In the matter of an application to register land known as Coldblow Woods and Sports Ground or Horseshoe Woods and Ex-Marines Ground, as a town or village green

---

INSPECTOR'S REPORT
FOR KENT COUNTY COUNCIL
24 October 2014

Annabel Graham Paul

Francis Taylor Building
Inner Temple
EC4Y 7BY

Commons Registration Team
Kent County Council
Countryside Access Service
Invicta House
County Hall
Maidstone
Kent
ME14 1XX

INTRODUCTION

1. I have been appointed as an independent Inspector by the registration authority, Kent County Council, and asked to report with recommendations in respect of an application to register land known as Coldblow Woods and Sports Ground or Horseshoe Woods and Ex-Marines Ground as a new town or village green ('the application land').

2. I heard evidence and submissions at a Public Inquiry held on 9 – 13 June 2014 at Deal Town Hall, High Street, Deal, CT14 6TR. I am grateful to Ms Melanie McNeir and Mr Chris Wade of the registration authority for their assistance with preparation for the inquiry and its smooth running. I am also grateful to the advocates, Ms Morag Ellis QC and Mr Sam Davis, Ms Hannah Lennox, Mr Oliver Hartland, Ms Rachel Jones and Ms Elaine Sherratt for the helpful way they conducted their respective parties' cases. In addition, the Applicant himself and his supporters had evidently invested an enormous amount of time and effort in preparing their case before they had any professional assistance, and I am grateful for the resulting clarity of their written evidence.

3. Parties benefitted from the preparation by the registration authority of three volumes of a core bundle of inquiry documents and the applicant and objector submitted respective bundles of evidence. Where page numbers are cited in this Report, they will be abbreviated in the following way:

   Core Bundle (CB [X])
   Applicant's Bundle (AB [X])
   Objectors' Bundle (OB [X])

4. The application was made by Mr Roger Chatfield of The Paddock, Chapel Lane, Ripple, Deal, Kent, CT14 8JG ('the applicant'). The application is dated 27 November 2012 and was revised on 11 February 2013. It was made under section 15(3) of the Commons Act 2006 with 'as of right' use stated to have ended in late

October 2012 (in respect of the northern plot) when the owner challenged a walker and erected posts and a bund and on 27 August 2012 (in respect of the southern plot) when barbed wire was stretched over access points and notices stating "Ringwould Cricket Club No Trespassing" were nailed to the trees. The locality relied on is the ecclesiastical Parish of Walmer. It was accompanied by a number of photographs and supporting documents and 326 evidence questionnaires (CB 115 – 2074).

5. Following publication of the application, a number of consultation responses were received (CB 2075 – 2214), a petition in support of the application (CB 2215 – 2334) and an objection received on behalf of the landowners (CB 2335 – 2564). They are:

   (1) TG Claymore (UK) Limited in respect of the Sports Ground or ex-Marines Ground part of the application land and surrounding woodland (also known as Site A during the inquiry);
   (2) Ledger Farms Limited in respect of the northern part of Coldblow Woods or Horseshoe Woods part of the application land (also known as Site B during the inquiry).

6. The registration authority resolved to refer the matter to a public inquiry and, following a pre-inquiry meeting, directions were made on 17 March 2014 in respect of the running of the inquiry. In accordance with those directions, further evidence was submitted by the applicant on 29 April 2014 and by the objectors on 16 May 2014. I received additional documents from both parties during the inquiry, which have been filed in the applicant's and objectors' bundles as appropriate. I also watched two 'Youtube' videos during the inquiry showing an 'air soft' game on Site A and BMX biking on Site B.

THE APPLICATION LAND

7. I made a formal site visit after the inquiry on 30 June 2014 accompanied by Ms McNeir of the registration authority and representatives of both parties. No evidence

was given during the site visit but I set out my personal observations insofar as they may be relevant in this Report below.

8. The application land and surrounding area were, for convenience, often referred to during the inquiry by reference to the lettering on a plan the applicant submitted with his witness statements. As already stated, the northern part of Coldblow Woods owned by Mr Ledger's company is called Site B. TG Claymore's land is called Site A. Various accesses are marked on the plan and letters mark points of interest for the evidence. I ask that Members of the registration authority are provided with a copy of that plan to refer to in conjunction with reading this Report.

UNDISPUTED FACTUAL CONTEXT

9. In terms of undisputed factual context, the application land was originally owned in full by the Secretary of State for Defence. Site B (and surrounding farmland) was sold to Mr Ledger's family in 1978. Site A remained the property of the Secretary of State for Defence and was used by the Deal-based Royal Marines as their sports ground until the late 1970s. When used as a sports-ground, Site A was surrounded by standard military chain link fencing of a bright green colour (there was no fencing between the woodland and sports-ground area). There were two vehicular entrances with gates from Coldblow Land (Accesses 3 and 5), which are set back from the road with a small 'lay-by'. There was also a pedestrian gate at some point between I and B on the plan. This gate became dilapidated and hung open at some point during the 1980s.

10. In 1987 there was a major hurricane across Britain. A number of large trees fell and caused serious damage and breaches to the fencing. No longer using the land, the marines carried out minimal (if any) repairs. Others cleared the surrounding footpaths, EE446 and EE438, by cutting the fallen trees' trunks.

11. The MOD erected a number of signs around Site A which read 'MOD Property' (NB there was a dispute about the wording of these signs in the written evidence,

which I consider is no longer material in light of the oral evidence), which remained in place until the end of their ownership.

12. On 2 November 1992, Site A was sold to Mr and Mrs Martin Luckhurst. Mr Luckhurst purchased Site A for its development potential but, in the end, did not use it. He noticed some breaches in the fencing, including between points B and I. He carried out some repairs to the fencing and erected signs which were quickly torn down shortly after purchase but was eventually overcome by the financial and practical difficulties of securing Site A from trespassers. He gave up trying to repair fencing around early 1996.

13. In any event, in 1996, Dover District Council issued a direction under Article 4 of the Town and Country Planning (General Permitted Development) Order 1995 prohibiting (inter alia) the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure (CB 2446 – 2447). This was to prevent Mr Luckhurst from subdividing the land for sale as plots (in particular to the owner of the neighbouring property, The Firs). Any repairs to the fence would therefore need express planning permission, which Mr Luckhurst did not seek.

14. Mr Luckhurst was increasingly concerned by nuisances on Site A, especially caused by motorbike riders and car drivers. In 1998 he applied to Dover District Council to construct a raised boundary and verges to prevent unauthorised vehicular access along the Coldblow Road side of Site A to a height not exceeding the existing fence dimension. This was refused on the grounds of visual amenity on 3 June 1999 (CB 2456). A further application was submitted in 2000, but withdrawn.

15. Meanwhile, during 1998 Mr Luckhurst had sanctioned a very small number of 'New Age Travellers' to reside on Site A with vehicles (the initial families were called Julia and Glen and then Julia and Witty with their son Luke; Julia and Glen were friends of Mr Luckhurst's son, Brett). Other families of New Age Travellers came and went

and there were people living on Site A for sometime. By all accounts, the New Age Travellers were friendly and did not engage in anti-social behaviour.

16. However, in 1999, other gypsies and travellers moved onto Site A who did not have Mr Luckhurst's permission. On 16 April 1999, the Clerk to the Parish Council noted a number of caravans on the site fluctuating between eight and nine (CB 2518) and on 24 April 1999 Mr Luckhurst wrote stating that these people were trespassing (CB 2517).

17. There is evidence of anti-social behaviour associated with these travellers and others at the time. Two 11 year old girls were harassed by the travellers in June / July 1999 (CB 2519 and CB 2540 – 2542) and by September 1999 local residents were writing to the Parish Council regarding the "appalling state of the woods and adjoining field at Coldblow" (CB 2525) with abandoned cars, flytipping, illegal raves and youths careering around on scrambler bikes. There were no sanitation arrangements for the disposal of human waste and household rubbish (CB 2522) and the wooded area was becoming littered with rubbish and plastic bags full of human excrement (CB 2523). On 6 September 1999, four burnt out cars on Site A were recorded in a letter (CB 2523).

18. On 14 October 1999, Dover District Council wrote to the concerned Parish Council stating that the first steps towards removing the travellers had been taken and Mr Luckhurst was actively pursuing methods to prevent their return (CB 2521). This was following a meeting held with Mr Luckhurst on 22 September 1999 (CB 2543).

19. On 6 April 2000, Dover District Council issued a Section 215 Notice under the Town and Country Planning Act 1990 requiring the clean-up of the land, as well as an enforcement notice in respect of the use of Site A for the stationing of caravans. The compliance period was 6 months. A contemporaneous newspaper article at CB 2508 refers to statements from three travellers at the time called Andy Prouse (father of twin baby daughters), Darren and his friend Chris. The travellers' statements suggest that others may have been responsible for the burnt out cars. It was referred

to as a 'glorified tip' and a 'nightmare' and it was said that a lot of people had stopped going to the area in contemporaneous newspaper articles at CB 2509 – 2511 and in correspondence from February and March 2000 (at .CB 2535 – 2538). Bad language and aggressive and intimidating behaviour to horseriders and pedestrians using the footpaths and bridleways in the area surrounding Site A were reported (CB 2557).

20. On 2 and 8 August 2000, officers of Dover District Council visited Site A with officers of the Environment Agency and noted the relatively recent deposit of significant quantities of controlled waste on the land, such as household waste, builders waste, garden waste, burnt out or otherwise destroyed caravans and burnt out cars (document handed out during the inquiry). It appears that there were no longer any gypsies or travellers on Site A at that point and that they had finally been removed at some point during the summer of 2000.

21. Site A was not cleared of detritus, in particular burnt out cars, however, as at 2 May 2001 when fresh section 215 notices were issued (AB 2470). However, by 14 June 2001 when Dover District Council inspected Site A following the end of the compliance period with the notices, the land was cleared subject to a residual amount of rubbish and debris (CB 2470).

22. Invoices from Mr Ledger's company who carried out the clean-up work show that he removed 38 flattened cars from Site A and also that he constructed a 'ditch and bund' on two sides of the field. Dover District Council decided not to take enforcement action in respect of this ditch and bund on 6 September 2011 (CB 2470 – 2471).

23. Anti-social problems, however, continued. Dover District Council wrote to Mr Luckhurst on 23 May 2002 in respect of noise complaints from neighbouring properties alleging that every weekend and some evenings, a number of motorbikes gather and scramble in a circuit around the land (CB 2561). Aerial photographs show increasing evidence of tracks created by circuits (Annex 4 to Mr Long's statement).

In 1993, two tracks are visible on Site A, crossing the mid-point. By 1997, there is also a circular track around the edge of the field and an additional (fainter) track joining the two central tracks, which becomes more visible in 1999. By 2001, there are further 'looped' tracks in the field, which remain in 2003 and 2006. In 2007 there is another 'inset' track round the bushes next to Coldblow Lane. The tracks remain visible up until the final photograph in 2012.

24. A police incident report (CB 2422) records 26 reports of between 4 February 2008 and 9 December 2012 in the area of Coldblow Lane, Junction Ripple Road, to Coldblow Crossing along railway line to Station Road, to A258 (excluding houses). Not all of these are necessarily associated with the application land, although it is fair to assume that some were. The majority are concerned with vehicle and bike nuisances, fires in the wood, raves and camping.

25. In late 2011, Mr Luckhurst instructed a friend, Mr Dickason to erect signs (as shown on the photograph at CB 2624) which asked members of the public to call Mr Dickason's mobile number to report felling trees, damaging trees, removing wood, shooting, riding motorbikes, lighting fires, camping, dumping rubbish without owner permission. It appears that six signs were erected around the woodland in Site A and Site B (see CB 2625).

26. On 11 May 2012, Mr Luckhurst sold Site A to TG Claymore (UK) Ltd., a land management and property development company, one of whose directors is Mr Fielding who is also the Secretary of Ringwould Cricket Club. On 27 August 2012, barb wire was stretched across the access points and signs were erected stating 'Ringwould Cricket Club No Trespassing'. On 2 November 2012 a digger was brought onto the land, a trench dug and an earth wall erected within the woods between Sites A and B. Earth ramparts, reinforced with fallen shrubs and barbed wire were pushed into all access points around the perimeter. The applicant accepts that 'as of right' use of Site A ceased on 27 August 2012.

27. In relation to Site B, there has never been any fencing. The Definitive Map shows no footpaths running over Site B. Footpath EE443 runs along the northern boundary just to the north of the woods, although there is some dispute as to whether that is accurate, which I do not consider is relevant to the determination of this application. That footpath is certainly inaccessible at the current time and has been so for at least the relevant period for the application. Bridleway EE442 runs immediately to the east of the eastern boundary of Site B.

28. Possibly as a result of neighbouring farmers cultivating the fields to the north and to the east of Site B right up to the woodland over the rights of way, walkers have created within the woodland pathways running parallel to the right of way. Walkers tend to access the land from the western or eastern extremity of what should be footpath EE443. On entering the woods from the north-eastern corner (which connects with footpaths running up to the settlement of Walmer), the walker is faced with two well-defined and well-used tracks: one running westwards parallel to footpath EE443, and another track running southwards within the woods running parallel to bridleway EE442. There are a number of other less clear tracks in the woodland which tend to converge on a depressed crater, known as the 'chalk pit' or 'bomb crater' marked as D on the plan. There are also a number of mounds which mark the remnants of the marines' assault course in the woodland.

29. Mr Ledger started to challenge walkers on Site B in late October 2012 and the applicant accepts that 'as of right' use ceased in late October 2012, although he has also mooted in an amendment application dated 9 June 2014 that it is for the Objectors to show that 'as of right' use ceased and, in the absence of that, he would wish to rely on s. 15(2) and use 'as of right' up to the date of the application in respect of Site B. I deal with the appropriate relevant period below.

30. Mr Ledger farms the adjoining field at Site C.

<u>Preliminary Issue: Amendment to the Application and Appropriate Relevant Period</u>

31. I have already referred to the different dates for the end of 'as of right' use set out by the Applicant in the application form with respect to Sites A and B (and, further, to the potential of considering Site B in the context of s. 15(2) of the Commons Act 2006). Section 15 of the Commons Act 2006 relates to the registration of "land" as a town or village green. It provides that the inhabitants of any locality must have indulged as of right in lawful sports and pastimes "on the land" for a period of at least 20 years. If they ceased to do so before the time the application was made, s. 15(3) can be relied on where the application is made within the period of two years beginning with the cessation referred to.

32. In my view, as a matter of literal statutory construction, it is not permissible within a single application to register a unit of "land" to rely on different dates for the cessation of 'as of right' use in respect of different parts of that land. If 'as of right' use is accepted to have ceased in respect of part of the land, then it has ceased in respect of the whole of the land. I therefore consider that the application is bound to proceed under s. 15(3) on the basis of the accepted cessation of 'as of right' use for Site A when TG Claymore erected barb wire and signs on 27 August 2012. This was ultimately agreed between the parties by the close of the inquiry. The relevant period is therefore 27 August 1992 to 27 August 2012.

33. Alternatively, if the signs erected on behalf of Mr Luckhurst by Mr Dickason in late 2011 render the use of the land no longer 'as of right', then it is open to the Applicant to rely on that earlier date as the cessation of 'as of right' use in respect of the whole. The Objectors were aware of this alternative argument when presenting their case, and I do not consider that any prejudice would be caused to them by allowing such an amendment, if the application would only otherwise fail by virtue of the effect of those signs (see paragraph 1.2 of the Objectors' Closing Submissions).

ISSUES

34. I identified the issues at the outset of the inquiry and refined them on the penultimate day. They are as follows:

(i) Whether use of the land was for lawful sports and pastimes by a significant number of inhabitants of the ecclesiastical parish of Walmer throughout the relevant period, with particular regard to whether:
   (a) Use was interrupted during the 20 year period;
   (b) Some of the claimed use should be classified as non-village green use;
   (c) The remaining user has been of such amount and such manner so as reasonably to be regarded as the assertion of a village green right.

(ii) Whether the lawful sports and pastimes has been 'as of right', with particular regard to whether:
   (a) Use has been by force;
   (b) Use has been permissive by virtue of the signs erected in late 2011;
   (c) Some or all of the use has been by stealth.

(iii) If the application would otherwise fail, whether the registration authority should register part of parts of the application land.

35. I remind myself and the registration authority that the burden lies on the applicant to prove, on the balance of probabilities, that the statutory requirements are met and, as Lord Bingham said in R (Beresford) v Sunderland City Council [2004] 1 AC 889 at [3]:

> "It is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town green … It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years' indulgence or more is met".

36. There is a large volume of written evidence in this case. I have had regard to the documentary evidence that supported the oral evidence of witnesses, as well as the written evidence that was not subject to oral elaboration and testing under cross-examination. However, necessarily, written evidence which has not been heard and tested carries less weight. Furthermore, the evidence questionnaires suffer in some cases from a lack of precision and clarity, e.g. in relation to exactly how long people have lived in the locality and used the land, which was not the case with the oral evidence. Whilst this is not a criticism of those who completed the questionnaires, it is inevitable that the detail given in evidence questionnaires is more 'broad brush' than in full written statements, and indeed in oral evidence given at the inquiry. Thus, whilst the evidence questionnaires form part of the overall picture of the use of the application land, their contents need to be treated with a degree of caution.

THE EVIDENCE PRESENTED

37. I will now set out a summary of what I consider the relevant parts of the evidence given at the inquiry and in those witnesses' written statements in light of the issues in dispute. Whilst I set out the evidence in some detail, this Report does not, and is not intended to, reproduce the oral evidence given at the inquiry verbatim. Neither does it replicate the written evidence of either those people who gave evidence at the inquiry or others, which can and should be read in full in the bundles.

Applicant's Witnesses

Mr Spain (AB 27)

38. Mr Spain has lived with his family in the locality since about 1973. He said that he had used the land continuously throughout the relevant period and would visit very often, particularly when his children were small (this was, however, before the start of the relevant period, as confirmed by their ages). His use would be weather dependent. He would generally go for a walk and quite often go around in a circle. The time he spent without his children would be less in physical duration, but he

would still go to the application land regularly. He accepted, though, that his wife's evidence questionnaire (at CB 1018) indicated at Question 12 that they used to walk more frequently and take the children there. He would access either from Coldblow Lane (at C) or from A. He never saw any signs apart from those erected by Ringwould Cricket Club and felt it was unclear where ownership started and finished.

39. He recalled the time when the 'ditch and bund' was constructed shortly after the travellers left. He did not consider that the MOD fencing prohibited entry in practice and saw no evidence of repairs to that fencing which disappeared or collapsed.

40. In respect of the travellers on Site A, he recalled them being present around 1994 / 1995. He said that the number was fluid and occupation varied. He used the land while the travellers were there as he had done before and did not consider their presence was a barrier to his use. In cross-examination, he said, however, that when he spoke of personal contact with travellers, he was referring to travellers on the land prior to 1990. It was not a long or big occupation, e.g. two caravans would come and three days later go. The police were not overly involved. He did not have any contact with the travellers on the land in 1999/2000. He remembered the complaints in the local press but that did not stop him doing what he wanted to do.

41. I found that Mr Spain had some difficulties with date recollection but was generally reliable. I do consider, however, that his use of the application land during the relevant period was not particularly frequent, by contrast to his earlier use when his children were young. His personal use consisted primarily of walking on defined tracks.

Mrs Venus (AB 58)

42. Mrs Venus has lived in the locality since 1972. Mrs Venus described a common theme of access and circulation around the application land. She would enter Site B at A, walk along what she described as clear tracks within the woodland which she assumed were the official footpaths. She had to follow these tracks, having a

pushchair in the 1970s which could not be taken over rough ground. The tracks headed southwards towards B where there was a large gap in the chain-link fencing through which the pushchair could be wheeled. She clarified that there was originally a gate at a point between I and B but it was permanently left open and falling off. The track ran through this gap so it was evident that the route was widely used. There was an 'MOD Property' sign at B. Mrs Venus agreed in cross examination that a gateway coupled with an ownership sign could be seen to indicate that Site A was private land and people should not be coming in. She would then remain in the woodland and go towards E and either leave the woodland at E where there was another large gap in the fencing or walking towards F or go into the sports field.

43. During the relevant period, Mrs Venus' son was grown up and no longer playing games on the application land. She would however from the 1980s until 2000 walk the land twice a day with her dogs. The only maintenance work she ever observed was the 'ditch and bund' erected after the travellers and burnt out cars were removed (from H to F, and H to I). She did not observe the actual construction but walked there at 9am or 4pm so may have missed it. It suddenly appeared at a time after her dog died (around 2000). She assumed the ditch and bund was to stop travellers and cars entering the land. The gap between I and B remained and so she considered it remained acceptable to walk on Site A.

44. Mrs Venus also started riding her horse to Coldblow in 1995 until 1998 / 9 and would ride along the tracks in the woodland and gallop around the perimeter of the sports field. She has not used the application land much since around 5-6 years ago and did not use it at all from around 2010 to 2012.

45. She remembers travellers using the land, but could not remember exactly when they were there, except she saw them when she still had her dog (around 2000). They normally parked their vehicles at the edge of the meadow close to the woodland around J. At most there were only a few vehicles (two or three, maximum four) and certainly insufficient number to have any impact on her use of the land. There was also a problem with cars being driven onto the land and being set alight. Her family

had a saying "Red sky at night, car alight (at Coldblow)". Although the cars were unsightly they did not interfere with Mrs Venus' use of Site A, although she accepted that the burnt out cars were in the area around G and so would avoid that particular area.

46. I consider that Mrs Venus was a reliable witness, although when she spoke of travellers I consider that the number she recalled (four vehicles) is inconsistent with the documentary evidence of greater numbers at the time. She may have been remembering the earlier use of the application land by smaller numbers of 'New Age Travellers', who did not cause anti-social problems.

Mr Venus (AB 73)

47. Mr Venus is Mrs Venus' son. He has lived in the locality since 1972. He used the application land as a child in the 1970s and subsequently, with the exception of a break between June 2001 and the end of 2011 when he was working away. In his adult life during the relevant period, his visits would be twice a month. He described a similar pattern of access to the land and circulation around it as his mother. He would stick to the tracks in the woodland.

48. He remembered seeing travellers on the land around 1994 / 5. There were four or five caravans. He did not remember how long they were there. When they first arrived, he was very wearing of approaching them, but then said 'good morning' in passing. The caravans were inwards from E (three or four) and another at J on its own. He remembered burnt out cars in the meadow between J and Access 4 with glass around the cars. He did not recall the construction of the 'ditch and bund' but estimated from his own civil engineering background that it would have taken two to three days to construct.

49. He also recalled slurry being deposited in the chalk pit at D to stop bike riding. That was in the early 1980s and it dried out in two weeks.

50. I consider that Mr Venus was a reliable witness. I did consider it notable, however, that he did not refer to the later encampment of travellers in 1999 / 2000. He said he did not read the local newspaper and was not aware of those articles.

Professor Smith (AB 89)

51. Mr Smith has lived in the locality since 1998. He used the land primarily for running training along the footpaths. He would run twice a day in the woodland using a combination of footpaths up to Nelson's Seat. He would also run on Fridays in the sports field. He would enter Site A through the gap between I and B and take the path onto the sportsfield. He said that Site A had very clear paths to run on.

52. Professor Smith described the linear path between C and A in Site B as being indistinguishable from many other designated footpaths in the area. The woodland in Site A also contained a linear path and one did not need a compass to find where to go. He would use the perimeter path in the field as well as some others in the middle which were good for running laps, as can be seen on the aerial photographs.

53. The other people he saw on the application land (e.g. dogwalkers and cycling) would also stick to the paths. Camping and picnicking would be off the paths. BMX bikers would also use the hillocks in the woodland off the paths. He was unable to give the names, dates or addresses of others using the land.

54. Professor Smith remembers travellers on the sports field near J. He said there were less than 12 caravans and could not remember the year. There was more litter in the woods e.g. toilet paper. This was something he had not witnessed to any degree either before or after. He said this did not affect his use of the woodland, but he would alter his route as the rubbish was encroaching on one of the perimeter paths and sometimes untethered dogs would interrupt his stride. He did not consider that the travellers were threatening in any way. He also saw the burnt out cars but this did not affect his use of the land in any way.

55. The 'ditch and bund' had no effect on his use of the land, since he came into Site A from between B and I.

56. He did not recall the signs erected in 2012 (CB 2624) by Mr Dickason.

57. I found Professor Smith to be a particularly reliable witness.

Mr Crockett (AB 12)

58. Mr Crockett has lived in the locality since March 2004. Shortly after moving, he discovered the woodland simply by following the public footpath from Dover Road which led him directly to the woods. There is a footpath sign near A which seems to indicate that the public footpath runs through the woods. He would then simply follow the very well established path, through the trees, to Site A and out into the field. The wide path seemed to be part of a public footpath and there was no indication that Sites A and B were two separate plots of land.

59. Mr Crockett's principal activities were bird watching and dog walking. He has picnicked with his children on Site A and foraged for berries, and the children have ridden bikes and flown kites. He exhibited some photographs of these activities. The picnicking would take place vertically up from E where there was a good open space where the grass was kept short by rabbits. He would go all over Site A for bird watching. He described others whom he recognised from Walmer using the whole meadow in the summer months for similar activities but, upon closer examination, accepted it was likely these people have produced evidence questionnaires anyway.

60. In the woods, as well as the paths, children would play in the raised hillocks (the remnants of the marines' assault course). Although there is a discernable track from C to A, the paths open up as one approaches the chalk pit and there are a great number of discernable paths there.

61. Although Mr Crockett was not using the land at the time of the travellers, he recalled a single or small number of burnt out car/s around 2005. He would not go to close to the vehicles when dog walking because of the broken glass, however that did not stop him using the whole of the rest of the area. He recalled some rubbish on the land but said it was not enough to put him off using it. There were small quantities of rubbish at Access 3.

62. I found Mr Crockett to be a reliable witness and his observations of the physical state of the footpaths in the woods and sign near A were consistent with my own observations on my site visit.

Ms Standen (AB 1)

63. Ms Standen has lived in the locality since 1977. She would access the application land from footpath EE444 at A and go down the well worn path to B. There, there were two rusty posts but no actual fencing between I and B. There was, since 1990, a wide gap people could walk through. She described how there is a public footpath sign at A. However, the path itself was not clear to walk so she decided to go the other way into the application land.

64. During the relevant period, she would use the land with her sons who left home in 1992 and around 2004 respectively (although they both stopped playing there around 1992). Her sons would use the application land with friends to walk dogs. She did not know precisely what they did while there. Her second dog died in 1998. She herself would also regularly walk her dog as part of a longer walk entering the woodland at A and exiting at C. She would also walk from A to B, and enter the meadow at J or further down. She would walk around the path in the meadow while her dog would race through the long grass. She would also sometimes go off the path herself to go foraging for grasses. She did not use the land from when her dog died in 1998 until starting again in 2006 to go with her elder son and his children.

65. She described other people from Walmer using the land, mostly for dogwalking. She would also see runners going into the woodland at A and out at E. She described a lot of broken fencing between B and E as a result of tree fall during the 1987 storm.

66. She recalled muck spreading in the chalk pit and at Access 4 during the 1980s. Earth was also piled up at B to stop cars driving into the neighbouring farmland at Site C.

67. She recalled the signs erected by Mr Dickason in 2012 asking people to report problems. She put the mobile phone number on the signs in her own photo and rang twice because people were taking mini-electrical cars into the meadow. On the first occasion, she was told the landowner was not there and the message would be passed on. Then the police arrived. On the second occasion, she was told the land had been sold. The signs did not affect her use of the land: she simply thought she was being helpful and was assisting the landowner to prevent undesirable activities occurring.

68. She observed the construction of the 'ditch and bund' and saw diggers on the land. She said the works took quite a while but she was not sure how long. She thought the construction was a sensible idea to deal with the problem of cars entering the land, but it did not affect her use of the land since she accessed the field from J, E or F. She recalled travellers before 1998, when she stopped using the land for a period.

69. She recalled some travellers in the early 1990s, although it was difficult to remember the date. There was also some rubbish (e.g. beer cars and crisp packets). She would litter pick with her friends as nobody else would do anything.

70. I found Ms Standen to be a reliable witness. There is an inconsistency in that she witnessed the construction of the 'ditch and bund' which took place in 2001, yet she said she did not use the land between 1998 and 2006. I find that that she was not using the land with any regularity during this period and her observation of the construction activities was serendipitous rather than an indication of frequent use.

Ms Elsam (AB 145)

71. Ms Elsam has lived in the locality since 1996. She used the application land for walking or running through the woods and dog walking. She would also pick items such as leaves and pine cones, and take moulds of animal tracks for use in her role as a teaching assistant (up until September 2012). This was not carried out on paths. She would also pick blackberries from bushes in the centre of the meadow and also from Coldblow Lane. This is around September time and she would pick fruit over three or four days. She would play with her young daughter very regularly (born in 2005), including playing hide and seek, bouncing on the 'bouncy tree' near point A and going down the 'chalk pit' when the snow fell. There was also a rope swing in the woodland which would regularly be cut down and replaced.

72. She did not consider the travellers camped around E problematic, particularly since her own family background is related to travelling. She observed burnt out cars more than once in the centre of the field but was deterred from going to those parts of the land due to the potential for sharp objects. She did not perceive more rubbish in the woodland as a result of the travellers and was not aware of problems reported in the local press.

73. I consider that Ms Elsam was an honest witness doing her best to assist the inquiry. Her evidence on the amount of rubbish associated with the travellers would appear, however, to be inconsistent with other contemporaneous accounts and other witnesses' recollections, such as Professor Smith.

Ms Williams (AB 68)

74. Ms Williams has lived in the locality since January 1994. She first found out about the application land in 1991 when she walked with friends (Julia and John) along footpath ED58 and entered at A. She then walked along the track to B. She did not remember any fencing or signs in the woodland. There was a clear track in the woodland leading to the meadow. She then returned to the woodland and walked to

F where her friends pointed out the tree damage that had been caused by the 1987 storm. The perimeter fencing had been mangled by falling trees. In cross-examination, she accepted that Site B was seen as public land with public footpaths running through it.

75. From 1994, she began walking the land regularly with her young daughter and would carry her in a backpack and then let her run around in the meadow. Later, her daughter would ride a bike on the meadow with stabilisers. These activities would have taken place on paths. Her son was born in 1997 and would come too from when he was around one. She used to camp on the meadow around once a month. To take the camping equipment onto the land, the family would drive their car through the double gates at Access 3.

76. When her son was around nine, she would play on the application land with him and his friends. They would play with toy guns, hiding behind the trees and building forts in the undergrowth. They would run up and down the 'chalk pit' or the earth banks at J. She would relax and read a book sitting on a chair while the children played. The children would run around the meadow and play Frisbee, soft darts etc. They also took kites, remote control cars, planes, bikes and scooters.

77. Occasionally, on summer evenings, she would use the application land for socialising with friends with a few drinks, congregating around J where the grass was kept short by rabbits. This was around 1996 and friends would include John Archer. Sometimes there was music. When her daughter was around 10, she would walk with her daughter riding her pony. The family had the pony for around three to three and a half years. The woodland provided logs for jumping practice and she would canter and gallop in the meadow. She examined the fencing to check for wire for her daughter's horse and never recalled any repairs. Her daughter would not necessarily stick to the paths in the woodland, since the pony was very agile and could dart between trees. When her daughter was older, she would go unaccompanied with friends to have parties in the 'chalk pit' or in the corner of the meadow near E.

78. From 2007, Ms Williams would take her dog for a walk daily.

79. Ms Williams explained that one of her work colleagues, Julia, asked Mr Luckhurst's son, Brett, if she and her partner, Glen, could park their coach on the land and live there, which they subsequently did with Mr Luckhurst's permission. A few weeks later, some of their friends, Julia and Witty, moved onto the land in a converted horse box. They stayed on the land for a couple of years. More travellers joined but some left. At most there were between 8 and 10 vehicles. These people were very friendly if people approached them. They were not really travellers, but simply people who lived in Deal, and could not afford decent housing. The photographs she exhibits at AB 72B show a caravan owned by a Mr John Archer. Mr Luckhurst's son did not give Ms Williams permission to use the land.

80. She recalled the signs erected by Mr Dickason in 2012. Her husband telephoned the number on one occasion but there was no reply.

81. I found Mr Williams a reliable witness.

Mr Puddle (AB 137 and AB 138)

82. Mr Puddle does not live in the locality, and hence I will not consider his user evidence. Mr Puddle exhibited a photograph and a location map of the signs put up by Mr Dickason (AB 137A and 137B) and various photographs of the breached fencing. He walked around the fencing daily and never noticed any repairs during the relevant period.

83. Mr Puddle described how by 1990 the old Marines sports pavilion had been demolished and the sports field had been left to revert to a chalk grassland meadow, with a well-defined track worn by walkers around the perimeter of the field and across the middle. In Site B, he assumed that the paths inside the woods were official public rights of way. The path through the woods originally ran right through the whole of the woods uninterrupted and through to the old piggery (demolished

around 1970), then rejoining up with Coldblow lane at the south western corner. Around B to I there was the remnants of an old broken down fence and pedestrian gate that was rusting away and always wide open.

84. He recalled the spread of slurry in the 'chalk pit' in the first half of 2012.

85. I consider that Mr Puddle was a reliable witness.

Dr Skinner (AB 9 and AB 140 for his son)

86. Dr Skinner has lived in the locality since 1973 and used the land before the start of the relevant period. He was then away in London and America from 1984 until 1999. From 1999 until 2012, he used the application land for running training, up to four times a week. In addition, he would take his son to the application land for picnics in the woods, sitting on fallen trees, from 2000 to 2003 and to use the rope swing that had been set up from one of the trees, and go sledding in the winter. The picnics happened on three or four occasions only. He would also sometimes take visiting friends for walks through the woods and across the meadow.

87. To reach the application land, Dr Skinner would normally walk or run down ED58 or ED36 and enter the wood from the footpath EE442. There was a clear entrance by a concrete sign that reads Public Footpath. Dr Skinner always assumed that the pubic footpath EE443 went through the northern section of the woods to the railroad crossing at Coldblow. Within the woods there were clear footpaths that had been worn over many years of use by the public. He always assumed that the clear main footpaths were public rights of way with various tracks leading off. He would walk throughout the woods on these clear paths. The footpath went seamlessly between Sites A and B and he never considered that there were two distinct plots of land. On the meadow / field, he would stay on the paths.

88. He saw others from Walmer using the application land, mainly dog walking, walking, cycling or children playing on the rope swing.

89. Dr Skinner was aware of the travellers camping on the northern part of the meadow from around 1999 to 2000. At that time, he was running through the woods. He never had any interaction with the travellers and still used the woods and meadow area. He was also aware of the burnt out cars but these also did not affect his use of the land. He would just go around them. He did not remember the construction of the 'ditch and bund' itself, but it did not change his use of Site A since he was entering from between B and I in any event.

90. Dr Skinner had been involved in some dissemination of evidence questionnaires. He confirmed that people were not given any legal advice when filling them in.

91. I consider that Dr Skinner was a reliable witness.

Mr Gill (AB 131)

92. Mr Gill does not live in the locality. His primary evidence related to his professional relationship with Mr Luckhurst and fencing. Between around 1987 and 1990, Mr Gill had a contract with Dover Council to remove some fencing on the outside of the wood following the storm between A and B (on Site B). This was steel / iron park fencing. A lot of it had already rotted and was down on the ground. This fencing was not replaced. Between 1990 and 2012 the quality of the fencing deteriorated and Mr Gill was only aware of fencing repairs when the MOD were actively using the land. Between I and B there was a gate which was always unlocked.

93. Mr Gill recalls the signs erected by Mr Dickason in late 2011. He noticed that the signs had in fact been put up in Mr Ledger's land (Site B) and telephoned Mr Dickason. He said that his son had obviously put them in the wrong section of woodland and these were moved. The signs disappeared within a week.

94. Mr Gill has himself used the application land regularly and never saw Mr Luckhurst on the land, with the exception of one occasion when he came ferreting with Mr Gill.

He has never seen Mr Ledger on Site B, although he accepted that it was possible Mr Ledger was there when he was not. Mr Gill had permission to ferret from Mr Luckhurst and Mr Ledger.

95. Mr Gill gave evidence about a proposition put to him by Mr Luckhurst in mid-2013 relating to evidence to be given in respect of the village green application. Since the issue of the wording of the MOD signs is no longer in dispute between the parties, I do not consider it necessary for me to consider this.

96. I found Mr Gill a reliable witness.

Ms Monger (AB 121)

97. Ms Monger has lived in the locality since 1987. Her late husband was a Royal Marine Bandsman and she described how the woods were used by the Marines for military exercises and the sports pitch for football. She assumed that the MOD had abandoned the land once the barracks was vacated in 1996 and, as her husband was tragically killed in the IRA attack on RMSM barracks in 1989, she believed Site A had been left to the public to use for recreation.

98. After her husband's death, she found solace walking in the woods and the meadow. In 1992, her second husband, Michael, and she got a dog and she has had several dogs since. They have used the meadow for puppy training, including for a dog who needed to use a specially designed canine wheelchair (this was Ruby, who arrived in 2003). Puppy training would last up to 18 months. Some of the training was done on paths and some on the roads outside the site. When puppy training, she would park her car in the laybys at Access 3 and Access 2. She did not realise she was parking on private land. Her use was regular, although there were times in 2012 when she did not visit every day for personal reasons. Mrs Monger knew other dog walkers from the locality who also used the application land.

99. She recalled two separate groups of travellers but could not recall exactly when they were there. She said the travellers were friendly and never caused any difficulty with dog walkers or walkers. They were generally good about clearing up after themselves, although on one occasion, there was a lot of rubbish which Ms Monger cleared with friends. She remembered around six to eight burnt out cars and would keep the dogs away from the cars, but otherwise they had no effect on her use.

100. I found that Mrs Monger was trying her best to assist the inquiry and was generally reliable.

Ms Platts (AB 154)

101. Mrs Platts has lived in the locality since before the start of the relevant period. By 1992, she had two children aged about one and five. In the summer, she and her children would go at least every week to the application land with a pushchair. They would enter from ED58 (i.e. at A). Inside the woodland, there were two clear tracks, one leading to C and the other towards Site A. She noted the footpath sign near C and thought that the public footpath ran through the woodland of Site B and down into the woodland in Site A. These tracks were easy to use with a pushchair. The gate she remembered from her youth between B and I had completely disappeared by 1992. At D, around three feet from the track, there was a bouncy tree which the children loved sitting on (see photograph at AB 160B). There were also two trees which they pretended were a time portal and which they walked between in a game of imagination. There was also an overgrown dell (the chalk pit) where the children could hide. They also hid in dens inside the undergrowth, although they could be seen by somebody standing on the path and looking in the right direction. They would play snowballs in the woodland in winter, climb trees, and use the rope swing which was replaced periodically. Other children played in the woods, usually on the mounds and the rope swing, including Ms Williams' children and the Weatherall children from Mayers Road.

102. The children would also play on the meadow, sometimes with balls and bikes, and Ms Platts and her husband would sit on a log to watch. Her children are now 22 and 28 so these games would have happened in the 1990s.

103. Ms Platts would also collect holly and ivy for Christmas and pine cones to decorate. She would take foliage for use in flower arrangements for church. She also picked blackberries and apples on Site A. She would go with her husband to the field and sit and chat.

104. Before August 2012, Ms Platts would take her grandson to the application land to play in a similar way to her own children. She did not use the land from November 2007 for around 9 months due to illness.

105. Ms Platts' husband would use the application land quite frequently. He was a lay preacher and would go there to compose his sermons, preferring spring and autumn as there are fewer people. He would often sit on logs in the short grass area or near the mounds.

106. She recalled the 'New Age travellers' on the application land around 1996 or just after. Her daughter, Miriam, would play with them with Ms Williams' daughter. There was never any trouble. She was not aware of the rubbish problem referred to by others and contemporaneous documentary material. She also remembered the problem with burnt out vehicles, but said these did not affect her use of the land.

107. I consider that Ms Platts was a reliable witness.

Mr Smith (AB 163)

108. Mr Smith has lived in the locality since 1982, almost next to footpath EE444. He would enter Site B at A and simply follow the path towards Site A. At B there was fencing dividing Site A from Site B, however the metal gate was completed open and just hanging there. That gate has disappeared by the time of the 1987 storm and,

in any event, a tree had come down through the fence between I and B. After walking around Site A, Mr Smith would leave the sports field at F where there was a gap in the fence. There were plenty of other gaps in the rotting fence.

109. After the 1987 storm, Mr Smith inspected the land. No repairs were carried out to the fencing, although some unidentified people cleared up the wood and opened up the footpaths outside the land. No repairs happened subsequently during the relevant period.

110. In the period 1992 until 2012, Mr Smith estimates he has used the application land over 7000 times, walking it on a daily basis, either with his dog or without. He accepted that walking was his primary activity on the application land and he would stay on the paths. However he said that at some points in the woodland, the paths would simply open up and it did not seem like the continuation of a footpath. Around 1996 / 7, when Mr Smith's son was about 12 or 13, he would visit the travellers, Julia and Witty and their son. On several occasions, Mr Smith would drive onto the application land to visit them. He said that the people on the land were not travellers as such and were mainly local people looking for an alternative lifestyle. On quite a few occasions, they would all disappear (e.g. in one year they all went to Glastonbury). Then they would turn up again. They were friendly and caused no real problem, although the lack of hygiene facilities did cause some concern. Mr Smith also spoke of 'gypsy types' moving onto the land. He did not have the same contact with them and would put his dog on a lead when near them because they had Staffy-type dogs. They were camped along the tree line on the eastern and southern side of the meadow so did not interfere with the use of the rest of the field or woodland.

111. Around 1999, car thieves brought cars onto the meadow and set them alight, usually at night. Mr Smith could not recall how many cars there were but they were not enough to stop him using the meadow. The 'ditch and bund' stopped people driving onto the land and Mr Smith interpreted it as an act directed towards the travellers. He did not witness its construction.

112. Mr Luckhurst was a neighbour of Mr Smith and Mr Smith would often tell him that he was using Site A. Mr Luckhurst never raised any concern with this. He remembered the signs put up by Mr Dickason and said they did not stay there long.

113. Mr Smith remembers manure dumping in the 'chalk pit'. He could not remember when it was but thought it was overspill from the field. He only noticed it because he walked through it once.

114. I found Mr Smith a reliable witness and his physical observations of the woodland were consistent with my observations on my site visit.

Ms Young (AB 113)

115. Ms Young has lived in the locality since 1957. She described the state of the application land in the 1970s. There were no fencing or signs preventing access to Site B. Once in the woodland the path ran down to the gate between B and I. This gate was never locked and there was a sign next to it saying 'MOD Property'. People would simply open the gate and continue into the sportsfield. Over the years, the fencing at B fell down and the gate had been left open and eventually also fell down. After that there was continuous free access to the whole of the land by foot without having to pass any gates or fencing. There were also several holes in the fencing around Site A and people could walk through these gaps.

116. Ms Young has used the land herself very regularly, predominantly for walking with her dogs (see photograph at AB 115B, which she believed was taken in summer 1992, although she could not be sure, but it was definitely after 1990). She has seen others from the locality using the land with or without dogs, some with children and family groups, horseriders, joggers, picnickers, kite flyers, although she could not identify anyone apart from the Cory family from Mayers Road.

117. She remembered the New Age travellers and said they were very friendly and she would greet them as she walked passed. However, one afternoon when she was

walking her dogs, she saw a truck with a caravan go in through the gates at Access 3. The following morning there were several caravans parked at the edge of the sports field fairly close to the woodland. Ms Young believed these caravans were owned by gypsies. She avoided that part of the sports field as they had dogs and she was worried that her dogs would react, however she still used other parts of the grass and woodland. The gypsies were only there for a couple of weeks, or maybe a few weeks. She said that people complaining about the state of the land would have been referring to the gypsies, not the New Age travellers, who never left any mess. They were emptying bowls of waste in the woodland and there were nappies piled high. The gypsies left some burnt out cars behind, and others were driven on and burnt. This was maybe two or three during the course of the years. She would still use the land but would simply move further around to avoid rubbish. It was shortly after they left that the 'ditch and bund' was constructed.

118. I found Ms Young a reliable witness although I consider she had underestimated the number of burnt out cars on the land (as indicated by the number removed by Mr Ledger) and the duration of time in which the gypsies (not New Age travellers) were present.

Mr Rogers (AB 124)

119. Mr Rogers is Ms Williams' partner and has lived in the locality since 1994. He knew the land previously since around 1975 and described the same physical features in the 1970s and 1980s as Ms Young. Like others, Mr Rogers had always assumed that the official footpaths run within the woodland of Site B and A. He explained that after the 1987 storm, it was local residents who drove onto Site A to clear up the fallen trees. They used them for free firewood. He did not recall the Marines making any repairs after the storm, since they had stopped playing sports there by then and it had become a wild flower meadow.

120. After moving to the locality in 1994, Mr Rogers and Ms Williams would take their young daughter to the application land almost every day, and also their son

born in 1997. The children loved the woodland and ran all around it. They played in the 'chalk pit' and ran up and down the sides of it. They played hide and seek and made camps in the bushes. On Site A there were two mounds that they could run up and down and there was a rope wing tied to a branch which hung over the mounds. On the meadow, the children played ball games or cowboys and Indians with toy guns.

121. Mr Rogers' children also played with other local children and he named Brian Stockley, Liam Prendergast and Barry from Mayers Road. The Mayers Road children would generally be on the application land at weekends and summer holidays. He recalled a big water fight involving several Mayers Road children which took place in the field and through the woods. This would have been around the year 2000. He also recalled a man who would often sit on a fallen log in the meadow.

122. Mr Rogers described the same events relating to camping on the land and Mr Luckhurst's permission for Glen and Julia to use the land as Ms Williams. Glen and Julia moved onto Site A in the summer of 1996 and were joined a couple of weeks later by two friends, Julia and Witty. Ms Williams and Mr Rogers would go and visit them just about every day, driving in their car over Site A. Word got out that the landowner (Mr Luckhurst) did not mind people camping on the land so more people followed. There were possibly some five or six vehicles on the land. Glen and Julia got a bit fed up and moved off. Julia and Witty also went travelling to the New Forest / Somerset and then came back. Some of the travellers also left so at times were half a dozen vehicles, some times there were just one or two and sometimes there were none at all. If Mr Luckhurst had wanted to close and padlock the gates there were quite a few opportunities to do so without trapping anyone inside.

123. Over the next couple of years travellers came and went and had no difficulty getting on and off the land because the gates were left open. Joy riders brought cars onto the land through the open gates and raced the stolen cars around the field before setting them alight. These problems were, in Mr Rogers' view, due to Mr Luckhurst not bothering to shut and lock the gates. After the eventual removal, the

'ditch and bund' was only to stop vehicles getting onto the land; it had no effect on walkers.

124. I found Mr Rogers a reliable witness.

Mr Chatfield (AB 169)

125. Mr Chatfield is the applicant. He does not live in the locality so I will not consider his own use of the application land. His recollection of the physical features was consistent with other witnesses. In particular, by 1990, the fencing between B and I and gate had gone and there was just a big, open gap. The woodland was an ideal adventure playground for children. In the south east corner, there was an open space, a glen (the chalk pit), a tree with chalk in its roots which children loved climbing over. There were large ramps which children could go up on with bikes. The 'chalk pit' is like an inverted hot cross bun where cyclists can shoot down each side. There was formerly a tree growing out of the side of the 'chalk pit' with a rope swing on it.

126. Mr Chatfield was able to identify that the man Mr Rogers had seen sitting on a log on Site A was called Terry who lived in Owens Square. He used the land for socialising when his wife died. Mr Chatfield produced a table (at AB 180) showing marked green those people who had submitted evidence who lived in the locality and the likely period of their use of the application land while resident in the locality. An additional table (at AB 289) shows numbers of residents of the locality who were resident there during the entirety of their period of use of the land. By year, it shows numbers in respect of different frequencies of use. The numbers claiming to have used the land daily ranged from 24 pre 1992 to 52 in 2012 and at least once a week from 36 pre-1992 to 77 in 2012. These tables are, however, superseded by later figures produced by both the applicant and objectors towards the close of the inquiry.

127. Mr Chatfield referred to the written evidence of Mr Cork, the owner of the neighbouring property, The Firs. In his statutory declaration (at CB 2481), Mr Cork

said that the gypsies that moved onto Site A in 1999 were very threatening. From what he saw, walkers stayed clear of Sites A and B, and stuck to the perimeter outside the treeline because of the gypsies (they had dogs, used bad language, there was human excrement everywhere and it was generally a very unpleasant place to be. Double glazing units and tarmac were left in the field). It took some time to get the gypsies moved. Mr Chatfield pointed to the photograph at AB 226 showing The Firs and the 7 foot high fence between it and the application land. The view from the house to the application land was very restricted. Mr Cork himself stayed away, so Mr Chatfield questioned how he could suggest use declined.

128. Mr Chatfield explained that he was able to pinpoint the date of 27 August 2012 as the date when TG Claymore arrived to fence off and plough up Site A from a report in the East Kent Mercury.

129. In cross-examination, Mr Chatfield accepted that there were clearly defined tracks on the application land and that they were indicative of where the majority of feet must have gone. The notional person would say that the vast majority of user is referable to paths. Mr Chatfield also pointed out that the woodland near C is narrow and people are restricted to the main path as to where they can go. However, it fans out as one approaches the 'chalk pit' and what restricts the user is the trees and underground, not a particular path. There was also a big clearing in the southern part of the wood in Site A where the fallen tree with chalk roots was.

130. Mr Chatfield gave various views in response to documents put to him in cross-examination concerning the adequacy of Mr Luckhurst's attempts to secure Site A from trespassers. I will form my own view on these questions, and thus I do not consider it particularly helpful to record that part of the evidence.

131. Mr Chatfield sought to explain why some witnesses may not have recalled rubbish on the land during the gypsy occupation. He said that it is a very large site and the travellers only occupied a small area near the woodland. There were other

areas people could use. He felt that different people have different perceptions of rubbish and it was common for newspaper articles to exaggerate the facts.

132. I consider that Mr Chatfield was a reliable witness insofar as he gave evidence of fact. His opinions on the evidence were helpful, but I do not regard them as determinative. He was also of great assistance with the painstaking work he did to analyse the evidence data.

Ms Barrell (AB 44)

133. Ms Barrell has lived in the locality since 1979. Ms Barrell painted a by now familiar picture of access to the application land at A or C through the well defined path. In the woodland, she could either stick to that main path and progress down to B or walk wherever she fancied on the multiple paths at converge on the 'chalk pit'. She said that the woods were used all over wherever there were no trees or undergrowth. There were multiple clear paths that went round all the trees.

134. She recalled on one occasion some years ago finding manure piled on a bank at the edge of Site C near the chalk pit. She knew that children on mountain bikes would ride down the slope of the pit and continue onto the agricultural field where they damaged the crops. She assumed that the pile of manure had been placed there to deter such use. The manure however did not impact upon her using the pit as it was not in the pit but at the boundary of the field.

135. It would only be if Ms Barrell was walking in the early morning or late evening that she would not see other people. On nearly every other occasion, she would see people using the land, some of whom she recognised as residents of Walmer. They were walking, walking dogs, riding bikes and horses, or jogging. During the school holidays, the woods were full of children, especially on the banks alongside the sports field.

136. She recalled the New Age travellers who came over several years during the summer months. They would always clear up before leaving the land. She also remembered 'Romany-type' travellers moving onto the land. She was walking on the application land when the first of these travellers drove through the open gates at G (Access 3). Over a couple of days their numbers increased. She would still go to the application land but avoided going onto the sports field as this would entail walking between their caravans and she was not brave enough to do this. She said that the caravans were quite close and she doubted that anyone would have wanted to walk between them. It was these 'Romany' travellers who were responsible for the human excrement in the woods. Ms Barrell thought they were there just a matter of weeks, but they left hardcore around the edge of the woodland. She did not recall the actual construction of the 'ditch and bund'.

137. I found Ms Barrell a particularly reliable witness.

Ms Burton (AB 133)

138. Ms Burton has lived in the locality since August 2011, however she first knew the application land when she took part in school cross-country runs in the late 1980s. Ms Burton pointed out, as others before her had, that the only sign in the vicinity of the application land was a footpath sign at C which pointed into the woodland and a concrete marker at A. She assumed that the public footpath indicated by these signs ran through the woodland.

139. Ms Burton has played a number of games with her young son on Site B, including Gruffalo hunting, hide and seek, looking for hoof prints or bicycle tyre tracks. They have collected twigs to make a tent, and they would run up and down the 'chalk pit'. They have also played in the snow. Her son would slide down the earth mounds at J. In cross examination, Ms Burton was confident that she did not always stay on the paths that she assumed were the public footpath. After playing in Site B, they then made their way south towards Site A. Ms Burton thought that the public footpath ran southwards inside the woodland. She only recently found out

that there are no public footpaths inside the woodland. She did not remember seeing anyone walking outside the woodland. Everyone she saw was walking within the woods.

140. I found Ms Burton a reliable witness.

Ms Peace (no written statement)

141. Ms Peace spoke to a Youtube video of boys playing 'air soft' on the application land, which was watched during the inquiry. She and her family have lived in the locality (15 St Claire Road, Walmer) for 37 years. Her son, Thomas, was one of the boys in the video. The video was filmed in around 2011 when he was around 13 and a half or 14. Her other son, James, would also go to play. The boys would spend the whole day on the application land and take sandwiches for lunch with them. The activity took place year-round, at least two or three times a month. They started in spring 2011 and stopped when the fencing went up at the end of the relevant period. Ms Peace has not been to the application land as an adult.

142. The 'air soft' video showed boys taking part in a 'military style' game using plastic BB guns which plastic white pellets. The paths on Site A are clearly visible and the grass around the paths is long. The boys leave the paths and run over the grass as part of the game. No one else appears present on the application land during the film. There was a suggestion in cross-examination that there was a smouldering fire on the land. It is not entirely clear, in my view, from the video, and certainly not clear that it is the boys that are responsible for any fire.

143. I found Ms Peace a reliable witness.

Objectors' Witnesses

Mr Luckhurst (CB 2431)

144. Mr Luckhust was the owner of Site A between November 1992 and April 2012. When he purchased Site A by auction he walked around the perimeter of the site and along Coldblow Lane. He observed a couple of breaches in the fencing at the corner at E and one opposite the mounds where children came in at J. Between B and I there was a way through near the galvanized fencing. He could not remember whether there was a gate there at that time and did not do a close inspection of H to B. He was aware at that time that people were using the land for recreational activities.

145. Mr Luckhurst put chains and a padlock on the agate at G, but these were quickly removed. He also asked Mr Dickason to go over and put barb wire where there were breaches in the fencing and also patch the MOD fencing with second hand galvanized link (as seen in the photographs at Annex 2 to Mr Horne's statement in the OB). Any repairs were simply reopened within a few days. He took the old 'MOD Property' signs and painted new wording on a few, until he ran out of paint. He thought the new wording was 'Private Property. No Admittance'. These new signs were also removed in a very short time, less than a week. He did not put any more signs up until the signs put up in 2012 by Mr Dickason with the phone number asking people to report nuisance incidents. The idea was to use people such as dog walkers to inform Mr Dickason when activities were happening, as Mr Luckhurst had had difficulty in the past approaching people.

146. Mr Luckhurst gave up making any repairs to the fencing by early 1996, or maybe earlier in 1994 when he started a new job and had other things going on. In particular, at no point did he attempt to put any fencing between B and I. He directed his resources to seeking to deter vehicles rather than walkers, since the main problems were from gypsies, motorcyclists and people burning out cars, and these issues were the ones costing him money. He said that the reason for the 'ditch and bund' was to stop joyriders coming in and the police spurred him into doing it. He said it was for the same reason that Mr Ledger put slurry at H: to deter people from driving or riding into Site C. He had had difficulty with the Article 4 direction placed on the land by the Council and was, apparently, not sure whether he could apply for

planning permission to repair the fencing. However, he accepted that the real reason he gave up making any attempts to repair the fencing was because any repairs would have been a hanky in a thunderstorm.

147. He accepted that Mr Fielding of TG Claymore had been able to secure Site A, whereas he had not. He said that Mr Fielding put more money into it and got professionals to do it. By 1996, Mr Luckhurst had recognised that it would cost around £6000 - £7000 to repair the fencing, which was a substantial amount of money in comparison to the amount he paid for purchase of the land. He said that Mr Ledger's efforts to deter drivers by erecting a mound at I was probably a better effort to prevent drivers than Mr Luckhurst's since whatever he tried to do was destroyed very quickly, apart from the ditch and bund.

148. After purchase, Mr Luckhurst only went to the land on a few occasions and did encounter dog walkers. He did not challenge them, apart from one lady who he did not like personally and knew from business. He accepted that there had been regular recreational use of Site A by local people during his ownership.

149. He described that there were two separate groups of travellers who lived on the application land. The first were the 'New Age travellers' who he allowed to stay for a couple of weeks, although they were actually there for some time. This was not a problem since they were not causing a nuisance. However, some time in 1999, a large number of gypsies came onto Site A and the 'New Age travellers' moved off. Mr Luckhurst was informed there were 25-30 vans and in the end there were 50-60 vans. There was absolute uproar from local residents and several police cars turned up. There were children and dogs and it was chaotic with a lot of sanitary mess and problems. Mr Luckhurst placed notices on the vans with police presence. He did not keep a copy of any of those notices. The gypsies intimidated Mr Luckhurst at his home and he never went to the application land after that. He did not play a part in the enforcement of their removal because of potential repercussions and left it to the Council to move them on. From hearsay, he understood that numbers reduced over a six month period, but there was a lot of debris left to clear up. He said that there

were 60-odd burnt out vehicles on the land to clean up when the travellers left (although the invoice at CB 2467 says 38 cars). He estimated from the documentary evidence that the travellers were evicted sometime in summer 2000.

150. I consider that Mr Luckhurst's oral evidence was reliable, although I consider he was exaggerating to an extent the number of burnt out cars to be removed (as this was inconsistent with the invoice). I consider he may also have been exaggerating the number of gypsy vans which moved onto the land (he said up to 60), although I believe that it was a significant number.

151. I note that Mr Luckhurst had prepared a document during the course of the sale of Site A to TG Claymore in response to a request from an insurance company. That document contained some statements of fact which appear to me to be inconsistent with some of Mr Luckhurst's oral evidence. To the extent that they are, I am informed that there is no question of liability under any covenant to compensate the Fieldings, and I record that in this Report.

Mr Ledger (CB 2423)

152. Mr Ledger is the owner of Sites B, C, E, and D. In his statutory declaration he gave evidence of the condition of fencing in Site A and signage when in MOD ownership. That written evidence is inconsistent with oral evidence from Mr Luckhurst and others and I prefer the evidence of others on these points.

153. Mr Ledger's employees and a contractor carried out the works on behalf of Mr Luckhurst to clean up Site A after the travellers left and to construct the 'ditch and bund'. He described taking a 360 Highmac digger and a 4-wheel caterpillar digger with loading shovel onto Site A for rounding up the cars and scrap, including three gas cylinders. He also said that there was rubbish dumping and fly-tipping during the earlier parts of Mr Luckhurst's ownership as the gates were open often. Even after the construction of the 'ditch and bund', which took a day to construct,

people still took rubbish to dump in the tarmacked laybys at Accesses 2 and 3. He stated that the police were in charge of the ultimate eviction of the travellers.

154. Mr Ledger accepted that he would not visit Site B as frequently as other parts of his land (he has 3,500 acres in total). Site B is difficult to access down a narrow lane and a deliberate reason to go there is needed. The woodland does not bring in any money (although it does bring in money from environmental schemes). Mr Ledger would principally go to Site B if an incident were reported. The only person he asked to leave Site B during the relevant period was Paul Emin, the twin brother of artist Tracy Emin, who was camping there for a period of time. He could not see into the woodland from neighbouring land he owned. He never went into Site A apart from when clearing the land after the travellers and constructing the 'ditch and bund'.

155. He said that he was not friends with Mr Luckhurst, who had limited funds and was not the best neighbour. In his opinion, Mr Luckhurst does not look after things and lets things go rough. Towards the end of the MOD's ownership, they were also not really that interested in making fence repairs and he could believe that there were holes in the fencing when Mr Luckhurst purchased Site A in 1992.

156. In Mr Ledger's view footpath EE443 runs outside the woodland but he accepted that there is a clear path within the woodland. He has been in contact with Kent County Council about this footpath, but they would not become involved. He said that people have chosen to believe that the footpath is actually between C and A within the woodland because the neighbour in the north east boundary has left EE443 to become rather overgrown for quite along time, although he could not say how long.

157. Mr Ledger described the attempts he had made to stop people accessing Site C from the woodland by constructing an earth bank at I with logs on it. Site C was also ploughed to stop cars driving on it. In particular, he was concerned with motorbikes in the woodland in Site B which had then gone onto Site C and trashed it.

Slurry was pumped into the 'chalk pit' at the entrance to Site C in response to this. In his written statement, he said he could not remember on how many occasions he had put slurry in the 'chalk pit'. In oral evidence, he said that he could only put slurry in the 'chalk pit' when there is no crop in Site C and he has slurry. He thought he had done it about four or five times. It dries up quite quickly and would be solid in around a week to 10 days. If it rained, it would be a little messy for longer. No local people remonstrated about the slurry.

158. I consider that Mr Ledger's oral evidence that I have recorded was reliable.

Mr Horne (statement in OB)

159. Mr Horne is a driver and handyman who works for Mr Fielding's son's company and was seconded to TG Claymore to help keep Site A in order. He put up the 'Ringwould Cricket Club, No Trespassing' signs in August 2012 together with barb wire at H to B, B to E and E to F, and carried out the complete fencing repairs in September 2013. While working on the fencing, he observed evidence of some previous repairs carried out by Mr Luckhurst and exhibited photographs of the different sections chain-link fencing. The MOD fencing in bright green, and there was also evidence of some silver galvanised steel chainlink and a dark green chainlink. This is consistent with the evidence given by Mr Luckhurst that Mr Dickason made some repairs to the fence in the early part of Mr Luckhurst's ownership by intertwining new chainlink in the gaps.

160. He said that, while some parts were a good job, there were patches on there which were a really bad job where the new fencing was just tied on with wire. As part of the recent 2013 repairs, Mr Horne said that 20 new posts had to be put in at H to B, 6 posts between B to E, 10 posts between E to F and 8 posts between F to H. There must be around 450 old gate posts (around 50 years old) remaining around the site. Around 875m of new mesh has been erected in a site of around 1,500m circumference.

161. I consider that Mr Horne's oral evidence was reliable.

Mr Fielding (CB 2357)

162. Mr Fielding is the Director of TG Claymore and purchased Site A from Mr Luckhurst in May 2012. He has lived in the area (around 800 metres from the application land) since 1986 and would often ride his horse or walk his dog past it, although he accepted in cross-examination that he was often abroad for work. He said that from 1996 onwards the footpaths around the application land became very unattractive to walk along as fences started to be vandalised and noisy and aggressive people on motorbikes became evident. In 1999, when travellers moved onto Site A who were aggressive, his horses became increasingly nervous of going down Coldblow Lane and so he avoided it and did not visit that area much, preferring to ride towards Martin. He said that the travellers caused a litany of problems and everyone he knew stayed away. He said that it was inconceivable that anyone would go on Site A with dogs when the travellers were they as the travellers had dogs and were very menacing.

163. Since 1996, there has also been increasing amounts of litter deposited on Site A and he exhibited photographs taken on 10 February 2013 of litter (see CB 2397 onwards). Some of these items would have been on the land before Mr Fielding ploughed it, but not all of them. He did not consider it would have been an attractive place to play with children.

164. In terms of fencing repairs, he estimated that 70% of the MOD chain link fence survived up to the time when Mr Horne replaced it. He completely renewed c 50 – 60% of the fencing. He accepted that there may have been breaches in the fencing when Mr Luckhurst purchased the land but thought that there was still clear evidence of where the ownership boundary ran. In terms of cost, the barb wire erection cost a couple of weeks of labour (£400 per week per man x 2) and the cost of the wire (£200 - £300). The cost of replacing the fencing was £10,000 to £20,000 in materials and £5000 worth of labour.

165. I consider that Mr Fielding was a reliable witness, although naturally he could only give direct evidence of his own attitude to travellers, and his evidence about others' attitudes is assumption and opinion.

Mr Long (statement in OB)

166. Mr Long is a town planning consultant and instructed to advise the objectors. He first visited the application land on 3 May 2013. As part of his research, he exhibited the definitive map showing the official location of public rights of way, aerial photographs of the site (which I have already set out) and factual information on the location of testimonies and witnesses in relation to the ecclesiastical parish of Walmer.

167. In respect of the latter, enquiries with the Diocese of Canterbury reveal that the population of the ecclesiastical parish of Walmer is 7,330 (this is an agreed figure). From Mr Long's research, 234 of the testimonies and witnesses provided with the application reside in Walmer, representing 3.19% of the population. 201 currently reside in Walmer (2.74%). 76 have resided in Walmer throughout the relevant period (1.03%). This was updated in the light of witnesses' evidence at the inquiry in a new Schedule 2. This shows 336 people who are resident in the ecclesiastical parish of Walmer who have used the application land at various times during the relevant period (i.e. 4.58%). A separate Schedule 3 sets out cases where it is uncertain how long the testifier use the land whilst living in the ecclesiastical parish of Walmer. Schedule 1 sets out the number of alleged users as a percentage of the population for each year of the relevant period. These figures do not take account of any defences to lawful sports and pastimes apart from locality, relevant period, and incidental use.

168. Schedule 1 sets out to categorise the type of activity carried out on the application land into the following headings: dog walking, playing with children, cycling, jogging, walking, photography, picnics, foraging / fruit picking, bird / nature watching, horse riding, camping, flying kites / models, other recreation. The users

shaded grey indicate those where there is no certainty as to when and for how long the individual/s resided in the ecclesiastical ward of Walmer and claim to use the application land.

169. The applicant has also attempted to analyse the same data set. Handwritten Table 5 shows a comparison of the applicant's and objectors' figures for each category of sport and pastime. Broadly the figures are similar. However, there are some discrepancies which Mr Long sought to explain. I consider these discrepancies were adequately explained by categorization differences. However, in cases where it is unclear how long a witness has lived in the locality, I accept what Mr Long says that it is impermissible to make positive assumptions on that point, in light of the burden of proof.

170. The applicant produced a new Table A which sets out the applicant's evidence with regard to the use of the application land by travellers and the effect that had on peoples' use. This table was agreed by Mr Long. The applicant also produced Table B which sets out when people began using the land, where they entered from and what signage they saw. Mr Long agreed what signage they saw but was not in a position to agree where people entered the land.

171. All of these tables reflect the written evidence, and Mr Long said that it was important also to have regard to the relevant oral evidence.

172. Mr Long confirmed that the application includes the laybys alongside Coldblow Lane which are within TG Claymore's ownership.

173. I found Mr Long's analysis of the evidence accurate and reliable.

APPLICATION OF THE EVIDENCE TO THE LAW

174. As set out above, the parties and I agreed the relevant issues during the inquiry, and I will structure this analysis in accordance with those issues.

Was use of the land was for lawful sports and pastimes by a significant number of inhabitants of the ecclesiastical parish of Walmer throughout the relevant period?

What use should be classified as non-village green use?

175. The objectors have argued that a number of activities that local inhabitants have carried out on the application land during the relevant period do not constitute 'lawful sports and pastimes'. The nature of what is a sport or pastime has been given a broad judicial interpretation since Lord Hoffmann addressed the issue in R v Oxfordshire County Council ex p Sunningwell Parish Council [2001] 1 AC at 357D. There is no requirement for communal activities and the phrase encompasses things such as dog walking and playing with children which are, in modern life, the kind of informal recreation which may be the main function of a village green. 'Lawful' has a broader meaning than simply a sport or pastime which is in itself in accordance with the law. Lord Hope in the Supreme Court in R (on the application of Lewis) v Redcar and Cleveland BC [2010] 2 AC 70 (at [67]) relied on the old case of Fitch v Fitch (1797) 2 Esp 543 for the proposition that the "user must not be such as would be likely to cause injury or damage to the owner's property".

176. In light of those principles, I am asked to disregard the following activities:

a) Parties with loud music. In my view, those parties which were sufficiently loud to constitute a 'rave-style' event would be unlawful. Other gatherings of friends, which did not damage the land or cause a statutory nuisance would not be, though. There was evidence of Ms Williams' and Mr Roger's daughter attending parties on the land. Since I cannot be sure of the degree of noise at the parties she attended, I discount her use of the land at parties. However, Ms Williams stated that she and Mr Roger would attend social gatherings on summer evenings around J, sometimes with music. From her oral evidence, I certainly did not get the impression that those social gatherings were anything other than perfectly lawful, and I would not discount them on this basis.

b) Driving with mechanically propelled vehicles onto the application land. It is an offence under section 34 of the Road Traffic At 1988 to drive onto land not being land forming part of a road without lawful authority. An exception is made for parking within 15 yards of the highway (s 34(3)). Ms Williams and Mr Rogers drove onto the land to camp and Mr Smith drove with his son to visit the 'New Age' travellers' Julia and Witty. That driving was clearly not a lawful sports and pastime. Ms Monger drove off the road and parked in the 'laybys' to take her disabled dog onto Site A. Having viewed the application land at the site visit, I do not consider that parking in the laybys would constitute a criminal offence, since they are less than 15 yards off the highway. I do not consider, however, that the act of parking is a sports and pastime though. Recreational driving on the land undoubtedly took place (both cars and motorcycles), but I have not included any consideration of this in the assessment of lawful sports and pastimes.

c) Any sports and pastime that is facilitated by driving. The objectors have argued that, once a person has committed a criminal offence by driving onto the land, any activity carried out afterwards is itself not lawful because it is facilitated by driving. The principle relied on is to prevent people from being able to benefit from their own wrong. I do not agree. Section 15(3) of the Commons Act 2006 refers to people having indulged in "lawful sports and pastimes on the land". It is thus the sports and pastimes that are referred to as being lawful, and not the specific means of access to the land. Whilst a person would be liable for prosecution under s 34(!) of the Road Traffic Act 1988 if they drove onto the application land and parked more than 15 yards from Coldblow Lane, it is inconceivable that they would be similarly prosecuted for flying a kite or having a picnic etc., having brought the equipment in their car.

d) Activities which are in the nature of 'work' rather than recreation, including Ms Platt's husband's composing of sermons and Ms Elsam's collecting of leaves etc. for use at work as a nursery school teacher. The argument here is that composing

a sermon or collecting objects for use in the course of employment are not pastimes. I agree and discount these activities. This is also relevant to some activities observed by others e.g. painting by a professional artist and school lessons.

e) Activities carried out by those living outside the locality. Such activities do not constitute qualifying user and the issue is relevant when considering user witnessed by others. Since the burden of proof is on the applicant in this regard, I therefore discount any use by persons unknown since I have no way of knowing if the user was by an inhabitant of the locality or not. There is evidence of a large amount of user from people who are unlikely to be local inhabitants in this case (not set out above for deliberate reasons) and, since the locality is in close proximity to other settlements (principally Deal), it was difficult for people who witnessed others to be sure where they lived. There were exceptions and, to the extent that others were specifically named and their addresses given, I would include their use as going towards meeting the statutory test. However, in many cases, it transpired that those users had submitted evidence to the inquiry in any event.

f) Playing with children where the children (e.g. grandchildren) themselves live outside the locality. If the children live outside the locality, their use will not qualify. The objectors also argue that the use by the family member who does live in the locality should be excluded since playing with children is a child-led category and the adults' use of the land is ancillary to the children's. I do not agree. Even if the primary motivation for visiting the application land is to entertain a non-resident child, the adults are still carrying out a lawful pastime on the application land. That is all the statutory definition in s 15(3) of the Commons Act 2006 requires and I do not consider there is any basis for excluding use for lawful sports and pastimes by residents of the locality who are there in conjunction with non-residents. I do not consider that the need to demonstrate the assertion of a TVG right that is referable to a specific locality would prevent adults playing with non-resident grandchildren from exercising

qualifying user. However, even if I am wrong, the evidence of such activities was that they were relatively infrequent, and I do not consider that excluding such use would tip the balance between significant and insignificant user.

g) 'Air soft' game. It was submitted by the objectors that the video evidence of 'air soft' went beyond a traditional game and, had other people been around and a plastic gun were shot in the area, it could amount to a common assault. I consider the potential criminal offence would be more likely to be an affray under s 3 of the Public Order Act 1986 where someone uses or threatens unlawful violence towards another and his conduct is such as would cause a person of reasonable firmness present at the scene to fear for his personal safety. In my judgment, having watched the video, the nature of the game did not in any way reach that threshold. I also did not see any evidence that the activity was causing damage to the land (there was no indication that the potential smouldering fire was in any way connected to the boys' presence).

h) Any blackberrying or foraging that I cannot be confident is not for commercial gain. Picking mushrooms, flowers, fruit or foliage growing wild on any land is not theft unless the picking is done for reward or sale or other commercial purpose (s 4(3) Theft Act 1968). Those who gave oral evidence at the inquiry of blackberrying (e.g. Ms Elsam) made clear that the fruit was picked for personal use. However, there are 41 instances of foraging / fruit picking recorded in Mr Long's Schedule 4, including those who gave oral evidence (the applicant's evidence on this point is that there are 32 instances). To the extent that it is for the applicant to prove that a pastime is lawful, it is said that I cannot be sure that the written records of fruit picking and foraging, which have not been tested under cross examination, were not for commercial purposes. This might seem an unusual submission to make given how common fruit picking / foraging are relied on as a lawful pastime in village green applications, without more. However, I am of the view that it is technically correct if one applies a strict burden on the applicant. I therefore discount evidence of fruit picking and

foraging, unless the applicant has expressly stated that it was not for commercial purposes.

To what extent should 'path-use' be discounted?

177. The objectors' counsel characterised this as a 'paths case' in closing submissions. It is said that the vast majority of the lawful sports and pastimes carried out by local inhabitants took place on the defined paths in the woodland or on the field at Site A, as evident in the aerial photographs. I am asked therefore to discount all walking, dog walking, jogging, cycling, and horse riding, unless the applicant has specifically shown that such activity took place off paths.

178. The objectors rely on the recent comments of Lord Carnwath in R (Barkas) v. North Yorkshire County Council [2014] UKSC 31 where he said that the test in s 15 of the Commons Act 2006 cannot be applied in the abstract and needs to be seen in the context of "the quality of the user" (at [61]). Critically, "in cases of possible ambiguity, the conduct must bring home to the owner, not merely that "a right" is being asserted, but that it is a village green right". If user is, or appears to be, referable to footpaths, there is nothing to suggest to a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of the land. This is the case even where a walker or dogwalker strays from a footpath without deliberate intention to go onto other parts of the land (see Sullivan J in R (Laing Homes Ltd) v Buckinghamshire County Council [2004] 1 P & CR 573 at [102] – [104]). The principle applies just as much to paths which are capable of being public rights of way as to those which are registered on the definitive map. The situation was explained by Lightman J in Oxfordshire County Council v Oxfordshire City Council & Robinson (2004) Ch 253 at [102] – [103]:

> "The issue raised is whether user of a track or tracks situated traversing the land claimed as a green for pedestrian recreational purposes will qualify as user for a lawful sport or pastime for the purposes of a claim to the acquisition of rights to use as a green. If the track or tracks is or are of such

character that user of it or them cannot give rise to a presumption of dedication at common law as a public highway, user of such a track or tracks for pedestrian recreational purposes may readily qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green. The answer is more complicated where the track or tracks is or are of such a character that user of it or them can give rise to such a presumption. The answer must depend on how the matter would have appeared to the owner of the land … Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential green will ordinarily be referable only to exercise of a public right of way to the green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential green may be recreational use of land as a green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).

Three different scenarios require separate consideration. The first scenario is where the user may be a qualifying user for either a claim to dedication as a public highway or for a prescriptive claim to a green or for both. The critical question must be how the matter would have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a public footpath, user for recreational activities or both. Where the track has two distinct access points and the track leads from one to the other and the users merely use the track to get from one of the points to the other or where there is a track to a cul-de-sac leading to, e g, an attractive view point, user

confined to the track may readily be regarded as referable to user as a public highway alone. The situation is different if the users of the track, e g, fly kites or veer off the track and play, or meander leisurely over and enjoy the land on either side. Such user is more particularly referable to use as a green. In summary it is necessary to look at the user as a whole and decide adopting a common-sense approach to what (if any claim) it is referable and whether it is sufficiently substantial and long standing to give rise to such right or rights."

179. A substantial element of common-sense judgment is therefore required in respect of the facts of a particular case as to whether it would appear to a reasonable landowner that use which is directed to paths is indicative of the acquisition of a public right of way or indicative of the acquisition of village green rights. In respect of the distinction, it is necessary to consider where the tracks go, why they are there (including the character of the land and season of the year) and the purpose of the activities. In ambiguous cases, the inference should be that users are exercising the lesser right of a public right of way. It is therefore for me to consider carefully the different paths used on the application land, since I do not accept the objectors' assertion that use of any path is *de facto* not qualifying village green use.

180. In analysing the various paths, I consider matters can be simplified by viewing three separate categories of path:

(a) The path within the woodland which runs roughly from C to A to between I and B and down through the woodland in Site A to E. A very large number of witnesses accessed the application land from either C or A and used this path to walk either through the application site or to gain access to the field part of Site A. Many of them said that their impression was this was in fact a public footpath (see Ms Venus, Prof Smith, Mr Crockett, Ms Standen, Ms Williams, Dr Skinner, Ms Platts, Mr Smith, Mr Rogers and Ms Burton). That is an eminently understandable impression given that the footpath signs at C and A are ambiguous, the exact location of footpath EE443 remains unclear, and in any event the footpaths around the site have for much, if not all, of the relevant

period been physically inaccessible. Professor Smith said that this path was "indistinguishable" from other public footpaths in the area and he used it for running as part of a network of paths over a wider area. From my observations on my site visit, I agree with those witnesses that the principal path in the woodland has all the characteristics of a public right of way. It is clearly defined, could be marked on a map, having a clear beginning, end and route. Use of this path, whether to access other land, the field in Site A, or generally, would in my view bring home to a landowner the assertion of a public right of way, and not a village green right. I therefore consider it appropriate to discount evidence of use of the path from C to A to I-B to E.

(b) Other more informal paths within the woodland. Users described a number of other paths in the woodland. Typically, it was said that there was a main path (that identified above) with various tracks leading off it (see Dr Skinner). In particular, it was evident from my site visit that where the woodland is narrow at C there is only the one main path, but as one approaches the 'chalk pit' and the woodland belt increases in width, the paths multiply. There are also a number of different paths in the wider parts of the woodland further south. Witnesses described that it did not seem like a continuation of a footpath at these points (Mr Smith). The question, of course, is how the matter would appear to the landowner, and not the users of the land. However, in my view, these smaller paths would not appear to a landowner to be characteristic of public rights of way.

The paths (or perhaps more appropriately described, tracks) have no specific defined route or routes through the woodland that could be plotted on a plan, or any such exercise would be extremely difficult, in my view. They have been created as a natural consequence of people navigating the easiest way through the dense tree cover. A woodland simply cannot be used on foot at ground level in any way other than by avoiding the trees. A reasonable landowner would, in my view, see the use that took place off the main path as use of the whole wooded area, rather than confined to a public right of way. The position is supported by

the activities carried out on these smaller paths, which appear to me to be principally focused on children's games or other activities (e.g. Mr Rogers' and Ms Williams' daughter and son playing, sometimes with Mayers Road friends, their daughter practicing with her pony, and the water fight which took place around 2000; Ms Platts playing with her children in the 1990s; Mr Crockett observing unidentified children playing on the remnants of the marines' assault course; Ms Burton playing with her son after August 2011). Further, the tracks themselves often appear to have evolved to facilitate the use of features of the application land which are of recreational significance for children e.g. the 'chalk pit', rope swings from trees, interesting trees (bouncy tree, time portal) etc. Thus the nature of the use of these subsidiary paths is akin to non-linear recreation rather than use of a path running from a theoretical A to B.

(c) The tracks visible on the various aerial photographs on the field / meadow part of Site A. I consider that these paths are more difficult to assess. On the one hand, they are well defined and were used for linear activities such as walking, jogging and cycling. Yet, on the other, they are present principally because people go to the application land as a destination for recreation and choose to take a circular route in order to maximise the length of their walk around the application land and / or follow the defined paths because the remainder of the grassy area was (perhaps with the exception of the southern part which was kept short by rabbits) made up of pretty rough grass, at least in later years, as seen on the Youtube 'air soft video'. It is not a requirement of TVG registration that every square foot of the land needs to have been walked on, and in many cases paths or tracks are inevitable features of land that is otherwise topographically hostile. In Oxford City Council v Oxfordshire County Council [2006] 2 AC 674 at [67], Lord Hoffman stated:

> "If the area is in fact intersected with paths and clearings, the fact that these occupy only 25% of the land area would not in my view be inconsistent with a finding that there was recreational use of the scrubland as a whole. For example, the whole of a public garden may

> be used for recreational activities even though 75% of the surface consists of flower beds, borders and shrubberies on which the public may not walk."

Although Lord Hoffman was considering the geographical extent of user and not whether user is consistent with acquisition of a public right of way rather than TVG rights, he clearly considered it permissible in the context of the acquisition of TVG rights for people exclusively to use paths and clearings when circumnavigating the land. As I have said, the use of the paths in the field of Site A was not really a choice, but necessitated by the uninviting terrain of the remainder of the meadow (which was traversed only those with a specific reason to do so e.g. air soft game, access to a blackberry bush etc.). Lightman J recognised in Oxfordshire that one needs to look at all the circumstances and what the suggestion to a reasonable landowner would be. In my view, given the terrain, the fact that these tracks do not go anywhere other than circumnavigate the application land (even if some people may have walked elsewhere in addition), and the nature of the activities that took place on the meadow, the applicant has shown that there is no ambiguity and a reasonable landowner should have viewed these tracks on the field as leading to the acquisition to of a village green right. I form this view on an objective basis and have not had regard to the subjective belief of either Mr Luckhurst or Mr Fielding in making this assessment.

The Effect of the Gypsy Encampment in 1999/2000

181. In light of the evidence, I find that the 'New Age travellers' were small in number, friendly, and did not effect any change in local inhabitants' use of the application land. However, there was a larger encampment of 'Romany / gypsy' style travellers on Site A after the 'New Age travellers' left (or possibly causing the 'New Age travellers' to leave), which did affect users' behaviour.

182. Both Ms Young and Ms Barrell witnessed the beginnings of this encampment when a truck with a caravan came onto Site A through Access 3. Ms

Young said that the following morning there were "several" caravans at the edge of the field, close to the woodland. Similarly, Ms Barrell said that over a couple of days the numbers increased. Mr Luckhurst said that he was told there were 25 – 30 vans increasing to 50 – 60. Although I consider this may be an exaggeration of numbers, I still consider that the numbers of vehicles and travellers was significant. Ms Barrell said that the caravans were close together, suggesting a substantial number. Although these witnesses could not remember the exact date, the documentary evidence suggests that this occurred some time in early summer 1999 (since the report of the harassment of two girls at the site by travellers occurred around June / July 1999: CB 2519).

183. Mr Luckhurst said that numbers reduced over a six month period and, whilst I accept that, I do not accept some witnesses' recollections that these travellers were only there for a matter of a few weeks. They were certainly still there (even if numbers had fluctuated) in October 1999 when Mr Luckhurst is reported to have taken the first steps to seek their eviction (CB 2521) and in April 2000 when Dover District Council issued a planning enforcement notice. Mr Luckhurst said that they were evicted in summer 2000. This date is consistent with documentary evidence that the site was cleared by August 2000 (see Environment Agency letter handed out during the inquiry). I therefore find that 'Romany' travellers were encamped on Site A for at least a year. The number of caravans is likely to have fluctuated and may have reduced from the initial influx, but I consider it was still significant throughout.

184. The positioning of the caravans close together meant people would not walk between them (Ms Barrell). Further, people would keep a wide berth from the encampment since these travellers were not friendly, and had untethered, 'Staffy-type' dogs which caused dog walkers and others using the land concern (see Professor Smith, Mr Smith and Ms Young). The Romany travellers were also responsible for depositing a large amount of unpleasant waste on Site A and in the adjoining woodland. Either the travellers, or others, dumped multiple burnt out cars on Site A around the same time. No witness spoke of having any contact with these Romany

travellers, in stark contrast to the New Age travellers (where there were a number of photographs and reports of social interaction).

185. It is notable that several witnesses who recalled in detail the New Age travellers gave no evidence concerning these Romany travellers. Mrs Venus, Mr Venus, Ms Elsam, Ms Williams, Ms Platts, and Mr Rogers remembered the earlier travellers but did not give any evidence about the later encampment. I can only assume therefore that they were not using the land when they were there. Those who did make specific reference to the Romany travellers consistently stated that, although they still used parts of the land, they did not go near the travellers. Professor Smith and Dr Skinner appeared predominantly to be using the woodland at that time anyway for their runs, and Professor Smith would alter his route as the rubbish was encroaching on paths and sometimes an untethered dog would interrupt his stride. Mr Smith would put his dog on a lead when near the travellers due to the 'Staffy' types and avoided the tree line on the eastern and southern side of the meadow where they were. Ms Barrell avoided the sports field entirely and Ms Young avoided the part of the sports field where the travellers were due to their dogs. She would also move around the waste and nappies in the woodland to avoid contact with the rubbish. The oral evidence is consistent with the written evidence, as summarised in the applicant's agreed Table A: some people refer only to the New Age travellers or do not distinguish between the two groups, others avoided the area to avoid disturbing the caravans, or were on guard around the travellers but continued use of the application land.

186. Even after the travellers were evicted, rubbish remained on Site A, in particular burnt out cars. Ms Elsam was deterred from going near the burnt out cars due to the potential for sharp objects. Ms Monger would similarly keep dogs away from the cars. The invoices for the removal of waste record that 38 flattened cars were removed from Site A in May / June 2001.

187. The objectors submit that the traveller encampment interrupted local inhabitants' use of Site A so as to stop the clock running for the accrual of TVG

rights. Alternatively, there was a substantial dip in the number of local inhabitants using the land at that time, so that it cannot be said that the applicant has shown use by a 'significant number' of local inhabitants throughout the relevant period.

188. There is no requirement in section 15(3) of the Commons Act 2006 for the use of land by local inhabitants to have been 'without interruption' (in contrast to section 2 of the Prescription Act 1832 and section 31(1) of the Highways Act 1980). Nevertheless, if local residents are physically ousted from the land such that they are incapable of continuing to use the land as a village green for a material period of time then time will cease to run for the purposes of the relevant period (see comments of Patten LJ in Taylor v Betterment Properties (Weymouth) Ltd [2012] EWCA Civ 250 at [71]). The exclusion must be complete rather than a case of two competing uses being able to accommodate each other (as they did in Lewis v Redcar (above) in the case of golfers who are only briefly playing on a particular part of the course). The burden of showing that the public were excluded from the land for a material period of time must fall on the objector, rather than the applicant having to prove that LSP was not interrupted (see R (on the application of) Mann v Somerset County Council [2012] EWHC B14 (Admin) at [61]: 'as of right' use "shifted the evidential burden to the owner to raise a vitiating circumstance").

189. Thus, in my opinion, an interruption requires an exclusion of the public which is 'complete' i.e. a physical ouster. Common examples are construction and engineering works taking place on land or the landowner prohibiting the public entry to the land for a material period of time. In terms of duration, in Betterment the interruption (by means of drainage works) had lasted for four months. I therefore have no doubt that the encampment was of a sufficient duration (at least one year) potentially to interrupt 'as of right' use.

190. In light of Betterment, I consider that the test for interruption is whether the public were physically excluded from Site A during the encampment. It is clear that local inhabitants would have been physically unable to use those parts of Site A upon which vehicles themselves were stationed. Within this, I would also include the areas

between the caravans, since I accept Ms Barrell's evidence that she doubted anyone would walk between them, presumably because the travellers themselves would have prevented this. However, apart from the vehicles themselves and the spaces between them, there was nothing physically stopping people from using the other areas of Site A, in particular the woodland, and Site B. Many may have avoided the area entirely due to the hostility of the travellers and the rubbish, but I do not consider that the behaviour choice of local inhabitants is properly seen in the context of interruption. In light of my opinion as to the requirement for physical exclusion, I find that the use of Site A was interrupted for a period of at least a year in those (undefined) areas where the caravans themselves were stationed (and of course the numbers and positioning of the caravans changed during that period). In all other respects, I do not consider that the travellers caused a material exclusion of the public (although I will come onto the effect of the change in behaviour they caused below).

191. Before turning to the behaviour change of local inhabitants, however, a further issue arises with regard to what the effect of the material interruption of use of part of Site A is on the applicant's ability to demonstrate qualifying user for the whole of the land. It is a matter of fact and degree and it is not necessary to demonstrate qualifying user for the whole period over every square inch of the land. Common sense must be applied: R (Cheltenham Builders) v South Gloucestershire [2003] EWHC 2803 (Admin) endorsed by Lord Hoffman in Oxfordshire at [68]. However, in my opinion, given that the physical extent of the caravans must have been substantial bearing in mind their number (certainly in the 10s, if not more), common sense dictates that their presence must also mean that the applicant cannot show qualifying use in respect of the whole of the field part of Site A, notwithstanding its overall size. The woodland of Site A and the woodland of Site B are distinct areas which were unaffected by caravans and it would be open to the registration authority to effect registration of those parts, irrespective of the interruption in the use of the whole of the field of Site A, provided all other elements of the statutory test are met.

192. Even if I am wrong on this, my comments below in relation to behaviour change would apply equally, if not more, to the field in Site A as to the woodland areas I consider in detail.

193. I turn now to consider users' behavioural change. It is clear to me that all those who spoke of the Romany travellers kept a wide berth (which is also consistent with the untested written evidence), not only in the field itself but also in the woodland generally. Many people appear to have avoided the application site entirely (Mr Fielding's and Mr Cork's experience and also evidenced by the number of witnesses who made no reference to the Romany travellers at all). Further, those who did use the application land made adjustments to their use of the woodland (as well as the field) to avoid rubbish. This continued after the eviction of the travellers before Site A was cleaned up in summer 2001. I accept the objectors' case that the period of intense unlawful use of the Site A will have discouraged LSP and the travellers and associated waste had a disruptive / displacing effect. Even though some of the more resilient users were able to continue using parts of the application land, in particular the woodland of Sites A and B, the patterns of use undoubtedly changed.

194. This raises the question of whether use of the application land as a whole remained by a 'significant number' of local inhabitants throughout the relevant period. In my view, there was an inevitable dip in the number of people using the application land during the traveller encampment and subsequent resulting mess. This is supported by the fact that only two of the applicant's witnesses recalled the construction operation of the 'ditch and bund' at the end of the clean-up (Mrs Venus and Ms Barrell), suggesting that user was not particularly extensive at the end of the worst period of environmental problems at Site A. Therefore, when considering the amount of user evidence of the application land in general, I am of the view that caution should be applied to the numbers using the woodland (as well as the field part of Site A if it is necessary to consider it) during that 1999 – 2001 period as a result of the general unpleasantness of the Site A at the time.

Whether the remaining user has been of such amount and such manner so as reasonably to be regarded as the assertion of a village green right and by a 'significant number' of local inhabitants

195. In light of my previous findings that the use of the field part of Site A was interrupted by the gypsy encampment between 1999 / 2000 and that user of the main path which runs from C to A to I-B to E is more akin to the establishment of a public right of way, the only potentially 'as of right' user left to consider is use of the woodland in Sites A and B which took place off that main path. Within this, I apply caution in particular to the period 1999 – 2001 when the woodland area was unattractive generally due to rubbish and the proximity of the Romany travellers, who were predominantly stationed close to the woodland belt.

196. In considering use of the woodland paths which run off the main path, there is significant difficulty in relying on the evidence questionnaires. This is because people did not generally distinguish between use of the main path and use of other areas. Therefore, in the vast majority of cases, I have no way of knowing whether the use was restricted to the main path or not. I further discount the activities of parties in the 'chalk pit' and fruit picking / foraging unless expressly stated not to be for commercial gain, for the reasons set out above.

197. As noted above, the activities on these subsidiary woodland paths appear to me to be principally focused on children's games or other child-led activities. The tracks facilitate the use of features of the application land which are of recreational significance for children e.g. the 'chalk pit', rope swings from trees, interesting trees (bouncy tree, time portal etc.).

198. I am conscious, therefore, that whilst the person giving evidence may have lived in the locality for a significant period of time, the period when they may have been partaking in children's games in the woodland is likely to have been shorter, since that type of activity naturally only takes place when their children are of a certain age. It is therefore also difficult to be certain about the periods of time that people have played with children in the woodland as a whole, unless expressly stated.

199. I now go on to summarise the evidence (both oral and from witness statements) that I can be confident about as indicating use of the subsidiary woodland paths. I have not included reference to the evidence questionnaires for reasons given above.

Name	Use of Subsidiary Paths	Likely period
Kevin Orchard and Corinne Divito (written only: AB 16 and AB 51)	Children riding bikes in 'chalk pit', playing with remote controlled cars and hide and seek in woodland as a whole	Early part of relevant period, moved to locality in 1992, one child (of two) born 1987
Margaret Young (AB 113)	Playing with niece and nephew from outside locality and not clear if Ms Young also left the main path – so discount	
Guy and Lynette Platts (AB 148 and AB154)	Children sat on the bouncy tree near D and parents bounced them up and down. Also two trees which they pretended were a time portal, children hid in the undergrowth, exploring woodland for pine cones, leaves etc. to take home, blackberrying near F for home consumption	Early part of relevant period, moved to locality in 1992, when children were 1 and 5. Travellers said not to have affected use of land but unclear if still playing with children off-paths during main encampment
Yvette Williams and Keith Rogers (AB 68 and AB 124)	Children would play with toy guns, hiding behind the trees and building forts in the	Around 2006 when their son was 9

	undergrowth. They would run up and down the 'chalk pit' or the earth banks at J and play on the rope swing. Water fight around 2000, daughter riding horse and jumping over logs	
Colin Skinner (AB 9)	Picnics in the woods, sitting on fallen trees, using the rope swing that had been set up from one of the trees, sledding in the winter	From 2000 to 2003
Tanya Elsam (AB 145)	Playing hide and seek, bouncing on the 'bouncy tree' near point A and going down the 'chalk pit' when the snow fell. NB I discount her foraging as it was in connection with her employment	Daughter born 2005
Philip Combes (written only: AB 82)	Grandchildren (presumably from outside locality) rode bikes up and down 'chalk pit' and earth mounds at J. Unclear if Mr Combes left the main path so discount.	During travellers' occupation. Some of the travellers saw them but did not come up to them.
Stephen and Julie Crockett (written only: AB 12, AB 111)	Children walked in woods but unclear on which paths – so discount.	Moved into locality in 2004
James Skinner (CB 14)	Running in the woods including in and out of the	From 2000 onwards

	'chalk pit' and over many of the trails in both the northern and southern parts of woods (with father). Picnicking on fallen trees in Site B, rope swing and J, sledding at D.	
Patricia Charters (written only: AB 24)	Games in the woodland, hide and seek etc.	About 30 years ago which suggests before the start of the relevant period, so discount
Sarah Jones (written only: AB 54)	Nephew (presume from outside locality) plays on tyre swing and hide and seek. NB no evidence of her own use of subsidiary paths so discount.	Since 2011
Clare Wiseman (written only: AB 56)	Took son to explore woodland (away from paths) and climb trees	Dates unclear and whether living in locality at relevant time when took son
Sue Ryder (written only: AB 86)	Playing with grandchildren (presume outside locality) in 'chalk pit', on bouncy tree, hide and seek, climbing trees. Appears Ms Ryder and her husband left the paths as shown in photographs.	Latter part of relevant period (photographs from summer 2012)
Paula Starling (written only: AB 63)	Riding horses (with daughter) around the 'chalk pit' as part of a longer ride that appeared to be on the	Riding horses was around 1993. Playing with grandson is since 2010.

	main path. Latterly, foraging with grandson (child presumably from outside locality) for cones, sloes etc. for home decoration / presents, hide and seek, jumping and bouncing on fallen logs, rope swing. Apparent from photographs that Ms Starling left main path.	
Tracey Ward (written only: AB 79)	Children would run around woods etc. Unclear if Ms Ward left the main path, so discount.	Earliest part of relevant period (from 1989)
Louise Burton (written only: AB 133)	Gruffalo hunting, hide and seek, collecting twigs, running up and down the 'chalk pit' and around the sides, sledding, building snowmen.	Since August 2011
Linda Standen (AB 1)	Playing with children off-paths in woodland ended around 1992. Subsequently playing with grandchildren (presume from outside locality) on earth banks and rope swing. Recalls four or five caravans and travellers who were friendly for around four weeks.	2006 to 2010 with grandchildren.

John Gane (written only: AB 6)	Evidence of off-path use with son is from before the start of the relevant period, so discount.	
Susan Williams (written only: AB 8)	Walking in the woods between the trees	Since 2005
June Jailler (written only: AB 14)	Playing with children of a friend (presume outside locality) once a month in 'chalk pit', earth mounds, and on rope swing. Picnics near mounds and sit on tree trunks. Recalls travellers but they had no effect on use.	From around 1999
Peter Fitch (written only: AB 31)	Walking on numerous tracks in the woods with grandchildren (presume from outside the locality)	Past 13/15 years but unclear on specific dates and whether this occurred during the gypsy encampment
Marion Sneller (written only: AB 143)	Invariably wander off well-trodden paths to look at plants and trees	Only permanently resident since 2007
Hannah Mace (written only: AB 161)	Picnicking sitting on logs in the woodland	Resident since August 2006
Hugh Smith (AB 163)	Playing with son and friends on earth banks, rope swing. Mr Smith would sit on a log in the woodland.	Appears that playing with son ceased in 1996/7 when he was 12/13. After that he went alone (or with friends) so unclear which areas were used.

200. I consider the above analysis of the evidence is interesting because it shows very little, if any, use of the subsidiary paths / 'chalk pit' during the main traveller

encampment between 1999 – 2000. The majority of the use of the woodland occurred either in the early part of the relevant period or in the most recent years. It is noteworthy, for example, that Dr Skinner and his son, James, only started using the woodland in 2000 (possibly after the eviction), even though Dr Skinner returned to the locality from America in 1999. Further, Ms Williams and Mr Rogers, who used the woodland (as well as the rest of Site A) extensively together with their children and other local children specifically made no mention at all in either their written or oral evidence of the Romany travellers.

201. The only person who refers to seeing the Romany travellers while playing with a child in the woodland is Mr Combes (AB 82). He says that his grandsons and he noticed them but they did not cause any problems. Some of the travellers saw them, but did not come up to Mr Combes and the children. It is clear to me that Mr Combes exercised some degree of caution when near the travellers and did not mix with them. It also appears that this was an isolated incident of playing near the travellers and not a regular occurrence. In any event, it is unclear if Mr Combes left the main path. Ms Jailler states that her use of the woodland with a friend's children around once a month was unaffected by the travellers (AB 14). Her written statement gives little detail and she says she says she cannot remember when the travellers were there or for how long. She further does not distinguish between the Romany travellers and 'New Age' travellers. It does not appear to me that Ms Jailler's use was very frequent and, notably, it was confined to the woodland, and not the field on Site A. It is unclear which travellers she is referring to and, since her evidence was untested by cross examination, it was not possible to clarify these points.

202. As I have said above, if local inhabitants were avoiding using the woodland during the encampment, they were even less likely to be using the field part of Site A.

203. The issue I must consider is whether there was a sufficient continuance of use of sufficient intensity to bring home to a reasonable observer, and in particular to the landowner, that LSP of some sort were taking place throughout the period which

are attributable to the acquisition of a TVG right (see Barkas at [61] and [65]). The key question is "how the matter would have appeared to the owner of the land", and is not at all concerned with "evidence of the individual states of mind of people using [the land]": Sunningwell at 352-3 and 354-6.

204. The further linked issue is whether use for LSP has been by a significant number of local inhabitants throughout the relevant 20-year period. This is a slightly different question because it turns on whether the assertion of a TVG right by qualifying local inhabitants has been by merely a small and insignificant number of people, indicative of merely use by some households, or whether it can properly be categorised as use by a significant number of qualifying local inhabitants: R (Alfred McAlpine Homes Ltd) v Staffordshire County Council [2002] 2 PLR 1. What is meant by a 'significant number' is very much a matter of impression. The number might not be so great as to be properly described as considerable or substantial; but it must be more than *de minimis* and sufficient to indicate general use by the community (see Alfred McAlpine at [71]). Again, I am conscious that the burden is on the applicant to establish this and use must be by a significant number of local inhabitants throughout the relevant period.

205. I should add that it is clear that TVG rights can 'co-exist' with other uses of land, in particular the landowners' own activities (Lewisv v Redcar (above)) and use by residents from outside the locality (no predominance test). I therefore do not consider there is any authority to suggest that significance needs to be viewed against the backdrop of other activities taking place on the land, as appeared to be suggested by the objectors. The question is simply whether the number of qualifying users is significant in accordance with McAlpine (above) and the use is of a sufficient intensity to assert a TVG right.

206. I am bound to say that my impression is that there was a distinct change in the nature and frequency of user during the part of the relevant period when the Romany gypsy encampment was on the field at Site A in respect of the use of the application land as a whole (including Site B). Whilst I accept that a few resilient

users persisted to use the woodland (off-paths), and even the field of Site A during the encampment, instances of this are very sporadic (and any use during this time was far more likely, in my view, to have taken the form of use of the main path in the woodland). I have not seen sufficient evidence from the applicant to indicate general use of the woodland, off the main path, by the community during this time such that it could be said to be by a 'significant number' of local inhabitants and clear to a reasonable landowner that a TVG right was being asserted. All of the witnesses concurred that the Romany gypsies were hostile. The primary activities that took place off the main path in the woodland were child-focussed activities, which were unlikely to be compatible with potentially hostile neighbours with untethered fierce dogs. This supports my view that these activities were no more than sporadic and *de minimis* during the period 1999 – 2000.

207. As an additional point, there is no evidence of use of either of the 'lay-bys' off Coldblow Lane, which were confirmed during the inquiry to be within the boundaries of the application land, for LSP at all.

208. The owner of Site A, Mr Luckhurst, did not visit his land during this time after his initial encounter with the Romany gypsies but, had he done so, I consider that he would have encountered the unpleasant reality of anti-social behaviour, litter and environmental waste, and burnt out cars. He would not have been confronted with local inhabitants asserting a right to use either the field or woodland as a town or village green, as may well have been the case at other times during the relevant period. Similarly, Mr Ledger, the owner of Site B, was an infrequent visitor to his land and only went there if complaints were received. However, if he had visited during the Romany traveller occupation, I do not consider he would reasonably have been aware of a 'significant number' of local inhabitants asserting TVG rights (as opposed to footpath rights along the main path).

209. My conclusions are a matter of impression having heard the oral evidence and read the written evidence. There is no absolute numbers test for 'significant number'. Given the length of the Romany gypsy encampment (over a year), the clear

contemporaneous documentary evidence of the unpleasantness of the field and surrounding woodland, and the distinct lack of sufficient evidence of use of the woodland off the main path during that time (in contrast to other parts of the relevant period), as set out above, I conclude that the applicant has failed to discharge the burden of proof of showing user by a 'significant number' of local inhabitants throughout the relevant period.

210. I do not therefore need to go on to consider whether 'significant number' should be seen in the context of the population of the locality.

211. Accordingly, my recommendation is that the application should fail in respect of the whole of the land on the basis that the applicant has failed to show that user was by a 'significant number' of local inhabitants during the period 1999 – 2000 and failed to show that a TVG right was being asserted during that same period.

212. However, for completeness, I will go on to consider the other elements of the statutory test and arguments raised.

Whether use of the 'chalk pit' was interrupted by slurry spreading

213. The burden of proof of showing interruption falls on the objectors. Mr Ledger suggested in oral evidence, rather as an afterthought, that he had spread slurry in the 'chalk pit' on four or five occasions during the relevant period to stop motorbikes in the woodland of Site B going onto Site C. This was also referred to in his written statement, although no frequencies were given. Mr Puddle recalled this occurring some time in the first half of 2012 and Mr Smith walked through it once. Ms Barrell also recalled manure piled on a bank at the edge of Site C. The slurry would take at least a week to dry up, depending on the weather.

214. I consider that, whilst it may physically be possible to walk through slurry, it would be such a deterrent that it would be capable of interrupting LSP. However, in my view the frequencies and duration of the interruption were unlikely to have been

more than *de minimis* in the context of the 20 year relevant period. Therefore, were the application not otherwise to fail, I would not recommend rejecting the application either in whole or in part on this basis.

Whether User Has Been 'By Force'

215. User will be "*vi*" if undertaken in the face of prohibition by the owner. Put simply, I consider that, notwithstanding the difficulties faced due to vandalism, Mr Luckhurst's attempts to fence Site A and put up prohibitory signs were feeble. The objectors cannot, in my view, suggest that he was doing everything consistent with his means and proportionate to the user to render use *vi*, had he really wished to keep people (as opposed to vehicles) out of Site A (Smith v Burdenell Bruce [2002] 2 P & CR 51 at [12]). One only has to compare his efforts to TG Claymore's more recent (effective) efforts to see that it is indeed practical and feasible to secure Site A from trespassers. Critically, Mr Luckhurst never made any attempt to secure the access point to Site A used by the vast majority of local inhabitants carrying out LSP i.e. between B and I.

216. His efforts (such as they were) were directed entirely to stopping vehicle trespass as this was causing him problems with the authorities and police. I consider that he in fact consciously acquiesced in the use of Site A by walkers etc., since they did not cause the same problems and were able to report vandalism and anti-social behaviour to him, as evidenced by the signs erected by Mr Dickason (or on his behalf).

217. Whilst it may be the case that an act directed to one class of trespassers is properly interpreted as prohibiting all unauthorised access, that cannot be said of the 'ditch and bund', in my view. Its erection was a direct response to the traveller encampment and the bringing of vehicles onto Site A, which were subsequently burnt. It had no effect whatsoever on walkers and others carrying out LSP entering Site A from the main path between B and I. I do not consider that its message to those carrying out LSP was in any way ambiguous and, in particular, I do not find

that it was communicating to local inhabitants that Mr Luckhurst was in opposition to their use of Site A for LSP.

218. The signs erected by or on behalf of Mr Dickason, whilst seemingly encouraging the use of Site A for LSP, did not express that any permission was being given that was revocable. Therefore, I do not consider that they rendered use of Site A '*precario*' after late 2011. However, even if I am wrong about this, it would be open to the applicant to rely on an earlier relevant period, as set out above.

219. In relation to Site B, there has never been any fencing. It is said that the slurry deposited in the 'chalk pit' would render any use of the 'chalk pit' itself '*vi*'. Again, I consider Mr Ledger's efforts, which were also directed to prohibiting vehicular use of the land (in this case, access to Site C), were not consistent with his means and proportionate to the user, so user was not rendered *vi*.

220. Finally, the objectors submit that some user has been *clam*, or 'by stealth', in particular parties in the 'chalk pit' and serious 'hide and seek' games. I have discounted parties in the 'chalk pit' in any event on account of the applicant not being able to show that they were lawful. In relation to 'hide and seek', the game involves 'seek' as well as 'hide'. By its nature, participants are only hiding for some of the time and are also clearly visible when seeking for those hidden. Therefore, I do not consider it can be said that such games are '*clam*'.

221. Therefore, I do not consider that, were the application not otherwise recommended to fail, it should do so on the basis of failure to establish 'as of right' user throughout the relevant period.

Whether the registration authority should register part of parts of the application land

222. I have recommended that the application should fail in respect of the whole of the application land. However, if the registration authority disagrees with my assessment in respect of part of the application land (e.g. the woodland area), it

would be open to the registration authority, in my view, to effect registration of any defined part of the application land, which appears to me to fall into three distinguishable parts:

(i) Field of Site A
(ii) Woodland of Site A
(iii) Site B.

CONCLUSION AND RECOMMENDATION

223. My conclusion is that the application should fail in full for the following reasons:

(i) The applicant has failed to show that:

(a) Qualifying use was by significant number of local inhabitants throughout the relevant period because the number was not significant between 1999 – 2000 during the Romany gypsy traveller encampment;

(b) Qualifying use was sufficient to assert a town or village green right between 1999 – 2000 during the Romany gypsy traveller encampment;

(ii) In relation the field part of Site A only, the objectors have shown that;

(c) Qualifying use was interrupted during the period 1999 – 2000 during the Romany gypsy traveller encampment.

224. My conclusions in paragraph 220(i)(a) and (b) above must be seen in the context of my finding that user of the main path which runs through the woodland from C to A in Site B and to between I and B and down through the woodland in Site A to E would bring home to a landowner the assertion of a public right of way, and not a village green right.

225. My recommendations are:

(1) That my Report should be made available to the applicant and to the objectors, together with final confirmation of the date of the meeting at which the registration authority will reach its decision. The applicant and objectors should be informed that this meeting does not present an opportunity for the parties to re-state their cases or seek to put in further evidence, unless truly exceptional circumstances are made out.

(2) That the decision on the application is for the registration authority which must exercise its own discretion, save that it must not take into account issues relating to any balance of advantage or disadvantage flowing from registration or non-registration of the land as a TVG.

(3) That in reaching its decision on the application it must have regard to my overall conclusions and reasoning, as well as any advice from officers.

(4) That subject to that advice and any late representations received, the application should fail in respect of the entire application land and for the reasons set out in this Report and summarised above.

(5) This application is governed by the Commons Registration (England) Regulations 2008. Under Regulation 37, the registration is required to give reasons for its decisions and details of any changes made to the register to give effect to that decision. If the registration authority accepts my recommendations and reasons, its reasons should be stated to be "the reasons set out in the Independent Inspector's Report of 24 October 2014".

ANNABEL GRAHAM PAUL

Francis Taylor Building
Inner Temple
EC4Y 7BY

24 October 2014