

Division(s): Faringdon

PLANNING & REGULATION COMMITTEE – 19 OCTOBER 2015

**COMMONS ACT 2006:
IN THE MATTER OF AN APPLICATION TO REGISTER
HUMPTY HILL, HIGHWORTH ROAD, FARINGDON
AS A TOWN OR VILLAGE GREEN**

Report by the Chief Legal Officer and Head of Law and Governance

Introduction

1. On 19 April 2013, Mr Robert Stewart on behalf of the Friends of Humpty Hill of 14 The Pines, Faringdon applied to the County Council as Registration Authority under Section 15 of the Commons Act 2006 to register land known as Humpty Hill, Highworth Road, Faringdon in Oxfordshire (“the Application Land”) as a Town or Village Green. This application, a copy of which is attached at Annex 1, was submitted formally in pursuance of the Act and has now to be determined by the County Council.
2. The Planning & Regulation Committee have delegated powers to determine such applications, provided they are ‘duly made’.
3. The application was considered initially by Legal Services who provided advice as to whether the application was ‘duly made’. In light of such advice the application was accepted as ‘duly made’ and was subsequently publicised in accordance with the statutory requirements.
4. One substantive objection was received during the statutory 6-week objection period from Gladman Developments Ltd, Charles Francis Nigel Allaway and Rosemary Ann Pollock (together the “Objector”). The objection raised several factual and legal issues in relation to the application and so an independent public inquiry was held. Dr Charles Mynors (“the Inspector”), a barrister experienced in the area of law was appointed to chair the Inquiry.
5. The Inquiry sat on 16-19 March 2015 and 24 March 2015 at the Sudbury House Hotel, Faringdon with a site visit on 23 March 2015.
6. A copy of the Inspector’s Report is appended at Annex 2. The main points to note are summarised below.

The Application Site: Land at Humpty Hill, Faringdon

7. The application form describes the Application Land as Humpty Hill, Highworth Road, Faringdon in Oxfordshire. The Application Land is shown edged red on the map included as part of Annex 1.

8. The Application Land is a grass meadow, roughly rectangular in shape and adjoins the western end of the built-up area of Faringdon. The land is bounded on all 4 sides by hedges and Highworth Road runs along the southern boundary. The land gently slopes from the southern boundary.
9. The hedges are generally thick and impenetrable, except for pedestrian access in the form of kissing gates at the north-eastern and south-eastern corners.
10. A public footpath (207/2, Great Faringdon Footpath No 2) runs between the two kissing gates. In addition, there is a roughly circular informal path around the field, overlapping with the public footpath on the eastern boundary. There is also a second, less well-defined path running hard up against the boundary hedges.
11. At the gate on the southern boundary there is a sign giving a revocable permission for persons to use the land for recreation.
12. The whole of the Application Land is registered at HM Land Registry under title number ON273315. The registered proprietor is Charles Francis Nigel Allaway and Rosemary Ann Pollock.
13. The locality or neighbourhood relevant to the application is described as the civil parish of (Great) Faringdon.

The Town Green Application

14. The application form was duly signed by Mr Stewart and supported by the prescribed Statutory Declaration. The Applicant submitted several additional pieces of information in support of his application, including a supporting statement and some 71 evidence questionnaires by other local residents who used the land. Further evidence and statements were also submitted by the Applicant in preparation for the public inquiry.
15. On 15 July 2013 the Applicant provided an updated version of the plan attached to his application, drawn to the correct scale and exhibited as part of his statutory declaration. This was as requested by the registration authority. This is the map that is included as part of Annex 1 hereto.

The Determination of the Application

16. Having been received by the County Council and accepted as 'duly made', the application was duly published in accordance with Regulation 5 of the Commons Registration (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007 by publication in a local newspaper, posting notices on site, and placing

copies on public deposit. A copy of the statutory notice, application and plan was also served on the landowner.

17. The statutory objection period expired on 19 March 2014. A substantial objection was received from the Objector dated 18 March 2014. An objection was also received from Scottish & Southern Electricity due to the presence of overhead power lines. Some statements in support of the application by local people were also received.
18. The principal grounds for objection were in summary as follows:-
 - a. That the Applicant had not established a 'locality or ... neighbourhood within a locality';
 - b. That the Applicant had failed to show use of the land by 'a significant number' of local people;
 - c. The use of the land was not of sufficient intensity and quality to bring home to the reasonable landowner that public rights were being asserted;
 - d. The Applicant has not shown that the land was used for 'lawful sports and pastimes';
 - e. The Applicant has not proved use of the whole of the land (as opposed to the footpaths and tracks);
 - f. The Applicant has not shown that the uses were 'as of right', in that according to the objector the use was either by right (in so far as it related to public right of way use) or forcible (in so far as locked gates were crossed or climbed, gaps made in hedges etc)
 - g. The landowners warned local people to get back onto the public footpath, therefore contesting local use of the land; and
 - h. Use by local people was small scale and sporadic.
19. In a separate letter the Objector also raised the argument that, since the registration authority had needed to go back to the Applicant for further information (the plan) the application was not 'duly made' until that later date. By that time, it was argued, the provisions of s15C Commons Act 2006 had come into force and there was no right to apply due to the existence of a 'trigger event' (an application for planning permission). The registration authority considered that this application was still 'duly made' in accordance with the *Church Commissioners v Hampshire County Council* [2014] EWCA Civ 634 and this point was not subsequently pursued.
20. The County Solicitor consulted Counsel on these issues. Ultimately it was considered that the issues raised were ones of fact as well as law and could not be resolved simply in writing and that a public Inquiry would need to be held.
21. It is important to note at this stage that the Council as Commons Registration Authority is essentially neutral in this matter. It is simply

concerned to assess the application and register the Application Land if it qualifies properly for registration. In carrying out this assessment it must look back over the use of the land and apply the statutory test under s15 Commons Act 2006. The potential future use of the land, or its desirability in planning terms, is not relevant to the assessment that the Council as Commons Registration Authority needs to make.

The Public Inquiry

22. A public Inquiry chaired by an independent barrister was therefore held on 16-19 March 2015 and 24 March 2015 at the Sudbury House Hotel, Faringdon with a site visit on 23 March 2015.
23. The Applicant represented himself and the Objector was represented by Counsel. Both parties called witnesses to give evidence in person and further written evidence was also given to the Inquiry.
24. The Inspector subsequently submitted his Report and recommendation to the County Solicitor on 27 September 2015 a copy of which is attached at Annex 2.

The Inspector's Recommendations

25. The Inspector's findings are summarised at the beginning of his Report and are briefly as follows:
 - a. that the Application Land, as a whole, has been used for twenty years by the inhabitants of Faringdon Civil Parish for lawful sports and pastimes, up to the date of the application; and
 - b. that such use has been "as of right".
26. The Inspector sets out his conclusions in more detail from paragraph 160 of his Report. He finds as follows:-
 - a. The general use of the land has been as a grass meadow. There has been low-level agricultural use through the year, peaking during a two-week period in the summer when the hay crop is cut and baled. No arable crops have been planted or ploughing carried out;
 - b. The growing grass usually presented no obstacle to general recreation, either on or off the paths. The landowners and others had witnessed people using the paths (and occasionally elsewhere on the land). As the grass grew longer, it made off-path use more difficult;
 - c. The evidence generally disclosed use of the land for walking (with or without a dog), children playing, and informal football, less strenuous activities such as bird watching, nature study,

enjoying the view, and generally “hanging out”, “lounging about” or “chilling”, and seasonal activities such as blackberrying, other fruit gathering, sledging and tobogganing;

- d. Use of the land was predominantly but not exclusively on the formal and informal footpaths, but there was evidence that some activities took place all over the land;
 - e. Cattle were grazed on the field in 1996 and 1997. This would have been during the months approximately May/June to September/October. Only 10 or so cattle were grazed and the Inspector found that their presence did not materially affect the use of the land for lawful sports and pastimes;
 - f. The landowner was aware of the use of the land by local people and took only cursory steps to prevent it. There was only low-level conflict between the recreational and the agricultural use and neither materially impeded the other;
 - g. In respect of the sign put up at the southern entrance, the Inspector finds that this was installed on or after 18 April 2011 and therefore that the 20-year period required was 1991-2011 and the application was made inside the 2-year period referred to in section 15(3) of the 2006 Act; and
 - h. The relevant locality is the civil parish of Great Faringdon and the users of the land came predominantly from that area.
27. In conclusion, the Inspector finds that the land is a “classic case” of use for dog walking and childrens’ play. The use of the footpaths indicated use of the land as a generally circular walk for recreation (although some can be attributed to footpath use, in particular people following the north-south public footpath). The recreation and agricultural uses existed side-by-side and the landowners were aware of this and did not forbid or make use permissive until the sign was erected in 2011.
28. In particular, the co-existence of uses on the land is expressly dealt with in recent case-law and in particular by the Supreme Court in *R. (on the application of Lewis) v Redcar and Cleveland BC* [2010] UKSC 11, to which the Inspector refers in his Report.
29. In view of these conclusions and the more detailed discussions of the law and evidence in his Report, the Inspector recommends that the application be approved and the Application Land be registered as a town or village green.
30. The County Solicitor supports these conclusions.

RECOMMENDATION

26. **Having received the Opinion of the Inspector set out in Annex 2 to this report, the Committee is RECOMMENDED to APPROVE the application for registration as a new Town or Village Green that plot of land known as Humpty Hill, Highworth Road, Faringdon in Oxfordshire that site being indicated clearly on the map included in the application submitted by Mr Robert Stewart on 19 April 2013.**

NICK GRAHAM

Chief Legal Officer and Head of Law and Governance

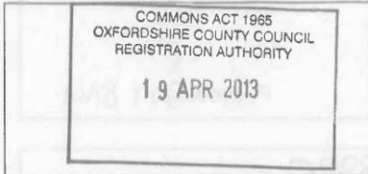
October 2015

Background papers: Appendices to Form 44
 Additional Evidence Questionnaires
 Objections by Charles Francis Nigel Allaway,
 Rosemary Ann Pollock and Gladman
 Developments Ltd dated 18 March 2014
 Responses received to statutory consultation
 Procedural Directions of the Inspector dated 19
 December 2014
 Skeleton Closing Submissions on Behalf of the
 Objector dated 24 March 2015
 Inquiry Bundles
 In Members' Resource room from 12 October 2015
 until the conclusion of the meeting.

Contact Officer: Richard Goodlad, Principal Solicitor (Tel: 01865 323917)

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

Note 1
Insert name of registration authority.

<p>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.</p>	<p>2. Name and address of the applicant</p>
<p>If question 3 is not completed all correspondence and notices will be sent to the first named applicant.</p>	<p>Name: <input type="text" value="Friends of Humpty Hill"/></p>
	<p>Full postal address: <input type="text" value="14 The Pines"/> <input type="text" value="Farmyobon"/> <input type="text" value="SN 7 8AU"/> Postcode <input type="text" value="SN7 8AU"/></p>
	<p>Telephone number: (incl. national dialling code) <input type="text" value="01961118920"/></p>
	<p>Fax number: (incl. national dialling code) <input type="text"/></p>
	<p>E-mail address: <input type="text" value="friendsofhumptyhill@gmail.com"/></p>
<p>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.</p>	<p>3. Name and address of solicitor, if any</p>
	<p>Name: <input type="text"/></p>
	<p>Firm: <input type="text"/></p>
	<p>Full postal address: <input type="text"/> Post code <input type="text"/></p>
	<p>Telephone number: (incl. national dialling code) <input type="text"/></p>
	<p>Fax number: (incl. national dialling code) <input type="text"/></p>
	<p>E-mail address: <input type="text"/></p>

<p>Note 4 For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.</p>	<p>4. Basis of application for registration and qualifying criteria</p>
	<p>If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.</p>
	<p>Application made under section 15(8): <input type="checkbox"/></p>
	<p>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.</p>
	<p>Section 15(2) applies: <input checked="" type="checkbox"/></p>
<p>* 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.</p>	<p>Section 15(3) applies: <input type="checkbox"/></p>
	<p>Section 15(4) applies: <input type="checkbox"/></p>
	<p>If section 15(3) or (4) applies please indicate the date on which you consider that use as of right ended.</p>
	<div style="border: 1px solid black; height: 33px;"></div>
	<p>If section 15(6)* applies please indicate the period of statutory closure (if any) which needs to be disregarded.</p>
	<div style="border: 1px solid black; height: 58px;"></div>

<p>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.</p>	<p>5. Description and particulars of the area of land in respect of which application for registration is made</p> <p>Name by which usually known:</p> <div style="border: 1px solid black; padding: 5px; width: fit-content;">Humpty Hill</div>
	<p>Location:</p> <div style="border: 1px solid black; padding: 5px; width: fit-content;">Highworth Road, Farington. Adjacent to Orchard Hill.</div>
<p>* Only complete if the land is already registered as common land.</p>	<p>Shown in colour on the map which is marked and attached to the statutory declaration. <input type="checkbox"/></p> <p>Common land register unit number (if relevant) * <input type="text"/></p>
<p>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.</p>	<p>6. Locality or neighbourhood within a locality in respect of which the application is made</p> <p>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:</p> <div style="border: 1px solid black; padding: 5px; width: fit-content;">The Town of Farington.</div> <p>Tick here if map attached: <input type="checkbox"/></p>

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).

Indulgence by a significant number of the inhabitants of Faringdon as of right in lawful sports and pastimes for a period of at least 20 years before permission was granted under section 15(2) of the Commons Act 2006 as witnessed by the 71* enclosed signed statements showing use for: Children Playing, Dog walking, Blackberry Picking, Bird watching, Picnicking, Kite Flying, People walking, Sledging, Randers, Football, Scouts, Skiing, Drawing and Painting, Camping, General Exercise, landscape Appreciation, Running, Jogging, Golf, Ball Games, Infants School Egg Rolling, Wildlife Observation, Wild-Flower Study by a ~~large~~ significant number of people over a period from 1960 to 2013.

* Seventy One enclosed questionnaires

<p>Note 8 Please use a separate sheet if necessary.</p>	<p>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</p>
<p>Where relevant include reference to title numbers in the register of title held by the Land Registry.</p>	<p>Nigel Allanway Crabtree Farm Lechlade Road Faringdon SN7 8BH</p>
<p>If no one has been identified in this section you should write "none"</p>	
<p>This information is not needed if a landowner is applying to register the land as a green under section 15(8).</p>	
<p>Note 9 List all such declarations that accompany the application. If none is required, write "none".</p>	<p>9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land</p>
<p>This information is not needed if an application is being made to register the land as a green under section 15(1).</p>	
<p>Note 10 List all supporting documents and maps accompanying the application. If none, write "none"</p>	<p>10. Supporting documentation</p>
<p>Please use a separate sheet if necessary.</p>	

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

72 Witness Questionnaires Attached.


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:

18/4/2013

Signatures:


R. A. STEWART.

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).

I, Robert Andrew Stewart¹ solemnly and sincerely declare as follows:—

² Delete and adapt as necessary.

1.² I am ((the person (~~which is persons~~) who (has) ~~being~~ signed the foregoing application)) ~~(the solicitor for the applicant) or one of the applicants~~ 1/3 DS
1/4 DS

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(9) 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:~~ 1/3 DS
~~(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~~

Cont/

⁴ Continued

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

1/15
DS

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

at The fortwell Angel
Market Place, Faringdon, Oxfordshire

this 18th day of April 2013



Signature of Declarant

Before me *

Signature: *Karel Brown*

Address: BURTON COURT, 3 WEST WAY, OXFORD, OXFORDSHIRE, OX2 0SZ

Qualification: SOLICITOR

* 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

Dear Lisa.

15/7/13

Please find enclosed a stat dec and map
as required for the Taon Crea Application
at Humpty Hill, Farnjolan.

07...

Rob Stewart

RECEIVED 17 JUL 2013

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).

I, Robert Stewart, 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) ~~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~~

RS
RS
Cont/

⁴ Continued

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

MS
RS

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

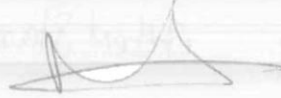
Declared by the said

ROBERT STEWART

at 21 FULLING CUSSE

FARINGDON, OXFORDSHIRE

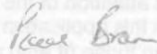
this 15TH day of JULY 2013



Signature of Declarant

Before me *

Signature:



Address:

BURTON COURT, 3 WEST WAY, OXFORD OX2 0JZ

Qualification:

SOLICITOR

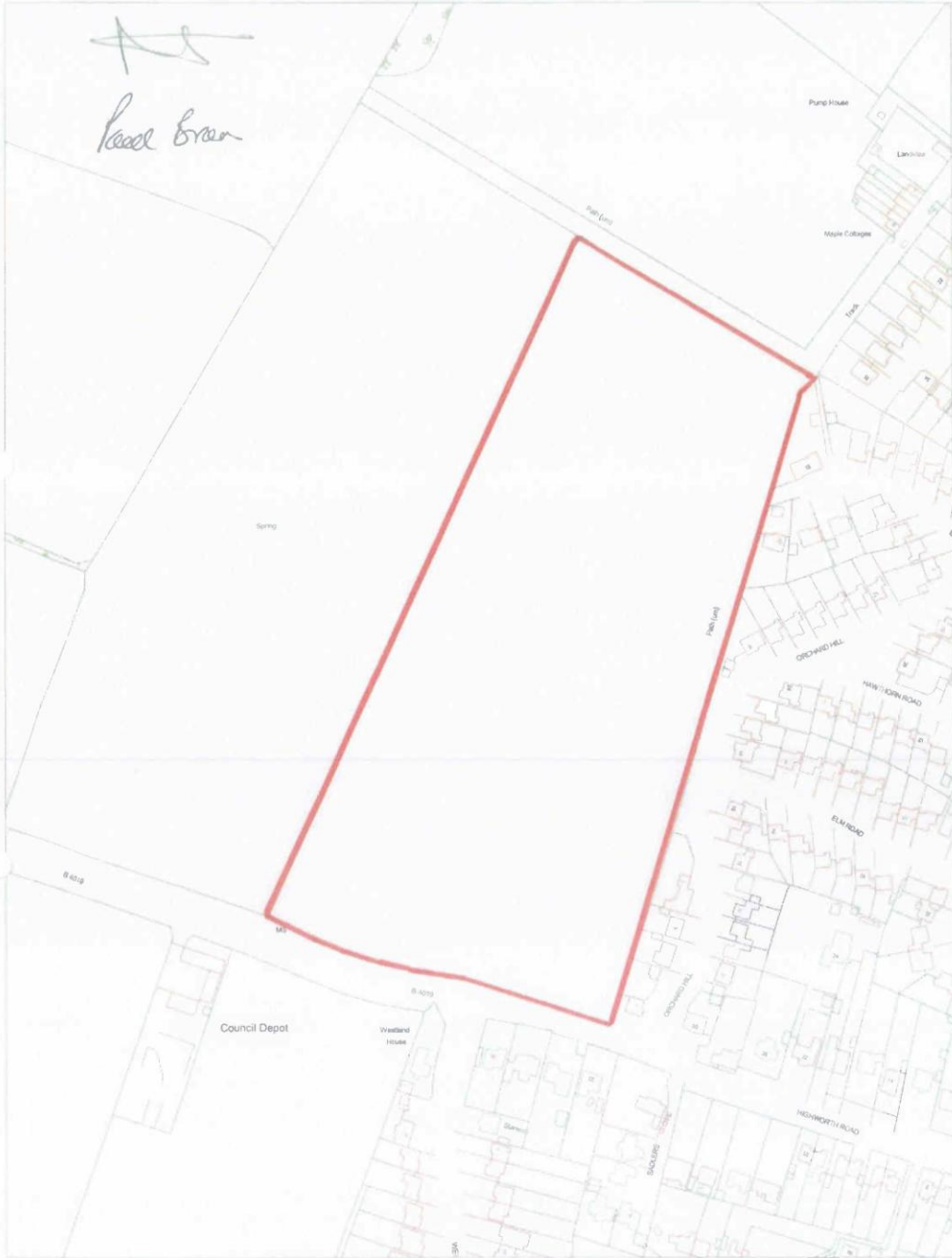
* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

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

THIS IS THE MAP REFERRED TO IN THE STATUTORY DECLARATION
OF ROBERT STEWART DATED 15TH JULY 2013



Reproduced from the Ordnance Survey mapping with the permission of the Controller of Her Majesty's Stationery Office Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings.

Scale 1:2500 (Approximate) Plot Date: 26 June 2013

Oxfordshire County Council Licence Number 100023343, 2013



Worksheet Ref: LJGW

In the matter of the Local Government Act 1972 and the Commons Act 2006
And in the matter of land at Humpty Hill, Faringdon, Oxfordshire

**Report to Oxfordshire County Council
on the determination of Application NLREG 33
to register as a town or village green land at
Humpty Hill, Faringdon**

Summary

I have been appointed by Oxfordshire County Council under section 111 of the Local Government Act 1972 to hold a public local inquiry into an application that has been made to it as registration authority under the Commons Act 2006 for the registration as a town or village green of land known as Humpty Hill, Faringdon, Oxfordshire (“the Application Land”, or simply “the Land”), and to advise the Council as to how to determine it.

My conclusions are as follows:

- (a) that the Application Land, as a whole, has been used for twenty years until at least April 2011 by the inhabitants of Faringdon Civil Parish for lawful sports and pastimes;
- (b) that such use has been “as of right” throughout the relevant period.

I therefore consider that the Application Land is eligible to be registered as a town or village green, and I recommend that the register under the 2006 Act be amended accordingly.

In this report I first consider first various procedural matters, and outline briefly the relevant legal background. I then consider the non-contentious evidence – the physical condition of the Application Land and the immediate vicinity, and relevant documents produced independently of the present proceedings. Next, I outline the evidence produced by those resisting the registration of the Land, so far as relevant, and the evidence in support of the registration. In the final section I set out my conclusions and recommendation.

Procedural matters

The Application

1. I have been appointed by the County Council in its capacity as registration authority under the Commons Act 2006 (“the Registration Authority”) to hold a public local inquiry under section 111 of the Local Government Act 1972 into an application that has been made to it for the registration as a town or village green of land at Faringdon,

Humpty Hill, Faringdon: report by Dr Charles Mynors to Oxfordshire County Council – page 1

Oxfordshire (“the Application”), and to make recommendations to the Council as to the manner in which to determine it.

2. The Application was made by Mr Robert Stewart, of 14 The Pines, Faringdon, SN7 8AU (“the Applicant”) on 18 April 2013.¹ It relates to land described in the application as Humpty Hill, lying between Highworth Road and the southern end of Canada Lane.
3. The Application was made under section 15(2) of the 2006 Act (see below). It was made on the statutory form, and accompanied by a statutory declaration, maps of the Application Land and the surrounding area, and 71 completed questionnaires.
4. The Registration Authority considered that the Application had been duly made, and proceeded to advertise it, and to notify those whom the Authority considered might be expected to object.
5. Objections to the Application were made by Charles Francis Nigel Allaway and Rosemary Ann Pollock (“the Landowners”) and Gladman Developments Limited (“Gladman”). The Owners jointly own the freehold interest in the Application Land; and they had entered into a contract dated 7 March 2013 with Gladman relating to the promotion of development on the Land. In this report, I refer to the Landowners and Gladman together as “the Objectors”.
6. A further objection to the Application was made by Scottish and Southern Energy, on the basis that there is an overhead power line running across the Land. That objection raised no issues that are material to my recommendation or to the Council’s decision, and I say no more about it in this report.
7. The Registration Authority decided to hold an inquiry at which the parties would be able to call evidence and make legal submissions.
8. I should record that, although I knew the Faringdon area reasonably well in the 1970s (my parents lived in Shellingford), I had never seen the Application Land before 2015, and knew nothing of its history, other than from the information with which I have been supplied in connection with the present proceedings. And I know none of those connected in any way with this case.

The inquiry

9. I held an inquiry at the Sudbury House Hotel in Faringdon, on 16 to 19 and 24 March 2015. I visited the Land and explored Faringdon, unaccompanied by any of the parties or the Registration Authority, on Saturday 7 March; and carried out further visits, accompanied by a representative of the Authority, during the inquiry; on my final visit I was accompanied by representatives of the parties. I regret that, due to other unexpected commitments, it has taken so long for this report to emerge.
10. I am grateful to all concerned – in particular the officers of the Registration Authority – for facilitating the smooth running of the Inquiry and the site inspection.

¹ Mr Stewart has since moved to 15 Eagles, Faringdon, SN7 7DT.

Evidence in support of the Application

11. The Applicant represented himself at the inquiry. He gave oral evidence himself as to the use of the Application Land, and called 14 further witnesses to give such evidence: Mr Gary Bates, Mr David Butler, Mr Colin Desborough, Mr Neil Edwards, Mr Joel Francis, Mr Robert Kelly, Mr Ian Lee, Ms Eileen Mrs Metcalf, Mr Joseph Middleton, Mrs Josie Miller, Mr George Platt, Mr Tim Stewart, Mr David Tutt, and Mr Edward Williams.² Each of those produced a written statement; 10 had also produced a questionnaire at the time of the Application.
12. I was given a written statement from one witness (Mr Robin Ashdown) who had been expected to give oral evidence but in the event was out of the country during the inquiry, and a further 55 written statements from others in support of the application who did not give oral evidence at the inquiry. There were also some 32 questionnaires from people or couples in support of the application who neither submitted statements nor appeared at the inquiry. I have generally lumped together representations from couples or families living at one address, as they tended to give very similar evidence; but the precise numbers in each category may be slightly inaccurate, as it is not always immediately apparent who belongs to the same family group.

Evidence in support of the Objectors

13. The Objectors were represented at the inquiry by Mr Philip Petchey of counsel, instructed by Walker Morris solicitors. He called eight witnesses to give oral evidence, each of whom had produced a written statement, accompanied (in some cases) by copies of relevant documents.
14. He called, firstly, six members of the Allaway family – Mr Charles Francis Nigel Allaway (“Nigel”), and his wife Mrs Alison Allaway; their children Mr John Allaway and Mrs Catherine Allaway James; Nigel’s sister Mrs Rosemary Pollock (nee Allaway); and her husband Mr Richard Pollock.
15. He also called Mr Philip Benson and Mr Ian Bowler to give oral evidence, and to produce a number of relevant documents. Mr Benson is the director of Phil Benson Contracting Limited. Mr Bowler is a partner of Strutt & Partners, Salisbury, and has been the land agent in relation to the Application Land since 2003.
16. The Objectors also relied upon written statements from a number of other witnesses who were did not appear in person at the inquiry – from Gladman, Mr Robert Black (project manager), Mr Robert Hogg (project manager), Mr James Holladay (land director), Mr Richard Horsfield (Land Director), Mr Jonathan Shepherd (director), and Mr Christopher Still (planning and development manager); for FPCR Environment and Design Ltd, Mr Martin Woolly (ecologist), Mr John Blackburn (assistant ecologist), and Ms Helen Kirk (Associate); Mr Malcolm Reeve (Director, Land Research Associates Ltd); Ms Hannah Smalley (Archaeological Consultant, CgMS Consulting); and Ms Katy Hayhoe (Associate Landscape Architect, TPM Landscaping).

² In this and other such lists in this report, the names in alphabetical order.

17. These witnesses were all willing to give evidence at the inquiry, but in the event were not required to do so, as the Applicant was willing to accept their written statement without the need for them to appear in person. In those circumstances, I did not require their attendance at the inquiry, but gave their written evidence the same weight as it would have had if they had attended and been subject to cross-examination.

The evidence

18. As is normal in such cases, the available evidence on which I have to base my recommendation consists of the documentary material (plans, photographs, reports, and so on) produced before the start of the present dispute; the oral evidence presented by those who appeared at the Inquiry, and the written statements accompanying such evidence; the statements produced by others who did not give such evidence; and what I saw myself in my various site inspections. I have listed or referred to this above.
19. I have given special weight to documentary evidence produced prior to the start of the present dispute, as the documents themselves could not be tainted by any suspicion of possible bias. As to the selection of those documents, there is no procedure for discovery, as there is in civil litigation, so there is always the possibility that unhelpful material could have been simply omitted; but there was in this case no suggestion that that had occurred.
20. I was also particularly assisted by the aerial photographs of the Application Land produced in 1999, 2004, 2006 and 2009. The proper interpretation of such photographs is always to some extent open to question; but there was no suggestion that they were not genuine photographs.
21. As for oral and written evidence produced specifically in connection with these proceedings, it needs to be remembered that the desirability or otherwise of any proposals for development on or affecting the land in question is wholly irrelevant. Equally irrelevant is any view as to whether the land should, as a matter of principle, be retained for recreation. However, it is likely that much if not all of the evidence in this category will have been produced by those who have views – possibly strong views – on such matters; and that will be relevant to my assessment of their credibility as witnesses.
22. I am aware that in this case Gladman has sought planning permission for the construction of housing on the Application Land. Its application was rejected by the local planning authority, and the subsequent appeal against that refusal dismissed by the Secretary of State.
23. Those giving oral evidence to me at the Inquiry as to the use of the Land (and those producing written statements or questionnaires) could therefore be said to be biased, in that they are or were or may have been either opposed to that proposal or in favour of it. However, I detected no particular tendency to misrepresent the truth – in either direction – and neither of the advocates (nor any of the witnesses) at the Inquiry seriously suggested that this was the case.

24. As noted above, fifteen witnesses appeared at the inquiry in support of the Application; and a further 85 or so produced only written evidence (either a statement or a questionnaire or both). I gave the greatest weight to those who appeared at the inquiry and were available to be cross-examined by the advocate appearing for the Objector; and I gave less weight to the evidence of those in the other categories listed above. However, as is normal in such cases, their evidence was generally consistent with the evidence of those who did appear in person.

The law

The statutory definition of a town or village green

25. The statutory definition of a town or village green is in section 15 of the 2006 Act, which, so far as relevant, when first enacted provided as follows:
- “(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.
- (2) This subsection applies where–
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.
- (3) This subsection applies where–
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
 - (b) they ceased to do so before the time of the application but after the commencement of this section; and
 - (c) the application is made within *the period of two years beginning with the cessation referred to in paragraph (b)*”

26. Section 15 came into force on 6 April 2007, in place of the definition previously to be found in section 22(1)(c) of the Commons Registration Act 1965 (as amended by the Countryside and Rights of Way Act 2000). That earlier definition was virtually identical.

27. With effect from 1 October 2013, the Growth and Infrastructure Act 2014 amended section 15 of the 2006 Act, to substitute for the words in italics the words “the relevant period”. That phrase was defined in a new subsection (3A), also inserted by section 14 of the 2014 Act with effect from 1 October 2013, as follows:

“(3A) In subsection (3), “the relevant period” means–

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

28. The amendments to subsection 15(3) of the 2006 Act, and the insertion of subsection 15(3A), took effect on 1 October 2014 – see Growth and Infrastructure Act 2013 (Commencement No. 2 and Transitional and Saving Provisions) Order 2013 (SI 1488), article 6. However, by article 8(2) of that Order,

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“The coming into force of section 14 of the Act so far as it applies to land in England, has no effect in relation to any cessation referred to in section 15(3)(b) of the Commons Act 2006 which occurs before 1st October 2013.”

29. It should also be noted for completeness that amendments were made to the 2006 Act (amending section 15 and inserting sections 15A to 15C) by the Growth and Infrastructure Act 2013. Those amendments came into effect on various dates from 25 April 2013; they do not apply in relation to applications made before that date.

Application to the present case

30. Section 15(2) of the 2006 Act thus makes it clear that, for the Application Land to be eligible to be registered as a town or village green by virtue of that subsection, it must have been used throughout the period of 20 years ending on the date of the application for registration:
- by a significant number of the inhabitants of a locality or of a neighbourhood within a locality, and
 - for lawful sports and pastimes,
 - as of right.
31. Where land has been used in that way for twenty years, but then ceases to be so used, for example because the landowner explicitly permits its use by local people,
- where the cessation occurs before 1 October 2013, the land will still be eligible for registration – under subsection 15(3) of the 2006 Act as originally enacted – provided the application for registration is made within two years of the cessation;
 - where the cessation occurs after 1 October 2013, the land will still be eligible for registration – under subsection 15(3) as amended – provided the application is made within one year.
32. In this case, the Application was made on 18 April 2013. To justify registration under subsection 15(2), therefore, it must be shown that the Application Land was used in a qualifying manner for 20 years starting on 18 April 1993.
33. It is said that a sign was erected in mid-2011 at the southern end of the Application Land, at the entrance from Highworth Road, permitting the use of the Land. If the effect of that sign was that all otherwise qualifying use of the Land after that date was no longer “as of right” – a point to which I briefly return later in this report – the result is that section 15(2) would not apply. However, the Land would still be eligible for registration if it was used in the appropriate manner for 20 years until the date on which the sign was erected, and the application for registration was made within two years after that date.
34. In the light of that analysis, I have considered carefully the use of the Application Land for the period starting 20 years before the sign was erected – in practice, from the start of 1991 – until the present. I refer to that in this report simply as “the relevant period”.

Use for lawful sports and pastimes

35. The use of an area of land for “lawful sports and pastimes” includes use of it for various forms of informal recreation, such as walking, with or without dogs, picnicking, flying kites, picking blackberries, and children playing. This was explained by the House of Lords in *Sunningwell* as follows:

“Class c [in section 22(1) of the 1965] Act is concerned with the creation of town and village greens after 1965, and in my opinion sports and pastimes includes those activities which would be so regarded in our own day. I agree with Carnwath J in *R v Suffolk CC, ex parte Steed*, when he said that dog walking and playing with children were, in modern life, the kind of informal recreation which may be the main function of a village green.³ It may be, of course, that the user is so trivial and sporadic as not to carry the outward appearance of user as of right. In the present case, however, [the inspector] found ‘abundant evidence of use of the glebe for informal recreation’ which he held to be a pastime for the purposes of the Act.”⁴

36. In particular, use for lawful sports and pastimes may not include walking along a specific route either around the edge of a field or across the middle, as a means to get from one point on the perimeter to another – that might in certain circumstances be appropriate to establish a claim to a public right of way, but it could not form the basis of a claim to a town or village green. This was considered by Sullivan J in *R (Laing Homes) v Buckinghamshire CC*,⁵ and by Lightman J in *Oxfordshire v Oxford CC*, who summarised the position as follows:

“[102] The issue raised is whether user of a track or tracks situated on or traversing the land claimed as a green for pedestrian recreational purposes will qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green. If the track or tracks is or are of such character that user of it or them cannot give rise to a presumption of dedication at common law as a public highway, user of such a track or tracks for pedestrian recreational purposes may readily qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green.

The answer is more complicated where the track or tracks is or are of such a character that user of it or them can give rise to such a presumption. The answer must depend on how the matter would have appeared to the owner of the land: see Lord Hoffmann in *Sunningwell*,⁶ cited by Sullivan J in *Laing Homes*.⁷

Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential green will ordinarily be referable only to exercise of a public right of way to the green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential green may be recreational use of land as a green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).

³ (1995) 70 P. & C.R. 487, at p 503.

⁴ *Sunningwell*, per Lord Hoffmann at pp 357D.

⁵ [2003] 3 PLR 60.

⁶ [2000] 1 AC 335, 352h-353a and 354f-g.

⁷ [2003] 3 PLR 60, 80, paras 78-81.

[103] Three different scenarios require separate consideration. The first scenario is where the user may be a qualifying user for either a claim to dedication as a public highway or for a prescriptive claim to a green or for both. ...

[104] The second scenario is where the track is already a public highway and the question arises whether the user of the track counts towards acquisition of a green. In this situation, the starting point must be to view the user as referable to the exercise (and occasional excessive exercise) of the established right of way, and only as referable to exercise as of right of the rights incident to a green if clearly referable to such a claim and not reasonably explicable as referable to the existence of the public right of way.

[105] The third scenario is where there has been a longer period of user of tracks referable to the existence of a public right of way and a shorter period of user referable to the existence of a green. ...⁸

37. When *Oxfordshire* came to the House of Lords, the observations of Lightman J at first instance, quoted above – and indeed those of Sullivan J in *Laing Homes* – were described as “sensible” by Lord Hoffmann; the other members of the House did not express an opinion on the relevance of rights of way, but did not dissent from or overrule those observations. I consider the implications of this further towards the end of this report.

Other points

38. The House of Lords in *Sunningwell* established that the use of land “as of right” means use that is not by force, by stealth or by permission.⁹ Whether a use of land is “as of right” must be judged from the perspective of “how the matter would have appeared to the owner of the land”¹⁰ – a question which must be assessed objectively.¹¹ Thus in *Sunningwell* itself, twenty years’ use of glebe land for recreation by residents, the majority of whom came from a single locality, was treated as an effective assertion of village green rights.
39. Where part of an area of land is overgrown or inaccessible, that does not of itself preclude the registration of the whole (including that part) as a town or village green. As pointed out by in *Oxfordshire CC v Oxford CC*, the whole of a public garden may be used for recreational activities even though 75% of the surface consists of flower beds, borders and shrubberies on which the public may not walk.¹²
40. Finally, where a registration authority forms the view that the case for registration as a town or village green has been made out only in respect of part of the land that forms the subject of an application, it may register just that part if it considers that can be done with no injustice to the parties – and there is no rule that the smaller area of land bear any particular relationship to the land originally claimed.¹³

⁸ *Oxfordshire CC v Oxford CC* [2004] Ch 253, at [96]-[105]. Sub-paragraphs added for clarity.

⁹ *R (Sunningwell PC) v Oxfordshire CC* [2000] 1 AC 335, HL at p 356A.

¹⁰ *Sunningwell*, per Lord Hoffmann at pp 352H-353A.

¹¹ *R (Barkas) v North Yorkshire CC* [2015] AC 195, per Lord Neuberger at [21], and Lord Carnwath at [62].

¹² *Oxfordshire CC v Oxford CC* [2006] 2 AC 674, HL, per Lord Hoffmann at [67].

¹³ *Oxfordshire CC v Oxford CC* [2004] Ch 43, CA, at [101]-[111], upheld at [2006] 2 AC 674, HL, at [67].

Non-contentious evidence

The Application Land: the physical evidence

41. As noted above, I had the opportunity to view the Application Land and its immediate vicinity before and during the inquiry.
42. The Application Land adjoins the western edge of the built-up area of Faringdon, on the north side of the Highworth Road. It is approximately 5.6 hectares (14 acres) in area, rectangular in shape, and slopes gently down from a thick hedge along the north side of the Road.
43. The southern boundary of the Application Land is formed by the hedge along the Highworth Road, which is more or less impermeable except possibly by small dogs and adventurous children. The western boundary is formed by a thick hedge, also impenetrable, adjoining a large arable field of approximately the same size and shape as the Application Land. The northern boundary, at the bottom of the hill, is also in the form of a thick hedge, adjoining a small belt of trees.
44. The eastern boundary is also a hedge, but this adjoins various residential properties at either end, and a short stretch of residential road along the middle section. It is possible that there may be one or two gaps in this boundary, and there may have been some in the past; but none are particularly visible now, and any that do (or did) exist would probably only be used by those occupying particular properties, and not by local people more generally.
45. The Application Land is currently a grass meadow, with no particular features other than round the edge. There is a pedestrian entrance at the south-east corner, at the uphill end of the field, enabling access from the Highworth Road via a kissing gate. There is also at this point a sign containing a map of the Application Land and stating:

“NOTICE. The public have permission to enter this land on foot for recreation.
This permission may be withdrawn at any time”

There is no access for vehicles or horses at any point along this southern boundary.
46. At the other, downhill, end of the Land (at its north-eastern corner), there is another pedestrian kissing gate. This one is immediately adjacent to a standard metal five-bar gate, wide enough to allow vehicular access – although it would seem, from the pattern of the grass to either side, that this gateway is only occasionally used by vehicles. These gates allow access to the Land from the southern end of Canada Lane. The northern half of Canada Lane is a metalled road that runs southwards from Lechlade Road, alongside the Infant School, and then becomes the Pines. The southern half is an unmetalled track leading from the junction with the Pines down to the corner of the Application Land.
47. Between the two kissing gates, running up the eastern side of the Application Land, is a public right of way on foot. This is clearly well used; and I observed people walking up and down this route with and without dogs.
48. There is also a well-worn pedestrian route running roughly around the perimeter of the Land, but a few metres in from the edge – overlapping with the public right of way along the eastern boundary. This path is referred to in this report, as it was at the inquiry, as “the circular path” (or track), as it cuts the corner at each of the four

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corners of the field – particularly at the north-western corner, which is slightly boggy. It also cuts the corner by each of the two gates – that is, it appears that those walking round the field, having initially gained access to it from one gate, go up one side and down the other, making a circular route, presumably leaving by the same entrance as they arrived. The result is that, by each of those two gates, there is a path leading to the circular path in each direction, and the circular path itself cuts the corner, so that the walk round the field can be started or finished at either gate, and enjoyed in either a clockwise or anti-clockwise direction.

49. And the circular path is indeed well used – broadly just as much used as the right of way – as is clearly visible both by looking at the Land today, in 2015, and on inspection of the 1999 and 2004 aerial photographs. In particular, I observed that, standing at the kissing gate at the uphill end of the Land, the path going to the west (parallel to the southern boundary) and the path going to the north down the hill (parallel to the eastern boundary) appear to be more or less equally used – in other words, although in law one is a public right of way and the other is not, that does not affect the way in which they are used. The same pattern is to be seen at the Canada Lane entrance.
50. Although it was not much referred to at the inquiry or in the written statements, it is clear on site that there is a further route, tight up against the hedges around the edge of the Application Land. This boundary route too seems to be well used, as evidenced by my observation of both the physical state of the route itself and people and dogs walking along it; but it would not seem to be used as much as the circular path, perhaps because it goes right into the corners, and is therefore longer. And along the eastern boundary (adjoining the houses and the road), there are some points at which the two paths merge.
51. Finally, I noted that there was generally a wire fence within the boundary hedge. There was in addition evidence of other wire fencing at the north-western corner of the Land.
52. On my various visits to the Application Land I observed that It is clearly now being used regularly for informal walking; indeed, it would be very surprising if it were not, given that it is immediately adjacent to a residential area and easily accessible at two points at either end of a public right of way. I also noted that some of those using the Land kept to the circular path; but some went into the middle; and, as noted above, it would seem that some use the path right at the edge of the Land.
53. I also observed that there is a good general view of the Application Land from the lay-by on the north side of the Highworth Road, just to the west of the south-west corner of the Land – sometimes referred to in the evidence as “the viewing point”.
54. From the Lechlade Road, and from the track leading to Crabtree Farm, on the other hand, there is only a fairly distant view of the Application Land. I imagine that it might be possible on a sunny day in the winter to see sledging on the Land – not least because of the movement of the sledges. But I should be surprised if anyone walking on the Land would be visible from the Lechlade Road.
55. I am obviously very conscious that I have only personally seen the Land and the immediate area in spring 2015, and that it may not have always been in the same physical condition, or used in the same way, throughout the relevant period.

The use of the Land: documentary evidence

56. Clearly the production of any written or oral evidence specifically in the context of the present Application is open to the charge that it has been fabricated, or at least exaggerated, to provide support for the case of the person producing it. Before considering such evidence, therefore, it is helpful to consider what evidence exists that altogether predates the present proceedings, and so is not open to any such doubts – even though it may be open to more than one interpretation.
57. The first items of evidence are the aerial photographs, referred to above, which indicate that the Application Land was in the period from 1999 to 2009 in more or less the same condition and use as it is today.
58. Secondly, inventory and valuation reports were produced by Dreweatt Neate, indicating that the land (under the name Liddiard's Field) was "permanent pasture" at the start of June in the years 1991 to 1996; that no dung was applied in any of those years; that fertiliser was applied in (only) 1995 and 1996; that the Land was chain harrowed in 1992 to 1996; and that it was rolled only in 1995.¹⁴ The reports for the years after 1996 were not produced. The identity of the land to which the various processes were applied is not directly stated in the reports, but there was no dispute as to the conclusions to be drawn.
59. Thirdly, handwritten stocktaking books produced by Mr Bowler, again by reference to "Liddiards Field", from 1990 to 2013¹⁵ indicates that fertiliser was applied in 1990, 1995 and 1996; chain harrowing was carried out in 1990 and from 1992 to 1999; rolling in 1990 and 1995; and no works from 2000.
60. Fourthly, invoices from various contractors indicate that hay baling was carried out on the Application Land in the years from 1993 to 2012, with the exception of 1996, 1997, 2001 and 2002.¹⁶ Again, the identity of the land involved is not stated in the reports, but there was no dispute as to the conclusions to be drawn.
61. A letter from the County Council indicates that the kissing gates were installed in 2003.¹⁷

Evidence in support of the objections to registration

The use of the Land: the evidence at the inquiry from the Owners

62. It is customary in inspectors' reports on village green inquiries to consider first the evidence produced of the Applicant. However, on reflection, in view of the oft-repeated advice from the courts that the key in such cases is always to consider first how the matter would have appeared from the perspective of the landowner, I am

¹⁴ Exhibits CFNA 2 to CFNA 7.

¹⁵ Exhibit IB 2, helpfully summarised at exhibit IB 3.

¹⁶ Exhibits CFNA 8 to CFNA 12.

¹⁷ Letter of 25 April 2003, exhibited (unnumbered) by Nigel Allaway.

starting with the evidence of the owners of the Application Land, and those advising them or working with them.

63. In this case, as noted above, oral and written evidence was to be produced at the inquiry by the Owners, Nigel Allaway and Rosemary Pollock, their spouses, and Nigel Allaway's children. Nigel Allaway was unfortunately unable to be present at the inquiry. I deal with each in turn.
64. Nigel Allaway and Rosemary Pollock have owned the Application Land since they inherited it from their mother on her death in 1990. Since they were born, in the early 1950s, they lived with their parents at Crabtree Farm, Lechlade Road – a mile or so outside Faringdon. In 1983, Mrs Pollock moved to Highworth, where she still lives.
65. Nigel Allaway explained in his written statement that the Application Land – known to him as Liddiard's Field or Cooper's Field, not as Humpty Hill – had always been permanent pasture, and in support of that produced the inventory reports, referred to above. He said that the Land had been chain harrowed each year until 2013, by him or a family member or friend, involving the use of chain harrow towed by a tractor for 1 to 2 hours, before or after the hay crop was taken. The rolling would similarly have taken 3 to 4 hours. The fertiliser would have taken 1½ hours each spring; and dung would have been spread each year, taking 45 minutes each February or March. Ragwort would have been pulled up each year before the Land was cut for hay. In addition, Mr Allaway would have visited the Land monthly while the crop was growing, and weekly towards the end of the grass growing season (around July). He mowed the Land until 2001, taking a full day; after that the mowing was done by P J Benson. And he carted the hay bales back to the Farm until 2009, taking slightly over a day. The hedges were cut every year, until c.2009.
66. Mr Allaway also stated that he had put cattle – about 10 cows – on the Land in 1996 (from June) and 1997 (from May). There was a water trough on the Land, around half way down the western boundary. There was a pen in the north-west corner of the Land, into which the cattle would be herded in September/October in order for them to be loaded on a trailer and taken back to the Farm (in 1996) or driven on foot (in 1997). There was only one isolated incident of the cattle escaping. There were no cattle after 1997.
67. When he was on the Land, engaged in harrowing, rolling, spreading fertiliser and dung, Mr Allaway mostly saw people on the path; if he saw them walking round the boundary of the Land, he would tell them to get back to the path. When mowing or carting, he only saw people on the footpath. Similarly, when he was on the Land checking the cattle, he did not see a lot of people using the footpath; and if he saw people on the circular path, he would tell them to get back onto the public footpath. Usually, if people had seen him, they would stick to the public path. But he had not seen people using the middle of the Land – he would have remembered, as it would have interfered with the crop.
68. He accepted that there had occasionally been sledging on the Land, to which he had never objected; and he had seen blackberry picking on one occasion. He also noted that children had interfered with the hay bales – cutting open the small square ones or, more recently, rolling the larger round ones down the hill – but usually they had run away before being intercepted. .

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69. Mr Allaway explained that there had been another entrance to the Land, approximately half way along the southern boundary, but this had been blocked up in around 2005.
70. Mrs Pollock – who had also never heard the Land referred to as Humpty Hill until recently – explained that until 2011 she had occasionally stopped on her way past the Land, to view it from the lay-by on the Highworth Road; and since then she had visited the Land every month, and more frequently at haymaking time. She confirmed that there had been a hay / silage crop on the Land each year, except in the two years when there had been cattle.
71. Over the years, she had seen people walking, with or without dogs, on the public path and round the edge of the Application Land – on some visits, one or two, and on some visits none – but she had not seen any tracks elsewhere on the Land. The grass would grow to around 60 cm (2 feet) tall, which would make it difficult to walk elsewhere. She particularly looked for dogs off the lead when there were cattle on the Land.
72. At the inquiry, she explained that she had considered trying to stop people on the land – including by the erection of fencing – but that it was difficult. The gate at the Canada Lane entrance had been locked, but the lock was vandalised. The permissive notice had been erected in 2011; the wording had been suggested by Swindon Council. She had seen a childminder on the land with some children, but she would not have asked them to leave; it was good for them to get out.
73. In re-examination, she explained that she was certain about the cattle on the Land in 1997, as that had been the year of Princess Diana's death, and her daughter Catherine had told her about herding the cows on horseback, which had linked in her mind with her recent visit to the USA.
74. Generally, the evidence of Mrs Pollock supported that of her brother Nigel.

The use of the Land: evidence from the Owners' family

75. Mrs Alison Allaway is the wife of Mr Nigel Allaway, one of the Owners of the Application Land. She has lived at Crabtree Farm since 1992, where she has been involved in the running of the farm. She corroborated the evidence of her husband as to the farming activities on the Land – including chain harrowing, rolling, spreading dung and fertiliser, pulling up the ragwort, mowing, baling and carting. In oral evidence, she explained that the dung had only been applied as a very thin coating. She had been on the Land every 2-3 months.
76. She explained orally that the use of the Land had been for "low level" agriculture – producing a consistent hay crop, but not intensive farming with lots and lots of artificial fertiliser.
77. She also confirmed the presence of cattle on the land in 1996 and 1997. Water for the cattle came from a neighbouring field, and a trough and a holding tank on the Land. Her husband had visited the Land every day, for 15-20 minutes, while the cattle were on the Land, entering from Canada Lane and driving around in a 4x4. She explained that cattle were very good at hiding, especially if they were not welcome; they could get under the trees at the bottom of the hill.

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78. She noted that she had sometimes seen people walking on the public path. She had also seen people walking, or dog walking, around the perimeter of the Land – usually solitary walkers rather than groups. And she was aware that children used the Land for sledging in the winter. Due to problems with children playing on hay bales, since the 1990s the hay crop has been baled and carted as soon as possible, to avoid damage. She stated in written evidence that otherwise she was not aware of anyone using the Land; although she noted in her oral evidence that Mr Benson had reported evidence of use, including dog balls. She also stated that she had seen people walking on the footpath throwing balls and frisbees; and small children on bikes.
79. Signs had been put up at the Canada Lane entrance before 2011, but they had been removed within months. She could not be specific as to whether the signs had been before or after 1991; nor could she produce any record of those signs.
80. Mr John Allaway is the son of Nigel and Alison Allaway. He was born in 1974, and lived at Crabtree Farm from 1992 to 1998, since when he has lived in Swindon. He had assisted his father with the haymaking on the Application Land in July and August from 1990 until 2004. He stated that the mowing would take around 4 hours, and turning another 4 hours two days later; the whole harvesting process would take between one and two weeks, depending on the weather. Initially he and his father had done the work themselves, and latterly they had employed contractors.
81. As to cattle, he confirmed that they were on the Land in 1996 and 1997; he suggested that there had been around 10-15 animals – dry cattle – on the Land. They were generally all over the Land, but tended to be at the edge to benefit from the shade and to keep out of the wind. His sister had helped, on horseback.
82. He noted that there had been occasional dog walkers on the Land; but the dogs had been on a lead when the cattle were present. In preparation for introducing the cattle, he and his father had secured the perimeter of the Land, and had noted that unauthorised pedestrian entrance points had been created. In written evidence, he said that he had seen people walking alone or with dogs, usually on the public path but occasionally elsewhere; “the vast majority of people I saw off the public footpath would put their dog back on its lead and return to the path if they saw me on the [Land]”. In oral evidence he said simply that he had seen some people on the footpath and others on the perimeter path. And he had seen teenagers hanging around the hay bales. He had occasionally seen sledging. But he thought that the presence of the electric cable across the Land would deter kite flying.
83. Mrs Catherine Allaway James is the daughter of Nigel and Alison Allaway, and sister of Mr John Allaway. She was born in 1982, and has lived at Crabtree Farm since 1992. She broadly corroborated the evidence of her parents, although she only left sixth form college in 2000. She had visited the Application Land around once a fortnight during the months from May to August in the years from 1990 to 2000, accompanying her father to check the crop growth. Since 2000, she had visited three or four times a week during harvesting – for two or three weeks – and otherwise every six to eight weeks.
84. She considered that there would have been roughly ten cattle on the Land in 1996 and 1997; and she described vividly her memories of driving the cattle into a pen in the north-west corner of the Land – a rectangular enclosure, made of wire fencing, just

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