SURREY COUNTY COUNCIL

COMMONS ACT 2006

IN THE MATTER OF AN APPLICATION TO REGISTER LAND KNOWN AS 'THE GREEN' AT LANDEN PARK, HORLEY, SURREY AS A NEW TOWN OR VILLAGE GREEN

Application number: 1878

INSPECTOR'S REPORT

Introduction

1. I am instructed by Surrey County Council ('SCC'), acting in their capacity as commons registration authority under Part 1 of the Commons Act 2006 ('CA 2006'), which is the responsible authority for determining applications to register land as a new town or village green ('TVG') under section 15 of the CA 2006 (as amended).

2. I was instructed by SCC to hold a non-statutory public inquiry to enquire into the facts behind the application and to apply the relevant law to those facts in order that I might provide SCC's Planning and Regulatory Committee with a report containing my recommendation on whether the application to register should be allowed or refused.

3. Accordingly, I gave directions for the holding of a public inquiry (including in relation to the disclosure and procedure of the inquiry) which was held over two days at the Town Hall in Reigate on 19-20 November 2018.

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4. Participants at the inquiry

(a) The applicants for registration were Adrian Woolsey, Mrs Philippa Parry, Mrs Tina Constanti and Mrs Lynda Muggeridge. Mr Woolsey (who described himself as 'Lead Applicant' and who also executed the statutory declaration in support of the application) ran the case for the applicants (all of whom gave oral evidence) at the inquiry. He assumed this role even though he and his family had moved away from the area in February 2018.

(b) The only objector was Sterling Homes Ltd ('the objector') in whose name the application land (to which I will refer as 'the green') is registered, having been transferred to this company by Gough Cooper & Company Ltd ('Gough Cooper') (the original developer) in 2006. The objector was represented by Stuart Lyell at the inquiry who called no oral evidence. I understand that since the 1980s the objector and Gough Cooper have been associated companies within the Allied London Group of companies. Mr Lyell (who was assisted at the inquiry by Olivia King, a trainee solicitor employed by Shoosmiths LLP) is a director of the holding company.

I am indebted to these parties for their assistance and conscientious submissions. I am also grateful for the administrative support provided by Helen Gilbert on behalf of the registration authority.

Legal framework

5. Section 15(2) of the CA 2006 enables any person to apply to register land as a TVG in a case 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.

6. One then has to look at the various elements of the statute all of which have to be made out to justify registration.

‘a significant number’

7. ‘Significant’ does not mean considerable or substantial. What matters is that the number of people using the land has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation rather than occasional use by individuals as trespassers (*R v Staffordshire County Council, ex parte McAlpine Homes Ltd* [2002] EWHC 76 at [64] (Admin) (Sullivan J)). In most cases, the fact that recreational use is more than trivial or sporadic will be sufficient to put a landowner on notice that a right is being asserted by local inhabitants over his land (*Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438 at [31] (Sullivan LJ) and *R (Allway) v Oxfordshire CC* [2016] EWHC 2677 (Admin) where the court found that an inspector had properly concluded that the starting point had to be whether the recreational use relied was such as to suggest to the reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land – in other words, the starting point has to be what a reasonable landowner would think).

‘of the inhabitants of any locality’

8. The term ‘locality’ is taken to mean a single administrative district or an area within legally significant boundaries. Village green rights have to be asserted by reference to a particular locality and would include an electoral ward. In this case, the locality relied on is Horley West Ward to which, rightly in my view, no exception is taken by the objector as a qualifying locality. It may be added that the objector says that in the 2011 Census this Ward contained 3,134 households.

‘or of any neighbourhood within a locality’

9. I need to deal with the law on ‘neighbourhood’ with some care as the existence of a neighbourhood is an issue for decision on this application.

10. The expression ‘neighbourhood within a locality’ need not be a recognised administrative unit. For instance, it has been said that a housing estate can be a neighbourhood for these purposes (*Cheltenham Builders Ltd v South Gloucestershire District Council* [2003] EWHC 2803 (Admin) at [85] (Sullivan

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J)). However, a neighbourhood cannot be any area drawn on a plan where all the applicants witnesses happen to live. In *Paddico (267) Ltd v Kirklees Metropolitan Borough Council* [2011] EWHC 1606 (Ch) at [97] Vos J said that 'the term "neighbourhood" 'is to be understood as being a cohesive area and must be capable of meaningful description in some way'. It has been emphasised recently in *R (NHS Property Services Ltd) v Surrey County Council* [2016] EWHC 1715 (Admin) at [116] (Gilbart J) that the cohesion of a neighbourhood is essentially a matter of impression and is not something which can be assessed by using some recognised technique. The Court of Appeal agreed ([2018] EWCA Civ 721 at [103]-[109] (Lindblom LJ)), holding that whether a claimed neighbourhood has a sufficient degree of 'cohesiveness' was a matter of impression which allows ample scope for differences of opinion. In other words, the analysis is not one which involves the application of any specific criteria or the application of any recognised method of assessment.

'have indulged as of right'

11. The traditional formulation of the requirement that user must be 'as of right' is that the user must be without force, secrecy or permission (the so-called tripartite test which, should any of these elements arise, will preclude registration). The rationale behind 'as of right' is acquiescence. The landowner must be in a position to know that a right is being asserted and he must acquiesce in the assertion of the right. In other words, he must not resist or permit the use. The nature of the inquiry is the use itself and how it would, assessed objectively, have appeared to the landowner. One first has to examine the use relied upon and then, once the use had passed the threshold of being of sufficient quantity and suitable quality, to assess whether any of the elements of the tripartite test applied, judging these questions objectively from how the use would have appeared to the landowner.

12. The issue of 'force' does not just mean physical force. Use is by force if it involves climbing or breaking down fences or gates or if it is contentious or under protest. Nothing of the kind arises in this instance, nor has the use in

this case been by stealth as the owner would clearly have been aware of its use by the public.

13. The issue of 'permission' is material in this instance. Permission can be express e.g. by erecting notices which in terms grant temporary permission to local people to use the land. It can also be implied (and the objector is relying on implied permission) but not by mere inaction in the face of known use (*R (Beresford) v Sunderland City Council* [2004] 1 AC 889 at [5]). What is required is some overt act on the part of the landowner (*Beresford* at [6], [7] (Lord Bingham) and [75] to [81] (Lord Walker)). Even if the use in question is encouraged by the landowner, it will still not amount to an implied licence (*Beresford* at [7], [60] (Lord Rodger) and [85] (Lord Walker)) where the acts relied on involved mowing grass and providing seating accommodation around part of the perimeter of an open space used for ball games and other lawful pastimes). The foregoing reasoning has been applied recently in the Court of Appeal in *TW Logistics Ltd v Essex County Council* [2018] EWCA Civ 2172 at [87] (Lewison LJ).

14. There is a further 'as of right' issue on this application which concerns the use of the pavement (at either end of which are concrete bollards and, at one end, a waste bin) which divides the green into two separate areas of open space which I shall hereafter refer to separately, and in the interests of convenience, as 'the northern area' (which lies between 23 Arne Grove and 44 Landen Park) and 'the southern area' (which lies directly opposite the homes of Mrs Credgington-Jones at 23 Landen Park and her neighbour Mrs Parry at 25 Landen Park). I shall return to this later but, suffice to say, the pavement is a publicly maintainable highway connecting the cul-de-sacs of Landen Way and Arne Grove and was the subject of an adoption agreement made between Gough Cooper and SCC in 1976. It follows that as the public's use of this pavement is necessarily 'by right' and not 'as of right', user of this strip of made up land will, in my view, not qualify for registration. The applicants raised no objection to this outcome at the start of the inquiry.

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‘in lawful sports and pastimes’

15. The expression ‘lawful sports and pastimes’ (‘LSP’) form a composite expression which includes informal recreation such as walking, with or without dogs, and children’s play.

‘on the land’

16. The expression ‘on the land’ does not mean that the registration authority has to look for evidence that every square foot of the land has been used. Rather the registration authority needs to be satisfied that, for all practical purposes, it can sensibly be said that the whole of the land had been used for LSP for the relevant period.

‘ … for at least 20 years ..’

17. The relevant period in this case is 17 January 1997 to 17 January 2017 (i.e. the date when the application to register was acknowledged by the registration authority).

Procedural issues

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

19. In *Regina (Whitmey) v Commons Commissioners* [2004] EWCA Civ 951 Waller L.J suggested at [62] that where there is a serious dispute, the procedure of ‘conducting a non-statutory public inquiry through an independent expert should be followed almost invariably.’ However, the registration authority is not empowered by statute to hold a hearing and make findings which are binding on the parties. There is no power to take evidence on oath or to require the disclosure of documents or to make orders as to

costs. However, the registration authority must act impartially and fairly and with an open mind.

20. The only question for the registration authority is whether the statutory conditions for registration are satisfied. In its determination there is no scope for the application of any administrative discretion or any balancing of competing interests. In other words, it is irrelevant that it may be a good thing to register the application land as a TVG on account of the fact that it has been long enjoyed by locals as a public open space of which there may be an acute shortage in the area.

21. The onus lies on the applicant for registration and there is no reason why the standard of proof should not be the usual civil standard of proof on the balance of probabilities.

22. The procedure in this instance is governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.

23. The prescribed procedure is very simple: (a) anyone can apply; (b) unless the registration authority rejects the application on the basis that it is not 'duly made', it proceeds to publicise the application inviting objections; (c) anyone can submit a statement in objection to the application; and (d) the registration authority then proceeds to consider the application and any objections and decides whether to grant or to reject the application.

24. It is clearly no trivial matter for a landowner to have land registered as a TVG and all the elements required to establish a new green must be 'properly and strictly proved' (*R v Suffolk CC ex p Steed* (1996) 75 P&CR 102 at p.111 (Pill LJ) and approved in *Beresford* at [2] (Lord Bingham)).

Consequences of registration

25. Registration gives rise to rights for the relevant inhabitants to indulge in LSP on the application land.

26. Upon registration the land becomes subject to (a) s.12 of the Inclosure Act 1857, and (b) s.29 of the Commons Act 1876.

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27. Under s.12 of the Inclosure Act 1857 it is an offence for any person to cause damage to a green or to impede 'the use or enjoyment thereof as a place for exercise and recreation.'

28. Under s.29 of the Commons Act 1876 it is deemed to be a public nuisance (and an offence under the 1857 Act) to encroach or build upon or to enclose a green. This extends to causing any 'disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green.'

29. Under both Acts development is therefore prevented.

Description of the application land and neighbourhood

30. I visited the green after the inquiry on what was a very cold, damp and overcast winter's afternoon. I was accompanied by two of the applicants (Mr Woolsey and Mrs Constanti) and by Mr Lyell and Ms King on behalf of the objector.

31. The plan at Appendix 1 ('App/1') shows the green edged in green with the pavement clearly shown thereon separating the two areas of open space which the parties agreed extended to approximately one-third of an acre. The area edged red on App/1 is the claimed neighbourhood. The same plan will be found at A/1.4 in the applicants' bundle. Mr Woolsey told me in opening that the claimed neighbourhood contains 163 dwellings on an estate (the Landen Park estate) that extends to some 350-400 dwellings.

32. It also assists if reference is made to the plan attached to the foregoing adoption agreement (1976) at O/23 on which both areas of grassed open space are clearly marked POS thereby indicating that these areas were intended to be amenity areas for those living in this part of the Landen Park estate which was developed in phases in the mid-1970s. Similar extracts from the developer's masterplan (showing the same designation POS) appear elsewhere in the applicants' evidence at A/42 and A/70. The plan at A/42 is a copy of the original transfer plan to Mrs Burrin's predecessor at what is now 1 Downe Close (then plot 178). The plan at A/70 is the same in relation to 14 Westleas (Foy) (originally plot 149). In addition, Mrs Constanti produced the

seller's brochure of the Landen Park development which had been given to her parents on their purchase of 21 Landen Drive in 1974 (although it could well have been a little later than this in view of the date of the adoption agreement at A/17 (10 August 1976) although I doubt whether anything turns on this) and it too contains the same masterplan and includes the area which later became Chaffinch Way (which lies outside the claimed neighbourhood) which was developed, again in the mid-1970s, by a local housing association (the Family Housing Association) (see plan at A/4.2A showing that the originally intended layout was only partially implemented in practice). The seller's brochure produced by Mrs Constanti was an older edition as I observe that the local authority is referred to as Dorking and Horley RDC which later became Reigate and Banstead Borough Council (to whom I shall refer herein as 'the local authority') following local government re-organisation in 1974.

33. Since the inquiry Mr Lyell helpfully sent me copies of plans comprising (a) developer masterplans for the whole of the Landen Park estate, and (b) an outline of what later became known as the Chaffinch Way / Wither Dale development. I have placed these additional plans at the back of tab/6 in the objector's bundle. I will return to these plans (which I have also attached at Appendix 2 ('App/2')) when I deal with neighbourhood.

34. The green is generally flat and unenclosed and is readily available for LSP by local residents. Both sides of the green are rectangular in shape and of roughly equal size. Since the completion of the development (presumably at or around the time of the adoption agreement with SCC in August 1976) the grass on the green was cut by the local authority. However, this stopped in 2015 since when the green has not been actively managed.

35. The northern area faces the new Westvale Park development where I was told some 1,500 new homes are in the course of being built. There is a fairly robust post and wire fence running along the northern area separating such land from the adjoining development site. The northern area has a grass and weed ground cover which is relatively short and is well-suited for short walks, with or without dogs, and children's play. I also observed that some limited grass cutting had taken place on either side by the adjoining owners. There

are also four or five trees on this side and an adventurous child might well be able to climb one or even two of them. The applicants' bundle includes photos of children playing on the northern area (A/48-50) which were taken in the summers of 2013, 2014 and 2015. There is another photo of Mrs Parry's daughter at A/53 (lower half) showing what the northern area would have looked like in what I was told would have been April or May 2016 by which time regular grass-cutting had ended. The photo taken of the northern area in 2013 (A/48) is also interesting as it shows, in the background, the large clumps of shrubs on the southern area which were removed by the objector in 2016, having, as I was told, been planted there in 2008. Also within the applicants' bundle are pictures of the Woolsey children playing in the snow within the northern area in the winter of 2010.

36. In the case of the southern area the ground cover is perhaps more tussocky and uneven in the northern part, nearer the footpath, and the former location, within this area, of the shrubs removed in 2016 are quite evident. There are mature trees (one or two of which are eminently climbable by older children) at the southern end, close to the panel fencing at the back of properties in Westleas. It seems plain that the ground has been flattened in this area which I have no doubt is because informal recreation mainly takes place at this end of the southern area. I should have thought that around half of the southern area is rougher than elsewhere where there are clumps of weeds which I suspect have grown out of the bare soil left by the removal of the shrubs in 2016. At any rate, there is nothing to prevent dogs running all around this area which was maintained by the local authority until 2015. My impression from what I saw of this southern area is that although informal use is liable to be heavier at one end (i.e. towards the southern end), the remainder is nonetheless integral to the enjoyment of the whole area by those who use such land or parts of it for, I suspect, mainly dog-walking. I think one can infer from the photo at A/48 that this area, when the shrubs were growing there, was an attractive area and well used for LSP. This is certainly consistent with the oral evidence.

37. I now turn to the claimed neighbourhood shown within the red lines on App/1. It would help, I think, if one took this plan and compared it with the plans sent

to me by Mr Lyell after the inquiry which I have added at App/2. The applicants' neighbourhood coincides approximately with the red line shown on the first of the two layout drawings in App/2 under reference number 4697/2 which, with the area edged blue on the same drawing, comprised the Gough Cooper development of what was market housing consisting of detached and semi-detached dwellings of varying styles. The blue area has within it a triangular-shaped open space marked POS (also running along the sides of a footpath) which I visited and which appeared to be regularly maintained and is no doubt an important amenity for residents living in this part of the estate. I think the applicants were right to place this open space and the land beyond it to the south (comprising Wither Dale and the closes off this road) outside the claimed neighbourhood. For one thing, it has to be accessed via a footpath running south and is located approximately 30m away from Chesters at its nearest point. In other words, it has, I think, only a limited physical connection with the claimed neighbourhood. It also seemed to me that this particular open space is more likely to be used mainly by people living outside the claimed neighbourhood.

38. The red line at the northern end of Wither Dale is more problematic as, at first blush, it seems quite random. Clearly there has to be a boundary but should it fall at the rear of the properties fronting onto Chesters? These streets were built at the same time and the houses in each are of a similar style (at least in the upper part of Wither Dale – running south towards Parkhurst Road there is a mix of market and affordable housing styles). Mr Woolsey said that he had to put the boundary somewhere. What he has done is to place only those properties with a frontage onto Chesters in the claimed neighbourhood which is not unreasonable seeing as the applicants' witnesses lived within these boundaries. I also think that Wither Dale should not be within the claimed neighbourhood anyway. This being the case, it is not unreasonable, I think, for the neighbourhood boundary to run in a more or less straight line across the road a short way back from Wither Dale's junction with Chesters as the intention is that it should run as a continuation line along the of the rear boundaries of the properties fronting onto the latter.

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39. The claimed neighbourhood also excludes the development in Chaffinch Way, Wither Dale, Goldcrest Close, Bullfinch Close and Charm Close. Chaffinch Way (along with the streets to the south of Charm Close) was originally developed by a local housing association and is a higher density development comprising a number of (mainly) terraces with on-street parking bays. One can see the intended layout on the second plan in App/2 (under reference number A9.158) which bears the date 24 July 1975, which phase of the overall development is almost certain to post-date the completion of the claimed neighbourhood and which excludes Goldcrest Close and Bullfinch Close which were doubtless built later, both of which streets appear to have been planned as affordable housing. It seemed obvious to me that Chaffinch Way and the foregoing three closes have been rightly excluded from the claimed neighbourhood with which they have little in the way of physical connection. Moreover, other than in the case of Charm Close, the housing styles and layout within these streets are also markedly different to the market housing found within the claimed neighbourhood.

40. In the gap between Willow Brean and Chaffinch Way there is a third open space which I think is slightly smaller than the green. This open space is located a short distance along the footpath at the end of Down Close and the entry into the open space obviously opens into a different vicinity to that in which the green is located. I was, for instance, struck by the enclosure of this open space by fencing and a high hedgerow and its separation from the adjoining development within Downe Close.

41. Elsewhere the claimed neighbourhood rightly ends, I think, at the rear of the older housing fronting onto Parkhurst Road or Meath Green Lane or in the newer development in the backland areas behind such housing (mainly off Meath Green Lane). On the face of it, the inclusion of dwellings on the eastern side of Willow Brean to the south of its junction with Westleas, including the whole of Dene Close, is open to question. However, I can see why this area was included seeing as it is an integral part of the remainder of the market housing elsewhere within the claimed neighbourhood. The only complaint which may be made is that it is too far away from the green but the applicants do have witnesses within this small area and I think it may have been

incongruous to have excluded it. It seems to me that the applicants were very probably right to end the claimed neighbourhood on this side at the southern end of the Willow Brean cul-de-sac where it adjoins the open space at the end of Chaffinch Way.

42. The Landen Park estate has two points of entry. The first is off Parkhurst Road via Wither Dale and the second is off Meath Green Lane via Landen Park. The estate is somewhat self-contained and the housing styles principally differ depending on whether it was planned market or affordable housing which is chiefly in Chaffinch Way. The streets themselves are all inter-connecting and it has clearly been difficult for the applicants to identify a cohesive neighbourhood within the estate. It was also obvious that open space provision within this estate is limited and any loss of green space is bound to be acutely felt. The recreation ground at Vicarage Lane is also over a mile away and has to be accessed via busy roads and is clearly not a practical location for informal recreation for those living on the estate, particularly for small children.

The material history of the AL

43. It is not the function of the registration authority to go looking for evidence. Its duty is to deal with the application to register on the basis of the evidence with which it is presented. In my directions (at para.12) I indicated that it would assist the inquiry if the objector was in a position to produce relevant conveyancing and planning documents along with any other records of decision-taking or management of the land. In the event, the objector initially produced only the adoption agreement entered into in 1976 between Gough Cooper and SCC, in its capacity as highway authority, in the exercise of its powers under section 40 of the Highways Act 1959 (since replaced by section 36 of the 1980 Act) the effect of which was to make the roads and paths identified in the agreement highways maintainable at public expense, and thus the responsibility of SCC once these works had been completed to the satisfaction of SCC. A copy of the adoption agreement had been kept on file at the Land Registry under the objector's title number SY325704. As indicated, Mr Lyell has also produced the two estate layout plans at App/2. He

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has also provided additional information in further written submissions which I received on 6 December 2018 which I will come to later.

44. For their part, the applicants have produced office copies of the objector's registered title within which the green and the other two open spaces already mentioned, along with other grassed areas within the estate, are shown to be vested, in particular the sizable area of grass on the northern side of Arne Grove. The objector's office copies show that it was registered as proprietor in 2006. They also note a number of adoption agreements affecting estate roads and paths. The local electricity board also has rights over the yellow strip shown marked on the objector's filed plan which abuts the flank wall of Mr Nye's property at 44 Landen Park.

45. The objector has put in no evidence but its objection statement at tab/1 of its bundle contains at para 30 on p.7 the information that by 1974 'Horley had progressed to form a continuous built up area which included the properties on the northern side of Parkhurst Road and the western edge of Meath Green Lane'. It continues at p.8 that the green 'is located on an estate arrangement typical of 1970s masterplanning and architecture. The original estate was permitted in the mid-1970s under the local authority's planning application reference 74/0757 as a mixed housing association (originally the Family Housing Association) and market housing development.'

46. I was presented with no planning document, nor could I find anything either under the above planning reference on the local authority's planning website. When I looked further into this online it was explained that scanned files and documents are only available from September 2006. Prior to this date it was said that copies of decision notices and appeal decisions were available online back to 1974. All other documents were said to be available to view at the Town hall in Reigate. It will also be recalled from para.32 above that Mrs Constanti produced the seller's brochure given to her parents on their purchase of 21 Landen Drive in 1974 and it contained a reference to the fact that the local authority was Dorking and Horley RDC which changed after local government re-organisation in 1974. We also have of course (a) the Transfer dated 29 June 1976 to Mrs Burrin's predecessor at 1 Downe Close

(Plot 178) (A/41); (b) the (undated) Transfer to Mrs Webb at 16 Westleas (A/68) (Mrs Webb moved into No.16 in September 1976 'before the entire development was completed'); and (c) the again undated Transfer to the Foys' predecessor at 14 Westleas.

47. I observe that under the Transfer (cl.7) in the case of 1 Downe Close the seller covenanted to complete the estate roads and footpaths upon which the plot abutted to the specifications of the relevant authority at which stage Gough Cooper's liability for such roads etc. would cease. So it was that on 10 August 1976 Gough Cooper entered into an adoption agreement with SCC in which the appended plan, being based on the developer's masterplan for the area, clearly identified the green as 'POS'. It is very probable that open space provision would have been the subject of a suitable planning condition although I was presented with no evidence of this in the form of an issued consent (nor, for that matter, is there any evidence of any planning agreement in relation to the use of such land). In the case of the green, what occurred in practice was that the local authority maintained such land by regular mowing which ceased in 2015 and which has not been resumed by the objector since this time although I gather that the local authority is still cutting the grass elsewhere despite not being the owner of such land.

48. The objector has taken no steps to maintain the green and cannot be forced to do so unless it becomes (in effect) an eyesore such that the local authority considered it necessary to resort to their power to require the land to be cleaned up under the Town and Country Planning Act 1990, section 215.

49. Clearly the green belongs to the objector who, as I say, cannot be forced to maintain it against its wishes so it can continue to be used by local inhabitants for LSP. On the other hand, it may be supposed that as Gough Cooper laid out the green as amenity open space (no doubt because they were presumably required to do this by virtue of a planning condition to this effect) they and their successors would have taken steps to ensure that the grass was regularly mown thus encouraging public use of this important amenity.

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50. The position seems to be as set out below.

(a) The Landen Park estate would have been fully developed during the mid-1970s, quite possibly by around the end of 1976, if not a little later than this as I observe from the adoption agreement entered into in August 1976 that the material roadworks (including associated drainage and other services) were required to be completed within a period of three months of the agreement or by such later date as was agreed. The process (which it is reasonable to assume was duly complied with) would have resulted in the issue of a certificate of completion and which was thereafter intended to be followed by a period of six months at the end of which SCC was required to do (and no doubt did do) whatever was necessary for securing that the road and paths became maintainable at public expense (this is all set out in cl.2 of the adoption agreement).

(b) The green was laid out, again sometime in the mid-1970s, by Gough Cooper as amenity open space for use by local residents who have used such land for LSP without interruption and without objection or permission of the owner from time to time.

(c) Although under no obligation to do so as it did not own such land, the grass on the green was until 2015 mown by the local authority. Thereafter the objector has deliberately refrained from cutting the grass (and is under no duty to do so against its wishes short of the green becoming an eyesore and damaging to local amenity) although the applicants' witnesses assert that the green continues to be used for LSP although not as intensively as it was before.

Applicants' evidence

Oral evidence

Kay Hammond

51. Mrs Hammond has since 1997 been the county councillor for Horley West, Salfords and Sidlow. Her statement will be found at A/4.12. She supports the application and is familiar with the green from her visits to the estate when

delivering leaflets or newsletters or lending her support to local political groups. She conceded that as she was not a local resident she was unfamiliar with the day-to-day activities taking place on the green. She thought that she would visit the area around twice a year or more often in every fourth year when canvassing at election time. It struck her that the Landen Park estate was distinct from the areas outside it. She said that 'as you drive into Landen Park there is a distinct feel of housing changes'.

52. Mrs Hammond also told the inquiry that in around 2007/8 she was contacted by residents when youngsters were making a nuisance of themselves by kicking balls at the garage of 14 Arne Grove which is next door to the green on its southern side. In 2008 (and in consultation with the community safety team and officers responsible for green space employed by the local authority who actually organised such work) Mrs Hammond used some of her member's allowance to pay for the planting of three or four shrubs in the southern area of the green which can be partly seen in the background to the photo at A/48. The aim of this was not only to enhance the area but also to limit space for over-exuberant ball games (in fact the local authority put up a sign saying 'No Ball Games').

53. Mrs Hammond told the inquiry that when, in 2015, the local authority stopped maintaining the green, she and representatives of the Gatwick Greenspace Partnership (which is funded through SCC and various local authorities – Mrs Hammond is in fact on the committee of this body) met on site with a number of residents (around 20) in order to discuss the future upkeep of the green. This led eventually to the objector being approached with a view to the maintenance of the shrubs planted in 2008 (which I think by then were becoming quite large and in need of proper maintenance). The objector's response to this was to remove these shrubs altogether leaving, I gather, bare earth. It is Mrs Hammond's view that the objector should take responsibility for the green. Previously, she had merely assumed that the green belonged to the local authority. Mrs Hammond was a conscientious and helpful witness although, even as she recognised, she was in no real position to help with such day-to-day use as may have been taking place on the green over the years.

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Lynda Muggeridge (one of the four applicants)

54. Mrs Muggeridge's brief statement will be found at A/4.6. She has lived at 19 Arne Grove (only a few yards away from the green) since 1977. She says that her own and other children grew up playing on the green (her children are now aged 43 and 42). She also mentions the Queen's Silver Jubilee celebrations taking place on and around the land in 1977. Her grandchildren come to stay and they have learned to ride their starter bikes on the green. When it came to neighbourhood she described the area shown on App/1 as 'my area' and where her friends live. She said that the green was well-used ('children always out there') but has now been left to 'rack and ruin' since the local authority stopped cutting the land in (as she said) 2016 although she made the point that children and walkers, with or without dogs, have not stopped using the land even though the grass is longer than it was, and it could be as long as 3 feet in places. She was, however, clearly disappointed that no one was looking after the land.

55. She accepted in cross-examination that 'other people' from what she called the 'Housing Association area' used the land.

56. Mrs Muggeridge was also a helpful and conscienscious witness. Her evidence on recreational use was compelling.

Peter Nye

57. Mr Nye lives next door to the northern area of the green at 44 Landen Park. His short statement is at A/4.7. Mr Nye and his family (his four children range in age from 20-29) moved to Landen Park in 1997. The open space next to his home was a big attraction. His own and other children played there (on both sides) when they were much younger. All his children learned to ride their bikes on the green. He speaks of 'a community among the children here, going to school and playing together in the open space'. He also mentions that when they extended the rear of their home the local planning authority told him that the land alongside their home 'would never be built on' although there had been a previous failed application to develop the land.

58. In his oral evidence Mr Nye said that dog walking on the land was ‘more than occasional’. He also said that ‘we’ve sat out there on a number of occasions’ although he accepted that their use of the land is less than what it had been when his children were younger. Like Mrs Muggeridge, he accepted that even after grass cutting stopped dog-walking continued and that children still play on both sides although the grass is longer on the southern side.

59. Mr Nye was another helpful and genuine witness able to give strong evidence on recreational use.

Tina Constanti (one of the four applicants)

60. Mrs Constanti lives at 21 Landen Park which is close to the southern area of the green. Her statement is at A/4.2. Her parents, she and her sister moved to 1 Landen Park (where her mother, Mrs Grace Lower, still lives and which is the first house off the junction with Meath Green Lane – they were one of the first families to move in – I have read Mrs Lower’s statement at A/5.13) in, as she recalls, 1974 although it might have been a little later than this although it matters not as she was clearly there with her family right at the start. She recalls that Gough Cooper used the green as a site to store building materials before it was laid out as open space upon completion of the development which occupied the site of what had formerly been Landen Farm.

61. After leaving home Mrs Constanti eventually returned to live at No.1 with her children in 1998 before moving to No.21 in 2000 (her children were born in 1990 and 1993). She says in her statement that the green (which she says is known locally as ‘The Green’) is a safe place for local children to play on and do all manner of things such as riding their bikes, climbing trees, playing football, cricket or tennis, running around or generally using it as a meeting place. She says that in recent years she has also seen joggers using the land which is also a good location for smaller wildlife. She says that several residents use it for walking dogs, as she and her sister did when they were living at No.1.

62. Mrs Constanti also says that the green has over the years been a venue for many local and national celebrations and street parties such as royal

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weddings, jubilees, the millennium and sporting events. She says the green is an ‘integral part of the Landen Park community, bringing people together, having a laugh and a chat’. She says that it is ‘vital to residents’. In her oral evidence she said that the green had ‘a community feel’ and had been an ‘integral part of the community for over 40 years’. She says it is close to home for residents and safe for children of all ages to meet up or play on as there are no major roads to cross to get there. She says that although until about three years ago the green was maintained by local authority, residents also used to help to keep it tidy and did jobs like tree pruning or removing dead branches. She accepts that there is less activity on the green when the grass is overgrown.

63. In cross-examination she accepted that in recent times she has not used the green as extensively as she did before. She said that she stopped walking her mother’s dog there in around 2008. The impression one gets from her evidence is that other than meeting her neighbours for an occasional chat on the green, her own use after stopping walking her mother’s dog on the land has probably been negligible although she has clearly observed others using the green for informal recreation.

64. Mrs Constanti enjoys living at Landen Park where she says there is a real community spirit. She also agreed that the area edged red on App/1 is the relevant neighbourhood and in her oral evidence she identified all the streets by name. She also recalls the removal of the shrubs in around 2016 leaving bare earth.

65. Mrs Constanti was another helpful and conscienscious witness. Her evidence on recreational use on the green over the years was very compelling.

Mark Tasker

66. Mr Tasker lives a short distance from the green at 6 Arne Grove where he and his wife have lived since 1977 (when he says that the area was, as he put it, still ‘a building site’). His statement is at A/4.9. He thinks that the green would have been laid out as open space by ‘1980 to 1982’ or ‘by the mid-1980s’ at the latest. He says that his two daughters (born in 1980 and 1982) spent

many hours playing on the green with their friends. He also says that when grass was being cut the green was available for use throughout the year. He says that you could ride your bike on the land which was 'like a public open playground'.

67. Mr Tasker said that his children had friends in Chesters and Downe Close and he and his wife were happy for them to play on the AL. His grandchildren are aged 3 and 5 and he is unable to play with them on the land in the same way as his children did. He thinks that dog walking has increased with the neighbouring development. He says that the older children use the green to climb trees and play games although less so in the Winter. However, he says that the green is still of use as an open space even though the grass is no longer being cut. Mr Tasker said that he himself no longer uses the land. Of some importance to the applicants' case, he did say in re-examination that over the last two years (i.e. since regular grass-cutting stopped) children were still regularly playing on the green.

68. Mr Tasker was also a helpful and genuine witness.

Sarah Woolsey

69. Until February 2018, Mrs Woolsey lived with her husband and their two children at 23 Arne Grove which is next door to the northern area of the green. Her lengthy statement is at A/4.10.

70. The Woolsey's moved to 23 Arne Grove in 2008. She says in her statement that they realised very quickly that the green was important to local residents and as their children grew up they played on it in safety with other local children and it became very much an extension to their garden (their back gate opened onto it). She also mentions that they rode their bikes on it as well as picnicking and climbing trees. She says that they loved to play games such as hide and seek, hiding behind the shrubs in the southern area before they were removed, and generally jumping around on the leaves in the autumn. There were also Easter egg hunts with visitors whilst parents looked on.

71. Mrs Woolsey mentions the trek (she said it was around a half a mile away) which they would have to make if they wanted to visit their local recreation

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ground (at Vicarage Lane) where she says there are no toilets whereas the green is a large open space for children to play on. An older child told her once that they did not like to go to the recreation ground as they felt intimidation there and thought that they might get into trouble.

72. Mrs Woolsey also says that even after the local authority stopped cutting the grass children continued to use the green. She mentions that residents did try to cut the grass and maintain the area.

73. On site I was shown by Mr Woolsey where one of the trees on the northern area encroached onto their property. Mrs Woolsey says that her husband and his brother cut off the offending branch or branches to make the tree safe.

74. Mrs Woolsey considers the green to have been something of a social hub which they miss. She says they have friendships which have been strengthened through their use of the green. She also thinks that the community have come together in the village green process. She says that most, if not all, residents, were under the impression that the green would never be built upon and would remain as open space.

75. In her oral evidence she confirmed her support for the claimed neighbourhood which she considered to have been her ‘community’ although she accepted that ‘people’ from Chaffinch Way had used the AL.

76. Mrs Woolsey was also a compelling witness and her statement was very strong and credible in its support of the case for registration.

Sue Credgington-Jones

77. Mrs Credgington-Jones lives with her husband at 23 Landen Park which has a frontage on the southern area of the green. Her statement is at A/4.3. She has lived at this address since moving there 25 years ago (1993?). The property attracted them as it overlooked open space on which their children played and, on one occasion, witnessed the presence of hedgehogs. She says that the green is also a place for meeting people, especially as they own a dog, which she says builds ‘a sense of community with your neighbours’.

78. In her oral evidence Mrs Credgington-Jones said that not a lot of children enjoy the land now as the grass is too long. She says that it is mainly the older children who will come onto the land in their wellingtons 'and muck about there'. This occurs at weekends and less often during the week in term time. She made the point that whilst they had lived at No.23 'it's where the children are expected to be', meaning (as I understand it) that this is an open space on which the children are supposed to play. She also sees dog walkers 'quite a bit' using the land, by which, I think, she means the area in front of her house.

79. Mrs Credgington-Jones also says that she rang the local authority and spoke to them about the state of the grass on the green (this would have been after cutting ceased in 2016) only to be told by a Mr Drayton that they did not own the green and had nothing to do with it. Having ascertained who did own it she spoke to a Mr Neil Warren who came to see her. She recalls that he told her (in what seems to have been a brief meeting) that (as she put it) 'you could get four houses here' (I think he may have been referring to the southern area in front of her home) which, she says, shocked her. She also asked Mr Warren whether the objector would maintain the grass and he replied that it would 'cost him money'. The meeting seems to have ended at that point.

80. Mrs Credgington-Jones says that the green (and I think she refers mainly to the southern area) has had 'a lot of use' but it no longer looks 'as nice' as it appeared on the top photo on A/53 which shows Mrs Parry's daughter (and Mrs Parry lives next door) sitting in the longish grass amidst the dandelions and buttercups on the southern area on a sunny day in the Spring of 2016. In re-examination, Mrs Credgington-Jones said that use of the green (meaning, I believe, the area in front of her home) has not stopped since 2015 although children and dog-walkers now have to dress appropriately and wear suitable footwear. She is aware of what is happening in front of her home as she can see people through her curtains walking with their dogs through the grass and around the green. Her front door also faced the land. In other words, she says that use of the green in front of her home has not stopped. She also mentioned that she has a new puppy and that she walks it on the green every

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day. When asked about her own use of the green since 2003 (which I think principally involves dog-walking on the land in front of her home) she said that it could be as often as three or four times a day unless it was raining.

81. Mrs Credgington-Jones was another strong witness whose evidence I also accept. She was, I thought, particularly credible in relation to such use as has taken place on the land in front of her home since grass cutting stopped.

Diane Martin

82. Mrs Martin moved to 3 Arne Drive in around 2011. Her statement is at A/4.4. She lives close to the junction with Chesters. She says that when she bought her home one of its attractions was the green. She has grandchildren (aged 14, 12 and 3) who stay with her once a month and for several days in the holidays when they play on the open space. She says that she meets people there who live outside the claimed neighbourhood. She frequently sees people walking their dogs there. She says that she does not see as many people on the green as she used to. She walks her son's dogs on the green once a month (or less often) when they are with her. She said that once mowing stopped it has become a less attractive destination and is now mainly, as she put it, a meeting place or place to walk a dog. When asked about the position in January 2017 (i.e. when the application was made) she says that the land was being used more often. The position now is that, viewed from her home, she sees people on the green some two or three times a week. It is particularly busy when the children are on their way home from the school (which on my plan is described as a County Middle School) which is located at Greenfields Road on the NE side of Meath Green Lane.

83. Mrs Martin was also a genuine witness and gave credible evidence when it came to recent user. Admittedly she lives further away from the green but she is using it herself from time to time and she also observes other people doing so, with or without dogs. Having seen the green and being aware of the school's location, it seems highly likely that a number of children would indeed be milling around on the green on their way home after school, particularly in the drier, warmer weather.

Philippa Parry

84 Mrs Parry (one of the four applicants) has lived at 25 Landen Park with her family since November 2014. Mrs Parry lives next door to Mrs Credington-Jones and her home overlooks the southern area. Her initial statement is at A/4.8 and her second statement is at A/4.8A-C. Her two daughters are aged 6 and 3.

85. Her children regularly play on the green and she produced the photos of her child playing on both sides (A/53) which were said to have been taken in around April/May 2016. Mrs Parry says that in moving to her home she and her husband were attracted by the green right in front of their home. She says she regularly stops for chats with her neighbours and other local residents around the green 'so we see it as an important focal point for our community'.

86. Mrs Parry says that during the summer months the land 'provides a runway for the local children to run, play, scoot and cycle together and climb trees'. She also says that there is 'a real sense of community, and the quiet ends of the cul-de-sacs in Landen Park and Arne Grove and the green provide a safe space for children to meet up'. As her home overlooks the green Mrs Parry says that she sees residents walking on and around the land 'at all times of the day and night'. Dogs also walk on and off the leash and she knows many of the dog owners by sight, some of whom she knows live outside the claimed neighbourhood.

87. Mrs Parry accepted that the recent condition of the green has had an impact on activity taking place on the land although it is still being used regularly by dog walkers whom she sees on the land. The children also play on the land more often in the summer. She seemed sure that the local authority stopped mowing the grass in the Spring of 2015. Her husband resorted to mowing the strip in front of their own home and she saw others do likewise outside their homes although no one has the equipment to a proper job over a greater area.

88. She recalls the shrubs being removed from the southern area in October 2016. It appears that she remonstrated with one of the contractors engaged in

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such work ‘begging him to stop’ but without success. She also got into contact with a firm she named as ‘Pelham Homes’ asking them to stop such work but again with no success. Mr Lyell informed the inquiry that Neil Warren (to whom Mrs Parry spoke) acts as a consultant to Pelham Homes Ltd which he said was another company within the Allied London Group of companies. Mrs Parry added that Mr Warren did not tell her that she was not allowed to use the green. She also deals at length with the nature and wildlife which is a feature of the green. She particularly mentions the birdlife, hedgehogs and bats. She applied (unsuccessfully) to the borough council to have a Tree Protection Order imposed on the trees on the green.

89. Mrs Parry was also a genuine and conscienscious witness whose evidence I accept.

Adrian Woolsey

90. Mr Woolsey was the lead applicant even though, since February 2018, he and his family have ceased to live at 23 Arne Grove into which property he and his wife had moved in 2008. Mr Woolsey gave written and oral evidence to the inquiry. Mr Woolsey not only provided the inquiry (a) with his own statement at A/44 but he also (b) handed in a transcript of his opening statement at the start of the inquiry (A/3.4-3.10) (c) gave oral evidence towards the end of the inquiry, and (d) provided written closing submissions in support of the application to register (these followed the submissions of Mr Lyell). In this part of my report I will be dealing with Mr Woolsey’s written and oral evidence.

91. Mr Woolsey and his wife were attracted by the fact that land next to their home was public open space which they thought belonged to the local authority as they were maintaining the land and had also planted shrubs in the southern area shortly after he and his wife purchased No.23. In common with his wife, he mentions the gate at the rear of their property which opens directly onto the green next to their home and the fact that their three children and their friends regularly played on the green. His children learned to ride their bikes on the green. Mr Woolsey mentions tree climbing, running around the land, ball games, Easter egg hunts and picnics on sunny days. All were enjoyed there by he and his family. He says that in addition to the use of the

green by he and his family (and he must surely be referring only or mainly to their use of the northern area), he has also seen others using the green for such recreation as is described above together with use by other children playing with his children and dog walkers. Mr Woolsey also helpfully produced photos of his children on the green next to their home playing and cycling in 2010, 2013, 2014 and 2015 (late Spring) (see A/46-50).

92. In his oral evidence Mr Woolsey said that when they extended their home in 2008 they erected a scaffold on the green, having been told by the local authority that the green did not belong to them although he assumed that they were responsible for maintaining it. He said that local residents used the green, referring, as I understood him, to the land on both sides on the footpath. He says he understood that the green was there to be used by the residents 'as of right' for recreation as it had been laid out for that purpose.

93. Mr Woolsey said that the grass was last mown by the local authority in early 2015 and that the green (and I think he was probably referring to the land outside his home) was still usable to the end of 2015 (and he refers to the photo at A/50).

94. He also dealt at length with the claimed neighbourhood which, he says, is where all those who responded to the survey which was carried out in January 2017 lived (the survey details will be found at A/23-40). He says that the applicants chose to canvass support within such area. He says that posters were placed on trees on both sides of the green giving a contact email address and the names of the three other applicants and their addresses, and local residents were invited to get in touch to lend their support to the campaign to register the green. No one got in touch with Mr Woolsey who lived outside the claimed neighbourhood, nor did any canvassing of the opinions of others take place outside the boundaries of such area. The red line on the plan at App/1 followed the survey. The applicants settled on the claimed neighbourhood as the results of the survey showed that those who responded to the survey and who used the green lived exclusively within such area. Mr Woolsey also emphasised what he described as the 'wrap around effect of the roads'.

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95. In cross-examination Mr Woolsey was asked (as it was put) why he had not knocked on doors in other areas. His answer was that before they conducted their survey they had an idea of those whom they believed would be supportive of the application to register. Although Mr Woolsey accepted that friends of his daughter living in Chaffinch Way also used the green, at the time when App/1 came into being the applicants were unsure that they would find additional users outside such area.

96. Mr Woolsey also said that the claimed neighbourhood also fitted in with the geography of the area (which I took to be a reference to the road layout within the claimed neighbourhood and the need to exclude the surrounding areas). He said that in drawing up the boundaries of the claimed neighbourhood he 'had to draw the line somewhere' and that it would 'be arbitrary to a point; but my line fits in with the legislation'.

97. Mr Woolsey was asked about the boundary at the junction of Wither Dale and Chesters. He was asked why he had not included No.2 Wither Dale and he said that his wife knew the occupants of this property but they had not come forward to support the application to register. The thrust of Mr Lyell's questioning was that the boundary at this point was arbitrarily drawn and that, as a result, other users of the green had potentially been excluded from the claimed neighbourhood. Mr Woolsey's answer to this was that the boundaries of the claimed neighbourhood were borne out after the 'gathering of evidence' and that 'ultimately I had to draw a line somewhere'. He said that he had not set out to exclude users living outside the claimed area. Mr Woolsey considered (and this is my note) that his (boundary) line 'is a reasonable line and is reflective of the use of the land and my neighbourhood'. Mr Woolsey was also a consciencious and genuine witness whose evidence I accept.

Written evidence

98. Behind A/tab/5 there are the applicants' written statements. There are in fact a total of 19 statements coming from 26 witnesses (including Danielle Smith who used to live in the area) of whom 11 have lived in the claimed neighbourhood for over 20 years (namely Daniel, Denny, Knott, Lower, Robinson (x2), Scott (x2), Silence, Webb and Brown) and one has been there

for 19 years (Smith). These witnesses come from Arne Grove, Westleas, Landen Park and Willow Brean.

99. The evidence of these witnesses is entirely consistent with the oral evidence, namely that the green is regularly used for recreation by children (mainly the smaller children) and others, including dog walkers, and is an important amenity and focal point for recreation within this small community, particularly to those who live in Arne Grove and Landen Park. In his email to Mr Woolsey dated 9/11/2018, Shane Jones noted that in the last year the green had become 'neglected' and 'therefore there has been a subsequent decline in the use of the space'.

Other evidence

100. The applicants have produced a helpful spread sheet in which the evidence of those who have given oral and written evidence is broken down under these headings: Period of Green Use; Personal and Family Use of Green; and Noted Others Use of Green. This schedule is at A/3.1 but I have also introduced it at Appendix 3 ('App/3') for ease of reference to those reading this report. The spread sheet discloses that 8 witnesses were using the green in the 1970s, 9 in the 1980s, 16 in the 1990s, 17 in the 2000's and 25 in the 2010's. In short, 8 witnesses have been using the green since the 1970s.

101. The local MP and the borough councillor for Horley West support the application to register (A/tab/6), as does the local authority (RA/B1) and town council (RA/B2).

102. On two days in January 2017 Mr Woolsey and Mrs Parry (aided by other residents) canvassed residents in 82 households in Landen Park, Arne Grove, Chesters, Westleas and Willow Brean asking whether residents used the green. If they had they were asked to complete a survey. Of the 82 homes visited those living at 77 households completed the survey document (evidently there were 3 non-green users and 2 homes where there was an unwillingness to complete the survey). The explanatory document and survey returns are at A/23 to 40. I have studied this material which is also consistent with the oral evidence and written statements. The survey returns are

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informative and information given includes ticks in the boxes against various types of personal use and of use witnessed of others on the green. The survey does not purport to include information about the green from all residents living in the foregoing streets. Clearly there are a number of gaps on the forms where people were not at home to complete the survey forms when Mr Woolsey and his companions called (although as indicated, the occupiers of two dwellings did not want to become involved).

103. Mr Woolsey's closing submissions include:

(a) a refusal notice dated 30 August 1984 showing that Gough Cooper failed to obtain planning permission to erect two detached houses with garages on land adjacent to 44 Landen Park (this property is now occupied by Mr Nye who lives next door to the northern area of the green). The reasons for such refusal are expressed on the notice as follows:

1. The proposal would result in the loss of a valuable area of open space which performs a valuable function in providing a visual break and its loss would be detrimental to the amenities of this well laid out residential estate.

2. The proposal, if allowed, would form an undesirable precedent for further similar developments on the remaining areas of open space within this estate.

(b) An image of the green taken from *Google earth* which is dated September 2012 which I have included at Appendix 4 ('App/4') which I am sure will be of interest to members. One can obviously see that the grass is mown and that the green is more attractive than it is at the moment. The shrubs on the southern side which were removed by the objector in 2016 were clearly integral to the attractiveness of the green.

Objector's evidence

104. The objector presented no evidence to rebut the evidence of the applicants' witnesses. However, Mr Lyell did produce the two extracts from the masterplans at App/2 along with a batch of email exchanges between Mrs Credgington-Jones (who lives opposite the southern area) and officers responsible for managing open spaces at the borough council in the period 2012-2015.

105. In May 2012 Mrs Credgington-Jones wrote complaining about the length of the grass and was promised an early mowing. In 2013 she asked for the shrubs to be weeded and tidied up and was again assured that this would be done. In May 2014 she sent a reminder to the local authority to cut the grass which she said was about a foot tall and an eyesore. She also mentioned that one resident was using part of the green land to store materials and was concerned that the condition of the green was such that local residents might be tempted to use it 'as a rubbish dump'. In September 2014 she again complained that the green was not being cut and that there were now two residents who were dumping green waste on the land which she said was making the green look like a tip. The correspondence shows that the local authority probably acted on these requests.

106. On 8 June 2015 Mrs Credgington-Jones wrote to Emanuel Flecken, the local authority's Parks and Countryside Manager, complaining again about the length of the grass (it was apparently 2 feet high in areas) and the volume of weeds. Complaint was also made about a resident who had still not removed two containers dumped in the corner of the green. The response to this email also came on 8 June 2015. Mr Flecken stated as follows:

> We have checked ownership of the land and it is still in the hands of Sterling Homes Limited. For maintenance on the green you will need to speak with them.

In her email to Mr Flecken dated 25 June 2015 Mrs Credgington-Jones stated:

> From our perspective the green is now completely unkempt with grass and weeds 3 ft. high. This is a terrible eyesore. The green is not very big and there is little traffic around the green during the working day and I am asking if you could please arrange for the grass to be cut as has been done by yourselves for the last 21 years to our knowledge …

107. The above correspondence shows (a) that after May 2012 the borough council were occasionally being reminded to mow the grass, and (b) that grass cutting and other routine maintenance by the authority would have almost certainly ceased by June 2015 although the contents of Mrs Credgington-Jones's email dated 25 June 2015 does suggest that the grass

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may not been cut at all in 2015 (although there are witnesses who say that the grass was cut for the last time sometime in early 2015).

The applicants' closing submissions

108. I have inserted Mr Woolsey's (very thorough) submissions behind tab/8 in the applicants' bundle.

109. Mr Woolsey went through the various elements which satisfy the definition of a TVG. He rightly points out that the identity of the locality, the boundaries of the green and the range of activities which have taken place on the green which are not contentious issues.

110. Mr Woolsey accepts that the pavement crossing the green would have to be excluded from any registration. However, the objector is not suggesting that local residents are using the whole of the green solely or mainly as a crossing point between Landen Park and Arne Grove and that this is how it would have appeared to the reasonable landowner.

111. Mr Woolsey deals with the issue of qualifying use for the whole of the qualifying period of 20 years ending with the application in January 2017. This is important as the objector says that qualifying use ceased (or at least ceased to any material extent) once the green was no longer being maintained by the local authority after 2015 (it will be recalled that contractors removed the shrubs – the site being cleared to earth – in October 2016 as a response to requests by local residents to maintain the green). Mr Woolsey asserts that the evidence demonstrates that qualifying use for LSP continued until the date of the application despite the absence of regular grass cutting after 2015. In other words, that the condition of the green did not preclude access by local inhabitants for LSP.

112. In para.29 Mr Woolsey states that the overgrown areas mentioned during the inquiry were the planted bed areas (in 2008) which were in response to some anti-social behaviour in the mid-2000's and which were used by residents and their children for games of hide and seek. He estimates that such beds amounted to in the region of between 2.5% to no more than 5% of the available space on the green.

113. Mr Woolsey denies the objector's assertion that recreational use was permissive as a consequence of the POS designation (or 'casual annotation' as he puts it) on the Gough Cooper masterplan or other layout of the estate generated by the developers. Nor, he says, is there any documentary or other evidence tending to show that the owner gave its consent to the public's use of the green (I take it that this is what Mr Woolsey means by the expression 'dedication agreement' which one usually associates with the grant of public rights of way). Nor does it follow, he says (in effect), that the green would only have been maintained with the formal concurrence of the landowner from time to time. Mr Woolsey says that there is no evidence of this and it is, in any case, mere supposition. He also says that the premise of an implied licence is inconsistent with the failed planning application mentioned in para.103(a) above and, as I am told, with the more recent failed application (in 2017) to develop the same land by the erection of four semi-detached dwellings thereon). Nor he says, for that matter, is a licence to be inferred from the mere fact that some residents have in their evidence adverted to the fact that the green (along with other green spaces on the estate) was specifically made available for use by residents for recreational purposes. Consistently with this the objector has taken no steps to control the use of the green. By way of example, it was the local authority that maintained it over the years and who also erected the 'No Ball Games' sign and (with the assistance of a county councillor) brought about the planting of shrubs on the green. It was also the residents who brought pressure to bear on the local authority to mow the grass (some of whom took to mowing parts of the green themselves) and who applied for a Tree Preservation Order. In light of this, Mr Woolsey says in paras.48 and 50 that it was the residents who looked to protect the green as if they owned it : in other words (as he puts it), their use was 'as of right with no one having given them permission to use the space'.

114. Neighbourhood: Mr Woolsey reviews the evidence, much as I have done. He refers to the plans produced by Mr Lyell at App/2 and distinguishes the areas earmarked for market development and affordable housing where the housing styles are markedly different (Mr Woolsey touches on this in para.60). He says at para.57(b) that the estate 'has two distinct halves built into its very

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formation'. He notes that area edged blue on the second plan benefits from open space on its doorstep and is a further distinguishing feature to the area edged red.

115. Mr Woolsey says that the roads within the claimed neighbourhood form a natural 'arc' around the green. He also mentions the other two open spaces outside the claimed neighbourhood serving different neighbourhoods.

116. Reference is also made to the closeness of the local community as illustrated by the turn out of residents on the occasion when Mrs Hammond visited the site of the green in 2016 to discuss options following the cessation of the local authority's commitment to continue maintaining the green. Mr Woolsey says in para.62 that 'This demonstrates that a clear community has been built with strong emotional connections around the Green.'

117. Mr Woolsey deals with the point raised by the objector that people outside the claimed neighbourhood also use the green. He does not dispute this but suggests that this is not unlikely as the area is public open space. However, he says that the predominant use is by those living within the claimed neighbourhood. He incidentally notes that the children who live in Chaffinch Way who played on the green (mentioned by Mrs Woolsey in her oral evidence) played with children who lived in the claimed neighbourhood, including with this children.

118. Mr Woolsey emphasises that the support of those living within the claimed neighbourhood to the application and their collective opposition to development taking place on the green by an absent landowner is another cohesive feature underscoring the chosen neighbourhood.

119. At paras.70 and 71 Mr Woolsey deals with the rationale for the selected boundaries of the claimed neighbourhood. He says in effect (a) that a different neighbourhood exists at the southern end of Willow Brean as this is where the affordable housing begins in Chaffinch Way; (b) witnesses came forward from Willow Brean but not from Chaffinch Way or indeed outside the red line boundaries; (c) Chesters falls within the neighbourhood, hence the line running along the rear of properties within this street where support exists for

registration; (d) further down Wither Dale market housing changes to affordable housing which is within a short distance of another open space on the western side of the estate which I visited; and (e) the properties (including backland development) fronting Meath Green Lane are of a different age and style and from which no one came forward to support the application.

120. Mr Woolsey notes that the January 2017 survey did not result in the choice of neighbourhood which he says was defined prior to such survey. He says that the actual scope of the survey was constrained by the time available to those who helped with the survey.

121. Mr Woolsey also makes specific responses to points raised in the objector's closing submissions and it would be preferable if I dealt with these points when dealing with the objector's submissions. Mr Woolsey contends that the claimed neighbourhood 'is clear, unambiguous and fits the requirements of the legislative test' (para.76).

122. Sufficiency of use: Mr Woolsey says that of the 163 dwellings in the claimed neighbourhood evidence comes from 77 households (oral and written) supporting the application. He thinks that the 77 households include 'well over 150 people' (para.83) which is sufficient to justify registration. He goes on to say that within the claimed neighbourhood there are, as it is put, 163 households from which it follows that evidence has been gathered from over 47% of such households.

123. In conclusion, it is submitted that all elements of the application have been made out and that the green should be registered (that is, with the exception of the footpath which crosses it).

Objector's closing submissions

124. I am reminded that all the elements necessary to justify registration have to be specifically proved by the applicants. The objector claims that it is entitled to object on the following grounds:

(a) the extent of the claimed neighbourhood (and it is not disputed that Horley West Ward is a qualifying locality (see area plan at O/tab3));

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(b) sufficiency of use has not be made out;

(c) the pavement crossing the green is not registrable in law;

(d) use has been 'by right' and not 'as of right';

(e) 20 years of use has not been established for the requisite period.

125. Neighbourhood: the objector does not accept that the claimed neighbourhood is sufficiently cohesive in the way represented by Vos J in *Paddico (267) Ltd v Kirklees Metropolitan Borough Council* [2011] EWHC 1606 (Ch) at [97] who said that 'the term "neighbourhood" 'is to be understood as being a cohesive area and must be capable of meaningful description in some way'.

126. The objector's complaint is that the claimed neighbourhood comprises only part of a much wider residential estate. I think the objector misstates the applicants' case by saying that it did this because the wider estate (which is said to number around 400 dwellings) included social housing which contrasts with the 'different housing type to the market housing provided in the Gough Cooper phase of the development' (para17).

127. What the objector says is within the claimed neighbourhood all the properties vary in style, size and material finish and that properties elsewhere 'are not considered to be distinguishable in terms of their overall style and finish from the design of the properties included within the "neighbourhood"' (paras.18(a) and (b)). The objector goes on to say that the finish of the properties not included within the claimed neighbourhood are of very similar quality, material and colour to the properties included within the claimed neighbourhood. Some of the properties outside the claimed neighbourhood not only share the same open spaces as those within the claimed neighbourhood but are also immediately adjacent to those included in the claimed neighbourhood, such as those properties in Chaffinch Way which are located adjacent to those in Willow Bream and abutting the open space at the southern end of Down Close (paras.18(c) and (d)). The objector also complains that although built within the same phase of the development, properties within Wither Dale and Charm Close have also been excluded from the claimed neighbourhood

(para.18(e)). It is also claimed that the roads running through the estate 'link all properties to the two main points of access into the estate' (para.18(f)).

128. As indicated in para.121 above, Mr Woolsey makes a number of points in relation to the foregoing objections to the claimed neighbourhood in para.18 of the objector's submissions. I set these out in full (they are made in para.72 of Mr Woolsey's submissions).

> a. The Objector clearly has no local knowledge, and as would have been evident from the site visit, this is simply not the case. There are of course variations now nearly 40 years after the estate was started to be constructed but this is true of any built area which has been built over several decades. The key is that the styles inside and outside of the Neighbourhood are clear from the original estate plan;
> b. This again highlights the Objector's lack of local knowledge. As the Inspector can see from our earlier submissions, we contend there are clear differences,
> c. This again highlights the Objector's lack of local knowledge. As the Inspector can see from our earlier submissions, we contend there are clear differences.
> d. The reasons for the distinction of what is part of the Neighbourhood and what is not is clear and set out. That the Objector would like it to be something different to undermine the application does not make that the case.
> e. There is clear case law that provides that use of a Town and Village Green can be by people outside of the defined Neighbourhood. The Objector does no more than point out that a limited number of people outside of the Neighbourhood could also use the Green and ignores the fact that directly to the north of Wither Dale and East of Charm Close is another area of open space that was part of the estate design and is available for these properties to use at least as easily as The Green.
> f. The roads were constructed for the wider development but looking at a map clearly shows that the two exit points create an East/West split with the mid-point on the roads being the point where Chesters meets Wither Dale. This again ties in with the Neighbourhood line we have drawn across this point (although again to be clear is not the primarily reason we draw the line here.) The development, however, was in two parts and clearly differentiates the neighbourhoods in those areas.
> g. Even at 400 properties, nearly 20% of such an area have provided evidence. This is, without question a significant number.

129. The objector's complaint is that the applicants have merely 'sought to artificially construct a neighbourhood for the purposes of the Application' (para.19). They rely on the dictum of HHJ Behrens in *Leeds Group Plc v Leeds City Council* [2010] EWHC 810 who said that a 'neighbourhood would normally be an area where people might reasonably regard themselves as living in the same portion or district of a town'.

130. The objector contends that the entire estate comprises what is, in truth, the correct neighbourhood in this case and is supported by the fact that there was

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evidence that some people using the green lived outside the claimed neighbourhood (this is a reference to some children living in Chaffinch Way on which Mrs Woolsey gave evidence). The objector says that the applicants should have widened the reach of their survey to include other areas (such as Chaffinch Way) as, if they had, the boundaries of their neighbourhood would have been extended.

131. The objector also makes reference (see paras.26-28) to (a) the importance of promoting neighbourhood centres in para.91(a) of the revised National Planning Policy Framework, and (b) emerging Local Plan policies which identify (and emphasise the importance of) Local Centres (see policies map at O/tab4). The point of all this, as I understand it, is to attack the credibility of the claimed neighbourhood on account of the absence of facilities within it serving the day-to-day needs of the local community (such as shops, community halls or community information boards or similar suggesting that the claimed neighbourhood is a distinct community in its own right).

132. The objector appears to doubt whether there are, in fact, any distinct neighbourhoods within Horley (para.34) including even the Landen Park estate (para.36). I understand the objector to be saying that even if one assumed a neighbourhood of a town to be 'organised around a neighbourhood centre' (para.38) then this would, in Horley's case, indicate a qualifying neighbourhood 'comprising most of the Horley West District Ward of around 3,100 households'. Accordingly, the objector submits (para.39) that the claimed neighbourhood is not a qualifying neighbourhood for TVG purposes.

133. Sufficiency of use: the objector contends that with the failure of the claimed neighbourhoood the applicants cannot succeed under this head (para.43).

134. Use 'as of right': the objector's case is that an implied permission arises (and of course, if it did, it would preclude use 'as of right') as it was made known to residents by 'The developers' sales staff' (para.48) that public open space on the estate was designated for use by the residents, such that the 'overt act requirement has been satisfied'. The objector goes on to cite from evidence in which witnesses stated to the effect that they knew that open spaces on the

estate were available for use by residents. What follows is, firstly, the evidence relied on by the objector in support of its case at paras.49-53 and, secondly, following on from such evidence, the applicants' rebuttal evidence at para.44.

Objector

49. P. Parry, in her oral evidence, confirmed that the public open space had been created for residents to use.

50. G. Lower, in her witness statement at 5.13, submitted that inter alia the developer's sales office staff promoted "the green open spaces specifically designed for use by the residents".

51. J. Scott, in her witness statement at 5.16, submitted that the provision of a number of public open spaces were used by residents and maintained by the Council.

52. B. Webb, in her witness statement in 5.19, submitted that "the development was designed as an open plan estate with green spaces to enjoy and to provide safe areas for children to play".

53. Finally, V. and M. Wheatcroft, in their witness statement at 5.22, stated that they had "always assumed that this was a public open space as this was the original plan".

Applicants

a. Philippa Parry is quoted as confirming the space had been created for residents to use. This is in relation to her wider evidence that The Green had always been available to her and her family and the other residents to use. By her own evidence she is talking of a period dating back to her and her family moving into Landen Park in 2014. She is speaking of the fact that The Green existed at this time and not of the process that brought The Green into existence some 30 plus years prior to this date.

b. Mrs Lower is quoted from her written statement saying "green open spaces were specifically designed for use by the residents." Mrs Lower was unable to attend and give context to her statement due to her advanced years and current health issues but her Daughter Tina Constanti was able to give oral evidence. Taking this evidence in the round this conversation is little more than a side note that happened in the early 1970's. The evidence provided showed that there was never any follow up to what would have been a sales pitch to Mrs Lower and her family. They would have needed

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to take this with the scepticism that any sales pitch would entail as it would never provide any binding right going forward. In addition the sales booklet that was introduced by Mrs Constanti as exhibit 4.2a is from the original sales literature presented to Mrs Lower. If all that was said by the sales team is to be taken as providing a right to rely on then the subsequent change in the estate plan and design, as also shown by the additional maps the objector introduces in their closing argument, would also create an expectation that the estate would be built as shown in the exhibit 4.2a and this clearly is not the case.

c. Mrs Scott is quoted as "the provision of a number of public open spaces and maintained by the council." Firstly this is actually a truncation of her statement with a section in between talking of the fact there were a number of public open spaces and the fact they were used by her Children and Grand Children to play. Again the provision statement relates to the sales pitch to her as an original resident of Willow Brean in 1975 so should be treated with the scepticism any sales pitch would entail. In addition it is clear Mrs Scott and family have used The Green since then without challenge and without the belief that they needed permission to do so.

d. Mrs Webb is quoted as saying "the development was designed as an open plan estate with green space to enjoy and provide safe areas for children to play." The first point is that quote is proceeded by "I understood" showing there was clearly no formal agreement she was speaking about and any impression has come from a conversation to her, most likely in her process to purchase the property and sales maps she had at the time. The overall context here is she has been sold a plan and an impression is not sufficient to create a right implied or otherwise.

e. Mr & Mrs Wheatcroft are quoted as "always assumed that this was public open space as this was the original plan." As clearly stated there is no actual overt act mentioned to create a right to use the land and this is one line out of a one page statement that talks about substantial and long term use of The Green since her family first moved onto the estate back in the 1970's.

135. In further support of the case on the existence of an implied licence the objector relies on the fact that public open spaces were laid out by the developer on the estate (which the objector says at para.63 would have been part of the original planning application and approved plans – for which there is no direct evidence) which were subsequently actively managed by the borough council for public recreation (including the provision of signage by the

authority in relation to the green). In para.65 the objector also speaks of the implied licence or permission being 'communicated through the historical transfers and plans for the development of the estate'. The objector goes as far as saying that the local authority would not have maintained the land (para.56) 'had there not been a clear right from the developers for residents to use it as open space and an obligation on the Council to maintain it at their expense', for which, I might add, there is no evidence as the inquiry was presented with no records about this (which I gather are no longer available in the archives of the local authority).

136. The objector also says that the pavement crossing the green does not qualify for registration as, following its adoption as a publicly maintainable highway in August 1976, the use by local inhabitants of such land is by virtue of their public right of passage. I understand the objector to be saying that any use of the green which is in the nature of highway use should be disregarded.

137. Finally, the objector disputes that qualifying use continued for the full period of 20 years to the time of the application in January 2017. The objector relies on the evidence that user declined once the local authority finally ceased to mow the grass in 2015. The objector says that it went back further than this. They say that user declined since at least 2012 'when the local authority reduced the frequency of its maintenance of the land' in support of which the objector relies on the email exchanges between Mrs Credgington-Jones and officers responsible for managing open spaces at the local authority in the period 2012-2015.

138 The objector also argues that the whole of the green has not in fact been used for the requisite period. I understand the objector's case to be that once:

(a) shrubs were planted in 2008 to deter ball games, and

(b) after the borough council stopped cutting the grass in 2015,

areas of the green became progressively inaccessible for any meaningful recreational use, and this was particularly true in the case of the southern area.

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139. In further submissions received on 6 December 2018 (now behind O/tab/1) the objector asserts a number of points in response to the applicants' closing submissions, the key elements of which are set out below.

(a) It is suggested that Mr Lyell had offered to give oral evidence but this opportunity had not been taken up by Mr Woolsey, nor, he asserts, was he been pressed by me to give such evidence before submitting a closing statement. As I indicated at the inquiry, it is not the duty of the registration authority to assist parties in the presentation or formulation of their cases.

(b) Although this did not appear in my own note of the evidence, it is suggested by Mr Woolsey that on his visit to the green in 2015 Mr Warren (who we were informed by Mr Lyell was acting as a consultant for Pelham Holdings Ltd) said words to the effect that the objector had forgotten that it owned the green. Mr Lyell makes the point that acting as a consultant for Pelham Holdings Ltd Mr Warren 'was not in a position to have a full understanding of all the property owned by the objector'. This is not an unreasonable proposition although I do not see that anything turns on this.

(c) Mr Lyell helpfully sets out the lengths to which the objector sought to obtain planning information from the local authority. The steps taken and their results are identified in appendix 1 to the submissions. It is to be noted:

(i) the local authority stated that the original planning permission was under reference 74/757 and was dated (and there is a typo here) 8 November 1974 (?);

(ii) no decision notice or application could be found for reference 74/757;

(iii) plans were provided relating to the affordable housing element under application reference 75/0557 (the drawings stamped 'approved' and referred to under reference 75/0557 included the annotation 'POS' over the green);

(iv) a decision notice and plans were provided for the planning reference 75/0557 where the application was evidently an amendment to an earlier consent under reference 72/678 (although a request was made for the documents under this reference the local authority stated that it did not match

the address of the previous applications although no plans existed within the archive).

(v) Mr Lyell disputes that he ever asserted that there was some form of dedication agreement. He does though say that 'some sort of agreement' would have existed with the developer which would have entailed the green being maintained by the local authority 'for forty years, without which they would have had no reason or internal authority to expend money on maintenance'. Mr Lyell goes on to say that the objector owns other parcels of land which are or have been the subject of maintenance by local authorities some of which have ended owing to budget cuts. He says that such agreements were common practice between local authorities and landowners. Despite this the objector produces no such agreement with the local authority in this instance.

Discussion

140. I propose to deal with the matter under the following heads:

(a) is the application supported by 'a significant number' of the inhabitants of the claimed neighbourhood?

(b) is the claimed neighbourhood a qualifying neighbourhood in law?

(c) have those inhabitants indulged in LSP on the green?

(d) did they do so 'as of right'?

(e) did they do so for a period of at least 20 years ending at the time of the application?

Significant number

141. The evidence is that the claimed neighbourhood contains 163 dwellings and that evidence in oral or written form in support of the application came from 77 households (or 47% of the total number of households). Mr Woolsey thought this might include well over 150 people and would be sufficient to justify registration.

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142. The applicants adduced oral evidence from 9 witnesses (I have excluded Mrs Hammond for these purposes) of whom 5 (and I am including Mrs Constanti who went to live as a child in Landen Park in 1974 and who returned to No.1 in 1998 before moving to No.21 in 2000) have lived within the claimed neighbourhood for at least 20 years (by the time of the application in January 2017).

143. In addition, the applicants rely on 19 written statements coming from 26 witnesses (including Danielle Smith who used to live in the area) of whom 11 have lived in the claimed neighbourhood for over 20 years and one has been there for 19 years (these witnesses come from Arne Grove, Westleas, Landen Park and Willow Brean).

144. Next, we have the results of the survey carried out in January 2017. A total of 82 households were canvassed for support in Landen Park, Arne Grove, Chesters, Westleas and Willow Brean (Down Close and Dene Close were excluded). Of the 82 homes visited those living at 77 households completed the survey document in a manner consistent with the oral evidence and written statements.

145. Finally, the applicants also laid out their evidence of use in the helpful spreadsheet at A/3.1 and at App/4. As already indicated, the spreadsheet discloses that 8 witnesses were using the green in the 1970s (and continue to do so), 9 in the 1980s, 16 in the 1990s, 17 in the 2000's and 25 in the 2010's.

146. It seems to me to be plain and obvious that the oral and other evidence advanced in support of the application to register was more than adequate to demonstrate a sufficiency of use for these purposes. It has already been indicated that the term 'significant' for the purposes of section 15(2) of the CA 2006 does not mean considerable or substantial. What matters is that the number of people using the land has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation rather than occasional use by individuals as trespassers. In my view, this test has been satisfied on the facts of this case. The evidence relied on (which comes from 47% of the total number of households) constitutes, in my view, a significant sample and is more than large enough to demonstrate

to a reasonable landowner that a right is being asserted by local inhabitants over his land.

Qualifying neighbourhood

147. The question (and it is one of considerable importance on this application) is whether the red line boundary shown on App/1 comprises a 'neighbourhood' within the meaning of section 15(2) of the CA 2006, it now being accepted by the objector that Horley West Ward would be a qualifying 'locality' within which such neighbourhood is to be found.

148. I have not only visited the area but have also studied, at some length, the available street imagery on *Google earth*. I am satisfied that I am as familiar as I need to be with the claimed neighbourhood to be able to deal with this issue which, in this instance, is by no means straightforward. This is not uncommon in urban areas where determining where one neighbourhood ends and another begins in areas (usually with interconnecting streets) which often have no name (which I accept is not a necessary requirement but if there is historical cohesiveness in respect of an area, one might expect it to have acquired some form of collective description). In this instance, the applicants opt not for the whole of the Landen Estate but only for that part of it (which, at a glance, could be roughly two-thirds of it, or perhaps even slightly less than this) which they maintain has the requisite level of cohesiveness which distinguishes it from the surrounding areas.

149. I also bear in mind that when Parliament amended the CA 2006 to permit registrations to take place by reference to 'a neighbourhood within a locality' it intended to make it easier to register TVGs, and did so by allowing them to be registered by reference to a concept that was not precise either as to definition or as to boundary (*Oxfordshire County Council v Oxford City Council* [2006] 2 AC 764, per Lord Hoffmann at [27]).

150. Although in *Paddico (267) Ltd v Kirklees Metropolitan Borough Council* [2011] EWHC 1606 (Ch) at [97] Vos J said that 'the term "neighbourhood" means a cohesive area which must be capable of meaningful description in some way', it has been said recently in the Court of Appeal (*R (NHS Property Services*

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Ltd) v Surrey County Council [2018] EWCA Civ 721 at [103]-[109] (Lindblom LJ)), that whether a claimed neighbourhood has a sufficient degree of 'cohesiveness' was a matter of impression which allows ample scope for differences of opinion. In other words, the analysis is not one which involves the application of any specific criteria or the application of any recognised method of assessment.

151. What the applicants have done is to say that their neighbourhood is best represented by the plan at App/1. Clearly such area is not only physically proximate to the green but is also where all the applicants' witnesses live. They also say that areas outside the claimed neighbourhood have their own areas of open space. However, it is not suggested by the applicants that no one living outside their neighbourhood is using the green. Indeed, Mrs Woolsey and Mrs Muggeridge conceded that people outside the claimed neighbourhood were using the green which I do not doubt includes children living in Chaffinch Way or elsewhere on the estate (no doubt whilst on their way home from the local primary or middle school located on the other side of Meath Green Lane close to the entrance with Landen park). What is being said by the applicants, however, is that the green is being used predominantly by those living within the claimed neighbourhood which is exactly what one might have expected. There must be some force in this in that the presence of posters on trees on both sides of the green inviting local residents to come forward to support the campaign for registration did not draw any or any active support from residents living outside the claimed neighbourhood.

152. Curiously, the actual choice of neighbourhood pre-dated the January 2017 survey. The scope of such survey was apparently constrained by the time available to those who carried it out. At any rate, the App/1 plan appears to have come into existence only after such survey was carried out which I think reinforced the view already taken by the applicants that they were right in their choice of neighbourhood.

153. I do not attach great weight to the fact that the claimed neighbourhood comprises market housing whereas other areas outside it include mainly higher-density affordable housing where the housing type is markedly

different. Clearly market housing exists outside the claimed neighbourhood. What does strike me as important, however, is the impression I obtained from the oral evidence that there seems to be what I would describe as a strong sense of community within the claimed neighbourhood of which the green is an integral part. I think this has been amply demonstrated, not only by these proceedings and the support which it has received from a large number of local residents living within the claimed neighbourhood, but also by the strong feelings which have been aroused over the years when it comes to the wellbeing of the green as a place where local residents and their children are able to recreate in safety. I think Mrs Parry put it very well when she said this:

> During the summer months the land 'provides a runway for the local children to run, play, scoot and cycle together and climb trees'. She also says that there is 'a real sense of community, and the quiet ends of the cul-de-sacs in Landen Park and Arne Grove and the green provide a safe space for children to meet up'.

Similarly, Mrs Constanti said that the green was an

> Integral part of the Landen Park community, bringing people together, having a laugh and a chat and was vital to residents.

Similar sentiments were expressed by other witnesses such as Mrs Muggeridge and Mr Tasker. Mrs Woolsey thought that the community had come together in the village green process. Mrs Parry said that she regularly stops for chats with her neighbours and other local residents around the green

> .. so we see it as an important focal point for our community.

154. We have also have:

(a) the intervention of Mrs Hammond in 2008 which led to support within the community for planting shrubs within the southern area of the green both to improve its appearance and to prevent over-exuberant ball games being played thereon by, I think, mainly older children;

(b) the efforts of Mrs Credgington-Jones (believing that she was acting in the best interests of the community) in (i) bringing pressure to bear on the local authority in the period 2012-15 to actively manage the green; (ii) in her efforts to get the objector to maintain the land and cut the grass in 2016; and

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(iii) in her failed attempt to stop contractors from removing the shrubs in the southern area of the green in October 2016;

(c) the intervention of Mrs Hammond, again in October 2016, when she met around 20 local residents on the green to discuss its future upkeep which ultimately led to the objector being approached with a view to the maintenance of the shrubs planted in 2008 which, as it turned out, only hastened their removal by the objector;

(d) the unsuccessful attempt by Mrs Parry to get a Tree Protection Order registered against trees on the green;

(e) the fact that some adjoining owners took to mowing parts of the green after 2015 even though they lacked proper mowing equipment for such a task; and

(f) the evidence of Mrs Muggeridge and Mrs Constanti of community events taking place on the green.

155. I consider that the boundaries of the claimed neighbourhood are reasonably coherent and have not been randomly chosen. I have already covered this but, put shortly, it is admittedly true that the claimed neighbourhood comprises most of the development carried out by Gough Cooper in the mid-1970s which was market housing consisting of detached and semi-detached dwellings of varying styles. The area edged in blue on the first of the layout plans in App/2 is, as I find, rightly excluded by the applicants from their neighbourhood since it has its own open space which I am sure is an important amenity for residents living in this part of the estate. As previously indicated, I think it reasonable that this open space and the land beyond it to the south and east (comprising Wither Dale and the closes off this road) should fall outside the claimed neighbourhood as I take the view that it has only a limited physical connection with the claimed neighbourhood.

156. I readily accept that the boundary at the northern end of Wither Dale is problematic. However, my view is that it is reasonable that it should fall at the rear of the properties fronting onto Chesters. What the applicants have done is to place only those properties with a frontage onto Chesters in the claimed

neighbourhood seeing as their witnesses live within these boundaries. I also think it reasonable that Wither Dale should not be within the claimed neighbourhood anyway as it is neither sufficiently proximate to the green, nor do any of the applicants witnesses live within this street. If anyone living in Wither Dale had been regularly using the green then they are likely to have seen the notices on the trees on both sides of the green encouraging support for the application to register and it is, I think, clearly material that no one in Wither Dale came forward to support the application. The same applies to the absence of active support in the case of the residents living in other streets outside the claimed neighbourhood.

157. The claimed neighbourhood omits Chaffinch Way, Wither Dale, Goldcrest Close, Bullfinch Close and Charm Close. Chaffinch Way and the streets to the south of Charm Close were originally developed by a local housing association and is a higher-density development comprising mainly terraces with on-street parking bays. This development followed the development of market housing by Gough Cooper. Chaffinch Way, Goldcrest Close, Bullfinch Close and Charm Close have, in my view, been rightly excluded from the claimed neighbourhood with which they have too tenuous a connection and, with the exception of Chaffinch Way, are all too far away from the green to form part of its immediate neighbourhood.

158. In the gap between Willow Brean and Chaffinch Way there is a third open space which is only a short distance along the footpath at the end of Downe Close. As previously indicated, it was my impression that the open space is located in a different vicinity to that in which the green is located.

159. Elsewhere the claimed neighbourhood rightly ends at the rear of the older housing fronting onto Parkhurst Road or Meath Green Lane or in the newer development in the backland areas behind such housing. I also consider it reasonable that dwellings on the eastern side of Willow Brean to the south of its junction with Westleas, including the whole of Dene Close, were included in the claimed neighbourhood. I have already indicated that this area is an integral part of the remainder of the market housing elsewhere within the claimed neighbourhood. The area is admittedly further away from the green

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but there are a handful of witnesses within this small area. I think the applicants were right to end the claimed neighbourhood on this side at the southern end of the Willow Brean cul-de-sac where it adjoins the open space at the end of Chaffinch Way. Although there is evidence that people living in Chaffinch Way used the green my view is that such use is likely to be limited. It is, I think, more probable that those living beyond Down Close (and it will be mainly children and dog walkers) will resort to the open space separating Chaffinch Way and Willow Brean for informal recreation rather than walk up to the green although I dare say that this must happen from time to time and even if it does it would not be sufficient to do undermine the applicants' case on neighbourhood.

160. It is now, of course, possible for reliance to be placed by an applicant on a neighbourhood or neighbourhoods within a locality. See *Leeds Group Plc v Leeds City Council* [2010] EWCA Civ 1438 at [27] where Sullivan LJ said that it would be a 'manifest distortion' of Parliament's intentions to hold that, if the evidence demonstrates that the land performed a more valuable recreational function for the local inhabitants of two or more neighbourhoods rather than merely one neighbourhood, that that would be a bar to registration.

161. It is, therefore, my view that the applicants have made out their case on the neighbourhood issue. I am content that the claimed neighbourhood shown on App/1 is justified on the evidence for the reasons given. I also take the view that it does not matter that there may be instances where qualifying use occurs by residents living outside this area which, as I find, is only likely to occur on an occasional basis and does not detract from the fact that the predominant use of the green is by those living within the claimed neighbourhood.

Lawful sports and pastimes on the green

162. I am satisfied that those using the green do so for qualifying purposes. I find that the main use is children's play and walking, with or without dogs. It is also clear that the green is a meeting place for local residents and I have no doubt that these activities justify registration. The nature of the claimed use was never questioned by the objector.

As of right

163. The issue under this head focuses on the objector's contention that an implied licence may be drawn from a combination of the following factors: (a) from the representations which would have been made by Gough Cooper's sales staff' to prospective purchasers that public open space on the estate was earmarked for the use of residents; and (b) the fact that open spaces were laid out for use by residents as part of the original planning approval for such development. It will be recalled that the objector speaks of the implied licence being 'communicated through the historical transfers and plans for the development of the estate'.

164. With one exception, I have no doubt that the use relied on by the applicants was 'as of right' and not 'by right'. The latter only arises, in my view, in the case of the pavement crossing the green. This is not disputed.

165. It is probable that it was a condition of the material planning permission that the developer should make provision for the open spaces identified on the approved plans and that this included the green. Nor do I doubt either that those living in the claimed neighbourhood will have rightly assumed that the green was available for their use for the purposes of informal recreation. However, it seems to me that the objector is nowhere near the starting gate in establishing that the conduct of the landowner in tolerating unhindered use of the green since the mid-1970s gave rise to an implied licence.

166. It seems to me that the provision of open space in the mid-1970s did not amount to overt conduct on the part of the landowner (such as might arise, for instance, by making a charge for admission or asserting his title by the occasional closure of the land to all-comers) which was intended to be understood by residents that they were being conferred with a permission to do something which would otherwise be an act of trespass. The case founded on the seller's purported representations comes nowhere near the test for an implied licence and, in any case, affects only that small handful of first-time purchasers. Further, the mere laying out of the green as an open space (no

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doubt pursuant to a planning condition) was no more than the provision of a facility for residents and their visitors which the landowner would be unable to withdraw if it formed part of the original planning permission (which I suspect it did). The fact is that until 2016 the objector and Gough Cooper stood by and acquiesced in the use of the green by residents and cared very little, if anything, about it as the local authority were managing it until 2015 when, with the advent of budgetary cuts and/or when the local authority realised that it did not actually own the green, objector realised that it needed to take stock of its position as landowner.

20 years use ending at the time of the application

167. The main issue under this head (as I understand it) is that the objector is saying that after the local authority stopped cutting the grass in 2015 (Mrs Parry said this occurred in the Spring of that year whereas Mr Woolsey recalls that the grass was last mown in early 2015) areas of the green deteriorated and became less accessible for ordinary recreational use, such that registration would not be justified on the basis that the whole of the green was not in qualifying use for the whole of the 20 year period ending in January 2017 when the application to register was made. The objector is, I think, also saying that although the local authority stopped cutting the grass its management of the green was in decline anyway after 2012.

168. In my view, the objector's case also fails under this head. Whilst it is admittedly true that Mrs Credgington-Jones wrote to the local authority in May 2012 complaining about the length of the grass, and again in 2013 about the state of the shrubs and yet again in 2014 about the grass which she said was about a foot high and an eyesore, it seems probable that these requests were acted upon. It was again, of course, when she wrote to the local authority in June 2015 complaining once more about the length of the grass (when it was said to be about two foot high in some areas), that she was met with the contention that it was no longer the responsibility of the local authority.

169. My findings on this issue are as follows.

(a) There is no evidence that, prior to 2012, the green was not being properly managed by the local authority.

(b) The local authority had to be reminded in May 2012 by Mrs Credgington-Jones (whose home looks out over the southern area) that the grass needed cutting and it clearly must have been judging from the photo at App/4 which shows the green on both sides to be in a reasonable state of maintenance in September 2012.

(c) In May 2013 Mrs Credgington-Jones complained to the local authority that the shrubs in the southern area needed to be weeded and tidied up from time to time. Such work was carried out although Mrs Credgington-Jones had been concerned that these beds were being neglected and were in need of weeding and general tidying up around the edges. The local authority wrote on 30 May 2013 saying that staff had been working on the beds that very day.

(d) By May 2014 Mrs Credgington-Jones was complaining that the grass on the green was about a foot in length – she considered it to be an eyesore and was concerned that the look of the area encouraged 'the school children/teenagers passing through to use the area as a rubbish dump'. Such work must, in all probability, have been carried out as the condition of the grass in the northern area in the photo at A/49 (showing Lily Woolsey on her bicycle) shows the grass to be short and the area looking very neat and tidy and it is, I think, unlikely that the southern area would have been in a materially worse state.

(e) On 18 September 2014 Mrs Credgington-Jones wrote to the local authority complaining that the green had not been cut even though grass cutting had been taking place elsewhere in or near to the estate. She complained that the grass 'is again high'. She also mentioned that two householders whose homes 'back onto the grassed area' were dumping garden waste on the green which she wanted stopped. I find that this request was, in all probability, acted upon as the email stream picked up again in June 2015.

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(f) In her email dated 8 June 2015 Mrs Credgington-Jones again complains about the state of the grass which she said was ‘about 60cm (2’) high in some areas), (and) full of weeds’. There was also some fly-tipping of garden waste going on. This email was met by the email from the local authority on the same date in which Mrs Credgington-Jones was referred to the objector and that they could be of no further help.

(g) It is probable that the grass on the green was cut at some point in the early part of 2015 as the photo at A/50 (showing Sadie Woolsey with a friend stood by the tree on the northern area) shows such area to be well maintained and the grass was clearly cut short.

(h) By April/May 2016 the grass on neither side of the green was being cut but the two photos at A/53 (showing Mrs Parry’s daughter playing on both sides of the green) discloses that the grass was probably less than a foot in length and would certainly have been accessible for children to play on (although not with their bicycles) and for walking with or without dogs.

(i) The application to register was made around 8 months later in January 2017. The evidence from the applicants’ oral witnesses is that recreational use reduced once the local authority no longer cut the grass. I also find that there were periods of time between cutting between 2012-2015 when the grass was too long such that it meant that the green was less used but not so as to prevent qualifying use taking place on either side of the green. I also find that the condition of the green, though materially worse in the period April/May 2016-January 2017, would still have been available for LSP and indeed continued to be used by children (albeit with appropriate footwear), dog walkers or as meeting place (including by children on their way home from school) (see evidence of Mr Tasker, Mrs Woolsey, Mrs Credgington-Jones, Mrs Parry and Mrs Martin who thought that the green was being used more often in January 2017) although as a destination for LSP it would, as I find, have been less attractive than it had been before 2015.

(j) I find that both sides of the green were available for use by residents for LSP up to the making of the application to register in January 2017 and

that qualifying use took place throughout the whole of the 20 year period up to the making of the application.

(k) I also find that the growth of the shrubs in the southern area in the period 2008-2016 did not mean that these areas should not be registered; in other words, that time would not have been interrupted in relation to such land. This is because I find that these shrubs (which are shown very clearly on App/4) were integral to the enjoyment of the whole of the green until their removal in October 2016. In other words, we are dealing with what was cultivated land which formed part of the function and attractiveness of the green on its southern side.

(l) My findings about the use of the green (on both sides) are assisted by what I saw for myself on my accompanied view. The northern area is still usable land for LSP, as is most of the southern area near to where it backs on to the rear of houses in Westleas. The remainder of the southern area is somewhat tussocky and not a particularly attractive destination for LSP but would still be perfectly usable by dog walkers.

Conclusion

170. Accordingly, it is my opinion that the applicants have, with one exception, established all that is necessary to be established under section 15(2) of the CA 2006 to justify registration of the green as a TVG.

171. The exception involves the omission of the pavement between Landen Park and Arne Grove falling within the area edged green on the plan at App/1.

172. Although highway land is not precluded by law from being registrable, qualifying use for TVG purposes on such land is markedly constrained by the right of the public to use such land as a highway. This arises from *DPP v Jones* [1999] 2 WLR 625 which held that the public may lawfully do anything reasonable on the highway which does not interfere with the public's right of passage.

173. What this means is that any highway use of the pavement must be discounted since it is not qualifying use and because the pavement is unlikely to have

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been used for LSP (or at least to any material extent) the registration of such land is not justified.

Recommendation

174. I recommend that with the omission of the pavement between Landen Park and Arne Grove which falls within the area edged green on the plan at App/1, the remainder of the area edged green should be registered as a TVG.

William Webster

3 Paper Buildings

Temple

Inspector **11 December 2018**