

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT ROBIN CANDY'S FIELDS,  
HIGH LITTLETON, BRISTOL**

**(also referred to as Greyfield Fields and the Sheppard's Fields)**

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**REPORT OF  
MR. MARTIN EDWARDS**

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Ref: SE.PEV.9611

## Introduction

1. I have been appointed by Bath & North East Somerset Council as Registration Authority (“the Registration Authority”) to consider and hold a non-statutory public inquiry into an application to register certain land as a new town or village green (“TVG”) pursuant to either section 15(2) of the Commons Act 2006 and to report to the Registration Authority on the application and to recommend whether the application for registration should be approved and the land registered as a new TVG.
2. The role of an independent inspector in these circumstances requires me, as the inspector, to consider all the evidence submitted to the Registration Authority as part of the application determination process including both documentary evidence and oral testimony presented to the inquiry and to then assess that evidence against the relevant statutory criteria and case law.
3. In advance of the inquiry, and as an aid to the parties’ preparation, on 7 January 2014 I provided Directions as to relevant procedural matters. Those directions were generally adhered to by the parties and no issues have arisen from them that require any further comment. I was also provided with copies of the original application and the supporting material (including signed and other statements and evidence questionnaires), the objections duly made to it and such further correspondence and exchanges that had taken place in writing from the parties. I also received written legal submissions from the parties in advance of the inquiry and I also received written closing submissions. I would like to thank the advocates for the clarity of their respective submissions.
4. The inquiry took place in two sessions. The first session commenced on Tuesday 17 June 2014 and lasted for 3 days until Thursday 19 June 2014. It was concerned with the Applicants’ case and supporting evidence. The inquiry then reconvened on Tuesday 21 October 2014 and closed on Thursday 23 October 2014. During the course of the inquiry I heard evidence from witnesses whose details are annexed to this report in the List of Appearances. I carried out an accompanied site visit on

the afternoon of Tuesday 21 October 2014. I also undertook unaccompanied site visits before and during the inquiry. I would like to thank everyone who participated in the inquiry, especially those that gave evidence, for their courtesy and contribution. Sadly I must record that during the interval between the two sessions both Mr. and Mrs. Candy passed away. It was clear to me that all present had nothing but kind words to say of Mr. and Mrs. Candy and I wish to take this opportunity of expressing my condolences to their family and friends.

5. In addition to the oral evidence that I heard, I have had regard in producing this Report and my Recommendations to all of the written and documentary material submitted by the parties.
  
6. All written and other documentary material submitted with the application and the objections, including plans and photographs, written statements from local people and all material submitted in the run-up to the inquiry and at the inquiry has been read or examined by me and I have taken all of it into account in forming the views which I have come to on the totality of the evidence. However, as is to be expected, more weight will inevitably be accorded (where there are matters in dispute) to evidence which was given in person by a witness who is then subject to, or in the course of this inquiry, made available for, cross-examination and for questioning by me, than will be the case for mere written statements, completed questionnaires etc. where there is no opportunity to challenge or question the author. A number of statutory declarations were also submitted. As usual I have accorded them greater weight than I would to unsworn statements.

### **The Application**

10. The Application was made by Mark Collins, Jane E. Neech, Rachel Tidcombe and Leonard Sheen of c/o Mendip Ho!, Greenfield Road, High Littleton, Bristol BS39 6XZ (“the Applicants”) and was signed and dated 17 July 2013. It was accompanied by statutory declarations sworn by each of the Applicants. The Application was accepted by the Registration Authority on 19 July 2013. Notice of the Application was advertised by the Registration Authority in the Midsomer Norton, Radstock and District Journal on 25 July 2013 and it required objections to be submitted to it by

10 September 2013. The application was made under section 15(2) of the Commons Act 2006 on the basis that a significant number of inhabitants of the neighbourhood of Greenfield have indulged as of right in lawful sports and pastimes for a period of at least 20 years as witnessed by 41 signed evidence questionnaires showing use for activities including dog walking, rambling/walking, nature watching, sledging and snowballing and educational purposes by a total of 88 people who have signed the evidence questionnaires. It follows that for the purposes of the application the relevant period is that from 19 July 1993 - 19 July 2013.

11. The Application land (“the Land”) was described in the application form as “Robin Candy’s Fields (also referred to as Greyfields Fields and the Sheppard’s Fields)”. Notwithstanding the alternative names for the Land it was clear to me that all the witnesses who gave evidence confirmed by reference to the photograph on display at the inquiry that their evidence related to the Land irrespective of the name by which the witness chose to give it. Therefore there was no dispute as to the precise extent of the Land. It is that area shown on the plan exhibited to the statutory declarations sworn by the Applicants.
12. The Land was said to be located “between Greyfields Woods and Greyfields Road and adjacent to Greyfield Common in High Littleton, Bristol. OS reference: Two fields approx. centred on ST 6405 5850 and ST 6424 5839”. The neighbourhood was stated to be the neighbourhood of Greyfields (the Applicants confirmed that the reference in the form to the plural was a typographical error). It was described as “...bounded by Dando’s Stores at the High Street of High Littleton (A39) and extends along Greenfield Road including all the cul-de-sacs that join it (Greyfield Common and Westwood Avenue) and into Gores Park”.
13. The Land is owned by J E Sheppard & Sons (Sawmills) of Crosslands, Wells Road, Chilcompton, Radstock, Somerset BA3 4ET. At the time of the application it was tenanted and occupied by Mr. Robin Candy of Greyfield Farm, High Littleton, Bristol BS9 6YQ.
14. On 9 September 2013 Messrs Battens Solicitors, on behalf of the Landowner, submitted written objections to the Application accompanied by statutory

declarations from Mr. Robin Candy sworn on 5 September 2013, Mrs. Christine Candy also sworn on 5 September 2013 and unsworn statements from NF Clothier and Sons Ltd, Mr. Peter Kingwill, Mr. Alastair Martin and Mr. Mark Chivers. On 30 September 2013 Mrs. Tidcombe responded in writing to the objections and enclosed five further statements and additional photographs together with a letter received from the local MP Mr. Jacob Rees Mogg.

15. The Land comprises two large fields that have been used for many years for grazing cattle and sheep. With regard to the extent of the Land, its boundaries, location within the neighbourhood and its topography it was clear to me that there was no factual dispute between the parties on any of these matters. I do not propose therefore to describe the Land in any further detail. In any event the extent of the Land was shown on numerous undisputed documents. What was in dispute, however, was the use of the Land that may have been made by local inhabitants during the relevant period.

#### **The Case for the Applicants - Evidence**

The case for the Applicants was advanced by Mr. Sheen. He did so with great skill and courtesy for which I am grateful. He presented an Opening Statement and provided a written copy. Whilst I have read and taken into account all the points that he made in his Opening Statement it does enable me to merely summarise what I consider to be the Applicant's main opening points:-

- (a) the Applicants accept that the burden of proof rests with them;
- (b) they believe that they have complied with all procedural and evidential requirements needed to satisfy the statutory tests;
- (c) they do not believe that there is any ambiguity in their case;
- (d) they were encouraged to undertake the Application on behalf of a strong neighbourhood steeped in local history;
- (e) people were encouraged not to exaggerate in the questionnaire responses;
- (f) they believe that the evidence in support is compelling and truthful;

- (g) the Applicants would call a sample of witnesses to cover the relevant period as others were unavailable due to work or personal commitments; and
- (h) Mr. Sheen confirmed that all the other matters related to the case were as original submitted and previously advised.

(The Objector's counsel, Mr. Honey, then presented his Opening Statement. However his submissions were largely reiterated and incorporated in his Closing Submissions which I deal with below.)

### Oral Evidence

19. The Applicants called a number of witnesses as set out below. I have, of course, taken into account the comment made by Mr. Sheen at point (g) of his Opening Statement. The page number references in this section are to the page numbers in the Applicants' Bundle. Reference is made wherever possible to the first page of the relevant document.
20. **Mark Collins**, (one of the Applicants) lives at Mendip Ho! Greyfield Road, High Littleton, BS39 6X2. He produced an evidence questionnaire dated 14 July 2013 (page 112) and a witness statement dated 11 May 2014 (page 517). In addition, of course, he had sworn a Statutory Declaration which was submitted with the Application. He confirmed the accuracy of the original documents and read his witness statement.
21. He has lived at his current address since **December 2011**. He has had first-hand knowledge of the use of the Land by locals from that period. He and wife use the Land in excess of six occasions a year and see neighbours using it every day that they are at home. They went sledging during the snow of January 2013. The livestock are sometimes a reason for using the Land. They enter the Land by the main gate to the road and they have never tried to hide their use of the Land. He has a clear view of the Land from his house and the gate is a common access point. He produced a number of photographs showing use of the Land in January, May, June and July 2013 and January 2014. The Land is a focal point for recreation in

the village. Occasionally he has seen people using the Land at night with torches and fluorescent jackets.

**22.** He described the background to the Application. Following parish council and village meetings the neighbourhood decided to investigate the possibility of registering the Land as a new TVG. The intention was to secure the rights of local people to enjoy the Land for recreation and to protect it from development that would be detrimental to TVG rights. He and others then circulated evidence questionnaires in support of the Application. The completed questionnaires were submitted with the Application and some residents also submitted additional personal statements.

**23.** The key points that arose from the questionnaires and statements were:

- (a)** a significant number of inhabitants of the neighbourhood use the Land - 36% of individuals (118 out of 331) living in the neighbourhood provided evidence questionnaires and/or personal statements showing their use of the Land over the relevant period;
- (b)** the use of the Land had been without force - 81% of individuals (95 out of 118) using the Land accessed the Land via a gate of which 30 persons gained access via private gardens. The remainder did not specify how access was gained;
- (c)** the use of the Land had been without secrecy - 33% of individuals (39 out of 118) who used the Land had been seen by the owner/occupier and none had been asked to leave or prevented from using it;
- (d)** 5% of individuals (6 out of 118) had sought and been granted permission to use the Land for specific purposes;
- (e)** the use of the Land is for lawful sports and pastimes with rambling/walking and enjoying the view being by far the largest reasons for using/entering the Land; and
- (f)** Use of the land has been for the relevant 20 year period - 28 out of 118 individuals who use the Land had done so for over 20 years.

**24.** The Applicants had researched the history of Greyfield and discussed the modern Greyfield Neighbourhood and its identity with residents and the wider village community (see pages 471-508). The neighbourhood is a recognised, distinct and cohesive community of approximately 331 residents. "Greyfield" is marked on the

OS map and recognised elsewhere (pages 477 & 481). It extends along Greyfield Road and includes the cul-de-sacs that adjoin it (Greyfield Common, Westwood Avenue and Gores Park). It is within the parishes of Clutton and High Littleton. There is a singular vehicle entrance/exit at the east marked by Dando's Stores at the junction of Greyfield Road, New Road, High Street and Eastwood Close. It is bounded by Greyfield Woods and fields to the west and south and by the poorly maintained hill of the The Gug and private gardens to the north. The Gug is rarely used due to its narrow width and poor surface with many deep potholes. It makes it impassable by vehicles without high ground clearance. It is clear that The Gug is not used a vehicular thoroughfare and visitors by vehicle do so for the purpose of visiting the neighbourhood.

**25.** The neighbourhood includes amenities and leisure facilities that would be expected of a modern rural neighbourhood. The Land is used by the neighbourhood's residents and the general public for daily recreation. The neighbourhood also has direct access to other leisure facilities such as bridle paths, Greyfield Woods and other recreational walks and paths. It is served by Dando's Stores which sells a wide range of groceries and provisions. There are council and school services and facilities such as a mobile library and walking bus which both have drop off and collection points around the village including dedicated points serving the neighbourhood. There is a single Royal Mail collection point - Greyfield Colliery - approximately halfway along its length. The postman refers to the neighbourhood and confirms that the postbag is packed in recognition of the neighbourhood. Similarly the local newsagent recognises the neighbourhood and deliveries are appropriately sorted.

**26.** Greyfield was formed around the former Greyfield Colliery and has historically been recognised as a cohesive community and separate from the localities around it. In 1997 the High Littleton Parish supported the publication of the parish history which describes the roots of the neighbourhood and refers to Greyfield and its history as a distinct community within the wider area as further confirmed by extracts from the Parish Council News and minutes of meetings. Today the neighbourhood continues to have its own identity within the locality and there is a strong cohesive spirit. Both of these attributes are exemplified by the response to and support for the Application which can be contrasted with the High Littleton



Parish Council which voted not to support it. Thus the neighbourhood (and the perception of its inhabitants) is distinct. The polarisation between the Greyfield residents and the Parish Council regarding the Application reinforces that the neighbourhood has a “state of mind” and a distinct and cohesive identity.

**27.** In cross examination Mr. Collins confirmed that he had known the Land since 2011. His two children also live at Mendip Ho! The Parish Council meetings would have been in April 2013 or thereabouts but these dates were from memory. The investigation into the potential for making the Application followed a presentation by Silverwood Partners. There was a two month delay whilst the residents discussed what needed to be done but they did not look into the legalities until June 2013. The questionnaires were distributed in late June or in July. His was dated 14 July 2013. He thought that it would be in late June but some questionnaires were put in after the Application went in.

**28.** Mr. Collins corrected some minor errors regarding dates on photographs (pages 122 and 520) and confirmed that photographs 7 & 8 on page 522 were outside the relevant period but he simply wanted to show people using the Land. He agreed that snow-based activities could only be done when it snowed and only at weekends or when the schools were closed. Sledging usually occurred when there was a good covering of snow and it was pretty fresh otherwise you could not sledge very far. It was only having fun. On the couple of days a year when it has snowed he has used the Land. It would probably be only one year in every five when the snow was so bad that the schools closed.

**29.** Mendip Ho! overlooks the Land. He likes enjoying the view from both his house and when on the Land. When on the Land he could see birds, trees, sheep and the undulations of the Land. He sometimes takes photographs with his stepson when on the Land. However he has only produced some in the bundle which show the snow activities. It was possible on any one visit for him to have walked and taken in the view and engaged in a mixture of lawful activities on the Land such as photography and his answers on page 113 question 11 had to be viewed in that light. His evidence covered his use of the Land between 2011 and 2013 but he accepted that other people may have reported in their questionnaires the same activities that he had witnessed.

- 30.** With regard to his observation in the second paragraph on page 121 concerning winter 2013 he did not accept that the Land was second choice after the woods as in his view people tended to go on different dog walking routes. He personally would go on different routes as he liked walking. People can also do a circular route. He regularly sees dog walkers - some he knows by name and some by where they live. On page 518 paragraph 11 he did not know who the people using the Land at night were and he could not say if they were connected with the Land.
- 31.** With regard to the collation of evidence he delivered the forms and evidence questionnaires to all households within the red line area. People were not badgered or pestered. He had been in touch with some people who had moved away. The statistics in paragraph 18 on page 525 second bullet point show that roughly 25% of users came onto the Land via their gardens. He could not say if they returned that way.
- 32.** He accepted that any use by permission would not qualify for TVG registration. Figure 4 on page 527 showed the number of households rather than residents. Thus eleven households had flown a kite. However this figure does not tell how frequently the land had been used in this way and it could be that each of those households could have flown one kite just once in the relevant period. Some of the activities could also have been combined and undertaken at the same time e.g. walking, taking photographs, fruit-picking.
- 33.** With regard to the neighbourhood - Objector's Bundle Tab 15 - OS Map 1904 - Greyfield Colliery and Brickworks are shown on the map but there was no separate place name for Greyfield. The postbox today still shows Greyfield Colliery. The map also refers to Greyfield Wood. It shows two rows of terraced cottages and two others and Oak Dene. The OS Map 1931 shows Scrumbrum Lane, New Road and Greyfield Road. The colliery has gone but the Wood is still shown. The name is now applied to four sets of cottages and one house. The OS Map 1958-1961 shows a couple of houses built on the old colliery site. No other new houses have been built. There is some development fronting Scrumbrum Lane and a house (Mendip View). The OS Map 1975 shows further changes - a transport depot, some more houses of The Gug, more homes at the High Littleton end of Greyfield Road.

Scobell Rise and Westwood Avenue are shown. The map shows the area infilling from the High Littleton end of the road. The OS Maps of 1984 and 1987 show little change. The OS Map 1990 shows the first part of Greyfield Common being developed. It was a phased build. It had been a field but was compulsory purchased by Somerset County Council for a school which was not built and the site was sold for housing. Mr. Collins was not quite sure about the history of that development.

**34.** Within the red line area there were a number of elements. The Gug - some houses are converted old colliery buildings and some purpose built houses. At the bottom of The Gug and the corner of Greyfield Road are a range of houses of different styles and ages. Gorse Park is a modern housing estate of different style to the housing on The Gug. Westwood Avenue and Scobell Rise were built at the same time. Scobell Rise comprises mainly bungalows. Westwood Avenue looks different again. Greyfield Avenue comprises small groups of similar types of house and a number of individual houses so there is a mixture of ages, types and styles. There is some frontage development and some backland development. He did not understand what ribbon development was and could not comment on it. However he did accept that it comprises many different styles of housing. Greyfield Common comprises modern housing built in two phases and therefore there are two different styles of house. The builder's yard is included. The only two fields included in the claimed neighbourhood are the two that comprise the Application Land. The red line goes down to Greyfield Wood Farm but does not include Greyfield Wood. Mr. Collins explained that the red line followed physical boundaries. Greyfield Wood was excluded because the Applicants did not feel that the neighbourhood included the Wood or the Farm. With regard to The Gug he felt that it was impassable to those without a 4 x 4. He would leave his house and drive along Greyfield Road and go up Scrumbrum Lane. It is also difficult to get to Greyfield Farm so that was why it was left out. Greyfield House was also left out. The Gug appears to have been cut in half by the Application red line on the basis that the part that has been included within the redline reflects the section of The Gug that is passable by car.

**35.** Mr. Collins was then taken to the Objector's Bundle Tab 1 and the plan document 1.0 which shows the locations from where the accompanying photographs were

taken. He was of the view that for most car users The Gug was not a thoroughfare and he also believed that it was a private road. There was a sign saying “private road” but he could not say that it was a private road.

- 36.** With regard to a neighbourhood Mr. Collins did not accept that it had to have relevant facilities and that these were the be all and end all. It involved a qualitative assessment. He accepted that the red line did not include Dando’s Store. He maintained that Greyfield is a neighbourhood within the locality of High Littleton. There are lots of facilities in High Littleton that do not appear in Greyfield such as a shop, pub, stores, chapel and that these were at the Greyfield Road end of High Littleton but all outside the red line. The red line also includes part of two parishes and half of Greyfield Wood Farm is not within the red line. Half of the farm’s fields have therefore been excluded as was the land immediately to the north of the farm buildings. Similarly excluded was the old BMX track.
- 37.** Mr. Collins was taken to the postman’s letter in the Applicants’ Bundle at page 491. The postman does not describe the area as “Greyfield” and he also calls it ‘an area of High Littleton’. He accepted that people do not refer to Greyfield as part of their postal address. Mr. Collins did not agree that the reference in the email at page 492 to “Greyfield and all roads off of Greyfield” were references to Greyfield Road as a road rather than a place. Similarly Mr. Collins was asked about the Parish records at page 488 of the meetings on 22 June 1925 and 25 March 1930 and references to Greyfield and Scrumbrum. It was put to him that there is no place known as Scrumbrum and that these must be references to the roads not places. Mr. Collins did not agree and he considered these were locals referring to neighbourhoods.
- 38.** In re-examination Mr. Collins pointed out that the A39 effectively cuts High Littleton in half.
- 39.** *Jonathan Moore*, and his wife live at Woodlea, Greenfield Road, High Littleton, Bristol, BS39 6YA. He produced a witness statement signed and dated by him and his wife on 13 May 2014 (page 542). He confirmed the accuracy of his witness statement and read it. His wife had also prepared an evidence questionnaire (page

245) dated 16 August 2013. He and his wife had known the Land since **2010** having lived at their address for **three and half years**.

40. He wanted to place particular emphasis on paragraph 7 of his statement and how he saw communities defined. People may be transient but communities are defined by tangible, physical attributes.

41. In cross examination he confirmed that he had moved in to his house in the summer of 2010. He had bought the house whilst in Hong Kong but moved in into it in November 2010 having worked on the house since it was bought. He had therefore known the Land for a period of two and a half years leading up to the date of the Application. His boundary is a hedge with a fence on the field side. He sometimes gains access to the Land by climbing over the fence but he also gains access from some of the other access points and the gates on the western-most boundary and in the south east corner of the Land. There are times when they would go onto the Land through one entrance and leave by another. He and his wife have three children born in 2008, 2010 and 2013 respectively. He had put some foam over the top of the hedge to stop baggy tracksuit bottoms getting snagged when climbing over.

42. Mr. Moore was taken to question 9 of the evidence questionnaire where there is reference to a permissive path. He accepted that there was not a public footpath although there was a pathway from one of the fields to the other. He was also taken to question 20 and the reference to seeking permission in 2012 for the fireworks. He did not do so in 2010 or 2011 as he did not know anybody in these years. He was not sure whether the reference to the fireworks were to the same fireworks referred to by Sarah Wheeler (page 571) but he believed that she may have been talking about his fireworks. He was then taken to paragraph 3 of his witness statement where he refers to the Study in their house. His Study overlooks the Land and in addition to this they had seen these birds and animals when on the Land.

43. He confirmed that the pre-school was located outside the red line area and that children come from outside the neighbourhood. He had not personally witnessed the pre-school group using the Land.

44. He was taken to paragraph 2 of his statement and the reference to his children rolling down the hills and wading through the grass. These activities were not incidental to them walking on the Land and sometimes they would go on to the Land specifically to do this. There are occasions when they would go onto the Land to walk and other occasions they would go on to it for no specific reason. He was not sure whether the grass was long because it was being grown for hay but there were times in the year when the grass would be longer and others when it would be shorter. The grass was shorter when the sheep were present.

45. In addition to the Land there are times when they would go to the park but they would go on to the Land very frequently and they would go into the woods if they can make it. The children will go anywhere and will play down the farm track. They would go to the park if there was a village fair etc. whereas on the Land it was unstructured play. Sometimes the children would play down Greyfield Common and riding their bikes. They could not go on to the Land to pick blackberries or to go sledging without walking so they have to walk on the Land if they are to undertake any activities other than the fireworks. They are therefore activities that, whilst not walking, inevitably involve walking.

46. **Catherine Lane** and her husband live at Oakwood, 7 Greyfield Common, High Littleton, BS39 6YL. She produced a witness statement dated 21 April 2014 (page 539) and an evidence questionnaire signed and dated by her and her husband on 11 July 2013 (page 198). They have known the Land since **2003** and have lived at their address since May 2005. They have therefore known the Land for **10 years**. She confirmed the accuracy of both documents.

47. The Land was used by local children of all ages including late teenagers. In cross examination she confirmed that her house had been built as part of the first phase of Greyfield Common in 1989. She had therefore lived near the Land for the last eight years. She had previously lived on the main road in Greyfield near the chip shop and had therefore known the Land since 2003.

48. With regard to paragraph 2 of her statement she confirmed that she sought (and received) permission from Mr. Candy simply to be polite and neighbourly. She knew

about him from conversations with the previous owners of her house. Her main reason for approaching him was simply to introduce herself rather than to go to see him to specifically ask for permission. The reference in the answer to question 7 of the evidence questionnaire about agreed access and being respectful to live stock was something that she had understood from talking to previous owners, the Cattermoles and the Countryside Code.

49. The gate at her house was there when she and her family moved in. She had always assumed it was there as it looked old and was a bit “wonky”. She was not aware of any gate being put in since they had moved in. Most of the houses along that boundary have some sort of hedge or boundary feature and only a couple of houses have merely fencing. Her boundary is a hedge. She accepted that cutting hedges, maintaining fences and retrieving stray balls are all legitimate reasons for going onto the Land.

50. There were sheep on the Land when they moved in in 2005 and there may have been bullocks. She did not challenge the account given by Mr. Norman Collier in his statement. Sheep had escaped last year on to the track - the fence had been pushed down by some eager sheep. She had happened to be walking past when the sheep escaped. The chain link fence was frequently in need of repair. She assumed that the boundary of the western field had an intact boundary. The fencing alongside the woods had badger gaps in it. She considered that the only place where people got on to the Land was in the south east corner of the western field. On the northern boundary of the eastern field the fencing was mostly intact.

51. She would go on to the Land for bird and nature watching especially butterflies and wildflowers. She had to walk on the Land in order to go wildlife watching. She saw a variety of birds throughout all seasons. One reason for going on to the Land was because the view from her house was not sufficient. She would also go out in all weathers.

52. She would always follow the Countryside Code and leave gates as she found them, follow paths where there were paths and her dogs would be on their leads. She also felt that the other locals also respected the Countryside Code. She would also walk her dogs in Greyfield Woods up to Clutton. The route that she chose would

vary but it would tend to be in the neighbourhood of Greyfield as opposed to High Littleton because of the main road. There was no specific time of day when she would go out as she preferred to have no routine in order to prevent her dogs going mad. It was unlikely that she would go on to the Land during the weekdays as they were both teachers but they do get very long holidays.

53. She would see people from the neighbourhood and from Greyfield and sometimes new people who she would not recognise. She would see regularly Leonard's wife Trudy, some ladies from the W.I. Chantelle Young and a lady who has moved into the new build. She would regularly see and recognise 3 or 4 people dog walking from her road but more residents use it for other family activities.
54. Walks would depend on the weather and what else she may have to do. It tended to be a mix of long and short walks and she may go on to the Land a couple of times a day for the shorter walks. She had noticed the hay growing on the Land in the last 2 or 3 years. It was in both fields on the Land and she had assumed that it was a hay crop - it appeared to be grown for a purpose. She would not go on to the Land when the hay was being cropped because their dogs are very small. The hay would take 2 days to cut and it would be left in piles. People tend not to play football when the hay was growing but it is cut in July or August and then sheep are put on the Land. Consequently it does not prevent activities from being carried out.
55. In re-examination she was asked about visiting the farmhouse. She said Mr. Candy was surprised to have a visitor and she understood from her conversation with him that he was happy with her being on the Land. It was more of a general conversation and she had mentioned in passing that she had been on to the Land.
56. **Neil Topping** lives at 16 Greyfield Common, High Littleton, BS39 6YL. He produced a witness statement signed and dated 1 May 2014 (page 569) and an evidence questionnaire signed and dated 10 July 2013 (page 404). He confirmed the accuracy of both documents and read his witness statement. He and his family have lived at their property since moving in in **October 1999**. They had known the Land for **14 years** as at the date of the Application.



57. In cross examination he stated that they lived next to Mrs. Titcombe's house. Their house had been built in 1999 and it backs on to the middle of the eastern field. They have two sons aged 19 and 17 years. Their garden is steeply sloping. The boundary has a vertical slatted wooden fence which had been put in in 2007 and prior to that there had been no gate on to the Land.
58. The land is used by his extended family and visitors and he accepted that any use by people who live outside the neighbourhood i.e. outside the redline area, would not count for the purposes of TVG registration. He readily admitted that he would not like to see any development on the Land and that any current proposals would not encroach on his view. He confirmed that he had not used the land on a daily basis for the last 14 years but he felt that his family used it regularly and it would be used on a daily basis during school holidays. This would be on the most easterly triangle of the eastern field. He recalled the Land being used by sheep since 2002 but he could recall a couple of days when a small number of cows would be on the Land. He could not recall specific times when the sheep would be on the Land. In 2001 he did not have a gate on to the Land and he had no specific recollection of the foot and mouth disease outbreak. He could not recall any signage but his children would only have been 4 and 2 years old at that time so they would not have used the Land.
59. The hay was normally cut around September or October. It took about a day or so. He did not recall it being cut earlier than about three years ago. There would be gaps left around the edges so as to not disturb neighbouring properties. He could not remember whether part of the land had been fenced off to allow the hay to grow. The strip of land that was left between the edge of the Land and the neighbouring properties would make it possible for people to go walking. He agreed with Mrs. Lane's evidence on hay cropping and access points on to the Land. The track from the Land up to Greyfield Road may exist on maps but it has never been used as it is heavily overgrown with nettles. He has used his gate for maintaining his boundary as well as gaining access on to the Land. The reference to the gate in question 10 of the evidence questionnaire was to his gate and this could not have happened before 2007. He accepted that access for maintenance of his boundary was a legitimate reason for going on to neighbouring land. In paragraph 8 of his witness statement and the reference to access gained from gates in boundaries he

confirmed that prior to installing his gate in 2007 numbers 14, 15 and 16 had gates and he could gain access to the land through these gates.

60. His use of the Land for playing ball games was limited to the triangle in the far eastern corner of the eastern field. He agreed that he had ticked dog walking in box 12 of this evidence questionnaire but he had not mentioned it in his witness statement. However this is a more recent event when his younger boy takes neighbours' dogs for a walk. This only began within the last year or so. The altered reference to team games in box 12 was done because he thought that it was meant to cover structured games rather than kickabouts. Most users came from Greyfield Common, Gorse Park, High Littleton and some were from outside the parish.
61. Badminton games would take place on the same area of Land in front of his house. That part of the Land is flat. It was really just knockabout badminton involving up to eight people but it may involve teams if there was a community event such as royal weddings and also when barbeques were being held in the close when activities would spill over on to the Land at the end of the day.
62. There are power lines running from north to south across the Land. Kite flying would depend on the weather and also some parts of the land are undulating. He could not say that he had used every part of the Land but he had used the immediate section of the eastern field. He had used it for kite flying in 2007. The reference to picnics was to children going on to the land and enjoying a meal whilst sitting on a blanket on the ground. These would be primary school age children and again they would be in the most eastern part of the eastern field. He accepted that for kite flying you would need a suitable wind and picnics would only be on sunny days and sledging only when there was snow. All these activities were weather dependent. Snow does not fall every year but when there was snow there would be families on the Land. There are parts of the Land in the western field that are hilly and good for sledging. In the field outside his house younger children built snow men and igloos.
63. In box 14 of his evidence questionnaire there is a reference to bicycle riding and he stated that his children had ridden across the fields on their bicycles. People would

walk their dogs on the land on a daily basis and others would go on for a stroll. He accepted that his children's use of the Land would be in fits and starts. He worked shifts so his use would be at a variety of times. His children would be sensible and leave little trace of their activities although he did recall finding a fluorescent jacket on the land and some goals being left behind. His children were not into BMX riding but he was aware of an area for BMX riding by Maynards Terrace.

64. He had limited knowledge about Greyfield Woods. He accepted that it was acquired by the Woodland Trust in 1997 (before he moved into the area) and he accepted that it was therefore used for recreation since then. He was an occasional visitor to the recreation ground. The school would use the recreation ground especially for sports days. It was properly laid out with mown football pitches and goals. There was also a proper play area with slides and swings. It was upgraded a few years ago but has been available all the time he has lived in the area. However crossing the main road is an issue with young children. There was a pedestrian crossing but it is a busy stretch of road.

65. **Sarah Wheeler** lives at 193 Greyfield Road, High Littleton BS39 6XZ. She produced a signed but undated witness statement (page 571) and an evidence questionnaire signed and dated 11 July 2013 (page 444). She has lived at her house since **December 2010** and had known the Land for **3 ½ years**. She confirmed the accuracy of her documents and read her witness statement. She clarified her reply to question 11 on the evidence questionnaire was to her using the land every couple of months rather than twice a month.

66. In cross examination she was taken to her other witness statement at page 451 which accompanied her evidence questionnaire. She lives next door to the Greens. She accepted that her evidence only related to 2 ½ years of the relevant 20 year period. She has two children born in 2009 and 2011 respectively. She accepted that the 2013 fireworks event was outside the relevant 20 year period. There had not been fireworks in 2011. Mr. Moore dealt with the organizing.

67. She thought but was not certain that there had been sheep on the Land in 2013 but she had not seen the Objector's evidence on sheep movements and so could not

answer questions on it. The reference to community celebrations in box 12 of her evidence questionnaire was to the fireworks. The photograph on page 457 was of Mr. and Mrs. Moore, her husband, their two older girls and her two boys. It was taken in the western field. She was not sure who the person was walking in the background. She has not been in the eastern field. The school was closed for about a week because of heavy snow in January/February 2013 and people would be on the Land most days at that time.

68. She confirmed that she had personally seen the activities mentioned in paragraph two of her witness statement. Mr. Honey wished to record the fact and it was duly noted that he would not be asking the witness any questions regarding the eastern field because the witness had confirmed that she had not been in that field. Her evidence concentrated therefore on evidence of dog walking, recreational walking and children playing.

69. **Adrian Neech** lives at Woodlea Bottom, Greyfield Road, High Littleton, Bristol BS39 6YA. He produced a witness statement signed and dated 25 April 2014 and an evidence questionnaire signed and dated with his wife dated 8 July 2013. He and his family have lived there since **2007** and have known the land for **6 years** up to the date of the Application. Mr. Neech read his witness statement and confirmed that he was prepared to answer questions about his wife's evidence as well. He confirmed the accuracy of his statement and questionnaire.

70. Their house had been built in 1994. It is next to the two fields that comprise the land and on which it is proposed to build housing. He had lived in the area for the last 6 years of the relevant 20 year period. "Greyfield Fields" is his wife's term to describe the Land but he would also refer them as Robin Candy's Fields. He accepted that Robin Candy had other fields.

71. He confirmed that the reference to daily/weekly in response to question 11 on the evidence questionnaire reflected the fact that between he and his wife one of them would use the Land on that basis but individually it would be more on a weekly basis. With regard to question 17, he could not say for sure that the owner/occupier of the Land had never seen either of them. He had never seen Mr.

Candy on the Land or ever talked to him but he accepted that it was possible that they might have seen him.

72. You can see the western field from the road and from the lane. The photographs on pages 264-265 were taken by his wife on the same day. He was not sure of the precise date but thought they would have been at the time that the form was signed i.e. July 2013. Both photographs showed relatively long grass. He has seen the grass both long and short. In July each year he would see the grass get long and then be mown for hay at the end of the summer. He confirmed that it had been grown for hay in summer 2014.
73. In paragraph 4 of his witness statement he referred to him maintaining his hedge twice a year and he accepted that this activity would not constitute a lawful sport or pastime. He had been on the Land for fruit picking. He used to make a lot of wine between 2007 and 2010 or 2011. These would be elderflowers in June, elder berry and blackberries in September and rosehips and sloes in October. He would pick these from two locations - one at the rear of his property and along the eastern boundary of the eastern field. There is a gate in his hedge. The photograph on page 266 was taken from inside his garden. The gate was upgraded in the summer of 2011 and he uses the gate more than twice a year. The hedges around his garden are very tall. You can see into the Land room his upstairs window. He had also cut "windows" in the hedge so that they can look out onto the Land. He did not accept that the bottom castellation was above head height. He accepted that retrieving stray balls etc. was a legitimate reason to go on to neighbouring land.
74. With regard to his reference to the fireworks these were separate from the Moore's fireworks although he did go to those as well i.e. he always held his own small fireworks parties. They were in 2008, 2009 and 2013. The last occasion was his daughter's birthday. In 2008 and 2009 there had been about 10 people in attendance - visiting friends and relatives from outside the red line area.
75. On one occasion on 30 November 2013 he drove the sheep in the field away from the rear of his garden but he accepted that this was outside the 20 year period. He

also accepted that generally speaking bonfires and grazing sheep were incompatible uses. He had no specific knowledge of sheep movements but accepted that there were a significant number of sheep on the Land for most of the year. They had been there in November and sheep may have been present all year round.

76. On page 546 at paragraph 5 his wife makes reference to using the Land for keeping fit. It was her main use of the Land. She does not have a regular routine but they would tend to walk the Land at about 7 pm once a week or so before having an evening meal. His wife may also walk during the day. Mr. Neech would go into the eastern field through the hole in the hedge. His nature watching would be a secondary activity as he would be there mainly to walk. Their evidence covers all of the Land. They have used all parts of it. The survey in paragraph 4 on page 545 was undertaken outside the 20 year period but it was typical of how the Land has been used. He considered that walking with or without dogs was the predominant activity. He had found golf ball in his garden which he presumed came from the fields. He did once find a steel tipped arrow which he felt must have come from somewhere close to his garden but he had never seen anyone on the fields with a bow and arrow. He had never been on the old BMX track.

77. In re-examination he stated that he felt that the view of the Land from Greyfield Farm was restricted. Mr. Honey acknowledged that the Objectors accepted that it was not possible to see the Land from Greyfield Farm

78. **David Fenton** lives at Greenwood, 154 Greyfield Road, High Littleton. He has lived there since **October 2002** i.e. for nearly **11 years** as at the date of the Application. He produced a written statement signed and dated 1 August 2013 by his wife and himself (page 154) and a witness statement signed by him. He confirmed the accuracy of both documents and read his witness statement. Mr. Fenton is a retired Planning Inspector. Most of his evidence related to the western field.

79. In cross examination he confirmed that he had not completed an evidence questionnaire. He had only glanced at other witness statements and had not read

any of the Objector's evidence. He had lived at his house since October 2002 i.e. the latter half of the 20 year period. He did not know about the cattle on the Land and he had only seen sheep on the Land. He would work from home when not away at a planning inquiry. His last professional engagement had been the Oxford Core Strategy. He did not undertake any village green work when with the Planning Inspectorate but he had briefly looked at the relevant legislation. He did not know Robert Ladd but knew his name. He believed he was a retired town planner. He did not know Peter Kingswill.

80. He was aware that sheep were present on the western field most of the time. He was taken to Tab 7 of the Objector's bundle and the table of sheep movements. He had no reason to doubt its accuracy. He has a clear view of the western field from his upstairs main bedroom window. He had seen tobogganing on the western field and has seen people walking from west to east on the Land until they go out of sight. The majority of walkers went from the western edge to the far corner but other would walk a circuit. He would not describe it as a single route and some people preferred to walk the perimeter. Some walkers stop in the middle of the field and throw balls. The majority traverse the fields and he accepted that there were a variety of walking routes. The majority of dog walkers would carry on walking down the lane rather than go on to the Land. Those that went in to the fields may do so as part of a circular walk. He would see a lot of familiar faces as a large proportion of residents have dogs but he cannot necessarily name people. He does not have dogs of his own and whilst he may recognize faces he could not say whether the people he saw came from within the red line area. Cars would be parked outside his house but a comfortable majority of dog walkers would arrive on foot. Car users were more a weekend feature. Whilst he could not say that the individuals live in a defined area he had gained the impression that the majority were locals. He has never seen a dog loose in the field when sheep were present. Where there are paths he would expect to see them follow them. There is a sign in the lane that asks people to put their dogs on leads and people generally obey the instruction. He considered that the use of the Land reduces when sheep are present but it does not stop.

81. The frontage of his house is Greyfield Road. The Gog does not start until after his property. A new house was built and occupied in later spring 2013. He wrote the

supporting statement for the outline application. Within the red line area there is no consistent building line, a range of house styles - detached, semi-detached and terraced. He felt that the characteristics of Greyfield Road are different to the rest of the area. Gorse Park was built in a single style and Greyfield Common and Westwood Drive were built in different styles. There is therefore no prevailing style or form of development other than the fact that they face on to Greyfield road. The Gug is not a dead end road. It is open for anyone to use but the surface is appalling and he never uses it. It is used by a very modest amount of traffic - occasional users or those sent there by their satnav devices.

82. In his opinion Greyfield is a neighbourhood. Having been born in London and then Bath before moving here he was of the view that it has a sense of community and locality separate from High Littleton. In his view Greyfield has a strong sense of community. It has a small, local focus.

83. **Leonard Sheen** (one of the Applicants) lives at Willow House, Greyfield Road, High Littleton, Bristol BS39 6YA. He and his wife moved there on **25 April 2007** and had known the Land for **6 years** as at the date of the Application. He produced a witness statement signed and dated 29 April 2014 (page 554) and an evidence questionnaire signed and dated 11 July 2013 by him and his wife (page 353). He confirmed the accuracy of these documents and read his witness statement. He lives next door to Mr. Neech. He also explained how his dogs - cocker spaniels - chase after rabbits on the Land. He also explained further the reference in paragraph 2 of his witness statement and how he joined the wire of his fence to that of the sheep wire.

84. In addition he commented on the evidence of Norman Collier in the Objector's Bundle Tab 7 at paragraph 9. He stated that this year the fences have been better maintained than ever before. They had been improved a couple of years ago after some sheep escaped. He and his wife are the only people who use the track at the side of their property. He refuted the assertion in paragraph 9 that there had been any wire cutting. The wire in the south-east corner of the field by Greyfield Wood was now good but before that it had not been very good - it was a metal hurdle knocked into the ground. He had not seen any indication that the fence wire had



been cut rather there were two pieces of wire that had been joined together but had then come undone. He referred to the Objector's Bundle Tab 7 regarding the movement of sheep and wondered how there could have been a crop of hay in both fields if sheep had been on the Land from April onwards. He wondered whether these were sheep movements out of Greyfield Wood Farm not the Land as the sheep movements did not appear to match the hay cropping.

85. In cross-examination Mr. Sheen conformed that he was one of the four Applicants. He is now retired. He had worked for 40 years in human resources in senior roles within both the public and private sectors. He had once worked for the Council as number two in the HR department from 2002 to 2005. After that he had worked as a freelance consultant.
86. Willow House had been built in 2005. He can see the entire eastern field from his house and part of the western field from the upper floor. Before the gate was installed he used to climb over the wooden fence which is his wooden fence. No one used the side track to access the field at any stage. They had two grandchildren living with them in 2010 for about one year. They were one and ten years old.
87. He knew Mr. Candy who he described as a very nice and honourable man. The two fields have been used for stock each year with the exception of 2008 and 2009. He admitted that he missed them. The fencing essentially fulfills the function of keeping the stock in for the majority of the time but he did not think that the Clothiers did a particularly good job of inspecting the fencing when they put their stock in. He understood what Mr. Candy and the Clothiers had said about the field fencing but he thought that there may have been an element of deference between tenant and landowner. Whilst there may have been a degree of economy with the facts he would not accuse them of lying. Also, Mr. Candy was an elderly man and his recollection may have faded. Mr. Sheen accepted that Mr. Candy was trying to recall matters to the best of his memory and was not trying to lie. In fact Mr. Candy was a man who Mr. Sheen admired and who had a wonderful sense of humour. However he felt that communication with Mr. Candy was not always easy

but he had no doubt that in making his statutory declaration Mr. Candy believed that what he had declared was true.

88. With regard to hay cropping, Mr. Sheen was certain that it has been done on two occasions as silage rather than as hay. He thought that it had been grown like that on two occasions when the fields were empty. He remembered it being cut and that it was done in almost one day. He thought that the evidence of the earlier witnesses sounded right but it was important that none of the Applicants or their witness kept diaries. He mentioned the electric fencing in 2010 which had been towards the southern boundary of the eastern field and on one occasion for may be up to 48 hours it had been along the middle boundary whilst fencing was put up. The fencing was for controlling the sheep as opposed to a cattle electric fencing. He recalled when five bullocks escaped from the eastern field into the field to the south which was not in the Candy's ownership. A bullock had escaped from the field to the south into the eastern field and sheep had escaped the other way. This was largely because badgers had undermined the fence. The gaps have been made by animals getting through not humans.

89. Most people enter the Land from the gates on the track that runs down the western edge of the western field. There was a hurdle in the south east corner of the western field which was effectively a metal style. It had been there until 2010 when new fencing went in. There are boundary gates from the adjacent houses but not all have gates. He could not say whether they had all been there for the full twenty years but he did not think that any new gates have been put in since he arrived other than Mr. Neech's new gate. The other new gates had been put in before he had moved in although he felt that it was probably correct to say that other gates had been put in during the 20 year period.

90. His main use of the Land was for dog walking and also fruit picking. He would also use the Land with his grandchildren. He goes on to the Land and returns by his back gate. He tends to take a longer walk in the morning and then an afternoon walk confined to the field but it will depend upon the sheep situation. His wife is a nurse. Today all the sheep were in the eastern field so he went up to and used the western field. Yesterday he took a similar walk but the sheep were then in the

western field. He follows the Countryside Code. Prior to living in Greyfield he had lived on Dartmoor so he knew the Code well. If he was in the field of vision of sheep he would ensure that dogs were on leads because sheep get used to you and can recognize familiar faces.

91. He would regularly see the same people. Whilst he did not know their names he would recognize their faces and their dogs. He regularly sees the Lanes, a lady with large dogs and a couple of people with black Labradors. He knows the BMX area and his two cocker spaniels know it even better. He has visited it twice. On one occasion he had to ring the Fire Service because there was a fire out of control. This was more than four years ago - he remembered it because he was doing a piece of work for the Fire Service. He understood that it was an old coal mining slag heap. It has been used by older children for recreation. Generally he does not take issue with what the Objector had to say about the BMX track.
92. His grandchildren play ball games on the Land but this was a lot less frequent than his use of the Land for dog walking. These ball games would be about once every couple of months. Ball games and tag would be played on an area around the rather splendid oak tree. It was dependent on the age of the child - it would have been from when they were stable on their feet so from primary school age and rising five through to about 14 years of age.
93. With regard to fruit picking, blackberries were the biggest single commodity, elderflowers behind his house and fronting Greyfield Road on the northern boundary of the western field and sloes in the hedge between the two fields. Blackberries occur all over the Land in the boundary hedges. They would go on to the Land with boxes or pots. They use the sloes to make gin, blackberries for apple and blackberry pies and elderflower for cordial. They had used the eastern field for sledging.
94. **Emily Malik** lives with her husband and children at 199 Greyfield Road, High Littleton BS39 6XZ. She produced an evidence questionnaire signed and dated 10 July 2013 (page 215) and a witness statement signed and dated May 2014 (page

541). She confirmed the accuracy of both documents and read her witness statement.

95. She and her family had lived at their address since **March 2011** and had known the land for **2 years** of the relevant period. In cross-examination she accepted that they had been using the land for less than 2 ½ years of the 20 year period. They have three children born in 2006, 2008 and 2010 respectively i.e. all before they moved in.

96. She was taken to the photographs on pages 220-222. She could not say whether they showed a typical summertime view of the Land since she had known it. The grass is long and this was typical of those summers that she had known the Land.

97. The Nature Club started in January 2013 i.e. 6 months before the end of the relevant 20 year period. Children come from Bath to attend and it is a drop-in group. The purpose is primarily educational - an outdoor version of a toddler group. As to the formalities, the group is insured and in association with the Cam (?) valley wildlife group. They do a risk assessment for their activities for insurance purposes. There is the risk of exposure to ticks. Sheep and lambs do not come close to the children and so they do not see them as a risk. She was aware that the community uses the Land and she did not consider it as trespass. They often use the Woodland Trust land. They do not go in there every week but probably one week in every three on the way back from the woods. They would use it in all weathers.

98. She was asked whether they would spend more time dwelling on the Land when it was dry but she commented that sometimes children like playing in the rain. Her evidence on bonfires was the same as the Moores. They would be attended by friends and family. The friends might be local but family members do not live in the area. She recalled Wendy and Geoff Connor from 220 Greyfield Road on the Easter egg hunt and the Moores and the Millers participating in the sledging.

99. The picnics involved them having food whilst sitting on a blanket on the ground. It was more of a family meal/picnic as opposed to a larger picnic. They do this

irregularly but more than once. They had been out with balls etc. so they would take snacks with them. There was no particular spot but sometimes this would be on the Land in front of their house. The picnic was not their main use of the Land. As to games, they played football, rounders, handstands etc., shadow shapes and anything that gets them outside. This would be in the western field on the Land. They would exit from the western gate on Greyfield Road. Whilst her evidence related to both fields she tended not to use the eastern field as much. The predominant use was of the western field.

100. In re-examination she named as associated with the nature club Louise, Wendy, Sarah and Jo as coming from within the red-line area.

101. **Bridget Rylance** lives at Greenwood (where Mr. Fenton now lives) with her husband and three sons overlooking the Land from **1971** to **1986** and then, after four years at Hallatrow, then moved to the Old Bridge, just off Greyfield Road, High Littleton, Bristol BS39 6YD from **1990** until the present day. They had therefore known the Land for **42 years**. She produced a witness statement signed and dated 7 April 2014 (page 547) and an evidence questionnaire signed and dated 9 July 2013 (page 315). She confirmed the accuracy of both documents and read her witness statement.

102. She had last been on the Land on Sunday walking with her husband. They had seen quite a few people because it had been a beautiful day.

103. In cross-examination she confirmed that she had also written a witness statement (page 322) so there were in fact two witness statements and an evidence questionnaire. Both witness statements were virtually identical save for the final sentences which were slightly different. She believed that she had written both statements herself. She has been at the Old Bridge since 1990. It is down the lane to Maynards Terrace but their drive looks out onto the Land. Her three sons were born in 1962, 1963 and 1967. Her last son left home in 1988. They now live outside the red-line area. She retired in 2004/5. She accepted that her children's playing games etc. was outside the relevant 20 year period. Mr. Honey said that he would ask her husband about the dog walking.

104. She was taken to page 316 and her answer to question 9 on the evidence questionnaire regarding the public right of way. She was asked where this was. She replied that she had assumed that there was a public right of way but she has now been informed that there never was one. She did not disagree that there was a gate in the north western corner of the western field even though Mr. Sheen had said that he could not recall one in his time. She was unable to say that the gate was available for use. In her evidence questionnaire she had referred at page 322 to The Seekers youth group that she had run in the Methodist Hall and she accepted that even though they may have walked through the Land this was outside the relevant 20 year period.
105. The photographs on page 322 were taken in 1978 in the western field on the way to sledging in the eastern field. The other photographs on pages 323 and 324 were taken in December 2010 and show sledging on the western field.
106. The Land has been used for farming throughout the 20 year period. At first there were dairy cattle and then sheep. She could not recall beef cattle being there.
107. She confirmed that she had not read the Objector's evidence. She believed that locals generally follow the Countryside Code. People can and do get killed by cattle and people would generally not have their dogs off their leads when cattle are around. She agreed that some people would not go onto the Land when cattle were present. She could remember young stock being on the Land. These were calves with their mothers and this was an added risk element.
108. She had known Mr. Candy for 42 years. He was a traditional farmer and he had only been absent for a few days. The Land was his home fields and they make up more than half his total pasture. The rest of his fields were down Maynards Terrace. He had never told her that she could not walk on the Land even when she had a dog. Sometimes when her dog was off the lead it would not always be under control but she would not send the dog off on its own. This would have been before the beginning of the 20 year period but it did not bother the cattle. She stated that

presently they do not have a dog but they have had one in the past which she would walk on the Land. She could not recall if dairy cattle had been present in 1994. She accepted that there had been around forty cattle present on the Land between March and November time. She could not be more specific but saw no reason to contradict Mr. Candy's evidence. She had no clear recollection of dairy cattle being on the Land from 5 pm in the evenings but Mr. Candy would bring cattle in, milk them and then take them out again. On some days there would be dairy cattle on the Land throughout the day. She could not recall if cows calved on the Land. She could not recall cattle being strip fed up until 1994. She was shown the 1992 aerial photographs and recalled the fence in the middle of the western field. She thought she could remember it being cordoned off but she did not remember it across the whole field. However she would not dispute this and she remembered areas of the field being fenced off with electric fencing to stop them eating too much rich grass. People would not go into the fenced off area when this was being done in the summer months. She thought strip feeding lasted for a few weeks. The fence was moved in sequence away from the Lane incrementally. Whilst cattle may not have been there all the day the fence would remain in place.

109. Beef cattle were on the Land from 1994 to 2002 and she thought that approximately 45 cattle sounded about the correct figure. The difference between dairy and beef cattle is that beef cattle would remain on the Land all the day as they would not be taken out for milking. She could not say whether for half of the time the beef cattle would be on the Land and for the other half of the time they would be in the field by Maynards Terrace and she could only say that she saw cattle on the Land for some of the time.

110. She could not dispute that sheep were introduced for wintering from 1998 and from 2002 the Land was used solely for sheep or that the Land was only used for beef cattle between 1994 and 1998. She could not recall whether cows at calving were brought on to the Land and would remain there for two months after calving. She did recall hay being grown and cut between 1994 and 2002 when cattle were there and she recalled hay cropping at that time. She explained that she does not keep a diary. She did agree that her evidence was not inconsistent with that of the Objector.

111. She knew the western field better than the eastern. She remembered the noise from hay cropping. It was sometimes done on a Sunday. You were just conscious of the noise and the dust. She saw the normal cycle of haymaking and remembered it happening in most years but was not conscious of it happening every year. People would go around the edge of the field or along the track when hay was growing. People would ensure that it was not fouled by dog mess. In some good years there would possibly be two cuts but in most years it was just the one cut, probably in late June.
112. She would not argue with the fact that there was muck spreading on both fields and when this was happening most people would not go on the Land. She could not say whether this would be for a couple of weeks a year.
113. She recalled the foot and mouth disease outbreak but could not remember Mr. Candy erecting the NFU signs. However if those signs were there then the locals would have respected them. It was put to her that the Applicants accepted that when the signs were up people did not go on to the Land.
114. She recalled sheep being present on the Land since 2002. She could not say whether they were present for most of the year because one was only semi-conscious of the noise. She recalled them arriving around May in 2014. She could not recall either way whether sheep were present in the winter time. She could not recall any pattern nor could she recall if the sheep had been there every year.
115. She agreed that the wood had been sold to the Woodland Trust in about 1997 although she did not necessarily agree that it was sold cheaply. When sold to the Woodland Trust it was opened for public access. The village had raised half the purchase money. She recalled the BMX track and had seen people riding bikes on it when she had visited it. It has probably been there for about ten years but it was not in the red line area. When the BMX track was set up the Objector did not do much about it at first then they put up a sign but they did not do much after that.
116. **Chris Rylance** lives at Greenwood (where Mr. Fenton now lives) with his wife and three sons overlooking the Land from **1971** to **1986** and then, after four



years at Hallatrow, then moved to the Old Bridge, just off Greyfield Road, High Littleton, Bristol BS39 6YD from 1990 until the present day. They had therefore known the Land for 42 years. He produced a witness statement signed and dated 10 April 2014 (page 550) and an evidence questionnaire signed and dated 9 July 2013 (page 325) and accompanying witness statement (page 342). He confirmed the accuracy of both documents and read his witness statement.

117. He did not disagree with anything his wife had said in her evidence. He had the same recollection of farming activities as his wife as they did not keep diaries. He remembered occasional electric fencing. His memory of the beef cattle was dominated by the moving of cattle from the Land to the fields by Maynards Terrace and sometimes frisky animals would end up in their garden. He did not know Mark Chivers. He was taken to the photographs on page 337 of the hot air balloon and whilst he could not recall the precise year it must have been prior to the 20 year period. They were photographs of the same balloon. He confirmed that the photographs on page 343 were the same as the ones that his wife had talked about. The photographs at pages 340 and 341 were not on the land but looking out across the western field. It shows an empty field with an open gate and was taken in 1975. He had no other photographs of activities on the Land. He referred to the December 2010 sledging photographs and commented that there were a huge number of footprints which showed that others had been on the Land.

118. He confirmed that he had nothing different or additional to what his wife had said to say in relation to dairy cattle, strip feeding, beef cattle, hay cropping, dairy cattle and muck spreading. He did not recall seeing the foot and mouth notice but he acknowledged that others did so he accepted that he might have seen it. People were told at the time that the countryside was closed. He agreed with his wife regarding sheep but he never found his walks through the fields limited by the sheep but he would have the dog on a lead. With regard to the wood, the village had taken a year longer to raise the money because the Heritage Lottery Fund changed its rules. It was Woodland Trust policy that the wood should be open to the public. The BMX track is still going. He occasionally has a bit of disturbance - overnight camping was rare but there would be boom boxes used. The use of the track has gone in fits and starts but the use is now in a second active phase. He also recalled an incident with a mini-digger.

119. He and his wife have not had a dog for the last fourteen years or so. They had a dog when they first moved in and would go walking the dog. They had a dog all the time in their previous house and had an overlap when the old dog was on its last legs. It was about 1997 when they last had a dog. They would walk their dogs on a variety of routes including across the fields on the Land. They might go diagonally from the north west corner of the western field to the south east corner and then into the woods. Sometimes they would go onto the land through one gate and leave by another.
120. **Michael Brewer** lives with his wife Susan at 14 Greyfield Road, High Littleton BS39 6YA. They had lived there since **2002** and had known the land for **11 years** as at the date of the Application. He produced a witness statement signed and dated by him and his wife on 20 May 2004 (page 516) and an evidence questionnaire signed and dated by them both 8 July 2013 (page80). He confirmed the accuracy of both documents and read the witness statement. He commented on his use of The Gug and he explained that he picks up their daughter from Gores Park to go to Clutton but he would never use it because of the road surface.
121. In cross examination he recalled that he had been given the evidence questionnaire but was not sure how he had been given it or by whom. His daughter, May White, now lives at 30 Gores Park and has lived there for the last three years having moved in in 2011. His house fronts onto Greyfield Road but it was built as part of Greyfield Common in about 1987 or 1988. They moved in in 2002 after Mr. Candy had sold his cattle. He could only remember sheep and they would be there for most of the time but they would come and go. With regard to The Gug he only has had a saloon car since 2011 and does not own a 4x4. If he had had one he might have used it but the potholes are very deep. Consequently his route to his daughter does not involve The Gug.
122. His fruit picking activities varies. He would pick blackberries but they were not greatly abundant, elderflowers, sweet chestnuts from the trees down the bottom of the Land and he also picked mushrooms. The blackberries were around the edges of the fields, elderflowers were around the edges as well but down

towards the bottom. These were seasonal activities. Walking and fruit picking were his only two activities on the Land according to his witness statements at pages 87 and 516. The reference in the answer to question 12 of this evidence questionnaire to nature watching was to him doing this as he walked around the Land. Sometimes he would go for a power-walk, sometimes they would go for a more casual walk and just observing as they went along and sometimes walking whilst they were fruit picking. They would enter the Land from the gates in the lane and if they were cutting across the Land they would use the top gate. They might use the bottom gate to get to the woods. It would be a decision that they would make at the time. They would wander around both fields. If they were going from west to east they would use the gateway in the middle of the field. They tend to leave by the same gate but sometimes they would go through the south east corner of the western field - it is a low (hurdle) fence which can easily be stepped over - to get to the woods.

123. He had seen the Land with long grass that was grown and then cut. It has been like this for most of the time but he had not taken much notice. Typically the hay making involved the grass being cut, left and collected over a two or three day period.

124. **Paul Allen** and his wife live at 1 Greyfield Road, High Littleton, Bristol BS39 6XX. They moved there in **September 1975** and have known the Land for **40 years** as at the date of the application. He produced a witness statement signed and dated 24 April 2014 (page 514) and an evidence questionnaire signed and dated by him and his wife on 9 July 2013 (page 19). He confirmed the accuracy of both documents and read his witness statement.

125. His property extends to the very edge of the western field. He could not recall any organized activities and was surprised by the mention of a car boot sale as he could only remember two car boot sales in Gorse Park when it was a transport depot. He had never been asked to leave the Land.

126. In cross-examination he accepted that a lot of what he had stated in the two documents related to a period before 1992 and was therefore outside the 20 year period. His wife had had one accident on The Gug because someone had been

driving too fast and on another occasion two wheels on a company car had been wrecked. The Gug is navigable with great care and parts of it get washed away in winter floods. With regard to fruit picking he had omitted to mention this but he did pick sloes from various points and there were also wild apple trees on the eastern boundary of the eastern field. He had seen the gate adjacent to Fairland used by a number of people but it became densely overgrown after the dairy farming had stopped. He did not recall animals being herded through it but it had been used by some residents at the time when he had moved in. He thought it had become overgrown between 1992 and 1995. His house is the most easterly house backing on to both fields. It has a long garden with trees and shrubs along the boundary with the next property. His rear boundary has nettles and ivy. There is a gate next to the shed. There had been a stile there before 2013 which he had put in in 1986. The gate was erected in the last 9 months i.e. September 2013. It was just a makeshift gate. There is a sheep fence between the gate and the field. There are older fence posts present and once there was another fence between his gate and the sheep fence. The fence was tatty, badly supported and tied on to his fence by twine. It could be stepped over because it was at an angle. It is a small stock fence now and it can be stepped over. He remembered cattle being on the Land, more often in the western field, where there would be cow pats. In contrast they could get around the western field without getting mucky. There was a feeding trough in the western field. It used to get very muddy near the bottom gate from the land into the western field.

127. They have three children and four grandchildren who all live outside the red line area. He was taken to his answer to question 2 on his evidence questionnaire where he referred to the land as sometimes being called "Candy's field". He explained that if you spoke to someone from the other side of the main road they would know Greyfield but not Candy's field. Similarly they would know of Gorse deport but not Gorse Park. With regard to question 10 and the reference to two gates. These would use either of them but they did not often use the southern gate on the western field. Normally they would gain access from their house into the eastern field and then on to the western field. He was then taken to the first paragraph of his witness statement and the reference to badger setts. He explained where the badger sett was. There were lots of rabbits and he explained his route along the eastern boundary of the eastern field. The fencing was

intermittent because the terrain was quite steep and it could be easily pushed over by sheep.

**128.** With regard to paragraph 3, once he stopped cross-country running his use of the Land changed and he would spend more time with his children flying kites and model aircraft, having picnics and showing them wildlife. He now uses a variety of ways to get to the woods. He recalled that between 1993 and 2013 (the relevant period) the Land had been used for farming throughout that period. He first saw the sign on the lane on the western side of the Land regarding keeping dogs on leads about a month ago. He is not a dog walker and he does not use that gate much. He would expect local people to follow the basic rules of the countryside. He had not seen people in that field with dogs running free when livestock were present. He remembered the cattle electric fences and he had never got a shock when he touched them. The fencing was used to keep cattle in an area and he guessed the purpose of it was to keep animals in. He did not disagree with the Objector's evidence about the types of fencing. It did not prevent him from accessing the Land - they were small enclosures. He was shown the 1992 aerial photograph and he recalled the enclosure which he said was consistent with his memory. He could not recall the whole field being divided - it was more of an enclosure. If livestock were present he would keep to the field boundary and others would do likewise. Regular users would go onto the field and would know how to navigate away from obstructions like cattle; and electric fences.

**129.** He agreed with the sequence of dairy cattle, beef cattle and then sheep on the Land. He remembered a large bull ploughing its way through the eastern hedges but this would have been in about 1980. It cooled off in a neighbour's pond. He thought dairy cattle had been present until 1984 and there would have been about 40 cows. In general the cattle were moved from the farm into the field. The dairy cattle were kept in at the farm over winter and were in the fields from March to November. He could not recall if the cattle were put into the fields after milking at 5 pm each day. He did not know where Mr. Candy's other fields were. He had no reason to doubt Mr. Candy's evidence. He could not recall anything of significance about the dairy cattle but he remembered the switch to beef cattle as the heifers jumped around a bit. He did not dispute that beef cattle were present between

1994 and 2002. There were about 45 beef cattle, slightly more than the dairy cattle which he thought were about 40 in number. The beef cattle would be kept in the fields and moved around so there would be beef cattle in both fields for some parts of the year. He recalled a bar across the fence/boundary between the eastern and western fields but he could not remember when this was. The cattle tended to be in one or other of the fields and they would stick together. He could not recall seeing calves.

130. He recalled the hay cropping. There were big, noisy machines. He could not recall seeing a combine harvester moving from the one field to the other but they would generally keep out of the way especially as one of their sons has hay fever. He accepted the Objector's evidence that hay cropping was done when the beef cattle were present and more recently by the Clothiers.

131. He recalled the foot and mouth disease outbreak but there was no outbreak in the area unlike elsewhere in the country. He did not recall any associated signage. His recollection was that the countryside was generally closed. He did not recall Mr. Candy's NFU signs. He was taken to the Objector's bundle tab 3 paragraph 7 and tab 18 paragraph 11 and the state of the fencing. He was confident that the fencing at the bottom of his garden was no different.

132. In re-examination he described the state of the fencing as variable. Some was secure and others not. Some was old, some hidden in hedges and some sub-standard.

133. *Rachel Titcombe* and her family live at 15 Greyfield Common, High Littleton BS39 6YL. They moved there in **October 2006** and have known the Land for **7 years** as at the date of the Application. She produced a witness statement signed by her (but undated) (page 556), a witness statement signed and dated 27 July 2013 (page 385) and an evidence questionnaire signed and dated 8 July 2013 (page 375) together with a number of photographs. She confirmed the accuracy of the documents and read her witness statement at page 556.

134. She explained the nature of The Gug and Gorse Park. She clarified her answer to question 11 on the evidence questionnaire - she does not physically go onto the Land every day as she considered the Land to be an integral part of her garden view. Her daughter Sophie does go on to the Land most days.
135. In cross-examination she was referred to her email of 6 July 2013 (page 140). It was sent after the Silverwood Partnership had been to the extended Parish Council meeting. She and the others had been outside and people were asked for their email addresses. They then formulated a distribution list from this and from the lists of a couple of neighborhood watches. The neighbourhood watch lists were pre-existing. She put herself forward at the Silverwood Partnership meeting. There were over 100 people on the distribution lists. This email came after the initial meeting by the Silverwood Partnership on the Tuesday. Chris Rylance booked the Methodist Hall for the Friday and at that meeting there were about 60 people present including 3 members of the Parish Council. The meeting unanimously decided that the Applicants should act on behalf of the neighbourhood. She accepted that Mr. Weallans (page 436) lives outside the red line area and that not all of the evidence came from people within the red line area.
136. The Briefing Note was written by the Applicants. She accepted that the Objector's costs would not be borne by the Council. However the Applicants had decided that they did not want to be abrasive and therefore suggested that they should contact the landowners who had generously supported the area by selling the woods cheaply. Part of her thought that the landowners might support the TVG Application. The Parish Council did not support the Application.
137. She and her husband are the second owners of their house. It was built in 1999. She identified by name the various people shown on the photographs at pages 398. The photographs had been taken from Mr. Topping's garden. There have been two organized events for the whole of Greyfield Common and everyone was invited to join in. They charged people a few pounds per head for the barbeque food. They have had other impromptu events on the Land. The street parties were limited to Greyfield Common itself and there had been no need to close the street as it is a cul-de-sac. There was no public liability insurance but they relied on a

waiver of liability and acceptance of the invitation denoted a waiver of liability. The two events were community celebrations. The photographs on pages 386 to 388 were taken from her house using a zoom lens. They were of activities all around the southern end of the eastern field and all were taken in good weather. The top photograph on page 389 was of the western field near the middle boundary. It was her daughter in the photograph and she was 7 years old. The bottom photograph was taken from her land looking at the eastern field. The bottom photograph on page 390 was taken from her land and the photographs on page 396 were taken close to her land. The people in the photograph on page 563 were going from her house between the two oak trees and on into the woods.

138. The gate had been put in her boundary so that sheep could be put back onto the Land after sheep had strayed into their garden according to the previous owners. They would also use the gate to access the field to cut their hedge. She was taken to page 385 regarding her boundary and she said that the title deeds to their house placed an obligation on them to maintain the boundary fence. It needs little maintenance because it is made up of railway sleepers. She accepted that use of the Land by visitors and family from outside the red line area count not count for TVG purposes.

## **The Case for the Objectors**

### Oral Evidence

139. The Objector called a number of witnesses as set out below. In addition the Objector submitted Statutory Declarations from Mr. Kevin Bird, Mr. Robin Candy, Mr. Christopher Cawood, Mr. Brian Clothier, Mr. Norman Clothier, Mr. Peter Kingswill, Mr. John Ledbury, Mr. Alastair Martin, Mr. Richard Memory, Mr. Alan Sheppard, Mr. Michael Sheppard, Mr. Henry Wareham, Mrs. Margaret Wareham and Ms. Laura Wilkinson. As this written evidence contained in these Statutory Declarations has been given under oath I have attached greater weight to it than to unsworn statements, evidence questionnaires and the like.



140. **Mark Chivers** produced a witness statement signed and dated by him on 30 May 2014 (Objector's Bundle Tab 5). He read his witness statement. He works for DHL since February 2001 and around that time he changed from working on the Land to more occasional visits to the Land and helping Mr. Candy.

141. He recalled cows on the land from July 1993 onwards (the start of the relevant 20 year period). He mentioned the dairy cattle operation and the fence around the middle of the field. The eastern field used to be called "The Common". Mr. Candy also had fields on the other side of the lane going down to Maynards Terrace. The dairy cows would be milked about 6.30 am and then between 3 and 3.30 pm (twice a day). Both fields on the Land were used all the time and throughout the year.

142. In paragraph 4 of his witness statement he referred to calves. The calves would be in the home fields as mothers were very defensive towards their calves. They would try to integrate dry cows with milking cows as separation can cause problems such as fighting. Dependent on the grass, the cows and calves would be kept together in the home fields for about four days. After about two weeks the calves would go to market and the mothers reintegrated into the herd. This was an on-going situation as calving is not seasonal unlike lambing. With cattle it is a 12 month exercise. At any one time at least one cow would be calving. Occasionally they would put one bull in the field to impregnate cows in season.

143. Mr. Chivers explained the strip grazing. There would be ten foot strips and it would be continuous across the two fields. It would take place between March to October but was dependent on the richness of the grass and the weather. It would take two to three weeks to go through this.

144. The beef cattle were on the Land from 1994 until 2002. The fence across the field was still there to prevent the grass being trampled down. Unlike with dairy cattle they would not strip graze the field but the fence was to stop the grass being trampled down. The middle fence was still there. The fenced off areas would not be fenced off for a large amount of time unlike with dairy cattle. They would

try to keep one area free from cattle to encourage grass growth. They would keep some cattle out in the home fields all the year.

145. Between the Common and the eastern field is a fence which would stop the cattle going between the two fields. To move them between the two would require the gate to be opened. This walkway arrangement would last from April to November each year. Mr. Candy would buy in four or five calves and suckle them and they would be weaned off after six or so months and another set of calves brought in to replace them

146. With regard to hay making, with the airy cattle they would strip feed the top of the eastern field and would cut the grass and make hay or silage once a year and, sometimes, twice. They would do the same with The Common. Mr. Chivers recalled hay making when the beef cattle were present but his memory of this was not as good as with the dairy cattle.

147. Muck spreading took place between March and May and after July. It would be spread across the fields and would depend on the weather. They would also spread the muck from the sheds. The main area for muck spreading was the top half of the western field but which was dryer but not the bottom half which was wetter. Muck spreading was always dependent on the weather. The muck spreading involved manure and some was sloppy and other manure would be firm. However no one would want to be using the Land for recreational purposes when this was happening. In summer the muck spreading could take up to a week.

148. When the foot and mouth outbreak occurred in 2001 Mr. Chivers was no longer actively working on the farm but he would visit once a fortnight. He recalled the signs on the fence and the gates. He would have more general conversations with Mr. Candy.

149. In cross examination Mr. Chivers explained how he came to work with Mr. Candy. Mr. Roy Blacker used to work with him as did others. Mr. Candy had his cows on the Maynards Terrace fields and on some rented land. He was not aware of any of Mr. Candy's cattle on a farm in Wells. He (Mr. Chivers) was paid pocket

money but he did it more for enjoyment. He explained that the dairy farming was a complete rolling annual cycle of use and they would be rotated in the fields. Mr. Candy would hire in a bull and would also use artificial insemination for his best cows. The less good cows (in terms of yield) would be put to the bull. They did not need to strip graze in every field. The beef cattle did not go to the fields at Maynards Terrace very often. They were grazed on all the fields in Greyfields including by the woods. The dairy cattle would sometimes make more limited use of the land - it all depended on sensible husbandry. The length of time that the dairy cattle would be in the fields would depend on the weather. The strip feeding involved fairly wide strips but it depended on how the cows had eaten the previous day. With regard to the observation in paragraph 8 of this witness statement he agreed that some people would be seen walking in the fields when muck spreading had taken place.

150. When the foot and mouth outbreak occurred he would drive down to the farm. He could not remember whether he disinfected his car. He would be calling in for a chat and his knowledge of the farming activities at that time was not that great and he could not remember much about the effect of the outbreak on his farm.

151. **John Ledbury** produced a witness statement signed and dated 2 June 2014 (Objector's bundle tab 12) and a Statutory Declaration. He read his witness statement.

152. He found some people who said they would give evidence on behalf of the landowners but had not been forthcoming. He also met a lady who was aware of the TVG application - she is a longtime resident - and they had a long conversation about it and she had the wrong impression that the Land was to be developed and he had convinced her that the whole of the Land would not be covered with houses. However her statement was not forthcoming because her partner had persuaded her not to get involved.

153. He had visited The Gug on 8 June 2014 and in the second week of October 2014. On 8 June he was present from 6.45am to 8.30am. He was trying to assess the traffic usage. He saw it used on eleven occasions including one taxi and one

commercial vehicle. Ten vehicles accessed Briggs Yard. Eight vehicles came down The Gug and three came up from Gorse Park. In second week of October he was there from 6.50am to 8.30am. The main difference between the two visits was that there had been some fairly bad potholes that had now been filled in.

154. With regard to snow falls, there had been large snowfalls in 1993 and 2013. He did not have accurate records as he lives closer to sea level. However he could say that it did not snow every year and perhaps only 6 times in the 20 year period.

155. In cross-examination he agreed that The Gug was at time difficult to pass along. It is in a considerably improved condition but he was unaware of how this had come about. The chairman of the Parish Council had told him that it was a public road. He was not aware that the residents on The Gug had asked the Parish Council to contribute funds to its repair but were told that the Parish Council could not contribute because it was a private road.

156. With regard to his visits to the site during the relevant 20 year period he felt that he had visited the area about fifty times or more but he had not been specifically looking out for use of the land but there was nothing that caused him to wonder what was going on. He believed that some people who exercised their dogs on the Land had permission from Mr. Candy.

157. *Alan Sheppard* produced a witness statement signed and dated 2 June 2014 (Objector's Bundle Tab 15) and a statutory declaration. He read his witness statement.

158. The BMX track has seen renewed activity and he had spoken to Paul Wyatt - the chair of the Parish Council - who told him that another group of youths, older than previous groups, appeared to be reconstructing the BMX track and playing loud music and causing some disturbance. Signs had now been put up stating that it was private property and that people should keep out. He also stated that there was no evidence that there had been a statutory closure of the Land during the foot and mouth outbreak.

159. In cross-examination he was taken to the aerial photograph taken on 3 June 2006. This showed some sheep on the Land. They were spread out. He was then taken to Mr. Clothier's sheep records (Tab 7) which shows 116 sheep on the land. He was then taken to the aerial photograph of 22 May 2010 which appeared to show no sheep in the field. However he felt that it was hard to identify any animals in that field even though Mr. Clothier's records show 78 sheep should be in the fields. It was put to Mr. Shepherd that the entries might refer to other fields owned or used by Mr. Candy. It was also accepted that Laura Wilkinson recorded no livestock on the Land when she visited it on 2 May 2013. (Mr. Honey accepted that the figures were inaccurate). The July 1999 photograph showed a number of animals on the Land. The sheep were distributed over the whole of the western field and there was no fencing. Mr. Sheppard could not say what the image showed as his eyesight was not that good.

160. With regard to the signage there was only one sign and that was the one on the gate post. It was a small sign by the NFU asking people to keep their dogs on leads. He was then taken to the witness statement of Mr. Kevin Bird (Tab 1) and the accompanying report conclusion on page 5 which records increasing public use of the Land which could be taken as accepting that there was some public use of the land taking place already. However Mr. Sheppard felt that the only person that could interpret that sentence in the conclusion was its author.

161. In re-examination Mr. Sheppard was taken to the visual assessment on page 3 of the report which referred to "opens up" this area of land and Mr. Sheppard agreed that this was looking to the future.

162. **Alastair Martin** produced a witness statement signed and dated by him on 2 June 2014 and a statutory declaration. He confirmed the accuracy of both documents and read his witness statement. He also read the email in the Core Bundle (Tab RA03: Objection).

163. The fields had always contained livestock when he had visited the farm. He explained why strip grazing was undertaken. It is a technique used by many dairy farmers to ensure the efficient use of grass. Dairy cattle can 'blow' if they have

unlimited access to grass. It is quite a laborious exercise as the fencing has to be moved each day. Mr. Candy certainly used strip grazing - it was entirely logical for him to do so.

164. The Foot and Mouth outbreak was horrendous in the area. It was impossible to say where it would spread but happily for High Littleton there was no outbreak. He confirmed that the area was not subject to statutory closure but it did mean that everyone had to be very conscious of hygiene and farmers were paranoid with people mixing with their livestock. It was common practice to erect Foot and Mouth signs - some were homemade and others were provided by MAFF. It was not just that animals were lost but also whole bloodlines would be lost.

165. In cross-examination he stated that he visited the farm approximately once a year for an average of one hour. There was no particular pattern to his visits but it would normally be at springtime when farmers would have turned out their animals from the buildings into the fields and the buildings could then be examined for repairs. He would drive down to the farmstead and go inside to talk to Mr. Candy who would often show him something that needed attending to. He (Mr. Martin) did not have a practice of walking every field. The fields are very undulating and views from the farmstead to the Land are limited. He had no reports of sheep worrying but he felt that Mr. Candy would have kept people out of his fields if livestock were present.

166. He was referred to the sign on the gate. This was an NFU sign. It was about keeping dogs on leads but it did not necessarily infer that the farmer is inviting people to use the Land. Sheep are, by their very nature, nervous animals. In 2001 the Land was leased or licensed to the Clothiers but sheep had been on the farm before then for over wintering. The Foot and Mouth outbreak was spread by vehicles and peoples' boots etc. so it was not just caused by animal to animal contact.

167. **Peter Kingswill** produced a witness statement signed and dated 2 June 2014 and a statutory declaration. He confirmed the accuracy of both documents. He also referred to emails dated 28 August and 17 September 2013.

168. When cows were due to calve they would be placed in the area close to the farmhouse. Once born the calf would accompany its mother into the main field on the Land. He referred to the aerial photograph of 1992 which showed strip grazing in the south west corner of the western field on an area of land that had been enclosed by an electric wire fence. It was possible to see the animals in them because of the evidence of grazing - you could see the channel or cows "walkways" that used to be enclosed by wires. The strip grazing would move at different speeds due to the growing conditions of the grass. The fields would be strip grazed in the first half of the farming year from April to June then in June it would move on to making hay or silage. In general the grass growth falls away after the middle of the year. Strip grazing uses wire fencing because it is quick and efficient and all farm stock recognize the effects of electricity. Sometimes you would get a grassy crop in the autumn if the summer had been warm and wet. This can provide additional silage. It is a useful management tool because you can be in control of your inputs. Redundant dairy cows would be used for weaning. The dairy cattle and calves would be in Mr. Candy's home fields because they are on the doorstep and so it was Mr. Candy's main production area or workplace. Adolescent cattle would be kept closer to Maynards Terrace.

169. At the time of the Foot and Mouth outbreak he (Mr. Kingswill) was chairman of the livestock auctioneers. It was a horrendous period and it was impossible to say where it would next come from. His business was effectively closed for the best part of a year. He was very concerned about this highly contagious disease. It was transmissible aurally as well as through soil, muck and dirt. He did not have any direct cases in north Somerset but it was never very far away. He was very conscious of his responsibilities as were the people in the village. Mr. Candy certainly put up signs and he recalled that the NFU had been very forward in posting out notices to all farmers to reduce the chances of the disease being transmitted. He remembered a sign on the main gate by the oak tree and on the bridge down to Maynards Terrace. He was certain that there had been no statutory closure of the Land and he did not recall any public use of the Land during that period.

170. In cross examination he stated that it was normal practice to keep dairy cattle in buildings from November to March although younger cattle might stay out

longer. The strip feeding would take place from the time the cattle were turned out until July as this is the time of the main grass growth. He did not think that Mr. Candy used any other land for his beef cattle although he did have another parcel of land at Clutton Hill and also some at Mendip. Whilst Mr. Candy did not form a cordon sanitaire during the Foot and Mouth outbreak he did in the early days construct a bund of disinfected straw on the track down to the farm and Greyfield Wood.

### **The Submissions for the Applicant**

171. The Applicant produced written Closing Submissions with appropriate references to relevant case law. I set out below a summary of those submissions.

172. In 2013, concern grew in the Greyfield neighbourhood that the land known as Robin Candy's Fields, over which several generations have enjoyed access for community and individual recreational purpose, appeared to be coming under threat. To address these concerns the inhabitants of the neighbourhood applied for the land to be registered as a Town or Village Green.

173. We have "properly and strictly proven" on the balance of probabilities each and every element of the Statutory Test as set out in section 15(2) of the Commons Act 2006. This has been demonstrated by our legal submission which we submitted before the Public Inquiry in June 2014 and the evidence provided by the Greyfield residents that is contained within Volumes 1 & 2 of the Applicants' Bundle prepared for this Inquiry.

174. For the purpose of brevity we will not repeat here the statements and references contained in our legal submission, or our response to the Objector (contained in the Registration Authority's Bundle).

175. During the first session of the inquiry we were asked to consider the point raised in the decision in *Barkas* that the *Beresford* case can no longer be relied



upon. Our view is that the reasons of the Supreme Court for the decision that Beresford cannot be relied upon are not relevant to this application. Robin Candy's Fields are not a piece of land owned by a local or public authority or held under a provision such as the Housing Act. However, there is text within the *Barkas* Supreme Court judgment that is pertinent. We would like to draw attention to paras 15, 16, 17 & 24 and Lord Neuberger reinforces Lord Hoffman's views on "as of right" and clearly states that the position of a private landowner is very different to that of a local or public authority. Robin Candy's fields are owned by a private landowner.

176. The Objector has submitted *Naylor v Essex* under cover letter dated 1 September 2014, and stated that he will refer to it in his closing statement . We note in Paragraph 74 that any break in the interruption of use is a matter of judgement for the Registration Authority. There has been no construction work to the application land that would prevent usage by the neighbourhood residents. John Howell QC states in paragraph 75 that such an obstruction to the public is very different to low level agricultural activities.

177. A significant number of inhabitants: You have heard from Mr. Collins that 36% of persons who reside in the neighbourhood at the time of application have provided evidence of usage. This equates to 118 residents which is clearly a significant number. The Objector submits that some usage should not count towards village green registration. We do not agree with their argument. Even if we discounted all usage by residents having permission for specific activities (e.g. fireworks) and all residents having a garden gate onto the land then the number would only drop from 118 to 82 residents. This remains a significant figure (25%).

178. In the Objection letter (9 September 2013) the Objector stated that evidence of usage has been provided by 38 households. The 2011 census shows an average occupancy of 2.3 persons per household. This equates to 87 residents. We provided evidence to show that the actual figure is higher. However, we submit that even the Objectors conservative figures of usage are significant.

179. Neighbourhood: Mr. Collins, Mr. Moore and Mr. Fenton provided evidence under cross examination that demonstrated that Greyfield is a neighbourhood for the purposes of the Application.

180. The Objection letter (9 September 2013) from the Objector clearly stated in paragraph 3.2 "The owners do not at present disagree that the residents of Greyfield Rd, Greyfield Common, Westwood Avenue, Up the Gug, the various houses now on the former colliery site and Gores park constitute a neighbourhood". Furthermore they refer to the households who have provided usage evidence as being within " ....this neighbourhood".

181. You have heard from Mr. Kingswill, a witness for the Objector who lived in Greyfield for 24 years. He describes in his statement the use of the land by children from Greyfield Common. He stated that he saw other persons using the land and he was "neighbourly" to them. The term "neighbourly" is a characteristic of a "good" neighbourhood. It means that residents behave with friendliness, helpfulness or kindness and have as a sense of cohesion and identity.

182. During the site visit you saw that the road surface of the steep and narrow hill of The Gug has been partially repaired in places along its length. This is an initiative of the residents of this private road. They reside outside of the Greyfield neighbourhood. Overall, the road surface of this private road remains in a very poor state. The repairs took place after the Application for the Land to be registered. They are of no significance to the application.

183. Mr. Ledbury was a witness for the Objector and he has told us, under cross examination that he observed cars using The Gug in June and October 2014 (which is outside of the 20 year qualifying period). He noted that The Gug had been repaired and the surface showed "considerable improvement".

184. Lawful Pursuits and Pastimes: Signed statements from the Objector's witnesses support the Applicants in that the Land has been used for lawful pursuits and pastimes in accordance with the requirements for Town & Village Green Registration.

185. For the Objector this evidence has been provided by Mark Chivers, Brian Clothier, Norman Clothier, Robin Candy, Christine Candy, Karen Corrigan, Peter & Nicky Kingwill, Robert Ladd, John Ledbury and Anthony Smith. They have all witnessed recreational use of the land. We point out that John Ledbury only observed the land on five occasions for between one and three hours at a time. An extrapolation of his observations of use over the 20 year period show significant usage.

186. In his evidence to the Inquiry, Mr. Bird of Silverwood Partnership for the Objector has provided a copy of a preliminary visual assessment of the land in question prepared by Tisdall Associates. The assessment report concluded that there were opportunities for "increasing public use and enjoyment of the adjacent high quality landscape". It was therefore clearly accepted by Tisdall Associates that public use of the land was already taking place.

187. Under cross examination, Mr. Chivers told us that he witnessed mushroom picking in addition to the recreational activities listed in his evidence in chief, of people walking and children playing. Mr. Chivers observed these recreational activities when he was on the land (which he told us was once or twice a day).

188. In his statement Mr. Chivers declared that there were no worn paths. This confirms the evidence of our witnesses who have demonstrated that they did not walk set routes or defined pathways. Residents used the Land as a whole for their sports and pastimes.

189. The objection letter (9 September 2013) clearly stated in paragraph 3.8 that "the owners accept that the activities claimed are lawful sports and pastimes for the purposes of Section 15.

190. As of Right (without force, secrecy or permission): We have provided evidence that demonstrates that the use of the land by the residents was not trivial, sporadic or in secret. This is supported by the evidence provided by the Objector. Farmers and other persons associated with the farm have confirmed such recreational use.

191. During the site visit you saw the sign on the main gate to the field which politely asks dog walkers to put dogs on a lead near livestock. The sign demonstrates that the farmer recognised this type of recreational activity was taking place when livestock were in the field and was significant enough to warrant the erection of a sign.

192. Volume 1 of the Applicants' core bundle has provided to the Inquiry evidence from 118 residents who submitted their evidence of use of the land. It can be seen that 97 residents included frequency of usage data. The average frequency of use is 91 times per year per person. It is improbable that this level of use could be in secrecy.

193. You have heard from Mr. Collins that of the 118 residents who have provided evidence of usage of the land, 95 have specified that they access the land by farm or garden gates whilst the remainder have not indicated how they access the land. There is no dispute that the main gate to the field from the road is unlocked. We have shown that entry is without force.

194. The gates in residents' garden boundaries have been present for many years and are clearly visible from the land. You have heard witness evidence confirming that they are responsible for maintaining the boundaries of their property.

195. The Objectors have tried to demonstrate that the fencing around the field was in a good state of repair. This is simply not the case. We have numerous witnesses who have provided statements and described to the Inquiry under cross examination that the fencing was insufficient to prevent the livestock from sometimes escaping. Mr. Neech, Mr. Sheen and Mr. Topping described how they repaired old or missing fencing / hedges. In fact the Objector's example of fence wire being cut is actually an example of Mr. Sheen repairing a fence that was poorly maintained. During the site visit you saw the age and poor structural quality of some of the fence posts.

196. You have heard that many residents have been seen on the Land by Mr. Candy and other persons associated with the farm. Mr. Collins told the Inquiry that 39 residents who provided evidence of usage stated that they had been seen on the land by the owner/farmer. 33 residents had spoken to the owner/farmer when on the Land but none had ever been asked to leave. Mr. N Clothier, who keeps sheep on the Land has stated in his evidence that he saw people on the Land but did not ask them to leave.

197. Of the 118 residents who provided evidence of use, 6 have asked for permission to use the Land for their own specific use or event (such as fireworks). There is no record that any signage or broadly communicated permission or restriction of usage has ever taken place.

198. Mr. Sheppard described how he erected signage at the land used by local children for a BMX Park which clearly told people to keep out. The BMX Park is a short distance from the main gate to Robin Candy's fields. If the landowner, his agent or tenants did not want people to use the fields subject to this application, why did they not place similar signage at the fields?

199. Mr. Collins told us that of the 118 residents who provided usage data for the application in 2013, 28 of those residents have used the land over the 20 year period.

200. The significance of this figure is reinforced when you consider the "normal" turnover of residents in a neighbourhood over that period. There will have been evolutionary growth of the number of houses in rural neighbourhoods such as Greyfield. i.e. 28 individuals would represent a larger percentage of the residents at the start of the 20 year period relative to 2013.

201. You have heard from the Objector that he doubts the continuity of use of the land over the 20 year period because of the 2001 Foot and Mouth outbreak. The Applicants have provided evidence in Volume 1 of their bundle submitted by 47 residents that their use of the land for recreation included use during 2001 without interruption.

202. There was widespread media attention regarding the Foot and Mouth Outbreak and the impact on the countryside. You have heard during the Inquiry that there were no outbreaks within High Littleton or nearby. Mr. Candy has stated the need for him to perform regular daily visits to the Land to ensure no public access during the outbreak. He obviously felt that these visits were required due to the fact that the public were using the Land during the outbreak.

203. We do not dispute that the usage of the countryside for leisure reduced in 2001 as a result of the Foot and Mouth Outbreak. During the outbreak there was a period where footpaths were subject to statutory closure by the local authority (Bath & North East Somerset).

204. Issues affecting the Land during the 2001 Foot and Mouth Disease are unclear. You have received a copy of an email from the Bath & North East Somerset's Public Protection Service stating that there was a "blanket ban on the

use of all footpaths and entry to farms during the Foot and Mouth Outbreak of 2001".

205. You heard from Mr. Honey, in his opening statement that signage had been erected on the Land that had been supplied by the NFU. You have now been advised by the Objector that the signage was not issued by the NFU. The Objector has provided a press cutting of a sign that he says is identical to the one displayed by Mr. Candy. The sign states "Foot & Mouth Disease, Please Keep Off This Land, Ministry of Agricultural, Fisheries & Food".

206. At the Inquiry, Mr. Martin stated that people were asked not to cross over farmland and that farmers displayed signs to this effect. He told us that some signs were homemade and some were issued by the Ministry of Agricultural Fisheries and Food.

207. You have heard from Mr. Topping, Mr. & Mrs. Rylance and Mr. Allen that they do not recollect any signage regarding Foot and Mouth disease relating to the land subject to the application. A witness for the Objector (Mr. Clothier) has stated that signage was present at two gateways to the Land. There is however no dispute that signage was not placed at the numerous gates that accessed the Land from residents gardens.

208. It is pertinent to the Application to consider how the signs which have been provided by the Objector would have appeared to a reasonable user of the Land. The sign does not demonstrate that the owner is exerting a right over the Land. It is a statement that the public should keep out due to Foot & Mouth Restrictions under instruction by the responsible Ministry. A reasonable person would have believed that it was issued with statutory force especially given the closure of footpaths crossing parts of Greyfield Wood Farm.

209. Given the usage figures from the residents, the context of the time, the neighbourly tolerance & deference that has been demonstrated and the wording of the alleged sign, it does not cause the use of the land to become contentious, prevent the use of the land by the residents as being "as of right" or constitute an interruption of use.

210. Although the applicants' evidence demonstrates that there was not a break in continuity of usage of the land during Foot and Mouth, if this were to be the case it would not be fatal to the application.

211. The Application was made in accordance with the DEFRA Guidance "Section 15 of the Commons Act 2006: Guidance Notes for the Completion of an Application for Registration of a Town or Village Green" (2007) in which a foot and mouth outbreak is given as an example of a closure which should be disregarded. It states: "Any period of statutory closure (e.g. during a foot and mouth disease outbreak) to be disregarded when deciding whether there has been 20 years' use as of right".

212. In our legal submission we discussed Newhaven which refers to *Hollins v Verney*. This clarified that an easement by prescription can be continuous although intermittent. The case contemplates that even low usage (such as annual usage) could be enough to comply with the Prescription Act if usage were visible to a reasonable person. Newhaven makes it clear that it is not necessary for the application to be successful, that the use of the land be non-stop.

213. Agricultural use and compatibility with the Town & Village Green Application: It has been demonstrated in law that that low level grazing and taking of a hay crop is compatible with Town and Village Green registration.

214. The Applicants have demonstrated in their evidence statements and in oral examination that there has been no incompatibility between the agricultural use of the land and their recreational use.



215. You have heard a detailed description by Mr. Chivers of muck spreading on the Land. Muck spreading did not extend to the whole of the Land and was concentrated on approximately a quarter of the Land. We would like to refer you to his statement where he confirmed that he saw people dog walking during this activity.

216. Mr. Chivers also described the calving that took place on the land. It is noted that calves were kept separate from the rest of the herd in the field by fencing and that only 1 cow was calving at any one time.

217. The compatibility has been demonstrated by Mr. Kingswill (witness for the objector). He observed people in the field with and without dogs when cattle and sheep were present. He states in his declaration that he observed people 'behaving responsibly to the land and the stock'.

218. Mr. Kingswill states that he would have reported any usage to the field owner, farmer or agents if any of his observed usage by the public was becoming an issue. He did not. This is substantiated by Mr. Martin (the managing agent). He states in his signed declaration that there were no such reports made to him.

219. You have seen the aerial photographs presented by Mr. Sheppard that serve to illustrate that the number of sheep on the land is very low level in intensity when considering the size of the land.

220. Mr. Norman Clothier has submitted a sworn statutory declaration that purports to provide sheep movements to Home Fields and identify this as being the land subject to this Application (see para 4 and 6 of his statement in particular). It shows quantities of sheep and dates when they went "In" and "Out" of the land. Under cross-examination you have heard Mr. Sheppard try to claim that the data relates to movements to Greyfield Wood Farm and not Home Fields. However, this is speculation on his part and there is no evidence to support his claim. Mr.

Clothier states clearly in his statutory declaration that the figures relate to the Application Land. It is clear that the data and Mr. Clothier's signed declaration are inaccurate.

221. The sheep records of the Clothiers have been found to be contradictory to the evidence provided by both the Objector and the Applicant for several periods. In some periods (e.g. the whole of 1999) the Clothiers admit that they can find no records at all. For example, the Clothiers provide sheep records that show that sheep were in the field at the time when Ms. Wilkinson (under instructions by Mr. Sheppard) visited the land to appraise it. Ms. Wilkinson stated that there were no sheep in the fields (and provides photographs to support her statement).

222. With respect to the cattle, the intensity of grazing has been questioned during the Inquiry and the number has been roughly agreed as between 35 and 45 at its peak. This is clearly very low intensity grazing for the size of the land.

223. Mr. Honey questioned Mrs. Rylance and Mr. Allen at length regarding the cattle in the field. It was clear that his view of the cattle grazing differed to their first-hand knowledge. This perhaps is not surprising. Mr. Honey has relied on the Objector's witness statements that have been shown to contradict one another regarding the periods when cattle were in the field.

224. The Statutory Declarations signed by the Clothiers state that solely cattle were in the field during the summer months until 2002. However, sheep movement records show that sheep were in the field all year round in 2000 and the summer months of 1998 and 2001.

225. You have heard that the cattle were not always in the Home Fields (the Application Land) during the day and the beef and dairy cattle were moved between fields along the lane known as Maynard Terrace and the public right of

way to the farm. The dairy cattle were moved as frequently as 4 times per day along Maynard Terrace and the lane to the farm.

226. Under cross examination, Mr. Chivers stated that the cattle only spent part of the day on the Application Land. This was usually overnight and that at other times they were kept in fields along Maynard Terrace. He confirmed that some of these fields had public footpaths within them.

227. It follows that the beef and dairy cattle's presence was not incompatible with recreational use by the public. Maynard Terrace is open to the public and the lane to the farm and some of the fields where the cattle were kept have public rights of way.

228. Any person who walks through the countryside will have experience of cattle and sheep held within fields having public footpaths. We have provided literature from the Health and Safety Executive and Outdoors West that substantiates this widespread observation of fact that cattle and sheep grazing is compatible with the use of the Land by the public for recreational purposes.

229. We have heard that at some time during the year the cattle were held in enclosures within the field. Our witnesses under cross examination state that these fences were not electrified or that they were easily negotiated. Mr. Allen has described the electric fences as "a bit of a joke" under cross examination. Mr. Chivers, for the Objector has provided evidence stating that the electric fences he constructed were not always turned on.

230. Mr. Chivers states in his declaration that the strip feeding lasted only a few weeks at a time and that over a period of the year the strip feeding would be relocated to cover 60% of a field in total. Therefore, during the period of time when strip feeding was applied only a very small part of the fields would have been affected.

231. Mr. Chivers has shown you a photograph (May 1992) of the field and described how the fields were typically used during strip feeding. The evidence that he gave verbally by referring to the photograph shows that the strip feeding typically covered an eighth (12.5%) of the field at any one time for a period of a few weeks.

232. Mr. Kingwell gave a comprehensive view of how the cattle were distributed within the application site and the use of strip feeding. Based on Mr. Kingwell's evidence it is clear that the cattle were not on the land between Nov and March/April each year. During the period between April and July (possibly into autumn, depending on the weather) Mr. Candy would operate a strip feeding system. This means that there was always space available on the land for the residents to pursue leisure activities alongside agricultural use.

233. In conclusion we have shown that the agricultural use of the land is entirely compatible with the recreational use by the residents of the neighbourhood.

234. Conclusion: We have "properly and strictly proven" on the balance of probabilities each and every element of the Statutory Test as set out in Section 15(2) of the 2006 Commons Act.

## The Submissions for the Objectors

235. Referenced written submissions were received from the Objectors supplementing rather than repeating the Objector's submissions in its Opening Statement and its Legal Submissions dated 3 June 2014. Both those documents have been read together with the closing submissions as requested by the Objector. The Objector's submissions are summarized (wherever possible) below. The Objector's references have been omitted where possible from the summary below but they have been considered and taken into account by me in coming to your conclusions.

236. The Objector's evidence has, in the main, been provided by way of sworn statutory declarations, so that it can be given very considerable weight. Moreover, the Objector's main witnesses have been cross-examined at the inquiry. Mr. and Mrs. Candy both sadly died during the course of the inquiry and so could not give evidence. The Objector's written evidence is not summarised in these submissions and the Inspector is asked to read the Objector's written evidence in its entirety when reaching his recommendation. The Objector's concerns about the fairness of the pre-inquiry process, summarised orally in opening, remain.

237. Applicants' Evidence: All the witnesses who gave oral evidence for the Applicants confirmed that their evidence was complete and that they had said all that they had to say which was relevant to the inquiry. That is perhaps unsurprising as most had completed a questionnaire and produced two witness statements. Mr. Collins explained in cross-examination (XX) that there had been a "blanket drop" of questionnaires to all households in the red line area, and that there had also been a second chance for people to submit questionnaires after the initial round. He also said that they had taken questionnaires from people who had moved away from the area.

238. It is clear that the Applicants made every effort to collect evidence for the inquiry so all the evidence which the Applicants could have produced in support of the application has been put before the inquiry.

239. Many of the witnesses were also frank about their motivation for giving evidence. Rachel Tidcombe, for example, said that they would try everything they could to protect the Land. In her letter to the Registration Authority (6 September 2013) she said: "we wish to protect the area from development of any kind". Her email sending the questionnaire out to people to complete said that evidence on usage was needed for "opposition to development". She also said that it was "important that we collate as much data as possible".

240. The witnesses wanted to stop the development of the Land which had been proposed. That is why they were giving evidence. It is interesting to note the location of the houses of those who came to give evidence, as was shown highlighted on the large aerial photograph used during the inquiry. They all border the application site. They would all stand to lose something - perhaps in amenity and in the value of their houses - if the application site came to be developed. They have a strong motivation to stop development. It was clear, in some cases at least, that this motivation coloured their evidence and prevented them from giving evidence genuinely aimed at assisting getting a complete and correct picture of the use of the Land.

241. When considering evidence, in particular photographs of use, it should be borne in mind that, as Mr. Collins told the inquiry, the Application was being talked about in April 2013. It is interesting that there are very few photographs of use of the Land during the relevant 20 year period. Those provided, for example by Chris Rylance, were either outside the 20 year period or did not show the Land. If the Land really was used as much as the Applicants suggest, it would be expected that there would be photographs of the Land, particularly from the 2000s with the rise of digital photography.

242. The position with the Parish Council was clarified with Mr. Collins. He accepted that, although the Parish Council did not formally object to the Application (in the way that the landowner did), it did not say that it had no objection to the Application. Indeed, as Mr. Collins explained, the Parish Council said that it did not support the Application and felt that it was an inappropriate use of village green law. That the Parish Council does not support the Application, and feels that the Application is inappropriate, is not without significance.

243. Farming Activities: The Applicants' written evidence failed entirely to address the farming which has taken place on the Land. Of the witnesses called by the Applicants to give oral evidence, few were around at the time when the Land was used by cattle, before 2002, or at the time of the foot-and-mouth outbreak in 2001, and those who were around did not remember much about the detail of the farming. However, importantly, they generally accepted the Objector's evidence and said nothing to contradict it.

244. Paul Allen - who had read the Objector's evidence - was asked whether there was anything in there with which he disagreed. Mr. Allen said that there was not, and that he was not saying that the evidence was wrong. This echoed what was said by other witnesses when asked about particular aspects of the Objector's evidence on farming matters. Moreover, the Objector's evidence on farming matters was not challenged to any significant degree by the Applicants in XX.

245. The Objector's evidence on farming (including cattle, strip grazing and foot-and-mouth) is not controversial. It is effectively, albeit perhaps reluctantly, accepted by the Applicants. The result is that, when the law is applied to facts which are not in dispute, the Application is bound to fail for any one of a number of reasons arising from the farming activities.

246. Bridget Rylance confirmed that she had seen the Land with dairy cattle, beef cattle and sheep on it and said in XX that the Land had been used for farming

throughout the 20 year period. She had known Mr. Candy for 42 years and confirmed that he was a diligent and traditional farmer who not only lived very close by but had also only ever been away for few days at the most. Mrs. Rylance also confirmed that the Land comprised Mr. Candy's home fields, which amounted to more than half his total pasture land. Mr. Sheen said that Mr. Candy was an honourable man. He also said that he accepted that Mr. Candy was telling the truth in his statutory declarations.

247. When asked about the agricultural use, Chris Rylance said that he did not disagree with his wife's evidence and that his recollection was very similar, although she had remembered more than he did. He said that the position was broadly speaking as it had been put to his wife in XX. He confirmed that he had nothing additional or different to say from his wife's evidence on all the topics.

248. Catherine Lane said that in her experience the local residents all followed the Countryside Code and this echoed the written evidence. She agreed that this meant that they would use gates where there were gates, leave gates as they found them, follow paths where there were paths, keep dogs under effective control, and keep dogs on a lead around farm animals. Leonard Sheen said that he would keep his dog on a lead if he could see sheep in the field. Neil Topping said in XX that even the kids were sensible and careful in how they used the Land when animals were in the field. It was formally accepted by the Applicants in their Response dated 30 September 2013 that local residents did keep animals on a lead around livestock (para 3.3).

249. Bridget Rylance accepted that cows can be dangerous, especially if there are dogs around, and said that she was sure that most people would have had dogs on a lead when there were cattle on the Land. She accepted that people would keep away from cattle, especially if there were calves or if they had a dog, and that the evidence showed that many people did not go onto the Land at all if there was livestock present. Mrs. Rylance said that they themselves had kept their dog



on the lead when cattle were in the field and she said in re-examination (RX) that she had seen young cattle on the Land.

250. Paul Allen accepted that it would not have been a good idea for children to be playing on the Land with cows, especially if the children were unsupervised. He agreed that local people would keep their dogs on a lead if there was livestock on the Land. He also said that if there were livestock present people would generally stay away from the livestock and keep to the boundaries.

251. The Applicants' evidence shows beyond doubt that the Land has been in agricultural use, including grazing by cattle and sheep. It also shows, importantly, that many people did not use the Land (e.g. for walking, dog walking or "games") at all when livestock was present. This was confirmed by Chris Rylance who said in XX that they always had the dog on a lead when there were sheep on the Land.

252. Dairy Cattle (to 1994): In addition to the Objector's written evidence, the position on dairy cattle was explained in oral evidence by Peter Kingswill and Mark Chivers, by reference to the large aerial photograph. The oral evidence was that when there were dairy cattle kept, the Land was split into three areas by fencing: the eastern field (known as the common) and the western field split into two by a fence running along the middle of the field, east to west. The dairy cattle would be in one of these three areas every day, as the fields were close to the milking parlour at the farm and were the best grass. The fields were used all through the summer and into the winter sometimes as well. The cows would be milked twice a day, around 6.30am and 3.30-4pm. The home fields would be used for cows at different times throughout the day as well as over-night.

253. Cows due to calve would be brought in to the milking herd (as dry cows were kept separately) in the home fields a week or two before it was estimated that they' would give birth, and then kept in the home fields for a few weeks after they were born, before they were sold. Calving was on-going throughout the year

and not confined to any season, so that throughout the year all forty odd cows would have a calf, but generally with each cow giving birth at different times.

254. Alastair Martin explained in XX that milking cows were kept separately and treated differently from the cows which were not producing milk at any one time. There was a constant, rolling, 12 month cycle of calving. Mothers would be very defensive when they had calves with them. Occasionally a rented bull would be put out in the home fields with the cattle.

255. Bridget Rylance confirmed in XX that Mr. Candy had dairy cattle present until 1994 and that he had around 40 cattle. When questioned on the details, she said that she just did not remember but that she would not contradict Mr. Candy's evidence. She did remember dairy cattle being in the home fields. Paul Allen said in XX that the cattle were more often in the western field than the eastern field. He said that around forty cattle was the right "type of number" he remembered and that they were in the fields from March or April until November.

256. Hay Cropping: In addition to the Objector's written evidence, the position on hay cropping was explained in his oral evidence by Mark Chivers, by reference to the large aerial photograph. Hay cropping was particularly connected with strip grazing (which is explained further below). As the grass got older, parts of the home fields were left to grow for hay or silage and the cattle were kept in the other parts, by electric fencing. There would be one or two hay cuts a year, depending on the weather. Both fields, east and west, would be cut for hay. The evidence from Peter Kingswill and Mark Chivers shows that this was mainly done when dairy cattle were kept but that it was also done during the beef cattle period, at least in the early years of keeping beef cattle.

257. The evidence from the Applicants' witnesses confirms that both fields have been cropped for hay. Mrs. Rylance said that she remembered hay cropping in the period when beef cattle were present (1994 to 2002) and said that she thought it happened in most years. She said that in some years she thought that there could

have been two cuts of hay and described what she remembered as being the normal cycle of hay growth. Paul Allen also said that he could not recall anything about how the dairy cattle were operated by Mr. Candy.

258. Bridget Rylance said that when the grass was growing long for hay people would just walk across the middle of the (western) field on a track and Mr. Topping said that people would use the perimeter of the field.

259. When hay was being grown it would have been apparent that it was being grown as a crop. Catherine Lane said that in her experience it was obvious it was a crop. She said that she would not go on to the Land when there was a hay crop growing. She also agreed that people would be considerate and would not flatten or damage the crop, especially those with dogs that could foul the hay. She said the people could not have used the Land for ball games when hay was growing and she said that when the hay was drying people would not mess it up but rather would walk in the tracks between the rows. Neil Topping expressly agreed in XX with Catherine Lane's evidence on the effect of hay cropping. He said that people would keep to the perimeter of the fields and Paul Allen also said that his general recollection accorded with the Objector's evidence. Mike Brewer said in XX that when the grass was grown long there tended to be a worn path which people tended to follow.

260. It was formally accepted by the Applicants in their Response dated 30 September 2013 that when a hay crop was being grown people would keep to worn tracks or the edge of the field (para 3.3).

261. Neil Topping described in XX the process of cutting hay as including heavy machinery going up and down and a process lasting two or three days when the weather was good. Paul Allen said that there were "big, noisy machines", that there was a lot of noise when it was done and that people kept out of the way when it was going on. Mike Brewer's evidence was to a similar effect: tractors going up and

down, typical hay-making with it being cut, left for two or three days to dry out, and then collected.

262. Emily Malik confirmed in XX that the photographs from June 2013 showing the western field with very long grass were typical of the summers during the time she has known the Land. It is clear from this that in the summer period, when use of the Land would be expected to be at its highest, the western field at least could not have been used for activities such as ball games. The growing grass would also have been treated with respect, as described by other witnesses, and would not have been used for activities anyway.

263. Muck Spreading: In addition to the Objector's written evidence, the position on muck spreading was explained in his oral evidence by Mark Chivers, by reference to the large aerial photograph. His evidence was that as well as fertilising the land, muck would be spread twice a year, in around February or March and in July. It would take around a week to cover the whole of the home fields with muck. The muck would be "sloppy manure", spread from a muck spreader, which had accumulated over time from the cow sheds. In February/March it would be spread mainly on the top half of the western field, as the bottom half was too wet. In July it would be spread on all the home fields, except where strip grazing was then happening (i.e. where the cattle were then being kept). The effect of muck spreading would last a minimum of a period of two weeks, during which no one would want to be on the field.

264. Bridget Rylance said in XX that she recalled muck spreading and agreed that all the fields would be covered, and that no one would want to use fields for playing after that had been done. The effect of muck spreading would have lasted for weeks potentially, depending on the weather, and at least a fortnight even in wet weather. The result would be that no one would have used the land for recreational purposes for a period of weeks after muck spreading. The only use that there could have been was simply walking across the Land (which is what the evidence shows was the primary use in any event).

265. Strip Grazing for Dairy Cattle: Alastair Martin explained that strip grazing was a technique used by many livestock farmers, especially dairy farmers, to allow an efficient use of grass, which was their main resource. Cattle tended to spoil good grass by walking over it or lying on it, and could also become bloated by eating too much, especially in spring and early summer. Mr. Martin explained that strip grazing was quite laborious and involved fencing land with electric fencing and moving the fence line every day. Mr. Martin confirmed that Mr. Candy used strip grazing in the Application fields.

266. In addition to the Objector's written evidence, the position on strip grazing was explained in oral evidence by Peter Kingswill and Mark Chivers, by reference to the large aerial photograph. This evidence was that the three areas of the home fields would be fenced off from each other. The cattle would be put into one of the three areas, with an electric fence penning the cattle into part of one area at a time. The fence would then be moved along progressively, from west to east, away from the lane. The fence was usually moved over once a day to expose a fresh strip of grass. The width moved each time would vary with the circumstances, but could be 10 ft. There would be a moving line of electric fence progressing across the field so that it eventually moved across the entire field. The fencing would remain in place even when the cattle were not in the fields. Each of the three areas of the home fields would be strip grazed in turn. It would take a good two to three weeks to get through each of the three areas. During strip grazing, land already grazed would also be back-fenced so it would be protected and able to re-grow more quickly, to allow the grass to be re-grazed. Once an area had been strip grazed it would be fertilised so the grass could re-grow. The cycle continued around the three areas of the home fields continuously from March through to September or October, depending on the weather and the grass growth. There would be active strip grazing through to July and then fencing to allow grass to grow for hay. There would be electric fencing in place throughout the application fields from March through to September time, first for strip grazing and then to allow grass to grow for hay or silage.

267. The May 1992 aerial photograph provides strong corroboration of the Objector's evidence, both that strip grazing occurred and what was involved. It shows land fenced off in such a way that any recreational use of the land simply could not have occurred. It also shows a channel or walkway for cattle fenced off along the bottom of the western field. This was described in oral evidence by both Mark Chivers and Peter Kingswill, who said that the area would be fenced off for the duration of the season from spring through to autumn. Although outside the 20 year period, the photograph is only just outside the period. In any event, it merely illustrates and confirms the sworn evidence given by the Objector's witnesses.

268. Bridget Rylance said in XX that she remembered land being cordoned off for strip grazing by fencing. She said that she did remember areas being fenced off by electric fence to stop the cattle eating too much rich grass. She said that although she did not particularly recollect the details, she was sure that Mr. Chivers' evidence on this was right. She agreed that the strip grazing would be during the summer months.

269. Mrs. Rylance said in XX that people would not get into the fenced-off area when the cattle were there. She said she expected that the fencing was left in place when the cattle were not in the field, and that the fencing would have been moved in sequence, away from the lane. Chris Rylance said in his XX that he did remember electric fences across the field to limit the amount of feed taken by the cattle.

270. Paul Allen could remember electric fences being used for the cattle. He said that they were an effective deterrent and that they would keep the cattle in as well as acting as a deterrent to people getting in. He described seeing "enclosures" made of electric fencing. Mr. Allen said that the 1992 aerial photograph was consistent with his memory of the type of thing that was done and was consistent with his memory in showing an enclosure. He remembered this in the eastern field as well, with fencing across the field running north/south. Mr.

Allen also said that he had no reason to doubt the evidence from the Objector on strip grazing.

271. It was formally accepted by the Applicants in their Response (30 September 20 13) that a strip feeding system using electric fencing was used for feeding cattle (para 3.3).

272. Strip grazing in this way would, in practice, have prevented the use of the Land for recreational purposes. The area which was being strip grazed at any one time would have the electric fence through it and would have the cattle contained within it for large parts of every day. There could be no use of the relevant part whilst it was being actively strip grazed. No member of the public would have gone into it, for recreation or any other purpose. Each area would be subject to active strip grazing for a period of weeks at a time. All the application land was subjected to this process throughout the season. This would prevent any of the Land from being registered as a green.

273. Moreover, whilst one part of the Land was being actively strip grazed, the other two areas of the Land would be fenced off and fertilised for the grass to grow. They would not be used for recreation either. Not only would access be difficult because they were securely fenced to keep the cattle out, but also they would be unsuitable for recreation, due to the growing grass, fertilising and muck spreading, and then eventually the cutting of the hay. The system of fencing for strip grazing and hay growing would also have prevented anyone from getting across the land or from one part to another.

274. The system of strip grazing and hay growing to which the Land was subject was so intensive and so disruptive to any recreational use, that, in practice, no recreational use could take place on any of the home fields whilst this system was in use. There would be a moving network of electric fencing in place from April through to September on the two home fields, for both strip grazing and hay

growing, and with dairy cattle (some with calves) on the Land, and the other related activities. This would cover the first two years of the relevant 20 years. It would amount to an interruption of any use of the Land for lawful sports and pastimes and prevent continuous use arising. It is an absolute bar to the registration of any part of the Land.

275. Submissions on continuous use and interruption were made in the Objector's Legal Submissions at paragraphs 16 and 18 and in the Objector's Opening Statement at paragraphs 22 and 23. Since then, the High Court's judgment in *R (Naylor) v Essex CC* [2014] EWHC 2560 (Admin) has confirmed that interruption could occur either by physical exclusion of inhabitants from the land or by carrying on an incompatible use of the land (paras 70-71). The case reinforces the submissions previously made by the Objector.

276. The system of electric fencing for strip grazing and hay growing in this case would have had the effect of interrupting any use and preventing any use of all the Land during 1993 and 1994. The Applicants cannot therefore show 20 years' continuous use of the Land for lawful sports and pastimes. The application must be rejected for this reason alone if no other.

277. Beef Cattle (1994-2002): In addition to the Objector's written evidence, the position on beef cattle was explained in oral evidence by Peter Kingswill and Mark Chivers, by reference to the large aerial photograph. This evidence was that beef cattle would be out in the fields for a full 12 months of the year. The home fields would be used constantly for keeping some beef cattle all year. There were always some cattle in the home fields.

278. Although strip grazing was not done as such with the beef cattle, areas would be fenced off for periods of three to four weeks, to allow the grass to grow without being trodden. The fenced areas would cover around three-quarters of the home fields throughout the year, at different times. There would also be a fenced pathway from the south-western gate of the western field, along the bottom of the western field, and then up to the gate into the eastern field, to allow cattle to be



taken to and from the eastern field without straying into the western field. This would be in place from April through to November time each year.

279. Robin Candy would buy-in ten or twelve calves a year, as well as having his own calves from his former dairy cows, and put them to suckle with four or five cows, to rear them. They would be weaned after some six months or so. They would be kept for two years and then sold, but there would be a continuous cycle of animals being bought in and then sold on. As with the dairy cattle, the calves would be kept in the home fields with their "mothers". The "adolescent" calves would be kept in the fields towards Maynard Terrace or elsewhere.

280. Mrs. Rylance confirmed in XX that, after the dairy cattle had gone, there were beef cattle at the farm until May 2002. She said that a number of about 45 sounded right. She accepted in XX that beef cattle were in the home fields for some parts of every year from 1994 to 2002 that only beef cattle were in the home fields from 1994 to 1998, and that, except for over-wintering, there were no sheep in the fields until 1998. When asked about the detail of the arrangements, including whether there were calves in the home fields, Mrs. Rylance said that she could not remember one way or the other.

281. Paul Allen remembered the beef cattle and said he was happy to accept that they had been present from 1994 until 2002. He said that he thought the number of about 45 cattle was "OK". He agreed that the beef cattle would be kept in the fields and moved around, but less frequently than the dairy cattle. He confirmed that beef cattle were in the home fields for some parts of every year from 1994 to 2002.

282. As with the system of fencing for the strip grazing and hay cropping during the dairy period, the fencing described above would also amount to an interruption of the use of the Land sufficient to prevent continuous use accruing during the period when beef cattle were present in the 1990s.

283. The Foot-And Mouth Outbreak: The foot-and-mouth outbreak ran from February 2001 through to January 2002. Alastair Martin, who was in practice as a land agent in the area at the time, explained that the outbreak was horrendous for farmers, not least because it was not known where the disease would spread next. Farmers lived in constant fear of being infected and made every effort to avoid infection. He said that the countryside was a very different place during 2001. Mr. Martin said that the public was invariably asked not to cross farmland during the outbreak and that they respected that. He explained that the NFU sent out signs for farmers to use and that, as well as using signs, farmers would be especially diligent to ensure people were not walking through fields. Mr. Martin confirmed that there were no cases of foot and-mouth in the vicinity of High Littleton and said that he was sure that the application site was not subject to any statutory closure.

284. Peter Kingswill was chairman of the Livestock Auctioneer s' Association in 2001. He said that it was a horrendous period, when farmers were extremely worried about the outbreak. He confirmed that there were no cases in north Somerset and that the Land was not subject to a statutory closure. He said that everyone in High Littleton wanted to be a responsible neighbour to Mr. Candy and that there had been no access at all to the application fields by members of the public during the outbreak. Mr. Kingwill said that notices sent out by the NFU had been erected on the two gates into the western field from the lane, and also on the oak tree in the lane. Mr. Kingwill said that the evidence in Norman Clothier's second statutory declaration accorded with his recollection of events.

285. During the outbreak, Mr. Candy put up signs to prohibit entry to the home fields and checked the Land to ensure that the signs were obeyed. The evidence is that local residents respected the signs and would not have gone into the home fields at all during the outbreak. Written evidence on what was done during the foot-and-mouth outbreak is contained in the statutory declarations of Robin Candy, Norman Clothier, Peter Kingswill and Henry Wareham. Norman Clothier's second statutory declaration (18 September 2014) provides the additional information

requested. This confirms that notices were in place from February 2001 until January 2002 on the two gates into the home fields from the track to the farm, that the fields were checked regularly to ensure that they were not used, and that they were not used. Mr. Clothier had sheep in the home fields from March until September 2001, having obtained licences to move the sheep. The notices were for use in "non-restricted areas", where no outbreak of the disease had been confirmed. They said: "FOOT AND-MOUTH DISEASE I PLEASE KEEP OFF THIS LAND". This echoes the evidence given by Robin Candy in his statutory declaration of May 2014 (para 7). The evidence is consistent and confirms that signs were erected, the home fields were checked, and that in practice no one went into the fields.

286. Mark Chivers was visiting the Candys about once a fortnight in 2001. He recalls seeing foot-and-mouth signs on the gates from the lane and he recalls Mr. Candy checking the fields. Mr. Chivers also confirmed that what was said by Norman Clothier in his second statutory declaration accorded with his own recollection.

287. There is no dispute that the Land was not used by local residents during the foot-and-mouth outbreak. It was formally accepted by the Applicants in their Response (30 September 2013) that there was not use "during the period around the 2001 Foot and Mouth epidemic" (para 3.9). Locals did not go into the fields during the outbreak.

288. Bridget Rylance said in XX that she remembered the foot-and-mouth outbreak in 2001, although she was "hazy" on the dates. She did not remember any signs, but was clear that she was not saying that there were no signs. Mrs. Rylance said that "of course" the locals respected the foot-and-mouth disease measures and would not have gone into the fields during the outbreak in 2001. Chris Rylance agreed with this, but added himself that he would be very surprised if Mr. Candy had not put signs up, and that people at the time were very conscious that the countryside was closed.

289. Neil Topping's evidence in XX was that there might have been signs for foot-and-mouth but that he simply did not remember. He also said that he was not saying that Mr. Candy's evidence was wrong or inaccurate at all. He simply did not recall the foot-and-mouth outbreak at all. David Fenton said that he would expect local people to obey foot-and-mouth signs.

290. Paul Allen's evidence, after he had seen the evidence of Robin Candy and Henry Wareham, was that he did not doubt that there were signs. He said that there was no actual outbreak of foot-and-mouth here, but that his recollection was that the countryside was closed. At least one questionnaire states that use was prevented during the foot and-mouth outbreak.

291. The agreed position is that when the foot-and-mouth outbreak was underway in 2001, locals would not have gone into fields. They did not. There was no recreational use of the application site at all during this period.

292. Submissions on the foot-and-mouth position were made in the Objector's Legal Submissions at paragraphs 16 to 18 and in the Objector's Opening Statement at paragraphs 15 to 21.

293. The recent judgment in *Naylor* confirms that the Objector's submissions on foot-and-mouth and section 15(6) are right. In that case, the Deputy Judge held that section 15(6) was concerned with a case in which there was a statutory prohibition on access to the land imposed on members of the public which had the consequence that the public could not lawfully use the land (para 81). In *Naylor*, as here, there was no evidence that access to the land was prohibited by reason of an enactment, so section 15(6) did not apply. It is exactly the same in this case.

294. No evidence has been produced by the Applicants to show that there was a statutory prohibition on access by members of the public to the Land imposed

during the outbreak. The evidence that has been produced shows that there was not such a prohibition, because it refers to other locations or to closure of public rights of way, neither of which are relevant to the Land. It is clear that in fact there was not such a prohibition, as was explained by the Objector's witnesses in oral evidence. As well as Alastair Martin and Peter Kingswill, Alan Sheppard confirmed that there was no statutory closure of the Land during the outbreak.

295. It was accepted by Mr. Sheen on the morning of Day 4 of the inquiry that there was not a statutory closure. He said, however, that because the signs came from MAFF a person seeing the signs would believe that a government department was asking them to keep off the land and would probably presume there was some statutory backing for that request. That is not accepted, but, be that as it may, it would not be enough to satisfy section 15(6) which requires there in fact to have been a statutory prohibition. The Somerset CC report dated 2 July 2001 notes the infected areas, but none of them include High Littleton. There are no public rights of way on the Land which could have been affected by a closure of PROWs (but that would not count anyway, as section 15(6) requires that "access to the land" be "prohibited to members of the public", so merely closing PROWs would not fall within the ambit of section 15(6)). The email from Mark Erickson dated 18 August 2014 says nothing of any substance, and it is merely one person's general recollection from 13 years ago. It falls a very long way short of even suggesting, let alone proving, that access to the Land was prohibited to members of the public under an enactment during the entire 2001/2002 foot-and-mouth outbreak.

296. Access to the Land by members of the public by reason of an enactment did not happen here. What people might have thought underlay the signs is nothing to the point. It is common ground both that the signs were obeyed and that there was no statutory closure. That is an end to the matter. It is agreed that there was in fact a very long interruption to continuous use of the Land. That interruption does not fall to be disregarded under section 15(6). This is utterly fatal to the application.

297. Sheep: Evidence on the use of the application land for keeping sheep is mainly in the statutory declarations provided by the Clothiers and corroborated by other statements. The position in summary is that sheep were first introduced into the home fields when they were kept there over winter from around 1993. As Mr. Candy disposed of his cattle, the Clothiers kept sheep in the fields at other times of the year. From around 2002 the fields have only been used by sheep and not cattle. The sheep are present, for long periods, for most of the year, and in large numbers.

298. Mr. Topping confirmed in XX that the Land had been used by sheep rather than cattle since 2002. He also said that there were times when sheep were not present, when the grass had been left to grow for a hay crop. The evidence is therefore that after 2002 either sheep were present or the land was being used to grow a hay crop. It was not left unused.

299. Adrian Neech said in XX that sheep were present on the Land in "all seasons" and accepted that they were present on and off for most of the year and in large numbers. Mike Brewer also accepted that the sheep were present in large numbers and said that they were there "most of the time". Catherine Lane accepted that the evidence from the Clothiers stacked-up.

300. Sarah Wheeler confirmed that sheep were present for most of the year in her experience (since 2010). David Fenton also considered Norman Clothier's schedule and said that he had no reason to doubt it at all.

301. Alastair Martin explained in XX that sheep are very nervous and that even a dog putting its head through a gate from the lane would be enough to scare sheep, which would be a particular concern when there were pregnant ewes in the field. He said that a farmer would not want dogs off a lead anywhere near sheep.

302. It is clear that any recreational use of the Land could not co-exist with the agricultural use. Not only is there evidence showing that much of the claimed use

simply did not happen when there was livestock in the field, and that that which did was much more confined, there is evidence showing clearly that the two could no co-exist. For example, Emily Malik said that when they went into the field the sheep and lambs would "flee". Similarly, Adrian Neech said that he had to drive the sheep away before holding his firework party in 2013. He accepted in XX that this was not compatible with the agricultural use of the Land. So, even when the Land was used for sheep rather than cattle, it is apparent from the Applicants' evidence that the use was incompatible with most recreational use of the Land - and that much claimed recreational use simply did not happen at all when there were sheep on the Land.

303. Challenges To Use: The evidence on farming uses corroborates the evidence given about challenges to the use of the Land by Mr. Candy, well into the 1990s. Christine Candy was clear in her statutory declaration of September 2013 that her husband had told local people to get out of the fields when they were seen there. Robin Candy said that himself, in his statutory declaration of September 2013, albeit that it was only "very seldom" that he would see members of the public on the Land.

304. The XX of Alan Sheppard about the scheduled did not affect the general point about the extent of the use of the home fields by the Clothiers' sheep, which had in any event been accepted by a number of the Applicants' witnesses. Alastair Martin explained in XX why the sign on the gate on the lane would be just as likely to refer to people with dogs on the lane as people with dogs walking across the field. The challenges were sufficient such that it ought to have become known by anyone using the Land that recreational use was not allowed, so that any use would have been contentious.

305. It is clear that any recreational use of the Land during the period it was actively farmed by Mr. Candy - that is, throughout the 1990s and beyond - would have been contentious or *vi*, and not therefore as of right, because of these challenges. The legal basis for this is set out in the Objector's Legal Submissions at

paragraph 6 and in the Opening Statement at paragraph 4. None of the use during the 1990s and into the early 2000s would count for the purposes of section 15 because it was not use as of right.

306. The Overall Effect Of The Farming Use: As Ross Crail said in her report on land at Station Road, Newport, livestock may be nervous or temperamental or vulnerable. In concluding that the claimed use by inhabitants was wholly inconsistent with the farming use of the land, so that the two uses could not sensibly co-exist, David Manley QC observed in his report on land at Derry Hill, Menston, that most sensible people, at least with dogs, would not wander about fields containing cattle and also that responsible parents would not let their children play in fields with livestock in them. Those same points apply here. Alastair Martin confirmed in his statutory declaration that it would have been unwise for anyone to have used the fields for any kind of recreation whilst the cattle were present (para 5).

307. This is confirmed by the HSE publication "Cattle and public access in England and Wales" and the advice from Outdoors West (page 5 of 7), both of which were submitted (late) by the Applicants. The HSE publication is clear that the two most common factors in incidents involving cattle and members of the public leading to death or serious injury are cows with calves and walkers with dogs, both of which would have been present in this case (on the Applicants' evidence). The Outdoors West document explains that it is an offence for a person to allow a dog to be 'at large' in the presence of sheep, that is not on a lead or otherwise under close control.

308. Peter Kingswill and Mark Chivers· both explained graphically in their oral evidence just how intensively farmed and used were the home fields (i.e. the Land). This was corroborated by Alastair Martin. The use of the home fields was contrasted by the witnesses with the other land on the farm (i.e. the four fields down the lane towards Maynard Terrace), which was nowhere near as intensively used. Such an intensive use of the home fields would make the agricultural use, at



least when cattle were present throughout the 1990s and into the 2000s, so intensive that it would be entirely incompatible with any significant recreational use of the land.

309. Alastair Martin explained that the application land was Mr. Candy's home fields, used for grazing his main stock, especially of dairy cows. The home fields were the two best fields Mr. Candy had. They were also closest to the farm, so that Mr. Candy could keep an eye on them. They were the centre of his farm business, for both dairy and beef cattle and Mr. Martin said that the home fields would be used for the dairy cattle who were producing milk, as the fields were the best fields and were most accessible.

310. The same thing was said by Mr. Kingswill. He said that the two home fields were absolutely integral to what was a small farm, and that the two fields, especially the western field, were the best fields in terms of production. The fields had the best grass on the farm and, whilst cattle would use other fields, these two fields were fundamental to milk production from April and all through the summer. Mr. Kingwill described the application site as the two main production fields on the farm. He also pointed out that the fields were on Mr. Candy's doorstep and were in effect his main place of work - the core element of his business. They would be used for his main milk production cows and cows with calves, who would all be in the home fields and not in the other fields towards Maynard Terrace.

311. This is very far indeed from the "low-level agricultural activities" which the courts have suggested might in principle be able to co-exist with recreational use. Any significant recreational use would plainly have come into conflict with the agricultural use made of the home fields, at least whilst cattle were kept by Mr. Candy. This is a case where the claimed recreational use could not sensibly co-exist with the undisputed agricultural use at all.

312. The evidence shows that there could not have been any material use of the land for recreation during the period when cattle were kept by Mr. Candy and it shows that even when sheep were on the land there was not any significant use of the land for lawful sports and pastimes.

313. This was confirmed in the Objector's oral evidence to the inquiry. Mark Chivers, for example, said that although he had sometimes seen children on the Land when the grass was long, he had never seen any children on the Land when cattle were in the fields. Submissions on this point were made in the Objector's Legal Submissions at paragraph 11 and in its Opening Statement. The result is that the agricultural use of the Land means that the application cannot succeed.

314. This is separate from, and in addition to, the freestanding points set out above on interruption and lack of continuous use which arise in relation to fencing and the foot- and-mouth outbreak. These are further, additional reasons why the application must be rejected.

315. Whilst it may be that there has been some recreational use of some of the Application Land, this has been intermittent, occasional and sporadic, and has only occurred more recently, after the sale by Robin Candy of his cattle in May 2002 and indeed the construction of more houses in High Littleton. In the context of the farming, any recreational use would not be enough to qualify for registration, but the interruptions to continuous use which have occurred would prevent registration in any event.

316. The Application Site: The home fields which comprise the application site are about 19 acres in all. The fields were Mr. Candy's home fields, and about half of his entire land holding, and were subject to an intensive level of use. They were also subject to a high degree of surveillance by the Candys and their visitors, being visible (in part at least) from Greyfield Road and the lane leading down to the farm. Mark Chivers explained that whilst the cattle were at the farm (i.e. until

2002) there was an intact fence and gate between the western and the eastern fields. He also said that until sometime in the 1990s, after 1994 when the switch from dairy to beef cattle occurred, the fence which split the western field in two was intact.

317. Western Field: The western field is about 12 acres. It is simply an open field. It is overlooked from Greyfield Road and the lane down to the farm (certainly from higher vehicles such as Land Rovers and tractors). Mr. and Mrs. Candy would have been able to see the western field when they were going to and from the farm, and along main road, as well as when they were on the farm.

318. The western field itself slopes down southwards from Greyfield Road. There is a deep valley dip in the south-eastern corner of the western field, as is shown on the site survey plan dated 2 December 20 10 submitted by the Objector. It is flatter in the south-western corner, near the gate. The evidence shows that the agricultural use of the western field was more intense than the eastern field, which is corroborated by the fact that it is closer to the farm and the gate to the lane. The evidence showed that it was often very muddy and not easy to get through the western field. Paul Allen explained that it was possible to get through the eastern field without getting mucky but that the western field was more difficult to get through. He said in XX that he had not used the western field anything like as much as the eastern field.

319. The only real evidence of any use of the western field came from a small group of recent arrivals in the area who have small children and who live very near the western field. This included the Moores (since 2010), the Wheelers (since 2010) and the Maliks (since 2011). This use would not be representative of the 20 year period. Even the "Nature Child" group run by Emily Malik was attended by Sarah Wheeler and Jo Moore. The same names were repeated in connection with different activities (e.g. fireworks, sledging, etc.).

320. Emily Malik described in XX how it was the middle part of the western field that had been used, in front of the top gate from the lane. There was no evidence at all of use of the top one-third of the western field. This is perhaps not surprising as it is steeply sloping, as it was described by Adrian Neech in XX. Sarah Wheeler also said that she had never been into the eastern field, showing how limited and confined this use was and Mrs. Wheeler said in examination-in-chief (XIC) that they only go on the land every couple of months. She also said in XX that she had never seen children out on their own in the western field, also showing how limited any use of the western field was.

321. There is virtually no evidence of any recreational use of the northern third of the western field. This is not surprising when one considers that all the access points into the western field are in the bottom two-thirds of the field (i.e. the two gates from the lane, the hurdle to the woodland in the corner, and the gate from the eastern field). Given the access points, and the topography, it is entirely understandable that this northern third of the western field has not been used.

322. There is, in reality, very little evidence of the use of the western field for lawful sports and pastimes at all, even taking the Applicants' evidence at face value. It is apparent that the western field was not used for recreational purposes to anything more than a *de minimis* extent. If it is concluded that any land should be recommended for registration as a village green, then the western field must be excluded from that registration. It simply has not been used for lawful sports and pastimes to anything more than a wholly *de minimis* degree, even on the Applicants' evidence, and cannot therefore be registered as a TVG.

323. Whilst it is accepted that not every part of the Land has to have been used for lawful sports and pastimes before it can be registered, it is the case that the whole of the Land needs to be used. It must be the case that the Land could properly be described, viewed as a whole, as having been used for recreation. The area to be registered would be the area "all of which was sensibly regarded as constituting a single identifiable area". The east and the west fields in this case are

single identifiable areas. Accordingly, evidence of use of the eastern field would only go to justify registration of the eastern field and would provide no evidence at all to justify registration of the western field. Only evidence of use of the western field (of which there is virtually none) could justify registration of the western field.

324. Similarly, evidence of use of only part of the western field (e.g. the southern part) would not be enough to justify registration of all the western field, as the area which has not been used (e.g. the northern part) is so large in relation to the whole that it could not sensibly be said that evidence of use of the southern part demonstrates use of the whole.

325. The position is that, on any analysis of the evidence before the inquiry, the application must fail in relation to the western field.

326. Eastern Field: The eastern field has some significant slopes within it. It is, to say the least, undulating. There are slopes down in each of the southern corners. There is a flatter area in the north-eastern part of the field, behind the houses of the second phase of Greyfield Common and into the triangular corner. The north-western part of the eastern field, towards Mr. Sheen's house, is too steep and the ground too rutted for any ball games or the like to be played. It is clear that only the north-eastern part of the eastern field could have been used for sports or pastimes.

327. Much of the evidence of use came from the residents of Greyfield Common who back on to the eastern field. As they back on to the Land, such use is perhaps less unexpected. But it is not an indicator that other people who lived elsewhere also used the land; it does not tend to suggest that there has been any wider use of the Land. In fact, that so much of the evidence related to use by people who lived immediately adjacent to the land, tends to suggest that there are no other people from further away using the Land.

328. The evidence of Neil Topping, for example, shows that the recreational use was confined to the north-eastern part of the eastern field - the strip behind the houses and the triangle in the north-eastern corner. He said in XX that the football was played in the triangle of land. His written evidence describes games played by Greyfield Common residents. He said in XX that this was people who had accessed the land through gates in their gardens or their neighbours' gardens, and comprised ball games on the flat triangle of land behind the houses. He said that they were "tucked away" in the north-eastern corner playing football. The same land - behind the houses and the north-eastern corner triangle - was identified as the site for all the claimed activities, including not only games but also kites and picnics.

329. Rachel Tidcombe's evidence also strongly supports this. She said in XX that there was a very flat part of the land behind her house which is where people would play football and cricket. She described it as a strip behind the second phase of Greyfield Common. The photographs she produced also show activity primarily in this area and, when she described the so-called den building, she said that it had been done just in front of her house. Indeed, she said that the previous owners of her house had moved because of the noise of football being played in the field so close to their house. This was corroborated by her written evidence which said that she would find footballs in her garden which had bounced over from the field (p560).

330. Mr. Neech said in XX that the golf balls he had found on his lawn on three occasions had to have originated near the house. If they came from the application site - and Mr. Neech said he had no idea where they came from - then it would have been the strip of the eastern field behind the houses.

331. The only evidence from the Applicants showing the use of the Land for lawful sports and pastimes to anything more than a *de minimis* degree (and even then it is limited) relates to north-eastern part of the eastern field - the strip behind the second phase of Greyfield Common and the triangle in the north-

eastern corner. If any part of the Land is to be registered as a village green (and none of it is) then it must only be this area of land. Nothing else could possibly qualify, even taking the Applicants' evidence at face value but the use of such a small part of the eastern field means that it cannot sensibly be said that use of this part of the eastern field amounts to use of the field as a whole for recreation. The part which it is claimed was used is such a small part of the whole field that the claimed use would not render the whole field liable for registration as a village green.

332. Access to the Land: It is clear from the evidence that the land has been fenced throughout the 20 year period. The fencing was clearly not always good enough to keep livestock in, but it was generally good enough to do that and it was clearly always good enough to mean that people had to go in and out by recognised entrances. It is also apparent that the western field was more securely fenced than the eastern field. Paul Allen said in RX that the western field had always been secure. For example, Mr. and Mrs. Skarden (who lived at 15 Greyfield Common from 1999 to 2006, before Rachel Tidcombe) said that "the land was always fully fenced".

333. Even where access points were improvised, such as the jumper/coat over the barbed wire in the middle of the southern boundary of the eastern field, they were defined and people would always use the same place. The same applies to the "hurdle" in the south-eastern corner of the western field, which led through to the woods.

334. Catherine Lane confirmed that during the period she had known the Land (May 2005 onwards) the only accesses to the Land for people were the two gates off the lane, a way through to the woods in the corner, and gates from houses - and that otherwise the fencing was intact. This was confirmed by others, including Jonny Moore, Mike Brewer, Leonard Sheen, Bridget Rylance (resident since 1990) and Neil Topping (resident since 1999). Leonard Sheen described a time in 2010 when sheep had escaped and electric fencing was deployed. He said that electric fencing had been put down the boundary between the two fields for a period of 48 hours and confirmed that this was not crossed by people. Paul Allen also said in XX

that the gateway between the two fields had been closed at times. There were also other references to this in the written evidence. This would constitute an interruption to the use of the land which would prevent continuous use of the land such that the application site could not be registered as a TVG under section 15.

335. Neil Topping confirmed that since at least 1999 the 'alley' from Greyfield Road had not been used by Mr. Candy and was impassable. He said that it was heavily overgrown. Paul Allen confirmed in his XX that the access track became overgrown in the early 1990s. It was therefore overgrown and inaccessible throughout the relevant 20 year period.

336. It is apparent that the only access points to the Application Land during the relevant 20 year period have been the two gates from the lane, the way through to the woods, and gates from houses. As is explained further below in relation to walking, the limited access points to the land have influenced how the Land is used.

337. The fencing may not have been perfect but it is clear that it was good enough to confine access by people to these points at all times, and to keep stock in for the majority of the time.

338. Access by climbing over a fence - as had been done by Paul Allen, the Moores and by Mr. Sheen - would not qualify as use as of right because it would have been *vi*. Nor would any access to the application site which had been gained from the woodland by climbing over the 'hurdle' in the south-eastern corner of the western field. Mr. Sheen said that this 'hurdle' was in place until around 2010 and that there has been fencing there since then. The legal position is as explained in the Opening Statement at paragraph 6 and in the Legal Submissions at paragraph 7. All this use must be left out of account in considering whether there has been a sufficient quantity and quality of use to qualify for registration.



339. Boundary Gates: Mr. Collins accepted that his analysis showed that a quarter of people who had said that they had used the land had had access from their private gardens, via a gate or over a fence. If the use of the land claimed by people with gates in their boundaries has to be discounted from consideration, as it must, then a large element of the claimed use simply falls away.

340. Rachel Tidcombe said that her understanding of why the gate had originally been installed in her boundary was to allow sheep to be let out of the garden if they got in and she said that the gate was used to access the field to maintain the boundary. Catherine Lane accepted that most houses have hedges or shrubs on at least part of their boundary and that only a couple of houses were purely fencing. She also accepted that gates into the field would be used to maintain the boundary and retrieve balls, shuttlecocks and the like, and that these were all legitimate reasons to go on to a neighbour's land.

Paul Allen described how although there was a stile in his boundary until 2013 he would also have to climb over a fence which was between his boundary and the field. Adrian Neech also said that he used his gate for access to the field for regular maintenance of the hedge (p260) and accepted in XX that this was a legitimate reason to go on to a neighbour's land. This is echoed in the written evidence (eg p540, para 3). This was also accepted by e.g. Neil Topping (and see e.g. p569, para 6).

341. This evidence is correct and shows that the existence of a gate does not of itself suggest to an observer that there is use of the Land by adjoining owners as trespassers. Gates could be there for entirely legitimate reasons. Even the Applicants said in their legal submissions at paragraph 4(b) that in most cases gates were installed where it was the householder's responsibility to maintain the boundary and it was formally accepted by the Applicants in their Response (30 September 2013) that the gates are used for the purpose of maintaining boundaries (para 3.6). Robin Candy's evidence was that he understood that the gates were present for boundary maintenance purposes and he never saw the gates being used to access the field for any other purposes.

342. Not all the gates had been there for the full 20 years. Neil Topping said that his had been installed in 2007. He confirmed that he used it for boundary maintenance. Before that time he said that he would squeeze through gaps in his hedge to retrieve things such as balls that flew over the hedge and to cut the hedge.

343. In legal terms, there are two important points arising from access by boundary gates. The first is that, because there were perfectly legitimate reasons for the gates to be present, other than for any recreational use of the Land, any such use as was made of the Land would have been *clam*. This is explained in the Objector's Opening Statement at paragraph 6 and in the Objector's Legal Submissions at paragraph 8. Use by people gaining access from gates in their boundaries would have been secretive rather than open and therefore would not qualify as being use as of right for the purposes of section 15. Such use must be ignored.

344. The second point is that if a right has arisen from access through the boundary gates it would not be in the nature of a public right such as a village green, but would simply be a private right of access, i.e. a private easement. The use would not count towards prescribing a public right but only, at most, towards prescribing potential private rights.

345. There are two important points about the claimed use of the land which it is important to recognise at the outset. First, use of the land is largely claimed by people who live adjacent to or very close to the land. Secondly, the main use of the land has been to walk, with and without dogs. This is clear from the Applicants' written evidence but was put beyond doubt by the oral evidence presented to the inquiry.

346. Mr.. Collins accepted that some things done on the land were more common than others, as did Neil Topping, who said that walking and dog walking was the common use. Mr. Neech also said in XX that walking, with and without dogs, was "the predominant activity" on the land and Sarah Walker said that in her experience the use was mainly walking dogs and walking through the field. It is clear that walking, with and without dogs, is by far the most common activity claimed to have taken place on the Land.

347. It is notable that Mr. Fenton's witness statement said that, apart from walking, the "other main activity" was when it snowed, showing that there really is nothing else apart from walking done on the Land save the very rare snow-related use. This was echoed in other evidence, for example the statement from Nicola Green which describes the use she has seen as "mainly for dog walking or sledging during snowy weather".

348. The various summaries of the Applicants' case make it clear what the primary use of the Land has been. The Applicants' legal submissions say at paragraph 3(b) that the Land has been "used for dog walking and also other activities". On the application form at (7), the first named activities were dog walking and walking.

349. Overall, the Applicants' evidence simply does not stack-up. Adrian Neech said that most of the field could be seen from the road and the lane down to Mr. Candy's farm, and that he did not believe that Mr. Candy had ever seen him or his wife on the field, but then said that they were on the field at least weekly. It is simply impossible to believe this. Given how visible the western field is (and this is common ground on the evidence), if Mr. and Mrs. Neech were going on to the Land weekly and in an open manner, then they would have been seen. The evidence is simply not credible. The Applicants' evidence of use generally is over-stated by a very substantial degree, as was perfectly apparent from cross-examination.

350. Another example is Mr. Neech's frankly desperate attempt to claim doing hedge maintenance as a lawful sport and pastime and he was over-egging the pudding to the extent to which the land is genuinely visible from his garden; visibility is in truth limited to only small parts of the garden.

351. Mr. Collins accepted in XX that in cases where permission had been granted that use would not qualify towards the application. Catherine Lane had sought and received permission to use the Land, despite what she had been told by the seller, presumably because she thought what she had been told was not credible. That use, for example, must be ignored when considering the test in section 15. The legal position on permissive use was explained in the Objector's Legal Submissions at paragraph 5 and in its Opening Statement at paragraph 5.

352. Moreover, as was explained in paragraph 36 of the Objector's Legal Submissions, use by visitors and family members who lived outside the red line area would not count for the purposes of section 15, as they would not be residents of the neighbourhood claimed. It is clear that much of the claimed use was by people outside the red line

353. Mr. Neech accepted in XX that when he had said on the questionnaire use was "daily/weekly" (p259) it was in fact "more weekly than daily".

354. It was perfectly apparent from the site visit that there are only particular, very small, parts of the Neechs' garden which gain views over the fields, and even then only a small part of the field can be seen from each (e.g. the part behind the shed and next to the compost bins in the bottom corner of the garden). The hedge had also been cut between the first and second parts of the inquiry, as Mrs. Neech admitted on the site visit. What Mrs. Lane reported as being said by Mr. Candy (that's fine but not by the sheep) amounts to sufficient permission to render the use *precario*. This was accepted by Rachel Tidcombe in XX and she accepted in XX that not all the written evidence came from people who lived in the red line area. Again, all this claimed use needs to be left out of account when assessing whether the application satisfies the test in section 15.

355. It is notable that Peter Kingwill's evidence on the limited use of the Land was not challenged in cross-examination. It appears that Mr. Kingwill's evidence is accepted by the Applicants. Given Mr. Kingwill's independent position - where material from him was submitted by both sides - what he says should in the circumstances be given very considerable weight.

356. As noted above, it is clear from the Applicants' evidence that walking, with and without dogs, is by far the most common activity claimed to have taken place on the application site. Moreover, it is also clear from the evidence that the great majority of the walking on the Land has been not only in straight lines but also on particular routes. It is interesting that Jonny Moore thought that there was a permissive path on the land because, as he explained in XX, there was a pathway from one side of the field to the other (he was referring in particular to the western field, but the path carried on into the eastern field of course). The same was said by Bridget Rylance. She explained in XX that she had assumed that there was a public path running east/west across the western field and through the gateway to the eastern field.

357. Paul Allen said in XX that he would use the gateway to get to the western field from the eastern field, as did Mike Brewer. The photograph produced by Rachael Tidcombe illustrates this: there is a group of people walking in a straight line. Her written evidence refers to walks "across the fields". The same thing is illustrated in a photograph from Mark Collins, which he described as typical. Other photographs show people walking across the land.

358. David Fenton said in XX that walking with dogs was by far the most common activity on the application site. He said that that most people he had seen would enter via the western gate in the middle of the field and walk either to the gate to the eastern field or to the south-eastern corner of the western field (which led through to the woods). He described that he would see people "walking across" the Land and said that the majority of people would "traverse" the Land. He said that a "few" people would walk around the perimeter of the site in a circuit.

359. The evidence clearly shows that the majority of the walking between the two fields was by people who passed through the gateway and was concentrated on a particular line either side of the gateway. That this is the picture to emerge from the evidence is not at all surprising. It is obvious that a walk on the Land would have to start and end in defined places, namely access points on to the Land and there were very few of those, as already noted. Moreover, it is natural that walking would be through the field from gate to gate. This is especially so given the very large area of land comprised in the fields. It is to be expected that people would take a direct route across the site from one field to another.

360. Not only has the bulk of the walking been through the application Land, it is also apparent that the majority of it has been walking through the Land as part of a larger route. Mr. Collins accepted in XX that people would tend to walk through the site to different places when on a walk. He said himself that "quite often" people would walk and take in a number of areas so that they went out one way and came back another. Even Jonny Moore, with very young children, said that some of the walking in the field was as part of a larger walk and that they would also go into the woods.

361. Paul Allen described the routes that he would take: along the eastern edge of the eastern field, down to climb over the wire fence at the centre of the eastern field, or through the gate to the western field and down the edge of the western field to the south-eastern corner and into the woods. In his second statement he said that "generally now I walk the fields to gain access to the woods and the route south towards the waterfall and Hallatrow".

362. Mike Brewer described the walking that he had done. He said his walks would tend to continue further than the field. He described walking through to the woods and walking around the edges of the two fields. The walk described by Rachel Tidcombe was from her garden to the middle of the southern boundary of the eastern field and then on into the woods, climbing over the fence to do so.

Bridget Rylance's evidence was of walking to the woods via the field. Mr. Neech described his wife's "keep fit" walking in XX. He said that this was her main use of the Land. He said that she would walk in the fields around 6pm or pm once a week or once a fortnight, and would walk down to the woods and around to return via the gate in the boundary.

363. In answer to an inspector's question, Adrian Neech described the walking he had seen on the Land. He said that walkers were very often just going across the field from gate to gate. He indicated walking routes from the two gates on the lane into the western field and across to the gateway into the eastern field, in straight lines. Not only is this purely linear walking from A to B but it is also confined to the bottom two-thirds of the western field. Mark Collins's statement said that the first gate to the western field was "a common access point". Walking would not happen in the northern third of the western field as that was to the north of the routes shown by Mr. Neech.

364. It is apparent, as one would expect that any running on the Land was done as part of a larger route and was also done very infrequently. Neil Topping had mentioned riding bicycles, but made it clear in XX that this was kids who had "gone across the field on bikes".

365. Dog Walking: Whilst a great deal of the claimed use of the Land was dog walking, it is apparent that there was in reality little use for dog walking (and even less for other claimed activities).

366. David Fenton accepted in XX that most of the dog walking done locally was done in the woodland, with some also down the track towards Maynard Terrace. He said that the majority of dog walkers going down the lane would carry on, either to the woods or towards Maynard Terrace, rather than go into the field. He agreed that he tended to see the same people walking dogs each day and he said that most of the people who go on to the field to walk a dog were doing a circular walk which involved the field.

367. Mr. Fenton also said that he had never seen a dog loose in the field at any time. His experience was that dog walkers would have dogs on a lead when they were anywhere near livestock and would also keep to paths where there were paths. He said that use of the site for dog walking reduced when there was livestock present in the field. This was echoed by Paul Allen who said in XX that he had never seen anyone over many years with dogs running free whilst there was livestock in the field. This is not surprising given the evidence about how local residents would respect the Countryside Code, noted earlier in these submissions.

368. Catherine Lane said that her route for dog walking would depend on the weather and how long she had, and that there would be a mix of longer and shorter walks, but that walks in the field would also include a route either into the woods or along the path to Maynard Terrace and Clutton. In her written evidence she said that she used the land for dog walking "weekly" and said that she would "walk our dogs around Greyfield Road fields and through them to go on to Greyfield Woods".

369. Leonard Sheen said that his use of the field would depend on "the sheep situation", but that he would usually take a long walk in the morning, walking through some of the field and into the woods before returning via the field and his back garden. This, he said in XX, was his main use of the land.

370. In his oral evidence, Chris Rylance said that they would always walk "through" the field. He described how they would walk diagonally across the western field from the top gate on the land to the south-eastern corner and then through into the woods, and also sometimes along the boundary of the western field. He said that going to the woods was the usual way he used the field for walking, both with a dog and without.



371. Mr. Collins could identify four regular users of the Land for dog walking. Catherine Lane identified around half a dozen regular dog walkers. Leonard Sheen identified a similar number, including some who were clearly the same people.

372. The Applicants' evidence is consistent with the Objector's evidence. For example, Mark Chivers said in XX that he had only ever seen dog walkers walking "across" the land, and indicated particular routes from gate to stile and the like. He said, in response from a question by the Inspector, that seeing dog walkers was "very rare" and that he only ever saw "the odd person".

373. A number of points emerge from the evidence. Most of the dog walking in the area is not done on the Land, but in the woods and on paths and tracks. The presence of livestock in the fields deters many people with dogs, and for others the dogs are kept on a lead. Any walking which is done with dogs on the Land is across the fields, and most of it is done as part of a larger walk, as described above. There are a limited number of people who ever use the land for dog walking, and the same small group of names and descriptions is given repeatedly.

374. All the walking, with and without dogs, described in the Applicants' evidence was walking in the nature of walking on a public right of way. Moreover, it is apparent that the majority of it was on defined routes, on some of which paths had apparently become worn. None of the walking was such as meandering all over the Land, back and forth, and the like, which could qualify as a lawful sport and pastime for the purposes of section 15 rather than something which would qualify for a new public right of way. It does not matter that the walking has not been on an established public right of way. As the January 2014 DEFRA guidance says, highway-type use is to be separated out and discounted where "routes across or around a claimed green have been used in a manner suggestive of the exercise of a public right of way even though no such right has been formally established or even claimed" (para 8.10.45).

375. As was explained in the Objector's Legal Submissions at paragraphs 12 to 15, the result of this is that the claimed walking, with and without dogs, does not in this case count as a lawful sport or pastime. It is not use which can count towards satisfying the section 15 test. All this use must be discounted before the section 15 test is applied to the facts. Given how much of the claimed use falls into this category, it is clear that, when this is done, so little claimed use is left that the application must fail.

376. Neil Topping described in his evidence the games of football, rounders, cricket and badminton which he knew had taken place on the Land. He said that they were played by mates from Greyfield Common, other parts of High Littleton and from outside the parish. He also said that they were only kickabout or knockabout games and were played on the Land behind the houses in Greyfield Common. He said that they were played in "fits and starts", depending on school holidays and what sports events were. As to the "community events", Mr. Topping said that the games were played predominantly by Greyfield Common residents and were on the eastern field. Rachel Tidcombe confirmed in XX that there had only been two such events and that invitations only went to households in Greyfield Common.

377. The evidence of ball games was confined to the north-eastern area of the eastern field. There was no evidence of ball games on any other part of the application site and the evidence was that even this use was limited, occasional and sporadic.

378. This is perhaps not surprising when one considers the topography of the Land, and the fact that grass was grown long on it for much of the relevant 20 year period, especially during the summer. The prospects of being able to play a ball game on the land, even a small kickabout game of football, were limited. Larger-scale games, even if only played by a few people, such as cricket and rounders, would barely have been possible on the Land. This reflects the evidence of the actual use, as well as the absence of finds of lost balls.

379. Neil Topping accepted that being able to use kites depends on weather conditions: it had to be windy but not too windy. He explained that the kite flying was the same part of the eastern field as used for other activities, and was when his children were of primary school age. The reality is that kite flying would always have been confined to a few people, happening infrequently, occasionally and sporadically, confined to one part of the land at any one time, and not lasting very long.

380. Much of the use of the land described by the Applicants' witnesses (and in the questionnaires) was highly seasonal. It would not have been carried on very often and not for very long. This is important when considering what would have been apparent to a reasonable landowner.

381. Snow-related uses - sledging, building snowmen, snowballing and the like - could only ever happen when it snowed, as Mr. Collins accepted. The events described by the witnesses were days when parents and children went out together. This would only be at weekends or when schools were closed. It could not happen on school days. Moreover, sledging could only be done when the snow was quite fresh and also when there was a good covering of snow.

382. This combination of events would not happen very often. Mr. Collins said in his experience it happened once a year on average and lasted for a couple of days - but it had snowed in the years since he had lived in the area. He accepted that the land only become a focal point for families in this way perhaps once in every five years on average, and accepted that it would not happen at all in some years. Neil Topping's evidence was similar. He said that when there were snowy days the fields would be used by families, but that there were some winters when there had not been any snowy days. Peter Kingwill's statutory declaration says that in the period of time he was in High Littleton (1986-2010) it only snowed on perhaps half a dozen occasions (para 10). This was confirmed in XIC by John Ledbury.

383. Neil Topping explained that there was a really steep hill a few fields away where the older kids would go to sledge. On the application site, he said that the younger children would use the western field. This was confirmed by Sarah Wheeler, who said in XX that families and younger children would use the western field, whilst older children used the eastern field.

384. It is clear from the Applicants' evidence - as would be expected - that when the land was used for sledging and the like it was used intensively and by multiple groups of people but it would not have happened very often - only perhaps one in every five years as Mr. Collins accepted -and only for a couple of days at a time. In terms of the picture of use that would have been available to a reasonable landowner, it would have contributed very little.

385. Moreover, use of sloping grass fields for sledging and the like when it snows is not at all uncommon in the countryside. Some people appear only ever to have claimed to have used the land in the snow. Even if it had been apparent to a landowner, it would have given no indication at all that there was any different or wider recreational use being made of the Land when there was no snow on the ground. It was a very particular and limited sort of activity, as intense as it might have been when it happened.

386. Fireworks were another seasonal use. The evidence of it was, however, very limited. Jonny Moore said that the fireworks involving the Wheelers and the Maliks had happened only once in the 20 year period, in 2012 (and not in 2010 or 20 11). This had been done with permission from Mr. Candy. It would not therefore count towards the use to be assessed under section 15 in any event.

387. The only other evidence of fireworks within the 20 year period was of the two occasions claimed by Adrian Neech in 2008/2009. He explained that one was a bonfire party and the other was a birthday party, and that on each occasion there

were about 10 friends and relations who visited, but all of whom lived outside the red line area (and whose use would not therefore count towards registration).

388. The truth is that the use for fireworks has been virtually non-existent. That is not surprising as Mr. Neech accepted that it was not compatible with the agricultural use of the land which we know was happening as a matter of fact.

389. Adrian Neech described his fruit picking in XX. It was done at only two locations, both at the edge of the field. He also confirmed that he would walk around picking fruit and would then take it home to use. Leonard Sheen's evidence was very similar. He identified only a few spots, all of which were on the boundaries of the fields. He accepted also that it could only be done at certain times of the year, when the fruit was in season. Mike Brewer's use was also similar, with him walking around the edges of the field to collect fruit to take home.

390. Not only does this not amount to a lawful sport or pastime, as explained in paragraph 10 of the Objector's Legal Submissions, it was at most a peripheral use which would do nothing to put a reasonable landowner on notice that the land was being used for recreation. Fruit picking adds nothing in practice to the Applicants' case.

391. Neil Topping described a typical picnic as being children out on the part of the eastern field behind the houses, on a picnic mat, on a warm day, when they were of primary school age. Emily Malik said that they had been into the main part of the western field but it had not been a regular event and Nicky Green described them as "the odd picnic".

392. It is clear that what is claimed in this case was not picnicking in the sense of a proper meal with a hamper, picnic blanket and the like. It was much smaller scale than that. It would in any event have been seasonal, infrequent, occasional,

sporadic, short- lived, confined to one small part of the land, and involving only a handful of people. The claims of picnicking, even if taken at face value, add nothing to the Applicants' case.

393. Many of the users of the land have claimed to do things like enjoying the view, photography and bird or nature watching. But it was clear from the evidence that this use was not what it at first might have seemed. First, it was apparent that much of it was done not on the Land at all but overlooking the Land. This would not qualify under section 15 as it was not indulging in lawful sports and pastimes on the Land. This use would have to be discounted.

394. Secondly, it was apparent that much was also done as part and parcel of another activity, mainly walking. This would not therefore add anything to the claimed use of the Land. They were not separate and additional activities which would count towards the use of the land. As the walking does not count towards use for the purposes of section 15, for the reasons already given, enjoying the view whilst walking and the like would not count either.

395. Mr. Collins, for example, said that he did the other activities he claimed when out walking and on the same visits he had described in his evidence. He accepted as a generality that it was possible in one visit to the Land to walk, photograph, pick fruit, watch nature and enjoy the view, and that ticking those boxes on the questionnaire did not show that a person had undertaken one visit for each activity. Mr. Brewer said that the two activities he had done on the land were walking and fruit-picking, but accepted in XX that he had done both together - picking fruit whilst walking.

396. This is an illustration of why the evidence from the questionnaires needs to be treated with a very large degree of caution. The questionnaires simply do not show what at face value they suggest. The questionnaire responses are misleading in this sense.

397. Mr. Neech accepted in XX that things done whilst out walking - like observing nature, children playing around, picking fruit, etc - would be secondary things done when walking. These would not be separate, freestanding activities in their own right. They would be referable to the walking use of the Land which would not qualify as a lawful sport and pastime in the circumstances of this case.

398. In addition to the points made above by Mr. Collins, it was clear from the evidence that nature-related use of the land was not a freestanding use which could count towards registration. Even Emily Malik described in XX how her nature club visits (only in the last 6 months of the 20 year period) would involve going in one gate and coming out the other side on the way to or back from the woods.

399. Claimed use by children: It is apparent from the Applicants' evidence that the claimed use of the application site by children is limited, both as to its frequency and intensity and also as to where it took place.

400. First, as to location, Neil Topping said in XX that children would play football on the north-eastern part of the eastern field when they were of primary school age. This echoes the other evidence about use in this particular location and not elsewhere on the application site.

401. As to the age of children, Mr. Topping's view of the children as being of primary school age is supported by the other evidence from the Applicants. When speaking about the use of the BMX track, Chris Rylance said that there would be "batches" of kids of similar ages in the area from time to time, and that groups would come and go so that some years it was used and others not. The same thing applies to younger children who it is said might use the application site. And it makes sense. You do get "batches" of children of similar ages who stick together in rural areas. They might use the Land when they were of primary school age, but

then outgrow it and stop using it, and it might then be some years until another group of children reached the age to use the Land.

402. This fitted also with Mr. Sheen's evidence of playing with his own grandchildren on the Land. He said that it depended on the time of year and weather, and might be once every couple of months on average. He also said it was during primary school age and that children tended to get distracted by other things when they reached teen years.

403. This overall picture fits with what one would expect. Younger children tend to get tired or bored quite quickly, and so would not be playing long games. If children are out with their parents, as younger children must be, there is in practice a limit to how long parents will play with children. Younger children also tend to be keen on swings and play parks, which are found at Gores Park and the recreation ground, not on the application site. There is in reality only a narrow gap between the time when parents are first content to let children out on their own (although usually not too far from home) and the time when children want to roam further afield. The age range of children who could conceivably have wanted to use the application site is the narrow band after first being allowed out on their own but before they want to go slightly further afield to more interesting places, such as the woods, the shops or the recreation ground. This perhaps explains why there was some use of the north-eastern part of the eastern field, but why the use was clearly limited.

404. Evidence of use by the Bo Peep pre-school, provided by Jo Moore, is limited. Jonny Moore said that he had never seen any school parties on the field. In any event, the evidence shows that those who attend the pre-school come from High Littleton and elsewhere, rather than just from the red line area. Indeed, the pre-school is based in the Methodist church which is outside the red line. In these days of risk assessment and insurance it is inherently unlikely that any such use was significant. It would have been reckless in the extreme to have taken pre-school



aged children into a field which contained livestock. The claimed use is in any event educational and would not therefore qualify as a sport or pastime.

405. When considering the evidence of use, it is of the utmost importance to consider also how often claimed uses might have been occurring. This is a vital part of considering what picture would have been presented to a reasonable landowner. The evidence shows that the land was not used very often at all by most people. Mr. Collins said that for both him and his wife they had visited the application site six times a year.

406. The claimed use of the Land was not at all frequent even by those people who provided evidence to the inquiry. When it is appreciated that the frequency of use by many people giving evidence is so limited, the picture of use painted by the Applicants' evidence is very different from how it might first appear. The truth is that the Land was hardly ever used, even by the people who have been advanced by the Applicants to give evidence of use.

407. This evidence is however consistent with what one would expect. Except perhaps dog walking, people have a choice about whether or not to go out. If the weather was poor, they would choose not to go out. People would generally not go out for recreational purposes when it was wet, blustery or cold, for example. They would tend only to go out in good weather. Some of the claimed activities - such as picnics, ball games, playing, nature observation and the like - would only normally be undertaken in good weather. It is also true that people can only go out for recreational purposes when they have free time. Most people cannot go out during working hours or during school time.

408. So, for recreational use you need both suitable weather and free time. Apart from those who are retired, or parents with young children, this essentially just means weekends and holidays (perhaps some summer evenings) and school holidays are not that long. They tend to be, say, six weeks, during which time most families are away for a fortnight, leaving only four weeks for children to need a recreational outlet during the summer holidays.

409. It is also the case that had there been significant recreational use it would have left traces, such as grass trampled down or worn short in areas and lost balls. Children also tend to leave at least some litter, such as drinks containers, crisp packets, sweet wrappers, etc. These are very apparent in the BMX area, so children here do drop litter when they use land for recreational purposes, as one would expect. Also, if children were building dens on the Land, you would at least expect to find remains and materials (sticks, sheeting, etc), if not the dens themselves.

410. The farmer would have seen traces of recreational use if it was taking place. The Objector's evidence is that such traces were very limited and very rarely seen, and confined only to the north-eastern part of the eastern field. This sits with the overall picture of the evidence, namely no recreational use of virtually all the application site and only occasional and low level use of the north-eastern part of the eastern field. This picture is also corroborated by the Applicants' evidence e.g. Mr. Neech said in XX that he had never seen any lost balls in the two fields and had never seen any dens. This is because there hardly was any recreational use of the Land.

411. As the witnesses confirmed in XX, when giving evidence they had identified all that they could remember having seen done on the application site, over the entire period they had known the Land, and for all the land. Although some witnesses had known the Land only for a very short time, others had known it for many years. The picture presented in the evidence is therefore a condensed or concentrated picture of use which would tend to suggest a much more intense use of the land than was ever the case. This evidence does need therefore to be treated with considerable caution. The use needs to be greatly discounted to get to a picture reflecting what would have been available to be seen by a reasonable landowner.

412. There is another reason why the evidence has to be treated with caution and discounted, namely because others could have seen the same things at around same time. Someone undertaking an activity on the land would give evidence of that, and then a number of people might give evidence of having seen that activity. The evidence could be taken to give a picture of the activity happening on a substantial number of occasions when in fact it was a one-off. This was accepted by Mr. Collins, who also agreed that each person was not reporting unique events and that the events cannot just be added up to give a total.

413. An example of this was the fireworks event (which was in any event by permission). The evidence of fireworks in 2012 given by Sarah Wheeler, Jonny Moore and Emily Malik all related to the same event. Similarly, although Neil Topping had said in his questionnaire that he used the land "daily", he said in oral evidence that this was only during school holidays. Taking the questionnaire alone would give a thoroughly misleading picture.

414. Related to this is the problem that the questionnaires tell you nothing about the frequency of use. Mr. Collins agreed in XX that the questionnaires showed that 14 households had said they had had a picnic on the land and 11 households had said that they had flown a kite on the land. These are low numbers anyway, and show the low level of the use of the land but as Mr. Collins accepted, these could have been done by each household only once during the entire 20 year period and that the questionnaires tell you nothing about the frequency of use.

415. This is a critical consideration for judging what would have been apparent to a reasonable landowner and whether the use was of a sufficient quantity and quality to qualify to make the land a village green.

416. Other Recreational Space: Bridget Rylance confirmed in XX that the woodland had been sold cheaply by the Objector to Woodland Trust in around 1997 and that it was then opened-up for recreation. She also accepted that there was a

PROW down and through woods before then, and that the woodland was very well used for walking - with and without dogs. With young children, Jonny Moore explained that they would also go into the woods, would play on the lane down to the farm, would go to the park and would ride bikes in Greyfield Common.

417. It was clear from the Applicants' evidence that the woodland was the main recreational resource in this area. The fact that the woodland has been used tends strongly to suggest that the application site has not been used for recreation. The use would be only as essentially described in the Applicants' evidence, namely to walk through the application site when going to or from the woods.

418. The recreation ground in High Littleton is properly laid out for recreation. As would have been seen on the unaccompanied site visit, it has various facilities, including a basketball net. Neil Topping knew the recreation ground and confirmed that it was a flat, mown football pitch with goals, and a play area. He said that it was used by children of an age to get there safely, but not younger children. It is where older children would have gone. It is also where children would have gone to play football, cricket, rounders and the like. Children of secondary school age would have had no problem in crossing the road.

419. The availability of the recreation ground underscores what was in any event apparent from the Applicants' evidence: that the application site was not really used for ball games, save for the occasional, small knockabout game in one particular part of the site.

420. Neil Topping also knew of the BMX track just to the west of the lane and said that it was where teenagers went. Bridge Rylance said that she knew that children used it and that it had been established at some point during the 20 year period. Leonard Sheen confirmed in XX that he did not take issue with Mr. Sheppard's statement in relation to the BMX track. Neil Topping confirmed in XX that the woodland had been opened-up for recreation by the time he arrived in 1999.

421. The BMX track is also on land owned by the Objector. The Objector's evidence is that it became aware of the use quite quickly, not least because Robin Candy reported it to them. The company then checked the position, informed its insurers and took action, including by putting up signs. When use apparently re-started in the summer of 2014, action was again taken and fresh signs were erected, as explained by Alan Sheppard in his XIC (and as was seen on the site visit). It is clear that when recreational use was made of its land, this was recognised by the Objector and action was taken. As no use was ever recognised of the application site, this is a strong indicator that no such use ever occurred to any material extent. If it had, it would have been discovered and action would have been taken. The company dealt decisively with any unauthorised recreational use of its land. Had there been any such use of the application site it would have been addressed.

422. Any use of the land that there was for properly qualifying lawful sports and pastimes was very infrequent, occasional, sporadic, limited in scope and duration, only by a handful of people who lived very close to the land, and confined to a particular part of the land (the north-eastern part of the eastern field). Even the (non-qualifying) use for walking, with and without dogs, was limited in frequency and amount. And the evidence shows that use did not occur at all during significant periods of time - not just during strip grazing or the foot-and-mouth outbreak, but when any livestock was in the home fields (especially cattle). It is notable that the great majority of the Applicants' witnesses only moved to the area after Robin Candy had sold his cattle.

423. The statutory declarations provided by Robin and Christine Candy must be given very substantial weight in the circumstances. Christine Candy was clear in her declaration of May 2014 that, "apart from occasional walkers", she never saw any evidence of use of the fields by members of the public. Robin Candy was also clear in his declaration of May 2014 that at no time had he ever seen any evidence of recreational use of the land. Given that they would have seen such evidence if it existed, it can clearly be concluded that there was no such use to any material

extent. All that Robin Candy saw was, on very rare occasions, people walking directly through the field, from one access point to another, some with dogs.

424. The evidence in the statutory declarations from the Candys is also supported by detailed statements from others. As well as those who gave oral evidence at the inquiry, there are statutory declarations from Henry and Margaret Wareham and from Norman and Brian Clothier. This evidence all paints a detailed and consistent picture. There can be no doubt that the evidence is true and complete.

425. There is also evidence from people who regularly visited the farm during the relevant 20 year period and would also have gone into the fields from time to time. This includes Christopher Cawood (vet), Raymond Langley (agricultural contractor), Richard Memory (tractor driver) and Michael Sheppard (vet). They would also have been able to see the fields when they were passing along Greyfield Road and the track to the farm, especially from the cab of a tractor. This evidence is clear that recreational use of the land has not been witnessed and indeed would not have been allowed by Mr. Candy. On the very, very rare occasions when any trace has been identified, such as the football found by Richard Memory, it has been confined to the north-eastern part of the eastern field.

426. And there is evidence from local residents themselves, such as Robert Ladd and Karen Corrigan, who would have known if the land was being used for recreation but who say that in their experience it was not. This evidence, which is contrary to their interests as local residents given the stance adopted by the Applicants and their supporters, should be given considerable weight. They recognise that they have occasionally seen people walking dogs through the field, but are clear that they have not seen any other use, save farming.

427. Alastair Martin explained in XX that when he visited the farm Mr. Candy would normally show him some land out on the farm and that he was able to get a good general impression of the application site from his annual visits to the farm.

428. John Ledbury explained in XIC that at least three other local residents had agreed to provide helpful statements for the Objector but had in the event declined to put their heads above the parapet.

429. The limited use of the Land in recent years is confirmed by the evidence from numerous people who have provided statutory declarations, including Kevin Bird, John Ledbury, Anthony Smith and Laura Wilkinson. It is of course accepted that this evidence reflects only snapshots of the Land, and some of it outside the relevant 20 year period, but there are numerous snapshots taken at times when any recreational use of the Land would have been apparent: in good weather, at weekends or during school holiday periods, at different times of the day, with no livestock present, and the like. And these are people who went to the land to look at it and who would have noticed if the land was being used to any significant extent by local residents for recreation.

430. John Ledbury explained the extent to which he had personally observed the Application Land over the years, and said that he had seen nothing which had caused him to query what was happening. This is a pretty good indicator that if the objective reasonable landowner had visited the Application Land he would have seen nothing to put him on notice of recreational use of the land by the general community of local residents. Given the evidence, this is not surprising. There was in reality very little use of the Land.

431. The evidence produced by the Objector, including that given orally at the inquiry, clearly shows that there has not been any significant recreational use of the home fields during the relevant 20 year period. This is entirely consistent with the Applicants' evidence, which shows that such use, even taken at its highest, was

limited, occasional and sporadic. The use has been nowhere near enough use, or use of such a character, reasonably to be regarded as the assertion of a public right against the Objector. The character, degree and frequency falls far short of what is required to establish a right to use the land on behalf of the community.

432. It could not rationally be concluded that there has been sufficient qualifying use to meet the relevant legal tests, as set out in the Objector's Legal Submissions at paragraphs 30 to 37.

433. The development of the area is shown by the historic OS maps provided by Alan Sheppard. The following descriptions of the plans were all agreed by Mr. Collins in XX. Plan 1 (1904) shows the colliery and brickworks with no place name - only the colliery. Indeed, even today, the post box says "Greyfield Colliery" not Greyfield. There are four sets of terraced cottages shown on the plan, and then at the village end of the road there is Oak Dene. Greyfield Wood is also marked. Plan 2 (1932) shows the colliery and brickworks as disused. The only new house is Woodlea. Plan 3 (c 1960) shows a couple of houses built on the old colliery site but no other new houses there. The development fronting Scumbrum Lane has been undertaken. Mendip View is present; that is included in the Applicants' red line area but not the other houses next to it. Plan 4 (1975) shows the transport depot and a few more houses nearby (eg up the Gug). There are a large number of houses built at eastern end of Greyfield Road - at the High Littleton end of the road. The road is being developed from High Littleton end of the road. Scobell Rise and Westwood Avenue were built at around same time. And houses were built in the grounds of Oak Dene. Plan 5 (1984) and Plan 6 (1987) show no real change apparent in the housing. Moreover, although Mr. Collins said he did not know about the history of Greyfield Common, Plan 7 (1990) shows the first part of Greyfield Common being developed, with the houses fronting the road built first, and then construction extending into the cul de sac. Nothing else had changed on Plan 7.

434. Mr. Collins did accept that the 1996 aerial photo in AS9 showed that the end of Greyfield Common had not then been built, but that Woodlea Bottom had been



built by 1996. And the 1999 aerial photo showed that 8 houses had been built at Greyfield Common by 1999. Willow House, next to Woodlea Bottom, was not there in 1999 but was there in 2006. Mr. Collins also said that Gores Park was built in 1996. Mr. Collins accepted that, within the 20 year period, the second half of Greyfield Common had been built, Gores Park had been built, and a number of new houses backing on to the fields had been built (four at Greyfield Common; Willow House; Wood lea Bottom. This totals some 72 houses out of 144 in the red line area today. This is a very radical change by any measure.

435. Mr. Collins said in his XIC both that the neighbourhood had changed and also that there had been "step changes in use" with the construction of Gores Park and then Greyfield Common. The phrase he used in his XIC was that there had been "a large expansion in the neighbourhood". The table produced by Mr. Collins at the inquiry on 17 June 2014 shows that "the neighbourhood has doubled in size between 1993 and the time of the application".

436. As was explained in opening, the fact that the claimed neighbourhood has changed so radically during the relevant 20 year period means that it cannot qualify as a neighbourhood for the purposes of section 15. It cannot sensibly be said that it was the same neighbourhood throughout the period when it changed so radically. There has not been 20 years use by residents of the claimed neighbourhood, because it was in essence not the same neighbourhood throughout. The place in 2013 is very different from how it was in 1993.

437. As Mr. Collins accepted in XX, the red line area excludes Greyfield Wood, Greyfield Farm and Greyfield House. He gave no explanation for the rationale underlying this. If there is a place called Greyfield (and there is not) then the area identified by the Applicants is not it. The evidence shows, however, that there is no "place" called Greyfield. There are things with that name, eg the road, the wood, the farm, etc. But there is no place called Greyfield which could be a neighbourhood.

438. The evidence advanced by the Applicants in support of there being a place called Greyfield does not in fact show that. As Mr. Collins accepted, the postman's letter does not describe the area as Greyfield; indeed, he calls it an area of High Littleton. And Mr. Collins said that the very great majority of people do not include Greyfield as part of their postal address. The newsagent means "Greyfield" as a road not a place (Mr. Collins said he was not sure about this, but a lack of clarity alone is telling). The parish records from 1925/ 1930 are referring to roads not places. There is, as Mr. Collins accepted, no place called Scumbrum, so the references in the records must be to roads not places. And the circular walk leaflet refers to Greyfield Wood and not Greyfield, and indeed does not mention Greyfield as a place or location on the walk description.

439. The red line area does not make any sense. It includes Mendip View but not the other houses next to it. It includes Westwood Avenue but not Scobell Rise which was built at the same time. There is a gate in the lane down to Maynard Terrace at Biggs Yard, but for no apparent reason land beyond the gate is included in the red line area, so that the boundary goes beyond gate and stops in the middle of the lane.

440. The red line area includes the application site but they are the only fields included in the red line area. No other fields at all are included in the red line area and the red line area excludes about half of the farm's land. It is perhaps telling that Mr. Collins did not know that the red line area cut the farm's land in half. As Mr. Collins accepted, the red line area also includes parts of two parishes, so that for example Greyfield Wood Farm is in Clutton parish. The red line area did not include the wooded area to the east of the application site which had been used for the BMX track. All these are more than mere quibbles about where the red line has been drawn. They demonstrate that it is impossible to identify a coherent neighbourhood in this location. That is because there is not one.

441. As far as neighbourhood facilities are concerned, Mr. Collins accepted that all the facilities were in High Littleton. He accepted that Dando's Stores was not in

the red line area (despite what some of the evidence claimed). He also accepted that the red line area excludes the pub, chip shop, post office, hairdresser, garage, church, chapel and school. All the facilities are beyond one end of Greyfield Road, in High Littleton. Although facilities are not an essential requirement for a neighbourhood under section 15 the presence or absence of facilities is a relevant factor of significant weight. The lack of such facilities is a fairly strong indicator that the area is not a neighbourhood. Another indicator is the Neighbourhood Watch (NHW) position, explained by Rachel Tidcombe in her evidence. She said that there was one NHW for Greyfield Common and one NHW for part of Greyfield Road. Again this indicates that the red line area is not one neighbourhood.

442. To the extent that there is any objective justification for the red line area qualifying as a neighbourhood advanced by the Applicants, it is on the basis that it is a separate area, with only one access into the area via Greyfield Road. Even if that was true that would not be enough to qualify as a neighbourhood under section 15 of the 2006 Act. It would mean that any dead-end area - such as a close, cul de sac or dead-end lane - would qualify as a neighbourhood. That is plainly wrong and not what the 2006 Act intends.

443. At all events, the alleged separation simply does not exist in fact. It rests on the fallacy that The Gug cannot be used to get access to or from the red line area. That is plainly wrong. The Gug is marked on the OS map as a yellow road, just like Greyfield Road and Scumbrum Lane. As a matter of fact it is not a dead-end road. Mr. Collins accepted in XX that traffic can get through either way, that there are no restrictions, that the road is open for anyone to use and that it is used by traffic. Indeed, he conceded that he could not say that no one used the road and also that he was not contending that everyone accessed the red line area via the High Street junction.

444. David Fenton also accepted that the road was open for anyone to use and was used by traffic, especially people going to and from Gores Park for example in the morning peak time. And Paul Allen said that he drives along The Gug, noting

that part of the road was washed away in the last winter floods. The evidence from John Ledbury of the use of The Gug during the morning peak period on two dates in June and October 2014 shows that it is in fact well used, both by local traffic and by visiting traffic, including commercial traffic.

445. In the light of Mr. Collins's oral evidence to the inquiry, the Applicants' case for the red line area being a neighbourhood cannot survive. It was clear that this idea of separation by reason of the area having only one access point was a device to try to create a defined area to qualify as a neighbourhood. It was bound to fail.

446. The character of the area within the red line: The following description of the character of the area was all agreed with Mr. Collins in XX. The Gug contains some old colliery buildings converted to houses as well as some houses which were built as houses; it contains a range of different ages, types and styles. Gores Park is a modern housing estate with houses very different from, for example, The Gug or elsewhere in the red line area. Westwood Avenue and Scobell Rise were built at around same time. Westwood Avenue is comprised of bungalows and looks very different from other places within red line area.

447. Greyfield Road itself contains small numbers of similar types of houses, including a number of individual houses built separately and terraces of cottages from the colliery days. The road has a mix of house ages, types and styles. It is indeed generally all different throughout. Some is frontage development and some is backland development. Mr. Collins himself said in XX that the road had many different styles of houses.

448. David Fenton's evidence, as a professional planner, was that the housing along Greyfield Road has no consistent building line; some houses are set forward and some are set well back into their plots; the houses along Greyfield Road are built in a range of styles; some are single storey, some chalet style and some two storey; they include detached, semi-detached and terraced houses; there is no

prevailing style or form; and, there is no prevailing form in spacing between houses. Mr. Fenton also said that some areas were very similar - Gores Park, Greyfield Common and Westwood Avenue - but that there was a "very, very mixed style of properties on Greyfield Road". It is clear on this evidence that the red line area cannot be a single cohesive whole in terms of its character.

449. Greyfield Common is a modern housing estate, with some houses fronting the road and some down the cul de sac. It was built in two parts, and each part has a different style. The housing is of different styles from other parts of red line area. Mr. Collins said himself in XX that there was a wide variety of styles of houses in the claimed neighbourhood.

450. In RX, Mr. Fenton referred to there being a sense of community, but he said that it was centred on the application site and Greyfield Woods. This would not be enough to qualify as a neighbourhood for the purposes of section 15. First, a "sense of community" is not the same as a sufficiently cohesive and distinctive area which is capable of meaningful description. This is similar to the "state of mind" referred to by Mark Collins in his evidence. Secondly, use of the application site cannot be a characteristic which defines a neighbourhood for section 15 purposes. That would be the application pulling itself up by its own boot straps. Thirdly, Greyfield Woods is outside the claimed neighbourhood and cannot therefore be a point which supports its existence. Mr. Fenton's evidence merely serves further to highlight that the claimed neighbourhood is not a neighbourhood for the purposes of section 15.

451. Historically, Greyfield as a label on the map arose not as the name of a place but the name of the colliery. The post box today retains the name "Greyfield Colliery". The position remains that there are still just labels on the map. After the colliery closed, the 1932 map shows the name on map left to apply to the four sets of terraced cottages. Then, during the 1970s, as Mr. Collins accepted, the road was developed from the High Littleton end of the road. The housing that was built then

and subsequently shows the area clearly being built-up as an extension of High Littleton rather than as a freestanding settlement or area in its own right.

a. In XX Mr. Collins refused to accept that he could not rely on the application site or its claimed use to justify the existence of a neighbourhood. This is a well-established point, but the Applicants' reliance upon it shows how misconceived their case on neighbourhood is. Even though the Applicants rely on it, it is not a point which can properly be taken into account in judging whether section 15 is satisfied in this case. Mr. Collins said in XX that the red line showed the area where they felt the neighbourhood was. That is not good enough. Section 15 requires a neighbourhood to be based on more than a feeling on the part of the Applicants. A neighbourhood cannot be an area of land that an applicant has chosen to delineate on a plan. It cannot just be the area within which people who claim to use the Land live. The Applicants' claimed neighbourhood does not have a sufficient degree of cohesiveness and is not capable of meaningful description.

452. None of the requirements of section 15 of the 2006 Act are satisfied in this case. There are a number of points any one of which would be fatal to the application, including the interruption to continuous use during the foot-and-mouth outbreak, the interruptions to continuous use when the fields were subject to fencing for strip grazing and hay growing, the lack of use when the land was intensively farmed by Mr. Candy with cattle (and indeed other times when livestock were present in the fields) and the absence of a qualifying neighbourhood.

453. As to use, there are a number of elements of the claimed use which must be discounted, so that there would be virtually no claimed use left, including the walking, with and without dogs, and related activities, which do not qualify as lawful sports or pastimes in the circumstances of this case. There has been contentious use due to challenges during Mr. Candy's period of farming with cattle, forcible use where users climbed over fences, hurdles or the like to gain access to the land and stealthy use made by people who accessed the Land from gates in their boundaries.

454. There has been (limited) permissive use of the land allowed by Mr.. Candy and use by people who live outside the red line area plus use for activities which do not qualify as lawful sports or pastimes under section 15 (e.g. educational activities and fruit-picking and claimed use consisting in looking out over the Land.

455. The legal tests for a sufficient quality and quantity of use are set out in the Objector's Legal Submissions. There is absolutely no hope whatsoever that those tests would be satisfied in this case, even if none of the claimed use was discounted. It could not rationally be concluded in this case that the whole of the Land had been used so as to signify to a landowner that the land was in more general use by the local community for informal recreation to an extent sufficient to be regarded as the assertion of a public right.

456. Moreover, this is a case where the claimed recreational use could not sensibly coexist at all with the undisputed intense agricultural use of the application land. No land like this has ever been registered as a new village green.

457. For any or all of the reasons given in the Objector's submissions, this application is bound to fail. It must be rejected.

### **Discussion and Conclusions**

458. The Application was made under subsection (2) of the Commons Act 2006. That 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.”*

459. The details of the Application have been set out by me in paragraphs 10 to 15 above. It was dated 17 July 2013 and was registered on 17 July 2013. The relevant 20 year period therefore covers the period from July 1993 to July 2013. The Applicants accepted (as they must) that the burden of proof rests with them. The courts have long accepted that registration is “no trivial matter” for the land owner and therefore it is essential that the Applicant establishes all the elements required to justify registration and that these must be “properly and strictly

proved” – see *R v Sunderland City Council ex parte Beresford* [2004] 1 AC 889 per Lord Bingham at para 2. In my view this means that the Applicants must satisfy the usual civil standard of proof, namely the balance of probabilities, in relation to each and every element.

460. Thus they must demonstrate with sufficient evidence that:

- (1) a significant number of the inhabitants of the locality or a neighbourhood within a locality;
- (2) have indulged as of right;
- (3) in lawful sports and pastimes on the Land;
- (4) for at least 20 years and
- (5) have continued to do so as at 17 July 2013.

461. I shall examine each of these elements in what appears to me to be the most logical order in the circumstances of the Application and make findings in relation to each element before coming to a final conclusion and recommendation. However as will be seen there is a considerable degree of interplay between the various elements.

*“Locality” or “neighbourhood with a locality”*

462. The Application was framed originally on the basis that the neighbourhood was “Greyfield”. Mr. Collins, Mr. Moore and Mr. Fenton in their evidence explained the rationale behind the choice of Greyfield as the relevant neighbourhood. Mr. Collins described it as a recognized, distinct and cohesive community of approximately 331 residents and provided evidence regarding its physical extent and its history.

463. The Applicants pointed out that in the Objector’s letter of 9 September 2013 at paragraph 3.2 stated: “The Owners do not at present disagree that the residents of Greyfield Road, Greyfield Common, Westwood Ave, Up the Gug, the various houses now on the former Colliery Site and Gores Park constitute a neighbourhood.” I note that, as expressed in that letter, the Objectors could be



taken as having only provisionally accepted that Greyfield constituted a neighbourhood for the purposes of section 15(2).

464. In paragraphs 12 to 16 of the Applicants' Closing Statement the Applicants highlighted the basis of their argument that Greyfield constituted a qualifying neighbourhood. In contrast, in paragraphs 199 to 232 of the Objector's Closing Submissions detailed reasoning was provided for the argument that the claimed neighbourhood could not qualify as a neighbourhood. There was also reference back to paragraphs 19 – 29 of the Objector's legal submissions and paragraphs 24-26 of the Objector's opening statement. Whilst this position is different from that set out in the letter of objection of 9 September 2013 it is in my view entirely reasonable for the Objector to have altered its view and to now assert that Greyfield does not constitute qualifying neighbourhood for the purposes of TVG registration. I do not believe that the Applicants have been prejudiced by this because the Objector's position was clear from the line of cross examination of the Applicants' witnesses that the issue of qualifying neighbourhood was being challenged by the Objector.

465. One of the principal arguments of the Objector was that the claimed neighbourhood had changed radically during the relevant 20 years period. Furthermore it was questioned whether there was any recognizable place as "Greyfield" and it was submitted that the red line area made no sense and that the character of the area within it was such that it could not be considered to have a single cohesive character. Other criticism included the separation of the neighbourhood from the remainder of High Littleton

466. In the case of *R (on the application of Laing Homes Ltd) v Buckinghamshire County Council*, the High Court endorsed the view that the question of what was the relevant locality (or neighbourhood within a locality) was a matter of fact for the Registration Authority to determine in the light of all the evidence, which might contain a number of conflicting views on the topic. Subject to considerations of fairness towards the Applicants and supporters and the Objector, the Registration Authority should be able to decide that question in the light of all the evidence, whether or not the answer corresponded with the locality (or neighbourhood) put forward by the Applicant.

467. In my view on the issue of the neighbourhood the Objector has raised a number of significant points. Nevertheless, on this element of the statutory test, the evidence that I heard together with my own inspection of the area has caused me to conclude that the approach of the Applicants is to be preferred. There is to my mind a clear separation between this neighbourhood and the remainder of High Littleton. The main road does represent a clear boundary: it is a main road and acts as a deterrent to residents crossing it to use the more formal play and recreation area in the main part of High Littleton. Whilst there is a lack of facilities such as shops and schools there is a clear element of cohesion. I do not place much weight on the mixed character of the area. A mixture of building sizes, designs and ages is not unusual. There is a clear historical background, centered originally on Greyfield Colliery, to the area and the name Greyfield does feature in a number of differing guises. Furthermore I place considerable weight on the observation of Mr. Fenton, a retired planning inspector, who will from experience be well placed to assess the character of the area.

468. I acknowledge the force in the argument regarding the development that has taken place in the neighbourhood during the relevant 20 year period. However my impression is that during that period the essential characteristics of the neighbourhood did not change to any significant extent. However the resultant growth in the local population during that period is relevant but that it is more appropriately considered in the context of consideration of the nature and level of use of the Land.

469. I therefore find that on the question of whether or not the Application relates to a neighbourhood for the purpose of section 15(2) I am satisfied that the Applicants have established this element of the statutory test and so conclude.

*Significant number of inhabitants*

470. In the light of my finding and conclusion above it is necessary to consider whether for the purposes of section 15(2) “a significant number of the inhabitants” of the neighbourhood have indulged in lawful sports and pastimes on the Land. In *R (Alfred McAlpine Homes Ltd) v Staffordshire County Council* [2002] EWHC 76

Sullivan J held that “what matters is that the number of people using the land in question has to be 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 individuals as trespassers.” The court did not accept that the expression was synonymous with a considerable, or a substantial, number because a neighbourhood might have a very limited population, and a significant number of its inhabitants might not be capable of being described as considerable or substantial. This implies that what constitutes a “significant number” is relative to the size of the population of the relevant locality or neighbourhood. Whether the evidence shows that a significant number of inhabitants used the land in question is, according to paragraph 71 of the judgment of Sullivan J, a matter of impression. The key question is whether the number of inhabitants using the land was sufficient to signify that it was in general use by the local community (i.e. the inhabitants of the relevant locality or neighbourhood) for informal recreation, rather than occasional use by individual trespassers. It is also important that, in addressing this key question, to examine this aspect throughout the entire relevant 20 year period rather than in the immediate years leading up to the submission of the Application. In an area such as Greyfield, where there has been some significant expansion in more recent years in terms of new homes and incoming residents, the more recent level of activity may not properly reflect the nature and level of use throughout the period.

471. The Applicants have invited me to conclude that this element has also been satisfied. As Mr. Collins indicated, 36% of persons residing in the neighbourhood at the time of the Application have provided evidence of usage and that this equates to 118 which is a clearly significant number. It was noted by the Applicants that the Objector argued that some usage should not count towards village green use. The Applicants did not agree and that even if all the usage with permission and those having access via their garden gates was discounted this would still produce a figure of some 82 residents (25%) and that this was still a significant number.

472. The Objector’s position was set in detail in the Closing Submissions. The Objector has taken a different approach to that of the Applicant. In my view the Applicants’ approach to this element of the statutory test relies too heavily on a numerical assessment of the evidence of use whereas the Objector’s approach also

adopts a qualitative assessment i.e. not just the number of residents who claim to have used the Land but also the nature, duration and manner of their use. Bearing in mind that the key question is whether the number of inhabitants using the Land was sufficient to signify that it was in general use by the local community (i.e. the inhabitants of the relevant locality or neighbourhood) for informal recreation, rather than occasional use by individual trespassers, the Objector's approach is the correct one to adopt.

473. I gained a very strong impression from both the oral and written evidence that there has been some use of the Land by local residents. It is clear from photographs, for example, that some activities were carried out on the Land. I also gained the impression that Mr. Candy was aware of some of this use and that he was prepared to tolerate it, possibly out of a spirit of good neighbourliness. However, the evidence clearly pointed to Mr. Candy being both a responsible and traditional farmer who placed the well-being of his livestock as a paramount consideration. In my view Mr. Candy was prepared to tolerate some use of his Land but that this was at a low level of activity and of such a nature and frequency that it did not conflict with his farming activities. In other words a *de minimis* level of use was tolerated by him but had the level of use increased beyond that he would, and did, challenge that use. It is also important to bear in mind that some residents have access to the land from gates in their fences or hedges and that some went on to the Land for the purpose of maintaining their fences or hedges (which, in some cases, was a requirement of their title deeds) or to retrieve balls etc. that had strayed on to the Land. Thus it may not have come as any surprise to Mr. Candy that at times people could be seen on the Land, especially in the area closest to Greyfield Common.

474. Further, it is clear from the evidence that the level of use of the Land was adversely affected by the various farming activities being carried out throughout the 20 year period. Whilst I accept that some people did gain access onto the Land, the presence of dairy then beef cattle and more recently sheep, together with the strip grazing, hay cropping and muck spreading will have acted as a significant impediment to any meaningful use of the Land by a significant number of local inhabitants. The evidence clearly showed that the land was in active use by Mr. Candy as a vital part of his farming operation and that it was in constant use

throughout the relevant period. Whilst the evidence pointed towards the level of use increasing in more recent years as cattle gave way to sheep and the population of the area increased, that does not in my opinion alter the position. In short, the evidence showed that on a the balance of probability the level of use was such that it could not be said that throughout the 20 year period a significant number of local inhabitants used the Land to such an extent to support the Application. The Application must be rejected on this basis.

*Lawful sports and pastimes on the land*

475. It is beyond dispute that some activities carried out on the Land must be discounted by me. Access to the Land for the purposes of maintaining fences and hedges and retrieving stray balls etc. are legitimate reasons for people being on the Land and cannot count for TVG purposes. Equally those accessing the Land as part of a longer walking route that took them beyond the Land must also be discounted. It is irrelevant that there is no right of way across the Land such use can only be taken into account for the purpose of acquiring public rights of way. It is clear from the evidence that a significant amount of usage must be discounted on that basis.

476. I heard and received evidence of some activities that were carried out on the Land. Photographs clearly supported snow related activities but, by their very nature, these were weather dependent and could only have taken place on those days when there had been sufficient snow on the Land. Thus this use, whilst undoubtedly a lawful pastime, was too sporadic and irregular to support TVG registration on its own. Similarly activities such as fireworks, picnics and kite flying were undertaken on a very sporadic basis and were certainly not a regular feature of the Land's use by local inhabitants throughout the 20 year period. Equally fruit picking is a seasonal but transient activity. Whilst these are also lawful pastimes they were not carried out any regular basis and by a significant number of inhabitants sufficient to support an application of TVG rights.

477. Whilst the evidence showed that some use of parts of the Land was greater than others - particularly in the north-east corner of the eastern field on the Land - the level, nature and duration of that use was still insufficient to justify registering a smaller area of the Land than that applied for.

478. There was one other aspect to this element that is problematic. It was impossible to say that all of these activities, when undertaken, were done so by local inhabitants (by which I mean those living within the red line area) as opposed to visiting friends or family or even strangers. Thus it cannot be said that on the balance of probability the Applicants have demonstrated that there was a sufficient level of use for lawful sports and pastimes by local inhabitants. This is in my view a further reason for rejecting the application.

*Use for 20 years*

479. The evidence was clear that the use of the Land in 2001 during the foot and mouth disease outbreak ceased. This was not seriously questioned by anyone at the inquiry and it would have been totally out of character for Mr. Candy to have allowed any access to the Land during that period. I was also impressed by the genuine desire on the part of the Applicants and those they represent to ensure that at all times any use of the land for whatever purpose was done in accordance with the terms of the Countryside Code. It is therefore beyond dispute the use of the Land for the purpose of TVG registration ceased for a lengthy period such that it would prevent TVG registration.

480. The only question that therefore needs addressing is whether the Applicants can rely upon the provision in section 15(6) whereby any period of statutory closure of the Land must be left out of account. The evidence on this was clear and beyond dispute. There was no statutory closure of the Land. Mercifully this part of the country remained disease free. The local inhabitants, out of natural concern for the well-being of livestock (and no doubt out of respect to Mr. Candy), voluntarily ceased using the Land for the duration of this lengthy crisis. Unfortunately for the purposes of this Application this well intentioned action on the part of the local inhabitants means that the Applicants cannot demonstrate that they used the Land for TVG purposes throughout the entire 20 year period and therefore as a matter of law the Application must be rejected on this basis alone.

*As of right*

481. As a consequence of my findings and recommendations above it is not necessary for me to determine the question of whether or not there has been use “as of right”.

*Recommendation*

482. It is my firm view that the Application should be rejected for the following reasons:

- (1) The Applicants have not been able to demonstrate, in terms of numbers of users and the nature and type of use, that on the balance of probability there has been general use for TVG purposes by a significant number of inhabitants of the neighbourhood; and
- (2) Use of the Land ceased during the foot and mouth outbreak for a significant period and the Land was not subject to any statutory closure. Therefore the Applicants have been unable to demonstrate use throughout the relevant 20 year period.

483. Either of the above reasons would have been sufficient to justify rejection of the Application. Taken together, they represent insurmountable obstacles to registration.

484. Finally I would like to record my thanks for the invaluable assistance provided to me by Mr. Stark and for his efficient and thorough handling of the Application and throughout the inquiry.

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8 April 2015