

# Agenda



**AGENDA for a meeting of the DEVELOPMENT CONTROL COMMITTEE in the Council Chamber, County Hall, Hertford on THURSDAY, 29 JUNE 2017 at 10.00AM.**

**MEMBERS OF THE COMMITTEE (10)** (Quorum = 3)

D Andrews, D J Barnard, S J Boulton, D S Drury, E M Gordon, J S Hale, M D M Muir (Vice-Chairman), S Quilty, I M Reay (Chairman), A D Williams

## **AGENDA**

### **AUDIO SYSTEM**

The Council Chamber is fitted with an audio system to assist those with hearing impairment. Anyone who wishes to use this should contact the main (front) reception.

### **PART I (PUBLIC) AGENDA**

Meetings of the Committee are open to the public (this includes the press) and attendance is welcomed. However, there may be occasions when the public are excluded from the meeting - for particular items of business. Any such items are taken at the end of the public part of the meeting and are listed below under "Part II ('closed') agenda".

### **MINUTES**

To confirm the minutes of the meeting of the Development Control Committee held on 26 April 2017 (attached).

### **PUBLIC PETITIONS**

The opportunity for any member of the public, being resident in or a registered local government elector of Hertfordshire to present a petition relating to a matter with which the Council is concerned, and is relevant to the remit of this Committee, containing 100 or more signatures of residents or business ratepayers of Hertfordshire.

Notification of intent to present a petition must have been given to the Chief Legal Officer at least 20 clear days before the meeting where an item relating to the subject matter of the petition does not appear in the agenda, or at least 5 clear days where the item is the subject of a report already on the agenda.

[Members of the public who are considering raising an issue of concern via a petition are advised to contact their local member of the Council. The Council's arrangements for the receipt of petitions are set out in Annex 22 - Petitions Scheme of the Constitution.]

If you have any queries about the procedure please contact Deborah Jeffery on telephone no. (01992) 555563.

## **MOTIONS (Standing Order C9)**

Motions may be made on a matter relevant to the Committee's terms of reference (other than motions relating to a matter on the agenda, which shall be moved when that matter is discussed).

Motions must have been notified in writing to the Chief Legal Officer by 9 am on the day before the meeting and will be dealt with in order of receipt.

No motions had been submitted at the time of agenda dispatch.

### **1. APPLICATION FOR THE REGISTRATION OF LAND TO THE REAR OF MEADWAY AND ST CATHERINE'S ROAD, HODDESDON AS A TOWN OR VILLAGE GREEN**

*Report of the Chief Executive and Director of Environment*

Local Member: Paul Mason

### **2. APPLICATION FOR PROPOSED REPLACEMENT OF EXISTING MOBILE NURSERY UNIT WITH NEW PERMANENT NURSERY BUILDING AND COVERED PLAY CANOPY AT SPRINGMEAD PRIMARY SCHOOL, HILLY FIELDS, WELWYN GARDEN CITY, HERTFORDSHIRE, AL7 2HB**

*Report of the Chief Executive and Director of Environment*

Local Member: Barbara Gibson

## **OTHER PART I BUSINESS**

Such other Part I (public) business which, the Chairman agrees, is of sufficient urgency to warrant consideration.

## **PART II ('CLOSED') AGENDA**

### **EXCLUSION OF PRESS AND PUBLIC**

There are no items of Part II business on this agenda but if an item is notified the Chairman will move:-

*"That under Section 100(A)(4) of the Local Government Act 1972, the press and public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph \*\* of Part 1 of Schedule 12A to the said Act and the public interest in maintaining the exemption outweighs the public interest in disclosing the information."*

If you require a copy of any of the reports mentioned above or require further information about this agenda please contact Deborah Jeffery, Assistant Democratic Services Manager on telephone no. 01992 555563 or email: [deborah.jeffery@hertfordshire.gov.uk](mailto:deborah.jeffery@hertfordshire.gov.uk)

Agenda documents are also available on the internet  
<https://cmis.hertfordshire.gov.uk/hertfordshire/Calendarofcouncilmeetings.aspx>

**KATHRYN PETTITT  
CHIEF LEGAL OFFICER**

# Minutes



To: All Members of the  
Development Control  
Committee, Chief Officers, All  
officers named for 'actions'

From: Legal, Democratic & Statutory Services  
Ask for: Deborah Jeffery  
Ext: 25563

---

## **DEVELOPMENT CONTROL COMMITTEE**

**26 APRIL 2017**

### **ATTENDANCE**

### **MEMBERS OF THE COMMITTEE**

G R Churchard, D S Drury, M J Cook, M D M Muir, S Quilty, I M Reay (Chairman),  
P A Ruffles, A D Williams

Upon consideration of the agenda for the Development Control Committee meeting on 26 April 2017 as circulated, copy annexed, conclusions were reached and are recorded below:

*Note: There were no declarations of interest.*

### **CHAIRMAN'S ANNOUNCEMENTS**

- (i) If a Member wished their particular view on an item of business to be recorded in the Minutes, it would be recorded on request by that Member.
- (ii) Members were reminded of their obligation to declare interests at the start of the meeting.

### **PART I ('OPEN') BUSINESS**

#### **MINUTES**

The minutes of the Committee meeting held on 22 March 2017 were confirmed as a correct record.

#### **PUBLIC PETITIONS**

There were no public petitions.

#### **ACTION**

**1. APPLICATION TO ENHANCE THE RESTORATION OF PHASES F AND H AT PANSHANGER QUARRY THROUGH THE IMPORTATION OF INERT RESTORATION MATERIALS VIA A PROPOSED NEW ACCESS OFF PANSHANGER LANE TOGETHER WITH CREATION OF A NETWORK OF PATHS AND USE OF AN OLD BARN FOR COMMUNITY USE AT PANSHANGER PARK, PANSHANGER, HERTFORD SG14 2NL**

[Officer Contact: Felicity J Hart, Principal Planning Officer, Tel: 01992 556256]

- 1.1 The Committee considered planning application reference number 3/0527-15 CM090 which proposed the importation of 940,000 cubic metres (around 1.6 million tonnes) of inert restoration materials to fill mineral voids known as Areas F and H at Panshanger. It also proposed to create a new vehicular access for HGVs into Phase H off Panshanger Lane close to the junction with the A414, and erect ancillary facilities (weighbridge and site offices).
- 1.2 Planning permission for this application was originally submitted and resolved for this proposal in 2015, subject to a S106 agreement requiring the payment of £200,000 to a Heritage Fund to be used to enhance historic features within the Cole Green estate for public benefit. The amended application included the creation of a network of footpaths and bridleways throughout the Cole Green estate linking into the Country Park, together with the proposed use of an old barn on the Cole Green estate for community use.
- 1.3 The S106 Head of Terms were highlighted as per the report, including 5, 6 and 7 below, which had been missed from the report:
- 5. Ensuring that the owner would use their best endeavours to ensure that an appropriate community use could take place if the barn has had at least £20,000 of Heritage Fund monies spent on it.
  - 6. To require the main North-South and East-west routes to become Definitive Bridleways.
  - 7. For the remaining network of paths (footpaths, cycle tracks and Bridleways) to be created and maintained as permissive paths.
- 1.4 Prior to questions and debate the Committee were addressed by Gary O’Leary from Hertingfordbury Parish Council, mostly in support of the application, however, raising concerns in relation to some areas of the application proposals and Alan Everard representing Tarmac in support of the application.
- 1.5 During general debate, it was clarified that the Heritage Committee

would oversee the spending of the £200k Heritage Fund to make improvements to heritage assets and the old barn, with the possibility of expert advice from a conservation expert officer or Historic England officer. Discussions would take place with regards to specific community use of the barn once £20,000 had been spent towards its repair. It was also clarified that the barn was an unlisted building within a listed Park.

- 1.6 Members considered that, dependent on what the barn was to be used for, a governance clause should be put in place within the S106 agreement to include representation from local people to run the barn as a Community Facility if it was more than a visitor shelter. Members also considered that Area G should be totally removed from the Minerals Local Plan, which officers confirmed was currently under review.

## **CONCLUSION**

- 1.7 Subject to the comments at 1.6, the Committee recommended that the application be approved subject to the conditions listed below and the completion of a S106 agreement following the Heads of Terms also set out below. In the event that the S106 Agreement is not concluded within 6 months of the date of consideration of this report then planning permission should be refused.

### **S106 Heads of Terms**

1. Following commencement of development:  
No future extraction at Area G;
2. Following commencement of importation:  
No further mineral extraction of F & H.
3. Payment of £200,000 to be paid in 3 instalments (for works associated with the conservation and enhancement of heritage features in the Cole Green estate which are related to the development proposals and to be made available for public benefit).
4. Setting up a Heritage Committee which would oversee the spending of the Heritage Fund to make improvements to heritage assets including the old barn.
5. Ensuring that the owner would use their best endeavours to ensure that an appropriate community use could take place if the barn has had at least £20,000 of Heritage Fund monies spent on it.
6. To require the main North-South and East-West routes to become Definitive Bridleways.
7. For the remaining network of paths (footpaths, cycle tracks and Bridleways) to be created and maintained as permissive paths.

Planning Conditions [should there be a condition relating to s278 agreement access?]

1. Implementation period
2. Approved plans and documents
3. Working programme and phasing
4. Duration and completion of restoration works
5. Hours of working
6. Submit new HGV access details
7. Submit details of network of footpaths, cycletracks and bridleways
8. Number of lorry movements limited to 160 movements per day
9. Mud on road and cleaning of vehicles
10. Dust management
11. Noise limits
12. Bunding of fuel tanks
13. Details of and location of wheel wash, site offices and weighbridge
14. Submit landscaping scheme
15. Conservation, landscape, ecology and biodiversity
16. Replacement of any trees planted
17. Lighting
18. Fencing /gate details
19. Footpath routing and crossing safety measures including signage
20. Soil handling and soil specification and final levels
21. Aftercare
22. Archaeology
23. Record of waste source
24. Mud on road and wheel cleaning [see also condition 9 above?]
25. Detailed landscaping scheme for land surrounding Cole Green Barn.
26. Detailed landscaping scheme for each of the entrances/exits on to the highway for each new route to include gates and signs.
- 26 Detailed scheme for restoration of all areas to be removed prior to completion of restoration e.g. haul road, vehicular access, site cabin
27. Bat and bird survey and mitigation at Cole Green barn.

**KATHRYN PETTITT**  
**CHIEF LEGAL OFFICER**

**CHAIRMAN** \_\_\_\_\_

**CHAIRMAN'S**  
**INITIALS**

.....

**HERTFORDSHIRE COUNTY COUNCIL**

**DEVELOPMENT CONTROL COMMITTEE  
THURSDAY, 29 JUNE 2017 AT 10.00AM**

Agenda Item  
No.

**1**

**BROXBOURNE DISTRICT**

**APPLICATION FOR THE REGISTRATION OF LAND TO THE REAR OF  
MEADWAY AND ST CATHERINE'S ROAD, HODDESDON AS A TOWN OR  
VILLAGE GREEN**

*Report of the Chief Executive and Director of Environment*

Author: Gavin Harbour-Cooper – Definitive Map Officer  
(Access & Rights of Way Team)  
Tel: 01992 556 186

Local Member: Paul Mason

**1. Purpose of the Report**

- 1.1 To inform Members of the Committee of an application to register land to the rear of Meadway and St Catherine's Road, Hoddesdon, as a town or village green.
- 1.2 To inform Members of the findings and recommendations of an independent inspector following a non-statutory public inquiry.
- 1.3 To ask Members to decide whether to grant or refuse the registration.

**2. Summary**

- 2.1 On 28 November 2014, Richard Buxton Environmental & Public Law, on behalf of Barbara Tyrrell, made an application to register land ("the Application Land") in Hoddesdon as a town or village green. (See map of Application Land attached at Appendix 1).
- 2.2 The application has been processed by the Access & Rights of Way Team on behalf of the County Council as Commons Registration Authority, in accordance with the Commons Act 2006.
- 2.3 Part of the Application Land is owned by Thames Water and the remainder is owned by the Forgione Family. Following the advertising of the application on 25 June 2015, objections were received from both Savills, acting for Thames Water, and Duffield Harrison LLP, acting for the Forgione Family.



- 2.4 Following the necessary gathering and exchange of information, it was decided that the evidence should be considered at a non-statutory public inquiry. The County Council instructed Mr Alexander Booth QC of Francis Taylor Building, London, a barrister experienced in village green law, to hold the public inquiry, assess all of the available evidence and make recommendations as to whether or not the land should be registered. The inquiry was held at the Marriott Hotel, Cheshunt from 16<sup>th</sup> to the 18 January 2017.
- 2.5 At the start of the public inquiry the applicant amended their application to remove from the Application Land all the land owned by Thames Water. The Inspector accepted the amendment and Thames Water played no further part in the proceedings.
- 2.6 Following the non-statutory public inquiry the inspector prepared a report in the form of a Main Report (Appendix 2), a Summary Report (Appendix 3) and associated Plan (Appendix 4). The Main Report, dated 14 March 2017, concludes "... it is my recommendation to the Council that it accedes to the Application in part, and registers that part of the Land which forms part of The Paddley as town or village green. However, I recommend that insofar as the Application seeks the registration of the remainder of the Land, then it be rejected ..."

### **3. Recommendations**

- 3.1 The Inspector recommends that the part of the Application Land as shown outlined blue in Appendix 4 should be registered as a town or village green and the remainder of the Application should be rejected.

## **4. Background**

- 4.1 The land subject to this application is located to the south of Hoddesdon and is a mixture of open and grazed land. It consists of approximately 4.6 acres and is bounded on the west by the New River and to the east by the properties of Meadway, Hoddesdon and the local gas distribution centre (see map attached at Appendix 1). There is a public footpath running along the tow path of the new river, which is separated from the land by fencing. There is also a surfaced path running east/west bisecting the land, known as 'Gasworks Lane', connecting a bridge over the New River to the local gas distribution centre and Meadway. The remainder of the land is known locally in two distinct plots; 'Horses Field' being the grazed area lying to the north of Gasworks Lane and 'The Paddley' being the open land directly to the south of Gasworks Lane'.
- 4.2 In 1998, the land was subject to a previous application for registration as village green but this was refused following a non-statutory public inquiry. When determining this 1998 application, the Inspector recommended that the application be rejected on the basis that the applicant had not demonstrated that the land had been used by the inhabitants of a locality within the meaning of section 22 of the Commons Registration Act 1965 (the legislation preceding the Commons Act 2006).

## **5. The Process**

- 5.1 Applications to register town or village greens are made to Hertfordshire County Council as the Commons Registration Authority for Hertfordshire. The procedure for dealing with such applications is laid down in the *Commons Registration (England) Regulations 2014*
- 5.2 An application for registration of land as a town or village green can be made under section 15(1) of the Commons Act 2006 in one of the following circumstances:
- 15(2) where:
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in sports and pastimes on the land for a period of at least 20 years; and
  - (b) they continue to do so at the time of the application.
- 15(3) where:
- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in sports and pastimes on the land for a period of at least 20 years; and
  - (b) they ceased to do so before the time of the application but after the commencement of this section; and

- (c) the application is made within the period of one year beginning with the cessation referred to in paragraph (b)

- 5.3 If the County Council decides that the requirements set out in paragraph 5.2 above have been met, it must register the land. The determination of the application must be based on whether there is sufficient evidence to show that a town or village green has come into existence.
- 5.4 To assist in determining applications the Registration Authority may appoint an independent inspector to hold a non-statutory public inquiry. The purpose of the inquiry is to hear the evidence for and against the application and allow the Inspector to make recommendations based on that evidence and relevant case law.
- 5.5 There is no statutory right of appeal the County Council's decision. The only way to challenge a decision made by this Committee would be through the process of a judicial review.

## **6. The Application**

- 6.1 This application was made on 28 November 2014 pursuant to section 15 of the Commons Act 2006. It was deemed to be duly made on 27 February 2015. The extent of the Application Land and the claimed neighbourhood were amended during the course of the processing of this application. This is detailed further in para 6.9.
- 6.2 The applicant submitted 48 user evidence forms from local people describing the recreational activities they have enjoyed over the land and the periods of time those activities have taken place. The applicant also submitted photographs, letters of support and information relating to the previous application to register the land as a town or village green which failed in 1998.
- 6.3 The appropriate procedures were followed by the applicant for making the application and by the County Council for the notification of interested parties and advertising the application.
- 6.4 Objections to the application were received from both landowners. The first was from Savills, acting for Thames Water and the second was from Duffield Harrison LLP acting for the Forgiore Family.
- 6.5 The main points contained within Thames Water's objection can be summarised as:
- Registration of the land would adversely impact on Thames Water's operational land and prevent sufficient access to carry out necessary inspection, maintenance or repair to the banks of the New River.

- Registration of the land as a town or village green is incompatible with Thames Water's functions as a Statutory Undertaker.
- 6.6 The main points contained within The Forgione Family's objection can be summarised as:
- The nature and frequency of the claimed use of the land is contested by the Forgione Family.
  - The land has been grazed by licence meaning any claimed use of the land cannot be considered 'as of right'.
- 6.7 Once information from both parties had been received officers of the County Council assessed the documentation and concluded that a non-statutory public inquiry should be held.
- 6.8 Mr Alexander Booth QC was appointed by the County Council as an independent inspector and an inquiry was held on 16<sup>th</sup>, 17<sup>th</sup> & 18<sup>th</sup> January 2017 at the Marriott Hotel, Cheshunt.
- 6.9 During the course of the public inquiry a request was made by the applicant to amend their application in two regards. The first amendment related to the extent of the land applied for; the applicant sought to remove all of land owned by Thames Water from the application. The second amendment related to the neighbourhood claimed; the applicant looked to remove St Catherine's Road from the claimed neighbourhood. No objections to these amendments were made and the Inspector confirmed he accepted the requests.

## **7. Conclusion**

- 7.1 The Inspector's Main Report is attached at Appendix 2, in it he concludes that:
- The Applicant has succeeded in demonstrating the existence of a neighbourhood for the purposes of the section 15 of the Commons Act 2006.
  - The neighbourhood is situated within a qualifying locality for the purposes of section 15 of the Commons Act 2006.
  - During both the relevant periods, there was use of the Land by local people (i.e. inhabitants of the neighbourhood) for the purposes of the Commons Act 2006.
  - Such use of Gasworks Lane by local people as took place during the relevant periods was not for lawful sports and pastimes for the purposes of the Commons Act 2006.
  - Such use of Horses Field by local people for lawful sports and pastimes as took place during the relevant periods was not carried out with sufficient intensity and by sufficient numbers of local people for the purposes of the Commons Act 2006.
  - Local people used The Paddley for lawful sports and pastimes throughout the relevant periods, in sufficient numbers and with

sufficient intensity, to justify registration of the land as town or village green pursuant to the Commons Act 2006

- Such use of The Paddley was carried on as of right; in particular the user was not 'forcible' having regard to the decisions in case law such as Lewis or Winterburn.

7.2 The Inspector's main report recommends that the County Council should accept the application to register that part of the land known as 'The Paddley' as a town or village green but reject those parts of the application relating to the land known as 'Gasworks Lane' and 'Horses Field'. The extent of the land recommended for registration is outlined blue on the Plan of Land for Registration (Appendix 4).

## **8. Financial Implications**

8.1 The finance for processing this application has been sourced from existing County Council budgets.

8.2 However, should any party seek a judicial review of the procedures that have been used by the Registration Authority, the County Council could incur costs which may not be covered by existing budgets.

### **Appendices:**

Appendix 1: Site plan showing the extent of the application (as amended, see paragraph 6.9).

Appendix 2: Main Report of Inspector Mr Alexander Booth QC

Appendix 3: Summary Report of Inspector Mr Alexander Booth QC

Appendix 4: Plan showing the extent of the land recommended for registration

### **Background information used by the author in compiling this report**

*Commons Act 2006*

*The Commons Registration (England) Regulations 2014*

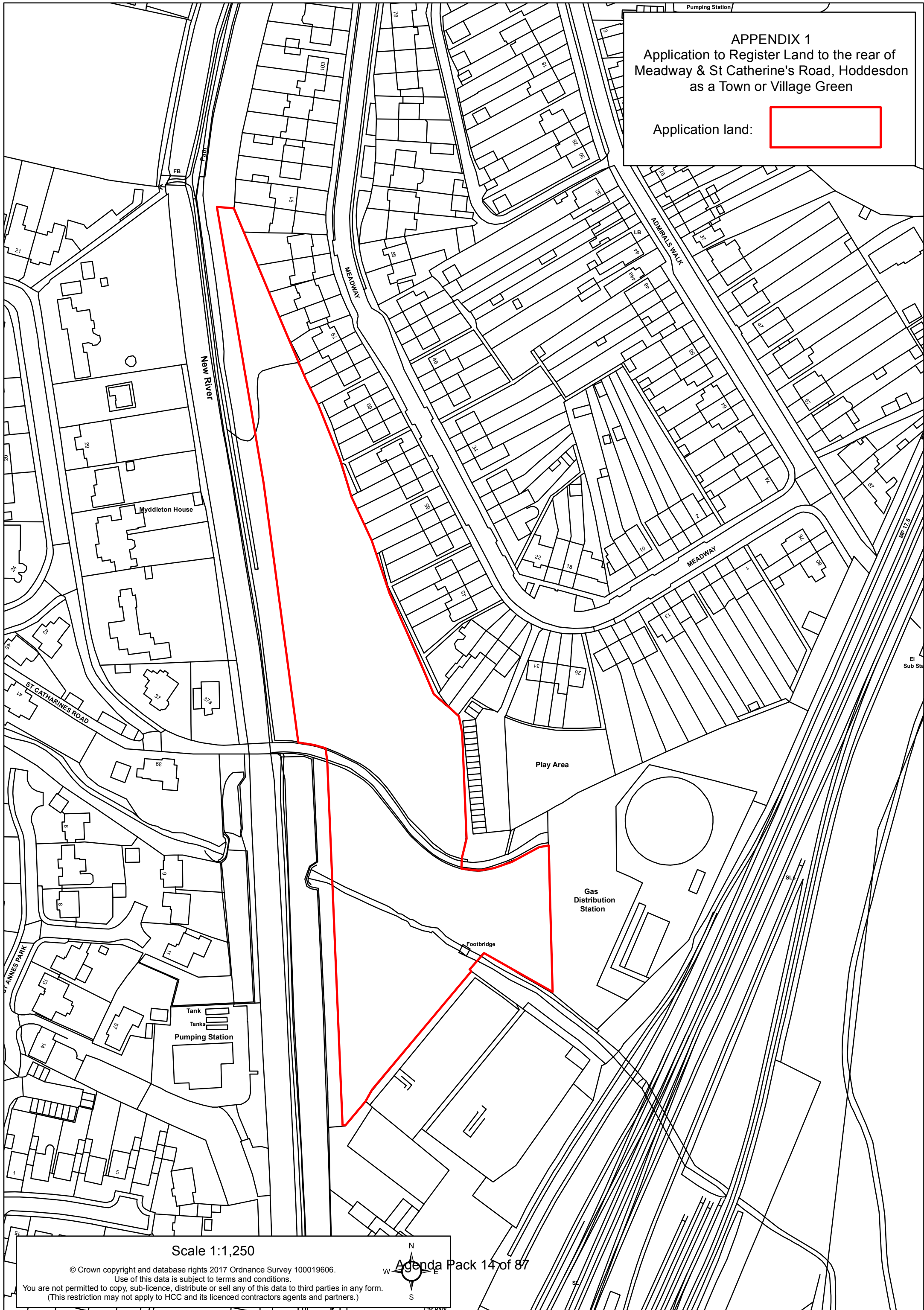
*Report of Mr Alexander Booth QC, dated 14 March 2017 (updated)*

*Summary Report of Mr Alexander Booth QC, dated 14 March 2017 (updated)*

If you require any further information on the items referred to in this report, please telephone Gavin Harbour-Cooper on 01992 556 186

APPENDIX 1  
Application to Register Land to the rear of  
Meadway & St Catherine's Road, Hoddesdon  
as a Town or Village Green

Application land:

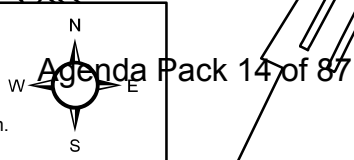


Scale 1:1,250

© Crown copyright and database rights 2017 Ordnance Survey 100019606.

Use of this data is subject to terms and conditions.

You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.  
(This restriction may not apply to HCC and its licenced contractors agents and partners.)



**APPLICATION BY MS BARBARA TYRRELL  
TO REGISTER LAND  
AT MEADWAY AND ST CATHERINE’S ROAD, HODDES DON  
AS A TOWN/VILLAGE GREEN**

---

**INSPECTOR’S REPORT**

---

**Introduction**

1. I am instructed by Hertfordshire County Council (‘the Council’) to advise it in its capacity as registration authority, regarding determination of the application dated 28 November 2014 (‘the Application’) submitted by Ms Barbara Tyrrell (‘the Applicant’) seeking the registration of land at Meadway and St Catherine’s Road<sup>1</sup>, Hoddesdon (‘the Land’) as a town or village green pursuant to section 15 **Appendix 2** (‘the 2006 Act’).
  
2. The Application was accepted as being duly made by the Council on 27 February 2015.
  
3. Originally the Application was the subject of objections by two parties interested in the Land, being Thames Water Utilities Ltd (‘TWUL’) and Mr Antonio Forgione (‘Mr Forgione’<sup>2</sup>). However, following clarification of the extent of the Land the subject of the Application, TWUL withdrew its objection.

---

<sup>1</sup> This road is identified in the documents provided to me variously as ‘St Catherine’s Road’ and ‘St Catharine’s Road’; indeed even those living on the road use different spellings on occasion. I use the term ‘St Catherine’s Road’ throughout this Report for the sake of consistency, and apologise to all those who consider the alternate spelling to be correct.

<sup>2</sup> In fact this objection was maintained not only by Mr Forgione, but by other members of his family, being Carolina Scozzaro, Luigi Forgione and Liberato Forgione. However, for ease of reference in this Report I refer only to Mr Antonio Forgione, given his role as the primary witness for the Forgione family in its objection to the Application.

4. I held a public inquiry ('the Inquiry') between 16 – 18 January 2017 at the Cheshunt Marriott Hotel, Broxbourne. At the Inquiry the Applicant was represented by Mr Robin Halstead of counsel, and Mr Forgione was represented by Mr Ned Helme of counsel. TWUL were initially represented by Mr Gareth Pinwell of Ashfords Solicitors but, as noted above, following clarification as to the extent of the Land the subject of the Application, TWUL withdrew its objection and Mr Pinwell played no further part in the Inquiry.
5. In conducting the Inquiry I had the benefit of documents provided to me by the parties in accordance with the directions issued on Monday 15 August 2016. In this regard I was provided with:
  - One bundle of documentation provided by the Applicant;
  - One bundle of documentation provided by TWUL; and
  - Two bundles of documentation provided on behalf of Mr Forgione.In addition, during the course of the Inquiry I was provided with a series of further documents which are listed in Appendix I to this Report.
6. On the final day of the Inquiry I conducted an accompanied visit which took place on 18 January, at which both the Applicant and Mr Forgione were represented.

#### **Statutory Provision**

7. The Application was made pursuant to section 15(2) and, in the alternative, section 15(3) of the 2006 Act. Insofar as relevant, section 15 provides as follows:
  - (1) *Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.*
  - (2) *This subsection applies where-*
    - (a) *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
    - (b) *they continue to do so at the time of the application.*
  - (3) *This subsection applies... where-*



- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
- (b) they ceased to do so before the time of the application but after the commencement of this section; and*
- (c) the application is made within the relevant period<sup>3</sup>.*

## **Preliminary Matters**

### **The Land**

8. The Land subject to the Application comprises an irregularly shaped area, situated to the east of the New River. It is broadly comprised of three parts. The first area, referred to as 'Horses' Field', lies between the embankment of the New River and the rear of properties on The Meadway. Immediately to the south of Horses' Field is a track known as 'Gasworks Lane'. This is a linear feature running from the New River to the facility known as the Gasworks, and serves to separate Horses' Field from the third part of the Land known as 'The Paddley'.
9. At the time of my site visit, Horses' Field comprised open grazing land, with some trees and shrubbery clustered at its southern end. The area was fenced, with gated access provided off Gasworks Lane. Just inside the access was a stable-type building, apparently used in connection with the current use of Horses' Field for grazing horses.
10. As noted above, Gasworks Lane is a linear feature. It is comprised of hardstanding of some kind, and is lit by streetlights.
11. The Paddley is currently thickly vegetated at its northern end, in that area between the stream<sup>4</sup> which bisects it, and Gasworks Lane. It is more open further south, although there is also further vegetation along its eastern boundary. A clearly marked path runs across this

---

<sup>3</sup> The 'relevant period' is defined by section 15(3A) as one year beginning with the cessation mentioned in section 15(3)(b).

<sup>4</sup> I understand that this stream is known as Spitalbrook.

area, from a point on Gasworks Lane heading in a southwesterly direction towards the embankment which leads up towards the New River.

12. The Land as originally the subject of the Application included a 'neck' of land extending northwards from Horses' Field towards the motor vehicle bridge. However, by letter dated 12 October 2016 ('the Amendment Letter') the Applicant sought permission to amend the Application by excluding this area. Having sought the views of all parties, I allowed this application on 14 November 2016.
13. Further, at the outset of the Inquiry Mr Halstead explained that it had been the intention of the Amendment Letter also to exclude a 5m strip of land immediately to the east of the New River, with a view to enabling TWUL to maintain that watercourse. Following discussions, all parties (including TWUL) agreed that the extent of the Land ultimately subject to the Application was as depicted on Document ID3 (as listed in Appendix I to this Report).

### **Neighbourhood**

14. The Application is predicated on the use by the inhabitants of a neighbourhood within a locality. That neighbourhood was depicted on a plan submitted pursuant to the Application. However, at the outset of the Inquiry, the Applicant amended the boundary of the neighbourhood relied upon so as to exclude from it certain properties, being those few dwellings lying to the west of the New River (ie on St Catherine's Road), and confine the neighbourhood to The Meadway and Admiral's Walk, (which streets lie to the east of the watercourse). Hereafter this area is referred to in this Report as 'the Neighbourhood'.
15. The locality relied upon was also amended, on my drawing the Applicant's attention to the decision in Ministry of Defence v Wiltshire County Council [1995] 4 All ER 931, in which case Harman J confirmed the proposition that in order to satisfy the requirements of the legislation, a 'locality' must comprise an administrative unit "*recognisable by the law*". The Applicant identified the locality as the civil parish of Broxbourne, which area was accepted by Mr Forgiione's counsel as satisfying the requirement<sup>5</sup>.

---

<sup>5</sup> I confirm this is the position, having regard to the fact that paragraphs 4 and 43 of the closing submissions delivered on behalf of Mr Forgiione might be read, erroneously, as suggesting that the question of locality remained unresolved.

### **The 20 Year Period**

16. As noted above, the Application was made pursuant to section 15(2) and, in the alternative, section 15(3) of the 2006 Act.
17. Thus, insofar as the Applicant relies on section 15(2) the relevant 20 year period in respect of which qualifying user by the inhabitants of a neighbourhood/locality must be demonstrated is the period immediately prior to the date on which the Application was accepted as being duly made (ie 27 February 2015). Thus in the present instance, such period comprises the 20 years from 27 February 1995 – 27 February 2015 ('the First Relevant Period').
18. Alternatively, insofar as the Applicant relies upon section 15(3), such reliance necessitates the identification of a different 20 year period during which the Land was used for lawful sports and pastimes. At the outset of the Inquiry the Applicant confirmed that the period relied upon in this regard was the period 1 March 1994 – 1 March 2014 ('the Second Relevant Period'), the latter being the date on which a sign was (on the Applicant's case) first erected on Horses' Field.

### **The Previous Application**

19. The only further matter to note by way of preliminary observation, is that this is not the first application to register this area of land as a town or village green. Indeed, I note that on 31 March 1998 the Applicant made a similar application ('the 1998 Application') in respect of this area pursuant to the Commons Act 1965 ('the 1965 Act'). The 1998 Application was rejected on or around 22 October 1999, on the recommendation of an independent inspector, Mr Rhodri Price Lewis, on the basis that the Applicant had not demonstrated that user had been carried on by the inhabitants of a qualifying locality for the purposes of section 22 of the 1965 Act.

### **The Applicant's Evidence**

20. Mr Halstead made opening submissions, following which he called 11 people to give oral testimony in support of the Application. All those who appeared at the Inquiry in support of the Application, produced a witness statement and/or an 'evidence form'.
21. In addition, the Applicant relied upon witness statements from a further 31 individuals and evidence questionnaires from a further 12, who did not appear before me at the Inquiry<sup>6</sup>.
22. The Applicant had also submitted a considerable amount of additional documentary evidence in support of the Application. This comprised a variety of different materials, including photographs and newspaper cuttings.
23. I have studied all this documentary evidence, and had regard to all of it in preparing this Report.
24. In the following paragraphs, I summarise the evidence given by those of the Appellant's witnesses who did appear before me at the Inquiry. This section of my Report is not a precise minute of each witness's evidence, but rather a general record of what I considered to be the thrust of their testimony (both written and oral).

### **Ms Jean O'Brien (36 Admiral's Walk)**

25. Ms O'Brien had lived at her current address since 1989.
26. In terms of use of the Land, she felt that children had typically used the Land all year round, but that in recent times it had become overgrown. She herself had used the Land on a daily basis between 1994-1999 when she had kept dogs, but from 1999-2013 she had only made use of it a few times a year. Thereafter, once she had begun walking a neighbour's dogs, she had used the Land on a weekly basis. Most of her use had been of The Paddley; she would not go up to the Horses' Field if it had horses in it. She had often picked blackberries on The Paddley.

---

<sup>6</sup> Some of these documents were in fact prepared by/on behalf of more than one individual.

27. More occasional activities had included 'Pooh Sticks' competitions on the New River<sup>7</sup>, barbecues (the most recent one being on The Paddley in 2015), and outings to clear weeds/brambles (the last of which had been in around 2011). She was aware of fireworks demonstrations, but had never attended, and had also seen wildlife on The Paddley such as owls and muntjac.
28. Ms O'Brien was adamant that the Neighbourhood comprised a community, notwithstanding it had no shops. She felt that the area was "*a little hamlet on its own*", with the New River proving a "*natural boundary*".
29. Ms O'Brien had understood that Mr Forgione had not wanted the Land used by the public, but did not feel that use was controversial. She did not feel she had been aware of Mr Pallett previously having wanted to prevent the Land being used.
30. Ms O'Brien remembered a sign having been erected in around 2012, although she confessed that she was "*bad with dates*". Her recollection had been that the sign was "*up then down and back up again*". She felt that the sign had said something to the effect that the land was 'Private Land' and that 'Horses would be removed'. She thought that the sign was still present today. She had never been told to leave the Land, and had never asked permission to use it.

Mr Philip Smart (39 Admiral's Walk)

31. Mr Smart had lived at his current address since 2006.
32. His most frequent use of the Land had been to use the path across The Paddley as a cut-through towards Broxbourne Station.
33. He was aware of Jubilee Celebrations having taken place on the Land, and also fireworks and barbecues, although he had not attended these events. He had however participated in scrub clearance ("*bramble bashing*") on The Paddley in around 2012. He had also, on many occasions, used The Paddley for wildlife spotting, since he is a keen conservationist and

---

<sup>7</sup> Of course use of the New River itself would not amount to use of the Land, since it lies outside of it.

member of the local wildlife trust. He also looked for wildflowers, such as Ragged Robin. In terms of other's use of the Land, he had seen children playing and people walking dogs.

34. His recollection of the sign being erected was that it had gone up in 2014, but he accepted that it could have been earlier, in around 2012. This sign was by the gate onto Horses' Field. He recalled fencing being put up between Horses' Field and Gas Works Lane in 2014/15, but he felt that The Paddley had never really been well fenced.

35. In terms of his neighbourhood, he felt that the New River was an effective boundary.

Mrs Lesley Cole (46 Admiral's Walk)

36. Mrs Cole moved to Admiral's Walk in 1997.

37. Mrs Cole felt that her immediate area comprised of The Meadway and Admiral's Walk, although she recognised that she drew on facilities from a wider area. She felt that this community had made use of the Land, and that although community activities did not take place frequently, she felt they took place "*regularly enough*". She had attended barbecues, a bonfire party and both Golden and Diamond Jubilee Celebrations.

38. In terms of more 'personal' use of the Land, she had always played with children on the Land. Ms Cole's children had been aged 2, 5 and 7 when she moved to her home in 1997. Her grand-daughter was now aged 5, and she often looked after her (the grand-daughter lives in a block of flats also within the Neighbourhood). As such she felt she had always used the Land for playing with children – and carrying on activities such as picking berries (and mint), picnics, flying kites and working on school projects (relating to leaves and plants). Other activities she had carried on included walking, dog walking and jogging. She had kept a dog until late 2013, around the date when the sign first went up. She felt that she had used the Land on at least a weekly basis.

39. She had become aware that Mr Forgione opposed use of the Land, even though she had understood when he acquired it that he was doing so for the local community.

Dr Clarke (49 Meadway)

40. Dr Clarke had moved to his current address in 1996. He is a leader of the Spitalbrook Village Green Conservation Group ('the Spitalbrook Group').
41. Community activities he had participated in included Golden Jubilee Celebrations in the Horses' Field in 2002, with fireworks and carol celebrations on The Paddley in 1999 and 2009. A Diamond Jubilee Celebration had also been held on The Paddley in 2012, and a summer barbecue had been held there in 2015. He had also participated in 'community clean ups' on the Land; one on The Paddley in 2009, with another on both The Paddley and Horses Field in 2013. He accepted that community events had not taken place every year.
42. His personal use of the Land had been roughly twice a week in summer, but once a week in winter. Activities included playing with his cats on the Land between 2001 and 2004. He had always found The Paddley a rich area for blackberry picking, and had also often seen children paddling in the stream there. He recognised that the Land – in particular parts of The Paddley – had become overgrown, but felt that this was because it had not been grazed. Even now he felt that The Paddley was used.
43. He said he recognised other people using the Land as being from the Neighbourhood, although he generally didn't know their names. He accepted there were no facilities in the Neighbourhood save for the childrens' play area, but felt that the area was distinct, with the only vehicular link to it being Upper Marsh Lane. He felt the area was cohesive, and stated that all members of the Spitalbrook Group were inhabitants of the Neighbourhood.
44. He felt that the first sign erected which purported to contest use of the Land had been erected on Horses' Field in 2014. He said he had never been told not to use the Land, and had never sought permission to use it. He felt that the fencing on the Land had always been in a state of disrepair, although it had been repaired in a 'make do' fashion from time to time when horses were put on the Land. An electric fence had been installed on Horses' Field in 2015. He felt that insofar as the signs were a "*warning of sorts*" not to use the Land, they were an "*unclear warning*" and they were only put up on Horses' Field. He felt that the presence of horses on Horses' Field had not been a bar to use of the area by local people, although he accepted that their presence might have put off some people with a nervous disposition.

Mr Michael Verlasco (19 Meadway)

45. Mr Verlasco has lived at his current address since 1991. He is the environmental officer of the Spitalbrook Group.
46. He felt that the Neighbourhood comprised The Meadway and Admiral's Walk, which together he described as "*a hamlet*". He felt the area had always been distinct, and mentioned the fact that in the local carnival, the Neighbourhood had used to have its own 'float'.
47. He accepted that 'community events' did not take place on the Land on an annual basis. However, he had participated in a number of such events, including a celebration for The Queen's Diamond Jubilee (in 2012) and a barbecue (in 2015); both on The Paddley. He had also been involved in a carol signing bonfire on The Paddley, in December 2009, and had participated in community clear up events.
48. Since 2009 he had used his European Scythe to chop back brambles on The Paddley; both for the purposes of maintaining the path towards the station, and to provide a wider open area for events such as the Jubilee Celebration.
49. Currently, he felt that a main use of the Land comprised use of the path across The Paddley as a cut-through, and as a circular route when walking dogs. However, he had always seen local people using the fields for walking and exploring, and picking blackberries.
50. In terms of his own use, he felt that he used the Land for walking and nature observation (on The Paddley) most days, and that he tended to recognise the faces of others using it, as being people from The Meadway, such as Anne Hall or Jean O'Brien. He has always had a keen interest in nature, and between 1995-99 he studied the Land pursuant to his BSc in Environmental Conservation. His children had made use of the Land, in particular catching fish and using the rope swing over the brook.
51. He accepted that Mr Forgione did not wish the Land to be used by local people. However, it was only when the sign was put up in 2014 that he understood that local people were not meant to be using the Land; he had never understood that to be the position whilst Thames Water had owned the Land. He felt the fencing on The Paddley had always been very



ramshackle, and he could not remember the last time horses had been kept there. An electric fence had recently been erected at Horses' Field.

52. He had never asked permission to use the Land, or been told to get off it. He had always thought of it as common land.

Mr Vincent McGuire (51 The Meadway)

53. Mr McGuire has lived at his current address since 2008.

54. He has participated in community events on the Land, including carol singing round a bonfire in 2009, and Diamond Jubilee Celebrations in 2012; both of these events took place on The Paddley.

55. He used the Land more or less every day in Summer, and generally used it frequently, as a short-cut to take his children to school or pick them up again.

56. In terms of sports and pastimes he and his children play football on the Land, pick blackberries & meadow flowers, watch birds and collect insects from the long grass. He also sunbathed there.

57. He thought he had a right to use the Land, and the first he knew that his user was contentious was when the sign was erected. He thought that this had been in March 2014. He had never been told not to use the Land, and had never sought permission

58. He knows the owner of the horses currently on Horses' Field, Ms Martine Lee.

Mr Richard Muschamp (45 The Meadway)

59. Mr Muschamp has lived at 43 Meadway from 2004, and at his current address since 2007. He has been the Secretary of the Spitalbrook Group since 2009, which role generally consists of helping Dr Clarke with administrative matters.

60. He feels that the Neighbourhood comprises The Meadway and Admiral's Walk, which area he regards as being *"the community"*, and *"definitely a neighbourhood"*. In this regard he said he did not regard St Catherine's Road as being built of the same sort of houses as in the Neighbourhood; the former are multi-million pound houses. Further, they are also on the far side of the physical barrier that is the New River. The Neighbourhood is a discrete area with *"one way in and out"*.
61. He characterised his use of the Land being 'daily' in terms of use as a 'cut-through', but weekly (in the warmer months) for recreation. Most of this use had been on The Paddley. He felt that the fencing on Horses' Field had been poor, so that horses got out regularly. He and his family picked blackberries on The Paddley, and his children hunt for insects there. They used to use both fields, but now mainly just use The Paddley, on account of the horses grazing in Horses' Field.
62. He had attended community events on the Land comprising the Diamond Jubilee Celebration on the Paddley (2012), a barbecue on The Paddley (2015), carol singing on The Paddley (2009) and multiple occasions of rubbish and bramble clearing upto 2011 – again on The Paddley. He had attended fireworks events in 2009 and 2011.
63. He remembered older local children using the ropeswing over the stream on The Paddley, and would see them using it once a week.
64. In terms of what Mr Forgione's position had been, he felt that there had been no direct communication (as opposed to through the press). He was aware that Mr Forgione felt there shouldn't be public use of the Land, but he had disagreed. He thought that the sign had first been erected in 2014, but he noted this had only been erected on the Horse's Field, and he thought it was saying that that it was intended to stop people from walking across that area. He had presumed it had been erected for insurance purposes. He had never sought permission to use the Land, and never been told not to use it.

Mrs Lorraine Howard (12 Admiral's Walk)<sup>8</sup>

65. Mrs Howard has lived at her current address since 1980.
66. She had used the Land for jogging, with a group of 5 friends, but had only begun doing this in March 2015. She saw cyclists using the area, but this was not on the Land itself. She had spoken with the current tenant of the Horses' Field (Ms Martine Lee), who had told her that she could feed the horses, but only when she (ie Ms Lee) was present.
67. In terms of more historic use, she had used the Land with her children for games, blackberrying and picking wildflowers. In the period 1995-2000 she had walked her dog on the Land three times a day. After 2000 she had tended to go on the Land a couple of times a week with children, but such use had been less frequent in winter.
68. Community activities she had been involved in included 2 or 3 fireworks events over the years, and around 3 barbecues. She also recalled the 2002 Jubilee Celebrations.
69. She felt that the fencing around the Land had typically been very poor. She thought that there had only been one sign, and wasn't entirely sure when it had been erected. She felt she had only known recently that Mr Forgione had not wanted people on the Land, but agreed that she read the Spitalbrook Group's newsletter. She said she had not previously been aware that Mr Pallett had objected to use of the Land when he had been the tenant, but then said she had known this at the time of the previous inquiry.
70. Mrs Howard felt that the Neighbourhood was rightly identified, being Admiral's Way and the Meadway. She knew the occupants by sight, but generally not their names. She felt she knew them well enough to call on if she were in trouble.
71. Mrs Howard was also aware of the Neighbourhood having operated a 'float' at the local carnival, but agreed that the last carnival had been held in 2005.

---

<sup>8</sup> Mrs Howard had not prepared a written statement or questionnaire for inclusion in the Applicant's bundle. Accordingly she prepared a written statement which was provided at the Inquiry; see document ID6.

Mr Barry Phipps (52 Admiral's Walk)

72. Mr Phipps had lived in his current home since 1994.

73. He described himself as a regular user of the Land, but his use had been more of The Paddley than the Horses' Field. In part this was because he was interested in wildlife, and there was no real wildlife presence in the Horses' Field. He liked to collect wild seeds. He thought the area was in daily use, with children playing in the stream. He felt that about half the time he visited he would see other people making use of the area, and that it was in daily informal use by residents. In terms of frequency, he thought he had used the Land every week in 1990s (after arriving in '94) – going onto it with his young son. He had also had barbecues there in the summer. Since 2009 his use (for walking and seed collecting) was on a monthly basis.

74. In terms of community events, he recalled attending two fireworks/bonfire events in the last 8 years or so, which events he recalled had been on The Paddley.

75. He felt that the Land was now overgrown, but that it had not always been so. He had been part of the group which used to cut back brambles.

76. Mr Phipps had only seen the sign in 2015, on the occasion of a barbecue. He stated that it only read 'Private Land' – it didn't say 'no trespassers'. He had assumed it did not apply to local people, and he had only understood recently that the Forgione's had not wanted local people coming on to the Land. He had not been aware of the previous inquiry in 1999, and had only heard of Mr Pallett at this Inquiry. He had only joined the Spitalbrook Group in 2015, and did not think that he had seen the newsletter when the 'sign' had been discussed. He did not buy the local newspaper.

Mr Robert Perry (64 The Meadway)

77. Mr Perry had lived in his current home since 1986.

78. He described his immediate neighbourhood to be the community of Hoddesdon, although he observed that *"people in Hoddesdon don't know we're there"*. He then described his

immediate neighbourhood as The Meadway, Admiral's Walk, with parts of St Catherine's Road and St Michael's Road.

79. He often used route across The Paddley as a cut-through to the station.
80. In terms of 'community activities', he had participated in the 2009 Bramble Bash, but not the Diamond Jubilee Celebration (although some of his children attended that). He remembered Pooh Sticks competitions in 1998, and also a bonfire party in 2009. His use had been mostly of The Paddley, and he had not really made use of the Horses' Field. He felt the name of The Paddley had been given it by local children, who had used the stream and the ropeswing over it. His use had generally been on a monthly basis, when playing with children and grandchildren. Use had been less frequent in winter, more frequent in summer.
81. He had been aware that Mr Forgione bought the Land in around 2010. He occasionally read the local paper, although he hadn't read any of the relevant articles in 2013. He had read about the sign in the Spitalbrook Group's newsletter (he had been a member of the group since 2004). He thought signs had gone up in either 2012 or 2014, but that they had only been put up in the Horses' Field. He thought the position was uncertain as regards what was meant by a sign which read 'private property'. He didn't accept that use of the Land had been controversial.
82. He hadn't thought Thames Water had had a problem with local people using the Land.

Mr Robert Butler (30 The Meadway)

83. Mr Butler has lived in his current home since 2011. Prior to that, during the period 1994-2010, he would visit his parents (who then lived in the house) roughly 2 or 3 times a week.
84. In the period 1994-2010 he would often walk the Land with his father's dog, and also go blackberrying. He felt that use of the Land had been an everyday occurrence in the past, although he recognised that activities like football/cricket and rounders had not been features on the Land during the relevant 20 year period. In these years, he felt that dog-walking, walking and blackberrying were more prevalent. His use was confined to The Paddley; in this regard he recognised that the area was very overgrown, but he still felt that

it was used for walking and berrying. Since 2011 he felt he used it once a fortnight during the summer, when he would walk his dog for half an hour or so. He felt he would see 20 or so people.

85. In terms of community events, he had attended the 2002 Jubilee Celebration, but not the one in 2012.

86. He had seen an article in the local paper saying that Mr Forgione did not want people using the Land in December 2013. He didn't feel that Mr Pallett had been opposed to people making use of the Land; he (Mr Pallett) had lived in Admiral's Walk and had never told anyone to stay off it. He thought the sign had gone up on the Horses' Field in 2014, and had not used that area since then. He had never been told verbally not to use either area.

87. He felt that Admiral's Walk and The Meadway had always been a community in their own right. He didn't feel that a neighbourhood needed a shop or a pub in order to be a community, and he felt that his area was distinct from the larger houses in St Catherine's Road. He felt that the Neighbourhood was separated from the rest of the local area by the New River.

### **The Objector's Evidence**

88. Mr Forgione called oral evidence from 8 witnesses (including himself). In addition, he relied upon written evidence from a further witness, and on various further documentation. I have considered all the documentation in Mr Forgione's bundle, and had regard to it in preparing this Report.

89. The following paragraphs are intended to summarise the testimony given by those of Mr Forgione's witnesses who appeared at the Inquiry. They do not represent a comprehensive record of the totality of their evidence.

### **Mr Antonio Forgione**

90. Mr Forgione bought his home at 29 St Catherines Road in 2008, at which time the Land was owned by TWUL. His house is located across the New River from Horses' Field.

91. He had been contacted by local residents in 2009, regarding a 'group' proposal to acquire the Land, but had not felt that this was a sensible option. He subsequently acquired it from the company which had purchased it from TWUL, at the end of 2009/beginning of 2010, in order to "*safeguard [his] view*". He felt that the Land was his, and that he had acquired it to prevent it from being built on; if other local people benefitted in this respect that was their good fortune, but he did not consider that they had any right to use the Land.
92. He strongly contested the evidence given by the Applicant's witnesses as to their use of the Land for sports and pastimes. He said that he had witnessed a lady throwing a stick for her dog once or twice, but other than that had not seen any such recreational user. He did however say that he had seen people walking along the path across The Paddley to the station, and indeed that he saw this "*all the time*". He felt that he had a good view of Horses' Field and could also see The Paddley from his bedroom, but accepted that he could not see what people were doing there very well. He was aware of no community events or activities taking place on the Land during his family's ownership.
93. He felt that he had made it clear to everyone that local people should not be using the Land.
94. He had encouraged Ms Pallett and Mr Townsend to keep their horses on the Land until March 2011. In Summer 2012 he had gone down to the Land and had noticed that a member of the Traveller's Community had put horses on Horses' Field without his permission. He challenged the individual looking after the animals, and subsequently erected a pair of signs that year, with the intention of protecting his position in respect of other Traveller's putting their horses on Horses' Field without his permission. He felt that a pair of signs had been put up 3 times in total; all the signs had been put up on the Horses' Field. The initial signs had indicated that the Land was private and that abandoned horses would be removed. He felt that the subsequent set of signs, with different wording (the same as that on the sign currently visible), had been erected in 2013, with another pair put up in 2014. The signs had all been vandalised and torn down, save for the one which is currently to be seen inside the gate onto the Horses' Field.
95. Mr Forgione had not permitted any horses to graze the Land between 2013-15, but then in June 2015 he granted a lease to Ms Martine Lee in respect of the Horses' Field.

96. Although in his written evidence he asserted that he had told people to get off the Land when he had seen them making use of it, in his oral evidence he indicated that this was incorrect; he had never challenged any one for using the Land. He said that he had not wanted to do this since these people were effectively his neighbours, and he had not wanted to seem unreasonable, and was happy to “*live and let live*”.
97. Mr Forgione had, at the local council’s request, arranged for works to be done to trees adjacent to/overhanging Gasworks Lane. He had commissioned Mr Musk to carry out these works.
98. Mr Forgione did not consider that the Neighbourhood was genuine, noting that residents didn’t appear to know each other’s names, and that all the shops were elsewhere (in Hoddesdon). He had been to a bonfire on The Paddley in 2009, but did not think that it was well-attended; he remembered only 15 or so people having been there.

Mr Peter Musk

99. Mr Musk does not live in the local vicinity of the Land. He is the principal of PJ Musk Trees, which is an arboricultural enterprise.
100. Mr Musk originally felt that he had carried out works to trees on the Land, at Mr Forgione’s request, on an annual basis since 2010. However, on reflection he felt that he carried out such works 2 or 3 times, and that the occasion of such works had been in the last couple of years (ie 2015 and 2016). This was consistent with his recollection that there had always been horses in Horses’ Field when he had undertaken these works (it being Mr Forgione’s evidence that there had been no horses kept on the Land between 2013-2015).
101. The works he had been commissioned to undertake had always been along Gasworks Lane. When carrying out such works he had had a view into Horses’ Field, and had not seen people on it save for Ms Lee, the owner of the horses there.

Mr Roger Townsend

102. Mr Townsend does not live in the immediate vicinity of the Land. He kept horses on the Land, on and off, between 1986 and 2010.



103. During this time he had visited the Land regularly to tend them; his horses had very largely been on Horses' Field rather than on The Paddley. When visiting he had only very rarely seen people making use of the Land (in that they were walking over it). He had never seen community activities or other activities there.

104. Historically the fencing had been "*a pretty shoddy affair*", but after he had been prosecuted for horses escaping he had repaired the fencing on the Horses' Field in the period 2004-08. At one time he had erected a sign on the Land which read "*Stallion – Be Careful*".

Mr Michael Guillotti

105. Mr Guillotti has lived at his current home, 99 the Meadway, since 1980. That property backs on to the 'pan-handle' which extends northwards from Horses' Field.

106. He did not recall any 'community events' happening on the Land during either of the Relevant Periods, although he remember that in and around 1998 there were a number of 'fund-raising' events (such as the Pooh Sticks competition, and 'clean ups' of the Land) held in connection with opposition to an application seeking planning permission to develop the Land.

107. The only activity he spoke of witnessing, related to persons using the path through The Paddley to get to Broxbourne Station. He had used this route during the 1990s. He stated that his property does not have a view over either Horses' Field or The Paddley, although he walks his dog along the New River and Gas Works Lane.

108. He felt that the Neighbourhood had "*a strong community feel*", where one could "*rely on your neighbours*". He felt that the area was different from the rest of Hoddesdon.

Ms Brenda Pallett

109. Ms Pallett does not live in the immediate vicinity of the Land. She was the daughter of a previous owner of the Land, Mr Frederick Pallett. She maintained that Mr Pallett had not allowed 'trespassers' on it, and had "*challenged people walking on the property*". She referred to letters which her father had written to the local council, and to the local newspaper, complaining about – and seeking to prohibit – use of the Land by local people;

however she agreed that she was unaware of whether any of these letters had ever been published.

110. Historically she had kept livestock on the Land, which necessitated daily visits; in the summer one had to walk the area to find the animals, and in winter one had to visit in order to provide forage for them. During the Relevant Periods she had kept horses on the Land until 2011, but her visits appeared to have been much less frequent. In this regard she referred to having had knee replacements, so that her partner Mr Mahoney, or other friends such as Mr Townsend, visited more frequently than she did. Her own visits would be every 6 weeks or so.

111. She maintained that she and her father had had trouble with vandalism of the fences, and that they had always been having to repair the fences.

112. She did not think that signs had been put up prior to 2012.

113. She recalled that at some point in the 1990s, the Applicant had approached her regarding the holding of a bonfire on the Land, but she had refused to give permission, saying *"I will hold you responsible for any loss or damage"*.

#### Ms Martine Lee

114. Ms Lee does not live in the immediate vicinity of the Land. She took a lease of the Horses' Field in August 2015. She cleared a paddock, erected 'stable buildings' and improved the fencing (including installing an electric fence). The fencing had, at times, been vandalised.

115. She had not seen any 'community use' of the Land, but had seen some people walking through it, and had seen others wanting to feed her horses apples and carrots (which she had agreed to, subject to her supervision).

#### Mr Michael Mahoney

116. Mr Mahoney is the partner of Ms Brenda Pallett, and endorsed the evidence which she had given. He does not live in the immediate vicinity of the Land.

117. Mr Mahoney explained that he had kept cattle on the Land from 1983, and that in 1984 he kept a bull there. He noted that as the animals were a valuable commodity he and Ms Pallett would check on them on a daily basis. However, he agreed that he had not kept cattle there since 1992.
118. Mr Mahoney provided the Inquiry with a series of photographs, although he recognised that these all pre-dated both the Relevant Periods.
119. Mr Mahoney stated that during the Relevant Periods Ms Pallett had kept one or two horses on the Land, but that he had had little to do with the Land since 1994; he had only been there to visit horses on odd times, say once a month.
120. He confirmed that at some point in the 1990s, Ms Tyrrell had asked Ms Pallett for permission to hold a bonfire on the Land, but that permission had been refused.

Mrs Feray Forgione

121. Mrs Forgione lives at 15 St Catherine's Road. She endorsed the evidence given by her husband.
122. She explained that although she worked two days a week (during term time), she otherwise spends a lot of time at her home and in her garden, from where she can look out over Horses' Field. In this regards she referred to the fact that she often looks after her two young nephews, who enjoy playing by the New River (which backs on the Land). She often feeds the ducks with them.
123. Mrs Forgione also referred to having a view over the Land from her bedroom window, but she subsequently acknowledged that the second floor of her house (in which the bedroom is currently situated), was only added to the property in 2015.
124. She felt that she only very exceptionally saw people making use of the Land for recreational purposes; generally she only saw people using the path along the New River (which route lies outside of the Land). She was aware of no community events or activities taking place on the Land during her family's ownership.

125. Mrs Forgione also disputed the existence of the Neighbourhood; she observed that she knew her own neighbours whereas the Applicant's witnesses had not appeared to know theirs. She noted also that the carnival which the Applicant's witnesses had referred to had ceased in 2005. She had gone to the bonfire event in 2009 with her husband, but they had refused permission to the Applicant to hold a barbecue in 2015.

### **Inspector's Discussion & Conclusions**

#### **Preliminary**

126. The Application was made on the basis of sections 15(2) and (3) of the 2006 Act. As noted earlier in this Report at paragraph 7, so far is relevant, section 15 provides as follows:

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

*(2) This subsection applies where-*

- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
- (b) they continue to do so at the time of the application.*

*(3) This subsection applies... where-*

- (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
- (b) they ceased to do so before the time of the application but after the commencement of this section; and*
- (c) the application is made within the relevant period.*

127. As already noted, there are two periods of usage relied upon by the Applicant; these being the First Relevant Period (27 February 1995 – 27 February 2015) and the Second Relevant Period (1 March 1994 – 1 March 2014). In order for registration of the Land to be justified, the Applicant must demonstrate that throughout a Relevant Period the Land was

used for lawful sports and pastimes as of right by a significant number of the inhabitants of the Neighbourhood.

128. It is the Applicant's case that such use of the Land has taken place. Mr Forgione contests this on a number of different bases. I believe that his various grounds of objection may fairly be summarised as follows:

- (i) First, that the Neighbourhood as relied upon by the Applicant does not satisfy the requirement of the 2006 Act, and that accordingly such use of the land for lawful sports and pastimes as has taken place, has not been carried on by the inhabitants of a 'qualifying unit'.
- (ii) Second, that to the extent there has been qualifying use of the Land for lawful sports and pastimes by the inhabitants of the Neighbourhood, such use has not been carried on with sufficient intensity by a significant number of the inhabitants of that area;
- (iii) Third, that use of the Land by the inhabitants of the Neighbourhood has not been carried on 'as of right', but has instead been carried on 'by force'.

In the following paragraphs of this Report (that is from paragraph 134 onwards), I consider each of these issues in the context of my evaluation of the Application.

129. The burden of proof in the context of the Application is in the first instance on the Applicant, who must discharge it to the civil standard. That is to say that the Applicant must succeed in satisfying the various requirements of section 15(2) or (3) of the 2006 Act on the balance of probabilities.

130. As a general rule, in considering the extent to which the Applicant has made out her case in respect of these issues, I must have regard to how matters would have appeared to a reasonable landowner. That such is the appropriate basis on which to assess matters is well established. In this regard, see for example the decision of Sullivan J in R (Laing Homes Ltd) v Buckinghamshire County Council [2004] 1 P&CR 573, in which the judge cites the Opinion of Lord Hoffman in R v Oxfordshire County Council ex parte Sunningwell Parish Council [2000] 1 AC 335, and emphasises the importance of "*how matters would have appeared to the owner*

*of the land*”<sup>9</sup>. In this context, I consider that the assessment is concerned with ‘a reasonable landowner’; that is either the ‘actual’ landowner acting ‘reasonably’, or else a notional ‘reasonable landowner’. In this regard see the reference to the reasonable landowner in decisions such as that of the Supreme Court in R (on the application of Lewis) v Redcar and Cleveland borough Council (No.2) [2010] 2 AC 70<sup>10</sup> and that of Patterson J in Allaway v Oxfordshire County Council [2016] EWHC 2677<sup>11</sup>.

### **Credibility of the evidence in support of the Application**

131. Before going further I make certain brief observations as to the credibility of the evidence called on behalf of the Applicant in support of the Application. I do so in circumstances where counsel for Mr Forgione emphasised, both in his submissions and in his questions in cross-examination of the Applicant’s witnesses, that the evidence in support of the Application was given ‘in fear’ of the prospect that Mr Forgione would cause the Land to be developed<sup>12</sup>.

132. I readily accept the proposition that the motivation for the Application was the hope of frustrating a perceived risk of ‘development’. Further, I also consider it likely that many of those giving evidence in support of the Application were indeed concerned at the prospect that development might take place. However, it is my view that such consideration is only relevant to the extent that I conclude that such motivations may have influenced the evidence given by witnesses; ie that their desire to frustrate development caused them to exaggerate their evidence in support of the Application and thus misrepresent the true position.

133. As regards this issue, I can confirm that I observed the Applicant’s witnesses carefully as they gave their evidence, and indeed I tested that evidence myself by asking

---

<sup>9</sup> See paragraph 78 of Laing Homes.

<sup>10</sup> See paragraph 36, per Lord Walker in Lewis.

<sup>11</sup> See, inter alia, paragraphs 52, 55 and 57 of Allaway.

<sup>12</sup> In passing I note that Mr Forgione’s clear and unequivocal evidence to the Inquiry was to the effect that he has no intention whatsoever of developing the Land. I have no reason at all to doubt that evidence, and consider it may well be that local fears as to the prospect of development are entirely groundless. However, and as previously indicated during the Inquiry, I note that whatever Mr Forgione’s intentions may or may not be, they are irrelevant to the task before me, which is to consider the Application with reference to the 2006 Act.

questions over and above those posed by Mr Forgione’s counsel. I am satisfied that the evidence given by the Applicant’s witnesses was reliable; that not only were the witnesses doing their best honestly to assist me, but that their evidence was not clouded/influenced by their desire that the Application would succeed (and thus ward off the perceived threat of development).

### **Neighbourhood & Locality**

134. The Application was made on the basis of use of the Land by the inhabitants of the Neighbourhood, it being an identified neighbourhood within the locality of the civil parish of Broxbourne (see further below). Although Mr Forgione disputes the existence of the Neighbourhood, he accepted (through Mr Helme) that the civil parish constitutes a locality for the purposes of the 2006 Act.

#### The Neighbourhood

135. The extent of the claimed neighbourhood as originally identified, is shown on a plan submitted with the Application<sup>13</sup>. That area included, on the east side of the New River, the residential properties on The Meadway and Admiral’s Walk. However, it also included a small number of residential properties to the west of the New River (on St Catherine’s Road).

136. On the first morning of the Inquiry, the Applicant indicated (through Mr Halstead) that she wished to amend the area of the claimed neighbourhood to exclude that part lying to the west of the New River; thus the Neighbourhood relied on at the Inquiry comprises solely the area to east of the New River (chiefly The Meadway and Admiral’s Walk).

#### The Law

137. The relevant law as regards this issue is, to my mind, still to be found in the case of R (Cheltenham Builders Ltd) v South Gloucestershire District Council [2004] JPL 975. In that case the judge rejected the submission “*that a neighbourhood is any area of land that an applicant for registration chooses to delineate on a plan*”, before going on to say that:

---

<sup>13</sup> See the second of the plans included within the Applicant’s bundle at Tab A.

*“The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word “neighbourhood” would be stripped of any real meaning. If Parliament had wished to enable the inhabitants of any area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so”<sup>14</sup>.*

138. The decision in Cheltenham Builders was the subject of some criticism by the House of Lords in Oxfordshire County Council v Oxford City Council and Robinson [2006] 2 AC 674. However, no criticism was made of the court’s decision in respect of this particular issue, although I note the statement of Lord Hoffman that the ‘neighbourhood’ requirement in the statute is *“is obviously drafted with a deliberate imprecision”<sup>15</sup>.*

139. The approach in Cheltenham Builders was endorsed by Judge Waksman QC in R (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council [2010] EWHC 530, where he observed:

*“the factors to be considered when determining whether a purported neighbourhood qualifies are undoubtedly looser and more varied than those relating to locality [but]...a neighbourhood must have a sufficient degree of (pre-existing) cohesiveness. To qualify therefore it must be capable of meaningful description in some way”<sup>16</sup>.*

#### Discussion of Evidence & Conclusions

140. I consider that the Neighbourhood satisfies the requirements of the legislation.

141. In reaching this view I have considered the various arguments advanced by Mr Helme on behalf of Mr Forgione, and indeed the points made by Mr and Mrs Forgione in their evidence. I have also had regard to the evidence submitted on behalf of TWUL, which Mr Helme indicated that Mr Forgione continued to rely upon notwithstanding TWUL’s withdrawal<sup>17</sup>.

142. In this regard, I make the following by way of preliminary observation:

---

<sup>14</sup> See paragraph 85 of Cheltenham Builders.

<sup>15</sup> See paragraph 27 of Oxfordshire.

<sup>16</sup> See paragraph 79 of NHS Foundation Trust.

<sup>17</sup> In particular the witness statement of Mr Christopher Colloff, which spoke to the issue of ‘neighbourhood’.



- First, I recognise that the Neighbourhood was only identified on the first morning of the Inquiry.
  - That the Applicant’s case on this issue was amended at this very late stage must, in my view, cast doubt on the credibility of the existence of the Neighbourhood as claimed.
  - Further, I consider that the written evidence (whether witness statements or questionnaires) provided by persons who did not give oral evidence to the Inquiry, cannot provide any support for the existence of the Neighbourhood since it did not form part of the Application at the time when that evidence was prepared. Indeed, I understand that this written evidence was submitted on the basis of/in support of the original neighbourhood, which is more extensive than the Neighbourhood now relied upon by the Applicant.
- Second, I note that neither Mr nor Mrs Forgione recognised the Neighbourhood as amounting to a community of any kind. As local people, their views must carry some weight in this regard.

143. However, notwithstanding these matters, I am firmly of the view that the Neighbourhood amounts to a qualifying neighbourhood for the purposes of the 2006 Act. In reaching this conclusion I make the following observations/findings:

- Of the 11 witnesses who gave oral evidence on behalf of the Applicant, all but one of those who were questioned in respect of this issue gave clear and consistent evidence to the effect that they recognised the Neighbourhood as their ‘local community’, and that St Catherine’s Road does not form part of this community. That Mr Perry felt his ‘community’ was more extensive than the Neighbourhood does not, in my view, negate the evidence given by the other witnesses.
- The evidence of the Applicant’s witnesses was supported by a witness called by Mr Forgione, who happens to live in the Neighbourhood. Mr Giullioti confirmed that he agreed that the Neighbourhood represented his ‘community’. Thus evidence called

by the objector actually endorsed the position of the Applicant in respect of this issue.

- I accept the proposition that the New River, provides a defining 'boundary' for the Neighbourhood, since it cuts off Admiral's Walk and The Meadway from the rest of the local area. The fact that there is only one vehicular route in/out of the Neighbourhood, across the bridge over the New River, is likely (in my view) to have helped to define the properties located to the east of the watercourse as a separate 'neighbourhood'. If properties in a certain area are, in relative terms, 'cut off' from others by linear features, I think it entirely natural that the inhabitants of those properties would associate with others 'isolated' within that same area.
- I conducted an inspection of the type of properties prevalent in the Neighbourhood, as compared to those on St Catherine's Road. I agree with the evidence given by Mr Muschamp, to the effect that the properties on St Catherine's Road are markedly different to those in the Neighbourhood in that they present as larger and of higher value. They do not 'fit' with those properties in the Neighbourhood, all of which are generally of a similar 'tone'.
- I do not consider that it is necessary that an area be served by services (such as a school, a public house or a shop) situated within it, in order to comprise a neighbourhood. Such services can help to create a community, and therefore a neighbourhood, but they are not in my view a pre-requisite. In any event, I note that in the present case the Neighbourhood is served by both the children's play area and the Land which, although doubtless used by persons living outside the Neighbourhood, have likely proved useful facilities for those within it.
- I accept the evidence given regarding community events; that is I accept the proposition that various such events have been held on the Land over the Relevant Periods – such as the Golden Jubilee Celebration, the Diamond Jubilee Celebration, the 'clear up'/'bramble bashing' expeditions, the bonfire and carol event and at least

two fireworks events<sup>18</sup>. I consider that the number of 'community events' which have taken place over the last two decades are wholly consistent with, and go some way to demonstrate the existence of, a 'community'. I do not regard the holding of such events as necessarily a pre-requisite to the existence of a neighbourhood for the purposes of the 2006 Act. However, in the present instance there have been a good number of such events. I do not consider the fact that such events take place less than annually to signify in any way that the Neighbourhood is not a meaningful 'community'; by their very nature I consider that community events of this type are occasional.

- I consider the fact that the Neighbourhood, as a distinct area, provided a 'float' at the local carnival is very much indicative of the fact that Admiral's Walk and The Meadway do regard themselves as a community. The fact that this carnival ceased to take place after 2005 does not, in my view, detract from this conclusion.
- I do not consider it overly significant that inhabitants of the Neighbourhood do not appear, by and large, to know each other by name. Several witnesses spoke of knowing their neighbours mostly by face, rather than name; I do not consider that is particularly unusual in the present day.

144. Having heard the evidence given to the Inquiry, and also toured extensively around it, I am satisfied that the Neighbourhood comprises a sufficiently cohesive unit to satisfy the 'test' Sullivan J posed in Cheltenham Builders. For the remainder of this Report I use the term 'Local People' to refer to inhabitants of the Neighbourhood.

---

<sup>18</sup> In addition to oral evidence regarding these events, I was provided with photographic evidence which depicted at least some of the events taking place (eg the Queen's Golden Jubilee in 2002 and Diamond Jubilee in 2012 - photographs at Tab G of the Applicant's bundle). Further, various events were referred to in contemporaneous newspaper clippings (such as the extract from the Hertfordshire Mercury dated 23 October 2009 (at TAB HI of the Applicant's bundle) which described (and depicted) a 'bramble clear up' event on The Paddley.

### **Use by a ‘Significant Number’ (with ‘Sufficient Intensity’) for Lawful Sports and Pastimes**

145. As regards this matter, Mr Forgione has not taken issue with the nature of the activities which Local People claim to have undertaken on the Land; that is, he does not contend that such activities do not amount to ‘lawful sports and pastimes’ for the purposes of the 2006 Act. Rather, he takes issue with the frequency that such activities have been engaged in (or indeed whether they have been engaged in at all), and the number of people who have engaged in them. Thus I deal only briefly with the activities themselves, and then turn to consider the intensity of use.

#### Lawful Sports and Pastimes

146. In terms of the various activities which the Applicant’s witnesses claimed to have carried on or have seen being engaged in, there was a significant amount of evidence relating to recreational walking & dog walking. There was also a considerable amount of evidence relating to people blackberry picking and children’s play, in particular as regards The Paddley.

147. It is now well established that the activity of walking a dog, and other informal activities such as blackberrying, are just such ‘lawful sports or pastimes’ as would justify registration of land as a village green; in this regard see the decision of the House of Lords in R v Oxfordshire County Council ex parte Sunningwell Parish Council [2000] 1 AC 335. In the present case, I am satisfied that the nature of the activities which it is claimed have been carried on, are such as to satisfy the requirements of the 2006 Act.

#### Significant number of Users – The Law

148. In terms of the question of whether the Land was used for lawful sports and pastimes by a ‘significant number’ of the inhabitants of the Neighbourhood (ie Local People), I have had regard to the comments of Sullivan J in R (on the application of McAlpine Homes Ltd) v Staffordshire County Council (2002) PLR 1. In that case the judge rejected the proposition that the term ‘significant’ meant “*a considerable or substantial number*”. Rather, the judge concluded that a ‘significant’ number of users would be that:

*“sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by trespassers”<sup>19</sup>.*

#### Sufficient Intensity – The Law

149. This issue is closely related to that considered in the previous paragraph, namely that of what number comprises a ‘significant number’ for the purposes of the 2006 Act. In this regard I consider that the question is one of whether a reasonable landowner would understand – from the intensity of use – that local people were making use of his land in a way that might give rise to village green rights, as opposed to making only occasional and infrequent use of it.

#### User – different areas of the Land

150. At paragraph 17 of his Opening Submissions, counsel for Mr Forgione proposed that the Application should be considered with reference to the three discrete areas which comprise the Land. That is, I was asked to disaggregate the Land and consider the Application with reference to its constituent parts. I am content that this is a fair and reasonable basis on which to approach the Application, and adopt this approach in the following paragraphs.

#### *Gasworks Lane*

151. I take matters relatively swiftly in respect of Gasworks Lane.

152. As noted earlier in this Report, Gasworks Lane is a linear feature comprising of hardstanding and running from the New River to the Gas Works. The route is lit with streetlights, and Mr Forgione has on more than one occasion cut back the trees/vegetation to enable passage along it.

---

<sup>19</sup> See paragraph 71 of the decision

153. I heard no evidence regarding use of this area which could not be characterised as ‘transitory use’; that is, the sole claims as to user involved people passing along Gasworks Lane.

154. Given the appearance of Gasworks Lane, and the basis on which it appears to have been used (ie solely as a linear feature), I have no hesitation in concluding that the Applicant has failed to demonstrate that this area of land was used by Local People for lawful sports and pastimes throughout either of the Relevant Periods, in such a way as would suggest to a reasonable landowner that the local community were exercising village green rights over it. In this context, I recognise that not all the ‘transitory use’ will have been simply using the route as a means of getting ‘from A to B’. Rather, I recognise that some of the user will have been recreational walking/dog walking. However, looking at matters in the round, I do not think the sum total of the user will have been sufficient to put a reasonable landowner on notice that the local community were exercising village green rights<sup>20</sup>.

#### *Horses’ Field*

155. On the face of the evidence, there is a factual contradiction as regards user of this part of the Land, in that the Applicant maintains that there has been lawful use for sports and pastimes by Local People, whereas Mr Forgione (and those witnesses who he has called to give evidence) disputes that such use took place on any material scale.

156. However on closer scrutiny of the evidence given by the parties, I consider that this apparent contradiction resolves in favour of the landowner.

157. In this context I make the following observations:

- Many of the Applicant’s witnesses who gave oral evidence, appeared to have made far greater use of The Paddley than the Horses’ Field. Time and again, witnesses acknowledged that their user during the Relevant Periods had been mostly on The Paddley.

---

<sup>20</sup> In this regard see my further comments at paragraph 165 below, regarding the decision of Lightman J in Oxfordshire County Council v Oxfordshire City Council & Robinson (2004) Ch. 253. To the extent that such user would suggest to a reasonable landowner that Local People were exercising rights, the right in question would be a ‘right of way’ rather than a right to village green use.

- Horses appear to have been kept primarily on the Horses' Field. Some of the Applicant's witnesses spoke of having been reluctant to go on to the Horses' Field when horses were present. I consider it only natural that less use was made of this area by Local People, when animals were present.
- The bulk of the community events which were held on the Land appear to have been held on The Paddley. In this regard the only such event which I am entirely satisfied was held on Horses' Field was the Golden Jubilee Celebration in 2002; the majority of the other events appear to have been held on The Paddley.
- Mr and Mrs Forgione claim not to have seen significant user of the Land for lawful sports and pastimes. Although I have considerable doubt as to what they could/could not have seen on The Paddley (see further at paragraph 168 below), I think that the presence of their home immediately across the New River from the Horses' Field means that they (in particular Mrs Forgione) would be likely to have seen at least some people using that area had significant use been being made of it. In this regard, I note both the height/thickness of the hedge at the bottom of the Forgione's garden, and the fact that the 3<sup>rd</sup> storey of the property was only added in 2015 (see further below as regards The Paddley). However, notwithstanding these limitations to their ability to survey the Land, I consider that the fact that Mr and Mrs Forgione did not see significant user of the Horses' Field militates against the Application in this regard.
- None of the other witnesses called by Mr Forgione appear to have witnessed any significant degree of user by local people of Horses' Field. In this regard, some of this evidence has only peripheral bearing on matters. For example, the evidence of Ms Martine Lee does not relate to either of the Relevant Periods, and her focus would in any event be on Horses' Field (over which area she holds a lease). The evidence of Mr Musk also relates to years outside of the Relevant Period, and in any event only speaks to what he noticed on the occasion of his 3 visits, each lasting only a single day. Further, the evidence of Ms Pallett and Mr Mahoney also appears to be limited in that neither of them appeared to have visited the Land particularly frequently/regularly over the Relevant Periods. However, looked at in the round, this 'supporting' evidence called by Mr Forgione militates in favour of a conclusion that the use of the Horses' Field for sports and pastimes was not such as should

have suggested to a reasonable landowner that the local community were exercising village green rights over the area.

158. Having regard to all these various matters, I do not consider that the evidence before the Inquiry is such as to demonstrate, on the balance of probabilities, that Local People made sufficient use of the Horses' Field (ie use for lawful sports and pastimes with the requisite degree of intensity) such as to put a reasonable landowner on notice that village green rights were being asserted. In this regard I consider in particular that the fact that much of the claimed user did not in fact relate to the Horses' Field, but instead to another part of the Land, would explain why neither Mr Forgione nor his witnesses appeared to have noted any material degree of user on the Horses' Field.

#### *The Paddley*

159. As regards The Paddley, once again there is a contradiction in the evidence. Local People assert that they have used the area for lawful sports and pastimes, but Mr Forgione denies that such user has taken place to any material degree.

160. However, before turning to assess the evidential position, there are two matters of law which I must needs address.

161. First, I note the submission made on behalf of Mr Forgione that The Paddley was too overgrown/boggy for it to have been used during the Relevant Periods for lawful sports and pastimes.

162. I accept that the area is somewhat overgrown<sup>21</sup>; indeed on the occasion of my site visit there were certainly parts of it which one could not walk over/through. However, I do not see this as a bar to registration. I do not consider that it is necessary for the totality of an area to be 'accessible' in order for it to be susceptible to registration as a town or village green. Depending on the facts of a particular case, the overgrown character of land may be consistent with a particular type of recreational use. I consider that in the present case, it is likely that the somewhat overgrown nature (more overgrown at some times, less overgrown at others, depending on when bramble clearing had taken place) which meant that it was

---

<sup>21</sup> It did not appear to me to be 'boggy' in any sense; however even to the extent that it is boggy on occasion, the observations I make in relation to the land being overgrown would similarly apply.



particularly attractive to those such as Mr Smart who had used it for wildlife spotting, for children who had used it for ‘insect hunting’, and for people who had picked blackberries.

163. Such conclusion is, I consider, entirely consistent with the decision to register the Trap Grounds in Oxford as a town or village green (which decision was subsequently upheld by the Courts in the series of Oxford County Council v Oxford City Council cases<sup>22</sup>).

164. The second matter of law concerns the use by local people of the informal path across The Padley; whether such user should be disregarded or whether it contributes to the Applicant’s case for registration.

165. This issue of whether linear/transitory use may support a case for registration has been considered by the courts, notably by Sullivan J in R (Laing Homes Ltd) v Buckinghamshire County Council [2004] 1 P&CR 573<sup>23</sup>, and by Lightman J in Oxfordshire County Council v Oxfordshire City Council & Robinson (2004) Ch. 253<sup>24</sup>. I do not consider that these authorities provide determinative guidance for me on this point, and indeed both decisions recognise that, in any given circumstances, a judgement will have to be reached on the facts as to how the use of the linear route would have appeared to the notional landowner – ie whether it would have appeared as use of a right of way or the exercising of village green rights. However, what I do take from these authorities is the proposition of Lightman J contained in paragraph 102 of Oxfordshire, namely that:

*“if the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green”.*

166. On the particular facts of the present case, and having regard to the observation of Lightman J, I do not consider it appropriate to have regard to the use of the informal path as contributing towards the Applicant’s case for registration as town or village green. Thus I have excluded it from my assessment.

167. Turning then to the evidence of user, I note the following matters as regards use of the Land:

---

<sup>22</sup> [2004] Ch 253, [2006] 43 and [2006] 2 AC 674. See in particular Lightman J at paragraph 95 of [2004] Ch 253.

<sup>23</sup> See paragraphs 102-109 of the decision in Laing.

<sup>24</sup> See paragraphs 102-105 of the decision of Lightman J in Oxfordshire.

- The vast majority of the Applicant's witnesses who gave oral evidence to the Inquiry, spoke of having made use of The Paddley during the Relevant Periods.
- Further, many of the activities described by these witnesses were in fact only carried on in this area. These included children playing in/over the stream, blackberrying, collecting insects and wildlife observation.
- Many of those who spoke of having used The Paddley for lawful sports and pastimes, spoke of having seen other Local People (ie persons whom they recognised from the Neighbourhood) making similar use of it.
- Mr Forgione accepted that Local People had gone on to The Paddley during the period of his ownership, (albeit this admission was made in the context of discussion as to use of the informal path towards the railway station).
- The majority of the community events which local people spoke of having participated in, were held on The Paddley.

168. In terms of the evidence/submissions given on behalf of Mr Forgione, which disputes use having taken place and which is prayed in aid in objection to the Application, I note the following matters:

- I do not consider that any of the 'supporting witnesses' called by Mr Forgione gave evidence which undermined the version of events spoken to by Local People; ie that The Paddley had been used by Local People for recreation. In this regard I note by way of example:
  - The focus of Mr Musk's evidence concerned what he had been able to see on the Horses' Field; he did not claim to have been able to see what was taking place The Paddley.
  - Ms Lee does not rent the Land, but instead only the Horses' Field. She did not claim to have noted the position as to user of The Paddley.
  - To the extent Mrs Pallet, Mr Mahoney and Mr Townsend had attended the Land to oversee their horses, that largely involved supervision of Horses' Field rather than The Paddley. Certainly it was the former, rather than the

latter, where the horses appeared to have been mostly kept during the Relevant Periods.

- Mr Giullioti has no view from his property over Horses' Field, still less over The Paddley.
- Mr and Mrs Forgione suggested that they were in a position to monitor from their property whether The Paddley was being used for lawful sports and pastimes. However, I do not think that the facts support that proposition. In this regard I note the following:
  - Their home is a considerable distance from The Paddley
  - The hedge at the end of Forgione's garden is extremely substantial, and would preclude any view of The Paddley at all by persons in the garden.
  - The second floor of their home, which it was said by Mr and Mrs Forgione provides a vantage point from which they monitor The Paddley, was only built in 2015 (a point accepted by Mrs Forgione in cross-examination).
  - There is a considerable quantity of vegetation/trees on the northern edge of The Paddley, which in my opinion would preclude any substantive view from the Forgione's home – or the riverbank outside their home – into that area. I assessed the position on the basis of the foliage in January; views could only be more limited in the remainder of the year (when foliage might be expected to be 'bushier').
  - I have already accepted the evidence of Local People, and found as a fact, that various community events were held on The Paddley during the period of Mr Forgione's ownership. In particular, and by way of example, I accept that an event was held to celebrate the Diamond Jubilee in 2012<sup>25</sup>. However, neither Mr nor Mrs Forgione were aware that this event had taken place. That fact that a substantial event such as this could be held on The Paddley without their having even been aware of it, in my view confirms that they had not been able to monitor events on The Paddley.

---

<sup>25</sup> As already noted, photographs of this event were before the Inquiry, in the Applicant's bundle.

- I do not accept the submission made by Mr Helme in closing, namely that the absence of photographic evidence of user precluded a conclusion that there had been significant use of the Land for lawful sports and pastimes. Notwithstanding the current prevalence of smart phones, I do not consider that ‘casual play’ of the type which witnesses claimed to have carried on at The Paddley is necessarily the type of activity which people photograph. ‘Everyday’ occurrences are often not regarded as sufficiently significant to warrant recording in this way.

169. On the basis of the assessment set out above, I consider that the factual dispute as to the user of The Paddley, is one which resolves in favour of the Applicant; it is my view that the evidence of user before the Inquiry is sufficient to make out the case for registration.

170. In this regard I should state that I find that there was sufficient intensity of use for lawful sports and pastimes throughout both the Relevant Periods; that is I consider the tests as to ‘use by a significant number’ and as to ‘sufficient intensity of user’ are satisfied in relation to both such periods. The oral evidence of the Applicant’s witnesses, supported as it is by the written evidence provided to the Inquiry<sup>26</sup>, covers the entirety of both the period 1 March 1994 – 1 March 2014, and the period 27 February 1995 – 27 February 2015. Witnesses who could speak to the entirety of either Relevant Period included Ms O’Brien, Mr Phipps , Mr Verlasco and Mrs Howard; the evidence of other such as Mrs Cole (since 1997) and Dr Clarke (since 1996) also helps to substantiate the full length of the periods relied upon. More recent user was attested to not only by these witnesses, but also by others such as Mr McGuire who had moved to the area midway through the Relevant Periods.

171. In this instance therefore, I consider that the factual dispute as to whether use has taken place, is one which resolves in favour of the Applicant; it is my view that the use of The Paddley for lawful sports and pastimes during the Relevant Periods was carried on:

- throughout the Relevant Periods,
- by a ‘significant number’ of Local People (for the purposes of the 2006 Act),

---

<sup>26</sup> I have attached materially less weight to this written evidence than to the oral evidence given (and tested) at the Inquiry. However, I have nevertheless attached some weight to it, noting its consistency with the oral evidence given.

- with sufficient intensity,

to have put a reasonable landowner on notice that Local People were making use of The Paddley as a town or village green.

### **User 'As of Right'**

172. In order to justify registration of land as town or village green, use of land must have been carried on 'nec vi, nec clam, nec precario'; that is, user must not have been forcible, permissive or carried on in secret.

173. I do not understand that Mr Forgione opposes the Application on the basis of an assertion that use of the Land was either 'permissive' or carried on 'in secret'. Certainly I do not consider that there is evidence to support a conclusion to either of those effects.

174. Rather, it is my view that the matter at issue in this context is whether or not the use of the Land was, for any part of the Relevant Periods, made contentious so as to render it as having been carried on 'by force'. In this context, I consider there are three particular issues for consideration, namely:

- (i) The 1998 Application;
- (ii) Steps taken by Mr Frederick Pallett (and subsequently by his daughter Ms Pallett);
- (iii) Steps taken by Mr Townsend ; and
- (iv) Steps taken by Mr Forgione.

175. However before turning to consider those issues, I summarise the legal position.

### Legal Position as to 'User by Force'

176. As regards this issue, Mr Helme (on behalf of Mr Forgione) referred me to various decisions of the courts, in particular R (Lewis) v Redcar and Cleveland Borough Council (No 2) [2010] 2 AC 70 and Winterburn v Bennett [2016] 2 P&CR 11. As regards the former, I note the observation of Lord Rodger that:

*“It would be wrong to suppose that user is ‘vi’ only where it is gained by employing some kind of physical force against the owner...if [use] continues despite...protests and attempts to interrupt it, it is treated as being vi and so does not give rise to any right”<sup>27</sup>.*

Lord Rodger went on to conclude

*“If, then, the inhabitants’ use of land is to give rise to the possibility of an application being made for registration of a village green, it must have been peaceable and non-contentious”<sup>28</sup>.*

177. As to what is necessary to render user contentious, I consider that the decision of the Court of Appeal in Winterburn sets the bar relatively ‘low’ in terms of the ‘tangible’ steps that must be taken in order to render use of land contentious. However, I also consider that such steps as are taken must communicate a clear message to local inhabitants. In this regard I note that LJ David Richards observed:

*“In my judgment, there is no warrant in the authorities or in principle for requiring an owner of land to [take steps such as having solicitors write letters or issue legal proceedings] in order to prevent the wrongdoers from acquiring a legal right. In circumstances where the owner has made his position entirely clear through the erection of clearly visible signs, the unauthorised use of the land cannot be said to be “as of right”. Protest against unauthorised use may, of course, take many forms and it may, as it has in a number of cases, take the form of writing letters of protest. But I reject the notion that it is necessary for the owner, having made his protest clear, to take further steps of confronting the wrongdoers known to him orally or in writing, still less to go to the expense and trouble of legal proceedings.*

*The situation which has arisen in the present case is commonplace. Many millions of people in this country own property. Most people do not seek confrontation, whether orally or in writing, and in many cases they may be concerned or even frightened of doing so. Most people do not have the means to bring legal proceedings. There is a social cost to confrontation and, unless absolutely necessary, the law of property should not require confrontation in order for people to retain and defend what is*

---

<sup>27</sup> See paragraphs 88-89 of Lewis.

<sup>28</sup> See paragraph 92, *supra*.

*theirs. The erection and maintenance of an appropriate sign is a peaceful and inexpensive means of making clear that property is private and not to be used by others. I do not see why those who choose to ignore such signs should thereby be entitled to obtain legal rights over the land<sup>29</sup>.*

#### The 1998 Application

178. On behalf of Mr Forgione, Mr Helme's closing submissions rely upon the making and determination of the 1998 Application as having rendered use of the Land contentious.

179. In the event that the 1998 Application (and more particularly the opposition to it by TWUL as the then landowner) had rendered use of the Land contentious in 1998, then I consider that would preclude the success of the Application, since it would have meant that there was not 'peaceable' user for the entirety of either one of the Relevant Periods.

180. However, on the facts of the basis of the materials before me, I do not consider that the 1998 Application (and its subsequent rejection) has that effect. In so concluding, I note the following points:

- I have not been provided with any materials relating to the 1998 Application save the report of the inspector who held an inquiry in respect of it (Mr Rhodri Price Lewis), and the report of the Council which considered that document.
- The 1998 Application relied on a period of user 1970 – 1990. Thus the evidence submitted to, and the conclusions reached by, Mr Price Lewis related to a period outside of the two Relevant Periods now at issue for the purposes of the Application. By way of example, I note that at paragraph 22 of his report Mr Price Lewis records that:

*"Mr Pallett<sup>30</sup> was unwilling to give evidence so TWUL relied in his written evidence as to keeping cattle on the land, maintaining fencing, erecting signs*

---

<sup>29</sup> See paragraphs 40-41 in Winterburn.

<sup>30</sup> Mr Pallett was the longstanding tenant of the Land, and apparently grazed animals on there during the Period 1970-1990.

*and telling people to keep off the land and giving permission for the Silver Jubilee celebrations”.*

In the absence of Mr Pallett’s actual written statement, I consider it reasonable to conclude that its contents will have related to the period with which the 1998 inquiry was concerned (ie 1970 – 1990). Otherwise there would have been no purpose in TWUL relying upon it.

- The content of the report only serves to indicate that TWUL opposed the registration of the Land<sup>31</sup> as town or village green; it does not serve to indicate that TWUL (or anyone else) objected to its use as such, so as to render use ‘contentious’ during the Relevant Periods.

181. In light of the matters set out above, I do not consider that the effect of TWUL’s objection to the 1998 Application was to render subsequent user of the Land contentious.

#### Mr Pallett

182. In the course of the Inquiry, I heard evidence from Mrs Pallett, the daughter of the gentleman who had previously held a lease of the Land at the time of the inquiry held in respect of the 1998 Application.

183. Mrs Pallett gave oral evidence that her father had opposed use of the Land, and had challenged persons whom he found trespassing on it at every opportunity. In addition, she produced letters written by her father complaining about recreational use; the first of these (dated 24 April 1998<sup>32</sup>) was addressed to the local newspaper<sup>33</sup>, and the second (dated 26 May 1998<sup>34</sup>) was addressed to the Council. Lastly, she referred to the fact that her father had fenced the land and erected signs indicating it was private land, only for that fencing/signage to be dismantled – matters which were raised by Mr Pallett in the second of the letters which I have referred to above.

---

<sup>31</sup> For present purposes I assume that the area the subject of the 1998 Application is the same as that the subject of the Application, albeit I recognise that this will not have been the case.

<sup>32</sup> Mr Forgione’s bundle, page B113. It appears this letter was also provided to the Council, since the latter’s letter of 15 May 1998 at page B115 seems to have been drafted in response.

<sup>33</sup> This being the Hertfordshire Mercury.

<sup>34</sup> Mr Forgione’s bundle, page B118.



184. Mr Forgione relied upon this evidence in his objection to the Application, contending that Mr Pallett's actions had the effect of rendering use of the Land contentious.
185. On the basis of the material before me, I do not accept that contention.
186. In this regard, I can attach only limited weight to the evidence of Mrs Pallett in this context, since insofar as she sought to speak to actions undertaken by her father, such evidence was 'second-hand' and lacking in detail.
187. Further, the evidence which she gave in relation to what her father is supposed to have said to Local People (both orally and in terms of erecting signs) runs contrary to the evidence given by Local People. In this regard I note that witnesses giving evidence in support of the Application attested that no-one had ever challenged or opposed their use of the Land, notwithstanding Mr Pallett had lived close by them (in the Neighbourhood). In particular I note the evidence of Mr Butler in this regard, who expressly noted that Mr Pallett had never opposed their use of the Land, and had never challenged them in respect of that user notwithstanding he lived in the immediate vicinity. Having regard to the manner in which that evidence was given, I accept it.
188. Further, insofar as the correspondence is concerned, I do not consider that it takes matters any further. It is apparent that Mr Pallett wrote to the Council regarding use of the Land; however there is no evidence to suggest that his letter was published by the Council, or that its contents were in any way communicated to local people. The same is true of the letter written to the local newspaper; there is no evidence that it was published or its contents communicated. Rather, it appears that local people were generally not aware that Mr Pallett was opposed to use of the Land for recreation (although I note that Mrs Howard appeared to acknowledge he was so opposed (her evidence was inconsistent on this point)).
189. I have already referred to the statement which Mr Pallett apparently gave to the inquiry held in respect of the 1998 Application. I do not know what was said in that statement; all that I can be certain of is that it was not tested in cross examination since Mr Pallett elected not to appear at the inquiry. Further than that, the only assumption it seems reasonable to make, is that the statement will have addressed matters during the period 1970-1990 (that being the relevant period the subject of the 1998 Application).
190. Lastly, I note what Mrs Pallett said regarding signage and fencing erected by her father. Mrs Pallett did not give any detail regarding these matters, nor was any

documentation provided in respect of it. In circumstances where no local people spoke of having seen any signs on the Land prior to those erected by Mr Forgione, and in the absence of any evidence as to where/when he erected those signs, or more particularly what those signs said, I am not persuaded that Mr Pallett erected 'effective' signs during the Relevant Periods, such as might have had the effect of rendering user contentious.

191. As regards the fencing referred to by Mrs Pallett as having been erected by her father, and which her father states in correspondence that he erected, once again I have no material detail as to what was done, and when. Certainly I have no documentation in respect of it.

192. In circumstances where I have no particulars as to this fencing, I cannot conclude that it was erected (and subsequently cut or vandalised) during the Relevant Periods. In this regard I note that the consistent evidence of the witnesses giving evidence in support of the Application, was that the fencing around the Paddley was always 'ramshackle' and wholly ineffective during the periods with which I am concerned.

193. Thus I do not conclude that the conduct of Mr Pallett had the effect of rendering use of the Land contentious during the Relevant Periods.

#### Mr Townsend

194. Mr Townsend grazed animals on the Land during the Relevant Periods, and in that context it appears that he erected signs and fencing. In particular, the fencing was erected at some point between 2004-2008, following Mr Townsend apparently being prosecuted for having allowed his animals to escape from Horses' Field.

195. As regards this fencing, insofar as it was erected in such a way as to restrict/prevent access to the Land, it may have had the effect of rendering 'forcible' any user by persons who had to climb it or cut it in order to gain access. Indeed use by persons who gained access through any 'vandalised' portions of fencing might well also be regarded as forcible.

196. However, the fencing in question was erected only around Horses' Field. That fencing cannot, in my view, have had the effect of rendering contentious use of other land (The Paddley) which it did not obstruct. This is significant, since whilst I have already

concluded that there was insufficient user of Horses' Field to justify its registration, I have reached a positive view as regards the degree of user of The Paddley.

197. Turning to signage, the same point holds true – the only sign which Mr Townsend expressly referred to was one erected on Horses' Field, and so could not have affected the position as regards The Paddley. Further, and in any event, that sign ('Stallion – Be Careful') would not in my view have the effect of rendering user contentious. Rather, it implies Mr Townsend was aware of, and was prepared to accommodate, people coming on to the Land.

#### Mr Forgione

198. The position with regard to Mr Forgione's conduct is not straightforward. There are a number of issues to consider, each of which I take in turn, before ultimately moving to look at the position in the round, and assess the cumulative picture which these circumstances paint.

#### *Newspapers*

199. On the basis of the evidence before me, it does not appear that Mr Forgione ever published an advertisement in the local newspaper with the intention of warning off local people from making use of the Land. Rather, it appears that on a number of occasions he was contacted by the newspaper, and made various comments in respect of matters that were put to him. Those comments were subsequently attributed to him in newspaper articles.

200. In this context, I note in particular that the 26 December 2013 issue of the Hertfordshire Mercury records him as saying "*The land belongs to me, I would like it left the way it is. I don't want people to use it. I bought it to safeguard everyone's interest in the area, so it will be always left the way it is. I bought it for my family, my two brothers and my sister walk their dogs there*"<sup>35</sup>.

201. Such a statement, on the face of it, might be said to be unequivocal in its meaning; that Mr Forgione did not want local people to use the Land. However, I do not consider that

---

<sup>35</sup> Tab HI of the Applicant's bundle.

this statement should be viewed in isolation. Rather, in assessing the effect of that newspaper article, I consider it necessary to consider it in the wider context, together with other relevant circumstances. In this wider context, as regards other newspaper articles, it is relevant to note that a previous issue of the Mercury had recorded the Forgione family as saying that they wanted “to preserve the picturesque view for local residents, commuters and dog walkers to enjoy”<sup>36</sup>.

### *Signs*

202. I accept the evidence that Mr Forgione erected three pairs of signs on the Land (‘the Signs’); one pair in 2012, and the other two pairs in 2013 and 2014 respectively. His evidence in this regard appeared to me to be credible, and was supported by the written statement of Mr Ben Cornish.
203. I accept that the first pair of Signs were different in wording to the second two pairs, which were worded in the manner shown on the sign now visible on Horses’ Field. That Sign reads:

***Private Land in Use***  
***No Public Rights of way or Grazing***  
***Unauthorised Horses will be removed***  
***Thank you***

204. These Signs were, Mr Forgione stated in evidence, erected by him on legal advice in response to his having come upon a member of the Traveller Community grazing his horse on the Horses’ Field without Mr Forgione’s permission.
205. I accept that all bar one of these Signs (ie that which now remains on the Horses’ Field) were removed/vandalised by persons unknown, who presumably disagreed with Mr Forgione as to his right to restrict user of the Land.

---

<sup>36</sup> Document ID4, as listed on Appendix I. The article was dated 25 March 2010.

206. Lastly in this regard, I note Mr Forgione's confirmation in oral evidence that all 6 of the Signs were erected in the Horses' Field, and that no signs were ever erected by him in The Paddley.

#### *Fencing*

207. In the period of Mr Forgione's ownership, it appears to me that no work has been done to improve the fencing on The Paddley. Rather, the only fencing that has been installed/repared has been that around the Horses' Field.

#### *Assessment*

208. I have considered the factual position in relation to Mr Forgione's actions, with reference to the legal position as set out in cases such as Lewis, and more particularly Winterburn. The view which I have reached is that whilst Mr Forgione took steps to render use of the Land contentious, those steps did not communicate clearly to local people during the Relevant Period that use of the The Paddley was contrary to his wishes, and was effectively user 'by force'.

209. In this regard, I make the following observations:

- The statements attributed to Mr Forgione in the 26 December 2013 issue of the Hertfordshire Mercury are statements of his desire that local people not use his property. However, the position is complicated by the fact that
  - A previous article on 25 March 2010 was, in my view, worded in such a way as would suggest to people reading it that Mr Forgione in fact did *not* oppose use of the Land by local people; and
  - The article of 26 December 2013 did not identify expressly to which areas of land Mr Forgione was referring. In this regard it would not be reasonable to expect persons reading the article to assume that Mr Forgione's comments related to the *entirety* of the Land. Indeed, even at the Inquiry Mr Forgione did not seek to suggest that local people should not be walking over Gasworks Lane. Thus the extent of the Prohibition that Mr Forgione was seeking to suggest in the 26 December 2013 was, in my view, unclear.

- The fact that signs were erected on the Horses' Field, but not on The Paddley, further clouds the issue of the extent of land over which Mr Forgione was seeking to keep Local People out. The fact that the signs were not located at the most obvious entrances to the Land (such as at either end of Gasworks Lane) would suggest that they were not intended to prohibit use of the Land as a whole. Further the fact that notices were not erected on both the substantive areas of the Land (ie on both Horses' Field and on the Paddley), but instead only on one of them, has the consequence – in my view – that they would not be clearly understood by local people as relating to the entirety of the Land, but rather would be understood as relating to the particular area on which they were located.
- Further, irrespective of their location, I consider that there may be significant doubt as to the effect of the Signs in any event. Mr Forgione commissioned their construction out of a concern that Travellers might graze horses on his land without consent; the Signs were drafted with a view to protecting him from that eventuality. Whilst they no doubt are suitable for that purpose, I am not satisfied that they engage to render use for lawful sports and pastimes 'forcible'; their specificity in terms of 'rights of way' and 'horses', in my view, counts against their being understood by the reader as addressing use by local people for village green rights. However, in light of the fact that I have already concluded the Signs could only take effect in respect of user of the Horses' Field (due to where they were located<sup>37</sup>), it is not necessary for me to reach a conclusion on this issue. This is because I have already concluded that the Horses' Field should not be registered as town or village green because of the insufficient evidence as to degree of user.
- The fact that no efforts were made to improve fencing on The Paddley by Mr Forgione at any time, would only have encouraged a reasonable user of the Land to understand that any opposition which Mr Forgione had to such use, related to Horses' Field (it being the area on which the Signs were located, and which was subsequently fenced by Ms Lee).

---

<sup>37</sup> See previous bullet point.

210. In reaching my conclusion that use of The Paddley was not forcible, I have noted that various of the witnesses accepted in cross-examination that Mr Forgione's actions/statements had communicated to them that he did not want them to use the Land. Indeed that was the evidence given by witnesses such as Ms O'Brien and Mrs Cole, whilst the Spitalbrook Group Newsletter of 22 April 2014 is clearly indicative that its author understood Mr Forgione's erection of the Signs in 2014 as being an attempt to render use of (at least part of) the Land contentious, and that statements made by Mr Forgione to the Hertfordshire Mercury also indicated his opposition (although it remains unclear to what area of land he was opposing use of). At the same time however, I have also noted the evidence of those such as Mr Perry, Mr Phipps and Mr Muschamp, that they regarded the position as unclear.

211. In concluding on this issue, I have adopted the approach endorsed by HHJ Waksman in Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust at paragraph 22 of his decision. That is, I note that what I am concerned with is how matters would have appeared to a reasonable user of the Land (both in terms of the Signs, and in terms of any other statements made, and actions taken by/on behalf of Mr Forgione). Thus, whilst it may be relevant what a particular witness *actually* understood the position to be, I am concerned with what a reasonable person would have understood the position to be<sup>38</sup>.

212. Looking at events objectively and in context, I consider that the that the position was far from clear as regards Mr Forgione's supposed opposition to Local People's use of The Paddley, whatever the position may have been in respect of the Horses' Field. I do not consider that Mr Forgione's actions were such as to communicate to Local People making use of The Paddley that they were carrying on their activities 'by force'. Accordingly use of that area, in my view, was not 'forcible'.

### **Conclusions**

213. Having regard to the above matters, my conclusions are as follows, namely that:

---

<sup>38</sup> By the same token, I do not consider the actual intention of Mr Forgione in erecting the Signs to be directly relevant in this context. Rather, it is how the signs would be understood that counts.

- The Applicant has succeeded in demonstrating the existence of a neighbourhood for the purposes of section 15 of the 2006 Act (namely, the Neighbourhood);
- The Neighbourhood is situated within a qualifying locality for the purposes of section 15 of the 2006 Act;
- During both the Relevant Periods, there was use of the Land by Local People (ie inhabitants of the Neighbourhood) for the purposes of the 2006 Act;
- Such use of Gasworks Lane by Local People as took place during the Relevant Periods was not for lawful sports and pastimes for the purpose of the 2006 Act;
- Such use of Horses' Field by Local People for lawful sports and pastimes as took place during the Relevant Periods was not carried on with sufficient intensity and by sufficient numbers of Local People for the purposes of the 2006 Act;
- Local People used The Paddley for lawful sports and pastimes throughout the Relevant Periods, in sufficient numbers and with sufficient intensity, to justify registration of the land as town or village green pursuant to the 2006 Act;
- Such use of The Paddley was carried on as of right; in particular the user was not 'forcible' having regard to decisions such of that in Lewis or Winterburn.

214. Accordingly, it is my recommendation to the Council that it accedes to the Application in part, and registers that part of the Land which forms part of The Paddley as town or village green. However, I recommend that insofar as the Application seeks the registration of the remainder of the Land, then it be rejected. In this regard I do not consider there is any prejudice caused to Mr Forgione by my recommending registration of a smaller area of land than was the subject of the Application.

**Alexander Booth QC**

14 March 2017

Francis Taylor Building, EC4Y 7BY





**APPLICATION BY MS BARBARA TYRRELL**  
**TO REGISTER LAND**  
**AT MEADWAY AND ST CATHERINE'S ROAD, HODDES DON**  
**AS A TOWN/VILLAGE GREEN**

---

**SUMMARY REPORT**

---

**Introduction**

1. I was instructed by Hertfordshire County Council ('the Council') to advise it in its capacity as registration authority, regarding determination of the application dated 28 November 2014 ('the Application') submitted by Ms Barbara Tyrrell ('the Applicant') seeking the registration of land at Meadway and St Catherine's Road<sup>1</sup>, Hoddesdon ('the Land') as a town or village green pursuant to section 15 of the Commons Act 2006 ('the 2006 Act'). The Land comprised three distinct areas, namely 'Horses' Field', 'Gasworks Lane' and 'The Paddley'.
2. The Application was accepted as being duly made by the Council on 27 February 2015.
3. The Application was the subject of objection by Mr Antonio Forgione ('Mr Forgione').
4. I held a public inquiry ('the Inquiry') between 16 – 18 January 2017 at the Cheshunt Marriott Hotel, Broxbourne. On the final day of the Inquiry I conducted an accompanied visit which took place on 18 January, at which both the Applicant and Mr Forgione were represented.
5. I have prepared a report ('the Report') setting out my recommendation as to how the Council determine the Application, having had regard to the oral evidence given by witnesses who attended the Inquiry, the documentary evidence submitted to the Inquiry,

---

<sup>1</sup> This road is identified in the documents provided to me variously as 'St Catherine's Road' and 'St Catharine's Road'; indeed even those living on the road use different spellings on occasion. I use the term 'St Catherine's Road' throughout this Report for the sake of consistency, and apologise to all those who consider the alternate spelling to be correct.

and the legal submissions made to the Inquiry on behalf of the parties. This 'Summary Report' summarises my conclusions and recommendation as set out in the Report.

### **Requirements for Registration**

6. The Application was made on the basis of sections 15(2) and (3) of the 2006 Act. So far is relevant, section 15 provides as follows:

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

*(2) This subsection applies where-*

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

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

*(3) This subsection applies... where-*

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

*(b) they ceased to do so before the time of the application but after the commencement of this section; and*

*(c) the application is made within the relevant period.*

7. Two '20 year periods' were relied upon by the Applicant; these being the 'First Relevant Period' (27 February 1995 – 27 February 2015), and in the alternative, the 'Second Relevant Period' (1 March 1994 – 1 March 2014). The Applicant relied upon the First Relevant Period, but in the event of it being held that a sign erected in March 2014 had the effect of rendering use of the land 'contentious', she relied instead on the Second Relevant Period.

8. In order for registration of the Land to be justified, it was necessary for the Applicant to demonstrate that the Land:

- was 'used for lawful sports and pastimes'
- throughout one or other of the 'Relevant Periods';
- such use having been carried on

- *'as of right'* , and
- with sufficient intensity,
- by a *'significant number'* ,
- of the inhabitants of *'a neighbourhood'* which satisfied the requirements of section 15 of the 2006 Act

9. It was the Applicant's case that the Land had been used in a way which satisfied these various criteria.

10. Mr Forgione disputed that the Land had been used in a way which satisfied the criteria set out above. His various grounds of objection can be summarised as follows:

- (i) First, that the neighbourhood relied upon by the Applicant did not satisfy the requirement of the 2006 Act, and that accordingly such use of the land for lawful sports and pastimes as had taken place, had not been carried on by the inhabitants of a 'qualifying unit'.
- (ii) Second, that to the extent there had been qualifying use of the Land for lawful sports and pastimes by the inhabitants of a qualifying neighbourhood, such use had not been carried on with sufficient intensity by a significant number of the inhabitants of that area;
- (iii) Third, that use of the Land by the inhabitants of the neighbourhood had not been carried on 'as of right', but had instead been carried on 'by force'.

**Recommendation**

11. On the basis of the evidence and submissions provided to me, as analysed in the Report, my conclusions are as follows, namely that:

- The Applicant has succeeded in demonstrating the existence of a neighbourhood for the purposes of section 15 of the 2006 Act;
- During both the Relevant Periods, there was use of the Land by inhabitants of the neighbourhood for the purposes of the 2006 Act;

- Such use of Gasworks Lane by Local People as took place during the Relevant Periods was not for lawful sports and pastimes for the purpose of the 2006 Act;
- Such use of Horses' Field by Local People for lawful sports and pastimes as took place during the Relevant Periods was not carried on with sufficient intensity and by sufficient numbers of Local People for the purposes of the 2006 Act;
- Local People used The Paddley for lawful sports and pastimes throughout the Relevant Periods, in sufficient numbers and with sufficient intensity, to justify registration of the land as town or village green pursuant to the 2006 Act;
- Such use of The Paddley was carried on as of right; in particular the user was not 'forcible'.

12. Accordingly, it is my recommendation to the Council that it accedes to the Application in part, and registers that part of the Land which forms part of The Paddley as town or village green. However, I recommend that insofar as the Application seeks the registration of the remainder of the Land, then it be rejected.

14 March 2017

**Alexander Booth QC**

Francis Taylor Building, EC4Y 7BY

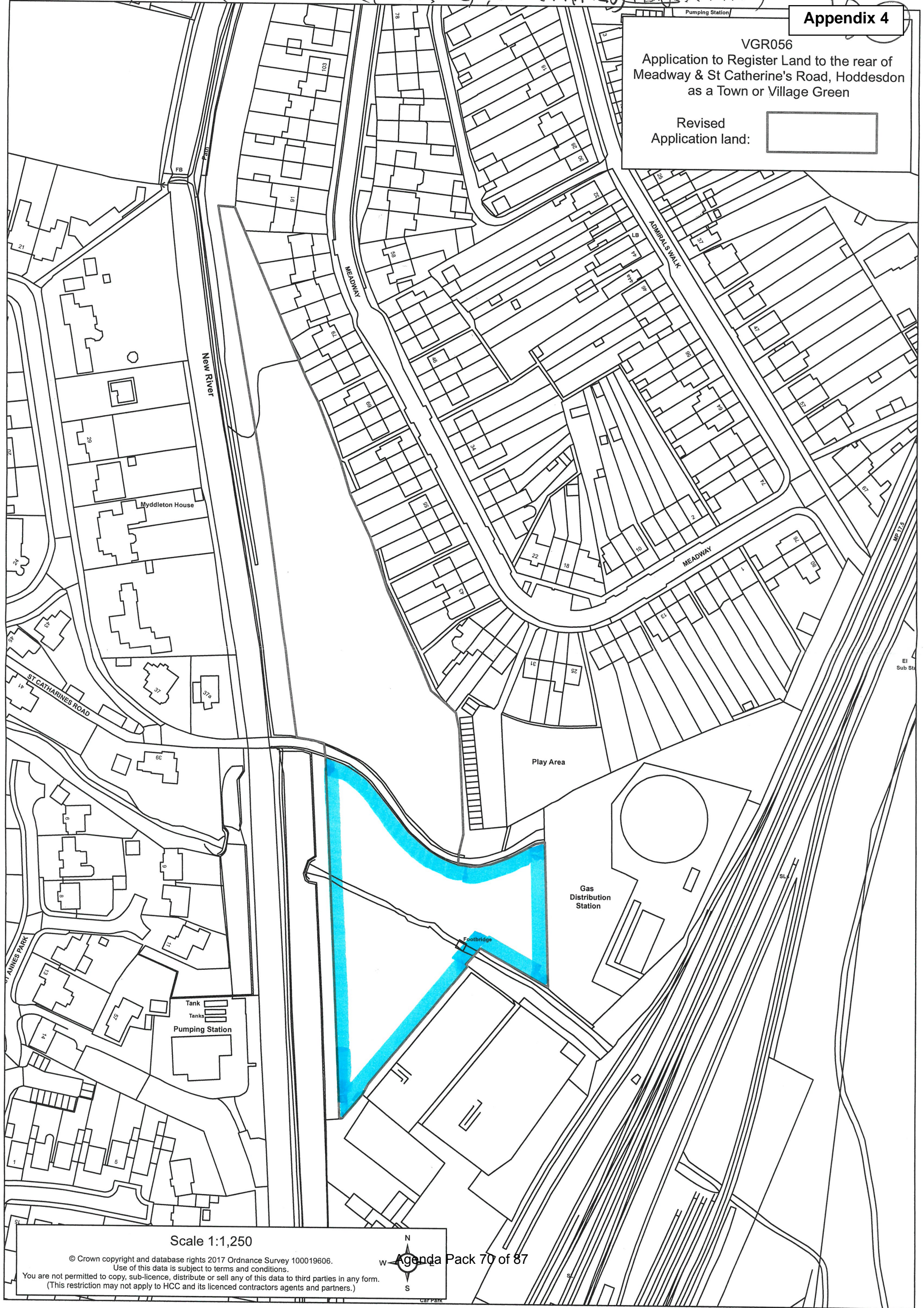
Initialed by Council 2 NPMK (for Register, VGR 056) (1/1/2017)

**Appendix 4**

VGR056

Application to Register Land to the rear of  
Meadway & St Catherine's Road, Hoddesdon  
as a Town or Village Green

Revised  
Application land:

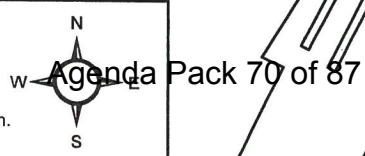


Scale 1:1,250

© Crown copyright and database rights 2017 Ordnance Survey 100019606.

Use of this data is subject to terms and conditions.

You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.  
(This restriction may not apply to HCC and its licenced contractors agents and partners.)



**HERTFORDSHIRE COUNTY COUNCIL**

**DEVELOPMENT CONTROL COMMITTEE  
THURSDAY, 29 JUNE AT 10.00AM**

**WELWYN HATFIELD DISTRICT COUNCIL**

Agenda Item  
No.

**2**

**APPLICATION FOR PROPOSED REPLACEMENT OF EXISTING MOBILE NURSERY UNIT WITH NEW PERMANENT NURSERY BUILDING AND COVERED PLAY CANOPY AT SPRINGMEAD PRIMARY SCHOOL, HILLY FIELDS, WELWYN GARDEN CITY, HERTFORDSHIRE, AL7 2HB**

*Report of the Chief Executive and Director of Environment*

Author: Ria Griffiths, Planning & Systems Support Officer Tel: 01992 556266

Local Member: Barbara Gibson

## **1. Purpose of Report**

1.1 To consider application 6/0462-17 (CC0176) for the replacement of the existing mobile classroom unit with new permanent nursery building and covered play canopy at Springmead Primary School, Hilly Fields, Welwyn Garden City, Hertfordshire AL7 2HB, following an objection raised by Welwyn Hatfield District Council.

## **2. Summary**

2.1 The application seeks planning permission to replace an existing mobile nursery unit with a permanent nursery building and covered play canopy at Springmead Primary School, Hilly Fields, Welwyn Garden City, Hertfordshire AL7 2HB

2.2 The principal issues to be taken into account in determining this application are the need for the proposal and the impact of the proposal on the surrounding area, particularly as the site is in within the designated area of Urban Open Land.

## **3. Conclusion**

3.1 The report concludes that it is recommended permission should be granted subject to the conditions set out in this report.

## **4. The Site and Local Area**

4.1 The Springmead Primary School site covers an area of approximately 2.63 hectares and is located to the east of Welwyn Garden City, within the Panshanger residential area. Residential properties run along the western and eastern boundaries of the site with Hilly Fields bordering the western edge. A foot/cycleway runs through private land along the northern boundary and

Panshanger Aerodrome is located to the north-east of the site.

- 4.2 The main school buildings, situated to the western side of the site, are single storey in height with flat roofs and were constructed circa 1972. Since the school was first built there have been several small extensions added to the site, including a two bay temporary modular building that was installed on the site in 2012, to the rear of the main school building, on the edge of the playing fields.
- 4.3 Access to the site, both vehicular and pedestrian, is from Hilly Fields on the west side of the site. The access forms a clockwise circulatory route around central parking areas comprising of 36 formal parking spaces with space for an additional 1 or 2 vehicles to the rear of the main reception building.
- 4.4 The nursery has capacity for 30 pupils to attend a morning session and 30 pupils to attend in the afternoon. The existing nursery building, to be replaced, is located to the north-west of the site, adjacent to Hilly Fields. Its location was chosen due to it being within close proximity to the main pedestrian gate, therefore allowing for easy drop-off and collection of children from the morning and afternoon sessions.

## **5. The Proposal**

- 5.1 The application seeks to replace the existing temporary nursery unit with a slightly larger permanent nursery building in the same location. The proposed new building will be single storey in height and comprise of a nursery classroom, children's toilets, disabled toilet, store, service cupboard and entrance lobby. The building is 13.27m x 9.20m and will have a gross area of 122.08m<sup>2</sup>, with the classroom amounting to 78m<sup>2</sup> of this space. The covered play canopy measures 11.77m x 3.50m.
- 5.2 The proposed building will have brick clad walls on a steel frame, with a grey flat felt roof covering and white powder coated aluminium window and door frames. The play canopy, to be situated on the rear elevation of the new building, will be constructed from a white powder coated aluminium support frame and Multiwall polycarbonate (non-fragile) roof glazing and end infill panel.
- 5.3 The main entrance door to the new building will be via a new 1200mm wide footpath, not exceeding 1:20 gradient. The width of the door will be 1000mm with a level threshold to allow clear access for wheelchair users. The internal door into the classroom will be 926mm in width also providing open wheelchair access. Vehicular access and parking will be unaffected. The proposal does not result in an increase in staff or pupil numbers and therefore will not create additional vehicular trips or parking requirements.
- 5.4 Surface water drainage will be via a new soakaway with foul drainage making use of the existing system.
- 5.5 The proposal requires the removal of two Sycamore trees.
- 5.6 There will be no other changes to the site as a result of this application and the number of pupils will not increase either.



## 6. Policy Considerations

### The National Planning Policy Framework (NPPF), 2012:

Section 7 – Requiring good design

Section 8 - Promoting healthy communities, specifically,

Paragraph 72 The Government attaches great importance to ensuring that a sufficient choice of school places is to meet the needs of existing and new communities. Local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement and to development that will widen choice in education.

### Welwyn Hatfield District Plan 2005:

Policy SD1 Sustainable Development

Policy R1 Maximising the Use of Previously Developed Land

Policy R17 Trees, Woodland and Hedgerows

Policy D1 Quality of Design

Policy D8 Landscaping

Policy D9 Access and Design for People with Disabilities

Policy D11 Design Statements

Policy OS1 Urban Open Land

Policy CLT8 New and Extended Education Facilities

Policy CLT10 Nurseries and Childcare Facilities

## 7. Relevant Planning History

6/1031-12 Double modular classroom unit and 2 additional parking spaces

6/0359-07 Application for footpath/cycleway

6/0814-01 Multi-use all weather sports court

6/0063-97 Extensions

6/0976-96 4-bay mobile for nursery

6/0384-96 Double mobile classroom unit

6/0140-94 Single mobile classroom unit

6/0697-93 Extension and other alterations

## 8. Consultations & Representations

Welwyn Hatfield District Council; objects to the proposal on the grounds that the new permanent nursery building will be sited on Urban Open Land and therefore conflicts with Policy OS1, Welwyn Hatfield District Plan 2005. Welwyn Hatfield District Council feels that the information provided in relation to this policy is insufficient and does not overcome their concerns.

Hertfordshire County Council as Highway Authority; does not object to the application as there are no highway issues related to the proposal.

Hertfordshire County Council Landscape Officer; does not object to the proposal, however suggests that for every tree that is removed, two new trees are planted. They also suggest that a lighting strategy be submitted prior to any development.

Lead Local Flood Authority; does not object to the proposal conditional on no development taking place until a Surface Water Draining Scheme has been submitted and approved in writing by the Local Planning Authority.

Hertfordshire Ecology; does not object to the proposal conditional that the removal of trees should be avoided during the bird breeding season and that four new replacement trees should be planted in place of the two that are to be removed.

Neighbours/Publicity; Publicity for the application was as follows:

2 site notices were erected on the main vehicular and pedestrian accesses on 16 March 2017.

A total of 189 properties were consulted and 2 responses have been received. The main concern raised in these representations was with regards to parking and traffic flow issues during drop-off and pick-up times, together with pedestrian safety.

## **9. Planning Issues**

9.1 The principal planning issues to be taken into account when determining this application are:

- The need for the proposal
- The location of the proposal / Landscaping
- The design of the proposal
- Traffic and highways impacts
- Flood Risk

9.2 The need for the proposal;

There is an ongoing need for nursery accommodation across Hertfordshire. This application seeks to provide a permanent nursery building to continue to fulfil this need. The current mobile nursery unit at the school has occupied the same site for more than 20 years and the building is now in poor condition. The new proposed permanent building will replace the mobile unit, providing a better quality education environment. Springmead School is in an area of Welwyn Hatfield where the provision of free early education places is only just sufficient to meet the community's need. Without the nursery building, there would not be enough free early education places for families in this area. In determining this application, it should also be taken into account that from September 2017 the new 30 hours free childcare is to be introduced wielding further pressure on availability of nursery places. The NPPF, Section 8, Paragraph 72 says that the Government attaches great importance to ensuring that a sufficient choice of school places is available to meet the needs of existing and new communities. It is therefore considered that the proposal is compliant with this policy and local Policy CLT10 (Nurseries and Childcare Facilities), in its delivery of nursery school places within the local area.

### 9.3 The location of the proposal / Landscaping

The proposed location of the new permanent nursery building is considered the most suitable as this is the site of the existing temporary nursery unit, to be replaced, which has already occupied this site for over 20 years. This location is still deemed the most appropriate due to its close proximity to the main pedestrian gate and the use of this site does not result in the loss or reduction of playing field. The site of the new building is designated as Urban Open Land (see appendix 1) in both the Welwyn Hatfield Local Plan 2005 and the emerging Local Plan (pre-submission draft 2017). Policy OS1 Urban Open Land states that the planning permission for development in these areas would not be granted unless it would:

- (i) assist in the maintenance or reinforcement of their function as essential open areas;
- (ii) be of a scale which did not compromise the value of the Urban Open Land or use of open space as defined in terms of its criteria; and;
- (iii) not result in the loss or reduction in size of any playing pitches, if the open land is used for formal recreation purposes, subject to the considerations set out in Policy OS2.

The Urban Open Land (UOL) designation covers the majority of the site including a part of the main school building. Areas not designated as UOL are the playground; the car park; and, the circulation loop used for access and parental drop off. These non UOL areas are considered unsuitable for the permanent nursery building as locating the building on the car park or playground would compromise the activities of the primary school and require these facilities to be moved onto land designated as UOL, and locating the nursery on the playground would result in the reduction or loss of hard play area, which would likely raise objection from Sport England. It would also result in the building being closer to residential properties.

It is therefore considered that there are no alternative sites for the building and the proposed location of the nursery building on the edge of the UOL designation is considered not to compromise the value of the UOL as a whole, as the remainder of the site will continue to function as a visual break within the urban area. Also, the proposed location does not result in the loss of any playing pitches.

Furthermore, contrary to Policy OS1, Policy R1 (Maximising the Use of Previously Developed Land), of the Welwyn Hatfield District Plan 2005 “requires development to take place on land which has been previously used or developed”. The existing mobile classroom has occupied this site for over 20 years and so the re-use of this site for the permanent nursery building is deemed to be in accordance with this policy. Therefore on balance it is considered that the minor impact on the UOL is outweighed by the provision of educational facilities.

The proposal does result in the loss of two sycamore trees as identified in the Arboricultural Impact Assessment, dated February 2017. These trees are too

close to the existing building and are causing damage. The removal of these trees will be off-set by the planting of four new trees and this can be secured by condition in order to comply with Policy R17 (Trees, Woodland and Hedgerows) and Policy D8 (Landscaping) of the Welwyn Hatfield District Plan 2005.

#### 9.4 The design of the proposal

The proposed building is in keeping with the character of the existing school building and would be clad in brickwork to match that of the existing school. The replacement building has a very similar footprint to the existing mobile nursery building, is single storey and would remain acquiescent to the main school building and is therefore considered to comply with both local and national policy regarding good design.

The building has been fully designed to comply with Part M (Access and Use of Buildings) of the Building Regulations and has clear access for wheelchair users, thus being in accordance with local Policy D9 (Access and Design for People with Disabilities).

The new building will fully comply with the Approved Document L2A; Conservation of Fuel and Power (New Buildings other than dwellings). It will be partially built off-site helping to minimise disruption to the school and therefore represents sustainability and is therefore compliant with local Policy SD1 (Sustainable Development).

#### 9.5 Traffic and highways impacts

Concerns have been raised by local residents regarding traffic issues, however vehicular access and parking will remain unchanged by this proposal and will not result in the increase of any staff or pupils to the nursery school; therefore it will not result in any additional vehicular trips or parking requirements.

#### 9.6 Flood Risk

The application site is located in Flood Zone 1 (low risk flooding) where the land has less than a 1 in 1000 annual probability of flooding. It is considered that the proposal would not give rise to any significant flooding and that surface water can be properly managed with a Sustainable Urban Drainage System (SuDs), which is to be considered further with details being submitted and approved by planning condition.

## 10. Summary

In conclusion, although this proposal will result in the loss of a small area of designated Urban Open Land, there is a need for nursery school places in the area and the nursery school at Springmead School plays an essential role in meeting this need. Paragraph 72 of the NPPF recognises the great importance

placed by Government in ensuring that a sufficient choice of school places is available and that in making decisions, local planning authorities should give great weight to the need to create, expand or alter schools. Overall having taken the balance of all the issues and policy into account, it is recommended that planning permission should be granted subject to conditions as follows.

## **11. Conditions**

1. Time Limit
2. Approved Plans and Documents
3. Construction Traffic Management Plan
4. Hours of Work
5. Tree Protection
6. Landscaping
7. Surface Water Drainage System
8. External Lighting

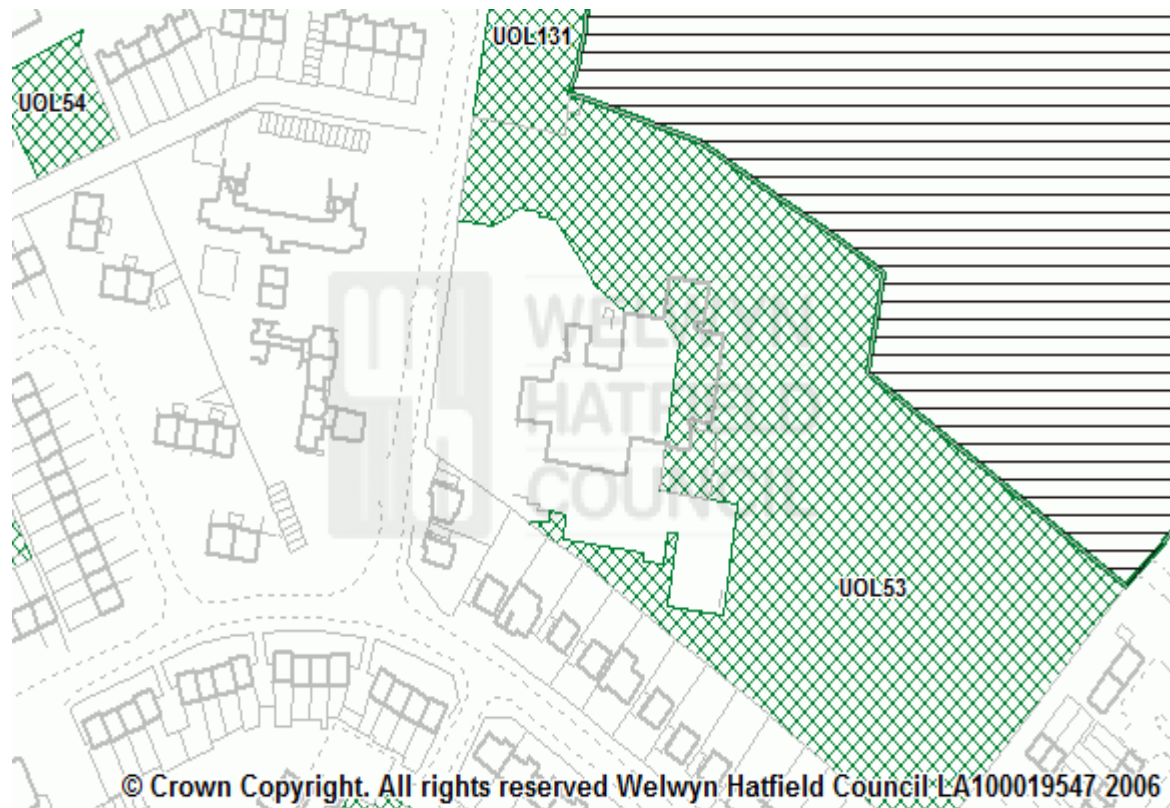
### **Background information used by the author in compiling this report**

Consultee responses

NPPF 2012

Welwyn Hatfield District Plan 2005

**Appendix 1 – Map showing designated area of Urban Open Land (UOL53)**



*Welwyn Hatfield Local Plan, adopted 2005*

## Appendix 2 – Welwyn Hatfield Council Objection in full



Colin Haigh  
Head of Planning

Ms Z Cook  
Postal Point CHN216  
Hertfordshire County Council  
County Hall  
Pegs Lane  
Hertford  
SG13 8DN

Reply To: address as below  
Direct Tel: 01707 357392  
Email: r.collard@welhat.gov.uk  
Our Reference: 6/2017/0462/COUNTY  
Your Ref: SLUP/CC01766/\*\*\*\*-17

3 April 2017

Dear Mrs Cook,

**Application for proposed replacement of existing mobile nursery unit with new permanent nursery building and covered play canopy at Springmead JMI School, Hilly Fields, Welwyn Garden City**

I write in connection with the above consultation request for the above site.

### Relevant Policies

Welwyn Hatfield District Plan 2005  
GBSP2: Towns and Specified Settlements  
SD1: Sustainable Development  
R3: Energy Efficiency  
R11: Biodiversity and Development  
D1: Quality of Design  
D2: Character and Context  
D8: Landscaping  
D5: Design for movement  
D9: Access and Design for people with disabilities  
CLT8: New and Extended Educational Facilities  
M14: Parking standards for new developments  
OS1: Urban Open Land

Welwyn Hatfield District Plan, Supplementary Design Guidance, February 2005  
Welwyn Hatfield District Plan, Supplementary Planning Guidance, Parking Standards, January 2004

Firstly the site in which the mobile nursery unit is located is on Urban Open Land in accordance with the District Plan 2005, therefore policy OS1 applies to the application. Very limited information has been submitted to justify the permanent loss of the urban open land and it is considered that all points within this policy should be addressed.

Welwyn Hatfield Borough Council, The Campus, Welwyn Garden City, Herts AL8 6AE  
DX30075, Welwyn Garden City 1

Tel: 01707 357000  
www.welhat.gov.uk



Policy CLT8 of the District Plan 2005 provides a list of criteria under which any extensions to education facilities should be considered. The considerations are as follows:

- i. They are situated close to centres of population and passenger transport services;
- ii. They provide opportunities for shared journeys, for example by school bus;
- iii. They provide facilities for the secure storage of bicycles for students and staff
- iv. The proposal complies with the Council's current car parking standards and there would be no adverse impact on the highway network including highway safety;
- v. Provision is made for the safety of students whilst being dropped off or picked up
- vi. There would be no harmful impact on the amenity of nearby residential properties and other uses; and
- vii. There would be no significant impact on the character of the area.

The following will consider the proposal against the four criteria listed above:

*(i) They are situated close to centres of population and passenger transport services*  
The proposal is sited in the east of Welwyn Garden City within the residential area of Panshanger. The existing building accommodates a pre-school and has a capacity for 60 pupils. The proposed replacement of an existing mobile nursery unit with a new permanent nursery building and covered play canopy would not result in an increase in the number of staff or pupils that attend the school. Public transport can be found close to the school site.

*(ii) They provide opportunities for shared journeys, for example by school bus*  
No details have been provided in relation to this, however as there is an existing nursery unit at the site this is unlikely to alter the existing arrangements as it would not increase the number of pupils or staff and therefore, would have no effect on journeys to the school, modes of transport or parking. No changes are proposed to the existing car park or access arrangements.

*(iii) They provide facilities for the secure storage of bicycles for students and staff*  
No details relating to cycle storage have been included on the plans, however it would be necessary to ensure that cycle storage facilities exist and no further spaces are required as a result of the proposal. In accordance with the Council's Supplementary Planning Guidance: Parking Standards 2004, 1 space is required per 10 full time members of staff and 1 space per 15 students.

*(iv) The proposal complies with the Council's current car parking standards and there would be no adverse impact on the highway network including highway safety;*  
There are currently 36 parking spaces on the site. Policy M14 of the Welwyn Hatfield District Plan requires parking provision for new development to accord with the standards in the Council's Supplementary Planning Guidance (SPG) on Parking



Standards 2004 which identifies a maximum requirement of 1 space per full-time member of staff plus 1 space per 100 pupils. No additional staff or pupils are proposed and consequently no additional parking spaces would be required. No additional parking spaces are proposed and it is therefore considered that the proposal would comply with Policy M14 and the Supplementary Planning Guidance, Parking Standards, January 2008. Pedestrian and vehicular access to the site would remain unaltered. This does not cause concern.

*(v) Provision is made for the safety of students whilst being dropped off or picked up;*  
The existing arrangements would remain in situ.

*(vi) There would be no harmful impact on the amenity of nearby residential properties and other uses;*

The application site is surrounded by residential properties. The classroom would be located in broadly the same location as the existing mobile nursery unit, sited forward of the main school building and on the opposite side of the road to properties located on Hillyfields. Consequently a permanent building would not impact on the amount of sunlight and daylight they receive. In addition it would have no greater impact on the privacy currently enjoyed by the adjoining occupiers than the buildings currently on the site. The proposal would not increase the number of pupils attending the school. Consequently it is considered that the noise levels on the site would remain the same and would, therefore, not be to an extent that would harm the amenity of adjoining occupiers.

*(vii) There would be no significant impact on the character of the area*

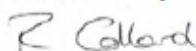
This application is for the replacement of an existing mobile nursery unit with a new permanent nursery building and covered play canopy. The existing building is not incongruous and although would be clearly visible within the public realm it is on a piece of land previously occupied by a mobile classroom and would be single storey in character with a flat roof.

Conclusion:

The proposal is therefore considered to be acceptable when assessed against Policy CLT8 of the Welwyn Hatfield District Plan 2005. However no information has been provided in relation to Policy OS1. Without this information Welwyn Hatfield Borough Council would object to the proposal.

I also request that all consultation responses received from Welwyn Hatfield residents are taken into consideration when assessing the above planning application.

Yours sincerely,



Ms R Collard  
Development Management Officer

## Appendix 3 – Hertfordshire Property Supplementary Note in Response to Welwyn Hatfield Objection

SPRINGMEAD PRIMARY SCHOOL, HILLY FIELDS, WELWYN GARDEN CITY,  
HERTFORDSHIRE, AL7 2HB

CONSTRUCTION OF NEW PERMANENT NURSERY BUILDING

SUPPLEMENTARY STATEMENT

### Background/Context

1. A full planning application has been submitted to Hertfordshire County Council for a permanent brick clad nursery building to replace an existing dilapidated mobile nursery at Springmead Primary School, Welwyn Garden City. The replacement building is needed in order to provide a better quality educational environment.
2. This statement provides information specifically regarding the site's Urban Open Land (UOL) designation. This note is supplementary to the Planning, Design and Access Statement and email between the applicant and the case officer dated 11 April 2017.
3. The site of the proposed new replacement building is designated as UOL in both the adopted Local Plan 2005 and the emerging Local Plan (pre-submission draft 2017).
4. The two plans below show the designation of UOL53. The current mobile (to be replaced) is not shown on the adopted local plan but is visible on the base map of the emerging local plan policies map:



5. The Local Plan is clear there is a presumption against development within areas designated as UOL. Local Plan paragraph 10.4 (a-g) identifies the key environmental, recreational, ecological, landscape and other amenity functions of UOL. Policy OS1 Urban Open Land states that planning permission for development within these areas will not be granted unless it would:
  - (i) assist in the maintenance or reinforcement of their function as essential open areas;
  - (ii) be of a scale which did not compromise the value of the Urban Open Land or use of open space as defined in terms of its criteria; and
  - (iii) not result in the loss or reduction in size of any playing pitches, if the open land is used for formal recreation purposes, subject to the considerations set out in Policy OS2.

### **Main Response**

6. The proposal is for a replacement nursery building on a very similar footprint to the existing mobile nursery classroom. The existing mobile nursery has been on the site with temporary permission(s) for over 20 years.

#### ***Site***

7. The site is considered to be the most suitable site for the building. The proposed site is in close proximity to the main pedestrian gate which provides easy drop-off and collection of children from the morning and afternoon sessions. The nursery has been in this location for over 20 years and meets the needs of the nursery without impeding the activities of the primary school.
8. The UOL designation covers the majority of the school site including a proportion of the main school building. The only areas not designated UOL are the playground; the car park; and, the circulation loop used for access and parental drop off. The non-UOL sites are considered unsuitable for the permanent nursery building. Locating the nursery on the site of the current car park or the playground would compromise the activities of the primary school and require these facilities to be displaced onto land designated as UOL. Notwithstanding the need to re-provide the playground in such an event, locating the nursery on the playground is not considered ideal as it would bring built form closer to residential properties
9. Locating the facility on an alternative school site is not considered an option. The facility is to serve the local community and the need for places is in the immediate area. The nearest alternatives schools are Sir Frederic Osborn School (secondary school) and Watchlytes Primary School. Both schools are also subject to UOL designations.

#### ***Scale***

10. It is considered that the modest scale of the development proposed will not compromise the value of UOL53 as a whole and the land will continue to function as a visual and physical break within the built up area. The activity of the facility is consistent with uses on the wider site (education) and the use of the site for the past 20 years (nursery).

#### ***Amenity***

11. The site has never been made available as informal space for either passive or active recreation. There are no plans to make the site available for public use. The previously developed nature of the site (temporary nursery) is such that it should not be considered to be of wildlife significance.

#### ***Playing fields***

12. The proposal will not result in the loss or reduction of any playing field, the schools playing fields are to the south east of the site. As stated above, consideration has been given to alternative non-UOL sites. A nursery on any other location on the school site could result in loss of hard play area or school playing field, which would likely raise objections from Sport England.

#### ***Emerging Local Plan***

13. It is noted that in the emerging Local Plan that land north of the school is to be an area for residential development (SDS1 North East of Welwyn Garden City), which will include new formal and informal open spaces for leisure and recreation (Policy SP

- 18). There is therefore no justification to prevent development on the site in order to preserve the site for future passive or active recreation.
14. Welwyn Hatfield Borough Council is at an advanced stage in preparing a new Local Plan. The Draft Local Plan Proposed Submission August 2016 (Regulation 19) recognises the role social infrastructure plays in creating successful communities. It is considered that the proposal for a permanent nursery on the site complies with the aspirations of the emerging local plan to meet local social infrastructure needs at a neighbourhood level.
15. In its representations on the Local Plan Consultation Document January 2015 (Regulation 18) HCC Development Services identified that Urban Open Land designation may act as a constraint and obstacle in being able to respond to the need to provide new, or to enhance existing, facilities. HCC requested that Urban Open Land designations on school sites be reviewed as part of the preparation of the Local Plan in line with criteria within paragraph 77 of the NPPF. The County Council is committed to working with Welwyn Hatfield Borough Council to support the emerging local plan and ensure the provision of infrastructure to support existing and new communities.

***Education Need***

16. Springmead School is in an area of Welwyn and Hatfield Borough Council area where the provision of free early education places for parents is only just sufficient to meet the communities need. If the community lost this provision the area would not have enough free early education places for families in this area.
17. The new 30 hours free childcare entitlement being introduced in September 2017 for working parents will increase the pressure exerted on availability of places in this community as the expectation is that demand for these additional places will be high. Consequently the community cannot afford to lose any existing provision and the need for permanent solutions / accommodation are paramount to meet the needs of this community. The application is to meet a permanent and ongoing need for nursery accommodation in the local area, as stated in the Design and Access Statement the previous mobile building has occupied the same site for over 20 years.

**Specific Policy Response**

18. The site is designated as UOL in the adopted and emerging Local Plan. The site is considered vital to the form, character and quality of the built-up areas of the district in terms of the urban open land criteria. Local Plan paragraph 10.4 (a-g) identifies the key environmental, recreational, ecological, landscape and other amenity functions of UOL. The County Council's response to the key functions of UOL is outlined below:

<b><u>Key function</u></b>	<b><u>Response</u></b>
<b><i>(a) The land is vital to the form and character of the built-up areas; or</i></b>	HCC recognises the importance of UOL in maintaining the form and character of the built-up area and functioning as a visual break. However there is a need for nursery school places in the area and the nursery at Springmead plays an essential role in meeting this need. There are considered to be no alternative sites for the nursery other than at Springmead Primary

	School and the site identified is considered the most suitable.
<i>(b) The land, in whole or part, provides an important visual and physical break within the built up area; or</i>	The location of the nursery is on the edge of the UOL designation and is considered not to compromise the value of the UOL as a whole as the remainder of the site will continue to function as a visual break within the urban area. There is a need for nursery school places in the area and the nursery at Springmead plays an essential role in meeting this need.
<i>C) The land contributes, in whole or part, to any wider green chain or open corridor; or</i>	The location of the nursery is on the edge of the UOL designation and is considered not to compromise the value of the UOL as a whole as the remainder of the site will continue to function as a visual break within the urban area.
<i>(d) The land is important or could in future be important, in whole or part as a local amenity in terms of its landscape qualities, its wildlife or ecological value, or its use as an informal space for passive or active recreation; or</i>	A nursery has been on the site with temporary permission(s) for over 20 years. The location of the nursery is on the edge of the UOL designation and is considered not to compromise the value of the UOL as a whole as the remainder of the site will continue to function as a visual break within the urban area. The site has no wildlife or ecological value. The site has never been made available as informal space for passive or active recreation nor will it in the future due to the site being a primary school.
<i>(e) The land, in whole or part, is of notable wildlife significance; or</i>	The site has no wildlife or ecological value.
<i>(f) The land is already identified by the County Council as Common Land; or</i>	The site is not identified by the County Council as Common Land.
<i>(g) The land is used as a formal space for active recreation.</i>	The site has never been made available as formal space for active recreation nor will it in the future due to the site being a primary school.

19. Policy OS1 goes on to state that planning permission for development within areas of UOL will not be granted unless it met three criteria. The County Council's response the criteria is below:

<u>Criteria</u>	<u>Response</u>
<i>(i) Assist in the maintenance or reinforcement of their function as essential open areas;</i>	Development on the site will result in the loss of a small area of UOL. There is a need for nursery school places in the area and the nursery at Springmead plays an essential role in meeting this need. The site

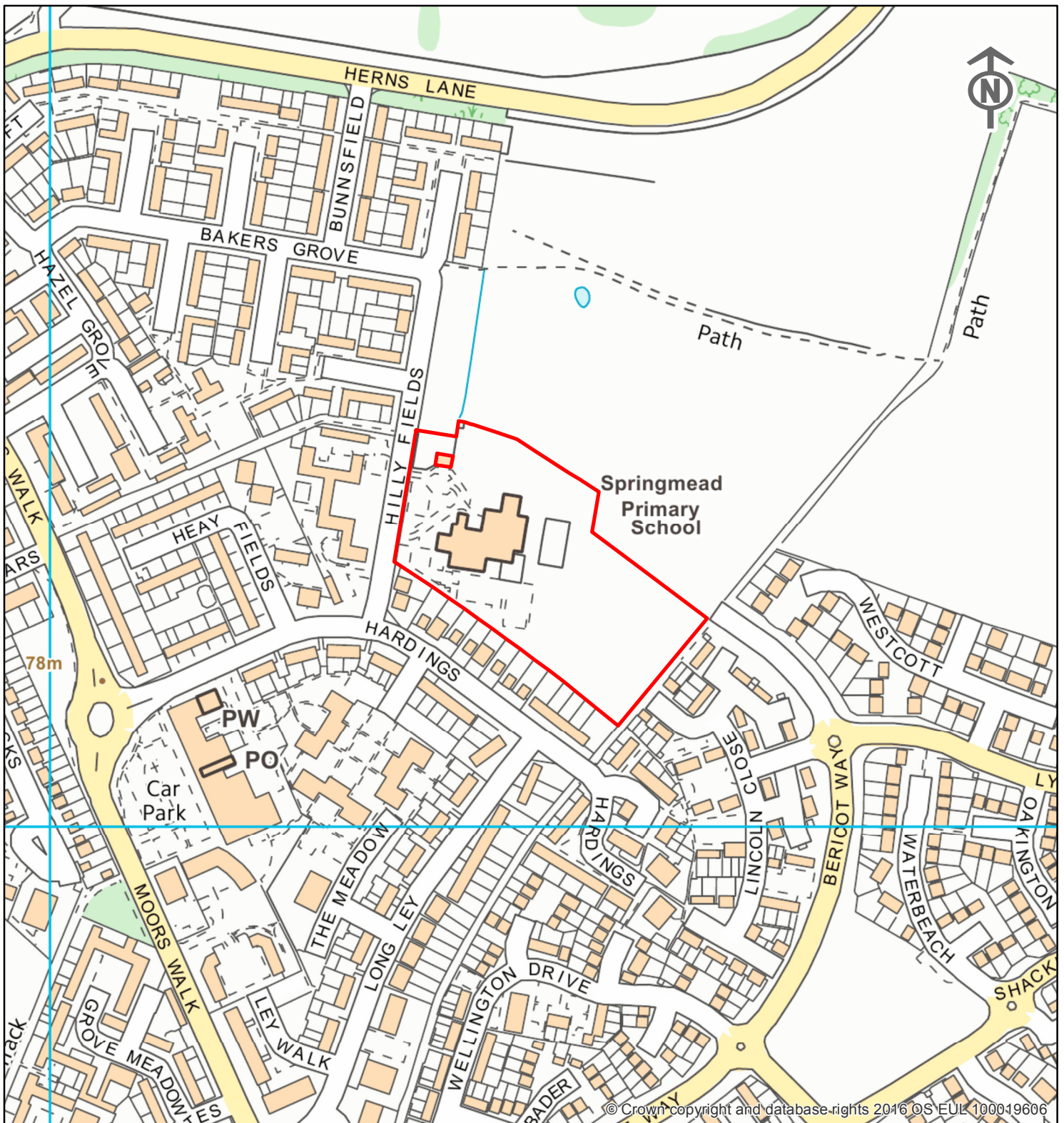
	has been used as a nursery for over 20 years and there is considered to be no alternative sites for the nursery other than at Springmead Primary School. Paragraph 72 of the NPPF recognises the great importance placed by Government on ensuring that sufficient choice of school places is available to meet the needs of existing and new communities. The NPPF recognises that local planning authorities should take a proactive, positive and collaborative approach to meeting this requirement and to development that will widen choice in education.
<i>(ii) Be of a scale which did not compromise the value of the Urban Open Land or use of the open space as defined in terms of its criteria; and</i>	The location of the nursery is on the edge of the UOL designation and is considered not to compromise the value of the UOL as a whole as the remainder of the site will continue to function as a visual break within the urban area.
<i>(iii) Not result in the loss or reduction in size of any playing pitches, if the open land is used for formal recreation purposes, subject to the consideration set out in Policy OS2.</i>	The development will not result in the loss or reduction in size of any playing pitches. The site has never been made available as formal space for active recreation nor will it in the future due to the site being a primary school.

### Conclusion

20. Although within an area designated as UOL the site is considered the most suitable location for the reasons given above. As stated in the Planning Statement the existing mobile nursery classroom is considered to be a vital part of the running of the school. However, it is no longer in a condition that is suitable or appropriate for the accommodation and education of nursery children and it therefore needs to be replaced.

21. In determining the application we ask that the need to provide local nursery school places is considered against the site's UOL designation. Specifically, Paragraph 72 of the NPPF and with consideration of the emerging Local Plan which seeks to ensure infrastructure is provided to meet local social infrastructure needs at a neighbourhood level.

**Matthew Wilson**  
Principal Planning Officer  
Development Services  
Hertfordshire County Council



**DEVELOPMENT CONTROL COMMITTEE**

Date: Thursday 29th June 2017



Application for proposed replacement of existing mobile nursery unit with new permanent nursery building and covered play canopy at Springmead JMI School, Hilly Fields, Welwyn Garden City, Hertfordshire, AL7 2HB

0 40 80 120 160 200 240 280 320 360  
Meters

Agenda Pack 87 of 87