

**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AS A
TOWN OR VILLAGE GREEN IDENTIFIED IN THE APPLICATION AS
'WOODCRAY' AT WOKINGHAM, BERKSHIRE.**

- APPLICATION NUMBER TVG WTC-1 -

**INSPECTOR'S REPORT AND RECOMMENDATION TO THE COMMONS
REGISTRATION AUTHORITY - WOKINGHAM BOROUGH COUNCIL**

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INTRODUCTION

1. I am instructed on behalf of Wokingham Borough council (WBC) in its capacity as the commons registration authority (CRA) to advise on an application to register an area of land sometimes known as "Woodcray" as a new town or village green (TVG).
2. In an application dated 7th March 2013, Mr Christopher Benham of 9 Hart Dyke Close ('the Applicant'), Wokingham applied to WBC to register the application land. WBC stamped the application, made on Form 44, as received on 21st March 2013 and it was given reference TVG/WTC-1¹. The application was stated to be made under s15(3) of the Commons Act 2006 ('CA 2006') qualifying use having ended on 14th January 2013. That date coincides with the date of letters sent to a number of residents whose properties border the application land by the landowners' firm of solicitors, Blandy & Blandy², informing them essentially that the land was private and should not be used. These are referred to in this report simply as 'the January 2013 letters' and are of some importance as the Applicant says that until these were received (and signage simultaneously erected on the land) user was 'as of right'. The application land was delineated by a yellow

¹ AB Tab 1

² OB Tab 32

outline on the attached map³. The locality or neighbourhood within a locality in respect of which the application was made was said to be shown coloured blue on the attached map and was stated to be “Hart Dyke Close, Finchampstead Road, Luckley Oakfield School and Luckley Wood, Denby Close”. In actual fact, the attached map does not include Denby Close and only encompasses a short section of Finchampstead Road in the blue coloured marking. The justification for the application was stated to be free use of the land for community purposes unstopped and without permission for over 40 years continuously. The application was supported by the prescribed statutory declaration and 30 completed evidence questionnaires.

3. The application was regarded by WBC as duly made and was publicised in accordance with the relevant regulations in April and May 2013. Only one objection statement was lodged within the appropriate time⁴ from the landowner, Brooklands Investments Limited (“the Objector”). The objection statement, dated 17th June 2013, was settled by experienced counsel and took numerous points in objection to the application.

4. The Applicant responded in writing to the lodged Objector statement in a written submission dated 22nd July 2013. In that submission the Applicant stated that the claimed neighbourhood was “bounded by the distinctive urban boundaries of Hart Dyke Close, Finchampstead Road, Luckley Oakfield School, Luckley Wood and Denby Close” and adopted the Wescott ward of WBC as being the locality⁵ relevant to the neighbourhood criteria of the statutory criteria (to which I shall turn in the next section).

³ AB Tab 1; map attached to Form 44.

⁴ OB Tab 1

⁵ AB Tab 2 para. 5.

5. WBC as CRA decided that the application should be considered fully at a non-statutory public inquiry. I was appointed as inspector to provide a written recommendation to the CRA concerning whether the application met the test for registration under the CA 2006. I issued directions in relation to submission of any further evidence and conduct of the inquiry on 27th May 2014.

6. Those directions requested that the parties file a written summary of the legal arguments which they intended to submit at the inquiry along with full bundles of documents by 18th August 2014. Both parties submitted full analysis of their legal arguments⁶. In the legal argument submitted by the Applicant, he applied to amend his application⁷ so that the claimed neighbourhood within a locality is either:
 - a. The neighbourhood of the “Hart Dyke Close” estate (completed in 1990) within the locality of the “Westcott” ward of the Wokingham Borough Council (“neighbourhood A”).

 - b. The neighbourhood of “Finchampstead and Luckley Road” (encompassing Hart Dyke Close, Luckley Wood and Luckley Oakfield School) within the locality of the “Westcott” and “Ewendons” ward of Wokingham Borough Council, or the locality of the administrative area of the Wokingham Borough Council itself (“neighbourhood B”).

7. It should also be noted that the relevant qualifying period, which had been identified by the Applicant in their response to the objection statement as running

⁶ O written summary dated 17th August 2014 and A legal argument dated 18th August 2014.

⁷ AB Tab 9 para. 5

from December 1992 to December 2012⁸, was now changed in the Applicant's legal argument⁹ to 21st March 1991 – 21st March 2011.

8. The public inquiry was held at WBC's offices on Monday 1st until Thursday 4th September 2014 and then reconvened for Monday 24th and Wednesday 25th November to hear final evidence from witnesses and the parties gave oral closing submissions on Thursday 27th November 2014 in the afternoon. Unfortunately Mrs Spackman, who had hoped to give live evidence at the public inquiry, had not been well enough to attend and do so. Her evidence has been considered with the written evidence submitted on behalf of the Applicant. Between the inquiry sitting in September and November 2014, the Objector provided some clarification evidence and a continuation bundle in which documents which had arisen during the inquiry in September were gathered together and indexed. I was very grateful for this assistance.

9. At the public inquiry the Applicant was represented by Dr Bowes of Guildford Chambers and the Objector, by Mr Wilmshurst of 9 Stone Buildings. I am extremely grateful to both these experienced advocates for the helpful way in which they conducted their respective cases and the great assistance they offered me throughout the inquiry. I must also extend my great gratitude to Mrs Woodward, my instructing solicitor from WBC, who arranged the inquiry and gave me exemplary administrative assistance throughout. I am also very grateful to the Objector's team who arranged the extensive accompanied site visit undertaken on the afternoon of Tuesday 5th September. At the end of the parties' helpful closing submissions, we found there were one or two technical matters upon which I invited the parties to make further written submissions. I issued directions in relation to those on 2nd December 2015. I received written submissions from

⁸ AB Tab 2 Applicant's response to objections to registration, para 9.

⁹ AB Tab 9 Applicant's legal argument, para. 11.

the Objector dated 8th December and 22nd December 2014 and from the Applicant dated 15th December 2014 and 12th January 2015.

10. At the outset of the public inquiry, the Objector did not oppose either of the amendments which the Applicant had sought in relation to neighbourhood or qualifying period and these were allowed. Therefore the Application proceeded on the basis of two alternative claimed neighbourhoods and two alternative periods.

11. The claimed neighbourhoods were set out at the inquiry on a large map which could be fixed to a wall for convenience and there was a small laminated map at AB Tab 3. Neighbourhood A is included as part of Neighbourhood B. On both maps Denby Close does not form part of either neighbourhood. Therefore, neighbourhood A comprised Hart Dyke Close only and neighbourhood B comprised Hart Dyke Close, a section of Finchampstead Road, a section of Luckley Road, Luckley Oakfield School (which is on Luckley Road) and Luckley Wood.

12. The Applicant explained the alternate periods sought on the basis that s15(3) allows for an application to be made within the period of two years beginning with the cessation of a significant number of the inhabitants of any locality, or neighbourhood within a locality, indulging as of right in lawful sports and pastimes on the land for a period of at least 20 years. The application itself identified use as of right ending on 14th January 2013. Therefore the relevant period might have been expected to be the 20 years immediately preceding that cessation i.e. 13th January 1993 to 13th January 2013. However, the words of the statute allow a two year grace period in which to bring the application. Hence in this case, the earlier period of 21st March 1991 to 21st March 2011 would equally satisfy the terms of the statute. As the application to include these two alternative periods was unopposed, I have considered them both. The Applicant advanced

this alteration on the basis that the terms of the statute allowed for that possibility and not because there was any evidential reason why the Applicant would prefer an earlier period to be considered.

13. In coming to my recommendation I have had regard to all the evidence submitted to the public inquiry, both written and oral and to the law that I have been directed to by the parties' advocates.

Housekeeping notes

14. There are minor matters of housekeeping to introduce at this stage to make the reading of this report more accessible. I have used abbreviations for terms and phrases frequently occurring and those are as follows:

AL	Application Land
AB	Applicant's bundle
OB	Objector bundle
NH A	Neighbourhood A
NH B	Neighbourhood B
NH plan	Plan at AB Tab 3
CA 2006	Commons Act 2006
LSP	Lawful sports and pastimes

15. On the northern border of the AL is a private boarding and day school. This has been referred to as both Luckley House School and Luckley Oakfield School. I wish to make clear that these terms refer to the same school. I believe that the original name was the former and that in recent years the name was changed to

the latter. It is not clear when that name change took place but that is not relevant to the considerations here. Different witnesses referred to and clearly knew the school by the different names. That may simply have been due to what was current during their involvement or knowledge of the school. Therefore the names are used interchangeably in this report but it is clarified that it is the same school and premises being referred to throughout.

16. Another small point should be made in relation to nomenclature. The lane that leads off Finchampstead Road along the side of the AL (and from which some witnesses described gaining access to the land) I have referred to throughout as “Woodcraey Lane”. I note however that it does not appear on any of the maps I have seen labelled in that way and I note that the Objector’s evidence is that this is simply a private lane albeit sometimes referred to as Woodcraey Lane¹⁰. I have adopted that name simply as a matter of convenience in order to assist myself and witnesses to orient themselves in relation to the AL. My use of the customary name has no further significance than that.

The relevant statutory requirements

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

Section 15(3) applies where -

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

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

¹⁰ OB Tab 2 David Gardiner at para. 35

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

18. It is not in dispute that user '*as of right*' ceased before the application was made and that the application to register was made within two years from the cessation of such use.

19. One then looks at the various elements of the statute.

'a significant number'

20. '*Significant*' does not mean considerable or substantial. What matters is that the number of people using the application land has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation rather than occasional use by individuals as trespassers¹¹.

'of the inhabitants of any locality'

21. Where first used in section 15(3)(a) of the CA 2006 Act the term '*locality*' is taken to mean a single administrative district or an area within legally significant boundaries. This emerges very clearly from what Vos J (as he then was) said at [97(i)/(ii)] in *Paddico (267) Ltd v Kirklees Metropolitan Council* [2011] EWHC 1606 (Cb) whose findings on locality were affirmed on appeal at [2012] EWCA Civ 262. In short, village green rights require to be asserted by reference to a particular locality.

¹¹ R (*McAlpine*) *Staffordshire CC* [2002] EWHC 76 at [71] (*Admin*)

22. Because of the later debate on locality, it is worth mentioning that in *Paddico* at first instance (see [106] at [2011] EWHC 1606 (Ch)) Vos J thought that a Conservation Area could be regarded as a locality since it had legally significant boundaries. However, he rejected this outcome on the facts of the case as (a) the area had not been designated as such for the whole of the relevant 20 year period, and (b) users had not been predominantly from such area. Sullivan LJ rejected this finding on appeal; [2012] EWCA Civ 262 at [29].

'or of any neighbourhood within a locality'

23. A neighbourhood is a more fluid concept. The expression *'neighbourhood within a locality'* need not be a recognised administrative unit. A housing estate can be a neighbourhood¹². However, a neighbourhood cannot be any area drawn on a map: it must have a degree of (pre-existing) cohesiveness¹³. In the *Warneford Meadow* case at [79] HH Judge Waksman QC said that the area *'must be capable of meaningful description in some way'*.

24. The statutory test is fulfilled if a significant number of the users come from any area which can reasonably be called a neighbourhood even if significant numbers also come from other neighbourhoods. The view I take is that the claimed neighbourhood must be an area which is cohesive, identifiable and recognisable as a community in its own right. There must, I think, be something about the claimed neighbourhood (or at least its core area) which distinguishes it from the surrounding areas. Only the inhabitants of the relevant neighbourhood have recreational rights over the land.

¹² *McAlpine*

¹³ *R (Cheltenham Builders Ltd) v South Glos DC* [2003] EWHC 2803 para 85

25. It is also clear that the expression neighbourhood can mean either a neighbourhood or neighbourhoods and the neighbourhoods concerned do not have to be located within a single locality¹⁴.

'have indulged as of right'

26. The traditional formulation of the requirement that user must be *'as of right'* is that the user must be without force, secrecy or permission. The rationale behind *'as of right'* is acquiescence. The landowner must be in a position to know that a right is being asserted and he must acquiesce in the assertion of the right. In other words, he must not resist or permit the use.

27. The nature of the inquiry is the use itself and how it would, assessed objectively, have appeared to the landowner. One first has to examine the use relied upon and then, once the use had passed the threshold of being of sufficient quantity and suitable quality, to assess whether any of the vitiating elements of the tripartite test applied, judging the questions objectively from how the use would have appeared to the landowner. In short, the use must be to a sufficient extent since use which is *'so trivial and sporadic as not to carry the outward appearance of user as of right'* should be ignored¹⁵.

28. The issue of *'force'* does not just mean physical force. Use is by force if it involves climbing or breaking down fences or gates or if it is contentious or under protest. In this case, the Objector claims that the signage on the gates on Woodcraze Lane

¹⁴ *Leeds Group PLC v Leeds City Council* [2010] EWCA Civ 1438 at [26] and [56-7] and *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674 at [27]

¹⁵ *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] 1 AC 335, 375D-E

rendered use of those aware of them, contentious. It is said that signage was erected in 2009¹⁶.

29. Use that is secret or by stealth will not be use '*as of right*' because it would not come to the attention of the landowner.

30. '*Permission*' can be express e.g. by erecting notices which in terms grant temporary permission to local people to use the land. Permission can also be implied but not by inaction (*R (Beresford) v Sunderland City Council* [2004] 1 AC 889 at [5]).

'in lawful sports and pastimes'

31. The expression 'lawful sports and pastimes' ('LSP') form a composite expression which includes informal recreation such as walking, with or without dogs, and children's play provided always that those activities are not so trivial or intermittent so as not to carry the outward appearance of user 'as of right' (see *Sunningwell* at p.356F-357E). It becomes necessary in some cases to distinguish between the use of paths or tracks as putative public rights of way rather than as qualifying LSP.

32. The law under this head was addressed by Lightman J in *Oxfordshire County Council v Oxford City Council*¹⁷ and in *R (oao Laing Homes Ltd) v Buckingham County Council*¹⁸ and in the *Oxfordshire* case¹⁹. There is also a very helpful analysis in the TVG

¹⁶ OB Tab 51

¹⁷ [2004] Ch 253 at [102/3]

¹⁸ [2004] 1 P&CR 36 at [102-110]

¹⁹ [2006] 2 AC 674 at [68].

report of Vivian Chapman QC in *Radley Lakes*²⁰ who said that the main issue in such cases is whether the use would appear to a reasonable landowner as referable to the exercise of a right of way along a defined route or referable to a right to enjoy recreation over the whole of a wider area of land. If the appearance is ambiguous, then it shall be ascribed to the lesser right, i.e. a right of way.

33. The decision in *Laing Homes*²¹ requires me to discount user which would suggest to a reasonable landowner that users believed they were exercising a public right of way which would include situations (a) where a dog off the lead roams freely outside the footpath whilst its owner remains on the footpath; (b) where owners are forced to retrieve their dogs which have run away from the footpath; or (c) where walkers casually or accidentally stray from the paths without any intention of going onto other parts of the application land. I should also mention *Dyfed CC v Secretary of State for Wales* [1989] 59 P&CR 275 at 279 where it was said that there is no rule that use of a highway for mere recreational purposes is incapable of creating a public right of way.

'on the land'

34. The expression '*on the land*' does not mean that the registration authority has to look for evidence that every square foot of the land has been used. Rather the registration authority needs to be satisfied that, for all practical purposes, it can sensibly be said that the whole of the land had been used for LSP for the relevant period. The registration authority also retains a discretion to register part only of the application land if it is established that part but not all of the land has become a new TVG. In fact in this case, the Applicant invites the CRA to consider recommending registration of parts of the AL in the event it is not possible to

²⁰ (13/10/2007) at [304-305]

²¹ At paras. 102-105

recommend registration of the whole²². This is dealt with further below at paragraph 188.

'for at least 20 years'

35. The relevant period in this case is 13th January 1993 – 13th January 2013 or 21st March 1991 – 21st March 2011.

PROCEDURAL ISSUES

36. The regulations which deal with the making and disposal of applications by registration authorities outside the pilot areas²³, such as WBC, make no mention of the machinery for considering the application where there are objections. In particular no provision is made for an oral hearing. A practice has, however, arisen whereby an expert in the field is instructed by the registration authority to hold a non-statutory inquiry and to provide an advisory report and recommendation on how it should deal with the application.

37. In *Regina (Whitney) v Commons Commissioners*²⁴ Waller L.J suggested at paragraph 62 that where there is a serious dispute, the procedure of *'conducting a non-statutory public inquiry through an independent expert'* should be followed *'almost invariably'*. However, the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties by judicial process. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to costs. However the registration authority must act impartially and fairly and with an open mind.

²² A's closing submissions dated 27th November 2014 at para. 91.

²³ SI 2008/1960

²⁴ [2004] EWCA Civ 951

38. The only question for the registration authority is whether the statutory conditions for registration are satisfied. In its determination there is no scope for the application of any administrative discretion or any balancing of competing interests. In other words, it is irrelevant that it may be a good thing to register the application land as a TVG on account of the fact that it has been long enjoyed by locals as a public open space of which there may be an acute shortage in the area.
39. The onus lies on the applicant for registration and there is no reason why the standard of proof should not be the usual civil standard of proof on the balance of probabilities.
40. The procedure is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. The 2007 Regulations follow closely the scheme of The Commons Registration (New Land) Regulations 1969 which governed applications to register new greens under section 13 of the 1965 Act. In a small number of pioneer authorities The Commons Registration (England) Regulations 2008 apply.
41. The prescribed procedure is very simple: (a) anyone can apply; (b) unless the registration authority rejects the application on the basis that it is not *'duly made'*, it proceeds to publicise the application inviting objections; (c) anyone can submit a statement in objection to the application; and (d) the registration authority then proceeds to consider the application and any objections and decides whether to grant or to reject the application.

42. It is clearly no trivial matter for a landowner to have land registered as a TVG and all the elements required to establish a new green must be *'properly and strictly proved'*²⁵.

CONSEQUENCES OF REGISTRATION

43. Registration gives rise to rights for the relevant inhabitants to indulge in LSP on the application land. Upon registration the land becomes subject to (a) section 12 of the Inclosure Act 1857, and (b) section 29 of the Commons Act 1876. Under section 12 of the Inclosure Act 1857 it is an offence for any person to cause damage to a green or to impede *'the use or enjoyment thereof as a place for exercise and recreation'*. Under section 29 of the Commons Act 1876 it is deemed to be a public nuisance (and an offence under the 1857 Act) to encroach or build upon or to enclose a green. This extends to causing any *'disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green'*. Under both Acts development is therefore prevented and the land is effectively blighted.

SUMMARY OF ISSUES

44. It is incumbent on the Applicant to strictly prove each and every qualifying requirement as set out in the statutory criteria above. For convenience, I summarise here the issues which had been raised by the Objector by the start of the public inquiry, but these should not be viewed as the hurdles that the Applicant has to overcome because those are statutory. The Objector simply brings to the CRA's attention matters which they believe preclude the CRA from registering the AL as a new TVG. The summary given here is not intended to do full justice to the many complex points that the Objector set out but simply to contextualise the following discussion of the evidence heard by the inquiry.

²⁵ (*R v Suffolk CC ex p Steed* (1996) 75 P&CR 102 at p.111 per Pill LJ and approved by Lord Bingham in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, at para 2)

45. In the submissions prepared for the start of the inquiry the objections, broadly were as follows:

- Lack of neighbourhood and/or locality; an electoral ward not being a qualifying locality and the claimed neighbourhoods lacking cohesion and not having existed for the whole period.
- That the Applicant cannot establish that a significant number of the inhabitants of either a qualifying locality or neighbourhood use the land sufficiently.
- That use has not been for a continuous period of 20 years because the length of the grass at its height amounted to an interruption of any use that had occurred and that the back garden gate use, so prevalent in the application, had not been in existence for the whole period.
- Any or much use that has taken place is not qualifying LSP but more in the way of use referable to a public right of way because it is in the majority use of a track around the outside of the AL.
- Any use has not been as of right because it was rendered contentious by the presence of signage on the gates on Woodcray Lane.

THE APPLICATION LAND

46. The AL is a large site comprising meadow and wooded areas. The whole site is about 57 acres in area²⁶. The Objector has helpfully prepared several documents which assist in getting to grips with the site. At OB Tab 15 is the Areas Plan showing the differing sections that the site falls into. During the oral evidence this provided very helpful names for each large section of the land and these terms

²⁶ OB Tab 25

have been adopted throughout this report. The Upper and Lower Northern Fields are collectively referred to as the northern fields. At the inquiry itself I asked the parties to divide the land into even smaller parcels so that witnesses could be asked detailed questions about the area of their use. The parties helpfully produced the map attached to this report at Annex 1. The different sections are referred to by their areas numbers where it was helpful for witnesses to give more detail than the names of the larger sections. David Gardiner provides a helpful general description of the land in his proof of evidence at OB Tab 2 paras. 9 – 12.

47. The AL was originally owned by the Woodcray Manor Farm Partnership (‘the Partnership’) of which David Gardiner is a senior partner. In time the Gardiner children, James, Georgina and Andrew were also appointed as partners. The land was bought as part of a larger land transaction in April 1986. At that time the northern fields were subject to an option in favour of Berkshire Land Limited (a consortium of developers). The option was never exercised and expired in 2005. The full history of the commercial ownership of the land is complex and I do not rehearse it here at length. It can be fully appreciated from the first proof of evidence from Christopher Thompson (OB Tab 9). The only other relevant detail in the planning history affecting the AL is that in 2000 an option was entered into with Bryant Homes for the north east triangle area of land. All options had expired and were not further renewed by 2007 at the latest.

48. It is not in dispute that the land has been in some form of agricultural set aside for the whole of both claimed qualifying periods. This is dealt with fully in the evidence of David Gardiner²⁷ and Christopher Thompson²⁸. Broadly, the requirements of the various applicable set aside schemes throughout the years

²⁷ OB Tab 2

²⁸ OB Tab 9

were for the land to be cut ('topped') once a year, usually between June and August. This has been the pattern of maintenance of the land since 1990.

SITE VISIT

49. The reader is likely to find it helpful to have to hand the sectioned map at Appendix 1 and the Physical Features map at OB Tab 19. There is a large parcel of adjoining land which has, in the past, been owned and managed by Brooklands Investments. The history of that land is complex and is dealt with very fully in the statements of Christopher Thompson²⁹. I generally refer to this as the 'golf course land' and I do not deal with it further.

50. I visited the land accompanied by the parties on the afternoon of Tuesday 5th September 2014 when we spent about five and a half hours walking the AL. We first walked the general area where Woodcray Lane turns off the Finchampstead Road. Some few hundred yards past the turning to the lane travelling south on Finchampstead Road is a bus stop which is labelled "Wokingham, Woodcray Manor Farm". As you approach the interior of Woodcray Lane there is a house to the left and one immediately encounters a gate way ahead with a sign on it³⁰. It was commented by the Applicant and accepted by the Objector that this gate was never shut. I have referred to this throughout the report as Gate 1 Then, walking forward, within a few yards one encounters a second gate (Gate 2). This also has a sign on it. I was advised by the Objector that this was the gate put in by the receivers for the golf course in 2009³¹.

²⁹ OB Tab 9 paras 1 – 5.

³⁰ OB Tab 38 p.813

³¹ OB Tab 38 p.814

51. Continuing down Woodcra y Lane, berries could be observed in the hedgerow on the left. There is signage on the left where the first gap into the wooded area (area 7) appears but it is well acknowledged by the Objector that this signage was erected after either of the qualifying periods contended for and so I do not refer again to the many examples of signage erected in January 2013 which I saw at various points around the AL.

52. We then progressed down Woodcra y Lane a short distance. We observed some gateposts on either side of the lane with no gates attached. I had no particular impression of how old these may be or whether there had originally been gates there or not. There was a single strand barbed wire fence running along the left of the land between the lane and the AL but the Objector accepted that installation of this all post dated the qualifying periods. We passed a closed gate on the left facing into the AL. We walked to a point on Woodcra y Lane where the 'green track' turns off to the left³². It was explained that the green track is part of land that is currently leased with the golf course land to the neighbouring leaseholder and as such it would be more politic to access any points on the green track via the AL.

53. We retreated back up Woodcra y Lane and entered the land via area 7. From there we took a route along the bottom of the northern fields above the wooded areas of 7 & 8. We returned to these woods later. Areas 7 & 8 are fairly new woodland made up of conifers and broadleaf trees that appear to be left to grow wild although some management was evident from the occasional tree stump. There was one tree that had fallen or been felled and left on the ground in area 8. My impression of the wooded area was that they are generally unused by people. The undergrowth was very thick and our walk into it caused much disturbance to the fallen branches and ground plants. I noticed there were also numerous golf balls

³² This is shown most clearly on the Physical Features plan at OB Tab 19

in this area presumably from the current or historic use of the golf course. There was evidence of old fencing particularly between the new woodland areas (7 & 8) and the lower northern field. This tended to be dilapidated post and wire fencing. There was evidence that in places this had been pushed down but it wasn't possible to tell if this was done deliberately by people using the land or whether it had simply occurred over time through disrepair and being traversed by animals. There was also a very old wooden gate in the extremity of area 8 facing towards area 11 but the whole area there is very overgrown, particularly with bracken, and is not accessible.

54. The grassy areas of the AL (which is the majority) had been topped about two weeks before the site visit but the Objector had helpfully left the upper northern field in an uncut state so that I could observe the length of the grass and the terrain generally in that condition.

55. The wet meadows were dry underfoot but it was unusually warm for September and I would accept that this is unlikely to be the usual condition for the ground surrounding the stream. There was a clear track visible leading up to and away from the short bridge over the stream (created by old railway sleepers) in the north of the area where the grass is trodden down and there was some evidence of muddiness there. It was not possible to assess whether this was caused by human or animal use. If the former, it seemed unlikely there was significant foot fall as the area wasn't either churned or compacted. In the south of areas 11 & 12 we saw the gate that provides access for agricultural vehicles onto the AL. It was locked with a heavy insulated chain and padlock. The green track on the other side of this gate was bordered by dense plant and tree growth but the track way was clear. However it is possible to see from the end of that corridor, that as the track way progresses further east it becomes increasingly overgrown. I did not observe any tracks in the wet meadow however there were numerous gaps in the shrub and tree growth between the wet meadows and the northern fields which would

provide on foot access between the areas. In the south of area 12 there is an area of standing water. There is wire fencing that looks clearly trodden down which runs along the boundary with area 13. There did not appear to be any track from area 12 into area 13. Walking the land in this area, it was notable that the ground is very uneven and full of grass growing in clumps.

56. Areas 13 & 14 are sparsely wooded at this stage and the ground was thick with bracken and ivy which is prevalent across the site. In these areas there are large swathes of bramble particularly at the margins of the land which would render parts completely inaccessible to walkers without cutting equipment. I did not observe the presence of sloes for myself but there would be no reason to doubt the presence of blackthorn in the thick hedgerows in these areas. The north east triangle was bare grassland without any real interruption.

57. At the north of areas 9 & 10 there were two particular areas where post and wire fencing had been trodden down between the AL and the land beyond and there would be enough room for a person to pass through the fence. In the second 'gap' of this type there was some sheep netting which had been trodden down and was now overgrown. Again the ground in this area was very tussocky and uneven to walk on.

58. We waked the northern fields towards the end of the visit. In area 1 there was a clear perimeter track. There was a part of the fencing between the AL and the back of the properties at Luckley Wood where there was a breach which would enable a person to pass through. Where the AL meets the back of Luckley Oakfield School there was also a gap (which I recall as simply a corridor in the planting rather than a gap in a fence) which allowed us to walk into an area of heavy foliage at the back of the school grounds. Till in area 1, on the northern side there was a sizeable area of standing water which, later, witnesses referred to as an

area of flooding. There are gaps in both the hedgerows between areas 9 & 11 through to 6 & 3 which would allow passage between those areas on foot. There is a gate in the far east of the dividing hedge between areas 6 & 3 which would allow passage of agricultural vehicles. There are very clear tracks around the west and northern perimeter of the upper northern field. There was some track evidence either side of the dividing hedge. There was a clear track running south in area 4. As one rounded the corner to walk along the southern extreme of area 5 the track was not clear and there was a wide border area that appeared to be well used. However, as we passed into area 6 the perimeter track became well defined again. I did not observe any tracks in the body of areas 5 & 6. The upper northern field had been left with the grass uncut. I have to immediately note the length of the grass. I believe it may well have reached as high as 6 foot in places which I found surprising as often, even left completely wild, grass may not grow much above 4-5 feet. However, I observed the general height of what was on the land to be more consistent with an average of 5-6 feet. We crossed the upper northern field, walking through this very long grass, from a point in the east of area 1 down to a point in the west corner of area 2. There were clear pathways through the grass in places but it was not possible to tell if these were made by people rather than either wild animals or dogs. It was clear to me that a very determined walker could use this area; however keeping track of a dog would be a challenge. My own experience was more in keeping with several of the witnesses at the inquiry who told me that at its highest, the length of the grass would discourage their use of the inner areas of the northern fields.

WITNESS EVIDENCE

59. Although I will endeavour to summarise the evidence that I heard, what follows is not intended as a verbatim account, or even necessarily a complete account, of the evidence given by the witnesses at the public inquiry. It is simply a summary of some of the more salient issues dealt with in the evidence, particularly those that form the basis of my recommendation. The summary is simply intended to be a

sufficient account of the evidence for the registration authority to understand the reasoning behind my conclusions.

Applicant's witness evidence; witnesses who gave oral evidence

LISA HAMMOND

60. Miss Hammond submitted a witness statement in support of the application³³.

She does not appear to have submitted an EQ. She lives at 16 Hart Dyke Close. She has lived there since 1990 when she moved with her family when she was 13. She has used the land throughout the qualifying periods although in oral evidence she explained that there had been times when she had used it much less frequently. She confirmed that her use of the AL was mainly in area 2 for kite flying and other activities but that she would walk over all of the northern fields. She accessed the AL via the back gate in her garden. She believed her father had installed the gate within 6 months of the family moving there in 1990. She was clear that the gate was not there when they first moved in and that none of the other properties had gates then either but that they had started to be installed in other properties at about the time theirs had gone in. She accepted her use had been restricted to the northern fields and that the frequency of her use fluctuated over time. Her family kept a dog from when they moved in until 2007. She believed she would have walked the dog daily. She would jog on the pathways (as she described them) aged about 14 or 15 having seen the girls from the school do the same. She thought she had seen them do this weekly but accepted she could not be sure of the frequency. When challenged that she would surely not have seen the school girls jogging on the land because she would have been at school Miss Hammond replied that she was told about it by her parents but that she had seen them when she was living at home when she attended Henley College between ages of 16 and 18. She then described that she had moved away for a

³³ AB Tab 4/HI

period of 6 months returning recently and that previously she had lived nearby for 2 years. During this period she would only use the land once or twice a month.

61. She agreed that for 2 months of the year she would be restricted to the pathways because the grass would be too long to see what was in it. She agreed that her dog walking was also generally on the pathways but that she would have to chase the dog into any part of the northern fields when he ran off. She accepted that the middle of the fields you would not be able to jog on because it would be too uneven but she did not accept that the ground was difficult underfoot to walk on. She explained that she would have used areas 2, 3, 5 and 6 more for ball games probably on a weekly basis but she accepted she could not be specific about frequency. She recalled her two friends from Hart Dyke Close using the land in the same way, Liz Jenkins and Amanda Barratt, but that other friends she played with there came from Finchampstead Road, Luckley Road and further afield. She recalled that the grass did get long enough to stop her playing ball games for about 2 months out of each year.

62. When asked what she understood to be neighbourhood A (having confirmed that was her neighbourhood) she described it as a collection of houses around Hart Dyke Close that she had been informed was NH A, and when pressed, she said she had been told to say that she was from NH A and that was just the location where her house was. She was asked if she knew what streets that included. She did not but she did know that it included the lower half of Finchampstead Road. When asked how she would describe where she came from she replied “Just Wokingham, near Finchampstead”. When asked of local facilities, she described having worked at and used Sandmartins Golf Club between 1992 and 1995. She played there when it first opened, about weekly. She agreed the Club had drawn in people from a wide area. Miss Hammond had also used Woodcraze Golf Club very occasionally. She did not use the Oaks family centre, church, either of the fields or Two Poplars pub although she accepted the latter also drew in custom from a

wide area. She does use the Tesco store and acknowledged it is a 'superstore' and that people from a wide area use it. When it was put to Miss Hammond that NH A is essentially just the street upon which she lives and there was nothing more special about it, she agreed that was the case. Her evidence did not assist the Applicant on this issue.

63. In re-examination Miss Hammond confirmed she believed there was a Neighbourhood Watch group but that she had never participated in it although she thought her parents did.

64. I have no hesitation in accepting the evidence of Miss Hammond who was clear and straight forward and anxious to try and correct it when she felt any misapprehension arose.

ELLEN CREWE

65. Mrs Crewe submitted an EQ dated 10th March 2013 and a witness statement of 3rd August 2014 with photographs attached³⁴. She lives at 14 Hart Dyke Close and had used the land for 9 years during the qualifying periods. Her evidence was that her use had not been confined to the northern fields but that she made use of the whole of the AL. Since 2011 she has owned a dog called Max and since then her use has increased notably to twice daily walks. In her evidence in chief, she was asked what her view of NH A and B was. She replied that she would expand the area to include Evendon Lane and that her experience of the community came particularly from her membership of the church which congregates at the Whitehouse School (which had recently closed). It had been doing so for some 8 years before the closure in 2011. She felt that the church group was evidence of the community. She explained that while none of her neighbours from Hart Dyke

³⁴ AB at Tab 4/C

Close attended the church except occasionally the nativity, many people from Evendon Lane did. On questioning, she didn't accept that the church drew in people from a much wider area than NH A but did say that increasingly people from the new housing developments attended. She was asked in cross examination what she understood her description of neighbourhood in her EQ to mean. She reiterated that her definition would be more extensive than NH A to include Evendon Lane but also that she would not class those on Finchampstead Lane as being part of Woodcray. When describing where she lived to others she would say it was near Woodcray golf course or opposite the Whitehouse School. She saw the AL as an integral part of her household's lives both now they live in Hart Dyke Close but also from before they moved there.

66. While her children attended the Whitehouse School she had known some of the other parents some of whom had lived in NH A although she was not sure if any were from Luckley Wood. She confirmed that Hart Dyke Close does have a Neighbourhood Watch scheme but that she is not a member.
67. On being asked about the local facilities available she had been to Sandmartins Golf Club from time to time for parties or christenings and had some friends who had houses that back on to the course. She agreed that when those locally wanted to hold parties, Sandmartins was a convenient venue, particularly as she didn't think Woodcray Golf Club had an operational clubhouse. She had not used the family centre but did use The Two Poplars Pub and the Tesco and accepted that both drew in people from a much wider area. For the ten years prior to 2004 she had lived in Crail Close which backed on to Viking playing field and used that and the Leslie Sears field a great deal. She still used Viking when the grass was too long on the AL. In terms of frequency of her use she accepted that her twice daily dog walking had mainly been from 2010 when she had got Max. It was put to her that her written evidence about frequency was contradictory (paragraph 2 of her witness statement mentioned twice daily dog walking since 2011 but her EQ at

page 3 stated 5 times per week from 2010). She explained that while Max needs to be walked twice a day she does not always take him. Then asked about her estimate of use 3 times per week now (EQ page 3 question 23), she explained that she had tried to average out the figure across the whole period and while she often walked the dog and children around “the field” with the dog it would often be twice daily just with the dog. She did not accept that her use of the AL had really been since 2010 as she had always used it for different purposes and had always pursued a very active outdoor life and that had increased with having children. She did accept that she used the most convenient fields and that when she had moved to Hart Dyke Close these had become the AL. She felt that 3 times per week was an average of her use of the AL in the years 2004 to 2010 before she had Max. That estimate did include the times when she used the AL to access events at Luckley House School but that was only about 5 times in a year.

68. Mrs Crewe was asked about the signage on Woodcray Lane which she occasionally uses to access the AL. She was taken to the photograph at OB 307 of the first gate (‘Gate 1’) as one approaches the lane from Finchampstead Road. Her recollection was that she had never seen this closed except since the letters of January 2013 and erection of signage then. Then the photographs at OB 305 and 309 were considered. This is the second gate encountered as one approaches the AL from Finchampstead Road (‘Gate 2’). Mrs Crewe accepted that this may have sometimes been closed but thought that was very rare. Her recollection was that the lane had always been open until January 2013 but accepted that the signs had been present on gates 1 and 2 for some time.

69. Regarding her use of the AL, Mrs Crewe did not accept at all that she walked her dog only on the tracks but she accepted they existed and that they were easier to walk on except when they flooded and you had to walk towards the centre of the field as regularly occurs in area 1. However, she explained that she found it preferable to follow her dog across the land and go where he led. She thought that

many people did the same and described how her neighbours with Ridgebacks follow them all over the land. She did not accept that the paucity of people in her photographs signified the norm for the land.

70. Mrs Crewe accepted that the grass in the northern fields grows very high by the end of July but did not accept this rendered it unusable. She felt that her family's disuse of the northern fields when the grass was long was mainly due to their suffering hayfever and that others, not so afflicted, continued to use it even when long. She also commented that during that time, one could use the tracks at the perimeter but she tended not to use the northern fields during that period. She accepted that the ground may be stubbly after cutting but only in August because after that it softened.

71. Mrs Crewe was a helpful witness whose evidence I accept.

SHEILA COOPER

72. Mrs Cooper submitted a witness statement to the Inquiry dated 17th July 2014³⁵. Between 1968 and 2013 she had lived at 183 Finchampstead Road and had used the land throughout both the qualifying periods. She described accessing the land via various points off Woodcraze Lane. Her use was for walking with dogs and training them going there most days. Her evidence was that she would mainly walk on the footpaths that circulate the land veering off these to avoid flooded areas. She did not believe the long grass had restricted her use of the land. In cross examination, however, Mrs Cooper did not accept that her use had been restricted to the pathways and said that she felt she spent a great deal of time scrabbling in the centre of the northern fields retrieving balls and toys for the dogs and she thought the same would be true of those out walking with children. She also did

³⁵ AB Tab 4/C

not accept that the grass grew as tall as 6 feet high. She accepted the ground was stubbly after the grass had been cut but she would continue to walk the dogs through it and did not accept it would restrict games playing by others. She did not accept that the winter would affect her use of the land or others. She would see families out in wellies in the winter. Her recollection was that in the 1990s she generally walked the land three times a day with the dog. She would walk along Woodcra Lane turning east along the grass track towards the railway line. She recalled that back then she would be able to walk all the way along to the railway line. She recalled crossing a small bridge over a stream and going into the fields. On considering the sectioned map she thought this would be in the area of the wet meadows. She accepted that few people would use the eastern extreme of the AL where she walked near the railway line and that over time all use stopped as the area became subject to dumping rubbish and became dangerous for dogs.

73. On questioning about her reference to NH B in paragraph 2, she did not recall identifying it as such herself. She thought it had been indicated to her on a map by Mr Benham. She would describe the neighbourhood as Woodcra and that had not changed over the many years she had been there. She believed the area was well known by that name because of the large farm and house of the same name.

74. Mrs Cooper recalled that gates 1 and 2 at the start of Woodcra Lane had not been closed to her knowledge and she did not think the signs had been on them originally but did remember seeing them during her period of use. She recalled the gate pictured at OB 265 and used to duck under it when accessing the AL that way. Similarly she recalled climbing over a gate further along Woodcra Lane [OB 277]. She would do this when the other path got too blocked up with rubbish.

75. Mrs Cooper was an honest and helpful witness whose evidence I wholly accept.

NORMAN PATTERSON

76. Mr Patterson has been the Bursar at Luckley Oakfield School since 2011. He provided a witness statement dated 7th August 2014 and EQ dated 28th February 2013³⁶. He confirmed that there are both boarding and day pupils at the school and that cross country running was part of the formal games curriculum. His written evidence was that he used the AL occasionally for walks but that the school pupils had used it every year for cross country running since he had been at the school and had done so for the previous 25 – 30 years.

77. Under cross examination a statement from the previous head teacher of the school, Richard Blake [AB Tab 5/B], was put to Mr Patterson. In the statement Mr Blake recalls that the school held an annual cross country race which ended with a circuit of the northern fields for which permission was sought by the Bursar or head of the PE Department. Mr Patterson could not account for what Mr Blake said and was clear that since he had come to the school there had been no suggestion that permission would need to be sought to hold the cross country event.

78. Mr Patterson was questioned about the risk assessments and planned route for these events and documents were subsequently made available and appear at OB Tab 52 & 53. He did not accept that the ground was unsuitable for walking and running during winter months and explained that if the perimeter track was waterlogged the PE teacher would simply cut into the centre of the field to avoid that. On questioning about the use made of the AL in spring, Mr Patterson's evidence changed substantially from that of his written evidence. He stated that the cross country running took place mainly in January to April and that during

³⁶ AB Tab 4/PQ

this time use of the AL was almost daily by one class or another particularly in the Easter term. Although timetables reflecting this were requested by Mr Wilmshurst, none were produced. Mr Patterson accounted for his change in position on the basis of having spoken to staff at the school, particularly Sally Hills who had been there a long time, between having completed his EQ and witness statement. He had also checked what she had told him about daily use between January – April with Sean Callum, the maintenance man, and he had agreed that was correct.

79. It was put to Mr Patterson that he was exaggerating the school use because he would be anxious about the land being developed. He rejected that he would mislead the inquiry in that way while being perfectly honest that the school did not wish to see the land developed.

80. I have some difficulty accepting Mr Patterson's evidence in relation to the daily use between January and April. That is not consonant with any other evidence the inquiry heard from either the Applicant or the Objector. Sally Hills does not mention it in her written evidence to the inquiry. There was no documentary evidence produced to support it. Mr Patterson's witness statement, completed shortly before the inquiry, does not indicate the change of position and it would be surprising for the Applicant not to have highlighted such a potential increase in what is presented as qualifying use.

MARIO SANVITALE

81. Mr Sanvitale provided a witness statement to the Inquiry dated 29th July 2014³⁷. He lived at 9 Hart Dyke Close for 7 years during the qualifying periods. He identifies with NH A and accesses the AL from a gate in his back garden. His use of the land was daily, often with his wife and two daughters for dog walking,

³⁷ AB Tab 4/S

recreation and wildlife spotting. His daughter used the AL to walk to school at Luckley House and he would walk with her perhaps once a week. He explained in evidence that his household's use was mostly in the northern fields but also they used the woodlands in areas 7 & 8 and the wet meadows. He accepted that when the grass was at its longest he would keep his Retrievers on the lead. In re-examination he estimated that the long grass would mean that he wouldn't let the dogs run into it for 3 – 4 months out of the year.

82. When asked about the community in NH A he said he didn't really know how to define it. He referred to the presence of friends nearby and that he and his neighbours had worked together to oppose the planning application for the building of Denbigh Close (which is effectively an extension of Hart Dyke Close). On cross examination about NH A, Mr Sanvitale thought he had received some written instructions from Mr Benham but he did recall that he had been shown a map with both NH A and B marked on it and was asked to refer to which one he lived in.

83. On questioning about local facilities as shown at OB Tab 18 Mr Sanvitale had not used the family centre or other playing fields and did not think his family had. He had used both the Sandmartins and Woodcraze golf clubs and Two Poplars Pub but did not feel able to comment who else used them. He agreed there were no community or neighbour associations when he had lived in Hart Dyke Close. He agreed that there were perimeter tracks around the northern fields and that these were easier to walk than the rest of the AL. He agreed that in January the main body of the fields would often be wet and tussocky. He felt that the photograph at OB 24 was a fair reflection of the northern fields at that time of year and that the wet meadows would be more hillocky than that at that time of year and that he wouldn't generally use them then. He has long haired dogs and would not want them to be infested with ticks from the very long grass. His experience of what he saw on the land when the grass was long would be activities like kite flying rather

than ball games but that dog walking continued albeit on the perimeter tracks. He agreed that it would be retrieval of his dogs that would take him off the tracks. His use of the wooded areas in 7 and 8 would be much rarer than the northern fields, estimated at a few times a month at its height in summer. He thought he had used the wet meadows 3 – 4 times a year on average and accepted that he hadn't really used the other areas of the AL.

84. I found Mr Sanvitale a straight forward witness whose evidence I wholly accept.

KATHERINE MARTIN

85. Mrs Martin provided an EQ dated 28th February 2013 and a witness statement dated 21st July 2014³⁸ She lives at 210 Finchampstead Road which is on the corner of Hart Dyke Close. She describes her use of the AL between 2001 and 2013 as very varied including many types of outdoor recreation. She particularly values use of the land because she does not drive a car. She describes the “Woodcray neighbourhood” as comprising Hart Dyke Close, Denby Close, Finchampstead Road and Luckley Wood. This does not correspond to either NH A or B. When asked by her counsel what leads her to describe the area as Woodcray neighbourhood she referred to the fact that on the bus that is the stop she would ask for and she has always known it by that name. Her daughter went to the Whitehouse School and later to Luckley House. She includes Luckley Wood and Luckley Road because she walks down these often and knows people from there and Finchampstead Road, many of who she got to know through the schools. She accepted that both the schools her daughter had attended had taken pupils from a wide area, although Whitehouse School, catering for primary age children, tended to have a more local intake but did accept some pupils from further afield.

³⁸ AB Tab 4/M

86. Mrs Martin's oral evidence was that she had used the land very fully and frequently as described in her written evidence. In particular she did not use the perimeter tracks for her dog walking but would zigzag across the land. Her recollection of the effect of the long grass was that it only really became "untenable" in May time but that even then, particularly when accompanied by a bored child, it was still possible to batten down the grass and have a picnic. She did not accept that dog walking was her primary use of the land and felt that this was better characterised as recreation generally. Mrs Martin described her life as a writer without a car as one of working from home and often using the AL to clear her head during the working day. She frequently would walk on the AL without a dog and regarded it as a "green lung" which helped her with her asthma. She didn't accept that this was an unusual lifestyle.

87. On cross examination, Mrs Martin did not accept that most dog walkers would remain on the perimeter track although she did accept there was a track. She thought she saw as many people walking dogs off the tracks as on. She also did not accept that any of the ground conditions experienced during the different times of year would inhibit or alter her use in any way. She saw no problem with walking on the land as depicted in the photograph at OB 24. Her experience was that many others used the land during the day such as mothers with children at home and her fit elderly neighbours.

88. It was put to Mrs Martin that her motivation in the application was to prevent development of the land. She denied that on the basis that she did not accept such development would affect house prices and that her property was probably far enough away to be unaffected in any event. She described her motivation as being simply to preserve what she saw as the community amenity. She also envisaged she was likely to move house within the next 5 years.

89. I accept Mrs Martin's evidence.

PAULA MEADES

90. Mrs Meades (whose evidence I accept) provided an EQ dated 21st March 2013 jointly with her husband and daughter and a witness statement of her own dated 12th July 2014³⁹. She has used the land since moving to 18 Hart Dyke Close in 1996. She describes wide ranging recreational use of the land with her husband and daughter. They do not have dogs.

91. In her oral evidence she clarified that her use is mainly in the northern fields that their house backs on to. Their access is via the gate in their back garden. She has not found that the long grass interferes with their use of the land.

92. Mrs Meades was asked by Mr Wilmshurst about her reference to NH A in her witness statement. She explained that she had not been instructed to write anything specific but that her understanding was that is where Hart Dyke Close fell. She said that she felt her real neighbourhood was in fact A and B together because while her front door is in Hart Dyke Close, from her back door she can access her neighbours from there and Finchampstead Road. She recalled she had been shown the map [AB Tab 3] and Hart Dyke Close was in NH A so that is what she wrote. She thought Mr Benham had originally sent them the map and her husband had printed it off. She did not agree that being part of NH A necessarily meant that she was not part of NH B. She felt that in reality her neighbourhood did include all the areas included in NH B so her view was that she was in both neighbourhoods. She accepted that she should have put that in her witness statement. On being asked who she knew in Luckley Road and Luckley Wood she explained that she did not necessarily know people's names but

³⁹ AB Tab 4/M

knew them to nod and say hello to when on the AL. One example she gave was a lady called Vicky from Luckley Wood who she would say hello to. She was of the view that this kind of interaction made these people part of her community. Later in questioning she defined neighbourhood as those who lived nearby to her. She accepted, when put to her, that the lines of NH A and B on the map were simply lines traced along where people live who use the field.

93. She would describe the local area as either Woodcray or as the Finchampstead Road opposite the Whitehouse School. She was taken to OB Tab 18; to the plan of local facilities. She recognised the playing fields but believed she had been to those less than once a year and she had not seen people she knew there. She did not use the golf clubs, family centre, church or Two Poplars pub (although she had done so some years before but not since living in Hart Dyke Close). She and in particular her daughter did regularly use the Costcutter shop. She also used the Tesco store and did tend to bump into people she knew there although she accepted it drew in people from a much wider area.

94. Mrs Meades confirmed she had accessed the AL via Woodcray Lane but infrequently, perhaps no more than once a year. She did not recall the gates on the Lane ever being closed even before 2000 and she did not recall a new gate being installed in about 2010. She did recall seeing the signage on the gates there. She did not accept that the long grass had impacted on her family's use of the centre of the northern fields and recalled that they had used to play hide and seek in the long grass with their daughter, Mia (now aged 13). Mia still used the land to play ball games with her friends and the family would play games such as rounders out there, right up until the letter of January 2013. It had been used very much as an extension to their garden. She did not accept at all that the ground was tough and stubbly after cutting or unsuitable for use in any way. She cited her friend Paula and her own husband who both run on the northern fields at those times. Mr Wilmshurst referred Mrs Meades to the photographs attached to her husband's

witness statement [AB Tab 4/M] but Mrs Meades did not accept his view of the poor quality of the ground at various times of the year. She also did not accept that it was only a small group of people who use the land.

95. In terms of her actual use of the land, Mrs Meades was insistent that there are plums growing in the hedgerow outside her garden and outside the garden of 216 Finchampstead Road because she makes plum jam with them. The extent of her use she stated was all the way across the AL up to the railway line including the wet meadows. She accepted there were no paths in the wet meadows but did not find that to be a problem as she and her family were keen walkers and all terrain cyclists. She accepted however that they would not use the wet meadows as frequently as the northern fields and that she was not as familiar with the new wooded areas 15 and 16 as with the rest of the AL.

96. Mr Wilmshurst took Mrs Meades to correspondence sent by her husband in 1997 to agents for the landowners seeking to buy a portion of land at the end of their garden [OB Tab 3]. He put to her that their refusal must have put her on notice that they did not want her and her family to use the land. She did not accept that and pointed out that they did not make any such reference but simply declined to sell them the land. She accepted that she did not want to see the AL built upon but denied that this had led her to exaggerate her evidence.

DAVID LUMSDEN

97. Mr Lumsden provided a witness statement to the Inquiry dated 22nd July 2014 and an EQ with his wife Elaine dated 30th May 2013⁴⁰. They live at 203c Finchampstead Road which lies south of Woodcray Lane on the opposite side of the road. They have lived there since 1994 so they have used it for most of the

⁴⁰ AB Tab 4/L

qualifying periods. Mr Lumsden estimates their use as being 3-4 times per week for dog walking, running and walking amongst broader recreational activities across the whole of the AL. He noted in particular fruit picking in area 4 and areas 10 and 14. His experience was that in the wet meadows and areas 13 to 16, there were no appreciable tracks apart from those made by animals. He found these areas easy to walk on. In the northern fields he would tend to stick to the perimeter tracks except when he had to deviate around flooded areas which might be up to as much as 80 metres. Those areas tended to be at the top of area 1, by the tree belt at area 3 and in the south part of area 6. In terms of the effect of the long grass, Mr Lumsden said that when it was wet one would get absolutely soaked by that and so they tended not to use the land so much then but used it very fully in the summer.

98. They gained access to the land via points along Woodcray Lane. Mr Lumsden recalled that gate 2 had been shut on two occasions since it had been put in which was much more recent than gate 1, however he noted that it was possible to simply walk around the side of gate 2 when it was closed. This was confirmed on the site visit. Mr Lumsden had never given any thought to ownership of the lane but in the past had walked dogs with the lady who lived at Woodcray House and she never mentioned ownership of the lane and so he assumed it was alright to use it.

99. Mr Wilmshurst asked if Mr Lumsden had received instructions on which neighbourhood to put in his questionnaire. He explained that there were no written instructions, just a suggestion that it would help to distinguish between those closer to the land. He understood that Hart Dyke Close was NH A and that those who felt they had an association with the land but lived elsewhere would be NH B. In his description of neighbourhood at paragraph 5 of the EQ he had assumed Luckley Wood included Luckley Road. He had not had anyone explain

the meaning of neighbourhood to him, he had just had the map (showing NHA and B) sent to him by Mr Benham and he had completed it.

100. In terms of other local facilities, Mr Lumsden did use the Lesley Sears and Viking playing fields quite frequently although his use of Viking was quite a recent occurrence and he tended to go there with his grandchild. He used the Sandmartins Golf Club once a week between 1990 and 2001 or thereabouts, playing once a week with friends. He acknowledged that those friends, and indeed other golf club users, came from a wide area. He did not know whether others from Finchampstead Road were members but believed that Mr Spackman (who also provided evidence to the Inquiry) was also a member. In terms of other local residents, Mr Lumsden had known some previous residents of Hart Dyke Close well and a previous resident of Luckley Wood but did not know anyone in Luckley Road. He accepted there were no formal community organisations involving residents of Hart Dyke Close, Luckley Wood, Luckley Road and Finchampstead Road and he did not know of any Neighbourhood Watch scheme for Finchampstead Road. His wife had attended the church at Whitehouse School for about a year. His impression was that the church drew in mainly local people and that it had been popular. He had used the Two Poplars pub but infrequently and may have seen people from NH A or B in there. In terms of the people he saw on the AL he acknowledged that he would see the people he knew from NH A but that he also saw the lady from Woodcray House walking on the land and that for a few years there had been a man who used to train black Alsatians on the land. Mr Wilmshurst took Mr Lumsden to the map at RAB 63 which is an extract from the definitive map showing a byway marked with the numbers 25-39-28. Mr Lumsden knew this way well and uses it frequently particularly to walk to Gorrick Woods. He also walks further afield to the land around Ludgrove School via the track that runs under the number 25 marked on the map.

101. On questioning about his use of the land, Mr Lumsden described using the perimeter of the northern fields about half of the time he is on the land. He accepted that it would be rare that he would cross the middle of the northern fields although occasionally would do so. He thought that was similar to other peoples use. He will often walk to area 6 through to 11 and then return to area 3 although sometimes from area 6 he will walk out to area 16 and then around area 15 and into the woods near the rail line which borders what was golf course land that in past years he would also have walked on although not since barbed wire and signs appeared. Of all the time he spent on the AL he estimated that half would be spent in the northern fields, a quarter on the wet meadows and the other quarter on the other areas. He accepted that the wet meadows generally had no tracks or paths in them and that the ground was much boggy there, that the grass did not grow as tall as on the northern fields and that it was most unlikely one could play ball games there. He did not recall the length of the grass ever deterring his use in the wet meadows or in areas 13 to 16. He did not accept that the nature of what Mr Wilmshurst described as the stubble just after cutting ever affected his use of the land. He agreed that areas 15 and 16 generally had no tracks or paths present and it would be rare to see people there.

102. Mr Lumsden confirmed that when using the land for jogging in the very early morning he would sometimes see others on the land. At other times he would see local children who might help him find his lost dog and he saw the children from Luckley House School running sometimes.

103. I found Mr Lumsden to be a very straightforward witness whose evidence I wholly accept.

PETER DUNKS

104. Mr Dunks completed an EQ dated simply February 2013 (this carries a second signature which is presumably Mrs Dunks') and a witness statement dated 30th July 2014⁴¹. He lives at 222 Finchampstead Road with his wife since 1969 so his use covers the whole of both qualifying periods. Mr Dunks gains access to the AL via the gates on Woodcraey Lane and describes using all areas of the land at all times of the year for playing cricket, flying model aircraft and dog walking. He describes his neighbourhood as 'Woodcraey Farm' and was not able to assist his counsel when asked whether the roads of NH A and B were known by any name locally.

105. The photographs at OB 24 & 25 were put to Mr Dunks as showing land that cricket could not feasibly be played upon. He said that the land had only been cut like that since about 2004 and he used to play cricket on it before that but nevertheless the boys would flatten it down and play on it regardless of that condition. Mr Wilmshurst in his questioning acknowledged that Mr Dunks had lived next to the land for a very long period and that the Inquiry was only concerned with the period starting with the 1990s around the time the last crop had been taken from the land. Unfortunately Mr Dunks answered that he couldn't recall that far back.

106. Mr Dunks thought that the sign on gate 1 could have been installed in about 2010 but that gate 2 had been installed 2 or 3 years ago at about the same time. It was not clear whether Mr Dunks meant at the same time as the installation of gate 1 or the addition of signage to gate 1. Mr Dunks' recollection was that he had used the gate depicted at OB 277 to access the land before it had been locked and since then he had used area 7 to cross from Woodcraey Lane into the AL. When pressed on this point, he accepted that the woods had only been there since about 2000 and that there would have been thick undergrowth there before then. He believed

⁴¹ AB Tab 4/D

that in those times he would have accessed by going around the gate at OB 277 or via gates further up Woodcray Lane.

107. On being asked about what he says at paragraph 3 of his statement about not having installed a gate at the back of his garden to access the land and the children climbing over the fence, Mr Dunks explained that he had four children the eldest of which is now 50 and there were about 2 years between each one of them. He could not recall how old they would have been when they moved into the property (although from his other answers, his oldest must have been about 5 years old when they moved in). He did think that by the 1990s the two eldest children would have moved out but the two youngest would have been at home. He explained that until his retirement in 2007 he worked away for long periods of up to 3 years, but that he would be away for about 5 weeks at a time and then would return for some time before returning overseas for work. Since retiring he would walk the dog, depending on the weather, about 4 times per week, including once a week on average when he would use Bracknell Woods. Mr Dunks recalled that there were tracks at the perimeter of the field, and agreed these were popular, but he thought they were also across the centre. He personally felt he varied his route on dog walks and did not stick to the tracks and walked all over the AL. He did not accept that the ground was so soft in the wet meadows as to discourage walking there and he felt that there were clear tracks there but that these were deer tracks. Generally, his evidence was that he felt there were more extensive tracks on the land which did not show on the objector's aerial photography. In particular he thought there would have been tracks in areas 15 & 16 because he used to follow them. He acknowledged that when the grass was very long or wet he might stick to an easier route or the northern fields in his walks. He did not accept that as his children grew older they used the land less, he explained that they came out to walk the dog exactly as they always had. Mr Dunks had not used area 8. In re-examination when asked about fencing running along Woodcray Lane, Mr Dunks thought there had been fencing but thinks it was dilapidated and rotted away naturally rather than ever having been removed.

108.I found Mr Dunks a genuine and honest witness who was doing his best to assist the inquiry. I found his recollection of the different time periods on the land sometimes unclear or inaccurate, e.g. he gave me the impression that he did not think the AL had started to be cut annually until 2004 although it has not been in dispute that this began in 1990. He also stated that he could not always remember as far back as 1990. Therefore I found I was unable to place great weight on his recollection of different periods and dates but that is not to diminish the valuable general impression he was able to give me about his long experience of the land and its surrounds.

VICTORIA SALMONS

109.Mrs Salmons submitted an EQ dated 11th March 2013 and a witness statement dated 4th August 2014⁴². She lives at 30 Luckley Wood in NH B and has used the AL since April 2006 when her and her husband bought the property. She accesses the land through a breach in the fence in her back garden where she can push the fence back and get through or via a similar gate at no. 31. She describes using the land for games, wildlife spotting and walking with and without dogs. She estimates that she uses the land about 5 or 6 times per year. She believed that there was an access path into the AL from Luckley Wood which ran between nos. 24 and 25 (although this is shown on the map at AB Tab 3 it was not apparent on the site visit and no confirmation of this could be obtained during the Inquiry).

110.She described the formal community organisations as being the Neighbourhood Watch scheme (which she accepted was confined to that road only) but felt also that there were strong links between Luckley Wood and Luckley Oakfield School and with Hart Dyke Close. In relation to the latter she described having been to

⁴² AB Tab 4/M

children parties there and a jewellery party at Claire Notley's house [AB tab 4/N]. She is a parent founder of the new free school, Evendons Primary, which opened on the day she was giving evidence on the refurbished site of the closed Whitehouse School. Her own daughter attends Westcott Infants but there is one family from Luckley Wood who will be sending a pupil to the new school. There are also two parent founders from Luckley Road. In her EQ she described her neighbourhood as Woodcraze and on being asked what that meant she included Hart Dyke Close, Finchampstead Road and Luckley Wood. She regarded that as her community because that is the area her family is in and it is where she encounters the people she talks to every day and will walk past when out and about and it is her custom to talk to the people who walk past their garden on the AL.

111. On questioning about her use of the AL, she confirmed her estimate of use 5-6 times per year which was mainly for family birthdays and blackberry picking. Her use is mainly of the northern fields and area 9 (where the blackberries grow). She didn't accept that her use of the northern fields would have been just on the pathways and explained that she would cross the fields with her daughter although she accepted that, as her statement reflected, the footpaths were easiest to walk on. Her brother's children would use the centre of the fields to play football and rugby on when the grass was shorter. Other times they would play tag in the long grass. She did not accept that the condition of the grass in OB 24 was such that the children couldn't kick a ball around on it. Mrs Salmons confirmed that she had not used areas 15, 16, 7 or 8. She described that she can see the top area of the northern fields (areas 1 – 3) from her bedroom windows and from her garden and she sees dog walkers in the mornings and evenings that use both the footpaths and walk across the fields.

112. I accept Mrs Salmons' evidence wholly.

MALCOLM SALMONS

113. Mr Salmons provided a witness statement dated 4th August 2014⁴³ in almost identical terms to that of his wife except for paragraph 2 where he records his own experience of using the land. He confirmed that his nephews played at kicking about a ball in areas 1 – 3. He estimated his use at about 10 times a year as he spent time on it with his daughter when his wife was cooking.

114. He was asked by Mr Wilmshurst whether he had received instructions about neighbourhood from anyone. He replied that he had from Mr Benham but that it was his wife who had been to the meetings.

115. I accept Mr Salmons' evidence.

CLAIRE NOTLEY

116. Mrs Notley submitted an EQ with her husband Darren dated 2nd March 2013 and a witness statement dated 29th July 2014⁴⁴. She lives at 10 Hart Dyke Close. In her EQ she identifies her neighbourhood as Woodcraze but as NH A in her statement. She has used the land since 2010 and estimates her use as daily for dog walking and cross country running. She describes her children also using the land for running and keeping fit. Her daughter walks across the land to school at Luckley house daily during term time. They gain access via the gate in their back garden.

⁴³ AB tab 4/S

⁴⁴ AB tab 4/N

117. Mrs Notley have information about the jewellery party that Mrs Salmons had attended at which she thought 6 or 7 residents of Hart Dyke Close had attended as well as friends from elsewhere. One person from Luckley Wood or Luckley Road had attended and another friend had brought Mrs Salmons. These were not regular events but she had held two of them.

118. In relation to her and her family's use of the land, she confirmed that she thought her son and daughter tended to use the northern fields to train in. Her daughter trains regularly but her son is away at boarding school and so only uses it when he is at home. In terms of the use she makes of the land for dog training, she uses the whole of the AL.

119. She was asked about the neighbourhood identified on her EQ by Mr Wilmshurst. She explained that she would describe it as Woodcray because of the golf course there. She did not take his point that there was a wide area of housing not in NH A or B that could also describe the area they lived in in the same terms. In relation to local facilities she confirmed she had used both the Leslie Sears and Viking playing fields for dog walking albeit not often and not more than ten times a year. She had attended the Sandmartins golf club for a party once. She had never used the family centre. She had used the Two Poplars pub a handful of times but had not seen anyone she knew in there. She had been to a service and a baptism at the church. She did use the Costcutter shop but had not met anyone she knows in there. She accepted that she had followed Mr Benham's suggestion to put NH A in her statement as this is where Hart Dyke Close is. She did believe that a lot of people who use the AL were from NH A or B but she accepted that she did know people from outside either neighbourhood. She used to see a man with three Alsatians who would come and train his dogs on the AL. She also recalled a lady with Ridgeback dogs who came from Sandhurst Road. She felt that there had been an increasing number of people who had used the AL until the signs went up in January 2013 when they stopped. Before then, she had three particular

friends who would come and walk their dogs with her, one from Wokingham and two from Finchampstead.

120. Mrs Notley confirmed she would walk her daughter to school across the fields from September 2010 and did this for the first year or eighteen months. They had got their dog Ruby in September 2011. As Ruby got older, she would continue to walk her after walking to school. By January or February 2012, her daughter no longer needed accompanying on that walk. She explained that at first the walk to and from the school would be enough for Ruby but the walks extended as she got older. As part of training her, she would play hide and seek with her and throw sticks and balls for her. She did not accept that her walks on other parts of the land (aside from the northern fields) were less frequent. She recalled them as more or less every day. She described a typical route that would take her across areas 2, 3, 9, 10, 13, 16 then back on herself, possibly through 11 cutting into 6 and back towards 1. She agreed that for a couple of months out of each year the ground in the wet meadows and areas 15 & 16 would be difficult to use although she had found this was only in June or July. This did not stop her use but she accepted it would be less frequent during those months. When she used them during these periods she found she just had to wear willies and did not accept the ground was as muddy as the Objector suggested. She did not accept that the wet meadows were not a popular route for walking and her recollection was that there were tracks there and she would see other dog walkers there albeit less in winter. She also believed there were tracks in areas 15 & 16 made by walkers.

121. I accept Mrs Notley's evidence.

CHRISTOPHER BENHAM

122. Mr Benham is the Applicant. He has provided an EQ with his wife Paula dated 5th March 2013 and a witness statement dated 5th August 2014. They have lived at 9 Hart Dyke Close since 2009 but they have used the land since 2000. There is a gate in their garden which gives access to the AL although Mr Benham records that he has continued to use the access points on Woodcraze Lane since moving into no. 9⁴⁵.

123. Mr Benham explains that he is something of an outdoor enthusiast. He intends to write a handbook on the best walks in Wokingham upon his retirement. With a view to that he has accessed many of the local fields for leisure. This has led him, on a small number of occasions since 2000, to access the AL via the access points off Woodcraze Lane. This was well before he and his family moved into 9 Hart Dyke Close. Since moving to the Close, he estimates their use of the land at 1 -3 times per week for walking and exercise and about twice a month with their grandchildren nature and wildlife spotting.

124. At the start of his oral evidence, Dr Bowes asked Mr Benham why he had chosen to describe NH A and B as he had. He described that having moved in to no. 9 in August 2009 he was very quickly introduced to neighbours and that at the time, Denby Close had just been built and many people on the Close were upset by the builders for one reason and another. He said that within days he had a knock on the door and was told about what was happening. He shared his email address with a group of people discussing the situation. He thought that email group was of people from Hart Dyke Close and Finchampstead Road and others that he didn't really know. Within weeks of that there was a small protest against the builders arranged by parking cars across the road. He felt that had given him a sense of strong community about the Close. The second example he gave was from December 2009 when there was heavy snow and no gritting on Hart Dyke

⁴⁵ AB tab 4/B at paragraph 5 of the witness statement.

Close. Emails were circulated and residents got together to clear the snow from the road and paths. One couple supplied food for those doing the clearing. Further to those examples, Mr Benham stated that it was the AL that really pulled people together. He mentioned that he had got to know people from Finchampstead Road better through the action to register the land. He had been in to Mrs Crewe's shop. He stated that there was a Neighbourhood Watch scheme in Hart Dyke Close which had been started after one neighbour had been burgled.

125. Dr Bowes asked Mr Benham about the application process itself. Mr Benham had obtained the EQs from a website. He explained that he had been influenced by a Countryfile programme which showed a piece on registration of a village green. He thinks he downloaded the questionnaire at that time and started a discussion via the email group. He thought this was in the autumn of 2012. Then he received the January 2013 letter from the Objector. After that he distributed EQs to those who expressed a willingness by email to complete one. The map supplied with the EQs were used to indicate the AL and for those completing them to indicate with an 'x' where they lived. He also dropped leaflets more generally in the area about the matter. He did not accept that he had given any advice to others about how to complete the EQs. When it had come time to prepare witness statements, Mr Benham had sought Dr Bowes' advice on how to prepare them and was provided with an example statement. Mr Benham circulated that by email. He accepted under cross examination, that when asked, he had told people which neighbourhood their property fell into. He said he had done so to try and make it clear to them. The Applicants team provided copies of the initial email that had been circulated and the letter attaching the sample witness statement and the sample itself [OB Tab 39 – 42]. Mr Benham also undertook to provide a copy of the leaflet that he had produced and put through doors. That does not appear to have been done but I regard this purely as an oversight and do not think anything in my recommendation is affected.

126. In Mr Benham's EQ, Q5 asks "If the neighbourhood has an identifiable name, what is it?". Mr Benham had written "Hart Dyke Close, Finchampstead Road, Luckley Road/Wood". Asked about that by his counsel, Mr Benham explained that he thinks of it collectively as Woodcray and thinks that is how it is thought of in Wokingham generally. He believed it is known about because of the problems the area has experienced over the years in terms of tipping and planning and also for the Whitehouse School. In referring to Woodcray Mr Benham stated he meant the AL itself but also the small area surrounding it.

127. Asked about his own use of the AL Mr Benham remarked that he liked the top part of the northern fields for their feeling of remoteness and he likes to go out there at the end of the day to clear his head. He runs his own business. He particularly uses the wet meadows and areas 15 & 16 in addition to the northern fields. He accepted that he had not used the woodlands (areas 13 & 14) and now his access was always gained via his back garden gate. The latter point conflicted with the evidence in his statement at paragraph 5 where he said he had continued to access the AL via Woodcray Lane.

128. He was asked about the grass length in relation to paragraph 6 of his statement [AB Tab 4/B] which states that it had never restricted his use of the land. He explained that he is very keen on outdoor pursuits; he skis 3-4 times a year, goes snowshoe walking and has a timeshare in the Lake District. He said he would frequently walk through the long grass as well as use the perimeter tracks depending on numerous factors like the weather, the light and so on. His grandchildren (aged 6 and 3) come to visit every Friday so he makes sure he finishes work in time to take them out on to the AL where they explore the land and wildlife together. While with them, he tends to use the top of the northern fields (areas 1 – 3). He had never found that either the length of the grass or the condition of it immediately after cutting has adversely affected his use of the AL even with his small grandchildren.

129. Asked by Mr Wilmshurst about how the application evolved, Mr Benham accepted that it was after the January 2013 letter that it was decided to complete the questionnaires and that decision came out of discussions between the dog walking group and others outside that group. He agreed it was the dog walking group that provided the impetus for the application. The leaflets that the Applicant group had put through peoples' doors were delivered in Hart Dyke Close, Denby Close, Finchampstead Road (up to Woodcray Lane on the Woodcray side and up to Evendons Lane on the other side of Finchampstead Road), Luckley Wood and Luckley Road. When asked why they hadn't covered the housing areas up to and around the other playing fields, he said he hadn't thought to and he thinks they may use those other areas. He accepted that it was fair to say that when he was drawing up the neighbourhood maps, he had firmly in mind where users of the AL lived. Mr Benham accepted it was very much the case that people within NH A & B use Sandmartins Golf Club. He did not use the family centre, the church or the Two Poplars pub and his children were not of school age and so would not have attended the Whitehouse School. He had used the Costcutter shop and accepted that both the shop and the pub served a wider area than just the claimed neighbourhoods. Mr Benham had never used the Leslie Sears or Viking playing fields or even visited them.

130. Mr Benham was challenged on whether Woodcray could really be characterised as a neighbourhood as it was a label really referable to either the failed golf course or historically, the farm or more recently the Whitehouse School (although it should be recalled that Woodcray is not the claimed neighbourhood). Mr Benham accepted these were local landmarks and that there were many people living near those places which were not included in neighbourhoods A or B. He accepted the observation made by Mr Wilmshurst that there was only one witness, Mr Lumsden, who lives on the far side of Finchampstead Road from the AL despite that being a large area of housing. Mr Benham also agreed with Mr Wilmshurst

that there were very different architectural styles evident on the different roads comprising the neighbourhoods, with no unifying theme, and that there was no overall community organisation of any type that encompassed the different roads.

131. When pressed on his evidence about his use of the land, Mr Benham confirmed what he had said in his EQ and statement. He accepted that his use of AL was not daily but pointed out that he also walks on numerous other local sites such as Farley Hill, River Blackwater, Gray Farm, amongst others. While he accepted that there are clear perimeter tracks that many dog walkers do stay on, his evidence was that there are just as many who do not. He sees people walk across the northern fields both early in the mornings when he is on the land and also when he observes them from his house which overlooks areas 1 - 3. He accepted that many dog walkers do not tend to use the land when the grass is at its longest but there are still those who do. He did not accept that the condition of the grass after cutting had ever been difficult underfoot even when wearing ordinary trainers. The only ball games he was aware of pursued in areas 1- 3 were those involving throwing balls for dogs. He had no recollection of ever having seen football or cricket being played there. He did not accept that there were no tracks in the wet meadows and thought there was at least one leading up to and away from the bridge over the stream although he couldn't recall whether this was at the northern or southern crossing point. He did not accept at all Mr Wilmshurst's suggestion that his description of the very north of the land as remote and the relatively few people he had observed on the land were due to the land not being well used. He explained that the AL is a very large area and one could well spend a good deal of time on the land at the same time as numerous other people but without ever encountering each other. He did not agree that other witnesses given the impression that they did not in fact use the land further away from the houses. He did accept that not many seem to have used areas 13 & 14. He did not accept that areas 15 & 16 were largely unused (although conceded use may be sparser) and described seeing rabbits with his granddaughter and finding good conkers there. Generally he did not accept that the majority of dog walkers stick to tracks

or that there was ever an impediment to use presented by the length of the grass, not only in the top of the northern fields but across the land generally. He accepted he did not use areas 7 & 8 as frequently as other land although he did still exit his walks through area 7 and walk back to his home along Finchampstead Road. He did not accept that the lack of people visible on the land in the YouTube films of remote controlled planes flying above the land in April to June 2010 demonstrated a lack of general use.

132. Mr Benham described maintaining the hedgerow and grass area around the area of his back garden gate onto the AL. He acknowledged that the hedgerow and tree that he trims and cuts back are entirely on the Objector's land. He has never sought permission to carry out this maintenance. In relation to signage on Woodcra Lane, Mr Benham had never noticed any of it. He had never seen either gates 1 or 2 closed despite driving past on the Finchampstead Road for the last five years.

133. Mr Benham rejected the suggestion that the application was motivated by an opposition to development on the land and the potential affect this might have on house prices. He did not accept that witnesses' evidence had been exaggerated because of their enthusiasm for the land.

JEREMY CREWE

134. Mr Crewe who lives at 14 Hart Dyke Close provided an EQ dated 10th March 2013 and a witness statement dated 3rd August 2014⁴⁶. He describes his neighbourhood as 'Woodcra' and has used the land between 2004 to 2013 for dog walking, recreation and as a shortcut to Luckley Oakfield School. His family have enjoyed watching the annual fireworks display put on by Luckley House

⁴⁶ AB Tab 4/D

School from the AL which had been mentioned by other witnesses. Mr Crewe has accessed the land mainly through the gate in his back garden but also from Woodcray Lane.

135. In his oral evidence Mr Crewe confirmed that his neighbourhood to him was the AL and the houses around it made up of Hart Dyke Close, Luckley Road, Luckley Wood, Luckley Oakfield School and some of the Finchampstead Road. He felt that was the area that comprised the land and who uses it and accepted that this corresponded to NH B. In relation to his use of the land Mr Crewe had provided a schedule which appears at OB Tab 54. He thought that the length of the grass had made no difference to his family's use of the land and that the children loved to explore in it. He has also walked their dog on the land although he said that Mrs Crewe did the majority of that. When he does it he doesn't use any particular route and can't stick to the track as he walks the dog off the lead and there are many distractions on the land for him. He was clear that while he agreed that his use of the land is primarily in the northern fields, he does use the other land particularly when out walking with the family.

136. When cross examined on neighbourhood, Mr Crewe's evidence wasn't always clear. He explained that he had picked up the term 'Woodcray' from others' use of it, having moved from outside the area. He said he would just refer to it as Hart Dyke Close but that others call it Woodcray. He did not think it was referred to as that on administrative documents. Then he said he might refer to the Whitehouse School if speaking to someone who didn't know the area because then he would want to pick out easily identifiable landmarks and he thought the sign for the school was prominent. He agreed that he belonged to different communities in that he was part of the community of parents and children that attended Whitehouse School as well as being a part of the neighbourhood where he lived. However, he seemed confused between which neighbourhood that was; A or B. He did not think he had looked at the NH plan as used at the Inquiry when

completing his witness statement. In terms of his use of the other community facilities identified at OB Tab 18, he had used the playing fields when they lived near to them but now tends to use the AL as it is more convenient. When pressed on how regularly he would have walked in the playing fields before 2003 he said he had no idea and had compiled his table of evidence because he found it difficult to recall. When challenged about the accuracy of the content of his table, he accepted it is not precise but rather a general recollection of the regularity and nature of activities particularly with his children. Mr Crewe was pressed further about the variation between his evidence of regularity of use in his witness statement, EQ and evidence table. He did not want to change his evidence from what had been said in his EQ. He had not asserted that his evidence was precise and thought he had attempted to use averages in all his evidence.

137. Mr Crewe confirmed that his usual access to the land was via his back gate and that he used Woodcray Lane very infrequently. He had never noticed the signs on the gates 1 & 2. He fully accepted that he may have seen them but he did not recall doing so. In cross examination on his use of the land, he explained that his use with his children was particularly at weekends and that would be reduced during winter months by poor weather. He absolutely disagreed that the condition of the ground in winter rendered it unusable in any way; he believed it was fully useable for running about and playing games on including ball games. He felt that with the appropriate footwear the land remained suitable for the recreation activities described in his evidence including netball, kite flying and throwing the ball for the dog. He accepted that when the grass gets too long that might restrict their use of the land but felt this was for a very short period of time and no more than 7 – 8 weeks of the year. He also commented that it was not the case that no one used the areas of long grass during those times, only that the use generally was reduced. He did not accept that the condition of the grass immediately after cutting was stubbly or difficult to use but he did accept that it was annually cut down to a length of about 6 inches. He agreed that there were some ridges (apparently made by a tractor) in the wet meadows. He recalled that there were

tracks made by walkers in the wet meadow which connected different areas. While he accepted that the areas beyond the northern fields weren't used by he and his family as frequently, he did think their use of the wet meadows, particularly at the northern end (areas 9 & 10) was frequent. He also rejected the suggestion that since having a dog, he had been more restricted to the perimeter tracks. In fact his evidence was that he tended not to use these as the dog liked to explore.

138.I found Mr Crewe a genuine witness whose evidence was helpful.

FIONA GRAHAM

139.Mrs Graham provided an EQ dated 21st March 2013 and a witness statement dated 7th August 2014⁴⁷. She lives at 8 Hart Dyke Close and has done so since 1996. She accesses the land via a gate in her back garden and she estimates her use at 2 – 3 times per week. She has mostly used the land for running and walking with and without dogs.

140.In her oral evidence Mrs Graham explained that not only was she a member of the Hart Dyke Close Neighbourhood Watch Scheme but that the burglary of her house about 5 years ago had been the reason for its formation. She had also been part of the action group referred to by Mr Benham who had been made unhappy by the conduct of those building Denby Close. She described their campaign as very informal and only involving those from Hart Dyke Close and Finchampstead Road. It had not spread as far as Luckley Road or Luckley Wood.

141.She confirmed her use of the land particularly for walking and playing with Mr & Mrs Gallagher's dogs. She walked them off the lead and, generally, they led the

⁴⁷ AB Tab 4/G

way. She had not found that neither the long grass nor inclement weather had restricted her use of the land at any time. She regularly walked the northern fields and frequently used the wet meadows. She did not think she had ever been into areas 13 & 14. She has run on the land but said this was infrequent and tended to happen when she was most inspired and then would fade off again. Asked about her description in paragraph 7 of her statement of her community as close knit, she explained that she was comparing it to other places where she had lived such as Finsbury Park where she had not known anyone despite living there for several years. She felt that Hart Dyke Close was very different in that they had worked together to object during the building of Denby Close and there was a good circle of friends. She had come to think of it as being Woodcray rather than that referring to the golf course or the farm. One neighbour acts as her hairdresser. She felt the neighbourhood extended to Finchampstead Road but not as far as Luckley Road or Wood.

142. In cross examination, Mrs Graham was asked about her description of belonging to NH A (witness statement paragraph 1) and whether Mr Benham had helped her to identify that. She explained that he had not but that it had been discussed at a meeting she had been to at his house. She had arrived late and had to leave early but recalled that the question of neighbourhood was discussed there. There were about 30 people present some of whom she knew from Hart Dyke Close but others that she did not know who must have been from other areas. She was asked if there was a reason why people from the other side of Finchampstead Road were not included as part of Woodcray. She thought it was simply that the road itself acted as a physical division.

143. She confirmed that when out walking she walked both on and off the tracks. She was not deterred by the long grass and tended to walk into it. She felt that being someone who rode horses, long grass did not present a challenge to her even when on foot. Mrs Graham did not agree at all that the land was remote and

described how she often wanted peace and quiet while on the land to practice for public presentations but found it challenging to be able to find that solitude. She described it as sometimes a bit like Piccadilly Circus, although she accepted that even 4 or 5 people could feel too many when trying to think something through. She did not accept Mr Wilmshurst's suggestion that Mr Benham's You Tube films demonstrated that there were no people using the land. She thought it possible they simply hadn't caught anyone at that time and there might have been people there shortly before or after. She felt this was contrary to her experience from viewing people on the land from where she works in her dining room. She described having seen people on the land from dawn, at all times of the day and into the late night. At night she thought residents of Luckley Wood used it for evening parties and she herself had been out to investigate when hearing cats fighting to see if her own was involved. She acknowledged that she had pruned and cut back trees and plants on the Objector's land bordering her garden.

144. I found Mrs Graham to be a genuine witness whose evidence I accept.

PAULA BENHAM

145. Mrs Benham provided an EQ jointly with her husband dated 5th March 2013 (see paragraphs 122 - 133 above) and her own witness statement dated 5th August 2014. She lives at 9 Hart Dyke Close. Her statement is in identical terms to Mr Benham's save for paragraph 4. She works as a mobile hairdresser and is the neighbour who visits Mrs Graham in that capacity. Other than Mrs Graham she does not have other regular clients in either of the neighbourhoods. In her oral evidence she confirmed her use of the land which is particularly spent with her grandchildren who are aged 5 and 3 years old.

146. Under cross examination, Mrs Benham confirmed that the frequency of her use of the land as stated in her EQ at Question 22 was a best average estimate that she and her husband had made jointly. She accepted that her main use had been of the northern fields. She did not accept that in winter she would avoid the centre of the fields. She described playing with the children, pretending to find pots of gold at the end of rainbows and the like, and this would take them all over the fields. However she did accept that when they were very young the walks would not be much more than 20 minutes or so and this obviously meant their range was just in the northern fields. She did not accept that the length of the grass being above the height of the children would deter them from running in and out of it. Her use had been at all times of the year. When she went out without the children looking for blackberries she might go farther afield although would find many in the hedges surrounding the northern fields. Mrs Benham confirmed that at area 4 there is a broad track of sorts but did not accept that her use had only been at perimeter tracks generally. There were occasions when she walked with her daughter and the grandchildren together and on those occasions they would go further, often into area 9 of the wet meadows. She accepted that they wouldn't really go as far as the stream or into the wooded areas.

147. I found Mrs Benham to be an honest witness and accept her evidence.

ANTHONY GALLAGHER

148. Mr Gallagher provided an EQ dated 10th March 2013 and a witness statement dated 6th August 2014⁴⁸. He lives at 6 Hart Dyke Close which he identifies as NH A. He has used the land since 1996. His use has been for daily dog walking and other recreation. He accepts that there are a few weeks in the summer months (as much as 2 months) when his use is restricted by the very long grass although this period often coincides with time spent away on holiday. He would generally use

⁴⁸ AB Tab 5/G

the northern fields but said that occasionally his walks would extend up to area 14. His access is gained via points along Woodcray Lane.

149. In his oral evidence Mr Gallagher confirmed he is the Neighbourhood Watch coordinator for Hart Dyke Close which involves distributing emails that come in from the central organisation to local members. He had been part of the group in Hart Dyke Close who had made representations to Wokingham Borough Council in opposition to the development of Denby Close and then he had been part of the action to make the builders aware of how unhappy the neighbours were about their conduct. He recalled the latter group had been made up of Hart Dyke Close residents. His view of his community today is that it is defined by the AL but he also described the immediate community as including Finchampstead road, Luckley Road, Luckley Wood and Hart Dyke Close on the basis that if anything happens locally, such as when there was the proposed development of Denby Close, that is the area that they would canvas. He would not consider Evendons Lane to be part of his neighbourhood because he uses facilities there very infrequently.

150. His use of the AL was generally of the northern fields and he described finding the land completely useable immediately after cutting. He has gathered blackberries from the hedgerow in the northern fields and sloes from the blackthorn bushes in the hedge between areas 3 and 9.

151. In cross examination Mr Gallagher described his use as not being restricted to the perimeter paths and he did not think others use was so restricted either. He enjoys playing with the dogs and that includes repeatedly throwing balls or sticks for the dogs to retrieve. The dogs also get distracted by deer and wildlife. While he did not feel he could describe others' use of the and he did explain that he would meet other dog walkers on the land regularly and that he knew they had crossed

other areas to come and meet him. He gave an example of a recent walk when one person with dogs had crossed areas 16, 13, 10 and then met him in area 9. He felt that what he had described as occasional use of the land beyond the northern fields was also regular, although this evidence seemed contradictory to me. He described that he would often walk with the dog early in the morning, his wife tending to walk the dog later in the day. He did not accept that his use tended to be on the perimeter tracks, particularly the more general recreation activities like kite flying which would often include the dog as well.

152. Asked about the signage on gates 1 & 2, Mr Gallagher recalled seeing the sign on gate 1 although he did not think it had been there from as early as 2009 but could not recall when he had first seen it. He believed that gate 2 had always been there and that it had been closed occasionally, possibly 2 or 3 times a year. He thought the sign on that gate was a recent addition. Mr Wilmshurst put to him that the sign had gone up in 2009 or 2010 but while Mr Gallagher did not agree with that, he accepted that he really could not be sure. He commented that if gate 2 were closed, one would only have to step around it to the left of the gate where there is a gap between the gate post and the fir trees. I did observe that gap on the site visit. Mr Gallagher had also used the gateway further down Woodcra Lane [OB 277] where one can access via the ditch on the left hand side which is wide enough to walk through (also observed on the site visit). He also believed he had used an access way from Woodcra Lane into area 8 which had been passable but was now overgrown. He could not recall when that track had become impassable. Mr Wilmshurst suggested that there may have been a fence that started alongside area 7 and ran the length of Woodcra Lane prior to 2000. Mr Gallagher could not recall that although he did think there was some evidence of a pushed down wire fence further down the lane. On a later question from me, he clarified that he had never encountered a fence on the left side of Woodcra Lane which had restricted or stopped his access on to the AL. He accepted that he could have accessed the land at a different access point than those he had recalled.

153. In terms of having identified his neighbourhood as being NH A, Mr Gallagher described having had discussions in the group about which neighbourhood but he believed he was also part of NH B. However, he accepted that his EQ had identified his neighbourhood as Hart Dyke Close and Finchampstead Road and that did not correspond to either of the neighbourhoods contended for. He explained that he had described it as best as he thought of it at the time.

154. I found Mr Gallagher to be an honest and helpful witness although some of his comments on the frequency of his use of the land outside the northern fields seemed self contradictory.

Applicant’s witness evidence; witnesses who did not give oral evidence

155. I turn to deal with the witnesses for the Applicant who submitted written evidence but did not give oral evidence to the public inquiry. I approach this evidence with considerable caution because I have not seen them, some of the written evidence is rather imprecise and the Objector has not had any opportunity to test the evidence by cross examination. However, I give appropriate weight to this evidence. I summarise it as follows:

NAME	ADDRESS	FORMAT OF EVIDENCE	CLAIMED USER PERIOD	REF.
Peter Bird	4 Luckley Wood	EQ 28.02.13 WS 16.7.14	1991/93 - 1995	AB Tab 5/B
Richard	8 Bassett Crescent	WS 25.07.14	1992 - 2004	AB Tab 5/B

Blake	East, SO16 7PB.			
Jonathan Furlonger	7 Kingsmeadow, SN16 9HT	WS 4.7.14	2005 - 2012	AB Tab 5/F
Pauline Furlonger	7 Kingsmeadow, SN16 9HT	EQ 4.3.13 WS 4.7.14	2005 - 2012	AB Tab 5/F
Sarah Gallagher	6 Hart Dyke Close	EQ 10.3.13 WS 6.8.14	1996 - 2013	AB Tab 5/G
Dorothy Hammond	16 Hart Dyke Close	EQ 22.7.13 WS 22.7.14	1990 - 2013	AB Tab 5/HI
Geoffrey Hawkins	224 Finchampstead Road	EQ 21.2.13 (Joint with Sue Hawkins) WS 9.8.14	1997 – 2014	AB Tab 5/HI
Sally Hills	Corinth, Berks, RG8 8JJ.	WS undated	1987 - ?	AB Tab 5/HI
Mia Meades	18 Hart Dyke Close	EQ 21.3.2013 (Joint with parents Gary and Paula Meades) WS 17.7.14	2002 - 2013	AB Tab 5/M
Darren Notley	10 Hart Dyke Close	WS 30.7.14 EQ 2.3.2013 (Joint with wife	2010 to present	AB Tab 5/N

		Claire Notley)		
Ellie Notley	10 Hart Dyke Close	WS 29.7.14	2010 to present	AB Tab 5/N
Gillian O'Donnell	17 Hart Dyke Close	WS 15.7.14 EQ 9.3.13	2005 – 2010, 2013	AB Tab 5/O
Alexander O'Donnell	17 Hart Dyke Close	WS 15.7.14	2005 - 2010	AB Tab 5/O
Brian O'Donnell	17 Hart Dyke Close	WS 15.7.14	2005 - 2010	AB Tab 5/O
Thomas O'Donnell	17 Hart Dyke Close	WS 15.7.14	2005 - 2010	AB Tab 5/O
David Spackman	216 Finchampstead Road	WS 22.7.14 EQ 1.6.13 (Joint with wife)	1980 - 2009	AB Tab 5/S
Wendy Spackman	216 Finchampstead Road	WS 22.7.14 EQ 1.6.13 (Joint with wife)	1980 - 2009	AB Tab 4/S
Jim Ahern	15 Hart Dyke Close	EQ 6.3.13	2012 to present	AB Tab 6
Sarah Fuller	5 Hart Dyke Close	EQ 8.3.13	2002 to present	AB Tab 6
Mark Hayman	7 Denby Close	EQ 1.3.13	2011 – 2013	AB Tab 6

Diane Ollerton	15 Hart Dyke Close	EQ 4.3.13	2006, 2012 – 2013	AB Tab 6
Marilyn Prewett	25 Luckley Wood	EQ 14.3.13	2001 - 2013	AB Tab 6
Michael Prewett	25 Luckley Wood	EQ 14.3.13	2001 - 2013	AB Tab 6
Jason Williams	9 Denby Close	EQ 4.3.13	2010 - 2013	AB Tab 6

Objector’s witness evidence

156. As so much of the undisputed documentary evidence referred to so far came from the Objector’s evidence, it is convenient to deal first with their witnesses before turning to the Applicant’s witnesses. I will deal with them in the order in which they gave evidence.

BUD YOUNG – CHARTERED LANDSCAPE ARCHITECT

157. Mr Young gave evidence to the inquiry on Monday 24th November 2014. His evidence in chief appears in his report at OB Tab 30 and was completed in August 2014.

158. In cross examination Mr Young confirmed he had physically visited the AL once. He said he had visited most areas of the land. He had not spent any time in the northern part of area 1 nor in area 9, he did not mention area 3, but he had been to all the other areas. When he visited the land it was in the same state as it had been when we had conducted the site visit in that one area in the upper northern field had been left uncut but the rest had been cut as usual. His experience of the cut areas was that it was difficult to walk across the grain of the grass and when he

had tried a light run in area 5 he had feared for his ankles as the ground was covered with small tussocks which made stepping precarious. He accepted it was neither impossible nor implausible that the land could be used for ball games after cutting. He did not accept that there were multiple access points into the AL from Woodcray Lane. He had found that access from the green track was practically impossible into the AL much past the point on Woodcray Lane which would be adjacent with the intersection of areas 5/6 with area 8 due to the thick undergrowth and fallen tree across it. He himself had entered the land via area 7. While Mr Young accepted that aerial photography may be constrained in showing up LSP use, he thought that people tended to return to the places they knew or which are convenient to them so that wear on the land appears in particular areas. He accepted that wide ranging leisure activities such as throwing a Frisbee, amongst other such LSP, would leave little or potentially no trace on coarse land. He agreed that some village green activities such as bonfires, barbecues and formation of circuit paths from perimeter walking does show up in aerial photography. He accepted, as he had in his report, that winter activities are not well captured by aerial photography because they occur out of the flying season generally. He also accepted that the relevant photography in this case only spanned 7 years of the qualifying periods. I think Mr Young accepted that there were limitations on the extent to which aerial photography may swiftly capture walking tracks in so far as it may fail to capture that level of detail, depending on the limitations of the photography at hand. He accepted that aerial interpretation was better at giving an overall picture of land use over time. Referred to the 1996 photograph, he accepted that showed strong paths. He did not necessarily agree that meant there were sizeable numbers of people walking there but more that this was a reflection of the nature of dog walking which is frequently repeated several times per day. Dr Bowes put to him that there could be many other people also walking that route every day. Mr Young could not accept that. His belief is that dog walkers, who are compelled to walk every day for the health of the dogs, tend to meet regularly and there tends to be a social element. This kind of regularity he thought was absent in other users.

159. Mr Young was pressed upon the presence of light pathways on the 1996 observations in his report⁴⁹ by Dr Bowes, who suggested to him that these indicated more dispersed use of the land for play rather than people simply walking circuits at the margins of the fields. Mr Young cautiously accepted that could be the case but explained that the light paths would represent a quite fleeting change in the surface conditions. He accepted that where the paths approach the stream crossing (in area 9) this will reflect the funnelling of people at that point and their use would be dispersed either side of that funnelling effect.

160. Asked about the August 1998 photograph⁵⁰ Mr Young accepted that there were many light paths in that year and accepted that those might indicate activities other than dog walking well distributed across areas 3, 4 & 5. In relation to the ditch crossing in the south west of area 11 he agreed this could be a similar effect to that seen at the stream crossing in the 1996 image. In terms of the numerous light paths, Mr Young felt that it was possible these could have been made by animals as an alternative to reflecting dispersed recreational use. If man made, he accepted that the level of use must be by a significant number of people. He later clarified in re-examination that he would understand that phrase to indicate a number of 50 or more. Asked about the March 1998 photograph⁵¹ Mr Young did not accept that the paths in area 7 reflected use by people accessing the AL and thought this use would be more associated with the forestry work being undertaken at the time because there was no joining up of these paths with the well defined perimeter track. Turning on to the 1999 photograph⁵² he did not accept that the absence of many light paths was due to the “sub-recent mowing”

⁴⁹ OB Tab 30 @ 450-451

⁵⁰ OB Tab 30 @ 455

⁵¹ OB Tab 30 @ 459

⁵² OB Tab 30 @ 467

but he did agree that he thought mowing would have the effect of eliminating all the light paths that could be seen on the August 1998 photograph. In relation to the 2003 photograph⁵³ he accepted, as he had done so in his written observations on the previous page, the combined effect of drought and work on the land in that year could have had an adverse effect on any show of use.

161. Asked about the 2005 photograph⁵⁴ Mr Young did not accept that it could be inferred that the ground would be hard just because it was noted to be a hot and sunny day; previous rain could mean this was not the case. He accepted that the faint path noted in area 1 could indicate a user walking off the perimeter path into the land but that could be caused by a walker retrieving a dog. Similarly, he accepted this could be the case wherever light paths were indicated on the photographs. Mr Young believed that the 'defined path' noted in area 5 was part of the perimeter track rather than a path leading out of the woods which would show access gained via those woods. He believed that there was rabbit and wire fencing along Woodcra Lane which would prohibit access through area 7 & 8. That was not my observation on the site visit.

162. Dr Bowes then asked about the 2010 photograph⁵⁵. Mr Young did not accept that light paths would have been eliminated by recent mowing here; in fact his view was that stable long term grass was the best for showing up the imprint of pathways. His observation was that recreational use had declined in this photograph and he did not accept that this had not been borne out by the evidence of the Applicant's witnesses. Dr Bowes then referred the witness and inquiry to a change on the land above the 't' of the word 'turf' in the photo (area 5). Mr Young accepted he had missed this in his original report. Dr Bowes

⁵³ OB Tab 30 @ 471

⁵⁴ OB Tab 30 @ 475

⁵⁵ OB Tab 30 @ 479

suggested that this could be a short mown area from which people flew their remote controlled model aircraft. Mr Young accepted that there was some possibility of this. It appeared to him a very slight change in the surface of the land, linear and about 8-10 metres long on a NE/SW line. Given a moment for reflection, he thought that if someone had mown a strip in that fashion, the change to the surface of the land would be much more obvious than this appeared to be.

163. Overall, Mr Young's evidence was that over the years it was clear the fields had been used for recreational dog walking using a fairly well defined perimeter track (with an additional well defined track at the central hedge). In 1998 there appeared to be many tracks in both March and August. Other than those, his view was that there were only occasional occurrences of small, faint paths. He remarked that he hadn't been asked at all about use of the wet meadows at all. He accepted that circuitous use will show up far more clearly than diffuse use but said that he thought that if other activities were persistent e.g. for a whole season, then that use would show on the land. He accepted that he could not contradict those who had given evidence that their use is more wide ranging than the perimeter track nor say that people didn't come onto the land from their back gardens and play ball games. He did not accept that it was inherently plausible that people were recreating in the areas 2, 3, 5 & 6 but that no trace of it would show up. His clear view was that if this was happening it would show on the land. Although he did accept that the use that had been described by some of the witnesses he had heard for the Applicant, such as ball games and kite flying, simply would not show on the land and that he could not factually dispute that those things had taken place.

164. In re-examination, Mr Young was asked if a single user leaving the established track to retrieve a dog would show on an aerial photograph. His answer was essentially that it would depend on the conditions of the land at the time but that in long stemmy white grass or a field of corn, it would show. He was asked to

explain the difference between light paths and dark paths on the photographs. He was able to clarify that well trodden paths where the grass has been broken down and the ground compacted will tend to show daisy, mayweed and plantain growth and other low lying vegetation. These paths are characterised by growth in rosette patterns. These paths generally show as dark green lines on the aerial photography. The lighter paths tend not to be habitually used and appear briefly for short periods. It is these light paths that could be obliterated by mowing. However, the dark green paths have developed their own structure and are visible even after mowing. He also clarified his meaning of significant numbers as noted above.

165. In answers to my own questions, Mr Young opined that he did not believe there was any real evidence of use of the AL beyond the northern fields; none of the witnesses had mentioned the newts in the stream or the sweet chestnuts to be found in the north east triangle or the beauty of the open woodland in areas 13 & 14. He was surprised by the lack of references made by witnesses to the ecological and play value of these areas. He assisted me with understanding the varying lengths of grass shown in the aerial photographs which ranged between no more than about 5cm in 2003 up to about 75cm in 1998 and 2005.

166. Mr Young was a helpful expert witness whose evidence I accept.

DAVID GARDINER

167. Mr Gardiner (Snr) gave evidence to the inquiry on Monday 24th November 2014. His evidence in chief appears in his proofs of evidence at OB Tab 2 dated 27th August 2014 and Tab 49 dated 24th November 2014.

168. In cross examination Mr Gardiner accepted that his involvement with the AL could be viewed as having two distinct phases; 1986 – 1995, the first phase, when he was a direct owner of the AL and then 1995 – 2006, the second phase, when he acted as an informal agent for the Objector. During the first phase the AL and golf course land were one farm which he would visit several times a week in his capacity of supervising the business. He would see how crops were doing on the AL. After 1990, when the crop growing had ceased, he would visit the farm shop elsewhere on the site and said he could go anywhere on the land at that time. He did accept that after farming had ceased his visits to the AL area probably reduce to 2 or 3 times per year as there was no real call to go there once the land was in set aside. During the second phase, he thought his visits were of the same frequency and would concern the topping of the land and the forestry work mostly. He accepted that he would have had little cause to visit the northern fields during this phase. He accepted that the grazing licences referred to in his evidence⁵⁶, which had been granted for grazing of horses in 1992 to 1995, did not relate to the northern fields. From the exhibited licence itself⁵⁷, it can be observed that the area for grazing largely falls outside the AL but did include the wet meadows. Mr Gardiner said this was typical of all the grazing licences. He thought that between 8 and 10 horses had been grazed under the licences granted.

169. In relation to users gaining access to the AL, Mr Gardiner thought that Gate 1 had never been closed and in the years when this was the only gate present, access would always have been possible by walking up Woodcray Lane and turning left into the AL. He thought there had been no other gates on Woodcray Lane until at least 2006. In relation to the private gates in people's gardens which give access on to the AL, Mr Gardiner's evidence was that he did not think these had been installed before 1995.

⁵⁶ DAW Supplemental Proof OB Tab 49 at para. 6 and exhibited at OB Tab 46.

⁵⁷ OB Tab 46

170. He accepted that he could not say that the use described by the Applicant's witnesses had not taken place at all but he had certainly never seen anyone on the land. He did not accept what had been said by the Applicant's witnesses about use of the land and pointed out that many had accepted that their use was infrequent. In any event none of the use described had ever coincided with his own visits to the land. He was surprised by the Applicant's evidence⁵⁸ that in February 2000 it had been said to a planning inquiry that the land was frequently used for recreation and he did not recall being involved in that process. He also did not agree with the description of the permissive footpath as described in that document⁵⁹ and was clear that in his view this was not correct factual evidence but rather the opinion of the Local Planning Authority giving the evidence to the planning inquiry.

171. I found Mr Gardiner (Snr) a very straightforward and helpful witness whose evidence I accept.

ANDREW DAVID GARDINER

172. Mr Gardiner gave evidence to the inquiry on Monday 24th November 2014. His evidence in chief appears in his proofs of evidence at OB Tab 12 dated 27th August 2014.

173. In cross examination, Mr Gardiner confirmed that he had acted as informal agent for the Objector in relation to the AL from 2006 until the present. That would take him to visit the land on average once a year unless he was invited to go and look at something specific by Mr Thompson, for instance. Usually those visits would last for half an hour up to a few hours. He explained that while he was

⁵⁸ AB Tab 7

⁵⁹ Section 3.2, page 3.

familiar with the land in the late 1980s, having done agricultural work there, from 1990 he was away, either abroad or at university.

174. When asked to comment on the use described by the Applicant's witnesses, Mr Gardiner was very clear that he believed that the length of the grass at high summer was simply not conducive to the use described. He accepted there was evidence of perimeter use only and he believed this had prompted Brooklands Investments to lodge the Highways Act declarations referred to in Mr Thompson's evidence⁶⁰ to stop the accrual of public rights of way. In relation to access to the AL, he believed that Gate 1 had been erected in about 2010. He could not recall clearly whether this gate had ever been shut or not. He thought that the signage saying 'Private Driveway' would have had the effect of making it clear to anyone that they should not drive or walk up there. He believed that Gate 2 had been erected at about the same time as Gate 1 by Receivers for the golf course at that time. He accepted that this was not kept locked and that walkers encountering it, even if shut, could simply open and close it behind them or indeed could just walk round it in the gaps either side. He accepted that the path in area 7 could only have been created and used by trespassers on to the land.

CHRISTOPHER THOMPSON

175. Mr Thompson gave evidence to the inquiry on Monday 24th November 2014. His evidence in chief appears in his proofs of evidence at OB Tab 9 dated 18th August 2014 and Tab 51 dated 14th November 2014. He is a director of the Objector and has been in that role since October 2004.

176. In cross examination he confirmed he visits the AL once or twice a year and his visits are usually for a duration from an hour to less than three. His view was that

⁶⁰ OB Tab 9 Christopher Thompson @ para. 26; OB Tab 29 Declarations.

by 2004 when he became involved, all the private back garden gates that give access on to the AL were in place. He reported (in relation to his comments at para. 23 of his first statement) that he had receive informal feedback from the neighbouring leaseholder of the golf course land, Ton Williams, and from this his impression was that numbers of people on the land are reducing and that if he (Tony Williams) sees anyone using the land he asks them to leave. He accepted therefore that some people were going on to the land as trespassers but could not comment what they did when there. His opinion that there are not great numbers of users was based upon the feedback he received from those people authorised to be on the land. The contents of Tony Williams' written feedback⁶¹ was put to Mr Thompson as establishing that people are still using the land as trespassers although all of this use is outside either of the qualifying periods so do not form part of my considerations. At paras. 29 to 34 of his first statement, Mr Thompson expresses his opinion that Hart Dyke Close does not compromise a neighbourhood. He accepted that this view was based upon his observations from driving round the area and that he did not have any knowledge of the Hart Dyke Close Neighbourhood Watch scheme, the group that had made efforts to oppose the development of Denby Close, the jewellery party at Mrs Notley's house or the snow clearing by residents in 2009. He had been aware of Luckley Oakfield School but had not been aware of the bus stop near the AL labelled "Woodcray Manor Farm". He himself would describe the land as Woodcray but did not think that described the surrounding area. He did accept that he could not say that what had been described by the Applicant's witnesses as their use for LSP had not taken place. Mr Thompson suggests in his evidence⁶² that the application has been made with the ulterior motive of ensuring the AL is not considered and promoted for development n the future. He did not accept Dr Bowes suggestion that it was more likely that the January 2013 letters and signs had prompted the application instead although he did accept that there is no planning application for the land being currently advertised or that had been submitted. He did however think that

⁶¹ OB Tab 11

⁶² OB Tab 9 @ para 37

the current need for additional housing was clear to anyone who kept their ear to the ground. He accepted that the assertions made in his statement were not made from a qualified legal background and that he had very limited knowledge of the day to day use of the AL.

177. In re-examination, Mr Thompson confirmed that the planning history of the land (presumably he was here referring to the options held by developers) was that there had been various proposals considered for development of the land over the years. His view was that in light of the chronic shortage of housing availability generally and the kind of planning approvals that had been granted in recent years, the AL could appear to have the prospect of potential development land.

JAMES BRYCE

178. Mr Bryce gave evidence to the inquiry on Wednesday 26th November 2014. His evidence in chief appears in his proofs of evidence at OB Tab 13 dated August 2014 and at OB Tab 50 dated 14th November 2014. He has carried out general land maintenance services for the Objector on the AL since 2000. He confirmed in his oral evidence that he was required to top the land between 15th July and 15th September each year. There was no particular pattern to when between those dates the cutting would be done.

179. In cross examination Mr Bryce was asked if the topping he has annually carried out was typical for the land between the years of 1991 to 2011. He replied that the same variety of machine had been used then as was used now⁶³ but he accepted that his knowledge of the land only dated from the mid-2000s. He confirmed that aside from the grass cutting he would carry out maintenance on gates on Woodcraze Lane, remove tree limbs from around the site when required and

⁶³ The machinery used now is described in detail in his second proof at OB Tab 50 para. 5.

maintain trees that neighbour other properties. He thought that he had carried this kind of tree maintenance in areas 4 and 1. He accepted that he did not linger on the land when the work was finished. He confirmed he could not directly recall seeing anyone on the land himself but that his colleague, who sometimes carries out the cutting, had seen a couple of people walking on the land. He had seen them in area 1 walking. He accepted that on reflection his evidence about having spoken to people on the land had changed between his first and second statement as he had thought more carefully about it. He had not seen people coming out of their garden gates on to the AL.

180. Mr Bryce did not accept that the land was suitable for use after cutting because of the sharp stubble and the high thistle content in the grass and cuttings which get stuck in socks. He commented that he certainly wouldn't want to go and play on it in that state and thought it would be too uncomfortable to run on. He accepted that he and his colleagues walked on it when cutting but that was in heavy work boots.

181. Asked about access to the AL, Mr Bryce did not recall Gate 1 ever being closed however he thought that Gate 2 had often been closed but had never been locked. He acknowledged that Gate 2 has a large gap at the left of the gatepost and that if it was closed, one could simply walk round it there. He acknowledged that by walking forward from Gate 2 and turning left into the wooded area, access to the AL was gained simply by stepping over the ditch although he had never accessed the land this way. He accepted the signs on Gates 1 & 2 contained no words relating to recreation or ball games but just about the driveway and that the signs appeared on the opposite side of the lane than the AL. He could not recall when these signs had been put up or whether they had always been there. He believed that there had been some other signs further down Woodcraze Lane until a few years ago but accepted they were not there now.

DISCUSSION

Sufficiency of use as of right for LSP for a continuous period of 20 years

182. The application was supported by 17 witnesses who came to give oral evidence at the inquiry. Of the 17 live witnesses for the Applicant, three could speak about the whole period of claimed use i.e. from 1991 – 2013, three for a period of over 15 years, four in the 10 to 15 year period with the remaining seven having used the land for less than 10 years. In addition, 24 witnesses provided EQs and/or written statements as summarised at 155 above albeit with the reservations as to weight set out there.

183. In closing, both parties have directed me to the particular authorities of *McAlpine Homes*⁶⁴ and *Lewis*⁶⁵ in analysing the question of sufficiency of user. The Objector also invites me to have regard to *Dyfed*⁶⁶ and I am also assisted by the decision of the High Court in *Laing Homes* which I find relevant to the issues arising. Although three are the authorities I have been directed to upon this particular point, I draw my approach from the wide range of the authorities contained in the parties' authorities bundle as a whole. Later, in written submissions, both parties commended the approach of Dove J to this question in the recently decided case concerning rights of way *Powell v Secretary of State for the Environment, Food and Rural Affairs*⁶⁷.

184. From these authorities I remind myself of the relevant principles underlying the assessment of sufficiency of use. First the requisite use which the Applicant must

⁶⁴ R (*McAlpine*) *Staffordshire CC* [2002] EWHC 76 at [71] (Admin)

⁶⁵ R (*oao Lewis*) *Redcar and Cleveland BC* [2008] EWHC 1813 (Admin)

⁶⁶ *Dyfed County Council* (1990) 59 P & CR 275

⁶⁷ [2014] EWHC 4009 (Admin)

establish is “*use for at least 20 years of such amount and in such manner as would reasonably be regarded as being the assertion of a public right*”⁶⁸. Secondly, the Applicant must demonstrate use of the whole land rather than merely part or parts of the AL for LSP for not less than twenty years⁶⁹. Thirdly, it is necessary to consider whether the use of footpaths at the perimeter of the northern fields would appear to the reasonable landowner to be referable to their use as putative rights of way or as use for general recreational purposes which would sustain a claim to a new TVG⁷⁰.

185. Against that background, I consider the evidence in this case. I can deal very shortly with the question of sufficiency of use for the AL as a whole.

186. Miss Hammond readily accepted that her use was almost always of just the northern fields. Mrs Cooper gave evidence that she thought few people used the land to the east of the AL where she had used to walk near the railway line. She commented that over time all use of that area had stopped as rubbish dumping had made the area dangerous for dogs. Mr Patterson’s evidence was that the school use had been confined to the northern fields. Mr Sanvitale conceded that his family’s use of the AL was mostly in the northern fields with occasional use of the new wooded areas and wet meadows. Mrs Meades clarified her evidence and accepted that her use of the AL was mainly in the northern fields. Mr Lumsden estimated that half his use of 3-4 times per week would be of just the northern fields and he thought this was similar to others use of the land. Mrs Salmons, who uses the land infrequently in any event, gave evidence that her use was mainly of the northern fields and this was echoed by Mr Salmons. Mrs Notley conceded that her children’s use of the land was really in the northern fields although her use

⁶⁸ Lord Hope in *Lewis* at para 67.

⁶⁹ Sullivan J in *Cheltenham Builders* at para 29.

⁷⁰ Sullivan J in *Liang Homes* paras 98 – 110 approved in *Trap Grounds* by Lightman J at paras 96 - 105

was wider as she uses the AL to train dogs. Mr Benham himself conceded that while he regarded his use as being of the whole AL, he had not used the new woodland areas (13 & 14). In his description of seeing others on the land he did so only in the context of the northern fields. Mrs Benham readily accepted her main use of the AL was in the northern fields. Mr Crewe's evidence was that his use of the land once per week was primarily in the northern fields. Mrs Graham's evidence was that her use of 3 – 4 times per week would be of the northern fields and wet meadows only. Mr Gallagher also confirmed that his use was mainly of the northern fields and use of the other areas was no more than occasional.

187. From this evidence, my impression overall was that most accepted that their use of the AL was concentrated in the northern fields. The Objector's aerial photography evidence further corroborated that impression. Therefore I have no hesitation in finding that the whole of the AL was not used throughout the qualifying periods in a manner and to an extent which would have appeared to the reasonable landowner as the assertion of a public right. Therefore, the Applicant has failed to establish the requisite use of the land in sufficient quality and quantity to qualify to be registered as a new TVG and my recommendation to the CRA would be to reject the application as it was first made on that basis.

188. However, clearly alive to the shortcomings in the evidence as it had come out at the inquiry, the Applicant invites the CRA to register a much smaller area of land than that applied for. That application is put in the Applicant's closing submissions in the following way:

“ALTERNATIVE REGISTRATION

91. We would invite you to recommend registration of the entire land claimed. However, we accept more use has been made of the upper and lower northern fields and wooded area than the rest. In the alternative, we therefore invite you to recommend registration

those parts of the land claimed in the event you feel unable to recommend registration of the entire site”

189. At the inquiry, when asked to clarify what parts of the AL the Applicant had in mind, areas 1 to 8 were indicated. This situation has been dealt with at some length in the authorities and there can be no doubt that the CRA has the ability to register a smaller area of land which has been found to satisfy the requisite statutory criteria⁷¹. Therefore the following remarks in the rest of this section are addressed only at the consideration of whether there is sufficiency of user on the much reduced parcel of land comprised in areas 1 – 8 of the map at Appendix 1. Therefore I bear in mind the same principles in paragraph 184 above but only in relation to that reduced area of land.

190. Although the authorities offer a progression of refinement in dealing with the varied and difficult issues that arise in TVG cases, there has never been any dilution of the essential requirement that the Applicant must be able to establish sufficiency of use; i.e. use by a significant number of inhabitants as of right for LSP for a continuous period of 20 years.

191. It is the last element of this requirement that has troubled me most in making a recommendation in this case. The Applicant must establish continuous use for LSP for the whole of the qualifying periods. It will be recalled that these are from 21st March 1991 – 21st March 2011 or in the alternative from 13th January 1993 – 13th January 2013. My impression of the totality of the evidence of use of the northern fields, at least of some kind, is that it was strong from 1996 or thereabouts in the oral evidence. The Applicant’s witnesses, as recorded above, related a great deal of walking with and without dogs but also more varied

⁷¹ Sullivan J in *McAlpine Homes* at paragraph 79 – 83; Lord Hoffman in *Trap Grounds* at paragraph 79.

recreation such as jogging, kite flying, ball games, etc. However, the CRA would need to be satisfied that qualifying use had been continuous for the whole of the period. Therefore I am particularly concerned with evidence of qualifying use for the early part of those periods, i.e. 1991 – 1995 inclusive. This represents the first four years of the earlier qualifying period and the first two of the later period.

192. I heard from three witnesses orally who could speak about the early period on the land; Lisa Hammond, Sheila Cooper and Peter Dunks. Miss Hammond's evidence was that she had used the land since her family had moved to Hart Dyke Close when she was 13 years old in 1990. Her use was certainly confined to the northern fields. She told the inquiry that when without a dog, she might walk anywhere on those fields, but that her jogging and daily dog walking would have been on the perimeter pathways except when retrieving the dog. She recalled two friends in particular who lived nearby who used the land as she did. She believed the garden gate at the back of her garden had been installed shortly after her parents bought the property in 1990 and her impression was that while there had been no others at the time they moved in, the others were all installed shortly thereafter.

193. Mrs Cooper had lived at 183 Finchampstead Road and had used the land since 1968. She told the inquiry that she had used the land most days for walking and training dogs and that use was mainly on the footpaths except when she veered off to avoid flooded areas. Under cross examination, she qualified this evidence only to the extent that she felt she spent a great deal of time off the pathways retrieving either dogs or toys thrown for them, and she thought the same would be true of other dog walkers and those out with children.

194. Mr Dunks' evidence I have already commented upon. I accepted his description of his use of the land for recreation and dog walking but I could not be confident

that this was his use during the early 1990s, not least because when asked about that particular period, he commented that he could not recall that far back.

195. Other relevant evidence addressing this time of the qualifying periods is the written evidence of Peter Bird and Mr & Mrs Spackman for the Applicants. Again, I have already commented on the very limited weight I am able to place on this type of evidence. Mr Bird states he has used the land since moving to Luckley Wood in 1978. However, this conflicts with his EQ which states he has known the land for only 25 years. More importantly he states⁷² that while his use was continuous between 1975 and 1985, after that it has only been periodic until 1995. So he used the land only periodically and for a short time into the qualifying periods and we have no real detail about what that use was for or how often it was.

196. Mr & Mrs Spackman's written evidence is too brief to really assist. They describe using the land between 1980 – 2009. The one notable comment is that they describe walking their dog "around the edge of the field".

197. There is no other evidence from the Applicant upon which inferences could be drawn about the use of the land during this early part of the qualifying periods. There was very little photographic evidence generally from the Applicant and none at all for the period that concerns me. There was no further evidence brought forward about the dates of installation of the increasing numbers of back gates or any other evidence to support or expand upon Miss Hammond's recollection of when the back gates had been installed.

⁷² AB Tab 5/B at EQ page 3, Q20.

198. I found the evidence of Mr Young helpful in trying to discern the sufficiency of use of the land throughout the periods generally but it is unfortunately not adequate to assist with the early part of the qualifying periods which I am particularly concerned with. It is regrettable that his report did not include the earlier period contended for (1991 – 1993) but that was not something within his control as the application was not amended to include these years when his report was being compiled. Therefore in terms of the earliest part of the qualifying periods, Mr Young's report only addresses 1993 and he accepted the limitations of that evidence both in his report and under cross examination. In 1993 Mr Young mistakenly attributes the land use to sown pasture before being put into set aside⁷³. This is at odds with the evidence of Mr Gardiner (Snr) who was clear that the land was first put into a set aside scheme in 1990⁷⁴. I don't believe anything turns on this. The photograph image in 1993 is so poor and of such a scale that it does not assist one way or the other in trying to discern whether the land was being used at all at that time.

199. On the basis of the evidence available, in my view, it is not possible for the CRA to be satisfied that there has been continuous use of the land for the whole of the required twenty years, particularly when one considers the quality of the use that there is evidence of. I turn to the third principle mentioned in paragraph 184 above; the consideration of whether use of any tracks or footpaths would appear to the reasonable landowner as referable to their use as putative rights of way or as use for more general recreational purposes outside the tracks which would justify a claim of village green use over the whole of the relevant land.

200. Both Mrs Cooper and Miss Hammond accepted that their most habitual use of the land was for dog walking. Both accepted that this was mainly done on the

⁷³ Observations at OB Tab 30 @ 445.

⁷⁴ OB Tab 2 @ para. 24

footpaths or pathways at the perimeter of the northern fields. Both stated that they did veer off these paths but mentioned that in the context of retrieving dogs or their toys. Mr & Mrs Spackman's evidence specifically mentions walking dogs at the edge of the field (although it is unclear whether they were referring to the whole AL as originally applied for or only the northern fields). On the basis of the very limited evidence available, the most I could infer of use at the start of the qualifying periods is that it was mostly use of the perimeter of the northern fields by dog walkers.

201. I have carefully considered the authorities in this area and I find that the guidance in *Laing Homes* as approved in *Trap Grounds*, leads me to the conclusion that the evidence of use in this early part of the relevant periods would not have appeared to a reasonably vigilant landowner as the assertion of a public right other than of a putative right of way. If the perimeter use by dog walkers was discounted in the way envisaged by Sullivan J at paragraph 105 in *Laing Homes*, I find as a matter of fact that the other activities that the Applicant relies upon taking place on the land at that time would not have been of such a character and frequency to indicate the assertion of broader village green type rights either over the AL as applied for, or even of just the northern fields.

202. Therefore I find that the Applicant has not sufficiently established in their documentary or oral evidence that either the AL as first applied for, or the reduced area shown in Appendix 1 as areas 1 – 8, has been sufficiently used as of right for LSP for a continuous period of 20 years and as such, cannot be recommended for registration as a new TVG.

Locality

203.S15(3) applies where a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in LSP on the land for a period of at least 20 years where they have ceased to do so before the time of the application and within two years of that use ceasing.

204. Therefore one of the first issues to be dealt with is whether the application is based upon a locality, or a neighbourhood within a locality, as those concepts have come to be recognised in this area of law.

205. It will be recalled from paragraph 6 above that the Applicant applied for NH A, being within the locality of Wescott Ward, and in the alternative, NH B, being within the localities of Wescott and Evendon wards. Therefore the Applicant relies upon electoral wards for the localities in which his two alternate neighbourhoods are located.

206. The Objector says, in essence, that the Applicant has not demonstrated that these are qualifying localities because it is not accepted that electoral wards are administrative units recognised by law and they should not be accepted as such because, like the conservation area in *Paddico*⁷⁵, their legally significant boundaries are not defined by reference to any community of interest. Furthermore, that the Applicant has not established that the relevant localities have been in existence unchanged for the qualifying period/s.

207. I do not accept the objection raised to electoral wards being relied upon as qualifying localities and find as a matter of law that these are qualifying localities. I

⁷⁵ [2012] EWCA Civ 262 @ 29

find persuasive the *obiter* of HHJ Waksman QC in *Warneford Meadow*⁷⁶ as relied upon by the Applicant. In particular at paragraph 69, where he identifies a ward as being an example of a qualifying administrative unit. I believe electoral wards to be administrative units known to the law. They have clear and legally significant boundaries. I am not aware, and have not been directed to, any of the later binding precedents where that *dicta* has been challenged or disapproved. I also bear in mind the comments of HHJ Behrens in the *Leeds Group* case where he accepted the submission that all the technical difficulties in the word “locality” that had arisen in common law should not be imported into the phrase “neighbourhood within a locality” as used here, when the clear intention of Parliament in reforming the law in this area had been to reduce the difficulties of registration.

208. NH B falls within two localities, Wescott West and Evendons. Finchampstead Road forms the boundary between them. This situation is expressly dealt with by Lord Hoffman in the *Trap Grounds*⁷⁷ case in the House of Lords where he (albeit in relation to the predecessor statute to the Commons Act 2006) expressly disagreed with Sullivan J in *Cheltenham Builders* that a neighbourhood must fall within a single locality.

209. The Applicant has failed, however, to advance any evidence to the inquiry that the localities relied upon have been in existence, significantly unaltered, for the whole of the alternate qualifying periods. My understanding of the borough wards in Wokingham is that they have been constant between 1991 – 2013 with some slight alteration at the boundaries of the Wescott ward. I am satisfied that, for the purposes of my recommendation, the two electoral wards are qualifying. If this was a determinative issue, the evidence from the Applicant in relation to this

⁷⁶ [2010] 2 EGLR 171

⁷⁷ [2004] Ch 253 at [102/3]

would not be sufficient and I would have invited further submissions in relation to it from both parties. However, in light of my other findings, further evidence on this would serve no useful purpose.

Neighbourhood within a locality

210. The Applicant amended his application in the legal argument submitted on 18th August 2014⁷⁸ to include two alternative neighbourhoods. NH A is simply Hart Dyke Close and does not include Denby Close. NH B includes NH A and sections of Finchampstead Road and Luckley Road and the whole of Luckley Wood. Luckley Oakfield School is also included in NH B. The Applicant relies upon the test for ‘neighbourhood within a locality’ as set out by Sullivan J in *Cheltenham Builders*; that the CRA must be satisfied that the area has a sufficient degree of cohesiveness to qualify.

211. The Objector agrees that the core test for neighbourhood is set out in *Cheltenham Builders* and directs me to the summary at paragraph 97 of *Paddico*⁷⁹ which essentially adds that the cohesive area must be capable of meaningful description in some way. I am also assisted by the *dicta* of HHJ Waksman in *Warneford Meadow*⁸⁰ at paragraph 79 where, in discussing the test for neighbourhood, he states that the *Cheltenham Builders* test of Sullivan J includes the requirement that the sufficient degree of cohesiveness of an area must be pre-existing. That observation seems to me unassailable when viewing the requirements for neighbourhood in the context of the statutory requirement for the whole of the qualifying period. I am also guided by the *dicta* of HHJ Behrens in the *Leeds Group* case in the High Court⁸¹ in relation to the definition of neighbourhood. I do not

⁷⁸ See paragraph 6 above

⁷⁹ [2011] EWHC 1606 (Ch)

⁸⁰ [2010] EWHC 1606 (Ch)

⁸¹ [2010] EWHC 810 (Ch)

view that as having made any significant departure from the position expressed in *Paddico* although it does serve as a reminder that whether the statutory requirement is met in any case is ultimately a question of fact and degree for the decision maker.

212. While I was greatly assisted by the submissions of both parties on this issue, I relied more upon my impression of the witnesses and the area itself. I have remained mindful that the concept of neighbourhood is partly geographical, partly functional and partly one of community identity and that the requirement is drafted with some deliberate imprecision to reflect the fluidity of the concept.

213. I placed great weight upon the evidence of the Applicant's witnesses about neighbourhood and I am afraid I formed the overall impression that as a group they were unclear about the geographic extent of their claimed neighbourhood or in relation to those elements that give rise to cohesiveness within the meaning of s15(3), as explained in *Cheltenham Builders* in relation to the 1965 Act (as amended). There was no consensus on this amongst them. This along with other relevant considerations dealt with below, have led me to the conclusion that as a matter of fact and degree the Applicant has not demonstrated that either NH A or B are qualifying for the purposes of s15(3), particularly for the whole of the qualifying periods.

214. As I have already said, I found the witnesses to be genuine and honest overall and I was very grateful to them for the time and trouble they took to come and give evidence to the inquiry. However, I found the oral evidence in particular established that many witnesses, despite identifying either NH A or B as being their neighbourhood in their written evidence, then altered that position to some extent in their oral evidence.

215.Examples of this follow although these do not represent the totality of the evidence from which I formed my overall impression: Miss Hammond was unable to describe her neighbourhood beyond saying that she had been informed that her house fell within NH A. She fully accepted that NH A was simply the street upon which she lived and that there was nothing more special about it than that. Mrs Crewe did not agree with the extent of NH B as described in the application and specifically would have included Evendon Lane in her description of her neighbourhood. Her experience of the community she lived in came particularly from membership of the Church which had congregated at Whitehouse School between 2003 – 2011. She acknowledged that no one from the NH A had attended that church. In a second opportunity to clarify her evidence on neighbourhood, Mrs Crewe’s position altered again in that as well as including Evendon Lane in the neighbourhood she now said that she would not really regard those living on Finchampstead Road to be part of the neighbourhood. When identifying where she lived to others she would do so by reference to the golf course or the White house School. She was not a member of the Hart Dyke Close Neighbourhood Watch scheme. Mrs Cooper could not recall having identified NH B in her written evidence and she said that it had been indicated to her on a map by Mr Benham. Mr Sanvitale thought he had received written instructions on how to identify his community in his written evidence but aside from this, he thought he had been shown a map with the two alternative neighbourhoods claimed on it and was asked simply which neighbourhood his property fell into. When asked about the community in NH A, he could not define it. He could only refer to having friends nearby and the opposition that had been expressed by a group of the residents to the planning application for Denby Close. He agreed that there were no community organisations or neighbour associations when he lived in Hart Dyke Close. Mrs Martin gave evidence that she regarded her neighbourhood as being a collection of roads that did not correspond to either NH A or B. Mrs Meades was very clear in her evidence that she was a member of both NH A & B, however she fully accepted in cross

examination that the boundaries of NH A & B were simply lines traced on the map to outline where people live who use the AL. Mr Lumsden's understanding of neighbourhood in the application was that Hart Dyke Close was NH A and that those that felt they had an association with the land but lived elsewhere would be NH B. He accepted there were no community organisations or neighbourhood associations that he knew of. In terms of formal community organisations, Mrs Salmons described only the Neighbourhood Watch for Hart Dyke Close. Mr Salmons recalled that there had been formal instructions from Mr Benham. Mrs Notley gave evidence about the jewellery parties she had hosted that had been referred to in Mrs Salmons' evidence. She stated there had been two of these and they were not regular events. In Mr Benham's own evidence he described that what he felt really pulled the community together was the AL itself. He accepted that when drawing up the boundaries of NH A & B, he had firmly in mind where users of the AL lived. He also accepted that there were very different architectural styles throughout the neighbourhoods with no unifying theme and that there were no community organisations serving them. In my view, evidence of this quality is nowhere near sufficient to satisfy the neighbourhood requirement.

216. There were other recurring themes in the evidence that contributed to my overall impression that neither NH A or B benefitted from the cohesive factors that are required to be present in order for the statutory requirement of neighbourhood not to be completely meaningless. None of the nearby community facilities identified by the Objector were confined to use by the residents of NH A or B nor did any of the witnesses describe any experience of being part of a community centred on any of those facilities. The Applicant's submission that use of local or community facilities is not the test for judging community cohesiveness is accepted to the extent that this is not the legal test. However, it is factual evidence about the communality of what is available locally to residents of the contended neighbourhoods and is important as part of the factual matrix that will contribute to decisions on qualifying neighbourhoods. It is part of the patchwork of evidence

that the CRA assesses to decide whether it is satisfied that the application satisfies the statutory criteria.

217. There were elements of the evidence heard that would indicate the presence of some cohesive factors particularly for NH A. The community action by those residents of Hart Dyke Close to oppose the building of Denby Close and the actions of the builders thereafter, I consider to be evidence of neighbourhood cohesion in Hart Dyke Close through the organisation of joint action and the communication that was clearly ongoing between interested residents. Joining together to alleviate the physical difficulties of the heavy snow caused on the Close for the residents generally is also, I think, evidence of some neighbourhood cohesion. Hart Dyke Close is also geographically focused and architecturally united because it is one small close leading off Finchampstead Road comprised of only 21 properties at most. It appears to have been built as a single development with all the properties being constructed in one phase ending in 1990. However these examples are very limited and do not provide any evidence of pre-existing cohesive factors for the whole of either qualifying period claimed.

218. In relation to NH B my impression was that there were no overall cohesive factors at all save for the use of the AL which I think is a highly relevant part of the factual background contributing to neighbourhood cohesion, but cannot be the only one. Unfortunately, in relation to NH B, my impression was that it simply represented an area picked out on a map that best corresponded to, and would link, present users of the AL. Several of the witnesses accepted that proposition. It is not clear why only sections of Finchampstead Road and Luckley Road would be part of this neighbourhood as distinct from the other parts of the same roads. There appeared to be no social cohesion between residents of these roads with several witnesses simply not knowing any people who lived in the other roads. The inclusion of Luckley Road, other than as a means to link users in Hart Dyke Close and Finchampstead Road with users from Luckley Wood was unclear as

there was no evidence of use by residents of Luckley Road at all, either in oral evidence or in the EQs. There was no evidence of any community organisation that catered for this neighbourhood. There is a Neighbourhood Watch Scheme for Luckley Wood and a separate one for Hart Dyke Close. There was not one known of for Finchampstead Road and no evidence about Luckley Road.

219. Geographically NH B is disparate and there are no unifying architectural themes or even commonality amongst the buildings found in the area. The relevant section of Finchampstead Road is a busy road characterised by larger properties set well back from the road in private drives and gardens which do not share any unifying themes architecturally. Luckley Wood was obviously planned and built to create a feeling of a private road lined with houses which appear to be constructed of the same materials and in the same style. I do not know if it was built in one phase or more but in any event the houses, trees and shrubbery are designed to be consistent throughout the close. This area is distinct from both Finchampstead Road and Hart Dyke Close and other roads around it. There is no evidence of any functional linkages between the NH B roads. There are no interconnecting or interlinking roads between them. There was no evidence before the inquiry of informal or formal twittens or passage ways or amenity corridors that had been designed in or had grown up by customary use showing any regular kind of traffic between the separated areas of Hart Dyke Close and Luckley Wood.

220. Again, there were factors which might have pointed towards neighbourhood cohesion such as the church held at Whitehouse School in past years, but again there did not seem to be evidence of this from the witnesses or from any documentary evidence advanced. For instance the church might have been a cohesive factor but only Mrs Crewe regularly attended the church within the claimed neighbourhoods and she accepted that the church had not drawn in any other members from Hart Dyke Close and that it had been more successful in attracting people from other newer housing elsewhere. The schools (Whitehouse,

Luckley Oakfield and the new school on Evendons) did not appear to have any neighbourhood element to their intake. Witnesses acknowledged that both the Whitehouse School when open and the new school on Evendons had or have catchments much wider than NH B and Luckley Oakfield effectively operates no catchment area as it is privately fee paying. I did not accept the Applicant's submission that two jewellery parties held on Hart Dyke Close by Mrs Notley, one of which Mrs Salmons had attended amongst others was any evidence of neighbourhood cohesion in a qualifying period of 20 years.

221. Therefore, as a matter of fact and degree I do not find that the Applicant has brought forward evidence that comes even close to satisfying the neighbourhood requirement throughout the whole of the qualifying period for either to be considered qualifying neighbourhoods. On this issue alone, I recommend that the CRA reject this application for registration.

222. In light of the above findings on sufficiency of user and neighbourhood, I am regrettably unable to recommend registration to the CRA. There were many other complex legal issues which arose in the course of the application and upon which the parties made very full written submissions and I was very grateful for their clarity and guidance. However, since I consider that the application fails on the findings already made which I do not think involve any controversial points of law, it is unnecessary for me to deal with the other matters.

CONCLUSIONS AND RECOMMENDATIONS

223. I conclude that the application fails for the following reasons:

- A. The Applicant has failed to establish that there was continuous qualifying use of the land for at least 20 years.

- B. The Applicant has failed to prove use by the inhabitants of a qualifying neighbourhood. Neither of the claimed neighbourhoods are neighbourhoods within the meaning of s15(3) CA 2006.

224.I recommend that the CRA should reject the application to register the application land as a new town or village green for the reasons set out in this report.

Felicity Thomas

12 College Place

17th August 2015.

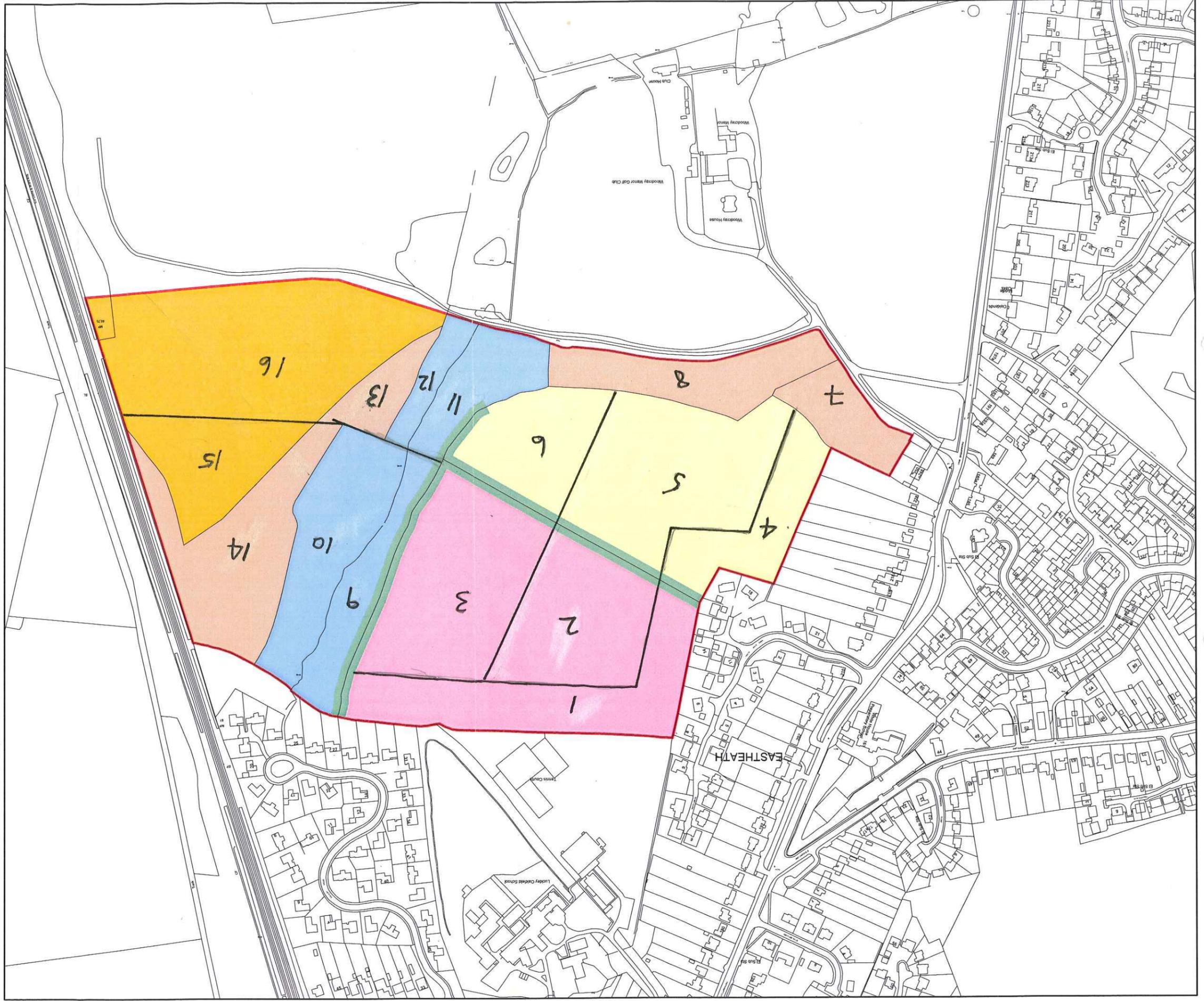
**IN THE MATTER OF AN APPLICATION TO REGISTER LAND AS A
TOWN OR VILLAGE GREEN IDENTIFIED IN THE APPLICATION AS
'WOODCRAY' AT WOKINGHAM, BERKSHIRE.**

- APPLICATION NUMBER TVG WTC-1 -

APPENDIX 1

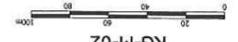
The scaling of this drawing cannot be assured
 Revision Date Dm Ckd
 15.08.14 M.D. M.K.
 A Legend text amended

- Site Area 
- Tree Belt 
- Wet Meadows 
- Upper Northern Field 
- Lower Northern Field 
- North East Triangle 
- Wooded Area 



Project
Woodcraay Manor
 Drawing Title
Areas Plan

Date 31.07.14
 Scale 1:2500@A2
 Drawn by ALC
 Check by MK
 Project No 18557
 Drawing No RG-M-02
 Revision A



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