

**APPLICATION BY MS BARBARA TYRRELL
TO REGISTER LAND
AT MEADWAY AND ST CATHERINE’S ROAD, HODDESDON
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 Road¹, 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’²). However, following clarification of the extent of the Land the subject of the Application, TWUL withdrew its objection.

¹ 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.

² 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 period³.*

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 stream⁴ 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

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

⁴ 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 requirement⁵.

⁵ 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 Inquiry⁶.
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.

⁶ 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 River⁷, 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

⁷ 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)⁸

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.

⁸ 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 as 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”⁹. 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 70¹⁰ and that of Patterson J in Allaway v Oxfordshire County Council [2016] EWHC 2677¹¹.

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 developed¹².

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

⁹ See paragraph 78 of Laing Homes.

¹⁰ See paragraph 36, per Lord Walker in Lewis.

¹¹ See, inter alia, paragraphs 52, 55 and 57 of Allaway.

¹² 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 Application¹³. 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:

¹³ 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”¹⁴.

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”¹⁵.*

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”¹⁶.

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 withdrawal¹⁷.

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

¹⁴ See paragraph 85 of Cheltenham Builders.

¹⁵ See paragraph 27 of Oxfordshire.

¹⁶ See paragraph 79 of NHS Foundation Trust.

¹⁷ 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 events¹⁸. 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.

¹⁸ 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”¹⁹.

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.

¹⁹ 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 rights²⁰.

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.

²⁰ 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 3rd 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 overgrown²¹; 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

²¹ 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 cases²²).

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 573²³, and by Lightman J in Oxfordshire County Council v Oxfordshire City Council & Robinson (2004) Ch. 253²⁴. 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:

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

²³ See paragraphs 102-109 of the decision in Laing.

²⁴ 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 2012²⁵. 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.

²⁵ 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 Inquiry²⁶, 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),

²⁶ 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”²⁷.

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”²⁸.

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

²⁷ See paragraphs 88-89 of Lewis.

²⁸ 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 land²⁹.

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 Pallett³⁰ was unwilling to give evidence so TWUL relied in his written evidence as to keeping cattle on the land, maintaining fencing, erecting signs

²⁹ See paragraphs 40-41 in Winterburn.

³⁰ 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 Land³¹ 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 1998³²) was addressed to the local newspaper³³, and the second (dated 26 May 1998³⁴) 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.

³¹ 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.

³² 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.

³³ This being the Hertfordshire Mercury.

³⁴ 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*"³⁵.

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

³⁵ 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”³⁶.

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.

³⁶ 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 located³⁷), 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).

³⁷ 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 be³⁸.

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:

³⁸ 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

