

APPLICATIONS:

**(1) BY MR MARCUS BURKE-WILLIAMS RECEIVED ON
14 AUGUST 2017 (1880)**

**(2) BY MRS AMANDA MOYLAN-JONES RECEIVED ON
17 DECEMBER 2018 (1882)**

**BOTH MADE UNDER SECTION 15(2) OF THE COMMONS ACT 2006 TO
REGISTER LAND NORTH OF A309, WEST OF WOODSTOCK LANE
NORTH, INCORPORATING STOKES FIELD NATURE RESERVE AND
ONE TREE HILL AND COMMONLY COLLECTIVELY KNOWN AS
"STOKES FIELD", LONG DITTON, SURREY**

REPORT AND RECOMMENDATIONS OF THE INSPECTOR

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KEY ABBREVIATIONS USED (others used are made clear in the Report):

IB-BW1:	Application Bundle for Application 1880
IB-MJ3:	Application Bundle for Application 1882
IB- MJ4:	Inquiry Bundles BW2 & MJ4 for the Applications
IB-B1:	Applicants' Expert Witness Bundle
IB-TW5:	Objector's Inquiry Bundle
LSP:	Lawful sports and pastimes
TVG:	Town or village green

LIST OF INQUIRY DOCUMENTS (ID)

- ID1: Outline of the Applicants' Case
- ID2: Skeleton Argument on behalf of the Objector
- ID3: Additional maps relating to Locality
- ID4: Additional photographs from Lucy Spiers
- ID5: Statement of Sue Wrigglesworth
- ID6: Additional photographs from Frances Fish
- ID7: Statement of Sam Hardwick
- ID8: Statement of Karen Powell
- ID9: List of dates of Mr Malyon's photographs
- ID10: Photographic evidence submitted by Jacqueline Bourne
- ID11: Photographs from Mrs Moylan-Jones
- ID12A: Decision Notice dated 11 July 2023 regarding the application (CRA Ref: 1890 dated 3 April 2023) under section 15(8) of the Commons Act 2006 by Elmbridge Borough Council
- ID12B: Delegated Report considering Application 1890
- ID13: Closing Submissions of the Objector
- ID14: Closing Note of the Applicants
- ID15: Site Visit Route showing points of interest with accompanying Note upon them
- ID16A: Agreed Plan of the Northern Quadrant, One Tree Hill and Cultivated Rose Garden Areas
- ID16B: Agreed red Line Plan of the Northern Quadrant
- ID16C: Agreed red line Plan of One Tree Hill Area
- ID16D: Agreed red line Plan of Cultivated Rose Garden Area
- ID17A: Spreadsheets of all Evidence Questionnaires in support of App 1880 and 1882
- ID17B: Spreadsheet of all Evidence Questionnaires (2017 and 2019) for The Early Years (users in Surname A-Z order pre-1999 onwards)

1.0.0 INTRODUCTION

1.0.1 I was instructed by the Surrey County Council in its capacity as the Commons Registration Authority ('CRA') to hold a non-statutory public inquiry to consider and to make recommendations to it on the applications to register land as a town or village green ('TVG') pursuant to section 15(2) of the Commons Act 2006 made by:

- (1) Mr Marcus Burke-Williams received on 14 August 2017 (CRA Ref:1880);
and
- (2) Mrs Amanda Moylan-Jones received on 17 December 2018 (CRA Ref: 1882).

1.0.2 The Applications were objected to by Elmbridge Borough Council, Taylor Wimpey UK Limited ('Taylor Wimpey') and D. and C. Trigg.¹ However, only Taylor Wimpey appeared in support of their objection at the Inquiry.

The Scope of the Applications and Considerations Arising

1.0.3 Both Applications relate to land at North of the A309, West of Woodstock Lane North incorporating Stokes Field Nature Reserve and One Tree Hill and commonly collectively known as "Stokes Field", Long Ditton, Surrey. However, it is important to note at the outset that:

- (1) Application 1880 was amended to exclude the southern part, owned by Taylor Wimpey UK Limited ('the Taylor Wimpey Land'), of the overall original application land. That was to reflect the fact that a trigger event within paragraph 3 of Schedule 1A to the Commons Act 2006 (identification of the land for potential development in a draft development plan document) had occurred prohibiting an application to register that land as a town or village green ('TVG') by reason of section 15C of that Act.

¹ As referenced in Section 2 below at para. 2.0.10.

- (2) However, a corresponding terminating event occurred which meant that an application on the Taylor Wimpey Land was no longer prohibited and Application 1882 included that land as well as the northern part of the overall site, the Nature Reserve, owned by Elmbridge Borough Council ('the Borough Council Land').² There is a slither of land between those different ownerships within the land comprised in Application 1882, the property title of which is unregistered and the ownership of which is unclear ('the slither of land').
- (3) Before the close of the Inquiry the Borough Council Land was registered as a TVG following that Council's application (CRA Ref: 1890 dated 3 April 2023) under section 15(8) of the Commons Act 2006 (see ID12A and ID12B). For clarity, it should be noted that:
 - (i) Registration 1890 does not include what is referred to as the Cemetery Extension Land, located to the west of the existing cemetery and within both Applications; and
 - (ii) The existing cemetery is outside the land in both Applications.
- (4) The Applicants and Objector agreed at the Inquiry therefore that the Application that needs to be addressed is now in substance only Application 1882 and only that part of that Application which relates to the Taylor Wimpey Land (but also including the slither of land). I deal with the procedural implications of this in the Conclusions and Recommendations section of this Report, section 5 below.
- (5) Furthermore, the parties are in dispute only over part of the Taylor Wimpey Land. For ease of reference this is best seen from the agreed (as I understand) plans ID16A- ID16D provided to me after the close of the Inquiry. The Taylor Wimpey Land has been notated in three sections – One Tree Hill Area (hatched red), the Northern Quadrant (hatched

² See IB-MJ3 at pp.26-27 confirming that the corresponding terminating event relating to the draft development plan document occurred on 16th December 2018.

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green) and the Cultivated Rose Garden Area (hatched blue). The agreed position between the parties is that:

- (i) One Tree Hill Area satisfies the statutory criteria for registration;
- (ii) However, the Cultivated Rose Garden Area does not;
- (iii) The only area in dispute is therefore the Northern Quadrant.

1.0.4 This Report therefore addresses in particular the Northern Quadrant and the evidence and issues relating to that area. However, notwithstanding the agreed position between the parties, the CRA will of course need to satisfy itself on the agreed position in respect of One Tree Hill and the Cultivated Rose Garden Areas. I explain in my Assessment (in section 4 below) why I agree with the agreed position of the parties on those areas having regard to the evidence assessed against the statutory criteria within section 15(2).

Procedural and Formal Matters

1.0.5 To help to ensure the fair and efficient running of the Inquiry, I provided Directions dated 9 February 2023 to the parties with regards to the procedure to be adopted at, and the provisions of the necessary documents in advance of, the Inquiry.

1.0.6 The Inquiry sat from Monday 24th until Friday 28th April 2023 and then again on Friday 21st July at Long Ditton Village Hall, 2 Ewell Road, Long Ditton, Surrey KT6 5LE.

1.0.7 The Applicants were represented by Paul Wilmshurst of counsel who called one expert witness and twenty-five local witnesses including the two Applicants, Mrs Moylan-Jones and Mr Burke-Williams.

1.0.8 The Objector was represented by Michael Manley KC who called two witnesses.

1.0.9 At the outset I make it clear, as I did at the Inquiry, that the merits of the use of the land for recreational purposes, whether in themselves or compared to some alternative use of the land, are of no relevance in determining these

Applications. For land to be registered as a TVG pursuant to an application under section 15(2), the Applicants must demonstrate on the balance of probabilities that the criteria in that provision are met.

1.0.10 I was grateful to the two advocates for focussing on the statutory criteria and the issues arising from them. I would like to thank them both and the witnesses of both parties for the assistance provided to the Inquiry and the courtesy shown to me by all throughout. This assisted in the efficient and well-mannered nature of the Inquiry which is a credit to both parties.

1.0.11 It is also a credit to the officers of the CRA who have greatly assisted me and the parties throughout. I am grateful to them all. However, I should make it clear, that I have written this Report and reached the assessments set out within it independently of the CRA and any of its officers and the CRA will determine the Application taking account of this Report, including my conclusions and recommendations. I have not discussed the merits of any of the evidence provided or submissions made at the Inquiry with any officer or member of the CRA.

Site Visits

1.0.12 As I again informed the parties at the Inquiry, I had visited the Application Land and area prior to the Inquiry to assist me in understanding the evidence given and submissions made. I also visited the area surrounding the Application Land during the Inquiry. However, my visit of the site itself prior to the Inquiry was somewhat restricted by the wet and difficult ground conditions in parts. I made an accompanied site visit on the morning of the sixth and final day of the Inquiry, Friday 21 July 2023. I was accompanied by the Advocates, the two Applicants and Mr James Malyon on behalf of the Objector. The ground conditions were much improved and we carried out a very informative inspection of the Nature Reserve, Northern Quadrant and the One Tree Hill Area and saw the main features referred to during the Inquiry. The Applicants provided me and the Objector with a plan of the "Site visit route" which although not strictly adhered to was largely followed. It usefully points out the

features referred to during the Inquiry, although in fairness to the Objector I have been careful to use my own notes of the evidence referred to in the note on the points of interest also provided by the Applicants.

Layout of the remainder of the Report

1.0.13 Against that Introduction, the Report is now set out as follows:

2. The Applications and supporting evidence
3. The Objections and supporting evidence
4. Assessment
5. Summary of conclusions and recommendations

2.0.0 SUMMARY OF THE APPLICATIONS AND SUPPORTING EVIDENCE

The Applications and Original Evidence in Support

Application 1880

- 2.0.1 As noted above, Application 1880 was made under section 15(2) of the Commons Act 2006 by Mr Marcus Burke-Williams being received by the Registration Authority on 14 August 2017. The Application was advertised in the local press and a notice was posted on the site allowing a period of 8 weeks for representations from 23 April 2021 to 14 June 2021 in accordance with regulation 5 of the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007.
- 2.0.2 The Application as originally made related to the Borough Council Land largely comprising a Nature Reserve as well as the land to the south of that owned by Taylor Wimpey. However, due to the occurrence of a trigger event under section 15C of, and Schedule 1A to, the Commons Act 2006, as explained in the Introduction, the Application was amended so as to exclude the Taylor Wimpey Land.
- 2.0.3 As explained in the Introduction, the Borough Council Land has now been registered as a TVG pursuant to section 15(8) of the Commons Act 2006.³ This Application therefore is in substance of no effect and can be treated as withdrawn, as agreed by the Applicant. Accordingly, it is not necessary to provide any further details of it at this stage other than to note that there were 105 Evidence Questionnaires provided in support of that Application.⁴

Application 1882

- 2.0.4 This Application was made by Mrs Amanda Moylan-Jones also under section 15(2) of the Commons Act 2006 and received by the CRA on 17 December 2018. The Application covers both the Borough Council Land and the Taylor

³ ID12A.

⁴ As confirmed in para. 6 on p.2 of the Closing Note of the Applicants (ID14).

Wimpey Land, as the latter was the subject of a terminating event (the expiration of two years from the publication of the draft development plan document) in relation to the previous trigger event which had led to Application 1880 being amended to cover just the Borough Council Land as referred to above. It also covers the slither of land.

2.0.5 The original Application Land is described in the Form 44 (section 5 on p.5, IB-MJ3) as:

"Land North of A309, West of Woodstock Lane North, incorporating Stokes Field Nature Reserve and One Tree Hill and commonly known as "Stokes Field".

It is delineated by a red line on Plan A (at IB-MJ3, p.12).

2.0.6 In section 6 of the Form (IB-MJ3, p.5) the Locality or neighbourhood within a locality was stated as:

1. *The locality of the ecclesiastical parish of St. Mary in Long Ditton; alternatively*
2. *The locality of the ecclesiastical parish of St. Christopher in Hinchley Wood; alternatively*
3. *The locality of the electoral ward of Long Ditton (of the Elmbridge Borough Council); alternatively*
4. *The locality of the electoral ward of Hinchley Wood & Weston Green (of the Elmbridge Borough Council); alternatively*
5. *The neighbourhood of Long Ditton and the neighbourhood of Hinchley Wood within the locality of the County of Surrey; alternatively.*
6. *The neighbourhood of Long Ditton and the neighbourhood of Hinchley Wood within the (a) localities of the ecclesiastical parishes of St. Mary in Long Ditton and St. Christopher in Hinchley Wood or (b) localities of electoral wards of Long Ditton and Hinchley Wood & Weston Green.*

The Neighbourhoods of Hinchley Wood and Long Ditton are shown on Map B (at IB-MJ3, p. 14) which highlights a shaded area of changes to the ward boundaries.

2.0.7 The Application is made on the following basis, as summarised in Section 7 on page 6 of the Application Form (Form 44- IB MJ3, p.6):

Please see full statement and appendices attached. Summary below...

The application land has been, and still is, used on a daily basis by qualifying users from all generations, including children, teenagers, adults, seniors and families, as well as social groups, such as, Cubs and Guides for a wide variety of pastimes. Qualifying use has been carried out over the land for far in excess of 20 years and continues to do so at the date of this application. The land is and has been in general use by a significant number of inhabitants of the localities and/or neighbourhoods described in section 6 for informal recreation, which includes (and has included) a variety of lawful sports and pastimes such as dog walking, walking without dogs, running, cycling, horse riding, wide games, fruit picking, socialising, picnicking in the summer and tobogganing in winter. It has also been used for bird watching, photography and art.

The qualifying use has been done without force, secrecy or permission and to the best of the Applicant's knowledge there have never been any signs on the land to prevent its use.

In respect of the neighbourhoods of Long Ditton and Hinchley Wood referred to in section 6, they are villages and as such have well defined boundaries. They both have a strong community feel and identity. The full justification statement attached contains more detail about both of these neighbourhoods.

The case for registration is demonstrated by the evidence contained within the evidence questionnaires. The applicant intends to collect more evidence questionnaires in due course and will supply them to the registration authority. In addition, should directions be made for this application in contemplation of a public inquiry, fuller witness statements can be supplied from selected and representative users.

2.0.8 The Full Supporting Statement referred to includes Map C (IB-MJ3, p. 15) which covers:

1. The Neighbourhoods of Long Ditton and Hinchley Wood
2. The area including 6 entrances, which I have seen, on my site visits, as shown on Plan C (IB-MJ3, p.22):

- ”1. Bank off A309, from the main road onto One Tree Hill
2. Track from the car park, running alongside the cemetery
3. “Kissing gate” and path at the back of the cemetery
4. Gap in the hedge on the cricket ground
5. Un-gated public footpath running between the allotments and the hockey club
6. Entrance from Bankside Drive

I am also aware that there are some entrances that I have not marked on the map, that are used regularly by individuals.

Please see questionnaires for details of these additional entrances.”

In the text under “About the Area”, it is also stated:

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“The area marked on the map shows the land subject to the application and includes two areas — known as Stokes Field Nature Reserve and One Tree Hill. To most local residents, there is no distinction between the two, and the whole area (commonly called Stokes Field) is already considered a public recreation space and is very much a part of life for residents of the two villages.”

3. User and pastimes

4. Four Appendices:-

- (i) Google Earth image of the land
- (ii) The Elmbridge Countryside Brochure created in 2007 relating to Stokes Field Nature Reserve
- (iii) Users’ photographs
- (iv) Historical photograph.

2.0.9 There are 400 evidence questionnaires in support of this Application. These have been very helpfully analysed in the spread sheets provided by the Applicants.

2.0.10 Copies of the Form 45 were sent by the CRA on 21 April 2021 to the Applicant for displaying on and around the Application Land.⁵ Notice of the Application was placed in the Surrey Advertiser on 23 April 2021.⁶ As a result objections were received from:

- C. Trigg and D. Trigg⁷
- Gavin Ramtohal, Monitoring Officer, Elmbridge Borough Council⁸
- Taylor Wimpey⁹.

⁵ IB-MJ3, pp. 41-42.

⁶ IB-MJ3, pp. 43-44.

⁷ IB-MJ3, p. 46.

⁸ IB-MJ3, pp. 47-48.

⁹ IB-MJ3, pp. 49-57.

2.0.11 Additionally, representations in support of the Application were received from¹⁰:

- Robert Huxley
- Emma Murphy
- David Howorth
- Chloe Earl
- Samantha & Daniel Williams
- Emma Pericas Sims
- Stephanie Cartwright
- Emily Bagley-Duncan
- Lisa Djavadzadeh
- Katia Ray
- Michael Cartwright
- Rebecca O'Shea
- Barbara Waters
- Matthew O'Shea
- Tiziana Leone
- Siobhan Halliday
- Paul Edwards
- Leone Selwyn
- Bery Aird
- Kim Lyle
- Ryan Beard
- Sue Rogers
- Mike Garrett
- Eilish & Duncan Mackay
- Sue Offen
- Sarah and Ian Adamson
- Angela Edwards
- Dominique Withey
- Haydan van der Berg
- John Thompson
- Erica Taylor

¹⁰ IB-MJ3, pp. 61-79.

- Vicky, Isaac and Sophie Gray-Cottrill
- Emma Rising
- Kim Jones
- Marcus Raja
- Chris Raja
- Paul Ray
- Jane Burgess
- Marion Burgess
- Anna Coleman
- Peter F Pye
- Sasha Davies
- Rodney Whittaker
- Antony Cooper
- Paul Lock

2.0.12 The Applicants responded to the Objections on the 6th January 2022 to the effect that it appears that there is dispute of fact as to the quantity and quality of the claimed user which could only sensibly and reasonably resolved by the holding of a public inquiry.¹¹

Oral evidence in support of the application

2.0.13 The following twenty-five local witnesses provided oral evidence at the Inquiry, called by the Applicants' counsel Paul Wilmshurst:

- Aileen Widdowson
- Alan Pemberton
- Amanda Moylan-Jones (Applicant for 1882)
- Antonia Izard
- Claire Watt
- Emma Rising
- Frances Fish
- Gary Hardwick

¹¹ ID-MJ3, pp. 81-86.

- Helen Robinson
- Helen Sawyer
- Jacqueline Bourne
- Jillian Fletcher
- Joanna Williams
- Kate Holgate
- Leonard Hards
- Lisa Currie-Smith
- Lucy Spiers
- Lucy Truman
- Marcus Burke-Williams (Applicant for 1880)
- Rachel Warren
- Rebecca O'Shea
- Rodney Whittaker
- Sue Rodger
- Susan Proctor
- Victoria Hart

2.0.14 The Applicants also rely upon the evidence of Christine Cox BA, MA, MCIfA, FSA Director of Air Photo Services Ltd., an expert in aerial and satellite imagery interpretation, who provided oral evidence to the Inquiry. Ms Cox's Report is IB-B1.¹²

2.0.15 Thirty-two local witness statements were provided (in IB-MJ4 as listed at p.4 and the Supplementary Bundle MJ4). I have taken into account the seven written statements of those who did not give oral evidence, namely:

- Christopher Collins
- Susan Offen
- Victoria Baker
- Susan Evans

¹² We were also provided with digital versions of the dated aerial and satellite images, and a PowerPoint version of the images.

- Martin Delaney
- Joanna Cobley
- Erica Taylor

2.0.16 The Applicants also provide a link (at section C on p. 602 of IB-MJ4) of a map of the location of those providing the Evidence Questionnaires for each Application. They also provided a list of a legal authorities (at Section D on p. 603 of IB-MJ4).

The Applicants' Representations

2.0.17 The Applicants' contentions on the issues that arise were set out in the following (but as presented and added to orally at the Inquiry):

- (1) Outline of the Applicants' Case (ID1)
- (2) Closing Note of the Applicants (ID14).

2.0.18 I have summarised these under the issues identified and addressed in my Assessment in section 4 below and taken them into account in my assessment of the issues therein.

3.0.0 SUMMARY OF THE OBJECTION AND SUPPORTING EVIDENCE

The original objection by Taylor Wimpey

3.0.1 The Objection to Applications 1880 and 1882 was made on behalf of Taylor Wimpey by Eversheds Sutherland (International) LLP and dated 14 June 2021.¹³

3.0.2 The main points initially raised in the Objection in relation to Application 1880 related to:

- (1) The land is owned by Elmbridge Borough Council and the majority of it is designated as Stokes Field Nature Reserve. It is therefore owned by the Council for a statutory purpose under the National Parks and Access to Countryside Act 1949. Any use of this land by members of the public is "by right" and not "as of right".
- (2) In relation to the land in the Borough Council's ownership that is outside of the designated Local Nature Reserve, it is understood that is open space used in connection with adjacent leisure facilities, and specifically a cricket ground.¹⁴ Use of this by members of the public is "by right" and not "as of right".
- (3) Further, any general recreational use of the Borough Council's Land would be inconsistent the purpose of the land being designated and held as a nature reserve under the 1949 Act.

3.0.3 In relation to Application 1882, Taylor Wimpey objected on the following basis:

- (1) The application fails to satisfy all of the requirements in section 15(2) of the Commons Act 2006.

¹³ See para. 2.0.10 above.

¹⁴ This area of land was not in any event pursued for registration and are not included within the section 15(8) registration – ID 12A.

- (2) The Council and Taylor Wimpey land are bisected by a track running west from the eastern boundary. The Council actively encourages the public to use the Nature Reserve for recreation and to experience nature.
- (3) The application forms submitted with 1882 refer to use of the 'land' as a whole, with very little distinction as to the respective parts of the land on which the activities claimed have been carried out.
- (4) It is therefore unclear to what extent the use of the application land claimed relates to that part owned by Taylor Wimpey.
- (5) The Taylor Wimpey land can itself be considered to have two constituent parts as shown in blue and green on Plan A, accompanying the Objection as Appendix 1. The blue land may have been cropped as shown on aerial photographs, although two paths are apparent. It is acknowledged that there are trodden paths evident around, and one across, the blue land on the aerial photographs going back to 1998.
- (6) The green land was clearly being used for growing roses as shown on the photographs for some years from 1998/1999 and could not have been used for recreational purposes.
- (7) The position changed between 2007 and 2010 when the green land ceased to be cultivated by the rose nursery. It is not until after 2013 and by 2015 that some routes are apparent through that area. Also by then the grass was cut again on the blue land. Additional photographic evidence shows the same. So the criteria in section 15(2) cannot be established in respect of the green land.
- (8) The Applicants have failed to identify the locality and (if relied upon) neighbourhood (or neighbourhoods) relied upon. The Application Forms identify a total of 6 localities or neighbourhoods in the alternative. Without clarity on this it is difficult to assess whether any of the named localities/neighbourhoods satisfy the necessary characteristics for purposes of an application made under section 15(2). As it is not for the Objector or CRA to best guess in this regard, the Applications should be dismissed on this basis.

- (9) The site inspections commissioned by Taylor Wimpey over a lengthy period of time, although post-dating the application, indicate that there is limited use of the Taylor Wimpey Land, particularly in inclement weather and what use there is limited to use of the trodden paths for dog walking, occasional jogging and cut through. There is nothing to suggest that the pattern has changed over the years from either application. Whilst a very small number of other uses have been observed, these are not considered representative of a pattern, or a significant level, of use for lawful sports and pastimes being undertaken as of right over the requisite period of time.

Oral evidence in support of the objection

3.0.4 Mr Manley called two witnesses, each of whom had provided a statutory declaration and exhibits included within Inquiry Bundle TW5 (IB-TW5):

- (1) Mr Calum Nicholls, an enforcement agent currently employed by the HCE Group Ltd based at 141 Walter Road, Swansea, SA1 5RW.
- (2) Mr James Malyon employed by Taylor Wimpey UK Limited as Senior Strategic Land & Planning Manager for the South East Region.¹⁵

Submissions on behalf of the Objector

3.0.5 The Objector’s contentions on the issues were set out in (as presented and added to orally at the Inquiry):

- (1) The Objector’s Skeleton Argument (ID2)
- (2) Closing Submissions of the Objector (ID13).

3.0.6 The Objector also helpfully provided eleven legal authorities within section D Bundle IB-TW5.

¹⁵ Exhibits CN1-CN7 for Mr Nicholls and JM1 to JM7 for Mr Malyon.

3.0.7 As for the Applicants' contentions, I have summarised those for the Objector under the issues identified and have taken them into account in my assessment in the next section.

4. ASSESSMENT

4.0.0 The Statutory Criteria

4.0.1 The registration of a new village green is governed by section 15 of the Commons Act 2006 which provides as far as is relevant at this stage:

15 Registration of greens

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

(2) This subsection applies where—

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

4.0.2 The burden rests with an applicant to demonstrate on the balance of probabilities (i.e. that it is more likely than not) that each relevant statutory criterion is met. Given the serious consequences for a landowner, it is important and fairness requires, that each criterion is carefully considered on that basis.

4.0.3 Accordingly, in summary the legal test centres on the Applicants being able to demonstrate that:

- (i) "a significant number of the inhabitants..."
- (ii) "of any locality, or of any neighbourhood within a locality..."
- (iii) "have indulged as of right...."
- (iv) "in lawful sports and pastimes on the land..." ('LSP')
- (v) "for a period of at least 20 years"; and
- (vi) "they continue to do so at the time of the application."

4.0.4 For Application 1882, which has become the focus for consideration as referred to above and now further explained, the relevant 20 year period is that ending on 17 December 2018.

The Scope of the Issues

4.0.5 As referred to in the Introduction above (at paragraph 1.03), following the decision to register the land on 11th July 2023 as a TVG (see ID12A & 12B) owned by Elmbridge Borough Council, save for the Cemetery Extension Land, the Applicants and Objector agreed at the Inquiry that the Application that needs to be addressed is now in substance only Application 1882 and only that part of that Application which relates to the Taylor Wimpey Land.

4.0.6 For the avoidance of doubt the Applicants' position at the outset of the Inquiry was that:

*"The overwhelming majority of the application land, which is owned by EBC, has or will shortly be registered as TVG voluntarily. The Applicants do not intend to pursue registration of any of the remaining land owned by EBC. They would like to amend to delete that land from the applications. In the alternative they will not pursue any case in relation to this land."*¹⁶

4.0.7 This was confirmed at the Inquiry and it was confirmed that this position also applied to the Cemetery Extension Land, which was not part of the section 15(8) registration under CRA Ref: 1890. No other person suggested that registration should continue to be sought on that land and no one provided specific evidence to support qualifying use of that particular part of the Application Land. In those circumstances and given also that it is possible that this land is being held for a statutory purpose inconsistent with recreational use (although I have not seen evidence of this)¹⁷, in my view the public interest does not require further consideration of that land and I would recommend acceptance of the position agreed between the parties in terms of the Application land now to be considered by the CRA¹⁸.

¹⁶ Para. 4 on pp. 1-2 of the Outline of the Applicants' Case, ID1.

¹⁷ See point 5 of the Objection from the Borough Council dated 28 June 2021 at IB-MJ3, pp. 47.-48.

¹⁸ The Applicant rightly acknowledged that there is a public interest in the CRA reaching the correct decision, and that it must take reasonable steps to do so – see para. 11 on pp. 3-4 of the Outline of the Applicants' Case, ID1.

4.0.8 Furthermore, the parties are only in dispute over part of the Taylor Wimpey Land, namely the Northern Quadrant (hatched green on ID16A). The Objector's cross-examination of the Applicants' witnesses was accordingly directed to the use of that area.

4.0.9 The other two areas of the Taylor Wimpey Land are not in dispute between the parties in that:

- (1) The Objector considers that the One Tree Hill Area (hatched red on ID16A) qualifies for registration, given the evidence of qualifying use of that part of the Application Site. The Objector considers that all the statutory criteria are or, in the case of the locality/neighbourhood criterion, can be, satisfied for the One Tree Hill Area. That is a helpful, fair and realistic acknowledgment in my view based on the oral and written evidence as addressed further below.
- (2) The Applicants accept that the Cultivated Rose Garden Area (hatched blue on ID16A) does not qualify for registration, as the Objector has maintained from its original objection.

Given the evidence of Mrs Cox on this and the acceptance by several witnesses of the inability to use that land for qualifying recreational purposes before the early 2000s at the earliest, in my view the Applicants' concession on this part of the Application Land was also helpful, fair and entirely realistic.

4.0.10 There is one other area of land which is not in dispute between the parties but that should be noted for completeness. It is the slither of unregistered land (in the property ownership sense) between the Borough Council's Land and the Taylor Wimpey Land lying to the north of the Northern Quadrant ('the slither of land'). It lies along the southern edge of the land in Application 1880 and is

included in Application 1882.¹⁹ This slither of land is excluded from the section 15(8) registration.

4.0.11 The fact that the slither of land is not owned, or claimed to be owned, by either the Borough Council or Taylor Wimpey does not in my view invalidate the Applications. The Applications were processed in accordance with The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. There is nothing to indicate to me why the Applicants or CRA needed to take further steps to ascertain the owner of the slither. No party purporting to own or have any interest in that land has objected to or made representations on either Application.

The Determining Issues

4.0.12 As between the Applicants and the Objector, the determining issue is now whether qualifying use, rather than use akin to a right of way, has taken place on the Northern Quadrant throughout the qualifying period and at a sufficient level to be understood by a reasonable owner as the assertion of a TVG right such that this area should, together with One Tree Hill (and the slither of land), be registered as a TVG pursuant to Application 1882.

4.0.13 The other outstanding matter that the CRA needs to be satisfied on is whether, in relation to any of the land to be registered, the inhabitants using the land for qualifying purposes are inhabitants of "*any locality, or of any neighbourhood within a locality.....*". The Objector does not dispute that this requirement can be satisfied. However, the CRA nonetheless has to satisfy itself on this on the balance of probabilities, as with the other statutory criteria.

4.0.14 I now address these issues in turn.

¹⁹ The slither lies between parcels with registered title numbers of SY808556 (Elmbridge BC) and SY181004 (Taylor Wimpey). See para. 1.0.3(2) above.

ISSUE 1:

4.1.0 WHETHER ANY USE OF THE APPLICATION LAND WAS QUALIFYING AND SUFFICIENT USE

4.1.1 I will address this in the following order:

- (i) The Applicants' case
- (ii) The Objector's case
- (iii) Assessment of this issue.

The Applicants' Case

4.1.2 I have identified in section 2 above the details of Application 1882 and the supporting evidence relied upon. I have also taken into account the Applicants' evidence (oral, written and documentary), including as referred to in their Closing Submissions, as well of course of my own record and impression of the oral evidence, as explained below.

4.1.3 The Applicants' case on qualifying use emphasised, based on *R (on the application of Alfred McAlpine Homes Ltd v Staffordshire County Council* [2002] EWHC 76 (Admin), that the word '*significant*' does not mean a considerable or substantial number. What matters is that the number of people using the land must 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 trespassers²⁰.

4.1.4 As also seen from the *McAlpine* case, the conclusion under this head is a "*matter of impression*" for the Inspector at inquiry rather than being some kind of

²⁰ Para. 24 on p. 7 of the Outline of the Applicants' Case, ID1.

mathematical exercise. However, a number of factors were said to be evidentially relevant including:

- Evidence of earlier periods can be relevant to findings about later periods if there is nothing to suggest that there has been a material change of circumstances (e.g. gates locked or a change in the physical state of the land).
- The written evidence of those not cross-examined, where it is consistent with and supportive of oral evidence given to the inquiry.
- The accessibility of the green (e.g. the distance to the centre of town or whether there are footpaths leading to it).
- All the surrounding circumstances that can reasonably be used to support the conclusion reached, realising that the evidence will often be a patchwork that needs to be fitted together.
- In addition, in *Redcar* in the Supreme Court at [75] it was said that the recreational use must be "*reasonably be regarded as being the assertion of a public right.*" If the use is less than the assertion of a public right then it will not be of such a sufficient quantity or quality to put a landowner on notice that rights are being asserted over the land.²¹

4.1.5 It is contended that the overwhelming number of witnesses, witness statements and evidence questionnaires, together with Christine Cox's Report, highlighting intensive use, demonstrate that this requirement is easily met²².

4.1.6 Although the Applicant must prove qualifying use of the Application Land for the whole of the relevant 20-year period, this does not mean that the land needs to be in use 24/7/365²³.

4.1.7 The evidence produced demonstrates a range of qualifying activities have been enjoyed. It was anticipated that the main line of attack from the Objector would

²¹ Paras. 25-26 on p. 8 of Outline of the Applicants' Case, ID1.

²² Ditto at para. 27 on p. 8.

²³ Ditto at para. 28 on p. 8.

be relating to paths. While the Report of Christine Cox does establish well-worn and established paths, it also identifies paths that come and go from year to year. In addition to this, random access of the land might not leave a trace visible on aerial photographs. In this respect, the witness evidence which has been produced is very important and nearly all of the witness statements address the way in which the land was used. Taken together, it is suggested that a reasonable owner on the spot could not have failed to realise that village green rights were being asserted and would be established unless action was taken to prevent them.²⁴

4.1.8 The Applicants relied upon the approach in the *Trap Grounds* case at first instance (paras. [102]-[104]) of the Judgment of Mr J Lightman in terms of whether the use of a track or tracks will qualify as user for a LSP or is more akin to use as public highway. Reliance was also placed on the decision of Mr J Sullivan (as he then was) in *Laing Homes* at [102]-[110] who held that a useful approach was to ascertain the total use of the land and then to discount use that is incapable of being a lawful sports and pastimes.²⁵

4.1.9 The Applicants point out that when the *Trap Grounds* case went to the House of Lords Lord Hoffmann held at [68] that what had been said at first instance by Lightman J and by Sullivan J in *Laing Homes* was useful guidance but as each case turned on its own facts he would not opine with a “*degree of particularity which Parliament has avoided.*”²⁶

4.1.10 The Applicants recognise that the whole land has to satisfy the statutory requirements. However, as they point out, in approaching this question, a “*common sense*” approach is required: see *Cheltenham Builders Ltd* at [29]. They also point out that in the *Trap Grounds* case itself only 25 per cent of the total area was accessible to a hardy walker, but this was a decision based on the facts and not a principle of law. It is suggested that a useful test is: are the

²⁴ Paras. 37-38 on p.11 of the Outline of the Applicants’ Case, ID1.

²⁵ Ditto at paras. 33-34 on pp. 9-11.

²⁶ Ditto at para. 35 on p. 11.

non-used areas integral to the enjoyment of the used areas? This will be a matter of evidence to be explored at the inquiry.²⁷

4.1.11 In their Closing Note the Applicants submit that there is overwhelming quantity and quality of evidence justifying the registration of One Tree Hill relying on a real variety of different activities all over the land. They also state that although there were certainly tracks over the land, these did not always stay in the same place, they came and went, they crossed the land and were in some places quite wide according to witness evidence.

4.1.12 The Applicants also rely upon any lack of real opposition to the registration of this part of the land, maintaining that this is explicable and well found and demonstrates the strength of the evidence showing that the use of the land started from an early time.²⁸

4.1.13 They also rely upon the evidence of Christine Cox and her conclusion that the evidence presents a typical instance of continual use of the whole site for leisure pedestrian access and this site presents truly consistent evidence for leisure walking along well established routes over the period of the Claims.²⁹

4.1.14 The Applicants ask, "*Why then would the rest of the land be somehow different?*" and contend as follows with regard to this disputed area³⁰:

- (1) First, there was not a great event that suddenly increased the number of users using, for example, the rectangle in about 2002. What is clear is that there were, even at any early time, a great many users of this area of the land. Further, that these users were enjoying and continued to enjoy a variety of activities from bike riding to blackberry picking and from walking to dog walking and jogging.

²⁷ Para. 40 on p. 12 of the Outline of the Applicants' Case, ID1, and paras. 6.3 & 6.4 of Christine Cox's Report (IB-B1).

²⁸ Closing Note of the Applicants, ID14, para. 85 on p. 18.

²⁹ Paras. 83-84 on p. 17 of the Closing Note of the Applicants, ID14.

³⁰ Ditto at paras. 86-92 on p. 18-19.

- (2) Second, applying the guidance from *Trap Grounds* and *Laing Homes*, there is a compelling case to be made that the use of the Northern Quadrant (the rectangle and the corridor) qualifies for village green registration. The existence of the two main tracks in this area ought not be ascribed to the existence of a right of way by which people go from A-B. Even the use of these tracks intrinsically relates to the use of the rest of the land both because of the user off the track but also because of the enjoyment, by users, of the land off the track. This is apparent from the evidence.
- (3) A number of witnesses were called who had been using the land for a really long time. These “early users” included:

Gary Hardwick	From 1983 – more consistently from 1998
Alan Pemberton	From 1997
Helen Sawyer	Since childhood 1970, from 1984 and 1998
Sue Proctor	Since childhood 1968 – more from 2005
Antonia Izard	Since childhood 1960-1980 then 2002
Joanna Williams	1996
Victoria Hart	1999
Jillian Fletcher	1994
Sue Rodger	1991
Aileen Widdowson	1999
Len Hards	1970’s – recalls more from 2012 onwards

Of these the Applicants contend, Ms Sawyer, Ms Williams and Ms Fletcher were particularly helpful on the use of the Northern Quadrant (“rectangle” and “corridor”) in those early years (from and before 1998 onwards) – particularly about how much more open and “meadowy” it

was, allowing more use to be made of that part of the land and how it merged with the EBC "meadow" land adjacent to it.

- (4) Third, while it may be that the use of the rectangle changed over time as the land changed in its nature and character, as maintenance ceased and it became more overgrown, this does not mean that the land does not qualify for registration. There is no requirement that the land must be used in the same way across the whole qualifying period. The evidence of Ms Cox is, as explained above, consistent with this. There is also the use of the Northern Quadrant which is covered by trees.
- (5) Fourth, any reasonable landowner could not have failed to have recognised that, in content, a right was being asserted across all of the land. Not only was there significant use off the tracks and (later) a greater multiplicity of tracks, but those paths that existed were part of the wider use of the rest of the land. Very high numbers of witnesses explained the way in which they used the land overall and as part of a wider use of all the land. All over the area there was reference to the picking of blackberries and in some cases sloes.
- (6) Overall, the land has been used in a manner that a reasonable landowner would perceive the exercise of a right to indulge in lawful sports and pastimes across the entirety of the land.

4.1.15 This was supported by a summary of the evidence of the Applicants' oral witnesses and also by the statement of Mr Sam Hardwick, which the Applicants contended should be given as much weight as possible as he was uniquely a child willing to provide evidence of his use.³¹ The Applicants also explained why they considered that Mr Nicholls' evidence, in support of the Objector, must be weighed up with some reservation.³²

³¹ See paras. 64-67 on p. 13 of the Closing Note of the Applicants, ID14, as well as their oral additions at the time.

³² Ditto at paras 68-73 on pp. 14-15.

The Objector's Case

- 4.1.16 This is set out in the Skeleton Argument and Closing Submissions of the Objector, both as explained and added to orally at the Inquiry.³³ The Objector refers to Lord Hoffman in *R (on the application of Beresford) v. Sunderland CC* [2004] 1 AC 889 who at para. 2 noted that the registration of a TVG can have serious consequences for a landowner. Registration is no trivial matter. The onus of establishing that a site has become a TVG lies upon the applicant and the standard of proof is on a balance of probability.
- 4.1.17 An application has to demonstrate that the whole, and not merely a part or parts, of the site has been used, as of right, for lawful sports or pastimes for not less than 20 years to the date of the application (see *R (on the application of Cheltenham Builders Ltd) v. South Gloucestershire DC* [2004] 1 EGLR 85). A Registration Authority can register less land than applied for in the application.
- 4.1.18 The Objector's Skeleton Argument set out the legal principles to be applied in terms of assessing whether the whole of the application land has been used for LSP and the approach to assessing use of tracks on the land.³⁴
- 4.1.19 The Objector's Closing Submissions confirm that they do not contest that there has been use by a significant number of the inhabitants of a neighbourhood, or neighbourhoods, of the One Tree Hill Area over the qualifying period.³⁵
- 4.1.20 The Objector has focussed on the use of the Northern Quadrant and identifies the 20 year period of 18 December 1998 to 17 December 2018 as the key period for consideration and the key issue as whether the Applicant has established, on a balance of probabilities, that the whole of the rectangle/northern quadrant has been used for LSP over that period.³⁶

³³ See paras. 3.0.4-3.0.6 above.

³⁴ ID2 paras. 4-5 on pp. 2-4.

³⁵ Para. 1 on p. 1 of the Closing Submissions of the Objector, ID13.

³⁶ Ditto at para. 2 on p. 1.

4.1.21 The Objector identifies the key question as being how a reasonable landowner would have interpreted such user as occurred. When the user includes the use of track (or tracks) capable of supporting a presumption of a right of way, then as Lightman J observed at first instance in *Oxfordshire CC v Oxford CC* [2004] EWHC 12 (Ch):

“The answer must depend on how the matter would have appeared to the owner of the land...Recreational walking may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year.”³⁷

4.1.22 The picture is complicated in this case, the Objector states, by:

- (1) The fact that the rectangle lay between two areas which were generally used for LSP, namely One Tree Hill and the Nature Reserve. However, proximity alone cannot prove or raise a presumption of recreational use.
- (2) The number of paths over the Application Land as a whole, including the Northern Quadrant, have increased over time. Some paths have changed their character over time, for example the so called “blue route” running north/south through the Northern Quadrant is generally said to have been much wider in the past.³⁸
- (3) The use of the land, including the Northern Quadrant has increased over time. It appears to be widely recognised that use was increased as a consequence of the pandemic but even before that there was a notable increase in use (see Claire Watt and Lisa Currie Smith for example).
- (4) The character of the Northern Quadrant has changed significantly over time. It was grassland and any trees were individual at the start of the relevant period. However, there has been scrub encroachment and from about 2013/14 it appears that the area became overgrown by scrub so

³⁷ Closing Submissions of the Objector, ID13, at para. 2 on pp. 1-2.

³⁸ As shown on Mr Nicholls’ Exhibit CN5 (at IB-TW5 on p. 19).

that it became a destination for fruit picking both from paths (old and new) and occasional clearings (see for example Antonia Izard, Amanda Moylan Jones and Jillian Fletcher).³⁹

4.1.23 The Objector's case is that in the first few years of the relevant 20 year period (i.e. commencing on 18th December 1998) the use of the Northern Quadrant was confined to the use of two tracks which would have appeared to a reasonable landowner as being referable to the use of a right of way only used as a means of moving from the Nature Reserve to One Tree Hill or vice versa since:

- (1) The Nature Reserve has its own specific attractions as a recreational/educational resource and public use has been encouraged over a long period of time by the provision of seating for example.
- (2) One Tree Hill similarly has its own attractions as an open elevated space giving panoramic views.
- (3) However, the Northern Quadrant did not, and does not, possess any such qualities.⁴⁰

4.1.24 The Objector also relies upon Christine Cox's acceptance that a degree of caution is required when seeking to draw conclusions as to what causes tracks. The Objector further relies upon the lack of tracks other than the established ones on Ms Cox's Figure 1 (30/05/98), Figure 2 (23/09/98), Figure 3 (25/07/99) (save for small tracks noted to the west of the main (pink) track), Figure 4 (August 1999) (save for some evidence of small tracks but again with uncertainty to their provenance), Figure 5, Figure 6 and Figure 7 (with more small tracks but again with ambiguity as to what is behind this). Up until August 2000 (Figure 5) there is nothing in the aerial photographic evidence that

³⁹ Paras 3-4 on p. 2 of Closing Submissions of the Objector, ID13.

⁴⁰Ditto at para. 5 on p. 3.

established on a balance of probabilities use of any other part of the Northern Quadrant.⁴¹

4.1.25 The Objector also contends that the evidence of Ms Cox is generally consistent with that of those who knew the Northern Quadrant in 1998-2000.

Assessment of the use of the Northern Quadrant

4.1.26 I will now consider the evidence in support of the Applications and the Objection before setting out my assessment against the statutory criteria and conclusions on Issue 1.

The Evidence

The Expert Aerial Photography Evidence

4.1.27 When considering this evidence, it is important to recognise at the outset that:

- (1) Ms Cox carried out her analysis and assessment of the aerial photographs in isolation from the witness statements. This is stated to be to assist her in achieving an objective (“unled”) assessment of the photographic evidence. She visited the Site in the week before the Inquiry started back in April 2023, after having prepared her Report.
- (2) There are inevitably some limitations to such an exercise as Ms Cox herself pointed out and became clear. Those limitations include both lack of certainty over the origins of some markings seen on the ground on some photographs. It is often difficult to draw conclusions from the photographs themselves on some aspects even on the balance of probabilities.
- (3) Further, it has to be recognised that just because certain activities may not be shown or be clear from a photograph, that does not necessarily mean they may not have taken place – as Ms Cox explained that can for example be because of ground conditions, which may explain clear

⁴¹ Ditto at Para. 6 on pp. 3-4.

differences between certain photographs taken at different times; or it may be because certain activities took place under tree canopies and therefore not visible in an aerial photograph.

4.1.28 So, whilst analysis of aerial photographs is undoubtedly a useful exercise, in my view it should be considered with a degree of care in some respects along with all the other evidence in order to assist in obtaining an overall picture as to the likely nature and extent of activity on the relevant land over the qualifying period.

4.1.29 Turning to Ms Cox’s evidence itself, she concluded:

- (1) In all instances of observation, the site contains a persistent network of established pedestrian tracks and accesses which generally follow the same pattern since 1998, throughout the period of the Claims and are still present in 2018.⁴²
- (2) These tracks are supplemented by extensive smaller tracks between and around the established tracks over the main grassland areas of the site. Some of these tracks appear randomly each year according to the need for access between the main tracks, others are established smaller tracks between the larger established tracks over and around the site. Tracks also enter and leave the woodlands. This indicates ongoing access around and into the woodlands. There is evidence of access from the residential area to the west of the site.⁴³
- (3) This evidence presents a typical instance of continual use of the whole site for leisure pedestrian access. She said that she has considered aerial imagery evidence over many sites of this nature, and this site presents

⁴² Para. 6.3 on p. 66 of her Report, IB-B1.

⁴³ Ditto at paras. 6.4 - 6.5 & 6.7 on p. 66.

truly consistent evidence for leisure walking along well established routes over the period of the Claims.⁴⁴

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4.1.30 Her findings and basis for these conclusions are set out clearly in her Report and I will not repeat here save in respect of the following matters which Ms Cox highlighted in her oral evidence:

- (1) She had looked at 24 individual points in time in terms of access to the land, pre-eminently for walking on it, over the relevant 20 year period.
- (2) She used coloured spots rather than tracing to show established tracks, smaller tracks (which vary from season to season) and tracks into and around woods. She had not shown every single track, but typical tracks.
- (3) She considered, on the basis of her assessment of the aerial photographs, the site to be one that was holistically walked and thus the whole site was used as one.
- (4) When cross-examined about the green dot (small tracks) shown to the west of established access in the Northern Quadrant shown by a blue dot on her Figure 3 (25 July 1999), it was put to her that those tracks did not appear again in her Figure 4 (29th August 1999) a month later. It was suggested to Ms Cox that this could be caused by foxes or dogs from the nearby housing. In response Ms Cox referred to the small track shown by a pink dot. It was suggested to her that this was in very different locations. When asked why that was (“what had happened?”) Ms Cox said there could have been land use changes. She also said that because it was not visible did not necessarily mean that it was not there on the ground. She accepted that it was not conclusive. At this point we looked together at Figure 4 on Ms Cox’s computer and she again made the point that she had not marked all instances of what could have been tracks/access.

⁴⁴ Ditto at para. 6.8 on p.66.

- (5) Ms Cox, under cross-examination and in answer to a question from me, did accept that isn't easy to distinguish between whether a track is caused by an animal or a human⁴⁵.
- (6) She made the same point in respect of the difference between her Figures 4 and 5 (12 August 2000) with regard to the pink dot (small track) to the south-west on the Quadrant, namely that it may be ephemeral but it does not mean that it was not there.
- (7) When referred under cross-examination to the mauve dot in the top right hand corner of the Northern Quadrant on Figure 3 (an access into and around the woods), Ms Cox stated that it was near an access point but marking an access that enters the woods and becomes invisible because it is under the tree canopy.
- (8) When it was suggested to her in cross-examination that Figure 7 (17 May 2002) showed an "explosion of activity", with the main tracks as before but with more small tracks emerging, Ms Cox made the point that there was increased visibility and not necessarily increased activity. It was again put to her that this could be the result of increased activity which she said was possible but it was possibly an increase in the receptivity of the ground surface. She referred to differences in the vegetation having an effect on accessibility and visibility of tracks. Also, Ms Cox said, in August the ground is usually drier and less susceptible to showing individual use.

User evidence for the Northern Quadrant

4.1.31 There is significant evidence of how the Northern Quadrant has been used during the 20 year qualifying period. However much of this evidence, although certainly far from all, relates understandably to more recent years and the period after 1998/early 2000s.

⁴⁵ See also the Objector's record of this evidence on p.2 of the Appendix to the Objector's Closing Submissions, ID13.

4.1.32 With regard to that early part of the 20-year qualifying period, the Applicants in their Closing Note rely in part upon a number of witnesses who had used the land for what they describe as "*a really long time*" including:

Helen Sawyer

4.1.33 She has used the land since 1984 and 1998 but had used it as a child from 1970, when they moved to Long Ditton. Ms Sawyer is the partner of Gary Hardwick, who also gave oral evidence, which helps in understanding her reference to walking their greyhounds on the land.

She said that the Northern Quadrant (which she referred to as the meadows) was much more open when she was a child and since 1984, with a lot more bushes and trees being present since then at that time, but it was still much more open than today.

She would enter the land by the cemetery and walk up to One Tree Hill and then down to the Northern Quadrant. On occasions she would probably use a shorter route. Sometimes she would just go up One Tree Hill with the children. There was not just one way through to the Northern Quadrant when the children were young.

Before 1998, in 1984/6 they went on paths on the Northern Quadrant she said they would have left paths and the children would run around and play games. They entered on the right hand side of the Quadrant, where there were bushes. She did that with her mum a long time ago and couldn't remember how many times.

They moved back to the area in 1998, and she seemed very clear of the year. When asked whether she would have stuck to the paths, she said it was the same as before – with a camp in the trees to the east of the North Quadrant – there was an old deckchair there which is still there, certainly a couple of years ago. There was material across the floor (as I saw on the accompanied site visit).

She also referred to dog walking and using the left hand side path (the main pink route on Mr Nicholls' CN5) in the Northern Quadrant but depending on the time of the year. There were a few different tracks – and it would depend on how muddy it was.

On occasions they would pick blackberries in the Quadrant to the east of the main path, along Goats Lane and on the Nature Reserve. They picked as they went along. She said they were always a lot of people along the Lane and on the field. They would sometimes leave the path to get to bigger blackberries. They did so more in 1998/9 and when the children were young – on little tracks as pathways would have provided access to the blackberries. On the odd occasion they would see someone else picking blackberries.

Ms Sawyer also said that as at times they walked 7 greyhounds and they had to keep some away from and avoid other people.

When asked (in-chief) whether they would stick to the paths, she said no and that they would drift off everywhere. The children would take her to see camps (to the east of the Quadrant). They would go through brambles. They would walk through and wander around. They used to look for slow worms.

When asked (in-chief) whether she remembered anything happening that changed the way they used the land, she said that the only thing that changed around 2000 was the rose area, which they could get into sometime after then. Under cross-examination she agreed (having been referred to Ms Cox's Figures 1 & 7) that this would have been about 2002/3 and that in earlier years it was only that the owners would allow some people to walk through. This stopped, Ms Sawyer said, in around 2000/2001 as the owner's wife died.

She was also asked (in-chief) as to whether in 2002 anything happened around then that would have changed the way people used the land but was unaware of anything that could have.

When referred to Ms Cox's Figures 11 and 12 (under cross-examination), it was pointed out to her that no small tracks (beyond the main and other limb) were

visible⁴⁶. She replied that no they are not shown “*but I can assure you that they were there*”. This also applied to the early years of the qualifying period as was clear from her evidence, as the Applicants also point out.⁴⁷ It was then said to her that you may have used them but there can’t have been many people doing that. She replied that she had seen other people walking along those tracks, although they were not there all of the time. It was then suggested to her that the vast majority stayed on tracks which are well worn.

Jillian Fletcher

4.1.34 Ms Fletcher is a former police officer (having retired in March 2020) and now trains dogs, as we witnessed on the accompanied site visit. She has lived in Long Ditton since 1994. She has used the land at various times of the day and night, reflecting her hours of work whilst a serving police officer, and usually twice over a 24 hour period. She said that she had been on the land every hour, depending on her shift pattern. She had worked at Kingston Police Station from 1998-2004 and remembers that period well.

Although others had referred to the E-W path - running along the southern edge of the cemetery and across the land broadly between the Nature Reserve land and the Taylor Wimpey land - as Goats Lane, she was not familiar with that name and referred to it as the Graveyard Path. She knows the whole area as Stokes Field and the bottom open space as One Tree Hill.

She said that the Northern Quadrant was all flat grass when she started using it with a single path across it. When asked (in-chief) whether she stuck to the path on the Quadrant she answered that you can come in from all directions – in recent times you have to stick to the path but in earlier times it was very wide. This has happened in the last 15 years (given the rate of plant growth). The paths increased but you can now only use the pink route (on Mr Nicholls’ Exhibit CN5). The trees on the site were individual and you could walk through.

⁴⁶ See Ms Cox’s Report at pp. 52-53, IB-B1.

⁴⁷ Para. 19 on p. 5 of Closing Note of the Applicants, ID14.

She referred to travellers having built a paddock, having put willow fencing at the end (Susan Proctor also referred to horses and donkeys with the latter having come from the travellers' site). She also referred to football being played on the rectangle when it was flat, in the period 1998-2010.

Blackberries grow where the chippings are and to the east of the main path to the east of the Quadrant. She didn't know about the wild garlic but two ladies both had a bunch from the side of the farm, along the fence line – but she had not seen it.

With regard to One Tree Hill, she would not walk on the paths as she would rather be on the grass to clean her boots off. She said that kids were always up One Tree Hill, especially during the summer months and she referred to them playing football there. She saw a bird watcher and someone with an easel. There was bike riding, with humps being made on the paths. Children tend to go into wooded areas (north of the Quadrant). The Quadrant is now extremely difficult .

She said that the land is definitely used more now than when she had started to use it (back in 1994).

Between the bushes to the left (west) of the Northern Quadrant there was a path to One Tree Hill but it is now dense with blackberry bushes and generally overgrown. She referred to somebody camping to the east of the Quadrant and a sofa some 5 years ago.

She also referred to a huge oak tree which had been set on fire and kids going over humps from right at the top of the Hill. Kids also made dens in the area to the east of the Quadrant, although that is very dense now.

Joanna Williams

4.1.35 Miss Williams has known the land since 1996, having moved into the area then. She stated (in-chief) that she generally regarded the area of land as one piece of land, with the Northern Quadrant being part of One Tree Hill and part of the Nature Reserve.

She said that she would picnic where the Northern Quadrant was and it was then, in around 2000 when her son was little, open and green. She did so a few times and saw others. She said there were plants, like a field, with it being open and a huge contrast to the woods. Under cross-examination it was pointed out that her statement had not referred to picnicking.

Her son was born in 1999 (as I recorded, but the Applicants say 1998⁴⁸) and he liked to be out and about all of the time. He would dive through the undergrowth and “just see where you pop up”.

She couldn't remember the path through the Northern Quadrant but acknowledged that there must have been paths as people walked across it.

Miss Williams also referred to use of One Tree Hill and the Nature Reserve, referring to a rope swing near the hockey club now being broken (I saw the likely position of this on the Nature Reserve on my accompanied site visit).

Under cross-examination Miss Williams referred to others pausing on the Northern Quadrant, sitting down, although not picnicking. She said her main aim was to get to the top of the Hill. But she would definitely pause before going up the hill on a hot day and sometimes have a drink, sitting down.

Miss Williams said that the land is very strongly linked to children and dogs and that the usage over time stayed the same but by different people.

Gary Hardwick

4.1.36 Mr Hardwick has used the land since 1983. The use increased in 1988, when he had greyhounds (which his partner Helen Sawyer referred to as recorded above) and walked them on the land four times a day. With regard to the Northern Quadrant, he said that between 1998-2006 he had been around the whole thing time and time again. He said he covered every blade of grass.

⁴⁸ See para. 32 on p. 7 of the Closing Note of the Applicants, ID14.

He could not remember when the growing of roses in the Cultivated Rose Garden Area ceased.

Alan Pemberton

4.1.37 Mr Pemberton regularly used the land from 1997 to 2016. He was a keen runner using the land once or twice a week until injury prevented him from continuing in 2016. He tended to run in the evenings.

He used the more prominent track to the west in the Quadrant and the more diagonal track - the track with a yellow and blue dot on Ms Cox's Figure 10 (on p. 51 of her Report, IB-B1).

He said that the Quadrant Area was less scrubby than now in 1999 (having been referred to Ms Cox's Figure 3 on p.44 of her Report) but it still had the same type of undergrowth then, namely brambles.

When referred to the yellow dot (area of bare substrate) in the north-west corner of the Quadrant Area as shown on Ms Cox's Figure 1, 1998 (on p. 42 of her Report), he said that used to be a medieval barn.

When asked whether people always took the main routes through the Quadrant, Mr Pemberton said that they certainly used the paths but used to emerge more to the east. They used a wider area on One Tree Hill than he did.

In re-examination he was asked to compare the two tracks shown on the Quadrant as seen by the blue dot on Ms Cox's Figure 10, 2006 (on p. 51 of her Report) with Figure 1 (on p.42). he said that it looked like the path had moved across.

He had heard children to the right hand side of the path on the Quadrant. – they were in the scrubby land. He couldn't remember when he had heard children playing (under the tree canopy) but it was a long time ago – he hasn't run for seven years.

Sue Proctor

4.1.38 Although Mrs Proctor had known the land since 1968, it was not until 2005 that her regular use of the land began. She referred to various activities on the land including dog walking, dogs off the lead (including in the Quadrant), children playing on the Hill, and a lot in the Nature Reserve, school parties (with nursery children walking over the Hill in a crocodile formation). She had not seen children in the Quadrant recently, as it is now too overgrown. Sometime between 2005-2020 she would occasionally see children playing in the holidays in the Quadrant – she would meet people with pushchairs and children and dens all over the wooded area of the Quadrant – you would go down steps to get into the very large den in the south-east corner of the Quadrant (there over 5 years ago). There were also lots of dens in the Nature Reserve. She said she did tend to stick to a path in the Quadrant but if her dog went one way “*you would follow*”. Occasionally she would have to retrieve it.

Antonia Izard

4.1.39 Mrs Izard has known the land since 2002, save that she was born in Hinchley Wood in 1960 and familiar with the land until 1980, when she moved away. She is a wildflower enthusiast and (since about 2016) a birdwatcher. She considers the land as one continuous area, although she recognises the Nature Reserve now to the north of the Northern Quadrant.

She referred to a camp fire on the top of One Tree Hill, which provides a good viewpoint. Children would sit around there and fires were lit. She saw deer on the land in Lockdown, when the traffic had “stopped”. She referred to the Quadrant as being “*so horribly overgrown*”. She referred also to the slither of land on the right side of the Quadrant which would vary with the seasons and including bluebells and wild garlic. There would be honeysuckle growing in the trees; cranesbill, cow parsley etc.

She remembered, particularly prior to moving away, the Quadrant being much more open and a meadow and mown – you could then ramble over it but you could not do so now. It was not necessary to stick to paths and there were

times when the paths got too muddy to do so ("*hideously muddy*"). In 2002 the Quadrant was grassy and not as brambly as now, although that would die down in the winter. You could walk through it (after 2002). The path at the eastern side is new since her childhood.

With regard to the Cultivated Rose Garden, she recalls that roses were still growing in lines (and this being cultivated to the best of her belief) in around 2002.

Victoria Hart

4.1.40 Ms Hart moved to the area in 1999 and has known the land since then. She had her first child in 2002 and in 2016 she got a dog.

She said that the Quadrant used to be more open and had been less so since 2018, before which time it had been possible to use more of that area.

She uses the western end of the Quadrant to avoid mud, with seasonal changes in the land. Within the Quadrant she uses the path to the east. If it is not muddy she will venture away from the path. When young her children would always venture off. The land is shrubby and brambly and on a slight incline. They built camps in the trees to the east of the blue route. They used a rope swing when her sons were about 12 – this is in the triangular area in north-east corner of the One Tree Hill Area.

In good weather she would cross the grass, as paths are not well marked. In bad weather she would loop around the field. She said also that 50% of people would use the paths and 50% would go off them, conditions allowing.

They would pick blackberries near the tree lines in the south and east of the Quadrant and in the south east corner of, or possibly just outside of, the Application Land by the road, the A309 Kingston Bypass.

She said that you can, looking north-west, see to Wembley from the top of One Tree Hill.

Under cross-examination, Ms Hart agreed that the use of the land had increased since the Pandemic.

She told me that it was the man from the rose business who had put down the wood chip, that one or two witnesses had referred to⁴⁹.

Sue Rodger

4.1.41 Mrs Rodger had initially said that she mainly used pre-trodden paths but she had walked off those. She then put this use as being for 50% of the time. For others she estimated that for a third of the time they were off the paths, including children. She entered the land through Bankside and the Cemetery entrance.

She said that she walked in the Quadrant at least once a week – generally on the path but if the path gets too muddy she would venture off to get around the mud. This time of the year (April) that would be about 50% of the time. She said that she always used that Quadrant Area.

When asked how her pattern of that use has changed, she said that it had not changed that much. The grass got longer at times and recently has been cut back. There had not been much change in the 20 years she has been living here. She could not honestly remember whether the Quadrant was much more open in the 1990s than now.

She would use the land fairly frequently back in 1991 and she used to go with her young children. When asked how many paths she had used in the Quadrant she said all of them, about 6 and demonstrated this using the pointer and large screen – and corrected the number to 5.

She referred to Girl Guide/Brownies use, mainly on One Tree Hill and to recent geocaching (since Christmas 2022), but the latter was not on the Quadrant Area.

⁴⁹ See also the photograph provided by Victoria Hart, Exhibit VH2 on p. 599 of IB-MJ4.

She also referred to using the corridor on the east of the Quadrant and said that she had explored every path and non-path in the past 30 years.

She referred to blackberrying at the bottom of the Hill to the eastern edge by the Rose Garden.

She has done bird watching (in the wooded areas at the back of Squires but outside the Taylor Wimpey Land but not seen others doing that.

The Objector says that she said she had walked the blue path (i.e. Mr Nicholl's blue path) and stayed on it and she had seen people picking blackberries along the bottom of the Quadrant. The Objector contends that her evidence "*appears a little confused*".⁵⁰

Aileen Widdowson

4.1.42 Mrs Widdowson has lived in Long Ditton since 1999. She provided detailed evidence particularly with regard to the Long Ditton neighbourhood issue (as referred to further below under Issue 2). She also stated that the Northern Quadrant was "relatively well tended" until 2014/16 when it has become overgrown. She also provided some evidence of her use of the land since 1999 but which has been more so since 2014.

Len Hards

4.1.43 Mr Hards has known the land since the 1970s, having lived on Bankside since then but more so since 2012 when he retired and takes his daughter's dog there. He said his family, including his wife, used the land and more than him

He said under cross-examination that he picnicked in the Quadrant after probably 2012 but also before as well but not as often. He said he would see other picnicking on One Tree Hill before 2012 at weekends or on public holidays.

⁵⁰ See item 18 on p.6 of the Appendix to the Objector's Closing Submissions, ID13.

Of these eleven witnesses the Applicants contend that Ms Sawyer, Ms Williams and Ms Fletcher were particularly helpful on the use of the Northern Quadrant ("rectangle" and "corridor") in those early years (from and before 1998 onwards) – particularly about how much more open and "meadowy" it was, allowing more use to be made of that part of the land and how it merged with the EBC "meadow" land adjacent to it.

Other evidence in support of the use of the Quadrant

4.1.44 In addition to the oral evidence referred to above the Applicants had sought to persuade me to allow Mr Sam Hardwick to give evidence as a witness. Having also heard submissions from the Objector, who expressed concern about the lateness of such evidence and the potential for the need to re-visit certain evidence, I decided that Mr Hardwick's evidence should in fairness to the Objector and for the overall efficient running of the Inquiry be dealt with by way of a written representation and the Objector accepted that approach. Accordingly, I have considered and taken Mr Hardwick's statement into account as written evidence upon which he was not cross-examined.

Mr Hardwick moved to 13 Chalcott Gardens in 1998, when he would have been 11/12 years of age. However, before then he had regularly visited and spent holidays with his grandmother at 6 Chalcott Gardens.

He can recall using Stokes Field from about the age of 9 or 10 (1995) and did so regularly until 2013 when he left home, although he moved back temporarily in 2017.

He found remnants of camps that people had built in the past. These were all at the bottom of One Tree Hill. He and his sister and cousin started to build their own camp, their "base camp", starting under the tree line adjacent to the top end of the farm. This was their home for games they played – the rope swing, manhunt or wars. They also rode their BMX bikes to Stokes Field and would ride them around the woods in the Nature Reserve and built the ramps that have been referred to by others. Then extended ramps to the downhill

section of the land next to the farm (within the Northern Quadrant), as the hill made this perfect for that. They also lit small camp fires near their camp, despite their parents being against this. They took snacks and drinks to their camp.

They used an old piece of plywood to flatten their way through some of the thicker blackberry bushes to base themselves in some of the harder to get to areas as quite a few other children had discovered their original camp. That second camp was still being used, Mr Hardwick says, a year ago.

Although they used to use One Tree Hill as children, it was mainly the areas at the bottom of the Hill and the Nature Reserve that they used most. He did not see the other camps.

Mr Hardwick says that these activities took place for many years consistently until around 2002 when he left school, although he continued to use the woods for walking his dogs and introducing his younger brother and sister to the camps and areas he had used.

Finally, Mr Hardwick refers to seeing many different people of different generations using the areas for all different reasons – including dog walking, jogging, walking, fruit picking, drone flying, kite flying, bird watching/nature watching, camp building, bike riding, picnics.

4.1.45 In addition to the above oral and written evidence, an extensive number of evidence questionnaires, including photographic evidence has been provided (as referred to below).

Other evidence in support of the Application Land

4.1.46 Subject to the issue regarding the use of the Northern Quadrant between 1998/9-2002, there is no doubt in my view that the evidence relating to the Taylor Wimpey Land (as distinct from, but for many users, integrally linked to use of, the Nature Reserve) clearly demonstrates extensive overall use of that land including for walking, running, dog walking, blackberrying and other fruit

picking (sloes in particular), observation of nature, bird watching, tobogganing (particularly on the slopes of One Tree Hill), children playing and bike riding.

4.1.47 In support of that there was extensive oral evidence provided to the Inquiry relating to what we are now calling One Tree Hill (as shown on ID16A). In addition there is photographic evidence (other than that produced by Ms Cox).

4.1.48 Furthermore, as referred to above, there are an extensive number of questionnaires (well beyond the number of witnesses who provided oral evidence). I was provided with:

- (1) Spreadsheets of all Evidence Questionnaires in support of App 1880 and 1882 with 6 tabs as follows:
 - a. for 2017 (sorted in (i) scan order, (ii) Surname A-Z order and (iii) Years Usage order)
 - b. for 2019 (sorted in (i) scan order, (ii) Surname A-Z order and (iii) Years Usage order)
- (2) Spreadsheet of all Evidence Questionnaires (2017 and 2019) for The Early Years (users in Surname A-Z order pre-1999 onwards)
- (3) The spreadsheets that the Applicants have provided helpfully summarise the Evidence Questionnaires and do so by stating:
 - (i) The name and address of the user
 - (ii) The Neighbourhood – either Long Ditton or Hinchey Wood
 - (iii) The nature of their personal use
 - (iv) The years of usage
 - (v) Frequency of use

(vi) Date of the evidence questionnaire.⁵¹

4.1.49 It is correct to say that most of the evidence questionnaires in support of the Applications do not distinguish between the use of different parts of the original Application Land, particularly not with regards to the use of the Northern Quadrant.

The Objector's Evidence

4.1.50 As recorded in section 3 above, the Objector called two witnesses:

- (1) Mr Calum Nicholls, an enforcement agent currently employed by the HCE Group Ltd based at 141 Walter Road, Swansea, SA1 5RW. He was employed by Firstline Security Ltd as the Operations Manager, when they were engaged by HCE to carry out inspections of Stokes Field on behalf of Taylor Wimpey. He was instructed to focus his inspections on the land owned by Taylor Wimpey rather and not the Nature Reserve (see Mr Nicholls' Exhibit CN1 which is a plan of the relevant areas⁵²). He went to the Council Land "less than a handful of times (he also said less than 10 times) but had not recorded any of the activity there. He wanted to walk what a dog walker would walk.
- (2) Mr James Malyon employed by Taylor Wimpey UK Limited as Senior Strategic Land & Planning Manager for the South East Region.

The evidence of Mr Nicholls

4.1.51 Mr Nicholls carried out sites visits as detailed in his written evidence and explained orally by reference to his plan at his Exhibits CN4 (Trodden Paths Plan) and CN5 (Route Plan)⁵³. His routes covered both One Tree Hill and the Northern Quadrant. Under cross-examination he explained that a colleague had

⁵¹ See ID17A & B.

⁵² On p. 11 (PDF p. 13) of IB- TW5.

⁵³ The marked Aerial Photograph on pp. 17 & 19 (PDF pp. 19 & 21) of IB-TW5.

provided back up for him on roughly 10 to 12 occasions. Mr Nicholls said that overall they had carried out over 1,000 site visits⁵⁴. Notes of what was observed were recorded on his phone and inputted into the forms, which he explained had evolved, he had exhibited (see Exhibits CN2, 3 in Bundle TW5) when he was back at the office.

4.1.52 With respect to the Northern Quadrant, he used the pink route shown on CN5. When the weather was bad and the ground wet and muddy he wouldn't follow the pink route all the way around. The blue route on CN5 passes from the top of One Tree Hill through in what has been called the corridor at the Inquiry (on the eastern part of the Northern Quadrant as shown on ID16A)

4.1.53 In chief Mr Nicholls deleted paragraph 40 of his Statutory Declaration which had stated:

Having spent several months observing and walking the Site, it is not surprising to me that I observed people using any part of it other than the trodden paths on only 3 occasions (i.e. the bird watcher twice and picnickers). The Site is not easy to navigate, even in dry weather, in my view mainly due to the gradient of the hill and the height of the grass outside of the trodden paths. As shown on the map attached to this declaration at Exhibit CN7, the open section of the Taylor Wimpey land rises from 24-25 metres along the western boundary of the Site to 38 metres at its peak. A 14 metre incline, most of which was surrounded by high grass, is not the type of land would choose to enjoy sports and pastimes.

Mr Nicholls said, however, that the 3 occasions should be 10.

4.1.54 He said, under cross-examination, that the Hill Top area was great for dog walkers. He accepted that there was no location on the land where you could see everyone on it. It was put to him in cross-examination that the surveys only

⁵⁴ Para. 38 on p. 8 (PDF p. 10) of Mr Nicholls' Statutory Declaration, IB-TW5.

covered a small part of any day. He replied that they tried to vary the times of the surveys.

4.1.55 He said at one point that 100% of people would use a footpath. He had marked the orange paths as “pre-trodden paths” on Exhibit CN4. He accepted, under cross-examination, that it was possible to walk off the orange footpaths but said that he was not sure “why you would”. He was not aware of any other paths or routes. He had not seen any camps or rope swings on the Taylor Wimpey Land. He saw thick brambles but not blackberries. He saw the grass cut once a year but it was never cut shorter than 6 or 7 inches. The use of the land was mainly the area at the top of the Hill. He said everyone would follow a curved path and go out at the bottom of the Hill in the north-east corner. Some would wander. He didn’t see people running around on the Hill as it is quite steep. He wouldn’t call the area a park or country park – it is totally different. He would call it an abandoned field – no buildings, no toilets, no climbing frame.

4.1.56 Mr Nicholls said that the Nature Reserve was far better to walk in – it had benches, wider paths and was more enjoyable to be on. If he had a dog, he would walk there.

4.1.57 The Northern Quadrant was not usable in the winter – it was not maintained. – whereas the Council Land looked more maintained and had a couple of benches. Although he never saw anyone working on that land. He said that everyone in that area was on trodden paths, although he also said often there was no one on that area of the land. He would not use that area – it was a generally used by dog walkers and school children. He also said that when in the Quadrant parents held children’s hands because of the brambles.

4.1.58 He said that he thought that the use slightly decreased following the end of Covid, with people going back to work. When asked further why he thought the use of the land had reduced, Mr Nicholls said that the land was getting more overgrown and becoming less accessible given that it is not maintained.

The evidence of Mr Malyon

4.1.59 The purpose of Mr Malyon's evidence was primarily to produce various documents relating to the use of the Cultivated Rose Garden Area explaining that the use of large part of the Site for commercial cultivation of roses during the first part of the qualifying period was supported by the historic imagery.⁵⁵

4.1.60 The aerial photographs produced by Mr Malyon were agreed to be consistent with those provided by Mrs Cox. The Objector helpfully provided me with a list (ID9) of the dates of Mr Malyon's photographs for the avoidance of any doubt.

ASSESSMENT OF ISSUE 1

The Statutory Requirements

4.1.61 As seen from section 15(2) of the Commons Act 2006 (set out at para. 4.0.1 above), this issue relates to whether the Applicants have demonstrated on the balance of probabilities that:

- (i) "a significant number of the inhabitants..."
- (ii) "of any locality, or of any neighbourhood within a locality..."
- (iii) "have indulged as of right...."
- (iv) "in lawful sports and pastimes on the land..." ('LSP')
- (v) "for a period of at least 20 years"; and
- (vi) "they continue to do so at the time of the application."

4.1.62 In terms of the correct approach to the requirement for a "*significant number of inhabitants*", the position is summarised in Gadsden at 15-36 as follows (with my emphasis):

The words "significant number" were introduced into s.22 of the 1965 Act by s.98 of the 2000 Act and were retained in the 2006 Act. The purpose of the amendment in s.98 was explained by Baroness Farrington when introducing it:

⁵⁵ See para. 10 of Mr Malyon's Statutory Declaration on p. 322 (PDF p. 324) of IB-TW5 and his Exhibits JM5(a)-(f), JM6(a) & (b) and JM7(a)-(c).

“It makes it clear that qualifying use must be by a significant number of people from a particular locality or neighbourhood. That removes the need for applicants to demonstrate that use is predominantly by people from the locality and means that use by people from outside that locality will no longer have to be taken into account by registration authorities. It will be sufficient for a significant number of local people to use the site.”

In *R. (on the application of McAlpine Homes) v Staffordshire CC* Sullivan J concluded that the inspector had approached the matter correctly in saying that “significant”, although imprecise, is an ordinary word in the English language and needed no further definition. Whether the use had been by a significant number of local inhabitants was held to be very much a matter of impression. He said that the number might not be so great as to be properly described as considerable or substantial, and held that “a significant number” meant a number that was anything more than de minimis and sufficient to indicate that the land is in general use by the local community. The judge did however say that “it would be difficult to see how six out of 20,000 or one out of 200 could be said to be significant”.

Sullivan LJ said in *Leeds Group Plc v Leeds City Council* that only use by a significant number of the inhabitants of the locality or neighbourhood will suffice to satisfy the definition of a green. He said in that case that the use was clearly of such an amount and manner as would reasonably be regarded as the assertion of a public right. This echoed Lord Hope in *Lewis* who said that the use of the land must be “of such amount and in such manner as would reasonably be regarded as being the assertion of a public right”.

4.1.63 The qualifying users also have to be inhabitants of any locality or any neighbourhood within a locality. This is addressed below under issue 2.

4.1.64 There is nothing to suggest, and the Objector does not contend, that any otherwise qualifying use was not *as of right*, save possibly arising from the Objector’s reference to dens being by nature hidden/secretive⁵⁶.

4.1.65 The qualifying user has to be demonstrated for the whole land and not just part of it. However, that does not mean that every part of the land has to have been physically used. Just because parts of application land may not be accessible, or easily so, does not preclude their registration if they are in essence properly considered to be an integral part of the overall land.

⁵⁶ See Closing Submissions of the Objector, ID13, para. 9 on p. 6.

4.1.66 Given the change in circumstances as considered above, the parts of the original Application Land that are now sought for registration are limited to One Tree Hill and the Northern Quadrant (as shown on ID16A plus the slither of land), as the Nature Reserve is now already registered and the registration of the Cultivated Rose Garden Area is not pursued by the Applicants.

4.1.67 The Objector does not, as explained above, contest the registration of the One Tree Hill Area and the focus of much of the Inquiry was consequently on the remaining disputed part of the original Application Land, namely the Northern Quadrant. As noted above, the Objector characterised the key issue as whether the Applicant has established, on a balance of probabilities, that the whole of the rectangle/northern quadrant has been used for LSP over that period.⁵⁷

The approach to the assessment

4.1.68 I take into account the legal authorities referred to by both parties with regard to the correct approach when assessing evidence regarding the use. The Objector refers to *Oxfordshire CC v Oxford CC* (the Trap Grounds case) including the approach of Lightman J in the High Court and Carnwath LJ in the Court of Appeal [2005] EWCA 175:

"(e) Evaluation of evidence

113. Two particular points were raised: (i) the relevance, taken with the evidence of use of the tracks, of the finding that only about 25% (or less) of 'the scrubland' is reasonably accessible; (ii) the relevance of the existence or potential for the existence of public rights of way, in particular over the circular track.

114. Lightman J dealt with these issues at some length. However, I think the pith of his analysis can be found in two passages. On the first point, he said, at para.95:

'There is no mathematical test to be applied to decide whether the inaccessibility of part of the land precludes the whole being a green ... Greens frequently include ponds. They may form part of the scenic attraction and provide recreation in the form of, eg, feeding the ducks or sailing model boats. Further, overgrown and inaccessible areas may be

⁵⁷ See the Closing Submissions of the Objector, ID13, at para. 2 on p. 1.

essential habitat for birds and wildlife, which are the attractions for bird watchers and others.'

He urged the registration authority to take 'a common sense approach' in deciding whether, having regard to its physical characteristics, which may have changed over the 20 years, the whole of the land (or some separately identifiable part of it) satisfies the definition.

115. On the second point, he noted correctly that use for recreational walking is capable of founding a case of deemed dedication of a highway, unless merely ancillary to other recreational activities (*Dyfed County Council v. Secretary of State for Wales* (1989) P & CR275, CA (a circular way round a lake, used for swimming and bathing)). Where the recreational use claimed in support of a class c green included the use of an identifiable track capable of supporting a presumption of a right of way, he said, at para. 102:

'The answer must depend on how the matter would have appeared to the owner of the land.....Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year.'

4.1.69 The Applicants also refer to the *Trap Grounds* case and sets out paragraphs 102-104 of Lightman J's Judgment as well as referring to paragraphs [102] to [110] of the Judgment of Sullivan J (as he then was) in *Laing Homes v Buckinghamshire County Council* [2003] EWHC 1578 (Admin).⁵⁸

4.1.70 Consistent with the approach in those authorities, I assess this issue on the basis of how the use of the Northern Quadrant would have appeared to the reasonable landowner. As recorded above, the Objector's case is that in the first few years of the relevant 20 year period (i.e. commencing on 18th December 1998) the use of the Northern Quadrant was confined to the use of two tracks which would have appeared to a reasonable landowner as being referable to the use of a right of way, only used as a means of moving from the Nature Reserve to One Tree Hill or vice versa.

⁵⁸ At paras. 33-36 on pp. 9-11 of the Outline of the Applicants' Case, ID1.

4.1.71 In terms of assessing the evidence I would say at the outset that, as is not unusual in such cases, where people are asked to remember events that have taken place many years ago, there are often inevitably some differences in recollections. That applies to some elements of the evidence in support of the Application. Sometimes remembering what was happening at a given time can be assisted by relating that time to a particular event in a witness's life. I have therefore considered the evidence (written, oral, documentary and photographic), as well as the submissions of the parties, in order help me form my impression of the evidence overall regarding the use of the Northern Quadrant.

4.1.72 In doing so, evidence that has been tested by cross-examination can and should in general be attributed greater weight than that which has not been so tested. That is perhaps more so in this case in respect of the evidence questionnaires because from most of those it is not possible to be sure as to what part of the original application land is being referred to. However, on that cautious basis, I have taken into account the evidence questionnaires particularly in terms of being consistent with the overall pattern of the use of the Taylor Wimpey Land together with the Nature Reserve which I gleaned from the oral evidence.

My assessment of the use of the Northern Quadrant

4.1.73 I will first consider the Northern Quadrant alone and as a whole as the Objector puts its case on that basis. In doing, so it is important to note that:

- (1) The Northern Quadrant is not gated or fenced off and any difficulty in accessing it or any part of it arises from the state of the vegetation at any given time during the qualifying twenty year period ending on 17 December 2018 and the varying ground conditions, which themselves change seasonally and even within seasons depending on the weather conditions.

- (2) There appears to be no dispute that throughout the qualifying period there has been at least two established tracks on the Northern Quadrant as shown on Ms Cox's Figures 2, 3, 4, 5 and 7.⁵⁹ These are the pink route in what some have referred to as the rectangle within the Northern Quadrant and the blue route in the eastern corridor of the Quadrant shown on Mr Nicholls' Exhibit CN5.
- (3) It is also clear from the clear predominance of the evidence that the Northern Quadrant was much more open at the commencement of the qualifying period back in December 1998, in the sense in particular of being relatively free from the current extensive growth of brambles but also in terms of tree growth.
- (4) Whilst there was much debate over exactly what Ms Cox's photographs showed at that time, and uncertainty over the cause and interpretation of the small tracks particularly between 1998-2002, that evidence needs to be considered alongside all the other relevant evidence of use for that period.

4.1.74 That other evidence (as recorded above) includes the following⁶⁰:

- (1) That of Helen Sawyer, the main points of which I have summarised above. That evidence is in my assessment persuasive and supportive, both in itself and when considered in context, of a wider recreational use of the Northern Quadrant as a whole beyond the exercise of a right of way.

Ms Sawyer moved back to the area in 1998 and so her use from that time equates well to commencement of the qualifying 20 year period. I have carefully considered the points made by the Objector about her evidence. The issue raised regarding whether there were blackberry bushes in the middle or around the edge of the Quadrant at that time is not in my view

⁵⁹ Ms Cox's Report at IB-B1 on pp.43 (23 September 1998), 44 (25 July 1999), 45 (29 August 1999), 46 (12 August 2000) and 48 (17 May 2002).

⁶⁰ At paras. 4.1.33 - 4.1.35 above.

determinative in itself, even if she was referring to the early years of the relevant period, which was not clear to me. She may have been mistaken or there could have been some brambles and blackberries in the central area as others (in particular Mr Pemberton, whose evidence I also found convincing and helpful) referred to the Quadrant as being less scrubby at that time but nonetheless still having the same type of brambly undergrowth as now. I suspect that undergrowth was not necessarily all over but would have spread with time – for example Jillian Fletcher, another convincing witness, referred to the playing of football in the Quadrant in the period 1998-2010. I also consider it likely, as explained below, that there were blackberries around the edges of the rectangular area of the Quadrant as well as the corridor.

Further, the Objector submitted that Ms Sawyer referred to the use of smaller routes in 1999 which, it contends, seems unlikely given that there is little evidence of such routes existing in 1999. However, Ms Sawyer was adamant that there were small tracks and she had seen other people walking along them too. In my view that would have been, at least probably, the position.

Ms Sawyer's evidence was consistent with my overall impression as to how the Northern Quadrant was used, and would have seen to have been used by a reasonable landowner, in the early part of the qualifying period; with there being use by numerous inhabitants, including a significant number not just crossing this area on the established footpaths but deviating off and wandering as part of a recreational use so as to signal the land as being in general use by the local community. That sits well with for example with Jillian Fletcher's evidence of people entering the Quadrant from all directions (see below).

- (2) Jillian Fletcher has extensive knowledge, as summarised above, of the land including the Quadrant, having lived in Long Ditton since 1994 and used it since then and being stationed at Kingston Police Station in 1998 until 2004. As a result of her shift pattern she visited the site consistently and at many

different hours of the day (and night). She confirmed the relative openness of the Quadrant in the 1990s (with having to stick to the path because of the rate of plant growth in the last 15 years). She referred to coming into this area from all directions, when asked whether she stuck to the path ('the very wide' blue route as she described it) in the Quadrant.⁶¹

(3) Consistent with that impression was the evidence of Joanna Williams, again as summarised above. She had lived in the area from 1996 and recalls the land from about 2000 (so probably not from the beginning of the qualifying period but shortly after), and picnicked/or took refreshments: As the Objector also recorded, she referred to "pausing" in the Quadrant and said the main picnic would be on One Tree Hill in the Quadrant in 2000/1. She also referred to people walking across the Quadrant. She said it was a "huge contrast" to the wood and open like a field. She also referred to trampled undergrowth.

I do not consider the Objector's point about doubts over whether she had picnicked or not on the Quadrant undermines the clear impression of the use of the land, including the Quadrant and wandering over that area in the earlier years⁶². Her evidence also epitomised to my mind how the Quadrant was used as part of the wider recreation use of the Application land as a whole, including the One Tree Hill, as well as the Nature Reserve, as returned to below.

(4) Although not tested under cross-examination, the written evidence of Mr Sam Hardwick is consistent with my overall impression of the evidence of use of the land and I understand it to also apply to the corridor and other parts of the Quadrant during those earlier years of the qualifying period.

⁶¹ See para. 17 on p. 6 of the Appendix to the Objector's Closing Submission as well as p.5 of those Submissions themselves, ID13.

⁶² Para. 24 on p.7 of the Appendix to the Closing Submissions of the Objector, ID13.

4.1.75 With regard to Mr Nicholls' assessment, I note that the Objector does not expressly rely upon this in its Closing Submissions. Nonetheless, I have carefully taken this into account. However, I share many of the reservations about this evidence that the Applicants set out in their Closing Note.⁶³ There were some clear difficulties with Mr Nicholls' evidence and the withdrawal of paragraph 40 of his Statutory Declaration did not assist. That paragraph contained a view of the land that was inconsistent with the distinct impression I gained from the Applicants' evidence of how the land, including the Northern Quadrant, was used throughout the qualifying period recognising the changes in the vegetation over that period.

4.1.76 Further, Mr Nicholls' assessment of the use of the land did not seem to me to be consistent with the Objector's own acceptance that One Tree Hill satisfies the statutory criteria. However, essentially nothing in his evidence and the impression it sought to provide, is sufficient to override my overall impression of the extent and nature of the recreational use not just of One Tree Hill but also of the whole of the Northern Quadrant gained primarily from the Applicants' oral evidence.

Overall Assessment for Issue 1

4.1.77 I acknowledge some uncertainty, which the Objector relies upon, over the origins and meaning of the small tracks in the aerial photographs when considered alone. However, I consider that the evidence from local residents paints a very clear overall impression of use of the Northern Quadrant at the contested time (1998-2002) which would have been not just of people crossing on the two established tracks but wandering off those tracks and taking part in other LSP on that area as described in the evidence.

4.1.78 That wandering off may not necessarily have been detectable on the aerial photographs because there were not necessarily small tracks created by the

⁶³ ID14 at paras. 68-73 on pp. 14-15.

very nature of “wandering”, which was certainly possible especially as at that time the vegetation was much more open as the Objector itself asserts and the evidence overall strongly confirms. Also, weather and ground conditions would in my view have impacted on how visible this was both on the ground and in the aerial photographs. In my view the aerial photographs are therefore generally consistent with and re-enforce the clear impression I obtained from the oral user evidence overall, even taking into account the uncertainties the Objector relies upon. Further, some tracks could have been hidden by tree canopies, recognising the less extensive tree cover at that time.

4.1.79 I find the argument that before the land became more overgrown there was no feature of interest to attract people off the main paths to be unconvincing. When the land was more open, but still in my view semirural in nature and likely to have even then a general air of remoteness or detachment from the built up area, it seems to me very unlikely that people, especially children, and dogs would have all stuck to the established tracks. In my view a significant number would have likely to have done otherwise, as the evidence on this overall supports.

4.1.80 It should not be overlooked that at that time, even though the Northern Quadrant was more open, there were still trees and bushes on the sides of the rectangular area (albeit less so on the western side) and adjacent to both sides of the corridor on the eastern side of the Northern Quadrant (as seen from Ms Cox’s Figures 2 -7). These areas would have been likely to have provided for example fruit (blackberries and sloes) for picking, vegetation for children to play in and for dogs to root around in, as many have described and consistent with the overall evidence.

4.1.81 Over time the precise nature of use will have changed with the expanding brambles and other vegetation, but that does not itself negate the earlier use and any claim under section 15(2) provided that the criteria are satisfied throughout the qualifying period.

4.1.82 I therefore have little doubt that even looking at the use of the Quadrant alone in those early years, a reasonable landowner would not have considered its use as the assertion of a public right of way. I also consider that this would have related to the Quadrant as a whole and allowing for seasonal differences in the level and nature of use.

4.1.83 I accept that some and even many may have kept to established paths for at least much of the time and a small, and in my view probably very small, number of these may have just crossed the Quadrant and wider land going from A to B. However, even allowing for that, in my view the reasonable owner would not have perceived that as referable to the exercise of a public right of way but a right to enjoy lawful sport or pastimes given the character and context and of Northern Quadrant and that many would have wandered off the tracks and over that area. The setting of the Quadrant, with in my view that general feeling of remoteness/detachment even when more open and the nature of the terrain to get to and from it, in my view would have been such that those, even sticking to the tracks, are likely to be understood by a reasonable landowner as recreating on the land in pursuance of a general right of recreation rather than just passing across it in the nature of a highway.

4.1.84 Notwithstanding that the Quadrant has become more overgrown, the Objector, correctly in my view on the evidence, does not dispute qualifying use of this area as a whole apart from those early years. Indeed, as noted above, the Objector contends that this growth in the vegetation has become a feature of interest attracting people and particularly children into the undergrowth and to build camps (as also referred to in Mr Hardwick's written statement but notably in the early part of the qualifying period). However, I have been cautious in terms of recognising that camps/dens themselves are likely to be hidden, as the Objector says. Nonetheless, even discounting the camps themselves, a reasonable land owner would in my view have observed the children on the land, as they had to get to and from the camps to use them and as the evidence shows playing around on the land in the various ways described, including on

bikes. Further, there appears to be more visible signs such as the rope swing over the years outside of the camps.

4.1.85 Nonetheless, in reality, a reasonable land owner who saw children on their land would in my view have checked any areas they saw them going to and from and probably in most cases discovered the camps. However, I emphasise that in my view, even without actually discovering these camps, a reasonable land owner should have been aware of the assertion of a wider recreational right over the whole Taylor Wimpey Land including the whole Northern Quadrant throughout the qualifying period.

4.1.86 Although I have assessed the use of Northern Quadrant alone, as detailed above, in my view a reasonable land owner would have looked at the use of the now Application Land (the Northern Quadrant and One Tree Hill) as a whole. They would also no doubt have noticed the close relationship with the Nature Reserve, owned by the Borough Council. That goes beyond mere proximity because, based on the clear and persuasive evidence overall, in my view these different areas of land are inextricably functionally linked as well. The landowners would or should have recognised the qualifying recreational use beyond public rights of way on One Tree Hill, as the Objector has acknowledged. In my view it is highly unlikely that a reasonable land owner would not have been alerted to the assertion of a wider recreational (village green) right on the whole land Taylor Wimpey Land including the Northern Quadrant.

4.1.87 Further, I recognise that it is contended by the Objector that the land has been used more since Covid (which of course occurred after the end of the qualifying period). Nonetheless, the position on the during and post-Covid levels of use is not in my view entirely clear cut. Several witnesses certainly perceived an increased use since Covid (for example Jillian Fletcher, Victoria Hart, Claire Watt and Lisa Currie Smith). However, Mr Nicholls said the use slightly decreased following the end of Covid, with people going back to work. When asked further why he thought the use of the land had reduced, Mr Nicholls said that the land was getting more overgrown and becoming less accessible given that it is not

maintained. I consider it likely that it was busier during Covid until people started to go back to their places of work. I recognise that must be tempered by the fact that working from home for at least part of the working week is now, as a result of the Lockdown, more common. In any event, I have not equated the current levels of use (as I have seen on my sites visits and in documents and photographs relating to the position post 18th December 2018) to what has happened during the qualifying period with what has happened during/since the Covid Lockdown (which commenced in March 2020). I have assessed the use on the evidence relating to the relevant period and primarily on the oral evidence as detailed above.

4.1.88 I have also been careful not to assume automatically, unless made clear, that the part of the overall land being referred in the evidence questionnaires is the Northern Quadrant. Nonetheless, it seems to me likely that the general pattern of use of the overall area (i.e. the Nature Reserve, the One Tree Hill Area and the Northern Quadrant) as described by most of the Applicants' oral witnesses would have been the general pattern of use of at least many of those providing questionnaires and in the written witness statements.⁶⁴ Nor can it be overlooked that except for those accessing One Tree Hill from the south (in particular from access point 1⁶⁵) or directly from properties to the west, anyone using One Tree Hill would pass through at least some part of the Northern Quadrant, which includes the area to the east referred to at the Inquiry as the corridor and through which Mr Nicholls' blue line track runs (as shown on CN5⁶⁶).

4.1.89 Finally, I again emphasise that I have concluded that the use of the Northern Quadrant alone, on the balance of probabilities the evidence clearly satisfies all of the criteria in section 15(2) of the Commons Act 2006, even though

⁶⁴ As referred to in para. 2.0.15 above and additionally that of Sam Hardwick as referred to at paras. 4.1.15 and 4.1.44 above.

⁶⁵ As seen on Application Plan C in IB-MJ3 on p. 22.

⁶⁶ IB-TW5, p. 19.

assessing it in isolation is in my view artificial as explained above. That conclusion becomes even more compelling when One Tree Hill and the Northern Quadrant are considered together as one.

ISSUE 2:

4.2.0 WHETHER THE REQUIREMENT FOR THE APPLICANT TO DEMONSTRATE A LOCALITY OR NEIGHBOURHOOD WITHIN A LOCALITY CAN BE SATISFIED.

4.2.1 Understandably, applicants for registration of land as a TVG often find this locality/neighbourhood requirement difficult to understand and address clearly. That should not be the case for most applications but the confusion on the part of some applicants is often understandable. There was initially, as it seemed to me, some confusion over the locality and neighbourhood case put forward by the Applicants in this case. This was a point that the Objector understandably made in its original Objection as referred to above.⁶⁷

4.2.2 However, as noted above the Objector does not contend that this locality/neighbourhood requirement cannot be met⁶⁸. So it is not an issue between the parties. Nonetheless it is important, particularly given the confusion arising from the various and numerous alternatives the Applicants relied upon, that the CRA is properly advised upon this, particularly if my conclusion on Issue 1 is accepted.

4.2.3 I now out below:

- The main points of the Applicants’ contentions on Issue 2
- Assessment of Issue 2
- Overall conclusions on Issue 2.

⁶⁷ IB-MJ3 at pp. 49-56.

⁶⁸ As made clear by the Objector at the Inquiry notwithstanding the reservations in the original objection and in paras. 11-12 on p. 8 of its Skeleton Argument, ID2.

Firstly, however, I summarise the legal position on this issue.

The legal position

- 4.2.4 A locality itself must be defined by reference to the limits of an administrative division known to the law. In *R. (on the application of Laing Homes Ltd) v Buckinghamshire CC*, Sullivan J referred to boroughs, parishes (civil and ecclesiastical) and manors. Other such units include electoral wards of all levels and polling districts⁶⁹. I consider the meaning of a 'neighbourhood' and its application to this case below in my assessment below.
- 4.2.5 Assistance on the approach to this issue is found in various authorities as referred to in Gadsden, and as the parties have referred to. In terms of the meaning of "neighbourhood" this is addressed in sections 15-44 and 15-45 of Gadsden (with my emphasis):

15-44

A neighbourhood is not a sub-division of a locality, and need not be a recognised administrative unit. What constitutes a neighbourhood has been considered under other statutory regimes. The cases on what constitutes a neighbourhood under other legislation have asked whether particular areas are "sufficiently distinctive to constitute a neighbourhood of its own" and whether they have a feeling of a community or neighbourhood. In one case the evidential factors which were noted as being helpful to identifying whether or not an area comprised a neighbourhood included: whether it had natural boundaries or distinct boundaries formed by a large road such as a motorway; the presence or otherwise of facilities which might be expected to exist in a given neighbourhood, including shops, primary schools and a post office; differences in housing types and standards; and differences in socioeconomic circumstances. The court stressed that these were only relevant indicators and the absence of or difference between certain factors did not prevent an area being a neighbourhood.....

In the context of greens, the issue came before Sullivan J in Cheltenham Builders. He said:

"I do not accept the defendant's submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word "neighbourhood" would be stripped of any real meaning. If Parliament had wished to enable the inhabitants of

⁶⁹ Gadsden on Commons on Greens (3rd Edition) at 15-39.

any area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so.”

15-45

What can in principle qualify as a neighbourhood is now, under s.15 of the 2006 Act, quite wide. As HHJ Waksman QC noted in the Oxfordshire & Buckinghamshire NHS Trust case, neighbourhood is a more fluid concept than locality and connotes an area that may be much smaller. However, the judge also noted and applied the requirement for a neighbourhood to have a sufficient degree of pre-existing cohesiveness. In Paddico, Vos J summarised the position by saying that a neighbourhood is understood as being a cohesive area which must be capable of meaningful description in some way. Even the definition of the word "neighbourhood" in the Shorter Oxford English Dictionary includes something which could be described as cohesiveness. It speaks in terms of a neighbourhood being a community or being a portion of a town considered in reference to the character or circumstances of its inhabitants. Defra guidance also suggested that a neighbourhood can be specified by reference to an obvious geographic characteristic such as the name of a village or housing estate.

- 4.2.6 With regard to changes in a locality, and as referred to by both the Applicant and Objector, guidance is found in the Court of Appeal's Judgment in *Lancashire CC v SOS* [2018] 2 P & CR 15 (ID7) as referred to in Gadsden at sections 15-41 to 15-42:

In Lancashire CC, the Court of Appeal seemed to accept that substantial boundary changes for a locality during the relevant 20-year period could prevent registration. It asked itself whether there was a continuous, identifiable locality in existence throughout the relevant 20-year period, notwithstanding the boundary changes. It was said that it was enough if the locality had existed in some clearly identifiable form throughout the relevant 20-year period as a coherent and continuous locality. In that case, the electoral ward was in existence throughout the 20-year period and was subject to only one relatively minor change, which did not alter the identifiable community of the ward. The court concluded that this was a matter of fact and degree for the inspector. It is apparent from the Court of Appeal's consideration of the issue, however, that boundary changes could be substantial enough to prevent a locality from being relied upon for the purposes of s.15 of the 2006 Act. The community in question must not have changed substantially over the relevant 20-year period.

The Applicants' Case

- 4.2.7 As noted at paragraph 2.0.6 the Applicant had contended on the basis of the following alternatives:

1. *The locality of the ecclesiastical parish of St. Mary in Long Ditton; alternatively*
2. *The locality of the ecclesiastical parish of St. Christopher in Hinchley Wood; alternatively*
3. *The locality of the electoral ward of Long Ditton (of the Elmbridge Borough Council); alternatively*
4. *The locality of the electoral ward of Hinchley Wood & Weston Green (of the Elmbridge Borough Council); alternatively*
5. *The neighbourhood of Long Ditton and the neighbourhood of Hinchley Wood within the locality of the County of Surrey; alternatively.*
6. *The neighbourhood of Long Ditton and the neighbourhood of Hinchley Wood within the (a) localities of the ecclesiastical parishes of St. Mary in Long Ditton and St. Christopher in Hinchley Wood or (b) localities of electoral wards of Long Ditton and Hinchley Wood & Weston Green.*

The Neighbourhoods of Hinchley Wood and Long Ditton are shown on Map B (at IB-MJ3, p. 14) which highlights a shaded area of changes to the ward boundaries.

4.2.8 The Applicants now put the case primarily on the basis of two neighbourhoods (Long Ditton and Hinchley Wood) within the localities of the electoral wards of Long Ditton and Hinchley Wood. If, for some reason, there is a problem with that, then the Applicants would rely on the County of Surrey, or if that were not acceptable (and with permission), Elmbridge Borough Council. In reality, the Applicants contend, there is no need to consider all of the theoretical combinations.⁷⁰

4.2.9 The Applicants also state that if I were not to find a qualifying user made out from both neighbourhoods, then it is accepted that the matter could be dealt with on the basis of the electoral ward of Long Ditton or even the ecclesiastical Parish. It is acknowledged by the Applicants that the inquiry has heard fewer witnesses from Hinchey Wood, but there is a limit to the number of witnesses that can be sensibly called anyway. The rule against plural localities is the reason for the complication in the way things have to be put.⁷¹

⁷⁰ Para. 3 on p. 1 of the Closing Note of the Applicants, ID14.

⁷¹ Para. 4 on pp. 1-2 of the Closing Note of the Applicants, ID14.

ASSESSMENT OF ISSUE 2

4.2.10 The locality and neighbourhood issue must be considered having regard to the actual statutory requirement under section 15(2)(a) which provides:

- (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;**

4.2.11 I have concluded above that a significant number of inhabitants have used the whole of the One Tree Hill Area and the Northern Quadrant for lawful sports and pastimes throughout the qualifying 20 year period. However, the Applicants also have to demonstrate that those inhabitants are from a locality or from a neighbourhood with a locality. As the courts have confirmed they can be the inhabitants of more than one neighbourhood.⁷²

4.2.12 I acknowledge that the changing electoral wards and the rule against pluralities of localities complicates the situation.

4.2.13 However, in my view:

- (1) Long Ditton satisfies the statutory criterion for neighbourhood as interpreted and applied by the Courts as referred to above. In particular, I consider that this area is distinctive with important facilities for the community. It is thus a cohesive area that the name Long meaningfully describes. I base this in particular upon:

- (i) The written and oral evidence of Mrs Aileen Widdowson which:
- (a) Supports the distinctiveness of Long Ditton which has its own Resident's Association, two schools - Long Ditton Infant School on Ditton Hill Road and a short walk down the hill and past the Fleece Road parade, Long Ditton St

⁷² *Leeds Group Plc v Leeds City Council* [2011] 2 W.L.R 2010; and also Gadsden on Commons on Greens (3rd Edition) at 15-47 to 15-48.

Mary's Junior School on Sugden Road. The children from the infant school generally transfer to the juniors, coordinating start times so that parents can make the short walk from one to the other.

- (b) There is St Mary's Church which has a Community Hall (built around 2007). There is also a Guiding movement for Rainbows, Brownies and Guides with meetings taking place weekly in the Church's Community Hall.
 - (c) There are three public houses in Long Ditton.
 - (d) There is also a Long Ditton Village Hall built in 1888 and situated on the Ewell Road opposite which is the Long Ditton Recreation Ground.
- (ii) My own assessment from walking the area.
- (2) Hinchley Wood in my view also satisfies the statutory criterion for neighbourhood. I base this in particular upon:
- (i) The written and oral evidence of Amanda Moylan-Jones, the Applicant for Application 1882 which:
 - (a) Supports the distinctiveness and cohesiveness of Hinchley Wood. She also referred to people from Hinchley Wood gathering together and bumping into people that she knows are from Hinchley Wood.
 - (b) Points out the presence of the two schools, Hinchey Wood Primary School and Hinchey Wood School, a secondary school. The primary school feeds into the secondary school and both are located on Claygate Lane. She refers to the various community events held at the primary school, including the annual Fireworks event. There are also two private run nursery schools in Hinchley Wood.

(c) There is a GP surgery on Station Approach where there is also a parade of local shops. There is the 1st Hinchley Wood Scout Group and Guide troop based in a hut off Claygate Lane by the railway bridge. There is St Christopher's Church with a village hall also on Claygate Lane.

(d) Hinchey Wood also has its own Resident's Association, distinct from the Associations in Long Ditton, Thames Ditton and Esher.⁷³

(ii) My own assessment from walking the area.

(3) In my view it has been clearly demonstrated that a significant number of residents from both neighbourhoods have used the land for qualifying purposes. That is assessing "significant" in terms of how it would have appeared to an objective landowner. I accept that the majority of the users of the land come from Long Ditton. Nonetheless:

(i) The evidence questionnaires (as demonstrated by the map for which a link was provided at IB-MJ4 at p. 602) support my impression that the overall users include a significant number for the Hinchley Wood neighbourhood.

(ii) That is not surprising given the proximity of the neighbourhood to the land and with direct access from access point 6 (as shown on Application Plan C at IB-MJ3 p. 22). There are also direct accesses from some of the adjacent dwellings on the western side of the One Tree Hill Area.

4.2.14 The final requirement for this criterion is that the neighbourhoods are within a qualifying locality. Although the Applicants rely upon Surrey County as the locality in respect of the two neighbourhoods, in my view the appropriate locality is the area of the Borough Council within which both localities sit. There

⁷³ See Mrs Moylan-Jones, Witness Statement at IB-MJ4 at pp. 50-52.

is some doubt over whether County can qualify given the likely lack of connection of land and the neighbourhoods with the County given the scale of a county (in most cases).⁷⁴ However, in my view the two neighbourhoods are sufficiently related to the Borough Council area. I saw for example that the notice board near the local shops in Fleece Road in Long Ditton had notices from the Borough Council which is one example of the clear link between that neighbourhood and that locality.

Overall Conclusion on Issue 2

4.2.15 I consider that the claimed neighbourhoods satisfy the legal requirement in section 15(2) as interpreted by the courts.

4.2.16 I also consider that the appropriate and qualifying locality is the area within the jurisdiction of Elmbridge Bourgh Council.

4.2.17 Further, in my view it has been demonstrated that a significant number of inhabitants from each of those neighbourhoods have used both the One Tree Hill Area and the Northern Quadrant for qualifying uses.

⁷⁴ See *R a(on the application of Mann) v Sommerset CC* [2012] EWHC B14 (Admin) referred to on pp. 6-7 of the Objector's Skeleton Argument, ID2.

5.0.0 SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

SUMMARY OF CONCLUSIONS

- 5.0.1 The Elmbridge Borough Council Land, which is largely made up of the Nature Reserve, has been registered as a TVG, under CRA reference 1890, pursuant to section 15(8) of the Commons Act 2006 since the original applications 1880 and 1882 were made.⁷⁵
- 5.0.2 The Inquiry therefore proceeded on the basis that it was only the Taylor Wimpey Land that was required to be considered. Accordingly, as recommended below, I have concluded that the Applications need to be amended to exclude the Borough Council Land. That is in essence the whole of the Land comprised in Application 1880, which in substance becomes of no effect and should be treated as withdrawn; and that part of Application 1882 covered by 1880.
- 5.0.3 It should be noted that the land in respect of which I conclude the Applications should be treated as withdrawn includes the Cemetery Extension Land, which the Applicants agreed should be withdrawn although not itself registered as TVG under the section 15(8). Notwithstanding that agreement, the CRA should consider whether it would be appropriate to accept these withdrawals.
- 5.0.4 Given in particular that the vast majority of the Borough Council's Land has been registered as a TVG and that no person raised objection to this withdrawal at the Inquiry, I have concluded that it would be appropriate and fair to accept this withdrawal including the Cemetery Extension Land.⁷⁶ In so concluding I have had regard to, as should the CRA, not just the views of the Applicants and Objector but also the wider public interest. Further, I did not consider it to be an appropriate or necessary use of resources, nor did anybody so suggest, to spend further time at the Inquiry considering the Cemetery Extension Land

⁷⁵ ID12A and 12B.

⁷⁶ See para. 4.0.7 above.

which would have additionally required the attendance of the Borough Council who have previously indicated that they consider this land cannot in any event be registered as a TVG as it is held for a statutory purpose in relation to the cemetery.⁷⁷

5.0.5 If my conclusions and recommendations on this are accepted, this means that the only effective Application is 1882 and only in relation to the Taylor Wimpey Land (together also with the slither of land). The parties agreed in respect of that land that the Cultivated Rose Garden Area cannot be registered as there was no qualifying use on it prior to about 2002/3. The evidence on this is compelling and therefore, also taking into account the wider public interest, I have concluded that it would be appropriate and fair and indeed necessary to exclude the Cultivated Rose Garden Area from Application 1882.

5.0.6 On that basis my conclusions in relation to what would be the remaining and amended Application 1882, if these amendments to the Applications are accepted by the CRA, are in summary as follows.

5.1.0 ISSUE 1 CONCLUSIONS: THE QUALIFYING USE ISSUE

5.1.1 The Objector only disputes qualifying use in terms of the Northern Quadrant and in particular in relation to the period between 1998/9-2002. However, I have concluded, subject to Issue 2, that the whole of the amended application land, namely the One Tree Hill Area and the Northern Quadrant, qualifies for registration as a TVG under section 15(2) of the Commons Act 2006.

5.1.2 For the avoidance of doubt that that should also include the slither of land between the western part of the northern edge of the Northern Quadrant and the Borough Council Land.⁷⁸

⁷⁷ Ditto and IB-MJ3, pp. 47-48.

⁷⁸ See paras.4.0.10 – 4.0.11 above.

5.2.0 ISSUE 2 CONCLUSIONS: THE LOCALITY AND NEIGHBOURHOOD WITHIN A LOCALITY ISSUE

5.2.1 I have concluded that Long Ditton and Hinchley Wood each satisfy the requirement for “any neighbourhood” within section 15(2). I have also concluded that these neighbourhoods both fall within the qualifying locality of the administrative area of Elmbridge Borough Council.

5.2.2 I have further concluded that a significant number of inhabitants from each of those neighbourhoods have used the whole of both the One Tree Hill Area and the Northern Quadrant (including the slither of land) throughout the qualifying 20 year period up to the 17th December 2018.

5.3.0 RECOMMENDATIONS

5.3.1 Accordingly, I recommend that Application reference 1882 is amended to:

- (i) Exclude the land owned by Elmbridge Borough Council; and also
- (ii) Exclude the Cultivated Rose Garden Area as shown on plans ID16A and ID16D; so as
- (iii) To cover only the One Tree Hill Area and the Northern Quadrant as so shown on plans ID.16A, ID16B and ID16C but also including the slither of land.

5.3.2 On that basis I recommend that the land in amended Application 1882 is registered as a TVG.

5.3.3 Further, I recommend that Application 1880 should be treated as withdrawn.

5.3.4 If the CRA does not accept my conclusions on Issue 1 in terms of including the Northern Quadrant, but does accept my recommendation on Issue 2, I would nonetheless recommend that the One Tree Hill Area as so shown on plans ID16A and ID16B is registered as a TVG. Notwithstanding that this would be a much reduced area from the original application land, the evidence is compelling in support of this being registered even alone and I consider that in

the circumstances there would be no prejudice arising from the CRA so deciding.

- 5.3.5 If in either event the CRA does not however accept my recommendation on Issue 2, then I would recommend that it considers giving the opportunity to the Applicant for 1882 to seek to address the locality issues and any particular concerns that the CRA may have on this before dismissing the Application by reason of the locality/neighbourhood issue.

STEPHEN MORGAN

APPOINTED INSPECTOR

LANDMARK CHAMBERS

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4 September 2023