COMMONS ACT 2006, Section 15

SURREY COUNTY COUNCIL
(Registration Authority)

RE: LAND KNOWN AS 'THE FIELD' OR 'THE MEADOW', TO THE NORTH OF WOODSIDE ROAD, CHIDDINGFOLD

REPORT OF THE INSPECTOR
MR ALUN ALESBURY, M.A., Barrister at Law

into

AN APPLICATION TO REGISTER THE ABOVE-NAMED AREA OF LAND

as

TOWN OR VILLAGE GREEN

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CONTENTS:

1. INTRODUCTION

1.1. I have been appointed by Surrey County Council ("the Council"), in its capacity as Registration Authority, to consider and report on an application officially noted and stamped as received by the Council on 10th September 2015, for the registration of an area of largely open land situated to the north of Woodside Road, Chiddingfold, as a Town or Village Green under ***Section 15*** of the ***Commons Act 2006***. The site, and the whole of Chiddingfold, are within the administrative area for which the Council is responsible.

1.2. I was in particular appointed to hold a non-statutory Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of it, and on behalf of those who had objected to the application ("the Objectors"). Hence I was provided with copies of the original application and the material which had been produced in support of it, the objections duly made to it, and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of that early material may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of it in compiling my Report and recommendations.

2. THE APPLICANTS AND APPLICATION

2.1. The Application, accompanied by various documents, including letters, statements and completed evidence questionnaires in support, etc. was, as already noted, formally received by the Council as valid on 10th September 2015; it was made by Mr Angus de Watteville, of Avoca Cottage, Woodside Road, Chiddingfold, and Mrs Antonia Cowley, of 2 Oakleigh Cottages, Woodside Road, Chiddingfold. Mr de Watteville and Mrs Cowley are therefore "the Applicants" for the purposes of this Report. The application form indicated that the application was based on ***subsection (2)*** of ***Section 15*** of the ***Commons Act 2006***.

2.2. The application form put forward the area of the (civil) Parish of Chiddingfold as the 'locality' relevant to the application, and a map accompanying the application put forward a smaller area (subsequently explained to represent the built-up area of the village of Chiddingfold) as the relevant 'neighbourhood' within that locality. The Civil Parish of Chiddingfold was accepted on all sides as an area meeting the relevant legal tests to constitute a valid 'locality'. I shall consider the matter of the claimed 'neighbourhood' further, later in this Report.

2.3. As for the application site, its originally proposed boundaries were shown (as is required) on a plan which accompanied the application, on a 1:2500 Ordnance Survey base. However the site as thus shown included within its boundaries a group of somewhat dilapidated garage buildings, near to its south-eastern corner (and one other small building a little further north along the eastern boundary). At the Inquiry application was made on behalf of the Applicants to amend the

application site by the removal from it of the relatively small areas principally occupied by those buildings, and an amended application site plan Map A(2) [Inquiry doc. ref. App.3] was produced.

2.4. It seemed to me that this amendment to the application was a reasonable and sensible one, and could not conceivably prejudice any party who might be affected by it. Furthermore, no objection to the amendment was taken on behalf of the Objectors/landowners, who were represented by Counsel at the Inquiry. Accordingly I shall take the amended and slightly reduced application site as being the site that is under consideration, and clearly my advice and recommendation to the Registration Authority is that it should do likewise. Thus from now on, when I refer to 'the site', or 'the application site' that will be a reference to the original site as thus amended and shown on the Applicants' Map A(2), unless the context otherwise requires.

2.5. As for the physical nature and appearance of the site, it is a roughly triangular shaped piece of generally open land. Its approximately southern side backs onto the northern end of the back gardens of a row of houses which are themselves on the north side of Woodside Road, on the northern edge of Chiddingfold village. A considerable number of those back gardens have gates through their back fences, on to the application site.

2.6. In a small number of instances there appeared (when I saw the site) to have been some 'encroachment' onto the application site, by the incorporation within back garden fencing of small areas which seem to lie within the site as shown on the application plan. I was given to understand (and it was not in dispute at the Inquiry) that the southern boundary of the application site as shown, on both the amended and original application plans, is the same as that of the relevant land registered by the Land Registry as being in the ownership of the Objectors in the present proceedings.

2.7. It is of course no part of my role, nor that of the Council as Registration Authority, to consider or address such matters as 'adverse possession', so I merely note these circumstances as part the background of what I observed on the site during my visits to it in November 2017.

2.8. The (roughly) north-western and eastern boundaries of the triangular site are generally fairly typical, heavily overgrown field boundaries, with numerous large trees, and a large amount of undergrowth (with some remnants of fencing visible in places), which may well result at least in part from earlier, perhaps more maintained, field boundaries having been neglected and allowed to overgrow, over a prolonged period. At the time of my principal site visit there were two quite obvious ways, convenient for an adult pedestrian to use, through the eastern site boundary and into the adjoining field to that side, and it was apparent that there were other places where a child or a particularly keen adult could have pushed a way through that boundary.

2.9. Perhaps more significantly, at the extreme south-eastern corner of the application site, there is an unmade-up track, apparently capable of carrying vehicles or pedestrians (and without any intervening gate or fence), going from the site southwards (approximately), alongside the eastern boundary of the property called 'Keneen', to join the carriageway and public highway of Woodside Road, at the point where that road is joined by another road called Wildwood Close.

2.10. I note, in passing at this stage, that I was told that (entirely separately from these proceedings under the ***Commons Act***) an application has been made to the County Council under the relevant legislation for the recording of a Public Footpath, based on evidence of long user, over the track just mentioned, and then (from close to the point where the track meets the application site) continuing through the plot of land to the east of the site, which is mainly a field, to join other footpaths further to the north.

2.11. In physical terms the track just mentioned provided (at the time of my visits) easy and unobstructed pedestrian access from the public highway to the application site, and also access to the group of dilapidated garages now excluded from the site, although there were no obvious signs suggesting significant vehicular use in recent times.

2.12. At the time(s) when I saw the site, a southern 'strip' of it, running along next to the boundaries of the Woodside Road properties, showed very considerable signs of domestic-related activity, such as children's toys or play equipment, gardening equipment, vegetable or fruit patches, some hens and ducks in small and fairly basic enclosure, and significant areas of relatively closely mown grass.

2.13. The remainder of the site, to the north, was considerably more heavily covered with vegetation. Much of this had the appearance of very overgrown and neglected grassland and weeds, but interspersed with a significant number of established (but mostly fairly small to medium-sized) trees and bushes, brambles, and other assorted but generally low vegetation, typical of an area which has undergone a period without much maintenance or management having taken place.

2.14. The northern apex of the site, where a 'pond' is marked on the Ordnance Survey map, did not at the time of my visit contain a pond, but rather a low-lying and damp area surrounded by denser and less easily penetrable vegetation than most of the rest of the site. A large tree within the site, but along its eastern boundary, contained a noticeable 'tree house'.

2.15. The more roughly vegetated northern part of the site generally contained a small number of apparent paths, including one quite prominent one running approximately north-easterly through the site from the area behind the houses to the most obvious exit point through to the field to the east, about half way along the eastern boundary of the site.

2.16. On the formal site visit on 9th November 2017, a short length of rather overgrown barbed wire fencing was observed, near to the eastern boundary of the site, but running in a direction laterally (i.e. approximately east-west) across the site, in the area just to the north of the dilapidated garages which have been referred to.

3. THE OBJECTORS

3.1. When the Council publicised the application, a substantial, reasoned objection was received from the McLaren Clark Group, on behalf of the landowners, understood to be Mr A.P. and Mr C.S. Matthews, Mr D.J. Faux, and Ms. J.A. Turner. These named landowners are therefore "the Objectors", and they were all represented jointly at the Inquiry which I held.

4. DIRECTIONS

4.1. Once the Council as Registration Authority had decided that a local Inquiry should be held into the application [and the objection(s) to it], it issued to the parties Directions as to procedural matters, drafted by me, in August 2017. Matters raised included the exchange before the Inquiry of additional written and documentary material, such as any further statements of evidence, case summaries, legal authorities, etc. Since the spirit of these Directions was in general observed by the parties, it is not necessary for me to comment further on them at this stage.

5. SITE VISITS

5.1. As I informed the parties at the Inquiry, I had the opportunity shortly before the Inquiry commenced to see the application site, unaccompanied, from its south-eastern corner. I also observed the surrounding area generally.

5.2. After the conclusion of the evidence to the Inquiry, on 9th November 2017, I made a formal site visit to the site, accompanied by representatives of both the Applicants and the Objectors. In the course of doing so, I was able to observe the site much more fully than I had previously been able to, to see the other land to the east and north-east which had been referred to during the Inquiry, and also once again to note parts of the surrounding area more generally.

5.3. I have made reference to what I was able to see on this site visit, in my description and discussion of the application site in paragraphs 2.5 to 2.16, above.

6. THE INQUIRY

6.1. The Inquiry was held at Hambledon Village Hall (Hambledon being the next village to the north of Chiddingfold), on 7th, 8th, 9th and 10th November 2017.

6.2. At the Inquiry submissions were made on behalf of both the Applicants and the Objectors; oral evidence was heard from several witnesses on behalf of the Applicants, one 'third party' (but supporting the application) witness on her own behalf, and one witness on behalf of the Objectors. All of this witness evidence was subjected to cross-examination, and questions from me, as appropriate.

Post-Inquiry evidence and submissions

6.3. The normal expectation, after a public local Inquiry such as the one I held in this case, would be that once the Inquiry has finished, I as Inspector would receive no further evidence or submissions from the parties, other than in exceptional or unusual circumstances; and indeed that normal expectation was reflected in the Directions which I had issued in this case.

6.4. However, quite shortly after the end of the Inquiry here, the Registration Authority's proper officer received a letter dated 17th November 2017 from the McLaren Clark Consultancy, acting as agents for the Objectors, drawing attention to a circumstance which had arisen since the close of the Inquiry. This was that one of the co-owners of the application land (and therefore one of the Objectors), Dr. A.P. Matthews, who lives in South Africa, on being sent copies of the closing submissions to the Inquiry, had realised that he was in possession of some knowledge, and photographs, relating to a visit he had made to the land in 2005 – things which he had not previously realised might be relevant to the dispute which the Inquiry was dealing with – all of which had been communicated in a letter (presumably emailed) from Dr Matthews, also dated 17th November 2017, with the relevant photographs attached.

6.5. Application was made that I and the Registration Authority should in these circumstances accept and consider this material, in spite of its late submission, on the basis (it was argued) that it is highly pertinent to the Registration Authority's decision in this case.

6.6. These circumstances were brought to the attention of the Applicants, who were given the opportunity to comment and make representations, both on the question of the admission of Dr Matthews's letter and photographs, and on the substance of them. In a letter of 8th January 2018, Mrs Antonia Cowley (the one of the Applicants who had acted as principal spokesperson at the Inquiry) objected to the late admission of the new material from Dr. Matthews, but also put forward some submissions, including a photograph, by way of response to that material, should I take the view that it ought to be accepted for consideration.

6.7. Clearly the late submission of material, especially after an Inquiry has ended, is in principle undesirable, and to be avoided. However in this instance it came at a time before I had been able to embark on any of the production of my Report, in relation to any of the substantive issues in dispute. It is also, at least potentially, relevant to the matters in issue.

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6.8. The fact that Dr Matthews lives overseas, in a jurisdiction where (it seems to me) it is most unlikely that a piece of legislation which closely parallels ***Section 15*** of the ***Commons Act 2006*** is in force, makes it more credible and understandable that he should not have realised in advance that his photographs and recollections were of potential significance. I therefore conclude that the circumstances here are sufficiently unusual for me to decide that on balance the more reasonable course is to admit the late material.

6.9. Clearly of vital significance in reaching this view is the point that the Applicant(s) have been given a full opportunity to respond to the material from Dr. Matthews, as both fairness and justice demand, and they (through Mrs Cowley) have taken up that opportunity. Therefore, it seems to me, no issue of unfairness in reality arises here, and the balance is clearly in favour of consideration being given, both to the new material, and to the Applicants' response to it, rather than the Objectors being prevented from making any reference to it.

6.10. The evidential matters raised in these exchanges are therefore among those which I shall bear in mind as part of my overall consideration of the evidence from all sides, later in this Report.

Overview in relation to matters considered

6.11. As well as the oral evidence, the submissions made to me, and other matters specifically raised at the Inquiry (and the Post-Inquiry material to which I have just referred), I have also read and had regard in producing my Report to all of the written and documentary material submitted by the parties. I report on the evidence, and the submissions of the parties, in the following sections of this Report, before setting out my conclusions and recommendation.

7. THE CASE FOR THE APPLICANTS – EVIDENCE

Approach to the Evidence

7.1. As I have already noted above, the original Application in this case was supported and supplemented by a number of documents; these included plans, statements, a considerable number of completed evidence questionnaires, and some other supporting material, including photographs.

7.2. More written or documentary material was submitted on behalf of the Applicants [and also the Objectors], both in the early stages of the process, and in the run-up to the Inquiry. I have read all of the written material, and also looked at and considered the photographs and other documentary items with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.

7.3. However, as is to be expected, and as indeed was mentioned in the pre- Inquiry Directions, on some aspects of a case of this kind, more weight is likely to be accorded (where matters are in dispute) to evidence which is given in person by a witness, who is then subject to cross-examination and questions from me, than will necessarily be the case for mere written statements, completed questionnaires, etc., where there is no opportunity for challenge or questioning of the author.

7.4. With these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report such personal evidence as was contained in the statements, letters, completed evidence questionnaires, etc., provided by individuals who gave no oral evidence. In general terms it was broadly consistent with the tenor of the evidence given by the oral witnesses. Thus, other than in those instances where I make specific reference to the untested written material later within this Report, nothing (in my view) stands out as particularly needing to have special, individual attention drawn to it by me.

7.5. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.

The oral evidence for the Applicant

7.6. ***Mrs Debbie Wallbank*** lives at 5 Pathfield, Ridgley Road, Chiddingfold. She is the manager of the Chiddingfold Village Nursery. That is held in Chiddingfold Village Hall in Coxcombe Lane. She said that she has used Woodside Meadow, which is the local name for the application site, as of right for the last two years, as a place to visit with the children from their nursery for outings. Those outings have been part of their 'Empty Classroom' days, and have included up to 23 children and 6 members of staff. They have used the meadow for bike riding, bug and fairy hunting, den building, ball games, races, role play, circle games, and the simple enjoyment of a wide open space. They have enjoyed musical activities, animal, plant and wildlife interactions, and picnics.

7.7. Those visits prove very popular with the children, and the feedback from parents has been brilliant. They wish to use the meadow for future trips and adventures, and to make it a regular and lasting part of the experience they offer their children and families.

7.8. The benefits of having access to a space such as Woodside Meadow to a developing child are huge. It allows children to develop not only their physical skills through freedom of movement etc., but also their imaginations and explorative skills. There are also social and emotional learning opportunities for children when they can gather in mixed age groups, and when parents, carers and the wider community can be included in their learning and play experiences.

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7.9. The limits and benefits of a space such as this are endless. Woodside Meadow is a safe, well-positioned, unique and valuable resource. They have never been barred from accessing the land in any way, nor have they been given permission. They access the land from the footpaths and the side track next to Wildwood Close, as other members of the community do. They do not use the land in secrecy, as they are aware that the community have been accessing the land for many years, and still do.

7.10. They have also used Woodside Meadow for team meetings and drinks parties to celebrate the end of terms. It has offered the perfect space over the years for professional gatherings as well as relaxation and recreation.

7.11. As the manager of a long established early years setting in the heart of Chiddingfold, and as a Chiddingfold resident, she hopes that Woodside Meadow will be registered as a village green.

7.12. She confirmed that some of the other people who had produced evidence statements are also members of her staff.

7.13. The nursery had undertaken two trips to this land with the children. She personally was aware that the track next to the site (to the east) had been in very long use, and she had always used it since 1999.

7.14. *In cross-examination* Mrs Wallbank said that the first visit to the land of the nursery group was on the 19th June 2015. On that visit there were 19 children, 5 staff and some helpers. They walked to the site in a *"walking bus"* type of arrangement. That was the only outing in 2015 to the site.

7.15. The nursery is registered with Ofsted. They (the nursery) do carry out risk assessments for their activities.

7.16. There had been other outings there subsequently. In 2016 they did not visit Woodside Meadow. However on the 18th May 2017 they did have an Empty Classroom day visiting that site, as well as others. They passed through the site. That day was not a sponsored walk day.

7.17. On the 19th June 2015 they had undertaken a number of activities on the site. These included ball games and looking for fairies in the long grass. Also there was looking at ducks, chicken and eggs. There were running games, and the children played in the long grass without their shoes or socks on.

7.18. Access to the site for those occasions would have been from the access track by Wildwood Close.

7.19. On the visit in June 2015 they went through this site to a wider area beyond, as they had done on the more recent occasion. They went through to an area known as *"the Laggs"*, on the path towards the Winterton Arms.

7.20. On their visit in 2017 they also wanted to go through to The Laggs. They went across a field to the east of the application site (known in the context of some planning proposals as *"Site 6")*, via the path which is there. There are streams and muddy ground over at the Laggs, and a small bridge. This is a good development challenge for the children. However they did get as far as the Laggs on that occasion. On their return though they did not come back the same way, but went into Woodside Meadow.

7.21. The Laggs is a wet area lying to the north-east of the norther corner of the application site. They followed an unmarked way from there in order to return to the site. They then walked down a path just within the east part of the site.

7.22. On their 2015 visit they had gone slightly beyond the footbridge. They had gone across *"Site 6*" to the footbridge. They started to walk back across Site 6, but then went into Woodside Meadow. She was not sure at precisely what point they entered Woodside Meadow. It was on that 2015 visit to the land that they did the activities there which she had mentioned. Those activities had taken place at the side of Woodside Meadow closest to the houses and gardens. However the fairy hunting in the long grass was further to the north. In her view the mown areas of the site at the time of the Inquiry were similar in extent to what they had been in 2015.

7.23. She personally has lived in the village since 1999. As to the suggestion that there might have been a gate across the access to the site in the period around 2005, she said she could vaguely recall going for a walk in that area around that time, but could not remember if there was a gate there or not. She did not recall seeing any barbed wire barriers on the site. Nor did she remove any such barriers.

7.24. She had a friend who used to live in Woodside Road, in the second house in from the access track. They were Mr and Mrs Robertson; their boys had been friends. Her own boys and their boys used to go out and play, from the friends' house. Her own boys were then aged 10, 9, 7 and 4 or 5. They would go out onto the meadow on their own. It was a safe space. That happened for about one year. Then that family moved elsewhere in the village.

7.25. Mrs Wallbank confirmed that Mrs Cowley, one of the Applicants, works with her. As for the team meetings and drinks parties which have taken place on the site, at the end of term the staff tend to gather in various places, and on a couple of occasions they had gathered at Woodside Meadow. This was on the mown area. The first of these occasions was in 2015, and was after the walk had taken place. This was a gathering for the employees, so therefore for 5 or 6 people. Term typically ends at the end of the third week in July.

7.26. What she had said in evidence was the totality of the personal involvement she had had with the site.

7.27. On reflection she said that she thought that the Robertsons had lived next to the site for about 3 years, so that her boys would have gone there to play with the Robertson boys in approximately 2001 to 2003.

7.28. She had never seen fencing on the site, nor people going to or from the garages next to the site. She personally did not usually go to this part of the village.

7.29. *In re-examination* Mrs Wallbank said that she had used two different accesses to the site. One was by the garages, and the second (which she had used with the children on the occasions she had mentioned) was along a natural footpath through from Site 6.

7.30. ***Miss Karen Brewster,*** had lived in Godalming for the last two years prior to the Inquiry. However, she had lived at 3 Stephensfield, Ridgley Road, Chiddingfold, between 1994 and two years ago. She had lived in Chiddingfold for her whole life before that as well.

7.31. She said that she has been using Woodside Meadow as of right since 1965, up until the present day. When she was a child she used to live in Queensmead, and came to visit her Aunt and Uncle and cousins who lived at 4 Oakleigh, on Woodside Road, and her grandparents who lived in Mortimore Villas, also on Woodside Road. Both of those properties backed onto Woodside Meadow. They always used Woodside Meadow as of right, and she used to run around and play games out there most weekends. Woodside Meadow was always open and free to access from several points, e.g. straight out of her family's gardens, and from the end of the field. All of the children from the houses and surrounding area used to play out there. She did not recall ever being challenged or asked to get off.

7.32. She still uses Woodside Meadow as of right today, nowadays with her grown up daughter and grandchildren, who now reside at 4 Oakleigh. They go for walks across the meadow, and play games and picnic there.

7.33. *In cross-examination* Miss Brewster said she had used the land since 1965 when she was aged 6. She could not say about anything that happened before she was that age.

7.34. As a child she would go to her grandparents nearly every day after school. Her mother worked part-time. Her grandmother had lots of vegetables growing in their garden, and they also had a garden table out in the Meadow. Her cousins are the

same age as her, and her brother and they used to go out onto the Meadow a great deal when they were there.

7.35. She carried on playing out there for some considerable time; she could not say when she stopped playing there as a child. Her understanding was that even her father had gone out there to play as a child. She herself has now moved to Godalming but she still comes to Chiddingfold, as her daughter had bought the house where her Aunt used to live. Her daughter is called Natalie Sparks. She, the daughter, had moved into that house in August 2012.

7.36. As a child the games which she and her cousins had played were football, rounders, other children's games such as hide and seek, head-over-heels, running etc. She did not recall seeing any fence or gate on the land, ever. Nor was there any barbed wire fencing. She had never seen any of that. The land was never cultivated or cut back, just left to its own devices.

7.37. She has never seen horses on the field, ever. As for the garages, she knew no-one who was renting them. She has seen them, but she does not know anything about them. She knew about the trackway through next to Wildwood Close, but she had definitely never seen any fencing or gates in the vicinity of that trackway, and certainly never seen any gates which were locked up. The track always had been completely open. She had never seen anyone come to do anything to the track, it was just always open. She had always been told that the track is "no-man's land", with no known owner.

7.38. The areas on the site which are tidy had been cleared by adjacent residents. Those represent the area where as children they could play ball games. However when she was young the whole area could be played on, and she and other children trod it down themselves. Picnics with her grandchildren on the site these days would be out at the back of their actual house, or with neighbouring friends. She personally has never been a dog walker, so has never used the site for that.

7.39. As for walking across the Meadow, one can walk over this site and onto the next field, and then onto the Laggs. That is a local Chiddingfold name for a muddy area of ground. There are quite a lot of walks down there. There is a small bridge there where the game of pooh-sticks can be played. When people including herself referred to the field 'behind the Club', they were referring to the same site as other people refer to as Site 6.

7.40. There used to be a flowery bank of primroses stretching from the bridge she had referred to, through to the Laggs. The primroses grow in spring, but they used to walk through there at other times of the year as well. There are very many walks one can go on.

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7.41. She had never talked with any residents who were saying that they were interested in buying a part of the field. She had not known that her daughter would choose the same house to live in as her Aunt used to live in. She personally had got involved in this current application because her daughter lives next to the site. Her daughter had some of the forms relating to the application, and had asked her if she would like to fill one in, so Miss Brewster had said yes because she had lived in Chiddingfold for such a long time and knew the site.

7.42. *In re-examination* Miss Brewster said they had used quite a large proportion of the site as children, even though there were parts of it which were long grass. One did use to see other children out there playing. In fact she had seen lots of people using it. She did not always know them, but her daughter knows those who use the land these days.

7.43. ***Mr Ian Spicer*** lives at 1 Jubilee Villas, Coxcombe Lane, Chiddingfold. He has lived there for 50 years.

7.44. He said he has lived in Chiddingfold since he was a child, and has accessed Woodside Meadow as of right since 1975. As a child he would visit Woodside Meadow regularly, to play football with other children from the village.

7.45. He used to access the land through his friend's garden at 3 Oakleigh, Woodside Road, and also via the track in front of the garages at the side of the site. Other local children and adults would access the field from that track as well.

7.46. He had never been barred from entering or using the field, had never sought permission, and there were never any signs or gates preventing their entry. It was common knowledge that the land was regularly in use by the local community, and therefore they felt able to access the land freely. The land continued to be used by the local community after his own football playing days were over, and the local community still use it to this day.

7.47. *In cross-examination* Mr Spicer confirmed that he had produced one of the evidence statements lodged with the original application. In that statement he had said he visited Woodside Meadow between 1975 and 1981. That had been in order to play games of football, and he would have accessed the land either through 3 Oakleigh, or by the side access. The marking of the area where football was played was very informal. They played directly outside his friend's house there.

7.48. There would also sometimes be bonfires there. These were not organised but impromptu events. Those would have been in the same general area, behind the properties.

7.49. In 1975 he was aged 8, and he played there from the ages of about 8 to 14 approximately. Those were his football years.

7.50. He has lived in Jubilee Villa all his life, indeed he was born there. He had been away for only a couple of summers, and other than that he had always lived around Chiddingfold. As for the garages adjacent to the site, he had never used them, and had only cycled past them. He had never spoken to anyone who had rented them.

7.51. He had a vague recollection of seeing one horse on the land, but he could not say when. That would have been during the time that they played football. They would tend to kick the ball over that way towards the horse all of the time.

7.52. His recollection was that there had been some sort of fence across the field, further from the houses. This was only some wooden posts and wire, which he thought was not barbed wire. He thought that had been in order to contain the horse.

7.53. As for the garage area, he never remembered any gate being near there. They would whizz down the track and cycle past the garages, with nothing stopping them.

7.54. After his football period he had not been back there to the site a great deal. His return to the site had been mainly when he was a bit older. He had not been there in the period around 2009 for example.

7.55. *In re-examination* Mr Spicer said he had not seen a horse in the field since he was a child playing football there. He had not seen a fence in the field since about 1995.

7.56. ***Mr Graham de St Croix*** said he had lived at 3 Oakleigh Cottages, Woodside Road, Chiddingfold since 1976. He and his family had used the field behind their house (the application site) as of right since that date, and continue to do so every day until the present day. Other users of the field include friends and extended family, as well as people from the local area. The field can be accessed by himself, his friends and family through his back gate, and also via the side track by others from the neighbourhood.

7.57. He has never been given permission to use the land, and he has never sought permission. He was never prevented from using the land, and used it without secrecy. He and the neighbourhood community have also never been barred from the land by gates, notices or fences. They have always accessed the field as a whole, regardless of a single horse being there in 1976 when they moved in.

7.58. The use of the land by himself, his family and the wider neighbourhood community ranges from dog walking, picking blackberries and sloes, children playing, sports, snowman building, to bird watching and bonfire parties. His

family have most frequently used the land for football games, cricket and bike riding. There have also been gatherings to celebrate Guy Fawkes night by the community, and these have taken place every year since his arrival at the address.

7.59. Mr Guy Edgerton, previously of 4 Oakleigh Cottages, took it upon himself to maintain the land using a scythe to cut the grass, and planting the daffodils and the cherry tree which are still there today. He planted the tree after Mr de St Croix's children had grown up and stopped using the space for football. In the early 1990s Mr Edgerton had removed some of the remaining barbed wire, as it was dangerous for the children as they used the land.

7.60. *In cross-examination* Mr de St Croix said that when they moved in in 1976 he was aged 35. He had been born in 1941.

7.61. The side track which people refer to is the track which leads to the garages. He himself had previously rented one of the garages, for only a short period. The back wall of it had fallen in onto the bonnet of his car.

7.62. His own activities on the site had included attending bonfire parties, possibly three or four times a year on this site from the time he moved in. The fires are not quite so frequent nowadays. They mostly involved the burning of garden rubbish.

7.63. The blackberries and sloes on the site are in the boundary hedges. It is easy to cross the site or to climb over a one-strand barbed wire fence that is on the site.

7.64. He had engaged in dog walking on the site for about 15 years, from 1976 when they moved in. His walks would be down to the area known as the Laggs, and then back up the main road. It was a long way round. To get to the Laggs he would typically go across the application site.

7.65. The bonfire after-party, after the main village bonfire on a different site, has been going on on this site virtually since he moved in. Football and cricket games on the application site were on the part of it behind peoples' houses. It was informal football, with coats for goal posts and the like. Children would also ride their bicycles on the site, and out into the next field or out via the gate onto the track. When he referred to the next field, that was the site that is sometimes called Site 6, or the field behind the club. All of that took place virtually from the time that he had moved in, until his children got motorbikes. His older boy had had a scrambler type bike from about the age of 15. He was not allowed to use it on the road then. That child had been born in 1963.

7.66. When he had referred to the building of snowmen on the site, that again was on the part of the site out at the back of the houses. However nowadays one does not tend to get the snow that there used to be.

7.67. As for his references to the one strand barbed wire fence on the field, when he and his family had moved in, he thought there was a post and barbed wire fence which started, at his estimation, somewhat more than 20 feet into the field, and then going across it. Mr Edgerton had to remove some barbed wire because it had snapped at the top end, and it would trap you if you ran through it. Mr de St Croix initially thought that that had happened in the early 1990s, after a black horse that had been on the site had been put down. On reflection although he was sure it had happened in the 1990s, he was not sure if it had been in the *early* 1990s. The horse had been put down on the site, near the garages. His wife had seen it; he had not because he was at work. That had happened before the barbed wire was taken away. There had been a gate there down by the garages. He could not remember any second gate further into the field. His recollection was that the black horse he had referred to had been there when they first moved into their house. He could not recollect a time when there were a lot of horses in the field. For example, the suggestion that there had been six horses in the field did not seem right to him. He thought there had been two other horses in the field, during the period since the black horse went from the site. There had been a very rudimentary field shelter in the field but it did not give much shelter. Two horses in the field was not a situation which had lasted for very long.

7.68. As for the reference he had made to a gate near the garages, that was the same one as is there now. He did not remember any new gates or fences being put in in the 1990s.

7.69. The access track to the field had been somewhat overgrown about 9 or 10 years ago. He personally had never really noticed it much, because he and his family came out of their own back gate, and many other people did the same. He did not think that very many people came down the path into the field.

7.70. He personally had never tried to buy any of this land, or spoken to anyone else who had done so. As for the garages, he did not know anyone else who had ever rented one of them.

7.71. *In re-examination* Mr de St Croix said he did not sign a formal lease on the garage he had rented. On the question of there being any horse or horses on the land between 1995 and 2015, he would not swear to it one way or another. As to the question of gates, there had not been any adequate kind of gate on the site in the period since 1995.

7.72. As for his reference to a fence on the site, it was never anything very high, and it did not stop access to any part of the land. There have always been lots of other people, as well as himself, using the land. Other people would come onto the land out of their own gates, and made their own paths through the land.

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7.73. ***Mr David Rauch*** lives at 2 Martindale Place, Woodside Road, Chiddingfold. He has been the Treasurer of the Chiddingfold Bonfire Association since April 2000, and said that he was presenting their witness statement on behalf of that association, in support of the application.

7.74. After the main annual bonfire event in Chiddingfold, he and other members of the Bonfire Association who organise and run the event, together with other volunteers, families and friends, have their own celebration on Woodside Meadow. This post-event celebration has been happening for in excess of 10 years, during which time they have used the land as of right. At no stage had they faced any restrictions on access to or use of the land. They have had free, ungated and unfenced access. All of those who have attended this annual celebration over the years are residents of or have a close connection with Chiddingfold Parish and the local neighbourhood.

7.75. The bonfire party on the site would typically be attended by some 10 to 12 people. The main event in Chiddingfold has thousands of people attending it. Some of those at the after-bonfire party would be from Woodside Road, or from Skinners Lane or High Street Green. They would all be local people.

7.76. Access to the land could be via the track leading to the garages, or through a member's garden if it backs onto the site. This event is always in the evening, so one does not see other people there.

7.77. He himself had been in Chiddingfold since December 1999. He is aware of local residents walking their dogs on this land. He himself does not walk dogs there, but his dogs sometimes go onto the land. He goes through the track to the path in the field to the east. He would occasionally go onto the application land after his dogs though.

7.78. *In cross-examination* Mr Rauch confirmed his position as Treasurer of the Bonfire Association since April 2000. The after party on the application site is an annual event. They build another fire there, and take beer, wine and food and sit down and chill out. The people involved in that after party are from what he regards as the neighbourhood. The access used to get onto the land depends on who is there, and the numbers there depend on the weather as well. 10 to 15 is the true number of people there for most of the times he has been involved. It is those people who help out with the main event.

7.79. The application land is ungated and unfenced. He could not remember seeing a gate at any time on the application site.

7.80. He had not seen any barbed wire fencing on the land near the entrance. However it is always pitch dark when he goes onto the site. Sometimes they go onto the edge part of the site (near the houses) for the after parties; that depended on where they

built their bonfire. They usually sit down around the bonfire because it is dark and often cold.

7.81. 'Site 6', not the application site, is the prime area where he walks his dogs on other occasions.

7.82. He did not recall seeing any horses in the application site field. As for the access track, it has always been possible to drive cars down there, so he would not say he had ever seen it particularly overgrown. Cars can be driven down there, and there is a house which is accessed via that track, he believed. He has been aware of those garages being there, during the whole time he has been in the village.

7.83. *In re-examination* he said that of the 12 to 15 people attending the bonfire after party, some of them would be the same people every year, and others less regular because of other commitments. They always tend to be people from Chiddingfold, many of them from parts of Chiddingfold quite close to the site.

7.84. ***Mr William Creswell*** used to live at 2 Oakleigh Cottages, Woodside Road, Chiddingfold, between 1997 and May 2010. He had lived there with his wife and two young daughters. Since May 2010 he had lived in High Street Green, a hamlet within the Parish of Chiddingfold about one mile to the east-south-east of the village.

7.85. His previous property in Oakleigh Cottages had a gate at the end of the garden that gave access to the meadow beyond (the application site). When they moved in it appeared that the meadow was not in agricultural use. It was rough grass, with many tussocks and clumps of brambles. Following discussion with his neighbours it became clear that there had been free access to the land for many years previously. The land was obviously being used by the majority of the occupants of the adjoining cottages, as a recreational space and an open extension to their gardens. Several of his neighbours had created small vegetable plots adjacent to their properties. There was also a well-worn path that passed behind all of the cottages to a series of dilapidated garages in the corner of the meadow, and a stone-surfaced track that ran around the end of the cottages to Woodside Road.

7.86. When they moved into 2 Oakleigh Cottages, the area immediately to the rear of their property was very overgrown with brambles, nettles and wild raspberries. He cleared the land of the undergrowth using a mechanical cultivator, and sowed grass seed to make a lawn area for his daughters to play on, as an extension of their garden, but retained their original boundary fence. He mowed that grass every week during the summer months. In subsequent years he had erected a children's swing, a climbing frame and a trampoline on that area, on which his daughters and their friends and neighbours children played almost every day. At some point he also dug a small vegetable plot and successfully grew potatoes, courgettes, butternut squash and French beans there.

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7.87. During the summer months they often played with their children in the meadow, went blackberry picking, and had picnics and parties there with friends and neighbours. The meadow was used as a communal meeting point for neighbours to meet, chat and exchange the usual gossip of village life. In the winter he would cut firewood there, and had snowball fights with his children and neighbours.

7.88. He had been unaware who owned the land, but shortly after they moved in a neighbour told him that he had managed to discover who owned the garages at the corner of the meadow, and had negotiated the rental of one of them. He, Mr Creswell, had followed suit and rented a small and very dilapidated garage, to which he had to do some repairs to make it secure. Having done that he used it to store gardening and camping equipment, bicycles etc., and made regular use of the path behind the cottages and the access track to Woodside Road. Many of his neighbours also made regular use of that route to gain access to the meadow and the rear of their properties.

7.89. He had been involved for many years as a marshal for the historic Chiddingfold bonfire in November. It has become common practice over the last 15 years or so for the bonfire committee and marshals to gather in the Woodside Road meadow after finishing their duties at the main event. A small bonfire was lit in the meadow, and people gather around this. Food is served, and they reflect on the evening's successes. Although he moved away from Woodside Road in 2010, he still attends the marshals' gathering in the meadow every November.

7.90. While they lived at 2 Oakleigh Cottages, the meadow was used by many people for recreation and leisure activities, particularly young children who had unrestricted freedom within a safe boundary to enable them to explore the countryside, build camps, fly kites, ride bicycles, play other games etc. That had enhanced his own children's development, and the same must be true for many others. Throughout the time they lived on Woodside Road they were never prevented from having free access to the main meadow, and there was never any question in his mind that such access was a longstanding and common practice by neighbours, previous residents and the local community. They were never given permission to use the land, and they never sought it either.

7.91. Access to the land for residents of Woodside Road would be from their rear gardens; practically every house had a way of accessing the land like this. Or the land could be accessed down the track by the side of the cottages, or from the fields at the back.

7.92. Dog walkers used to roam freely over the land. Children including his own and their friends used the entirety of the field on a daily basis. They would roam freely, and it was a very valuable resource for them. They would build camps around the edges of the land, and there was a tree house at the far end. Blackberry picking would be in the margins of the field. His own access point during the period when he lived there was mainly through his own property. Since then he

had driven to the land by car and parked adjacent to where the garages are. He could not remember any gate onto the site, nor any fence on the land.

7.93. *In cross-examination* Mr Creswell said that when he moved into his adjacent property in July 1997, he had cleared overgrown vegetation from the area at the back of his house. He had effectively created an extension of his garden, very similar to what others had done near to him. On that area he had placed a swing, a trampoline etc., and had dug his vegetable plot.

7.94. He had rented one of the garages, towards the end of the time he lived there. It was for a number of years, perhaps three or four years, before he moved away. When he had the garage he quite often drove to it, because he used it for domestic storage. He did not keep his car there however. He was not able to say how many other people rented those garages.

7.95. The tree house he had referred to was in the north-eastern part of the site, and was indeed up in a tree.

7.96. He had seen dogs which were off their leads running around in the field. These were not stray dogs; there were people in the field walking with their dogs. The whole general area is walked regularly and extensively by the public. Individual people do not tend to stay on the paths, but roam freely.

7.97. No horses had been kept in the field while he lived in Woodside Road, and nor was he ever aware of any barbed wire fence on the land. He did not recall a gate of any sort into the field. There was free access for his car to get to the garages. In the period between 1997 and 2010 he had worked in London, and commuted by train from Witley station. He worked Mondays to Fridays, and would typically catch a train at about 7.45am and get back home at about 6.30 or 7.00pm or later. However sometimes he worked from home.

7.98. The bonfire after-party was not something that was put on just for Woodside Road residents alone. The people who came to that were from across the locality of Chiddingfold.

7.99. He thought he may have found out about the existence of the garages shortly after moving in, but he did not recall how long it was after that before he started renting a garage. It was in the last few years of his residence that he had had use of one of the garages.

7.100. He himself is not a dog walker, but he regularly walked around the village with his children, as a family activity.

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7.101. *In re-examination* Mr Creswell said that he did not recall ever having signed a formal lease for one of the garages.

7.102. ***Mr Ben Fielden*** has lived at Keneen, Woodside Road since 1975. He lives adjacent to the un-made-up road which leads from Woodside Road to the meadow (the application site), and also to the field behind Wildwood Close.

7.103. He gains access to the meadow via that un-made-up road leading to the garages, and also through the gap and paths through the trees bordering the meadow. He has always felt free, and nowadays feels he has a right, to be on the meadow, as there have never appeared to be any rights of way involved. He has always presumed that the field must be owned by someone, but he has never been prevented from entering the field by fencing, gates or notices prohibiting entry. Nor has he been refused or given permission to be on the field.

7.104. When his children were young they would quite often be out 'mucking about' on the field with other local children. Since the time of his own children, there has been a steady stream of children using the meadow for playing. Where parts of the meadow have been tamed into mown grass, children and parents are often seen using the area for ball games and other various activities ranging across the whole area. This happened regularly in summer, less so in winter. Some parts of the meadow have also been used for cultivation, and some small areas have previously been used for livestock. The meadow had been used by him himself for bonfires and blackberrying for many years.

7.105. With all those activities going on over such a long period of time without anyone objecting, it would be a pity and a considerable loss if this local amenity were no longer to be usable.

7.106. Children need land to play on. On the whole, it was the part nearest to where he and his family lived that the children used to play on, until they were aged about 5 or 6. After that they used to roam further into the wilder parts, for example to play hide and seek. A lot of children used the land from the houses bordering the field, and their friends would come from other parts of the village as well. He personally does not have a view of the field from his own house. However one does see people wandering in the field generally. They are often people from the houses backing onto the land. But in the case of a lot of the people he does not know who they are. They would access down the side of where he lives.

7.107. He does not recollect any fencing on the land at all, apart from one tiny bit of fending near the garages. Nor has there ever been a gate. There were horses on the land, he thought, about 35 years ago. They were there for about one year or so. More recently there might have been the odd occasion of a horse being on the land.

7.108. *In cross-exam*ination Mr Fielden said that he had filled in one of the original evidence forms lodged with the Application. He moved to his house Keneen in 1973, he thought, not 1975 as he had said previously. He had had to ring his ex-wife to find that out. He has his own garage at the very end of his garden, which is accessed by the track alongside his house. As well as the activities on the application site which he had mentioned in his questionnaire (blackberrying, lighting a rubbish bonfire, and talking to his neighbours) he also used to walk his own dog, and his children walked the dog too. Back in 1973 his children had been aged 5 and 7. Those children stayed at home until they were aged 18 or so.

7.109. When in his questionnaire he had said that there were chicken runs on the land, they were on the part near the backs of the houses. His reference to gardening taking place on the land referred to people who had raised beds on the application site, and the like. The horse riding which he had said he had seen was a long time ago. He thought that two cart horses had been kept on the land. Those horses were used for dressage, and on this site they were used for practice for that. That must have been about 30 years ago, and it did not take place over a long period. It occurred for about two years, i.e. over two summers. The land on the site is actually quite boggy, and those cart horses churned it up at the time when they were using it. There was a field shelter in the meadow, which he thought was still there although it was in poor condition. He was not sure if that had been there before the cart horses; indeed it was possible that it was originally for them. He himself had no memory of the apparent incident of a horse being put down on the land. There had been no other horses on the field to his knowledge, other than the ones he had mentioned.

7.110. He does not have much of a view of the meadow from his house, even from his upstairs windows. The site drops away a bit, and can get quite boggy. He could not remember a time when there were about 6 horses on the site. The people who he had seen riding the cart horses were adults, not children.

7.111. The blackberrying on the site which he had referred to was around the edges of the field. For him, the best part for blackberrying was just round by the garages. If they were poor there then he would move on further, but he did not usually need to.

7.112. He had never seen a barbed wire fence in the field, properly in position. He did remember seeing some barbed wire on the ground, years and years ago. However he has not tripped over it for years. 35 years or so ago he did recall tripping over some barbed wire on the ground. He thought it had rotted away from old age about 30 or so years ago.

7.113. As far as he was aware, that fence had had no relation to the presence of the horses on the field which he had referred to. He had no recollection of ever seeing a gate to the field at all. He had no recollection of ever being stopped by a gate or a fence. Likewise he had no recollection of a gate or fence ever being repaired. There was certainly no gate or fence there now.

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7.114. His next-door-neighbour has his own garage as well, and there is another garage which goes with the third house up from him.

7.115. He acknowledged that there seems to be one garage or shed actually within the application site, behind one of the houses in Oak Villas. It is made of wood, he thinks.

7.116. As for his dog walking on the land, he knows the area which has been referred to as the Laggs, and also is familiar with the field behind the Club. There is a popular path through that latter field. In his days of dog walking, he went across the field by the Club and then would turn right through to the Winterton Arms, then cross the main road and carry on further. There is an almost infinite variety of walks available in the locality. Dog walking stopped for him about 20 years ago. In order to go dog walking, they would go out either from the front or the back of his property, according to the destination. Where they would go would depend on the time available.

7.117. The horse riding in the field was so long ago that he did not mention it in his new statement. Mrs Cowley had given him the impression that he should place more emphasis in his statement on what had happened from about 1990 onwards. His bonfires for burning garden rubbish had only been about once or twice a year at most. He would do that very close to the garages at his end of the meadow. It would be within the red line of the application site, but close to the garages.

7.118. His own full time work stopped about 8 or 9 years ago. Prior to that he had worked in Godalming, to which he normally went on his bicycle. Nowadays he does still work part-time but on a casual basis. His full time work had been from a Tuesday to a Saturday in a typical week.

7.119. *In re-examination* Mr Fielden said that in the period from 1995 onwards there had been no fences on the land, nor gates nor horses, as far as he could recall. His dog walking, when he had done it, had included walking on the field in question.

7.120. ***Mrs Sarb Dhaliwal*** lives at 3 Mortimore Villas, Woodside Road, Chiddingfold. She and her husband moved into their property in Woodside Road with their young daughter in January 1996, and they have continued to live there for 21 years, along with their second child.

7.121. When they first moved in they noticed many of the neighbours' children playing in Woodside Meadow, and her daughter asked if she could play there too. She was aged 3 at the time. On speaking to some of the neighbours, she had understood that they had made use of Woodside Meadow for many years, without any permission or restriction. One neighbour said she had been using it for 30 years without any problems or complaints. Mrs Dhaliwal therefore allowed her daughter also to play in the fields, along with her friends and neighbours.

7.122. Her daughter would take her bike into Woodside Meadow, along with her two friends from next door and other friends, and they would spend hours playing in the fields. Her younger daughter (who is now 14) had also spent many years playing in Woodside Meadow (and continues to do so), doing things like climbing trees along with her cousins during most school holidays. In fact when Mrs Dhaliwal's young niece from London was asked a few years ago why she loved coming to Chiddingfold, she answered that she loved playing in the fields at the back of their garden, which reminded her of the story '*The Secret Garden*'.

7.123. Mrs Dhaliwal has never seen any fencing or locked gates which prevent people from entering Woodside Meadow, or any signage prohibiting trespassers. A garden gate at the end of their garden gave them direct access to the meadow, so she allowed her children to play there over the 20 years in question, along with neighbourhood children and the cousins who visit regularly. Over the years she has seen this use of Woodside Meadow increase, both in terms of the number of users and the variety of usage. Neighbours mow the grass outside their gardens, people walk dogs, children play on swings and slides and even a trampoline, or with an archery set, or table tennis equipment being set up. She has seen tree houses being built, and children including her own climbing trees, people growing vegetables and extending their gardens with fencing, a chicken hutch being built, with chickens living there, and many more things. She has also seen people walking their dogs.

7.124. Thus she and her family have been using Woodside Meadow as of right for over 20 years, and at no time has she been prohibited or barred from using it. Nor has she been given permission by the landowners or any of their agents. She has never been challenged at any time. There have been no signs, locked gates or fences preventing access.

7.125. When he daughter went onto the field on her bike, when she was little she stayed close to the house but when she was older she was allowed to go right to the back of the field. The tree house she had referred to was towards the back of the site, and her daughter played in the trees towards the northern corner of the field. Other children from the village came and played with her and her friends there as well. She had also seen people come into the field through the gaps in the hedge.

7.126. *In cross-examination* Mrs Dhaliwal said that she had moved in in 1996. Part of the property they moved into had been divided off and sold off. They accessed the field from the gate at the back. The access went straight out into the field. There is a strip at the back of people's gardens which is used by people and mowed etc. That is the area which people mainly use for their activities.

7.127. The dens that children built, however, were in the tree and hedge line around the edge of the field. Her daughter's friend (who was one of the neighbours) had a dog; her daughter would go with them for walks with the dog. Mrs Dhaliwal did

not personally know the name *"The Laggs"*. She has not been to any meetings about the Neighbourhood Plan.

7.128. She does know what is known as the 'field behind the Club'. She herself has been up there. That is the route that her daughter would go with her friends on their bikes. The friends would come and fetch her daughter, and off they would go. She did not need to watch exactly where he daughter went, because she was in a group.

7.129. She sometimes gets home from work at about 8pm, and leaves at 8 in the morning, Mondays to Fridays. She has to drive to her work, just this side of Guildford. Originally the property where they lived was a shop; then it stopped being a shop. She has been in her present job since 2009; prior to that she worked in Farnham on a 9am to 5pm basis, from about 2001.

7.130. She did not recall seeing any horses on the site. She had never seen any fences or barbed wire there. She and her family have never rented a garage, although she does know someone who has rented one. That was a local resident. She has never seen gates on the site. When she had referred to sitting out with drinks or nibbles on the land, that would be in the area right at the back of the properties. She herself does not use the access track to get onto the land. She had never spoken with anyone about buying parcels of land here. She and her family have had bonfires out on what could be called the 'back garden' part of this land, burning garden rubbish. This would have been about once or twice a year.

7.131. *In re-examination* Mrs Dhaliwal said that the dog walking she had described did take place on the site as well as other land; the same also applied to the bicycle riding which she had described.

7.132. ***Councillor Miss Christine Tebbot*** also gave oral evidence in support of the application, although she was not called by the Applicant Mrs Cowley.

7.133. Miss Tebbot has lived at Okelands Cottage, Pickhurst Road, Chiddingfold since moving here in October 1993 at the age of 39. She has served as a Parish Councillor since 1999, was Chairman of the Council for a period of four years, and is at present Chair of the Neighbourhood Plan Steering Group.

7.134. Chiddingfold Parish Council supports the application for Woodside Meadow to be registered as a village green. For many years the Parish Council has recognised the need for additional outdoor recreational space in the village to serve the needs of the residents. The public recreational space in the village falls far short of the nationally recognised National Playing Fields Association standard of 2.4 hectares per 1,000 population, and the Council has long looked for ways in which that might be increased. That is especially important as the 2011 census showed that the proportion of children aged under 18 in Chiddingfold is higher than in the Borough of Waverley or in the South East Region as a whole.

7.135. The area known as the main village green of Chiddingfold, while it is a public open space, is neither safely accessible nor of a suitable size and nature to use for sport, active recreation or children's play. It is bisected by the busy A283 road, which makes it totally unsuitable. The annual village bonfire, which has been taking place on that green for 169 years, is only possible because the road is closed for the time the event takes place.

7.136. The historic centre of Chiddingfold around the green, with many historic buildings, is what most outsiders see when they pass through the village. However the vast majority of the housing stock has been built west of the A283, along Woodside and Ridgley Roads, and in the estates which lie off those roads. Many young families live in these roads, and can safely access the land at Woodside Meadow for informal recreation. They have done that over several generations, and continue to do so.

7.137. Chiddingfold is fortunate to have a strong and stable community. Many residents were born and have lived their whole lives here, and from Parish surveys it is known that one third of residents have lived in the village for over 20 years. The use of Woodside Meadow as an informal recreation space by local families is well known throughout the village, and many residents regularly walk through the land and the adjoining field behind Wildwood Close.

7.138. Paths across these two fields connect to the wider public footpath network, which is one of the most extensive of any parish in Surrey. Miss Tebbot herself is an active walker, and often walks along footpath 211 from the Winterton Arms past the Laggs, cutting back to Woodside Road through the Club land or Woodside Meadow itself. She frequently meets other walkers, and sees children playing in Woodside Meadow. Access to the meadow throughout the time she has lived in the village has been open and unrestricted, without fencing or gates, either from the track by Wildwood Close, or from the path at the northern end of the field. The land has been neglected for many years, except for the areas closest to the houses in Woodside Road, where local residents have undertaken maintenance.

7.139. As part of the Neighbourhood Planning process, several public consultations have been undertaken when residents have been asked for their views on a number of topics including sport and recreation. 77% of respondents supported an application for village green status at Woodside Meadow.

7.140. *In cross-examination* Miss Tebbot said that the Parish Council itself has submitted written evidence. She herself had spoken in her personal capacity, and as Chair of the Neighbourhood Plan Steering Group. The steering group resolved in May 2017 to ask the question referred to at the end of her proof (about being in support of the village green application). She herself is involved in planning matters for the Parish Council.

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7.141. She accepted that the National Playing Fields Association had ceased to exist in 2008. Since then its name had been changed.

7.142. In the context of the proposed Neighbourhood Plan, a number of sites are being consulted on for potential residential development. Site 5 is the present application site. Site 6 is the land just to the east which is also known as the land behind the Club. Site 7 is another site further to the east. At present the Neighbourhood Plan is in draft, which is due to go out to consultation in early 2018. The questionnaire which had been sent out in connection with the Neighbourhood Plan is available on the Parish Council's website. The consultation which she had referred to had taken place in the village hall. Notification of it went to every house in the Parish. The responses she had referred to had been from those attending the meeting, or those who had completed an on-line response that was also possible.

7.143. Walking is extremely popular in Chiddingfold. This includes people who come in from outside to walk around the village. She in fact came to this village because she is a very keen walker. One of the very first things she did on arrival was to walk all the public paths in the Parish, which she found very enjoyable. She does not own a dog.

7.144. Access to the field has been unrestricted, with no fences and no gates. She has never seen horses on the site in the period since 1993. She did not think that would have been either likely or possible, because there has been no stock-proof fencing. She had never seen any barbed wire fence on the land at all. She had never heard of the apparent incident where a horse was put down on the land. She had never seen a gate on the site.

7.145. She understood that Chiddingfold Parish Council had resolved to support the village green application. She however was not speaking at the Inquiry on behalf of Chiddingfold Parish Council. The Parish Council had made its own written submissions in July 2016.

7.146. The Applicant Mrs Cowley had not asked her to make a witness statement, although she had offered to do so. She had wished to speak at the Inquiry because some reference had been made to the Neighbourhood Plan, a matter which she is particularly concerned about.

7.147. For reasons which I have discussed earlier, I am not generally summarising here in my Report the detail of written statements, completed questionnaires and the like, lodged in writing in support of the application, provided by witnesses who have not come to give oral evidence. However it is appropriate that I should note specifically that a comment on the application was received by the Registration Authority from ***Chiddingfold Parish Council***. In an email on behalf of the Parish Council dated 26th July 2016 the information was given that at its meeting on 14th July 2016 the Parish Council had resolved to support the current application. It was stated (without further detail) that the Parish Council is aware that this land

has been widely used by the community as a walking and recreation area for at least the last 20 years.

8. THE SUBMISSIONS FOR THE APPLICANTS

8.1. I shall not repeat here the justification originally given for the application at the time of its submission, as the points referred to in it have in general terms been dealt with more fully in the context of the subsequent Inquiry.

8.2. However a very full response was provided by the Applicants to the initial objection made on behalf of the landowners, and it is appropriate that I should summarise its main points here. It was clarified that the relevant locality for the purpose of the application was intended to be the Parish of Chiddingfold, but the neighbourhood was intended to be a smaller area which is proportionate to the size and scale of the claimed land. Considerable detail was provided as to the jurisprudence to be found in the various judicial decisions that there have been on the questions of localities and neighbourhoods.

8.3. As to the suggestion that users of the claimed land have been overwhelmingly present and past residents of Woodside Road in particular, it is natural that those people should be giving evidence, because they have key information regarding the historical use of the claimed land, stretching back in some cases over 50 years. Their evidence therefore is crucial to proving continual use of the claimed land as of right for more than 20 years. In fact the results of an email survey which was carried out show that people using the land come from a good selection of locations within the neighbourhood and locality.

8.4. It is true that some people have stated that they have accessed the land in question directly from the rear of their own properties. However there is an access way on the eastern border of the claim land, leading to a footpath which gives the wider public access to the land, and has done throughout the whole of the relevant period. All of these users have accessed the land without force, secrecy or permission.

8.5. As for the point that use by a significant number of the inhabitants must be shown, it is clear from judicial decisions that this does not mean any particular proportion of the inhabitants, or in particular any very high proportion of the inhabitants. What matters is that the number of people using the land has to be sufficient to indicate that there is general use by the local community, rather than occasional use by individuals as trespassers. That test is passed by the evidence in this case. There had been objection on the basis that there was no available route for public access to the land in question. Yet the evidence shows that access points and routes to the land have been in use for as long as the claim land has been used by the local community. In those circumstances the lack of access directly from an already recorded public right of way does not prejudice the potential success of a town or village green application. The Parish Council also agrees with and

acknowledges the historical use of the access track leading to the application site. That track has never been gated at its entrance point. Nor have there been any signs prohibiting access.

8.6. Such evidence as there may be of permissions given to particular individuals to use parts of the land does not indicate that permission was ever given to the local community generally to use this land. Any such permission needs to be communicated down to all the users of a piece of land, and in this case there was no such communication at all. There is no kind of underlying permissive relationship between the landowners and local people generally in this case. Even if there may have been permissions given by the landowners to some people, for matters like grazing horses, and if some of that may have taken place during the relevant 20 year period, that is irrelevant to the present application.

8.7. Suggestions that the whole of the land was not used for lawful sports and pastimes are wrong, and do not show understanding of the position as a matter of law. The law does not expect every single person to have used every square inch of land during the 20 year period relevant to an application.

8.8. The question of encroachment onto the southern part of the application land by the owners of the adjacent properties to the south is not relevant to the town or village green application. The evidence provided in support of the application proves that the claim land has been used for lawful sports and pastimes as of right by the local inhabitants for at least the last 20 years and beyond.

8.9. In opening the case for the application to the Inquiry, it was mentioned that 43 individual witness statements had been lodged in support of the application, together with 3 statements from local community groups, 17 selected email survey statements, and a letter of support and evidence of use from the Chiddingfold Parish Council, together with maps and photographs. All of that evidence was in accordance with the criteria of ***Section 15*** of the ***Commons Act 2006***. The evidence proves that the statutory criteria are met in this case.

8.10. The evidence supporting the application proves a pattern of use of the land over more than 50 years, which has created an established place for recreation by and for the inhabitants of the community. This is a well-used piece of land.

8.11. As for the identification of the locality and neighbourhood relevant to this application, the locality or administrative area which is relevant is Chiddingfold Parish. The neighbourhood within that locality is the area which had been marked on the relevant plan. Within that neighbourhood there reside the majority of the users of the land, who constitute the local community. A map had been produced showing where selected known users, who had given evidence accompanying the application, came from. It is clear that those users are people and families from the claimed neighbourhood.

8.12. The boundaries of the application land had been very slightly altered to reflect the fact that a shed had been erected on a very small part of it. That was the only instance of structures on the land which would inhibit the use of the land in full. Other than that the land had always been fully usable.

8.13. There is no evidence of grazing livestock or effective fences or gates from within the relevant 20 year period. The evidence supports the view that the local community have used the land for lawful sports and pastimes for the whole relevant period. Indeed community members have taken it upon themselves for more than the required 20 year period to maintain the land, keeping areas mown for games, and desire lines kept open and mown. That has maintained access to popular sites around the land, such as children's dens, fruiting trees and bushes, areas of wild flowers and diversity. Groups such as the local Scouts and village nursery have used the land for recreational purposes, and organisations such as the bonfire committee have gathered to socialise and celebrate.

8.14. Those sports and pastimes have always been community-focused and lawful. No-one had been excluded from access. This is a piece of land which allows the community to come together in ways they otherwise could not.

8.15. Access to the land has been by a variety of routes. There are multiple gaps in hedges, and along bordering paths and the access track, as well as through the gardens of the Woodside Road houses. Witness statements prove that this has been so for well in excess of the relevant 20 year period. An application for the registering of a public footpath leading to the site has in fact been submitted to Surrey County Council, with supporting evidence. That relates to the track running from Woodside Road, next to Wildwood Close, then across the adjoining field and on towards Footpath 211.

8.16. In relation to the question of the identification of the relevant neighbourhood, and whether it can be shown that a significant number of the relevant inhabitants have used the land, it was argued that use by people from the claimed neighbourhood could logically be subdivided into three different categories, who have all used the land in somewhat different ways. Firstly there are the inhabitants who use the land on a daily and regular basis, who in general are the people who are concentrated around the Woodside Road area, and in particular those whose properties back onto the land. The availability of this land is part of what gives the area a great sense of community. The second category of user would be those from the neighbourhood who use it occasionally. Evidence in relation to them can be found in the material which had been lodged. These are people who know the land of the application site is available to them, and use it from time to time, being aware that they can do so. Then there is a third category of groups and organisations representing the wider community within the village. These people also know about the availability of the land, and use it. They might be from families spread out to all the boundaries of the neighbourhood (which is the built up area of the village of Chiddingfold). The evidence in relation to these three categories of users amply

justifies the view that there is general use by the local community for informal recreation, as was stipulated in the well-known ***McAlpine*** case.

8.17. It was noted that the Objectors had made reference to some aerial photographs of the land. However these aerial photographs could in reality only distinguish between the area of mown grass and other areas. They could not really show what areas of land were used by local people, in the way that one can understand when one is actually on the ground. Reference was made to the well-known ***Trap Grounds*** case, ***Oxfordshire County Council v Oxford City Council*** [2006] UKHL 25. That case clearly established that it is not necessary to show that every inch of the surface of a piece of rough and scrubby ground has specifically been used by local inhabitants.

8.18. It is cynical and misleading on the part of the Objectors to claim that because the local community has recently acquired a more powerful and more efficient mower, this is an attempt to make the land look more used, for the purpose of the application. That misunderstands the reality of what happened on the ground and what happens in real life. The truth was that a local resident had provided the meadow with a more powerful and efficient mower, which could traverse terrain which the original communal mower could not. It clears more efficiently, and creates better defined pathways.

8.19. It was noted that the Objectors had made considerable reference to permissions and licences being granted in respect of the land in the past. However the majority of the apparent evidence from the Objectors about this dated from well outside the qualifying period, i.e. in a period much earlier than 1995. Similarly the planning history presented by the Objectors is irrelevant. The landowners had in fact attempted to put some fencing up in 2015, but stopped when opposition was raised. That rather suggested that the landowners accepted the Applicant's position about this land, i.e. that local people had established a right to use it. The landowners have for many years neglected to secure the site sufficiently to deter use by the community. Widely established use has embedded itself on the land. This is not an adverse possession claim on behalf of individual neighbours to the land, but a claim in respect of the whole land on behalf of the local community as a whole.

8.20. No evidence had been provided suggesting the closing or securing of any part of the land by gates more recently than 1993. That is outside the relevant time period. The witness evidence is clear that there has been no relevant fencing or gates preventing access on the land within the relevant 20 year period.

8.21. In *closing submissions* it was argued that the Appellants' evidence had clearly shown that the criteria in ***Section 15*** of the ***Commons Act 2006*** had been met. The use by local people has been continuous, regardless of any purported permissions, whether those were accepted or denied. The oral witnesses had supplied overwhelming and unchallenged evidence of use by themselves and the local community. Their observations were wide ranging in the periods of time they covered, the type of user they represented, and the variety of uses that were made

of the land, not only by themselves and their families but also by others. They had proved that the land was freely accessible without hindrance and without force or secrecy. Even when a fence had existed prior to the relevant period, it was an irrelevance to their use of the land. Even the Objectors' witness Mr Faux had explained the ways in which he had walked around the site, using routes that others did, and had no need for a key.

8.22. The evidence of the Objectors' witness had done nothing to dispute the evidence of the Applicants' witnesses. Mr Faux had acknowledged the continued use of the land in the qualifying period by the local community, despite suggesting that it was a trespass which had upset him. His own level of attendance, and his own experience of the site, had been extremely limited. His short, inadequate visits were not a fair sample of the use of the land, when placed against a collection of individuals who live locally, and in some cases had done so for their whole lives, and visit the site frequently if not daily.

8.23. That unfamiliarity with what was happening on site meant that Mr Faux knew very little about the state and layout of the site, or the impact the community had on it over the relevant time period. His details about the physical state of the land were inconsistent and incomplete. He had been aware of uses on the land such as mowing, keeping ducks, and the paths, but he did nothing to prevent the land's continued use, such as displaying signage or erecting fencing or gates. His lack of attention to the site during his time as part owner, and lack of any action to prevent the established use of the land by the community, show an ambivalence towards the use and state of the land. This continued until a window of opportunity for potential development on the land triggered him into taking some action.

8.24. Mr Faux himself had acknowledged that he had had experience of a village green application elsewhere, so he should have been aware of how issues could arise in relation to the present application site.

8.25. None of those who had given evidence about using the land had ever sought or been given permission to use it. People were drawn there to use it as a community asset because of its availability.

8.26. The line shown running east-west across part of the site on large scale Ordnance Survey maps was an anomaly which represents the previous existence of a path along that line. It was not the Applicants' view that the line thus shown represented some kind of fence line.

8.27. The fact that the Objectors might lose financially, should the current application be successful, is not relevant. Retention of this site as a town or village green would be to the great advantage and benefit of the community of Chiddingfold.

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8.28. The neighbourhood of Chiddingfold village, or the built-up area of the village, is clearly cohesive enough to represent the kind of neighbourhood that could be recognised in law for the purpose of the ***Commons Act***. The visits to the site by the local nursery school, and in connection with the after-bonfire party, were at least in part within the relevant period for the purposes of the application.

8.29. Even if there had been a fence partly across the site, when it existed it was not sufficient to inhibit use of the land by local people. There was no evidence which told us what the state of that fence had been at the beginning of the period.

8.30. The Appellants dispute the argument that virtually all activities had taken place on the mown area near to the back of the houses in Woodside Road.

8.31. Individual witnesses are not each required to have had a knowledge of the whole of the site, or knowledge of the site over the whole 20 year period. It is sufficient to rely on the collective effect of the totality of the evidence.

8.32. As to the Objectors' argument that in reality the use of most of this site had just been 'point to point' use of paths across the land, this is not accepted. Undoubtedly there are paths on the land which serve as access for the community to the land itself, and to other land, but this does not mean that there was not extensive use of the land of the kind that is relevant for a claim under ***Section 15*** of the ***Commons Act***.

8.33. The evidence about horses on the land had been somewhat confusing. Mr Fielden had referred to tethered horses on the land some time ago. That rather tallied with something which had been said by Mrs Peacock (in a written statement) about horses being dumped on the land by travellers at one time. The Applicants were surprised to hear the Objectors suggest that people who had working lives, during normal working hours, could not provide persuasive evidence in relation to use of the land. Even people who work have free time, and weekends, and many of them have flexi-hours; many of them also have friends and family who use the land while particular individuals are working.

8.34. The Objectors had concentrated much of their argument on what had gone on on the mown area of the land, suggesting that that was the only area which had been used. However the evidence had proved otherwise. The fact that no-one (other than the site visit party itself) had been on the site during the official site visit was not relevant to the case to be considered here.

8.35. In answer to the late submission of evidence (after the Inquiry) by the Objectors (consisting of a short statement and some photographs provided by one of the owners of the land, Dr A P Matthews, who lives in South Africa), the Applicants made the following points (in summary): the Objectors' excuse for not having provided this evidence earlier was unsatisfactory. How could a landowner say that

he did not realise that the 1995 – 2015 period was relevant, when the Inspector's Directions circulated to the parties had clearly indicated that evidence of use during that period was exactly what needed to be examined? It was therefore argued that this late evidence and the accompanying submission should be rejected. [I have already indicated earlier in this report that I did not accept this submission, and allowed the material provided by Dr Matthews to be considered].

8.36. On the basis that the material from Dr Matthews was being considered, it was suggested that the photographs he had provided show nothing more than incomplete lines of a few poles, and there was no indication of any wire between them. There are clearly poles missing, leaving gaps in the line of the supposed fence, so the poles would not have been capable of supporting a wire in so derelict a state. It is clear that they had been derelict and had no maintenance for many many years. It is disingenuous to suggest that the photos clearly demonstrate a post and wire fence. They do not.

8.37. The broken line of poles simply terminates mid-way across the meadow, and even without the gaps would not constitute a barrier to entry of any sort. It does not form a continuous boundary around any area.

8.38. There is no supporting evidence for the date of these photographs, and no details are provided of the unnamed friend of Dr Matthews who was said to have taken them. Dr Matthews had claimed that from the garages the field was too overgrown to go anywhere. The Applicants would say that this was certainly inaccurate, as at all times there has been free and clear access from the back of the houses to the garages.

8.39. A photograph was provided by Mrs Cowley for the Applicants, taken on 23rd July 2004, which clearly showed the pathway from the mown area leading across the back of the gardens down to the garages. The mower used to mow this area was stored in one of the garages rented from Mr Faux from 2002, so continuous access was a necessity from then on, but was in fact the case from as far back as any local residents can remember.

8.40. Dr Matthews had commented that there were brambles or bushes near to the garages. The photographs he produced were taken to the north of the only garage that stands on its own, and the presence of brambles there, as is still the case today, does not preclude free access to or through the meadow.

8.41. Nothing in Dr Matthews's photographs is inconsistent with any of the information or evidence provided by the Applicants, and the condition of the meadow in those photographs is not inconsistent with the condition of countless other areas of land with common or village green status. It is important to remember that this is not an adverse possession case, and there is no dispute that the land is owned by the Objectors. Rather the situation is simply that the land has been continuously used as of right for the statutory purposes for the prescribed period, and no prevention

notice was registered by the owners. Therefore nothing included within the late submission of material by Dr Matthews had altered the evidence of use put forward on behalf of the Applicants.

9. THE CASE FOR THE OBJECTORS – EVIDENCE

9.1. The original objection, made on behalf of the joint landowners of the site, was accompanied by a considerable volume of evidential material. Much of this consisted of past correspondence and accompanying documentation in relation to the history of the site. The most relevant parts of this correspondence and documentation were brought up and referred to quite extensively during the course of the Inquiry. Indeed part of the purpose of holding an Inquiry in the first place was in order for the most relevant pieces of evidence to be identified by the parties and concentrated upon. Accordingly it is not necessary or appropriate for me at this point to seek to summarise that initial collection of correspondence and documentation, although of course reference will be made to the most significant parts of it as I consider the evidence which was given at the Inquiry itself.

9.2. It is however worth noting at this stage that one of the documents which accompanied the original objection was what was stated to be a brief account of the chronological order of events which had happened in relation to the use of the land. In that document it was said that from 1979 to the present day the garages in the south-eastern corner of the application site had been rented primarily to those residing on Woodside Road. In April 1979 permission had been given to one local resident for use of a plot directly outside that person's property. From 1988 to 1994 there had been a grazing use of the land, which was fenced and had a gate. In April 2000 a letter had been issued to residents of Woodside Road notifying them that unauthorised uses on the land needed to cease. In February 2002 Mr Angus de Watteville, one of the Applicants, had written to the landowner seeking to purchase part of the land. In 2002 some local residents (Mr and Mrs Nobes) had written in relation to continuing the permitted use (by them) of an area within the site. In June 2005 the landowners were contacted by the owner of Oak Villa, Woodside Road, requesting to purchase a plot on the application site. The landowner did not agree to sell.

9.3. In October 2014 the site was put forward by agents on behalf of the owners for potential removal from the Green Belt and allocation as a housing site. In February 2015 a letter was sent to the Clerk of Chiddingfold Parish Council, outlining the suitability of the site for housing, and requesting for it to be considered through the Neighbourhood Plan process.

9.4. In July 2015 letters in relation to the garages and encroachment were issued to some of the local residents, with the opportunity to purchase land which had been inappropriately fenced in being raised. In August 2015 Mr B Moir, a Woodside Road resident, wrote a letter apologising for having placed raised beds on the land without permission, and requested to purchase some land. In September 2015 a letter had been sent out on behalf of the landowners, stating that objects would be

removed from the land and a fence would be erected. The process of considering the site in the context of a possible planning allocation continued into 2016.

9.5. I should perhaps also mention that another evidential item which accompanied the initial Objection was an undated draft statutory declaration by Mr David Faux, in relation to the access track which leads from Woodside Road to the south-eastern corner of the application site, close to where the group of garages are situated. It is unnecessary for me to say any more about this, not only because this was a mere uncompleted draft document, but also, more relevantly, it was agreed at the Inquiry that there was no disputed issue between the parties on the question of the rights of local people or others to reach the boundary of the application site from the acknowledged public highway of Woodside Road itself.

9.6. At the Inquiry, the oral evidence on behalf of the Objectors was given by ***Mr David Faux***, who is one of the joint proprietors of the land in question, and therefore one of the four Objectors to the application. Mr Faux did not claim to live in Chiddingfold, or in close vicinity to the site; he explained during his evidence that he currently lives in Dorking, and had at an earlier stage lived in Great Bookham. Neither of those places, although they are within the County of Surrey, is particularly close to Chiddingfold. Mr Faux explained that his step-mother's family had had an interest in the application land for over 60 years. He inherited his rights in it in 1992, and has since then been the main point of contact in respect of the management of the land, and the garaging arrangements in one corner of it. He had also assisted his father in the management of the land and the leasing of the garages prior to that date. Written records survived in relation to those early periods. The other three co-owners of the land are Mr Faux's sister, and the two sons of his late step-mother's brother. Mr Faux explained that his step-mother had in fact asked him to get involved in the management of this land while his father was still alive; his father had died in 1992.

9.7. Mr Faux explained that his step-mother's parents had lived at a house called Crofts to the north-west of the application land in Chiddingfold. When Mr Faux first got to know this land the garages in the south-eastern corner already existed. It had been thought that they would be of a benefit to the neighbours, although Mr Faux was not sure who had originally built them. They had been let to local people on Woodside Road, on the basis that people could walk to them out of their back gardens, through the southern part of the application site.

9.8. The property (relevant to these proceedings) owned by Mr Faux and his relations consists of the garages in the south-east corner of the application site (now excluded from the site by agreement of the parties) and the remainder of the land, which Mr Faux described as grazing land. He said there is a surviving broken barbed wire fence dividing the property into two areas. The northern area is marshy and less suited to grazing at some times of the year. The western edge of the site is overgrown with brambles and self-seeding trees. Over the 20 year period in question, a small strip at the rear of the properties on Woodside Road has been mown, with areas within that strip being used for vegetable growing, keeping of

chickens and children's play equipment. He produced some pictures which had been taken in 2014, prior to the submission of the application under consideration.

9.9. Right at the beginning of his personal period of involvement, the land had been let for horses to be kept on. The whole area was overgrown, and not very smooth. There were various bushes growing out of it; it was uneven land.

9.10. The purpose of visits he made in June and November 2014 (when photographs were taken) was because McLaren Clark had approached the owners with a view to seeing the land. Mr Faux introduced them to the land, and they walked around it and noticed various encroachments and the like which appeared to have taken place on the land. The approach to the owners (by McLaren Clark) had been on the basis of seeing the land as possible development land.

9.11. There currently appears to be a footpath across the application land, leading through to the field to the north-east, which is often referred to as 'Site 6'. There was currently a short strip of barbed wire across the land, a little to the north of the start of that path. Mr Faux thought that this particular barbed wire fence might have fallen in part, even at the time he first became aware of it. There had been wooden posts associated with it, but he had never thought previously that this decayed fence might have any future significance.

9.12. He was aware of a number of permitted uses on the land that had taken place prior to his inheritance in 1992. While his father was still alive, Mr Faux assisted him with the management of the garages and upkeep of the property from time to time. He also had relevant pieces of correspondence in relation to this.

9.13. For example, in 1979 a Mr Moss who lived in Woodside Road had been notified that he had encroached on the land without permission. Mr Moss then requested and was granted permission to cultivate a small plot of land at the rear of his property, provided he did not construct a perimeter fence. In 1986 the owners of another property in Woodside Road were also granted permission to cultivate a small area of land to the rear of their property.

9.14. The correspondence which Mr Faux had produced had been given to him either by his step-mother or by his father. His step-mother had been a former secretary, and liked to file everything. That explains how Mr Faux comes to possess such a considerable volume of correspondence.

9.15. Correspondence dating from 1986 was produced with a Mr Knight, who lived in Woodside Road, giving permission for cultivation of a small patch of the southern part of the site. Mr Faux had not seen any correspondence which purported to revoke that permission. Correspondence with Mr Nobes, another Woodside Road resident, dating from 2002, was also produced, which made reference to a permission which had been granted for the cultivation of a small area of the

application field situated beyond the writer's back garden. Mr Faux understood that Mrs Nobes had been Mr Knight's daughter. Mr Faux believed that the relevant permission had been given. He believed that a lot of this granting of informal permissions had been done by telephone.

9.16. Mr Faux also produced a letter dated 26th April 2000 from a gentleman called Mr Daniels, living in Crofts Close, Chiddingfold. [Crofts Close is a short road lying a little to the west of the present application site, and the Crofts Close properties do not appear to have direct boundaries with the application site itself]. This letter makes reference to land adjacent to Mr Daniels's property which had previously been rented out for grazing [but it is not clear whether the land referred to is the present application site, or the field or former field to the west of the present application site]. Mr Daniels acknowledged that he had made use of part of the land outside his property for cultivating runner beans during the summers. He made reference to the farmer carrying out the grazing having erected a cattle fence around the field, which left the area he had cultivated outside the area used for the grazing. He stated that he had continued to use that area not only to grow runner beans but also in order to prevent the uncultivated field from encroaching on his garden, *"as it is now full of weeds and fallen trees"*. [I re-emphasise that it is not entirely clear which field Mr Daniels was referring to]. Mr Faux had never sought to revoke the permission that had apparently been given to Mr Daniels, or to remove Mr Daniels; nor did he understand that Mr Daniels had ever claimed any rights in respect of the relevant piece of land.

9.17. As for grazing, the land of the application site was grazed between 1988 and 1994. In July 1989 a grazing and amenity use agreement was completed with Mrs Watts (who was apparently connected with a local residents association). As part of that agreement the 'grazier' was required to maintain stock-proof fencing along all boundaries of the application land. Later that year Mrs Watts assigned the agreement to a Mr and Mrs Herbert, until June 1990.

9.18. Then, from 1990 to 1993 a Mr Turner took a licence to graze the field, and during that period he sought to apply for planning permission for a replacement field shelter. That application was approved in 1991. Another application for stabling and a hay store was refused in 1993. At that time the grazed land was secured with fencing and metal gates, which were chained and locked. The fence line is shown on Site Plans for the permitted shelter and proposed stabling, which were produced back at that time.

9.19. Mr Faux produced a considerable volume of old correspondence from the late 1980s and early 1990s relating to the grazing of the land on the application site. All of this was correspondence which he had been given when he took over management of the land. He had not been involved personally at that stage. He also said (and I agree with him) that it was not necessary for me or the Inquiry to consider all of that material in detail. However I note that among other features of the documentation, it records that there was clearly a grazing tenant or licensee called Mr Turner, who grazed or managed the land in a way which the owners and their agents regarded as satisfactory, in the period from 1990. It also appears from

the documentation that at that time (i.e. the early 1990s) there were some fences within and around the grazed field, and some gates controlling access.

9.20. Mr Faux said that by 1992 he personally was starting to get involved in the management of the land. Among the various documents, he produced a copy letter from the owners' agents to their solicitors, from August 1992, in relation to an enquiry from Mr Turner, the grazier, as to whether he might be allowed to erect a stable with three stalls and a hay store on a concrete base within the field. Two plans appear to have accompanied that letter. One, on an Ordnance Survey base, appeared to show various lengths of fencing within the field which constitutes the present application site. A larger scale site plan, showing the proposed stables and hay store, also marked what it called an existing gate into the field, in the vicinity of the garages in the south-eastern corner of the site, and an existing field shelter in a position some distance up the eastern boundary of the present application site from the location of the garages.

9.21. Mr Faux said that the *"existing field shelter"* referred to on that plan was not something that he recalled having seen. It looked as if it was near a present gap through the hedge which leads through to the field known as Site 6. He thought that a dotted and dashed line shown on that plan, in the vicinity of the field shelter, might represent some of the barbed wire which he recalled had been in that general area. Mr Faux believed that the plans accompanying that 1992 letter did show the fencing existing at that time. He personally could remember seeing fencing on the site, but could not specifically recall seeing the fencing in the vicinity where the sketch plan marked *"existing gate"*.

9.22. Mr Faux also produced some plans relating to the 1991 planning application for a stable in the field, and the 1993 application (apparently related to the letter of August 1982 just referred to) for proposed further stabling and hay store.

9.23. It was apparent from a letter from Mr Turner, dated 1st April 1993, that he (Mr Turner) decided to remove himself from this land when the 1993 planning application for additional stabling was refused. The lease or tenancy was therefore not continued.

9.24. Mr Faux said that from the early 1990s, once he had begun managing the land, he would visit it on an 'on demand' basis. He had no regular schedule for this, and nor did he keep a diary of visits. He had been introduced around that time to people who were potentially interested in developing the land, but that then dropped off.

9.25. Then from about 1995 through 1996, 1997 and 1998, he would visit the site about once a year, but it could have been less than that sometimes. Nevertheless he thought that the land did not during that period drop significantly in quality. His recollection was that the deterioration in the quality of the land had come rather later than that. However encroachment onto the land by people from various

neighbouring properties did begin to happen during that period of the late 1990s. This was by way of people gardening (i.e. in effect extending their gardens into the land), children playing, and play equipment being placed there, and so forth. By this he meant incursions which went beyond anything that the owners had previously agreed that people could do there. For example, they had previously agreed generally, for many years, that local people could walk across the south of the land to the garages in the south-east corner.

9.26. He himself could not remember any horses on the land after Mr Turner's horses. There were some people who showed some interest in the field, after Mr Turner had gone, but they were always concerned about the question of stabling and watering. Water in particular was always the issue on which ideas such as that would fall apart.

9.27. Mr Faux had never himself seen any tethered horses on the site. He did not believe that anyone who knew and used horses would tether them in a field in order to keep a horse in a particular area. If that had ever happened, he thought that it must have been in the remote past.

9.28. As for the garages in the south-east corner of the application site (excluded from the site as a result of an amendment made at the Inquiry), he believed that the garaging was built on land that was previously pigsties. He had evidence that the garages had been rented out since 1979, through to the present day. They had been let mainly to local residents, on rental arrangements, with the majority of payments made on a monthly basis. The garages can of course be used for the storage of vehicles, and as such the people using the garages have rights to access via the track from Woodside Road.

9.29. Mr Faux was able to name some 16 or 17 local people who had rented garages there over the years. Mr de Watteville, one of the Applicants, had paid a monthly rent for two garages from 2002 to May 2015, at which point he took on a third garage. He was still currently paying monthly for the use of three of the garages.

9.30. Mr Faux had contacted Mr de Watteville in September 2008, to ask for his guidance and help about an abandoned car which had appeared in one of the garages. Mr Faux had suggested erecting a notice saying something like *"Private Keep Out"*. Mr de Watteville's response to Mr Faux on 5th February 2009 said that the area *"has a very low profile, the track is somewhat overgrown and I suspect that very few people even know the garages are there. It may be that a sign would actually attract attention and do more harm than good"*.

9.31. It turned out that the abandoned car had apparently been owned by someone in the Chiddingfold area. Mr Faux did not want anything like that to happen again. However he did not in fact erect a sign in the vicinity of the garages, because of what Mr de Watteville had said to him.

9.32. In July 2015 letters were issued to the current garage users, in order to formalise the leasing arrangements. Some tenants signed the agreements, others did not. Mr de Watteville for example did not return the agreement, as he needed to do work to make the garages useable. Nevertheless he still pays the rental fee for three garages, as agreed. In addition Mr de Watteville had agreed with Mr Faux that they had an ad-hoc arrangement whereby he kept an eye on the garages, mowing around them for suitable access and so forth. Mr de Watteville had acknowledged that he had been doing that for some 15 years.

9.33. Mr Faux acknowledged that nothing historically had been recorded in writing about the garages until 2015. Most of the arrangements with local people for the use of the garages had been done over the telephone. A very minimal rent had been charged. The users of the garages had to keep them in good order, and could walk through the field to them from their back gardens. The intention was to give permission to cross the bottom part of the field to the whole family living there with them, or friends helping to carry stuff to or from a car in the garage, for example.

9.34. On one occasion Mr Faux remembered that he had been there specifically to look at the garages. A gentleman called Mr Willment had asked him to come and look at the work he had done on one garage to make it useable.

9.35. Otherwise Mr Faux occasionally visited the site with people interested in development, and would see the garages and land at that time. Apart from that sort of thing he made no planned visits.

9.36. At no time on any of those visits which he made did Mr Faux ever see anyone on the land. He saw no children playing, no people walking dogs, nothing at all. The idea that people were regularly using the land just never was the case. He said that he might go to the land with a specific person by appointment, or otherwise his visits would be as opportunity arose. These visits would be on no particular day of the week nor at any particular time.

9.37. The condition of the land during that period was not getting substantially worse, simply because there were no horses on it. However it was certainly not improving either. Nature was gradually taking over. He did not recall ever suddenly having asked himself *"where have those fences gone?"*, for example.

9.38. Back in 1979, the records showed that the owners' solicitors had issued letters warning about encroachment on the land to all residents whose properties adjoin the application field. Later on, in April 2000, the same solicitors issued letters to adjoining residents to notify them that any use of the property was in fact unauthorised, and that any unauthorised uses needed to cease.

9.39. Then in July 2015 a letter and property boundary plan had been issued to the neighbouring residents, to notify them that the strip of land to the rear of their properties, along the southern edge of the application site, that had been encroached upon was unauthorised. That letter also provided local residents with the opportunity to purchase the land that they had fenced as part of their property. That letter was issued to all the adjoining residents. A follow up letter was issued in September 2015, which also said that if belongings had not been removed within 28 days then they would be removed by contractors, and a stock-proof fence would be erected.

9.40. Contractors had in fact entered the property on 8th October 2015, to prepare for fencing the land. Those contractors were approached by residents of Woodside Road and told to stop, as a village green application had been lodged earlier in the year. Mr Faux and the landowners had not been aware of that application at the time. Later that day however Mr Faux received a fax from a firm of solicitors notifying him of the village green application. He had not been aware of that application prior to 8th October 2015.

9.41. The encroachment onto the land which had taken place by local residents was essentially concentrated in the strip of land behind those residents' back gates. It was a strip measuring about 20 feet or so.

9.42. At one time there had been discussions with a group of people, including the Chiddingfold Club and various other local people, who had been very keen to set up a residential home, and possibly a medical centre and the like, on the present application site, possibly in conjunction with some of the site known as Site 6. Because of interest of that kind being shown, Mr Faux carried on coming to visit the site in connection with such matters, about once a year or so. That was during the period from 2002 through to about 2010. Between about 2010 and 2013 his visits were not too frequent, because he was busy with other things. During his visits between 2002 and 2010, he did not recall ever seeing anyone else on the site, during a single one of those visits.

9.43. From 2013 or so onwards the McLaren Clark group became involved, and Mr Faux was on site more frequently than previously. He would probably attend the site a couple of times a year. He had also visited the site twice during the period leading up to the Inquiry. For example, he had visited the site over the August Bank Holiday weekend of 2017, when to his astonishment he saw no-one there on the site at all. On a more recent visit he had seen a number of dog walkers, but all they did was walk straight across the site into Area 6, where there is a footpath.

9.44. Mr Faux's impression was that the mown part along the southern edge of the site had expanded a little over the years. When he first noticed it in the year 2000, there were just a few people growing vegetables. A great change had been later on, when some ducks and geese, and even some electric fencing, had appeared on that strip. It had been quite a shock to see those features there. He thought that had

been in about 2013, or possibly 2012. In the period from 2015 to date, he thought that the mown area had grown rather bigger than he had seen it before that time. He agreed however that the area near the rear of the houses had been mown for quite some time. Also there was a mown track running from approximately the rear of the property called Avoca Cottage to a gap in the eastern hedge of the site leading through to Site 6.

9.45. About the year 2000 was the first time Mr Faux had noticed mown areas. He had (possibly incorrectly) incorrectly believed that, as long as they sent a letter every 14 or 15 years or so, it would keep the risk of adverse possession away, by avoiding 'squatters' rights'.

9.46. Clearly, as he had mentioned previously, some local people had actually been given permission to make use of parts of the southern strip of the application land. In February 2002 Mr de Watteville had contacted him seeking to purchase part of the land. As mentioned previously, Mr and Mrs Nobes, of the property known as 'Laurels', Woodside Road, had contacted him in relation to continued permitted use of an area of land to the rear of their property, to grow vegetables.

9.47. In June 2005 Dr Baxter-Jones of Oak Villa, Woodside Road contacted him, requesting to purchase a plot of land at the rear of their property. No sale was agreed.

9.48. In 2013 and 2014 he had been contacted again by Mr de Watteville, this time on behalf of local residents, saying that they wanted to purchase the land for community use. There was an exchange of correspondence, but later in 2014 Mr Faux had responded that the proprietors were not looking to sell the land. In addition he specifically said at the time that any use of the land was unauthorised, as it was private land, and there were no formal access rights to it, or from back gardens.

9.49. In August 2015 a Mr B Moir, the owner of Adelaide Cottage, Woodside Road, responded to a letter to him of July 2015, and apologised for having placed raised beds on the land without permission, and requested to purchase some land. The July 2015 letter had in fact been sent to the adjacent residents generally, not just Mr Moir, and a number of other residents responded, confirming that they had received that letter.

9.50. So, in summarising the position in relation to his visits, Mr Faux confirmed that since his inheritance in 1992 he had generally visited the site at least once a year. Although in the latter years a small strip of land to the rear of the Woodside Road properties has been mown, and in some areas cultivated, there had not been signs of any other use of the field as a whole, and he had never seen or met any members of the public on the land. Since the village green application had been submitted, and encroachment correspondence had been issued, residents had taken to mowing larger strips of the land and encroaching further into the property.

9.51. While he acknowledged that the grazing of the land formally ceased in 1993, his sister Mrs Turner (unconnected to the former grazier Mr Turner) had made a visit to the property with a Mrs Jean Flemming in 2005. Mrs Turner had reported to him that the property at that time was fenced, with gates for access, and her concern at that time was that the field was becoming very overgrown with long grass and thistles. Mr Faux produced a written note whose contents were said to come from Mrs Turner, but which was signed on her behalf by Mrs Flemming, in relation to this matter. The note referred to the visit to the land in 2005.

9.52. Mr Faux also referred to a letter to him from his solicitors, dated 19th April 2000, which referred to the results generated by the circular letter which had been sent to the local residents by those solicitors, about encroachments onto the land. According to that letter there had been an *"explosion of responses"* to the circular letter. Points within those responses were said to have included that the field is a tip and needs to be brought back into good condition. There had also clearly been opposition expressed to the notion that the field should ever be developed; some of the responses appeared to have said that the field should be gated to prevent unauthorised trespassers. Some of the residents had apparently said they would like the field to stay as it is, because it is a wonderful countryside feature etc. Overall, it was stated that the circular letter had been quite well received by the local residents. [It appeared that a copy of the actual circular letter, which plainly pre-dated 19th April 2000, had not been tracked down].

9.53. Mr Faux reiterated that he had had a number of discussions with people over the years about possible developments of various kinds on the land. The McLaren Clark Group were instructed as land agents in June 2014. That firm were instructed to find a suitable development partner, and to promote the site through the planning process. Mr Faux gave some description of how that process had been followed since that time.

9.54. *In cross-examination* Mr Faux said that as well as the regular yearly visits he made to the site, to which he had referred in his written statements, he did come at other times to visit the site when he happened to be passing. Some of those visits would be at weekends, and sometimes during the week. While he was himself working, which he had until three years previously, his visits would not usually be in the week. However he had worked overseas quite a lot during his working career, so visits could be at any time when he was back in the UK. His visits would generally be to look at the garages, or to go onto the parts of the site where it was easy to go. He would go to the parts of the land where he believed others could get to easily.

9.55. He did notice some fencing on the site on his visit there in 2014, he recalled. There was not a lot of fencing, but he noticed some near a gap through the hedge on the eastern side of the site, near to the path across the site.

9.56. In 2000 he first noticed a mown area on the site. Before that, probably in about 1998 or 1999, he had realised that some encroachment had taken place onto the site, and that there was a need to say something to people about that. He could not recall having noted any specific further change on the site in relation to his visit in 2005.

9.57. Neither could he recall any specific changes around the garages in 2012. He recalled that there had been a garage taken away from that vicinity, but that was somebody else's garage which had been placed there; that was in the part of the land which was now, after the amendment to the application, outside the application site.

9.58. In relation to the various letters from local people who had been permitted to cultivate vegetables on parts of the land, nothing suggested that those permissions had ever been revoked. They go back many years. In fact one gentleman, Mr Knight, was both permitted and paid money for use of part of the land.

9.59. Mr Faux accepted that grazing of the land had ceased in 1993. Mr Turner, the grazier, had said that he had locked the gate. Mr Faux himself was not personally given a key. On his own visits he just walked where anyone else could walk. It was apparent also that on the visit reported by Mrs Turner and Mrs Flemming in 2005, they had been able to access the land without a key.

9.60. Mr Faux agreed that permissions given to individual people to do things (such as cultivate vegetable plots) on the site were not permissions communicated to the wider community. Also, when people were given permissions to use one or more of the garages, that would have no particular bearing on the question of any other use of the land by the wider community. Mr Faux agreed that he had never directly denied anyone permission to go onto the land. He had in fact generally given permission to local people to walk along the land from their homes to the garages. He regarded himself as having given people the right to go, in an A to B sense, from the rear of their houses to the garages, by the most direct route.

9.61. He acknowledged that within the period between 1995 and 2015 (the 20 year period under principal consideration) he had been aware that people were trespassing on the land at the back of their houses. He was aware also that there was a track which had appeared, coming from the land to the east known as Area 6, into the application land. He did see such a track or way through; there might have been other ways through that appeared too, but he was not sure. He had never put up a sign to prohibit access, nor put up new fences to keep people out. One reason for not fencing the whole site was that he wanted to allow people to get across the bottom of the land to the garages from their houses. He had never installed any locked gates, largely for the same reason .

9.62. It was true to say that for a long period of time he was aware of some trespass, for example by way of vegetable patches, or the placement of children's swings or

fruiting bushes. There were also paths which appeared, and he could accept that people might well walk dogs along those paths.

9.63. When it was suggested to him that in reality his visits had been for approximately 15 minutes, once a year, he said that if he had ever visited and seen people on the site then his visits clearly would have been longer.

9.64. *In re-examination* Mr Faux said that prior to being involved in this process in Chiddingfold, he had been aware of another village green application in Great Bookham, when he lived there. That site had seemed to him an appropriate one for this sort of application; he himself had walked on it for 15 years, on many paths across it. Nevertheless that village green application had been thrown out, which had led him to assume that it was very difficult for people to get a town or village green registered.

9.65. From what he knew of the history of this present site, there was no conceivable justification (he said) for a village green application to be approved here. Essentially he had seen one path appear, crossing the land, and a little bit of mowing and other use by neighbouring residents on the southern strip of it.

9.66. In addition to the lengthy evidence of Mr Faux, which I have summarised above, I must note the small piece of late evidence from ***Dr A.P. Matthews***, one of the co-owners of the application land, who lives in South Africa. I have referred above to my decision to allow this evidence to be considered, given the circumstances in which it arose.

9.67. Dr Matthews explained in a short letter that, having been sent a copy of the closing submissions which had been made at the Inquiry itself, he had realised that the condition of the land between 1995 and 2015 was a relevant matter, a point which he had not appreciated before. In his letter he said that he remembered that he had visited the field in January 2005, when a friend had driven him there, and that the friend and he had taken photos of the field, some of which had included Dr Matthews himself. Dr Matthews, had found the relevant photographs (which appear to be 4 in number); zooming in upon them he had seen that fence poles crossing the field were visible. He said that if he had known that this information might be useful before, he would have sent it a long time previously.

9.68. Dr Matthews remembered going to the field and driving up to the garages. He had wanted to walk around the field, but it was too overgrown to go anywhere, he said. His memory was that he wanted to walk across the field to see the orchard [a plot of land further west, I understand], and perhaps get a view of the house known as Crofts, but that it had not been an option to go walking about, because of the vegetation and thorns. Looking at the photographs, he could see that there are brambles and bushes in the vicinity of the garages. The best he could do at the time was that his friend and he took 4 photographs of the field, spanning from the south to the east boundaries, with him himself in two of the photographs. They had

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been taken on the afternoon of Saturday 15th January 2005. In addition to Dr Matthews' letter, which was dated 17th November 2017, and clearly sent by email to Mr Faux, Dr Matthews had electronically sent copies of the 4 photographs referred to. As noted above, I have also received and accepted those 4 photographs in evidence, and the Applicants have been able to comment on them.

10. THE SUBMISSIONS FOR THE OBJECTORS

10.1. In the initial objection made to the application, a number of submissions were made which I shall summarise briefly. It was pointed out that case-law indicates that the number of people using a piece of land in question has to be sufficient to indicate that the use of the land means that it is in general use by the community, rather than occasional use by individuals as trespassers. It was suggested that nearly everyone who had supported the application here gained access via the properties on Woodside Road which back onto the application site. Most of those (who had provided written statements) who did not currently live in Woodside Road had in fact gained such access either because they previously lived there, or because they currently access via the property of friends or family. There was very little evidence of use of the site by persons not living in or visiting properties in Woodside Road.

10.2. Woodside Road is a very small component part of Chiddingfold Parish, and not centrally located within the Parish. The user evidence did not show use by people distributed across the Parish.

10.3. It was argued [at that stage] that there is no lawful public access point to the site. However there were a number of documents which showed that over a lengthy period various parts of the application site had been accessed and used with the permission of the landowner, or by way of licence. Examples were cited.

10.4. None of that was in any way consistent with the claim now being made that access to and use of the land had been exercised as of right by the inhabitants of the locality. There had even (it seemed) been in the past a contractual licence agreement between the Chiddingfold Residents Association and the landowner for amenity use, in return for payment. Even when that formal arrangement ceased, any use of the land which continued would have been by implied permission. The numerous requests by local residents for permission to use parts of the land in various ways were all consistent with an acknowledged need to obtain permission of some sort in relation to the land.

10.5. The vast majority of the evidence submitted fell well short of demonstrating 20 years use.

10.6. In later outline submissions prepared for the purpose of the Inquiry, it was argued that while the Parish of Chiddingfold satisfies the requirements to be a *"locality"* for the purpose of an application of this kind, any 'neighbourhood' which had been identified by the Applicants was likely to be arbitrary and lack the requisite cohesion to suffice as a neighbourhood for legal purposes.

10.7. It was pointed out that a separate application had been made by local people to register the access track leading from Woodside Road to the application site as a public highway. That application was entirely parasitic upon the town and village green application, and did not add weight to the latter application. Therefore it was not a material consideration. The application to register the track as a public highway was understood to remain undetermined at the time of the Inquiry.

10.8. In additional opening submissions, it was pointed out that the Inquiry was not concerned with the future of the site, even though the determination following from it might have far reaching consequences for that future. Because success of the application would lead to a substantial removal of the landowners' rights in respect of the land, the claims made on behalf of the Applicants needed to be properly, critically and thoroughly examined.

10.9. The application in this case was, in terms of its timing, an almost classic response to trigger events. There had been letters sent to local people about encroachment on the land. There had been an initial approach to engage with the local community about possible development of the site. That approach about possible development in due course was then reflected by a plain intensification of use of the land by local people. Nevertheless it was accepted that no formal trigger event under the legislation has taken place.

10.10. It was accepted that the question of 'locality' is a non-issue in the present case. On the question of identifying a relevant 'neighbourhood', it was argued that there had not been a proper justification of the neighbourhood which had been proposed.

10.11. It was suggested that there was strong evidence that physical barriers had existed on parts of the site at relevant times, and also that there had been permissive access or use of the land. Even the Applicants concede a level of permissive use on the land. The absence of formal written leases in the case of some users, and occupiers of the garages, did not mean that there was not permissive use. Oral licences or permissions to use the land are just as much permissions as written tenancies or leases. There was much evidence of permissions being given over a long period.

10.12. The fact that in 2015 the landowners desisted from carrying out a proposal to fence off the land, should not lead to the view that there was any recognition by the owners of the validity of the town or village green claim. The cessation of the erection of the fencing occurred simply because it became known that the ***Commons Act*** application had been made.

10.13. The Objectors accepted the proposed reduction of the size of the application site by the removal from it of the small area including and surrounding the garages in the extreme south-eastern corner of the original site. This amendment to the application site could be viewed as an agreed matter.

10.14. It was accepted on behalf of the Objectors that there is not an automatic requirement for access to be from an existing, already recognised public highway. Nevertheless the absence of a clear public right of way leading to the land should inform how the evidence of user in relation to the land itself should be seen. The approach taken to this should have regard to the amount of permissive use of the land, and of routes across the land, which has taken place.

10.15. In *closing submissions* the well-known point was made that it is no trivial matter for a landowner to have a town or village green registered on his land. It was also noted that the Registration Authority has no investigative duty which requires it to find evidence or reformulate an applicant's case.

10.16. The criteria which are relevant under ***Section 15*** of the ***Commons Act 2006*** were noted. It was specifically noted that the application here is not put on the basis of the locality of Chiddingfold Parish, but based on a 'neighbourhood' within that locality. Thus the identification of the neighbourhood is a critical first step. Failure to identify or justify the neighbourhood adequately will result in an application which cannot succeed. Identification of the claimed neighbourhood is critical in enabling objectors to address and respond to the element of the test which requires a significant number of inhabitants to have used the land.

10.17. The Applicants in this case had produced a plan showing an area demarcated within the parish of Chiddingfold which was claimed as the neighbourhood. It had initially been suggested that this area was the area within which the majority of the users of Woodside Meadow reside. It was noted that at the Inquiry the Applicants had suggested that there were three categories of user from the claimed neighbourhood, namely those who claimed to use the land on a daily basis, being those residing physically closest; those who use it occasionally, being people who do not live physically close to the land; and groups or organisations which are spread out within the boundaries of the neighbourhood.

10.18. The claimed neighbourhood in this case was an arbitrary one, which did not have any sufficient degree of cohesiveness to satisfy the tests suggested in the judgment of Sullivan J (as he then was) in the case of ***Cheltenham Builders***. A neighbourhood must have a sufficient degree of pre-existing cohesiveness, and be capable of meaningful description in some way. It cannot be an artificial construct which an applicant has identified merely to show an area within which recreational users predominantly live. The claimed neighbourhood in this case was arbitrary in that sense, having been designed simply to reflect an area which the claimed users predominantly inhabited. The application therefore fails this criterion.

10.19. In any event the Applicant has not established that there has been as of right use by a significant number of the inhabitants of the claimed neighbourhood for lawful sports and pastimes over the requisite period of at least 20 years. The Objectors' analysis of the proportion of inhabitants purporting to use the site had not been challenged by the Applicants. At best, some 9.6% of the claimed neighbourhood had provided any evidence claiming any use of the land at any time. That would drop to only 3.7% if the area taken were the locality of the Parish of Chiddingfold. Before consideration of any of the more detailed evidence submitted, it was suggested that this would fall short of anything that could be said to be use by a significant number of inhabitants of either the locality or the neighbourhood.

10.20. As for use of the land by various groups, it was pointed out that no oral evidence had been given in relation to a claimed group visit by the local scouts/beavers, which had been said to have occurred in the Autumn of 2015. The date of the visit had not been specified in the relevant written statement. Since the relevant 20 year period itself ended on 9th September 2015, the likelihood was that the scout/beaver visit occurred outside the period, or if it occurred within the period, it must have occurred right at the very end of it.

10.21. The evidence in relation to the nursery school group attendance on the site is that this had only occurred twice ever, in June 2015 and in May 2017. An additional visit as an end of term gathering for 5 or so staff was also claimed to have occurred in 2015. However, on closer scrutiny, on their 2015 visit the children appeared to spend much of their time away from the site, on walks across other land to the east and north-east, up towards the area known as The Laggs. They were claimed to have been on the site only for a picnic and to play ball, and for some running games, and to see the ducks and chickens in the mowed area. Also, the area mowed at that time, at the southern edge of the application site, was smaller than it was at the time of the Inquiry.

10.22. The only activity which was not described as taking place either off-site or within the mowed area of the land was the children being allowed to take their shoes off and walk in the long grass on the site. However the specific area of long grass on the site being walked in was not addressed in evidence on behalf of the Applicants. The team gathering of the staff had also been described as taking place within the mowed area of the site.

10.23. When Mrs Wallbank had been asked in cross-examination about the staff team gathering on the application site, she had confirmed that gatherings of that kind had been held in a number of different locations across the years, but had said that once they had taken the children to the application site they appreciated how beautiful it was, and decided to go there without the children. That answer did not suggest Mrs Wallbank was previously familiar with the site. The team was only taken there after they had taken the children there, and because of that appreciated how beautiful the site is.

10.24. The fact that the children were only taken there for the first time in the history of the nursery in June 2015, only a few months before the application was made, also indicates how little known and utilised the site really was. That a nursery group which prides itself on outdoor activity days had only visited this site once, and that in June 2015, tends to undermine the assertion of the Applicants that the site really was as well known, well-loved and well used as they now seek to claim.

10.25. The evidence about the annual bonfire committee after-party amounted to a yearly gathering of between 10 and 15 people, around a fire. The location of the fire seemed from the evidence to vary a little, being either in the mowed area, or possibly sometimes a little further into the site. The evidence only spoke of this having happened since the year 2000, which left five years of the relevant period (1995 – 2000) with no evidence of such an after party on the site. The only other evidence relating to bonfires had related to bonfires of garden refuse or rubbish, which had only occurred (on the evidence) in the mowed part of the site.

10.26. Taking a broader view of the history leading to the key period of 1995 to 2015, any use of this site can be understood in context as having been a permissive community use. There is no other way to interpret the payment of an annual fee of £250 by Mrs Watts, apparently on behalf of the local residents association, (as documented in both 1988 and 1989) for both grazing and amenity use of land which clearly included the application site, as well as a further area of land. That agreement had both permitted amenity (as well as grazing) use of the land, and required stock-proof fencing to be maintained around its boundaries. It is a reasonable inference that a residents association, having paid for amenity use of land including the site, would have communicated that permitted use to residents of the local community on whose behalf the association acted. It is inherently unlikely that such a permission was not so communicated.

10.27. Almost immediately after that agreement concluded, a Mr Turner was making enquiries about the land, and took the land for grazing purposes. It is clear that from 1990 Mr Turner had both taken the grazing on the land, and fenced it and gated it, with two gates as per a specification for such works which had been stipulated.

10.28. Then in 1992 Mr Turner had written, identifying various works proposed on the land and explaining, with sketches, some of those proposed works, which had included an additional stable block and hay store. Those plans disclosed that in August 1992 there was an existing fence just to the north of the garages, with an existing gate indicated as running to the rear of the garages, before turning approximately 90 degrees and running roughly parallel to the back of the gardens of the houses along Woodside Road. The plans also showed an existing fence further north in the field, running across it, with a second gate on that fence line. It was suggested that a remnant part of the more northerly of those fences had been visible on the site visit, which took place on the day before closing submissions. That fence, albeit covered with vegetation, was clearly in the location which had been indicated on Mr Turner's sketch plans, in the area just to the north of the

garages. That also accorded with the indication on various Ordnance Survey maps of the presence of boundary treatment of some sort in that area, and continuing along in a line roughly parallel to the back gardens of the dwellings on Woodside Road.

10.29. It was clear that the fencing and gate had been present still in April 1993, when Mr Turner wrote to surrender his lease of the land, having failed to obtain planning permission for his proposals. It had been noted that he had chained and locked the gate, and forwarded the key for the lock to a Mr Perry. Thus in April 1993 the site was clearly fenced, gated and secured by lock and chain.

10.30. That evidence led to a number of consequences. It was clear evidence of the site having been fenced and secured against intrusion in the period immediately before the relevant period. It was also entirely consistent with the keeping of horses in the area so secured, and indeed with the evidence from some of the Applicants' witnesses that there had been fencing on the site.

10.31. All of this evidence undermines the credibility of the other evidence produced for the Applicants, which frequently asserted the absence of any fencing or gates on the site at any point. The evidence of those who acknowledged the past existence of fencing was also consistent with a line which was visible on the 1999 aerial photograph of the site, and later aerial photographs. It was noted also that although Mr de St Croix (one of the Applicants' witnesses) in his written evidence had spoken about some barbed wire having been removed from the land in the early 1990s, in his oral evidence he indicated that he was not in fact sure that the barbed wire removal had occurred in the early 1990s, suggesting that it might have been in the latter part of that decade.

10.32. Other evidence also pointed to the barbed wire on the site not having been removed in the early 1990s. First, the site was only vacated by Mr Turner in April 1993, when it was clear that the site was left secured, with a locked gate. Secondly, the modern fencing can only have been installed by Mr Turner after October 1990. In October 1991 the agent Mr Perry had gone onto the site and confirmed that the work had been done. Third, Mr de St Croix gave evidence of two horses having been kept in the field, *after* the horse kept there by Mr Turner up till April 1993.

10.33. Fourthly, a gentleman whose real name is understood to be Mr Guy Edgson (but frequently referred to at the Inquiry as Edgerton) himself wrote to Mr Faux on 27th February 1994, offering to rent the field, to keep it tidy and mow an area for toddlers to play on, and to grow some vegetables. Mr Edgson had made no mention of already having undertaken any works of clearance on the site as of February 1994. He was still expressing these things as proposed works, should he rent the field.

10.34. Therefore, on the evidence before the Inquiry from both sides, there appeared to have been a longstanding presence of fencing, both within and around the site, in

the form of barbed wire, and the presence of at least one gate, with horses and a field shelter present there over a considerable period of time. Given the date of vacation of the land by Mr Turner, and the condition he left the boundaries in, and the subsequent presence of horses, it is likely that the site remained fenced and secured for some time thereafter.

10.35. It is inherently unlikely that the fencing and gates which had been described fell into ruin in the period April 1993 to September 1995. The alternative is that someone had broken down the fencing and/or gate, which would be accessing the site by force. The presence of fencing and a gate in the area to the north of the garages in the late 1990s is consistent with aerial photography from 1999, and some of the oral evidence from the witnesses. The continued presence of a fence and a gate in that area in the late 1990s is not inconsistent with other evidence relating to the use of the mowed area in the southern part of the site. Indeed some witnesses had talked of not having to go through a gate in order to get to the mowed area – and this is not a point which the Objectors disputed.

10.36. It was noted that of the small number of witnesses who could speak to the period before 1996, several of them had acknowledged the presence of fences gates and horses, whereas others had not. When all that evidence was considered alongside the written records, correspondence and documentation, it was highly likely that the fence and gates, certainly at the north end of the garages and running around to parallel the backs of the houses, was present into the late 1990s, and therefore for at least the first few years of the relevant period.

10.37. The period from 1996 onwards then engaged other witnesses produced on behalf of the Applicants. Although many of the witnesses who had been on the scene from after 1996 did not describe fencing and gates on the site, other witnesses for the Applicants' side clearly had seen fencing, gates and horses. Many of the witnesses who had been called spoke only of use of the land achieved by coming out through gates through their back garden fences. Although some witnesses said that they never had any reason to go along to the area where the garages are located, other witnesses did have that reason, and it was clear that it was practically possible to proceed along a 'corridor' along the back of the dwellings, and out of the site, without passing through a gate of any kind. It was also possible, for example, for children to cycle on their bikes along that corridor from the rear of the houses, and so proceed to the track that turned northwards into the field to the east known as Site 6. Once again, that would not have been a route which was impeded by any fence or gates. Witnesses' evidence of not having to pass through a fence or gate should be seen in that light.

10.38. Most of the activities which had been described by many of the witnesses were ones which had occurred within the mowed area of the application site. That included the bike riding. In fact the evidence offered by all of the witnesses who had given evidence tended to suggest that virtually all activities had occurred in the mowed area. The only activities described by any witness with a location other

than that were: walking/dog walking; berry-picking; den-building/tree climbing; and playing hide and seek.

10.39. Such evidence as there had been about berry-picking was described by all relevant witnesses as occurring at the perimeter and boundaries of the site. One or two witnesses had fruiting bushes immediately outside their houses. The routes described by those witnesses were of a circuitous nature, following the boundaries of the site. Those witnesses were not accessing anything other than a route around the edge of the site, which is not sufficient to constitute a pastime on the land. Use of such a route could not constitute evidence of effective use of the whole site. It is more akin to a right of way following a path around a certain route.

10.40. The few witnesses who had referred to den-building, and identified any location, identified that dens were built in the hedge and tree line, which once again amounts only to the boundary of the site, or the treed area which is not the subject of the present application. That is not sufficient evidence of use of the whole land, or the exercise of a right over the whole of the land.

10.41. As for walkers and dog walkers, the site is physically too small to suffice for a walk or a dog walk in itself. It was noted by all of the witnesses that the site has very good connectivity to a wider network of footpaths. The reality of the evidence about walking and dog walking in relation to the site is that it amounted to walking along a path which is visible on the site, in order to cross it, to one of two identifiable gaps on the eastern boundary where clearly defined paths proceed away from the site across Site 6 and towards the Laggs, and the wider footpath network. Evidence of that kind amounted to no more than a point to point A to B use of a route across the site, and out to the wider footpath network.

10.42. As for use of the site to play hide and seek or other such games, no witness gave evidence in any detail whatever as to locations within the site which were said to have been used in this way. The only witnesses who had spoken of it were those who had not lived in the area for the entirety of the relevant period. There had been no evidence as to the numbers of children, or the frequency of such occurrences. It is impossible to assert that there had been evidence showing that such rights were exercised over the entirety of the land. Indeed a considerable portion of the northern part of the field is covered with blackthorn bushes, which do not present a hospitable environment for children to play.

10.43. The Applicants' evidence also was not sufficient to suggest use by a significant number of the inhabitants of the neighbourhood area. With almost all of the playing concentrated in the mowed area behind the houses, and with all of the social activities in that same area as well (as well as the garden bonfires, social events etc), there was only a very small number of children that even *could* have been engaged in that kind of play.

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10.44. Although they are now excluded from the application site, the garages in the south-east corner still bear upon the evidence at the Inquiry, particularly in relation to the mowed area of the site. The garages have been there for a long time, and were rented to benefit the residents of the area, particularly Woodside Road. Mr Faux and his father and step-mother before him had plainly rented out those garages to a considerable number of people across the years.

10.45. The relationship between Mr Faux's family and the users of the garage was plainly that of a contractual licence arrangement. Mr Faux explained what he called his *"set piece talk"*, that he would have with potential occupiers of garage space, including telling them how access was granted to the garages, both by the access track and if relevant from residents' back gardens along the southern part of the site. Mr Faux had been clear in his evidence that that access was not restricted only to the individual with a licence for any particular garage, but extended to all members of that person's household, and visiting friends and family. That makes total sense, and is a normal arrangement.

10.46. The result is that any presence on the land by a member of a household renting a garage, for the purpose of going between their house and a rented garage across the mowed area, is by permission under the licence. It is not an activity being undertaken *"as of right"*. Mr Faux had produced a plan showing that a very significant proportion of the residents on the north-side of Woodside Road had had agreements to rent one or more of the garages.

10.47. Mr de Watteville, one of the Applicants, had chosen not to give evidence to the Inquiry, or to be exposed to cross-examination. However the evidence clearly showed that he had written in February 2002, indicating that he would like to take on rental of a garage which had previously been rented by the previous owner of his house. He also tried to buy that garage and associated land. Mr Faux also gave evidence about his asking Mr de Watteville about the possibility of putting up *"Keep Out"* or *"Private Property"* signs within the vicinity of the garages. Mr de Watteville had replied in February 2009, suggesting that putting up signs would be a doubled-edged sword, and indicating that at that time the area had a very low profile, with the track being somewhat overgrown. He (Mr de Watteville) suspected that very few people even knew the garages were there. He thought that a sign might actually attract attention and do more harm than good. In consequence of those exchanges Mr Faux did not erect any such signage. It is clear that Mr de Watteville had not had a formal written tenancy of the garage, but he had written shortly before the application in this case was made, to indicate that an ad-hoc agreement had worked well for the previous 15 years or so.

10.48. Those circumstances are not consistent with the position of Mr de Watteville as joint Applicant, in suggesting that there is no formal agreement between him and Mr Faux for what eventually became the rental of three garages. Moreover the absence of any signs indicating to others that they should keep out, or that this is private property, had been caused by Mr de Watteville's email to Mr Faux, indicating the overgrown, low profile nature of the site, and that the erection of signs would be counterproductive. Had that not happened, it was likely that Mr

Faux would have erected signs, in which case it is most unlikely that this application would have been made. Certainly the presence of such signs would have stood in favour of the landowners in seeking to resist any such registration.

10.49. As to the more general issue of the garages, and the effect of the permissions granted in relation to them, it is clear that a significant element of the use of the mowed southern area of the application site needs to be removed from consideration as a qualifying activity, because it falls within the permitted use under the licences which were clearly granted.

10.50. As for the mowed area itself, it is clear that it is necessary to exclude from any qualifying use of it those activities such as walking or dog walking, or cycling, into or out of the wider area. Those are simply parts of a point to point use as a route connecting with the wider footpath network, or onto Woodside Road. The photographic evidence also suggested that the mowed area in 2014 was only about half the size of the area which appeared to be mowed at the time of the Inquiry.

10.51. It was acknowledged that in its reduced form, consisting of the 20 feet or so at the back of the gardens alongside Woodside Road, where virtually all of the activity had been concentrated, that would be a site which might comprise a better candidate for village green status than the wider site. The evidence plainly showed an escalation and intensification of use of that area in the latter years of the relevant period. In the earlier years the evidence suggested that the activity out there might more accurately be characterised as some children playing in the field out at the back of the houses, rather than the exercise of village green rights by a significant number of inhabitants of the neighbourhood. In addition, a number of the residents had sought permission for various activities on the land (such as vegetable growing), or had sought to buy parcels of land, at various points running into and through the relevant period. If inhabitants were accessing and using this site as of right, then it was questioned why they would be enquiring of the landowner about purchase.

10.52. In conclusion, it was argued that the uses that the site had been put to over the years had varied. The site had clearly been let to local residents for amenity in the 1980s. It had then been grazed and used for equestrian purposes, and then left vacant. It had been fenced and gated for various periods, and been used as a cut-through for walkers and dog walkers. Berry-pickers seem to have used the hedges around the site's boundary. A small part of it had been mowed and used for a range of activities, from vegetable growing to children's football games, and latterly other things like playing with trampolines, holding barbecues and picnics etc. It has also been used for accessing garages by various people.

10.53. However the land has ***not*** been used for a period in excess of 20 years for lawful sports and pastimes by a significant number of inhabitants of the claimed neighbourhood. The evidence clearly showed periods when the wider public were excluded by fencing and/or gates, an extent of permissive use, and uses which are

not those of a village green, but more akin to 'right of way', point to point access on the way to the wider footpath network.

10.54. The evidence underpinning the application is unclear as to the nature or extent of use of the site, and also in relation to the location of uses on the site, and the period of such uses. It did not stand up to scrutiny in cross-examination, with witnesses often conceding that they were not present for substantial parts of the day or week, or conceding the fencing or gating of the site, or accepting the concentration of activities in the mowed area. In spite of the evidence of Mr Faux having been substantially based on the documents produced by him, and being based on a lesser number of visits to the site than might with hindsight have been thought desirable, nevertheless it was not challenged in any substantial way. Mr Faux had on such visits as he did make to the land never seen anything which justified firmer action in terms of fencing, or the erection of prohibitory signs.

10.55. As much as the residents of the local area might desire that this site should be preserved as an open field or meadow, the reality is that the criteria under ***Section 15*** of the ***Commons Act*** are not met here. The application for registration should therefore be refused.

10.56. Shortly after the Inquiry finished, it was argued on behalf of the Objectors that the *late submission* of a short *letter and 4 photographs* from *Dr AP Matthews*, one of the joint owners of the application site (who lives in Durban, South Africa), should be accepted. It was argued that the photographs and statement by Dr Matthews clearly demonstrate that in 2005 there was a wooden post and wire fence on the land, as per the written evidence from Mrs Turner.

10.57. It was accepted that this material had come outside the normal timeframe for submission, but it was argued that it should be accepted in the circumstances, and that this material is highly pertinent to the Registration Authority's decision.

11. DISCUSSION AND RECOMMENDATION

11.1. The application in this case was made under ***Subsection (2)*** of ***Section 15*** of the ***Commons Act 2006***. That subsection applies where:

> *"(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
>
> *(b) they continue to do so at the time of the application."*

The application was stamped as received by the Registration Authority on 10th September 2015. That is therefore the 'time of the application', and the date from which the relevant 20 year period needs to be measured (backwards).

Assessing the Facts

11.2. Both main parties in this case correctly noted the point that the law in this field initially puts the onus on an applicant to prove and therefore justify his/her case that the various aspects of the statutory criteria set out in ***Section 15(2)*** have in reality been met on the land of an application site.

11.3. To the extent that any of the facts were in dispute in this case, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether the statutory criteria for registration have been met or not.

11.4. Where there were material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities, from the totality of the evidence available. In doing this one must also bear in mind the point, canvassed briefly at the Inquiry itself (and mentioned by me earlier in this Report), that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements (particularly 'pro forma' statements), completed questionnaires and the like, which have not been subjected to any such opportunity of challenge.

11.5. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of 'findings of fact'. Rather, what I propose to do, before setting out my overall conclusion, is to set out in turn the various particular aspects of the statutory test under ***Section 15(2)*** of the ***2006 Act***, and to assess how my conclusions (on the balance of probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention below under one heading are only relevant to that heading. I have taken into account the totality of the underlying evidence in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

"Locality" **and "*Neighbourhood within a locality"***

11.6. There was no dispute at all between the parties that the Parish of Chiddingfold is the appropriate area to be regarded as the 'locality' relevant to this application. It meets all the tests which have been laid down by the courts as to what is capable of constituting a 'locality'.

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11.7. However, although the original application form itself was not entirely clear on this point, the Applicants made it plain, in the material (including maps) which they lodged with the application, that the claim here was put on the basis of use of the land by inhabitants of a 'neighbourhood', being a smaller area within that 'locality'. This position was maintained by the Applicants at the Inquiry.

11.8. What was put forward in a very clear map accompanying the application, and further explained at the Inquiry, is a 'neighbourhood' consisting of the built up area of the actual village of Chiddingfold. This is as opposed to the 'locality' consisting of the Parish of the same name, which also, as is entirely normal (indeed common), includes outlying hamlets and isolated properties over a considerably wider area.

11.9. The Objectors sought to argue that the neighbourhood specified here by the Applicants is an 'artificial construct' for the purposes of this application, and lacks the requisite 'cohesiveness', and so falls foul of the remarks made in respect of this point by Sullivan J (as he then was) in ***R (Cheltenham Builders Ltd) v South Gloucester DC*** [2003] EWHC 2803 (Admin) at para 83, and by HHJ Waksman in ***R (Oxon & Bucks Mental Health Trust) v Oxfordshire County Council*** [2010] EWHC 530 (Admin), at paras. 58 and 79.

11.10. It seems to me that any judgment on the adequacy of the definition of a claimed 'neighbourhood' in this field needs to be prefaced by a clear appreciation of what Lord Hoffmann said on this topic in the House of Lords in ***Oxfordshire CC v Oxford City Council*** [2006] 2 AC 674, at para 27. There Lord Hoffmann pointed out that the statutory expression *"any neighbourhood within a locality"* was *"obviously drafted with deliberate imprecision"*, in contrast to the rather precise interpretation which the courts had previously given to 'locality'. Lord Hoffmann also disagreed with some of what Sullivan J had said in ***Cheltenham Builders***, although not the remarks about the need for some cohesiveness, and lack of artificiality. What is completely clear is that the expression 'neighbourhood' is not to be approached in a 'technical' manner, or one designed to 'trip up' applicants under ***Section 15*** of the ***Commons Act***.

11.11. In my judgment (assisted of course by the case-law), 'neighbourhood' is a very ordinary English word, and means any area which a normal, sensible, English-speaking person would recognise as being reasonably and plausibly described by the term. There is nothing precise about its definition, though no doubt elements of cohesiveness and lack of artificiality are likely to form parts of its characteristics.

11.12. In this particular instance I do not see any merit in the argument advanced for the Objectors. It is hard to think of a more obviously 'cohesive' area than the built-up area of the existing village of Chiddingfold, and that is what the Applicants chose to identify as the relevant 'neighbourhood'. The law says that this area cannot be a 'locality', as that must be the considerably larger (in a geographical sense) Civil Parish of Chiddingfold. The actual built-up village of Chiddingfold is most clearly capable of being seen as a neighbourhood within that locality, in my judgment.

11.13. I agree also with the point made on behalf of the Applicants that it is normal (and acceptable) that the majority of very regular users of a claimed village green are likely to live in the part of a neighbourhood nearest to the land concerned, whereas others from further away within the neighbourhood, or neighbourhood-wide community groups, might well use the claimed land less frequently. All of that is normal, and acceptable in my judgment, in terms of the principle of the correct approach to the matter.

11.14. I would observe, again purely as a point of principle, that an applicant in a place like Chiddingfold might conceivably have sought to identify a smaller area within the village as being a 'neighbourhood' within it. However no party on either side of the argument here sought to put forward any lesser part of Chiddingfold as being the neighbourhood which ought to be considered.

11.15. The relevant judicial authorities do allow some scope to Registration Authorities (and Inspectors acting on their behalf) to seek themselves to identify the most appropriate 'neighbourhood', on the basis of the evidence actually presented. However there is not (on my understanding) any suggestion of an investigative *obligation* on Registration Authorities to try to seek out and identify a putative 'neighbourhood' which it thinks might be even more plausible than one put forward by an Applicant.

11.16. I have already noted that no party here put forward or argued for any particular smaller (or indeed larger) 'neighbourhood' than that proposed by the Applicants. Likewise (in my view) no obvious lesser area within Chiddingfold sprang out of the evidence as being plainly more appropriate for consideration as the relevant 'neighbourhood'.

11.17. As I have indicated above, in my opinion the area put forward by the Applicants, being essentially the village of Chiddingfold, is entirely capable of being reasonably regarded as a 'neighbourhood', in the context of ***Section 15(2)*** of the ***Commons Act 2006***. I do stress however that, in finding that the Applicants have properly identified a plausible and appropriate 'neighbourhood within a locality' for the purpose of this application, this does not imply that I am here making a finding that the evidence shows that a 'significant number' of its inhabitants have used the application site 'as of right', for 'lawful sports and pastimes', for the full 20 year period concerned. Those are matters which I shall be considering in the paragraphs which follow.

The remaining criteria

11.18. In this particular case, the other elements of the statutory criteria under ***Section 15(2)*** [apart from identification of the 'neighbourhood'] are all so closely

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intertwined that a degree of artificiality is inevitably introduced in setting out a series of separate headings covering them, and the artificiality would (I believe) be even greater if the headings or criteria were approached in the same order as they appear in ***Section 15(2)***. Accordingly I re-state the point that I have considered the whole of the evidence, and the whole of the statutory criteria, together in an integrated way in reaching my conclusions. I only set matters out below under headings relating to the individual criteria, in order to give some structure to the conclusions I am able to draw from all the evidence, and to my discussion of the reasoning which has led me to those conclusions in the light of the evidence.

"On the land"

11.19. It is completely clear, and was not in dispute between the parties here, that it is not necessary for an applicant to show that every single square inch of a piece of land was in the right kind of use 'as of right' by local people for the entirety of the claimed period. The best known (persuasive) authority on this point is the already cited House of Lords decision in ***Oxfordshire CC v Oxford City Council*** [2006], commonly known as the '*Trap Grounds*' case. It is plain that the House of Lords supported the view that in areas such as scrubland, where access to every single part of the land is physically impossible, it is nevertheless acceptable lawfully to conclude that use during the requisite period was sufficiently general and widespread to amount to recreational use of the land viewed as a whole, if the evidence supports such a conclusion.

11.20. It was also held in that case that a registration authority might in a proper case lawfully register under ***Section 15*** an area of land *smaller* than that which the Applicant originally applied for, if the evidence so warrants, and if that can be done without unfairness to any party. In this present case, as noted already, an amendment was proposed, and accepted by me, to remove from the original application site a relatively small area occupied mainly by garages, in the site's extreme south-eastern corner (and one other extremely minor change along the eastern boundary). The amended plan, reflecting those changes, was introduced to the Inquiry as Map A(2), Inquiry Document APP.3, on 8th November 2017. Other than these alterations, which were agreed, no party put forward any arguments tending to lead to the potential registration of only some lesser part of the remaining application site.

11.21. One of the reasons why it is important to note these points is that it seemed to me that the evidence, taken as a whole, was significantly different in relation to some parts of the remaining application site from that which applied to other parts of it.

11.22. Even as I saw the land in late 2017 (more than 2 years outside the relevant period) it was clear that there was a relatively narrow strip of land, running along the southern edge of the site, to the north of the back gardens of the Woodside Road properties, which was of a substantially different character from the rest of the site. Indeed I noted that in a small number of instances there had been actual encroachment, indicated by fencing which did not appear to be new, where small areas of land shown on plan as being within the application site, had in fact been

enclosed and seemingly added to the back gardens of neighbouring properties. It is not however for me or the Registration Authority to involve ourselves in potential issues of *adverse possession* by individual neighbours, and I do not propose to say any more about those particular pieces of ground.

11.23. That aside, the southern strip of the application site contained considerable areas of (apparently) regularly mown grass, some areas of garden-type cultivation, an area given over to domestic fowl, quantities of children's play equipment etc. It was also, because of the mown areas of grass, quite easy to follow an east-west route along the southern strip, in order to get in or out of the site in its south-eastern corner, near the blocks of garages.

11.24. The remainder of the site was much rougher, consisting of rough areas of long grass, interspersed with areas of brambles, bushes and small trees (some of them thorny ones). It was not impassable, but not particularly easy or comfortable to walk through, except that there was quite an obvious main pathway extending north-eastwards from approximately the middle of the southern strip, to a point approximately central of the north-east boundary of the site (there were also a small number of other routes within this rougher area which were somewhat easier to follow). The northern tip of the site contained a more densely treed area.

11.25. I mention these impressions, gained in late 2017, because the evidence given to me strongly suggested that this approximate physical state of affairs on the land had persisted for quite a considerable period, going well back into the 20 year period most relevant to the application (September 1995 – September 2015). The Objectors pointed out (it seemed to me correctly) that the evidence indicated that the southern, rather domestically managed, strip of the land appeared to have grown somewhat wider by late 2017 than photographic and other evidence suggested it had been during earlier years, within the period. However the essential physical nature of that distinct southern strip, during quite a prolonged period, was not in reality a matter of substantial dispute between the parties.

11.26. There was quite considerable inconsistency among the various witnesses for the Applicants, even leaving aside Mr Faux for the Objectors, as to what the state of the application land as a whole had been, and the activities (if any) that took place on it, in the period leading up to the commencement of the 'relevant period' in 1995. I have formed my conclusions about this, on the balance of probabilities, from a combination of the most cogent and reliable-seeming of the personal evidence, combined with the apparent history of large-scale Ordnance Survey mapping of the area, together with the substantial collection of paper records which had been kept by Mr Faux's family, and were produced by the Objectors.

11.27. It is clear that Ordnance Survey mapping at 1:2500 scale which was available in the early 1990s [because referred to in documentation from that period, although I do not know the relevant survey date] suggested that the main, northern part of the site had been at some stage separated off from the narrow, southern strip by some

kind of fencing or other visible boundary treatment (and some other fence or hedge lines were shown as having existed within the area further to the north). The same line of division between the southern strip and the larger area to the north, in more or less exactly the same position, has continued to be shown on the more modern 1:2500 O.S. plans of the area, showing copyright and database dates of 2015, which were produced by the Applicants as the base for the application plan, and for other purposes.

11.28. This (while not conclusive as to the physical presence of fencing/boundary demarcation at any particular past date – especially in the absence of information about survey dates, etc) tends at least to support the view that there had been a long-term distinction between the southern strip and the rest of the land, which had been picked up by the Ordnance Survey's cartographers. This is consistent with the evidence given by Mr Faux that he, and other members of his family before him, would regularly give permission (even if only oral) to local people who were renting garages to the south-east of the site to access those garages along the southern strip from their back garden gates, without there being any obstruction to the use of that access route.

11.29. I found Mr Faux's evidence on this to be convincing and credible, as was his evidence that it was mutually understood that these permissions would apply also to family and visitors of the renter. There was clearly, I conclude, a long-term history, extending through the 'relevant period', of permissive use of the southern strip, at least as a route to pass through, for the benefit of a number of families residing on the north side of Woodside Road.

11.30. It was also clear that there has been a long history of some permissive 'domestic gardening' by individual neighbouring residents, within the southern strip outside the back gardens of Woodside Road properties. It seems from the documentary evidence that this went back at least to the 1970s. A notable example of it was a letter of June 2002 from a Mrs Nobes of 'Laurels', Woodside Road, asking to be allowed to continue with a permission for a vegetable garden in the southern strip, which the documents suggested had been given in 1986 to a Mr Knight, understood to have been Mrs Nobes's father.

11.31. I have already mentioned that there were still cultivated 'garden' patches of land of this kind within the southern strip when I saw it in late 2017, although the extent of any division within those areas between continuation of such permissions, on the one hand, and trespassory incursions on the other hand, was not (it seemed to me) made clear by evidence from either side.

11.32. Insofar as a 'vegetable garden'-type use, by an individual neighbour or family, within the southern strip during the relevant period was *permissive*, clearly that would be inconsistent with establishment of 'lawful sports and pastimes' use 'as of right' by other local people in respect of that patch of land. There was no suggestion in the evidence that other neighbours would trample at will over such

individual vegetable gardens (or indeed areas fenced around to keep domestic fowl). Insofar as any such uses were '*trespassory'* (vis-a-vis the landowners), it likewise seems to me that such uses of particular patches of land by individual neighbours would not 'count' towards the establishment of 'lawful sports and pastimes' use on behalf of the inhabitants of the neighbourhood as a whole, even if the history of such use might (hypothetically) be relevant to a potential adverse possession claim on behalf of the individual cultivator.

11.33. I shall have more to say later about other activities on the southern strip, but for the moment I shall turn to what the evidence shows as to the state of affairs on the larger, northern part of the land, in the period leading up to 1995.

11.34. As I have noted above (and as is not inherently surprising), there was not consistency in the recollections provided as to what had occurred on this land in earlier times (pre-1995). Clearly this would not in any event necessarily be evidence of the first relevance to consideration of the key period, September 1995 – 2015. It is however potentially relevant to forming a view, on the balance of probabilities, as to what the state of affairs was on the land at the start of the relevant period, in 1995.

11.35. The evidence taken as a whole suggested that there had been some keeping/grazing of horses on the main part of the application site, going right back at least to the 1970s. It seems likely (having regard to the Ordnance Survey material, and some of the witness evidence) that there was in those very early years fencing of some kind along the north side of the 'southern strip', and also subdividing the main field.

11.36. It does not particularly matter what state that fencing was in in the 1970s/80s, because of what subsequently happened. It appears from the written records (produced by Mr Faux – and which I found generally helpful, and likely to be reliable, as far as they went) that in the period around 1988/89 there was a letting of this land (and further land to the north-west) on licence by the owners to a Mrs Watts, living in Crofts Close, for a mixed purpose of grazing and being amenity land. The Objectors believed that Mrs Watts took this licence on behalf of a local Residents Association, although it was not made entirely clear to the Inquiry how such an arrangement might have worked in practice, and no other witness at the Inquiry made any reference to it.

11.37. Be that as it may, the licence to Mrs Watts in the late 1980s included fencing obligations (to maintain stock-proof fencing along all boundaries). There was no clear evidence as to how Mrs Watts complied with those obligations.

11.38. What is clear is that Mrs Watts moved away from Crofts Close, and that in 1990 a new grazier for the main part of the application land, a Mr Turner, had appeared on the scene. There is considerable surviving documentary material (including some plans) relating to Mr Turner's occupation, from which it is clear that he took his

fencing obligations seriously. I conclude, on the balance of the evidence, that during Mr Turner's term as grazier there was adequate stock-proof fencing around the main part of the application site, including between that part and the 'southern strip', as it then was; that there was fencing, with a gate in it, between the grazed area and the south-eastern area around the garages; and that there was some other internal fencing within the overall grazed area.

11.39. However the documentary evidence (which is entirely credible on this) is clear that in April 1993 Mr Turner gave up his grazing licence, largely because he could not obtain planning permission for some additional stables and a hay store, which he had been seeking. He left, leaving the land (I find) fenced, and stating (in a letter of 1.4.93) that he had *"chained and locked the gate to keep out undesirables"*.

11.40. That was effectively the end of any kind of formal or semi-formal letting/licensing arrangement on the main part of the land (i.e. leaving aside the garages and any continuing permissions relating to parts of the southern strip). A Mr Edgson, living in one of the Woodside Road properties, wrote in February 1994 enquiring about the possibility of 'renting the field', but nothing definitive seems to have followed from that. The tenor of Mr Edgson's letter does not however suggest that in February 1994 that gentleman could have believed that by that date the field in general was in some kind of 'as of right' recreational use by the local community at large.

11.41. Nevertheless that was still (in February 1994) over 1½ years before the 'relevant period' for present purposes commenced in September 1995. What the evidence relating to Mr Turner's occupation does however is to cast doubt on the soundness of the memories of those witnesses or statement-providers who claimed to have known the site well before 1995, but not to recall the presence of stock-proof fencing etc.

11.42. For my part, I would be inclined to accept, on the balance of probabilities, the argument for the Objectors that Mr Turner's stock-proof fencing, which was clearly there in mid-1993, was more likely than not still there in September 1995, unless there was some plausible, convincing evidence explaining how it came effectively to disappear during the intervening period of somewhat over two years. It did not appear to me, considering the matter as a whole, that there was any such evidence.

"A significant number of the inhabitants..."
"Lawful sports and pastimes"

11.43. It was clear to me on the evidence, including the evidence on behalf of the Objectors, that a mixture of activities, some of which would undoubtedly be 'lawful sports and pastimes', was indulged in by the neighbouring residents of Woodside Road, and to a lesser extent their visitors, for a prolonged period before

and including 2015, on significant parts of what I have called the 'southern strip' of the application land. Indeed that point was more or less conceded by Mr Faux, the only oral witness for the Objectors. However he said, and I incline to accept this evidence, that signs of this kind of use had been considerably more obvious and intense during the latter part of the period, compared with earlier on.

11.44. However it needs to be recalled that any 'collective' use, in common, of parts of this strip by neighbouring inhabitants was physically interspersed with patches of that land being used by *individual* neighbours, for their own individual garden extension or other gardening purposes (including domestic fowl rearing), some of which at least was quite clearly permitted by licence from the owners. Further, many of the neighbours clearly had also been given licence or permission by the owners (and often specifically by Mr Faux in person) to pass and re-pass through the southern strip, in order to gain access to the block of garages to the east, and thence out of the site to Woodside Road or elsewhere. Such permissive use would have included any other activities on that land which were incidental to such passing and repassing.

11.45. I am inclined to accept, on the balance of probabilities from the evidence, that there probably was at least an element of 'lawful sports and pastimes' use, effectively in common, by some of the immediately neighbouring residents, for the entire period of 1995 to 2015 inclusive, on some parts of the southern strip. However, that was so mixed up with the permissive right of passage across this land for many local residents, and the patches of the land devoted to individual neighbours' private gardening endeavours, that it would be extremely difficult to distinguish the various elements geographically.

11.46. No party to these proceedings in fact suggested that it might be appropriate to seek to register under ***Section 15*** of the ***Commons Act*** a much smaller area of land (compared with the whole site) consisting only of some parts of the 'southern strip', and nor was I provided with any means of ascertaining in a clear way on a plan which areas of the southern strip might have been generally used by the neighbours collectively for 'lawful sports and pastimes', as opposed to being used individually, either under licence or through individual acts of trespassory possession..

11.47. Thus although in theory it might be open to a Registration Authority to register only some lesser part of an application site, where the evidence justifies such a course, there is no real basis for doing that in this case, even if the view were taken on the evidence that there had been *some* 'lawful sports and pastimes' use by the immediate neighbours collectively, over the full period of 20 years, on some parts of the southern strip.

11.48. It seems to me to be arguable in any event that what took place on the 'southern strip' here was in reality more akin to a multiple trespass by a number of individual immediately neighbouring occupiers, via their individual back garden gates, out

onto the land behind those gardens, rather than an effective assertion of 'as of right' use on behalf of the inhabitants of a wider 'neighbourhood' collectively.

11.49. In this regard, I note also that it was clear from the documentary evidence produced by the Objectors, together with what Mr Faux said about the matter, that at some point in late 1999 or early 2000 the owners' solicitors had addressed a 'circular' letter to neighbouring residents on the north side of Woodside Road, and (it seems) Crofts Close, raising the issue of trespass onto the owners' land, including the application site. It was unfortunate that a copy of the original 'circular' letter had not been found, but that such a letter had existed, and been sent, and attracted multiple responses, is in my view clear from the letter to Mr Faux from his solicitors, dated 19th April 2000, which has survived.

11.50. This circumstance alone calls into serious question, it seems to me, whether any of the immediately neighbouring residents (or at least those who were in occupation in early 2000) could really claim to be using any part of the field *"as of right"* (i.e. without permission, but *as if* they had a *right* to be there, which had never been questioned). It seems clear, on the balance of probabilities, that in 2000 the landowners' rights in respect of their land, and objection to trespass thereon by the neighbours, had been asserted on the owners' behalf to those neighbours, so that any trespassory activities by those neighbours thereafter would not have been *"as of right"*.

11.51. Clearly, however, it might be the case that even if warnings against trespass had been given to individual close neighbours during the relevant period, e.g. in 2000, those warnings could not be assumed necessarily to have been conveyed on to the inhabitants of a much wider 'neighbourhood' area, who could (in theory) have carried on using the relevant land in an 'as of right' manner.

11.52. It is therefore necessary to consider what the evidence says about 'lawful sports and pastimes' use of this land during the whole relevant period, by inhabitants of the whole wider neighbourhood. On the Applicants' case, of course, that means in effect the inhabitants of the whole village of Chiddingfold.

11.53. The evidence of use of any part of the application site by inhabitants of the wider neighbourhood (not being immediate neighbours or their friends/family) during the earlier years of the relevant period seemed to me to be rather scant, especially as far as the oral evidence was concerned. There was however what I found to be a telling piece of documentary evidence, found in an email exchange in early 2009 between Mr Faux and Mr de Watteville (one of the present Applicants, who had also been a renter of garages in the block at the south-east corner of the site).

11.54. This exchange related to the garages area, and the desirability of possibly erecting signage aimed at keeping trespassers out of that area. Mr de Watteville said (5th February 2009): *"The signage thing is possibly a bit of a double edged sword – at present the area has a very low profile, the track is somewhat overgrown and I*

suspect that very few people even know the garages are there. It may be that a sign would actually attract attention ..."

11.55. It is true that this exchange was about the garage area, rather than specifically about the present application site, just beyond the garages. However, by far the most feasible route of access to the application site for inhabitants of the wider neighbourhood was via the *"somewhat overgrown"* track, and passing through the area of garages that 'very few people' even knew about, unless perhaps they entered via the private back garden gate of one of the immediate neighbours who they happened to be friendly with.

11.56. This strongly suggests that the existence of the whole application site (and in particular its existence as a place which might be used and enjoyed) was in reality very little known about by residents of the wider 'neighbourhood', as of February 2009 (and by inference before that). This view is consistent both with the submissions for the Objectors, and the evidence of Mr Faux, and in my judgment, on the balance of the evidence, it is most likely to represent the reality of the situation.

11.57. It is also consistent with the impression I formed as to how slight the evidence was as to any significant level of use of any part of the application land, over the full requisite period, by people from the neighbourhood who were ***not*** neighbouring Woodside Road residents, or their guests or relations. No oral evidence was given of visits to the land by the local Scout/Beaver group(s), and such mention as there was in written material suggested the site had been visited by them only near the very end of the period.

11.58. The evidence of Mrs Wallbank suggested that the local nursery school had visited the site twice ever, only one of those occasions being within (but very near the end of) the relevant 20 year period. It was clear from her evidence that she had been pleasantly surprised on her first visit by the attractiveness of the application land, strongly suggesting that it was previously 'unknown territory' to her.

11.59. There was evidence about Bonfire 'after-parties' held on the application land, after the main annual village Bonfire event on the village green in the centre of the village. Witnesses' evidence about this was not completely consistent, but the predominant evidence from those whose recollection seemed reasonably clear was that such events had happened quite regularly from about the year 2000 onwards, in the dark, for about 10-15 people who had been involved in organising the earlier main celebration. They seem from the evidence to have taken place mainly on the 'southern strip', but occasionally a little further north.

11.60. However the evidence suggested that the reason this 'after-party' took place here was to a considerable extent associated with the circumstances of one or more of the organisers of the main village bonfire in fact residing in Woodside Road, backing onto the 'southern strip', and having 'garden gate' access onto that strip.

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11.61. It seems to me therefore, on my assessment of the evidence, that these bonfire 'after-parties', as well as not having taken place over the full 20 year period, had much of the character of some of the uses of parts of the 'southern strip' by the immediate neighbours which I have discussed earlier.

11.62. I turn now to the evidence about use of the larger, northern part of the application site (north of the 'southern strip') over the relevant period, and further back. There was inconsistency among the recollections of witnesses for the Applicants in relation to this. That is not of itself particularly surprising, as it is difficult for anyone to remember with accuracy over a period in excess of 20 years, especially in relation to changes to a day to day state of affairs, in respect of which there would have seemed at the time to be little reason to take a detailed or careful note.

11.63. I have to say however that I was impressed by the sincerity and straightforwardness of the way in which Mr Faux, for the Objectors, gave his evidence. He acknowledged that he had not been a frequent visitor over the years, but he had been a regular one – and of course he had a particular reason actually to take note of the general state of affairs on the land, on his visits. I found entirely credible, on the balance of probabilities, his evidence to the effect that, apart from noting the signs of some trespassory activities by neighbouring residents on the southern strip, it was extremely rare to see anyone on the land at all.

11.64. Of course it would be possible, in principle, that significant levels of activity by local people ***could*** have been occurring at other times, which just happened to be missed by Mr Faux's infrequent visits, or the even more isolated (in terms of time) visits reported in writing by Mrs Turner (in probably the mid-part of 2005) and Dr Matthews (from South Africa) in January 2005.

11.65. There is some limited photographic evidence, but none of it is particularly conclusive, especially in relation to the early to mid-years of the 1995 – 2005 period. The January 2005 photographs of Dr Matthews do appear to show a continuous line of fence posts, in reasonably good order, running across the middle part of the land. But they are inconclusive (at least to my eye from the copies I have been provided with) as to whether there actually survived at that time any effective fence wire attached to those posts. [I do acknowledge that on my site visit in December 2017 a short length of fencing, with wire still attached (albeit largely covered with vegetation), was identified within the field, just to the north of the garages].

11.66. I have concluded on the balance of probabilities from the evidence overall, that it is likely that Mr Turner's sound fencing around what had been his (rented) horse paddock did still survive in reasonable condition in September 1995, even though his use of the land had by then ceased for some time. Conversely however, as I have noted above, it seems clear that the 'southern strip' has always (in the context of the 20 year period under consideration) been easily accessible from the back

gardens along Woodside Road, with some parts of that strip at least being available for children in particular to come out of their gardens to play on, without interfering with the cultivated patches being tended by individual neighbours.

11.67. It clearly was also 'always' (in the same context) possible for neighbouring children and others to come out of their back garden gates and proceed on foot (or bicycle, etc) along the southern strip and thence (via the garages area) onto the wide network of paths over the open fields further to the east and north-east. This could be done without passing through any fences or gates on the application site. Indeed the evidence suggests that this could be done even during the period in the early 1990s when Mr Turner (the grazier) was in occupation, with his sound fencing around the main part of the field to the north of the 'southern strip'.

11.68. In reaching conclusions such as this on the evidence, I should not be taken as suggesting that any of the witnesses from among the neighbours have been telling me deliberate untruths (albeit clearly they could not all be right, when they have been mutually inconsistent with each other). What I conclude has happened here, on the balance of probabilities, is that witnesses have in their minds elided a state of affairs which has undoubtedly come about in more recent years (no effective fencing on the application site, mown path(s) across it, etc) with a position where it has 'always' (i.e. for at least the requisite 20 year period) been possible for children and others to get out on to the southern strip through back garden gates and play there, or wander off into other open land to the east; and they have convinced themselves, in my judgment erroneously, that the accessibility of the main, northern part of the application site has always been more or less as it is now.

11.69. The probability however, it seems to me from the evidence as a whole, is that the paddock fencing on the application site fell away only gradually, only later in the 1990s, or quite possibly more recently than that, and that it gradually became feasible for the occasional adventurous child or adult to venture into and across the increasingly rough ground of the former paddock to the north.

11.70. This has led, eventually and over the years, to the current situation, seen by me in 2017, where neighbouring residents actively mow at least one clear path across the main part of the field, leading to a route out through the eastern boundary. Indeed it seems to me probable on the evidence that the use of this main path as a route of passage has been the most significant use made of any of the northern land, even in more recent years. I accept the evidence that there has been ***some*** blackberry picking around the hedge/tree lines on the boundaries of the site, and clearly someone at some point put some effort towards creating a tree-house in one of the boundary trees. I also accept that it is probable on the evidence that at least some children will have played from time to time in the rough ground of the northern part of the site, especially during the latter part of the 20 year period. The evidence did suggest to me however that even in more recent times the main areas used for local children's play have in fact still been within the southern strip.

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11.71. What the evidence taken as a whole has ***not*** done is to show, on the balance of probabilities, that any significant 'lawful sports and pastimes' activity by local inhabitants has taken place on the bulk of the application site for the full 20 year period – and certainly not use at a level which would suggest general use by the local community 'as of right', as opposed to sporadic, occasional trespass.

11.72. Indeed the evidence suggested to me that, even in the more recent, latter years of the relevant period, almost the only thing that would bring onto the site any Chiddingfold person who was not an immediate neighbour, or the guest of one, would be the additional walking route (albeit a 'dog leg') made available by the combination of the main current (mown) walking route across the site towards the eastern boundary, and the longer-established east-west route along (and within) the southern strip.

"As of right"
"… for a period of at least 20 years"

11.73. It will be apparent to anyone who has read through the earlier paragraphs of this section of my Report that I have already in fact addressed many of the considerations which arise in respect of the two statutory criteria highlighted in the heading above this paragraph. To recapitulate, it seems to me on the balance of probabilities, from all of the evidence (the written material as well as the oral evidence which has been able to be tested), that there probably has been at least some noticeable open (i.e. unconcealed) use of a significant proportion of the southern strip of the land, for purposes including 'lawful sports and pastimes', for the full requisite period of 20 years from 1995, by people (children and adults) living in the immediately neighbouring properties on Woodside Road, sometimes accompanied by visiting relations and friends.

11.74. By 'noticeable', I mean use to an extent where a reasonably observant landowner, who took the trouble to inspect his land from time to time, should have noticed it. In fairness to the landowners here, in spite of their relatively infrequent visits, they did in fact, during the relevant period, notice this trespassory activity by neighbours, and attempted on at least one occasion to reassert their rights, and communicate with all their neighbours.

11.75. However any such use by neighbours (and their visitors from time to time) was mixed up, in a way where the evidence does not provide the ability to make a ready distinction, with the permissive right that many of them had to traverse along the southern strip for access to the garages and beyond (and to do anything else reasonably incidental to that right); and the clearly permissive right that some neighbours had individually to cultivate a particular patch of the southern strip; and the fact of some other neighbours individually cultivating (or engaging in analogous activity on) particular patches of that strip.

11.76. I was not convinced, on the balance of probabilities, that any significant use of the southern strip was made during the whole 20 year period by other inhabitants of

the neighbourhood of Chiddingfold, apart from the immediate neighbours, and their guests from time to time. Furthermore, it seemed clear from the evidence that the extent of the 'southern strip' had gradually increased over time.

11.77. As I have noted previously, no party to the proceedings sought to define the extent of the southern strip at its various stages through time, still less to distinguish and define the parts of it which appeared to have been used for *individual* permitted or trespassory activities (e.g. cultivation), as opposed to some sort of collective 'lawful sports and pastimes' use. And, significantly in this context, no party sought to suggest that I and the Registration Authority ought to consider the possibility of registration of just the 'southern strip', or any relevant part(s) of it.

11.78. Thus, even if the evidence had otherwise warranted it (and my conclusion is that it does not), it would not have been incumbent upon myself or the Registration Authority to seek to identify from unclear evidence some lesser part of the application site where the case in favour of registration might have been stronger than elsewhere.

11.79. Another important point to make in this overall context is that it does not in any event, it seems to me, fall upon myself or the Registration Authority to present some sort of detailed conclusion as to exactly what ***did*** happen on a claimed area of land at all times during the relevant period. The balance of the matter is the other way round: the onus was on the ***Applicants*** to show, by their evidence, and their arguments as applied to that evidence, that on the balance of probabilities all of the statutory criteria under ***Section 15*** of the ***Commons Act*** can be seen to be met in this case.

11.80. My conclusion is that the Applicants have failed, through their evidence and arguments, to establish that the statutory criteria are met here, even in respect of the undoubtedly more heavily used 'southern strip' of the application site.

11.81. As far as the remainder of the land, further north, is concerned, the evidence when considered and weighed overall does not in my judgment even come close to establishing that lawful sports and pastimes uses had been indulged in 'as of right', by a significant number of the inhabitants of Chiddingfold, over the whole relevant period.

11.82. It seems to me probable on the evidence that any forays into the northern land by local people in the early years of the period from 1995 are likely to have involved stepping or climbing over extant fencing, so calling into question the 'not by force' aspect of the 'as of right' requirement. In any event the evidence viewed overall suggested that any such instances were likely to have been sporadic incidents of trespass, rather than an implied assertion by local people generally of a right to use this land recreationally.

11.83. Undoubtedly this trespass increased later on, as it became more obvious that the owners were neglecting this land, in the absence of any tenant or licensee occupier. Plainly at some point one or more local residents started mowing at least one path across the northern area, initially it seems using a mower which Mr de Watteville, one of the Applicants, purchased for that purpose, after he moved into the area in 2002 – according to Mr de Watteville's written statement [he did not give oral evidence].

11.84. But the evidence as a whole suggested that even after that change took place, any use of the northern area was very sporadic, other than as a route of passage out of the field via the main path or paths. That there has been some reasonably regular picking of blackberries etc, by people from the neighbouring houses, around the boundaries of the site, seems more probable; and I have already noted that someone at some point put up a tree-house in a tree on the north-eastern boundary. However, as I have remarked earlier, the evidence overall was not convincing, on the balance of probabilities, that there was sufficient use of the surface of the land generally, as opposed to the path(s), and possibly the boundaries, on any basis higher than sporadic trespass. Even this sporadic level of trespass seems to me on the balance of the evidence likely to have been very much lower during the earlier years of the relevant period.

11.85. The evidence of any use at all, for most of the relevant period, by the inhabitants of Chiddingfold more widely than the immediate Woodside Road neighbours (with back garden gates) and their occasional guests, seemed to me to be extremely thin and unconvincing. I therefore conclude that the Applicants have not shown that the relevant statutory criteria are met in respect of the main, northern part of the application site, either.

Final Conclusion and Recommendation

11.86. It follows that my conclusion is that the Applicants have not made out their case for registration of the amended application site under ***Section 15(2)*** of the ***Commons Act***.

11.87. My recommendation to the County Council as Registration Authority therefore is that ***no part*** of the land to which this application relates should be added to the statutory Register of Town or Village Greens, because on the evidence it does not meet the criteria required for such registration, for the reasons explained in this Report.

ALUN ALESBURY
7th March 2018

Cornerstone Barristers
2-3 Gray's Inn Square
London WC1R 5JH

APPENDIX I

LIST OF APPEARANCES AT THE INQUIRY

FOR THE APPLICANTS
(Mrs Antonia Cowley and **Mr Angus de Watteville):**

Mrs Antonia Cowley (Applicant); she called:

Mrs Debbie Wallbank, of 5 Pathfield, Ridgley Road, Chiddingfold
Miss Karen Brewster, of 11 Ladymere Place, Ockford Road, Godalming
Mr Ian Spicer, of 1 Jubilee Villa, Coxcombe Lane, Chiddingfold
Mr Graham de St Croix, of 3 Oakleigh Cottages, Woodside Road, Chiddingfold
Mr David Rauch, of 2 Martindale Place, Woodside Road, Chiddingfold
Mr William Creswell, of Medlar Cottage, High Street Green, Chiddingfold
Mr Ben Fielden, of Keneen, Woodside Road, Chiddingfold
Mrs Sarbjit Dhaliwal, of 3 Mortimore Villas, Woodside Road, Chiddingfold

AS AN ADDITIONAL PARTY

(Parish) Councillor Miss Christine Tebbot, of Okelands Cottage, Pickhurst Lane, Chiddingfold

FOR THE OBJECTORS:

Mr Scott Stemp of Counsel – instructed by the McLaren Clark Group, Park Farm, Chichester Road, Arundel BN18 0AG

He called:

Mr David Faux, of 6 Calvert Gardens, Dorking, Surrey

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY

NB: This (intentionally brief) list does ***not*** include the original application and supporting documentation, the original objection, or any material submitted by the parties or others prior to the issue of the Directions for the Inquiry. It also excludes the material contained in the prepared bundles of documents produced for the purpose of the Inquiry on behalf of the Applicants and the Objectors, and provided to the Registration Authority (and me) as complete bundles.

FOR THE APPLICANTS:

APP1 - Map showing location of facilities in Chiddingfold

APP2 - List of Individuals who had provided evidence (written) prior to Inquiry

APP3 - Amended Application Plan, Map A(2)

APP4 - Note of opening submissions for Applicants

APP5 - Email survey declaration from Matthew & Karen Prodger of Whistlers, Ridgley Road, Chiddingfold

APP6 - Note of Closing Submissions for Applicants

FOR ADDITIONAL PARTY

Written Note of Evidence of (Parish) Councillor Miss Christine Tebbot

FOR THE OBJECTORS:

OBJ1 - Section 13, Chiddingfold (Draft) Neighbourhood Plan, *"Recreation, Sport and Leisure – Site 6"*

OBJ2 - Interim Consultation on Draft Chiddingfold Neighbourhood Plan, Sections 1 to 6

OBJ3 - Photograph of play equipment and 'raised beds' on site, (said to be) dated November 2014

Not of Closing Submissions for the Objectors

APPENDIX III

LIST OF DOCUMENTS ADMITTED AFTER THE INQUIRY

***From the Objectors*:**

Covering letter (17th November 2017) from McLaren Clark Consultancy, enclosing:
(Emailed) Letter (17th November 2017) from Dr Alan Matthews, of Durban, South Africa, and 4 photographs of site, (said to be) dated 15th January 2005

***From the Applicants*:**

Letter (8th January 2018) from Mrs Antonia Cowley (Applicant), commenting on the above documents, and including a photograph (said to be) dated 23rd July 2004.

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