Introduction:

1. I am instructed to advise Lincolnshire County Council, the registration authority for the purposes of the Commons Act 2006. An application under s.15 of the Act has been made to the Council for the registration of an area of land to the north of Alexandra Road, Woodhall Spa, Lincolnshire ("the land") as a town or village green.

2. The application was made by Mr. George Bolton on the form required by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. The application did not meet the requirements of the Regulations in a number of ways and those deficiencies prompted a claim by East Lindsey District Council, the owners of the land and objectors to the application, for judicial review of the Council’s decision to consider the application.
Permission to bring the challenge was however refused by Mr Justice Collins and the application for registration was put in order. No point is now taken on behalf of the District Council as to the validity of the application although they object to registration and submit that the application should be rejected.

3. I am instructed to advise in relation to that application and was asked to hold a non-statutory public inquiry into the application and the objections made to it. I held that inquiry on the 2\textsuperscript{nd}, 3\textsuperscript{rd} and 6\textsuperscript{th} October 2014 at the Railway Hotel, Witham Road, Woodhall Spa. The Applicant was not legally or otherwise represented and presented his case himself with help from his wife, Mrs Bolton. Mr. George Laurence QC and Miss Francesca Perselli, Counsel, represented the District Council. I should like to thank Mr David Clark and Ms Helen Patchett, officers of the Registration Authority, for the efficient and helpful way in which they organised and administered the inquiry.

4. I am instructed to write a report following the holding of the public inquiry for consideration by the Council as registration authority with my recommendation as to whether to grant the application and make the necessary registration of the land as a town or village green or whether to reject the application.

The Application:

5. The application was made by Mr. Bolton on Form 44, as prescribed by the 2007 Regulations. These are the Regulations made under the Commons Act 2006 that set out the procedure to be followed in seeking an amendment of the register of
town or village greens maintained by the Council as registration authority under
the Act. The application was accepted as validly received by the Registration
Authority on the 11th March 2013 and the Authority followed the prescribed
requirements for publicity and for the giving of opportunity for objection.

6. The application form in answer to what the Form refers to as “question” 5 gives
the description and particulars of the area of land in respect of which application
for registration is made in these terms: “Name by which usually known: Land
adjacent to the O.A.P. dwellings. Location: Bottom of Alexandra Road Woodhall
Spa”.

7. In answer to question 6 seeking identification of the “locality or neighbourhood
within a locality in respect of which the application is made” the application land
was shown diagrammatically coloured pink on a map of Woodhall Spa that was
enclosed with the form. That map was not on an Ordnance Survey base. By a
statement dated the 7th August 2013 and a letter dated the 8th August 2013 the
Applicant produced an extract map on an OS base at a scale of 1:2,500 and
referred to as GB1 showing the application land edged in red. In the same way Mr
Bolton also produced the OS map extract GB2 showing what was described as
“locality and locality within a neighbourhood” edged in blue with a legend
identifying the area edged in blue as “Area bounded by Stixwould Road, Witham
Road, Mill Land Green Lane.” Mr Bolton explained at the inquiry that he meant
that the area edged in blue was the neighbourhood he relied upon albeit he
intended that the dwellings on both sides of each named road should be included
within the neighbourhood. He identified at the inquiry that the locality he relied
upon is the civil parish of Woodhall Spa. He produced at the inquiry a map marked as “Exhibit Ref PP1” showing the boundary of the civil parish. The officers of the registration authority confirmed during the inquiry that that boundary has not changed since 1987 and therefore it has not changed during the relevant period for this application. At the inquiry Mr Bolton also produced on an OS based map prepared by the officers of the registration authority a definitive boundary of the neighbourhood he relied upon. I gave that map the identification RA1. It shows the boundary of the neighbourhood and includes the curtilages of dwellings on the outer sides of the named roads. The officers of the registration authority also showed on RA1 by red colouring the addresses of all the supporters of the application who had in writing or live at the inquiry or both given evidence as to their use of the land. RA1 was accepted as accurate by the parties at the inquiry.

8. Question 7 of the Form asks for “justification for application to register the land as a town or village green” and was answered:

“1. Local residents state that the land has been continually used by the community for at least 50 years.

2. Council maintains the grass for public use.

3. It is an open area.

4. It is used for car parking for village events e.g. marathon and forces weekend.

5. Emergency landing field for ambucopter
6. It is regularly used for dog walking, kite flying, ball games and activities.

7. Amenity area for the elderly residents of the O.A.P. homes.

8. Supporting evidence from local residents of use by circus.

9. Used for Queen’s Silver Jubilee Party.”

9. The applicant relies on the criteria for the registration of a town or village green now found in s.15(2) of the Commons Act 2006 namely where:

“(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports or 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.”

10. I shall deal with the issues raised by those criteria in the context of this application later in this Report. It is worth remarking now however that the only matter before me and the registration authority is whether the land has become a town or village green by satisfying the relevant definition. Any proposals as to the future of the land whether they be to develop the land for affordable housing in accordance with the planning permission granted on the 12th March 2013 or otherwise are not relevant to the determination of this application. Nor is any need
or absence of need for recreational land in Woodhall Spa relevant to whether the land meets the statutory definition for registration as a green.

11. Question 8 of the Form asks whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green. Mr. Bolton answered: “East Lindsey District Council”.

12. The supporting documentation with the application was identified as: “Letters from local residents and copy of maps confirming use of land for at least 20 years.”

13. In answer to the request in question 11 of the Form for any other relevant information and the note thereto which says “in particular if a person interested in the land is expected to challenge the application for registration” Mr. Bolton wrote: “East Lindsey District Council.”

The Objector

14. The application land is owned by the District Council. It forms part of a larger area of land acquired by the Urban District Council of Woodhall Spa in 1951 under the Housing Act 1936 for the purposes mentioned in that Act. The land passed to the District Council in 1974 on local government reorganisation. Much of the land acquired other than the application land was built on to provide council housing. The District Council’s housing stock was transferred in 1999 but the application land was retained by the Council.
15. The District Council submitted a written objection dated the 21st June 2013. That objection identified deficiencies in the application form but as I explained earlier the application has been put in order and is now valid as is accepted on behalf of the District Council.

16. The District Council’s written objection went on make the following points in challenge to the claim:

   (1) that there was not evidence that a significant number of the inhabitants had indulged in lawful sports and pastimes on the land for a period of at least 20 years.

   (2) that neither the locality nor the neighbourhood within the locality relied upon had been identified and so it is not possible to say whether the inhabitants are from an appropriate locality or neighbourhood within that locality;

   (3) that the open space that makes up the application land was held by the Council until 1999 for a statutory purpose as a recreation ground so any use was by right and not “as of right”

   (4) that use of the land as a linear route to the north onto Green Lane is more in line with acquiring a right of way than securing registration as a town or village green.

17. Mr. Bolton in his letter of the 8th August 2013 sought to address the first point by submitting a further 81 “witness statements” in the form of letters and completed
pro forma documents in which his supporters set out how long they had used the land and for what recreational purposes.

18. At the inquiry Mr Laurence QC on behalf of the District Council expressly accepted that there has been extensive use of the land for lawful sports and pastimes over the relevant period from 1993 to 2013. Indeed it is the District Council’s case that recreational use by the public has been what the Council has held the land for, as set out in the third ground of objection set out above. I will address Mr Laurence’s full submissions later in this report. He maintained the objections relating to the locality and neighbourhood relied upon by the Applicant but the fourth ground set out above was not pursued.

The application land and its context:

19. I anticipate that some members of the registration authority who will be considering this report and the application will be familiar with Woodhall Spa and the application land and so I need describe them only briefly now. The application land is shown on the plans before me perhaps most helpfully on the plan at Tab 4 p.3 of the Core Bundle of documents prepared for use at the inquiry, and in its wider context of the village of Woodhall Spa the plan at Tab 1 p.8 is helpful albeit diagrammatically.

20. Woodhall Spa is an attractive village that has developed in a largely linear way along Witham Road, Station Road and The Broadway. At the near centre of the village there is a junction formed by Witham Road and Station Road on the west
east axis and Stixwould Road and Tattershall Road travelling north/south. The population of the village is some 4,000.

21. I explained at the start of the inquiry that I took the opportunity on the day before the inquiry to familiarise myself with the village by walking from the eastern end of the village and around the boundaries of the neighbourhood relied upon by the applicant. I also walked across the application land. On the afternoon of the first day of the inquiry I visited the application land in the company of the applicant, with Miss Emma Tattersdill of Freeths, the solicitors instructed on behalf of the District Council and with Mr. Gary Sargeant RICS, Corporate Asset Manager with the District Council who kindly drove us in his car.

22. The application land is an open area of some 1.08 hectares (2.7 acres). It is well and closely mown. It can be approached by vehicle or on foot from along Alexandra Road from which it lies to the north. There are dwellings for the elderly to its south west and a large community centre which also appears to contain some accommodation is to the south and centre. There are dwellings along all its boundaries save for its northern boundary which it shares with an agricultural field. There is a gap in that boundary which seems to be in use by some people and which provides access to Green Lane although there is no right of way across that northern field. There is a gap beside the gate from that northern field to Green Lane and a bin for dog faeces has been provided by the District Council beside that gate on the Green Lane side. There is another such bin as you enter the application land from the south. There is a path in the south west corner which gives access to the Viking Estate of housing so named after the long-
distance Viking Way which crosses that estate from Witham Road in the south to Green Lane in the north. I was driven around the Viking Estate which comprises modern high quality housing generally in spacious curtilages. Outline planning permission for a development of some 330 dwellings on the area of land that was to become this estate was granted in October 1994.¹ There is an area of open space on St George’s Drive. Building work is continuing to the north–west of the application land. To the west of the Viking Estate is a large area of agricultural land with housing on its southern boundary fronting Witham Road before more housing to the west and along Mill Lane. More established housing fronts Witham Road save for another undeveloped area along much of the southern side of Witham Road.

23. The centre of the village lies to the east where most of the shops, the public houses and restaurants and most other facilities are to be found. There are a number of facilities within the claimed neighbourhood including the community centre, Jubilee Park at its eastern end with its tennis courts, bowls greens, croquet green, mini golf and swimming pool. There is a cricket pitch and camping sites to that eastern end of the claimed neighbourhood. There is an open area known as the Rally Field. There is a primary school, a fire station and a vet’s surgery. There are some shops on the southern side of Witham Road at its eastern end.

¹ See OB MD2 at Appendix 11.
The Law:

24. The 2006 Act was enacted to replace the Commons Registration Act 1965 and section 15 of the 2006 Act dealing with registration of greens came into force on the 6th April 2007, replacing sections 13 and 22 of that earlier Act as amended by s.98 of the Countryside and Rights of Way Act 2000.

25. This application stands to be determined in accordance with that section 15 of the 2006 Act and with the Commons (Registration of Town or Village Greens)(Interim Arrangements) (England) Regulations 2007. The wording of the definition of a town or village green in the earlier legislation has largely been carried forward into the 2006 Act and the courts have found that the authorities on the former definition are still valid guides as to how the legislation should be applied. The application is to be determined in accordance with the law at the time of determination of the application, as it has been explained by the courts at that time. I advise on the basis of the law at the time of writing. I do not anticipate any relevant changes in the law in the near future.

26. Section 15 provides:

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

   (2) This subsection applies where –
(a) a significant number of the inhabitants of any locality, or of any
neighbourhood within a locality, have indulged as of right in lawful
sports or 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.”

27. It is subsection (2) that the applicant relies upon.

28. The 20 Year Period: It must be shown that the local inhabitants have used the
land in the required manner for not less than 20 years and in this case continue to
do so up to the date of application\(^2\). The relevant period here is therefore from at
the latest the 11\(^{th}\) March 1993 to the 11\(^{th}\) March 2013.

29. The use of the land: For land to become a town or village green, it has to have
been used for “lawful sports and pastimes”. Lord Hoffmann in \textit{R v Oxfordshire
CC ex p Sunningwell Parish Council} \(^3\) explained that “sports and pastimes”
comprise a single composite class so that as long as the activity in question can
properly be called a sport or a pastime, it falls within the composite class. That
class includes those activities which would be so regarded in our own day. So dog
walking and playing with children suffice so long as they are not so trivial or
sporadic as not to carry the outward appearance of user as of right. However, use
of a public footpath for walking with or without a dog does not create a right to
use a wider area for recreation and whilst use of an informal footpath for a 20 year

\(^2\) \textit{Oxfordshire CC v Oxford City Council} [2006] 2 AC 674 (Tab 10 of the Objector’s Authorities bundle) at paras.42-44, and 60 the speech of Lord Hoffmann.

\(^3\) [2000] 1 A.C. 335 at p.357D.
period may create a public right of way along the line of that footpath it does not create any right to use a wider area for recreation.\(^4\)

30. **The people using the land:** Those using the land must be a significant number of the inhabitants of either a locality or a neighbourhood within a locality. A “locality” must be some legally recognised administrative division.\(^5\) A “neighbourhood within a locality” is drafted with deliberate imprecision to avoid the complexities under the original definition arising from the use of the word “locality”.\(^6\) A neighbourhood may be within a locality or localities. A neighbourhood nevertheless still needs to be an area with a sufficient degree of cohesiveness.\(^7\) That is the corollary of the fact that if land is registered as a green on the basis of use by the inhabitants of a neighbourhood, those inhabitants alone acquire the right to use the land as a consequence of that registration.\(^8\) So a boundary cannot just be any line drawn on a map.

31. As to the question of the need to show use by “a significant number of the inhabitants”, Sullivan J. (as he then was) in *R. on the application of Alfred McAlpine Homes Limited v Staffordshire CC*\(^9\) explained that the word “significant” is an ordinary word in the English language and is not usefully

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\(^4\) *Oxfordshire County Council v Oxford City Council* [2004] EWHC 12 Lightman J.

\(^5\) *R (Laing Homes) v Buckinghamshire CC* [2003] 3 PLR 60 at paragraph 134 and *Oxfordshire* at paragraph 27.

\(^6\) *Oxfordshire* at paragraph 27

\(^7\) *Oxfordshire* at paragraph 27, the speech of Lord Hoffmann

\(^8\) *R (Cheltenham Builders Limited) v South Gloucestershire DC* [2003] EWHC 2803 at paragraphs 46 and 85 (Tab 9)

\(^9\) *Oxfordshire* at paragraphs 45 to 52 and see *R (Barkas) v North Yorkshire County Council* [[2014] UKSC 31, 2014] 2 WLR 1360 Lord Carnwath at paragraphs 55-56

\(^10\) [2002] EWHC 76 (Admin) at paragraph 71 (Tab 8 of the authorities bundle)
paraphrased - “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.” Nevertheless, only user by a
significant number of the inhabitants of the locality, neighbourhood or
neighbourhoods, as the case may be, will suffice.\(^{11}\)

32. “As of right”: Lord Hoffmann explained in \textit{Sunningwell} that for the use of the
land to have been “as of right” it has to have been \textit{nec vi, nec clam, nec precario},
that is not by force, nor stealth nor the licence of the owner. It is not necessary to
show that the users subjectively believed that they had a right to use the land.
They may have privately known that no right existed when they were using the
land. It is the state of affairs when viewed objectively that is relevant. The user
has to “carry the outward appearance of user as of right.”\(^ {12}\) It must be shown that
their user is such as to give the outward appearance to the reasonable landowner
that their user is being asserted and claimed as of right.\(^ {13}\)

33. The Supreme Court explained in \textit{R(Lewis) v Redcar and Cleveland Borough
Council}\(^ {14}\) that if the user by the local inhabitants for at least 20 years were of such
amount and in such a manner as would reasonably be regarded as an assertion of a
public right so that it was reasonable to expect the landowner to resist or restrict
the user if he wished to avoid the possibility of registration, the landowner would

\(^{11}\) \textit{Leeds Group v Leeds City Council} [2011] Ch. 363 paragraph 26
\(^{12}\) p.357D-E
\(^{13}\) \textit{Lewis} at paragraph 35
\(^{14}\) [2010] 2 AC 70 (Tab 17 of the authorities bundle)
be taken to have acquiesced in it unless he could show that one of the three vitiating circumstances applied.

34. Use by force (vi) means not only use by physical force, such as cutting fencing or forcing one’s way through or over fencing, but also use in the face of continuing protest by the landowner.\[15\] There can be vis where the use is contentious.\[16\] If a landowner has taken steps which would have been sufficient to notify local inhabitants that they should not trespass on the land then the landowner has done all that is required to make use of his land contentious.\[17\] The steps taken to manifest opposition do not have to be fail-safe; they must simply be reasonable and proportionate to the user which the landowner wishes to prevent.\[18\]

35. By stealth (clam) means in such a way as the landowner did not and could not know of the use, such as by entering at dead of night.

36. The issue of whether the use of the land was by the licence or permission of the owner (precario) was the primary question before the House of Lords in the case of R v City of Sunderland ex parte Beresford\[19\]. Their Lordships explained\[20\] that a licence may be either express - oral or in writing - or implied where the facts warrant such an implication. As Lord Bingham explained: “I can see no objection

\[16\] Regina (Lewis) v Redcar and Cleveland Borough Council (No.2) [2010] at paragraph 91 in the judgment of Lord Rodger
\[17\] Ibid paragraph 93.
\[18\] Taylor v Betterment Properties (Weymouth) Ltd [2012] EWCA Civ 250, per Lord Justice Patten at paragraph 48.
\[19\] [2003] UKHL 60, [2004] 1 AC 889 (Tab 16 of the authorities bundle)
\[20\] See paragraphs 3-6, the speech of Lord Bingham
to the implication of a licence where the facts warrant such an implication…. A landowner may so conduct himself as to make clear, even in the absence of an express statement, notice or record that the inhabitants’ use of the land is pursuant to his permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way asserts his right to exclude and so makes plain that the inhabitants’ use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use.” 21

37. Lord Hoffmann explained in Sunningwell that toleration of use of the land by the owner on the other hand is not inconsistent with the user having been as of right and quoted with approval the earlier remark by Evershed J. that “it may be no bad thing that the good nature of earlier generations should have a permanent memorial” that is by their toleration of use ripening into the right to use. But if the landowner has acted in such a way so as to regulate the activities on the land or otherwise to show that the inhabitants were using the land by the owner’s revocable leave or licence, then that would not be tolerance of or acquiescence in the use but an indication that the use was by permission or licence (precario) and

21 Ibid paragraph 5
so not “as of right”. This approach has now been supported by the Supreme Court in *Regina (Barkas) v North Yorkshire County Council.*

38. In *Barkas* the Supreme Court further held that where land is held by a public authority under statutory powers for recreational purposes, the public had a statutory right to use the land for recreational purposes. So when the public so used the land they did so “by right” and not as trespassers so no question of user “as of right” within section 15(2) of the Commons Act 2006 could arise. So a reasonable local authority in those circumstances would regard the presence of members of the public on the field, walking with or without dogs, taking part in sports, or letting their children play, as being pursuant to their statutory right to be on the land and to use it for those activities, given that the field was being held and maintained by the council for public recreation pursuant to statutory powers such as those under the Housing Act 1985 and their statutory predecessors such as those under the Housing Act 1936. So where the owner of the land is a local, or other, public authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period) it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land “as of right” simply because the authority has not objected to their using the land. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so.

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22 See Lord Rodger in *Beresford* at paragraph 68
23 [2014] UKSC 31, [2014] 2 WLR 1360 (Tab 18) see paragraphs 29, and 35-38
24 Ibid at paragraph 21
39. *The burden and standard of proof*: The onus of proving that the land has become a town or village green by satisfying the relevant definition lies upon the applicant. As Pill LJ observed in *R v Suffolk CC ex p Steed* [1996] 75 P&CR 102 at p.111: “it is no trivial matter for a landowner to have land... registered as a town green...” so the ingredients of the definition “must be 'properly and strictly proved’”. In *Beresford* 25 Lord Bingham observed: “It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision-makers must consider carefully whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limit of 20 years’ indulgence or more is met.”

The Inquiry:

40. A Core Bundle (“CB”) was helpfully prepared for use at the inquiry. It is tabbed, paginated and indexed. It contains after Tab 1 the application, Tab 2 supporting evidence, Tab 3 the objection by ELDC, Tab 4 the applicant’s response to the objection dated the 7th and 8th August 2013, Tabs 4a and 5 papers relating to the Judicial Review claim, Tab 6 the conveyance to the council dated 11th December 1951 and Tab 7 relevant council minutes. The copies of the originals of those minutes are difficult to read so typed transcripts were also provided.

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25 [2004] 1 AC 889 paragraph 2
41. An Objector’s Bundle (‘OB’) was also prepared. That contains a proof of evidence from Mr. Sargeant which deals with the grant of planning permission for the development of the application land, the purchase of the land in 1951, the relevant council records from 1951, the maintenance of the land by the District Council and the permission given to use the land for a 10km run in 2012. Mr Sargeant produced documents relevant to his evidence. The objector’s bundle also contained a proof of evidence from Mr Ian Bennett, Cleansing Area Supervisor with the District Council and from Mr Michael Davies BSc, MRTPI, Dip TP, AIEMA who is a director of planning with Savills who deals with the questions of the locality and neighbourhood.

42. After introductory remarks from me the inquiry began with Mr. Bolton and Mr Laurence QC’s making short opening submissions on their cases.

43. After the opening statements Mr. Bolton called his witnesses. They largely dealt with their use of the land for recreation but as it is accepted on behalf of the District Council that the land has been used extensively for recreation during the relevant period as I can summarise their evidence briefly as follows.

The Applicant’s Evidence:

44. **Mr Derek Nash** was Mr Bolton’s first witness. Mr Nash lives at Woodlands on Turnberry Drive which is the road to the immediate west of Alexandra Road. He has lived there for 7 and a half years. Mr Nash had already provided letters in
support dated the 8th March 2013 and the 29th March 2013\textsuperscript{26}. The first letter was written in objection to the application for planning permission for the land. In that letter he wrote: “This plot of land has been used as a recreational area for well over 25 years; it has never been developed and is, in all respects, a ‘green field’ site. In all that time it has been recognised as a recreational area by East Lindsey District Council who regularly cut the grass and provide and empty waste/dog bins. The land is also marked on many local maps, including Ordnance Survey maps, as being a recreational ground….Many of the local elderly residents use this land for walking and exercising their dogs and would plainly have nowhere else to go. Indeed the grass is so flat and well kept on this land near the Community Centre that people in wheelchairs often use it. It is also regularly used as a play area by children after school and in the holidays, so to provide housing here might benefit one section of society but severely deprive other far more vulnerable sections of society of a very valuable and well-used amenity.”

45. His later letter explained that he and his wife have used the land for recreation since living in Turnberry Drive and confirmed the contents of the earlier letter that I have quoted above. He attached to the letter copies of extracts of local maps showing the land marked as “Recn Ground”.

46. He told the inquiry he uses the land about 5 times a week for walking and exercising the dog. He has seen children playing football and riding bikes there. Jubilee Park does not provide any open space that could be used as a village green is used. The field to the north of the application land is ploughed and planted with

\textsuperscript{26} CB Tab 4 p.23 to 27
crops and is unsuitable for young children to play on. He lives on the Viking Estate. There are no facilities within the Estate.

47. **Mrs Edith Robinson** was the next witness. Mrs Robinson has lived at 31 Alexandra Road for 21 years. She had written a letter of objection to building on the land in accordance with the planning permission. That letter was dated the 16th May 2013. Mrs Robinson also signed a form dated the 26th September 2014 and produced it to the inquiry. A number of the applicant’s witnesses had recently signed this form and they produced their copies at the inquiry.27

48. In her letter and form and at the inquiry Mrs Robinson told of extensive use of the land for ball games, riding bikes, flying kites, walking dogs, playing football and she saw toddlers riding scooters.

49. The form28 she signed identified the facilities available within the neighbourhood and beyond, as I have listed them earlier in this report.

50. Each form explains how the signatory accesses the land: in Mrs Robinson’s case from Alexandra Road.

51. Each forms declares that the signatory has never been challenged or prevented or discouraged from using the land, has never asked for permission and has never used the land by stealth or force.

52. The period and frequency of use is identified on each form. Mrs Robinson has used it for 21 years approximately 7 times per week, every morning.

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27 CB Tab 4 p.69 and 69a.
28 P.69a
53. The form records the purposes for which the signatory uses the land: in Mrs Robinson’s case for walking the dogs, playing ball with her grandchildren, watching them fly a kite and for having a picnic with her family.

54. The form also records what activities the signatory has seen other people doing on the land and Mrs Robinson has seen dog walking, meeting friends and children playing games.

55. As the fact of extensive use of the land for recreation is not in dispute I will summarise only very briefly the activities the witnesses say they carried out and saw others carrying out.

56. In evidence Mrs Robinson said that she had always assumed that the land is an open green for everybody to use. She said that the Council had been cutting the grass and looking after the land for as long as she had lived in Alexandra Road.

57. She said that Woodhall Spa was the locality they rely on and she meets people from that area on the land.

58. **Mr George Cutting** was the next witness. He has lived at 14 Alexandra Road for 48 years. Mr Cutting had already provided a letter and a proforma explaining his knowledge and use of the land. He also signed one of the new forms dated the 29th September 2014. He explained that he has used the land continually for those 48 years about 7 times a week. He uses it for dog walking and his children and others have used the land for playing football, flying kites, riding bikes and walking dogs.

59. He confirmed that the dog bins have been there quite a while and that the grass is cut on a regular basis. He remembers the land being used as a football field in the

29 CB Tab 4 p.42,42a and 43.
1960s but then the football field was moved and thereafter the land was used for general recreation.

60. He explained that the land is used for parking for the agricultural show which had been held once a year. The agricultural show has also moved away. It has also been used as a car park for the half marathon and people kept away when it was in use as a car park.

61. He had not given any thought as to whether the neighbourhood relied upon was his neighbourhood. I asked him if there was a name for his neighbourhood and he replied “just off the Witham Road”.

62. **Mrs Sarah Busby-Smith** was the next witness. She has lived at The Willows, Green Lane for 7 and a half years but was born in Woodhall Spa in 1969, went to school there and knows the village well, considering herself as always having lived in Woodhall Spa. Mrs Busby-Smith had filled in one of the earlier proformas in which she remembered a Queen’s Silver Jubilee event on the land, watching football matches and in recent years teaching her children to ride bikes and also for sledging. She also produced a signed copy of the new proforma declaring her recreational use of the land. She confirmed there have never been any challenges to her use nor fences nor signs to prevent or discourage her use.

63. She remembered the land being used as a football field in the 1970s but local people used it for recreation too.

64. She told the inquiry that the village has held an event commemorating the 1940s in the last few years and the land may have been used for parking for these events, as for the athletic events.

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30 CB Tab 4 p.37 and 37a-b.
65. She had not given any thought to what is her neighbourhood save that she classes herself as living in the village, that is in Woodhall Spa itself and she said that people come to the application land from anywhere in Woodhall Spa because it is known to be available.

66. **Mrs Jane Perkins** was the next witness. She has lived at 45 Mill Lane for 7 years. She had filled in one of the earlier proformas explaining that she and her family had used the land for 40 years for a variety of lawful sports and pastimes. She also produced one of the new proformas signed by her and dated the 29th September 2014. She was born in Woodhall Spa in 1969 and lived in the village from then until 2001 and then moved away but returned in 2005.

67. She has used the land for recreation since she was about 4 to 5 years old.

68. She told the inquiry that all of Woodhall Spa is her neighbourhood and that the immediate area around where she lives does not have a name.

69. **Mr Paul Redhead** was the next witness. He has lived at 34 Turnberry Drive for 7 and a half years. He provided one of the original statements in support of the application and produced at the inquiry a copy of one of the new forms signed by him and dated the 24th September 2014.

70. He considers that he lives on the Viking Estate and that is his neighbourhood and he identified the roads, drives and closes that make up the Estate. Essentially it is the roughly square block of roads to the west of the application land and up to the agricultural field to its west and between Green Lane and the gardens of the

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31 CB Tab 4 p.64 and 64a-b
32 CB Tab 2 p.6 and 6a-b
houses fronting Witham Road. The roads on the Viking Estate are mostly named after famous golf courses.

71. He uses the land about 20 times a week usually for dog walking and for other general recreation and he sees others doing the same. He has never been challenged in his use.

72. He remembers the land being used for car parking about two or three times a year for the events such as the 1940s commemoration, athletics and the agricultural show.

73. **Mr John Howard Kemp** was next. He lives at 17 Alexandra Road now having lived from 1982 until 2000 at number 32. He produced to the inquiry a copy of the new form signed by him and dated the 26th September 2014. He has used the land extensively for recreation and seen others use it. He remembered the land being used for parking for the agricultural show. Horse boxes would be in the agricultural field to the north and the show itself would be in the field to the east. He thought the last show had been about 8 years ago. It has since been held on an area off Green Lane further to the west. He remembered the land being used for car parking for the other events.

74. His neighbourhood he considered Alexandra Road and he added that Woodhall Spa is so small “we class ourselves a village”.

75. **Mrs Michelle Mounce** was next. She has lived at 11 Alexandra Road for 7 years. She had previously written a letter explaining her and her family’s recreational use of the land. She also produced one of the new proformas signed and dated the

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33 Tab 4 p.80
28th September 2014\textsuperscript{34}. She uses the land 6 or 7 times a week. It is particularly convenient for her disabled son in his disability chair, indeed he is unable to play anywhere else without his mother. She has taken part in and seen may types of recreational activities on the land. She knows the Council maintains the land and provides the dog bins.

76. She does not consider that she lives in any particular area and she considers you are not part of the Viking Estate when you live in Alexandra Road. She tells people that she lives near the community centre and when I asked what the “community” is that is served by the community centre she told me “anybody in the village”.

77. **Mr Brian Churchill** has lived at 7 Alexandra Road for 10 years. He provided one of the original statements in support of the application and produced at the inquiry a new form signed by him and dated the 27th September 2014. He uses the land for walking his dogs and playing ball with his grandchildren about 10 times per week and he has seen many recreational activities taking place on the land.

78. He told the inquiry that the Council use the land as a car park during the special events such as the triathlon, the half marathon, the 1940s weekends and the agricultural show from 2004 to 2008 but people can and so still walk their dogs on the land when those events are being held and have sandwiches between the cars.

79. **Mrs Julie Findley** lives at 1 Turnberry Drive. Her grandfather was one of the founders of the agricultural show in the 1940s. She recalls the land being used for

\textsuperscript{34} CB Tab 4 p.29 and 29a-b.
car parking and for picnicking during the show. The show moved to its new location some 5 years ago.

80. **Mr Bolton** gave evidence last. He had also submitted a letter dated the 10\textsuperscript{th} April 2013 in support of his application.\textsuperscript{35} He has lived at 36 Alexandra Road for 15 years. He said that he had always assumed until recently that the land was a village green. He referred to an archaeological assessment dated May 1994 to which a Figure 1 was attached being a plan of the area on which the land was marked as “playing field”. He also referred to the Woodhall Spa Village Design Statement which refers to a need for the provision of public open spaces in order to ensure that the village remains a popular and cohesive community and to promote healthy lifestyles, to continue the success of the local economy, to encourage biodiversity and in a small way to help combat the effects of climate change. He also referred to a witness statement on behalf of the District Council in the judicial review which referred to the loss of grant funding for the affordable homes permitted on the land if works had not begun by March 2014 rendering the purchase of the land by the housing trust from the Council unviable. The implication I took was that the planned affordable housing scheme was not certain to go ahead now.

81. He stressed that Woodhall Spa is a village without separate identified areas within it. He explained that the community centre is popular, with coach trips organised from it and a successful lunch club. He told the inquiry that there had been a fete organised by the community centre on the land in the past but that it had been cancelled this year and he drew the inference that that was because such an event

\textsuperscript{35} CB Tab 2 p.21
looked too much as if the land was being used as a village green. He recalled the land being used for the parking of vehicles during the various special events.

82. The documents by way of letters and completed forms from supporters of the application produced by the Applicant address the recreational use of the land. The District Council expressly accepted that there was extensive use of the land for lawful sports and pastimes by local inhabitants during the relevant period and so I need not summarise the contents of those documents.

**The Objector’s Evidence:**

83. **Mr Gary Sargeant** gave evidence in accordance with his written proof of evidence.\(^{36}\) He is a member of the Royal Institution of Chartered Surveyors and has been the district valuer. His principal responsibility is managing the District Council’s property portfolio. He first became directly involved with this land in 2010 during negotiations for its sale to a housing trust for the purpose of building affordable housing on the land. Planning permission for that development was granted on the 12\(^{th}\) March 2013.

84. He was born some 15 to 18 miles away and has been on the land in the past but his evidence is not directed to usage of the land.

85. He has looked at the council records and referred to the conveyance of the land as part of a wider parcel of land of over 12 acres (5 hectares) on the 11\(^{th}\) December 1951\(^{37}\). In its recital the conveyance records that the Urban District Council were

\(^{36}\) OB 01
\(^{37}\) CB Tab 6 p.101-111 (there are no pages)
“desirous of acquiring the said property for the purposes mentioned in the Housing Act 1936”. The Council records show that there were regular discussions between the Council and the Ministry of Housing and Local Government about the provision of housing on the land on what became known as the Park View Housing Estate. Planning permission was deemed to be granted for initially 8 houses and by the 27th December 1952 4 houses were ready for occupation and 4 were due to be ready by the following February and approval had been given by the Ministry for the erection of a further 14 houses on the estate. By 1954 application was being made to the Ministry for the building of another ten houses.

86. In 1957 a tenancy “of land at the rear of the Park View housing site” was being given to the Woodhall Spa Agricultural Show Committee. In 1965 the football club were looking to sub-lease that land and the Council were content for that provided the Club vacated the land if it was needed for more housing. On the 10th December 1965 there was a resolution noting that the land was purchased for housing but “had been used for recreation for the past 12 years and it might well be so for many years to come.” Two more houses seem to have been built in 1968. By 1969 it had been decided to build more “old people’s dwellings” at The Close. By the 19th February 1973 a third phase of development at The Close was planned. Mr Sergeant explained that the football club moved from the area of the Close to the application land at this time. The sequence of these developments is shown by the series of Ordnance Survey map extracts produced by Mr Davies as his MD 5, 6 and 7a. In 1981 the football club entered into a lease of what is largely now the application land for 6 years. In 1987 deemed planning permission
was given to build bungalows at The Close. The application land is commonly referred to as “the playing field” in relevant documents.

87. In 2004 part of the land was allocated as “protected open space” in the Council’s draft development plan but the plan was never adopted.

88. Mr Sergeant produced documents showing that the Council have maintained the land under various contracts for the cutting of the grass.

89. He also produced documents showing that the Council gave permission for the land to be used for car parking associated with a 10 kilometre run in 2012.

90. He explained that the Council’s housing stock was transferred in 1999 but the application land was retained and a value was ascribed to its development potential.

91. In cross-examination by the Applicant Mr Sergeant agreed that he does not have a copy of the Ministerial consent needed by the Council for the provision of a recreation ground in connection with housing provided by them under the Housing Act 1936 but he said there was nothing in the material he had seen to suggest that such consent would not have been obtained. There are many records of discussions with the Ministry at the time in relation to the acquisition and the subsequent developments.

92. **Mr Ian Bennett** gave evidence in accordance with his written proof of evidence. As part of his council cleaning and maintenance duties for the last 10 years he has visited the land and seen recreational activities taking place on it. He explained that as far as he is concerned the land is an open area that is made available by the Council for anyone to use so it is public land and he would not say that the people...
he sees using it are trespassing. The Council provide litter bins for people using
the land and the two dog mess bins that have been there for the 10 years he has
worked for the council.

93. Mr Michael Davies of Savills gave evidence in accordance with his proof. His
evidence addressed the question of the locality and the neighbourhood within the
locality relied upon by the Applicant. He produced a plan as Appendix 3 to his
original report MD2 showing the Woodhall Spa Civil Parish boundary. That
boundary accords with that shown on the Applicant’s plan PP1 and shows the
locality relied upon by the Applicant. It is clearly a legally recognised boundary
but Mr Davies does not consider that this locality has any real or credible
relationship with the application land. The area of the civil parish is large and
expansive and he finds it difficult to see why the inhabitants of the whole parish
would use the application land when they have a wider and better choice of
alternative green spaces available to them.

94. So far as the neighbourhood relied upon by the Applicant is concerned, Mr Davies
says that the area is predominantly residential with very few services or facilities
which in his view means that it does not have the characteristics or function of a
cohesive neighbourhood. He produced a copy of the planning permission granted
in October 1994 that lead to the development of what became the Viking Estate
and his research indicated that those houses were developed between the late
1990s and the mid 2000s.38 His Appendix 11 to his final report MD3 is a table
listing the facilities in Woodhall Spa both inside and outside the neighbourhood
relied upon by the Applicant. Appendix 12 shows those facilities within the

38 OB MD2 paragraphs 2.17-18 and Appendix 11.
claimed neighbourhood on a Google Maps base and Appendix 13 shows those outside the claimed neighbourhood in the rest of the village.

95. He pointed out that the population of the claimed area has increased by some 40% between 2001 and 2011 because of new building within that area. The current population is roughly 2,000 people. There are around 780 dwellings within the claimed neighbourhood now. Nearly a half of these were not there in 1993. The Viking Estate, developed in the late 1990s and 2000s, largely accounts for these more recent dwellings.

**Application of the law to the facts:**

96. There is virtually no factual dispute in this case. The District Council as the only objectors accept that a large number of people living in the immediate area of the land have used the land for lawful sports and pastimes for the requisite period from 1993 to 2013. It is accepted that they have done so openly, freely and without challenge. It is clear from all the written and oral evidence that that is the case and I so find.

97. The only live issues are therefore (i) whether the use was “as of right” and (ii) whether the locality of the civil parish of Woodhall Spa and the neighbourhood within that locality as shown on plan RA1 relied upon by the Applicant meet the legal requirements.
98. I have explained in paragraphs 32 to 38 above how recreational use has to be “as of right” in order to qualify as a use that can lead to registration of land as a green.

99. The District Council’s Submissions: It is the District Council’s case that they have held the land in order for the public at large to use it for recreation and they have maintained it to enable that to happen. Therefore they submit, firstly, that the recreational use that has taken place has been “by right” and not “as of right”: they say that the public had the right to use the land for recreation because until 1999 the Council held it for that very statutory purpose as a recreation ground provided in connection with the housing accommodation built in the immediate area. In 1999 the Council disposed of its housing stock and thereafter the application land was not held in connection with housing but the Council submit that thereafter they either held the land under statutory powers to make recreational facilities available or they held the land under general powers, made it available for recreational use and encouraged such use so that the use was by their implied permission, revocable whenever they decided they needed the land for another purpose and so not “as of right” but by permission , albeit implied permission and so precario.

100. They further submit that the fact that the Council excluded people from use of the land when it was needed for car parking for the various events that took place in the immediate area shows that by taking back a substantial part of the
application land whenever it needed to, in order to use that part of the land for its own purposes, namely providing car parking for the event in question, and so in a way inconsistent with its continuing use for recreation at those times, the Council signified to local people that they were free to use the land at other times for recreation but therefore with the implied permission of the Council.

101. **The Applicant’s submissions** on this issue firstly queried whether the Council had shown that the provision of the land as a recreation ground under the statutory powers was with the consent of the relevant Minster as the statutes required. Secondly he argued that there was no evidence that the Council had permitted car parking and pointed out that people had continued to use the land for recreation such as for having picnics even when the land was in use for car parking. Thirdly he submitted that there was no evidence that the Council had permitted recreational use, such as by erecting signs to that effect.

**My conclusions on this issue:**

102. The Urban District Council of Woodhall Spa acquired the application land as part of a wider parcel of land in 1951 in order to build council housing. The conveyance explained that the Council “were desirous of acquiring the said property for the purposes mentioned in the Housing Act 1936.” Section 72 (1) of that Act gave them power to “provide housing accommodation ...(a) by the erection of houses on any land acquired by them.” Section 80 (1) of the same Act gave the power to the Council “to provide and maintain with the consent of the
Minister … in connection with any such housing accommodation … any
recreational grounds which in the opinion of the Minister will serve a beneficial
purpose in connection with the requirements of the persons for whom the housing
accommodation is provided.”^{39}

103. In this case houses were built on some of the land acquired from 1952^{40}
but not all the land was needed. On the 10th December 1965 there was a resolution
which noted that some of the land acquired had been used for recreation for the
past 12 years and might continue to be so used for many years to come^{41}. By 1973
the football club had moved onto the land^{42} and so I find that by 1973 at the latest
the application land was being provided by the Council as a recreation ground in
connection with the houses that had been built.

104. There is no record of any Ministerial consent for the use of the land as a
recreation ground, as the statute required, but there are many records of
discussions with the relevant Ministry during this period so the Council were in
touch with the relevant officials, were well aware of the statute under which they
were exercising their powers^{43} and, as Mr Sergeant explained, there is nothing in
any of the records he has examined which suggest that such consent was not
obtained. Further, there is a principle in law given the Latin tag omnia
praesumptur rite esse acta which means that official acts are presumed to have
complied with any necessary formalities unless there is evidence to the contrary.

^{39} Objectors’ Authorities bundle Tab 2. The relevant provisions of the 1936 Act were repealed and
substantially re-enacted in the Housing Act 1957, whose provisions were in turn repealed and substantially
re-enacted in the Housing Act 1985.
^{40} CB Tab 7 p.146-147.
^{41} CB Tab 7 p.180
^{42} Paragraph 86 above and CB Tab 7 p.227
^{43} See e.g. CB Tab 7 p.159 and 166
On the balance of probabilities given the contemporaneous records of continuing discussions with the relevant Ministry and the fact that the Council had access to legal advice and were well aware of the statutory powers under which they acted, I find that such consent was obtained and I so find without recourse to the maxim I quoted above but that principle in my view puts the matter beyond any doubt.

Equally I am satisfied that the Urban District Council resolved to provide a recreational ground on the application land in connection with the housing it had already provided on the remainder of the land in exercise of its powers under the Housing Act 1957, section 93 (1).

105. So I find that those people who used the land for recreation from 1973 at the latest were doing so because they were entitled to do so. The Council had provided the land for them to use for recreation under statutory powers and they were using it because they had the right to do so: they were using it “by right” and not “as of right”. The position here is as it was in the Barkas case, as the Supreme Court has explained it. So long as land is held by a public authority under a provision giving them the statutory power to provide recreation grounds, members of the public have a statutory right to use the land for recreational purposes and therefore they use the land “by right” and not as trespassers so no question of user “as of right” can arise. A reasonable local authority in the position of the Council here when it held the land under the statutory powers would have regarded the presence of members of the public on the land, walking with or without dogs, taking part in sports or pastimes, or letting their children play, as being pursuant to their statutory right to be on the land and to use it for
those activities given that the land was being maintained and held by the Council for public recreation pursuant to its statutory powers. The District Council so held the land from 1974 on local government reorganisation until 1999 when its housing stock was disposed of. Therefore the Applicant cannot show 20 years user as of right as the Act requires (in this case from 1993 to 2013) and that alone means that this application must be rejected.

However, for completeness I will consider the position after 1999. The Council retained ownership of the application land and I am satisfied that it continued to maintain it as an area for public recreation as is shown by its mowing the grass and its general maintenance of the land. It provided bins for people to put any mess from their dogs as they walked them on the land and did so from at the latest 2004 when Mr Bennett began working for the council and in my judgment that is evidence that the council held the land with the intention that people should use the land for walking their dogs ands so for recreation. It had ample statutory powers to do so: see, for example, section 12 of the Open Spaces Act 1906 and section 19 of the Local Government (Miscellaneous Provisions) Act 1976. So as Lord Neuberger put it in Barkas the Council had “lawfully allocated the land for public use.” As he went on to explain: “It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so.”

44 Authorities Bundle Tab 5
45 ibid Tab 7
46 Barkas at paragraph 24
107. Far from objecting to the public use by maintaining the land and providing bins the District Council were taking steps to ensure that the public were aware that they were being encouraged to use the land. A number of the Applicant’s witnesses understood that the land was being provided by the Council for them to use for recreation. None of them felt they were trespassing for the very good reason that they were not: they were there on the implied permission of the District Council. Their use therefore from 1999 was not “as of right” but was by the implied permission of the District Council and so precario. Permission does not have to be express by way of signs or any other method so the absence of signs giving permission is no answer to this submission by the District Council, as the Applicant suggested it might be. This permission also explains the labelling of the land on the various maps produced to the inquiry as “Playing Field” or “Recn Ground”.

108. In my judgment therefore the use of the land for lawful sports and pastimes was not “as of right” because from 1993 (and earlier) to 1999 the use was by reason of statutory entitlement and so “by right” and from 1999 to 2013 the use was not “as of right” because it was by the permission of the Council to be implied from the Council’s acts of encouragement of recreational use by maintaining the land in a suitable state for recreation and providing bins for dog walkers to use. The use was therefore precario – it depended on the permission of the District Council.

109. It follows that the application should be rejected.

47 See Barkas at paragraphs 81 to 83.
110. I should add for completeness that I do not accept that the District Council excluded inhabitants on the occasions when the land was used for parking for the various local events. It is clear that people continued to use the land for recreation for example by picnicking or walking their dogs between the parked cars. But their use continued to be by implied permission and not “as of right.”

(ii) Locality and Neighbourhood

111. I have explained the legal position on this issue at paragraph 30 above. The Applicant relies on the locality of the civil parish of Woodhall Spa shown on Plan PP1 and on the neighbourhood within that locality shown edged in blue and pink on drawing RA1.

112. Because it is the inhabitants of the locality or neighbourhood within the locality who acquire the right to use the land following and in consequence of its registration, the locality or neighbourhood must have a cohesive identity so that its inhabitants can be identified. A locality must have legally significant boundaries and whilst the concept of a “neighbourhood within a locality” was introduced in an earlier amendment of the legislation with deliberate imprecision to avoid the complexities under the original definition arising from the use of the word “locality”\(^{48}\), in my judgment both the locality and the neighbourhood must have cohesion and have a real and credible relationship with the land sought to be

\(^{48}\) Oxfordshire at paragraph 27
registered as a green. That was the approach followed in *R (oao Mann) v Somerset County Council*\(^{49}\) and I respectfully consider it is right.

113. **The Objector’s Submissions:** The District Council submit that the area chosen and relied upon by the Applicant as the neighbourhood was arbitrarily chosen simply to encompass those who had supported the application and was not intended to and did not identify a distinct and identifiable community. Such facilities as there are within the neighbourhood do not serve just that neighbourhood but the whole of Woodhall Spa. Furthermore the Viking Estate did not begin to be built until the late 1990s and that estate makes up a significant proportion of the dwellings and population within the neighbourhood. So that a significant proportion of the claimed neighbourhood has not existed for the full relevant period from 1993 to 2013. The wide area covered by the locality of Woodhall Spa civil parish, whilst having a legally recognised boundary has even less of a credible relationship with the land.

114. **The Applicant’s Submissions:** The Applicant accepts that Woodhall Spa is thought of as a whole and there are no named neighbourhood areas within the village. But he did point out that there are a number of facilities within his claimed neighbourhood which, whilst being available to the whole village, do mean that the neighbourhood forms a cohesive neighbourhood within a locality.

115. **My conclusions on this issue:** The locality of the civil parish of Woodhall Spa does have a legally significant boundary but it includes a wide area comprising virtually the whole village together with some outlying farms and dwellings. It is nevertheless a cohesive area because many of the witnesses spoke

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\(^{49}\) [2012] EWHC B14 at Tab 13 of the Authorities Bundle at paragraphs 95 to 97
of coming from or living in Woodhall Spa. However, as the plan marked RA1 shows, there are no claimed users or supporters of the application living in the wider parish beyond the claimed neighbourhood. None lives south of Witham Road or east of Stixwould Road or Tattershall Road. In my judgment the civil parish for that reason does not have a real or credible relationship with the application land. Most of the people living within that locality do not claim to have used the land for recreation and they have other recreational areas available to them.

116. The users of the land and supporters of the application do live in and throughout most of the claimed neighbourhood but in my view that is because the Applicant has chosen to draw the boundary of his neighbourhood around the homes of the supporters of his application. In my judgment the area does not have the required cohesive identity. It has no name by which witnesses could identify it, the Applicant himself accepts that the village of Woodhall Spa does not have smaller individual communities within it and witnesses usually considered that their community was the whole village. The facilities within the claimed neighbourhood serve the whole village and not just the neighbourhood. The boundary drawn on RA1 by the Applicant in the south-west is an arbitrary line crossing Witham Road passing through one property without any explanation of why the house on one side of that line should be considered as within the neighbourhood and the property to the west outside the line should be considered as outside the neighbourhood. The Viking Estate is only part of the claimed neighbourhood and itself has no facilities other than the area of public open space.
Furthermore it has not existed for the whole of the relevant period from 1993 to 2013, having begun to be developed some two years into that period.

117. In my judgment therefore neither the claimed locality nor the claimed neighbourhood within that locality qualifies as such within the meaning of the legislation. The application for registration should therefore be rejected for this additional reason.

CONCLUSIONS:

118. For the reasons given above I recommend to the registration authority that the application to register the land north of Alexandra Road, Woodhall Spa should be rejected because:

(i) the use of the land for lawful sports and pastimes has not been “as of right” but has been “by right” from 1993 to 1999 and by the implied permission of the landowner, the East Lindsey District Council, from 1999 to 2013, the date of the application; and

(ii) neither the locality nor the neighbourhood within that locality relied upon in the application qualify as such within the meaning of section 15 of the Commons Act 2006

Rhodri Price Lewis QC