

Mrs.Bentley would not go onto the land if the grass was high or if there was machinery on the land.

36.Mrs.Bentley did not recall having seen any notices around the land but she may well have walked past them without noticing.

37.Mrs.Janet Bolas lives at 16, Shellduck Drive, Leegomery. Mrs.Bolas moved to this address approximately 3 years ago. Mrs.Bolas was born in 1940 on Hadley Park Road and had played in and around the application site between the ages of 10 and 15 years. After that, she moved out of the area. Since moving to Shellduck Close, Mrs.Bolas used the application site if the weather was good, usually as part of a longer walk. She also visited the area with her mother before moving to her present address. Mrs.Bolas mother lived at Hadley Park Road. She recalls seeing others use the application site to exercise dogs and recalls children using the application site to play, particularly during the school holidays. She has seen the notices and the fencing but has used the gates of gaps in fence to access the land.

38.Mrs.Bolas was asked about the 1999 photograph and accepted that the application site looked as if it had been ploughed in that photograph.

39.Mrs.Bolas confirmed that she must have seen a tractor cutting grass on the field at some stage and that she would not go onto the land if

machinery was on the field. Mrs.Bolas would not do anything which was a danger to herself or to the crops.

40.Brian Buckle lives at 24, Royal Oak Drive and has lived in Leegomery for 27 years. Mr.Buckle has used the application site for the whole of that period to exercise his dogs. He has been a dog-owner for the whole period during which he has lived at Leegomery, save for two months. He would use the application site twice a day for dog walking, usually in the morning and again in the evening. For the last few months he has used the application site less due to his dogs becoming less mobile. The main use of the application site which he witnessed was for dog walking. He would stop to chat with other dog owners whilst their dogs played. On warm summer evenings, there may be as many as 20 users of the field at any one time. He also recalls children using the land especially during the school holidays. He recalls the fencing around the land but assumed that this was to prevent encroachment by vehicles rather than people.

41.Mr.Buckle confirmed that use of the application site had increased as houses were built around it. In the early years of his familiarity with the application site, use was generally restricted to summer evenings when people used the application site to access the Apley Castle Woods which was a “useful circuit”. Mr.Buckle was asked about the aerial photograph at p.87 of the Objector’s bundle. He could not confirm what was shown

as growing in the application site. Mr.Buckle stated that “there has been so much alteration it is difficult to recall a specific field – it is difficult to remember”. Mr.Buckle could not remember the application site being cultivated with a cereal crop.

42.Mr.Buckle does not recall seeing any signs or notices. He did not enter the application site from Peregrine Way but via the gate along Silkin Way where there was not a sign.

43.Robert James lives at 38, Royal Oak Drive. Mr.James was born in Wellington in 1950 and has known the application site and its vicinity since 1958 or 1959, but has used the application site mainly since 1985. Mr.James keeps dogs and uses the field often very early the morning or late at night. He uses all of the application site for dog exercise and training. He would exercise his dogs by throwing balls, a frisbee and sticks for the dogs to retrieve. He has seen other activities taking place on the land over the years that he has known it, including football, cricket, rest and relaxation under trees, bicycle riding, as well as dog walking. Mr.James’ access to the application site has never been impeded. He generally enters the field at the gates along Silkin Way. He recalls grass being cut on the field. This was done as much as 3 times per year if not more often. He recalls that this was done by “Timmy”, who was a relation of the farmer responsible for the application site. Mr.James had

never seen the grass baled. He was never stopped from using the application site.

44. Mr. James recalls signs being erected and damaged or uprooted shortly thereafter. Mr. James stated that there had been no arable crops in the application site since he has lived in the area. He recalls barley in other fields and he would not enter those fields which were under crop.

45. Mr. James confirmed that users of the application site derived from a wide area including Wellington, Hadley as well as Leegomery. Mr. James was asked about the 1993 aerial photograph and whether that showed a ploughed field. Mr. James considered that that photograph showed a field cropped by sheep.

46. Ronald Plenderleith lives at 5 Dover Drive, Leegomery and has lived in Leegomery since 1981. Mr. Plenderleith's address is located outside Apley Castle Ward. Mr. Plenderleith was stationed at Parsons Barracks, Donnington when he was serving with HM Forces between 1961 and 1964 and during this period used the application site as a shortcut during fitness training. Roll call often occurred on the application site following the end of a training session. Since between 1981 and 1995, Mr. Plenderleith has exercised his dog twice a week on the application site. Since 1995, Mr. Plenderleith has visited the application site once a week as part of a walk or to assist in litter picks in Alpey Castle Woods.

Mr.Plenderleith recalls seeing others using the application site for recreational purposes. On occasions he witnessed 10 to 15 people using the application site. Mr.Plenderleith has never asked permission to use the land. He has no recollection of the land being cultivated. Mr.Plenderleith confirmed that if a field had been cropped he would not enter onto it.

47.Mr.Plenderleith was referred to the 1993 aerial photograph. He agreed that there was no grass on the application site except around the edge of the site. He was not prepared to accept however that the photograph showed a ploughed field but suggested it could be the application site after it was burned. Mr.Plenderleith considered that interpretation of an aerial photograph was a matter for a specialist.

48.Mr.Plenderleith was aware of the presence of notices but chose to ignore them. He considered the application site to be public land.

49.Mrs. Valerie Buckle is the wife of Mr.Brian Buckle. They live at 24, Royal Oak Drive, Leegomery. Mrs.Buckle has lived in Leegomery since 1981 and before that she lived in Trench and worked in Wellington. Mrs.Buckle did not visit the land a great deal before 1985 as she worked full-time. When she began to use it, Mrs.Buckle would enter onto the application site from the “five bar gate”, which is located along the Silkin Way boundary. She would use the land to exercise the family dog, twice or three times per week and to play with her children. Mr.Buckle usually

walked the dogs but Mrs.Buckle would sometime take the family dogs for an extra walk if the weather was good. Mrs.Buckle recalls having seen a lot of other dog walkers, and those training dogs, especially in summer. Mrs.Buckle recalls that the application site had always been an open field. Although the grass was cut there was no specific cutting regime, in so far as she was aware. There was never a crop in the field.

50.Mrs.Buckle recalls the erection of the estate fencing but thought that this was to deter the dumping of cars.

51.Mrs.Buckle was asked about the photograph at p.87 of the Objector's bundle. She confirmed that it was probably taken around 1997. Mrs.Buckle was asked whether that photograph showed a crop. Mrs.Buckle considered that this showed a field of mowed grass. Mrs.Buckle was also asked about the 1993 aerial photograph and it was put to her that this showed bare earth which had been dug. Mrs.Buckle stated that she was not sure about this but she noted that there was a "very clean cut edge to the field" as it appeared in that photograph.

52.Mrs.Buckle confirmed that when she began to use the application site in there were "a lot fewer houses" than now.

53.Mrs.Buckle does not recall seeing signs at the point off Silkin Way from which she usually entered the application site.

54. Mrs. Sudesh Mejer lives with her family at 14, Eider Drive, Leegomery.

The family moved to Eider Drive in 2002. Mrs. Mejer and her husband moved to Telford when they were married (summer 1995) and lived at first nearer to Apley Castle. They would go for walks as a couple before their children were born and Mrs. Mejer knew the woods around Apley Castle well as a result of this. Mrs. Mejer and her family now use the application site for walking and for her children to play. She has used the track across the application site for her son to ride his bicycle. They occasionally picnic under a tree on the application site in summer. She uses the application site regularly at weekends to access the Apley Castle Woods. She sees others using the application site for a range of activities including dog walking and playing with children. Mrs. Mejer's kitchen directly overlooks the application site. There can be 8 to 10 dog walkers on the application site at 6 pm in the evening. The application site has been mowed on two occasions while she has been using the land. There was no objection from the tractor driver to her presence.

55. Mrs. Mejer confirmed that since she began to use the application site, the use of it by others has increased.

56. Mrs. Mejer was shown the photograph at page 87 of the Objector's bundle, thought to be taken in 1997 and was asked whether this showed a crop of barley. Mrs. Mejer stated that it "looked as if it has been

farmed". When asked in re-examination whether at any time since 1996 she recalled farming taking place on the application site, she stated that she could not answer that question. She confirmed that she would not walk on a field with crops growing but may choose to walk around the edge.

57. Gerrard Hunt lives at 9, Wigeon Grove, Leegomery. Mr. Hunt moved to Telford in 1988 and has lived at various addresses before moving to Wigeon Grove in 2004. He has known the application site for 18 years, give or take a month. At present he uses the application site to walk his dogs, usually twice-daily. In the past he has used the application site to play with his children, to picnic, for birdwatching and for blackberry picking. He has seen others using the land for the same purposes. He has only ever seen grass on the field which was cut from time to time.

58. Mr. Hunt confirmed that the use of the land has increased as more houses have been built. Most housing near the application site is less than 18 years old. He confirmed that he had read the notices which had been erected but thought that they were incorrect and ignored them.

59. Mr. Hunt confirmed that some fields in the vicinity had been cropped and that he would not enter a cropped field. He stated that he could not be specific as to which fields were cropped and which were not, or to the type of crop.

60. On the basis of the evidence summarised above, the Applicant submitted that the legal requirements for the application site to be registered as a green had been met. The Applicant produced submissions in writing, at my request, and I include those submissions as Annex 1 to this report. In short the Applicant submitted:

- a. that the application site had been used for lawful sports and pastimes for a period significantly in excess of the period of 20 years preceding the application. The use of the land has been shown to have been by a significant number of the inhabitants of the locality relied upon, namely Apley Castle Ward.
- b. that use had not been interrupted by any cultivation of the application site during the relevant period. In particular, the Applicant denies that there had been any cultivation of cereal crops or sugar beet during the relevant period and suggested that neither the aerial photographs nor the MAFF returns produced by the Objector could or should be relied upon to reach a contrary conclusion;
- c. the fencing around the land has not preclude or prevented free access since gaps have always been left in the fence;

d. the notices which had been erected are expressed as highway notices and therefore have no bearing of use of the land for lawful sports and pastimes. Furthermore, the notices were not positioned so as to be visible to all users.

Evidence Called for the Objector

61. Neil Hollamby is employed by “The Environment Partnership” (“TEP”) as Clerk of Works. He has held this role since 1981. In 2002, English Partnerships commissioned TEP to manage a programme of landscaping works to land around, and including, the application site. This was part of a larger project covering much of the Apley Castle area. One element of this work was the erection of estate fencing which is present now in the area including around the boundary of the application site with Peregrine Way, Pintail Drive and Eider Drive. Mr.Hollamby confirmed that this fencing was erected in 2002. Mr.Hollamby produced minutes of various contract meeting which show that this fencing was in large measure complete by May 2002 and, other than snagging, the fencing was wholly completed by June 2002.

62. Mr.Hollamby confirmed that gaps were left in the fencing to allow individuals to gain entry and that the notices which indicated that access to the land was limited to permissive paths were positioned adjacent to these gaps after the fence was erected in 2002.

63. After completion of the works TEP were responsible for maintaining the area after 2002. This involved mowing the area within the new fencing.
64. Nicholas Ashcroft is an Assistant Land Manager employed by English Partnerships. His role includes the management of various parcels of land owned by English Partnerships and part of this role is the management of the erection and maintenance of signs and fences on English Partnerships' landholding.
65. Mr. Ashcroft confirmed that notices in the terms which I have described at paragraph 9 above were erected at two locations along the boundary of the application site with Silkin Way a few days before the public inquiry. Signs had been erected repeatedly along this boundary in 2006 and 2007 but had been on every occasion been either vandalised or uprooted shortly after their erection. The notice along the boundary with Silkin Way, nearest to Apley Castle woods, had been replaced on three occasions since March 2008.
66. The current notices on the estate fencing had been erected in 2005 to replace earlier notices with the same information contained on them which had been put up in 2003.
67. Mr. Ashcroft confirmed that the intention on the part of English Partnerships as to the instruction that these notices was to convey was that the land to which they related was private and that people were only

entitled to access the application site to use the permissive routes between the gaps in the boundary fences, which were shown on the plan submitted by the Objector and to which I have referred.

68. Mr. Ashcroft confirmed that the track on the application site which continued from a locked gate at the junction of Pintail Drive and Eider Drive was made of hardcore and was laid to serve George Wimpey Limited's construction compound which occupied part of the application site for a period of nine months in 2002 and 2003.

69. Gerard Cooke is a farmer and has been for over 40 years. He farms from Bratton Hall Farm, Bratton, Telford, which is about 2 miles from the application site. Mr. Cooke farmed the application site under a series of agricultural tenancies and informal licences from the 1960 to 2002. Mr. Cooke's father farmed the application site before him. They both had exclusive occupation of the application site during the period of these tenancies and licences. Mr. Cooke referred to the field as "Bovis".

70. The application site was set aside from the 1999 growing season to 2002, when Mr. Cooke's tenancy of the application site terminated and was not renewed. When set aside, the site would have the appearance of a green field. It was generally mowed once each year when set aside.

71. Prior to being put into set aside, Mr. Cooke used the application site for a rotation comprising sugar beet and cereal crops (ie. 2 years of cereal crop followed by a year of sugar beet). Mr. Cooke considers that those who suggested that there had been no cultivation of the application site since 1983 were incorrect in their recollection.

72. The cultivation of spring cereal crops included spring barley. Spring barley would be sown in March and harvested in August. Before seeding, the land would be ploughed using a tractor-borne plough. The crop would be sown using a tractor and thereafter the field would be sprayed as the crops matures, again using a tractor. The crops would be harvested using a combine harvester. Harvesting would take a day and would be followed by bailing, using a mechanical straw-baler. The stubble would then be left in the field until it was ploughed the following December.

73. As part of the rotation, the application site would be used to cultivate winter barley. The process of cultivation is broadly the same as for a spring crop save that the cultivation period is extended, typically, from October until harvesting in the following July or August.

74. The remaining part of the rotation was the use of the application site to cultivate sugar beet.

75. During the growing seasons access to the application site for recreational purposes would have damaged the crop and would have become

impossible as the crop reached maturity. Mr.Cooke does not recall his crop having been damaged. On rare occasions, he would witness people trying to cut across the application site. On these occasions, he would request that they leave.

76.Mr.Cooke produced a series of MAFF Field Data return forms. As it was explained to the inquiry, the return completed for 1996 indicates that the field was under cultivation with a crop of sugar beet (reference "SU1") during that season. The return for the following year, 1997, shows that the crop was barley (reference "BA1"). The return for 1998 has the same crop recorded. The return for 1999 states that the field was placed in set aside in that year. These forms are consistent with Mr.Cooke's description which he gave of the use of the application site.

77.Mr.Cooke was asked to comment on the aerial photograph at p.87 of the Objector's bundle. Mr.Cooke thought that this photograph would have been taken in 1995 or 1996 rather than in 1997. However, he stated that it showed a cereal crop in mid-summer, around June or July, before it was cut. It was not grass that had been cut. Mr.Cooke explained that the "tram lines" which are visible on the photograph, are the tracks which the tractor uses when entering the field to spray the crop.

78.Mr.Cooke was asked about the photograph at p.94 of the Objector's bundle, taken in April 1999. Mr.Cooke confirmed that this showed the

application site in its first season as set aside. The markings on the ground would be as a result of the previous year's cultivation which was for barley. These marking would, Mr.Cooke stated, have disappeared as the land regenerated over time.

79.Mr.Cooke was asked about the 1993 photograph. Mr.Cooke stated that this showed the application site had been ploughed. It was not, he stated, a field laid to grass or a field which had been grazed by sheep. He did not plough to the edge of the field adjacent to the road since he wished to keep a green verge to the road and in order to avoid damage to the plough. He considered that the ploughed condition of the field was entirely consistent with his management regime which, he explained, was that he would try to plough before Christmas in order to take advantage of frost action on the soil before Spring.

80.Christopher Jones is a chartered surveyor and a partner with the firm of Berrys. He qualified in 1993 and practises mainly in the agricultural field. Most of his clients are farmers. Mr.Cooke's MAFF returns which have been produced in evidence were completed by Mr.Jones. Mr.Jones explained in detail how the returns were prepared and the information contained in them. His evidence corroborated the explanation which had already been given by Mr.Cooke. Mr.Jones, in particular, explained why the National Grid field number for the application site ("Bovis" field)

changes between the 1996 return and the subsequent years. Mr.Jones explained that this was as a result of the centre point of the field being recalculated.

81.Mr.Jones confirmed that the information which he added into the MAFF returns as to the use made of field was provided to him by Mr.Cooke. Mr.Jones did not visit the relevant field to check for himself the accuracy of the information provided to him. MAFF officials check randomly and not at a set frequency. He was not able to confirm whether MAFF inspected Mr.Cooke's landholding or the application site in particular during the years to which the returns he completed relate. However, Mr.Jones confirmed that the penalties for providing false information to MAFF on a return were severe, and included prosecution. He was not aware that Mr.Cooke had ever received a penalty.

82.The Objector made submissions as to why the application should be rejected. These submissions, like those of the Applicant, were reduced into writing and I attach those submission as Annex B to this report. In short, the Objector makes the following points:

- a. any use made of the land was not continuous during the relevant 20 year period due to interruption by agricultural operations which had taken place on the land nor for that reason was the use "as of right";

- b. any use was not as of right for the complete 20 year period by reason of the presence of fencing and notices;
- c. use of the land was interrupted by the presence of a site compound in use by George Wimpey Limited in 2003;
- d. the use of the land has not been shown to have been by a significant number of the inhabitants of the locality nor that users are spread throughout the locality, namely Apley Castle Ward.

Conclusions

83. On the basis of the evidence and submissions which I heard, I must consider whether the Applicant has demonstrated that, on the balance of probabilities, that the relevant elements of the qualifying definition are met. I set out those elements in paragraph 18 above. In considering the evidence, I have firmly in mind the guidance given by Lord Bingham in the *Beresford* case (see paragraph 21 above) in which he emphasised the need for particular care in ensuring that the qualifying requirements are properly met before land is registered as a green

Use of the land for lawful sports and pastimes for the 20-year qualifying period

84.It is agreed that the relevant qualifying period is the 20-year period between 14 June 1987 and 14 June 2007.

85.It is necessary for the Applicant to show that, on the balance of probabilities, the land was used for lawful sports and pastimes continuously during this period.

86.The first point which I need to consider is the extent to whether it has in fact been possible to use the land for recreational purposes during the whole of the relevant period and, in this respect, whether for any part of that 20 year period the application site was in agricultural cultivation which prevented, practically, its use for sports and pastimes.

87.Six witnesses called for the Applicant gave evidence of their recollections for the whole of the relevant 20 year period. None of these witnesses nor indeed any other witnesses called for the Applicant recalled any arable cultivation on the application site. However, Mr.Buckle accepted that it is difficult to recall the use of any specific field. Mr.Hunt stated that he could not recall specific fields and what specific crops were growing in them.

88.As against this, I heard the evidence of Mr.Cooke, the farmer who occupied the application site until 2002. His evidence was that from the 1999 growing season until 2002 the land was in set aside and therefore would have had the appearance of an open field laid to grass. Mr.Cooke

explained that prior to the 1999 growing season, the application site was used for the cultivation of cereal crops and sugar beet in a three year rotation. Mr.Cooke stated that when the application site was in arable cultivation the land could not, in practice, be used nor was it to any material extent used for sports and pastimes. I accept from general experience that use of a ploughed field or a field in which barley or sugar beet is maturing would not be capable in any meaningful way of being used for lawful sports and pastimes. Indeed, and as I have recorded, many of the witnesses called for the Applicant confirmed that they would not enter or use fields which were in arable cultivation. I consider Mr.Cooke to have been a truthful and reliable witness and I place considerable weight on the evidence which he gave to the inquiry.

89.Mr.Cooke's evidence is corroborated by the MAFF returns that the Objector produced and which were explained by Mr.Jones. Mr.Jones completed these returns and I attach no weight to the fact that Mr.Cooke was not able to the answer technical questions put by the Applicant relating to these returns since it was Mr.Jones and not Mr.Cooke who was responsible for their completion. The returns stated that between 1996 and 1998 the application site was in used for cultivation of barley and sugar beet. The returns also indicate that from the 1999 growing season the application site was in set aside. Mr.Jones explained that the

requirement to submit returns began in 1993 and that prior to 1993 the application site would have needed to have been in cultivation for a period of 5 years. Mr.Jones explained that this could have included cultivating grass. These returns therefore accord with Mr.Cooke's evidence.

90.The Applicant's representatives questioned Mr.Jones, with appropriate robustness, as to the details of these MAFF returns. I am satisfied that Mr.Jones explained satisfactorily the details shown on these returns and answered all of the Applicant's inquiries. I am satisfied in particular that the difference between the 1996 and 1998 returns as to the National Grid field number for the application site is explained by a recalculation of the centre point of the site. Although Mr.Jones did not himself verify the accuracy of the information provided to him by Mr.Cooke as to the use made of each field, since providing false information in these returns is a serious matter, I do not consider it likely that the information set out in these returns is likely to be inaccurate.

91.Then there are the aerial photographs. At the inquiry much weight was placed on an aerial photograph of 9 April 1999 (Objector's bundle p.95) and a photograph which is undated but which it was generally agreed showed the application site and surrounding area in 1997³ (Objector's

³ Albeit that Mr.Cooke considered that it was from an earlier year.

bundle p.87). The Objector's suggested that these photographs and, in particular the photograph at p.87, showed a field in arable cultivation and, in the case of the 1999 photograph, a field which had not at that stage regenerated following arable cultivation. Mr.Cooke stated that these are the conclusions which he drew from the photographs. I have some sympathy for the Objector's position and the photograph which was taken to date from 1997, to me, does seem to show an arable crop in the field. However, absent other evidence, I would not feel able to reach a definitive conclusion as to what in fact the photographs show as to the crop (if any) on the application site. However, the conclusions which the Objector invited me to draw from the photographs and, in particular, the 1997 photograph accords with the recollections of Mr.Cooke as to the use made of the application site at that time and, importantly, with the MAFF return for that year. In the context therefore of other evidence, I place some weight on the photographs 1997 and 1999 and the Objector's interpretation of them as demonstrating that the application site was and had been in arable cultivation during those years, respectively.

92.The photograph taken on 14 December 1993 is a different matter. This photograph shows part but not all of the application site. In my view it is abundantly clear from this photograph that the part of the application site shown on this photograph had been ploughed, save for strip adjacent to

the vehicular carriageway at Peregrine Way. Although, I accept that in some cases the interpretation of an aerial photograph is a matter on which specialist evidence may be required, I consider that the 1993 photograph is sufficiently clear to allow a concluded view to be formed as to what that photograph shows without the need for such evidence. Indeed, when Mrs. Buckle and Mrs. Mejer was asked to indicated what they considered the 1993 photograph showed if not a ploughed field, they found it difficult to suggest a different conclusion to that which was put. I find Mr. Plenderleith's explanation that the 1993 aerial photograph showed the application site after it had been grazed by sheep implausible and not supported by any other evidence, whether called for the Applicant or the Objector.

93. Therefore, I have the evidence of Mr. Cooke, which I consider reliable, and the corroborative documentary evidence in the form of the MAFF returns and the aerial photographs which point to a conclusion that the application site at least from 1993 to 1998 was in arable cultivation and was thereafter placed into set aside. As against this I have the evidence of the witnesses called for the Applicant many of whom lived in the vicinity of the application site during the 1990s and do not recall the application site being in arable cultivation.

94. I consider that all of the witnesses who were called for the Applicant to be entirely honest and that they were doing their very best to help the inquiry with their recollections. I do not consider it likely that any of the Applicant's witnesses were intentionally seeking to give inaccurate evidence to the inquiry. However, I am very conscious that the area surrounding the application site has undergone very substantial physical change over a short period, as indeed many of the Applicant's witnesses readily confirmed. The aerial photographs which have been produced demonstrate that as relatively recently as 1999 the area to the north and west of the application site largely comprised open fields with very little to differentiate one field from another. I am therefore concerned that with the passage of time, it may well have become difficult for individuals to accurately recall individual fields and the use made of them. This is particularly the case when the landscape has changed so substantially and so rapidly since the mid to late 1990s. Both Mr. Hunt and Mr. Buckle stated that for them it was difficult now to recall specific fields and specific crops. I consider that other witnesses would be under the same, understandable, difficulty.

95. Therefore, on balance, I consider that the evidence produced by the Objector which shows that the application site was in fact in arable cultivation for many years during the 1990s should be preferred. I

conclude, on balance, that the evidence called for the Applicants as to the use of the application site during this period is less reliable, not by reason of any intention to mislead but by reason of lack of clear recollection.

96. I conclude therefore that on the balance of probabilities the application site was in arable cultivation at least for the period between 1993 and 1998 and possibly⁴ for several of the years before 1993. This use of the application site made it impractical for use for lawful sports and pastimes during this period. Furthermore, I am satisfied from the evidence of the Applicant that local inhabitants would not in fact have entered a field when in crop, as many of the witnesses from whom I have heard confirmed. I conclude therefore that the application site was not used nor was it available for use in any meaningful way between 1993 and 1998. I conclude that it was only after 1999 that the land became suitable for recreational use. Therefore, I conclude that the application site has not been shown to have been used for lawful sports and pastimes for the period between June 1987 and June 2007.

97. I am however satisfied that after 1998, when the application site was placed into set aside, that it began to be used for sports and pastimes. The level and intensity of use increased as the housing development close to

⁴ Although I accept that the crop may have been grass for the whole or some part of the period of 5 years before 1993 (as per Mr. Jones' evidence (see para.89 above)).

the application site advanced. I note from the plan produced for the Objector which showed when various houses in the vicinity of the application site were sold-off that it was during the late 1990s and the early part of the following decade that most of the houses close to the application site became occupied. I therefore conclude that significant use of the application site for sports and pastimes did not begin until around 2000.

98. The conclusion which I have reached in the above paragraphs of itself leads me to recommend that the application should be rejected. However, and for completeness and to do justice to the evidence and submissions made to me, I will address two further points concerning the evidence of use of the land during the qualifying twenty year period between June 1987 and June 2007.

99. First, it was suggested for the Objector that when use of the application site for sports and pastimes was occurring the predominant use was to pass and repass through the site and not for sports and pastimes. I accept that there was some considerable use of the application site as a walking route either directly through the application site or as a means to access Apley Castle woods. Indeed, at the time of my site inspection, there were clear wear marks on the surface of the application site which are consistent with its use as a through route. However, from the evidence I