

Smithy Wood Village Green Report

REPORT OF INSPECTOR RICHARD GROUND

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ABBREVIATIONS

The following abbreviations will be used.

AB = Applicant's bundle.

OB = Objector's bundle.

TVG = Town or Village Green.

LSP = Lawful Sports and pastimes.

0 INTRODUCTION AND EXECUTIVE SUMMARY

- 0.1 This is a report into an application dated 14 November 2013¹ to register Smithy Wood as a town or village green (“TVG”) under section 15(1) and (2) of Commons Act 2006. I was instructed by Sheffield City Council to conduct the Inquiry and write a report with a recommendation on this application.
- 0.2 The precise land that was applied to be registered was set out in clarification map A². It is just less than 20ha of land immediately west of the M1 motorway close to junction 35. The Applicant, Cowley Residents Action Group (“CRAG”) recognised that the land that was Highway Land³ and the land crossed by electricity pylons could not be registered⁴. The Applicant relied upon the users coming from a neighbourhood within a locality of the Cowley Estate shown on Clarification Map B at tab 3 of their bundle.
- 0.3 For the reasons set out below I recommend that the Registration Authority refuse this application for a TVG on the basis that the use has not been by a significant number of inhabitants of the neighbourhood and is insufficient to pass the test for quality of user set out in *Redcar*⁵. I take the view the Cowley Estate is a neighbourhood within a locality within the meaning of section 15 Commons Act 2006.

¹ See Applicant’s Bundle [hereafter AB] tab 1

² Tab 3 of AB

³ Objector’s Bundle [hereafter “OB”] at page 118

⁴ OB132a

⁵ R (on the application of Lewis) v Redcar and Cleveland Borough Council [2010] 2 AC 70

1 THE INQUIRY

- 1.1 The Inquiry sat for 5 of days of evidence and submissions on 14, 15, 16, 17 and 23 April. I conducted accompanied site visits on 13 April and 23 April 2015 and viewed all the places that were requested to be viewed and more.
- 1.2 The Applicant CRAG were represented by Mr Greaves of Counsel. The Objector was the owner of the land Axis 1 Limited a wholly owned subsidiary of St Paul's Developments Plc. They were represented by Mr Carter of Counsel.
- 1.3 At the outset I express my gratitude formally to both of the parties and their barristers for the way that they conducted the Inquiry. The submissions were helpful and to the point and concise correct concessions were quickly given. The parties cooperated very well and the witnesses were helpful to the Inquiry.
- 1.4 I also express my gratitude to the Licensing team of Sheffield City Council in particular Claire Bower who made all the arrangement for the Inquiry and liaised with the parties.
- 1.5 I apologise about the errors in spelling of some people's names. I did not want to slow down the Inquiry by stopping everyone to spell every name that they gave in evidence. I have done my best but apologise for any errors. I do not mean to be disrespectful.

2 APPLICANT'S EVIDENCE.

PAUL BRACKENBURY

Examination in chief

- 2.1 He produced a witness statement at pages 1-3 of the Applicant's bundle which he confirmed to be correct.
- 2.2 His son was born in 1989. His daughter in 1991.
- 2.3 He said his use started in about 1993/4. There were fences around the edge of the motorway but on the north side of Application Site there was a fence but no gates only the posts. At the lower end i.e. the southern side of Application Site the youths used the site probably in period when his son was about 10-15 i.e. 1999-2004.
- 2.4 The over bridge was demolished in 2006 there were no signs on there saying don't use until the demolition. He did not recall vehicles using this over bridge after 1977 but he was not there during the week.
- 2.5 The route he went in was through Chapeltown Park and then through Hesley Wood. In 1996 his kids used the site. He had sole charge on Saturday of his kids because his wife worked. He said he would visit 2 or 3 times per month in summer time. The kids were at local schools. The kids had quite a lot of friends on the estate.
- 2.6 "My boy started using Smithy Wood by himself from when he was about 11 [2000]." His daughter went by herself at a similar age from 2002. He said he would discover from sitting around the dinner table and having discussions.
- 2.7 Another family on the estate had children in the same school years, the O'Neills. His daughter also had a Glenwood Crescent friend.

- 2.8 His daughter went to Rotherham College in around 2007/8 and stopped using Smithy Wood then. His daughter is now back at home studying for a masters and his son comes back to visit with his grandchildren.
- 2.9 He could remember going in for a school project on local history with each of his children. This would have been in around 1997 and then 1999. They looked at the Bell Pits on the site as part of local history. His grandchildren were too young in the 1993-2013 period.
- 2.10 He was never prevented from using site 1993-2013.
- 2.11 He did remember the open cast mining and the reclamation. He remembered the bridge being demolished and there was a crowd of 200 from the estate who went one evening about 10 pm. The demolition never stopped him getting into the woodland.
- 2.12 He said he could not remember the fire in 1995: "I was working in Doncaster and did not use often enough to see fire. Furthest south was the fire and a little bit by the Pylons where it was less grown."
- 2.13 He said he would occasionally bump into people from the estate. Some he knew were from the estate that he saw were Mick Harrison and Jean Williams with her dog. He said he had seen kids with push bikes. There were certainly remains of tree houses which were on the Cowley Hill side near the northern part of the woodland.
- 2.14 The motorised vehicles he heard more than saw. The motorised vehicles had become more of a problem in the last couple of years.
- 2.15 In January 2013 Recycoal were granted planning permission and they took the trees down in around February/March 2013. He had not personally seen consultants in the wood but saw what appeared to be unusual cars parked on Cowley Hill.

Cross examination Paul Brackenbury.

2.16 He was deputy chair of CRAG.

Neighbourhood.

2.17 He was involved in the drawing of the boundaries.

2.18 He did not accept that the boundaries of the planning application drove the village green application site.

2.19 Originally they drew the locality as the area where the questionnaires came from. As the process went on they concentrated on Cowley Estate.

2.20 He disagreed entirely that the Cowley Estate was not cohesive. In terms of his questionnaire the neighbourhood watch was entirely in the green neighbourhood area. The catchment of schools was larger than the estate. None of the others facilities were just for the estate.

2.21 There were paths that people walked on some of which are shown on the OS map page 132 of OB.

2.22 The page OB155 map was not available to all.

2.23 When he and his family were on pushbikes he said they went where they liked and sometimes got off the bikes. They did not go through bushes. He said there had always been motor-cross bikes but it was only in the last few years where there had been quad bikes and large 4x4s.

2.24 He agreed that there was open cast mining and backfilling remediation work between 1991 and 1995 as said at page 81 of OB by Mr Newton. This was substantial works as shown on the photo at OB 93.

2.25 For parts of this period the over bridge and underpass were not available. This provided the youths with the impetus to find a way in.

- 2.26 This he said did not stop him getting access to the woodland.
- 2.27 In 1995/6 [OB 96] he would have got in in the far corner i.e. north east near the motorway. The tracks in the Smithy Wood do not show up on the aerial because it is dense greenery.
- 2.28 He was taken to the report on the fire [OB142/143] but did not remember the fire. He did not go to the southern part of Smithy Wood at that time. If he went to the wood at that time he would have stayed in the northern corner as his children were 4 and 6 in 1995. He thought the photos of the 1996 February fire at OB145 were in the south part of the site.
- 2.29 In 2006-2008 the only access was further up Cowley Hill there was not access using the over bridge and underpass.
- 2.30 He accepted that Chapelton Park was a used facility but there had been damage. There used to be a bandstand and football which stopped 9 years ago.
- 2.31 He accepted that there was a lot of greenspace around Sheffield and around the Application Site that can be used.
- 2.32 His son moved away in 2009 when his son had a daughter. His daughter went to university in Huddersfield and came back in May 2013. He has not taken his granddaughter because she has special needs and he had not taken her there during the relevant period.
- 2.33 There were remnants of fencing in various states of disrepair. There are still some parts there which are in disrepair.
- 2.34 His bike rides with his children started in about 1995. In 1993/4 he would go walking. The last time the three of them were on bikes was 2009.

- 2.35 The cycle trips, he said, were 2 or 3 times per month every month. Winter time did not stop him.
- 2.36 The unaccompanied trips started when children were 11. They used it a lot.
- 2.37 He said he was an engineering lecturer in Doncaster. Company director in Doncaster. 5 years ago his wife was diagnosed with cancer.
- 2.38 The other family he mentioned who used it were Thomas Roy. His kids were not involved in the tree houses.
- 2.39 He saw vehicles in the layby which were not car share so he thought this was to do with surveys of the site. During this period (2013) for the reasons above he did not use the site a lot. His wife was having chemotherapy and his son was not there and had just had child.

Inspector questions.

- 2.40 For early trips before 1996 he would take the car to Smithy Wood and stay in the northern part.
- 2.41 For early bike trips around 1996 he would take them on a bike rack. There were other places he would go as well with his two children.
- 2.42 He said his trips in 1991-2 were much less often. He said that 1991-5 was less frequent 1995 to about 2000 was more frequent accompanied trips. From about 2000 his kids went alone.

Re-examination.

- 2.43 Plan on page 155 indicates paths at a snapshot in time. They are not public rights of way. Some paths well trodden and others are not.
- 2.44 The only official path crosses the motorway south of Application Site.

- 2.45 Looking at page 132 the paths were well defined to the pylon that was 2-3 ft wide. There were more paths than on 132 but not as many as 155 when he started using the site.

GEOFF DRIVER 1.50 PM 14 APRIL 2014

Examination in chief

- 2.46 Read statement which appears in the Application Bundle at page 13 ff. That said that he had lived at 32 Cowley Drive since 1969 so for the full extent of the 20 year period. It detailed his use of the site.
- 2.47 He said he often saw others in woods. Dog walkers in particular. Lots of people. Some from Thorpe. Lots from around there. People from Chapelton and people from the estate. He said he remembered seeing Pete Darrington and his neighbour Mick Harrison. He also walked with his brother who is in Thorpe Hesley.
- 2.48 He said he lives alone. He said he got divorced in 1987 and has lived alone since then. He said he did a lot of walking. Walking is his hobby. He wanted to be alone and think about what might have been. He said he can be anti-social.
- 2.49 When walking alone he would think or look at things. He said you can see a multitude of animals. Walking off path at SW he watched grass snakes courting. Then saw women talking about Eastenders. He walked on paths and said. now we have tracks created by 4x4s. These tracks were created about 3 years ago. Motorcycles use the same as routes as the footpath.
- 2.50 He said if he had seen a nest and tree that had come down he would be keen to see what was in the nest. He said he would look for that. Sometimes a tree in high wind could crack open. There has been nightjars, tits, buzzards and birds of prey. There are he said a variety of

owls. He thought he had seen every owl but not the barn owl. He said he used to examine and look for the pellets.

2.51 He said that it was mostly on south end of the wood where there were birds that he looked at. In the north were the magpies and the common birds but that did not interest him so much. There was a cottage on north west side of Smithy Wood which he thought was demolished in the 1950s. There were raspberries and blackberries in garden of that cottage. Not raspberries in application period but there have been blackberries in that period. In last 20 years he said that he had a lady who made a pie for him after he picked the blackberries.

2.52 He said he would see fungi particularly Bracket Fungi. It grows on beech and silver birch. Mushrooms don't grow in woodland.

2.53 The Application Bundle page 19 which referred to gathering fungi. He explained that he would gather it to put in better light. [box 23] .

2.54 When the bridge had gone he said he got into the Smithy Wood by going across Cowley Hill and up steep banking on south side of the road. It was only later that the fence went up where the bridge used to be on the north side. He said he went in on north west side of Smithy Wood. Sometimes he would walk up new Cowley Hill anywhere along the banking he could gain access. When the new Cowley Hill was built there was a fence along the top. New Cowley Hill was built in late 60s when M1 was built. Along any new section of road he thought they built a fence.

Fire

2.55 The 1995 fire in middle third just west of where it says Smithy Wood on the plan OB132. Now where the silver birch is. He said used it 2 or 3 times per week. If he saw something worth looking at he said he would go back there the next day. The fire lasted 4-5 days. Every time

the wind got up, the fire came up again. The fire brigade doused it down. It was mainly on that fringe. It trespassed about 100m from the west side. It did not stop him going to the wood.

2.56 He said he did not remember the second fire. There were some poles soaked in creosote which would have burnt but he did not remember the second fire. He was using Smithy Wood in 1996. He walked up Cowley Hill three times per week to visit his mother. If it had been on fire he said he would have noticed.

2.57 He said you could look down at the opencast mining from Smithy Wood. At weekends he said you could go into the open cast mine.

2.58 OB 94 [aerial dated by John Newton in oral 1990-1]. He said he remembered the vast hole where they were doing open cast mining. He said he stood overlooking that. He said he would go over the bridge and along the path on the western side of the wood and go to the south part of the wood to look at the open cast mine.

2.59 He did mention 4x4s. There were motor cycles and latterly 4x4s. He had not seen a half track. The 4x4s go in on north east side and south west side. About 6 months ago they tried to block them off. He said it would put him off using the site as he cannot negotiate with 4x4 drivers. They have been using Smithy Wood for 3-4 years.

Other people.

2.60 He was asked about whether he saw consultants on the site. On one occasion he said he saw a derrick [bit of machinery] at Smithy Wood. He said he did not go and make enquiries. They saw him he thought. The people had helmets on.

2.61 He said he would frequently see people particularly dog walkers, whose dogs will not behave go there. If you take your dog there it is under cover.

- 2.62 He said nearly every time he would see someone. He said you could be walking in summer time 20 or 30ft away from someone and not see them there. He said he had often talked to people there who said they had been at Smithy Wood around 11 when he was also there and yet they did not see each other. Youths were smoking and doing other things. They were probably doing some kind of damage. They were building dens and tree houses. They would shoot air guns in woods. He said he recalls dens and tree houses.
- 2.63 He has lived at his house 32 Cowley Drive for 46 years. He said he went into the house from new but it was one of the last to be built.
- 2.64 He said it is a desirable estate because of the size of houses and close proximity to facilities. He said he is a bit anti-social. If he saw people walking close to him he did not want to talk to them.
- 2.65 He said the area on 132 edged red is referred to as Cowley Estate.

Cross examination

- 2.66 The Application Bundle questionnaire box 18 which refers to taking children walking. He said this was not before 1993 and it was not his children but neighbours children. He did not mention in examination in chief because he was not asked.
- 2.67 He said he is an attending member of CRAG.
- 2.68 He used the route in the gap where over bridge used to be in 2006 until about two years ago.
- 2.69 He said he did not walk in Smithy Wood necessarily 2-3 times week but his use depends on weather and patterns. If there is something worth looking at he would go more often. If a bird had laid an egg he may go for 5 days in a row.

2.70 He said he was not in employment now or in 1993 and that he was 75.

2.71 He said off road motorbikes have been using Smithy Wood for 10 years or so.

Neighbourhood.

2.72 He said from box 6 [on page 17 tab 5 AB] of the questionnaire that where he said there was a doctor's surgery or scout hut that is a misunderstanding on his part.

2.73 He said he does go off the paths because he does not like to get involved in trivial conversation. Other people were on the paths and some don't like to get clothes snagged. He said when he went off paths he did not see other people.

2.74 He said he agreed with the dates of open casting remediation set out by Mr Newton at OB 81.

2.75 Tab 2.3 142/143 OB. He was put the OB142 letter dated Friday 13 October 1995 dealing with the 1995 fire.

2.76 It was suggested that he was mistaken as to where the fire was. His answer was that where the red ash was is not a good indication of where the fire was. He said he did not think this memo was necessarily correct. He said that where the memo says virtually untouched by fire is wrong. Areas of badly burnt trees that is too low on the plan.

2.77 He thought the fire was below ground.

2.78 Mr Darrington lives at 39 Hesley Grove.

Inspector's Questions.

2.79 He said he knows the surnames of about 5 neighbours. He saw a few people on Smithy Wood but cannot name them. Quite a few also from Thorpe Hesley and from rest of Chapelton.

2.80 He said that between 1993 to 2005 paths created by feet. Some were well worn. Majority of people don't want clothing snagged. They don't want to walk on rough ground.

2.81 Paths stayed in more or less the same places 1993-2005.

2.82 Motorcycles followed the footpaths 4x4 changed the routes and they went anywhere.

Re-examination

2.83 A fence was put back about 2 years ago on Hesley wood side on the SW side.

2.84 Could always go into Smithy Wood since 2006 I would go from Cowley Way. You can see evidence of trees and where it burnt down the trees.

2.85 It burnt the trees down.

My question

2.86 There was no one else from the estate who went everywhere like him he said he was a one off.

MICHAEL HARRISON

Examination in chief

2.87 He said he classed Ecclesfield Thorpe Hesley, as the neighbourhood.

2.88 At AB58a and 58b he put in the photos of the over bridge. He said they were taken around 2006 before it came down.

2.89 At that time he said there were single track footpaths going through the wood. It is now hard to remember what it looked like. On Cowley Hill it is different from what it used to be.

- 2.90 He said he was not aware of everything his youngest son did when he was a young lad.
- 2.91 By 1993 he said his son would still use a bike in the wood. At about 1994. The date of birth of his youngest son was 1978. He stopped going on his bike when he was 16 [i.e. around 1994]. All the houses all had young families and all went into the woods.
- 2.92 Richard Driver, Mark Downing, and Russell McKenza were contemporaries of my son. More than that, he said, he cannot remember. He also remembered Paul Denton. My son went to Smithy Wood to get away from parents. It was an adventure playground. During school holidays he went every day. They could go over the road bridge. They could go under the underpass with no danger.
- 2.93 When his son was older he had mountain bikes but he was regularly using when he was about 13, 14 and 15. He stopped when he about 17. This covers the period of about 1993-1995. He still goes in with their kids who live outside the estate.
- 2.94 He then checked more accurately with his wife the dates of birth of his children and confirmed they were born in 1971, 1972 and 1977.
- 2.95 He said he got a dog in 1990 and liked Smithy Wood as the dog was anti-social and it was quiet so he could let him off the lead. It was near and Hesley Wood was for the scouts.
- 2.96 There were blackberries on the edge of the wood “as you came over the over bridge on the western side out of the Application Site” which he pointed out on the plan. This was only in autumn time. He said his wife made blackberry jam and blackberry pie. He got the sloe berries from the entrance on Cowley Hill. The last two years have been different.

Fire

- 2.97 The fire affected the bottom part of Smithy Wood. He said he went when the fire brigade was there. Fire was about a third of the way down on the western side going about 100m into the wood. The notice said the woodland there was dangerous. There is no notice there now.
- 2.98 That was the area where the fire was. If one went along the old road bridge there was a footpath. That was the same footpath where the berries were. He said he accessed Smithy Wood from north west corner.
- 2.99 On Smithy Wood there were tiny single file footpaths. As you got nearer to the main entrance the motorbikes had made lots of routes in. There were lots of footpaths. Motorbikes were in the north and north east.
- 2.100 In the period 1993-2000 he said he occasionally saw a motorbike. The motorbikes were mainly where the pylons were. The presence of motorbikes was only occasional and so did not interfere. More recently, in the last few years, you can get 10 or more motorcycles so you could not walk there on Sunday afternoons. You can get verbally abused by riders. He also said that you can see motorbikes there in the week especially in school holidays.
- 2.101 The 1995 fire was the only one he could recall. People told him about that also and he said he had heard about it today.
- 2.102 He said he would sometimes go in at top end of the site [i.e. North of Smithy Wood] and do a circuit. That was both when he had a dog and when he did not have a dog. He would do different routes. He said it was a lovely peaceful wood. It is really only in the weekend when you have the off roaders.

- 2.103 Of Photo 5 [The Application Bundle, page 59] he said was taken around 2008 and 2009. His grandson is now 13 so he was about 6 or 7 then. Photo 8 was taken in northern section, it is of his wife and her granddaughter. Photo 10 is of the old stump in the middle of the wood.
- 2.104 Photo 5 is the first photo where motorbikes had been. On right side of the photograph on the path.
- 2.105 Photo 3 [58(b)] is taken when he had just come across the over bridge. He walked a few yards and took the photo of some construction vehicles. It is looking west after he went over the bridge. He said you could always use path on western side of the Application Site. You could look into the wood where the fire had been.
- 2.106 He said that he used the place to enter the wood where the bridge used to go in.
- 2.107 He said he also went along the old railway line and then under Cowley Hill. He said it was possible to go in at numerous places along the banking on the north western side of Smithy Wood. He said he would go up the steep banking and sometimes he would go in near the Travellers Inn.
- 2.108 When he saw the archaeologist he was in the northern end near the informal parking. He was digging in one of the bell pits. He said he has seen other people there who were university people doing a wildlife survey. They were doing a survey on bats. That was prior to 2013. He said he had seen quite a few but they were evasive they were walking around with notepads. The man, he said, told him he was doing an archaeological study but would not tell him who he was

working for. It was probably autumn when he saw the archaeologist. He was using a mini digger that you can sit on.

2.109 He said that generally you would not see someone every time you went into Smithy Wood. You could always avoid them. I would normally have a chat with one or two of them. They would come from Thorpe Hesley and Ecclesfield as well. Every third time you would see someone you knew. He went in every day and 3 or 4 times a week may see someone from the estate.

2.110 He was going up there twice a day in period 1993-2001. He went twice a day to Smithy Wood.

2.111 After that he went 3 times a week.

2.112 He said he retired in 2011 and before that he worked part time 3 days a week. He worked part time 1999-2011. When he was working he said he did not always go out.

2.113 He said his wife would not go into Smithy Wood now with the 4x4s. The north east section is trashed. Down by the pylons is trashed. He said the 4X4s started in about 2012. He said that from 2012 he would still go once or twice per week, but not on Sundays.

CROSS EXAMINATION HARRISON

2.114 He said when he wrote his witness statement at page 48ff of tab 5 of AB he had his wife with him so that the dates were better. He said that virtually every time he went for walk he went to Smithy Wood. Sometimes not on Sunday.

- 2.115 He said that although Hesley wood was nearer he did not go there because it was the tip. He said his walk was part of a route. He would either end or start in Smithy Wood. He would go either clockwise or anti clockwise. He did not cross a main road.
- 2.116 He said he would go into the wood at night. He chose to walk in Smithy Wood in the dark.
- 2.117 He said his son visited the wood in 1993 when he was 15 and stopped about 16. He told me where he was going.
- 2.118 He told me where he was going he had his 3 friends with him. He said he had to believe what he told him. He went to Chapeltown Park. He was not restricted.

Fire

- 2.119 OB 142/143. He said he knew exactly where the fire was. You can still see the silver birches after you go in about 100 yards into Smithy Wood.
- 2.120 He said he spoke to his wife about her recollections of the fire. His wife remembered a fire as they came up the motorway slip road and saw the fire.
- 2.121 144a. 1996 fire. He said he remembered a fire that was near the motorway but could not remember when that was.
- 2.122 In 1995 when the fire was going on he avoided the area where the silver birch was. There was concrete post with notice saying “dangerous”.
- 2.123 When he heard fire engines he walked on Smithy Wood. The fire engines parked on Cowley Hill. They said they had the fire under control but it reignited. He thought they returned once.

- 2.124 He said it took months before it was back to normal. While it was all bare in the bottom bit he skirted around it either above or below.
- 2.125 He said he did not remember the fire in the middle of the wood.
- 2.126 He thought the reason may be that it was probably not as serious as people were saying.

Overbridge

- 2.127 Overbridge. **AB 58a His photo.** He didn't agree with dates and didn't know who had put the dates on. It was not 31 December.
- 2.128 Photo 3 58b AB. Taken from what is not Cowley Way. Woodland is the woodland south of Cowley Estate. The hut is where unit 2 is now.
- 2.129 OB 98. He said he went up that steep bank shown in the photo to get in Smithy Wood but that if that was difficult he would have accessed a bit higher up nearer the motorway. He would have accessed Smithy Wood along Cowley Hill. When work was taking place on the junction this was difficult.

4x4s

- 2.130 Primarily over the last two years, 4x4s had stopped him using it on a Sunday.
- 2.131 He said the 4x4s deter his wife from using Smithy Wood. He said they walk down the Trans Pennine Trail occasionally and go into Smithy Wood half way down.
- 2.132 He was not saying objectors have allowed the 4x4 use deliberately. His wife's reluctance to use Smithy Wood has been for the last two years.

Surveys

- 2.133 He said he saw excavator in the north area around bell pit.

2.134 A grid of uses (Ob 140c) was put to him where the entries for 18 January 2013 showed that no-one was seen and 10 April 2013 entry recorded 10 days of surveys and only 6 dog walkers seen. He said this does not surprise me that no-one was seen. You can speak to people who were at the wood at the same time but not see them.

2.135 He said he does bump into people.

Inspector's Questions.

2.136 He said his route varied. Sometimes he would walk along the railway line. Sometimes over the bridge and sometimes in along the edge of the wood.

2.137 He said that during his dog walking period 1990 -2001 there were single file paths not wide paths. He said that invariably he followed those paths.

2.138 Some people were with dogs and some without dogs. Others invariably followed the paths.

2.139 He said it was such a peaceful place.

2.140 He probably still uses it twice a week.

Re-examination.

2.141 He said he could remember the concrete blocks and the aerial ropeway but he could not recollect any fire in that area. He said he walked past that area.

2.142 During 1996 he was walking throughout the woodland he said he walked through constantly.

2.143 He said photos 1-4 [AB tab 5 58a] were taken at the same time.

- 2.144 98OB is taken below woodland there was banking at 45 degrees going into woodland. He said there was always banking.
- 2.145 Photo 1 – there were never any works east of overbridge to stop one from going into the woodland.
- 2.146 In 2013he said he would be in Smithy Wood half an hour typically but could be in for longer.
- 2.147 Between 1991-2000 there were a number of paths.
- 2.148 OB 155 the tracks in 1991-2000 completely different than on that plan which dated from 2014. There were not quite as many as on that plan.
- 2.149 He said that the vehicles are creating more paths and the paths are wider. In 1991-2001 there were 10 or 12 footpaths. Some were just made by one or two people. The ones he walked on were those.

DR CHRIS PERRING.

- 2.150 Dr Christina Perring, 212 Cowley Lane.
- 2.151 She lives outside the Cowley Estate. North West of the Cowley Lane.
- 2.152 Read witness statement page 71ff.
- 2.153 74a. 1990-1995 monthly walks before she moved in. New to Sheffield.
- 2.154 She said she knew nothing about either fire until very recently. In April 1996 she moved into her house on Cowley Lane. She then used Smithy Wood in summer evenings.
- 2.155 From 2004 onwards she used Smithy Wood 2-3 times a week. She was off sick in 2002 and also going in during that period.

Cowley Estate.

- 2.156 She explained that that is how she knows Cowley Estate. She said the Estate had clear boundaries. It had access to the whole estate down Woodburn Drive. There was the spoil heap at the back.
- 2.157 When moved in she could remember that there was still work going on in April 1996 along Nether Lane.
- 2.158 Page 96. While working from 1996 she would go to Smithy Wood once or twice a week.
- 2.159 In 2006 and 2008 she said she could go down Nether Lane and go into Smithy Wood in the south. She said she could do that even when there were works going on at the business park.
- 2.160 There was a stile into the wood. The stile was in a rough part of ground. The stile is 20 metres further south and is still there.
- 2.161 Before Cowley Way was put in she said she would walk through various paths through the woodland west of Smithy Wood and then up the bank to main part of Smithy Wood. There were tracks of others walking. It was scrubby sort of land.
- 2.162 Plate 5 tab 2 AB. Track/bridle path along the western side of Smithy Wood. She said she did not recall whether that path was there one way or the other. She said she could go straight in by Cowley Hill either accessing from Travellers Inn or not.

What She observed.

- 2.163 She said at the south end kids making dens and with bikes post 2004. That was during the day in school holidays.

- 2.164 She said she would meet other people and people walking dogs. She met someone charting butterflies. She saw other lads rabbiting with birds of prey.
- 2.165 She said that they got to know those walking dogs and in particular knew the dogs but she was not able to say where people were from. Sometimes there would be no one there.
- 2.166 She said they have walked neighbour's dogs and family and friends have dogs.
- 2.167 The rope swings in southern edge under big Beeches. She did not recognise that as being a clearing.
- 2.168 She said that she picked blackberries on southern edge and the bit that is near the bridleway⁶.
- 2.169 She said she did not see others picking blackberries.
- 2.170 In 1996 she said it was quite easy to get around there were single file tracks. They were covered with leaf mould and now they are wider.
- 2.171 She said that she would say that they could take a dozen or more routes through the wood.
- 2.172 There were some definite entrances. Within the woods not directed in any particular direction. She said she favoured the southern end of the wood.
- 2.173 There were concrete blocks on Cowley Hill. She thought the concrete blocks could be more than 5 years ago but she was reluctant to guess. She said she still used that entrance from time to time.

⁶ Both of these she pointed to areas outside of the Application Site

4x4s

- 2.174 She had been aware of 4x4s for 2 years. The tracks were wider now and very muddy, they sometimes filled with water which meant you sometimes have to go well off the path. About a third of woodland has these tracks. Beyond that there were occasional young people on motorbikes who were respectful until 2008. Thereafter more and more aggressive motorcyclists.
- 2.175 Every time at weekends she said she encountered them. It was quieter in terms of motorbikes on weekdays during term time.
- 2.176 Post 2008 there was an increase in motorbikes. Transit vans would unload motorbikes. Police thought they should not do that. She would say there had been many more 4x4s within last 3 years.
- 2.177 She said they would avoid areas at certain times at weekends and avoid the Cowley Hill entrance. They would walk in the middle of the day and that had not changed. She said that recently she was still using it twice a week.

Consultants

- 2.178 She said she saw an official on bridle path earlier when units 2 and 4 were there. She saw electricians people cutting down under the pylons and apart from that she did not remember any official.

CROSS EXAMINATION DR PERRING

- 2.179 There was motorbike usage when she first bought her house in 1996.

CAROL ECCLES.

- 2.180 Her address was 46 Glenwood Crescent and she has lived there since 1967.
- 2.181 One relative did live on Woodburn Drive which was her third son Jamie Eccles. He lived there for 3 years 1997-2000 they had one little girl.
- 2.182 She said her grandchild Daniel wanted a military career from when he was 14. Ryan and Chelsea also went to Smithy Wood. That was from 1998 onwards. He did not then live on the estate.
- 2.183 She said she occasionally met children on Smithy Wood. She said she cannot remember the names of any of the children. She said she had seen them around the estate. Half the time she said no-one was there. Sometimes children were not from the estate. Quite a lot of children not from the estate. Most of the time from the Estate. Around about the centre beech trees in the woods is where she remembered this happening. It is quite clear that stunted beech trees in the middle of the wood. She did not remember any rope swings. That was the area she saw children and in the south area.
- 2.184 She retired 11 years ago in 2004. She said she went to Smithy Wood about 3 times a week since retiring. Every once a week in the winter. Normally with a dog. When going in recent years she would usually go in along bridleway path.
- 2.185 Before trees were cut down she went via Hesley Wood and then in past the Travellers Inn and Smithy Wood Road. Also she did use the over bridge route before it came down in December 2006. She said you could see Sheffield from top of the tip.

2.186 The underbridge was a bit of an assault course. She said her most regular route was from the tip. There were roadways on the tip. It was negotiable. Hers was an assault course because there were trees at the back of her garden. It was 2013 that trees in Hesley Wood were cut down. Now she said she goes along Trans Pennine Trail.

Use by grandchildren

2.187 She said she would accompany her grandchildren. She did not go when Daniel was doing his training.

1993 what it looked like

2.188 She said Smithy Wood was green and pleasant with undergrowth trails single tracks not footpaths.

2.189 She said there were about a dozen footpaths and she would use mainly the southern end ones.

2.190 It has been ruined by 4x4s the pre-existing paths have been ruined. The 4x4s started in 2013. There were motorcycles before then.

2.191 Whenever she went in summer, even further back, there was the odd motorcycle but they did not cause her concern. The motor cyclists were now fitted out with full gear. That change has been in the past 6-7 years. It has made it more unpleasant to go to Smithy Wood.

2.192 She said she could only remember the remains of the fire. She remembered the trees on the western edge in an arc in northern section seeing charred trees but not the fire going on. She would not like to say exactly when she saw it. She also saw brush fire beside the motorway close to slip road beside the motorway but cannot say when and how long it lasted. It was while she was still working.

2.193 She said she had never seen anyone working there at Smithy Wood.

2.194 Her visits were more frequent when working in summer went at lunchtime but only once a week in winter.

Cross examination Carole Eccles

2.195 She explained that when filling in question 6 of her questionnaire she thought that it meant the Chapeltown area and that was why she said there were all the facilities mentioned on her form.

2.196 She said she made her way through the woods by following the trails. She said she used mostly the western ones. She said she used the Trans Pennine Trail now and before the trees were cut down on Hesley Wood she would use the top access.

2.197 She said she used to go in further down and would enter along the bottom. Now she goes down Trans Pennine Trail and goes up the bridleway and up the bank.

2.198 [JDN 5 OB 96]. 1995 this was after open cast. She then went over the over bridge to get into Smithy Wood. She said she would go up near the motorway junction and in there where the 4x4s have now made a mess.

2.199 She said she steered clear of the area where the fire was because her sons had told her not to go in there. She said she thought that the over bridge was removed in about 2006. When that work was going on she said she would go in by the informal parking.

2.200 In 1993 she said her eldest grandchildren were using Smithy Wood. Daniel stopped in 2001. Since then she said the others Laura and Alexander have used it.

2.201 Daniel and Chelsea did not live on the estate.

2.202 Alexander did not live on the estate either when he was using it.

2.203 She did not remember the other fire in 1996.

Consultants visits.

2.204 140c. She said that she had never seen anyone doing this kind of work on the site.

JEAN WILLIAMS.

2.205 She lived at 11a Hesley Grove. She read her statement at AB p83ff. She moved there in 1983.

2.206 She moved into the estate when her house was new in 1972. Then she moved in 1983. I knew lots of people who lived there. There is one road on and one road off. It is a separate community. Chapeltown Park separates Chapeltown from the Estate.

2.207 From 1993 she always thought the children could roam like she did. She said that they always told her where they were going. Stuart Padgat of Woodburn Drive, Chris and Phil Armitage of Cowley Drive. And Tom Vere of Glenwood Crescent also went. Danny and Luke Appleyard on Glenwood Crescent also went. They all went around together. She said she always asked them where they were going so that she knew where they were if she had to look for them. She said she never had cause to look for them though. She did not like them going to Chapeltown Park unless they were kicking a ball. Sometimes they would go to Hesley Wood. More often than not Smithy Wood. That was the limit. They were making dens playing hide and seek and riding bikes. She said her youngest son was into racing his mountain bike, they would go into Bell pits. She said that continued between 1993-2005. He needed to get his practice for racing. The Bell Pits were good practice. They made a jump at the top. The Armitage and Appleyard brothers were into mountain bike racing.

- 2.208 When they were younger when 5 and 7 she went in with them but she said that they would not have thanked her later if she went in with them.
- 2.209 In earlier period she said Smithy Wood was magical especially where the stunted trees were. She said they would picnic there. There were several paths. The main paths were a little wider. There were little paths. She said she liked to look where they were going. The main one is down the middle from Smithy Wood. She liked to meander through and roam around. After 1993 she did not have reason to go there.
- 2.210 In 2003 she said it was lovely, particularly in spring. It was grassy. There were some brambles.
- 2.211 When she got her dog she would go in either opposite Smithy Wood Road or along the over bridge. Sometimes she would go in along the disused railway. She said she would vary between them either along the disused railway or on over bridge.
- 2.212 She said the photo at OB 100 was during construction east of new Cowley Way.
- 2.213 When construction work going on she said it was a bit of a mess. She said she either went in near where over bridge was or by using the main access opposite Smithy Wood Road.
- 2.214 From 2003 onwards she would sometimes see next door neighbours Mr and Mrs Bedford in Smithy Wood. They usually had their dog or were in Smithy Wood with their grandchildren.
- 2.215 She said she would see people 2-3 times a week. She would be going up most days. She recognised some. She knew a lot of children from the estate.

- 2.216 OB 119 was put to her and she said she does not know Mr Powell. She did not agree that Smithy Wood was a dangerous place the 4x4 use has only been in the last 2 or 3 years. In Chapeltown Park she said there were lots of “funny” men. Never heard it mentioned that Smithy Wood is a dangerous place. The 4x4s do not make it a dangerous place she said she gives them a nasty look but they had never been rude to her.
- 2.217 It is mainly at the weekend, usually Saturday and Sunday that 4x4s come. She would still go with her dog then. She asked rhetorically why should she be intimidated.
- 2.218 Before the 4x4s she said that the motorbikes have been using Smithy Wood in the last 8-10 years.
- 2.219 In 2003 she said there were not many motorbikes then. They tended to be there at weekends and probably school holidays. The use by motorbikes has increased but has not affected her use. She said she does not see many motorbikes. It is mostly 4x4s.
- 2.220 She does not recall any motorbikes from when she was younger.
- 2.221 The fire was in 1995 and that was when she was not using it very much. She can remember a fire going on near the motorway. She did not think it was such a big deal. She did not remember any one talking about fire at the time. She would have thought children had more sense than to go near the fire. Children may have described the fire but she could not remember.

CROSS EXAMINATION JEAN WILLIAMS.

- 2.222 Box 6 of questionnaire she accepted that the facilities there do not exist on Cowley Estate. Nevertheless she thought it was a separate community. She said that if you were selling a house those facilities are there. She said the people who live there don't move often. I know Chris on Cowley Lane I know them to nod to.

1993ff

2.223 After 1993 my children are truthful if went somewhere different I would have been cross. They never brought trouble.

Since 2003.

2.224 I particularly went to the wood. When I am with dog I go where he wants to go. I know Mr Driver he would probably be hiding.

2.225 OB 81 - she presumed timings are correct (1991-95) as mentioned there.

2.226 Page 98 OB it is such a poor photo that cannot tell the steepness of the bank. When that was going on she said she could get up the side where over bridge used to be. Just as easy to walk round the road and access it that way.

2.227 She agreed that business park built out 2008 onwards.

2.228 In 1995 she said she may have been there but did not use that much then. She said she could remember a fire visible from the slip way of the motorway.

2.229 She said her sons were out every day. School holidays and weekends my sons would be out.

2.230 It is in the last 2-3 years that 4x4s there and she did not think the last 2 years were relevant to the application. She said she did not see anyone doing excavations around Bell pits. She saw someone with a folder he was noting the wildlife. It was a couple of years ago.

2.231 Not seen anyone with a bat detector. If they did not have dogs she would avoid them.

Inspector's Questions

- 2.232 On western ridge close to the path she would come in. She said she had a Terrier. She would let him off the lead.
- 2.233 She wore wellingtons and walking boots. She said that she does go down the Bell Pits. She follows the dog where he is going and would not want to avoid the rougher terrain.
- 2.234 Not everyone followed the paths but said that probably most followed the paths.
- 2.235 She said that she avoided people without dogs.

Re-examination

- 2.236 AB 87. She just thought it was the facilities in the area. Drs surgery etc she said you could live without these facilities. A lot places don't have scouts or a church.
- 2.237 Ob 98. She could always remember being able to walk up a bank near the entrance where Cowley Way is now.
- 2.238 She said she could get in opposite Smithy Wood Rd. She said there is a lovely wood opposite our estate. I don't think this gives an accurate picture. Not good enough quality on OB 98.

MRS HOWE.

Examination in chief

- 2.239 CRAG set up originally to object to the planning application on the Open Cast Mining site. The action group was founded to fight the planning application. She said they set that up in 2012. The members come from all over the estate. She said they have one gentleman who lives in Chapelton and Dr Perring who is just outside the neighbourhood. She said that it was their estate that was going to be

effected. It was particularly the houses that back on to the Trans Pennine Trail. She said they were worried about air quality.

2.240 She said that they kept lobbying but they did not get environmental permit until later. The developers cut down the trees on Hesley Wood in February 2013. She said CRAG raised money and arranged picnic at the Travellers. They were gutted that they had lost one woodland in Hesley Wood and wanted to protect Smithy Wood from 4x4s. She said they all used Smithy Wood and did not want to lose it to the 4x4s and motorbikes.

2.241 They joined the open spaces society. It was only when they spoke to open spaces society that they had to redraw the boundaries. The only other people were in Thorpe Hesley but she understood why. People assumed that it was facilities within the wider locality we needed to look into. I thought it was in a wider locality.

2.242 She knew people in Thorpe Hesley. They, the Cowley Estate are a very cohesive estate one road on and one road off. The ones on Cowley Lane have driveways that go onto Cowley Lane. She also has a friend who lives in a bungalow. I also have a friend that backs on to Chapelton Park.

2.243 Her son was actually 18 months when we moved in. Would probably only walk in when Robert was 5. The family walks stopped when he was about 11.

2.244 Trips son went on own started around 1994. The others he went with were Jean Williams son, Tom Bere, the Browns, Luke Briscoe, Stuart Pagat, Andrew Heatherington who was older, his sister used to babysit, Chris Armitage loved it. Those are the ones I remember. Sometimes I would go up usually it would be at the top end. It would be near the Bell Pits.

- 2.245 Sometimes she said she would access Cowley Hill half way up.
- 2.246 The Chapeltown Park was revamped in 2010 and before then the play area was not very safe. The old play area was on a concrete base. Robert did not particularly go to use the play area.
- 2.247 She said she would go across Hesley Wood and would go across the over bridge. She said the easiest way was through Chapeltown Park and then Hesley Wood and then over the footbridge. She said she would occasionally only go to Hesley Wood. If she had time she would go to Smithy Wood which was mostly at weekends and summer evenings. She said she would go there to collect things for teaching. She said you would not know you were so near the motorway when in Smithy Wood. There is a bigger variety of things in Smithy Wood. She said her granddaughter asked her to collect things and her son collected things. Her son loved it there it was a boys paradise she said. Hesley Wood was not good for bike riding. Chris Armitage was a real mountain biker. He was two years older than her son. Hesley Wood had a spoil heap on it and there was a pond on top. Boys will be boys. There was no deep pit on Smithy Wood.
- 2.248 She said she would see people when she went for dog walks every other time she would see someone. There can be other people that she would not know. On those occasions some people she saw would be from the estate and some from elsewhere.
- 2.249 She said she did see the odd one or two dens. There were rope swings but she did not encourage Robert to go into it. She did see BMX bikes and mountain bikes.
- 2.250 There was a tree house there just before 2001.

2.251 She said her dog goes out 3 times a day. In summer time when the evenings were light she would go to Smithy Wood. She said her dog would not go with her son if he knew she was in the house.

Fire.

2.252 It was along the West side of application site bordering the path that goes up. She did not see the fire burning. She knew afterwards. She said you could see the burnt trees from Cowley Hill. She remembered there being a small fire. She remembered seeing the overhead ropeway. She said she could not remember anyone doing any works there or under the old ropeway. She thought it must have been an underground fire. There was never a notice up there.

2.253 She did not see the notice at the other end.

2.254 She said she was not worried about her son going in when fire going on because he was going in the top end i.e. near Smithy Wood Road. If on bikes he would go in on the over bridge. They went that way with bikes.

2.255 In 1993 she said they went in half way up Cowley Hill and went over the overbridge. She said it was not used for vehicles but was wide enough for them. On a summer's evening they would go to the travellers for a drink and then walk across there. The more typical walk was over the over bridge or under the over bridge.

2.256 She said she could remember when it came down and then she went in Smithy Wood half way up Cowley Hill.

2.257 She said they built Trans Pennine Trail about a year ago that was when they started.

2.258 When construction finished and Cowley Lane finished she pointed out where she went in on OB 100. She would use Trans Pennine Trail and

go in at the south end of Smithy Wood. She said she went up last Sunday and there were no 4x4s last Sunday morning.

- 2.259 She said she remembered that big 4x4 activity with Range Rovers and Land Rovers escalated over the last 2 maybe 3 years. Motorbikes had been using Smithy Wood for the last 10 years.
- 2.260 She said that 4x4s were usually at weekends although she saw them a few weeks ago on Wednesday. There were two chasing each other around. She said she tried to keep out of their way. She would then go on the narrower paths. They have made some new routes on there recently.
- 2.261 It was a lovely place to go. That is why, she said, they wanted to put in for a village green. It was a very different place. Parkin Wood which is north of Chapeltown could only be accessed by crossing a busy road to get to. Hesley Wood was a regeneration site. The top of the spoil heaps was very bare. Smithy Wood is an Ancient Woodland. The badgers set was in the middle of the place the 4x4s go round. The badgers have moved. There is more wildlife at Smithy Wood. If you go at dusk you could see the bats flying around.
- 2.262 She said in 2013 she would be going in about once a day unless it was bad weather. She would go into woodland for about 45 minutes. And longer at weekends. If 4x4s were there however she said she would not stop that long. She said that in 2013 she could be there in the weekdays because she retired in Christmas 2009 but since then she has done some part time teaching. She said she did see a digger near to the entrance but did not go over to it. It was in one of the bell pits.
- 2.263 OB155a and page 97 of report shows the length of that new footpath bridle path. Page 99 she said they did not object to the building of the trail. She said she will find out from CRAG's original objection. This

objection was written by Paul Brackenbury. What she said they objected to was the fencing. It was the fact that it went from nowhere to nowhere.

2.264 Gardens are well below the track. We objected to where they put the fence. The council then put the fences along the trail.

Cross-examination Mrs Howe.

2.265 CRAG operates with a committee she said they have a bank account. There are 5/6 people on the committee. You can become a member. Some wanted to be a member. We are all from Estate. Colin and Chris come to meetings but are not members.

2.266 She said CRAG has 28 active members. There are about 500 houses. Some come who are not members. There are quite a few bungalows. It was a meeting of the whole group who made the village green application. About 32 or 33 were at the meeting where they decided to make an application. There are 8 who are giving evidence orally from Cowley Estate.

2.267 Written evidence was addressing a different neighbourhood.

2.268 Neighbourhood plan exhibit 2 to the application was dated 14.11.13

2.269 Carole Eccles' statement map A was different application site. That was addressing a different application site and a different locality.

2.270 AB Tab 3 Map A. She said she knew they could not include the highways land at top side.

2.271 She accepted that Page 118 OB showed the Highway land on Cowley Hill in orange.

2.272 She said that the Eccles map A attached to questionnaires not supposed to be different from area in clarification.

- 2.273 She said it was all of the committee and the membership that changed the area. She said she thought they did have a meeting. She was working with Jacqui at time who was helping her. She is ill.
- 2.274 On the neighbourhood, she said that it had one road in and one road out and had definite boundaries. It is bordered by other things. She said the Estate is a neighbourhood watch area. Only those coming to the estate come in Woodburn Drive.
- 2.275 She said she did not think people read question 6 as a neighbourhood.
- 2.276 Ecclesfield Parish none of the users address themselves to that. She said they are within Chapeltown.
- 2.277 It was suggested that her evidence was inconsistent regarding the frequency of her use when she said two or three times a week in 1997 and then once a day at the end of her evidence in examination in chief. She accepted that perhaps she was mistaken there.
- 2.278 She said it did vary depending on weather and what she was doing. She took her dog out 3 times a day. Two or three times a week she would go to the Wood. She took him in morning and in the evening her husband did one of them.
- 2.279 Some of tracks have widened. She did not always use the paths and wandered off the paths sometimes. The majority of time she would be on the path but the dog did not go on path.
- 2.280 When the dog wants to go off the path she said she would go with him and did not have an extendable lead. He is kept on a lead.
- 2.281 Her children talked to her and told her where they went. This very much depended on whether it was holidays. In the holidays she said she went to check on her son. On weekends he did not go up for the whole day.

2.282 She said she did not see the rope swings and tree house being put up. Now she would go in half way up but if no 4x4s she would go at the top. That has been situation for the last two years.

Officer's report

2.283 155a. post dated February 2014. Southern section built by St Pauls as part of the business.

2.284 CRAG did object but in essence did not disagree with the form. She said she could get Paul to pull objection off the computer.

2.285 She said she did not know that it was only permissive right of public access.

2.286 She said she had seen the witness statements of Objector.

2.287 She had seen Mr Newton's statement and did not dispute his dates.

Inspector's Questions.

2.288 She said the estate was all built at around the same time as far as she understood.

2.289 She said she did not know if the style was all the same. So far as she understood it was all built as part of one project.

2.290 She said of the paths on Smithy Wood that some were a bit wider and definite path ways some were not as wide as others. You could tell they were worn paths. You could tell there were definite tracks. Probably a lot kept to tracks. Usually people stuck to tracks.

Re-examination

2.291 Exhibit 1 tab 1 of AB. This was submitted with the original application. That is different from the questionnaires. That has a smaller bit out than map A on the questionnaires.

2.292 She said the majority of the area on questionnaires fell within the current boundaries of the application. She said she would say most of activities are within the boundaries.

2.293 She said she spoke to those people doing an extra statement and showed them the map clarification to the area and the neighbourhood.

2.294 Heatherington showed him the plans, Zoe King showed her the two plans, Gary Lambert she said she showed him the plans, Lorraine Widdowson showed them the plans.

Cross examination on those extra points.

2.295 She said she thought she did new maps of the neighbourhood and the site. She showed these to the people who were at the meeting and gave updated evidence. They were told of the two plans. They had attention drawn to them. Passed it round at meeting and probably had 3 or 4 copies.

DAY 3 16 APRIL

2.296 I raised with parties my role on a threatened judicial review for Recycoal application, where I had advised Sheffield City Council on a pre-action protocol response, informally with advocates before Inquiry and then openly at Inquiry at 10. I did not know who the proposed Claimant was in that proposed litigation which was never in the end issued. Both parties were content for me to continue as the Inspector.

IAN NEWTON-SMITH

Examination in chief

2.297 51 Cowley Drive address.

2.298 He has lived there since 1989 and before that he used to live at Chapeltown.

- 2.299 When his daughter was 3 in 1989 he said he took daughter to Smithy Wood.
- 2.300 From around 1995 he said his daughter went there after she was 9, with friends Daniel Bingham, John Duffy and Liam Mitcham who lived on Burn Grove. He said there were others but could not remember names. Not so many girls on estate. He said his daughter did this between 1995-2002.
- 2.301 He said he knew what she was doing because there were times when he had to go and retrieve them at dusk. Could be 7, 8 or 9 o'clock. He said they would be mainly at the top end near the Travellers pub. He said when he went he would go on the bottom end. Go over the bridge over the road generally. When he retrieved them that would be from top half. Usually be in top 2/3rds. He said he would retrieve them and go along Cowley Drive and then along Cowley Hill.
- 2.302 Chapelton Park he said had been vandalised. It was only from about 2010 that they introduced swings there. Chapelton was more of a grassland.
- 2.303 It was very difficult to get onto Hesley Wood from estate. Was not much there when daughter went on Smithy Wood.
- 2.304 He said they had a dog from about 1995-2005 which was a cross Staffordshire Bull Terrier. He said he walked the same path as when he went to pick up his daughter. He said he would take the dog for a walk every day. He would go twice a week into Smithy Wood. He saw Mick Harrison there. He said he would see other dog walkers. Mick Harrison only one he could name and his dog was called Sam. The rest he said he did not know where they lived. There was a chap on Cowley Lane with an Alsatian.

- 2.305 It would be tea time when he went with his dog. He said he would come across someone every other day.
- 2.306 He would sometimes enter near where Cowley Way is now but he would mostly enter near Smithy Wood Road and a bit below.
- 2.307 If walking his dog he would walk there. On west side there was a well-worn track. More people entered through the bottom entrance.
- 2.308 There was a delta with 3 or 4 paths going to various places. He said his dog was off the lead when in the wood. He said he followed the dog it would be random locations.
- 2.309 There were quite a lot of paths that would lead to further tracks.
- 2.310 Ben, his dog, came back when he called him. He said he stuck to paths. He said he would have to. If there were blackberry bushes he would have to stick to paths. Off the paths he said it was pretty overgrown and established.
- 2.311 Blackberries were mainly round edges. They were in abundance all over the woodland. He said he used to come in off Smithy Wood Road and there were blackberries when he came in. Sometimes he said he would have to go in further depending on whether they had been picked.
- 2.312 He said he was a bird watcher and sometimes took binoculars - Carl Zeiss binoculars. He said he would stick to paths. He took binoculars when he remembered to pick them up. It was a bit seasonal when chicks were around he said you could see a bit more. He would not specifically go bird watching.

Open casting.

- 2.313 It was at the bottom where it says Smith Wood and working disused on OB page 132.
- 2.314 OB 94. He said at the time of this photo he would still access Smithy Wood the same way from Cowley Hill. It was only in last 10 years that he had gone in through the business park. When developing the business park he said there was lots of dust.

Fire.

- 2.315 He said he used to go down Nether Lane 2-3 times a day and apart from the odd smell there was no inconvenience from the fire. He did not remember seeing it in Smithy Wood. It was an underground fire.
- 2.316 He said he was not concerned about the fire affecting his daughter's play because it did not.
- 2.317 Fire did not affect him using the top end of the woodland.
- 2.318 When his daughter was going there he said there were not facilities at Chapelton Park. He said it was sloping and not even fit for ball games.
- 2.319 It is only the last 2 or 3 years that he has seen more 4x4s and motorbikes. There have been more years of motorbikes but not as many until recently.
- 2.320 In last few years he said he would go once a week. He would carry binoculars or camera sometimes. He said there were still lots of wildlife. He said it was not a nice site to see 4x4s but it had not put him off using Smithy Wood.
- 2.321 OB 119. He does not know Mr Powell. He said his opinion of the comment that Smithy Wood is a dangerous place is that it has had a lot

of problems with 4x4s. He said he attended a meeting with the South Yorkshire Police but they do not seem to be curtailing 4x4 use. That was the first one he went to. He said he cannot remember when 4x4 first started.

- 2.322 When his daughter was there, when he was walking Ben between 1995-2005 and when his daughter was playing, it was not a dangerous place. He said he was happy then.
- 2.323 OB 140(a) ff. He said he went up a couple of times and saw the Council doing surveys and they would not enlighten him as to what they were doing surveys on. They had high-vis jackets. He said he thought on one occasion they mentioned they were from the Council. There was another time about a dozen people in high-vis jackets and Hunter wellingtons.
- 2.324 AB p40. Questionnaire. He said he thought it referred to Smithy Wood. He thought it was all the bit above the DPD of Smithy Wood. He thought it was roughly what this is here looking at application area on 132. He thought it referred to Smithy Wood. He did not really think there were areas of Smithy Wood not included.
- 2.325 When he answered question 6 on questionnaire he was thinking of things that were available for local residents.
- 2.326 He explained that what distinguishes Cowley Estate is that it is one of the biggest closes in Yorkshire that you can only leave via one route by car.
- 2.327 He said he would describe where he lives as the Cowley Estate it is known all over as that.

2.328 He said about 95% of Estate was built at the same time. Burn Grove and 15 houses on Cowley Drive. Those were done about 10 years before.

2.329 Where C is on Cowley Lane on the plan were all built after his house with small gardens. The two or 3 with bigger gardens were before but he did not want to be quoted on the exact detail of that.

Inspector's Questions

2.330 About half the time when he went to Smithy Wood he saw someone. Sometimes he said he would not go into wood much in winter or when it was dark.

2.331 Most of the usual activity he saw was dog walking and walking. He thought Mick Harrison went every day and 2 or 3 times per day.

2.332 He said at times that he saw children playing. At tea time that was less frequent.

2.333 He was not able to comment whether this had got more or less frequent over the 20 year period.

2.334 Now mainly motorise bikes but he said he thought mountain bikes had a good run.

2.335 They would stick to the top bit. It was a bit lighter and they would prefer that bit. If you shouted your head off they would hear you. He said he would pick them up not much it would be 3 or 4 times a year.

CROSS EXAMINATION NEWTON-SMITH

2.336 Questionnaire got Map A I had the outline area in front of me and he said he was notified it was a different shape.

2.337 Question 6 he said he cannot find a map B and did not think he had one.

- 2.338 He said he was told it was a slightly different shape to the one on the diagram. He was told that before he made his statement by Mrs Howe. He was told it was a slightly different shape but not shown the plans.
- 2.339 He said he would stick to paths but Ben would not.
- 2.340 When he was with his dog his routes were random. When he went with family he would go down Smithy Wood Road and stick to top near the motorway side. It goes down steeply and he said they would be in the top.
- 2.341 He said he would still be walking on paths and when birdwatching he would have used paths. He said he is a member of CRAG.
- 2.342 OB p81. Open Cast mining 1991-95. He said they did that where new business park development is now.
- 2.343 OB 94. Far better photo he did not pay much attention to the open casting. He could not say that was 1992.
- 2.344 OB96 that is poor quality difficult to date.
- 2.345 Major reclamation July 2006-March 2008 he could not comment on those dates.
- 2.346 2008 onwards was when business park was built out.
- 2.347 He said he was on Smithy Wood when fire was on there. It was quite a lot lower. He thought the fire was not in Smithy Wood but off Nether Lane.

Fire

- 2.348 OB 142/143 put to witness which was October 1995 report of fire. Large area of badly burnt trees is clearly in TVG application site he said.

- 2.349 He said this is absolute bunkum. I would not allow my daughter to go there. This is a load of bunkum this report of the fire.
- 2.350 Mr Harrison said there was a period of months where you could notice. He said he would not let his wife go where he thought it was unsafe.
- 2.351 He disputed this document and thought it was doctored but then thought doctored was the wrong word.
- 2.352 Right from beginning he went right in. His use was more concentrated in the Northern end. He said they focused mainly on the top.
- 2.353 There is evidence of the rope way on the ground he said. 144a - he said he did not remember the fire mentioned there. He did not recall fire in February 1996. There was no sign of that fire.

Daughter playing

- 2.354 He said the landlord did not encourage looking at animals in Travellers pub. She was allowed to go to Chapelton Park without him and Hesley Wood.
- 2.355 She was allowed to go to the remediated area which was not very pleasant. He said the remedial area was fenced.
- 2.356 There was the odd time when he had to fetch her back when it was dark. He said he would go and shout at her and gather her and what she had with her and go home again.

Motorbikes.

- 2.357 Up to 2-3 years ago see the odd tyre track.

Consultants

- 2.358 Saw two groups of two people. They were opposite the pub entrance nearer to the motorway. They had clip board and walking around.

2.359 He said he broke his back in 1995 and was laid up in 1995. It was 97 days.

2.360 February 10 accident and on May 18 1995 came out of hospital.

Re-examination.

2.361 Fire. In early 1995 he said he would not go south of top section although he then said that he would go down 2/3rds area.

2.362 Not further than the second path on OB p132. He said if you walk down 4-5 minutes you would get just below where it says Smithy Wood on 132OB. [From my two site visits I concluded that it was difficult to estimate precisely where you walked on the map even if you had the map with you because the map does not show obvious landmarks.]

2.363 In winter he said he would not go as often into the woodland. February not go into the wood when dark. So in February he was probably not in the Wood. He may have gone at a weekend.

CAROL GIBSON.

Examination in chief

2.364 She said she moved to Glenwood Crescent in August 1993 before that she lived 3 miles away. She said her husband sometimes went to Smithy Wood.

2.365 She said she would go over the bridge and then sneak in the side of the wood. Go up banking into the wood. She said Hesley Wood had a different feel. Smithy Wood was a more developed wood. This was in 1999. In 1999 her son was only 3.

2.366 She said there are established paths and some that rabbits make. Lots of different ones. You follow dogs and children.

- 2.367 Lots of Bracken at top end did not stop her going through.
- 2.368 Beech trees further down had been there years and years. She saw people going up and down. There were one or two that she recognised but did not know where they lived.
- 2.369 Her son rode on his bike and sometimes she would carry the bike. When 6 or 7 [i.e. 2002 or 2003] he could go on a bike. She said he usually wanted to go up humps near beech trees.
- 2.370 She said she had two other sons who did not use woodland they were 16 and 18.
- 2.371 She said the date of birth of her younger son was 1996.
- 2.372 She had a dog in 1999. She said she would go 2 or 3 times per week in summer but it would depend. Sometimes she said her husband would go separately. Her husband likes bird watching. He liked Smithy Wood she said.
- 2.373 When she went with her dog, she said she went everywhere. She said she could get over the bridge. She said she would go to field not over the motorway. She said they could go to the farmers field if cows not there. Blackberry bushes best in middle the ones on the edge had been picked.
- 2.374 Most people pick round edges because they did not want to venture past the edge.
- 2.375 She said that there were groups of children and 4 or 5 lads together on bikes. She would say that they were teenagers.
- 2.376 Other boys were John from Burn Road and Carl and Aaron. She said her son went to secondary school in around 2007 then went to Smithy Wood with these boys. They have fits and starts of using it.

- 2.377 She said he played football on Sunday for a team. Played on driveway. She said he told her where he was going.
- 2.378 They did go into Hesley Wood and occasionally Chapelton Park but that was not developed. She said it attracted boys doing other things that she did not want him to get involved in.
- 2.379 She said she may have seen them if she went with the dog but that she did not want to pester them and be an embarrassing mother. She did not have a dog in those days.
- 2.380 She said she would still run. She said she had run through the woods. She used to run 3-4 times a week. It was okay to run in the wood if she had the correct clothing. She said she would normally go up the hill through the wood and then out near Travellers Inn.
- 2.381 In terms of seeing people there she said she saw her next door neighbour Ellen and Chris, she thought Brown is their surname. She could put faces to them.
- 2.382 She would see people once a week back to 1999. Sometimes more if it was good weather. Now much more. She did not know where people driving from.
- 2.383 Before that 4 year period did not get 4x4s.
- 2.384 From when we first went in the occasional scrambler. They were normally weekends. It was mainly Sundays.
- 2.385 Scramblers did not affect the way she used the wood, it did not bother her. She still goes in the woods, the new people that go in with 4x4s are not very nice. They go in convoys. They go 4 at a time they are serious off roaders. There may be 4 people in a vehicle. They are in gangs. She said she was determined not to let them stop her going in but found it very annoying when she saw what they are doing.

- 2.386 She said she was in there from 6.30am in summer. In winter 7am onward. The 4x4s tend to be a Sunday morning. Now they have the Trans Pennine Trail. The path she said went all the way to Meadowhall. It has been opened already.
- 2.387 OB 119 She said she did not know Mr Powell.
- 2.388 She said it was one person's opinion that it is a dangerous place. Her opinion is that they should not put her off. They are not there in the weekdays. When she went up to Smithy Wood any time on weekdays she did not see 4x4s. She said she also saw an old couple that go birdwatching but did not know where they live.
- 2.389 Fly-tipping does not stop her going in. It occurs on south west side close to the green line of the village green Application Site.
- 2.390 Bird watching. Her ex-husband before 2002 walked there and did bird watching. It is quite diverse in Smithy Wood that is what appealed to her. There was a deer in there. The dog she has at the moment is a Springer Spaniel and she said he goes everywhere. She said he does come back if she calls him.

Appearance of woodland.

- 2.391 Some of the paths now are wider. The 4x4s have cut paths. People tend to make new ones now. Paths can be made by animals and people walk that. It is riddled with paths.
- 2.392 It was riddled with paths in 1999. It has always had paths that are used.
- 2.393 They were single file paths and some were moulded over and there were open areas. Paths connected open areas.

Questionnaire

- 2.394 Map A. She said the large chunk taken out of application site she thought was at bottom where the Beech trees are. It is where the Silver Birch are.
- 2.395 She said she would classify right down to the farmer's field as Smithy Wood. She could not remember the other map.
- 2.396 She knew the new boundary of the village green application site and was shown a different map with Jean Howe at a meeting of CRAG.

Cowley Estate

- 2.397 Red line on OB132 does show boundary of Cowley Estate.
- 2.398 She said that the thing with the Estate is that there is only one way on and one way off. The only way in is from Cowley Lane down Woodburn Drive.
- 2.399 She thought the whole of the Estate was all built close in time. She thought her house was one of the last it was in the 1970s.
- 2.400 In 2013 she was using the woodland. She recalled people tagging trees. She remembered seeing this in Autumn/winter 2013. They had been all over the woods. She went all around writing numbers down.
- 2.401 Sometimes there were people with building clothes and high vis jackets and hats etc.

Inspector's Questions.

- 2.402 Now this path is running on the back of the estate she said she definitely walked more. This was the improved path along the disused railway. She said the building of that path increased usage of Smithy Wood as well.

2.403 She thought it was used more in 2013 than in early part of her use, that was her experience. She thought the children are playing in the same manner. Kids playing activities were not different in that period.

Cross Examination Carol Gibson

2.404 Map A of Questionnaire does have her signature on and that was what she thought was the area of the village green application. She was not aware of a map B.

2.405 She did not know if she was told of any amendment before she did her witness statement. When reminded of the date of witness statement she then said that she was shown. It was something similar to tab 3 map A and B that she was shown.

2.406 She said that bracken was not growing over the paths. Her dog, she said, goes over bracken. There are paths through it. Paths kept by people walking over them.

2.407 She said Smithy Wood trips with son's trike when it was sunny and in mood 2-3 per week. They would walk around.

2.408 She would only take bigger bike if in mood for cycling because otherwise she would have to carry it back.

2.409 She said her dog would not stick to the paths. She said both her first dog and second dog responded to her call. She said if she was on the path he would come back. She said that sometimes she would go off path and with second dog it is still the same.

2.410 Occasionally she would go up and see her son when he was a teenage boy, but teenagers did not want to see their mother. She said they did not go up in dark weather as she would not let them. She said she was not 100% sure where they went but would bump into other mums and could find out by word of mouth.

Re Cowley Estate.

- 2.411 She said there are some houses that are outside the red line of the neighbourhood on OB132 that are accessed from Glenwood Crescent. The front doors are on Cowley Lane but the back doors are on Glenwood Crescent.
- 2.412 She said you would hear motorbikes and there would be tracks especially if wet.

OTHER WRITTEN EVIDENCE OF APPLICANTS.

Written witness statements and questionnaires.

Peter Darrington	39 Hesley Grove	He said he has walked his dogs for twenty years. Not clear the extent to which he has followed paths. His playing in the 50s and 60s was clearly out of the period.
Mr and Mrs Davda	36 Glenwood Crescent	They say they have used for walking and taking visitors around. Not clear the frequency or whether used as footpath type use.
Mr Glossop	64 Glenwood Crescent	The activity he says he and his family use Smithy Wood for is walking and dog walking in letter and questionnaire. The frequency is said to be less frequently but still often but it

		is very unclear whether he used it as a footpath type use.
Andrew Hetherington and Jenny Hetherington	Now Sprotbrough 61 Glenwood Crescent	Andrew Hetherington's letter speaks of hours on my bike riding through woodland. However there is very little detail of where or with whom he was riding or the frequency of these activities.
Zoe King	1982-2003 at parents in Glenwood Crescent	Says that she used between 1982-2003 for nature activities. However very unspecific on frequencies and whether footpath type use.
Gary Lambert	8 Hesley Grove	Says used for bird watching, children playing and dog walking. The frequency of use and the amount of use for footpath type use is difficult to assess from the written evidence.
Lorraine Widdowson	38 Hesley Grove.	Walking and bird watching. They say on form that used since 2010. It is not clear how often they use the paths as footpaths.
Mr/Mrs Brammer	54 Woodburn Drive	2004-2013. Not clear if just stuck to paths or not but said

		high level of use.
John Briscoe	24Glenwood Crescent	1955 onwards. His use was walking, bird watching, wildlife and peace and quiet. Not clear exactly the period of this use or the children playing or whether he stuck to tracks.
Luke Briscoe	24 Glenwood crescent	Says that used for bike riding dens playing hide and seek and walking the dog for the period 1990-2013. The frequency is less frequently but still often. It is difficult to assess how frequent this use was from the written evidence.
AH Goodinson	Wordsworth Avenue when used the land	He was outside the neighbourhood when used the land.
Mr Green	33 Glenwood Crescent	Says occasional use for walking. Not clear whether he stuck to paths.
Mr Hardy	35 Glenwood Crescent	He says on form that he knows the land as Hesley Wood which casts doubt on whether it is relevant user. In addition it is not clear if he used the land for footpath use.

Jayne Lawson	30 Glenwood Crescent	Dog walking claimed but not clear whether it is footpath type use and how frequently.
Potter	42 Cowley Drive	The use claimed is walking however the frequency and whether it is footpath use is not clear.
Malcolm Selby/ Valerie Oldfield	12 Wood Close	Only claimed to have used occasionally between 2012 and date of form.
Garry Sherriff	208 Cowley Lane	It is not clear if much use is claimed in the relevant 20 year period most of the periods of use were before.
Derek Stagg	32 Hesley Grove	Claimed to have used April 2010 to date of form frequently for dog walking and leisure activity. Not clear how much was for footpath type use.
Chris Sumner	57 Woodburn Drive	Occasional use claimed for the period. They uses claimed are walking bird spotting and running. It is not clear how much use was for footpath type uses of the paths. In fact the letter suggests that the

		running was along “2-3 clearly defined paths” and so likely to be a footpath use.
Mrs Sykes	42 Woodburn Drive	The only use claimed is walking and it is not clear how much of this is footpath use.
Paul Yeardley	26 Cowley Drive	Claimed to have used occasionally for walking or cycling in 20 year period. Not a frequent use and not clear if all footpath/cycle path type use.

3 OBJECTORS EVIDENCE

RICHARD POWELL.

- 3.1 Lived at 87 Cowley Lane for 7 years. He would go to Chapeltown park.
- 3.2 Read and certified as true his witness statement OB pages 119-120. He had previously worked with St Pauls that is why he had come to make statement.
- 3.3 He confirmed that he did not have any current financial or other relationship with St Pauls.

Cross examination

- 3.4 Office just to right of Hydra Business Park for about 2.5 years. Going back before 2013. He said he moved to this estate in about 2012.

- 3.5 He said he sits at his desk working on computer and has a clear view. There are windows looking out at Smithy Wood.
- 3.6 His office he estimates is about 650 metres or so from Smithy Wood. He doesn't pay any particular attention to people going in. If walking up path he can see people going up the path. From where he sits he does not see anyone going in to Smithy Wood. He arrives at work at 7.15am and leaves at 5.15pm. His office is unit 9 on the first floor. He accepted that he definitely cannot see all of the wood. He accepted that it is possible people walk in a bit that is obscured.
- 3.7 Chapelton Park he has twin boys aged 6. They have been using park since 2009. Before that not caused to use the park. He used to use Park 1978-1986 when he would have played football. Between 1986-2009 he was not using Chapelton Park and did not know whether it was run down. When they got there it had swings and had the climbing frame. He said he went there before the regeneration and there were still swings etc. It is not the same kind of playground now and is better now than it was.
- 3.8 There is a wooded area in Chapelton Park for birdwatching. Nature observation cannot do that so well in the Park. Better nature places not just Smithy Wood. Smithy Wood is one of those places. If looking for woodland things. They have got a BMX track in Chapelton Park. Steve Peat opened that. He said it has always been there but developed it. Improved and opened by Peat 3 or 4 years ago.
- 3.9 I have never been in Smithy Wood. He said you can see accessing Smithy Wood at the main entrance. You can see where to go in with vehicles and quad bikes. He said he had never been in. He said he is not going in anywhere with motorbikes or quad bikes. He thinks it is a bit longer than 2-3 years that there have been 4x4s. It has definitely got worse. Weekend and school holidays is when it is bad.

3.10 During the week people not likely to encounter bikes. Deep mud to get in. He said he had not seen motor vehicles on Chapeltown Park. He said he had seen on Hesley Wood. He said dog walking can be done in Park. Some like to walk dogs in the Wood. He said he would not take his dogs into Smithy Wood. He is not aware of complaints about Chapeltown Park.

3.11 He said he is not aware of complaints from friends of Chapeltown Park.

MR JOHN NEWTON

3.12 Read witness statement at p78ff. Been Managing Director since 1999.

3.13 Para 3. Duke of Norfolk he was and still is landowner of 50% of the business park.

3.14 Before we were involved.

i) ½ Duke of Norfolk western half.

ii) ½ RDA and what they called themselves.

iii) In between that was the former railway line. Railway paths Limited based in Bristol owned that part.

3.15 OB page 88. First looking west the village green application site on left. This photo shows;

i) Sharp incline; and

ii) Major road.

3.16 OB 89 looking towards the motorway.

3.17 OB Page 93 is taken from engineering report from the engineers who supervised the open cast mining. It was before St Pauls ownership. It

was done by Fitzwise. They were people who dug out coal. Engineer report was Scott-White. I got possession of this. Before we entered into the agreements we undertook a due diligence exercise as to what had happened to the site.

- 3.18 Captions put on for this inquiry but not labels.
- 3.19 Paragraph 11b of his witness statement at OB 81 should read July 1995 to July 2006.
- 3.20 OB 94. Colleague put in 1992. This was in the early stages of the open cast. Before the main operations. OB 94 may well have been 1990 or 1991.
- 3.21 OB 93 is taking north to south.
- 3.22 OB 96. That is what the Smithy Wood site looked like for about 10 years. Nothing changed on the site for about the next 10 years. Duke of Norfolk land is the lower section.
- 3.23 As far back as open cast mining he was working with a surveying practice in Leeds. They were working with client who wanted to develop Smithy Wood. That goes back to 1992-3.
- 3.24 St Pauls entered into negotiations in 1999-2000.
- 3.25 He said, yes, he did visit when in condition on OB page 96 which was how it looked between 1996-2006. Higher plateau generally flat to east closer to Smithy Wood. Another plateau which was less flat and belonged to Duke of Norfolk. There is a bank in the middle near former railways line.
- 3.26 The desire lines shown on OB 96 is his interpretation of footpaths where people travelled. He said he visited about 30 times between 1996-2006 more 1999 onwards.

- 3.27 However he said he would not have seen whether there was a path on the side of Smithy Wood.
- 3.28 Page 98 OB. He said he was intimately involved in that project and knew what was happening on the site in that period 2006-8.
- 3.29 On the Northern tip the over bridge was removed early December 2006.
- 3.30 The bank was very steep going from Cowley Way to the wood. The area of white was works they were doing to create left turn and access. White area along Cowley Hill was a construction site for 2007.
- 3.31 There were two other main elements of construction for the new access roads. Cut and fill top half was taken off the Eastern half of the site and the western half was raised to create a flat plateau.
- 3.32 All area of access was a working site which was fenced off. He could not remember how long but estimated 2-3 months. He thought the photo at OB 98 was taken in summer 2007. He said the bank was steep all the way along Cowley Way.
- 3.33 He said there will have been periods when you could not go up the north west bank of Smithy Wood. The grey shade had been created by machines with bulldozers. It is bare earth colliery shale because it is grey. It was part of a fenced construction site.
- 3.34 Page 100 OB was from July 2009 he said he could date this one because it had a date on it. On page 100 the gradients are now softer.
- 3.35 Those units were both constructed at the same time in December 2008.
- 3.36 DPD was finished in spring 2013. Further building is for a specialist drill bits firm for engineering oil and gas.
- 3.37 Can soften gradients because 98 is a wider road than 100.

- 3.38 OB 102 17.84 Thorncliffe on north west, next one is Parkin wood 5.79 one of which Axis own.
- 3.39 The 13.23 ha is north west of Hesley Wood which he said his company lease to the scouts.
- 3.40 OB 104 presented by occupier of building who makes the bits for the oil and gas industry. They damage the property. They own their own building. He said when they carried out our works to the site they were asked to construct a temporary footpath.
- 3.41 He said they were asked to construct the footpath on page 100. Until the red route is completed this was to be a temporary footpath. He said they did realise that when they constructed that footpath it made it easier to get to Smithy Wood. Construction of that temporary path did make it worse when it was built in 2007. The picture in OB110 is to stop 4 wheel vehicles.
- 3.42 He said his company opposed 4x4 usage wherever possible. He said they have tried all sorts on this site and others. He said he has found all measures fail. They will stop at no length to use including driving through landscaping. There is a balance at some time as to what measures to use because if too many can get complaints from for example horse users. He said they have used concrete blocks at the south.
- 3.43 He said he had been in Smithy Wood. When they bought site originally insurance requirements was that they had visits. They had visits with the police. They have had stolen cars and so had to visit. A whole lot of reasons to visit which serve no purpose for St Pauls. He said they remove a lot fly tipping.
- 3.44 He said he went on with an insurance person annually. He was looking for things that were immediately dangerous. He was concerned about

motorbikes. That was noted. Of the woodlands he observed Parkin Woods was higher risk. He was worried about occupier's liability and not whether someone was going to claim village green use.

3.45 But that would have involved looking at whether there were people likely to go on site even for occupier's liability.

3.46 Page 139 OB 25/11/13 police training dogs asked if they could go onto Smithy Wood. They asked him if they could have permission. He thought it would deter people who they did not want there so he said he gave permission. Illegal use of motorbikes.

Inspector's Questions.

3.47 His company bought a long lease on Smithy Wood. Long leasehold 1999/2000. Then freehold.

3.48 General procedures re visiting land. Some of our sites he said are more dangerous. Some create more risk for company those we visit once a week. That scales down to once a year. Those that are developed once a week those where visit once a quarter.

3.49 On Smithy Wood we have been active since 2005 on an ongoing basis. He said he would have members of staff on site for most of the year involved on site. Only in 2009 would not have had people on business park site.

3.50 It was a low risk site and few visits for fly tipping, vehicle recovery and once a year a formal inspection.

3.51 Extent of St Paul's landholdings 1990's to date hundreds of acres several sites like Smithy Wood. They are familiar with site issues.

3.52 11b for part of that period the bridges were inaccessible. When first visited 1993-5 Core Property were trying to do a deal. Underbridge led

into open cast operation. His impression at that time was that the over bridge also led into that operation. He would have thought someone would have closed it off from his experience.

CROSS EXAMINATION OF JOHN NEWTON.

Insurance position

- 3.53 In terms of risk of people being in the woods the insurers were happy not that many people being in the wood and not many things of danger in the site.
- 3.54 The risk of people in the woodland he said the majority of risk comes from motor vehicles. The insurer at the time said that it was low risk because not very close to population. This was based on proximity to housing.
- 3.55 Yes it was clear that people were using the woodland. It was clear that people going in there. It was classified as low risk.
- 3.56 Bad photos of people on business park was last year. It has got worse 4x4 in last couple of years.
- 3.57 January 2013 Recycoal secured their site which may have encouraged use of Smithy Wood he could not comment.
- 3.58 Prior to 2013 he was aware of 4x4 more in the East and South and near power lines and the bottom area. He was not entirely sure but he thought they were coming from the Meadowhall end.
- 3.59 Open cast site. He did not go over the over bridge. He stood under it. He did not know whether it was in use but it was not in use by vehicles.
- 3.60 He did not have any cause to see where it went into and could not definitely say that people could not walk over the bridge. He

acknowledged that the evidence of what people actually did provides better evidence.

- 3.61 Page 93OB he was not there in 1992 but did have good knowledge of the site and he did know exactly where that cliff was.
- 3.62 The high wall is somewhere under where they put Cowley Way. He accepted that it was possible that people would have been able to overlook the opencast mining site.
- 3.63 OB 96. He did not recall if there was a path along woodland may not have noticed that at this time. He said the white line near woodland may look similar to desire lines and it is conceivable that people were walking into the wood.
- 3.64 OB 98. Some areas very white. Reason why it was grey is where soil was cut away.
- 3.65 At this time 2006-8 all a construction site. Lots of machines beside Cowley Way. He thought the works were 100m going up Cowley Hill.
- 3.66 Along highway land there was fencing there was a massive amount of construction equipment. There was a lot of fibre optic cable that had to be moved. There was fencing going back 100 metres along Cowley Hill.
- 3.67 Throughout all this period he said they did some works but did not think his work affected the access at the top near Smithy Wood Road.
- 3.68 He also said that people would be able to access on the southern side. But he said you would have to go quite a long way south to get in because of the works. He accepted that it may have been possible to come along banking and into the wood from there.

- 3.69 St Pauls did not stop coming in by foot at the top end. St Pauls did not fence off apart from construction site. He said he did not know why there was a stile on the bottom of the site. He did not put stile in doesn't know why it was put in.
- 3.70 He said he was not trying to resist village green law not really so well known.
- 3.71 He said his company have had issues with public access but only where residential much closer. People are generally lazy not so concerned if away from houses. That was part of his decision making. He accepted he could have put up signs and they did not do that.
- 3.72 He said he never thought about whether they tolerated people.

Other areas.

- 3.73 In Hesley Wood and other part of Smithy Wood don't see paths marked. There were more obvious paths in Smithy Wood on plan.
- 3.74 He said that he did not think there were any public rights of way on Smithy Wood.
- 3.75 Page 94 OB. [90-91] Smithy Wood is more established than Hesley Wood apart from back chunks.
- 3.76 In 1990s if you wanted to walk in woodland Hesley Wood not the same.
- 3.77 In early part of the period Hesley Wood was different in the later period woodland became more developed. He said he would not like to say as to the quality of Hesley Wood.
- 3.78 Chapelton Park some facilities. There are things that people like to do like nature walks which cannot do there in the same way.

- 3.79 Hesley wood extensively been used for cycling. He said Hesley Wood was an alternative.
- 3.80 Smithy Wood provided bell pits which were not available at Hesley Wood.
- 3.81 OB102 north west of White Lane. They are further from the Estate. White Lane also busy. There was no crossing on Cowley Hill for some of the period.
- 3.82 He said they own the scout land 13.23ha shown on OB 102. They own it and lease it to the scouts. He has walked it on a regular basis and no-one ever stopped people. He said it is a more formal environment.
- 3.83 He did not accept that Smithy Wood was more convenient. It is at the top of the hill.

Inspector's Questions again.

- 3.84 Toucan crossing was built in late 2007 maybe be 2008.
- 3.85 There would have been a period of 1 year where no crossing and no bridge over Cowley Hill.
- 3.86 He did not see children playing in the bell pits. He said if he thought children were playing in his wood he probably he would have brought risk to the company and would have done something about it.
- 3.87 He was not aware of so many users of Smithy Wood to cause his company a problem. He thought it was tracks and paths. If anything was likely to happen he thought someone might claim a right of way on a path. He was not that worried about a right of way. The company have moved many footpaths and opened them and could incorporate them in developments so that was how he felt.

Greaves further questions.

- 3.88 Paths any concern. Some of them did look like a risk of public footpath. Some did and some did not. There are clearly defined paths.
- 3.89 He was more interested in paths with entrance and exits.

Re Examination.

- 3.90 Parkin Wood and Thorncliff Wood he said he had not seen any evidence about their relative ecological importance.

DAY 4 17 APRIL 2015

NICHOLAS TOVEY.

Examination in chief

- 3.91 He read qualifications and confirmed experience from OB p123.
- 3.92 He said he had advised and assessed 10-12 colliery fires. He has two published papers one in Brymbo in Wales and another one in Czech Republic.
- 3.93 Read from 3.1ff witness statement at OB 124.

Period 1983-2012.

- 3.94 Office at the Thorncliffe Park Estate it is to the north on of OB 132. You travel up Station Road. He now lives North of the area so he comes from the North. However before he lived to the East up to 2000 about half the time he would travel to office along Cowley Hill to work.

- 3.95 Paragraph 3.3 he wanted to add a bit that he now lives in Dales and almost always sees people walking around with the their dogs. He really has seen hardly anyone at all at Smithy Wood by comparison.
- 3.96 3.4 there was more interest on Hesley Wood than there was at Smithy Wood.

NPT 3 revised 140a

- 3.97 His conclusion is that they have hardly seen anyone while they have been on site. Most was during archaeological work when they examined the bell pits towards the top of the site.
- 3.98 Other times very little to report.
- 3.99 The ecology survey were a couple of people 19/4/13
- 3.100 Bats a couple of people.
- 3.101 Topographical survey the number of people was probably 2.
- 3.102 22/4/13 that was different from topographical work. It would have been examining ground conditions.
- 3.103 Topographical survey is what led to NPT 7 plan.
- 3.104 10/6/13 probably bats surveys.
- 3.105 13/6 SCC officers probably 3 officers from our side. That may have been 10 people with clipboards.
- 3.106 Same team with Bats.
- 3.107 17/7/13 don't know task ecology team were doing that day.
- 3.108 6/8/13 probably 2 people.

- 3.109 Two more bats site investigations. He was not absolutely sure what was stolen on 28/8/13.
- 3.110 29 August Archaeology walkover probably 2 people.
- 3.111 10/9 site investigation trial pitting probably only 2 people a machine driver and engineer.
- 3.112 Gas monitoring would have been one person. Probably 5 or 6 points and 30 mins at each probably 3 hours on site.
- 3.113 4 November error.
- 3.114 5/11/13 meeting with SCC.
- 3.115 7/11/13 a couple of people on site.
- 3.116 18/11/13 we had archaeological team doing the bell pits investigation.
- 3.117 18-22 November is duplication with what is above.
- 3.118 25 November should probably be 22 November.
- 3.119 20 and 21 May survey for 2 whole days a couple of people on site.
- 3.120 2/3 June 2014. That was to do with liaison with SCC but not absolutely certain what they were doing.
- 3.121 11/12 August is two days cannot help with what that was that they were doing.
- 3.122 18/19 Sept two days but cannot help with what there are doing.
- 3.123 Ecology probably 2 people on site.

Fires.

- 3.124 Dancastle - they were retained by them. They were the owners of quite a lot of Chapeltown woodlands. The particular matter is that they had

been alerted to fire and we had to investigate the fire. He did not know why they were asked to investigate the first more clear on second fire.

- 3.125 They were not instructed to do works on first fire as it had put itself out.
- 3.126 Mr Hartley was ranked as an E2 second tier. He was a good site engineer. He was a good engineer not likely to get something significantly wrong. He suggested he got the areas right. General agreement as to where fire was.
- 3.127 Mr Tovey said he started in 1980 with Wardell Armstrong. He opened the Sheffield office in 1989.
- 3.128 OB142/143 he found this in an old Dancastle property file. Not written specifically for this Inquiry. It has not been doctored. He, the engineer, would have taken temperatures of fires. They have a probe stick in ground it will give temperature of ground. They use this to see if underground fire or surface fire. Those readings are indicating the ambient temperature. There is a “gun” that you can use to see temperature of fire.
- 3.129 The 1995 fire - he said he did not visit because it was not a problem.

Second fire Dec 95- Feb 96.

- 3.130 He read 4.2 witness statement.
- 3.131 OB144a this is one he said he had more input into. They found a problem that needed resolving. He said they were asked by Dancastle properties. The fire brigade were called but they could not put it out because of nature of the fire.
- 3.132 He said they used probes and worked out that there was a problem underground. Excavator would have spread out material and then put it

back mixed it with clay and compacted it. The fire was on route of the former rope way. His educated guess is that spillages of coal would have spilt from aerial ropeway. As to what started fire he said it could be kids and/or bonfire, probably not that in this case. Lightning strike could have burnt a tree and go downwards. It could have been associated with 1995 fire.

- 3.133 How long on site - he thought it was about 2 weeks. He explained the rough route of the aerial ropeway. It would have come down in 1970s or 1980s.
- 3.134 Photos 145 photos. Some of these photos may have been the 1995 fire.
- 3.135 1996 fire he thought he visited 2 or 3 times during the fire. Once every two days.
- 3.136 Probably would have seen it smoking a little bit. Intensity of burning in centre of it. He thought it would not necessarily have been seen from the road.
- 3.137 The 1995 fire would have been more visible not with flames. More smouldering than flames. It is because they are burning relatively slowly. Not tinder dry and would not get flames coming out.
- 3.138 During 1995 and 1996 he said they had similar fires in Parkin Wood and Thorncliffe wood. He had a feeling that it must have been lightning strikes. From about 25 metres you would notice it probably not that much further. It would produce a little odour.
- 3.139 He read 4.2 of witness statement. OB 151 that is transcript from engineer after 20 year period and 152 and 153 are photos. Contracto removed the cars.
- 3.140 Paragraph 5.1 read.

JDN 4 page 93ff.

- 3.141 OB Page 94 he said that was prior to open cast works. Profile was natural.
- 3.142 Smithy Wood colliery just west of disused railway. This photo is before open cast work. The things that look like ponds are ponds.
- 3.143 OB p 93 looks like lagoon on part to the west of Smithy Wood.
- 3.144 Page 93 is from area just west of Smithy Wood.
- 3.145 In OB 98 can see remnant of cliff but that is some 10 years later.

Inspector's Questions.

- 3.146 To get to Hesley Wood they would go up via the travellers. Up Smithy Wood Road.
- 3.147 Ecologist are probably not very interested in people walking on the site but archaeologists would be more interested.
- 3.148 Site investigations crews dug trial pits and did drilling.
- 3.149 Ecologists were bothered about their equipment. On some sites they have local residents up in arms. There have been events on site. They have not been stopped from doing surveys on Smithy Wood.

11.40 CROSS EXAMINATION TOVEY.

- 3.150 He said he never went onto site during open cast mining but had been on to many sites.
- 3.151 He never went into Smithy Wood during the open cast mining.
- 3.152 Smithy Wood would be near the top of the high wall. He said he was basing that on his experience.

3.153 Reason they put Cowley Way where they did is that you could not build units where the high wall was. You would build Cowley Way in the middle of that high wall. High wall is not going right up to Smithy Wood. There would be a stretch along the top of the woodland where you could go. People said that they have looked out over the high wall and seen it and their evidence on that is probably better.

Observations from road.

3.154 He said he lived the other side of Sheffield and would sometimes go down Cowley Hill. When going in could he could not see people on over bridge. He did not see people frequently. Where he lived now he could see walkers with dogs 6.30 and 9 o'clock. He does not have any recollection that he had seen people at Smithy Wood. He could not say what people doing who had parked cars.

3.155 He accepted that some people were using the woodland during this period. OB 136 1996. In 1996 that refers to a path that goes to where the fire was.

3.156 Tab 8 of AB Doar evidence suggests there were paths.

"The presence of these pathlets indicated that Smithy Wood was well used by walkers during this period."

3.157 No particular reason to think decreased.

3.158 He accepted that that people were in the wood.

3.159 From 2013 deliberately took an interest.

3.160 OB 100. The path July 2009 he accepted that since that was put in people have now used that.

3.161 Since 2013 4x4 use Smithy Wood. It has got worse over the last few years near the Travellers.

- 3.162 No access through Hesley Wood. The access at the travellers is theoretically closed off but he said he has seen people where old bridge was.
- 3.163 More difficult through Hesley Wood and via the Travellers now and he acknowledged that Recyclcoal have tried to seal it off.
- 3.164 He said it could be more likely that people would use the south side now with the construction of new path, the 4x4 use and the fact that it is now harder through Hesley Wood
- 3.165 His observations were that he has not seen walkers with dogs eager to get there so could get into Smithy Wood on the toucan crossing. He said he walked along the Trans Pennine Trail at Easter and there were a lot of people on the Trans Pennine Trail but not on the footpath on page 100.
- 3.166 He did not hear motor vehicles on that day.
- 3.167 Ob 125 and 137 he said he may have got dates of Hesley Wood wrong. He said he said he thinks 3.4 should be 2010 and 2011. [application went in 2011]
- 3.168 Very limited trips to Hesley Wood before then. On a number of occasions he went in. Very occasionally took people around 4-5 occasions over 10 years.
- 3.169 Hesley Wood not changed a lot since OB 94 lagoon. It has been reasonably bare in there. Before 2010 cannot say whether a lot of use before. He cannot say one way or the other whether use increased. The trial bike use has increased on both sites. It transfers from one to the other.
- 3.170 He said he had seen trial bikes going into both areas not really a big decrease at Recycoal. Recycoal similar problems.

Chapelton

- 3.171 He said he made mostly weekends visits to in laws.
- 3.172 He said his in laws are still there in Burn Grove. He got married in 1986. Sheffield office opened in 1989. He worked in Chapelton from 1988. Sometime in 1990s went to Newcastle under Lyme.
- 3.173 1989 -91. He said he tended to go to in laws. Few visits when his kids were young to in laws.
- 3.174 NPT7 155. It was done from 2013 topographical survey. Tracks marked subsequently.
- 3.175 Large number of paths on the Topo. If you call a motorbikes track a path it is riddled with paths. He had marked motorbikes tracks and 4x4s that was done by engineer in response to village green application.
- 3.176 OB 155 first produced in early 2014. Observations not re-done.
- 3.177 He cannot comment on vehicular tracks before.
- 3.178 He walked the site on occasions during 2013. He did it about 3 or 4 times. Interspersed throughout that period.
- 3.179 There are more deep 4x4 tracks and more rutted now than in 2013. Tracks related more to trial bikes. They were more 4 wheel drive. More motorbikes in early days.
- 3.180 OB 136. No 4x4s recorded before 5 November 2013 on schedule. He said on Hesley Wood there was trial bike use. In both there was use by both.

- 3.181 Trial bikes had been using for about 10 years. Could not put dates specifically prior 2013 on 4x4s. The evidence from the entrance was about 2 or 3 years.
- 3.182 155 there are paths not marked with 4x4s in the north west of Smithy Wood. There are tracks where the woodland is a bit more dense. Vehicular use would normally follow the paths. They concentrate on bell pits and have made new ones.
- 3.183 There have been paths nowhere the same level previously. The motorbikes have gouged them out. The quantity of paths is greater now than when we did the desk study back in 1989.
- 3.184 Paths were recognisable before other than animal tracks. Paths were used by walkers or cycling.
- 3.185 In 1989 we did desk top study but with a site visit. I went once or twice to the site then. [see 136 OB] did not recall as many footpaths as there is now.

Recollections only is there were limited footpaths but not extensive tracks.[OB136]

Fire October 1995.

- 3.186 The inspection October and the fire was in the summer 1995. He did not visit this fire. It would have been within a week or 2 of the fire. It would have been in October 1st ish that the fire started. It would have been within a couple of weeks of the fire that report done [OB142].
- 3.187 OB 143/4. It was roughly right but it was not surveyed the plan was roughly correct. Fairly small scale map annotated by hand. It was where he thinks the area of fire. Some areas were virtually untouched.
- 3.188 He thought he can really only go on what was in the fire report a couple of weeks after the fire.

- 3.189 142 and 143 at the same time. 143 refers to new vegetation just starting to grow.
- 3.190 The 1996 fire was visible from 25 metres away. The 1995 fire was a larger area.
- 3.191 It is possible that people could have used the northern area without seeing it. It may well be out by 5 or 10 metres. Engineer would be able to orientate by pylons marked on plan at OB143. People would be able to go back into this area. Report by Mr Hartley was that in my “opinion that the fire has now extinguished.”
- 3.192 The fire would have been about 2 or 3 weeks.

1996 fire.

- 3.193 He said he was not certain where he got December 1995. It could have been when it was discovered. Letter in January 1996. It could well have been discovered December council letter January 1996[140aOB].
- 3.194 They are isolated but connected. He said they will have done temperature probes. He said his company did work on the hotspots.
- 3.195 The fire was about 100m in length. Could not see it from much more than 25 metres away. Unless walking on this area. It would be hidden from the motorway. He said you would not necessarily see it from the top part of the Application Site. If accessing the wood lower down the same applies and may not see it.
- 3.196 He accepted that the fires would not have prevented use of whole of the wood. The works were around a 2 week period could have been slightly less.
- 3.197 He said the access they came in was opposite Smithy Wood Road where the cars are parked now. It was a small excavator that they used

which wound its way around the woodland where it could. It was a small JCB. There would be driver and one of our guys supervising. Possibly 2 or 3 people he said he went personally 3 or 4 times.

3.198 Significant works JCB and 2 or 3 people significant excavation fire is always major. We were doing 2 or 3 fires in that period. He said they did the Parkin Wood fire as well. He said they brought the warning signs and bunting so that people could not access it. It was red and white in colour.

3.199 He said he never visited the 1995 fire and it does not appear to be taped off. He said that excavator was not that noisy so one would not hear until 25m or a little bit more metres away. There would then be a bit of evidence of tracks of digger. Possible that people using the wood would not be aware of this.

Area around 19 ha see OB 102

3.200 There are some that are not recognisable. It is a big woodland.

3.201 The mines to the south are shafts. Bell Pit ancient opening around 1850s and 1870s about 10 metres. A mine shaft is a bigger feature going to a deeper seam. A bigger mound with a mechanical device.

3.202 Over the site you could be there and not know that someone else was there. You would not know that others were there.

3.203 He said he remembered people saying that Mr Harrison did not see people in the same time.

3.204 He said the only fixed work was archaeological where contractors did not move around site. He acknowledged that the table on 140ff were compiled from consultants looking back. He said he had built up tables from answers.

- 3.205 Eventually everyone did respond to the e mail that he sent asking for information from their site visits and works. He accepted that they were not specifically looking out for people at the time and that the workers were concentrating on their work.
- 3.206 He said it was also possible that they would not have seen people in a different part of the Wood if not close to them. He did say that the workers would probably have remembered if they had seen people.
- 3.207 He said he asked the teams for recollection in 2014 sometime before March 2014.
- 3.208 They were walking around the site. When there were two people who would have been walking either together or in separate areas.
- 3.209 The consultants did encounter some in the woodland. The people they encountered. 140c first dusk where one BMX there.
- 3.210 There were then some in mid-morning and late morning. Dusk 6 children on mountain bikes. Many of the mornings talked about dog walking in the morning. Children were seen after school. BMX ramps were seen in a different area. 140d late evening children were seen.

29 July -5 Sept school holidays.

- 3.211 School holidays children could do different things.
- 3.212 There are records of using the woodland. This is despite the fact that it is a large site.
- 3.213 Recollections of what people see. He acknowledged that they would not be surveying the whole site all of the time.
- 3.214 He said his overall take on the tables is that any use he would say was occasional. Opinion not that many records of people walking dogs he thought very occasional. That he said is for the Inspector.

- 3.215 He said he could tell that people go into the woodland but on paths was most of use. Worn paths suggest they are being used. Even when not being used there are paths that are being worn.
- 3.216 He said that it is possible that people were walking before consultants came to site. However he said that they have quite a lot of instances where work in the morning. Some of archaeology consultants would start at 8 or 9 although some local people may have gone to work by that time. It is a bit of a mix. Some that are all day would start between 8-9am. The bat surveys in the dark. Most surveys would finish at dusk.
- 3.217 Reptiles mid to late. If said mid morning it would be 10 or 10.30.

Re-examination

- 3.218 February fire. Given that he did visit JCB was not a bob cat. Classic big JCB. Have to be reasonably small. It was yellow.
- 3.219 Schedule 140e there is a reference to car tracks on 6/10/13. Fresh car tracks. Probably different people.
- 3.220 140f Only one dawn bat survey November hours of work for archaeological 7am to 4.30.

4 THE LAW GENERALLY

- 4.1 This is an application made under section 15 the Commons Act 2006 which provides:

15(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

...

(2) This subsection applies where—

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

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

4.2 The critical issues for this case are the following.

- i) The meaning of locality and neighbourhood within a locality.
- ii) The test for the quality of user required to satisfy the statutory test.
- iii) The meaning of significant number.

4.3 There is no dispute that the relevant period in this case in which the applicant has to show the statutory definition is satisfied is from 14 November 1993 to 14 November 2013.

4.4 I will deal with the law and analysis on each of these issues in turn but clearly the application of the test needs to bring the component parts together.

BURDEN OF PROOF

4.5 The burden of proof is firmly on the applicant to ensure that each and every element of the claim is properly and strictly proved. *R v Suffolk County Council ex parte Steed* (1998) 75 P&CR 102. Lord Bingham made it clear in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 that all ingredients of the definition should be met before land is registered. He agreed with Pill LJ in *Steed* that it is no trivial matter for a landowner to have land registered as a village green. The burden is clearly on the applicant to prove all elements of the definition.

5 LOCALITY AND NEIGHBOURHOOD.

Law

- 5.1 Lord Hoffmann in *Oxfordshire v Oxford City Council* [2006] 2AC 674 set out the following guidance.

“27 Any neighbourhood within a locality” is obviously drafted with a deliberate imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries. I should say at this point that I cannot agree with Sullivan J in R (Cheltenham Builders Ltd) v South Gloucestershire District Council [2004] JPL 975 that the neighbourhood must be wholly within a single locality. That would introduce the kind of technicality which the amendment was clearly intended to abolish. The fact that the word “locality” when it first appears in subsection (1A) must mean a single locality is no reason why the context of “neighbourhood within a locality” should not lead to the conclusion that it means “within a locality or localities”.

- 5.2 Sullivan J in *Cheltenham Builders*⁷ gave what is still the leading guidance on the requirements for a neighbourhood. He said:

85. It is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood. For the reasons set out above under “locality”, I do not accept the defendant's submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word “neighbourhood” would be stripped of any real meaning. If Parliament had wished to enable the inhabitants of any area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so.

- 5.3 I have also considered the guidance in the *Leeds Group PLC v Leeds City Council* [2010] EWHC 810 at first instance.

- 5.4 In that case HHJ Behrens set out his decision on neighbourhood in the following way.

104. I have come to the conclusion that both The Haws and Banksfield are properly to be regarded as neighbourhoods within the meaning of

⁷ R (On Application of Cheltenham Builders Limited) v South Gloucestershire DC [2003] EWHC 2803 Tab 3 of Blue 6

section 22(1A). I am conscious that there are limited community facilities and no shops within the two neighbourhoods and that estate agents do not sell properties by reference to The Haws or Banksfield neighbourhood. However it was conceded both before the Inspector and by Ms Ansbro that this was no more than a factor to be taken into account in determining whether there was a neighbourhood. She also accepted that many of the streets in Banksfield had the word "Banksfield" in their name and that many of the streets in The Haws have "Haw" or "Hawthorn" in their name. Ms Ansbro very properly conceded that those were factors to be taken into account pointing in favour of a neighbourhood. As the Inspector pointed out there are connecting streets within each neighbourhood and although there are a variety of styles there is a preponderance of post war semi-detached housing within each of the areas. I agree with the Inspector that there is sufficient cohesiveness to justify the description of each area as a neighbourhood.

APPLICATION TO THIS CASE.

- 5.5 In this case what is relied upon is the locality of the civil parish of Ecclesfield and the neighbourhood of the Cowley Estate.
- 5.6 In terms of locality the civil parish of Ecclesfield is an area known to law. The fact that it was known to the law was not challenged although as will be set out shortly the locality was not accepted by the Objector.
- 5.7 The Applicant was very clear through Mr Greaves what the locality was that they were relying on as part of the expression "neighbourhood within a locality". In Mr Greaves' helpful outline legal submissions on behalf of the applicant dated 15 March the locality aspect was set out as being the civil parish of Ecclesfield.⁸ That did not change at the Inquiry albeit that an accurate plan was not presented until after the Inquiry.
- 5.8 Post the Inquiry the Applicant produced the map of the CP of Ecclesfield on 27 April attached to an e mail of Paul Brackenbury where he said "The map is based upon the civil parish as far as can be determined has been in force throughout the claimed period November

⁸ See §14

1993 to November 2013”. The Objector on 7 May took the point that this was unclear and there was not evidence that the boundaries had endured for the whole 20 year period and that the burden was on the Applicant.

5.9 In response to that the Applicant produced a witness statement from David Morton dated 14 May 2015 who is the Clerk to the Parish Council of Ecclesfield in which he said:

“I can confirm that the map they have submitted for the purposes of the Smithy Wood Town and Village Green application represents the boundary of the Civil Parish of Ecclesfield”

5.10 The Applicant said in the covering e mail that in the event that I am not satisfied regarding the locality that I should recommend an alternative locality.

5.11 By letter of 19 May 2015 the objectors responded that:

- i) The burden was on the applicant
- ii) The objector has not had an opportunity to test the evidence of Mr Morton.
- iii) I should not recommend an alternative locality on the basis of the Lord Hoffman’s observations at paragraph 61 of *Oxfordshire v Oxford City Council* [2006] 2AC 674 to the effect that the Registration Authority does not have an investigative duty.

5.12 The Applicant made a short response dated 20 May 2015 on the basis that they have been consistent at the inquiry on relying on the locality aspect as being the civil parish of Ecclesfield.

5.13 I am on the basis of the evidence presented satisfied that the applicant can rely on the civil parish of the Ecclesfield for the purposes of the Locality part of the Neighbourhood within a Locality expression. I do not think that there is any unfairness to the Objector in the way this

evidence came forward. In reality the Locality has been clear since 15 March 2015 at the very least. They had an opportunity of putting in evidence since then to dispute that it was a qualifying locality. The existence of a map of the locality was not essential for them to be able to dispute the evidence if they had wanted to. Whilst the evidence of David Morton was not tested it was perfectly credible and the Objector had the opportunity to put in their own evidence about the Civil Parish and boundary changes if they had wanted to and thought there had been substantial boundary changes. Thus I accept that evidence in all the circumstances.

5.14 In any event if that was not a locality it would be very likely that a locality could be found in which the neighbourhood fell e.g. Sheffield. This was canvassed with the Objector during the closing submissions and there was acceptance that there would be nothing to prevent this approach being taken. It would seem on the authorities that they were right to accept that approach could be taken. In *Leeds Group Plc v Leeds City Council* [2010] EWHC 810 Ch HHJ Behrens concluded that:

“...one of the main purposes of the amendment, as it seems to me, was to allow inhabitants in a neighbourhood to qualify in a situation where the locality itself was too big.”⁹

5.15 This aspect was not doubted by the Court of Appeal who upheld the High Court decision and dismissed the appeal in *Leeds Plc v Leeds City Council*.

5.16 Thus the position is that I am satisfied that there is a locality which has been demonstrated which complies with the requirements for the locality element in the statutory expression of ‘neighbourhood within a locality’. Even if I was not right about this it would be fair on the facts of this case to reformulate the locality element.

⁹ See paragraph 90

Neighbourhood.

- 5.17 The Cowley Estate is a collection of houses that are all accessed off one road namely Woodburn Drive. There are around 320 houses¹⁰. It is accessed from Woodburn Drive and that is the only access and egress by car. There are other pedestrian accesses in particular one to Cowley Hill in the south east and one to Chapeltown Park in the north west.
- 5.18 Sullivan J in *Cheltenham Builders*¹¹ expressly used the example of a housing estate as something that would in ordinary language be described as a neighbourhood.
- 5.19 The Cowley Estate is more than usually cohesive. All of the houses within the neighbourhood have their vehicular access from Woodburn Drive. The boundaries in the north east are with the dismantled railway which is now a footpath¹² to the south east is Cowley Hill and north west is Chapeltown Park. In addition virtually all the houses were built as part of a scheme at a very similar time in around the late 1960s early 1970s¹³ which contributes to cohesiveness.
- 5.20 In addition the residents that gave evidence on neighbourhood all identified themselves, with conviction, as coming from the Cowley Estate. There was no witness of the Objector that disputed that the Cowley Estate was a neighbourhood.

¹⁰ This was a figure given by Objector from their work on the day of the closing submissions which the parties were both happy to use as an approximation. It appears certainly to accord with the number on the plan.

¹¹ R (On Application of Cheltenham Builders Limited) v South Gloucestershire DC [2003] EWHC 2803 Tab 3 of Blue 6

¹² The evidence of objector was that it was permissive.

¹³ See evidence for example of two long standing residents who bought their houses new. of Geoff Driver moved in to new house 1969, Carole Eccles 48 years ago i.e. 1967 approximately

5.21 The only point raised by the Objector is that there were some houses on Cowley Lane that can be accessed from the estate namely from Glenwood Crescent but have not been included within the neighbourhood. However the few houses which have their front entrance on Cowley Lane and were outside the neighbourhood claimed appeared to have been built at a different time.

5.22 Even if there are a few houses which might have been included in the Cowley Estate which have not been by the Applicant I do not think this prevents the neighbourhood selected of having cohesiveness. The term is one that is deliberately imprecise as Lord Hoffmann observed and so even if there are a few houses where it is difficult to say whether they are definitely in or out of the neighbourhood that would not deprive the area selected from being a neighbourhood. The Cowley Estate is definitely a neighbourhood and this is the best and only attempt to describe it physically. The boundary selected by the applicant had a logic which is perfectly easy to follow and has much to commend it.

5.23 My advice is that the Cowley Estate is a neighbourhood. It is wholly within the Locality of the Civil Parish of Ecclesfield.

6 LAWFUL SPORTS AND PASTIMES/ FOOTPATH TYPE USE.

6.1 It is quite clear that it is necessary in this case to work out how much of the use being made of Smithy Wood was for footpath type use. If a use is a footpath use it is not LSP and does not count for the purposes of establishing a TVG. [*R (Laing Homes Limited) v Buckinghamshire CC* [2003] EWHC 2803 at §105-111]

LAW ON DISTINCTION BETWEEN LSP AND FOOTPATH USE.

6.2 There are two helpful cases that give helpful guidance in making the distinction between a footpath type use and lawful sports and pastimes.

Lord Hoffmann in *Oxfordshire CC v Oxford City Council* [2006] 2

AC 253 gave strong endorsement to both:

“Lightman J made a number of sensible suggestions about how such evidence might be evaluated and the judgments of Sullivan J likewise contain useful common sense observations; for example, on the significance of the activities of walkers and their dogs (R(Laing Homes Ltd) v Buckinghamshire County Council [2004] 1 P & CR 573, 598-599”

6.3 Turning first to the guidance given at first instance in the Trap Grounds¹⁴ case by Lightman J on the issue.

“102 The issue raised is whether user of a track or tracks situated on or traversing the land claimed as a green for pedestrian recreational purposes will qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green. If the track or tracks is or are of such character that user of it or them cannot give rise to a presumption of dedication at common law as a public highway, user of such a track or tracks for pedestrian recreational purposes may readily qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green. The answer is more complicated where the track or tracks is or are of such a character that user of it or them can give rise to such a presumption. The answer must depend on how the matter would have appeared to the owner of the land: see Lord Hoffmann in the Sunningwell case [2000] 1 AC 335 , 352h-353a and 354f-g, cited by Sullivan J in the Laing case [2003] 3 PLR 60 , 80, paras 78-81. Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential green will ordinarily be referable only to exercise of a public right of way to the green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential green may be recreational use of land as a green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).

103 Three different scenarios require separate consideration. The first scenario is where the user may be a qualifying user for either a claim to dedication as a public highway or for a prescriptive claim to a green or for both. The critical question must be how the matter would

¹⁴ *Oxfordshire CC v Oxford City Council* [2004] Ch 253

have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a public footpath, user for recreational activities or both. Where the track has two distinct access points and the track leads from one to the other and the users merely use the track to get from one of the points to the other or where there is a track to a cul-de-sac leading to, e g, an attractive view point, user confined to the track may readily be regarded as referable to user as a public highway alone. The situation is different if the users of the track, e g, fly kites or veer off the track and play, or meander leisurely over and enjoy the land on either side. Such user is more particularly referable to use as a green. In summary it is necessary to look at the user as a whole and decide adopting a common-sense approach to what (if any claim) it is referable and whether it is sufficiently substantial and long standing to give rise to such right or rights.”

- 6.4 Lightman J gave the following key bits of guidance.
- 6.5 The first issue to be looked at is whether the track or tracks were of such a character that they could give rise to use as a public highway. He gave further guidance on this in the paragraph before where he said that:
- “It is not possible to have a public right indefinitely to stray or meander over land or go where you like. If there is no made-up or definite enduring track but merely a temporary or transitory track, that is evidence against a public right of way: see Pratt & Mackenzie’s Law of Highways, 21st ed (1967), pp 37-38 which cites the relevant authorities. 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”*
- 6.6 Secondly Lightman J advised that it is how the matter would appear to the owner of the land that is important.
- 6.7 If the use is ambiguous the inference should generally be drawn of the less onerous rights i.e. the public right of way.
- 6.8 One then looks at the use in a common sense way to see what is referable to a public right of way type use or LSP use.

- 6.9 Sullivan J in *R (Laing Homes Limited) v Buckinghamshire CC* [2003] EWHC 2803 made common sense observations on dog walking that if a dog owner is walking down a path but goes to retrieve an errant dog who is off the path that is still only the exercise of a footpath use and not LSP. He said the following.

104 The landowner is faced with the same dilemma if the dog runs away from the footpath and refuses to return, so that the owner has to go and retrieve it. It would be unfortunate if a reasonable landowner was forced to stand upon his rights in such a case in order to prevent the local inhabitants from obtaining a right to use his land off the path for informal recreation. The same would apply to walkers who casually or accidentally strayed from the footpaths without a deliberate intention to go on other parts of the fields: see per Lord Hoffmann at 358E of Sunningwell. I do not consider that the 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.

APPLICATION OF LAW TO THIS CASE.

Character of Paths

- 6.10 The first question to consider is the character of the tracks during the application period and whether they were such that they could give rise to a claim for a highway.
- 6.11 The vast preponderance of the evidence was that during most of the relevant period Nov 1993-Nov 2013 there were about a dozen footpaths on the land. There were more when the 4x4s have been using the land extensively in the last few years. The following is some of the key evidence on this.
- 6.12 Mr Brackenbury said in re-examination the number of paths was between the number on the plan at OB 132 and OB155 when he began using the land near the beginning of the period. This is consistent with about a dozen paths. He also spoke of them as being well trodden.

- 6.13 Mr Driver said that the paths stayed in more or less the same places between 1993 to 2005.¹⁵
- 6.14 Mr Harrison said in re-examination that there were 10-12 paths in the period he was using the Application Site 1991-2001.¹⁶
- 6.15 Dr Perring said in both examination in chief and cross examination that there were a dozen or so footpaths going through the woods.
- 6.16 Mr Newton accepted from his visits where he saw tracks and paths that there was a possibility of a footpath claim.¹⁷
- 6.17 Carol Eccles said in examination in chief that there were a dozen or so footpaths.
- 6.18 Ms Gibson said Smithy Wood was riddled with paths. However I prefer the more specific evidence of all of the above witnesses as to the nature of the paths.
- 6.19 In addition from the site visits made I was able to see that there were paths now running through Smithy Wood. These paths have probably changed in character number and location because of the 4x4 activity. However about a dozen paths over 20 hectares of land is perfectly consistent with having tracks that have the attributes of footpaths as opposed to use of the land as a whole.
- 6.20 So taking all the evidence as a whole I was quite satisfied that there were paths and tracks which had the character necessary to be footpaths. That changed after the 4x4 use increased in the last 2-3 years when the routes were much more changeable. This is also supported by the evidence of how the site was used as well.

¹⁵ See cross examination

¹⁶ See last answer of re-examination

¹⁷ See Inspector questions second set.

USE AS FOOTPATHS.

- 6.21 The most common use of Smithy Wood was for dog walking and walking in that order.¹⁸ That is not to say that even for these uses they were very frequent for the reasons that I set out below.
- 6.22 Of these uses the vast majority of the use for these purposes was along the paths. This is clear from the totality of the evidence but in particular the following.
- 6.23 Mr Brackenbury said that there were paths that people walked on in cross examination and spoke in re-examination of some paths which were well trodden.
- 6.24 Geoff Driver made it clear that the majority of people did not want to get their clothing snagged and as a result didn't walk on the rough areas.¹⁹ He also said that there was no-one else from the estate who went everywhere like him, he said he was a one-off.²⁰
- 6.25 Mr Harrison said that he invariably followed the paths when he was walking his dog between 1990-2001 and that others that he saw also invariably followed the paths.²¹
- 6.26 Ms Eccles said that she followed the footpaths²².
- 6.27 Mrs Williams said that she wandered off the path sometimes but the majority of the time she would be on the path.²³ So far as others were concerned she said probably a lot kept to the tracks and usually people stuck to the tracks.²⁴

¹⁸ See evidence of Mr Newton Smith Inspector questions for example.

¹⁹ See Inspector questions.

²⁰ See last answer to Inspector

²¹ See Inspector's questions.

²² See cross examination

²³ See cross examination

²⁴ See Inspector's questions.

- 6.28 Ian Newton-Smith said that he stuck to the path in both examination in chief and cross examination .
- 6.29 Carol Gibson said that she would sometimes go off the path in cross examination.
- 6.30 Mr Newton's evidence was that he saw the evidence of track having been made that looked like being made by foot.²⁵

CONCLUSION ON LSP FOOTPATH.

- 6.31 Therefore applying the tests in *Laing* and *Oxfordshire Trap Grounds* at first instance the vast majority of the use was for a footpath type use. This footpath type use does not count as LSP and so should be stripped out before considering whether there are a significant number of users or a sufficient quality of user to make a successful claim for TVG registration.

7 CONCLUSIONS ON SIGNICANT NUMBER & QUALITY OF USER.

LAW

- 7.1 In *R(McAlpine) v Staffs CC* [2002] EWHC 76 (Admin) Sullivan J set out the following guidance on the meaning of the significant number in the context of section 22(1) as amended of the Commons Registration Act 1965.

71 Dealing firstly with the question of a significant number, I do not accept the proposition that significant in the context of section 22(1) as amended means a considerable or a substantial number. A neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to be properly described as a considerable or a substantial number. In my judgment the inspector approached the matter correctly in

²⁵ See Inspector's questions.

saying that “significant”, although imprecise, is an ordinary word in the English language and little help is to be gained from trying to define it in other language. In addition, the inspector correctly concluded that, whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the meadow for informal recreation was very much a matter of impression. It is necessary to ask the question: significant for what purpose? In my judgment the correct answer is provided by Mr Mynors on behalf of the council, when he submits that what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.

7.2 This was approved of by the Court of Appeal in ***Leeds Group v Leeds City Council*** [2011] Ch 363²⁶.

7.3 Thus the key question is whether the use is sufficient to indicate that it is in general use by the local community for informal recreation rather than occasional use by trespassers. In the same case the court approved the Inspector’s approach that in deciding whether a significant number of locals had used an area for recreation this ‘*was very much a matter of impression*’. It is relevant to this task to look at the size of the neighbourhood or locality claimed.

7.4 In ***R v Oxfordshire CC Ex p Sunningwell*** [2000] AC 335 Lord Hoffmann set out that if a use was trivial and sporadic that would be insufficient to carry the outward appearance of user as of right. He said:

*“It may be, of course, that the user is so trivial and sporadic as not to carry the outward appearance of user as of right.”*²⁷

7.5 The test for the quality of user required has since then been set out by the Supreme Court in ***R (on the application of Lewis) v Redcar and***

²⁶ See paragraph 31 where Sullivan LJ quoted with approval his judgment in *McAlpine*. Arden LJ expressly agreed with this at paragraph 59

²⁷ See page 357D

Cleveland Borough Council [2010] 2 AC 70. They held that the test was whether:

*“the user was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right (see R (Beresford) v Sunderland City Council [2004] 1 AC 889, paras 6 and 77), the owner will be taken to have acquiesced in it –.”*²⁸

..

“The question is whether the user by the public was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right” [para 75]

APPLICATION TO THESE FACTS.

7.6 Whilst all of their witnesses were trying to assist the Inquiry I do not accept that the totality of the use of Smithy Wood was very great. The frequency of use and the number of people typically who used the site are difficult to recollect going back over a 20 year period. There were some of the witnesses who were imbued with the idea that it would be beneficial to have the registration succeed to “save” Smithy Wood from development. In addition it is natural when asked about particular events to remember positive times when you did that as opposed to the no doubt many times when they were doing other things. These factors whether consciously or subconsciously led to some overstatement of the frequency of visits and the consistency of visits over a period.

7.7 There are a number of factor that lead me to suspect that use of Smithy Wood for any sort of activity was relatively limited.

- i) First it was quite a distance from the Cowley Estate. For most of the period people from the Estate would have been able to go over the over bridge after going through Hesley Wood. Alternatively they would have been able to cross the busy Cowley Hill or go under the disused railway. However it was not very close. I accept the evidence of Mr Newton from his insurers

²⁸ see Redcar per Lord Hope at paragraph 67

that people are often lazy about where to go for recreation and if it is not close they will not use it very regularly. There are of course exceptions to this and those with a motive to go further like dog walkers or nature enthusiasts may go further. However the distance leads me to suspect that use of Smithy Wood was not as great as some suggested.

- ii) The routes there were not amazingly straightforward for most of the period. The old railway line was rough until the Council improved it in the last year. The overbridge involved going through Hesley Wood. There was a period in 2007 after the over bridge was taken down and before the toucan crossing was built when it was even less inviting.

- iii) Chapeltown Park was along one side of the Cowley Estate with an easy access. It is true that the evidence of many was that this was a bit run down until it was improved in around 2010. [see evidence of Mrs Howe examination in chief] However Mr Powell used it before the improvement and it did not put him off. Ms Gibson did not notice any change in the kids playing over the period.²⁹ On the site visit on 23 April 2015 I saw only 1 person in Smithy Wood despite spending 1 hour there and yet in the park there was constant activity with 10s of people there. I looked carefully for evidence of people walking into Smithy Wood along the Trans Pennine Trail at the end of the site visit and there were none. Even taking into account: the slightly different timings on the same day of the visits to each, that it was only a snapshot, that is harder to see people in Smithy Wood and that the park has been improved it was testament to the fact that Chapeltown Park would have been likely to be used for many recreational uses during the relevant period.

²⁹ Inspector's Questions Ms Gibson

- iv) In addition if children wanted a bit of wood to play in particularly just north of the Estate without crossing any road there was a part of Hesley Wood which was available although this was quite a narrow area by comparison with Smithy Wood. However it would have been a convenient and close treed area. It was apparent from the site visit that this area had old trees which was consistent with the aerial photo from 1996 showing trees in this area.³⁰
- v) The creation of the bridleway path south west of Smithy Wood which was done when the business park buildings were constructed in 2008 made the use of Smithy Wood more appealing. Before that there was not an easy route that followed that line.

7.8 In addition when the totality of the applicant's evidence is looked at there are several features that really point to a very low overall level of usage of Smithy Wood which is consistent with the above.

- i) The number of people who have evidence of using the land directly is small. It is a small number from an estate of about 320 houses. There were 8 witnesses who gave oral evidence from inside the Neighbourhood of having used the land. The written evidence has to be treated with some caution because it is difficult to tell from that as to whether any significant amount of that use was for LSP as opposed to footpath type use. The frequency and time period of the use is much harder to give weight to.
- ii) The evidence of seeing other named individuals from the Estate was very limited. Evidence of seeing unnamed and unrecognised

³⁰ OB 96

others on Smithy Wood is not of so much weight because they may well be from elsewhere and so not qualifying user.

- iii) The evidence was quite limited on the number of specific occasions related to any known event but was all very general on the number of times per week which over a 20 year period is easy to focus on usage and hence consciously or subconsciously inflate usage.
- iv) In terms of the children playing very few specific recollections from those that saw it or were involved in it.
- v) There was a lack of any photographs. This could be explained by there being fewer cameras around than today. But even making allowance for that there were very few photographs. The applicant clearly did incorporate some. If Smithy Wood had been used as a regular destination play area for events like picnics and kids playing I would have expected some more photographs than were presented.
- vi) There was a lack of evidence of people seeing new dens or rope swings.
- vii) In addition some of the evidence was to the effect that the paths were rather lightly used in the early years. Dr Perring for example spoke of leaf mould being on the paths and that some of them being made by one or two people.³¹
- viii) Most of the evidence of blackberry picking was outside of the Application Site south or west of the Application Site. What was left was very limited and occasional.

³¹ Last answers in re-examination.

- ix) Physically Smithy Wood is a large site of just under 20ha so that the level of use to put a reasonable landowner on notice must be greater.
- x) The lack of recollection especially of the fire in 1995 is consistent with the use being less frequent than some remember. The second fire was more localised from the evidence of Mr Tovey and would only have been visible from around 25 metres and so it is explicable that people did not notice that or did not recollect that.

7.9 I am reinforced in these conclusions by the evidence of the objector. Mr Newton and Mr Tovey went on the site on a number of occasions and did not see any children playing or evidence of that. All Mr Newton saw is paths consistent with a possible footpath claim which he was not concerned about. Post 2013 if there was a substantial use certainly before the underpass had been improved along the old railway line from around April 2014 he would have been likely to have seen it on his trips down Cowley Hill. He would have seen walkers crossing the toucan or walkers going in up the banks but he did not. Mr Tovey was a reliable witness who did not appear to be giving only answers helpful to his client.

7.10 The consultants' reports of what they saw in the evidence of Mr Tovey from 2013 are an important record and significant evidence. Despite approximately 45 days³² of having consultants on the site usually for long periods there were people in the woodland on only a few occasions. I take the point that there are limitations to this evidence in that it was not the product of contemporaneous notes but compiled by Mr Tovey asking for recollections around 6 months after the consultants were there but it is nonetheless a powerful record. I was impressed with the candour and integrity of Mr Tovey and I am

³² See OB 126 he said approximately 45 but looking at the table it is very likely to be over 45 days.

confident he compiled this evidence without trying to influence it. The reporting of visits and sightings of people over the period voluntarily is testimony to this.

Conclusions On Quality of Use and significant number.

- 7.11 I thus take the view that there was very little use of Smithy Wood in the relevant period considerably less than appeared from some of the evidence. However if the use by people from outside of the neighbourhood is stripped out and use for a footpath type use is stripped out what is left is trivial and sporadic and not by a significant number.
- 7.12 Firstly when people saw others generally many of those that they saw were likely to be from outside the neighbourhood. For example Mr Driver said that quite a few came from Thorpe Hesley and Chapeltown³³. Mrs Howe recognised in examination in chief that some that she would see were from elsewhere and not the estate. Thus much of the evidence of seeing others would not in fact be qualifying user because the people seen would not have been from the Neighbourhood.
- 7.13 However the even more significant factor is that the most common uses were walking dogs and walking and the vast majority of that was footpath use and not LSP and so should be stripped out for the reasons set out above.
- 7.14 When this is done the limited use that was made of the site initially becomes miniscule for LSP by those from the Neighbourhood certainly nothing like sufficient to be a significant number or the quality of use that would be able to qualify under section 15 of the Commons Act 2006.

³³ See Inspector's Questions

- 7.15 This can be tested by looking at the schedule of what the consultants saw in 2013. This was, as has been mentioned, observations over 45 days when consultants were on site usually for substantial parts of the day. This was over the warmer months and included the summer holiday. It was during a period when the bridleway path had been constructed and so use was likely to be encouraged. The only point that could have dampened the use was 4x4 use however that was most frequent over the weekend and particularly Sundays and the surveys covered lots of days that were not weekends.
- 7.16 When the schedule is looked at there is very little LSP use left if the footpath, illegal and furtive uses are stripped out. Firstly if walking and dog walking are stripped out on the basis that the vast majority of that is footpath type use that reduces the total. In addition the illegal shooting and illegal use of motor vehicles which was correctly accepted by the applicant to be unlawful should be stripped out. The police dog training was with permission. There is one occasion of furtive gathering of wood [5/9/13] which is more marginal but is likely to be unlawful if the wood is being taken and could be secretive³⁴. In any event it should probably not be considered. When all of those uses are stripped out all that is left is 3 incidents of children playing which are certainly LSP. Of those it is not certain that they are all from the neighbourhood. In any event 3 isolated events of children playing even if they were all from the neighbourhood is clearly trivial and sporadic over 45 days. That is even when one considers that some use would have been missed and a small part of the walking with and without dogs may be qualifying use.
- 7.17 Thus for all these reasons there was insufficient use to indicate that the use of the land was in general use by the local community for informal recreation rather than occasional use by individuals as trespassers. The

³⁴ ie clam to use the Latin term from nec vi, nec clam and nec precario

use was not of such an amount and in such a manner as would be reasonably be regarded as being the assertion of a public right. Thus the use fails the test for significant number in section 15 of the Commons Act 2006 as elucidated by Sullivan J in *McAlpine* and the test for quality of user as set out in *Redcar*.

8 OVERALL CONCLUSIONS

- 8.1 For the above reasons I recommend that the Registration Authority refuse this application for a village green on the basis that the use has not been by a significant number of inhabitants of the neighbourhood and is insufficient to pass the test set out in *Redcar*. I take the view the Cowley Estate is a neighbourhood within a locality within the meaning of section 15 Commons Act 2006.

Richard Ground

14 July 2015

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