IN THE MATTER OF AN APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN IDENTIFIED IN THE APPLICATION AS 'FIELDS AT ROSIER WOOD' AT BILLINGSHURST WEST SUSSEX

– APPLICATION NUMBER TVG 30/28 –

INSPECTOR'S REPORT AND RECOMMENDATION TO THE REGISTRATION AUTHORITY – WEST SUSSEX COUNTY COUNCIL

Introduction

1. I am instructed by West Sussex County Council in its capacity as commons registration authority ('CRA') to provide an advisory report and recommendation in the case of an application made by Andrew Tullett ('the Applicant') to register land described in the application form as 'Fields at Rosier Wood' ('the application land') as a new town or village green ('TVG').

2. The application in Form 44 will be found at A/1 in the inquiry bundle and is dated 19/12/2010 and the date of the CRA's official stamp indicating a valid date of receipt is 24/12/2010. The application was accompanied by a statutory declaration signed by the applicant and by the supporting documentation identified in Box 10 of the application form.

3. Put shortly, the grounds on which such application was made were that local inhabitants had used the application land for informal recreation for a period of at least 20 years before qualifying user 'as of right' ceased in August 2009 from which it follows that the case for registration falls under section 15(3) of the Commons Act 2006 ('CA 2006').

4. The application was publicised by the registration authority in accordance with the regulations (namely The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007). The publicity

notice invited objections which were received from the Objector, namely Bellway Homes Ltd, in their capacity as landowner of the application land.

5. After being instructed by the CRA I gave directions on 23/07/2013 dealing with procedure at the public inquiry which took place over 7 days between 17/09 and 10/10/2013 at Billingshurst Community and Conference Centre where I heard evidence from a number of witnesses.

6. I made lengthy site visits on 12/09/2013 (unaccompanied) and on 2/10/2013 when I was accompanied by the applicant and one of his supporters and by representatives of the Objector. I also spent time on both occasions looking at the claimed neighbourhood and surrounding areas. I am confident that I am as familiar as I need to be with the application land and the claimed neighbourhood to which I will return later.

7. Representation at the public inquiry was as follows: Christopher Maile acted as advocate for the applicant (although Mr Maile is not a lawyer) and Douglas Edwards QC acted for the Objector. Both are experienced in this field of the law and I am grateful to them for their assistance and helpful submissions. I am also grateful for the administrative support provided by Peter Jupp of the CRA.

Legal Framework

8. Section 15(3) of the CA Act 2006 enables any person to apply to register land as a TVG in a case where subsections 2, 3 or 4 applies.

9. Section 15(3) applies where -

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

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

(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).'

10. It is not in dispute that user ‘as of right’ ceased before the application was made and that the application to register was made within two years of the cessation of such use.

11. The meanings of the expressions in section 15(3) have been the subject of numerous court decisions.

‘a significant number’

12. ‘Significant’ does not mean considerable or substantial. What matters is that the number of people using the land has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation rather than occasional use by individuals as trespassers (see R (McAlpine) Staffordshire CC [2002] EWHC 76 at [71] (Admin). It is then very much a matter of impression whether user is sufficient for these purposes on the basis of oral and written evidence adduced by the Applicant.

‘of the inhabitants of any locality or of any neighbourhood within a locality’

13. A ‘neighbourhood within a locality’ need not be a recognised administrative unit. A housing estate can be a neighbourhood (McAlpine). However a neighbourhood cannot be any area drawn on a map: it must have some degree of cohesiveness (R (Cheltenham Builders Ltd) v South Glos DC [2003] EWHC 2803 para 85). In the Trap Grounds case (Oxfordshire County Council v Oxford City Council [2006] UKHL 25) Lord Hoffmann pointed out the *‘deliberate imprecision’* of the expression. The statutory test is fulfilled if a significant number of the users come from any area which can reasonably be called a ‘neighbourhood’ even if significant numbers also come from other neighbourhoods (see R (Oxfordshire & Bucks NHS Trust) v Oxfordshire County Council [2010] EWHC 530 (Admin) (usually called the Warneford Meadow case)). In short, the claimed neighbourhood must be an area which is cohesive, identifiable and recognisable as a community in its own right. Only the inhabitants of the relevant neighbourhood have recreational rights over the land.

14. A ‘locality’ for these purposes means an administrative district or an area with legally significant boundaries. See Paddico (267) Ltd v Kirklees Metropolitan Council [2011] EWHC 1606 (Ch) at para 97(i).

‘have indulged as of right’

15. Although a new green by 20 years’ use does not depend on the inference or presumption of a grant or dedication, the expression ‘as of right’ echoes the requirements of prescription in relation to easements and public rights of way. In both cases, qualifying use must be ‘as of right’ because the existence of the right enjoyed by local people depends on the long acquiescence of the landowner in the exercise of the right claimed.

16. The traditional formulation of the requirement that user must be ‘as of right’ is that the user must be without force, secrecy or permission.

17. ‘Force’ does not just mean physical force. Use is by force if it involves climbing or breaking down fences or gates or if it is contentious or under protest. Prohibitory signs render use contentious and so not ‘as of right’.

18. Use that is secret or by stealth will not be use ‘as of right’ because it would not come to the attention of the landowner.

19. ‘Permission’ can be express eg by erecting notices which in terms grant temporary permission to local people to use the land. Permission can be implied but not by inaction or by acts of encouragement by the landowner. It was held in R (Beresford) v Sunderland City Council [2004] 1 AC 889 that permission must be revocable or time limited. Permission that is unlimited and irrevocable amounts to acquiescence. A discreet issue arises in this case in relation to part of the application land which concerns the application of the decision in R (Mann) v Somerset County Council [2012] EWHC B14 (Admin) in which an implied permission arose from periodic exclusions relating to part only of the land but whose effect was taken to be referable to the whole of the application land. In Mann the holding of ticketed beer festivals in aid of charity in a large marquee on 3 or 4 occasions and the occasional holding of a funfair was found to be enough for this principle to be applied even though the public

were free to use the remainder of the land whilst these events were taking place.

20. ‘As of right’ means ‘as if by right’. If use is in fact pursuant to a legal right (eg under a statutory right of public recreation under section 164 of the Public Health Act 1875 or section 10 of the Open Spaces Act 1906) then use is ‘by right’ rather than ‘as of right’. This principle extends to some public open spaces held under the Housing Acts (R (Barkas) v North Yorkshire County Council [2012] EWCA Civ 1373).

21. See also *R (Lewis) v Redcar & Cleveland BC* [2010] 2 WLR 653 at [67] where Lord Hope said that users must have been doing so ‘as of right’, *‘that is to say, openly and in the manner that a person rightfully entitled would have used it. If the user for at least 20 years was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right … the owner will be taken to have acquiesced in it – unless he can claim that one of the three vitiating factors applied in his case*.’

‘in lawful sports and pastimes on the land’

22. The expression ‘lawful sports and pastimes’ (LSP) form a composite expression which includes informal recreation such as walking, with or without dogs, and children’s play provided always that those activities are not so trivial or intermittent so as not to carry the outward appearance of user ‘as of right’ (see R v Oxfordshire County Council ex parte Sunningwell Parish Council [2000] 1 AC 335 at p.356F-357E).

23. The expression ‘on the land’ does not mean that the registration authority has to look for evidence that every square foot of the land has been used. Rather the CRA needs to be satisfied that, for all practical purposes, it can sensibly be said that the whole of the land had been used for LSP for the relevant period. When areas of the claimed green have not been used or are inaccessible the question for decision is whether the whole of the land is still registrable. The answer in truth is whether the unused areas are integral to the enjoyment of the whole of the land as might apply, for instance, in the

case of borders and overgrown areas which can form part of the function and attractiveness of the area.

24 Difficulties frequently arise where the predominant recreational user of the application land is that of user of paths such as would have appeared to a reasonable landowner to be referable to the exercise of existing, or the potential acquisition of new, public rights of way rather than rights sufficient to support a TVG registration. In the Trap Grounds case at first instance ([2004] Ch 253 at [102/3]) Lightman J said that the use of tracks will generally only establish public rights of way unless the use is wider in scope or the tracks are of such a character that use of them cannot give rise to a presumption of dedication at common law as a public highway. It is perhaps worthy of note that use for recreational walking is capable of founding a case of deemed dedication of a highway unless merely ancillary to recreational activities such as sunbathing, fishing or swimming (see Dyfed County Council v Secretary of State for Wales [1989] 59 P&CR 275).

25. In practice, the use of tracks will, in my view, usually only be referable to public or putative rights of way unless the whole of the land on either side of the track or tracks is also being used for informal recreation, the matter being viewed from the position of the landowner. The question therefore begs as to whether users of the track veer off the track and play, or meander leisurely over and enjoy the land on either side. Such user would be more particularly referable to use as a green. Lightman J also noted that where there was any doubt about the matter the inference should be drawn of exercise of the less onerous right rather than the more onerous right to use the land as green. Where the track is already a public highway then the public's use of such land is unlikely to count towards the acquisition of a TVG (see Trap Grounds at [104[). In this situation, the starting point must be to view the user as referable to the exercise of the established right of way and only referable to the rights incident to a TVG if clearly referable to such a claim.

26. The footpath issue was also addressed by Sullivan J in R (oao Laing Homes Ltd) v Buckinghamshire County Council at [2004] 1 P&CR 36 at [102-110]. Put shortly, where you have heavy use of footpaths around the perimeter of

application land, it becomes necessary to distinguish between use which would suggest to a reasonable landowner that the users believed they were exercising a public right of way and use which would suggest to such a landowner that the users believed they were exercising a right to indulge in lawful sports and pastimes across the whole of the land. A useful test is to discount walking, including dog-walking, on the footpaths in order to determine whether the other activities over the remainder of the land were of such a character and frequency as to indicate an assertion of a right over the whole of the application land. It was also usefully noted by Sullivan J at [104] that he did not consider that a dog's wanderings or the owner's attempts to retrieve his errant dog would suggest to the reasonable landowner that the dog walker believed he was exercising a public right to use the land beyond the footpath for informal recreation. At [68] in the Trap Grounds case Lord Hoffman approved of the guidance on this issue offered by Lightman J at first instance and by Sullivan J in the Buckinghamshire County Council case.

27. There are 2 further points which should also be looked at under this head.

Continuity / Interruption

28. The use has to be continuous throughout the 20 year period (Hollins v Verney (1884) 13 QBD 304). In White v Taylor (No.2) [1969] 1 Ch 160 at 192, Buckley J said this: *'But the user must be shown to have been of such a character, degree and frequency as to indicate an assertion by the claimant of a continuous right, and of a right of the measure of the right claimed'*. In short, the use has to show that a right is being asserted and must be more than sporadic intrusion onto the land. It must be use which suggests that rights of a continuous nature were being asserted. It is essentially a matter of fact and degree for the registration authority to determine whether the whole of the land has been available for lawful sports and pastimes continuously throughout the full 20 year period. Interruptions of short duration and/or which are confined to only limited parts of the land may not be regarded as an interruption in the use of the site as a whole or part such as to break the continuity of user of the site as a whole.

29. On the other hand, where local inhabitants are prevented from using the land for prolonged periods then the result will be that the applicant for registration will be unable to rely upon continuous user for the 20 year period. For instance, in Taylor v Betterment Properties (Weymouth) Ltd [2012] EWCA Civ 250 the Court of Appeal upheld a finding that enclosure for around 4 months was a sufficient disruption to stop time running. As Patten L.J put it at [71]:

' …there must be a physical ouster of the local inhabitants from the land and the disruption must be inconsistent with the continued use of the land as a village green. If the two competing uses can accommodate each other (as they did in Redcar (No.2)) then time does not cease to run. But here the exclusion was complete and the use of the land for the drainage scheme was not compatible with it remaining in use as a village green. The judge was therefore correct in my view to hold that there had not been twenty years' user of the works site.'

30. I have dealt with interruption at some length as the issue arises here principally in connection with elements of the farming activity which took place on the application land at various times which I will deal with in a separate section which, it is argued, meant that for prolonged periods large areas of the application land were incapable of being used for qualifying LSP.

Severance

31. It was also held in the Trap Grounds case that the registration authority can register part only of the application land if it is established that part but not all of the application land has become a new green. The decision of the Commons Commissioner A.A. Baden-Fuller In the Matter of Gleaston Green (Ref No:20/D/3) is particularly noteworthy here. In an application to register made under the Commons Registration Act 1965, he said that notwithstanding that part of the land was a *'swamp and tip'* and hence unsuited to sports and pastimes, the definition of TVG in section 22 of the Commons Registration Act 1965 did not require him to limit the land to which the application applied to the exact area on which sports and pastimes are actively indulged and that it could include *'all the surrounding area of land which can fairly be described as the same piece of land'.*

32. An extreme example of this was the *Trap Grounds* case itself where an area of scrubland within the application land was so overgrown that the majority of the land was inaccessible. The landowner argued that this precluded registration of such land as a green. The inspector found that only around 25% of the total area was reasonably accessible, the remainder consisting of trees and scrub. The view taken by the inspector was that the recreational use of the scrubland had been sufficiently general and widespread so as to amount to recreational use of the scrubland when viewed as a whole. His view on this was not set aside and Lord Hoffmann drew an analogy with a public garden being used for recreational activities as a whole in circumstances where 75% of the surface consisted of flower beds, borders and shrubberies on which the public could not walk. At the end of the day, every case depends on its own facts.

‘ … for at least 20 years ..’

33. The relevant period in this case is August 1989 – August 2009.

Procedural issues

34. The regulations which deal with the making and disposal of applications by registration authorities outside the pilot areas make no mention of the machinery for considering the application where there are objections. In particular no provision is made for an oral hearing. A practice has, however, arisen whereby an expert in the field is instructed by the registration authority to hold a non-statutory inquiry and to provide an advisory report and recommendation on how it should deal with the application.

35. In Regina (Whitmey) v Commons Commissioners [2004] EWCA Civ 951 Waller L.J suggested (at para 62) that where there is a serious dispute, the procedure of *‘conducting a non-statutory public inquiry through an independent expert’* should be followed *‘almost invariably’.* However the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties by judicial process. There is no power to take evidence on oath or to require the disclosure of documents or to

make orders as to costs. However the registration authority must act impartially and fairly and with an open mind.

36. It was said at first instance by Carnwath J (as he then was) in *R v Suffolk County Council ex parte Steed* [1995] 70 P&CR 102, 487 (at pp.500/501) that an authority has an implied duty to take reasonable steps to acquaint itself with the relevant information to enable it to correctly answer the correct question under the Act – as it was put by Carnwath J: *'Some oral procedure seems essential if a fair view is to be reached where conflicting recollections need to be reconciled'*.

37. Having said that, however, the registration authority does have a discretion as to the procedure to be adopted but that discretion is not unfettered and it must be exercised in a manner which is not unfair to applicants or objectors.

38. The role of the expert inspector is thus to provide a report and to make a recommendation to the registration authority on whether the application should be accepted or not. His job is to hear the facts and make findings in circumstances where the facts are in dispute and then apply the facts to the relevant law. Inspectors have no power to decide anything and provided they act lawfully, the registration authority is free to accept or reject the recommendations of their inspector and would also be free to seek further advice from another person as to the content of their inspector's report before deciding whether to accept its recommendation. However, having said that, it is still the case that the registration authority should have a very good reason for not following their inspector's recommendation.

39. It should also be noted that in the Trap Grounds case at [61] Lord Hoffmann said that the registration authority has no investigative duty which requires it to find evidence or to reformulate the applicant's case. It is required only to deal with the application and the evidence as presented by the parties.

40. The only question for the registration authority is whether the statutory conditions for registration are satisfied. In its determination there is no scope for the application of any administrative discretion or any balancing of competing interests. In other words, it is irrelevant that it may be a good thing

to register the application land as a TVG on account of the fact that the land has been long enjoyed by locals as a public open space of which there may be an acute shortage in the area or because it is a beautiful habitat teeming with wildlife.

41. The onus lies on the applicant for registration and there is no reason why the standard of proof should not be the usual civil standard of proof on the balance of probabilities.

42. The procedure is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. The 2007 Regulations follow closely the scheme of The Commons Registration (New Land) Regulations 1969 which governed applications to register new greens under section 13 of the 1965 Act. In a number of small pioneer authorities The Commons Registration (England) Regulations 2008 apply. In Wales the regulations are different but they are very similar to the 2007 regulations.

43. The prescribed procedure is very simple: (a) anyone can apply without fee; (b) unless the registration authority rejects the application on the basis that it is not 'duly made', it proceeds to publicise the application inviting objections; (c) anyone can submit a statement in objection to the application; and (d) the registration authority then proceeds to consider the application and any objections and decides whether to grant or to reject the application.

44. I should make two further points under this head: (a) it should be emphasised that it is no trivial matter for a landowner to have land registered as a green and all the elements required to establish a new green must be *'properly and strictly proved'* (R v Suffolk CC ex p Steed (1996) 75 P&CR 102 at p.111 per Pill LJ, and approved by Lord Bingham in R (Beresford) v Sunderland City Council [2004] 1 AC 889, at para 2); and (b) the reforms in this branch of the law contained in the Growth and Infrastructure Act 2013 do not apply to this application.

Consequences of registration

45. Registration gives rise to rights for the relevant inhabitants to indulge in LSP on the application land.

46. The owner is not excluded altogether from his land. He still has the right to use it in any way which does not interfere with the recreational rights of the inhabitants. In practice, however, there is a massive mismatch between what an applicant has to do to obtain registration and the practical and financial consequences of this upon the owner of the land. This is of critical importance in this case where part of the application land is required for development.

47. Upon registration the land becomes subject to (a) s.12 of the Inclosure Act 1857, and (b) s.29 of the Commons Act 1876.

48. Under s.12 of the Inclosure Act 1857 it is an offence for any person to cause damage to a green or to impede *'the use or enjoyment thereof as a place for exercise and recreation'*.

49. Under s.29 of the Commons Act 1876 it is deemed to be a public nuisance (and an offence under the *1857 Act*) to encroach or build upon or to enclose a green. This extends to causing any *'disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green'*.

50. Under both Acts development is prevented and the land is effectively blighted. In most cases, its value will be massively reduced. These reasons explain why TVG cases are extremely contentious.

Description of the application land and its surroundings

51. The application land is the area edged in red on the applicant's plan at A/10. This plan will be found in Appendix A to this report ('APP/A'). Mr Andrew Munton, the Objector's Regional Planning Director, helpfully provided the inquiry with a composite plan showing a number of features on the ground. This plan went through four adaptations and will be found in O2/517R as well as in Appendix B ('APP/B').

52. On the APP/B plan the application land is broken down into Field Numbers 1-6. Field Numbers 3-6 (but excluding Tunnel Field and Stable Block Field – both of which fall outside the blue line) continue to be comprised within an agricultural tenancy of land held by Court Farms (Billingshurst) Ltd. However, title to Fields 1/2 with vacant possession passed to the Objector in 1999 (the tenanted land falls within the blue line on APP/B). The tenanted land is shown on the plan at O1/17 and included land to the north of the railway line which bounds the application land on its northern side. The overall acreage of the application land can be determined from the composite plan at O2/517R and amounts to some 58.44 acres. The APP/B plan shows that the application land comprises, roughly speaking, a rectangle with a northern span between points A-B of 599m, a southern span between points C-D of 679m, a depth between points B-C of 389m and a diagonal span between points A-C of 729m. The tenanted land is slightly less than this in size. The tenanted fields are also named as shown on the APP/B plan although, as indicated, Tunnel Field and Stable Block Field, were never tenanted.

53. To complete the picture, the red lines shown on the APP/B plan are public footpaths and are shown on extracts from the Horsham Definitive Map 2005 in O2/607 & 608. There is no legend to the plan, nor are there any footpath numbers on the plan, but they can be identified as follows:

(a) the footpath running east from the edge of the plan to point 2 on the north-west margin of the application land is Footpath No.1935 ('FP/1935');

(b) the footpath running north-south between points A-D is Footpath No.1932 ('FP/1932');

(c) the footpath running in an easterly direction across the application land between the points numbered 1-12 is Footpath No.1933 ('FP/1933');

(d) the footpath running east from the edge of the plan through points D and C and then heading north through point 12 and then east to the A272 is Footpath No.1934 ('FP/1934');

(e) the footpath running in a south-east direction from point 6 is Footpath No.3624 ('FP/3624');

(f) the footpath running in a south-west direction from point C is Footpath No.1926 ('FP/1926').

54. To the south of the application land lies a large expanse of mature woodland. On its western side it is known as Daux Wood and to the east as Rosier Wood. These woods are Ancient Woodland ('the Woodland') and they dominate the immediate landscape. To the north, the application land is bounded by the Billingshurst to Horsham railway line. Beyond the railway line there are further fields. Roughly mid-way along the northern boundary, just the other side of the railway line, there is a small business estate based on Rosier House. On the eastern side of the application land there are two fields (one of which is known as Pavilion Field) and a large residential property known as Rosier Gate which fronts onto the A272. The western boundary of the application land is on the eastern edge of the built-up area of Billingshurst. I will deal with this in more detail when I describe the claimed neighbourhood.

55. The two fields abutting the built-up area are Fields 1 (3.79 acres) and 2 (4.88 acres) and is the site of an intended development following the outcome of a successful planning appeal by Bellway Homes (South East) Ltd. The development proposed is the erection of 46 dwellings with associated access, car parking and landscaping. Vehicular access to the development site will be from the end of Daux Avenue (which is the cul-de-sac ending at point 3 on the APP/B plan). It is proposed that the residential development will take place within Field 2 (ie adjoining the residential properties on Daux Avenue and Rosier Way) and that Field 1 (ie to the north of the stream known as Par Brook, which is narrow, winding and tree lined), which is adjacent to the industrial estate and railway line on its western side, will be developed as public open space. It is also proposed that there will be a buffer strip some 15-18m wide between the development on its southern side and the Woodland which will be planted and managed. The conditional planning permission arises from the Appeal Decision dated 18/04/2013 which is to be found at O2/411a-u. The fact that part of the application land is available for development is, of course, irrelevant to the application for registration of the land as a TVG.

56. Access into Field 1 is via the ‘kissing’ gate at point 1 on the APP/B plan (it used to be a stile – references hereafter are to points on this plan unless the contrary is stated). The route of FP/1933, where it crosses the field, is fenced on both sides. There is also a gate at point 2 at the end of Daux Road but it is now boarded up. A photo of this gate before it was boarded up is at O1/34 but the ‘Please Keep to the Public Footpath’ remains in place. There is a rather old WSCC footpath directional sign on the northern side of this gateway so that there could be no doubt where the public footpaths ran at this point and it would not have been through this gateway. There is a photo of the cross-field track looking west at O2/458 (I take the number from the photo location plan at O2/431 – the photos are helpfully numbered in accordance with the location plan in the top left hand corner).

57. The metal gates at either end of the footpath where it crosses Field 1 were erected by West Sussex County Council in 2009 (‘WSCC’ – in their capacity as Highway Authority with responsibility for rights of way). At point A there is a stile which leads onto an unguarded crossing over the railway line.

58. Field 1 is no longer managed and is heavily overgrown in the southern half. The fencing on the western side is in tact and is a mix of concrete and metal uprights to which mesh is attached with a run of barbed wire on top and wiring below. The hedgerow is also very dense along this boundary which is bridged at the crossing with Pin Brook. See the batch of photos of the fencing along the western boundary of Field 1 at O1/49-57. The metal uprights and mesh were incorporated into the fencing alongside Field 1 in 2009.

59. The current entry into Field 2 is at point 4 through Heras fencing which has been forced open. At the end of the cul-de-sac at point 3 there used to be an opening but since May 2013 this has been boarded up in front of which, on the ground, there is a slab of concrete. There are remnants of a farm gate at this opening on the field side of the boarding. There is another WSCC directional post on the south side of this former entry point indicating that the path running up the western boundaries of Fields 1 and 2 was a public footpath (FP/1932) and that there was no public footpath into Field 2 through the opening at this point. The boundary running up the western side of Field 2

is a mix of impenetrable hedgerow and improvised post and wire fencing of varying ages. As one nears point D the fencing is somewhat threadbare with a gap at point 5. There is a batch of photos of the fencing on the west side of Field 2 at O2/39-41.

60. There is a concrete post in the undergrowth at the south-west corner of Field 2. There are remnants of some rather aged post and wire fencing along the southern boundary of this field which would have pre-dated 2003 when more modern fencing repairs would have been carried out, and again in 2009 when the post, barbed wire and mesh fencing was installed inside the remnants of the older fencing. There is a useful batch of photos of the southern boundary of Field 2 at O2/43-48 and at O2/561/2/3/5 (as before, I take the number in the top left hand corner of these photos).

61. The eastern boundaries of Fields 1 and 2 consist of substantial hedgerows which is also the position in the case of the boundary between these fields. Field 2 is now the main thoroughfare into Field 4 and beyond. Access into Field 4 is across a worn track running directly into this field through damaged Heras fencing in the gap leading into Field 4. The field itself is no longer managed although in 2003 it was cleared of undergrowth by means of a large cutting machine and at the end of 2010 or beginning of 2011 it was, I gather, even ploughed. The current situation is thus the product of some 3 years of unmanaged growth and of user on foot across the field into Field 4. One can see how overgrown this field would have been at one time (at least at its southern end) by looking at the 2000 aerial photo and then comparing it with what is shown in the 2005 aerial photo on which the cross-field paths on both fields are clearly shown. There is a useful batch of photos of Field 2 at O2/561 (looking west to the boarded-up access at point 3) / 562 (the main access between Fields 2/4) / 563 / 565 (both looking east towards the hedgerow). It is perfectly feasible to walk through this field.

62. Field 3 (12.58 acres – and known as Station Meadows) is permanent pasture and is managed at fairly low level. Although the grass had been cut fairly recently it was generally tussocky and overgrown and hard going underfoot away from the margins of the field. The field is crossed by a single path.

There are also paths around the sides of the field and hedgerows along all four boundaries. See the aerial photos after 2004 and the batch of photos produced at O2/459 (note the Heras fencing on this photo which screens damaged fencing on Field 3's western boundary) / 461 / 462 (running along the northern boundary) / 464 (the diagonal path running between the eastern end of FP/1933 on Field 1 and the south-east corner of Field 3 – note the solitary Oak tree in the middle of this field) / 466 / 467 (looking south-east) / 466 (note the damaged fencing at the end of footpath on Field 1 where, as indicated, there is now Heras fencing which is intended to stop people walking off the main footpath on Field 1 straight into Field 3 and beyond) / 467 (looking south-east) / 468 / 469 (both looking north-west) / 470 / 472 / 473 / 474 (which are a batch taken of the eastern boundary of Field 4 – 474 is interesting in that it not only shows the eastern boundary of Field 3 but in the background one can also see the Woodland bounding Fields 4/6 on their southern side – the entire site gently slopes down from the railway line in the north to Pin Brook and then up again to the Woodland in the south).

63. Field 4 (10.1 acres – and known as Old Malhams) is similarly permanent pasture. Not only does FP/1933 run along the northern perimeter of this field (before crossing Pin Brook and heading north into Field 1) but there are at least 2 tracks crossing the field and tracks elsewhere around all four sides. There is a hedgerow on the northern side of this field and on the southern side there are at least 4 gaps leading into the woodland where the boundary is unfenced. The aerial photos are again useful as are the photos from the Objector's voluminous batch at photos, particularly those at O2/440 (looking west to the gap leading into Field 2 where there is now a gate which was installed in 2009) / 443 (looking north-east) / 444 (looking south-east up the slope to the woodland) / 447 (looking east from the north-west corner of the field in the direction taken by FP/1933) / 450 (looking south up to the gap in the hedgerow leading into Field 2) / 541 (looking west from the south-west corner of Field 4 along the boundary with the woodland / 543 (looking east from the south-west corner of Field 3, again along the woodland perimeter) / 544 (one of the well-used gaps into the Woodland in the south-west corner) / 545 (looking north from the south-east corner of the field – note the stock-

proof fencing running up this side of the field which was erected in 2009) / 550 (looking south up the western boundary) / 551 (looking south-east up to the Woodland from the entry point into the field from Field 2). This field slopes away from the Woodland. The grass had also been cut fairly recently when I viewed the site and in common with Field 3 was heavy going off the circular and cross-field tracks, especially on the sloped areas.

64. Field 5 (4.86 acres) actually comprises two fields: Barn Field and Tunnel Field of which only the former is included within the agricultural tenancy. Barn Field has recently been cut but Tunnel Field has been allowed to go to seed and is barely used off one or two tracks. There is a circular track around Barn Field and a path between the opening into this field, close to the railway line, and the entry point into Tunnel Field. These tracks can clearly be seen in the aerial photos after 2000. There are further photos of Barn Field in the Objector's batch at O2/478/476 (looking east) / 479 (looking south) / 480 (looking north with Rosier House in the background) / 481 (looking west at the bottom of the field / 483 (looking west from the south-east corner of the field and 484 (looking north on the eastern boundary of the field) / 486 (looking down the field on the eastern boundary) and 487 (looking north-west along the line of the cross field track towards Field 3). Again, this field was also heavy going under foot away from the tracks. Indeed the ground was uneven and had a number of pot holes and was certainly more difficult to walk across than Fields 3/4. Tunnel Field can be seen in the objector's batch of photos at O2/488 (looking south-east) / 490 (looking north on western side) / 491 (bottom of field looking north on track on western side). Tunnel Field is heavily overgrown but there are a couple of tracks which may be used but the area as a whole is likely to be used only occasionally and even then only by determined walkers. With the exception of their northern boundaries, both fields are bounded by substantial, impenetrable hedgerows, especially along their southern perimeters through which runs Pin Brook, now a watercourse badly in need of clearance and effective management after years of neglect.

65. Field 6 (15.09 acres) is similarly two separate fields both of which are permanent pasture. We have Rosier Gate Field (on the western side – where the grass had also been cut fairly recently) and Stable Block Field (on the

eastern side) which falls outside the agricultural tenancy and is separated from Rosier Gate Field by a newish and fairly narrow hedgerow running, north-south, straight across the field although there are gaps at either end to accommodate access.

66. If one looks at the aerial photo for 2000 it looks as though there was probably only fencing in place between these two fields at that time (one can easily deduce from this photo that Stable Block Field lies outside the leased land). The position looks unchanged in 2005 but there are the makings of a hedgerow by 2005 and the 2012 photo shows the, more or less, current position on the ground. The hedgerow can be seen on the photos in the Objector's batch at O2/ 507 & 510 (looking north across a glorious crop of buttercups within Rosier Gate Field – with same dog-walker in both photos) and on 511/512 (south side of Rosier Gate Field looking east with Stable Block Field in background).

67. Elsewhere we have more photos of Rosier Gate Field at O2/513 (south side, looking west) / 514 / 515 (again south side but looking east where we have a well worn path running along the southern perimeter with the woodland prominent in the background) / 517 / 516 (this is also taken on the south side of the field but at the south-west corner where one sees the continuation of the same track at the margin of the field) / 519 (this is the cross-field track which joins up with FP/1933 – note the WSCC direction sign in front of the hedgerow beyond which we have a narrow track running over a bridge crossing the Pin Brook which leads into the south-east corner of Field 3 – although the main footpath is supposed to follow the perimeter of Rosier Gate Field at this point it seems that users are cutting the corner by walking straight across the field at the south-west corner of the Pond shown on the APP/B plan which, incidentally, is wholly invisible from the field because of the impenetrable undergrowth in the hedgerow at this point).

68. The photo at O2/522 is looking up towards the woodland entry gap at point 10 on the APP/B plan in the south-west corner of Rosier Gate Field. There are also useful photos at O2/523 (looking east along FP/1933) / 500 (taken just inside Stable Block Field at its north-west corner looking towards point 12 on

the APP/B plan where (as I recall) there is a stile and another WSCC direction sign just beyond it on one side of the track running towards the A272). There are photos of Stable Block Field in the Objector's batch such as those at 492 / 494-7 and 499. The field is flat with circular tracks and a single track running diagonally across the field from the north-west corner to the south-east corner where there is a gate into private property to the east and access into the Woodland to the south. Rosier Gate Field is fairly flat on its eastern side (see O2/510-512) but as one heads west it gently slopes up nearer one gets to the Woodland (see O2/513 and 517/516). Although the tracks are firm and easy to walk on, outside the tracks, particularly on the sloped areas, it is heavier going under foot with, in places, thistles, brambles and tussocky grass which will undoubtedly make it less attractive as a place to walk over although I cannot imagine dogs being hindered by this.

69. Before I leave my description of the application land (which, I regret, is unavoidably prolonged in view of the extent of the application land) I should mention that I did walk within the Woodland which is bound to be an inviting destination for dog-walkers and children looking for a more adventurous area to play around in seeing as there are a number of formal and informal paths and dirt tracks for the more energetic cyclists.

Agricultural history

David John Marshall

70. The agricultural history is a significant element to this application and I propose to deal with it at the outset. This history under this head was advanced by, in the main, David Marshall (not to be confused with Stuart Marshall who also gave evidence for the Objector) who is the senior partner in a firm of Chartered Surveyors known as H.J.Burt & Son who are based in Steyning, which involves itself with farmers and landowners and their professional advisors in their capacity as land agents, valuers and advisors on agricultural matters.

71. Mr Marshall not only gave oral evidence but also provided two statutory declarations at O1/88 (dated 26/06/2012) and O1/83 (dated 4/09/2013). In the

earlier of the two declarations Mr Marshall tells us that he has had professional dealings with the application land or, as he puts it, the fields at Rosier Wood, since 1955. Since 1976 he advised the tenant, namely Court Farms (Billingshurst) Ltd ('CFB'), through its director, a Mr C. Hardy Gillingham, who died in January 2010. Evidently Rosier Farm (which extended to some 582 acres) which was, and perhaps still is, based at Court Farm, Billingshurst, which is to the south-east of the application land, and which has been in the Gillingham family since the 1920s. The financial arrangements within the Gillingham family were evidently somewhat convoluted and are of no relevance to the application to register but the tenant interest (which affected Fields 3-6 (less Tunnel Field and Stable Block Field) and land elsewhere to the north of the railway line) was vested in, successively, Elgin Property Management Co Ltd (after 1976) and CFB (initially as a sub-tenant and, since 1999, as tenant in their own right holding under a tenancy from year to year under the provisions of, successively, the Agricultural Holdings Acts of 1948 and 1986 – the tenancy is continuing).

72. It was Mr Marshall's job to take an annual valuation of the crops, livestock and other assets for accounting purposes of CFB's farming business as at 31/03 in any one year. It was on the basis of his detailed valuations and records maintained for such purposes (rather than relying upon his own inspection of what was happening in each of these fields at any one time – in other words, it was essentially a desk top exercise based on information received, including vouchers for seed purchased against the total area farmed, and applying normal farming practice for cropping on agricultural land in the Sussex Weald) that he has been able to produce extremely helpful spread sheets showing what farming activity is likely to have taken place on each of the fields in question between 1989 – 2009. It will be recalled that this is a section 15(3) application in which the relevant qualifying period is 1989 – 2009.

73. The accuracy of Mr Marshall's valuation notes and records and resultant spread sheets are, as I find, beyond question. For instance, it is plain that he excluded the acreage comprised within Tunnel and Stable Block Fields from his farming activity analysis (being respectively 5 and 6 acres). The relevant documentation will be found at O1/109 (starting with the Annual Stock Taking

Valuation as at 31/03/1989 and the supporting valuation notes, and running through to the same Valuation and supporting notes as at 31/03/1999. The spread sheets had to be varied and the final version is to be found at O1/210A and 211B. For ease of reference these spread sheets (x2) will be found in Appendix C ('APP/C').

74. The reason why, in his written evidence, Mr Marshall only produced figures for the 10 year period ending on 31/03/1999 (although his valuation note books for the later years were available if required although, as I recall, they were not needed) is that all these fields have been in the set aside scheme since 1999 and have thus not been in a state of active cultivation, having been taken out of production altogether in return for an annual payment. In other words, these fields became permanent pasture after 1999 with topping every Autumn to cut down the Summer's growth and to prevent the spread of invasive scrub. In practice the fields would have been left as they were after the preceding harvest – in other words, although we are dealing with permanent pasture it is some years since these fields were last rolled, hence the fact that the land is heavy going and uneven underfoot. The consequences of set aside are dealt with in the evidence of Robin Hobson with whose evidence I will deal next. Mr Hobson was called as I invited the Objector to provide evidence on the effects of set aside on land use and management where I felt there was a gap in the evidence.

75. If one looks at the legend on p.2 of APP/C one sees coloured yellow cereal cultivation such as Winter wheat or barley which would have been a standing crop on the fields in question for the whole of the year apart from a short period after harvesting leaving stubble before the land was ploughed, heavy rolled and disc harrowed and the new crop was sown (by combined drill) in September and October or even later in November, depending on weather conditions) to be followed, no doubt, by germination within only a matter of weeks and by, as it is known, pre-emergent spraying in March or April of the following year before harvesting in late Summer (I think in August). There is also reference to the cultivation of maize on Field 3 in April 1996, evidently for silage taken in early Autumn before sowing to winter wheat. On Field 5 winter wheat was then grown in 1996 and in August 1998 both of these fields were

then harvested and put into set aside. The legend also shows grass ley cultivation which would have been standing grass which would have been mown for silage or hay once or twice at appropriate times in the Summer. In this instance, these fields would have been rolled and harrowed in March to smooth out the surface of the soil to be followed by fertilising in April and in June the grass would be cut and silage taken. Fields 4 and 6 were in grass ley up to August 1991 after which they were both put into winter wheat.

76. There are a number of photos which can be placed side by side with Mr Marshall's spread sheet. The aerial photo dated 24/09/1990 shows (as were told by Mr Marshall) barley stubble about 5/6 inches high in Fields 3/5 (ie Barn Field) right up to the edges of these fields. We were told that the stubble could be 'quite sharp' and that you would not necessarily want to walk through it with your dog whilst it remained in the field which could be for as long as 3 weeks after harvesting before the ground is made ready for sowing in the Autumn. The photo dated 20/11/1995 shows all fields in a state of set aside. The photo dated 28/07/1997 shows cultivation within Field 3 and in Barn Field (F/5) (Winter wheat) which is again consistent with what one finds in the spread sheet for these fields. By the time we get to the remainder of the aerial photos all the tenanted fields are in set aside.

77. Mr Marshall ends his written evidence by saying, in effect, that he considered it unlikely that LSP was taking place whilst there were standing crops within the tenanted fields and that it was more likely that walking, with or without dogs, would only have been taking place on the FP/1933 or at the margins of these fields. He says that no one ever complained to him about problems associated with trespass on the land.

78. Mr Marshall gave oral evidence and was cross-examined on his statements. He told the inquiry that there was a heavy clay subsoil on the application land which implied that the land would be heavy going in the wet weather, especially after ploughing. He also said that once the Winter cereal crop is sown in late September (or later, in October, if the weather is poor) germination takes place quite quickly and the fields are covered with a green crop some 6 inches off the ground by November whereupon the crop will stop

growing during the Winter until the start of the growing the following Spring. Mr Marshall said that the land is either in a state of cultivation or is being prepared for cultivation throughout the whole of the year.

79. In relation to the grass leys (shown coloured orange on the spreads sheets – grown in Fields 4/6, ie Rosier Gate Field, in 1990/91) Mr Marshall said that there could be two silage crops in a season (in May/June and in July) if the grass had grown well after sowing in March/April (grass leys are a Spring sown crop) followed by cereal cultivation in the Autumn months.

80. In cross-examination Mr Marshall said that his valuations were accepted by the Revenue. He says he relied on descriptions given to him by his client and other documentary verification and had no need to inspect the land himself. He said that land in set aside was kept in a state of permanent pasture. No hay or silage could be taken from the land which would be cut once a year. Mr Marshall also mentioned that the fields would not necessarily have been ploughed right up to their edges and a farmer would require space for trimming the hedgerows once a year.

81. I accept the evidence of Mr Marshall who has immense experience in these matters.

Robin Hobson

82. Mr Hobson is an experienced agricultural consultant and has had knowledge of and been a regular visitor to the application land for more than 30 years through his professional association with CFB and the Gillingham family. His two statutory declarations will be found at O2/586 and 605A. In his written and oral evidence Mr Hobson gave highly detailed evidence about the establishment of the set aside scheme in the early 1990s (whose object was reduce levels of food production) for which payments were claimed by CFB after 1992 for land which had previously been used for growing arable crops for which, I gather, subsidies had also been paid.

83. The set aside scheme precluded set aside land from being put to any agricultural use and Mr Hobson tells us that Station Meadows (Field 3) and Field 4 (Old Malhams), Barn Field and Rosier Gate Field duly complied with

the requirements of the scheme for subsidy payments. What followed was annual cutting to 10 cms or less once in the Summer which could not be removed and had to be left on the ground to rot. After the Summer cutting (which is necessary to ensure that the land does not get out of control – and there would be no economic reason for a farmer to cut the grass more than once a year) the grass would regrow to some 20-30cms and would then cease growing during the Winter months and by the time it was cut in the following Summer the grass could be around 1m high. As this was what is described as 'Natural Regeneration Set Aside' there was, in addition to the cuttings left to rot, a high weed content, including thorn, brambles and thistles which has given rise to an uneven field surface which I discovered on my own inspection of these fields. It is the view of Mr Hobson that whilst after cutting in the Summer these fields could be used for informal recreation, such as a game of throw and catch, anything more challenging than this at other times was probably unlikely in view of the height of the grass cover, the volume of weeds on the ground and the uneven, heavy soil conditions which he says meant that these fields were not a particularly pleasant place for exercising.

84. Mr Hobson accepts the evidence of Mr Marshall, including his spread sheets (which he says were consistent with CFB's annual returns to MAFF and his own records). Mr Hobson also introduces copy records (Field Data Sheets – which are records of what was happening on land before it joined the set aside scheme) which he himself maintained for CFB.

85. When asked how close to the hedgerows these fields would have been cultivated, he said that during the 1990s farmers would have drilled and combined right up to the edges whereas nowadays farmers would stop short of the hedgerows.

86. Mr Hobson gave evidence about the soil classification (Wickham 5). He says the application land is a 'very wet' clay soil (although dry in mid-Summer), although some areas are wetter than others. The land is classified as Witness Class 4 and, on a scale of 1:6, is at 4 where 6 is a bog and 1 is a sandy beach.

87. Mr Hobson also gave the inquiry a brief outline on extent of the interval between harvesting and sowing in the case of the cereal crops (the Winter wheat and barley had to be sown before the end of September). He was aiming to explain how limited the period was between these operations. He said that Winter barley would be combined at the end of July whereas in the case of Winter wheat it would be combined in mid-August. The cut Winter barley would remain as stubble in the field before ploughing/drilling for around 6 weeks whereas it would be around 4 weeks in the case of the Winter wheat. In the case of the maize (which would be sown in May), the gap would be around a week after harvesting at the end of September or the beginning of October. To complete the picture, the fields in set aside would, as indicated, be cut once down to 10cms in July/August. The elements involved in cereal cultivation are set out in the legend to Mr Marshall's spread sheets vis ploughing, heavy rolling, disc harrowing, drilling, spraying, fertilising, combining, baling and carting straw away, followed by yet more rolling and harrowing, presumably to break down the stubble. Mr Hobson says that *'things are happening all the time – the land is unlikely to be left completely'*.

88. Finally, in all the time he was involved with this farm, trespass was never an issue. Mr Hobson was not involved with Fields 1/2.

89. These issues arise from the evidence of Messrs Marshall and Hobson. Firstly, was the agricultural land being used by local inhabitants throughout the qualifying period to such an extent that registration would be justified. Secondly, if it was then did the history of active cultivation in the period 1989-1992 in the case of all four fields and in the period 1996-1998 in the case of Fields 3/5 (ie Barn Field), give rise to a material interruption in qualifying use that was sufficient to stop time running?

Aerial photographs

90. It is a feature of this case that the Objector has been able to produce aerial photos which are consistent with its case that the predominant recreational use of the application land is that of the use of paths such as would have appeared to a reasonable landowner to be referable to the exercise of

existing, or the potential acquisition of new, public rights of way rather than rights sufficient to support a TVG registration.

91. The aerial photo dated 29/04/1998 (see O3/718) winter wheat cultivation (see Appendix 3 spread sheets) taking place in Station Meadows (Field 3) and Barn Field (Field 5). The aerial photo for 2000 shows circular paths at the edges of Fields 3, 4, 5 (excluding Tunnel Field and less so in Barn Field) and 6. The aerial photo for 2004 discloses a network of circular and straighter paths within all the fields, as does the aerial photo for 2005. The aerial photo for 2007 is again strong evidence showing that there is heavy use of paths around and crossing the fields. The position is obvious in the case of Field 2 in the 2005 aerial photo which appears to be mainly being used as a crossing point into Field 4 and beyond. There is also heavy use of PF/1933 which is unlikely to count as qualifying user.

92. Mr Edwards seizes on the aerial photos to demonstrate, in effect, that, for all practical purposes, it cannot sensibly be said that the whole of the land has been used for LSP for the relevant period and, he argues, the active cultivation of the agricultural land in the early stages of the qualifying period merely serves to reinforce this, such that, on any reckoning, registration cannot possibly be justified on the evidence.

The claimed neighbourhood – including local leisure facilities

93. The applicant's neighbourhood plan is at A/17. If one excludes the 2 industrial estates (at Daux Road and Gillmans off Natts Lane) the streets included are as follows: Daux Avenue, Rosier Way, Woodlands Way, Dauxwood Close, Daux Way, Daux Road, Brookfield Way, Chestnut Road, Lower Station Road, Groomsland Drive and the western side of Marringdean Road. At this point the claimed neighbourhood skirts, anti-clockwise, around the rear boundary of Gillmans Industrial Estate before striking the railway line which it then follows east as far as the A272 before returning (again anti-clockwise) around the perimeter of the application land, up past the rear of the settlements at Rosier Way, Woodlands Way and Dauxwood Close before striking Marringdean Road.

94. I have visited every street of the claimed neighbourhood and have also driven extensively around the town which has expanded in recent years and the amount of developer contributions towards off-site open space, sports and recreation facilities no doubt explains the extensive provision of such facilities within the town.

95. The applicant points to a number of factors which, he says, contribute to the cohesion of the claimed neighbourhood as a distinctive community in its own right. He says that the area is separated from the remainder of the town by the railway line which is undoubtedly the case although the railway line is actually bridged where it crosses Natts Lane and there is also a footbridge from Daux Road at the station crossing. The applicant also says that the most of the pre-school children attending Dauxwood Pre-School Group (which is housed in a wooden-clad building on the north side of the junction of Lower Station Road and Natts Lane) live within the claimed neighbourhood. Also that most of the day to day shopping done by those living within the neighbourhood takes place at the Tesco Express store which is on the west side of Lower Station Road at its northern end. The town's two industrial estates also lie within the claimed neighbourhood as does what is known as Lower Station Road Recreation Ground where there are tennis courts, a sports field and excellent play facilities which, the applicant suggests, is a play area which mainly serves the recreational needs of those living within the claimed neighbourhood.

96. The main residential area on the west side of the application land comprises a mix of house types but mainly post war dormer bungalows and bungalows. This is the case at Rosier Way and Woodlands Way (which David Hart, a witness called by the Applicant, thought were developed in 1957) and roughly as far west along Daux Avenue (which Mr Hart thought pre-dated the former streets) as the turning into Brookfield Way and about half way along Daux Way. There are older detached dwellings at the western end of Daux Avenue on the west side and Dauxwood Close comprises a cul-de-sac of largely post war detached dwellings. Brookfield Way is a mix of different styles. Mr Hart thought this street was built more than 20 years ago and it could, I think, date from the 1970s. Chestnut Road is again a mix of much older semi-detached

houses with a new development at the end of the cul-de-sac. Lower Station Road also comprises buildings of a mix of ages and styles with 2 retail and fast food outlets close to the station. There are a number of older buildings in Lower Station Road and Chestnut Road the closer one gets to the station. The Railway Inn, which is a notable building on Station Road, lies on the northern side of the railway line just outside the claimed neighbourhood. Groomsland Drive is off Natts Lane and has the appearance of 1950s public housing but now presumably comprises mainly privately owned dwellings. Finally, there are a handful of houses on the west side of Marringdean Road, just behind Gillmans Industrial Estate, one of which is an old cottage whereas the rest are newer. The neighbourhood ends just before Kingsfold Close which is a fairly new development. I have to say that there is little obvious connection with the settlement in Marringdean Road and Groomsland Drive and the remainder of the claimed neighbourhood. Nor, for that matter, does the claimed neighbourhood even have an official name. For instance, on the neighbourhood plan at A/17 only one area within Billingshurst has a name and that is 'Parbrook' which appears to comprise the south-western corner of the town.

97. Before I leave neighbourhood, I should mention a few matters which were advanced in the evidence adduced by the Objector's Regional Planning Director, Andrew Munton, in his second declaration dated 1/10/2013. Confirmatory documents were also provided by him at O2/517A-S.

98. Mr Munton was responding to the Applicant's assertion that the claimed neighbourhood was a 'self-contained' community within Billingshurst and he cited the fact that it had its own retail provision (Tesco Express), 2 takeaway food outlets, a large recreational ground (Lower Station Road Recreation Ground) and its own play school (Dauxwood Pre-School).

99. In the case of the recreation ground, Mr Munton mentions that the facilities included football goal posts, a basketball hoop, an area earmarked for skateboarding, a children's playground and 4 hard tennis courts which are operated by Billingshurst Tennis Club of which one court is available for public use through advanced bookings (evidently the tennis club charges an 'out of

area' fee for juniors living more than 25 miles from the club). Mr Munton says that the recreation ground is run by the Parish Council for the benefit of the whole of Billingshurst and is used by residents living on both sides of the railway line.

100. Mr Munton also mentions the fact that there is a Scout hut located on the recreation ground and that having spoken to the District Scout Commissioner for Petworth and Pulborough, a Ms Cath Bridger, he was informed that within Billingshurst there is a Beaver Cub pack (5-7 years), 2 Cub packs and 2 Scout troops (in all around 100 children, some coming from as far afield as Wisborough Green and Ashington) who use the Scout hut and who are known collectively as the 1st Billingshurst.

101. Mr Munton also says that the Tesco Express store (which is open between 6am-10pm – which is longer than Budgens in the High Street which is Billingshurst's other supermarket) is used by those passing on both sides of the railway line, as he himself observed when watching people emerging from the station (the train from London pulls in on the southern side). Mr Munton asserted in his oral evidence that he had seen people crossing the railway line in a northerly direction carrying Tesco bags. He also said that the Tesco store is so close to the station that people are liable to get off the train and do their shopping there before walking back over the railway line.

102. Mr Munton has also made enquiries of Dauxwood Pre-School Group which is open to all children living in the community and is not restricted in its admissions policy or otherwise required to give priority to children living within any particular part of Billingshurst.

103. Mr Munton also made enquiries of local estate agents. Marcel Hoad who is Managing Director of Fowlers Estate Agents (which has an office in Billingshurst) says that Dauxwood is not known to him as a neighbourhood, being an area of historic woodland off Marringdean Road on the outskirts of Billingshurst. Another agent, John Hooker of Mallards Land & New Homes (with Mansell McTaggart), which also has an office in Billingshurst High Street, said that the claimed neighbourhood (and he was provided with a plan) 'is definitely not Daux Wood' nor is it 'known by any other name'. The name

‘Daux Wood’ or ‘Dauxwood’ (it was unclear to me which it was) was evidently coined for the first time in the course of these proceedings. I have noted that Mr Maile told the inquiry that for want of a better name they, meaning those advancing the case for registration, had decided to call their neighbourhood ‘Daux Wood’ – in other words, it was no more than a name of convenience for the purposes of the application. Mr Maile actually uses the name ‘Daux Woods’ in his outline submissions at A2/1 at para 3 where it is contended that the claimed neighbourhood is ‘known locally as ‘Daux Woods’. I think he would now withdraw this assertion in light of the concession which he made about the use of this name.

104. Finally, there is an email dated 25/02/2013 (O2/517L) from the Clerk to the Parish Council to (I believe) an officer at Horsham District Council which contained suggestions in relation to off-site contributions from the Objector in respect of play and community facilities within Billingshurst as part of the planning arrangements associated with the proposed development on Fields 1 and 2. In this email improvements to the Lower Station Road Recreation Ground are just one of four options being put to the authority and I think the Objector would say that this implies that this recreation ground did not require any special treatment or priority when it came to developer off-site contributions. Although no document is advanced which deals with this (and for what it may be worth), Mr Munton also says that when it came to the Objector’s contribution to local education provision, the County Council considered the catchment for children of primary school age to extend beyond Billingshurst Primary School to a number of primary schools outside Billingshurst. It should perhaps be added that a Mr David Hart, a parish councillor who gave evidence at the inquiry, produced a draft minute of a parish council meeting which took place on 8/08/2013 (see A1/28A) which indicates that in their initial discussions (presumably with Horsham District Council as the relevant planning authority) the Objector’s off-site contributions were thought to be earmarked for improvements at Lower Station Road Recreation Ground (which is closest to the Objector’s development site) whereas, in the section 106 agreement with the Objector, the funding is currently earmarked for Station Road Gardens. It seems that the Parish

Council was not happy about this and wanted the funding to go to the nearest recreation ground but there was obviously nothing they could do about reversing the decision which was evidently not a mistake as the decision to favour Station Road Gardens was a deliberate decision and not an error in the preparation of the section 106 agreement.

105. In relation to local leisure facilities, the applicant very helpfully provided the inquiry with the plan at A/520 showing the names and locations of playgrounds and recreation grounds within Billingshurst. There are 11 green dots showing playgrounds and 4 red dots showing recreation grounds, 2 of which are located in the north of the town with the other 2 being on the southern side. I have already mentioned that known as Lower Station Road Recreation Ground , which lies within the claimed neighbourhood to which there is access off Natts Lane and at the upper end of Lower Station Road. The other is, I gather, known as Upper Station Road Recreation Ground and appears to be located on the eastern side of the much larger campus of the town's only secondary school which is known as The Weald Community School. I gather that locally this open space is known as 'Station Road Gardens' and is little more than a large open space. The main recreation facilities in the town will be found on the northern outskirts and is known as Jubilee Fields which, I think, opened in 2006.

106. The claimed neighbourhood falls within the boundaries of the civil parish of Billingshurst and a plan is produced at A/16. There is no dispute as to the claimed locality within which the claimed neighbourhood is located.

Other evidence before the inquiry

Objector's evidence

107. I have already covered the evidence of David Marshall and Robin Hobson as their evidence in relation to the cultivation history was largely unchallenged. I propose to deal with the remainder of the Objector's evidence in what I consider to be a convenient chronological order from which it follows that I will not necessarily be dealing with the evidence in the order in which it was given at the inquiry. I should also mention that less weight will be attached to the

evidence of those who were not called to give oral evidence as it has not been subjected to cross-examination.

Mrs Anne Camilla Sara Gillingham Aukner

108. Mrs Gillingham (as I shall call her – this is how she signs off her declarations) is a solicitor living in Norway. She not only gave oral evidence but also produced statutory declarations dated 3/09/2013 (at O1/58) and 30/09/2013 (at O1/82D). The need for a second declaration coming, as it did, after she had given oral evidence on Day 2 of the inquiry on 18/09/2013, arose because Mrs Gillingham had a great deal more to say in chief about the background than appears in her first declaration and I was concerned to see that the whole of her evidence was comprehensively reduced to writing for the avoidance of doubt, to which there was no objection.

109. Mrs Gillingham was brought up at Rosier Gate which lies to the east of point C on the APP/B plan. She lived at Rosier Gate until she went to University in 1983 and the property was sold soon afterwards. She then moved with her family to Rosier House on the other side of the railway line. Her trips home after 1983 were not infrequent and sometimes were prolonged. There were times when she even lived at home and commuted to London. She moved to Norway to live and work in 1994. She still periodically returns to the area of the application land as she has an interest in the business park known as the Rosier Commercial Centre which is just the other side of the railway line. The application land was, I believe, farmed by her late father's brother, Hardy Gillingham, and whose ownership vested in her family.

110. Mrs Gillingham's evidence focuses on fencing and licensed activity within the application land (she also deals with trespass and other anti-social behaviour which pre-dated the qualifying period, which I do not propose to deal with). Mrs Gillingham says that the western boundary of Field 1 was fenced by means of concrete posts and high tensile wires in 1992 by a firm called Explosive Engineering and she produces a document to prove this at O1/82C. At the same time a stile was installed at the entry point into Field 1 which replaced a wooden farm gate. The wires were repeatedly cut (the stile's top rail was also removed) and there are photos (taken by Mrs Gillingham's

brother in, she thinks, the period 1993/94) showing this damage at O1/64 which occurred at point 1 on the Appendix B plan. The top strand of barbed wire which has been introduced into the run of fencing along Field 1's western boundary is, Mrs Gillingham thinks, likely to have been added to the fencing by her brother (see O1/55) in consequence of the wire cutting which occurred soon after this fencing was erected in the early 1990s which appears to have been prompted by steps taken by the Parish Council in around 1990 to introduce a new footpath onto the Definitive Map (now known as FP/3624 and located in the Woodland – and which was evidently confirmed in 1996). It seems that this step galvanised the Gillingham family to secure their boundaries and to erect suitable prohibitory signage in order to deter trespass onto their land. Mrs Gillingham told the inquiry that signage (and it is, I think, bound to have been of the same or similar as the surviving sign at point 2 – see para 103 below) was in place at points 2, 3, D, in the vicinity of points 8/9 and at point 11 where there were gaps in the fencing/hedgerows (she was unable to recall a sign at point 1 or what the signage might have said between points C/D). It also appears that at some point in the 1980s WSCC had also introduced improved signage to indicate the presence of public footpaths on and in the vicinity of the Gillingham farmland. This would have included such signage points 1, 2 and 3 on the APP/B plan.

111. Mrs Gillingham recalls the 'Please Keep to the Public Footpath' sign at point 2 (ie at the end of Daux Road) on the same plan which she says was erected by her brother at around the same time as the fencing work was done in 1992. These gates were also padlocked at the same time to deter trespass which was taking place at this point. Similar signs were put up at points 1 and 3 (where there was a gate which was padlocked after 1990) although she is unsure of the exact wording on the sign at point 1, it seems probable that it must have required those using Field 1 to keep to the public footpath.

112. Field 2 was not fenced in 1992 as there was already a thick hedgerow along this boundary which had within it barbed wire fencing of some age. Access into Field 2 was via the gate at the end of Daux Avenue (there were no other gaps in the western boundary of Field 2). The southern boundary of Field 2 was also fenced with barbed wire (the wire was evidently fixed to the trees –

Mrs Gillingham can actually recall such fencing in the 1960s/70s), the remnants of which I saw for myself on my site inspection (as did Mrs Gillingham on the morning when she gave her evidence to the inquiry). She also recalls that at one time the whole of the northern perimeter of the Woodland was fenced off from the adjoining farmland to the north. The mid-point of the boundary between Fields 2/4 was fenced (enabling such fencing to be rolled back for access) whereas the remainder of this boundary comprised of hedgerow. She also spoke of problems involving trespassers getting through into the farmland.

113. Mrs Gillingham also deals with licensed events (through bodies such as Rosier Park Equestrian Centre, Weald Leisure and Daux Agriculture Ltd) which occurred on what she calls were the 'Showground fields' which consisted of Tunnel Field and Stable Block Field (both of which fall within the application land but are outside the tenanted farmland) and Pavilion Field which falls outside the application land (see APP/B plan). Mrs Gillingham helpfully produces a schedule of events (with the far right hand side column providing references to the evidence given about these matters) which took place in the period between September 1991 and July 1995. Evidently it was her late father and brother who were, as she put it, 'marketing and managing' the family farming business and the use of the land for events – she herself took no active role in this but she did witness some of these activities and also heard about others when she was home at weekends. From the available documentary evidence what we find occurring are as follows:

(a) dog shows on a total of 9 days between 27-29/09/1991 and 17-19/09/1993 on Pavilion Field and Stable Block Field;

(b) a caravan rally over 3 days in July 1993 which took place on Pavilion Field, Stable Block Field (the schedule erroneously refers to 'Showground Field' which does not exist and the reference should presumably be a reference to Stable Block Field) and Tunnel Field;

(c) another dog show lasting 2 days (and not 4 days as stated in the schedule) between 16-17/07/1994 on Pavilion Field, Stable Block Field and Tunnel Field;

(d) what are described as Earth Spirit OBOD Camps ('OBOD' stands for 'Order of Bards, Ovates and Druids') which occurred on two separate occasions in 1994/1995 over a total of 20 days (10 days each) on Pavilion Field, Stable Block Field and Tunnel Field.

114. It is evidently the case that Stable Block Field was used for parking (seeing as it is flat and more easily accessible to the A272) and that Tunnel Field was used (as it is put on O1/60 at para 13) *'for additional show rings or additional exercise areas or overflow'*. There was a small wooden bridge over Pin Brook that connected these fields which in turn allowed all 3 fields (ie including Pavilion Field, which seems to have been the main area for events) to be used for shows and associated parking.

115. In light of the above, the tally of events for Stable Block Field is 34 days whereas in the case of Tunnel Field it is 25 days. In addition, Mrs Gillingham also recalls that her brother used these fields between around 1989 and 1994 for clay pigeon shooting and karting events and she produces an aerial photo dated 6/10/1994 showing track marks within Tunnel Field which were caused by karting taking place within the northern part of this field. There are no documents dealing with this. The position is the same in relation to other caravan rallies which Mrs Gillingham can recall taking place on these 3 fields for which records no longer exist.

116. Mrs Gillingham also produces photos at O1/78-81. The black and white prints on O1/78-80 show Pavilion Field being used for a dog show with Stable Block Field being used for parking. On O1/81 there is a sheet containing 3 colour prints showing the Earth Spirit OBOD Camp which were large events with tents and marquees (see O1/81A which shows from which location on the plan each of these 3 photos were taken – top photo: looking south-east across Tunnel Field; middle photo: looking north-east; bottom photo: looking south-west across into Tunnel Field). The camp was located on Tunnel Field in 1995 (as in the photo at O1/81) but the other two fields were also used.

117. Mrs Gillingham says that the dog shows were well attended and that often it took a day to set up for a show and another day for dismantling, cleaning up and inspection prior to repayment of the deposit. In the early years the event

attracted between 30-50 cars on Stable Block Field but later on Tunnel Field had to be used as an overflow car park.

118. Mrs Gillingham also asserts that the accounts for Daux Agriculture Ltd disclose that her uncle, Hardy Gillingham, paid for summer grazing on Fields 1 and 2, Tunnel Field and Stable Block Field between 1989-1992 (see photo on O1/78 – Tunnel Field).

119. Mrs Gillingham also refers to a number of other licensed activities which took place on the farm.

(a) The flying of model aircraft on the farm for a number of years during the mid-1990s by a Mr Carver.

(b) Graham Taylor also undertook woodland crafts on the farm at some stage in the 1990s using materials coppiced from the woodland.

(c) Messrs Hobbs, Taylor and Trumann evidently lived in old vehicles on Stable Block Field and elsewhere just outside the application land close to the A272 in return for doing odd jobs on the farm and, I think, as a deterrent to travellers coming onto the land. This would have been in the period 1992-93.

(d) Those who kept horses at Rosier Gate stables (where there was stabling for 6 horses) who had implicit permission to ride on the Gillingham farmland. This had been the case since the stables had been built in around 1973.

(e) A mountain bike club (Sussex Nutters) also had permission to use the farmland for regular weekend rallies between 1991-93.

There are a number of documents produced by Mrs Gillingham which corroborate most of these activities.

120. On the face of it, a good deal of licensed activity took place on parts of the application land which will be non-qualifying for TVG purposes. In addition, there is the Mann issue and that of implied permission in relation to LSP which is found to have taken place within Tunnel Field and Stable Block Field during the qualifying period. Mrs Gillingham readily conceded, however, that

she did not know whether members of the public had to pay to go onto the land whilst licensed activity took place and she also accepted that members of the public would have been able to use the land at the same time if they had wished to do so.

121. Mrs Gillingham's oral evidence is consistent with her written evidence which was very largely unchallenged. I am grateful to Mrs Gillingham for taking both the trouble to travel from Norway to give evidence at the inquiry and to produce her second declaration dated 30/09/2013 which clarified some of her oral evidence. I thought that Mrs Gillingham was an honest and genuine witness who did her best to help the inquiry. Although she was certainly unhappy about past trespasses onto the Gillingham land, I did not consider that she embellished or exaggerated. For instance, she was unable to recall whether there was a sign at point 1 or what the signage between points C/D on the APP/B plan (which she could recall) actually said.

122. To a limited extent, I was assisted by the documents in the Objector's third bundle of evidence (O3) which, at tab/1, included a bundle of documents germane to the intended claim (evidently advanced in early 1990) of Billingshurst Parish Council that WSCC should take steps to modify the Definitive Map by including what eventually became FP/3624, which step the Gillingham family opposed. As we are dealing with matters occurring off-site I do not intend to deal with the detail of this in this report but there are documents of interest.

123. For instance, in David Gillingham's response to questions raised by WSCC dated 18/02/1992 at O3/636&7 he puts in plans showing that there were signs at the approximate locations of points C and slightly to the east of point 10 on the APP/B plan saying 'Please keep to the public footpath' (the path being FP/1934). There was another reference to a sign in the vicinity of point D which the plan noted said 'Private Path' but which had been torn down. At O3/634, in response to the questions posed in Box 10, Mr Gillingham said that he had re-erected signs in 1989 ('Private Path' and 'Private Property Keep out') *'many have been torn down 2 remain in place'*. The County Secretary's report to the Rights of Way Sub-Committee noted at p.683 that there was only

one sign ('Private Property – Keep Out') found along the claimed route and this was fixed some 15 feet up a tree (see photo at O3/651) within the woodland, as no doubt were others. In the result, in 1993 WSCC approved the proposal to introduce what became FP/3624. It appears that, on the advice of their solicitors, the Gillingham family withdrew their objection to the proposed modification in early February 1996 which was duly confirmed by the Secretary of Sate on 29/02/1996 (see County Secretary's report and plan at O3/713&4).

124. The foregoing evidence on signage along the southern boundary of the application land, or at any rate along the northern edge of the Woodland, is, I think, broadly consistent with the evidence which Mrs Gillingham gave that signs were in place at points D, in the vicinity of points 8/9 and at point C where there were gaps in the fencing/hedgerows. She was unable to recall what these signs said but, in light of her brother's earlier evidence in 1992, they must have been prohibitory in nature, as he describes. Any other signs are likely to have been in the Woodland and of no consequence to the present enquiry. This might very well apply to the sign at D judging by the location plan at O3/637, particularly if it were fixed high up on a tree. At any rate, in the late 1980s/early 1990s it seems likely that, as Mrs Gillingham said, that the Gillingham family were certainly taking some steps to secure their boundaries and to communicate their opposition to unwanted trespass off the public footpaths.

David Gillingham

125. Mr Gillingham did not give oral evidence but he has provided a statutory declaration at O3/735 in which he confirms:

(a) that concrete post fencing with high tensile wires were erected along the western boundary of Field 1 in 1992;

(b) that Field 2 was in 1992 already securely bounded on its southern and western sides by fencing and dense hedgerows (including barbed wire fixed between trees) respectively;

(c) that the family became ‘more vigilant’ in securing its boundaries in the late 1980s/early 1990s following an encroachment by travellers and by the Parish Council’s claim to modify the Definitive Map: *‘hence the works to the western boundary of Field 1’*;

(d) the wires in the fencing by the new stile into Field 1 were cut at least twice;

(e) that the sign on the gate at point 2 (‘Please Keep to the Public Footpath’ – see O1/34) was probably installed in around 1993 which was when the gate or gates were also replaced; he cannot now recall whether similar signs were put up on the gate at point 3 (Field 2) or at point 1 (next to stile leading into Field 1) but he does recall that other signs were installed along this boundary (but not what they said) and along the paths in the woods *‘in order to notify people that they were only allowed to use the footpaths and that then rest of the land was private’*.

126. Mr Gillingham goes on to give detailed evidence about events which took place on the application land and elsewhere on the farm which is consistent with the evidence given about this by his sister. He deals with the following events, additional to or by way of elaborating on those events mentioned by his sister in her evidence, which were allowed by him to take place at the farm on (as I understand his evidence) the so-called showground fields comprising Tunnel Field, Stable Block Field and Pavilion Field (it appears that Stable Block Field was usually the car park or horse box parking area with Tunnel Field either providing extra space if more than one event or activity was taking place or as an overflow car park for the larger events):

(a) laser clay pigeon shooting and karting in 1990 on Pavilion Field on weekday evenings and at weekends (this is outside the application land);

(b) the British Lawnmower Racing Club used Tunnel Field over a weekend but he cannot remember when this was;

(c) radio controlled car clubs used Pavilion Field;

(d) a radio controlled aircraft flying club used all the fields;

(e) an archery club used to use Pavilion Field for training and practice on weekday evenings with Tunnel Field being used for competitions at weekends with Stable Block Field being used for parking;

(f) Rudgwick Riding Club used the showground fields for a 4/5 day camp one summer; they also had access to the other fields and the Woodland;

(g) the Sussex Nutters Mountain Bike Club held weekend rallies and regional competitions on the farm between 1991-93; parking took place in Pavilion Field, Tunnel Field was the start/finish point and Stable Block Field was part of the off road bike circuit that wound around the fields and mainly followed the paths of the equestrian cross country course through the woodland (Mr Gillingham notes that when mountain bike trials took place the junctions with the public footpaths were taped and during events were overseen to keep non-attendees, such as dog walkers, strictly to the public footpaths;

(h) rally Karts for grass karting took place on Pavilion Field and Tunnel Field;

John Brindley

127. Mr Brindley gave oral evidence. His two statutory declarations will be found at O1/8 (dated 22/06/2012) O1/4 (dated O1/4).

128. Mr Brindley was employed by the Objector as a Planning Manager when he joined the firm in March 2003. By the time he left the Objector in April 2012 he was their Regional Planning Director.

129. In 2003 he was responsible for day to day issues arising in the case of sites held by the Objector in the South East Region which included the application land, the freehold of which had been sold to the Objector by the Gillingham family in 1999, albeit subject to the Gillingham's farming tenancy, as previously explained, in the case of Fields 3-6.

130. When he first inspected the application land in 2003 Mr Brindley found that it had not been properly managed for some time. Although Field 1's western boundary appeared to be secure (as it is today – fencing and thick hedgerow

– the padlocked gateway at point 2 was evidently heavily overgrown in 2003), the fencing on Field 2's western boundary was down in two places. Mr Brindley also says that that Field 2 was heavily overgrown (he cited the fact that there were self-seeded Oak saplings as tall as he was and the impression he got was that no coppicing had been carried out for a long time). The opening at the end of Daux Avenue was gated although the original gate has since been replaced. Mr Brindley presumes that it must have been padlocked as an opening into the field had been forced on one side of the gateway. There was a post and barbed wire fence along the southern boundary of Field 2 of which there are still remnants as I saw for myself. It seemed to Mr Brindley that no one was using the southern boundary as a means of access into the field as gap alongside the gateway on the western boundary was more than adequate for pedestrian access into the field.

131. Because of the Objector's concern about the effects of the Village Green legislation, a decision was made to erect signs on the land in order to deter trespass. Indeed, Mr Brindley had observed for himself that walkers, with or without dogs, were using the application land although they kept to the public footpath or used the informal paths. In truth, the Objector was really only concerned about securing the boundaries of Fields 1 and 2 seeing as Fields 3-6 were let and for which the Objector was not responsible although Mr Brindley did write to the tenant in 2003 about the condition of the fields which he said led to them being mown twice that year (he was anxious to avoid a situation in which the farmland was as badly neglected as Field 2 had been).

132. He made up the signs himself which he photographed – see O1/27-31. The wording, on which the Objector had been advised by solicitors, was this:

Highways Act 1980 – Section 31(3)

No Public Right of Way

Please do not Trespass

133. The signs were put up in the 9 locations and facing the direction arrows shown on the location plan at O1/15 in around July/August 2003. There is a very helpful location plan at O1/57S&T accompanied by a numbered

breakdown showing in what manner the 9 signs were put up, namely on stakes (2), tied or pinned to trees (5) or pinned to posts on existing fencing (2). 3 of these signs were located on, or close by, the western boundaries of Fields 1 and 2 whereas 5 were located on the eastern perimeter of these fields. The remaining sign was located on the Field 4 side of the entry point into this field from Field 2, there being a gap in the hedgerow at this point (there was no gate in this entry point between the two fields in the period 2003-09 – a gate was installed in 2009 – merely a gap between 2 Oak trees). He returned to the site after around 3 weeks and, as I understand his evidence, most of the signs were still in place. However, when he returned around 3 weeks later all trace of the signage which he had put up some 6 weeks previously had disappeared (including drawing pins and stakes) whereupon he replaced the missing signs with copies in the same locations. When he returned after another 6-8 weeks they had again disappeared and he did not bother replacing them again. On the face of it, the signs and their replacements would have been in place for at least 3 months, if not longer.

134. In addition to erecting signs in July/August 2003, Fields 1 and 2 were cleared. Field 1 required mowing whereas the lower half, or thereabouts, of Field 2, which was very heavily overgrown with self seeded (mainly Oak) saplings, gorse and brambles, had to be cleared with heavy machinery. In his statutory declaration at O1/57B, at para 6, Mr Brindley says that the extent of the undergrowth was such that *'Field 2 was inaccessible in any realistic sense'*.

135. By 2006 the Objector was actively promoting Fields 1 and 2 for a small-scale release for development and a decision was made to actively manage the land. This was the trigger for fencing repairs in 2006 to close up gaps (which he said were clear signs of trespass) in the western hedgerow between the end of Daux Avenue to the south-west corner of Field 2, where shown on the plan at O1/15 (of which there are remnants, as was pointed out to me on site – post and rail next to the gateway with post and wire elsewhere filling the larger gaps along the remainder of the hedgerow on Field 2's western boundary). Within only a matter of weeks, however, sections of this fencing had been broken down (the main gaps were next to the gate, half way down to the south-west corner and at the corner itself) and they were repaired only

to be broken down again. There were no further repairs at this stage. In 2009, however, Fields 1 and 2 were securely fenced. WSCC also erected new right of way direction signs at this point.

136. The thrust of Mr Brindley's evidence in relation to signage in 2003 and fencing repairs in 2006 was not diminished when he was cross-examined. He indicated that mesh was added to the fencing along the western boundary of Field 1 in 2009. Previously there had been concrete posts with 3 strands of normal wire with a run of barbed wire along the top (as we can see in O1/54) although he was unable to recall anything of the fencing to the north of the stile at point 1. Mr Brindley also accepted that in 2003, before Field 2 was cleared, the land was not impenetrable and that children could still play in the field if they wanted although they would not have been able to run freely in the southern two-thirds of the field where there was a concentration of saplings and undergrowth (see 2000 aerial photo). He also asserted in re-examination that the steps taken in 2006 to secure the boundary on the western side of Field 2 was because this was where the trespass was coming from.

137. I found Mr Brindley to be an honest and credible witness and I accept his evidence.

Peter Clifton

138. Mr Clifton is a Project Coordinator and has been employed by the Objector since March 2003, initially as a Technical Assistant and then as an Assistant Project Coordinator. His declaration is at O2/518. He did not give oral evidence.

139. He only became involved in the application land in April 2008 when he visited the land and took photos of Field 1. Both fields were overgrown but, judging by the photos, probably not excessively so as to impede access on foot. He tells us that in June 2009 Mr Brindley decided to renew the fencing around Fields 1 and 2 and an order was given for the erection of stock-proof fencing and the installation of metal farm gates that same month. By August and December 2009 the fencing was found to be damaged in various places. It was at this point that all the newly installed gates were padlocked. Fencing

repairs were carried out in a large number of locations in February 2010. There is a very useful works schedule at O2/529.

140. Mr Clifton also adduces applications (along with a batch of supporting evidence forms) made by Dr E. Rirsch of 14 Daux Avenue dated 20/09/2009 for a Definitive Map Modification Order in the case of two paths. The first runs along the northern boundary within Field 3 (see plan at O2/533). The other runs between point 3 on the Appendix B plan across to the gap in the hedgerow between Fields 2/4. It then runs south along the eastern perimeter of Field 4 before changing direction to run along the southern perimeter of this field before cutting across into Field 6 proceeding in a north-easterly over Pin Brook into the south-east corner of Field 3 and then running up the eastern perimeter of this field.

141. I offer no view on this application but I ought to mention that deposits were made under section 31(6) of the Highways Act 1980 by Daux Agricultural Ltd and Elgin Property Management Ltd under cover of Declarations made in January 1992. These deposits (consisting of declarations and plans) are available for inspection if required.

Andrew Munton

142. Mr Munton is the Objector's Regional Planning Director. I have already dealt with his second declaration dated 1/10/2013 on the neighbourhood issue in which he offers facts and a personal view on whether the claimed neighbourhood is liable to be a qualifying neighbourhood in law (it is perhaps worthy of note that Mr Munton lives in Guildford and is not local to the area). I shall turn to this later when I discuss this topic. In the meantime, I deal with his evidence on other matters which is contained in his declaration dated 10/09/2013.

143. It will be recalled that this is an application for registration under section 15(3) CA 2006 where it is accepted by the Applicant that qualifying user would have ceased in August 2009. It appears that Mr Munton had no knowledge of the application land before November 2009. His job as a Regional Planning Director after this date included having to deal with strategic land owned by

the Objector and any day to day planning issues arising in relation to sites within his area of responsibility (Thames Gateway and South East Divisions as it is described in his declaration) which included the application land.

144. Mr Munton deals with the planning history since the application and other land formerly belonging to the Gillingham family was purchased by the Objector in July 1999, albeit subject to the farming tenancy on part of the land. The recent successful planning permission is addressed and development will undoubtedly take place within Fields 1 and 2 if the application to register is rejected. The report of the Inspector dated 18/04/2013 (in which the developers' appeal was allowed and planning permission granted for 46 dwellings and associated works) is appended to Mr Munton's declaration at O1/411A-411U. I have already touched on this.

145. Mr Munton says that since he became responsible for this site in November 2009 he has arranged for the fencing around Fields 1 and 2 to be repaired on several occasions. The damage was largely cutting the new or replaced fencing and rolling it back to create an opening for access. I saw examples of this when I visited the site, not least at point 4 at the side of the public footpath.

146. Since the grant of planning permission the perimeter of Fields 1 and 2 has been further secured by the installation of Heras fencing. This work was done in May 2013 and this fencing has similarly been damaged or knocked down in a number of locations and unwanted access is still taking place through various gaps around the edges of these 2 fields. Repairs have proved futile and no further work has been carried out on the fencing since June 2013. There is a batch of photos of damaged fencing at O2/412-430 and, of course, I observed much of this damage myself when I visited the site.

147. Mr Munton also took a large batch of photos on 6/06/2013 which are produced at O2/432-517 which show paths, formal and informal, criss-crossing the application land. This was a good time to take these photos as the grass is long and had not by then been cut (as it will be later on in the Summer). Much of what is permanent pasture is in flower (buttercups and clover) and there is, in addition to the long grass, a considerable volume of

thistles, brambles, scrub, weeds and wide, largely impenetrable, hedgerows around the perimeter of these fields. Mr Munton's survey of the various paths of which photos were taken have been located on his survey drawing at O2/431 which is broadly consistent with what one sees on the 2005/07/12 aerial photos (although the 2012 aerial photo was obviously taken just after the grass was cut, most of the paths identified by Mr Munton can still be seen).

148. An issue arose in Mr Munton's oral evidence as to whether those living within the Parbrook area (which lies to the west of the railway line – see neighbourhood plan at A/17) are likely to be using the Lower Station Road Recreation Ground. His view was that whilst there were a series of small amenity spaces within the Parbrook area, they were unsuitable for anything other than a kick about for small group of children whereas the nearest convenient place for organised sports would be on the recreation ground to which there was access directly along Natts Lane (there is in fact a pavement on the south side of Natts Lane beneath the railway Bridge). However, he conceded that the recreation ground off Natts Lane was probably where youngsters living to the south of the railway line play as it is nearer to their homes, has better facilities and is a better laid out grassed area than the recreation ground to the north of the railway line (ie Upper Station Road Recreation Ground).

149. I also found Mr Munton to be an honest and genuine witness and he gave his evidence in a very confident manner. I am also indebted to Mr Munton for his work in drawing up the APP/B plan which was extremely helpful to all those involved at the inquiry.

Stuart Marshall

150. Mr Marshall is an experienced process server and enquiry agent trading as 'S M Process' from premises in Brighton. His two statutory declarations will be found at O1/217 (dated 5/09/2012) and at O1/214 (dated 29/08/2013).

151. Mr Marshall was retained by the Objector to carry out observations of activity taking place on the application land on two occasions. The first time was

when he was retained in April 2012 to visit the application land 3 times a day, 4 times a week over a period of 4 weeks. In the event, he made a total of 33 visits (with his dog) between 5/04/2012 and 7/05/2012. His visits were logged on the sheets (and each sheet had an accompanying aerial photo) at O1/225-322. The format of the log sheets enabled Mr Marshall to explain what he saw (such as dog walking or jogging) and exactly where (by reference to the accompanying aerial photo) such activity took place. The route and direction which Mr Marshall walked is marked in red on the aerial photo and each field is given a letter. So what we get on the log record are references to (a) Field Nos A-H (and the record was so thorough that even Pavilion Field was included, though outside the application land) (b) the number of people seen on that trip, and (c) what activity was being undertaken. On the aerial photos we see each of the fields marked A-H and, in black, references within fields to 'DW' (denoting the presence on the relevant field of a dog-walker) or 'JG' (denoting the presence of a jogger), 'HT' (denoting the presence of a tethered horse) or 'HR' (denoting the presence of a horse rider). Sometimes no activity was observed at all.

152. The conclusions drawn by his observations during April/May 2012 was that of the 113 people whom he observed on the land on his 33 visits, 100 were dog walkers using the paths. The remainder were riders, joggers or were simply teenagers playing in the woodland outside the application land.

153. Mr Marshall was retained again in April 2013 to carry out observations 3 times a day on 4 days a week over a period of 2 weeks which coincided with the Easter break. The procedure was much the same as before although this time the aerial photos marked the fields 1-6 and omitted Tunnel Field and Stable Block Field. The aerial photos have to be read together with the daily logs (see O1/324-393) so that we can see where the one or more walkers were located when observed. There is also a helpful summary at O1/184 showing that on the 24 visits he made during this second period he observed a total of 62 plus individuals on the land (the 'plus' allows for a party of adults and children 'number unknown' in the early afternoon of 7/04/2013 – see O1/337). All the walkers observed were seen on the established paths. As Mr Marshall puts it in para 13 of his second declaration on O1/215, *'the majority of the*

people I have seen have been dog walkers whose activities have been restricted to the footpath and desire lines'. This is the conclusion which he draws from his observations on a total of 57 visits each of which lasted approximately 1 hour as we were told in his oral evidence.

154. In his oral evidence Mr Marshall made it plain that if he had observed people on then land then he would have noted it. In truth, his evidence could not be challenged. I found Mr Marshall to be an extremely sound witness and I have no doubt at all as to the accuracy of his records.

Applicant's evidence

155. I deal firstly with those who gave evidence at the inquiry. As I indicated in relation to those witnesses of the Objector who were not called to give oral evidence, less weight will be attached to such evidence as it will not have been subjected to cross-examination. I have though considered such evidence.

Andrew Tullett (the Applicant)

156. Mr Tullett and his family (he has 3 children) live next to the application land at 63 Daux Avenue. He applies for registration on behalf of the Save Billingshurst Action Group. His statements are at A1/73&105C and are accompanied by a number of photos and 3 letters which he wrote to the registration officer in 2011-12.

157. Mr Tullett is a Chartered Fellow of the Institution of Structural Engineers and a Chartered Member of the Institution of Civil Engineers. He has lived at Daux Avenue since 1995. He says he uses the application land regularly for walks or, occasionally, for jogging or cycling. It has predominantly been dog-walking since 2000 when they first got a dog whereas his use of the fields would have been less frequent before such time. He says that he regularly sees others in the fields such as children playing, kite flying, walkers, with or without dogs, picnickers, joggers, campers or those flying model aircraft. He said that his use of the application land is not confined to the paths although he accepted in cross-examination that the application land is used less the further away one gets from the settlement on its western side. Since the birth of his first

child in 2001, he says that he and his family have used the land more often, including walking their dog some 3/4 times a week, as well as picnicking, sledging (for which we have photos in the winter of 2010) and picking sloes and blackberries in season. He says that the fields provide a point of focus for local residents and plays an important part in maintaining a strong sense of community in this area of Billingshurst. In his oral evidence he said that he actually meets more people in the fields than he does in the Woodland.

158. Mr Tullett explained that the application to register was supported by 73 evidence forms from 53 separate households. He breaks down the evidence of personal use before the inquiry to show that it covers a wide spectrum of activities which ranges from those, at the upper end, who use the land for recreational walking (at nearly 59% - or 43 people) or for flying kites (at a little over 1% - which is just one person). He also explains that a number of activities will not necessarily be restricted to the paths. He also identifies in a pie chart what he refers to as 'Community Group Use' which is disclosed in the evidence questionnaires. So that, for instance, 36% (or 45 respondents) mention use by Scouts and 11% (or 14 respondents) mention use by Guides (he says there are some 8-10 Guides living in his road). Within this range we have use by schools or pre-schools and Cubs. In terms of frequency of use, the majority of those answering the questionnaires use the land on a weekly basis although 37% (or 22 respondents) claim to use the land once or even twice daily and some 32% (or 32 respondents) claim to have used the land for periods in excess of 20 years. Mr Tullett has also analysed the time, in percentage terms, during the 20 year qualifying period when Fields 3-6 (but not, of course, Fields 1/2) would have been under cultivation for cereal crops (ie excluding grass ley) and he arrives at these figures, namely F3 – 7 years (30%); F4 – 2 years (10%); F5 – 6 years (30%) and F6 – 2 years (10%). He does not consider that the grass ley cultivation which took place on Fields 4/6 in 1990/91 would have materially interrupted use for LSP. In broad terms, Mr Tullett makes 2 points: first, that the agricultural regime was both infrequent and non-intensive and, secondly, that the fact that the whole of the application land may not have been available for LSP for the whole of the qualifying 20 year period would not, without more, preclude its registration. These are

clearly questions of fact. In truth, what Mr Tullett is actually saying here is that we are dealing with low-level agricultural activity in Fields 3-6 which did not in practice conflict with qualifying user for TVG purposes which, as he says in his letter to the registration officer dated 12/09/2012 at A1/102, has neither been *'trivial nor sporadic'*.

159. On the issue of non-peaceable user, Mr Tullett contends that prior to 2009 the fencing and gateways along the western boundaries of Fields 1 and 2 (see A1/103) *'could in no way be considered to be 'exclusory', their purpose being simply a means of boundary demarcation* (and he reiterated this in his oral evidence)*. The gates allowing access to Fields 1 and 2 were at no time locked and, indeed, were in a state of dereliction'*. He also contends that with the exception of the western boundary of Field 1 and the fencing along the railway line, there was *'no other fencing, exclusory or otherwise, and no notices expressly prohibiting entry have been present around any of the other field boundaries at any time until these were installed during the summer of 2009'* – if one looks at Mr Tullett's plan at A1/13 one is able to see the extent of the August 2009 fencing and prohibitory signage ('Private - Keep Out' – there were 6 signs altogether – and in light of this, it was inevitable that this would be a section 15(3) application with the qualifying period ending on this date). It is argued that the application land would have been accessible from the Woodland and, in the case of Field 2, also from the public footpaths crossing Field 1 and running parallel with its western boundary which he is, I think, saying was defined by a line of trees and scrub through which there were gaps which enabled access to take place into Field 2.

160. The remainder of Mr Tullett's letter to Mr Jupp dated 12/09/2012 deals with sufficiency of use and neighbourhood and his second statement offers his response to Mr Munton's second statement where he also deals with the neighbourhood issue. When the application was made the claimed locality or neighbourhood was described as 'the south east portion of Billingshurst' and included land to the north and north-west of the railway line and, of course, by the time we got to the inquiry Mr Tullett's case under this head had been amended, as previously described. At any rate, in his second statement Mr Tullett describes the facilities at each of the town's playgrounds or recreation

grounds. He also considers that access to the Lower Station Road Recreation Ground is poor for those living on the other side of the railway line (only two roads) which he says *'would deter a greater number of users from the north'* who would be likely to use Upper Station Recreation Ground or any of the other open spaces which he mentions to the north and west of the railway line (A1/105E). He also thinks that since the opening of the skate park in Jubilee Fields (which is on the northern outskirts of the town) the use of the skate park at the Lower Station Road Recreation Ground will have diminished, being restricted largely to children living within the claimed neighbourhood. This is the thrust of Mr Tullett's case, namely that in practice children will invariably use the recreation ground which is closest to their own home.

161. Mr Tullett also says that the Tesco Express store is a local store whereas Budgens in the High Street is the town's main supermarket, having a greater selection of goods, its own car park, a delivery service and lengthy opening hours of 8am to 8pm Monday to Saturday and between 10am to 4pm on Sundays. The point he makes is that Tesco is basically the local convenience store for the claimed neighbourhood. Mr Tullett also accepts that neither the Scout hut and tennis facilities on the recreation ground nor Dauxwood Pre-School are used exclusively by residents living within the claimed neighbourhood. In the case of the latter, he does point out that there are 2 other playschools in Billingshurst beyond the railway line which, as he puts it, makes it *'logical'* that most children attending Dauxwood Pre-School would tend to live close by.

162. Mr Tullett's oral evidence covered all the ground detailed in his written evidence which I do not propose to repeat. There are though some matters which I ought to mention.

163. There are photos taken by the Tulletts of children playing on swings at A1/87. These are near the pond on the boundary of Fields 5/6 (3) and close to the boundary of Fields 4/6 close to the woodland (1). Other photos were taken by them of children playing within the application land at A/1 at pp.87, 89, 91, 170-174 (a number of which involved children playing in the snow in 2010 on the slopes close to the woodland). There are yet more photos which were

taken by supporters of the application to register at A1/496-516 (the picnic in this photo evidently took place in 2011), including another batch of children playing in the snow at 508-512 (some of which were also taken by the Tulletts) and others at 514-516 (again taken by the Tulletts) of children recreating in the warmer weather within Field 4, both at the edge and in the middle of the field. (There are also photos on A1/517A of children playing within Field 4 which were taken by Rachel Gee who has lived at 6 Daux Avenue since 2000.) It was put to Mr Tullett that there was a dearth of photos of children playing in the central areas of the fields which, as it seems to me, is undoubtedly the case.

164. Mr Tullett dealt with neighbourhood at some length in his oral evidence. He considers that the claimed neighbourhood is a self-contained area near the station. He said that it *'tends to be known by people as Daux Wood'*. He mentioned (ie as cohesive features indicative of the viability of the claimed neighbourhood as a qualifying neighbourhood in law) the Tesco foodstore, the 2 fast food outlets, the recreation ground and the playgroup (in practice, Mr Tullett says, children will always attend their local playgroup provided there is space although he accepts that none of the Billingshurst playgroups are restricted to children living within their areas) all of which are used, or mainly used, by local inhabitants of the claimed neighbourhood. He said that theirs is a cohesive neighbourhood with community facilities and other amenities which are mainly used by those living within the claimed neighbourhood.

165. Mr Tullett conceded that he had conducted no survey to substantiate his contention that most users of the recreation ground in Lower Station Road actually lived within the claimed neighbourhood (and similarly in the case of users of Station Road Gardens, in order to establish that they lived predominantly on the northern side of the railway line).

166. Coming at the end of his evidence on the neighbourhood issue, Mr Tullett also advances the notion that the claimed neighbourhood is also an area of *'geographic significance'*. He relies on the numerous reference to Daux or Dauxwood in the case of a number of local streets and, of course, in relation

to the name given to the pre-school playgroup in Natts Lane whereas no such name attaches to any street or body located north of the railway line.

167. When it came to agricultural activity taking place on Fields 3-6, Mr Tullett had no recollection of crops being grown on the land although he was aware of mowing once a year over the last 5 years and the grass being left in the fields (he recalls participating in a number of picnics which took place in the long grass). Even though Mr Tullett has lived Daux Avenue since December 1995 he did not recall the cultivation which took place in Fields 3/5 (maize and winter wheat) in the period 1996-98.

168. Mr Tullett accepted that the totality of Fields 1/2 were fenced off in August 2009 and that he would have had to climb fences or otherwise trespass if he wanted to get into these fields after this time, that is, unless he used FP/1933 (which was fenced on both sides within Field 1). He agreed that the Heras fencing installed in May 2013 closed up the gaps. He also agreed that the gateway at the end of Daux Avenue would have been locked and chained by the end of the same month along with the deposit of the concrete block which now exists in front of the gateway.

169. When it came to signage, Mr Tullett agreed that signs were erected by Mr Brindley in 2003 along the western boundary of Field 2. He recalls seeing only 2 signs in 2003 (Mr Brindley says he erected 3 signs along the western boundaries of Fields 1/2 at the main points of entry) which he said were tied to trees or posts with string. He said that the 2 signs which he saw were located close to his home. One was located on the western boundary of Field 2 near its south-west corner (which he marked on my copy of the 2005 aerial photo – which was slightly further back from the south-west corner of Field 2 than is shown on Mr Brindley's plan at O1/15). As I understand it, the other was just to the south of the end of Daux Avenue, where marked on Mr Brindley's plan.

170. It was Mr Tullett's understanding when he first saw the signs that they only meant that there was no public right of way within the fields. He did not think that these signs remained in place for very long. In cross-examination, however, he agreed that (as he put it), *'with the benefit of hindsight'*, the Objector, by erecting these signs, was telling the public to keep off the land.

He also confirmed his plan at A/13 which described the location of the fencing and the 6 'Private – Keep Out' signs which were erected in August 2009, none of which remain (the signs were placed on the new 5-bar field gates shown at the locations identified on the plan). In relation to the 'Please Keep to the Public Footpath' sign at point 2 on the Appendix B plan, Mr Tullett said that the sign had been in place for some time but it may have been obscured by vegetation if it had been there before 2003 in view of Mr Brindley's evidence about the condition of the land in 2003. However, he cannot recall precisely when he first saw this sign but it would have been after 2004 when the gateway was cleared of undergrowth.

171. Although pressed about the condition of the pre-2009 fencing (including the pre-2003 fencing), Mr Tullett said that it did not act as a barrier to the land and was for boundary demarcation only – *'I don't think that a single strand of barbed wire is significant to exclude people'*.

172. Mr Tullett recalls only that repairs took place to the fencing between 2006-09 but (as he put it) it *'didn't signify to me why the fences were being repaired'*. He thought that *'preventive repairs'* probably took place every 2 years and that *'breakages were left open for lengthy periods until more recently'*.

173. He was asked about the tracks on the aerial photos and he accepted that the photos for 2005/07 were representative of the position in 2009 and that users *'undoubtedly'* made good use of the tracks shown on these photos. However he said that children played away from the tracks and by way of example he said that Pin Brook and the area close to it was popular with children. He also cited the photos of his own children playing on the 2 rope swings in August 2009 (which were located in the south-east corners of Fields 3/4 – the swing close by the Pin Brook stream in Field 3 has now gone but Mr Tullett said that there had always been a swing in this location), albeit after the erection of the fencing around Fields 1/2 in that year.

174. Mr Tullett was a very courteous, though highly partisan, witness. He was obviously disappointed about the grant of planning permission allowing development to take place close to his home. When it came to signage, he undoubtedly saw 3 prohibitory signs in the period 2003/04 (ie the two signs

put up by Mr Brindley near his home on Field 2's western boundary in 2003 (O1/27)) and the sign which he accepts he would have seen after 2004, or thereabouts, in the gateway on Field 1's western boundary (O1/21). However, I was unable to accept his assertion that it was only in hindsight that, by erecting signs in 2003, he understood Mr Brindley to be telling the public to keep off the land. In my view, he is bound to have realised this at the time.

175. It seems to me that the nature and location of the signs on the western boundary of Field 2 was such that no reasonable person could have concluded that they meant only that the Objector opposed the creation of further public rights of way and that they did not apply to prohibit the public from walking outside FP/1933 or any of the numerous informal tracks within these fields. Similarly his assertion that the sign at O1/34 meant only that the public should keep to the footpath running down the western boundaries of Fields 1/2 (FP 1932) and did not extend to a prohibition in the case of the public's use of the land beyond the gateway was, as I find, equally implausible. I sought clarification of these matters at the conclusion of his evidence and I am satisfied that this a fair summary of Mr Tullett's evidence when it came to the signage.

176. There are two further matters which I should mention. Firstly, I found it impossible to accept Mr Tullett's evidence that the physical boundaries, such as they were before 2003 or even 2009, were, in effect, little more than boundary indicators and were insufficient to exclude members of the public who wanted to walk in the fields. The inference here, I think, is that he is saying that the Objector was taking insufficient steps to exclude the public from the land and may arguably have been acquiescing in the public's use of the application land. Secondly, Mr Tullett's inability to recall cultivation within Fields 3/5 (maize and Winter wheat) in the period 1996-98 is, I think, liable to be consistent with the fact that his own use of the fields was probably limited before 2000.

Philip Buddle

177. Mr Buddle has lived at 24 Lower Station Road since 1945. His statement is at A1/18.

178. He has evidently used the application land for most of his life and his family has also spent a good deal of time on the land. He has 3 children all of whom would have been young enough to play in the fields independently during the qualifying period. Since 2001 he has been using the land to fly remote controlled model aircraft, generally in Field 4 but occasionally in Field 6. In his oral evidence he said that he does this 2/3 times a week in the Summer and occasionally in the Winter. Whenever he is there is also sees other people, including joggers, families out together and children playing on (as he put it in his oral evidence) *'the extremities of the fields'*.

179. He also mentions both in his oral and written evidence that he never saw any agricultural activity taking place in the fields or events occurring in the eastern fields, although he accepted that he would not have walked through a field with crops in it.

180. He accepted in cross-examination that people generally used the tracks but occasionally they would go into the fields. He said that people playing with children either used the paths or diverted into the field on either side. He said he could hear children playing in the woods and occasionally they spilled out into the fields. He said that children would not stick to a track as an adult might. Most of the joggers he saw, however, stuck to the tracks.

181. He recalls the fencing in 2009 and on the first occasion he went to the land after this he accessed the fields via the Woodland where it was unfenced. However, within around a week to 10 days the fencing had gaps. He has no recollection of any notices in 2003 although he recalls the end of Daux Avenue being fenced off at that time which meant that he had to take a detour to get into the fields. He also said that if notices had been on the boundary with the fields at the end of Daux Avenue then he would consider such notices to refer to the fields.

182. He also considered that his neighbourhood was east Billingshurst, to the south of the railway line, which contained *'most of the facilities which I would need on a daily basis'*.

183. Mr Buddle was an honest and genuine witness although his lack of knowledge when it came to agricultural activity tends to imply that he could not have been using the land as often as he claims, at least at the start of the qualifying period or in the 1996-98 period.

Karensa Miller-Hart

184. Miss Miller-Hart has lived at 5 Rosier Way since her birth in 1994. She was aged 15 in 2009. Her statement is at A1/46.

185. As she lives so close to the application land it was, as she puts it in her statement, a *'perfect stomping ground'* for she and her friends which she can remember visiting unaccompanied by the time she was 6 in 2000. It is plain that throughout her childhood she has been a regular visitor to the fields where she either played with her friends (in which event they would use the whole of the fields) or else spent time with her parents out in the fresh air (she said that her parents would stick to the perimeter). She spoke of den building up to the age of 12 (out in the open, not in the woodland) in the south-east and south-west corners of Fields 2/4 respectively.

186. She always sees people out in the fields of all ages, mainly family groups walking around coming out of the woodland or walking around the perimeters of Fields 4/6 although people did not necessarily stick to the paths. She said that she used the rope swing at the top of Field 4 near the woodland and that she actually broke her arm using it in 2006 when she was aged 11. She also mentions barbeques or picnics (including 6/7 times in Field 2) and camping several times (with occasional bonfires – as recently as November 2012) mainly in the south-east corner of Field 4.

187. She said that until the fencing went up she did not recall any obstruction getting into the fields. Her home backs onto the right of way which she is able to access via a gate at the bottom of their garden. She then accesses Field 2 through a gap in the hedgerow or at the end of Daux Avenue. When cross-

examined she accepted that there were clear worn paths within the fields and that before the grass was cut people mainly walked on the paths. In Spring and Autumn there were thistles in the fields although they were not as 'vicious' in Field 4 where adults could walk off the paths and play hide and seek with children in the longer grass. The dogs could be walked off the lead unless their owners were wary of small children. When pressed about this, she accepted that people mainly used the paths but also walked elsewhere if the grass was not so long or where there were fewer thistles. She said that people used the tracks more often, as was shown on the aerial photos but this did not mean that they did not use other areas of the fields where there were fewer thistles or where they were not impeded by the long grass. When cut the fields were more accessible and attractive places to walk on, but people mainly stuck to the paths. The fact that people were not leaving traces in the central areas of the fields did not mean that they were not being used, merely that it was not happening sufficiently often to leave a trace on the ground.

188. She explained that when she was 15 (in 2009) she attended boarding school in Reigate. Before this she attended schools in Billingshurst. She recalls nature trips into the fields when at Junior School and in the Brownies (at least once a year). She thinks that of the 16 girls in her Brownie pack, 10 lived within the claimed neighbourhood. When younger all her friends lived within this area whereas her friends now come from a wider area.

189. Miss Miller-Hart was an extremely impressive witness. I accept that she would have been a frequent user of the fields, at least Fields 4/6, from the age of 6 in 2000. I also accept her evidence that although people mainly used the paths the fields were more accessible once the grass had been cut although this is not to say that these areas were not being used at other times although not as often as would give rise to signs of wear on the ground.

David Hart

190. Mr Hart is Karensa Miller-Hart's father. His statement is at A1/22. He is a teacher at the Weald School in Billingshurst and, as a Parish Councillor, also speaks for the council which supports the application to register (see letter from the Parish Clerk to the registration officer at A1/28B).

191. Mr Hart has lived at 5 Rosier Way since 1981 (he is not a dog-walker). He speaks of the use of the application by generations of local people for a wide variety of informal recreation which he covers in his detailed statement. He says the fields serve the residential area on the eastern side of Billingshurst together use by the Scouts, Guides and pupils at Daux Wood Pre-School for games and nature walks. He also mentions use by The Weald Community School for cross-country running, den building in Fields 2/4/5, the flying of radio-controlled model airplanes in Field 4 along with picnicking/social gatherings in the same field. It seems that some local young people actually set up a protest camp against the bypass in Field 2 in the late 1990s (consisting, I think, of 3 vehicles) one of whom (Chris York) actually stayed in his caravan for around 9 months.

192. Mr Hart says he has walked on the fields since 1981 and even when there were standing crops people were still able to walk around the *'very wide boarder'* of the affected fields (he mentions Fields 5/6 but he does not recall arable cultivation taking place in Field 4). He says that for many years the fields have not been used for agricultural activities and *'the development of a number of habitual footpaths attest to the opportunities the public have been taking to access all of the fields for a variety of recreational activity'*. In his oral evidence Mr Hart claimed to have used Fields 2/4 several times a week up to 1994 (sitting or walking around, picnicking or just generally 'enjoying the space') whereas it has reduced to around once a week since this date (owing to his disabilities – problems with his hip and feet) although it would have been more than this in his wife's case after 1994. He says he never follows the paths *'assiduously'*; as he puts it: *'I like exploring space rather than just walking through it'*.

193. As a teacher youth worker Mr Hart is involved in a range of activities for youngsters in Billingshurst and he knows that a number of children use the fields and also have camps on the fields. He said that once the fields went into set aside the application land became a very popular place. A lot of cyclists also cycle down through the woodland into the fields. Mr Hart is not convinced that there are no signs of human activity outside the tracks

although when he pointed out where informal recreation might have taken place on my copy of the 2005 aerial plan, I could not be sure about this.

194. Initially Mr Hart said that he had no recollection of the notices erected by Mr Brindley in 2003 (see O1/27) although when cross-examined he said that *'at the time there were a number of notices going up'*, and he mentioned *'small notices of protest and children's posters'* which opposed any development taking place on the land. He said *'the weather would take care of a lot of these … The entry point at the end of Daux Avenue became a bit of a litter bin'*. I think the gist of his evidence about signage was that he does not recall seeing any of Mr Brindley's signs which may well be due to the fact that there was, at the time, a proliferation of other signs and notices along the boundary at the end of Daux Avenue and at other access points into the fields. He does not recall seeing the sign at O1/34 either (ie at point 2 of the Appendix B plan). At all events, he said that access was *'easy'* before the western boundary was fenced in 2004.

195. Mr Hart also said Initially that he had no recollection of any fairs or formal activities taking place on the land but when cross-examined about this he remembered the event involving the Earth Spirit group although he never attended. Mr Hart does recall that Field 2 was cleared in 2003 (he said it was *'flailed'*) and that fencing was erected in 2004, initially in the wrong place, but which was later repaired a number of times. He said that before Field 2 was cleared there were *'little areas'* dotted around the field where children could play, but not flying kites which took place in Field 4.

196. When dealing with the neighbourhood issue, Mr Hart says that Billingshurst comprises 3 areas, namely to the east of the main road (by which, I think, he is referring to Stane Street, Alicks Hill and High Street which 3 streets run north-south through the town), to the west of these streets running up to the bypass and to the south of the railway line which he describes as *'geographically coherent'* and an *'homogenous neighbourhood'*. He thinks that the application land is a cohesive feature seeing as it is mainly used by residents living within this area. He says that the pre-school playgroup on

Natts Lane is a cohesive factor although the area has neither its own postal code or neighbourhood watch scheme.

197. In my view, Mr Hart's evidence was too partisan to be reliable. I think he was influenced by the strong emotions which have been raised by the application and by his desire to safeguard the application land against, as he and others see it, unwanted development near their homes.

198. I was, for instance, unable to accept Mr Hart's evidence that he saw none of the 2003 signage on Field 2's western boundary or indeed even the sign at point 2 on Field 1's western boundary. I regret that I am unable to accept his explanation that he could not recall seeing any of Mr Brindley's signs. His explanation (in effect) that this was probably due to the fact that there was, at the time, a proliferation of other signs and notices along the boundary at the end of Daux Avenue is, I think, inherently implausible. In my view, if the Brindley signs were there in 2003 (as I find they were) then he is likely to have seen them and taken a keen interest in such matters. I was also surprised that Mr Hart was unable to recall so little of the agricultural activity which took place in Fields 3-6 in the period up to 1992 or, in the case of Fields 3/5 (ie within Barn Field), in the period 1996-98 which, as I find, implies that his own use of these fields was a good deal less frequent than he claims. Even if he was not actually walking in all of these fields, he is highly likely to have been aware of the fact that the fields nearby were under cultivation and/or had standing crops for lengthy periods even if he only walked in those fields which were closest to his home.

199. Mr Hart claims to have used all the fields extensively in the period 1985-94, mainly Fields 2/4 and then several times a week, although it would have been less frequent than this, reducing to around once a week after 1994, yet he only recalls arable cultivation (as he describes it) taking place in Fields 5/6 but not at all in Fields 3/4. Mr Hart was also rightly challenged about the answer which he gave in his evidence questionnaire at Box 10 (see A1/25) where he claims (as at 19/11/2010) to have used or be using the application land 2/3 times week which is a good deal more than he claimed was the case in his oral evidence since 1994. Even though he claimed his wife used the

application land more than he did, she was not called to give evidence to verify any of these matters.

Dr Eric Rirsch

200. Dr Rirsch lived at Daux Avenue between 1980 and sometime in 2013. Until 2002 this was at No.43 and later at No.14. Dr Rirsch says that he has over the years been a regular visitor to the application land. He recalls seeing children play in Field 2 in the period 1988-93. He says there was *'only intermittent fencing around the perimeter and the field was unfarmed and open land'*. In the case of Field 4, he thinks this field was farmed more than 25 years ago. In the meantime, he has observed a good deal of informal recreation taking place in this field and he cites children cycling, kite flying, model aeroplane flying, dog walking, camping and ball games and he thinks this would have taken place during the period 1990-93. He also says that he has witnessed similar activities taking place in Field 6. He says that the fields played a significant part in the lives of his own children who would have been aged 6/9 in 1989. He also remembers his neighbours at No.45 Daux Avenue whose 3 children were a little older than his but who also played in the fields. In his evidence questionnaire at A1/62 Dr Rirsch says that he walks on the land, with or without his dog, twice a day. He also mentions walks with children and playing rounders with the family (evidently, in light of his oral evidence, some 6 times a year between 1990-93 on the western side of Field 4).

201. In his oral evidence he also recalls Field 3 being farmed but he could not say when this was although it would have been less than 25 years ago, as in the case of Field 4. He also thinks that the boundaries of the claimed neighbourhood are *'reasonable'*. He says that if anyone asked him where he lived he would say on the other side of the railway line. He says that its (ie the claimed neighbourhood's) proximity to the Woodland distinguishes it (as I understand it, in the sense that it sets it apart) from other areas within Billingshurst. He also mentioned the Tesco Express convenience store which is the only shop in the area which serves the neighbourhood although there are stores to the north of the railway line if people wanted to use them. He

says that when he lived in Daux Avenue he considered the Tesco store to be his local shop.

202. When cross-examined Dr Rirsch said that he did not stick to the paths on his walks as it would be *'boring'* to walk his dog only on the path. His dog is never on a leash on these walks. He also thought that his children stopped playing in the fields when they were 15/16, ie in the period 1998-2000 at which point they would have been using Fields 2/4 in order to access the woodland. He also accepted that the paths were worn because of regular use although, as indicated, he walked off the paths from time to time. He accepts that the well trodden paths are consistent with the routes taken by dog-walkers. Dr Rirsch does not remember notices at any time.

203. I considered Dr Rirsch to be an honest and genuine witness although his memory was poor when it came to his recollection of crops being grown on Fields 3-6 after 1989.

Linda Nicholl

204. Mrs Nicholl has since 1987 lived at 22 Cleve Way which is outside the claimed neighbourhood. She has actually lived in Billingshurst since 1965. Her statement is at A1/57. Mrs Nicholl's interest stems from her connection with the local Cub/Scouting movement and as the Manager of a pre-school group known as the St Gabriel's Playgroup which is based in a Church Hall off East Street which is well to the north of the railway line which is where the children mainly live although some of the children attending St Gabriel's live south of the railway line if there are no places for them at Dauxwood Play Group. She says that some 3 times a year the children make a trip to the application land for games and other organised activities.

205. She makes it plain that the application land is a popular place for recreation in Billingshurst. The Beaver/Cub packs (mainly boys but there were some girls – the Beavers were 6-8 years and the Cubs were between 8-11) regularly used the application land and the woodland after 1991 when her son was a member. In 1998 (until very recently) Mrs Nicholl took over the two local Beaver/Cub packs (then consisting of 36 Cubs and 4 leaders) which met up at

the Scout hut on the Lower Station Road Recreation Ground (which she said is the Scout and Guide Headquarters for the whole of Billingshurst). There are, I believe, 2 Cub packs and 2 Scout packs in Billingshurst. Evidently the 2 Beaver/Cub packs reduced to one in around 2000. The Beaver/Cub packs use the whole of the application land whenever they can for organised play and other activities (such as trekking in the fields and the Woodland), as do the Scouts (her son used to be a Scout leader) and Guides although she herself was only directly involved with the Beaver/Cub packs. She says that they also saw and met other people using the application land (in Fields 1/2/3/4) for recreation whilst they were there (but not in Fields 5/6 which were too far away for the Beaver/Cubs and where the Cubs only hiked around twice a year), especially in the nicer weather. Mrs Nicholl produced a sheet of names of the Cubs (but not Beaver/Cubs) at A1/58A showing that in her time (ie since 1998) a total of 100 children in the 8-11 age bracket had been members of the Scouting movement who have lived within the claimed neighbourhood.

206. It seems that the amount of time which the Beaver/Cub packs actually spent on the application land was fairly limited, perhaps for less than an hour in alternate weeks and then only during term time in the Spring and Summer terms. She was a little vague when it came to crops but she said that would never take the Beaver/Cubs through a field full of crops. She was also rather vague when it came to fencing along the western boundaries of Fields 1/2 but she never saw any prohibitory signage along these boundaries.

207. Two points emerge from this evidence: firstly, that the Scout hut on the north-east side of the Lower Station Road Recreation ground is the headquarters of the Scout/Guide movement in Billingshurst, and, secondly, that the pre-school playgroups normally take in children from their local catchment but this is not always the case and depends on whether a local play group has sufficient vacancies for children living nearby. I certainly accept Mrs Nicholl's evidence.

Pat Homer

208. Mrs Homer has, since 1963, lived at 24 Coombe Hill in the north-west of Billingshurst which is well outside the claimed neighbourhood. Her statement

is at A1/29. Between 1973-2008, or thereabouts, Mrs Homer was directly involved in Guiding activity in Billingshurst (she is still involved on the fringes) where she said there would be around 30-36 Guides. She says the Guides used the application land (lasting around an hour each visit and again only during term time) and Woodland for organised activities such as map reading, work with compasses, nature walks or just impromptu fun. They did this around 6-8 times a year and the current leader carries on these traditional Guiding activities on the land. There is a single Guiding Company in Billingshurst (until 2000 there used to be two). The Guiding Company comprises Guides aged between 10-15, Brownies who are aged between 6-8 and the Rainbows who are 5-7 years.

209. In her oral evidence Mrs Homer was unable to recall the fields in a state of cultivation but if there had been crops they would not have walked through them. I accept Mrs Homer's evidence.

Diane Lloyd

210. Between 1999 and 2009 Mrs Lloyd lived at 22 Daux Avenue when she moved to an address in Stane Street which is outside the claimed neighbourhood. Her lengthy statement is at A1/31. She and her children (one is now a teenager) made ample use of the application land for all manner of recreation. They had a dog after 2006. She says that the fields have been in constant use by the local community over a great many years.

211. In her oral evidence she said that until 2006, when they got their dog, they only used Field 2 where her children built dens. Her children (boys who would have been aged 12/9 in 2010) had also been too small for longer walks. Thereafter they periodically went on longer walks. Their route would vary and they would walk all over the 6 fields without always using the paths. She has seen campers and her children have also used the swings. She was asked about picnics and she said she would take a small blanket out and they would eat sandwiches in the open air when the weather was good although she never saw anyone else eating out in the open.

212. Mrs Lloyd also said that the claimed neighbourhood *'has always been referred to in the community as Daux Wood'*. She said it was easier for her boys to use the application land for general play than the recreation ground at Lower Station Road. In cross-examination she said that although she generally kept to the paths in the fields this was not invariably the cases. For instance, the paths were muddy at times in the Winter months. She also stuck to the paths when she was walking in the fields with friends or other children. She accepted that the paths were the routes which *'are predominantly used'*.

213. Curiously Mrs Lloyd did not recall either Field 2 being cleared in 2003 or any of the Brindley notices on the western boundary of Field 2. She only recalls fencing repairs along this boundary in 2009. It seems to me that if Mrs Lloyd was using Field 2 as often as she claims then it is likely that she would have observed either of these matters.

Sue Mariner

214. Mrs Mariner (who is an active member of the group pressing for registration) has lived at 42 Daux Avenue since 1992. Her children were born in 1994/96. Her lengthy statement is at A1/40. It is clear that she and her family have always made the most of the application land for recreational purposes. When her children (whom attended Dauxwood Pre-School, as did (as she says) most of the children in the area and they played with their friends in the fields on most days, entering into Fields 1/2 through one of the many gaps. She has often seen Beavers, Cubs, Scouts and Brownies using the fields for (as she puts it) recreation, games and badgework. She has also seen students from The Weald Community School exercising in the fields and local children playing on sledges in the snow. Sometimes in the Summer there are groups of teenagers (some of whom she recognises are from the immediate locality) who camp overnight in the fields.

215. Between 2001 and 2009 Mrs Mariner was a teaching assistant at Billingshurst Primary School and she can recall at least 12 occasions when she visited the fields with groups of 30-90 children from the school with accompanying adults on nature walks or other educational activities in the fields.

216. In her oral evidence she claims to have used all the fields, especially between 1992-2005 when she had a dog (she said she walked her dog some 3/4 times a week in the fields). She also said that she has run and cycled over the fields as well as playing on the fields with her children when they were younger. When she was a teaching assistant she said that there were around 8/9 children from her area in her class, perhaps as many as a third of the class. In fact some 20/30% of the school comprised of children from her area. When on the fields the children entered the application land by approaching from Daux Road and then into Field 1 and the fields beyond. She specifically mentioned Fields 3/4 (see photo at A1/105A showing the children walking in a crocodile along the hedgerow toward the south-west corner of Field 3).

217. When asked why she was in favour of the claimed neighbourhood, she said that it was where she lived, where she knew most people and where she and her children used most of the facilities, including attending the pre-school on Natts Lane, using the tennis courts on the recreation ground and shopping at the Tesco store. She said that these facilities are mainly used by people living in her area most of whom refer to it as 'Daux Wood'. She also mentioned Summer street parties in Daux Avenue for which a number of photos were produced A1/521. As it turned out these parties in 2010, 2011 and 2012 post-date the expiry date of the 20 year window in this case. Had this not been the case then these photos would have been very helpful to the Applicant.

218. Mrs Mariner has no knowledge of signage or of agricultural activity taking place on the application land. Nor could she speak about the fencing (including fencing repairs in the early 2000's along the western boundary with Field 2) other than the main fencing which was put up in 2009. She says Field 2 is completely different to what it had been when her children were young when there had been quite a number of Oak saplings. The land has been cleared of the young Oak trees and scrub.

219. When cross-examined she was pressed about her own use of the fields. She said that half her dog-walking took place on the paths and around the outside of the fields. The other half would have been within the central areas of the fields. She also saw walkers, with or without dogs, on and off the paths. As

indicated, she does not recall agricultural activity taking place on the land and she does not recall that it prevented her from walking where she wanted. She said that she would not hesitate to walk on tractor lines in the fields if they were there. She also said she tried to keep fit by jogging on the land and also cycled around on her mountain bike without necessarily sticking to the circular paths. She also recalled baseball being played in Fields 4/6 and kite flying in Fields 3/4/6.

220. I did not consider Mrs Mariner to be a reliable witness. It seems to me that if she had been using the land as often as she claims then she would surely have been able to recall (if only vaguely) the Brindley signage and fencing work in the early 2000's and the agricultural activity which took place in all the fields in 1992, in Field 3 in 1996 and in Fields 3/5 (ie in Barn Field) in 1997-98. I also reject her evidence that most people living in the claimed neighbourhood referred to the area as 'Daux Wood' (or 'Dauxwood') as this is plainly not the case. Not even Mr Tullett used this expression, either in his oral evidence or in the application paperwork. Moreover, it is also inconsistent with the perimeter of the claimed neighbourhood in its initial conception which included land to the north of the railway line. In the case of her jogging and cycling on the application land, it seems to me that these are activities which, more likely than not, only occurred very occasionally and were probably confined to the firmer ground on the numerous tracks either crossing or at the edges of the fields. I unable to accept that the position would have been otherwise, except perhaps on very rare occasions, with the result that I find her evidence about this implausible. I regret that I find that Mrs Mariner was an unreliable witness and I think that she was far too partisan in her evidence to be of much assistance to the inquiry.

Tessa Coughlan

221. Tessa is aged 17 and is the daughter of Mrs Mariner. In 2009 she would have been only 14. She has lived at 42 Daux Avenue since 1996 and she had a dog until 2009. Her statement is at A1/20. She used all the fields when with her parents and it would have been in 2004 when she started going there independently. She rode her pony on the land without challenge some 2/3

times in 2003, and when she was 10 she and her friends began using the land a great deal (*'as our main playing area'*). Since 2009 she has cycled on the land and jogged there for fitness. She also mentions playing football and throwing frisbees around in Fields 3/4/5. She also built camps 2/3 times in Field 4. She also mentions sitting around or playing games with her friends and groups of other youngsters from the locality in Fields 3/4. She usually sees people in the fields whom she recognises. She and her friends gather there in the Summer and she often sees groups of local teenagers (friends of hers living mainly in streets within the claimed neighbourhood although I think 2/3 of her friends lived on the other side of the railway line) heading into the fields (mainly Field 4) with their camping gear (she camped in the south-east corner of this field once herself in 2010). She mentioned that the rope swing in the south-east corner of Field 4 was actually put up by her father some 10/11 years ago. She also appears in one of the sledging photos on A1/508 (dated Jan 2010).

222. When walking her dog she said that she did not stick to the paths and that she would *'just go anywhere'*. She says that there is always someone running around or cycling on the land and this would have been the case to her knowledge before 2009. When cross-examined she reiterated that she went accompanied by her family up to 2004. They did not stick to the edges of the fields. Curiously, one moment she said that she and her family *'kept predominantly to the paths'* when they were out for walks yet, when I asked her to clarify her evidence about this, she denied that they predominantly kept to the paths in the fields. Instead she said that they would stick to the paths for only 50% of the time.

223. Although, by and large, I found Miss Coughlan helpful as a witness it concerned me that on what was an important issue (namely whether she and her family kept mainly to the established paths when out walking in the fields), she gave different answers to the same question when pressed about this. Either she was muddled by the questioning (which I doubt) or else she realised that her initial answer (namely that they kept predominantly to the paths) was unlikely to assist the Applicant's cause and so deliberately changed her evidence about this. In all probability, I think it was the latter in

which case her evidence was deliberately partisan and, in all probability, of limited assistance to the inquiry.

Sandra Myskow

224. Mrs Myskow (who is a teacher at The Weald Community School) has lived at 16 Daux Way since 1984. Her statement is at A1/49. She has 3 children who were born in 1985 and 1987 (twins) whom she accepted stopped playing in the fields when they were aged around 15 in 2000/2002. Her family has made ample use of the application land for informal recreation. She evidently spent a lot of time on the land when her children were small. Her children certainly did. They evidently played in the fields with their friends for prolonged periods (mainly in Fields 2/4) whereas Mrs Myskow says that she and her husband now walk further afield (she speaks of walking *'right through the fields'*, although she would not walk through standing crops which she recalled growing in Field 3 (but not elsewhere) – she no longer walks around Field 6 very often), mainly at weekends or if they are walking with friends. As against this, it was pointed out to her that in her evidence questionnaire she said that she only used/uses the land once a month. She was unable to explain this discrepancy in her evidence. Her children have left home but they still go for walks on the land when they come home. Mrs Myskow walks with friends who have a dog (she has, for the last 3 years, looked after a dog for a friend in the Summer holidays). She picks blackberries and sloes and also looks after her nephew and niece in the school holidays when they go for walks. She said that the application land was a busy area with children and people walking dogs. As she put it, there was a *'homely feeling over there … You would always bump into someone whom you knew'*.

225. When asked about the 2005 aerial photo she said that she and her husband *'stick to the tracks when we walk'* although when looking after her friend's dog she uses more of the fields as the dogs run off the tracks.

226. In cross-examination Mrs Myskow accepted that her assertion that, if asked where she lived, she would say in the Daux Wood area of Billingshurst, was something which she had not previously mentioned in her evidence

questionnaire or statement (Mr Edwards made it plain that it was no part of his case that there had been collusion amongst the Applicant's witnesses).

227. I did not consider that Mrs Myskow was a reliable witness. I think that in her oral evidence she probably exaggerated her own use of the application land once she ceased using the land with her children when they were younger. Her poor recollection when it came to agricultural activity also implies, I think, that she was not using the application land, or at least was not straying further than Fields 1/2 as often as she claims although it is, I suppose, perfectly possible that she has forgotten but I rather doubt it.

228. Although not called by the Applicant, a Mrs Joanna Marriage also gave evidence in support of the application to register. She produced a statement in the form of a letter dated 23/09/2013 to the Head of Law and Governance at WSCC which will be found at A1/522. Mrs Marriage has lived at 29 Groomsland Drive since 2005 and she obviously uses the application land regularly with her dogs and enjoys the open space which brings her great comfort since the recent death of her late husband. She was not cross-examined.

Other evidence

229. Although I only heard oral evidence from 12 witnesses who supported the case for registration, a considerable quantity of written evidence is contained in Applicant's first bundle. For instance, there are statements (and evidence questionnaires) from 15 witnesses and an additional 61 evidence questionnaires. On the face of it, the application to register has been supported by a total of 88 individuals of whom only 12 gave oral evidence.

Parties' submissions

Applicant

230. Mr Maile's closing submissions extended to 35 pages which, in the interests of convenience, I have placed at the start of the Applicant's second bundle. I hope I will be forgiven if I do not descend into excessive detail and merely set

out below, in summary form, the fundamentals of the Applicant's case in closing.

231. The case for registration is made under section 15(3) following the erection of fencing during August 2009 which impeded access to parts of the application land.

232. This is a neighbourhood case based on the qualifying neighbourhood of 'Daux Wood' which is located within the boundaries of the civil parish of Billingshurst.

233. That having established qualifying LSP on the whole of the application land throughout the whole of the qualifying period, the evidential burden lay on the Objector to raise a vitiating circumstance which would preclude registration.

234. Any notice found to have been posted on or in the vicinity of the application land on the western boundaries of Fields 1/2 did not, as a matter of fact or law, give rise to non-peaceable user on the application land and related only to user on the adjacent footpaths rather than the application land as a whole (reference is made to R (Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire County Council [2010] EWHC 530 (Admin) (the Warneford Meadow case). It is not disputed that signs were placed on the land by Mr Brindley. The issue is their content and what message they would have conveyed to reasonable users.

235. The agricultural use of parts of the application land did not give rise to an interruption in usage which was sufficient to stop time running. It is suggested, firstly, that the agricultural activities were of a low-level and, secondly, that the Objector has not proven that such agricultural activity which took place would have prevented LSP. The CRA should also consider the possibility of severance, ie of dealing with the application land on a field by field basis. In short,

236. On the evidence, the Applicant has established *'more than sufficient use of the land'* throughout the whole of the qualifying period.

237. It is conceded that pure footpath use (formal or otherwise) will not count but as soon as some other non-footpath use occurs then all the use, including that of the footpath, becomes qualifying use, *'the footpath use being mere access to the LSP use'*.

238. Fencing activity would have been confined to Fields 1/2 only and was *'primarily intended as boundary fencing and for no other purpose'*. In other words, the fencing was not intended to keep people out of the fields. Nor is there any evidence that damaged fencing was caused by those using the application land for LSP rather than, perhaps, by those seeking to use only the footpaths. The land can, in any case, be accessed from a number of places other than via the western boundary of Fields 1/2.

239. None of the events mentioned by Mrs Gillingham which took place in Tunnel Field or Stable Block Field were sufficient to give rise to an implied license, either in the case of these fields or in relation to the whole of the application land. There is, for instance, no evidence that members of the public were excluded from these fields unless they paid a fee for entry whilst the various events took place.

240. Neighbourhood: the claimed area is geographically separate from the surrounding areas being bounded by the railway line, open countryside (save for a small section of the A272) and Woodland. There is a high level of community spirit and facilities which are mainly used by those living south of the railway line (not least Lower Station Road Recreation Ground, the Tesco store and the pre-school group in Natts Lane).

The Objector

241. The closing submissions of Mr Edwards extend to 13 pages and, for ease of reference, I have placed them at the start of the Objector's authorities' bundle.

242. The burden of proving those factors necessary to justify registration rests with the Applicant who in this case comes nowhere *'close to producing the range, volume and quality of evidence necessary, on any reasonable basis, to demonstrate qualifying use of the application land'*. It is submitted *'that the application is, quite simply, hopeless'* and *'should never have got this far'*.

243. The worn paths which can be seen now and which are obvious in the aerial photos represent the principal way in which the land has been used by walkers. The evidence of some of the Applicant's witnesses and that of Stuart Marshall is consistent with this. Dr Rirsch also made two applications for DMMOs in respect of some of these paths. The use of paths may give rise to public rights of way. In light of what Lightman J said at first instance in the Trap Grounds case, the matter must be considered by reference to a reasonable landowner and how he/she would regard the use. If the conclusion is ambiguous, resort should be had to the lesser right.

244. On the facts of this case, the Objector argues that a reasonable landowner would conclude that the vast majority of the use and users were using the worn tracks in a way which was referable to use of actual or potential rights of way rather than using the whole of the land for LSP. *'No other conclusion is reasonably tenable … The use of these paths and therefore the majority use of the application land being relied upon should be discounted'*. Cycling and jogging (which logically must be confined to the paths) also fall to be excluded *'as being equivalent in a reasonable landowner's eyes to use of actual or potential rights of way and not LSPs'*. What use is left is largely use which is incidental to use of an actual or public right of way. Anything else is insufficient to support a conclusion of LSP taking place within the fields off the worn paths and their margins.

245. The history of arable use (which few of the Applicant's witnesses can now recall) is fatal to the claim in relation to Fields 3/4/5/6 on the grounds that it gave rise to a significant period of interruption in the case of each of the fields concerned. The Objector also alleges material interruption in the case of the use of Tunnel Field and Stable Block Field for events and would also give rise to an implied license meaning that the use of these fields would not have been as of right. It is suggested that the present facts fall squarely within the parameters of the Mann case.

246. The claimed neighbourhood is not a qualifying neighbourhood in law. There is, for instance, nothing to suggest that any of the facilities within the area are

dedicated to the claimed neighbourhood which do not provide a basis for cohesiveness.

247. In light of the prohibitory signage (2003) and fencing repairs (2006) user would have been non-peaceable after 2003 (*'Damage to fences and interference with notices is endemic here'*). As most users come from the west it is where you would reasonably expect to find a landowner erecting prohibitory notices contesting trespassory access to the entirety of the application land and the 2003 notices should be interpreted as such. If it is necessary to go back this far, the Objector says that user would have been forcible as early as 1992 in light of the fencing works carried out by the Gillingham family and the signage erected by them at around that time.

Discussion and findings of fact

248. All the ingredients of section 15(3) CA 2006 have to be met before the application land can be registered and I propose to deal with each of them in turn.

A significant number

249. We are dealing with a vast area of land on the south-east outskirts of Billingshurst. It is a little over 58 acres. As Mr Edwards rightly says, the Applicant's task was never going to be an easy one. It seems to me that the range, volume and quality of the oral evidence was plainly insufficient to justify registration. Of the 12 witnesses who gave evidence in support of the application to register (and I include here Mrs Marriage), only 4 were able to speak of their own use of the application land for more than 20 years (namely Philip Buddle, David Hart, Dr Rirsch and Sandra Myskow), although I accept that they spoke of others whom they observed on the land engaging in LSP. In my view, 4 was never going to be enough to justify registration. Although I accept that Sue Mariner speaks for 17 years and that Mr Tullett speaks for approximately 14 years and that Diane Lloyd can speak for 10 years, it nonetheless seems to me that the number of people who gave evidence at the inquiry was far too small a sample to enable the CRA to determine that

the application land was in general use by a significant number of local inhabitants within the local community for informal recreation.

250. Of the other witnesses giving evidence in support of the application, 2 lived outside the claimed neighbourhood (Linda Nicholl and Pat Homer), one was born in 1994 (Karensa Hart-Miller) and another in 1996 (Tessa Coughlan) and the last, Joanna Marriage, did not even submit herself for cross-examination. I accept that there is a volume of additional written material but despite the close proximity of the venue of the public inquiry to the homes of these witnesses, most of them chose not to attend or else were not called in such number as would have enabled the CRA authority to find that the application had sufficient support in the local community to justify registration.

251. The importance of attending an inquiry and giving oral evidence is that it allows the evidence to be tested by cross-examination which, in this instance, would have involved questioning on matters relevant to the witness's use of the application land such as precisely where they went on the application land, what they did there and how often they were on the land, in addition, of course, to the neighbourhood issue where, by the time we got to the inquiry, the Applicant's case had undergone quite radical change. As it was, a number of those who were cross-examined were, for reasons already explained, generally poor witnesses and found by me to be of limited value to the inquiry. This was particularly so in the case of Mr Tullett, David Hart, Sue Mariner, Tessa Coughlan and Sandra Myskow, 2 of whom (David Hart and Sandra Myskow) spoke of their own use of the land for more than 20 years.

252. I ought perhaps to mention under this head that I also considered the evidence of the use from amongst the local Scouting and Guiding Community (at all age levels) and local schools / playgroups but, in my view, such use was either too infrequent to justify registration or else included a number of children and support staff who would not even have lived within the claimed neighbourhood.

Use by the inhabitants of any neighbourhood within a locality

253. No issue was taken in relation to the locality comprising of the civil parish of Billingshurst. The issue under this head was whether the claimed neighbourhood was a neighbourhood within the meaning of section 15(3) CA 2006.

254. In R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and Oxford Radcliffe Hospitals NHS Trust) v Oxfordshire County Council [2010] EWHC 530 (Admin) (the Warneford Meadow case) it was held by HHJ Waksman QC that *' … a neighbourhood must have a sufficient degree of (pre-existing) cohesiveness. To qualify it must be capable of meaningful description in some way'*. In my view, the claimed neighbourhood in this case shows every sign of being cobbled together for the purposes of the application to register.

255. It must, I think, be substantially a matter of impression whether a claimed area is a qualifying neighbourhood or not. My impression, and my considered view having heard all the evidence, is that the claimed neighbourhood in this instance is not a neighbourhood. Whilst it is correct that it is located to the south of the railway line, it did not seem to me that the character of the residential area differed substantially from the surrounding areas. There are a variety dwellings of varying ages and styles within the area and, of course, a large number of commercial buildings, but I cannot see that there is anything significant to distinguish the area from the areas which surround it.

256. The area has no name (and if there is historical cohesiveness in respect of an area, one might expect it to have acquired some form of collective description) or community facilities which predominantly serve the area and no other. There is, of course, a large, well-equipped, recreation ground, a Scout hut, a pre-school playgroup, a convenience store and 2 fast food outlets, all within the area, but these facilities are available to all within the town and elsewhere and are not in practice dedicated to the use of those, or mainly to those, living within the claimed neighbourhood.

257. It was, of course, the Applicant's case that all these facilities were mainly being used by those living within the claimed neighbourhood. This could be true but no analysis was carried out to establish whether, on the balance of probabilities, this was indeed the case. For instance, I can quite believe that large numbers of people leave the station every day, do their late night shopping at the Tesco store and then walk back home to the north of the railway line which, in practice, is no real barrier to the free flow of traffic across the town, either on foot or vehicular.

258. The area has no licensed premises, nor any church, communal hall or similar or, for that matter, even its own neighbourhood watch scheme. Whilst it is possible to have a neighbourhood without the sort of facilities that create a self-contained small community, the absence of those features would indicate to me that one would need to see some other factor or factors indicating cohesiveness.

259. My own view is that the Applicant has devised a neighbourhood to which his witnesses were, somewhat cursorily, merely asked to cast their mind. I strongly suspect that many considered that their neighbourhood was simply the area in their own particular vicinity, whereas others had not really thought about it as, if they had, then I am sure that they might well question (as I do) the connection (which, on the face of it, is non-existent for present purposes) with the settlements in Marringdean Road and Groomsland Drive and the remainder of the claimed neighbourhood.

260. I have borne in mind that when the law changed to permit registrations to take place by reference to 'a neighbourhood within a locality' it intended to make it easier to register and did so by allowing them to be registered by reference to a concept that was not precise either as to definition or as to boundary. However, notwithstanding this, my conclusion for the reasons set out above and the arguments advanced by the Objector, is that the claimed area is not a neighbourhood within the meaning of the CA 2006.

Use as of right

261. There are 2 issues here:

(a) whether, at any time, user has been non-peaceable as if it had then it would not have been 'as of right':

(b) whether an implied license arose from the occurrence of those events which took place in Tunnel Field and Stable Block Field which are mentioned in the evidence of Mrs Gillingham and her brother David Gillingham?

As a matter of law, if user is non-peaceable or permissive then it will preclude registration.

Non-peaceable use

262. It is possible that user might have been non-peaceable from as early as the early 1990s. Mrs Gillingham dealt with fencing and signage on the western boundary of Fields 1/2 and I accept her evidence about this. She says that the western boundary of Field 1 was properly fenced by means of concrete posts and high tensile wires in 1992. At the same time a stile was installed at point 1 on APP/B which replaced a wooden farm gate. However the wires were repeatedly cut and the stile was damaged. A top strand of barbed wire was also introduced into the fencing along Field 1's western boundary.

263. Mrs Gillingham also says that notices which stated 'Please Keep to the Public Footpath' were also erected at 3 points along the western boundary of Fields 1/2, namely at points 1, 2 (a notice to this effect is present now – see O1/34) and 3 on APP/B (ie at the end of Daux Avenue). Although she is unsure of the exact wording on the sign at point 1, it seems probable that it must also have required those using Field 1 to keep to the public footpath. In my view, these notices were, as Mr Edwards suggests, plainly telling users not to trespass and operated to render use via damage to fences or in the face of such notices forcible.

264. However it is unnecessary for the CRA to deal with this application solely on the basis of what occurred in the early 1990s as it seems to me that the consequences of the steps taken by the Objector in 2003/06 are decisive when it comes to non-peaceable user.

265. In Taylor v Betterment Properties (Weymouth) Ltd [2012] EWCA Civ 250 (to which reference has already been made on interruption) the land was crossed by public footpaths. The landowner erected signs forbidding trespass but they were regularly torn down shortly after they were erected. Many users of the land never saw the signs because they were torn down so quickly. The court held that the landowner had erected sufficient notices (if they had not been torn down) to notify the local inhabitants that they should not trespass and that was enough to make use by local inhabitants contentious. The applicant in such circumstances could not rely on the unlawful conduct of those who tore the signs down to argue that users did not see the signs. In the result, where a landowner puts up notices which make it clear that he does not tolerate trespass on his land, he will be able to say that use of the land in defiance of the notices was non-peaceable, and thus non-qualifying, even though many users never see the signs.

266. In my view, this principle applies in this case as I accept that in 2003 Mr Brindley placed a sufficient number of notices in 9 key locations on the western perimeter of the application land and elsewhere within Fields 1/2 (see O1/15) which are likely to have been seen by reasonable persons using the land if they had not been torn down. In my view, the notices in question, namely:

Highways Act 1980 – Section 31(3)

No Public Right of Way

Please do not Trespass

were in terms sufficiently clear to convey to the average reader that any use of the fields beyond FP/1933 to the east of the western or physical boundaries of Fields 1/2 by members of the public would be treated as a trespass and, in these circumstances, it is irrelevant that individual users either misunderstood the notices or did not bother to read them. The inhabitants who encounter the signs have to be treated as reasonable people to whom an objective standard of conduct and comprehension is applied.

267. As a matter of common sense it cannot, as it seems to me, be said that these notices rendered permissible any public use of the fields on the basis that they had to be taken to refer only to user of the paths crossing the fields rather than the land generally. We are not therefore concerned with the situation which arose in the Warneford Meadow case where the notice stated merely: 'No public right of way'.

268. I accept Mr Brindley's evidence that when he returned to the site after around 3 weeks some of the notices were missing but that when he came back some 3 weeks later all trace of them had gone whereupon he replaced the missing notices with copies in the same locations. I also accept his evidence that when he returned after another 6-8 weeks the notices had again disappeared and that he did not bother replacing them again and I find that it would have been pointless for him to do so. My finding is that Mr Brindley's notices would have been erected sometime in July/August 2003 and that these notices (ie both the original notices and their replacements) would have been in place for at least 3 months.

269. We also have the issue of fencing repairs in 2006 and beyond. It will be recalled that by 2006 the Objector was actively promoting Fields 1/2 for development and a decision was made to actively manage the land. It was this which was the trigger for fencing repairs in 2006 to close up gaps on the western side of Field 2 (which, as I find, was where the trespass was coming from). Within only a matter of weeks, however, sections of this fencing had been broken down (the main gaps were next to the gate, half way down to the south-west corner and at the corner itself) and they were repaired only to be broken down again. There were no further repairs at this stage and it was later, in 2009, when Fields 1/2 were securely fenced, as previously explained.

270. Accepting as I do the evidence of Mrs Gillingham and that of Mr Brindley, forcible use can be traced back to 1992, or thereabouts, through the works of the Gillinghams, and beyond to the Objector's notices of 2003 and the fencing repairs of 2006. It seems to me that it would be a proper conclusion to draw on the evidence that forcible use at the points of entry on the western boundary affected the whole of the application land. I also find that the

overwhelming majority of those who used the land for informal recreation would have come from the settlement on this side rather than through gaps in the Woodland boundary or between points BC on APP/B on the eastern side (there was little evidence of entry other than via Fields 1/2 except in one or two cases via the Woodland). As Mr Brindley made plain, his notices were erected in locations to intercept those using the main access points onto the application land and I am confident that they were so placed as to be seen by reasonable users and would be taken by them to mean that they should not trespass on the land and, in my view, the Objector was not obliged to do any more to make use of the land contentious.

271. I also agree with Mr Edwards when he said that these notices could not be construed to be conveying a message that users were not to use the paths but were free to use the remainder of the land. He suggests that this *'absurd'* conclusion is reinforced by the fact that notices were placed either side of the public right of way on Field 1 which meant that they could be referring to nothing but the wider field beyond the lawful path which crosses Field 1.

272. The next issue concerns whether an implied license arose from the occurrence of the events which took place in Tunnel Field and Stable Block Field which are covered in the evidence of the Gillinghams.

273. I have exhaustively set out the various licensed events which are alluded to in paras 113-117. In my view, Mr Edwards is correct when he says that the facts of this case fall squarely within the parameters of R (Mann) v Somerset County Council [2012] EWHC B14 (Admin) in which an implied permission arose from periodic exclusions relating to part only of the land but whose effect was taken to be referable to the whole of the application land. In my view, this principle (which stems from the dictum of Lord Bingham in R (Beresford) v Sunderland City Council [2004] 1 AC 889 at [5]) applies in this case to preclude registration in the case of Tunnel Field and Stable Block Field. I accept Mr Edwards submission that it is clear that any LSP which took place on these fields (and the evidence of this is negligible anyway – and I would, in any case, have been forced to conclude that the amount of LSP taking place within these fields was insufficient to justify registration) would

have been by implied permission arising from the exclusionary use of these fields by bodies with the express consent of the landowner, namely the Gillingham family.

Use of the land for lawful sports and pastimes

274. It will be recalled from my earlier analysis of the legal framework that the CRA needs to be satisfied that it can sensibly be said that the whole of the application land had been used for LSP for the whole of the relevant period. The difficulty in this case is this: (a) whether LSP predominantly took place only on the paths (formal and informal) crossing or at the edges of the fields, and (b) the effect of the agricultural activity which occurred during the qualifying period which is helpfully explained by reference to the spread sheets at APP/C which plainly show arable activity taking place in Fields 3-6 between 1989-92 and in Fields 3/5 (Barn Field) between 1996-98.

275. The evidence of user shows that the application land is mainly used by walkers, with or without dogs. If one studies the aerial photos it is plain that walkers are predominantly using the worn paths whose presence I was able to see for myself when I inspected the site. Mr Edwards correctly says that the alignment of these paths has remained remarkably consistent over the years and that they have been created by regular use. I also accept Mr Edwards submission that it is *'plain and obvious'* that these paths represent the principle way in which the land has been used by walkers and dog walkers. This conclusion is also consistent with the extensive monitoring carried out by Stuart Marshall following 57 visits, lasting approximately 1 hour each, during April / May 2012 and in April 2013. It will be recalled that after his visits in 2012 he observed 113 people on the land of whom 100 were dog walkers using the paths (the remainder, he said, were riders, joggers or teenagers playing in the Woodland). Following his monitoring in 2013, he noted that all the walkers observed were seen to be on the established paths. Moreover, the volume of use of the paths is also consistent with the 2 applications for DMMOs in respect of 2 paths which were made by Dr Rirsch in relation to some of them in Fields 2 / 3 / 4 / 6 in September 2009.

276. The next question is to determine what conclusions should be drawn from the fact that use is concentrated upon the established paths, that is, use involving walking, with or without dogs (and occasionally for jogging and cycling as well), which, without more, can plainly be LSP.

277. I have, at paras 24-26, already addressed those cases (Trap Grounds at first instance and Laing Homes) where the court has considered the difficulties which arise where the predominant recreational user is that of paths such as would have appeared to a reasonable landowner to be referable to the exercise of existing, or the potential acquisition of new, public rights of way rather than rights sufficient to support a TVG registration. These cases recognise, as Mr Edwards correctly says, that the manner in which walking or dog walking occurs is critical. In the Trap Grounds case, at first instance, Lightman J held that the matter must be considered by reference to how a reasonable landowner would regard the use and that where the conclusion is ambiguous, resort should be had to the lesser right, ie a right of way.

278. The inescapable conclusion which I draw from the evidence is that any reasonable landowner would conclude that the vast majority of use and users were using worn tracks in a way which had the objective appearance of the exercise of rights of way as opposed to the use of the whole of the land for LSP. In effect, these tracks (including FP/1933, the use of which will not, in my view, count seeing as the public enjoy a right to use a public footpath for reasonable purposes provided they do not obstruct the way) can be combined to form a circuit or number of walking circuits across and / or around the margins of any one or more of the fields as opposed to the use of the entirety of the application land for LSP which is required by the law. If such use by walkers, with or without dogs (and I agree that occasional jogging and cycling would, for these purposes, fall into the same category as walking), is to be discounted then one should look and see what user is left to justify registration and the answer, in my view, is demonstrably not enough.

279. I accept that occasionally some use has taken place in the fields off the established paths but, in my view, it has not been of sufficient quality or frequency to justify registration. Clearly children walking in family groups will

stray off the paths as will users looking out for something interesting as, for instance, to pick blackberries or look at a plant or some other aspect of what is, I suspect , a teeming habitat as, of course, will dogs who may sometimes have to be retrieved by their owner. These are, as Mr Edwards rightly states, examples of use which is merely incidental to the use of an actual or public right of way and their occurrence would not (in the eyes of a reasonable landowner) operate to elevate such use of the path from its use as an actual or potential right of way to LSP over the whole of the application land. Such incidental activities should, in my view, also be discounted.

280. In Dyfed County Council v Secretary of State for Wales [1990] 59 P&CR 275 it was held by the Court of Appeal that the use of a path was capable of founding a case of deemed dedication of a highway even if it was associated with other incidental recreational activity. The position might be different if the path is being used for walking only and was unrelated to recreational activity taking place elsewhere. In this instance, it would, I think, be extremely difficult to claim that the use of the paths for walking was unrelated to the various incidental activities connected with its use. Within this class of use I would include things such as occasional sledging, camping, playing on the swings, wandering off the sides of the paths to picnic, sit down, watch the birds, pick blackberries, jogging and children's play which has, I accept, clearly occurred but mainly only in parts of Fields 2/4 and in respect of which, as Mr Edwards rightly says, there is a striking shortage of photographic evidence which I find surprising if the volume of activity taking place in these fields was as extensive as is claimed.

281 Mr Edwards helpfully mentions some of the evidence relating to so-called incidental activities. He cites, for instance, sledging in the southern portion of Field 4, children playing, again in the same area, the use of the swing in the south-east corner of Field 4, to (as I find) some very occasional camping in broadly the same location and some limited use for child's play in Field 2 and at the western edge of Field 4. As previously indicated, the use of the whole of Tunnel Field and Stable Block Field for LSP is negligible, if non-existent, although there are tracks running through and around the edges of these fields which is where users mainly walk in these fields.

282. I ought to mention that there is a question mark in relation to the suitability of Field 2 anyway for informal recreation before the land was cleared in 2004. It will be recalled that the 2000 aerial photo shows a great deal of undergrowth on the south and eastern sides of Field 2. I also accept Mr Brindley's evidence that when he first inspected the application land in 2003 it was plain to him that it had not been properly managed for some time. He said that Field 2 was heavily overgrown, saying that there were self-seeded Oak saplings as tall as he was and the impression he got was that no coppicing had been carried out for a long time.

283. In light of this evidence, I find that for a prolonged period ending in 2004, the whole of Field 2 was not regularly being used for informal recreation although I dare say that parts of it were available for short walks but insufficient to justify registration.

284. I should also mention that there is barely any evidence of LSP outside the established worn paths. For the most part, in the case of Fields 3-6, the land is uneven, the soil is heavy and there are a number of potholes. In a number of places there are thistles, brambles and tussocky grass which makes those parts of the fields away from the worn tracks less attractive to walk over although I cannot imagine that dogs have been hindered by this.

285. I am not suggesting that whilst Fields 3-6 have been in a state of set aside they could not be used as they clearly could. However, the land is not ideal walking ground since it has in the past been in a state of cultivation and is now barely managed and has simply been left open to the elements (albeit with a single cut in the late Summer at a time when the grass is long) and would represent a less attractive option to walk through than the worn paths running across and around the margins of all the fields which (as I have already found) is where virtually all the apparent footfall is concentrated. There are then other sound reasons why most users stick to the worn paths when using these fields for informal recreation.

286. In my view, the evidence of qualifying LSP over the application land as a whole is nowhere near sufficient in terms of its quality, frequency or spatial

extent to justify registration. I agree with Mr Edwards that the Applicant's case, at least under this head, is hopeless.

287. As Mr Edwards also rightly points out, there is a further fundamental objection to registration in the case of Fields 3-6 (minus Tunnel Field and Stable Block Field) and this concerns the agricultural activity which has, in the past, taken place on these fields, as is shown in the APP/C spread sheets and is also comprehensively dealt with in the evidence of David Marshall and Robin Hobson which was not seriously challenged and is also consistent with such aerial photos as are available.

288. Both these witnesses explained the likely sequence of events when it came to cultivation occurring in these fields during the qualifying period. It is plain from the evidence that the areas under cultivation would, for all practical purposes, be inaccessible for recreation for prolonged periods during the annual growing cycle. As Mr Hobson puts it at para 87 above: *'things were happening all the time – the land is unlikely to be left completely'*. It is, I think, also relevant that neither Mr Marshall nor Mr Hobson had heard any complaint about trespass on the cultivated land. In my view, if local people were recreating on the land in the numbers and with the frequency claimed then this is more than likely to have been an issue but it seems that it never was, at any rate, not during the qualifying period.

289. As has already been indicated in para 29 above, where reference is made to Betterment, it is plain that where local inhabitants are prevented from using the land for prolonged periods then the result will be that the applicant for registration will be unable to rely upon continuous user for the 20 year period. In Betterment enclosure for around 4 months was a sufficient disruption to stop time running. As Patten L.J put it at [71]:

' …there must be a physical ouster of the local inhabitants from the land and the disruption must be inconsistent with the continued use of the land as a village green.'

This may safely be said in relation to the cultivated land in the case of Fields 3-6 (minus Tunnel Field and Stable Block Field) between 1989-1992 and in

the case of Fields 3/5 (Barn Field) between 1996-98, from which it follows that there had not been 20 years user of the whole of the application land. I accept that there are gaps in each of these years in the case of all the fields when they would have been left as they were after the preceding harvest but I do not consider that this meant that the interruption had necessarily ended in these months as the land would still have been heavy underfoot in these months, particularly in light of the heavy clay subsoil.

290. The interruption issue only really arises if the Applicant can prove that qualifying LSP would actually have been feasible on the affected fields during the periods mentioned. Moreover, whilst I accept that during the periods when these fields were in the set aside scheme they would have been available for LSP, in practice they were not used to any great extent for these purposes for reasons already explained.

291. It is also clearly noteworthy that few of the Applicant's witnesses could recall arable use which, in light of the very strong evidence of its occurrence, seriously calls into question the reliability of their evidence as a whole. In my view, there was barely any use of these fields between planting and the harvesting of the arable crops and I reject as greatly exaggerated the evidence suggesting widespread use of these fields. There was minimal evidence of people walking or playing in the crops themselves and I scarcely imagine that they would have done anything other that respect and avoid the standing crops (including the cultivated grass) from, at the latest, the time when the crops began to grow visibly. However, having said that, even during the limited periods when the fields under cultivation were accessible for LSP it is my view that the frequency of such use would either have been minimal or insufficient in terms of volume and frequency to justify registration.

292 Mr Edwards is therefore right when he submits that the result of the arable use of Fields 3-6 (minus Tunnel Field and Stable Block Field) is that for material parts of the qualifying period these fields were not used and were incapable of use such that there would have been a significant period of interruption in each of the fields concerned.

Summary

293. My overall conclusion on the totality of the evidence presented at the inquiry is that the Applicant has failed to prove his case and that none of the application land qualifies for registration as a TVG under section 15(3) CA 2006.

294. It has not been shown that a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged in LSP as of right on the application land, or any part of it, for a period of at least 20 years ending in August 2009.

295. In particular, I have found:

(a) that the range, volume and quality of the oral evidence was insufficient to justify registration;

(b) that the claimed neighbourhood is not a qualifying neighbourhood in law;

(c) that user has not been 'as of right' in that:

(i) it has been non-peaceable in that fences were damaged and prohibitory notices were ignored on, and in the vicinity of, the western boundary of the application land in the early 1990s and in 2003/06; and

(ii) the use of Tunnel Field and Stable Block Field would have been by implied permission arising from the exclusionary use of these fields during the 1990s by bodies with the express consent of the landowner, namely the Gillingham family;

(d) that LSP predominantly took place on the established paths such as would have appeared to a reasonable landowner to be referable to the exercise of existing, or the potential acquisition of new, public rights of way with the result that such user did not qualify as LSP within the meaning of the CA 2006;

(e) that in relation to the cultivated land (i) in the case of Fields 3-6 (minus Tunnel Field and Stable Block Field) between 1989-1992 and (ii) in the case of Fields 3/5 (minus Tunnel Field) between 1996-98, the use of these fields in

these periods for arable cultivation would have been incompatible with the use of such land as a TVG and represents a significant period of interruption for each of these fields.

Recommendation

296. In light of the above discussion, I recommend that the application to register the application land (being application no.TVG 30/28) should be rejected.

297. Under reg.9(2) of the 2007 Regulations, the CRA must give written notice of its reasons for rejecting the application. I recommend that the reasons are stated to be *'the reasons set out in the inspector's report dated 3rd December 2013'*.

William Webster

12 College Place

Southampton

SO15 2FE

Inspector **3rd December 2013**

APPENDIX A

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The representation of features as lines is no evidence of a property boundary.

— claimed Land

■ Land owned by Mr + Mrs Tullet

Metres 20 40 60 80 100

Scale 1:2500

Supplied by: National Map Centre
Serial number: 53332709
Centre coordinates: 509523 1249170.75

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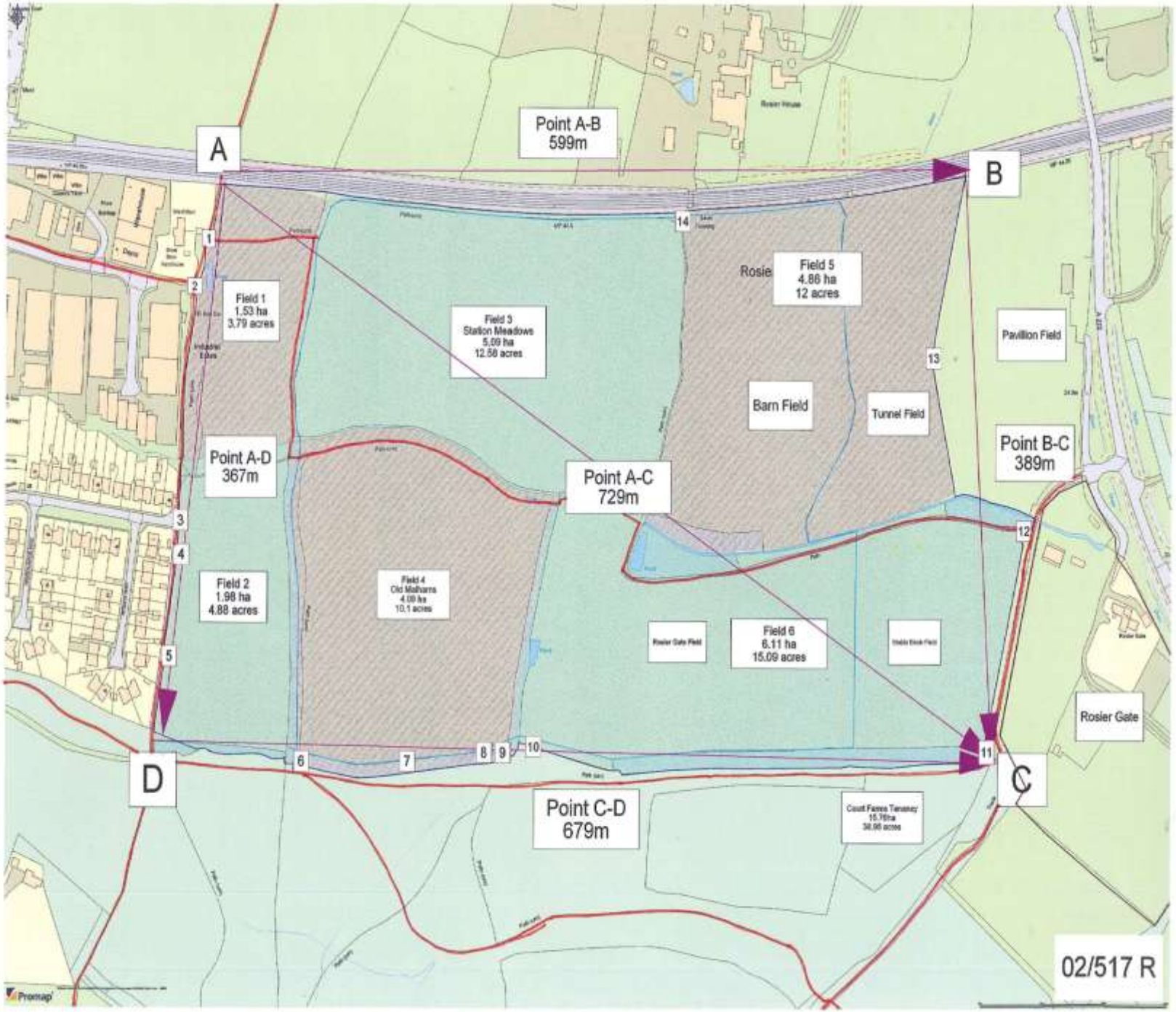
"MAPA"

THE CLAIMED LAND

Exhibit Marked "A" referred to in the statutory declaration of Andrew Ronan Tullett made this 19th December 2010 Before me [illegible]

10

APPENDIX B


A
B
C
D
Point A-B
599m
Point A-C
729m
Point A-D
367m
Point B-C
389m
Point C-D
679m
Field 1
1.53 ha
3.79 acres
Field 2
1.98 ha
4.88 acres
Field 3
Station Meadows
5.09 ha
12.58 acres
Field 4
Old Malthams
4.09 ha
10.1 acres
Field 5
4.86 ha
12 acres
Field 6
6.11 ha
15.09 acres
Rosie
Barn Field
Tunnel Field
Pavilion Field
Rosier Gate
Rosier Gate Field
1
2
3
4
5
6
7
8
9
10
11
12
13
14
02/517 R

APPENDIX C

BELLWAY HOMES LIMITED
LAND AT ROSIER WOOD, BILLINGHSHURST
YEARLY CROPS SCHEDULE FROM 1989 TO 2009

	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
FIELDS																					
STATION MEADOWS - I	Winter Wheat	Winter Barley	Winter Barley	Winter Barley	Set aside	Set aside	Set aside	Maize	Winter Wheat	Winter Wheat	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside
January																					
February																					
March	2xS, 2xF	2xS, 2xF	2xS, 2xF	2xS, 2xF					2xS, 2xF	2xS, 2xF											
April	2xS, 2xF	2xS, 2xF	2xS, 2xF	2xS, 2xF				P, HR	2xS, 2xF	2xS, 2xF											
May								CO													
June																					
July					SMT	SMT	SMT				SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT
August					SMT	SMT	SMT				SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT
September	CH, B&CS	CH, B&CS	CH, B &CS	CH, B &CS					CH, B&CS	CH, B&CS											
October	P, HR, D	P, D, HR						P, HR, PH, D, CR	P, HR, D												
November	CD, F								S												
December																					

OLD MALHAMS - Field	Winter Wheat	Grass Ley	Grass Ley	Winter Wheat	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside
January																					
February																					
March		R, CH	R, CH	2 x S																	
April		2 x F	2 x F	2 x F																	
May																					
June		M, FN&C																			
July			M, FN&C		SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT
August	CH, B&CS	M, FN&C		CH, B&CS	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT
September	3 x PH, 2 x HR		P, 2 x HR																		
October	SB		RH, D																		
November																					
December																					

BARN FIELD - Field 5 (I	Winter Wheat	Winter Barley	Winter Barley	Winter Barley	Set aside	Set aside	Set aside	Set aside	Winter Wheat	Winter Wheat	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside
January																					
February																					
March	2xS, 2xF	2xS, 2xF	2xS, 2xF	2xS, 2xF					2xS, 2xF	2xS, 2xF											
April	2xS, 2xF	2xS, 2xF	2xS, 2xF	2xS, 2xF					2xS, 2xF	2xS, 2xF											
May																					
June																					
July					SMT	SMT	SMT				SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT
August	CH, B&CS	CH, B&CS	CH, B&CS	CH, B&CS	SMT	SMT	SMT		CH, B&CS	CH, B&CS	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT
September	P, HR, D	P, D, 2xHR	P, D, 2xHR						P, HR, CD												
October	CD, F	RH, CD	RH, CD																		
November																					
December																					

ROSIER GATE FIELD - Field 6 (Part)	Spring Wheat	Grass Ley	Grass Ley	Winter Wheat	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside	Set aside
January																					
February	P, PH, CD																				
March	P, PH, CD	R, CH, 2xF	R, CH, 2xF	2xF, 2XS																	
April	2xF, 2XS		R, CH, 2xF	2xF, 2XS																	
May																					
June		M, FH&C	M, FH&C																		
July					SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT
August	CH, B&CS	M, FH&C	P, D, 2XHR	CH, B&CS	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT	SMT
September	3xPH, 2xHR		RH, CD																		
October																					
November																					
December																					

KEY

Cereal Cultivation

P - Plough
HR - Heavy Roll
D - Disc Harrow
CR - Cambridge Roll
PH - Power Harris
CD - Combined Drill
S - Spray
F - Fertiliser
CH - Combined Harvester
B&CS - Bale & Cart Straw
R - Roll
RH - Rotary Harrow

Grass Ley Cultivation

P - Plough
PH - Power Harrow
HR - Heavy Roll
SB - Seed Broadcast
M - Mow
RU - Row up
FH&C - Forage Harvester & Cart?
CH - Chain Harrow

Set Aside

SMT - Set Aside Management Topping