Lincolnshire COUNTY COUNCIL
Working for a better future

County Offices
Newland
Lincoln
LN1 1YL

22 August 2019

Planning and Regulation Committee

A meeting of the Planning and Regulation Committee will be held on **Monday, 2 September 2019 at 10.30 am in Council Chamber, County Offices, Newland, Lincoln LN1 1YL** for the transaction of business set out on the attached Agenda.

Yours sincerely

Debbie Barnes OBE
Head of Paid Service

Membership of the Planning and Regulation Committee
(15 Members of the Council)

Councillors I G Fleetwood (Chairman), T R Ashton (Vice-Chairman), D Brailsford, L A Cawrey, Mrs J E Killey, D McNally, Mrs A M Newton, Mrs M J Overton MBE, N H Pepper, R P H Reid, S P Roe, P A Skinner, H Spratt, M J Storer and C L Strange

PLANNING AND REGULATION COMMITTEE AGENDA
MONDAY, 2 SEPTEMBER 2019

Democratic Services Officer Contact Details

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Please note: for more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting

- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details set out above.

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Lincolnshire COUNTY COUNCIL
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PLANNING AND REGULATION COMMITTEE
29 JULY 2019

PRESENT: COUNCILLOR I G FLEETWOOD (CHAIRMAN)

Councillors T R Ashton (Vice-Chairman), L A Cawrey, Mrs J E Killey, D McNally, Mrs A M Newton, Mrs M J Overton MBE, N H Pepper, S P Roe, P A Skinner, H Spratt, M J Storer and C L Strange

Councillor Dr M E Thompson attended the meeting as an observer

Officers in attendance:-

Jeanne Gibson (Programme Leader: Minor Works and Traffic), Neil McBride (Head of Planning), Marc Willis (Applications Team Leader), Rachel Wilson (Democratic Services Officer) and Mandy Withington (Solicitor)

10 APOLOGIES FOR ABSENCE/REPLACEMENT MEMBERS

Apologies for absence were received from Councillor D Brailsford.

11 DECLARATIONS OF MEMBERS' INTERESTS

The following declarations of interest were noted:

Councillor L A Cawrey declared an interest in item 6.1 as she was a member of North Kesteven District Council (NKDC) and sat on the Planning Committee. NKDC had been consulted twice on this matter, in June and September, however, Councillor Cawrey left the September meeting before this item was heard. She was the vice-chairman for the 27 June 2019 meeting, but did not vote and declared an interest as a County Councillor.

Councillor S P Roe declared an interest in item 5.1 as the road was adjacent to the entrance of his mother's farm. He also declared an interest in item 6.1 as his daughter and son-in-law owned a house within 300 yards of the site. Councillor Roe advised that he would leave the meeting for consideration of these two agenda items.

Councillor T R Ashton declared that in relation to item 7.1, he was a member of the South East Local Plan Committee, but his appointment was subsequent to the publication of the local plan, and he has not stated his view.

Councillor Mrs A M Newton declared an interest as a member of South Holland District Council and advised that she had been lobbied on both applications, but they were not within her County Council wards. However the application for Section 5 did form part of her district ward. She advised that she had made comments on the

application on behalf of residents, but did make it clear at the time they were the views of the residents.

Councillor H Spratt declared an interest in item 5.1 as it was within his area and had been campaigning for two years for this change. He advised that he would leave the meeting for consideration of this item.

(NOTE: Councillor H Spratt left the meeting at 10.40am and did not return as he had not been in attendance for the site visits)

Councillor N H Pepper declared an interest as a member of South Holland District Council, however he was not a member of the Planning Committee, but he had been lobbied in relation to the applications listed under item 7.1.

Councillor M J Overton MBE declared an interest in agenda item 6.1 as a member of North Kesteven District Council, as the planning application had been sent to the district council for comment. Councillor Mrs Overton had been to a number of district council meetings and briefings on this application. She had attended the site visit and received the report and was approaching this item with an open mind.

12 MINUTES OF THE PREVIOUS MEETING OF THE PLANNING AND REGULATION COMMITTEE HELD ON 1 JULY 2019

RESOLVED

That the minutes of the meeting held on 1 July 2019 be signed by the Chairman as a correct record.

13 MINUTES OF THE SITE VISIT HELD ON 22 JULY 2019

RESOLVED

That the minutes of the site visit held on 22 July 2019 be received.

14 TRAFFIC ITEMS

14a Lincoln, Hykeham Road and St Margaret's Gardens - Proposed Waiting Restrictions

(NOTE: Councillor S P Roe left the meeting at this point in the meeting)

The Committee received a report which set out objections received to the proposed waiting restrictions for Lincoln, Hykeham Road and St Margaret's Gardens which were publicly advertised from 28 February to 28 March 2019.

The report outlined the existing conditions and the objections received as well as the comments of officers on the objections received.

Members were provided with the opportunity to ask questions to the officers present in relation to the information contained within the report and some of the comments made included the following:

- It was a positive to see that a public meeting had been held, and this scheme should be applauded at this location.
- Parking outside schools was an issue nationally for a lot of schools, as people complained about parents dropping off and picking up children. It was suggested this was due to parents now having a choice of which school to send their children to and so a lot of children were dependent on their parents to take them to school by car.
- It was accepted that this was an issue that existed in many towns and villages across the county, and welcomed the work that had been carried out by officers to resolve the situation in this area.

On a motion by Councillor T R Ashton, seconded by Councillor P A Skinner, it was:-

RESOLVED (10 in favour, 1 Abstention)

That the objections be overruled and that the order as advertised be implemented.

15 COUNTY MATTER APPLICATIONS

15a For the demolition of the existing animal by-products processing plant and all associated installations; and the construction of a new animal by-products processing plant, comprised of: raw material reception and processing buildings; engineers building; boiler house; oxidiser building and flue; DAF plant; effluent treatment plant; bio filter bed; general office; weighbridge and weighbridge office; hardstanding areas for accessing the processing plant and for parking of cars, commercial vehicles and trailers used in connection with the operation; residential development to provide three environmentally sustainable eco affordable homes and one manager's house for the processing plant; alterations to the existing site access from Jerusalem Road; and all associated development, including landscaping at Jerusalem Farm, Jerusalem Road, Skellingthorpe - DS Developing Ltd (Agent: MAZE Planning Solutions) - 18/0709/CCC

The Committee received a report which sought planning permission by DS Developing Ltd for the demolition of the existing animal by-products processing plant and all associated installations; and the construction of a new animal by-products processing plant, comprised of: raw material reception and processing buildings; engineers building; boiler house; oxidiser building and flue; DAF plant; effluent treatment plant; bio filter bed; general office; weighbridge and weighbridge office; hardstanding areas for accessing the processing plant and for parking of cars; commercial vehicles and trailers used in connection with the operation; residential development to provide three environmentally sustainable eco affordable homes and one manager's house for the processing plant; alteration to the existing site access

from Jerusalem Road; and all associated development, including landscaping at Jerusalem Farm, Jerusalem Road, Skellingthorpe.

It was reported that further to the publication of the agenda, a letter from the applicant, a representation from Newark and Sherwood District Council and a further representation from a local resident had been received and were set out in the update which had been circulated to the Committee the previous Friday.

Officers guided members through the report and set out the main issues to be considered in the determination of this application.

Mr James Birch, spoke on behalf of Doddington Parish Council as an objector to the application and made the following points:

- The recommendation to refuse permission based on 6 planning criteria was applauded.
- The rendering plant was only in Skellingthorpe for historical reasons, it was believed that if this was a green field application there was no possible way that the Council would authorise a new plant beside a village of 4000 people and in line of sight of Lincoln Cathedral and a mile from Doddington Hall, a tourist attraction with 300,000 visitors per year.
- It was hoped a combination of stronger environmental laws, climate change resistance and common sense would mean this facility was forced to close in the next 30 years. If the rebuilding of the plant was allowed, it was an endorsement of a plant on this inappropriate site for a long time into the future.
- There were claims that newer equipment would mean a less noxious atmosphere, it was the transporting lorries which were the real problem. The applicant claims that the output level of the new facility would be the same as the current one. That was clearly not the plan. The LEO Group had spent £6m on the freehold of the site and would have to spend at least another £20m building the new plant and then demolishing the old one. They were sophisticated business people and were not going to invest £26m for no increase in revenue. It could be concluded that the new plant would either have a much higher output or they would decide to keep the old facility once the new one was up and running.
- The scale of the proposed investment would logically mean that a new plant would mean more output and that would mean far more lorries smelling badly and congesting the small village roads.
- This planning application was a cover for a struggle for control of the site between the new freeholder Leo Group and the current tenant Lincoln Proteins who had a lease until 2041, but did not bid enough when the freehold came up for sale. The four houses applied for on the site were only there because Leo Group could terminate the tenants lease if planning permission for housing became available on the site.

No questions were asked to the objector.

John Drabble spoke on behalf of the applicant and made the following points:
Housing

- He would review housing, transport, odour and noise.
- Members would be aware of the site's close proximity to Skellingthorpe village, and that the previous NKDC Local Plan settlement boundary passed along the Jerusalem Road frontage, well past the area now proposed for housing. The application site was not in an *isolated area of countryside,* which was the relevant NPFF reference. This was conveyed in the before and after images of the site development. The proposed housing was a component of a larger regeneration scheme that could provide environmental benefits.
- There would be no greater operational movements than currently – there was no stated intensification. The report concluded no adverse impacts on capacity or safety, accord with relevant Policies, and a s106 Agreement could be secured to prevent HGV's travelling through the village.

Odour

- In terms of odour, the Officer report misrepresented the odour assessment. The submissions made it clear that the most stringent of the odour benchmarks was assessed.
- The use of real measured emissions data from an operational plant, using 3 lines not 2 was entirely appropriate and robust.
- The worse-case, maximum odour concentration did not exceed the most stringent odour standard at any existing or proposed property.
- The existing plant processed Category 1, 2 and 3 material and used older, less efficient abatement plant than proposed. Vehicles would be modern, enclosed with hydraulic covers. The weighbridge would be deeper into the site, with passing possible so the potential for queuing would be reduced.

Noise

- In terms of noise, the applicant's Regulation 25 response was compliant with BS4142, contrary to the report.
- Night time HGV movements would result in a negligible impact above existing background
- On short term concurrent operations during commissioning, a restriction on noisy commissioning activities at night time could be conditioned.
- Existing properties would be 2 to 3 times more distant from the nearest process building in the proposed site configuration. The short term commissioning process could be suitably managed.

In closing,

- On housing, members would be aware that the Court of Appeal clarified NPFF Policy, in that proposals *cannot be considered to be isolated if there are other dwellings nearby*. The dwellings would not suffer from poor amenity. The Manager's house was not an operational requirement, and could be omitted.
- There were no objections raised by statutory bodies – Highways England and LCC Highways Authority, the Environment Agency, Natural England or Historic England.
- There were benefits to the proposals, including improved air emissions, an improved and safer site access, better screening for noise, benefits in visual impact and no significant environmental effects as detailed in the 850 page

ES. The assessments were not deficient, and the applicant fully accepts appropriate conditions to manage construction and operations.

Members were provided with the opportunity to ask questions to the applicant and the following was noted:

- It was queried why it was thought the odour assessment was not correct. It was noted that the moderate odour benchmark was 3, and the odour on site was 1.5.
- The model was based on the highest recorded emissions.
- The applicant was asked to explain how the proposed processes were different to the current ones and how this would lead to a reduction in odour. The Committee was advised that there were three categories of waste, and the Penrith plant processed category three only. This site would process categories 1, 2 and 3. The odours would be controlled by a thermic oxidation process.
- The new plant would also be compliant with BAT and environmental permits.
- Emissions would also be improved as it was proposed to include a mains gas connection for fuel. The current plant used tallow fuel.
- It was commented by one member that this was a commercial site, yet there were plans for four dwellings, the reasoning behind a managers house was accepted, but the reasoning for the additional three dwellings was queried.
- It was queried why an alternative access had not been included. Members were reminded that as this was the access outlined in the application, an alternative could not be suggested. It was proposed to improve the existing access to the site to allow HGV's to pass each other.
- It was queried whether there was an intention to increase throughput at the new facility. It was acknowledged that this was an investment by the applicant, but they did not need to increase throughput in order to increase profit. An increase in throughput was not required to make the plant viable.
- In relation to odour, members were advised that stringent and offensive were the same measure.
- The site had to comply with current operational conditions, but for the new site, the environmental permitting would be more stringent.
- It was very important to understand the expected odour and what level the smell would be in the future if the application was approved. The new site would be significantly further back than the current one was. The nearest properties were 115 and 118m from the existing processing buildings, when the new site was built they would be 290 and 336m away. The new property would be 188m from the nearest processing building. The odours would be improved due to the thermal oxidation process as it was a vastly improved method of destroying the odours that it captured.
- The new build would need to be completely enclosed and would have a negative pressure air lock so the odour could not escape. This would be covered by the environmental permit.

The Committee was provided with the opportunity to discuss the application and information presented and some of the points raised included the following:

- It was commented that the tour of the site was very interesting, but it was highlighted that the odour on the site was very strong, and one member commented they were shocked by the strength of the odour.
- It was highlighted that at the time of the visit, one of the doors of the facility was partly open and it was difficult to determine whether this had contributed to the strength of the odour.
- It was noted that if there was an opportunity for a new modern building that was able to get rid of the smell and the noise and was better controlled and further from the village and something could be put in place to manage traffic, then the Committee would need to approve it. However, there was not the assurance that the new facility would deliver on any of these factors.
- It was acknowledged that the site was licensed with the Environment Agency.
- There was a need to make a decision based on the application as presented, and a member commented that they could not support the application as presented, and would agree with the officer recommendation for refusal.
- Another member commented that on balance of what they had heard, they were happy to second the motion to refuse.
- The main issue was the residential element, which was not just outside of the local plan policies but would be located next to one of the most offensive forms of industrial process. Members commented that they were pleased to have had the opportunity to visit the site and appreciated that the properties were incredibly close to the location of the facility.

On a motion by Councillor L A Cawrey, seconded by Councillor T R Ashton, it was:-

RESOLVED (6 in favour, 1 abstention)

That following consideration of the relevant development plan policies, planning permission be refused.

15b <u>For the retention of a temporary store for liquid organic waste at Land to the north of Kirton Road, Blyton - D. R. Jacques & Son (Agent: Robert Farrow (Design) Ltd) - 139472</u>

(NOTE: Councillor S P Roe re-joined the meeting)

The Committee received a report which sought retrospective planning permission for the retention of a temporary store for liquid organic waste at land to the north of Kirton Road, Blyton.

Officers guided members through the report and set out the main issues to be considered in the determination of this application.

Councillor I G Fleetwood advised that he was the Chairman of the Planning Committee at West Lindsey District Council, and he had not discussed this application at the district council.

It was reported that further to the publication of the agenda, clarification had been received regarding the cover of the tank which was set out in the update which had been circulated to the Committee the previous Friday.

It was highlighted that it was important that the effect of any light pollution was taken into account. Members were advised that condition 5 detailed that any lighting needed to be approved before being brought onto the site.

On a motion by Councillor D McNally, and seconded by Councillor P A Skinner it was:-

RESOLVED (unanimous)

That conditional temporary planning permission be granted.

16 COUNTY COUNCIL APPLICATIONS

16a To construct Section 5 of the Spalding Western Relief Road comprising of a new single carriageway route from the B1356 Spalding Road and Enterprise Way to Vernatt's Sustainable Urban Extension (SUE) incorporating a new roundabout junction with the B1356 Spalding Road, a bridge over the Peterborough to Sleaford railway line, and a priority junction into Vernatt's SUE - H14-0326-19
To construct Section 1 of the Spalding Western Relief Road comprising of a new single carriageway route from the B1172 Spalding Common to Holland Park Sustainable Urban Extension (SUE) incorporating a new roundabout junction with the B1172 Spalding Common, a bridge over the Peterborough to Sleaford railway line, and a new roundabout junction for access into Holland Park SUE - H16-0327-19

The Committee received a report which sought planning permission for Section 1 (the southern section) and Section 5 (the northern section) of the Spalding Western Relief Road.

The Spalding Western Relief Road (SWRR) was an important highway infrastructure project for the Spalding area. The SWRR sought to relieve congestion in Spalding caused by frequent closures of the highway network at level crossing and the facilitate access for and within the Vernatt's Sustainable Urban Extension (VSUE) and the Holland Park Sustainable Urban Extension (HPSUE). It was planned to build the SWRR in three phases, Section 1 (the southern section) and Section 5 (the northern section) were to be built first with Sections 2, 3 and 4 (collectively referred to as the central section) to be built at a later date as the development of the VSUE and HPSUE progressed.

It was reported that since the publication of the agenda, further representations had been received, details of which were set out in the update which had been circulated to the Committee the previous Friday.

Officers guided the Committee through the report and set out the background and details of each application including the route, funding and timescales and details of the environmental assessment, transport assessment and results of consultation and publicity.

Simon Holmes, representing SPARR (Spalding Pinchbeck Against the Relief Road), spoke as an objector and made the following points:

- This application contravened PPG14 (Planning Practice Guidance (PPG) 2014 Delivering sustainable development in accordance with a wide variety of the guidance4 categories, these including; climate change, design, vitality, flood risk, health and wellbeing, housing and economic development needs and land availability assessments, local plans, natural environments, noise open space, planning obligations, travel plans, viability, the use of conditions and water quality) and was also commented that it defied logic and common sense.
- In terms of location, the current design was inappropriate. The road veered towards a waterway, and built on designated green space and impinged key eco-systems.
- The location of Junction B maximised vehicle movement in a sustainable development, ROM figures suggested 2 million nugatory miles per year (based on 2250 properties, 1 car per household, mean distance to Junction B 1 mile, 5 return journeys per week, 48 weeks per year gives a total of 2,160,000 miles a year) with the environmental, health and financial implications to match.
- It was noted the central section had returned to consultation; the favoured (by an unscientific show of hands at the public meeting) marked corridor was compromised by the location of Junction B and limited future viable options. Pushing ahead piecemeal would result in a sub-optimal network. It would not escape the committee's attention, the unconventional road layout required to join the network.
- It failed to take into account the Environmental Impact Assessment destroying the water voles' environment, a protected species, and the construction area adjacent further compounded this.
- Residents had been informed that key elements would adhere to industry best practice (best practice for one situation did not make it best practice for another) a term competent engineers stopped using years ago; with no public scrutiny what competent 'independent body' was going to assure compliance? The committee were invited to reject this incomplete application as due diligence could not be completed.
- During public consultation (Woodlands Hotel, 16 February 2019) mitigation to the severe impact of Junction B (250m embankment running south of Junction B along South Drove), was outlined, a position reinforced at a SHDC meeting. These measures were not reflected in the planning application and should be placed as a condition.
- In summary, a sub-optimal plan, with severe negative environmental impacts, limiting future options, and would result in inflated cost to the public purse, changing designs in the planning phase was exponentially cheaper than when under construction. The Committee was therefore invited to defer or reject

this application, until the route of the section was known, as it failed to meet the terms of PPG 14;

There were no questions to the objector.

James Avery, representing Pinchbeck Parish Council, spoke as an objector and made the following points:

- He clarified that he was speaking on behalf of Pinchbeck Parish Council and as the district councillor for the residents of Pinchbeck and Surfleet. He was not representing South Holland District Council.
- Within the report presented there was a golden thread hinting at the benefits of the Spalding Western Relief Road. Given section 5 was a cul-de-sac, such terminology was wholly misleading and disingenuous given there was currently no funding or commitment to the timeframe for sections 2 to 4, and therefore, provided no relief to the existing road network and its users.
- Plans for Phase 1 and 2 of the Vernatts SUE included 1000 houses, bringing about significant, additional vehicle movements which could only travel north.
- The initial 1000 houses would take time to build, but traffic levels would intensify over time, and road users would find the path of least resistance, and head through pinchbeck.
- The transport assessment suggested that, in isolation, section 5 of the relief road would bring about transport improvements, and would improve transport links and capacity on the surrounding network.
- At SHDC Planning Committee, the LCC Highways Consultant indicated the new roundabout at Enterprise Way would ease the traffic flow. There was, however, no evidence presented as to how this would come about.
- At the same meeting the Consultant was also asked "how Highways would mitigate the impact of significantly increasing traffic movements within Pinchbeck", but they declined to respond.
- Section 5 was a key. It would enable developers to unlock their land for housing. Unfortunately, once developers had access to the land they had control, and as a district councillor, and member of SHDC Planning Committee, he had seen countless times the cynicism displayed by some developers.
- The Lincoln Bypass and Grantham Southern Relief Road projects were both fully forward funded, with retrospective funding from developer contributions. Both £100m+ projects.
- A completed Spalding Western Relief Road was of a similar scale to those projects, and it was not understood why LCC were unwilling to fully forward fund a fully joined up Relief Road for Spalding. Evidence showed that the relief Road was critical to the delivery of Spalding's growth strategy, and for this reason, the design and funding for the entire route should be identified and secured at this stage.

There were no questions to the objector.

Ian Turvey, agent for the applicant spoke in favour of the application and made the following points:-

- Section 1 and Section 5 of the Spalding Western Relief Road both formed key component parts of a strategic road scheme which was of high priority within the Highway Authority's Capital Programme and were both fully supported by the current Local Transport Plan (LTP).
- There was a commitment to funding and it was intended to construct Section 5 by 2021 and Section 1 by the following year.
- Direct consultation with statutory bodies including Network Rail, Historic England, Natural England, the Environment Agency and the Welland and Deepings Internal Drainage Board had raised no objection to the proposals.
- The LTP was published in 2013, and dealt with concerns for the future economy of Spalding town centre if Network Rail implemented plans to increase freight traffic through the town. But there were also wider implications. In 2014, following further rigorous analysis, a Transport Strategy for Spalding (up to 2036) was adopted by this authority and also by South Holland District Council.
- It was realised that an effective transport strategy would ensure that the travel and transport impact of growth around the town could be achieved, but that priorities needed to be identified so that funding could be obtained, from local and national sources when it became available.
- Extensive consultation was undertaken in 2014 prior to the publication of the Strategy, drawing on the various plans and initiatives that had come forward through the planning process in the previous 10 years or so, and the outcomes had been scrutinised by governance boards within the authorities.
- The desired outcome of the Strategy, amongst a wide raft of social, environmental and economic goals, were to reduce the amount of traffic entering the town and to make the roads safer and with the benefit of providing resilience along the A16 corridor to the east of the town.
- These objectives and outcomes had be to meet the requirements of the National Planning Policy Framework and also the South East Lincolnshire Local Plan – that was itself adopted on 8 March 2019 with recommendation by an Independent Inspector following an extensive Examination in Public.
- The Spalding Western Relief Road was identified as the most important proposed strategic infrastructure project for the local area - and what you see before you today was the product of several years of extensive consultation, assessment, policy development and planning – and all within the context of a commitment by the Highway Authority to deliver a priority scheme.
- Sister documents supported the Strategy, which dealt with movement and deliverability, programming and assurance – the technical appraisal of the preferred schemes – the alignments, junction configuration etc. had evolved.
- In 2017, the Strategy supported a funding bid, and the successful outcome was an award of £12m towards the proposed improvements at and adjacent to Spalding Road/Pinchbeck Road.
- The bid set out the intended strategic road corridor along with the scheme objectives and was fully supported by the then Minister of State for Transport and the local Member of Parliament for South Holland and the Deepings.

- That successful award allowed the priority for the Relief Road deliverability to be re-assessed and for the Highways Authority to accelerate its preferred programme of phased delivery of the road in sections.
- Instead of one section being able to be developed now, the award of a government contribution had allowed a second section to be planned at the same time.
- There was a danger therefore, if the planning permission for section 5 was not granted, as not only would that be at odds with local adopted policy, but it would also result in the loss of significant funding that would likely not be available in the future.
- The summary papers before the Committee set out the detail of the two planning applications for Section 1 and Section 5 and in turn these referenced the library of documentation that had informed the development of the proposed preferred schemes – including a full Environmental Statement.
- South Holland District Council had been formally consulted on these proposals in its role as Local Planning Authority – and had endorsed both schemes at their Planning Committee in May 2019.
- For Section 1, by promoting a strategic road corridor, the Highway Authority could ensure that road infrastructure would be delivered in a manner that was consistent across all sections of the relief Road and which conformed to the local and national design specifications of a principal road.
- For Section 5, the route incorporated a new 5-arm roundabout junction with Spalding Road and Enterprise Way – road geometry, capacity, and Network Rail requirements had been key considerations in a wide range of alternatives that had been considered, north along Spalding Road.
- A detailed landscape strategy had formed a key part of the design process and members would note that computer visualisations and separate photo-montage techniques had been used to inform the preliminary design and the visual assessment, so that the visual impact of the bridge from downstairs facades of the closest properties – between 85m and 225m from the new road – would be minimised.
- All of the proposed planning conditions were acceptable.
- It was respectfully suggested that members supported the officer recommendation for approval for both of the planning application.

Members were provided with the opportunity to ask questions to the applicant and the following was noted:

- It was queried whether the route for Section 2 was close to being announced. Members were reminded that the applications before them were for Sections 1 and 5.
- In response to a question, officers clarified that in terms of the alternate route for Section 2, the local plan showed that the land had been allocated to housing and a school.

Comments were received by e-mail from Councillor Mrs E J Sneath, the local member for Spalding Elloe as follows:

- She urged the Committee to reject the proposed planning application H14-0326-19 section 5 of the Spalding Western Relief Road.

- The application for the Pinchbeck end of this so called 'relief road' was nothing more than a developer led, ill-considered folly that would blight the lives of the residents of all the villages on this main arterial road leading in to Spalding.
- The effects of this increase of traffic into our market town, our cottage hospital, our primary and senior schools and our shops and businesses would be catastrophic.
- The proposed road was nothing more than a giant cul-de-sac for 1000 houses, potentially 2000 extra traffic movements a day, the misery this volume of traffic would bring was immense.
- Members would hear a lot of rhetoric about the need for a relief road but that is not what this is about, it was being pushed through because funding was being promised but sometimes money was just too expensive and this was certainly the case with this application.
- On behalf of all the residents of Pinchbeck and Spalding Elloe whom she represented, Councillor Sneath requested that the Committee turn down this application.

Members were provided with the opportunity to discuss the applications as presented and some of the points raised included the following:

- A member expressed concerns that the design of Section 1 now swung away from the development and more towards the Drain. This design now differed from what was passed in 2009, and was pushing it nearer to houses on South Drove. The previous route of the road from 2009 was therefore preferred.
- The Committee was thanked for visiting Two Plank Bridge.
- The report mentioned that there would be noise during construction, and it was requested that some noise attenuation measures were included as there was a need to take into account the impact on the residents who currently lived there. Members were advised that a planning condition required the submission and approval of a Construction and Environmental Management Plan which would provide further details of measures to be adopted to be adopted to minimise noise during the construction phase.
- It was highlighted that it was common when dealing with major projects, such as the Lincoln Eastern Bypass, that not all sections were agreed at the start of the project. There was a need to make a start somewhere.
- The funding and timeframe for delivery was referenced in the report.
- It was important to keep in context what was being discussed as the County Council Planning Committee. The housing allocation had already been agreed as part of the Local Plan, and members were here to determine the application for the road. It was acknowledged that it was not a complete road, but there was a need to start somewhere. The benefits of this application going over the railway line were noted, and it was commented that it was pleasing to see that the design had been future proofed by allowing enough clearance for electrification. The main issue was to get the road over the railway line.
- There were some concerns about the location of the roundabout.
- The Committee could not speculate on what might come in future.
- Councillor Mrs A M Newton was thanked for her assistance and local knowledge on the site visit.

- There was sympathy for Mr Avery and his concerns regarding developers, but the Committee needed to make a decision on material planning considerations.
- It was noted that housing had been allocated on the local plan, but it was queried whether planning permission had been granted for the housing. Members were advised that there was permission for the Holland Park SUE, at Section 1.
- One member commented that they were reasonably happy with the proposal for Section 1, as the developer had been building there for some time, and it would be beneficial if that road could be put in place and joined up with Spalding Common. There were slight concerns with the location of the roundabout and would prefer it to be in the same location as put forward in 2009.
- Regarding an alternate route for Section 2, officers confirmed that the Committee had to consider only the applications and sections that were in front of them and as such not the central section. Options for the preferred route of the central section had yet to be finalised but officers highlighted that the land of the previous "allotment route" was now allocated for housing and a school site in the recently adopted Local Plan.

On a motion by Councillor T R Ashton and seconded by Councillor L A Cawrey, it was:

RESOLVED (9 in favour)

That planning permission be granted in relation to Section 1 of the Spalding Western Relief Road.

RESOLVED (8 in favour, 1 against)

That planning permission be granted in relation to Section 5 of the Spalding Western Relief Road.

The meeting closed at 12.51 pm

Lincolnshire COUNTY COUNCIL Working for a better future

Regulatory and Other Committee

Open Report on behalf of Andy Gutherson, Executive Director of Place

Report to:	**Planning and Regulation Committee**
Date:	**02 September 2019**
Subject:	**Deeping St James, Rycroft Avenue - Proposed Waiting Restrictions**

Summary:

This report considers objections received to the above proposals which were publicly advertised from 16 May to 13 June 2019 inclusive.

Recommendation(s):

That the Committee approves the amendment to the proposed 'No Waiting at Any Time' restriction as a minor modification and agrees that the objection to the proposed limited waiting bay be overruled so that the order can be confirmed.

1. Background

1.1 There are currently no parking restrictions at the junction with Broadgate Lane, or on Rycroft Avenue itself. The limited waiting has been proposed to allow a turn-over of parking outside the shops. The recently completed houses opposite remove some of the previously available on-street parking, increasing the use of the layby outside the shops for all day parking. The double yellow lines at the Broadgate Lane junction have been proposed in order to prevent on-street parking taking place at the junction. Statutory consultation took place from 29 January to 22 February 2019. The proposals were then advertised from 16 May to 13 June. Two objections were received during the objection period. The proposals consulted upon are shown at Appendix B.

1.2 Members of the public expressed concerns regarding parking taking place in the vicinity of the shops and close to the junction with Broadgate Lane. Investigations into the concerns were undertaken and the local Member was consulted for their view on the proposals in December 2018.

Existing Conditions

1.3 The shops were constructed at the same time as the housing development in the area and consist of a newsagents, fish and chip shop, hairdressers, computer systems shop and a pharmacy. In the past couple of years a pair of

dwellings have been constructed opposite the shops. These properties are now being occupied and the presence of their driveways has reduced the amount of on street parking available.

Objections

1.4 The objections received relate to the length of double yellow lines proposed on the southern side of Rycroft Avenue, and to the introduction of limited waiting outside the shops. There are concerns that the effects of the proposals will displace on-street parking further along Rycroft Road.

Comments

1.5 The purpose of the proposals is twofold. The limited waiting removes all day parking in the layby directly outside the shops. The 2 hour time period accommodates the differing periods of time customers require to park when visiting the various businesses and provides flexibility in this respect. The double yellow lines will prevent parking at the junction with Broadgate Lane, making vehicle manoeuvres easier and also clearing visibility for pedestrians crossing the end of Rycroft Avenue.

To mitigate the concerns raised regarding the potential for displaced parking the extents of the double yellow lines proposed on the southern side of Rycroft Avenue can be reduced by 11m (two car lengths) to end at the same point as those on the northern side. The local Member is in support of this minor modification which is shown in green at Appendix B.

2. Conclusion

The proposed restrictions will improve safety for traffic and pedestrians at the junction of Rycroft Road with Broadgate Lane, and assist local businesses by improving the opportunity for their patrons to park in the vicinity.

3. Consultation

Statutory consultation took place from 29 January to 22 February 2019. The proposals were then advertised from 16 May to 13 June. Councillor Dobson was asked for his views on the recommendation in this report as mentioned above.

a) Have Risks and Impact Analysis been carried out??

No

b) Risks and Impact Analysis

n/a

4. Appendices

These are listed below and attached at the back of the report	
Appendix A	Location Plan
Appendix B	Proposed Waiting Restrictions

5. Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report

This report was written by Dan O'Neill, who can be contacted on 01522 782070 or dan.o'neill@lincolnshire.gov.uk.

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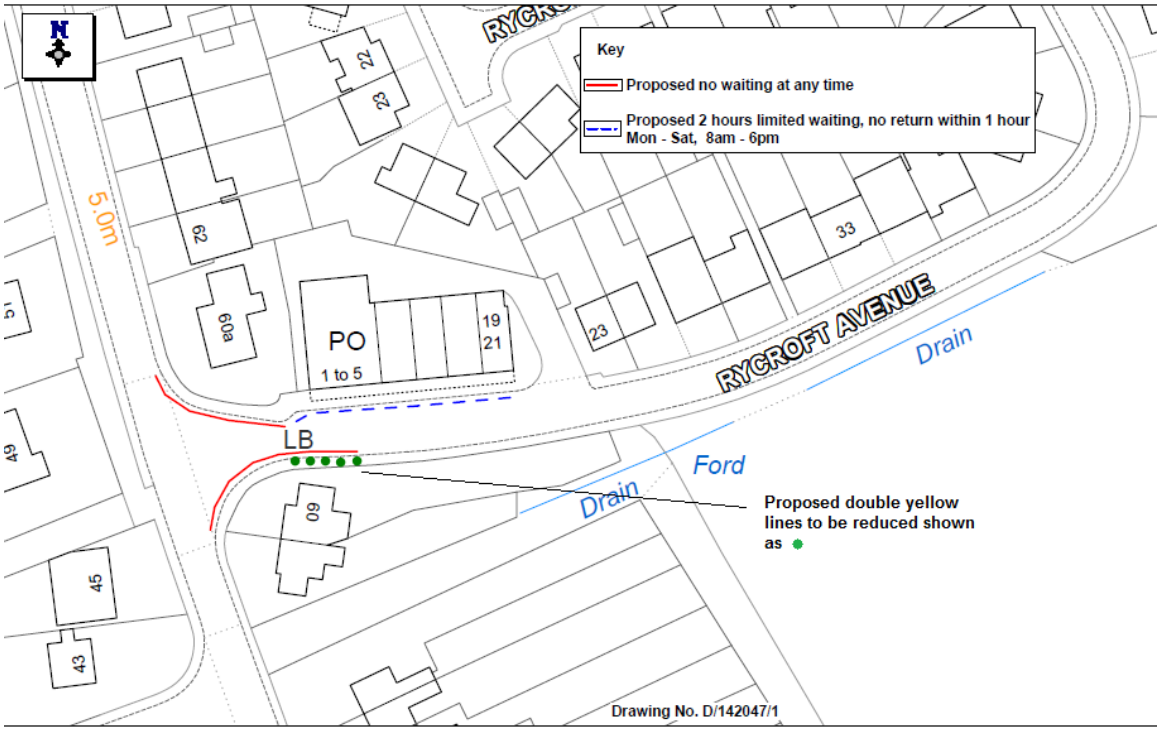
Appendix A – Location Plan

Appendix B

Plan showing initial proposals and amendment



Environment & Economy

Lincolnshire County Council

Appendix B

Deeping St. James
Rycroft Avenue
Proposed Waiting Restrictions

Lincolnshire COUNTY COUNCIL Working for a better future

Regulatory and Other Committee

Open Report on behalf of Andy Gutherson, Executive Director of Place

Report to:	**Planning and Regulatory Committee**
Date:	**02 September 2019**
Subject:	**Application for Village Green status on Land at Millfield Road, Market Deeping**

Summary:

The Committee are requested to consider the report of the Inspector and make a decision on the application to register land on Millfield Road, Market Deeping as a town or village green

Recommendation(s):

That the recommendation of the Inspector be accepted and that the Committee reject the application to register as a town or village green the land at Millfield Road, Market Deeping on the grounds that the statutory criteria for registration under section 15 of the Commons Act 2006 have not been satisfied.

Background

1. The purpose of the report is to present to the Committee the recommendation of the Inspector further to a public inquiry held between the 8 -11 January 2019, so that the Committee can determine the application for land at Millfield Road, Market Deeping (" the land") to be registered as a Town or Village Green under section 15 of the Commons Act 2006 (" the 2006 Act").

2. On 21st June 2017, an application was submitted by the applicant to register the land as a town or village green under section 15(2) of the 2006 Act. The application was accompanied by thirty two evidence questionnaires and a list of names and addresses of an additional thirty six users. Most of the people who completed the questionnaires live or have lived in the vicinity of Millfield Road.

3. The application was accepted by Lincolnshire County Council acting as the Commons Registration Authority (section 4 of the 2006 Act) and advertised in accordance with Regulation 5 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations ("the 2007 Regulations").

The Land.

4. The land is an area of approximately 32.126 acres (13.7 hectares) of flat agricultural farmland laid mainly to grass and comprising of two fields, a northern field and south field. A culverted drain separates the two fields with access between the two. A public footpath (Public Footpath No. 2 Market Deeping) crosses the land and runs in an east- west direction from Millfield Road to the A15 bypass. The registered freeholder of the land is Lincolnshire County Council who purchased the land in 1920 so that the land could be used as a small holding. A plan showing the location of the land is included at Appendix B.

The Relevant Law.

5. Under section 15(1) of the 2006 Act, anyone may apply to a Commons Registration Authority to register the land as a town or village green.

6. In order for the land to be registered as a town or village green the applicant has to demonstrate on the balance of probabilities that;-
   - a significant number of the inhabitants of a locality, or of any neighbourhood within the locality
   - have indulged as of right
   - in lawful sports or pastimes on the land
   - for a period of at least twenty years and
   - that this use continued to the date of the application

7. It is necessary that all of these criteria are met before a registration authority can register the land as a town or village green. Therefore if any one element is not satisfied then the application must be rejected.

"Locality or neighbourhood".

8. Although the term "locality" is not defined in the 2006 Act, it is considered that it should be legally recognised administrative areas such as a civil parish or an electoral division. Whereas a neighbourhood does not have to be a legally recognised area, it may be defined by an area drawn on a map but the area must have a ‘sufficient degree of cohesiveness' and may include facilities such as a church, shops or community facilities within it.

"Significant Number of Inhabitants".

9. ‘Significant’ does not mean considerable or substantial, but the land must be ‘in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.’

"**Lawful Sports or Pastimes".**

10. Dog walking (as long as it is over the whole of the land and not confined to specific routes) and playing with children are examples of lawful sports and pastimes. There is no need to show both sports and pastimes and no need for communality, solitary recreation can be included.

"**As of Right".**

11 ‘As of right’ reflects the common law concept "*nec vi, nec clam, nec precario"*, that is "without force, without stealth or without permission of the landowner". There is no requirement that the users believed that they had a right to use the land but that the land is used by the inhabitants of the locality in such a way as to ‘suggest to a reasonable landowner that they believed they were exercising a public right.’ The user must be more than trivial or sporadic.

12 Likewise, toleration by a landowner is not fatal to a claim ‘as of right’. The law draws a distinction between an owner’s acquiescence in or toleration of the use of his land by others for lawful sports or pastimes and his giving licence or permission for its use. The giving of permission must involve some overt and contemporaneous act by the landowner, such as the erection of signs or notices, whereas toleration may be merely passive. In any event, the user must have taken place openly and in the manner that a person rightfully entitled would have used it.

"**For Twenty Years"**

13 The land must have been used for a full twenty year period that is calculated retrospectively from the date of the application. Periods of statutory closure (e.g. for a foot-and-mouth disease outbreak) do not provide an interruption to such use.

Procedure

14. The 2007 Regulations provide that the registration authority must consider every written statement in objection to an application which it receives before the advertised deadline for objections; and may consider any such statement which it receives on or after that date and before the authority finally disposes of the application. It must send the applicant a copy of every statement which it will consider. The registration authority must not reject the application without giving the applicant a reasonable opportunity of dealing with the matters contained in any statement of which copies are sent to him; and any other matter in relation to the application which appears to the authority to afford possible grounds for rejecting the application.

16. The burden of proof lies on the applicant, who must prove that all the requirements are satisfied. The standard of proof is the civil one, that is, on the balance of probabilities.

17. If there are conflicting representations on matters of fact then it may be appropriate to proceed to arrange a non-statutory public inquiry, presided over by a suitably qualified independent inspector, who would consider the evidence with the benefit of cross examination. After the inquiry, the inspector will provide a report and a recommendation to the registration authority. This practice has been strongly supported by the Court of Appeal in *R o.a.o (Whitmey) v Commons Commissioners [2004] E W C A Civ 951.*

Effect of registration

18. Once land has been registered as a town or village green by the registration authority it is subject to the same statutory protections as all other registered greens. Local residents will have a guaranteed legal right to indulge in sports and pastimes over it on a permanent basis. Registration as a town or village green is irrevocable and so land must be kept free from development and other encroachments. Any subsequent disposal by the registered freeholder does not alter the right of recreational use.

The Evidence Submitted with the Application

19. The applicant stated in her application form that the land is a valued piece of open space that has been used by the people living in the area since the 1960's. It also states that the "users believed that they had an existing legal right to go onto the land". The owner of the land had been seen by a few people and no attempt had been made to prevent them from using the land. Four entrances were identified on the eastern boundary as the routes used to enter the land.

"Locality or Neighbourhood."

20. The applicant defines the neighbourhood as the Parish of Market Deeping, which is a legally defined locality.

"Significant Number of Inhabitants".

21. The majority of the users of the land are local residents that live in Market Deeping; others live in Deeping St James or the surrounding areas.

"Lawful Sports and Pastimes."

22. The activities cited on the evidence questionnaires include: jogging, walking, with or without dogs; fruit picking; enjoying wildlife; photography; bird-watching; used as an area of contemplation and children playing. There is no evidence of any use inconsistent with lawful sports and pastimes. Several people indicated that they also attended the two day agricultural show, the Deepings Show.

"As of Right."

23. There is no evidence of any enclosure of the land or of any forceful entry by the residents. There is no suggestion of any secret use. Users indicated that they had not sought anyone’s permission to use the land nor did they believe it necessary to do so. They still used the land despite the Deeping Show taking place and the footpath being closed. Signage erected at the entrances were misleading as the sign "Private Farm" was erected adjacent to an adjoining field, the users had assumed that this indicted the adjoining field where farming activity regularly took place. One sign had been damaged/ vandalised for many years.

"For Twenty Years."

24. The relevant 20-year period for claiming use is the 20 years immediately before the application. As the application was made on the 21 June 2017, the start of the relevant 20-year period would be 21 June 1997.

25. The evidence presented indicated that the land had been used for many years and that the use was still continuing when the application was made.

The Objections

26. Objections were received from the landowner, Lincolnshire County Council. The objections include:
    - The land had been used for agricultural purposes for arable crops of wheat and barley and for the grazing of cattle and sheep. It had also been used for an annual two day agricultural show since the 1960's up to 2013;

    - The user evidence shows that the majority of the use has been accessed via a public right of way, as the public already have a legal right to use the land to pass and repass over the footpath is " by right";

    - The land has been entranced and locked and fenced. In 2006 signs were erected at the entrances of the land stating "private farm"; "no trespassing" and "please keep to the public footpath". The signs were erected to warn the public that the land was regarded as private and the tenants of the land had asked the public not use the land;

    - The majority of users had attended the Deepings Show and that use was with the permission of the owner who had granted an agricultural tenancy to the Deeping Show and the public had to pay an entrance fee to enter the event, the use could not be regarded as being "as of right";

    - The use cannot have continued for the whole of the statutory period as the land had been used for agriculture it had been ploughed up and cropped and the Deepings Show formally closed the public right of way for the period of the show until 2013 therefore creating a break in usage.

27. Due to the fact that conflicting representations on matters of fact the Commons Registration Authority determined that a non- statutory inquiry should be held, it appointed Mr Martin Edwards to act as the independent Inspector. A public inquiry was held in Market Deeping from 8- 11 January 2019. The Inspector heard evidence from both the applicants and her supporters and the objectors.

28. The Inspector’s report outlining his conclusions and providing his recommendation in light of all the evidence he heard at the inquiry is in Appendix A.

Conclusion

29. Mr Edwards considered all the written evidence submitted with the application and the oral evidence presented at the inquiry and based his recommendation on whether the evidence indicates that the statutory criteria for registration have been met.

"Locality or Neighbourhood."

30. He also considered that the applicant has correctly identified a relevant locality and therefore has satisfied the statutory test.

"Significant Number of Inhabitants."

31. He considered that the documentary evidence and evidence from the applicants witnesses show that a significant number of the local inhabitants has used the land over the entire 20 year period claimed and that the use was such that the landowner should have been aware of that use. He points out the landowner had become aware of the use in 2006 when it erected the signage.

"Lawful Sports and Pastimes."

32. He concluded that the land had been used for a variety of lawful sports and pastimes. He pointed out that as a public right of way crossed the land, he had discounted any evidence relating to this use.

"As of Right"

"Use by stealth"

33. He considered that there has been no evidence to show that the use of the land has been by stealth as the land is large and open and visible with a public footpath crossing it. The landowner was aware that local residents were using the land as they erected signage in 2006.

"Use by force"

34. He considered that this should be regarded as two separate elements;-

(a) **Actual forcible entry onto the land**

He considered that whilst *"some unidentifiable people may have broken down fences or forced their way through hedges (the evidence was unclear)"* any users who did not do so and who were not aware of the original damage their use could be regarded as being "as of right".

(b) **The effect and presence of signage erected**

He considered that forcible entry can also arise where suitable and visible perimeter signs are erected. The evidence submitted showed that the

landowner had erected signage in June 2006 at the entrances to the land after being made aware that the land was being used by "dog walkers". He considered that the signage erected;-

- One sign stating "private farm";
- Five signs stating "no trespassing";
- Two signs stating "please keep to the footpath";

35. He formed the view that he was required to consider if the landowner had erected a sufficient number of suitable placed, visible and clearly worded signs that would draw the attention of the local inhabitants using the land other than walking on the public footpath that their use was being challenged.

36. He considered relevant case law to assist with his determination, at paragraph 112-116 he has highlighted passages that he has indicated will assist the members with their deliberations.

37. He concluded that only a relatively limited number of small signs were erected, the wording used was not sufficiently clear to bring to the attention of the reasonable user of the land that the landowner was opposing their use of the land. The "private farm" sign was ambiguous and located in a position that the message it conveyed was not clear as to indicate the use of the land in question and not the adjacent farmland. Similarly the size and location of the "no trespassing" signage was not sufficiently clear when viewed in context. He concluded that the signage did not amount to use by force.

38. However he has stated that this conclusion based upon the evidence this was a finely balanced decision and that it is open to members to debate and to reach a decision that may disagree with his conclusion and recommendation.

"Use by permission"

39. From the evidence he found that during the twenty year period the land had been let under a tenancy agreement to the Deeping Agricultural Show for grazing and with the specific permission that they could hold an annual show once a year. The Show was a substantial event that occupied the land for a number of days that included when the equipment was being set up and dismantled and the event itself. For the duration of the show (i.e. the two days) the public footpath across the land was formally closed and had been obstructed by temporary structures such as the treasurers and members office, red cross and mother and baby facilities and the secretary office. Various sections of the land were fenced off for livestock and other purposes including siting of marquees. Entrance fees were charged and generated a significant amount of gate money. The organisers of the show had maintained control for health and safety purposes and good order.

40. He concluded that the presence, nature. operation and scale of the Show was such that the landowner had made it clear each and every year that the Show operated that they were exerting their right to exclude the local inhabitants and that any use of had been with their permission. He therefore concluded that this relevant part of the statutory test had not been met.

41. Mr Edwards concludes that the application fails because the applicant has failed to satisfy all of the requirements of the statutory tests. He therefore recommends that the application be rejected.

42. The Committee is recommended to accept his recommendation and reject the application to register the land at Millfield Road Market Deeping as town or village green.

Consultation

a) Have Risks and Impact Analysis been carried out??

No

b) Risks and Impact Analysis

n/a

Appendices

These are listed below and attached at the back of the report	
Appendix A	Report of Mr Edwards dated 19 July 2019
Appendix B	Plan showing application site

Background Papers

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report

This report was written by David Clark, who can be contacted on 01522 553066 or David.Clark@lincolnshire.gov.uk.

IN THE MATTER OF AN APPLICATION TO REGISTER LAND AT MILLFIELD ROAD, MARKET DEEPING AS A VILLAGE GREEN (HP/SKVG1/2017)

REPORT OF THE INSPECTOR

19 JULY 2019

In this report references to documents and page numbers within are as follows:
(i) in the Registration Authority Core Bundle – RACB 123;
(ii) in the Applicant's Bundle (contained in two lever arch files) – AB 123; and
(iii) in the Objector's Bundle – OB Tab X 123.
Supplemental documents will be referred to individually.

Introduction

1. An application for registration of land as a village green has been made to Lincolnshire County Council. I have been instructed to assess all the evidence and to report (with advice) to Lincolnshire County Council in its capacity as Registration Authority in connection with this application which is to register land at Millfield Road, Market Deeping, Lincolnshire PE6 8AD as a new village green ("the Application Land") and to make a recommendation as to whether the land should be registered.

2. To assist me in my task, I held a non-statutory public inquiry on 8, 9 and 10 January and conducted an accompanied site visit on 11 January 2019. The inquiry was held at Eventus, Sunderland Road, Northfields Industrial Estate, Market Deeping PE6 8FD with one evening session on 9 January 2019 held at Open Door Baptist Church, 5 Spalding Road, Deeping St James PE6 8NJ. As set out below, such inquiries are not only commonplace, but often essential, when dealing with village green applications.

3. I would like to record my thanks to Ms Helen Patchett and Mr David Clark (of the Environment and Economy Department of Lincolnshire County Council based at Lancaster House) for the efficient and helpful way in which they administered the Application, organised the inquiry and assisted me. As I made clear at the inquiry, I had undertaken an unannounced site visit (with Mr Clark) on the morning of 30 July 2018, before holding a pre-inquiry meeting, to familiarise myself with the Application Land and the surrounding area.

4. As set out below, it is my view that the Registration Authority must approach the determination of the Application with all due care and in clear recognition of the

relevant legal principles. In order to assist the members, I have compiled this report in the following format:

(1) The legal approach to be taken by a Registration Authority;
(2) A description of the Application Land;
(3) The Application;
(4) The Statutory Test applicable to determining the Application;
(5) The Applicant's oral evidence before the Inquiry;
(6) The Objector's oral evidence;
(7) Other evidence relevant to the Application;
(8) My findings, conclusions and recommendation.

The law requires the Applicant to make the case for the Application. Therefore, in this report I will consider the Applicant's case and evidence in support first before considering the Objector's case and evidence.

The approach to be taken by a Registration Authority

5. It is important to record, at the outset, that the Application Land (described in more detail below) is owned by Lincolnshire County Council in a capacity that is separate from its capacity as Registration Authority. In its capacity as landowner it objected to the Application and I shall hereafter refer to the Council, in this capacity, as the "Objector" to avoid confusion. For the avoidance of doubt, I have been instructed by the Council acting in its capacity as Registration Authority.

6. As I explained when opening the inquiry, it is not uncommon for local authorities to find themselves in a position whereby it is both Registration Authority for the purposes of the Commons Act 2006 (as amended) and the landowner faced with (and objecting to) an application under section 15 to register some of its land as a new town or village green[1]. The law allows for this, although it does require the relevant local authority to proceed in a manner that fully recognises and respects these distinct and separate capacities.

7. DEFRA Guidance advises that where applications are contested (as this one is), the courts have commended the use of independent inquiries – see *R (oao Whitmey) v The Commons Commissioners* [2004] EWCA Civ 951where Arden LJ said that a registration authority "should proceed only after receiving the report of an independent expert (by which I mean a legal expert) who has at the registration authority's request held a non-statutory public inquiry….The authority may indeed consider that it owes an obligation to have an inquiry if the matter is of great local interest." A similar view was expressed by Carnwath J in the High Court in *R v Suffolk County Council, ex parte Steed* (1995) 70 P & CR 487.

8. My role in this Application is to consider all the evidence (both oral and documentary) and to make a recommendation, in this report, to the Registration

[1] A similar situation occurred in Bristol and featured in the High Court decision in *R (oao Cotham School) v Bristol City Council and others* [2018] EWHC 1022 (Admin). The decision also highlights the difficulties that members may face if they wish to go against the recommendations of independent inspector's and/or officer's reports without sufficient justification.

Authority. However, the final decision as to whether or not the Application Land (in whole or in part) should be registered rests with the relevant members of the Registration Authority. The role of the Registration Authority is a quasi-judicial one. It follows from the above that it is, in my opinion, imperative that those members of the County Council determining this application should limit the debate and consideration of the application to those issues arising out of the legal tests relevant to section 15 of the Commons Act 2006 and discount all issues relating to the recently submitted planning application or the wider planning status (and development potential) of the Application Land. This Application must be determined solely in accordance with the specific provisions set out in section 15 of the Commons Act 2006. To do otherwise may give rise to issues of apparent bias or *ultra vires* by, for example, taking into account irrelevant considerations such as the likely financial benefit that would accrue to the Objector should the planning application be approved by South Kesteven District Council. Furthermore, it would be best to avoid any intermingling of functions by ensuring that no member determining this Application is, or has been, a member involved in the Objector's decision to seek planning permission on the Application Land or in the subsequent decision on the Application by South Kesteven District Council i.e. members who may be elected members of both councils (sometimes called "twin-hatted members").

9. At the inquiry, and throughout, the Objector was represented by Mr Simon Randle of counsel, instructed by Mrs Mandy Withington of Legal Services Lincolnshire based at County Offices, Newland. The Applicant, Mrs Pamela Steel, was not legally or otherwise represented and presented her case herself and was assisted by Mrs V. Moran. I would like to thank both Mrs Steel and Mr Randle for the courteous and efficient way in which they presented their respective cases. It has been clear to me throughout that Mrs Steel has devoted a considerable degree of effort, time and care in compiling and pursuing the Application. As I explained at the pre-inquiry meeting, as the Applicant is not legally represented, I have paid due regard to the need to ensure an "equality of arms" where necessary or appropriate, bearing in mind the County Council's dual capacity as both Objector and Registration Authority. I also permitted various members of the public to address me and to raise questions (when and where appropriate). It is also right that I must add that Mr Randle confirmed to the inquiry that he was not instructed by the Owner in connection with the planning application.

10. It was clear to me that the Application Land is a much-cherished area of land and its potential loss to development was a point of concern to many. Despite this, all who participated in the inquiry did so with a commendable degree of mutual respect and decorum. I am grateful to all of those who participated, especially to the younger members of the community who spoke so eloquently at the evening session and displayed an encouraging degree of commitment to, and interest in, protecting their local environment.

11. As indicated above, it is settled law that, on any application for registration of land as a village green under section 15(2) of the Commons Act 2006, the burden of proof is on the Applicant to make the case for registration to the civil standard i.e. on the balance of probabilities. It has been said by the courts that "it is no

trivial matter" for a landowner to have land registered as a green, and that accordingly all the criteria for registration must be "properly and strictly proved" and careful consideration must be given by the decision-maker to whether that it is the case – see Pill LJ in *R v Suffolk County Council ex parte Steed* (1998) 75 P & CR 102. This should be seen as the most crucial determining factor in relation to any village green application.

12. It is also important to record that, a couple of weeks before the inquiry opened, the Objector (as landowner) submitted an outline planning application to the local planning authority (South Kesteven District Council) in relation to the application land for the construction of up to 260 dwellings and a new vehicular access from Millfield Road, public open space and associated infrastructure. It was perfectly entitled to do so. However, it was a little unfortunate that the site notices posted by the local planning authority that I saw on the edge of the application land purport to have been signed and dated on 26 December 2018 i.e. on Boxing Day. I fully accept that the posting of these site notices was outside the control of the Objector, but I was left with the distinct impression that the posting of the site notices had given rise to an understandable degree of suspicion amongst some local residents as to the motive and purpose.

13. Following the close of the inquiry, I received the written Final Remarks of the Objector dated 22 January 2019 and the Applicant's Final Submissions dated 1 February 2019. Both of these documents have been helpful in drawing together the respective parties' cases.

14. In May 2019 I asked for additional evidence to be provided by the parties, if possible, with regard to three aspects that arose out of the evidence that I have received. The first related to the Foot & Mouth outbreak, the second to the organisation and accounts in relation to the Deeping Show and the third related to the issue of whether or not an entry charge to the Show. It was agreed that the parties would endeavour to this information to the Registration Authority by 27 June 2019. Subsequently I received a further red file from the Applicant and a further black file from the Objector of further evidence and suggested amendments by both parties to the consultation draft of my report that was sent to the parties in May. I am grateful to them for their helpful suggestions and for the further evidence which I have found extremely relevant and of great assistance to me in coming to my conclusions and to my recommendation. I have made minor textual amendments where appropriate.

The Application Land

15. The location and extent of the Application Land is shown on Plan B in the Registration Authority Bundle at RACB 1.2.13[2]. The freehold of the Application Land is owned by the Objector. It was originally acquired by (the then) Kesteven Council Council from Mr Callis Thomson Bell by a conveyance dated 6 April 1920 under the provisions of the Small Holdings and Allotments Act 1908 (and

[2] It is referred to variously as Millfield or Mill Field. However I found no reason to attach any significance to these or other various descriptions of the Application Land and so I shall refer to these variants whenever the context necessitates.

purchased for the purposes of that Act) and the Land Settlement (Facilities) Act 1919. A copy of the conveyance was produced by the Objector (OB Tab3a 7). The Application Land is now registered at HM Land Registry under title number LL290651. A copy of the Office Copy of the Register on 21 June 2017 was also produced by the Objector (OB Tab3a 3). The Filed Plan to the Register shows the title as including the line of the new dual carriageway bypass and the majority of the traffic roundabout that is now part of the A15 within the redline of the title. However, the new bypass is outside the confines of the Application Land. And does not form part of the Application. The Application Land forms part of a larger holding (204A) and has been used for agricultural purposes throughout the Objector's ownership.

16. The Application Land comprised some 32.126 acres (13.17 hectares) of flat agricultural farmland laid mainly to grass and comprised of two fields – a North Field and a South Field prior to the construction of the noise bunds which reduced the area to some 27.645 acres (11.33 hectares). A culverted drain separates the north and south fields and there is easy access between the two fields.

17. The north field is laid mainly to grass and is bounded on the western side by the A15 bypass (which lies beyond), on the eastern side by Millfield Road and by agricultural land and a drainage ditch to the north. The boundaries are marked by post and rail fencing on the western boundary and hedged and diched on the eastern boundary. The south field is laid mainly to grass and is bounded by the A15 bypass on the western side (which lies beyond), Millfield Road on the eastern side and Stamford Road on the southern side.

18. The Application Land is located at the southern extremity of the Objector's administrative area – the area to the south of Stamford Road marks the administrative boundary with Cambridgeshire. The Application Land is currently managed on behalf of the Objector by Savills who took over from Clegg Kennedy Drew. There are five entry points onto the Application Land which both parties refer to as entrances A, B, C, D and E and are shown on the Plan A (RACB 1.2.13 in the Registration Authority Core Bundle).

19. A public footpath (Public Footpath no.2 Market Deeping) crosses the Application Land from Entrance B and runs in an east-west direction to Entrance E where it then continues over a stile and through a gap in the noise bund and across the A15 bypass and then into the open countryside beyond. The footpath route is clearly defined on the ground and signposted cross the Application Land. This public footpath is divided into sections and the section that crosses the Application Land is footpath 2/6. The section on the other side of the bypass is 2/7 and the section going through the Tattershall Drive estate is 2/3.

20. It was clear to me from my site inspections that the construction in 1997 of the A15 bypass (which I was told was welcomed by the residents of Market Deeping) brought about a significant change in the character of the immediate locality. The four-lane bypass, together with the noise bund, effectively closed in the Application Land and severed it from the open countryside beyond it to the west.

It was also clear to me that the current level of traffic on the bypass will deter many from crossing the bypass along the route of the public footpath. It appears to me that the construction of the bypass, which commenced a couple of months before the commencement of the relevant 20-year period for the purposes of this Application, may well have changed the perception of local residents towards the Application Land and their use of it. It is also significant that this coincided broadly with the construction of the Tattershall Drive housing estate.

21. On 13 September 2017 the local planning authority, South Kesteven District Council, wrote to the Registration Authority (the date of the letter appears to be a typographical error as the year is given as 2016) a letter which appears to be a duplicate of one sent on 9 August 2017 with regard to the issue of trigger events (RACB 7.44). In the letter it is stated that South Kesteven District Council had published on 3 July 2017 a consultative draft Local Plan for consultation which closed on 18 August 2017. The draft had been approved by the Council's Cabinet on 22 June 2017. In total 875 representations were made to the consultation. The draft showed the Application Land as a provisional site for development. It was stated to be part of the process of preparing the Local Plan within Regulation 18 of the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). It was confirmed in the letter that the consultation draft was not part of the statutory part of the production of the Local Plan but was considered to be an informal process to help shape and improve the plan before a pre-submission Local Plan was prepared under regulation 19. As such, the local planning authority did not consider that the current informal consultation acts as a trigger under Schedule 1A of the Commons Act 2006 (as amended). The letter also explained that a number of representations received during the consultation related to the provisional allocation of the Application Land and that there was particular concern from the community about the loss of the open space or green fields on the west side of Market Deeping. The letter also noted that during an earlier round of consultation (the Sites and Settlements consultation July 2016) a petition had been received in relation to the Application Site and it was also shared with the Objector, as promoter of the site (RACB 7.38)[3]. The Sites and Settlements consultation was an informal consultation. A letter was also sent from the local planning authority to the Objector on 10 July 2017 (RACB 7.23) in which it is stated that the Objector was exploring informally the possibility of the Application Land being promoted for residential development for up to 260 units. The letter did conclude that "the site is not currently policy compliant, you are advised to wait for progress in relation to the new emerging local plan. Once the local plan has progressed further it is likely that weight will be given to any emerging policies relevant to the site."

22. It is clear to me that the Application Land is seen as both a potentially extremely valuable (in financial terms) asset by the Objector and (in social and environmental terms) by the Applicant and those local residents who support the Application.

[3] The petition contained 91 signatures obtained between 10 and 19 July 2016. It also included a number of comments regarding the use of the land and opposition towards its possible future development.

The Application

23. The Application for registration was submitted by Mrs Steel on 21 June2017. In her covering letter that accompanied the Application it was stated that Mrs Steel was representing local residents in the locality of the Application Land. The Application comprised Form 44, Map A showing the land at a scale of 1:2500, Map B showing the locality as being the built-up element of part of the parish of Market Deeping and five separate categories of evidence of use. The application was made under section 15(2) of the Commons Act 2006. The Form 44 described the location as "land west of Millfield Road, and north of Stamford Road, Market Deeping, Lincolnshire." It was clear from the inquiry that there was no doubt as to the location and extent of the Application Land. The Form 44 also identified the Objector as the freeholder of the land and that it was occupied under a farm tenancy understood to be held by Messrs Allen, Wright and Grace (being the Trustees of the Deeping Show) as holding 204A, Market Deeping Farms.

24. On 3 July 2017 the Registration Authority wrote to the Chief Executive of South Kesteven District Council and to the Planning Inspectorate to enquire whether the Application Land was subject to any relevant trigger events as set out in Schedule 1A to the Commons Act 2006 (as amended by the Growth & Infrastructure Act 2013). It was confirmed subsequently that no such trigger events had taken place.

25. On 5 July 2017 the Registration Authority wrote to Mrs Steel to acknowledge receipt of the application and to raise a minor procedural point with regard to Map A and requiring an amendment to the application. However, in accordance with case law[4], the relevant date for the purposes of calculating the end date of the relevant 20-year period remains **21st June 2017**.

26. The justification for the application was set out by Mrs Steel in section 7 of the Form 44. In summary, Market Deeping, a historic market town, has had rapid periods of expansion since the 1960's. Large areas of greenfield spaces have been covered with houses, businesses and industry. The Application Land is a valued piece of recreational open space which has been used by people living in the locality of Market Deeping and beyond without hindrance since the 1960's. A significant number of inhabitants have used the site and some have come from outside the area such as Deeping St. James and from adjacent villages such as Langtoft and Northborough. The Applicant had approached 66 users of the land during May 2017. There was evidence that some of these users were not approached whilst on the Application Land and one stated that they had been approached whilst at a building in the town although, in my view, such an approach would neither be improper nor unexpected. 32 evidence forms were competed and a further 34 individuals who, whilst not completing forms, stated that they have used the Application Land and the length of time that they did so. It was said that the Application Land "has plainly been used as of right, without

[4] See, for example, *R (St. John's College, Cambridge) v Cambridgeshire County Council* [2017] EWHC 1753 (Admin).

force, without secrecy and without permission. Users believed they had a pre-existing legal right to go on the land." The owner was seen by only a few respondents and no clear attempt has been made by the owner to prevent people using the land. No force was said to have been used. The Application Land has been used for a wide range of recreational activities including jogging, dog-walking, fruit-picking and children's play. The evidence was said to show that the whole of the land has been used given the nature of the activities (such as play with children and kite flying). The Application Land was described as being "the countryside on our doorstep" for a significant number of inhabitants of Market Deeping for well over twenty years. Many of the users have been residents of the Tattershall Drive estate, the southern part of which was built in the 1990s and the northern part built between 1994-96 by Westbury Homes. Many of these people were said to have lived on the estate since it was built and they have used the Application Land for recreational purposes since they arrived. The submitted evidence was said to show that the Application Land continued to be used up until the date of the Application.

Four entrances onto the Application Land were identified on the eastern boundary and there is a fifth entrance on the western boundary facing the A15 bypass. These were shown as points A-E on Map A. A public footpath no.2 crosses the Application Land, running east-west, from entrance B – E.

From my own observations, it is clear that the completion in 1998 of the A15 Deepings bypass has hindered access to the open countryside beyond as it cuts across the public footpath and the application maintains that this has "significantly increased local residents' dependence on [the Application Land] for recreation."

Most users were said to access the Application Land from via the pedestrian entrance to the public footpath (entrance B) – 16 of the 32 who completed evidence forms stated that entrance B was the only entrance that they used and a further 10 said that they used this and other entrances at different times. 3 were said to have used the pedestrian entrances "that have been made over the years next to the entrance in the north east corner" (entrance A). Whilst the entrances are locked to control vehicular access all other entrances were said to offer free access points and that users can enter onto the Application Land freely without force. The Application Land is open to view, and users have accessed the land throughout the day without secrecy. No practical measures were said to have been taken to prevent access. Only 6 of the 32 users knew who owned the Application Land, 11 do not know if anyone acting for the landowner had seen them using the Application Land and 7 said that they had seen the owner or tenant, and nothing had been said to them about their use of the land. It is said to be clear that no attempt has been made to prevent people from using the Application Land and that users believed that they had a pre-existing legal right to use it. None of the 32 users had permission to use the land and none had been prevented from so doing. One preferred not to use the land when the tenant farmer was cutting the grass although she had witnessed others using it at that time. One saw a notice closing the footpath on one occasion, but users ignored

this. Two users remembered a notice about keeping to the footpath and 6 users saw a notice relating to the fields having been sprayed.

Of the 66 users it was said that 14% (9) had used the Application Land for less than 5 years, 29% (19) for between 5 – 9 years, 23% (15) for between 10 -19 years and32% (21) for over 20 years of which 5 were said to have used it for over 35 years. Details were also given of the nature of the use. 31 of the 32 forms mentioned using the Application Land for walking and 6 mentioned jogging and/or exercise. 8 cited family, children and grandchildren enjoying the countryside and playing, 2 had flown kites and a few users said that they had used the land for mindfulness and thinking. 2 used the land for bee keeping related purposes, some for photography and for blackberry and sloe picking in the autumn – the bushes are said to be along the boundary with Millfield Road and along the sides and middle of the Application Land. 29 of the 32 users were said to have seen and/or participated in other community activities over the past 20 years and 24 of the 32 had participated in the Deepings Show.

27. In October 2017, after a preliminary examination of the Application, it was my view that the Application was deficient in that it did not specify the locality correctly. It was my view, supported by the relevant DEFRA guidance and relevant case law, that the locality for the purposes of an application under section 15(2) should be a legally recognisable administrative area rather than a simple but nevertheless seemingly logical geographical area and that the application could and should be amended and that it could be done so without prejudice to the interests of any party. As submitted, the locality was just part of the built-up area of the Parish of Market Deeping. The Application was duly amended by Mrs Steel and the locality is shown on Map B in the Registration Authority Bundle at RACB 1.2.15.

28. On 20 December 2017 the Objector wrote a letter to the Registration Authority objecting to the Application and stated that its full objection and evidence would be submitted by 11 January 2018. The objection letter of 20 December 2017 outlined the Objector's view that the statutory tests in section 15(2) had not been met for a number of reasons which I set out below in summary form:

    (1) The Application Land had been used for agricultural purposes for arable crops of wheat and barley and for the grazing of cattle and sheep. It had also been used for an annual two-day agricultural show since the 1960s up to 2013. In more recent times it has been used for the production of hay;

    (2) The user evidence shows that the majority of use has been accessed via a public right of way – Public Footpath 2 Market Deeping. The Objector contends that the public already have a legal right to use the Application Land to pass and repass over that footpath and this public right is "by right" not "as of right";

    (3) The Application Land has always been entranced and locked and fenced, any entry on to the application land through a locked entrance or fence would have meant that the public have had to climb over fences or entrances in

order to gain access at the other claimed entry points. In 2006 the Objector erected signs stating, "private farm", "no trespassing' and "please keep to the public footpath" at the entrances onto the Application Land warning the public that the land was regarded as private. The tenants have asked the public not to use the land and have been verbally abused for informing them of this fact;

(4) The majority of users had attended the Deepings Agricultural Show and that this use was with the Objector's permission as they had granted an agricultural tenancy to the Deeping Agricultural Show and the public had to pay an entrance fee which indicated that any use during this event could not be regarded "as of right"; and

(5) The use has not continued for the whole of the statutory period 21 June 1997 – 21 June 2017. It cannot have occurred as part of the Application Land had been ploughed and cropped and the Deeping Agricultural Show formally closed the public right of way annually for the period of the Show up to 2013 thereby creating a break in usage.

29. On 9 April 2018 Mrs Steel provided an initial response to the Objector's full objection and evidence. A full response (with enclosures) was provided on 25 April 2018 and contained a number of material points. I have sought to summarise below, without comment, those that appear to me to be central to the Applicant's case for registration: -

(a) **Use for lawful sports and pastimes**: It was agreed that the Application Land "is used principally by local residents for dog walking and walking simply to enjoy this green open space. Other activities such as jogging and cycling also take place";

(b) Whilst the Application Land had been officially leased for agricultural purposes it had been used for low-level agricultural activities and not inconsistent with use for dog walking or jogging. Periodic grazing of land has been held not to prevent its registration as a village green;

(c) The agricultural tenancy agreement of 2010 gave permission for commercial activities, but permission has never been given for such activities as dog walking, jogging, cycling and generally enjoying the green open space;

(d) **Use for a period of 20 years up to the date of the application**: The land has been used regularly for a period of 20 years from June 1997 – June 2017. It was not agreed that work on the bypass began in late 1997. It began on 20 March 1997 and when the 20-year period commenced the works had been in progress for 3 months. The Deeping Show took place at the beginning of June 1997 and local residents continued to use the land. Public footpath 2 was cut through by the bypass leaving only a short section of the footpath on the Application Land. Dog walkers could safely access the Application Land during construction, and it was only when the bypass opened to traffic that it became a safety hazard. After construction began a site meeting took place on

the Application Land to discuss noise issues and access to the meeting was via Entrance C. Originally there had been a metal entrance at Entrance D which was replaced by a wooden accommodation fence but someone removed 3 pieces of wood which enabled access at Entrance D until it was repaired in March 2018;

(e) The public footpath was closed each year for the Deepings Show but users could still continue to use the Land, as confirmed by the Chairman of the Deepings Show committee. The Chairman admits that the fields were not actually sprayed. Although there was an entry fee to the Show, this was to cover the £50,000 costs of the Show and it was not intended to exclude the inhabitants as it was a community event put on for the benefit of local residents. Entry to the show was porous – Entrance A was open for cars and there was no charge to go in that entrance, Entrance C was open for horses and there was no charge at that entrance, Entrance D was not marshalled as the Chairman stated that it involved going through a piece of woodland. The south field was used mainly for horses and animals, Entrance E was unmanned as no one was expected to enter from the bypass and Entrance B was the public footpath and it was here that visitors were directed to the pay stall. Some users claimed their right to use the footpath and use the rest of the Application Land "as of right" if they only wanted to walk their dog and did not attend the Show. The Rotary Club did their best to collect the entry fee, but some people just went through and did not pay. Stall holders and helpers did not pay an entry fee;

(f) There were no farm animals on the Application Land during the Foot and Mouth outbreak in 2001 – the Show Committee even considered holding a dance on the Application Land in June 2001 as an alternative due to animal movement restrictions. The Application Land itself was not closed;

(g) It was not accepted that the Application Land had only been used by residents since 2006. It may be that the Objector only became aware in 2006 that residents were using the Land for recreational purposes but the Chairman of the Deepings Show clearly states in his interview that the problem with residents using the Land began when the new housing estate was built;

(h) The southern end of the residential estate was built by Persimmon Homes in the late 1980s, the northern end built between 1994-1997 by Westbury Homes and the centre of the estate by Tarmac and was completed in 1996. Residents walked the fields for many years before the 1980s and once the estate was completed even more people used the Application Land. It is not used as a circular dog walk – residents walk wherever they choose from the access point where they entered, and the current agricultural tenant complains in his witness statement that walkers walk down the middle of the Application Land and tread all through the long grass;

(i) **Use by a significant number of inhabitants**: The Application Land has been used by a significant number of residents, the majority of whom live in

Market Deeping and others live in Deeping St. James and surrounding villages. In 2001 there were 2429 households in Market Deeping and around 36.1% contained dependent children. Membership of the Friends of Mill Field is around 1,100 adults and growing. It is estimated that around 26% of the UK population own a dog which equates to 1,562 people in Market Deeping. Whilst there some households would have more than one dog, but it still means that there are a lot of dogs in Market Deeping;

(j) 32 evidence forms were submitted with the Application, but some were from couples and each of the forms represents a wider network of partners/offspring/grandchildren etc. A further 36 users submitted information including their names, addresses and length of time that they had used the Application Land. 6 of these had used the Application Land for 20 years or more. 90 names, addresses and comments of users were also included in the petition. The total user information submitted is 158 and more evidence can be submitted, if required. 18 of the users whose evidence has been submitted have used the land for 20 years or more;

(k) **Use by inhabitants of the locality**: The locality includes almost all of Market Deeping. To disregard the evidence of those users who had moved house in the 20-year period is unjustifiable. Usage can be collective and cumulative;

(l) **As of right**: Local residents have used the Application Land without force, without stealth and without permission of the Objector. 18 users claim to have gained access via Entrance B, a public footpath and " we acknowledge that whilst they are on the Public Footpath that they are using the path 'by right' but once they walked beyond the scope of the public right of way on to the rest of the Site they did so 'as of right'. All of the 18 users have <u>not</u> stated that they used only the Public Footpath, this is incorrect. All of them use the entire Site." Since 1997 the footpath has been intercepted by the bypass and few residents risk crossing with their families and therefore have opted to walk in Mill Field instead "as of right';

(m) **Without force**: All signage present at the Application Land now was erected in March 2018, nearly one year after the end of the claimed period. There is evidence of signs at Entrance A and C from Google Streetview in 2009 but no evidence in the same Google Streetview of any signs at Entrance B. There is no mention in the Holdings Reports for the Application Land from 2006 to 2009 of any signs actually being removed. At entrance A there was a sign that read "Private farm" but many residents told Mrs Steel that they assumed it indicated the adjoining field where farm activities regularly took place. The sign at Entrance C was damaged for many years but nothing was done about it until 2018. In the Memorandum from Savills, asking for an order to be made, it states: "there are 2 access entrances, one next to the footpath so only need 1 on other access entrance…' and this indicates that there was no intention of putting a sign at Entrance B. Several sites were ordered by the County Council at the same time, but they were also for other sites across the county, so the orders do not provide conclusive evidence about exactly which signs were destined for which site;

(n) The fence along the Stamford Road boundary was broken by local youths who, for many years have ridden bikes and built dens using branches and pieces of fence in the small woodland area between the road and the Application land. Access at Entrance D was not difficult as the winding pathway through the trees had been worn down by many users over the years. Residents who live along Stamford Road have used Entrance D since the early 1990s. The fence was only repaired in March 2018 blocking access from Entrance D from that date. Dog walkers have not needed to climb fences or entrances to gain access because Entrances A, B, D and E have always been open, and Entrance C was unlocked for many years;

(o) Residents from the northern end of the Tattershall Drive estate whose houses overlook the north field recall sheep grazing there many years ago. The Chairman of the Deepings Show has said that even when there were animals on the field, locals continued to use it. Mr Hallam secured his land because travellers pitched up twice in 2017 and he had to pay to remove them although he did not secure his land or dig ditches to keep out dog walkers or other users. There are photographs of the access entrances taken before the travellers came and the access points were neither locked nor secure. Pedestrian accesses at B and E are always open and the reason that the double entrances onto the field have been secured and locked was to stop vehicular access;

(p) The majority of the users have used the Application Land unchallenged for decades. Only pleasantries have been exchanged on occasions when the grass has been cut. Some users asserted their right to use the Application Land when challenged by the Deepings Show Chairman when he was setting up the Show;

(q) **Without stealth/secrecy**: The access points were made secure after the end of the 20-year period. Mr Hallam dug ditches by the double entrances so that caravans could not cross onto the fields if the entrances were broken down after the travellers left in June 2017. Before then there was a well-worn path at the side of the double entrances at Entrance A which walkers used;

(r) **Without permission**: Many users of the Application Land included the Deepings Show as one of their informal sports and pastimes because it was an event that the majority of the local residents participated in. This was not a case of a landowner wishing to use his land for his own purposes to the exclusion of the public. Entrance fees were charged, not with the intent to exclude but because it was necessary to raise money to pay for the event. Some residents were keen to pay as the Show was a charitable cause, but others chose to exercise their right to enter the land without paying;

(s) **Is the use continuing**: Residents continued to use the Application Land when the travellers were there although it is possible some were deterred. Local residents, mainly the Friends of Mill Field, cleared up the Application Land after the travellers had left; and

(t) **Conclusion**: The journey between the Application Land and Lincoln involves a round trip of 80 miles and many of the Objector's witnesses do not have first-hand knowledge of it and some of their arguments are more conjecture than fact.

The Statutory Test

30. After the pre-inquiry meeting, I issued Directions for the preparation for and conduct of the inquiry. I am grateful to both parties for their observance of those Directions as they facilitated the expeditious progress of the inquiry. In one of my Directions I invited the parties to submit (should they so wish) in advance any legal submissions that they considered necessary together with any relevant case law although I did indicate that I was not necessarily expecting any to be made. The Applicant chose not to make any submissions as was her right. However, she did prepare a written opening statement (AB 36 – 41) which was in the form of legal submissions.

31. In the light of the Applicants written opening statement, the Objector did provide written legal submissions together with copies of the relevant cases and for which I am grateful. It is important to acknowledge that the Objector stated at paragraph 5 that it was not its intention to identify in the legal submissions all the supporting evidence which is relevant to the matter being raised (as this was to be left to closing submissions).

32. In summary, in the legal submissions, the Objector submitted that it considered the following matters to be in dispute (although this was not expressed as an exhaustive list): -

    (a) That a 20-year period of use has been identified;
    (b) That the use has been by a significant number of inhabitants in the locality;
    (c) That the matters claimed to fall within the definition of "sports and pastimes";
    (d) That the use has been "as of right" – there was a fee paid for entry to the Deeping Agricultural Show, access was contrary to signs or by means of fences being broken down; and
    (e) That the land has been subject to incursion by the travelling community and the use by inhabitants was interrupted.

33. In order to assist the members who will ultimately determine the Application, it is useful to set out the legal principles relevant to the statutory test. I have placed emphasis on certain aspects of those principles that, in my opinion, are of particular relevance to the issues that arise out of the Application, the legal submissions made and the evidence.

34. Section 15(1) of the Commons Act 2006 (as amended) provides that anyone may apply to register land as a village green so long as it meets the relevant criteria and that no trigger event as set out in section 15C(1) has occurred. As mentioned above, it has been confirmed that no trigger events have occurred.

35. The Application was made under section 15(2) which applies where –
    (a) a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
    (b) they continue to do so at the time of the application.

36. It is settled law that the burden is on the Applicant to satisfy, on the balance of probabilities, each and every element of the criteria in the statutory test in section 15(2). This means that if any one element is not satisfied then the Application must be rejected as a matter of law. Unsurprisingly, various aspects of the statutory test have been the subject of numerous cases in recent years. It is important to recognise that many of these cases are fact sensitive and can often be distinguished. Therefore, the guidance that they provide may be subtle and nuanced and to such an extent that it may be inappropriate to draw general principles of law from these cases.

37. The first criterion is that the use should be by "a significant number of inhabitants" of a locality or a neighbourhood within a locality. Useful guidance on what is meant by a "significant number" was given by Sullivan J in the High Court in *R v Staffordshire County Council, ex parte Alfred McAlpine Homes Ltd* [2002] EWHC 76 (Admin) at paragraphs 71 – 73:

> "71. Dealing firstly with the question of a significant number, I do not accept the proposition that significant in the context of section 22(1) as amended means a considerable or a substantial number. A neighbourhood may have a very limited population and a significant number of the inhabitants of such a neighbourhood might not be so great as to be properly described as a considerable or a substantial number. In my judgment the inspector approached the matter correctly in saying that "significant", although imprecise, is an ordinary word in the English language and little help is to be gained from trying to define it in other language. In addition, the inspector correctly concluded that, whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the meadow for informal recreation was very much a matter of impression. It is necessary to ask the question: significant for what purpose? In my judgment the correct answer is provided by Mr Mynors on behalf of the council, when he submits that what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.
> 72. The inspector concluded in paragraph 7.1 that substantial use had been made of the meadow for informal recreation for more than 20 years before the application. He referred specifically to six of the witnesses who could give evidence covering the whole of the 20-year period. Mr Wolton's criticisms of the inspector's conclusions are not well founded. It is quite unrealistic to refer simply to the six witnesses or to deal with the matter on the basis that they are only six out of 20,000 or one out of 200, and that such numbers are not significant. I accept that, if all of those six witnesses had said that they had not seen others on the land over the 20-year period, then it would be difficult to see how six out of 20,000 or one out of 200 could be said to be significant. But the fact of the matter is that they did not give such evidence: they were able to give evidence, not merely about what they did themselves, but what they saw others doing on the meadow over the 20-year period.
> 73. It is difficult to obtain first-hand evidence of events over a period as long as 20 years. In the present case there was an unusual number of witnesses who were able to speak as to the whole of the period. More often an inspector at such inquiries is left with a patchwork of evidence, trying to piece together evidence from individuals who can deal with various parts of the 20-year period. In the present case, however, the evidence of the six witnesses who were able to cover the whole 20-year period was amply supported by many other witnesses who dealt not simply with the last few years but with a very considerable part of the 20-year

period, some of them going back almost 20 years, some going back to times before the 20-year period began."

38. There is a related issue and that is whether use should be exclusively by inhabitants from within the locality. After the High Court decision of HHJ Waksman QC (as he then was) sitting as a Judge of the High Court in *R (oao Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and another) v Oxfordshire County Council* [2010] EWHC 530 (Admin) the position now appears that there is no implicit requirement for most of the users of the Application Land to have lived in the locality or neighbourhood. So long as a significant number of inhabitants of a locality or neighbourhood were among the recreational users of the Land, it does not matter if many, if not most, users came from elsewhere – see paragraphs 58 -79 of his judgment.

39. The second criterion is that of the "locality". There appears to be no dispute that the locality (as amended) identified by the Applicant constitutes a "locality" for the purposes of section 15(2) and thus that criterion is satisfied. As is often the case with village green registration applications, many of the users giving evidence, making declarations or submitting other forms of written evidence live closest to the Application Land. In the first instance decision of Vos J in *Paddico (267) Ltd v Kirklees MBC and Clayton Fields Action Group Ltd* [2011] EWHC 1606 (Ch) at paragraph 106(i) the judge stated that he "was not impressed with [the] suggestion that the distribution of residents was inadequately spread" across the specified localities. It follows that the only judicial guidance on this point is that it is immaterial if a large proportion of inhabitants using the Application Land come from one particular part of the locality. Furthermore, this issue was also discussed by Patterson J in her decision in *R (oao Allaway and Pollock) v Oxfordshire County Council* [2016] EWHC 2677 (Admin) at paragraphs 69 – 73 where she rejected the notion that there needed to be a spread of users from across the locality.

40. The third criterion is that inhabitants must have used the Application Land for "lawful sports and pastimes". It was established by the House of Lords in *R v Oxfordshire County Council and another ex parte Sunningwell Parish Council* [2000] 1 AC 335 that "lawful sports and pastimes" is a composite class which includes any activity that can properly be called a sport or a pastime and there is no necessity for any organised sports or communal activities to have taken place. Solitary and informal kinds of recreation, such as dog walking and children playing (by themselves or with adults) will satisfy that criterion. Equally, it is not necessary for local inhabitants to have participated in a range of diverse sports and pastimes. However, trivial or sporadic events such as annual Bonfire Night or May Day celebrations, on their own, may not suffice.

41. The fourth criterion, "as of right" contains three separate aspects which all have to be met. Therefore, to meet the criterion of use "as of right" the long line of case law establishes that the Applicant must show that the use throughout the 20-year period occurred *nec vi, nec clam, nec precario*, which in modern-day language, means without force, without stealth and without the permission of the landowner.

42. It is irrelevant whether the users believe themselves to be entitled to do what they are doing, or know that they are not, or are indifferent to which is the case. On the other hand, as Lord Hoffman made clear in *Sunningwell*, English law places the focus on "how the matter would have appeared to the owner of the land" – at 352H-353A and see also the judgment of Sullivan J in *R (oao Laing Homes) v Buckinghamshire County Council* [2003]EWHC 1578 (Admin) at paragraphs 78-81. Thus, the question of whether a use of land is "as of right" must be judged from the perspective of how the matter would have appeared to an owner of the land and that question must be assessed objectively.

43. In cases where there has been use of the land by the landowner as well as recreational use by local inhabitants which involves the local inhabitants deferring to the landowner's use the Supreme Court made clear in *R (oao Lewis) v Redcar & Cleveland Borough Council (No.2)* [2010] UKSC 11 that there was no bar to registration where local inhabitants had deferred to the landowner's use. In that case, the land was held to be properly registrable despite the inspector finding that there was "overwhelming" deference by local inhabitants to its use as a private golf course. In so doing, the Supreme Court effectively disagreed of the view of Sullivan J in the *Laing Homes* case on the point. As Lord Hope in *Lewis* said: "Taking a single hay crop from a meadow is a low-level agricultural activity compatible with recreational use for the late summer and from then until next spring". Similar considerations apply where use for lawful sports and pastimes by local inhabitants had peacefully co-existed with other kinds of use by the landowner (or by other people with the landowner's authority) during the 20-year period.

44. The Application Land is traversed by a public footpath from Entrance B to Entrance E, at what appears to me to be the narrowest section of the Application Land. The route of the public footpath is clear and straight and runs close and parallel to the boundary between the north and south fields. There are no other established public footpaths or other rights of way on the Application Land.

45. The matter is further complicated by virtue of the fact that, for almost the entirety of the 20-year period relied on in the Application, the Public Footpath, on leaving the Application Land at entrance E in a westerly direction, crosses over the surface of the four lane A15 bypass. To continue on that footpath requires the walker to navigate four lanes of fast-moving traffic. There are no safety or other measures (such as footbridges or underpasses or road markings) that makes crossing that road easy or safe for walkers. Therefore, the A15 bypass represents a major, but not insurmountable, obstacle and I consider that this would generally deter many walkers from continuing on that footpath in a westerly direction beyond entrance E, and especially if they were accompanied by children and/or dogs. I would also expect that the bypass would similarly deter most walkers travelling in an easterly direction from crossing the bypass in order to enter the Application Land at Entrance E and to walk towards Market Deeping. I would also expect that many local residents using the Application Land would be more than familiar with the inherent difficulties of proceeding beyond Entrance E and across the bypass. Such a state of affairs would also be apparent to any reasonable landowner of the Application Land.

46. It is settled law that it is important to discount any use of the public footpath as a right of way and the Applicant has acknowledged this (as mentioned above). However, in County *R (oao Allaway and Pollock) v Oxfordshire Council* [2016] EWHC 2677 (Admin) Patterson J was faced with a not dissimilar position where a public footpath running along the eastern side of the land in question. In that case the village green inspector "made clear in his supplementary report that he discounted those who used the public footpath, entering at one entrance and leaving at the other. The remainder of the walkers, he concluded, were mostly using the land for the assertion of a village green right." Patterson J endorsed the inspector's approach, that is to say, if the walking was such as to indicate use of an actual right of way (for the purpose of passage along it) it had to be discounted but that does not mean that use of the right of way will always be associated with the assertion of a public right of way. It is possible that a person may use the whole or part of that section of the right of way that traverses the Application Land for general recreational purposes consistent with the assertion of a village green right. In coming to her decision, the judge specifically followed the judgment of Lightman J in *Oxfordshire County Council v Oxford City Council & Robinson* [2004] EWHC 12 (Ch) at paragraph 102: "Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential Green will ordinarily be referable only to a public right of way to the Green. But walking, jogging or pushing a pram on a defined track which is situated on or traverses the potential Green may be recreational use of land as a Green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a Green)."

47. The requirement that the use should be "without force" (*nec vi*) in the circumstances of the Application involves two distinct issues. The first is the assertion by the Objector that access to the Application Land has been obtained by fences and hedges being broken or cut through (as opposed to have been simply left in a state of disrepair thus allowing access) to gain access to the Application Land. The second is the alleged presence and efficacy of perimeter signs.

48. As a starting point, access to the Application Land throughout the 20-year period, has always been open due to the fact that a Public Footpath traverses it. The Objector has asserted that public access to the Application Land has been interrupted during that period, for example, during the Deeping Agricultural Show or when the travellers were present. It will be necessary later in this report to assess the evidence in relation to this point. Case law also indicates that use can be by force in circumstances other than the use of physical force, for example, by an act sufficient to demonstrate that the landowner had objected to

public use of his land e.g. by oral challenges to local inhabitants, provided that such challenges were made on a sufficient scale to become common knowledge.

49. One recognised method of challenging use is by the erection of suitably worded signs or notices in prominent positions – see the High Court decision of HHJ Waksman QC (as he then was) sitting as a Judge of the High Court in *R (oao Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and another) v Oxfordshire County Council* [2010] EWHC 530 (Admin) at paragraphs 17 – 22. Other key cases include the Court of Appeal's decision in *Taylor v Betterment Properties (Weymouth) Ltd v Dorset County Council* [2012] EWCA Civ 250, the Court of Appeal's decision in *Winterburn v Bennett* [2016] EWCA Civ 482 and the High Court decision in *R (oao Cotham School) v Bristol City Council and others* [2018] EWHC 1022 (Admin) in which the judge helpfully emphasised that the decisions in the *Taylor* and *Winterburn* cases constitute binding authority for the proposition that where a landowner has made his position clear through the erection of a sufficient number of suitably placed and clearly visible signs, it would make the use of the land contentious and therefore not "as of right". However, *Taylor* does make the point that the signs must be suitably worded so as to make it clear to the average reader that any use of the relevant land is contested. Thus, for the purposes of this Application, evidence that may be important concerns the number, location and specific wording of the signs and whether or not they were removed unlawfully and replaced sufficiently. The decision of HHJ Waksman QC provides a useful example of how the wording of signs should be approached.

50. There is a suggestion by the Objector that the use of the Application Land was "by stealth" in that it is aware that since all the access points have been made more secure some users are now gaining access by walking over the newly constructed bunds, at entrance A the public have created a well-defined footpath to the left of the entrance which goes through the ditch and under the overgrowth onto the Application Land and that this amounts to covert use and/or use by force. The DEFRA Guidance makes the point that this aspect of the statutory test has received little judicial attention but suggests, rightly in my view, that the use must be open, so that the owner can see it taking place and resist it if he wishes. Use that was surreptitious, e.g. under the cover of darkness, would not qualify.

51. There is, however, the issue of whether the use of the Application Land was by permission of the Objector due to the fact that the Application Land having been used for the holding of the Deeping Agricultural Show and where the public had to pay an admission fee in connection with the show. It should be noted that this is an area of dispute between the parties. It is also said that there is evidence that the organising Society gave the local army cadets permission to use the land on a Wednesday evening.

52. In relation to this aspect, the Objector has drawn attention to the decision of HHJ Robert Owen QC (sitting as a High Court judge) in *R (oao Mann) v Somerset*

County Council and another [2017] 4 WLR 170[5] where the judge highlighted (at paragraph 91 of his judgment) "that careful consideration must also be given to the nature and effect of the owner's conduct relating to his use of the land during (any date within) the period in question." That case involved the holding of beer festivals on one part of privately-owned land which was the subject of a village green application and where access to a marquee had been denied to local residents unless in possession of a ticket and that they could not make use of the other facilities without paying a charge. As the judge made clear in paragraph 36 of his judgment "Ultimately, it is necessary to scrutinize all the circumstances of the particular case to determine whether the grant of permission or implied licence is made out, whether by reason of 'overt acts' or 'demonstrable circumstances' or, indeed, 'relevant circumstances'". The judge accepted that whilst the pubic use must be established for over 20 years (uninterrupted) the establishment by the owner of a vitiating circumstance is less onerous; i.e., for example, permission need only be established on one occasion during that period, in order to prevent the accrual of any asserted village green right.

The Applicant's Oral Evidence before the Inquiry

53. This section of my report summarises the evidence given on behalf of the main parties. I deal separately with those members of the public who spoke or submitted written comments during the inquiry but were not part of either party's case. It is also not intended to be an exhaustive summary of every single witness but rather to convey a flavour of that evidence. To do anything more would result in a report of unwieldly length. Witnesses were not required by me to give evidence under oath but were subject to cross-examination. These summaries of the oral evidence include relevant answers given to questions raised in cross-examination.

54. Members should note that the oral evidence does not constitute the totality of the evidence. In particular, and in common with many village green inquiries, the parties were limited to 15 witnesses each giving oral evidence and witnesses attempted, wherever possible, to avoid unnecessary factual repetition. Therefore, the witnesses are a representative sample of the supporting evidence. I should also record that there was a sizeable turnout of local residents at the start of the inquiry and an unusually large number attended throughout the inquiry, most of whom appeared to be supportive of the Applicant and the Application. Whilst this point is not strictly relevant to the statutory test it is contextually noteworthy.

55. I summarise first the evidence of the Applicant's witnesses. I have concentrated on evidence relevant to the 20-year period and only included references to evidence outside that period where necessary.

56. The Applicant, Mrs Steel, has lived in Market Deeping for 11 years. Before calling her witnesses, the Applicant delivered a short opening statement (AB Index 2,

[5] A case decided on 11 May 2012 but not reported until 2017.

Tab 5, 36 – 41). The Applicant's witness statements are to be found in the AB Tab 7.

57. **David Shelton** of Church Street, Market Deeping is the Mayor of Market Deeping Town Council, the Chair of Deepings Heritage and also chair of the Neighbourhood Plan Group of the Deepings. He had moved to Market Deeping 5 years ago – having moved in in January 2014 - and lives in the oldest home (dating from 1463) in the Deepings. Prior to moving in, he had no previous contact with Market Deeping but had lived in Corby Glen between 1975 – 1995. He had no contact with the Application Land before moving to Market Deeping and can only give direct evidence since January 2014. He had no involvement with the Application Land before the Application. He first became involved with the Town Council in May 2015 when he was elected a councillor. He was not involved in the footpath closures regarding the Deepings Show.

The Application Land embodies the rural character of the market town and has long been associated by the inhabitants of Market Deeping as a place of leisure and recreation. In 1882 the Oddfellows Charity held its first annual festival on the land and which included competitions, races, stalls, fireworks, brass bands etc and which drew large crowds. There is archive newspaper reports obtained from the archivist of Deepings Heritage of various leisure activities on the Mill Field including:

(a) Stamford Mercury, Friday 26 July 1901 – 19th Annual Sports in Mill Field including stalls, roundabouts, shooting galleries, brass band and fireworks – (AB Tab 7 114) "The 19th annual sports were held under a blazing sun in the afternoon in the Mill Field, adjoining the Stamford road, kindly lent by Mr. D Perkins. There was a very large attendance. The Market Deeping Brass Band played during the afternoon, and for dancing in the evening.";
(b) Grantham Journal, 19 July 1902 – the Coronation Festival (King Edward VII and Queen Alexandra);
(c) Stamford Mercury, Friday 29 July 1904 – 22nd annual sports in Millfield (AB Tab 7 115) "…held in the Mill Field, Market Deeping (which had kindly been lent by Mr. D. Perkins, on Thursday last in the beautiful weather. A new feature was a singing competition…";
(d) Stamford Mercury, Friday 30 July 1909 – Sports and Gala (AB Tab 7 116) "This annual event took place in the Mill Field on Thursday week and passed off very successfully….";
(e) Grantham Journal, Saturday 25 November 1922 – Victor Bosley Shield (AB Tab 7 117) "The Market Deeping Scouts are drawn at home against Langtoft Juniors in the above Shield Competition. The match is arranged to be played at Market Deeping on Dec. 16th, on the Mill Field, kindly lent by Mr. J.G. Perkins and the Market Deeping FC."

Mr Shelton accepted that the precise location of the land on which these events took place could not be ascertained from the press reports, but he noted the references to the land adjoining the Stamford Road. He acknowledged the references to the land being "kindly lent" by the Mr Perkins which suggested they were all being used with the permission of the then owner. He also

confirmed that he had not looked at the material produced by the Objector dealing with the bypass construction and the related compulsory purchase and side road orders.

After WWII, the Deepings Agricultural Show Society and all sections of the community took part in the annual Deepings Agricultural Show that took place on Mill Field from the 1960s until 2013. It was an ideal place for such events as walking and playing – flat, enclosed grassland – and has become increasingly popular since the 1970/80s as the town expanded and other fields disappeared. When the Tattershall Drive estate was built in 1994, it became an important part of the new residents' lives for leisure activities such as children playing, racing remote-controlled cars, flying kites, walking and jogging. These activities continue to this day and are important part of local residents' lives as well as those from Deeping St. James and neighbouring villages.

The construction of the bypass began in March 1997. It was welcomed as it alleviated through traffic, but it unfortunately prevented most of the community from accessing the countryside beyond. There are four lanes of fast traffic making it hazardous to cross, especially with nervous dogs or young children. Consequently only a few people use the Public Footpath since 1997. This was purely his personal visual assessment and he had never seen anyone crossing the bypass. The majority enter Mill Field by Entrance B and use the land itself. This was also just his personal view.

His observation that Mill Field forms a western entranceway is just his own view rather than any formal definition.

The Neighbourhood Plan Group exists to produce a Neighbourhood Plan for the Deepings. The Group acknowledge the need for development, but residents need more than just houses. The NPPF's core planning principles includes statements that planning should empower local people to shape their surroundings, promote healthy communities and create a shared vision of the residential environment and facilities residents wished to see. The survey undertaken a few years ago showed that Mill Field was very special to large numbers of residents and many would rather choose to allocate houses closer to their homes rather than lose Mill Field. In a bid to promote a healthy community, the Group is creating a Green Walk linking up green areas of Market Deeping and passes through Mill Field. The Neighbourhood Plan is still in draft form. The Green Walk is a policy that it is intended to bring forward in the Neighbourhood Plan, but it has been informally adopted only by the Town Council and South Kesteven District Council. There is, however, no policy in the adopted Local Plan and it is not shown on the Definitive Map as it is more of an encompassing concept than a footpath.

58. **Maralyn Pieri** of Kesteven Drive, Market Deeping moved with her husband and two children (then aged 10 and 8 years) to her bungalow in 1979. Kesteven Drive is just slightly off Map A. Her husband built their bungalow and when she moved in there was nothing in terms of development around at that time. She has therefore known the Application Land for 38 years. She describes herself as a

true country girl. She loved the rural feel of Market Deeping when she first moved here. There used to be five farms around Deepings. The area has changed a lot since she moved in. She has never been able to drive and travels everywhere locally by bike or on foot and has always loved walking. She used to cycle 12 miles on a round trip to see her mother.

When her children were at school, and sometimes at weekends, she did long walks in Millfield Road and Mill Field and sometimes further afield. She entered via Entrances A or B. She would walk in all directions because it was all open land.

She went to Mill Field nearly every day. Her route would be a mixture of roads and fields. She used to walk on the fields in Mill Field. When she entered by entrance B she would walk on the footpath but when she entered by entrance A she would walk in a figure of eight. This was from 1989 onwards. She was referred to the photograph at AB Tab 7 76 - which was taken on 4 June 1996 – she did not recall seeing any crops near entrance A but remembers going around the edge of the field although she did not remember walking around crops. She thought it was mainly weeds. When she referred to the north fields in her statement (at paragraph 6) this was a reference to the fields north of entrance A. The two fields that she walked in were south of entrance A and these she called the south fields and these are the ones that her evidence concerned.

She would see rabbits, deer, woodpeckers and owls on Mill Field. The week before the date of her witness statement she saw a white owl as she was walking around the field at 6 a.m. In 2000 she had a minor heart attack and renewed her efforts to walk 5 miles each day to improve her health.

She recalled that in her early days there were crops in the north field but by the time that the construction of the bypass had started, it was all grass. In 2001 she saw Foot & Mouth notices in Peakirk where there were farm animals but not in Mill Field. She would not have disobeyed Foot & Mouth signs if she had seen them at Mill Field.

When her husband died, she found walking helped deal with her bereavement and being in the countryside at Mill Field gave her an inner peace. She has also made lasting friendships with fellow walkers who now meet to walk every day. In the summer months, after she lost her husband, she would get up at 5 a.m. and go walking. Now she usually meets one of her friends at around 6 a.m. on weekdays and walk for about an hour. Even at that time of the morning she often sees others using the field.

When her children were young, she would take them to the Deepings Show in the afternoon. There was no one charging for entry. As her daughter Rachel got older, she modelled at the Show for Dynasty, a local clothes shop, and she used to help as well. Lots of local residents helped out at the Show and local dance groups put on displays.

She has crossed the bypass once. She does not like to do so as she considers it too dangerous. She has had a dog for the last 20 years and the dog is a bit dubious about it. Traffic in Market Deeping was horrendous before the bypass opened and many people did not object to having the bypass for that reason.

She did not know who owned the Application Land, but she occasionally saw the farmer. Most of the time she would just see fellow walkers.

When the travellers came on to the Application Land, she avoided most of it because they had vicious dogs although some of her friends went there but kept out of their way.

59. **Gordon Smith** of 36 Stamford Road, Market Deeping and his family have lived there since January 1996. His two children were 8 and 5 years old when they moved in. He works from home. It is less than 400 metres from the Application Land which became one of a few natural local and walkable destinations for play and enjoyment. It takes him between 5 – 10 minutes to get there. It has always been very accessible, without apparent obstruction and most of the time it was grassland which lent itself to unencumbered activity. It was always attractive to use as it offered freedom where space was needed e.g. for kite flying (he produced a still from a mobile phone video dated 31 December 2013 showing kite flying and looking south westwards AB Tab 7 120) and bat and ball games. The Application Land was suitable for space-demanding uses as it was away from the constraints such as roads or houses. He had noticed changes to Market Deeping and Mill Field over the years – the extent of housing growth and the construction of the bypass which has constrained people by providing a barrier and he can track increased use of the bypass

As his children grew up and away from parental control, his own use of the land naturally changed. It became a readily accessible and attractive space for jogging or walking for exercise. Over time his frequency of use has changed. With young children, use was mainly in the summer and visits would be frequent. The activities varied and some would be weather and/or seasonal dependent. Now he uses the Application Land more frequently (weekly) irrespective of the season for either exercise (fast walking), recreational ambles, blackberry picking with his wife and occasional kite flying.

When he initially began using the Application Land in 1996, the fields were broadly open to the west but with the advent of the bypass it created enclosures limited to the western side with fencing in mid-1997 and bunds. All of the site was in use apart from the site of the bunds (which was the same area as the bunds are now). He did not recall the bypass works obstructing the use of the Application Land. Indeed, he recalled that he and his children found the construction works a useful 'spectator sport' and he recalled a celebratory family cycle ride along the as yet unopened bypass in July 1998. He recalled the western roadside enclosures suited the use of the space with young children. The Mill Field space became more enclosed with perimeter fencing thereby feeling 'safer' and more like a natural country park.

He did not recall crops being grown on the land. It has mostly been grassland and did not know if its agricultural purpose was for grazing or hay production. Livestock have been present on very few occasions and it did not deter him from using the land as it is normal to respect livestock with appropriate distance and is no different to recreational use of local country park.

He had been incorrectly quoted in the Objector's earlier representations as only limiting his access to the Public Footpath and he felt that this had downgraded his evidence. He has accessed the land from entrances A, B & D. Generally, all entrances have been easy to access and there have been no obstructions (at least until recently after the date of the Application). The access point used would depend on whether or not its use was to be part of a longer walk and the direction of travel. None of his activities have been limited to the Public Footpath and his own walks and activities with his children have taken place without hindrance across the whole of the Application Land. It has always been highly permeable with little obstruction to casual access. At no stage has he or his family ever been challenged, as they were rarely alone in using the spaces for recreation nor did they ever have reason to think that they might be challenged so they naturally took up a pattern of use that can be described as being 'as of right'.

He did not use the open spaces on the Tattershall Drive estate because there were signs saying no ball games, no kite flying, and they are near to houses. Kite flying in a built-up area can be intrusive.

People are drawn to the Application Land because it is attractive: it is a bit of countryside and has the appearance of a country park and they treat it as common land. It is a good dog walking area and some people come from further afield and by car to carry their dogs or families. There is space to park in Mill Field Road in the entrances to the access points and people park respectfully.

His Evidence Questionnaire is found at AB Tab 2 63 -72. In it at Q13 he stated that he gained access via the public footpath which was consistent with what the Objector had stated. However, he explained that it was his principal access point, but he had used others. He could not be more specific as to when his children became more independent and he became more active. At Q25 he stated that he used the Application Land 3 – 4 times per annum. He said that this referred to his use for kite flying. At Q36 he repeated that he had used the land 3 – 4 times per annum during the 20-year period but at Q37 he stated that he still uses the land about once a week. He agreed that this was what his answers in the form stated but it is not his interpretation. It was more that the pattern of use had changed but he could not say when and how.

He gained access to the unopened bypass from the southern roundabout therefore that evidence does not relate to use of the Application Land. He accepted that he probably did not use Mill Field on those occasions. He did not recall arable crops growing on any part of the Application Land but recalled livestock in the southern field about ten years ago.

He was asked about his reference to access via entrances A, B & D being "without apparent obstruction" by which he meant without barriers or entrances. He stated that it could not be judged from the appearance today as fences were erected after the Application was submitted. For years there had been a gap at entrance D. He was then taken to the Google photograph dated March 2009 at OB Tab 3A 113 – he recalled seeing a sign but could not remember what it said. He was also taken to the photographs at 114, 116 and 117. At 115 (which is the entrance to the Public Footpath) you could see an open entrance. Entrance C, at 117, was often closed but not locked and signs could be obstructed by vegetation and he could not recall seeing that sign being there. At entrance D, at 119, he stated that there was a fence, but it had substantial gaps in it. As 118 you needed shoes with appropriate grip, and it is a route that he had only used occasionally, possibly once a year over the 20-year period, but he could not be more precise. Entrance E, at 120, merely provides an indication of its historic use and the noise bund could be seen in the background.

60. **Colin Gamble** of Deene Close, Market Deeping stated that he moved to Church Street in Market Deeping 20 years ago from a rural village in Northamptonshire and was delighted to find that, although a much larger town, it had excellent opportunities to enjoy the wildlife and walking in Mill Field close to where he lived. He spent (and still spends) many hours there, originally on his own but after 5 years with his dogs. He had seen sheep and cattle on the Application Land. He has lived in 8 houses in Market Deeping since arriving in the town.

    In the early years the Agricultural Show was held on the field once a year. On every occasion that he wished to use the field when the Show was being held, he entered without charge. He entered via entrance B and there was nothing across the Public Footpath which prevented him from using that entrance. On one occasion he helped a relative who had a stand in the marquee.

    He became a Town Councillor in 2014 and has always been a member of the planning committee. He therefore understood the legal reasons for closing a footpath and he had not known the Public Footpath to be closed for any reason. He will remain a Town Councillor until the May 2019 elections. He is not standing again. He moved in to the area at the end of 1997 or the start of 1998 when the bypass was nearly completed. His dogs would go all over the fields with a ball. When bird watching he had seen redwings, a ring-necked parakeet and heard tawny and little owls. He got into the Show without paying a charge although he was not interested in the Show and only wanted to walk his dogs. He normally enters via entrance B. He was not aware of the Public Footpath not being closed to the public whilst the Show was being held although he did find this out subsequently from being on the Town Council. He did not recall seeing anything that said that it was closed, and he did not recall any barriers erected to enable entrance money to be collected. He did not accept that the Public Footpath was closed for the Show but he accepted that there is a suggestion that it was. He did not recall being on the planning committee when the footpath closure was being discussed. He was taken to OB Tab 3A 49 which showed (no. 352) a temporary closure of Public Footpath 2 starting on 5 June 2004 for 2 days for the Deeping Agricultural Show. He was not aware of there being any

compulsory entrance fee There were people sitting near the entrance in a Gazebo, but he did not know who they were. He was taken to OB Tab 3A 67 and 69 and he agreed that the photographs were representative of the events at the Show. At 69 he could see metal fences around the arena, and it would not be possible to enter the arena. He did not go into the marquees with his dogs. 70 also showed the arena fence and 75 showed orange plastic fencing and a plastic-coated chain fence. Whilst the fences were being moved it was not possible to freely move around. 81 was from 2009 and it shows animals pens typical of the way that the Show was run but he did not recall the cattle.

He now lives very close to the Application Land and uses it virtually every day. There are green areas relatively close to where he lives on the estate roads, but they are not secure and not very safe for children and dogs.

61. **Beatrice Randall** of Tattershall Drive, Market Deeping moved to her home in Market Deeping in June 2009 just before the Deepings Show. It was her first introduction to the local community and the Application Land. She went back to the Show every year after that. She did not pay to go in. Her husband died 14 years ago and when she moved in, she bought a dog and was able to walk with her dog around the Application Land in the morning and again in the late afternoon. It was wonderful to have the countryside so close and in so doing she has made many friends. She lives opposite the green area bordering Sandringham Way and Tattershall Drive which she believed is owned by Persimmon Homes. It is pleasant to look out on but impractical for dog walking as there are no barriers and the proximity to the roads makes it dangerous to let dogs off the lead. She did see children playing and once a ball was kicked into the road and the children who ran after it appeared not to give a thought that there might be a car coming. She is now unable to walk to the Application Land on her own but still goes there with her daughter, in her car and sits in it at the entrance whilst her daughter walks the dog. The feeling of being in the countryside is still there, looking at the trees, hedgerows and wildlife, during the different seasons and watching and talking to other people walking or jogging. She had never seen the owner or the farmer.

    She produced three photographs taken at the Deeping Show which showed the stall for the Deepings Churches Together stand.

62. **Robert Romaine** of 15 St. Guthlac Avenue, Market Deeping has lived there since November 1999 when he was six years old. The Application Land formed a fundamental part of his time growing up. It is the largest informal open space in his locality and offers serenity, seclusion and security unavailable elsewhere in Market Deeping. He has had uninterrupted use of the Application Land for 19 years. It holds fond memories – it is an area he used to walk with his grandparents after Sunday lunch and a trip to the shop to buy a magazine. As it is flat with open easy access via the public footpath entrance he would often go in all weathers as the pathways were always manageable and did not struggle compared to other footpaths around the town that have stiles and uneven ground. These walks and similar visits with his mother at weekends formed a

lasting impression of his new surroundings he found himself in having moved here as a young city boy where open space had been at a premium.

In his secondary school years his use of the Application Land increased along with his independence and his familiarity with this end of the town. Events like the Deepings Show became more of an occasion. His time away from the house became more important and, when his family got a dog, he would walk it on the large and lovely open space just around the corner. Particular memories of the Application Land include the regular misty mornings when delivering newspapers on his round in Millfield Road. He recalled when, as part of a group of twenty or so schoolfriends, they played a large game of "hide and seek" spanning several postcodes west of Church Street and hid at the back of the Application Land up against the bypass. This was a one-off event.

Continually, during school, he was offered opportunities to be part of the Deepings Show where he had his artwork shown and took part in the Deepings School Railway Club – he produced photographs of these taken from the 2004 Show in relation to the Railway Club and his artwork from his days at the Primary School in the age 5-6 years category. In addition, his family were always regular visitors to the Show events including the Churches Together service on the Sunday afternoons and the farming shows. His other activities included sitting with friends on the field, playing football and once he threw a boomerang (but it got lost in the long grass and he never got it back). He has kept his exhibit entries from the Show. He was fairly confident that he attended the Show every year but did not always take part and then attended as a spectator. He was not aware of there being any admission fee.

After secondary school he went away to university, but the Application Land was an area he would still return to when home at weekends and he would walk the dog on what to him was a social space and he would meet other walkers. He would also use it to go on runs with friends and as a quiet place for a wander. The Application Land was rarely empty and even at irregular off-peak times he would spot a walker, runner or group of teenagers using the field as he had done in his schooldays. It is an open space that came to hold a particular sentimental value in 2016 when Benjy his 12-year old Labrador's health was rapidly deteriorating, and he took his dog in the car to the field where he sat with the dog for an hour or so. It was a sunny autumn day and it seemed the perfect place to be at the time. Two days later Benjy had to be put down. He produced a copy of a photograph of Benjy that he took on that visit in which you can see his car parked in the entrance at entrance B. Benjy may be on the footpath in that photograph.

His family now has a new dog that likes to stroll around the Application Land, like Benjy did, and explore every blade of grass on every inch of the field. His use of the Application Land was never challenged. He has never been told not to use the land. There is a small green area in St Guthlac Avenue but our use of it for ball games became an issue for some of the neighbours when we played ballgames, so we felt unable to play on that area. He never wondered who owned the Application Land, he just thought that it was "our field". He normally used

entrance B but he has used entrance A and once used entrance D. He did not recall seeing any signs.

63. **David Cooper** of Woburn Close, Market Deeping and his wife have lived at their address for about 24 years during which time they have had a couple of dogs. His house was newly-built in 1993 when they moved in. He had moved to Deeping St. James in1977 and knew of the Deepings Show. The Application Land is within easy walking distance of their house and they have both used the Application Land to walk around and in with their dogs during the last twenty years. They have never been prevented from using it. They had noticed infrequently erected signs warning that the land had been sprayed but this used to be shortly before the Deepings Show. He would not walk on the field during those times and he thought the notice was there purely to prevent dog fouling prior to the Show but he did notice other people walking their dogs during those warning notice periods. He did not recall seeing any notices during the Foot & Mouth outbreak warning that the footpath or field was quarantined. He remembered the time well as he was going at the time to Yorkshire for a "boys' weekend" and there were warning notices all around Yorkshire. He was confident that there were no such notices on the Application Land. He had not seen or been aware of, until recently (within the last year), any signs asking people to stick to the footpath.

    He was aware that the public footpath had a sign at the Millfield Road end and at the bypass end and that the footpath ran in a direct line. He did not recall a green sign next to the entrance but he remembered a sign near entrance A which referred to crops on the private field – this was probably about four years ago but it could possibly have been as far back as 2009 but he did not believe it was 2006. It was not a proper metal sign – it was handwritten. He took the view that it related to the field to the north and not the Application Land. The crops were in the field to the north of Entrance A. He could not recall the chestnut paling fence.

    He explained his routes to the Application Land and his use of the various entrances which depended on the route he was following. He had last used Entrance D about 6 months ago. The fence had been repaired but a section had been moved. He could not remember when the original fence had been damaged, but it could have been a long as ten years ago.

64. **Ian Newton** of Kesteven Drive, Market Deeping has lived at five addresses in Market Deeping since 1987 and, for the last 18 years in Kesteven Drive. For most of the 30 years he has lived on the Tattershall Drive estate. He was aware of the green areas on the estate but had not seen many children use them. He has used the Application Land and the public footpath on a regular basis. Initially, from the late 1980s, the Application Land would be used either as a route to West Deeping or a circular route beyond West Deeping to Maxey Mill and then following the river back to Market Deeping. This circular route would be walked, often a couple of times a week, weather depending. The full walk was 5.5 miles long and would take between 100-110 minutes to complete.

As his son grew older, from 1995 onwards they used to cycle the route at weekends, going across the Application Land and onto West Deeping or Maxey. During the construction of the bypass there was not normally any work being done at weekends and they used the empty tarmac or rough surfaces to race their bikes up and down. This was for a brief period of about one month when the tarmac had been laid but the bypass not yet opened. People used the Application Land whilst the bypass was being constructed. At this time, he and his family were living in Althorpe Close. They continued to regularly use the public footpath as part of their weekend leisure time until 2005. He could not recall any Foot & Mouth signage. His career is within the food sector and he would visit suppliers' premises, often farms, and so he was well aware of the impact of the Foot & Mouth crisis. The heightened security, washdown procedures and administrative paperwork required was enormous. He was therefore fully aware of the epidemic and how it was being managed. The nearest signs were at a farm on the outskirts of Deeping St. Nichols on the old A16 on the way to Spalding. He would have been aware of any signs had there been any in Market Deeping. You could not miss them if you had seen them as they were distinctive, and he would have known about it if the Application Land had been closed for 7 months. He was aware that the Deepings Show was not run in 2001 because animals could not be moved around the country.

He did not know who owned the Application Land. As regards the Deeping Show, the organisers were puting on a show for the local community so they would respect this and would keep away. He had seen two planning application signs and he also recalled the "tick spraying" signs on two or three occasions between 2000-05 but it was of little consequence to him at that time because they did not have a dog. They first got a dog in 2009 and from 2010 regularly walked her on the Application Land. They would use both the north and south fields to walk the dog, play ball and allow her to play with other dogs. This was a regular daily walk and they continue to do so. He would enter by entrance B and go into the middle of the field and throw a ball for the dogs.

From 2010 onwards they have also used the public footpath across the Application Land to go across the bypass and through the fields behind Bells Farm on a circular walk with the dogs, returning following the river.

He recalled the field to the north of the Application Land had crops on it. He used to walk along the edge of that field but a couple of years ago the farmer put up a sign about the crops, so he did not use it anymore and thought that most people had stopped using it now. He was only aware of entrance C being regularly locked and the entrance gates at entrance B are now more solid because of the travellers, but it is always open for pedestrians.

He was not aware of any footpath closure order when the Show was taking place as he did not use the footpath when the Show was on. The entrance at entrance C has always been locked. He could not recall it ever being open. He could not recall if the entrances at entrance B had ever been locked as he did not pay much attention to it because the pedestrian entrance there is always open. He had not used entrance D.

65. **Mervyn Barwell** of Belvoir Close, Market Deeping stated that he and his family bought their house from Persimmon Homes and moved in in May 1997. He was speaking on behalf of himself, his wife and their three children. When they first moved in, they owned a Westie dog which their eldest daughter (who was 16 or 17 at the time) took for walks on the Application Land during the week and he would walk the dog at weekends. He had spoken to his daughter via facetime about her recollection. She accessed it by entrance A and then walked in the field. She has no recollection of the northern field being ploughed or anything other than grassland. She has no recollection of any signs at entrance A between 1997 and 2008 when she left home. Their son, the youngest child, enjoyed playing on the Application Land with his friends, even when the bypass was being built. Around that time (when he was about 11 or 12) there were sheep on the land and there was an electric fence that went across the public footpath and there were bales of hay on either side so that walkers could climb over. Once you had climbed over the first two bales you were in with the sheep. They did not take their dog into the field when sheep were there, although their son and his friends continued to play in the fields. Other walkers did not take their dogs into the fields if the sheep were there. His son had drawn a plan (annexed to his statement) of what he recalled of that time and he knew of the bales and electric fence but did not see them himself and he accepted that he may be recalling what he was told. He could not say when this was and there was no date on the plan but it would seem that this reflected a situation at the time that the bypass was being constructed.

    He recalled seeing sheep in the early years, but he could not be more specific. He was then taken to OB Tab 3A 181 which is the 1999 Holding Inspection Report which referred to sheep grazing, 179 which is the 2000 HIR and 177 which is the 2001 HIR both of which did to sheep on the land but noted that it was permanent grassland and that sheep may have been on the land some of the time.

    Neither he nor his family attended the Deepings Show and he could not say if the public footpath was closed. He was unaware of any payment and he would walk his dog elsewhere.

    They did not always go on to the Application Land just when the dog needed walking. They would go on for other reasons. When he walked the dog, he entered via entrance B and exited via entrance A and would then walk down Millfield Road and back home. I would go wherever the dog went. The Application Land has always been used by numerous people, along with Millfield Road, for walking, jogging, playing and simply enjoying the countryside with birds in and out of the hedges. There are blackberry and sloe bushes and residents, including himself, would pick the fruit. Their fence line is next to Millfield Road so we can hear people in the road and field. Hedges have grown up a lot in 21 years so they can no longer see into the Application Land from their front garden. He produced an aerial photograph which showed his house in relation to the Application Land. He had never seen any signs nor been told to get off the Application Land.

When the bypass was being built his son and his friends on one occasion went onto the area where the bypass was being built and were chased off by workmen by which he meant off the bypass land rather than the Application Land. They were construction workers not the farmer. He could not recall there being any fence to keep people off the construction works but he assumed that there would have been one.

His house has an entrance onto Millfield Road from which he walks down the road to either entrance A or entrance B. He might have once climbed over entrance C as it was not open for access. At OB Tab 3A 116 which is a Google Maps photograph apparently from March 2009 and showed entrance C and showed the green sign which, on 117, could be seen as saying "No trespassing" but he did not recall seeing the sign in 2009. He did not recall using the entrances being like that, but he could not be certain. When he had been in with his Westie dog the entrance was different and did not recall any sign. At OB Tab 3A 113 there was another Google Maps March 2009 photograph of entrance A which showed another green sign – he was unable to recall when people would go around that entrance by removing any obstruction. At that time his use of entrance A would have diminished, and he would be walking via that entrance once a month at best. He was asked about the northern field by which he meant that section of the field between entrance A and entrance B. He had asked his daughter about this. He was asked to look at AB Tab 7 76 [which is a photograph attached to the witness statement of Dr. Mistry] that appeared to show that the northern half of the northern field on the Application Land may have been in agricultural use. It was taken in 1996 before his house was built and he could not remember the field being split like that.

66. **Derek Hughes** of The Hawthornes, Market Deeping has lived in Market Deeping with his wife since 2009. Prior to that he lived in Northborough, a couple of miles away, having moved from the south in 2002. His neighbours had told him about the Application Land, and he would visit it to pick elderberries, sloes etc. He is a few minutes' walk away from the Application Land, but they might travel by car if they were on their way back home. They use the field with their grandchildren (who are now 7 and 5 years old) since they were about 2 years old for exercise, playing games such as football and educating them about wildlife. They also involve them in blackberry and sloe picking and in jam preparation. They do not own a dog but act regularly as substitute dog walkers. His daughter lives across the road. These activities play a major role in friendly social interaction with local residents and visitors. It is one of the calmest friendliest places and the land is enclosed and safe and secure to allow children and pets to run freely. They use the Application Land at least bi-weekly, all year round. It is different to the green spaces on the estate. He did not recall seeing any animals grazing in the fields nor did he recall any signs except the one by the ploughed field which is at the top i.e. north of the northern field. He did not know the owner.

He did not recall any farming activity or hedge cutting although he had seen hay making and baling in the last couple of years. Whilst he did not witness it being carried out, he had seen the end product.

The sign by entrance A was directly in and at the front of the ploughed field i.e. the field north of the drain. He had not noticed the sign shown on OB Tab 3A 114. He did notice a white sign just above ground level where the drain is. He could not recall the type of fencing in that location.

67. **Jack Thompson** of Towngate West has lived in Market Deeping since 2004 and lives just about 7-8 minutes' walk (or about one third of a mile) from the Application Land. He goes to the Application Land at least twice a week. He has made many friends when walking the dogs and he considers it to be as much a community as squash, badminton or walking groups. You could see Muntjac deer running across, foxes, rabbits and red kites overhead. Bird life dominates the trees and hedgerows and it is a good spot to pick blackberries. It is used for walking, running and cyclists also use it. He last jogged on the Application Land in 2012. He is not aware of being denied access. He has worked as a delivery driver for a marquee company in Peterborough and access was not restricted when he delivered to the Deepings Show. Public access was never restricted during the set up and clearing up times. They would usually set up on a Monday for the Friday. The marquees would be delivered on an articulated lorry. He could not say when the marquee would be removed but it might be the day after. He has not attended the Show since 2004.

    He was taken to OB Tab 3A 125 – which showed entrance A in December 2017. In his view the new fencing does not stop access. Entrance A has been an easy access point. He discussed how, when circuses and fairs were set up and taken down in John Eve's Field, the area is no fenced off and dogs ran everywhere.

68. **Caron Romaine** of St. Guthlac Avenue moved to Market Deeping from East London in November 1999. She had known the area before that as her mother lived in Deeping St. James since 1993 and her sister had moved there in 1987. She would visit them every school holiday. She and her husband have three children. The Application Land is about ten minutes to get to from her house.

    Her first visit to the Application Land was for the Deepings Show in June 2000. It was a very large event and she was pleased that her children would learn about their new area from a local show right on their doorstep. From her house it was possible to hear the tannoy announcements about all the weekend's displays and events. It was wonderful to see the animals close up and the displays of tractors parked up at the edge of the north field. It was an opportunity to experience the community atmosphere. There was a large arena for various displays such as dog agility training, motor cycle display teams. She really enjoyed the art exhibitions in the marquee. Churches Together always held a service in a marquee on the Sunday afternoon that had contributions from four churches in the area. She attended free of charge with her children.

    In 2001 there was no Show because of the Foot & Mouth crisis. Access was not restricted because of the Public Footpath. There were no farm animals, and no one was moving cattle. Many people continued their walks during that period. There were no cases of the disease in this part of Lincolnshire. She never saw any signs even though she had seen some at Burley House on television.

Her children appreciated the freedom that the Application Land gave unlike at John Eve Field. It was in 2003 that she helped a friend teach her son to ride his bicycle on the Application Land as it was safe there. The ground is soft. Cycling was something that she had encouraged her three children to do. It is an appealing place for fitness walking and dog walking and to de-stress after work. By contrast, John Eve Field is divided into sections and had a BMX track installed where dogs were excluded.

She was asked about her "Mum's diary" document. This was for a children's school project and it covered just a single week in one October. It contained only one mention of going to the "Showground field" for dog walking on the Monday at 9.15 am. She confirmed that she walked in other parts of the town, but the Application Land was the most convenient for her. It was hard to put a number on it, but she might use the Application Land maybe four or five times a week.

She did not see any signs. She never saw any restrictions on use. She was asked questions about the census (AB Tab 6 42 onwards) undertaken in September 2018 and the SurveyMonkey but these (including the photographs) are matters outside the 20-year period. However, it is noted that (on 52) 3 people appear to have stated that Lincolnshire County Council had given them permission to use the Application Land, but no further details could be provided about this.

She was also asked about her personal statement at AB Tab3 20 and was asked about the location of the photograph or her dogs at 21 which she believed was taken in 2014 or 2015 as was the photograph of entrance A at 23. She was then asked questions about her Open Spaces Society questionnaire at AB Tab 2 276-287. This was dated 24 May 2017 and also included copies of those photographs. She confirmed that she recalled filling in the document in the town centre, in she believed the Oddfellows Hall. In question 5 she states that she has known the Application Land since 1987 when her sister moved to the area. Question 13 refers to the footpath entrance B, but she has used other entrances. In question 35 the reference to 1997 should be to 1999.

69. **Dr. Chandra Mistry** of Millfield Road, Market Deeping moved with his family to his present home in November 1995. He is a retired NHS Consultant Physician with a special interest in kidney diseases. His home is directly opposite the south field of the Application Land and close to entrance C.

Since his arrival, he has witnessed a steady stream of people using the field for a number of recreational activities including jogging, cycling but mostly walking and dog walking. It is a beautiful open green space, surrounded by natural hedges, mature trees and a well-established country land to the east. It induces a sense of peace and tranquillity and has drawn people for the local community for ages and from a wide age group. They come regularly day in, day out irrespective of the weather. He has seen frequently friendly interactions between walkers, characteristics central to a healthy lifestyle.

He was inspired by the location and took up daily walking, initially with the family dog but for the last decade on his own. He walks a minimum of 6 miles a day including walking through the Application Land. He also walks on the estate green spaces, but they are small, rather sterile and he is not surprised to see the low level of use of those spaces.

He understood the Application Land to have been bought by the Objector in 1920 for agricultural purposes but since then it has been used for several community-related events, especially the Deepings Show from the mid-1960s. Its configuration, and the agricultural tenancy, has changed over 20 years, just prior to the bypass construction. He remembered the south field as always being grassed but the north field, which was previously arable, was also partly grassed in 1996 – he attached an aerial photograph from 4 June 1996 which he had obtained from Air Images Limited. This photograph is outside the claimed 20-year period, but it was taken just after the 1996 Deepings Show on 1 and 2 June 1996. The photograph appears to show that the northern field was divided at the time of the photograph into two parts, of which one half appears to have been grassland. By the time of the 1997 Show construction on the bypass had commenced and the Show took place on both fields so that the north field could not have been either arable or ploughed. It appeared to him that the Objector, through various tenant farmers, demonstrated a low-level of management over the past two decades with no regular fixed commitment to the Application Land other than the annual Deepings Show and, more recently, a couple of hay collections with sporadic supervision. In comparison, to regularly farmed land. The local community recreational activities continued undeterred and flourished day- in, day-out throughout the year, and irrespective of the weather.

He lives opposite entrance C. There has always been an iron entrance there, but it was not always locked. It was cumbersome to open and close so that is why it was not always used. Sometimes it is locked. He presented photographs of the entrance taken in 2012. Entrance B was replaced after the problem with the travellers. His photograph showed it in a delipidated state and he saw no evidence of notices instructing people to keep to the footpath or not to trespass.

He was asked as to whether he was aware of the legal tests for registration and that tranquillity was not part of that test. He considered it to be irrelevant to the context. He was then asked about use for riding electric quad bikes and small motor bikes and whether that affected tranquillity. In his view tranquillity is not a fixed state of mind and some might not find it unacceptable. He had not seen them being ridden on the Application Land but thought that it would not add to his sense of tranquillity. He agreed that the noise from the traffic on the bypass did not add to the sense of tranquillity and that is why the residents had fought for the inclusion of the noise bunds.

He has used entrance B most of the time. He had no set routine circuit and would walk all over the fields. When he had work commitments he would walk at weekends. His 6 miles a day is more recent (within the last four or five years). Prior to that, his weekend walks would be via entrance B, walking around the Application land and beyond. He would use both fields. He would walk past

entrance C. He was asked about the photograph at OB Tab 3A 116 – the photograph of entrance C and the green sign – which looked like the sign in his photograph taken in 2012 but its image was smudged. He did not know how the sign had become defaced. He could not recall it saying: "No trespassing". He had only used entrance A to exit from the Application Land when on a circular walk. He had seen a small white sign near that entrance. He was not part of the Deepings Show.

70. **Laura Edwards** of Dene Close, Market Deeping moved to Market Deeping two years ago but has been using the Application Land since 2011 as she has family close by and would walk around it at weekends and evenings. She explained the positive impact this use has had on her life and how she would walk her three dogs on the Application Land, sometimes up to three times a day. She enjoys seeing all the wildlife. She has made many friends as a result of using the Application Land. She walks her dogs all over the fields every morning and evening. She recounted how the travellers moved on to the field and the mess that they left behind and how she organised the clear up of it by local residents and she produced some photographs of the clean up operation. The rubbish was put out by the man entrance for the Council to pick up. When on the fields she sees people jogging, walking with or without dogs, teenagers enjoying the space in the summer, picnics, blackberry picking, ball games and kites being flown. No one sticks to the footpath.

71. **Peter Wells** of Tattershall Drive, Market Deeping spoke with the assistance of his wife. They moved into their house in 1994 when it was newly built. At the time they owned a border collie-cross dog who was very active and needed a lot of exercise. The bypass had not been built at that time and their favourite walk was a circular one across the footpath at the top of Millfield Road (from Town Entrance West not Footpath 2) and across the fields to the dyke and back round through the Application Land. Although they followed the public footpaths and were respectful of crops when the footpath was in a grassed area like the Application Land they did not stick to the footpath. Over the years they would sometimes walk through the Application Land as the Deepings Show was being set up or packed away. No one had ever said anything to them and there was never an issue.

    He walked all around the Application Land before the bypass was built. He tried to cross the bypass once, but it altered their walking pattern and it has basically rendered the public footpath obsolete and the fields on the Application Land are the only place where we can walk now.

    They did go to the Deepings Show when their son was young but after a while it became a bit "samey". They did not pay to get in. He thought any payment was for local charitable causes. You could also still use the public footpath and he did not know if it was closed.

    Mrs Wells has an art degree and is an art teacher. Over the years she has gone on to the Application Land to sketch as it is very close and a place of quiet seclusion. In 2001 they would have noticed if their walks had been prohibited by closure of

the public footpaths for seven months. They did not recall any notices and would have certainly stopped using the footpaths if there had been a Foot & Mouth notice.

Six years ago, Mr Wells suffered a life-changing accident and is no longer able to walk. The Application Land has been especially important to them both as Mr Wells is able to have some independence by driving his electric wheelchair around an area of open countryside. For Mrs Wells, it helps lift her spirits when she is struggling with the impact of her husband's accident. They continue to use the Application Land today.

He sees more people use the Application Land now than before the bypass was built because of the bypass and because Market Deeping has grown so much.

72. **Frances Thackray** of Rockingham Close, Market Deeping has lived in the town since March 1997, firstly in Chestnut Way, then on the High Street and moved to Rockingham Close in September 2015. When she moved to the town, she was told about the Application Land by other school parents. It was a short walk from Chestnut Way. One of the reasons for their move to their current home in September 2015 was the proximity of the Application Land. She has used the Application Land at least once a week whilst living in Chestnut Way and the High Street and daily since moving to their current home. She would wander freely over the Application Land and her dog would go everywhere. There is quite a community of walkers, dog lovers and keep-fit enthusiasts on the Application Land and it is of great comfort to elderly residents. She currently walks her dog on it twice a day which often means early in the morning before catching the train to work in London and even at 5a.m. there are residents on the land. She walked her dogs on the Application Land when the travellers were present and was not aware of being refused entry during the Foot & Mouth crisis or when the Deepings Show was on. She used the Application Land during the seven-month crisis and did not recall any signs. She came from a family of dairy farmers so knew about foot & mouth disease. She recalled accessing the land during the Show when walking her dog and she was not charged an entry fee, but she did recall paying when just visiting the Show. She did not recall seeing advertisements or signs regarding charging. She also explained the relevance of the Application Land to her husband's bee keeping.

    She tried crossing the bypass once, but it was very difficult. She used entrances A and B for entry and has not used entrances C or d. She would enter by the footpath at entrance B and used both the north and south fields. She thought that the signs by entrances A and B appeared in the last year.

The Objector's Oral Evidence before the Inquiry

73. It is important that members should note that the Objector's witnesses have less direct day-to-day knowledge of the use of the Application Land throughout the 20-year period. However, this is fairly common with institutional landowners such as local authorities who may have numerous landholdings spread out across their administrative area. Furthermore, the Application Land is located on

the border of the county with the Cambridgeshire and is some considerable distance from the main administrative centre. On the other hand, the Objector possesses certain documents relating to the Application Land that the Applicant does not, or could be expected, to have. The evidence should therefore be viewed in that context. I have therefore summarised this evidence in some detail and, in a later section, review the witness statements and the Objector's supporting documentary evidence in the final section dealing with my findings and recommendation.

74. **Blayne Anthony Hallam** of Thurlby Fen Farm, Long Drove, Thurlby has farmed the Application Land for two years when he took over the farm tenancy. He has lived at Thurlby Fen Farm since he was three years old and it is located about 6 miles away from the Application Land. He has been a farmer all his working life but undertook landscaping work (including maintenance) for Tarmac Homes and Persimmon Homes on and off over a 26-year period on the Tattershall Drive estate and he is familiar with its layout including the green spaces. He thinks that two of the green spaces still belong to Persimmon Homes but is not sure if they have been adopted by South Kesteven DC.

    Since taking over the tenancy he has had two hay crops off both fields using a round baler. He has been prevented from using the fields for arable crops because English Nature have said that the soil is too thin and that there was archaeology under the land, even though the north field was originally arable.

    In January or February, he cuts the hedges on both the field and road sides, removing saplings with his tractor. This would take him about two days to complete. In February or March, he spreads manure on the fields in a process that would take him about two days. Currently, during the spring, he sprays both fields with weed control then applies a top dressing. The grass is cut in May or June to be used as hay. It is left on the land to dry and he visits it each day to turn the grass so that it is evenly dried out. This operation takes about one week to complete. He usually erects signs saying: 'Spraying in Operation – Keep Out' and he usually sprays in the evening "after the surge of dog walkers have left the Site". He also does this where he farms at Langtoft because of dog walkers.

    The site is secured by entrance gates, but these were damaged by the travellers and he did extra work to entrance B gate to make it more secure. When he took over the tenancy there was a wooden entrance gate at entrance A, but all the other entrance gates had been taken up, so he put in temporary stock fencing until the entrance gates were replaced but the travellers ruined the entrance gates. There was a 'no trespassing' sign by the gate at entrance A. He has seen people climbing over entrance gates even when chained up and on 6 December 2017 (outside the 20-year period) he noted that the fence at the southern boundary of the south field was broken. He did once have someone camping on the field near entrance A. A lot of people enter the site via the public footpath but also at entrance A.

    The main activities that he has seen are dog walkers, a few joggers and mountain bikers – a lot of dog walkers circuit both fields and access the Application Land

from all three entrances. He has not seen anyone playing games. At haymaking times, the dog walkers still use the fields even walking down the centre of them. One or two have asked if they can still walk down the centre but he has told them to stick to the outside edge. Some people do trample routes through the long grass before it is cut. Generally, dog walkers have stuck to the outside edge. He confirmed that the photograph produced to the inquiry of a child riding in a tractor was his tractor and was being driven by his father. It was taken at haymaking time. There were two tractors at the time – one raking and the other baling the hay.

He does not leave his machinery in the fields overnight and takes about 350 round bales off the land. People still use the Application Land whilst haymaking was going on, so he has to be aware of their presence when using machinery.

He explained about the travellers and the efforts he had to go to in order to secure their removal, how they had moved from Tattershall Drive onto the Application Land and how the local residents had participated in the clear up including removing a Coca-Cola vending machine that had been left there. In general, he visits the land about once a month to check the main entrances and would be there for about 15 to 20 minutes. He parks at the main entrance. He also explained the difficulties that he now faces with regard to re-introducing arable crops. With regard to spraying he confirmed that he has seen dandelions and mushrooms on the Application Land. His spraying concentrates more on nettles, dock leaves and brambles. He has told people that the land is private, and he confirmed that some are people were understanding and were quite willing to stick to the edges.

75. **Ronald May** is a consultant principal engineer with WSP, and previously he had worked since 2002 for Lincolnshire County Council as a Principal Engineer in relation to road schemes and, before that, as a Senior Engineer to the Council. During his time with the Council he was involved in the promotion and subsequent construction of various road improvement schemes including the A15/A16 Market Deeping Bypass. He produced copies of various related statutory orders and other relevant documents. He confirmed that he was the Project Engineer for the overall proposals and his first involvement was in the early 1990s. His evidence demonstrated that he played a central role in the construction of the bypass including the section in the immediate vicinity of the Application Land.

Planning permission for the construction of the bypass had been obtained in 1992 or 1993 and the line of the bypass was protected in the 1995 Local Plan for South Kesteven. A public inquiry into the scheme was held in October 1995 although he did not present evidence himself to the inquiry. The relevant orders were confirmed, and he believed that construction of the bypass began in late 1997 and it opened to traffic in July 1998. His direct involvement with the bypass ended with its opening subject only to ongoing maintenance issues. He last visited the scheme when the landscaping works were completed, possibly in 2002. He explained the scope and extent of the investigative work undertaken in order to satisfy the inspector at the inquiry. In particular all landowners and

occupiers were identified including agricultural tenants. He was able to state with absolute certainty that the investigations did not reveal any claimed use of the land other than the rights of the owners, occupiers including agricultural occupiers and users of the public footpath. However, such investigative work will have covered a time before the commencement of the relevant 20-year period.

He explained how the noise bunds came to be constructed and confirmed that a meeting on-site had taken place with local residents, although he had not attended that meeting. The bunds were constructed by the time the bypass opened. He produced two photographs taken at the time that the bypass was opened although neither photograph looks directly into the Application Land. However he was able to confirm from his own knowledge two important facts – that the fencing shown on the photographs was identical to the fencing used throughout the proposals to mark the boundaries and that the top photograph shows the bund to the east of the bypass, although the planting had not taken effect at that stage.

He also stated that the Application Land did not exist in its current form until after the bypass was constructed. During construction, the land being used to construct the bypass and its mitigation bund was fenced off from the rest of the field to enable the construction to be carried out safely – see OB Tab 3A 121. The area contained within the Application was not therefore available for any such use until July 1998 once construction was complete and the bypass opened. However, in my opinion, it is important for members to note that the Application Land covers (and at all material times covered) what may be considered to be the residue of the two fields i.e. the area of land that excluded that taken for the bypass and noise bund construction. In other words, the whole of Application Land (as applied for) was available for public use at the commencement of the relevant 20-year period and unaffected by the bypass construction.

He also made two comments regarding the assertion that it had been claimed that cycling took place on the new road at some stage during the construction process. He explained that at no time had anyone raised in his meetings with the appointed contractor (Mowlem) any issue with unauthorised access to the site. He also explained that there were no reports of footprints or cycle tracks on the cement bound ballast.

He was not sure if the public footpath was closed during construction. A footbridge was too expensive to justify constructing and would have affected the viability of the scheme, as it was constructed during a time of difficult funding. The road signs erected about the number of deaths were to influence drivers' behaviour rather that to warn of specific past incidents. They were not one-off signs specific to a particular location but were specific to individual routes.

76. **Lynette Swinburne** is an associate director with Savills (UK) Limited, and she works in the Rural, Energy and Projects Team. She has been with Savills since January 2017. The purpose of her evidence was to provide a historical evidence of the promotion of the Application Land as a possible housing site.

She described the Application Land and that it comprised Grade 3 agricultural land. She explained the local plan situation and the Core Strategy (2010), the adopted and emerging local plans including the timetable for the preparation of the emerging local plan.

Promotion of the Application Land began with the "Call for Sites" by South Kesteven District Council in January – March 2015. A meeting between the District Council and the Objector took place on 11 January 2016. The site was included as a proposed allocation in the Consultative Draft Local Plan (DEP1-H2: Millfield Road – SKLP30 – for 200 dwellings (indicative)) which was published for consultation between 3 July – 11 August 2017. 146 representations were received in connection with the Application Land and most had opposed the development as they expressed concern over matters such as the loss of open space, natural habitats and wildlife and the Application. By the time that the Draft Local Plan was presented to the Cabinet on 10 May 2018 site DEP1 H2 was no longer included as an allocation due to the lodging of the Application.

She also explained the progress made with regard to the planning application, the approach to growth in the development plan and the current (at the date of her witness statement) 5.3 years housing land supply, although this supply was uncertain and an appeal decision on 2 February 2018 had allowed an appeal for 480 dwellings at land to the north of Longcliffe Road, Grantham. The Statement of Common Ground at the appeal inquiry had accepted that the District Council was unable to demonstrate a 5-year housing land supply which the inspector accepted and took the view that paragraph 49 of the NPPF and the 'tilted balance' in paragraph 14 therefore applied.

She acknowledged that planning applications and village green applications are processed under different statutory codes.

77. **Sarah Wells** has been employed by the Objector since February 1999 and between 2009-2014 she worked as a Property officer with responsibility for County Council owned farms and the financial management of the Objector's owned land and property. Since August 2014 she has held the role of Business Manager for the Corporate Property Team with responsibility for County Council owned farms.

She explained the role of the managing land agents appointed by the Objector, that Clegg Kennedy Drew had merged with Savills and that the current land agent for the Application Land is Jonathan Wood. She explained that the Application Land had been identified since 2013 as a possible development site to provide potential revenue for the Objector. The Objector is under a legal duty to secure the best value for the land. She is duly authorised by the Objector to object to the Application and that she considers the Application Land to be agricultural farmland, with development potential and has been used continuously since its purchase for agricultural purposes.

If the Application Land had been used as claimed over the previous 20 years, she would have expected to be informed of this by the managing agents. She

confirmed, from documentary records but not personal knowledge, that she has not been informed of any use prior to 2006 when the Objector was informed that the public were using the Application Land as a dog walking circuit and the Objector, through its managing agents, took evasive action and erected signage warning them that the land was private.

As far as she was aware, the initial trespass by the travellers was dealt with by the agricultural tenant, Mr Hallam, as part of his responsibilities. When the second trespass the objector decided to assist Mr Hallam. She explained the respective roles of the Objector and the District Council.

78. **Jonathan Wood** is a director of Savills (UK) Limited in the rural estate management team. He has been with Savills since 2004. He is a Chartered Surveyor, RICS registered valuer and a Fellow of the Central Association of Agricultural Valuers. His responsibilities include the day to day management of the Objector's farmlands. He first became involved with the Application Land in 2007 and he undertook site inspections of the Application Land in 2008, 2010. 2012 and 2014 as shown in the Holdings Inspections Reports ("HIR") contained in the OB.

From his records he was aware that the Application Land was part of OS parcel no. 0005 (totalling 25.93 acres/10.493 hectares) and was known by its holding number 204F and forms the southern field and OS parcel no. 8434 (totalling 23.62 acres/9.538 hectares) and was known by holding number 204B and forms the northern field. The Application Land is now known by holding number 204A.

The records show that Mr H N Smith took over the tenancy of plot 8434 in 1991 and it was described as being arable land set to sugar beet. The tenancy agreement dated 18 December 1991 and (deed of surrender) 31 May 1997 states that the land was arable and is corroborated by the re-letting in 1998 and, more specifically, a letter dated 17 August 1998 which confirms that the balance of plot 8434 to the west of the bypass was also in arable use.

It was his view that the arable use of the Application Land makes any claimed use by the public highly unlikely at this time because it would be incompatible with the claimed usage in that normal arable farming practices on the land would have in all likelihood have prevented the ability to use the land as claimed. In his view the land would have been ploughed and cultivated which would have made the terrain unsuitable for the claimed uses. Following the establishment of a crop it would have been normal for agrichemicals to have been sprayed on the land to prevent weeds, pests and fungi. Once established the growing crops would have restricted access, if not prevented it altogether. In his experience, the public has a respect for growing crops. He was sure that if such incidents had occurred the tenant would have immediately brought this to the attention of the managing agents. He had no such records of any reports. On this basis, he saw it most unlikely that the claimed use would have occurred whilst arable crops were being grown on the land.

In addition to plot 8434, Mr Smith also tenanted parcel 0005 and a letter of 21 October 1991 confirms that the land was permanent pasture and indicates that he had the right to permit the Deepings Show Committee to use the 25-acre pasture field for up to 2 weeks in June each year. In 1997, the land was sub-let to K J Adams and was permanent pasture. Prior to the creation of the bypass in 1997/98, the Deepings Agricultural Show was held on parcel 0005, including land that is now both east and west of the bypass.

He was aware that the grass pasture plot 0005 had been grazed by cattle and sheep. The HIR dated 23 July 1999 records that sheep were grazing at the time of inspection and he was also aware that the Deepings Show Committee arranged for local farmers to graze sheep or bullocks on the land in other years, as the HIRs from 2000, 2001, 2002 and 2004 make reference to the land sometimes being used for sheep grazing. It was his understanding that in order for the land to be grazed an electric fence was erected to the south of the dyke running parallel with the public footpath so as to enclose the northern boundary of field 0005 and thereby make this field "stock proof" to prevent livestock straying outside of field 0005.

He then examined the available evidence in relation to the bypass, the unauthorised usage in 2006, the Deeping Agricultural Show, the development potential and recent events.

In 1997-98 the County Council constructed the new bypass which went through parcels 8434 and 0005. Plans attached to a letter of 22 July 1957 and a MAFF notice and plan of 26 February 1992 showed the layout before the bypass was built. The bypass resulted in new field shapes being created and new wooden post and rail fences were erected inside the new noise bunds. During visits by him on 6 and 19 December 2017 (i.e. outside the 20-year period) he noted that part of the boundary fence had been vandalised in the vicinity of entrance D in what he considered was an apparent attempt to create an access route to the Application Land.

He explained the normal practice of visiting and inspecting holdings prior to the expiry of each tenancy to identify any possible management issues. He briefly summarised the relevant points from the HIRs in chronological order (and the identity of the person undertaking the inspection is shown in brackets):

HIR 23 February 1998 (D Barron) – cropping reported as permanent grassland. Use for Deepings Agricultural Show noted. Bypass construction noted with recommendation to "ensure roadworks are adequately fenced and hedged".

HIR 23 July 1999 (D Barron) – cropping reported as permanent grassland. Use for Deepings Agricultural Show noted. Sheep grazing recorded at time of inspection. "New hedging, earth bund and fencing to the bypass as accommodation works" noted. Report notes "some occupiers on Millfield Road dump their grass cuttings on the roadside verge" and "bypass now open".

HIR 14 July 2000 (D Barron) – cropping noted as permanent grassland "sometimes used for sheep grazing and once a year for the Deepings Agricultural Show". Also notes "New hedging and earth bund and fencing to the bypass side as accommodation work" and "the usual continual problem from the occupiers of houses opposite who dump their grass cuttings on the roadside verges and some prunings".

HIR 12 July 2001 (D Barron) – cropping noted a permanent grassland. Also notes "sometimes used for sheep grazing and with permission once a year for the Deepings Agricultural Show" and the holding is "bordered by the earth bond (sic.) to the Deeping Bypass now becoming nicely grown up and by a mature hedgerow and trees to Millfield Road". It notes that the Show was cancelled that year due to the Foot & Mouth outbreak and reports "..an ongoing problem unfortunately with householders opposite dumping the garden clippings in the roadside boundary dyke" and that the "permanent grassland appears to have been grazed up until recently".

HIR 20 March 2002 (D Barron) – cropping and Show use recorded as in 2001, notes the position with the bypass bund and comments "…from time to time we have problems with householders dumping their domestic grass cuttings etc on the dyke bank – appears okay at present".

HIR 6 January 2004 (D Barron) – cropping and Show use recorded as in 2001, notes the progress with the bund tree planting and also notes "Rang Mr Allen from the site to inform him that we had had an enquiry from a Mr Fox asking permission to use a blank firing gun for dog training purposes at the weekends – left message for Mr Allen to ring me to ask if he was aware of this and that our first reactions were that we were not keen on this activity so close to the houses. It is to be noted that an email (OB Tab 3A 233) from Rob Butler (of the HBS Business Services Valuation Team) to David Barron dated 24 December 2003 states: "David, I have recently taken an enquiry from a Mr…regarding the County Council's land at the Showground, Market Deeping. Mr… is training a gun dog and wants permission to use a blank firing gun for training purposes at the weekends on the land. I suggested to him that this would be unacceptable given that the land is likely to be tenanted, but as I do not have details said I would pass the enquiry on for your observations." It also notes "…occasional problems with householders from time to time dumping their domestic grass cuttings on the dyke bank – appears okay at present".

HIR 5 April 2006 (K Ward) – cropping recorded as "permanent grassland which holds the Deepings Agricultural Show once a year". It notes the bypass bund and tree planting. It also records: "The Chairman of the Deeping Show Society confirmed that they were now struggling to find a grazier to take the land on due to the decline in the number of stock farmers and increase in the amount of grassland available. It was almost getting to the stage where they would have to pay someone to graze the land and clear hay from it." It also notes, for the first time: "It was also reported there continues to be an issue with people walking all over the showground site and are not sticking to the actual right of way present over the far corner of the far corner of the land. I confirmed we would look into

the erection of signs to prevent a right of way by prescription being obtained over the fields, particularly bearing in mind their potential development value." In Mr Wood's view, this ties in with the action taken which he described in paragraphs 12 and 13 of his witness statement.

HIR 4 April 2008 (J Wood) – cropping, the Deepings Show and bypass tree planting all recorded. It states: "Mr Allen, the Chairman of the Deeping Show Society confirmed that they were topping the grass and no grazing or mowing" and "It was also reported that there continues to be an issue with people walking dogs all over the showground site and not sticking to the actual right of way present over at the far corner of the land. This is despite the erection of signs, some of which have been damaged. Measures need to be taken to prevent a right of way by prescription being obtained over the fields, particularly bearing in mind their development value."

HIR 30 June 2010 (J Wood) – the notes are identical to that in 2008 - "Mr Allen, the Chairman of the Deeping Show Society confirmed that they were topping the grass and no grazing or mowing" and "It was also reported that there continues to be an issue with people walking dogs all over the showground site and not sticking to the actual right of way present over at the far corner of the land. This is despite the erection of signs, some of which have been damaged. Measures need to be taken to prevent a right of way by prescription being obtained over the fields, particularly bearing in mind their development value."

HIR 12 June 2012 (J Wood) – the notes are identical to those of 2008 and 2010 - "Mr Allen, the Chairman of the Deeping Show Society confirmed that they were topping the grass and no grazing or mowing" and "It was also reported that there continues to be an issue with people walking dogs all over the showground site and not sticking to the actual right of way present over at the far corner of the land. This is despite the erection of signs, some of which have been damaged. Measures need to be taken to prevent a right of way by prescription being obtained over the fields, particularly bearing in mind their development value."

HIR 3 June 2014 (J Wood) – cropping, Deeping Show and bund recorded as in the previous years. It notes "grass topped off, but no grazing or mowing is undertaken" and "Land is used regularly by dog walkers etc who are not adhering to the routes of the Rights of Way. DSS now trying to resurrect Show, which was held in 2013. Land may have development potential."

HIR 20 June 2017 (O Smith) – the tenant is now shown as B A Hallam - cropping reported identically to previous four reports. Notes "long grass, but no grazing or mowing is undertaken" and "Land is regularly used by dog walkers, etc who are not adhering to the routes of the Rights of Way. Problems with gypsies – 3 caravans, 2 vehicles, and fly tipping in corner of middle fields. Land may have development potential."

Mr Wood recalled that during his inspections he saw dog walkers on the land walking around the edge of the fields, but he did not recall seeing any other use of the land by members of the public. He remembered being surprised by the

proportion of dog walkers who arrived by motor vehicle, usually parking by entrance B, which suggested that these walkers were likely to originate from outside the immediately local area.

In April 2006, in a meeting with Miss Katy Ward of Savills (as recorded in a letter of 22 May 2006) the Show, as tenant, informed Savills that there were "problems experienced with the dog walkers trespassing away from the public footpath". Miss Ward stated that she had obtained advice from Lincolnshire County Council's solicitors and that they had recommended two courses of action – (1) to lock the entrances which are not directly next to the public footpath "as a deterrent to unauthorised entry. We are of course aware that the entrance by the public footpath cannot be locked as it is of course illegal to obstruct a public footpath" (2) "we are also arranging for signs to be made up stating that there is 'no public right of way', which I would be grateful if you would be able to erect at suitable points around the field along the dog walking track and perhaps on the other field entrances, to prevent any public right of way being gained by prescription. I am of course aware that at some point these signs may be damaged or removed and I would be grateful if you could let me know when these circumstances occur so that we can keep notes of this for our files and also to arrange for replacement signs to be delivered. I am sure that at the end of the day many people will ignore the signs and will continue to trespass, but I fear that there is little else that we can do with regard to this situation." A subsequent memorandum of 23 May 2006 from Miss Ward to Richard Bullock (of Savills) stated; "As you are aware we have been experiencing problems with lazy dog walkers doing circuits on the showground field rather than using the public footpath [*the next section is unreadable*] we arrange for signs stating 'no public right of way' to be placed on the entrances into the field and at certain points around the field. I believe that there are two access entrances into the field, one of which is next to the public footpath, therefore we will only need to put one on the other entranceway with probably two or three to go round the field. The Chairman of the Deeping Show Society is happy to arrange for the signs to be erected if we can get them delivered to him."

The memorandum then goes on to refer to a different area of land. A purchase order of 26 May 2006 from Savills in relation to two sites ordered in respect of the Application Land the erection of "Public Footpath' and "No Trespassing" signs "by entrances into the Show site at Market Deeping" and "Remaining 3 spread along accessible boundary". Copies of the relevant orders and invoices were produced as exhibits. In his view the signs were erected in November 2006 and the "Please keep to the public footpath" and "No Trespassing" were erected at entrance B and other signs along the accessible boundary, specifically a sign marked "Private Farm" was erected at entrance A and "No Trespassing" at entrance C. Photographs taken on 23 June 2017 show that one sign is still in place adjacent to the southern entrance on Millfield Road but it has been vandalised. From his inspections he recalled that at entrance C a sign was erected stating "No trespassing" that is still present but has been vandalised and at the northern entranceway a sign was erected stating "Private Farm" which can be seen on the exhibited Google Street View photograph dated 2009.

He was aware that the tenancy to the Deepings Agricultural Show committee included a reference to the permission to hold the show and he was aware that this was an event at which the general public were charged for access and that the general public were excluded from the land for the duration of the two day show unless they paid an entry fee. It was held annually usually on the first weekend in June, up until 2013. It included animal showing and judging, trade stands, equestrian show jumping, animal displays, vintage machinery and other activity typical of country shows. Car parking was located on the northern field with the rings, stands and other activity on the southern field. Consequently, even paying members of the public were excluded from the animal enclosures. The Show also required a temporary closure of the public footpath for which applications were made by the Show Society and for which consent was given. This prevented any unauthorised public access by non-paying member of the public during the period of the Show. There were no permanent installations in relation to the Show other than some stoned track areas adjacent to the accesses. During the Show the entrances would have been stewarded and entrance would not have been possible to the land by the general public without an entrance fee being paid.

The Deeping Agricultural Show gave notice to leave the tenancy in March 2015. He outlined the development potential of the Application Land and that it was his belief that this prompted the village green application. He also outlined recent events in June 2017 when travellers moved on to the Application Land. He also introduced aerial photographs from 1999, 2003, 2005, 2006/07 and Google images from 2009. It was his view that use of the Application Land had proliferated very recently. A second witness statement details his visit in December 2017, contractor's works in February 2018 and the re-entry on to the Application Land of travellers in May 2018 and the damage that they had caused.

79. **Mandy Withington (formerly Wood)** is a senior solicitor with the Objector. She explained her role within the County Council and, in particular, in connection with village green and public rights of way applications and she detailed the investigation undertaken by her in relation to the Application.

She set out the history of the Objector's purchase and use of the Application Land and how the title and agricultural holding numbers had changed over time and that the numbers currently used represent the position since the bypass was constructed. During the period of the claimed use the Application Land has been tenanted by two people – Mr Allen (acting as the Chairman of the Deeping Agricultural Show) from 1997 until 2015 and Mr Hallam, the current tenant.

Upon receipt of the Application and the accompanying evidence, she studied the documentation provided and assessed the user evidence and she summarised the position in a table (OB Tab 3a 15) and plotted the users' addresses in relation to the Application Land (OB Tab 3a 17 & 19) in order to determine whether they lived in the locality. She found 3 users who lived outside the locality and 3 who lived outside the locality for part of the claimed period. In her view their evidence should be disregarded.

It was her view that the user evidence indicates that the majority of the use has originated or terminated on the public right of way and such use would be "by right" as the public have a legal right to use the public right of way and not "as of right". The documentary evidence suggests that only 6 users can claim to have used the Application Land over the required 20-year period. Evidence suggests some limited use of the Application Land in the past and which supports the Deeping Show chairman's recollection that in the early years he met the occasional user, but the use had grown since 2006.

On 23 February 2001 the whole of the country was declared a controlled area under the Foot & Mouth Disease Order 1983 and the County Council implemented numerous control measures to prevent the spread of the disease including the closure of all public rights of way within the country. She produced a report by the County Trading Standards Officer of 22 June 2001 (OB Tab 3a 21-30) and signs were erected (an example was provided) and the public rights of way remained closed until 27 July 2001 when the Minister removed the restrictions and signage was removed and replaced by new signage informing the public that the right of way was open and available but subject to ongoing limitations and advice. The Council also wrote to all landowners asking them to remove the old signs and to replace them with the new signs. In her view, the public would have been prevented from using the Application Land during this period and that this broke the claimed 20-year period.

She has been told by the Show's Chairman that it took time to set up the Show and several days to take it down such that it would occupy the Application Land for about 14 days each year in total. The majority of the Application Land was used for the Show between 1952 and 2015. It was for that reason that the Chairman took the tenancy agreement in 1997 to ensure that the Show could remain in that location. It was used for a variety of purposes with some areas for parking and other areas for marquees or fenced areas for animals or the main show ring. There were a variety of parades around the Application Land and during the period that it operated the Objector authorised the tenant to hold the Show on the express condition that a financial payment was made. As there is a public footpath through the centre of the Application Land it was necessary to close it to temporarily allow the Show to take place. From internet research she discovered documents from the Market Deeping Town Council Planning and Highways Committee records that show that the footpath was closed during 2013 and 2014. From the Council's records the footpath was closed in 2004, 2005, 2006, 2007, 2008, 2009 and 2012 for two-day periods although she has been unable to find any documentation for the additional dates.

She has investigated the extent of the Show and the area it occupied on the ground. She produced an online extract from the Peterborough Telegraph, photographs from the Stamford Mercury and stills taken from various You Tube videos which she had watched for 1957, 2008, 2009, 2011 and 2012. It was her view that these demonstrated that the Show was a large event using both the north and south fields. The footpath had clearly been closed for the period of the Show as the land over which it runs was used for the event itself. In her view it was clear that the public could not have continued to use the Application Land as

a village green whilst the Show was being set up, being run or disassembled. Temporary fences, marquees and agricultural machinery would have blocked their path.

In the Council's records she had found various aerial photographs which she attached to her witness statement. They were from circa 1971, 1999, 2003, 2005, 2006/7 and 2017. In her opinion the aerial photographs made it clear that public usage became more predominant since 2006 which corresponded with the time period in which the tenant informed the Objector that people were accessing the Application Land and trespassing across it which led to the signs being erected.

Other photographic evidence was obtained from Google street view on 24 October 2017 and which suggested what was present in June 2009 and March 2010. These photographs were exhibited to her witness statement. The showed:
Entrance A – gated with a double entrance and a sign adjacent to the entrance post that appears to read "private farm" and palisade fencing by the side of the ditch;
Entrance B – a finger-post located within the highway, gated by a pair of gates with a gap at the side for the public right of way, the entrance way is hard surfaced;
Entrance C – gated with a pair of gates and a sign on the left side stating "No Trespassers", the entrance way is hard surfaced and extends into the field;
Entrance D – a wooded area with no visible access; and
Entrance E – the public right of way from the bypass is overgrown and indicative of little public usage.

From these documents it showed that in 2010 the public were not able to access the Application Land from entrance D as claimed and that signage was still present at entrance A and entrance C and that, viewed from Millfield Road, the northern land is fenced with a palisade fence along its length adjacent to the hedge and the ditched boundary.

She also referred to internal legal advice in 2006 which led to the signs being erected, the trespass by travellers in June 2017 and to her site visit in December 2017 and the photographs taken and which were exhibited by her. On 22 December 2017 she received a call from the former Chairman of the Show (who did not wish to be identified). She produced a typed version of the notes of the meeting.

A second witness statement referred to post- application action taken by the Objector under section 31(6) of the Highways Act 1980 and section 15A(1) of the Commons Act 2006 (as amended) and to certain minor typographical corrections.

Other evidence relevant to the Application.

80. In this section I discuss other evidence submitted but only where that evidence is, in my view, relevant and material to the elements of the statutory test under consideration. It covers witness statements and other statements (including

statutory declarations) from persons who, for whatever reason, did not present oral evidence at the inquiry and therefore were not subject to cross-examination, letters and statements from those third parties who spoke at the inquiry with my permission or wrote to me during the inquiry or in the short period afterwards which I set aside for third party comments to be submitted. I am grateful to all who took the time and effort to do so. Some of those who submitted material to me were opposed to, or questioning of, the Application and wished to preserve their anonymity. In fairness to all, therefore, I shall not identify any of the third parties who spoke at the inquiry (including the evening session) or submitted written material to me. In any event, they were not formally part of either party's case. I will also not take into account any matters that are more appropriately considered as part of the planning application or development plan preparation processes. It is not helpful to confuse or conflate the two distinct legal regimes. For the avoidance of doubt, this section does not cover the evidence and documents submitted by the Applicant with the Application or subsequently in the period leading up to the inquiry. This will be taken into account by me in the final section dealing with my findings and recommendation.

81. In addition to the witnesses appearing at the inquiry, the Objector produced witness statements from Sally Ironmonger (OB Tab2b 1) who described her visit (with Helen Panter) to the home of the former Chairman of the Show on 6 December 2017 and a site visit (also with Jonathan Wood) at which various photographs were taken, Helen Panter (OB Tab2b 3 and Nicholas Willey, a Gypsy and Traveller Liaison Officer with the County Council (OB Tab2b 5) with regard to the travellers' entry onto the Application Land in 2017. This evidence forms part of the Objector's case against registration.

82. Two correspondents with very lengthy knowledge of the Application Land and who had been involved in certain events at the Show over the years, questioned whether there had been "frequent" use of the Application Land. One correspondent who had attended the evening session described themselves as neither for nor against the Application and stated that they see people walking around the field with dogs, although not in great numbers. They also referred to a sign restricting access and to attending the Show and "that on each occasion I attended I recall there was not really any option but to pay for the entry as those manning the entrance made sure that they got payment". One correspondent only moved to the area after the date of the Application but explained how socially beneficial they had found the Application Land to be.

83. One correspondent referred to their nine-year use of the Application Land and its value for recreation and the way that it offered relief, distraction, refreshment and relaxation. Another correspondent who had lived in the area for over 40 years and described themselves as "not a dog walker and so I don't have to walk anywhere but I choose to walk through Millfield due to its unique environment". Another stated that they had used the Application Land 5 or 6 times a week almost every week since arriving in the area nearly 15 years ago. One correspondent has lived near the Application Land for nearly 40 years and, with their neighbour and 4 children would go onto the Application Land to pick fruits and observe nature. They could not remember signs but would not go on if there

were cows grazing. They made reference to the residential development nearby and how the numbers using the Application Land increased as the houses were occupied. Children would build dens and tree houses and joggers would use the field safe from traffic, and parents would teach their children to ride bikes there. Similarly, another correspondent who had lived in the area for over 30 years described how they, and others, had used the Application Land for a variety of activities including kite flying, frisbee throwing, stargazing and fruit picking. For good reason (which I do not propose to record in this report), the correspondent has a clear recollection of using the Application Land for a specific purpose in late 2003/early 2004. The correspondent also described access to the site whilst the Show was being held as "porous" and many people got on to the show fields, without paying, from a variety of access points, not least entrance C, which was not always manned effectively during the course of the weekend.

My findings

84. In this section of my report, I set out the pertinent facts as I have found them, and I discuss the implications of my findings in terms of the evidence required by the statutory test (and in the order described by me above in the section dealing with the statutory test but sub-divided where necessary) and the conclusions to be drawn from them and my recommendation. In both these sections I have also taken into consideration the respective closing remarks of the parties and the further evidence provided recently by the parties to me following my request.

85. In my view, this is not an easy application to determine. As I set out below, certain elements so the statutory test have been satisfied but there is one issue that is far from clear-cut and, whilst I have made recommendation in relation to it, the evidence is finely balanced to such an extent that it would be open to members to debate and to reject my recommendation should members consider it necessary.

86. I must also repeat that in any village green application the law requires the applicant to establish the case for registration to the civil standard i.e. the balance of probabilities, and that it must satisfy each and every element of the test.

87. In the Final Remarks, the Objector has made certain observations regarding the questionnaire and census exercises and raised misgivings about them – see paragraphs 9 - 15. In my experience, whether in planning or village green inquiries or elsewhere, such exercises are not uncommon and can prove productive in garnering support, but often they carry with them inherent evidential difficulties, some of which the Objector has alluded to in the Final Remarks. However, in the case of the Application, the Applicant has produced sufficient other evidence that I have not had to attach any weight to the results of the questionnaire and census exercises. Nonetheless I do appreciate and acknowledge the efforts of the Applicant and those assisting her in undertaking those exercises.

88. Similarly (and I do not believe this to be a source of controversy between the parties), recalling facts and events that may have occurred 20 or more years ago is generally acknowledged to be difficult and prone to be unreliable. It is necessary to give due account to this when weighing up all the evidence. Put bluntly, I doubt if anyone (even one well versed in the law of commons and village greens) walking on the Application Land in, say, 1999 would commit to memory a relatively innocuous event in the expectation that 20 years later it would become relevant to a village green application!

89. In addition, I have also placed limited weight on the aerial photographs produced as, apart from providing a momentary snapshot, they were not especially clear. Similarly, for the reason outlined by me at the inquiry, I have placed limited weight on the Google Earth photographs.

90. As mentioned in paragraph 22 above, the Application Land is much valued by the community and is of great value to the Objector as it made clear in paragraph 24 of the Final Remarks. Nevertheless, such a consideration, whilst self-evident, is not in my view relevant to the members' decision on the Application.

Has the Application Land been used by a significant number of local inhabitants of a locality or a neighbourhood within a locality?

91. In my view, applying this part of the test as explained by Sullivan J in the *Alfred McAlpine* case in the High Court, the Applicant has met this part of the statutory test. The documentary evidence and the evidence from the Applicant's witnesses, demonstrated to me that a significant number of local inhabitants had used the Application Land over the entirety of the claimed 20-year period. The level of use may have grown over that period, but I am of the view that a significant number of local inhabitants did use the Application Land by the time that the claimed 20-year period commenced on 21 June 1997. Members should note that for the purpose of efficiency, both parties were restricted in the number of witnesses that they called. Thus, the oral evidence on the part of the Applicant should be seen as representative not exhaustive. The evening public session helpfully illustrated the popularity of the use of the Application Land.

92. As the Objector has rightly pointed out in paragraph 37 of the Final Remarks, the decision of the High Court in *R (on the application of Allaway and Pollock) v Oxfordshire County Council and another* [2016] EWHC 2677 (Admin) (at paragraph 68 and onwards) held that "provided the number of people using the land in question was sufficient to indicate that their use signified that it was in general use by the local community for informal recreation that was sufficient." Consequently, the determination of this is not a simple numerical or statistical exercise but is very much a matter of impression and, from the evidence, I find that the number of people using the Application Land throughout the claimed 20-year period was significant.

93. At the beginning of the Claimed Period (and long before) the Application Land had an element of public use by virtue of it being traversed by a public footpath. Obviously, such use of the public footpath would have to be discounted as its use

would have been "by right". However, by the time that the claimed 20-year period had commenced, the public footpath had been effectively closed for a short period of time to allow the construction of the bypass and noise bund. Furthermore, although the public footpath was re-opened following the opening of the by-pass, the construction of the new dual carriageway and associated noise bund has not resulted in an insurmountable barrier to the continued use of the public footpath, although it has changed the perception and use of the Application Land in the minds of local residents and that this has added to its attraction. It became a classic example of land sandwiched between the edge of a settlement and a new bypass. In my view the evidence was clear that local residents were no longer using the Application Land simply to traverse it on the public footpath but were using it for wider recreational purposes.

94. It is also important that the Application Land had a long history of local use due to it being the venue for the Deepings Agricultural Show.

95. Similarly, it is equally important that, in the years leading up to the commencement of the claimed 20-year period, Market Deeping has undergone a significant expansion in physical size and population in the near vicinity of the Application Land with the construction of the Tattershall Drive estate which, of itself, would have added to the attractiveness and use of the Application Land as an area for general recreation and leisure. In my view, the provision of green spaces within the estate did not serve to limit the use of the Application Land as the nature and limited sizes of those green spaces was markedly different to the Application Land which is a large open tract of agricultural land.

96. I also accept the view expressed by Dr Mistry that, by the time the claimed 20-year period commenced, the northern part of the north field was not being used for arable crops but had already been given over to grassland. I also find from the evidence that the limited agricultural activity (with the exception of the Show) did not impede or prevent its recreational use by local residents.

97. In my view, therefore, the use of the Application Land throughout the claimed 20-year period was by a "number of people using the land in question…to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers". There is some supporting evidence for this view to be found in the Savills letter of 22 May 2006 [OB Tab 3A 235] where reference is made to "dog walkers trespassing away from the public footpath" and to the need to erect at suitable points around the field signs stating that there is 'no public of way' "to prevent any public right of way being gained by prescription". It is clear, therefore, that the Objector was well aware in 2006 that local residents were using the Application Land for general dog walking away from the public footpath. It also appears that at that time no consideration was given by the Objector to the issue of the acquisition of village green rights by local residents, even though the issue should have been obvious.

98. In my view, the construction of the bypass itself does not affect the validity of the Application Land or the Application Land as claimed other that to provide an explanation for the popularity of the Application Land with local residents.

Has a "locality" been identified?

99. In my view there can be no dispute that the Applicant has identified a relevant locality for the purposes of the statutory test and therefore this part of the test has been met.

Has the land been used for lawful sports and pastimes?

100. As mentioned above, it was established by the House of Lords in the *Sunningwell Parish Council* case that "lawful sports and pastimes" is a composite class which includes any activity that can properly be called a sport or a pastime and there is no necessity for any organised sports or communal activities to have taken place. Solitary and informal kinds of recreation, such as dog walking and children playing (by themselves or with adults) will satisfy that criterion. Equally, it is not necessary for local inhabitants to have participated in a range of diverse sports and pastimes. However, trivial or sporadic events such as annual Bonfire Night or May Day celebrations, on their own, may not suffice.

101. From all the evidence that I received, I find that the use of the Application Land has been for a variety of lawful sports and pastimes including dog walking off the public footpath, jogging and playing with children. I have discounted any evidence that related to the use of the public footpath across the Application Land. However, there was more than enough evidence to demonstrate that local inhabitants had used whole of the Application Land for a variety of lawful sports and pastimes. It follows that this part of the statutory test has been met.

102. On the evidence produced I do not find that the varied agricultural use of the Application Land has in any way impeded its recreational use by local inhabitants. As Sullivan J acknowledged in the *Laing Homes* case at paragraph 73, this is a matter of fact and degree. In my view the evidence of the extent and nature of the agricultural use of the Application Land is materially different to that in *Laing Homes* – see, for example, the observations of Sullivan J at paragraph 53. The Objector was able to produce very limited direct evidence to counter the evidence of the local inhabitants and the HIRs do not assist the Objector as they refer to the Application Land as being permanent grassland and sometimes grazed. Furthermore, the HIR of 5 April 2006 refers to difficulties in finding a grazier and the HIRs from 4 April 2008 onwards refer to there being no grazing or mowing. I find that there is no reliable evidence to support the argument that any part of the Application Land has been used for arable production. In my view the limited evidence of the brief presence of electrical livestock fencing did not in any way prevent the use of the Application Land for recreational purposes by local inhabitants.

Has the use of the Application Land been "as of right"?

103. In this part of the test the Applicant must demonstrate on the balance of probability that the use of the Application Land has taken place "without force, without secrecy and without permission. Necessarily, therefore, the test must be sub-divided into three separate elements, each of which must be satisfied. As Lord Hoffman held in the *Sunningwell Parish Council* case: "the unifying element in these three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the landowner to resist the exercise of the right – in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited period".

Use by stealth

104. There is no evidence that use of the Application Land has been by stealth. The Application Land is large, open and visible with a public footpath traversing it. There was ample documentary evidence to show that the Objector was aware of local residents using the Application Land – see, for example, the correspondence in 2006 leading to the erection of signs.

Use by force

105. In relation to this Application this involves the consideration of two matters. First, the question of actual forcible entry onto the land by breaking down fences and hedges and, second, the presence and effect of any signs erected by the Objector.

106. The Objector has suggested that there has been forcible entry involving the breaking of fences and hedges. However, access to the Application Land has always been open due to the presence of the public footpath which long pre-dates the claimed 20-year period. In any event, whilst some unidentified people may have broken down fences or forced their way through hedges (the evidence of which was not clear), those that follow but who themselves do not break the fences or enlarge the holes in hedges and have no knowledge of the original damage are still capable of doing so "as of right". On this basis I find that there has not been any forcible entry.

107. However, forcible entry can also arise when there are suitable and visible perimeter signs – see, for example, the *Taylor* and *Winterburn* cases. In relation to the Application Land, the evidence is finely balanced. I have come to a conclusion and make a recommendation on this issue, but I would emphasise that, in my view, the evidence is such that it would be open to members to debate and to disagree with my conclusion and recommendation.

108. Whilst I have placed limited weight on the Google Earth photographs they do, in my view, support the assertion that during the claimed 20-year period the Objector did erect signs. There was documentary evidence produced by the Objector to support this assertion. In summary, as the Objector states at

paragraph 62 of the Final Remarks, these signs were erected on or around June 2006, supported by contemporary documentary evidence. There were two saying "Please keep to the footpath", five saying "no trespassing" and one saying: "Private Farm". In the Applicant's Final Submission, it is accepted that "There was evidence of a "Private Farm" sign at gate A and a "No trespassing" sign at Gate C but nothing at Gate B, where the vast majority of users enter the site." However, the Final Submissions then assert that "Signs should be visible, legible and unambiguous. The sign at the gate A simply stated: "Private Farm" but it is also positioned next to an agricultural field belonging to a third party." Mr Wood confirmed in paragraph 13 of his witness statement that from his inspections he recalled that at Gate C a sign was erected stating "No trespassing" that was still in place but has been vandalised and at Gate A there was the "Private Farm" sign. There is further evidence about signs to be found in the HIR dated 4 April 2008.

109. In my view, the Objector did erect the signs in June 2006, as the Applicant acknowledged. I further find that some of the signs have been vandalised. However, the critical question is, did the Objector erect a sufficient number of suitably placed, visible and clearly worded signs, that would make the use of the land by local inhabitants contentious and therefore not "as of right"?

110. In my view, the importance of these signs should concentrate on the message conveyed to local inhabitants using the Application Land as, ordinarily, those from outside the locality cannot claim village green rights. I also accept that there may have been a degree of confusion on the part of the Objector as to the purpose of these signs. The documentary evidence from 2006, and particularly the Savills letter of 22 May 2006 [OB Tab 3A 235], suggests that the intention was to prevent the acquisition by prescription of public rights of way over the Application Land rather than to prevent village green rights being acquired. In my view, that intention is irrelevant, What is relevant is that the consequence of those signs was to draw to the attention of local inhabitants using the field, other than walking along the public footpath, was being challenged. In my view, as a general principle at least, the erection of suitably worded and located signs would be effective to prevent either, or both, village green rights and public rights of way being established. Therefore, the key question becomes: did those signs that were erected achieve that purpose?

111. There is relevant case-law that assists in the task of addressing this question. In my view, the wording of the signs was somewhat vague in contrast to, for example, the signs in the *Cotham School* case where there was a sign measuring about 4 feet 6 inches by 2 feet 6 inches (about 1.37m x 0.76m) situated in close proximity to an access point and which had upon it in bold: "MEMBERS OF THE PUBLIC ARE WARNED NOT TO TRESPASS ON THE PLAYING FIELD". The notice went on to prohibit named activities which caused nuisances and threatened that persons committing any such nuisances would be liable to prosecution. Any person wishing to use the playing field was advised to make a request to the Director of Education and the words "County of Avon" appeared beneath the wording. The sign was clearly visible. In *Winterburn v Bennett* the Court of Appeal was concerned with a clearly visible sign erected on the wall of a building on one side of an entranceway to the car park which read: "Private car

park. For the use of Club patrons only. By order of the Committee." The Court of Appeal held that its earlier decision in *Taylor v Betterment Properties* established that the continuous presence of legible signs may be sufficient to render use contentious. David Richards LJ then went on to hold that in circumstances where the landowner has made his position entirely clear through the erection of clearly visible signs, the unauthorised use of the land cannot be said to be "as of right", and later, that "The erection and maintenance of an appropriate sign is a peaceful and inexpensive means of making clear that property is private and not to be used by others. I do not see why those who choose to ignore such signs should thereby be entitled to obtain legal rights over the land."

112. In *Taylor v Betterment Properties* the Court of Appeal provided useful relevant guidance and from which I have set out various passages from the judgment that may assist members in their deliberations over this point. It also concerned an area of land bisected by two public footpaths and it was considered that the location of the land and the existence of public rights of way over and adjacent to it were important features relevant to its registration. Notices had been erected on the land warning people not to trespass and to keep off the land on either side of the footpaths. The judgment records that the local inhabitants giving evidence had said that they had never seen any notices in contrast to the landowner's contention that signs were erected at strategic points on the perimeter of the land and at the edge of the footpaths. The judge at first instance found as a fact that signs had been erected (but regularly pulled down by persons unknown) and that the signs said "private" and "keep out". Of course, in the case of the Application Land it appears to be common ground that signs were erected, and some remain and are visible. However, as Patten LJ pointed out at paragraph 35 of his judgment, this raises a more fundamental question of law as to whether and to what extent signs stating the landowner's opposition to the use of his land must come to the knowledge and attention of all users if the landowner has in fact taken all reasonable steps to achieve this. He went on say, at paragraph 38, that "If the landowner displays his opposition to the use of his land by erecting a suitably worded sign which is visible to and is actually seen by the local inhabitants then their subsequent use of the land will not be peaceable."

113. At paragraph 43, Patten LJ stated:

> "43. In *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] LGR 631 HH Judge Waksman QC (sitting as a Judge of the High Court) considered Pumfrey J's dictum in Smith v Brudenell-Bruce in the context of an application to register a meadow adjoining the Warneford Hospital in Oxford as a town or village green. The land in question was crossed by a public footpath alongside which was a notice stating: "No public right of way". This was said to have prevented any public use of the meadow itself from being as of right.

44. The judge held that the notice had not rendered such use contentious because, reasonably read, it had to be taken to refer to the user of the footpath rather than the meadow land generally. He was not therefore concerned with a case where the notice had been placed in an inaccessible position or where (as in the present case) the notices had been removed. But in his judgment he set out some general principles. Having referred to *Smith v Brudenell-Bruce* and to *Redcar (No 2)* he said this:

> "22. From those cases I derive the following principles:
> (1) The fundamental question is what the notice conveyed to the user. If the user knew or ought to have known that the owner was objecting to and contesting his use of the land, the notice is effective to render it contentious; absence of actual knowledge is therefore no answer if the reasonable user standing in the position of the actual user, and with his information, would have so known;
> (2) Evidence of the actual response to the notice by the actual users is thus relevant to the question of actual knowledge and may also be relevant as to the putative knowledge of the reasonable user;
> (3) The nature and content of the notice, and its effect, must be examined in context;
> (4) The notice should be read in a common sense and not legalistic way;
> (5) If it is suggested that the owner should have done something more than erect the actual notice, whether in terms of a different notice or some other act, the court should consider whether anything more would be proportionate to the user in question. Accordingly it will not always be necessary, for example, to fence off the area concerned or take legal proceedings against those who use it. The aim is to let the reasonable user know that the owner objects to and contests his user.
>
> Accordingly, if a sign does not obviously contest the user in question or is ambiguous a relevant question will always be why the owner did not erect a sign or signs which did. I have not here incorporated the reference by Pumfrey J in Brudenell-Bruce 's case to 'consistent with his means'. That is simply because, for my part, if what is actually necessary to put the user on notice happens to be beyond the means of an impoverished landowner, for example, it is hard to see why that should absolve him without more. As it happens, in this case, no point on means was taken by the authority in any event so it does not arise on the facts here."

114. At paragraph 50, Patten LJ held with regard to the above:

"50. It is therefore important to read the tests set out by Pumfrey J and Judge Waksman as directed to what the landowner in any given case will be required to do in order to manifest his objections to the use of his land. What Judge Waksman refers to as the putative knowledge of the

reasonable user means (as he explains) what the reasonable man standing in the position of the actual user should have realised. It does not attribute knowledge to the reasonable user which the actual user walking over the land at the relevant time would not have had. Users of the land are therefore treated as more perceptive than they might actually have been but they are not deemed to have seen things which were not there."

115. Furthermore, at paragraph 52 Patten LJ said:

"52. I agree with the judge that the landowner is not required to do the impossible. His response must be commensurate with the scale of the problem he is faced with. Evidence from some local inhabitants gaining access to the land via the footpaths that they did not see the signs is not therefore fatal to the landowner's case on whether the user was as of right. But it will in most cases be highly relevant evidence as to whether the landowner has done enough to comply with what amounts to the giving of reasonable notice in the particular circumstances of that case. If most peaceable users never see any signs the court has to ask whether that is because none was erected or because any that were erected were too badly positioned to give reasonable notice of the landowner's objection to the continued use of his land."

116. At paragraph 60, Patten LJ stated:

"60. It seems to me that there is a world of difference between the case where the landowner simply fails to put up enough signs or puts them in the wrong place and a case such as this one where perfectly reasonable attempts to advertise his opposition to the use of his land is met with acts of criminal damage and theft. The judge has found that if left in place, the signs were sufficient in number and location; and were clearly enough worded; so as to bring to the actual knowledge of any reasonable user of the land that their use of it was contentious. In these circumstances is the landowner to be treated as having acquiesced in that user merely because a section of the community (I am prepared to assume the minority) were prepared to take direct action to remove the signs?"

At paragraphs 62 and 63 he stated:

"……The evidence before them and before Morgan J was that inhabitants of the locality who were seeking to obtain registration of the land as a town or village green had seen the signs; had understood what their meaning and purpose was; and, for that reason, had removed them. The landowners had therefore made their opposition known to the local inhabitants even though, by the actions of some members of that class, the signs may have disappeared within a few days of being erected and may not therefore have been seen by many users of the land.

63. It would, in my view, be a direct infringement of the principle (referred to earlier in the judgment of Lord Rodger on Redcar (No. 2))

that rights of property cannot be acquired by force or by unlawful means for the Court to ignore the landowner's clear and repeated demonstration of his opposition to the use of the land simply because it was obliterated by the unlawful acts of local inhabitants. Mrs Taylor is not entitled in effect to rely upon this conduct by limiting her evidence to that of users whose ignorance of the signs was due only to their removal in this way. If the steps taken would otherwise have been sufficient to notify local inhabitants that they should not trespass on the land then the landowner has, I believe, done all that is required to make users of his land contentious."

117. Applying the principles that can be derived from the above case law, it is my view that the facts, when viewed in context, in relation to (1) the erection and presence of (2) a suitable number of (3) appropriately worded and (4) located signs are very finely balanced such that, on the facts of this case, it is open to members, having considered the evidence as set out by me in this Report and the case law, to come to a different conclusion than mine.

118. I begin with the observation that the Application Land is a large area of land comprising two fields over which a public footpath bisecting the land has always existed. Furthermore, apart from low level agricultural activity, the Application Land has been for very many years the location of a major public event, the Deeping Show, which existed primarily for the benefit of the local community. In addition, there has been a recognised history of use during the claimed 20-year period by local inhabitants of the Application Land, away from the public footpath, as recognised in the Savills correspondence in May 2006 and which resulted in the erection of the signs.

119. In my view, only a relatively very limited number of small signs were erected, and they were not sufficiently clear in terms of wording to bring to the attention of the reasonable user that the landowner was opposing the use of the Application Land. In particular, the "Private Farm" sign by Gate A was, in my view, both ambiguously worded and located (next to a field north of the Application Land and in arable use) that the message that it conveyed to the reasonable user was not clear enough to indicate that use of the Application Land was being contested by the Objector. Similarly, the size and location of the "No Trespassing" sign at Gate C was not, in my view, sufficiently clear, when viewed in context, to demonstrate that the landowner was contesting its use.

120. I therefore conclude that, on balance, the number and nature (size, location and wording) of the signs located were insufficient to amount to an appropriate demonstration that any use of the Application Land in contravention of those signs would amount to use by force. However, I also acknowledge that this issue is finely balanced, and members would be entitled to form a contrary view.

Use by permission

121. I am grateful to the parties for the further evidence that they have provided. In my view the evidence provided is central to the determination of this Application. In the Objector's Final Remarks at paragraph 71 it is said that: "anyone entering the land for the duration of the show, which was active for two days every year from the 1960's through until 2013, but for 2001, either entered with permission or as a trespasser as footpath rights were suspended. Some locals were aware of that and paid for admission, others decided not to pay but were then subject to the controls of the "owner' as he opened routes and closed others to control the access around the site whilst the Show was running, and others simply stayed away. The interruption by the Show itself of the ability to move around the site, whereby people would have stopped before being allowed to continue at some subsequent time when safe to do so proves that permissive element. That activity strongly resembles the position in respect of the beer festival and that provides a very strong hurdle for this Application." Members will wish to note that the reference to the "beer festival" is to the facts in the case of *R (oao Mann) v Somerset County Council and another* [2017] 4 WLR 170 (mentioned above) where the judge highlighted (at paragraph 91 of his judgment) "that careful consideration must also be given to the nature and effect of the owner's conduct relating to his use of the land during (any date within) the period in question." That case involved the holding of beer festivals on one part of privately-owned land which was the subject of a village green application and where access to a marquee had been denied to local residents unless in possession of a ticket and that they could not make use of the other facilities without paying a charge. As the judge made clear in paragraph 36 of his judgment "Ultimately, it is necessary to scrutinize all the circumstances of the particular case to determine whether the grant of permission or implied licence is made out, whether by reason of 'overt acts' or 'demonstrable circumstances' or, indeed, 'relevant circumstances'". The judge accepted that whilst the pubic use must be established for over 20 years (uninterrupted) the establishment by the owner of a vitiating circumstance is less onerous; i.e., for example, permission need only be established on one occasion during that period, in order to prevent the accrual of any asserted village green right.

122. In her Further Evidence, the Applicant has made reference to a village green decision in relation to the Glebe Field at Goudhurst, Kent[6] where village green status was granted despite the fact that they held an annual fete on the site and flyers said that entry was by programme only and programmes were at a price. For the benefit of members, this was a decision Kent County Council's Regulation Committee Member Panel in May 2015 which considered the report of Ms Annabel Graham Paul of counsel dated 25 September 2014 and a supplementary report in April 2015 following an inquiry. In my view it is necessary for me to set out some relevant aspects of that application before considering both it, and the decision in *Mann*, and how they relate to this application.

[6] Members may wish to note that I have personal knowledge of the location and nature of the Glebe Field and the surrounding Goudhurst area.

123. The factual circumstances of the Glebe Field application were materially different to this Application. The Glebe Field was only 2.5 acres (1 hectare) in area and there were no recorded public rights of way crossing it. It had been leased by the County Council as a playing field in connection with the primary school. It was undisputed at the Glebe Field inquiry that every summer during the relevant period, a summer fete had been held on the application site. The inspector found, as a matter of fact, that it was the clear and established policy of the fete committee that people had to buy a programme to enter the fete, but that that policy was not rigorously enforced. Although an advert in the 1994 parish magazine referred to the fete being held "by kind permission of the head teacher" (of the local primary school), the head teacher strongly disputed that he had ever been asked for any such permission and there was no other evidence that his permission had been sought. The inspector found that, whilst the head teacher was entrusted by the Local Education Authority with the control and management of school premises (including the Glebe Field) there was no evidence that the head teacher specifically authorised the principle of holding the fete on the application site, or the practice of charging for entry. Furthermore, whilst it as in the interests of the fete committee to require a programme to be purchased on entry to the fete (in order to maximise proceeds for local causes), the committee had no recourse to enforce that policy and had no powers at all in relation to the application site. Indeed, the fete was not organised by the landowner or the lessee or on their behalf.

124. With regard to the principles arising from the decision in *Mann*, the inspector concluded that they did not apply during the relevant period and made the following analogy in her report: "I consider that the fete committee were simply acting (albeit in an formal and publicised way) in the same capacity as any other local inhabitant using the application land for recreational activities. The fact that they did so on their own terms is neither here nor there. From the landowner's perspective, they were all trespassers who could be prohibited or licensed. An analogy might be drawn with a group of children playing a game of football on the application land. They have written in the village diary that they will be using the application land between 2-4pm. However, another group of children arrive to play at 3pm without having booked in the diary. Who can complain? Neither have any right to be there. The school is not authorising either of them to use the application land, and neither is the school prohibiting either. The fact that the first group may have 'booked' the application land in the village diary may mean that as a matter of courtesy their use should take priority, but they have no priority over the second group in law." The inspector concluded that, in those circumstances, the use had been "as of right".

125. I am grateful to the Applicant for referring me to this decision because it provides a useful working example of the matters relevant to this issue and the facts of that application can be compared and contrasted to those applicable to the Application Land. Equally, I am grateful to Mrs Withington for her third Witness Statement and accompanying documents. I shall make reference to some of these new documents where they are of particular relevance to the issue of permission.

126. I studied the YouTube videos of the Deeping Show referred to by Mrs Withington in paragraph 15 of her first Witness Statement. It is clear from those videos that the Show was a substantial event with many large marquees erected. There were trade stalls – in 2009 there appears to have been stalls such as Outback Grill and Chris Finch Jewellery and hoardings for Fengrain, Barron-Clark Castings, Melton Mowbray Market and Brown & Co. I could also see a large bouncy castle (Moon Walk). In 2011 there were many tractors and similar machinery that seemed to be new and on display. Despite the size of the Show there are scant records available regarding its organisation and financing, but the further evidence provided by the parties has assisted me greatly in connection with this issue. Factually, the Show was significantly different in scale and nature to the village fete on the Glebe Land.

127. There is a suggestion in a press article in the Applicant's Further Evidence [FE] and FE3 that the Show originally began in 1945 as a small-scale gymkhana as a 'welcome home' for men who had fought in World War 2. FE4 is a press article about the 1958 Show which was held on the "Millfield Site on Stamford Road, Market Deeping". By the time that the claimed 20-year period began, the event had grown in size and was a significant event as the press articles indicated. FE9 is a press article from the Peterborough Telegraph dated 8 June 2010 regarding an accident when a livestock owner entered a cattle pen and a young bull kicked out, hitting him in the face. FE13 shows the front cover of two programmes for the Marquee exhibitions in 2006 and 2010. I note that the programme for 2006 clearly states on the cover "by kind permission". FE16 and FE16 is a diagrammatic plan of the 2009 Show which I am informed was displayed on the back of the programme and FE21 was a similar plan in relation to the 2006 Show. Both plans appear to show that the public footpath (commencing at what is shown on the plans as Gate 2) (i.e. Gate B) was obstructed by the presence of the Treasurer's and Membership Office and Red Cross and Mother and baby facilities and the Secretary's Office.

128. FE30 is an email from Robert Broughton to David Clark dated 18 January 2019. The Applicant has brought this to my attention because she suggests that it Mr Broughton, as a town and district councillor, "was aware that some people continued to use the site as they normally would and did not pay". However, I also note that he states: "During the Deepings Show, the public footpath was officially closed but I never say any notices to that effect at the entrance to Millfield." There is evidence that entry money was taken by stewards provided by local voluntary groups such as the local Lions Club and the Rotary Club, but it is the Applicant's case that entry was "porous" and some did not pay but continued to use the Application Land as normal.

129. In paragraph 14 of her first Witness Statement, Mrs Withington provided evidence in the form of articles from, for example, the Peterborough Telegraph for 12 May 2009 that clearly indicates that entry fees were charged. In my view there was ample evidence that, in general, entry fees were charged to those attending the Show and I attach no significance to the fact that some may have avoided making payment by some means or another.

130. The Objector has also provided further evidence about the Show. I shall refer to this where necessary by using the numbering set out in Mrs Withington's third Witness Statement.

131. 4.3 are details of the horse show event on 8 June 2008. It is clear from this that these were substantial events for which competition entry fees were charged. There were four rings. In my view these would have inevitably restricted or prevented general access to those areas of the Application Land during the Show. Furthermore, page 3 of the Approximate Timetable for Saturday 7 June 2008 details the number of officials involved and page 4 the number of judges. This clearly evidences that by 2008 the Show was a substantial event. Page 25 sets out the Rules of the Society in which it states: "The Organisers of the show have taken reasonable precautions to ensure the health and safety of everyone present. For these measures to be effective, everyone must take all reasonable precautions to avoid and prevent accidents occurring and must obey the instructions of the Organisers, Officials and Stewards……The committee reserves the right to eject from the Showground without being liable for any compensation, any person who interferes with the Judges or the Committee during the execution of their duties, or who cause any disturbance." Thus the Committee was exerting control, when necessary, over all attending the Show and reserving the right to exclude. It is relevant that the organisers of the Show held the land under an agricultural tenancy from the Objector and which specifically authorised the use of the Application Land for that purpose in marked contrast to the organisers of the village fete at Goudhurst who had no such arrangement and who the inspector found had no power to exclude others from the Glebe Field.

132. 4.5c is the Deeping St James & District Agricultural Show Society's Statement of Financial Activities for the Year Ended 31 July 2013 prepared by Keith Miller Accountancy Services and lodged with the Charity Commission. This statement contains an entry for "Gate money (inc. pedestrian)" of £25,855 for 2013 as against £13,665 for 2012. I also note that separately shown are entry fees for horses and for cattle, the dog show, trade stands etc. On the following page (which details expenditure) there are items for security and traffic control. The Gate money entry shows substantial amounts collected which suggest to me that, if entry was "porous" those that avoided payment were few and far between. On the other hand, if the entry was "porous" to any considerable extent then the large sums taken would suggest that, when the numbers of those that paid for entry are added to the numbers claiming not to have paid, the Show was an event attracting hundreds, if not thousands, of visitors over the two days. Common sense also then dictates that an event of this magnitude could not have been undertaken without the organisers retaining a significant degree of control over visiting members of the public for health and safety and public order reasons.

133. In her first Witness Statement at paragraph 13, Mrs Withington produced documentary evidence from council records that indicated that there had been temporary closures of Public Footpath 2 for two days in 2004, 2005, 2006, 2007,

2008, 2009 and 2012 for the two days of each respective year when the Show was being held. More extensive records from the Town Council existed for 2013 and 2014. In my view, there is ample evidence to suggest from these records and from the diagrammatic plans on the rear of the programmes to demonstrate that it is more likely than not that the section of the Public Footpath 2 that crosses the Application Land was officially temporarily closed for the duration of the Show (but not for the time before and after when the Show was being set up and dismantled). Therefore, for those two days each year, the public could not have lawfully used the footpath. In a tangential manner, this would also be consistent with the comment in final paragraph of the File Note 4.4(e) from the person at GL Events UK regarding problems with people and dogs walking over marquee equipment when it had been left on the ground before and during erection because at those specific times the public footpath would not have been closed.

134. Drawing all the above together, I find the following facts and conclude as follows:

(a) For the majority of the claimed 20-year period the Application Land has been let on a tenancy granted by the Objector to the Deeping Agricultural Show for grazing and with specific permission once a year to hold the Show;
(b) By the time the claimed 20-year period commenced, the Show was a substantial event that occupied the Application Land for two days (and also for additional days when the Show was being set up and dismantled). It is in stark contrast to the village fete on the Glebe Field at Goudhurst;
(c) For the two days of the Show, the public footpath crossing the Application Land was lawfully closed and obstructed by temporary structures as mentioned above;
(d) There were indications on the 2006 programme that the event (and therefore entry to it) was "with kind permission" which in my view can only mean with the person having lawful possession of the Application Land;
(e) Various parts of the Show site were fenced off for livestock and other purposes such as the display of tractors or occupied by marquees;
(f) Entrance fees were charged. Some may have escaped payment, but it is clear from the press reports and the accounts filed with the Charity Commission that a significant amount of gate money was generated; and
(g) The organisers of the Show maintained control (including the power to refuse entry to the site or parts of it) for the purposes of health and safety and good order. Not only do the accounts show relevant entries consistent with this, it is also common sense that a major event such as the Show could not be safely undertaken without the ability to exclude persons form the site or part of the site.

135. Furthermore, it is clear from all the evidence obtained that the Show is of a different scale and kind to the Glebe Field at Goudhurst. Any similarity between the two cases is, in my view, superficial. The facts are analogous (and even more extreme) to those applicable to the beer festival in Yeovil in the *Mann* case. Therefore, on this basis, and bearing in mind the observations of the judge in that case at paragraphs 71- 73 it is my clear and firm view that the evidence now before me is so strong that, on the balance of probability, the use of the

Application Land has been with the permission of the Objector as landowner, particularly through the actions of the Show as tenant. In my view, the recent evidence provided by the parties puts this issue beyond doubt.

136. In the light of my clear finding in relation to the issue of permission, I do not consider it necessary for me to raise the issue of whether or not the Application Land was closed during the 2001 Foot & Mouth crisis.

Conclusion

137. Taking all the above into account, I conclude that:

(a) The Application Land has been used by a significant number of local inhabitants of the locality throughout the claimed 20-year period;
(b) A relevant locality was identified by the Applicant;
(c) The use has been for lawful sports and pastimes;
(d) There has been no use by stealth;
(e) There has not been entry by use of physical force. On balance, I find that the presence and nature of the signs erected by the Objector were such that they were insufficient to amount to an appropriate challenge to the use by local inhabitants and that, in this regard, the use was not by force. Members should feel free to take a different view on this aspect once they have considered the evidence as the issue is finely balanced; and
(f) In all the circumstances of this case, the presence, nature, operation and scale of the Show was such that, in accordance with case law including the decision in *Mann* (in particular paragraph 71), the Objector had made it clear each and every year that the Show was held that it was asserting its right to exclude local inhabitants and demonstrated that their use of the Application Land was with the Objector's permission. Therefore, this relevant part of the statutory test has not been met.

Recommendation

138. It follows from the above that, in law, the Application must be rejected, and the Application Land should not be registered as a village green.

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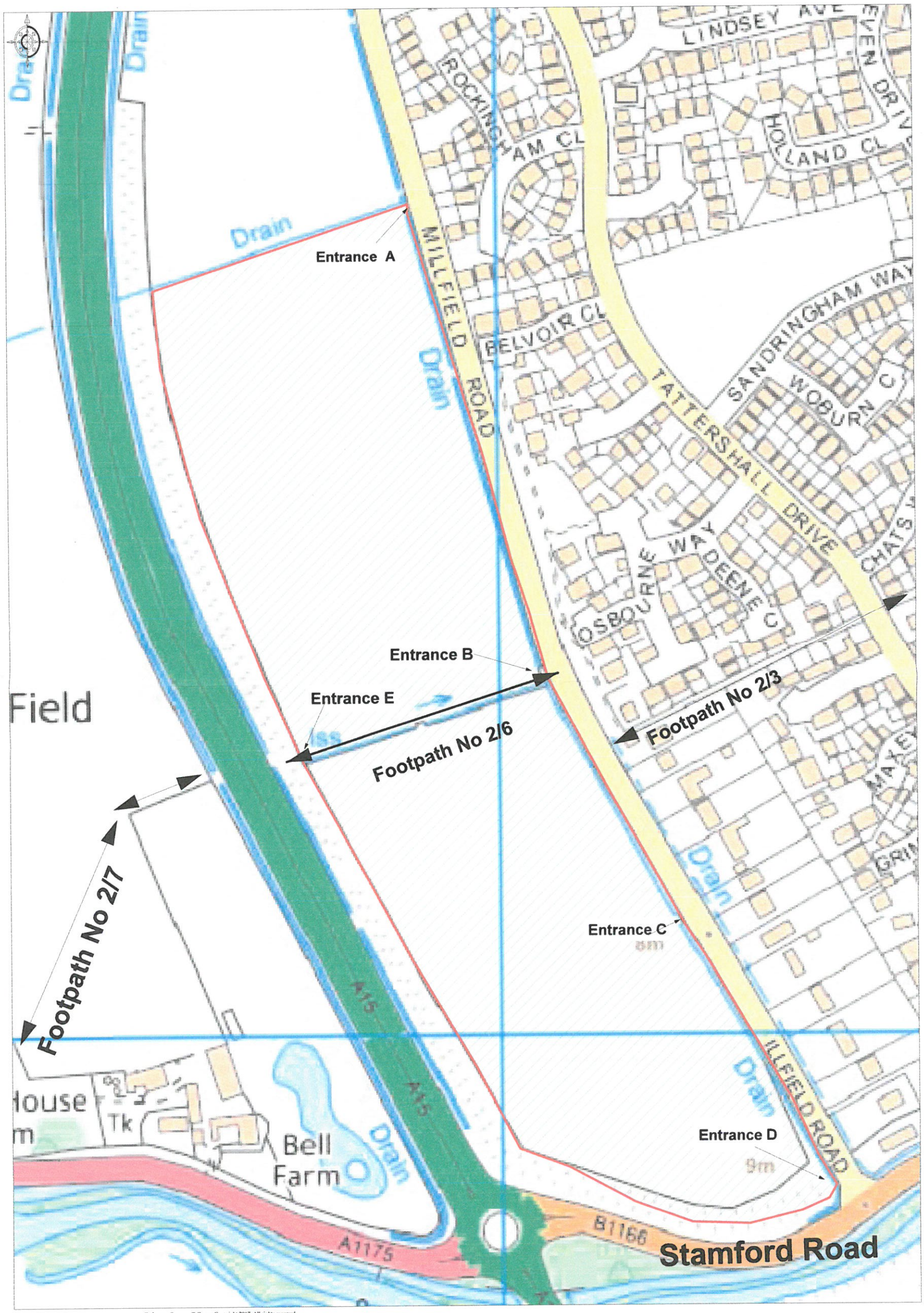
19 July 2019

Map A- Mill Field (near PE6 8SU)
Application for village green.



Boundaries of site.
Line of present public footpaths shown as black arrows.
Scale 1:2500 @size A3

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