

TELFORD & WREKIN COUNCIL

LICENSING COMMITTEE – MONDAY 22ND SEPTEMBER 2008

**DETERMINATION OF APPLICATION FOR LAND KNOWN AS THE FIELD,
OFF PEREGRINE WAY, APLEY TO BE REGISTERED AS A VILLAGE
GREEN**

REPORT OF INTERIM HEAD OF LEGAL SERVICES

1. PURPOSE

- 1.1 To consider an application by Apley Preservation Association (“the Applicant”) to register a plot of land described as “The Field, off Peregrine Way, Apley” as a town or village green pursuant to section 15 of the Commons act 2006.
- 1.2 To consider the report of Douglas Edwards, Barrister, the independent inspector appointed by the Council in its capacity as registration authority, following the three day non-statutory public inquiry into the application in April 2008.
- 1.3 To decide, having regard to the application, the objection to the application and the Inspector’s Report and his findings of fact and law and his conclusion and recommendation whether to accept or reject the application.

2. RECOMMENDATIONS

That Members refuse the application for town or village green status for the land described as The Field, off Peregrine Way, Apley for the reasons set out in the Inspector’s report.

3. SUMMARY

3.1 An application was received from Apley Preservation Association on 15 June 2007 to have the area of land known as The Field, off Peregrine Way, Apley registered as a Town or Village Green under the Commons Act 2006. The application was accompanied by evidence which the Applicant contended proved use in accordance with the requirements for registration. The application site is shown in yellow on the plan attached to this report.

3.2 The evidence was considered by officers and, in accordance with the relevant legislation, consultation was carried out with various parties and a notice was placed in the Shropshire Star. The landowner, English

Partnerships, was also consulted and they submitted an objection.

3.3 Members are asked to consider the evidence that has been submitted, the objection and the Inspectors report, taking particular account of his findings of fact and law and determine, on the balance of probabilities, whether the case has been proven for registration of the Site as a Village Green.

4. PREVIOUS MINUTES

None

5. INFORMATION

5.1 Background

Any person may make an application to the local authority for an area of land to be registered as a Town or Village Green. The terms Town and Village are interchangeable in this context.

The authority should register land as a Town or Village Green if it is satisfied, on the balance of probabilities, that the area of land in question has been used for not less than 20 years by a significant number of the inhabitants of the locality, or of any neighbourhood within a locality, who have indulged in lawful sports and pastimes as of right.

A copy of the letter and application form submitted by the Applicant is attached as Appendix 1. This was received on 15 June 2007 and was allotted number 2/2007 in accordance with the regulations governing the procedure. Further supporting evidence was submitted subsequently in advance of the inquiry.

This application was made on the basis that the prescribed use was continuing up to the date the application was made. This means that the period of use to be considered is 14 June 1987 to 14 June 2007.

A copy of the evidence submitted by both the applicants and objectors is available in the Members Room, Civic Offices.

5.2 The Process

When an application is received by the authority it must carry out a number of steps including, allotting a number to it and various consultation and notification procedures. Notices were sent to English Partnerships as landowner, various properties in the vicinity of the application site and the Parish Council. A notice was also placed in the Shropshire Star and a number of notices were put up on site.

A period of 6 weeks is allowed for objections or representations to be made about the application.

An objection was received from English Partnerships. The basis of the objection was that the criteria for registration had not been made out and therefore the land should not be registered as a green.

As an objection had been received the Council decided to hold a non-statutory public inquiry.

5.3 The Public Inquiry

The Council appointed Douglas Edwards, Barrister to sit as an Inspector at the inquiry. He is very experienced in this field and was appointed to consider all evidence from the applicants, the objectors and any members of the public that wished to speak.

The inquiry was held at Leegomery Community Centre on 8th, 9th and 10th April 2008. The Inspector also offered to hold an evening session should either party request it.

During the course of the inquiry the applicants called 12 witnesses to give oral evidence in support of the application, which was open to cross-examination by the objectors. The applicants also submitted 68 evidence questionnaires in support of their application.

The Objector called 4 witnesses in support of their objection and also submitted written evidence in advance of the public inquiry.

The Inspector carried out an unaccompanied site visit prior to the commencement of the inquiry and an accompanied site visit during the inquiry.

Following the conclusion of the inquiry, the Inspector produced his Report of the inquiry, dated 8 August 2008 which is attached as Appendix 2.

5.4 The Report

The Inspector submitted a Report to the Council which includes a summary of the oral and documentary evidence considered at the inquiry.

In his report the Inspector refers to the land which is the subject of the application as "the application site". This is the land coloured yellow on the plan attached at appendix 1.

The Inspector based his findings of fact on the written submissions and the evidence he heard. He concentrated on the relevant period required for the application to succeed i.e. 14 June 1987 to 14 June 2007.

Members need to carefully consider the Inspector's findings, particularly those contained at paragraphs 83 to 114 in the Report. In particular, Members need

to be aware that the Application must satisfy each element of the statutory definition (as detailed at paragraph 18 of the Report) for it to be successful.

The Inspector, having considered all of the evidence has recommended that the Application should fail as it does not satisfy all of the elements of the definition.

5.4 The Determination

The Board should consider the following when making their determination:-

20 Years

The Board should be satisfied that this area has been used for a continuous period of 20 years ending on the date of the Application i.e. between 14 June 1987 and 14 June 2007.

Local Inhabitants

There is no clear definition of this; however, case law suggests that inhabitants of a Parish should be considered as “local inhabitants”, as well as other people who live in the locality, for example where the land lies close to the Parish boundary.

Lawful Sports and Pastimes

Again, there is no clear definition, however, sports and pastimes has traditionally included flying kites, playing football, picnicking, walking a dog, kicking a ball and bird watching. Events such as Village Fetes and carnivals would also fall under the definition of sports and pastimes.

The Board should consider the Appendices and form a view as to whether the case for registering this land as a Village Green has been proved on a balance of probabilities.

5.4 Environmental Impact and Equal Opportunities

As this is a report which seeks a determination based on evidence submitted there are no environmental or equal opportunities considerations.

5.5 Legal Comment

The Committee is acting as Registration Authority for town/village greens and must make any determination on the basis of the evidence before it. This must be made in the context of the non-statutory inquiry having been held with all parties having had the opportunity to put forward any matters which they wished the Inspector to consider.

Any determinations must be based on the principle of reasonableness. Should a determination which is not substantiated by the evidence be made the Council would be vulnerable to a challenge by way of Judicial Review. Should such a challenge be successful the substantial costs of such action would fall upon the Council.

5.6 Links with Community Priorities

The following are considered to be the corporate priorities applicable to this report:-

Maintaining a high quality, attractive and sustainable environment

Promoting healthy communities and improving the quality of life for vulnerable and older people

5.7 Opportunities and Risks

The opportunities and risks associated with this decision have been identified and assessed. Arrangements will be put in place to manage the risks and maximise the opportunities that have been identified

5.8 Financial Implications

Besides the potential for an adverse costs award in the event of the Committee making an unreasonable decision in this matter, there are no financial implications arising from this report.

Although it has no bearing on the decision being made the cost of appointing the Inspector to preside over the inquiry was £13,792 (including VAT).

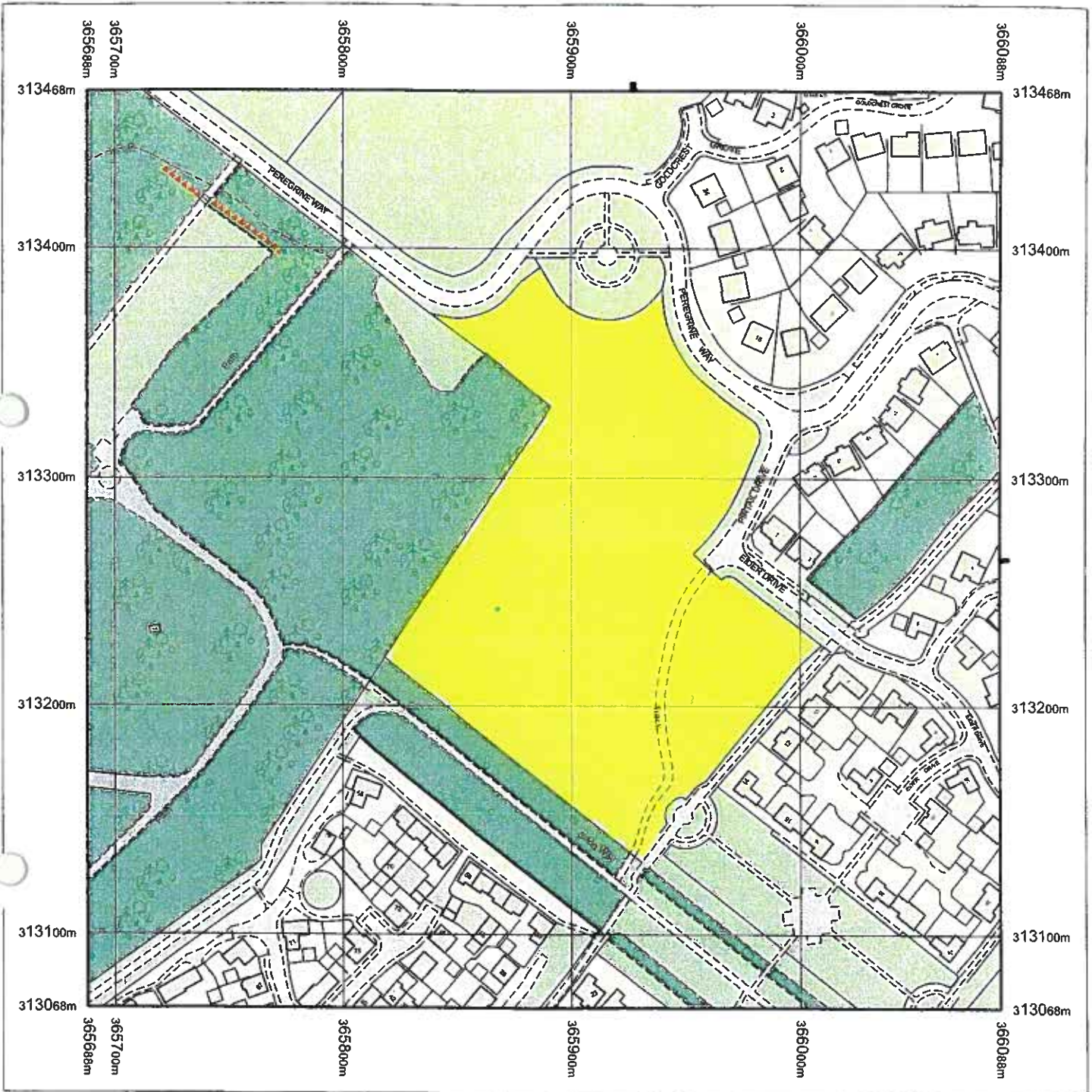
6. WARD IMPLICATIONS

This report has implications for the Apley Ward.

7. BACKGROUND PAPERS

All relevant background papers are included as Appendices.

***Report prepared by Emma Harvey, Solicitor,
Tel: 01952 383255***



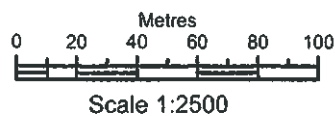
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APPENDIX

1

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:

COMMONS REGISTRATION ACT 1965

**BOROUGH OF TELFORD & WREKIN
REGISTRATION AUTHORITY**

DATE: **RECEIVED**
15 JUN 2007

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.

Note 1
Insert name of registration authority.

1. Registration Authority

To the

TELFORD AND WREKIN COUNCIL.

Note 2

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

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

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.

2. Name and address of the applicant

Name:

Full postal address:

Postcode

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

Note 4

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

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

4. Basis of application for registration and qualifying criteria

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

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

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

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

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

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

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

Name by which usually known:

THE FIELD

Location:

LAND OFF PEREGRINE WAY, BORDERED BY THE SILKIN WAY, APLEY WOOD, BRIDLE PATH AND PEREGRINE WAY.

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

Common land register unit number (if relevant) *

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

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

PARISH OF HADLEY AND WEGOMERY

Tick here if map attached:



Note 5

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

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

Note 6

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

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

Note 7

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

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

A SIGNIFICANT NUMBER OF LOCAL RESIDENTS HAVE USED THIS LAND FOR RECREATIONAL ACTIVITIES FOR 20 YEARS AS OF RIGHT.

THIS IS SUPPORTED BY 27 EVIDENCE QUESTIONNAIRES.

Note 8

Please use a separate sheet if necessary.

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

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

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

Note 9

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

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

Note 10

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

Please use a separate sheet if necessary.

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

ENGLISH PARTNERSHIPS

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

10. Supporting documentation

1. MAP OF AREA SHOWING LOCATION OF LAND TO BE REGISTERED.
2. AERIAL PHOTOGRAPH OF AREA DATED SUMMER 1991
3. TWENTY SEVEN (27) EVIDENCE QUESTIONNAIRES IN SUPPORT OF REGISTRATION AS A NEW GREEN

11. Any other information relating to the application

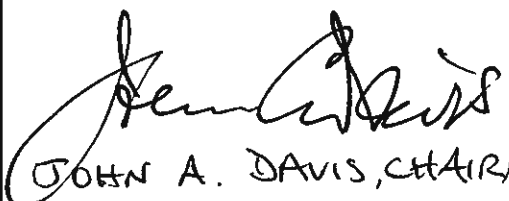
Note 11

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.

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: 14.06.07 .

Signatures:  . 14.06.07
JOHN A. DAVIS, CHAIRMAN A.P.A.

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).*

JOHN ALAN DAVIS solemnly and sincerely declare as follows:—

² *Delete and adapt as necessary.*

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

³ *Insert name if Applicable*

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

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

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

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

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

Cont/

4 Continued

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

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 *Wragge & Co Solicitors*

[Handwritten Signature] (JOHN. A. DAVIS)
Signature of Declarant

this *14th* day of *June 2007*

Before me * *FLASSER WILLIAM TART*

Signature: *[Handwritten Signature]*

Address: *55 Colmore Row
Birmingham*

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

APPENDIX

2

**APPLICATION BY APLEY PRESERVATION
ASSOCIATION TO REGSITER AS A TOWN
GREEN LAND OFF PEREGRINE WAY,
LEEGOMERY, TELFORD.**

APPLICATION NUMBER 2/2007



**REPORT AND RECOMMENDATION
FOLLOWING A PUBLIC INQUIRY**

Introduction

1. On 14 June 2007, an application was made to Telford and Wrekin Council by the Apley Preservation Association (“the Applicant”) to register as a town green an area of land described as follows in section 5 of the application form:

“Land off Peregrine Way, bordered by the Silkin Way, Apley Wood, bridle path and Peregrine Way”

2. The application site is located in Leegomery.
3. The application was stated to be made under section 15(2) of the Commons Act 2006.
4. An objection to the application was made by English Partnerships (“the Objector”), who is the owner of the application site.
5. Telford and Wrekin Council, in its capacity as registration authority for the purposes of section 15 of the Commons Act 2006, resolved to convene a public inquiry before determining the application. I was instructed by the Council to hold that public inquiry and thereafter to produce a report on the inquiry and a recommendation to the Council as to whether the application should be accepted and rejected.
6. The public inquiry was held on 8 to 10 April 2008.
7. At the inquiry the Applicant was represented by Mr. John Davis, the Chairman of the Apley Preservation Association. Mr. Davis was assisted

in the presentation of the Applicant's case by Ms.Helen Hampton, the Secretary of the Association and Ms.Angela Twyford. English Partnerships was represented by Mr.Patrick Walker, a barrister.

The Application Site

8. The application site comprises approximately 2.56 hectares of largely open land. It is of an irregular shape and is bounded by Peregrine Way, Pintail Drive and Eider Drive on its east side, by a bridleway on its south-east side, by a recreational route known as the Silkin Way on its south-west side and by the established woodland surrounding Apley Castle to the northwest.
9. The application site was, at the time of my site inspection, laid to grass with some established trees.
10. The boundary of the application site with Peregrine Way, Pintail Drive and Eider Drive comprises estate fencing. There are two gaps in this length of fencing – one approximately at the point where Pintail Drive meets Eider Drive and a second approximately at the northernmost point of the application site, between the boundary with an ornamental garden (which is outside the application site) and the boundary with the Apley Castle wood. These gaps are sufficiently wide to allow a pedestrian and, in my view, a bicycle to pass through. Close to each of these gaps in the estate fencing there is a notice, which it was agreed had been erected by

English Partnerships and which bears English Partnerships' logo and a telephone number, which state as follows

“Highways Act 1980, section 31(3)

PRIVATE LAND

NO PUBLIC RIGHT OF WAY – RIGHT OF WAY (ON FOOT ONLY)
WITH THE PERMISSION OF ENGLISH PARTNERSHIPS”

11. There is a field gate within the estate fencing, located approximately at the mid-point along Peregrine Way, between the junction with Pintail Drive and the ornamental gardens. This was locked at the time of my site visit.
12. The south-eastern boundary of the application site adjoining the bridleway comprises a hedge, which has gaps in places, and a post and wire fence within it.
13. Along the south western boundary of the application site with the Silkin Way there is a post and wire fence. There are two gates in this fence, one close to the junction of Silkin Way with the bridleway and a second gate approximately at the mid-point along the Silkin Way boundary. These gates were in various states of dilapidation at the time of my site visit and did not obstruct, or have the appearance of having for some time obstructed, access onto the application site. There is a further opening towards the northernmost point of this boundary. The southernmost gate has well-established openings either side of the gate posts. There are

notices in largely the same terms as the notices which I have describe in paragraph 10 above at various locations along this boundary. Some of these notices had been removed from their footings.

14. The boundary of the application site with Apley Castle wood comprises a fence which has collapsed in many places and some sections of hedge. There is an access without any gate into the Apley Castle Woods towards where the northern boundary of the application site turns through a right-angle towards Peregrine Way. There is no notice at this point.

15. There was evidence at the time of my site inspection of clear wear marks on the application site which plainly represented well-used routes. The most prominent of these is between the two gaps in the estate fencing which I have described. A further route lies between the between the gap in the estate fencing near the junction at Pintail Drive and Eider Drive and the opening in the post and wire fence at the southern end of the boundary of the application site with the Silkin Way. There is a further worn route (albeit somewhat less pronounced than the others which I have described) which extends easterly form the northernmost opening in the Silkin Way boundary towards the route which extends between the two gaps in the estate fencing.

16. The Objector stated in evidence that these routes correspond to what it considers to be the “permissive routes” through the application site,

which it has permitted and which are referred to on the notices. The Objector produced a plan to the inquiry showing the location of the routes that it is said have permitted. The routes shown on this plan correspond to what I have described in paragraph 15 above. I have no reason to doubt the Objector's evidence of fact in this in this respect nor that it has in fact permitted use of these routes through the application site.

The Application

17. The application is made under section 15(2) of the Commons Act 2006.

At the inquiry, I asked to Applicant to confirm whether it was in fact its intention to proceed with the application on the basis of s.15(2) of the 2006 Act. Mr. Walker, for English Partnerships, at the inquiry explained to the Applicant, objectively and, in my view, accurately, the effect in law of an application made under s.15(2) of the 2006 Act as opposed to an application made under s.15(4). I also explained how the various provisions operated in law. The Applicant's representatives took time to consider these explanations and, having done so, confirmed that they wished their application to be considered under s.15(2). The inquiry proceeded accordingly.

The Legal Requirements

18. Under section 15(2) of the Commons Act 2006, an applicant must establish that the following elements of the statutory definition of a town green are met before the land may be registered as a green:

- a. the land has been used for lawful sports and pastimes;
- b. by a significant number of the inhabitants of a locality or of a neighbourhood within a locality;
- c. the use has to have been as of right; and
- d. that the use must have continued for a period of no less than twenty years and thereafter has continued to the date of the application.

19. At the inquiry, it was agreed that the relevant period for consideration of qualifying use should be the twenty years immediately preceding the application, namely between 14 June 1987 and 14 June 2007.

The Burden and Standard of Proof

20. The burden of proving that land has become a green rests with the Applicant. The standard of proof is the balance of probabilities. These matters were common ground, as they had to be.

21. However, when considering whether or not the Applicant has discharged the evidential burden of proving that land has become a green, it is

important, I consider, to have regard to the guidance given by Lord Bingham of Cornhill in *R v Sunderland City Council ex parte Beresford* [2004] 1 AC 889 where, at paragraph 2, Lord Bingham advised as follows:

“As Pill LJ. rightly pointed out in *R v Suffolk County Council ex parte Steed* (1996) 75 P&CR 102, 111 “it is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green ...”. It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers must consider carefully whether the land in question has been used by inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years’ indulgence or more is met.”

The Case for the Applicant

22. The Applicant submitted a very substantial number of completed user forms in support of its application, 68 in all¹. 12 witnesses were called for the Applicant at the inquiry. I have given substantially more weight to the evidence of those who appeared as witnesses at the public inquiry in support of the application and were thereby available for cross examination to those who have completed user forms only. The fact that the evidence set out in user forms is not sworn nor is it possible for the evidence to be tested in cross examination in my view means that it should only attract limited weight. I set out below the main points raised

¹ Excluding those who gave evidence as witnesses at the public inquiry.

by each witness who gave evidence for the Applicant at the public inquiry.

23. Paul Robertson lives at 14, Curie Croft, Leegomery. Mr. Robertson's home is a half to three-quarters of a mile from the application site. Mr. Robertson's home is located on the south-east side of Silkin Way, to the southwest of the Princess Royal Hospital. He purchased his home in Leegomery in 1988 and at the same time acquired a dog. Mr. Robertson, since moving to the area, has walked on the application site with his dogs as part of a circuit. He confirmed that he has used land for 19 years since 1988. He has owned three dogs since moving to Leegomery. When using the application site, Mr. Robertson confirmed that he walked "across the site". He sometimes used the well-worn paths but it depended on where his dog left its ball and he would deviate from a path to retrieve the ball or to pick up litter. He has accessed the site usually from Silkin Way but also from what is now the boundary with Eider Drive and Peregrine Way. He uses the application site every day usually between 7 and 8:30 am and between 3 and 4 pm. Mr. Robertson usually walks his dogs for one to one and a half hours a day. He recalls seeing children playing on the application site particularly with bicycles. He has also seen the application site used for kite flying, by dog walkers (particularly people throwing balls for dogs to retrieve) and for flying model planes. He has

never been prevented from using the site nor has he ever asked permission. He recalls the grass being cut. He recalls that in the past the field was not fenced. He recalls a fence along Silkin Way but that there were gaps, including a style. He recalls the new fencing put up recently but thought that it was an ornamental fence particularly since gaps were left in it. He first noticed signage in 2002 or 2003. He recalled that these notices said that the site was "private land" but that people could "enter with permission".

24. Mr. Robertson confirmed in cross-examination that the area appeared very different in 1988 when he moved in. His home at that stage was surrounded by fields. Mr. Robertson was asked whether he recalled there being an arable crop in the field. He confirmed that there was never an arable crop in the field since he has used it. He recalls grass and the grass being cut but never an arable crop. Mr. Robertson confirmed that in the early years he would walk through or around other fields (as shown on a 1997 aerial photograph) to access the field from his house.

25. Mrs. Janice James moved to 38, Royal Oak Drive, Leegomery in 1985 and knows the application site as "the field". Mrs. James kept two dogs when her family moved to Royal Oak Drive and has had a succession of dogs since. At one time, the family had five dogs. Mrs. James has used the site to train her dogs, although has done less training in the last five years.

She visits the application site six times per days, often with her husband. Mrs.James accessed the site from Silkin Way. She uses the field since it was the only one which has remained laid to grass. Mrs.James recalls the site being used for kite flying, bicycle riding and, in the past, for falconry.

26.Mrs.James confirmed that the area surrounding her home has changed significantly since 1985. In 1985 it was “largely a rural environment”. In 1985, Mrs.James confirmed that a lot of the fields not built on were in arable cultivation. She would not cross fields with crops in them but walk around them. Mrs.James confirmed that use had grown significantly since 1985 as more houses were built and more people moved to the area. Mrs.James confirmed that the site was “little used” in 1985 but use increased after 1989 when the hospital was built. Mrs.James recalls the grass on the site having been cut but does not recall actually seeing the grass cut.

27.Mrs.James recalls fencing and signs being erected in 2002 along the road boundaries. She also recalls the gaps in this fence.

28.John Moore lives at 8, Theresa Way, Leegomery. Mr.Moore has lived in the Hadley area for the whole of his life. Mr.Moore considers that the application site had not been planted with arable crops since 1985. He recalls sugar beet being planted between 1981 and 1983. He confirmed

that the application site could have been ploughed up to 1983. He used the application site to exercise his dogs and said that he has done so for 26 years. He would use all parts of the application site with his dogs, as would others. Some dog walkers would walk straight across the site, however. He recalls others using the application site for mountain biking and playing football, as well as for dog walking. He has never asked or been given permission to use the land.

29. Mr. Moore recalls a construction compound within the application site in 2001 and that it remained for a year to eighteen months. Mr. Moore recalls that although there was some use of the land in 1985, use increased materially after 1989. Unlike Mrs. James, he did not consider that the opening of the hospital was a particular “turning point” but that the increase in use was more gradual – there was a “progression”, he said – use increased as more houses were built. He confirmed that the use had “trebled” since 1985². He recalls that some people came to field by car. He did not know where from.

30. He recalls the farmer cutting hay in the field in July or August. The silage would be left for a couple of weeks and turned before being put into silage bags or into a trailer. He would stay off the field when it was being

² There was an issue at the inquiry as to whether Mr. Moore referred to 1981 or 1985 in this context. I recorded his evidence as being that use had trebled since 1985. However, I do not consider that ultimately anything material turns on this matter.

cut. He suggested that no responsible user would go onto the field when the grass was being cut. However, he would not be deterred from using field when the silage was being loaded. However, he would only walk across field when farmer was present. He confirmed that “he would not use the field when the farmer was working on field except to cross it”. Mr.Moore stated that he did not use the field in a way which would have come to the attention of the farmer.

31.Mr.Moore was asked about the aerial photograph at p.87 of the Objector’s bundle. He considered that it would have been taken between 1991 and 1998. He confirmed that the application site and the field immediately to the south of it appeared the same in the photograph.

32.Mrs.Pamela Steele lives at 1, Chichester Drive, Leegomery and has known the application site since 1988. She has used the application site for 19 years, but less recently after 2004 due to infirmity. Mrs.Steele began to use the application site shortly after she moved to the area as a means of accessing Apley Castle wood. She would cross the application site to enter the Woods and to use the bridle paths which are located in the Woods. She would enter the application site form various directions – at the weekends from the east side near the A442 but at other times, from different directions. She recalls seeing others using the land for bike riding and for walking dogs.

33. Mrs. Steele does not recall seeing notices to indicate land is private. She does however recall signs offering the land for sale. Mrs. Steele confirmed that the environment had changed significantly since 1988. She confirmed that since 1988 what was a largely rural landscape had been become built up.

34. Mrs. Steele does not recall crops in the application site but recalls hay being cut and left to dry then collected some days later. She confirmed that if mechanical equipment was being used on the field, that she would not enter it.

35. Mrs. Caroline Bentley has lives at 1, Sunderland Drive, Leegomery and has lived in the area for 27 years. She has used the land since 1981, mainly at first for walking either around or across the field and then to play with her children. From around 1993, when her youngest daughter had reached the age of 10, Mrs. Bentley would allow them play on the application site unsupervised, especially with their BMX bikes. As children grew older, Mrs. Bentley used the land less and it could be many months between visits. Mrs. Bentley would often see others using the application site, mainly for exercising dogs. It was used by children, but more during the school holidays and on summer evenings. Mrs. Bentley never recalls the land being ploughed. She recalls grass having been cut.

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

have heard I am satisfied that from about 2000 the application site was used for a wide range of pastimes which are not restricted or necessarily ancillary to its use as a through route. I have heard, and do not doubt, evidence of the use of the application site for children's play, for picnics, for bike riding and for kite flying. I have heard evidence of use of the application site for exercising and training dogs and that this use involved the use of the whole site and was not limited to certain tracks through the site. That this type of use was taking place does not surprise me having regard to the open nature of the site and its proximity after about 2000 to a much expanded residential community. I therefore consider that after about 2000 there was use of the land for sports and pastimes which went beyond its use as a through route.

100. Secondly, on 3 April 2003, English Partnerships granted to George Wimpey Limited a licence to occupy part of the application site as a construction compound. The term of this licence extended for a five month period commencing on 24 March 2003. I heard some evidence that this licence may have followed on from an earlier licence entered into in 2002. Mr. Moore for the Applicant recalled that the compound was in existence for some 18 months. In my view, that part of the application site which comprises the land the subject of this licence and which was used as a site compound could not in fact have been used, nor was it used, for sports and

pastimes during the period of the licence and occupation by George Wimpey Limited.

Use as of right

101. There is no evidence that use of the application site has at any time been by force or stealth.
102. However, the concept of use “as of right”, requires use to be such that the landowner would appreciate that the user was asserting a right to use the land and that the landowner was tolerating, acquiescing or encouraging this use.
103. First, and as is plain and obvious, since I have concluded that there was no material use of the application site for sports and pastimes between at least 1993 and the 1998, there was no use “as of right” during this period.
104. Second, in more recent years and since about 2000, when the land has been laid to grass, I have concluded that the application site has been used for lawful sports and pastimes by local inhabitants. I have heard that during the period since the land was placed into set aside in 1999 the grass was cut at least once a year any maybe more often. The process of cutting was mechanical and took a day to be cut and then a further day or part of the day for gathering the grass and baling, when it occurred. I also heard evidence that most local residents would avoid the application site when this process was taking place. Although I accept that in some

circumstances for a user to avoid land when in use by the landowner is not consistent with an assertion of right and therefore with use as of right. Avoiding land while it a crop was maturing would be an example of this. However, cutting of grass is as much a matter of good and responsible management as anything else and is the type of activity which can be expected on most traditional village greens. Avoiding land when the landowner is cutting the grass would not, in my view, be perceived by any reasonable landowner as an act of deference by the user to the landowner's entitlement to manage his land. Furthermore, it seems that since this process only took place on one or two days in each year, I consider that the interruptive effect is de minimis. I consider therefore that since around 2000 when the land was in fact used for sports and pastimes, the occasions when local inhabitants would avoid the land due to grass cutting and gathering taking place was de minimis and is not inconsistent with use as of right during that part of the 20 year period.

105. Thirdly, I have heard evidence of the erection of estate fencing in 2002. I also heard evidence that some of the boundaries of the application site were fenced prior to this date. However, gaps were intentionally left in the estate fencing erected in 2002 to allow access by local residents and that fencing did not therefore physically prevent access. I am satisfied also that prior to 2002 there was no fencing which operated to prevent access to the

application site. I do not therefore consider that for any part of the relevant 20 year period the land was fenced to as to render access by local inhabitants forcible and thereby other than as of right.

106. Fourthly, there are the notices. The evidence of Mr.Ashcroft and Mr.Hollamby is that notices were placed close to the gaps in the estate fencing after the erection of that fencing in 2002. There is some conflict between Mr.Ashcroft's evidence and that of Mr.Hollamby as to whether notices on the estate fencing were erected in 2002 or 2003. However, I do not consider that this conflict is material to my overall conclusion on this aspect nor does it undermine the reliability of either Mr.Ashcroft or Mr.Hollamby's evidence. Mr.Ashcroft gave evidence, which I accept, that in 2006 and 2007 notices were erected at establish entrance points to the application site along the Silkin Way boundary but that these were continuously vandalised or dislodged. The notices which had been erected all contained either identical or words very similar to the notices which were present at the date of my site inspection and which I set out in paragraph 10 above.

107. As a matter of fact I consider that the Objector had erected notices close to gaps on the estate fencing and at locations corresponding with established openings along the Silkin Way boundary before the application was submitted and therefore during the relevant 20-year qualifying period.

Furthermore, I consider that most users would have been aware at one time or another of the presence of these notices. Even users who entered the application site via Silkin Way would, in my view, have recognised the presence of the rear side of the notices positioned near the gaps in the estate fencing in 2002 or 2003 and most would have taken time to investigate what these notices said. Furthermore, the notices close to the gaps in the estate fencing are certainly highly visible from the Peregrine Way and Pintail Drive and local inhabitants driving along those roads would have seen the notices, in my view.

108. In terms of the effect of the notices, the Applicants suggest that these notices concerned the issue dedication of public rights of way and had no bearing on the quality of use of the land for other recreational activities. I accept that as a matter of principle that a notice erected for the purposes of s.31 of the Highway Act 1980 which said no more than that a landowner was not intending to dedicate a right of way over his land would not, generally, affect the issue as to whether use of land of sports and pastimes was as of right. However, although the notices erected on the application site were intended, in part, to indicate a lack of intention to dedicate a right of way, they went in my view considerably further than simply addressing that issue. The notices stated that the land was “private land” and that there was a “right of way on foot only (with the permission of English

Partnerships)”. In my view, notices expressed as such are indicative of a landowner seeking to control the use made of his land rather than acquiescing or tolerating the use made of it by the public. The notices did not merely indicate a lack of intention on the part of the landowner to dedicate a right of way but were expressed as limiting access to and use of his land by the public to passing and repassing only, for which permission was given. I am reinforced in this view by Mr. Ashcroft’s evidence as to the intention on the part of English Partnerships in the way that the notices were expressed and the reason for their erection. I conclude therefore:

- a. that the notices were erected during the relevant qualifying period in the same or substantially the same terms as the notices present on the application site at the time of my site inspection;
- b. that most if not all users would have been aware of the notices;
- c. that the terms of the notices went beyond seeking only to indicate that no public right of way was intended to be dedicated and were a clear expression of control by the landowner as to the purposes for which its land could be accessed and used by the public;
- d. the presence of these notices is not therefore consistent with a landowner acquiescing in the use of his land but is an expression of control of that use;

- e. from the date in 2002 or 2003, when these notices were erected, any use of the land for sports and pastimes was not as of right.

109. I conclude therefore that the use of the land was not as of right during the whole of the qualifying 20 year period.

Use by a significant number of the inhabitants of the locality

110. The Applicant relies on Apley Castle Ward as its locality. There is no issue that an electoral ward may be a locality for the purposes of an application to register land as a town green.

111. I have already concluded that the requirement to establish use of the land for sports and pastimes during the period between at least 1993 and the end of the 1998 growing season has not been shown. There was therefore no use by a significant number or indeed any material number of the inhabitants of the relevant locality during that part of the qualifying period.

112. I accept during the land was placed into set aside that the use of the land increased as housing development took place. From the evidence which I have heard I am satisfied that from about 2000 there was considerable use of the application site for sports and pastimes. The evidence produced for the Applicant made this plain.

113. Although I have received evidence, both oral and written, directly from only a modest number of the inhabitant of the locality, I am satisfied that this reflected use by others. The proximity of an open field close to new housing development leads to me to conclude, from general experience, that those inhabitants who live closest to the application site would be inclined to use it for sports and pastimes, particularly since it was not suggested nor am I aware of any alternative location where similar types of recreational activity could occur in the vicinity. I am satisfied therefore that a significant number of inhabitants who live closest to the application site used the land for sport and pastimes in the latter part of the relevant 20 year period (ie. from about 2000 onwards).

114. However, the requirement is that the land is used by a significant number of the inhabitants *of* the relevant locality. I consider that this requires the users of the land to be spread throughout the locality and not to originate from just one part of it. I am reinforced in this view by the fact that, if registered, the inhabitants of the whole of the locality relied upon would enjoy a right to use the registered green for sports and pastimes. It is therefore logical to assume that in order to qualify as a green, inhabitants spread over the whole area which would benefit from the rights must have been shown to have used the land sought to be registered for sports and pastimes. The plans produced for the Applicant and for the Objector both

show that, although those parts of the locality closest to the application site have generated significant numbers of users, no users who have produced evidence, either written or oral, to the inquiry originate from areas to the south-west of the locality, around Jay Drive, Kingfisher Way, Sulby Drive and Weatherdale, or from the residential area within Apley Castle Woods or from Pool Farm Avenue and Lawton Farm Road. I am not therefore satisfied that use of the land when it has occurred since around 2000 has been by a significant number of the inhabitants *of* Apley Castle Ward.

Conclusions and Recommendation

115. In respect of the qualifying requirements, I conclude that:

- a. the application site was in active arable cultivation between 1993 and 1998 and possibly for several years prior to this period. The application site was not capable of use and was not in fact used to any material degree during this period for sports and pastimes. On this basis the Applicants have not shown that the land was used for all of the qualifying 20-year period between June 1987 and June 2007 for sports and pastimes.
- b. material levels of use of the land for sports and pastimes began in around 2000 and have increased as development has taken place around the application site;

- c. however, since the erection of notices in 2002 or 2003, the use of the application site for sports and pastimes which has occurred has not been acquiesced to or tolerated by the landowner and the effect of those notices is that use was not as of right;
- d. although since around 2000 there has been use of the land by a significant number of inhabitants who live close to the application site, it has not been shown that such use as there has been has been sufficiently spread throughout the qualifying locality to be considered to be use by a significant number of the inhabitants *of* the Apley Castle Ward.

116. I conclude therefore that application site has not been shown to meet the qualifying requirements for its registration as a town green. My recommendation is therefore that the application should be rejected for the reasons set out in this report.

PP DOUGLAS EDWARDS

Francis Taylor Building,
Temple, London.
EC4Y 7BY.

8 August 2008.



VILLAGE GREEN HEARING – 8th, 9th 10th APRIL 2008
APA CLOSING STATEMENT

This closing statement has been prepared by John Davis, Chairman and Helen Hampton, Hon Sec of the Apley Preservation Association, known as APA, for the inspector, Douglas Edwards of Francis Taylor Building, Temple, London at the hearing of the 'Application by the Apley Preservation Association to Register Land Off Peregrine Way as a Town Green'. The land in question to be known as 'the field' throughout this closing statement.

We have been able to confirm that although our approach and application throughout has been to ensure that the ground known as 'the field' be delineated as a 'village green' that this was entirely compatible with the term 'town green' used in the inspectors direction document by the inspector and others.

Further a number of procedural issues were addressed at the beginning of the hearing which need to be identified and their impact discussed before we move to the body of our response to the hearing.

The location of the field relative to the surrounding area and therefore the position of the witnesses who appeared and others who submitted evidence questionnaires and did not gain the opportunity to speak.

Some fifty evidence questionnaires in support of registration of the field as a new green, known throughout as the 'village green' were submitted prior to the hearing. Everyone made clear their support for a 'village green' which was initiated and motivated by local people, for local people and in doing so satisfied both the issues of significant number of residents and sufficient spread of use.

We have been able to satisfy the inspector as to our choice of locality, namely Apley Ward, its position in the wider parish of Hadley & Leegomery and the various ward name changes that have taken place over the recent years.

The 'field' takes up a central location within the ward and is bounded, as we said in our opening statement by Apley Woods, the Silkin Way, a bridle path, Peregrine Way and Eider Drive.

In addition, we have been able to confirm the approximate acreage of the field as 6acres. We had chosen to select the date of our application, 14th June 2007, as the identifiable reference point for the required twenty year period of usage, as of right and therefore satisfy an initial request by the objector as to our choice of 15.2 rather than their suggestion of 15.4. We were also able to satisfy the inspectors request as to the progressive nature of the building development around the 'field'.

Over the past three days we have clearly demonstrated that the meadow at Apley Castle, known locally as 'the field' has been used, without interruption by local residents for more than 20 years. We gathered 50 witnesses to testify that they had used the field regularly for many years and 12 of these came forward willingly to speak at this hearing. Each and every one of these residents gave a truthful and accurate account of their usage of the field. Their real fear of loosing their open space was their motivation in this case and they have made their case through APA.

We are confident in our knowledge and claims that this particular field has not been farmed for decades. We acknowledge that nearby fields have and were farmed but it does not apply to this field. We believe that it is entirely possible that Mr Cooke is confused about which fields he farmed in Apley Castle Park, particularly once building started to take place.

During his cross examination on two separate occasions he referred to adjacent fields, on the opposite side of Peregrine Way and the other side of the Silkin Way, under the name 'Bovis' on the Maff forms and that it was always difficult to separate yields from fields.

'The field', which we would like to see dedicated as a village green is at the heart of our community. It serves a purpose for local residents and provides the adjoining woodland with valuable breathing space. This field is widely used by many local people on a daily basis as we have shown and it has been for more than 20 years.

It is one of the few remaining green areas left that attracts local people to come here to walk their dogs, play with their children, enjoy the countryside or simply reflect on the beauty of what remains of the original parkland.

This area is known as Apley Castle Park and should we lose this important field to development then almost all of the original parkland that made up the Apley Estate will have gone.

From our witnesses who braved the ordeal of cross examination we have taken in addition to their 'evidence questionnaires' some high points that they added to the personality of the hearing, their bold contribution to achieving 'village green status' for 'the field'.

Paul Robertson said 'it's a meeting point' for local people and that he had used the field for 19 years.

Janice James said 'it's always been a green field with grass' and that as a trainer of working dogs we used the field every day. She has used the field for 22 years.

John Moore said that he had 'accessed the field from all directions' and 'it's a social gathering now' during his 26 years using the field without anybody trying to stop him.

Pamela Steele only ever remembers grass being in the field that was cut for hay in her 19 years of use.

Caroline Bentley said 'we've flown kites in the field' and 'there are no other open spaces'. She had never seen a crop having used the field for 26 years.

Janet Bolas said emotionally 'we want our village green' and added 'its not a ploughed field' and she has used the field for 37 years.

Brian Buckle said that local people 'always go up to the top field' and on his access from the Silkin Way the 'the old five bar gate was never closed' he has used the field for 27 years.

Robert James used the whole field with dogs at all times 'several times a day', had seen people training falcons and added that 'new signs went up on Monday 7th April 2008'. He has used the field for 22 years and never been asked to go or stay.

Ron Plenderleith said that he currently walks his dogs twice a week in the field. He trained there in the early '60s when in the forces and since living locally again has used it regularly since 1981.

Valerie Buckle said that she 'can't remember it being planted with anything' and she too has used it for 27 years.

Sudesh Mejer said that she used the field with her husband for jogging and recalls 'the farmer mowing the grass in the field'. He smiled at her but did not ask her to leave. She has used the field for 11 years.

Gerry Hunt said 'its where we go to exercise and walk' he added that he had never seen it ploughed, 'I was there it was grass' he said adding he had used the field for 18 years.

So a spread of comments and anecdotes from witnesses covering thirty seven years of involvement and enjoyment of the field and all hoping that we achieve 'village green' status.

We would now like to respond to some of the points made during the cross examination of our witnesses, by the objectors, adding our views and comments.

Signage

Signage and the partial fencing has played a large part in the Objectors cross examination of witnesses. Some of our witnesses have said that they have never seen the signs. That view is totally acceptable when one considers that there are several and various access points to the field and few of these have ever held any signs at all. Where signs do exist they face outwards and anyone entering the field at an unsigned point and leaving at a signed exit will not see the sign there.

Additionally the signs have been removed and changed, the wording has changed which we understand was due to lack of signs. There has been a flurry of sign erection at various points since the application was lodged and even this very week.

There has been reference to the removal of signs by persons unknown. We have shown that there has been some anti social behaviour from time to time in the area, which could be an explanation for such occurrences.

In terms of users of the field seeing the signs and 'ignoring' them, as the Objector's barrister has put it on several occasions, we would contend that in much the same way as the fence was viewed, users merely thought that the signs were also intended to be seen as a deterrent to stop less welcome persons accessing the field in vehicles.

Our information is, nevertheless, that the wording used on the signs, which makes reference to the Highways Act, has no bearing and renders them of no influence or import in the case of a village green registration.

Additionally the metal fence was never intended as a means of stopping use of the field, but was only there to stop vehicular access from one side of the field which borders a road. The rest of the field perimeter, three more sides remains open to all, as always.

In terms of the dating of the erection of the fencing I refer to Page 49 of the evidence bundle provided by the Objector, where a report on a meeting to discuss works on the field and surrounding area is provided.

Mr. Hollanby admitted when asked by the Inspector that these discussions were about works, some of which had not actually taken place and some of which, at the very least, were still in progress. Mr. Hollanby claimed that these works were completed by June 2002, but on Page 57 of the bundle, Mr. Ashcroft states that the signage was initiated just after the completion of the fencing in early 2003. This date should also be taken into account in the earlier references to signage erection.

Mr Ashcroft confirmed under questioning that fencing adjacent to the field was completed in 2003.

Aerial Photographs

The Objector's Barrister has made much of the reference and use of aerial photographs in a large part of his cross examination. The point was well made by our witnesses that it is impossible to make judgements of what is growing on a piece of land from the air.

Bob James said 'they say photographs can't lie but that's not true is it' and Ron Plenderleith said 'that interpretation of aerial photographs is a skilled business'.

As was clear on the site visit, 'the field' that appears flat from the photographs is in fact anything but flat in reality, being high adjacent to the woods and low next to Eider Drive.

Also some of the photographs were not correctly dated and labelled and in fact the main photograph, page 87 had the date 'suggested' several times, hardly an accurate assessment. As such they can have no value and should be disregarded, in our view.

The variation in quality of the copy photographs in the bundle was considerable and they could be considered as picture maps. Even though an original was introduced late it still remained undated and may have been colour enhanced. The Objectors barrister passed over this point when it was mentioned by our last witness.

The computer printed digital photograph, submitted as late evidence on Wednesday morning, showed only a very small part of the field in question, was of very poor quality and in any case referenced only the part of the field which we are not claiming as part of the village green, the 'roundel gardens' occupy this corner.

For these reasons we maintain that any evidence or discussion about that photograph should be deemed as irrelevant.

One final point to make is that we introduced on the second day a photograph originally supplied to us by EP which shows the area now. It emphasises the current positioning of the field within the community and was taken in 2006 as the foundations of the hospice are clearly shown.

The Farmer's evidence

The farmer Mr. Cooke gave a very full account of farming practices and processes used on his land. He gave no detail of dates and location or any precise plantings of any specific crops. Some of his verbal evidence at this point did not match with what he claimed on the MAFF records, which had been supplied as late evidence on Tuesday morning.

He said at this point, before discussion about the MAFF sheets, that the set a side started in 1998 and that prior to that he had rotated spring cereals, later evidence showed that to be incorrect.

When questioned in detail about the MAFF records it was apparent that there were several anomalies on each sheet submitted.

1996

The totals in Column L did not reflect the claimed acreage on the Bovis field which the farmer claims is the field in question. On this sheet the Grid reference for the field is 9326. This sheet is stamped with a 'calculations correct' imprint and there is a code of 'H744' in the top right hand corner.

1997

Totals are correct in column L and field grid reference is again 9326. This sheet is not stamped with the 'calculations correct' imprint and no code is present.

***This fact is also true for all following forms also.*

1998

Totals are correct in column L but field grid reference is now 8925. There is a second entry for a 'Bovis' field, this one with different acreage and a grid reference of 7854. The farmer felt that this second Bovis field was the one opposite the first one, on the other side of the Silkin Way.

1999

This return shows the field with the grid reference 8925 as set a side.

For 2000, 2001, 2002 and 2003 the field with grid reference 8925 is shown as set a side. One of these sheets is not signed.

The farmer was asked to explain how the grid reference system worked. He explained that this was done by MAFF and his field agent.

He appeared unable to explain how the number for each field was arrived at and was unable to say how he would locate each reference.

He was unable to

- a. identify the grid references or even explain how they are formed
- b. explain why there are two grid references for what he claims is the same field
- c. explain why he has referred to two fields called Bovis on the same record
- d. respond when asked if the two fields either side of the Silkin Way have become confused in his mind due to very similar acreage.
- e. in addition he was unable to answer the Inspector's questions about set-a-side and some other aspects of the form.

As a result of this confusion the inspector agreed that the land agent should explain. Mr Chris Jones from Berry's the land agents, attended on the last day and explained grid references and admitted that his client would not be expected to understand them.

His belief is that most farmers rely on local 'names' to identify fields and he is aware that it is common practice to call several fields by the same name.

His explanation of how the MAFF forms work was a convoluted and we feel a little less than transparent. Auditing of these forms appears to have been sporadic. Mr Jones said he always used information supplied by the farmer in the first instance. When asked about acreage Mr Jones referred out of context to tenancy agreements, which of course are related and should cross refer given ~~their~~ both drive financial considerations.

they

We maintain that there is sufficient doubt now raised by the failure of these so called records to have the farmer's evidence that he did farm the field in question in the period under discussion withdrawn.

We close now with reference to our opening statement and clarification with some additional points following the work of the hearing.

We believe our case is straightforward and concise.

- a) All the people who have come forward have used the field 'as of right' for whatever period they were around and up to the present day in most cases. They did not do it secretly nor by force; they simply accessed the field and used it for the recreational activities they have mentioned.
- b) They have also seen other people doing the same thing. They have never sought permission to enter the field nor have they been asked to leave it.
- c) All have indulged in several activities which can be described as 'lawful sports and pastimes'. These have included for example Frisbee games, football, cricket, picnicking, kite flying, golf pitching, dog walking, dog training, berry picking, bird watching, bike riding and even falconry. All the pastimes in fact that local people have undertaken on village greens all over the country for decades. They have shown and we have witnessed that they have used the whole field. They are also aware that many other people from the locality do the same thing in significant numbers and always have.
- d) They have not personally seen any evidence of farming activity or anything which would stop them using the field for the period they have been residents and some for more than 20 years.
- e) They have however been aware that the grass on the field has been cut for silage, which would happen on any village green.
- f) We have confirmed and comply with the area criteria and the location of Apley Ward.

We have worked hard on our application and brought twelve decent, honest and hard working people together this week in order to allow them to express their deeply held views. There were many more who contributed and their statements have also been submitted as evidence, but additionally there were others who would have contributed but were intimidated by the thought of a formal hearing. It is important to give credit to those who have spoken at this hearing, they should be congratulated for their courage and belief in what they needed to say.

Lastly we understand that there are several cases which support our case with legal precedent. We have chosen not to refer to these directly but trust that they can be taken into account where appropriate.

This is our closing statement and we look forward to formal registration of the field as the village green.

IN THE MATTER OF

AN APPLICATION TO REGISTER LAND

AS A TOWN OR VILLAGE GREEN

PURSUANT TO THE COMMONS ACT 2006

AND IN THE MATTER OF

LAND KNOWN AS THE FIELD, OFF PEREGRINE WAY, APLEY CASTLE

OBJECTOR'S CLOSING SUBMISSIONS

1 THE APPLICATION

1.1 An Application dated 14 June 2007 has been brought by the Apley Preservation Association. This Application relies on section 15(2) of the Commons Act 2006. The Applicant was offered every opportunity to rely on section 15(4) but expressly declined to do so. Accordingly, the relevant period for consideration is 14th June 1987 to 14th June 2007.¹

1.2 The Applicant must prove the following:

- (a) A significant number of the inhabitants ...
- (b) ... of any locality or of any neighbourhood within a locality ...
- (c) ... indulged as of right ...

¹ It may be noted that a claim based on an earlier period before erection of signs would have been doomed to fail in any event, not only because of agricultural use in the 90s, but also, even on the applicant's evidence, the planting of sugar beet in 1983 (1985?): see the evidence of John Moore. Further use in those years was most probably insignificant, even if it later became significant. The Inspector is invited to find accordingly, or at least make comment, notwithstanding the absence of a section 15(4) application. He is also invited to record the full explanation of the implications of section 15(4) and the Applicant's response that they did not and would not seek to rely on that section.

- (d) ... in lawful sports and pastimes on the land ...
- (e) ... for a period of twenty years; and
- (f) they continue to do so at the time of the application.

2 THE SITE

- 2.1 Consists of a field of approximately 6 acres crossed by permissive footpaths ("the Field").
- 2.2 A plan of the Field is appended to the Application² and images of the Field can be found in the Objector's Bundle at tabs 3 and 4.

3 THE ISSUES

- 3.1 It was the Objector's case in opening and remains its case that this Application should be rejected on a number of grounds, some of which are interrelated but any of which is sufficient to defeat the claim:
 - (a) user was not as of right and/or continuous having regard to agricultural use of the Field;
 - (b) user was not as of right having regard to the fencing and/or signage present on the Field;
 - (c) user was interrupted by agricultural activities and/or the presence of a site compound on the Field in 2003;
 - (d) relevant user (which excludes use as a through-route) has not been by a significant number of inhabitants of the locality relied upon and even the witness evidence in support of the Application suggests use by insignificant numbers for at least part of any relevant period, and
 - (e) there is insufficient spread of use throughout the locality.

² OB/1/11

4 USER AS OF RIGHT: AGRICULTURAL USE

- 4.1 The Field has been actively farmed during the twenty-year period claimed and long before as demonstrated by the agricultural tenancies included in the Objector's Bundle³, and the witness statement of Gerald Richard Cooke⁴.
- 4.2 The intensity of agricultural use of the Field is detailed at paragraphs 4 to 10 of Mr Cooke's witness statement. In summary he states that the land was usually ploughed in December, seeded in March and harvested in August. All of these processes required the use of agricultural machinery which made it unsafe for members of the public to access the land. While the crop was growing people were also prevented from using the Field for lawful sports and pastimes.
- 4.3 Further, such arable farming activity is evidenced by contemporaneous (MAFF Common Agricultural Policy) records made long before this application was contemplated. The agent responsible for compiling those records presented as credible and meticulous, and his evidence of criminal and financial sanctions, and random spot-checking, together make it very unlikely that these records are false. Further, the Applicant's case would require much more than false declarations in 1996 and beyond, but false declaration that the Field was not permanent grass in the 5 years prior to 1993.
- 4.4 The photographic evidence is compelling: see in particular OB/4/87 showing crops and tractor markings on the Field, and the December 1993 photograph showing the Field in a ploughed condition.
- 4.5 It may be noted that local inhabitants' misconception that the Field has been available for public use for the last twenty years may well derive from the allocation of the Field to 'set aside' (also evidenced in the records) since 1998. A period of 10 years is often enough for inhabitants to convince themselves (or be told by others) that a Field has 'always been this way', particularly when combined with use in fallow years.
- 4.6 Of course this evidence conflicts with the evidence of several Applicant's witnesses who suggested at the Inquiry⁵ that either the field has not been cropped, or that only a grass crop has been taken. Can these witnesses be wrong on this point? The short answer is 'yes' having regard to:
- (i) The credibility of the farmer Mr. Cooke, Mr. Jones and of Mr. Ashcroft. Note that the Applicant expressly declined to cross examine Mr. Ashcroft on his simple but

³ OB/6/122-296

⁴ OB/2/17

⁵ Mostly in evidence going well beyond their witness statements, e.g. Paul Robertson, Janice James, John Moore.

clear evidence that he had knowledge of the Field from before 1991 and had personally witnessed ploughing sowing and cropping for cereals.

- (ii) The availability of clear contemporaneous records made without contemplation of this dispute.
- (iii) The contrasting evidence of Applicant's witnesses which often appeared hazy about some aspects but adamant on the 'only grass' point. The impression that this was something of an Applicant's mantra was reinforced by what might be described as 'communal indignation' in the Inquiry room at any suggestion the field had ever been cropped!
- (iv) Clear indications from many of the witnesses, that the field was a through route along permissive paths either to the obviously attractive adjacent woods or as part of a circuit, so that little or no attention was paid to the nature of the crop. As Mr. Hunt put it, if a field was in crop, he would neither go near it nor pay it much attention. Such lack of attention was clearly widespread and extended to 'communal blindness' in respect of clearly displayed and prominent signs.
- (v) The evasiveness of witnesses who (it is submitted) could recognise a cereal crop or a ploughed field on an aerial photograph, but would go to almost any lengths to avoid giving a straight answer (including most recently Mr. Hunt), or would suggest far-fetched explanations such as irrigation or burning.
- (vi) Evidence from the Applicant's witnesses' own proformas that any use was subject to any crops and only when the land was 'fallow' – see Ken and Carol Hughes (*"Common usage across farmers fields when fallow and around the edges of field when crops /livestock were on it.."*), J Grateley (*"farming and public use"*).
- (vii) Confirmation from a number of witnesses that throughout the 80s and part of the 90s, the landscape was more rural with a patchwork of fields over which it was possible to walk, and a limited number of locals did walk. The combination of (a) a relatively rural landscape to the 90s and (b) no cultivation of the Field after 1999 provides obvious opportunity for inaccurate memory even if not all were as candid as Caroline Bentley who commented *"You're asking me about a long long time ago. I don't even remember what was happening yesterday."* Brian Buckle commented that *"the fields have changed so much"* and agreed *"It is a difficult task when you have seen many fields developed and focus is shifted onto one field – it is hard to remember."*

4.7 The Inspector is invited to make the following findings:

- (i) **Photo OB/87⁶ was probably taken in 1997 and certainly between 1991 and 1998.** [Witnesses who expressed a view thought 1997 'about right' (Valerie Buckle) and many agreed that the state of housing precludes a date before 1991 or after 1998]
- (ii) **Photo OB/94⁷ dates from April 1999 and on balance shows the Field in its first year of set-aside.** [The date on the reverse of the photo has not been challenged and is consistent with development – note the nearly finished properties adjacent to the Field. The farmer (Gerald Cooke's) evidence was clear and compelling. The absence of vegetation around the trees is consistent (only) with recent cultivation and contrasts with grass to the trunks apparent on inspection during the Inquiry.]
- (iii) **The additional photo dated 14/12/93 is as dated and shows part of the Field in a ploughed condition. It is likely that the part of the Field not visible on the photo was similarly cultivated.** [The photo is clear and shows the plough lines (including around the edges), and the clear delineation between ploughed land and headland. Suggestions of grazed field, burning or short grass are absurd and simply indicate the lengths to which Applicant's witnesses will go to try to save what they see as a very valuable amenity. The MAFF agricultural records (OB/8) are also consistent, showing set aside in 1993 and the existence of ploughing without seeding is consistent with the credible evidence of Mr. Cooke of ploughing before Christmas (1993) to plant in Spring 1994.]
- (iv) **It is likely (or the Applicant has failed to prove to the contrary) that the Field was cultivated for cereal and root crops between 1987 (and before) and 1998.** [No other conclusion is consistent with the photos, the evidence of Mr. Cooke or the MAFF records. The photos and records were contemporaneous: Mr. Cooke is far more independent than the witnesses devoted to the Applicant's cause.]
- (v) **During such periods of cultivation, in general members of the public would not access the Field, particularly during mechanical operations, but also when the Field was ploughed or whilst the crop was growing.** [Whilst witnesses were understandably reluctant to admit the existence of crops on the

⁶ Original provided.
⁷ Original provided.

Field, a clear picture emerged of respect for growing crops and an unwillingness to go onto any field which was being cultivated: for example

John Moore - "*absolutely*" would avoid a hay crop on any field.

Pamela Steele – "*if someone was using a mechanical machine I would not enter that field. Wouldn't go on a field while there were crops on it*"

Janet Bolas – would walk around the edge of cornfields,

Brian Buckle – wouldn't go on a field which had crop on it,

Robert James – would stay off land when cropped unless out shooting.

The photographs also illustrate the absence of significant use of cultivated land – note the absence of desire lines in the crop OB/87 or on recent set aside OB/94, and contrast the clear desire lines visible in other fields.]

- (vi) **Accordingly, there was not continuous user as of right during the period 1987 to 2007.** [Signage is dealt with separately, but it is clear that the public deferred to agricultural use and/or that such use interrupted the period of use]

4.8 Even if the Applicant's witnesses evidence had been correct, it included clear evidence (consistent with the farmer's evidence of what occurred in set aside years) of:

- (a) Agricultural use for cutting grass (including Paul Robertson, Janice James, John Moore, Pamela Steele)
- (b) Use of machinery for cutting, turning and baling.
- (c) A minimum of 3 different operations over a period of 'a week or so' (Pamela Steele) although the witnesses conceded the period could be affected by the weather – a point subsequently confirmed by Mr. Cooke who said that up to 3 turning operations would be required in poorer weather.
- (d) Most ~~if not all~~ of the witnesses did not and would not go on the land when machinery was being used, or in some cases, when the crop (whatever it was) was growing.

For these reasons the Inspector is invited to find that **further, there was not continuous user as of right by reason of cutting, turning and baling during set-aside years.**

- 4.9 Sometimes it is asserted that agricultural use did not substantially affect recreational use, and although it would be difficult to assert in the circumstances of this case (including acceptance by witnesses that they would not go on the land when it was being cultivated), it may be noted that in any event, the relationship between use of land for lawful sports and pastimes and agricultural use was examined in *R (Laing Homes Ltd) -v- Buckinghamshire County Council*⁸ in which Sullivan J held that:

"the proper approach is not to examine the extent to which those using the land for recreational purposes were interrupted by the landowner's agricultural activities, but to ask whether those using the fields for recreational purposes were interrupting [the landowner's] agricultural use of the land in such a manner, or to such an extent, that [the landowner] should have been aware that the recreational users believed that they were exercising a public right."

The question to be considered is therefore whether the landowner's agricultural use was interrupted and if so to what extent.

- 4.10 Mr Cooke made clear in his witness statement at paragraphs 9 and 10⁹ that any use of the Field by the public while his crops were growing would have damaged the crops and that such use whilst mechanised processes were being undertaken would have been unsafe. He also pointed out that on the rare occasions he saw people using the Field he would challenge them.
- 4.11 Even the haymaking described by the Applicant's witnesses both demonstrated an interruption in use and that any public use clearly deferred to use by the farmer. In the *Bridgefields, Wem* case¹⁰, agricultural use was held *"inconsistent with the existence of an unqualified right for local inhabitants to indulge in lawful sports and pastimes on the Land. Recreational activities could not take place freely whilst the grass was in the latter stages of growth, whilst it was being, cut, dried or baled, without harming the crop...Consequently, I find that use of the Land was not as of right."*¹¹
- 4.12 It is clear therefore that if there was any use of the Field for lawful sports and pastimes such use deferred to the agricultural use of the Field and as such was not as of right. The Application should accordingly be rejected.

⁸ [2003] PLR 60 para 82: Objector's Authorities Bundle tab D

⁹ OB/2/19

¹⁰ OAI.

¹¹ Para 8.46.

5 USER AS OF RIGHT: FENCING AND SIGNAGE

- 5.1 The Field is fenced. The current fencing was erected in 2002¹². There are gaps provided in the perimeter fencing to allow access to permissive paths across the Field. Positioned as per the plan of locations submitted during the Inquiry are signs bearing the wording:

PRIVATE LAND

NO PUBLIC RIGHT OF WAY – RIGHT

OF WAY (ON FOOT ONLY) WITH THE

PERMISSION OF ENGLISH PARTNERSHIPS

These signs were erected in late 2004/early 2005 to replace signs which had been erected at a similar time as the 2002 fencing. Paul Robertson told the Inspector he first noticed the signs in 2002/2003. Signs erected very recently include one with slightly different wording (due to stock availability).

- 5.2 In view of the fencing and/or signage use of the Field (other than along a permissive path) was clearly by force and not as of right. There was some suggestion by witnesses that the fencing only excluded vehicles, but the gaps in the fences were provided specifically to allow access over permissive footpaths¹³ and were accompanied by signs which rendered any use of the land permissive (alternatively if the permission was exceeded – by force).
- 5.3 Witnesses making any significant use of the Field cannot realistically contend that they did not see the signs. The suggestion made on inspection that they would not be seen by those coming out of the Field might be right for an one-off visitor but could not possibly be right for those alleging regular visits and use of the whole Field. Some may have ignored them, others abided by the permission, but those such as Caroline Bentley who first suggested she had never seen signs, when asked whether she had walked past signs and ignored them, conceded that *'it looks like I have done'*. Janet Bolas and John Moore accepted signs were present but used the land regardless. Brian Buckle agreed that he had effectively ignored signs erected in 2002/3, as did Ron Plenderleith. Gerrard Hunt thought the signs were wrong and ignored them.
- 5.4 In any event, about a third of the Applicant's own witnesses acknowledge the existence of the signs (with slightly differing dates) in proforma statements. Even some of those

¹² As detailed in the witness statement and exhibits of Neil David Hollamby at OB/2/31: 80% complete in May 2002

¹³ See plan of permissive footpaths submitted and confirmed in evidence by Mr. Ashcroft.

who denied signage in their proformas (see for example Paul Robertson), gave contrary evidence to the Inquiry and the overwhelming likelihood is that in accordance with the evidence of Mr. Hollamby and Mr. Ashcroft, signs have been erected since 2003 at the latest. **The Inspector is invited to find accordingly.**

- 5.5 As the Application relies on user as of right continuing up to the date of the Application, 14 June 2007, the Application should be rejected by reason of fencing and/or signage alone.

6 CONTINUOUS USER AND INTERRUPTION

- 6.1 On 3 April 2003 the Objector entered into a licence agreement with George Wimpey West Midlands Limited¹⁴ to allow George Wimpey to occupy part of the Field as a site compound while building homes nearby. The licence period was to be "5 months commencing 24 March 2003". The evidence of the Applicant's witness John Moore, who was familiar with it, confirmed use for "18 months ish".
- 6.2 The existence of this site compound interrupted any use of that part of the Field for a period of 5 months. The Application in relation to the Field (which includes the site of the Compound) should therefore fail¹⁵
- 6.3 In so far as any use has been as of right (which is disputed) such use has clearly been interrupted by agricultural activities and has not been continuous.
- 6.4 Use as of right was interrupted (and ceased) by reason of the fencing and/or signage.

7 SIGNIFICANT NUMBER

- 7.1 The Applicant has redefined the locality on which it relies as Apley Castle Ward.
- 7.2 This locality has a population, calculated in the 2001 census of 2981. Of this number only 68 people have submitted pro forma evidence and only ¹¹ 11 appeared in support of the Application at the Public Inquiry (Mr. Plenderleith is not an inhabitant of the locality).

¹⁴ OB/2/24

¹⁵ It is also arguable that the construction of the service road amounted to public users deferring to landowner, although there is no specific evidence on the effect of use of the road.

- 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.

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10th April 2008