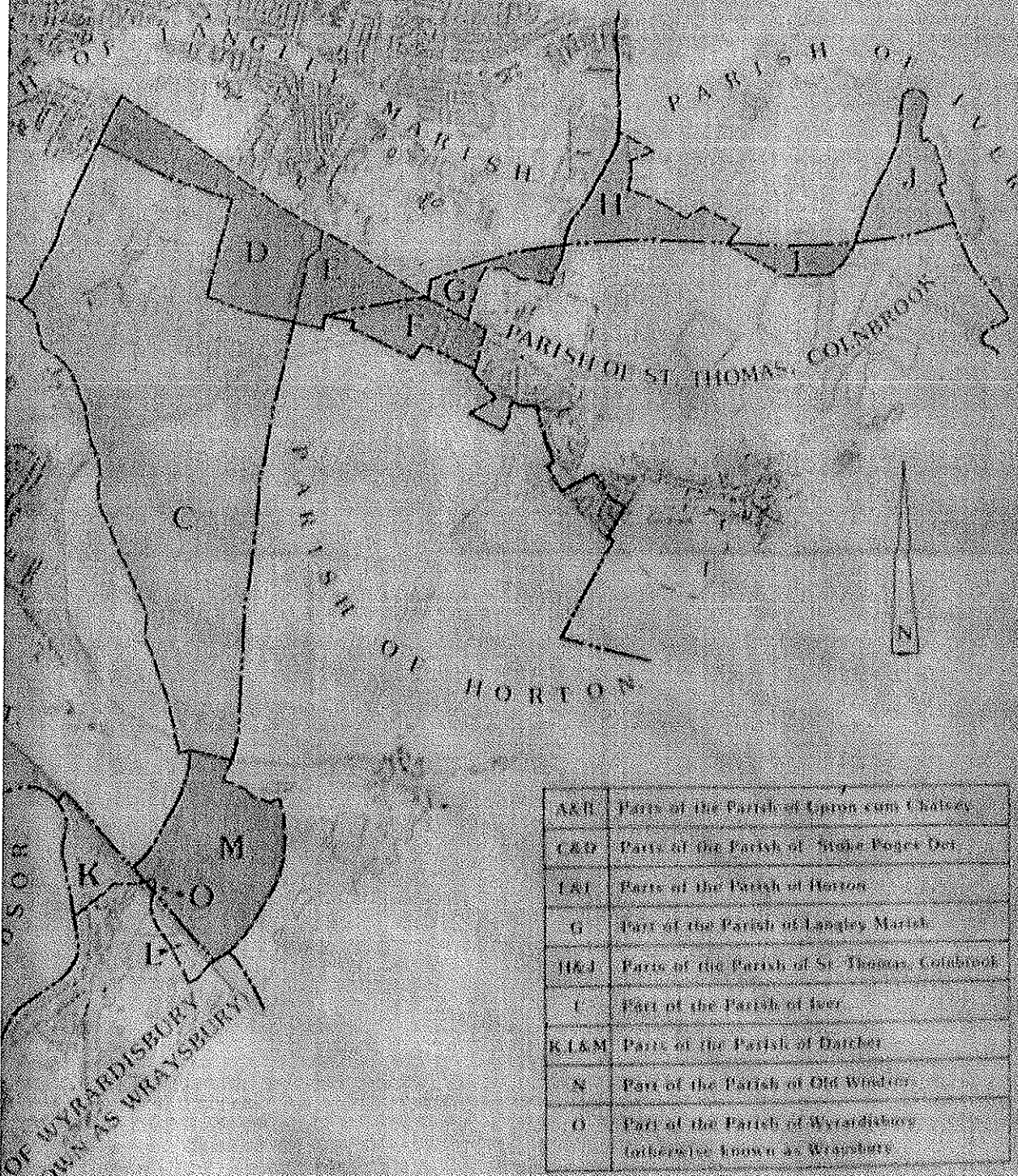
[Handwritten signature: Peter Dean]

[Handwritten signature]



Map Showing
The Alteration of the Areas of
THE PARISHES OF
ST. THOMAS, COLNBROOK,
DATCHET,
ETON WITH ETON WICK AND BOVENEY,
HORTON,
IVER,
LANGLEY MARISH,
OLD WINDSOR,
STOKE POGES,
UPTON CUM CHALVEY,
and
WYRARDISBURY (OTHERWISE KNOWN AS WRAYSBURY).

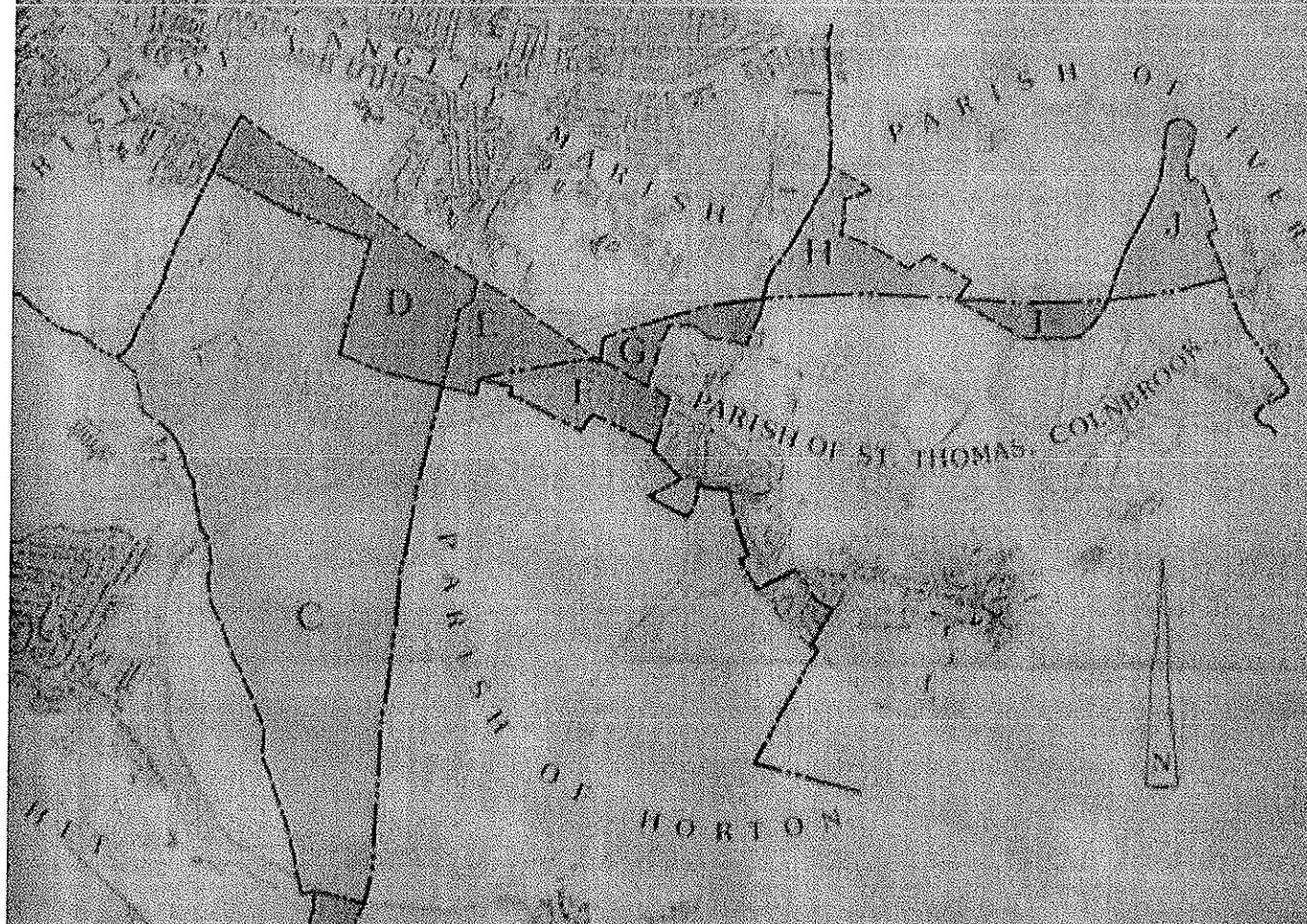
Scale - 6 Inches to 1 Mile



A&B	Parts of the Parish of Upton cum Chalvey
C&D	Parts of the Parish of Woke Poses Det
E&F	Parts of the Parish of Horton
G	Part of the Parish of Langley Marsh
H&I	Parts of the Parish of St. Thomas Colnebrook
J	Part of the Parish of Isor
K,L&M	Parts of the Parish of Barber
N	Part of the Parish of Old Windsor
O	Part of the Parish of Wyrardisbury (otherwise known as Wraysherry)

I certify that this is a true copy
of the original
C. J. Day (Gov. Secy)
Mapping Section
Chesham Commission 4/11/2012

Scale: 2 1/2 Inches to 1 Mile



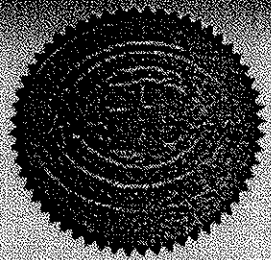
WILKINSON
 PARISH OF WYRARDISBURY
 PREVIOUSLY KNOWN AS WYRARDISBURY

A&B	Parts of the Parish of Capton cum Cholesey
C&D	Parts of the Parish of St. Peter's Dec.
E&F	Parts of the Parish of Horton
G	Part of the Parish of Langley Marsh
H&I	Parts of the Parish of St. Thomas Colnburgh
J	Part of the Parish of Irem
K&L	Parts of the Parish of Gatchar
M	Part of the Parish of God Window
N	Part of the Parish of Wyrardisbury (otherwise known as Wyrardisbury)

I certify that this is a true copy
 of the original
 C. J. (Clerk of the Court)
 Mapping Section
 Clerk Commission 10/1/15

NOW THEREFORE I, Richard, Bishop of Leicester, do make this Order
my seal this 14th day of April 1986.

- The name of the benefice and parish of Saint Andrew, Whitwell and altered to "The Benefice (or Parish) of Thrapston, Saint Andrew".
- This Order shall come into operation from the first day of the month following the date of the making hereof.



The COMMON SEAL of the Church Commissioners was hereunto affixed in the presence of:-

[Signature]
Secretary

[Signature]

SIGNED by the Right Reverend Richard, Bishop of Leicester, and SEALED with his Episcopal Seal in the presence of:-

[Signature]
Private Secretary
Bishop's Lodge
Leicester

14 APR 1986

PASTORAL MEASURE 1986

The parish of Wyardbury (parishes known as Wyardbury) in the diocese of Oxford
The parishes of Egham
Saint Paul, Egham Hythe
in the diocese of Guildford

PASTORAL ORDER

WHEREAS the Church Commissioners, acting in pursuance of this Pastoral Measure 1983, have prepared a draft Order to give effect to proposals for altering the areas of certain parishes in the diocese of Oxford and the diocese of Guildford and having sealed this copy thereof have submitted the same to us

NOW THEREFORE WE, Patrick, Bishop of Oxford and Michael, Bishop of Guildford, do make this Order under our seals this 14th day of April

from the first day of the month following the date of the making of this Order with the areas of the parishes of Wyardbury, Egham and Saint Paul. The same shall be altered in the manner described in the Schedule to this Order and delineated on the annexed map.

Handwritten notes at the top of the page, including "The name of the benefice..." and "14 APR 1986".

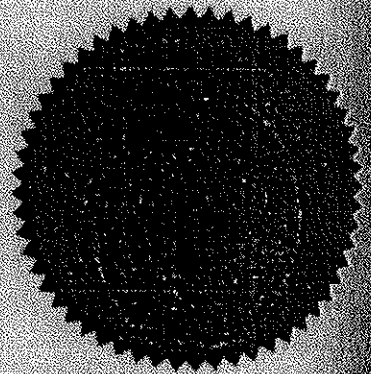
201 H

SCHEDULE

1. All that part of the parish of Wyrardisbury which is coloured pink on the annexed map shall be transferred to the parish of Egham.
2. All that part of the parish of Wyrardisbury which is coloured green on the annexed map shall be transferred to the parish of Saint Paul, Egham Hythe.

THE COMMON SEAL of the
Church Commissioners was
hereunto affixed in the
presence of:-

[Signature]
ADMINISTRATIVE OFFICE



SIGNED by the
Right Reverend Patrick,
Bishop of Oxford, and
SEALED with his Episcopal
Seal in the presence of:-

[Signature]
Isisian Hyslop

Patrick [Signature]

SIGNED by the
Right Reverend Michael,
Bishop of Guildford, and
SEALED with his Episcopal
Seal in the presence of:-

[Signature]
Michael Kneller

Michael Kneller

MAP SHOWING

THE ALTERATION OF THE AREAS OF
THE PARISHES OF

EGHAM.

ST. PAUL, EGHAM HYTHE.

AND

WYRARDISBURY. (OTHERWISE KNOWN AS WRAYSBURY.)



A. & B. PARTS OF THE PARISH OF WYRARDISBURY.
(OTHERWISE KNOWN AS WRAYSBURY.)

SCALE, 11 INCHES TO 1 MILE.

14 MAY 1987

PASTORAL MEASURE 1987

The Parish of Wynyardbury (otherwise known as Wynyardbury)
in the diocese of Oxford
the parish of Staines
in the diocese of London

APP

PASTORAL ORDER

WHEREAS the Church Commissioners, acting in pursuance of the Pastoral Measure 1983, have prepared a draft Order to give effect to proposals for uniting the areas of certain parishes in the diocese of Oxford and the diocese of London and hereby sealed this copy thereof have submitted the same to us:

NOW THEREFORE WE, Simon, Bishop of Buckingham duly appointed in pursuance of the provisions of the Pastoral Measure 1983, and Christian, Bishop of London do make this Order

in full force and effect from the day of May 1987.

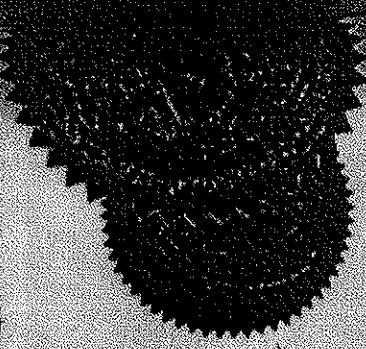
*I certify this is a true copy & do myself
G. J. (Gen Sec)
M. J. (Gen Sec)
Church Commissioners 14/5/87*

1. The benefice of Saint Just-in-Penwith and the benefice of St. Mary's (hereinafter referred to as "the benefices") shall be held in future by a single incumbent.

2. The right of presentation to the benefices on hold in plurality (as defined in section 10 of the Pastoral Measure 1983) shall be exercised in a recurring series of three successive turns, of which the patron of the benefice of Saint Just-in-Penwith shall have the first and second turns, and the patron of the benefice of St. Mary's shall have the third turn.

3. The incumbent shall reside in the parsonage house of the benefice of Saint Just-in-Penwith.

4. This Order shall come into operation upon the first day of the month of May following the date of the making hereof.



The COMMON SEAL of the Church Commissioners was hereunto affixed in the presence of:-

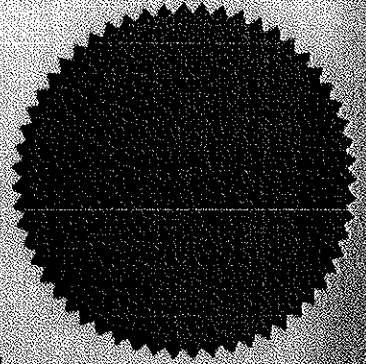
[Signature]
AUTHENTICATING OFFICER

SIGNED by the Right Reverend Peter Bishop of Truro, and SEALED with his Episcopal Seal in the presence of:-

[Signature]
+ Peter [Signature]

As from the first day of the month following the date of the making of this Order all that part of the parish of Wyrardisbury which is coloured pink on the annexed map shall be transferred to the parish of Staines.

The COMMON SEAL of the Church
Commissioners was hereunto
affixed in the presence of:-



D. J. Day

AUTHENTICATING OFFICER

SIGNED, SEALED and DELIVERED
by the Right Reverend Simon,
Bishop of Buckingham in the
presence of:-

+ *Simon Buckington*

*Annal E. Rastall
High Wicks,
23 Suiptsms Way,
Kensington,
Oxford Ox1 5RZ*

SIGNED, by the Right Reverend
and Right Honourable Graham
Bishop of London, and SEALED
with his Episcopal Seal
in the presence of:-

+ *Graham London*

*A. S. Davaz
Diocesan Registry
35 Great Peter Street
London*

S. 20.1

205

Map Showing
THE ALTERATION OF THE AREAS OF
THE PARISHES OF
STAINES,
WYRARDISBURY
(OTHERWISE KNOWN AS WRAYSBURY).



Scale: 10 Inches to 1 Mile.

Correct copy of map annexed
to Pastoral
Order dated

A Part of the Parish of Wyrardisbury
(otherwise known as Wraysbury)



THE CHURCH
OF ENGLAND
CHURCH
COMMISSIONERS

Su Burrows
21b Coppice Drive
Wraysbury
Staines, TW19 5JG

Gwen Jones
Mapping and Graphics Officer

4 April 2013

Dear Su

Boundaries of the ecclesiastical parish of Wraysbury

I enclose two maps of the ecclesiastical parish of Wraysbury, one showing the boundaries from 1975, prior to any changes, and the other showing the current boundaries, both signed and dated by me.

I also enclose copies of the three Pastoral Orders dated 14 April 1986, 4 July 1986 and 14 May 1987, and their accompanying maps, which altered the parish boundaries as detailed in the orders. All are signed and dated by me to confirm that they are true copies.

I confirm that these are the only boundary changes that I have been able to trace between 1975 and today, and that as far as I am aware there have been no changes to the parish boundaries since 1987.

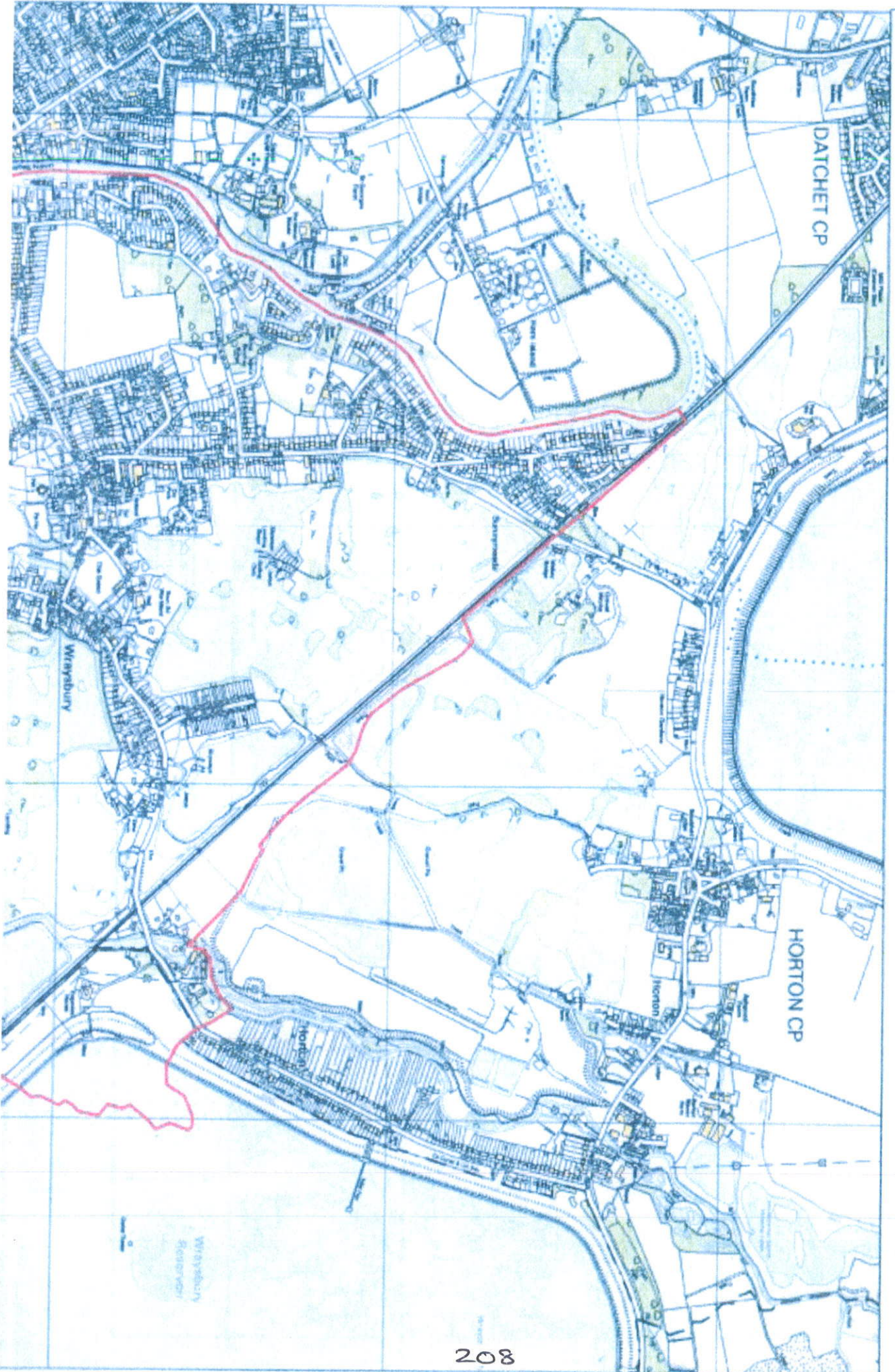
I hope that this answers your questions.

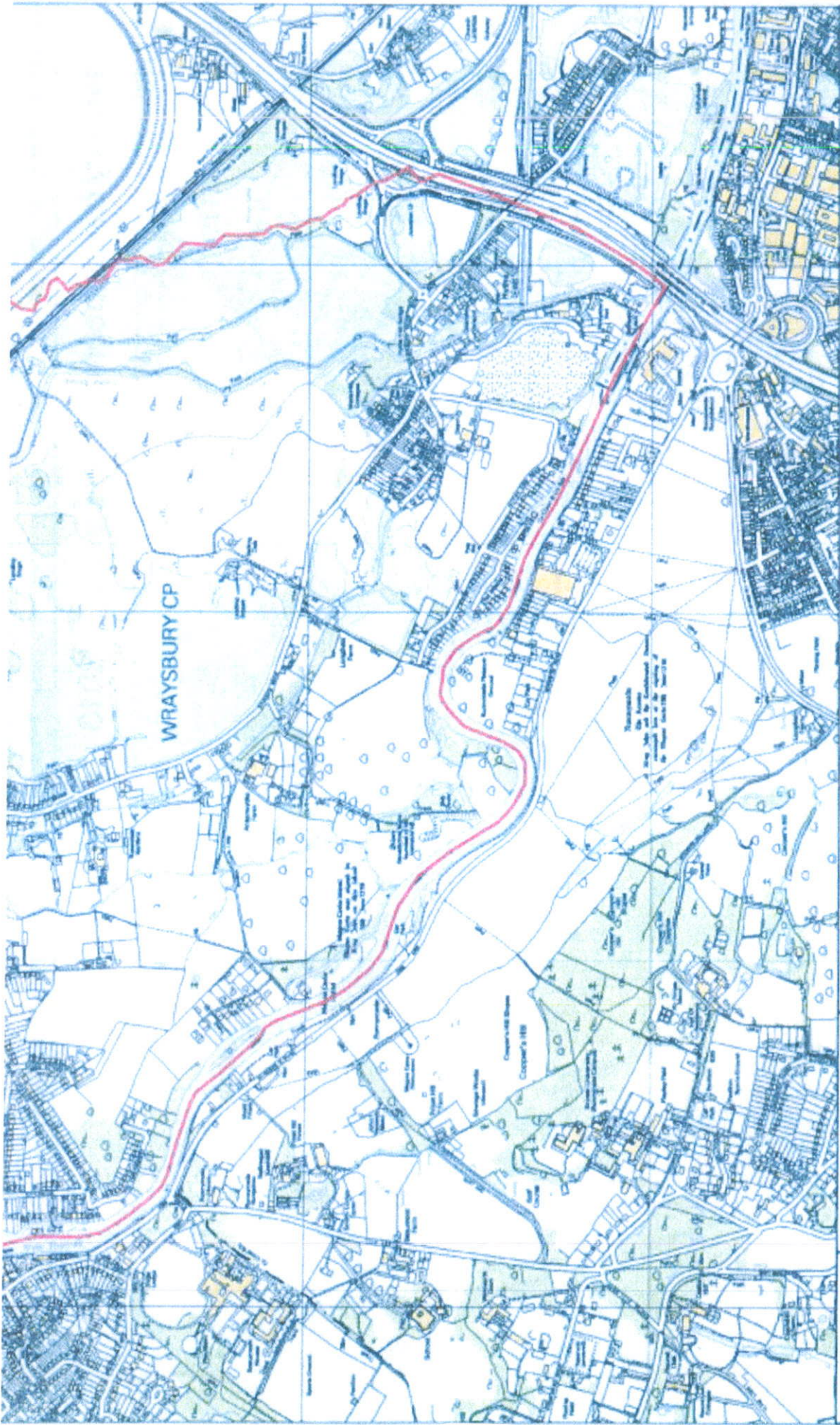
Yours sincerely

Yours sincerely

Gwen Jones

Wraysbury parish boundaries as at 04/04/2013

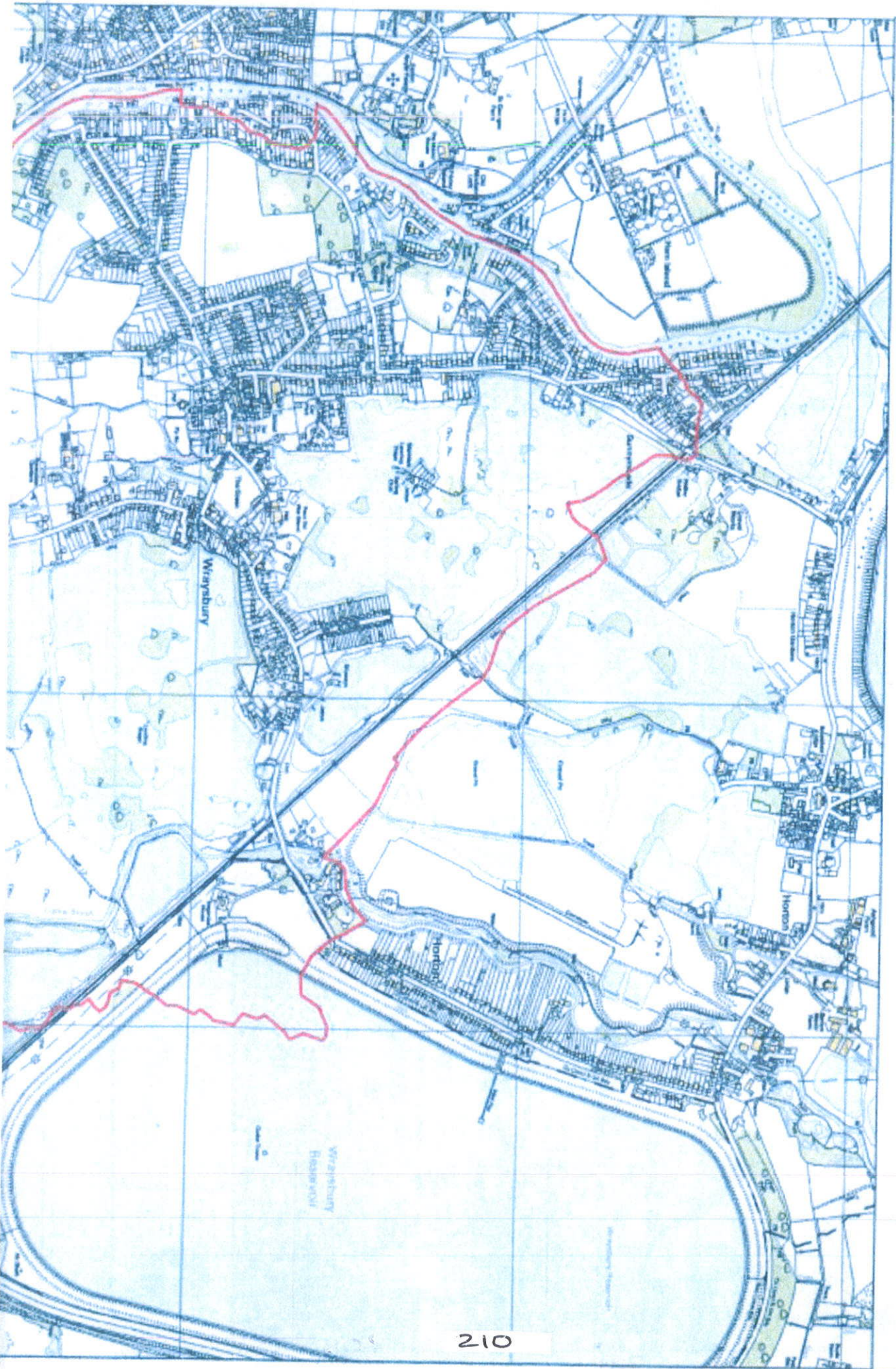


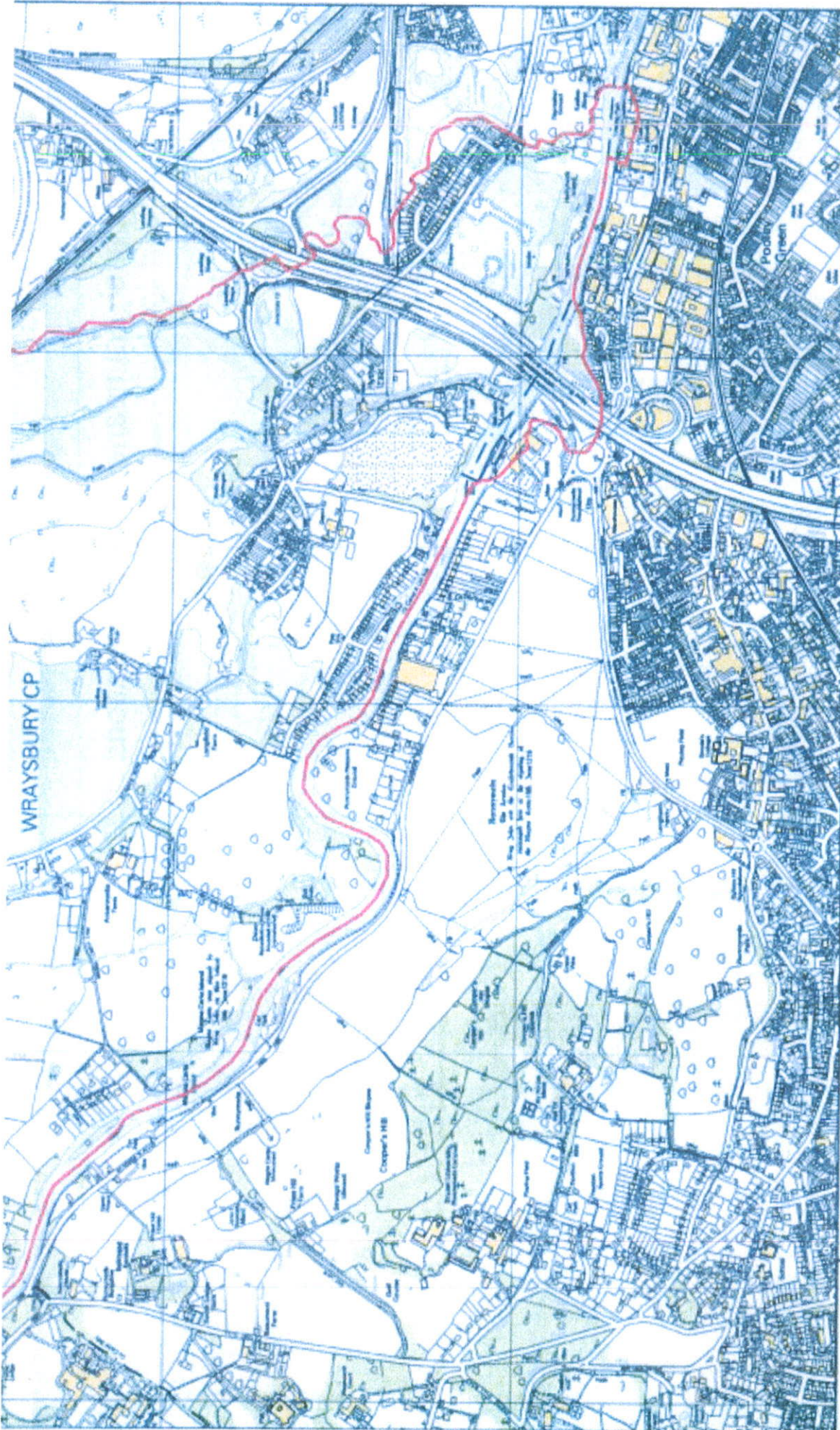


		© Crown copyright and database right Ordnance Survey Ltd. no 100040148	
		Drawn By Gwen Jones	Scale 1:15000
		File / Pathname / Project / Drawing No. Z:\gwen.jones\Pastoral\Wraysbury.wor	

Gwen Jones
4/4/2013

Wraysbury parish boundaries prior to alterations





	© Crown copyright and database right Ordnance Survey. No. 100046148		
	Drawn By Gwenn Jones	Scale 1:15000	Date 4/4/2013
	File / Pathname / Project / Drawing No. Z:\gwen.jones\Pastoral\WraysburyA3.wor		

G. Jones
 4/4/2013

Our Ref: AM
Your Ref: 387107 /
005541-CAW-LG15057

33 The Green
Wraysbury
Staines
TW19 5NA

Chairman
Highways and Rights of Way Panel
Royal Borough of Windsor and Maidenhead
C/O Shared Legal Solutions
Wokingham Borough Council
Shute End,
Wokingham,
Berkshire,
RG40 1WH

01784 483060

28th March 2013

Dear Sir,

VG102 Thamesfield, Wraysbury

I am instructed by Mr and Mrs Gates and Mr and Mrs Smith in objecting to the above application.

I trust that the Panel will act on and adopt the findings of the Inspector in this case and not register the land. I include the relevant paragraph from the report.

[30] In relation to the application to amend the TVG application to exclude the land owned by Mr. and Mrs. Smith and Mr. & Mrs. Gates, the position before Miss Wood was that WESL opposed the application. This seems to have been a tactical move by WESL to discourage the Smiths and the Gateses from supporting the amended application. However, at the end of the public inquiry, WESL withdrew its objection to this amendment. The present position is therefore that no one opposes the proposed amendment. The land acquired by the Smiths and the Gateses was, as appeared at the public inquiry, part of the overgrown belt of scrub alongside the boundary of Thamesfield with little recreational value to local people. In these circumstances, I consider that it would be appropriate to allow the applicant to amend her application to exclude the land owned by the Smiths and the Gateses.

I also submit the final paragraph of the report:

[337] I recommend that the TVG application should be rejected. Under regulation 9(2) of the 2007 Regulations it is necessary for the CRA to give to the applicant written reasons for the rejection of her application. I recommend that the reason is stated to be "the reasons given in the inspector's report of 25th February 2013".



If the Panel ignores the findings of the Inspector at the Public Inquiry and registers the land you should allow the applicant to amend the application to exclude both of my clients land from the registration

Yours faithfully,



A. P. Moran FRICS
a.moran@moransurveyors.co.uk

In the Matter
of an Application to Register
Land Known as Thamesfield, Wraysbury,
Royal Borough of Windsor and Maidenhead
As a New Town or Village Green

FURTHER REPORT
of Mr. VIVIAN CHAPMAN Q.C.
3rd May 2013

Royal Borough of Windsor and Maidenhead,
Shared Legal Services,
PO Box 151, Shute End,
Wokingham,
Berkshire RG40 1WH

Ref Sean O'Connor/Catherine Woodward/ Emma-Jane Brewerton
VRC/13/35/WP/S4/Thamesfield Further Report v2

In the Matter
of an Application to Register
Land Known as Thamesfield, Wraysbury,
Royal Borough of Windsor and Maidenhead
As a New Town or Village Green

FURTHER REPORT
of Mr. VIVIAN CHAPMAN Q.C.

3rd May 2013

Introduction

[1] I am instructed by email dated 25th April 2013 to comment on further submissions arising out of my Report dated 25th February 2013 from:

- Mr. A Moran on behalf of Mr. & Mrs. Gates and Mr. & Mrs. Smith
- Mr. F McDonagh
- Public Law Solicitors on behalf of the applicant, and
- Mr. Wilmshurst on behalf of the applicant.

Mr. A Moran

[2] By a letter dated 28th March 2013 written on behalf of his clients, Mr. & Mrs. Gates and Mr. & Mrs. Smith, Mr. Moran cites paragraphs [30]&[337] of my Report and submits that:

- The commons registration authority (CRA) should accept my recommendations and refuse to register Thamesfield as a new town or village green (TVG),
- If the CRA does register Thamesfield as a new TVG, it should exclude the land owned by Mr. Moran's clients by allowing the applicant's application to amend her TVG application to exclude that land.

[3] I agree that both submissions are correct in the light of my Report.

Mr. McDonagh

[4] By an email dated 8th March 2013, Mr. McDonagh expresses his agreement with my Report. No comment is called for from me.

Public Law Solicitors

[5] By an email dated 17th April 2013, Public Law Solicitors have provided further evidence to deal with paragraphs [208] and [299] of my Report. This only arises if the CRA rejects my recommendation to reject the TVG application and decides that the application land (or the application land excluding the land owned by the Smiths and Gateses) ought to be registered as a new TVG subject to satisfactory evidence that Wraysbury was a “locality” in law throughout the relevant 20 year period. In those paragraphs of my Report, I pointed out that the applicant had not produced satisfactory evidence to prove the relevant locality but that, if the application were otherwise successful, she should be given the opportunity to do so.

[6] The applicant now makes it clear that she relies on the ecclesiastical parish of Wraysbury as being the relevant locality. She produces a letter dated 4th April 2013 from the Church Commissioners. That letter produces a map of the current parish boundaries and states that they have not changed since 1987. The other documents provided by Public Law Solicitors appear to me to be consistent with the applicant’s proposition. It appears to me that this is satisfactory evidence that Wraysbury has been an ecclesiastical parish and that its boundaries were unchanged during any possible relevant 20 year period. I take the view that the applicant has now filled this gap in her evidence.

[7] However, I think that the active objectors (WESL, the Smiths, the Gateses and Mr. McDonagh) must be given the opportunity to study and comment on this new evidence. The application cannot fairly be determined by reference to evidence that they have not seen. I recommend that all the new material sent by the applicant and her solicitors on the locality issue ought to be provided to the active objectors and that they should be asked to comment on it by a date that gives reasonable time for their comments to be considered before the CRA actually decides whether to accept or reject the TVG application.

Mr. Wilmshurst

[8] The applicant has served very detailed submissions settled by Mr. Wilmshurst and dated 5th April 2013. Having read and reflected on those submissions with care and respect, it seems to me that they can fairly be summarised in two propositions:

- The signs erected on the instructions of WESL in July 2007 were not suitably worded to prohibit future public access to Thamesfield, and
- Even if they were suitably worded, they were not enough to render future public use of Thamesfield “contentious” and not “as of right”.

[9] I will first consider the argument that the 2007 signs were not adequately prohibitory in their wording. It will be recalled that the signs read:

PRIVATE PROPERTY

Access to this land is by permission of the owners

I considered the meaning of these signs in paragraph [309] of my Report. I have reconsidered that paragraph and remain of the same view. I do not consider that any ordinary reasonable person reading those signs would understand them to mean that the landowner was granting all and sundry permission to use the land. I consider that the ordinary reasonable person reading those signs would understand that the landowner was forbidding access to the land except with his permission. I conclude that although the signs could have been better worded, their meaning is clearly prohibitory.

[10] Secondly, I turn to consider the argument that, even if the wording of the signs was prohibitory, the signs were insufficient to render public use of Thamesfield contentious and hence not “as of right”. The conclusion I reached on this point is set out in paragraph [331] of my Report. In short, I considered that the erection of these signs at four of the major entrances to Thamesfield and their being in position for about a month, was sufficient to communicate to the generality of recreational users of Thamesfield that the landowner was not acquiescing in that use. I have reconsidered that conclusion and, having done so, remain of the same view.

[11] Mr. Wilmshurst’s counter arguments are as follows:

- I should not have relied on the private rights of way/easement cases,
- I did not apply the test laid down in the most recent case: the *Betterment* case.
- He relies on a Canadian case not previously cited: the *Bloor* case.

[12] As for the private rights of way/easement cases, I did recognise in paragraph [312] of my Report that there is a distinction between those cases and TVG cases in certain respects. However, those cases and the TVG cases are all part of the general area of law known as the law of prescription. I therefore consider that those cases do give valuable assistance in considering what is meant by “contentious” for the purposes of the law of prescription in the TVG context. I think that I am supported in this view by the fact that the private rights of way/easement cases were considered at great length by Morgan J at first instance in the *Betterment* case and that he was not criticised for having done so by the Court of Appeal when it dismissed the appeal from Morgan J.

[13] Nor do I accept that I failed to apply the test laid down in the *Betterment* case. On the contrary, I consider that the decision of the Court of Appeal in *Betterment* supports my view of the effect of the signs. I analysed the reasoning in the *Betterment* case both at first instance and in the Court of Appeal in paragraphs [324] – [325] of my Report. I refer to the following passages in the judgment of Patten LJ which seem to me strongly to support my view on the effect of the signs:

- Para. 38: “*If the landowner displays his opposition to the use of his land by erecting a suitably worded sign which is visible to and is actually seen by the local inhabitants then their subsequent use of the land will not be peaceable. It is not necessary for Betterment to show that they used force or committed acts of damage to gain entry to*

the land. In the face of the signs it will be obvious that their acts of trespass are not acquiesced in.”

- Para. 41: After citing *Smith v Brudenell-Bruce*, the judge said: *“This requires to be unpacked a little. Assuming that the notice is in terms sufficiently clear to convey to the average reader that any use of the relevant land by members of the public will be treated as a trespass then it will be irrelevant that individual users either misunderstood the notice or did not bother to read it. The inhabitants who encounter the sign have to be treated as reasonable people for these purposes to whom an objective standard of conduct and comprehension is applied.”*
- Para. 48: *“If the landowner erects suitably worded signs and they are seen by would-be peaceable users of the land then it follows that their user will be contentious and not as of right”*

[14] Finally, I do not accept that the *Bloor* case is inconsistent with my approach. This is a recent Canadian case. Bloor claimed a right of way by prescription over Ontario’s land. The relevant 20 year period was 1993-2003 (before a Land Titles scheme came into force). In 1987, Bloor approached Ontario with a draft grant of a right of way over Ontario’s land. Ontario refused to sign it and soon afterwards erected prohibitory signs which were ignored and soon torn down. The trial judge rejected the claim to prescription on the ground that the 1987 request was an acknowledgement which stopped time running since it acknowledged that he required permission. Gillese JA upheld that reasoning. Laskin JA rejected that reasoning (which he equated to a finding that there was an implied grant of permission) but dismissed the appeal on the ground that the prohibitory notices negated the landowner’s acquiescence. See in particular para. 125. McPherson JA agreed with both the other judges. Thus, the majority judgments in this case in fact support my view that the erection of suitable prohibitory signs rendered use of the Thamesfield “contentious” and not “as of right” and that the critical consideration is whether the signs negated the acquiescence of the landowner.

[15] Accordingly, I do not accept Mr. Wilmshurst’s arguments and adhere to the findings and recommendations in my Report.

Conclusion

[16] Having studied all the submissions made in relation to my Report, I maintain the findings and recommendation made in my Report. In my view, the TVG application should be rejected. The written reasons for rejection should now read “the reasons given in the inspector’s Report of 25th February 2013 and Further Report of 3rd May 2013”.

Vivian Chapman QC
3rd May 2013
9, Stone Buildings,
Lincoln’s Inn,
London WC2A 3NN

From: Alastair Wallace
Sent: 17 April 2013 17:11
To: Emma-Jane Brewerton
Cc: Catherine Woodward
Subject: Wraysbury VG102

Dear Emma-Jane,

Further to our submissions on the Inspector's report please find attached a copy documents which our client has obtained concerning the locality element of the registration criteria.

We refer to paragraphs 299 and 208 of the inspectors report. The inspector comments he has proceeded on the basis that Wraysbury is a locality being either a civil or ecclesiastical parish but that if the application were otherwise successful he would require further evidence of this.

We submit that the application should be successful and thus we consider it appropriate to submit the evidence. Our position is as follows:

1. we rely on the Ecclesiastical Parish of Wraysbury;
2. we attach a copy of a plan of the Parish as at 04/04/13 signed by a relevant officer of Church of England;
3. we also attach a letter dated 04/04/13 signed by the officer confirming that the boundaries of the Parish are unaltered since 14 May 1987;
4. the applicant relies on s.15(2) or alternatively s.15(3) of the CA 2006. The date of the application is found by the Inspector to be 11/03/2010. Accordingly, the earliest date of qualifying use relied upon by the applicant is 11/03/1988. From the evidence submitted it is apparent that there have been no changes to the locality during this period.

For completeness we have attached copies of the other documents referred to in the Church's letter of 4/04/13.

In view of the quality of the copy documents attached we will ask our client to file the originals with the RA.

Yours sincerely,

Alastair Wallace

Public Law Solicitors
8th Floor
Albany House
Hurst Street
Birmingham
B5 4BD

DX 711803 Birmingham 28

Tel: 0121 256 0326
Fax: 0121 622 1426

Comments received from Frank McDonagh 10 May 2013

Dear Mrs Brewerton , Thank you for sending me the latest info and i would comment as follows . 1, The applicant had 2 years to put her case together and now finds new evidence that was not sent to me to look at , this is not good enough . 2 , The applicant asked the inspector Mr Chapman QC to again look at the meaning of a private property sign on my gate Mr Chapman stated again what it means and that is why the private property will stay private . The sooner Su Borrows understands she has lost her case the better 3. I agree with Mr Chapman revised report to dismiss the claim . Frank Mc Donagh

Emma-Jane Brewerton
Royal Borough of Windsor & Maidenhead
Shared Legal Services
PO Box 151, Shute End
Wokingham
Berkshire RG40 1WH

New Kings Court
Tollgate
Chandler's Ford
Eastleigh SO53 3LG
DX 155850 Eastleigh 7
DDI: 01275 332000
T: 023 8090 8090
F: 0870 4877511
E: jane.hanney@bllaw.co.uk

www.bllaw.co.uk

And by email – Emma-jane.Brewerton@wokingham.gov.uk

Our ref: REG/JZH/561919.1

16 May 2013

Your ref:

Dear Ms Brewerton

Application for Village Green (VG102) - Thamesfield, Wraysbury

I refer to your email of 10 May 2013, in which you request comments on the supplementary evidence submitted by Public Law Solicitors by email on 17 April 2013.

In this respect, on behalf of our clients Worby Estate Sales Ltd, it is our view that on the basis of the evidence provided, it would appear that Wraysbury is and has been an ecclesiastical parish and that its boundaries have not been changed during any possible relevant 20 year periods relevant to the Village Green Application. However, we have not undertaken any research into this specific issue and, in light of the Inspector's recommendation, are not inclined to expend further resources into research at this stage. However, should this matter progress, we reserve the right to properly research this issue.

Yours sincerely

Jane Hanney

Consultant Solicitor

Our Ref: AM
Your Ref: 387107 /
005541-CAW-LG15057

33 The Green
Wraysbury
Staines
TW19 5NA

Chairman
Highways and Rights of Way Panel
Royal Borough of Windsor and Maidenhead
C/O Shared Legal Solutions
Wokingham Borough Council
Shute End,
Wokingham,
Berkshire,
RG40 1WH

01784 483060

16th May 2013

Dear Sir,

VG102 Thamesfield, Wraysbury

In response to the further evidence the Inspector's recommendations in respect of my clients' land remains unchanged and the applicant does not seek to change her position either and therefore my previous comments apply as repeated below.

I trust that the Panel will act on and adopt the findings of the Inspector in this case and not register the land. I include the relevant paragraphs from the inspector's original report.

[30] In relation to the application to amend the TVG application to exclude the land owned by Mr. and Mrs. Smith and Mr. & Mrs. Gates, the position before Miss Wood was that WESL opposed the application. This seems to have been a tactical move by WESL to discourage the Smiths and the Gateses from supporting the amended application. However, at the end of the public inquiry, WESL withdrew its objection to this amendment. The present position is therefore that no one opposes the proposed amendment. The land acquired by the Smiths and the Gateses was, as appeared at the public inquiry, part of the overgrown belt of scrub alongside the boundary of Thamesfield with little recreational value to local people. In these circumstances, I consider that it would be appropriate to allow the applicant to amend her application to exclude the land owned by the Smiths and the Gateses.

I also submit the final paragraph of the report:

[337] I recommend that the TVG application should be rejected. Under regulation 9(2) of the 2007 Regulations it is necessary for the CRA to give to the applicant written reasons for the rejection of her

application. I recommend that the reason is stated to be "the reasons given in the inspector's report of 25th February 2013".

If the Panel ignores the findings of the Inspector at the Public Inquiry and registers the land you should allow the applicant to amend the application to exclude both of my clients land from the registration

Yours faithfully,

A. P. Moran FRICS
a.moran@moransurveyors.co.uk

In the Matter
of an Application to Register
Land Known as Thamesfield, Wraysbury,
Royal Borough of Windsor and Maidenhead
As a New Town or Village Green

SECOND FURTHER REPORT

of Mr. VIVIAN CHAPMAN Q.C.

18th May 2013

**Royal Borough of Windsor and Maidenhead,
Shared Legal Services,
PO Box 151, Shute End,
Wokingham,
Berkshire RG40 1WH**

Ref Sean O'Connor/Catherine Woodward/ Emma-Jane Brewerton

VRC/13/42/wp/S4/Thamesfield Second Further Report

In the Matter
of an Application to Register
Land Known as Thamesfield, Wraysbury,
Royal Borough of Windsor and Maidenhead
As a New Town or Village Green

SECOND FURTHER REPORT
of Mr. VIVIAN CHAPMAN Q.C.

18th May 2013

Introduction

[1] This Second Further Report is written in response to the email dated 17th May 2013 of Emma-Jane Brewerton attaching the comments of the active objectors to the further evidence produced by the applicant and considered in paragraphs [5] – [7] of my Further Report of 3rd May 2013.

Mr. A Moran

[2] On behalf of the objectors, Mr. & Mrs. Smith and Mr. & Mrs. Gates, Mr. Moran has written a letter dated 16th May 2013. In that letter he makes no comment on the new evidence. He simply urges the commons registration authority (CRA) to adopt the recommendation in my Report.

Mr. McDonagh

[3] Mr. McDonagh submitted comments in an email dated 10th May 2013. He does not comment specifically on the new evidence save to say that the applicant has had two years to put her case together. If it is implicit in this email that Mr. McDonagh objects to the admission of the new evidence, I consider that the CRA should take account of the new evidence. Until the CRA finally determines the TVG application by rejecting it or (contrary to my recommendation) by registering Thamesfield as a new TVG, I consider that the CRA is normally entitled and bound to take account of all relevant evidence, whether presented to the public inquiry or not.

WESL

[4] On behalf of WESL, Blake Laphorn have responded in a letter dated 16th May 2013. The stance adopted is that it is accepted that the evidence provided shows that Wraysbury is and has been an ecclesiastical parish and that its boundaries have not changed during any relevant 20 year period. Blake Laphorn state, however, that they have not undertaken any research into the issue and “should this matter progress, we reserve the right to properly research this issue”.

[5] In my view, the CRA is *functus officio* after it has either (contrary to my recommendation) registered Thamesfield as a new TVG or has formally decided to reject the application. I think that Blake Laphorn, in using the expression “should this matter progress” must mean that if WESL were to challenge a decision to register Thamesfield as a new TVG by proceedings for judicial review (JR) or under CRA 1965 s. 14(b) it reserves the right to adduce further evidence on this issue. I think it doubtful whether fresh evidence would be admitted on an application for JR, but it might be admitted in proceedings under CRA 1965 s. 14(b) depending on case management directions. However, the current position is that WESL agrees that the new evidence appears to have the effect discussed in my Further Opinion.

Conclusion

[6] The effect of the comments is that there is no challenge to the new evidence for present purposes. It follows that the applicant has proved that Wraysbury was a “locality” at all relevant times.

[7] However, this does not affect my recommendation, for the reasons analysed in my Report and Further Report, that the application fails and should be rejected.

[8] Having studied all the submissions made in relation to my Report and Further Report, I maintain the findings and recommendation made in my Report and Further Report. In my view, the TVG application should be rejected. The written reasons for rejection should now read “the reasons given in the inspector’s Report of 25th February 2013, Further Report of 3rd May 2013 and Second Further Report of 18th May 2013”.

Vivian Chapman QC
18th May 2013
9, Stone Buildings,
Lincoln’s Inn,
London WC2A 3NN