

- 7.3 It is submitted that little weight should be given to pro forma evidence which could not be tested by cross-examination.
- 7.4 The number of supporters should be considered in the light of:
- (a) substantial use as a through-route;
 - (b) very public campaign for village green registration¹⁶;
 - (c) the length of the Public Inquiry.
- 7.5 Examples of Applicant's witnesses giving evidence of principally through-route use include:
- (i) Paul Robertson (encouraged by the Inspector said he would only deviate from the path to pick up a ball or litter),
 - (ii) Janice James (circular route and apart from training dogs, just used to "pass through",
 - (iii) Pamela Steele said she would "*cross the field in order to get to the woods*" Mr. Davis led in re-exam as follows "*When you spent time on the field did you use it for more than just walking through?*" Response "*I took Charlotte kite-flying and on her bike but mostly I used it for walking through.*"
 - (iv) Sudesh Mejer, whose initial use was clearly for walking and jogging through.
- 7.6 Review of the evidence shows repeated references to going 'across' or 'through' the Field consistent with Mr. Cooke's description of primary use as a "*short cut*". It is submitted that such through use was predominant in the earlier years and probably remains so.
- 7.7 Use by significant numbers must be reviewed in the light of such evidence.
- 7.8 The Applicant's supporters equate to approximately 2.4% of the population of the locality relied on and the witnesses appearing at the Inquiry only 0.3%. Whilst it is accepted that the test in the Act is not simply mathematical, on any view this is a tiny (and it is submitted insignificant) proportion¹⁷.

¹⁶ Apley Preservation Association websites at www.apleyprotests.co.uk and www.apley-castle-park.org

¹⁷ In the Pattinson Road Inquiry 11% was held to be insignificant – see footnote to paragraph 88 of the report at Objector's Authorities Bundle tab J

7.9 Further, and of even more importance, of the 68 people who have submitted pro forma evidence in support of the Application only 17 are able to provide evidence of use in 1987, the beginning of the twenty year period claimed, and only 7 are able to show use going back to the early 1980s. The Inspector is referred to:

- (i) 3 plans of the Apley Castle Ward showing the number (and lack of spread) of witnesses.
- (ii) the jigsaw plan (OB/5/121), showing the incremental development of the area [note entry 13 is clearly an inaccurate date and we believe should be a date in 2002. All other dates are believed to be accurate].
- (iii) the grey shaded plan illustrating that by far the majority of witnesses come from housing built after the start of the relevant 20-year period.
- (iv) A 'timeline' document recording the addresses and alleged duration or recreational use

7.10 These documents (which merely plot the information provided in the witness statement)

- (i) Support the proposition that if there has been significant use, it developed in the mid 1990s.
- (ii) Demonstrate that in respect of the early part of the period relied on (1987 onwards), the witnesses giving evidence at the Inquiry amount to 4 households only.

7.11 All of the above is totally consistent with the photographs which show desire lines in the 90s in other fields but not on the Field. The presence of clear desire lines on 2008 inspection actually support the objector's case that use has greatly increased – in practice has been treated increasingly as amenity land since cultivation ceased in 1999. Although witnesses predictably did not agree insignificant use in the early days all agreed substantial increase (John Moore "*probably trebled*", Sudesh Mejer – increase since 2002).

7.12 Accordingly if the Applicant was able to show use by significant numbers (which is disputed) it certainly could not do so during the earlier years of the period relied upon. The Application should therefore be rejected.

8 SPREAD OF USE THROUGHOUT LOCALITY

- 8.1 Because all but two of the witnesses are situated in Apley Castle Ward, an application based on the parish identified in the application would have been bound to fail on the basis that there was no spread within the locality.¹⁸
- 8.2 However, even within the Apley Castle Ward, the spread is insufficient to justify registration in favour of the locality.
- 8.3 As appears from the ward plan titled 'Showing All Users' there are large areas of housing which are entirely unrepresented in terms of users including housing below Grainger Drive encompassing over 300 dwellings, housing between Barnes Wallis Drive and Lawton Farm Road encompassing over 100 dwellings and all housing to the west of the Field incorporating in total almost 50 dwellings.
- 8.4 The plan dates from 2003 shortly after the 2001 census found 1095 households in the locality of Apley Castle Ward. Although more recently built housing is not included this plan shows that for the majority of the twenty year period claimed areas representing 450 dwellings, or 48% of this ward, were entirely unrepresented. Indeed the majority of users come from just 3 streets: Peregrine Way (20), Shellduck Drive (10) and Royal Oak Drive (9)¹⁹.
- 8.5 In these circumstances rights cannot reasonably and do not accrue in favour of the occupants of parts of the locality where the inhabitants have made no significant use of the Site and may even be unaware of its existence.

9 LAWFUL SPORTS AND PASTIMES

- 9.1 A permissive footpath crosses the Field which provides a route from the Apley Castle housing area to Apley Castle Park for walkers and dog-walkers. As well as not being as of right this large proportion of use is not included within the definition of lawful sports and pastimes.
- 9.2 Care must be taken to disregard the evidence of witnesses whose use has been or has been primarily as a through-route (see paragraphs 7.5 and 7.6 above).

¹⁸ There is one user, Andrew Watkins, who does not live in the Parish of Hadley and Leegomery and another Ronald Plenderleith, who lives outside the ward.

¹⁹ Note that only the third street pre-dates 1987.

10 CONCLUSION

10.1 The Application is misconceived and should be rejected for the following reasons, any of which would be sufficient to defeat the Application:

- (a) user is not as of right in the face of years of agricultural use and/or more recent fencing and signage;**
- (b) user was interrupted by agricultural activities and/or the positioning of the site compound in 2003;**
- (c) user has not occurred for a twenty year period;**
- (d) user has not been by a significant number of inhabitants of the locality relied upon;**
- (e) user has not been by a sufficient spread of inhabitants throughout the locality relied upon;**
- (f) the majority of user has been of the permissive footpath which is not qualifying use for lawful sports and pastimes.**

10.2 Applying the legal requirements of the Commons Act 2006 to the circumstances of this case, regardless of other findings, it is submitted that the claim must fail if either the 1993 photo shows a ploughed field, or if it is accepted that the signs erected in 2002/2003 prevented user as of right continuing.

**Patrick Walker
Counsel for the Objector
10th April 2008**