IN THE MATTER OF:

AN APPLICATION TO REGISTER LAND KNOWN AS "THE HUMPTY DUMPS" AT BOWLING GREEN LANE, CIRENCESTER, GLOUCESTERSHIRE, AS A NEW TOWN OR VILLAGE GREEN

REPORT

OF ROWENA MEAGER (INSPECTOR)

Dated 17 March 2015

Gloucestershire County Council
Legal Services
Quayside House
Quay Street
Gloucester
GL1 2TZ

1. I have prepared this report following an application ("the Application") received by Gloucestershire County Council ("the Council"), as Commons Registration Authority, to register land known as the Humpty Dumps at Bowling Green Lane, Cirencester, Goucestershire ("the Application Land") as a new town or village green ("TVG") pursuant to section 15(3) of the Commons Act 2006 ("the 2006 Act").

2. The Application to register the Application Land, the valid date of receipt of which is 17 January 2013, was made by the Friends of the Humpty Dumps ("FROTH") ("the Applicant"). The Application, as noted above, was made pursuant to section 15(3) of the 2006 Act and the relevant application period is 24 January 1991 to 23 January 2011 ("the Application Period") which is the twenty year period immediately preceding the date upon which the Applicant says qualifying use of the Application Land ceased. The Application was publicly advertised in accordance with the procedure laid down by the 2006 Act on 26 May 2010.

3. The Application Land is part owned by Piper Ventures Limited (that part of the Application Land that is registered under Title No GR329698) ("the Objector"), the other part (that part of the Application Land that is registered under Title No GR337904) is owned by Cirencester Town Council ("CTC"). An objection statement dated 13 June 2013 was received from the Objector. CTC sent a letter of support for the Application dated 13 August 2014.

4. The Application was the subject of a non-statutory public inquiry over which I presided beginning on Monday 17 November 2014 and concluding on Friday 21 November 2014. At the Inquiry the Applicant was represented by Mr Tim Bennett and Mr Timothy McGrath. The

Objector was represented by Mr Vivian Chapman QC and Miss Faith Julian, a pupil barrister at Mr Chapman's chambers.

THE APPLICATION LAND

5. The Application Land (in so far as it is owned by the Objector) is irregular in shape and, as the name by which it is known suggests, is, in part, very irregular in terms of its topography (ie the land undulates quite significantly). It extends to approximately 4.58 ha and is what can best be described as rough grazing land. The Application Land is situated in the North Western corner of a residential area known as Bowling Green, to the North of Cirencester, and is completely surrounded by housing on two sides (East and South) as well as for the southern part of the Western Boundary, at the end of Bowling Green Lane. The residential development stops where Bowling Green Lane ends and the road thereafter becomes a track (also a public bridle path, being registered in the Definitive Map and Statement as right of way number 10 ("BP10"), also known as Monarch's Way) leading to Lower Bowling Green Farm, situated just North of the Application Land.

6. Monarch's Way is situated outside the Application Land[1] but runs alongside the eastern boundary from the end of Bowling Green Lane, continuing Northwards and eventually leading to the distinct settlement of Baunton. There is, however, a recorded public right of way (Footpath No 9) that crosses the Application Land between two points located in the South Eastern and North Western corners thereof respectively. At the South Western corner Footpath No 9 ("FP9") emerges from an alleyway that leads to Bowling Green Road. As FP9 enters the Application Land for a short section there is fencing to both sides of the footpath ("the Fenced Section"), to the East side the

[1] There was, at first, some confusion about whether the land on which Monarch's Way (BP10) is situated was the subject of the Application. It was confirmed, however, by Mr Bennett that

boundary fence between the Objector's land and the CTC land (land that is also the subject of this Application) and to the West a fence that was erected to separate the first section of the public footpath from the rest of the Objector's land in order to encourage people to walk along the line of the public right of way. At the end of the Fenced Section is a stile (of the 'climb over' variety) that gives access onto the open part of the Objector's land. In the North Eastern corner access is presently gained to and from FP9 from Monarch's Way through a slip stile (or one can open the large galvanized gate).

7. As already noted above, part of the Application Land has a particularly uneven surface as a result of the site having previously been used as a shallow quarry. That part of the Land is on the higher ground in the southern section of the Application Land. The Application Land is significantly higher at the Southern end and along the Eastern boundary. It then slopes down towards the Western and Northern boundaries. The highest point is a 'ridge' that runs East / West across the Application Land from the rear of houses on Berry Hill Crescent to a more Westerly point on the Application Land (roughly where the corner of Rosehill Court extends into the Application Land) where the land then drops away to meet the end of Bowling Green Lane (by which time the land is at its lowest point).

8. The other part of the Application Land, that which is owned by CTC, is situated to the most extreme South Eastern corner of the Objector's land. It is moreorless trapezoidal in shape but has a very uneven ground surface (like the Southern section of the Objector's land. The CTC land extends to approximately 0.28 ha. It was apparently sold or donated to CTC in 1971 by Henry Freeth, former owner of the whole of the Application Land. At one time it had play equipment on it (it is a former 'play area'). Now it is empty. However, it is identified within the registered title as "Humpty Dumps Recreation Ground".

THE APPLICATION TO REGISTER A TVG

9. As noted in the foregoing, the Application to register the Application Land as a new TVG was made pursuant to section 15(3) of the 2006 Act, the substance of which (as it was at the time of the Application[2]) is set out below:

   *"**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) …
   (3) 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 ceased to do so before the time of the application but after the commencement of this section; and
      (c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).
   (4) …".

10. In order for an applicant to succeed in an application to have land registered as a new TVG the Council must be satisfied that each and every part of the foregoing statutory test is met.

THE STATUTORY TEST

[2] The time provided by section 15(3)(c) has been reduced to one year now as a result of the enactment of the Growth and Infrastructure Act 2013, section 14.

… a significant number …

11. "Significant" does not mean that a considerable or substantial number of people must have made TVG type use of the land. It simply means that the number of people using the land in question in a qualifying manner has to have been sufficient to indicate to the landowner that the land has been in general use by the local community for informal recreation as distinct from occasional use by individuals as trespassers[3].

12. It is not necessary for the recreational users to come predominantly from the relevant locality or neighbourhood[4]. Nor is it necessary for there to be a spread of users coming from across the entirety of the claimed locality or neighbourhood. Vos J in *Paddico (267) Limited v Kirklees Metropolitan Council & Others*[5] was unimpressed by, and rejected, a contention that an inadequate spread of users throughout a claimed locality would be fatal to an application for registration.

13. However, only recreational use by members of the public from the relevant locality or neighbourhood will contribute to the "significant number" test. In other words, use by people that do not come from within the claimed locality or neighbourhood does not support an application for registration of a new TVG and should be discounted to the extent that evidence of such use is adduced. The statutory test is clear that use must be by "a significant number of the inhabitants of any locality or of any neighbourhood within a locality". Those components of the test must be read together.

---

[3] *R (McAlpine) v Staffordshire County Council* [2002] EWHC 76 (Admin), para [77].
[4] *R (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxford County Council* [2010] EWHC 530.
[5] [2011] EWHC 1606 (Ch), para [106(i)].

… of the inhabitants of any locality …

14. A "locality" must be an area known to the law such as a borough, parish or manor[6]. It cannot be created by simply drawing a line on a map[7]. Further, Sullivan LJ in *Adamson v Paddico (267) Limited & Others*[8], in considering what amounted to legally significant boundaries for the purposes of establishing the existence of a locality, drew a distinction between boundaries that might be legally significant for a particular statutory purpose (in that case a conservation area) and an area that is so delineated by reference to any community of interest on the part of its inhabitants. It is clear that he considered the former to be erroneous but the latter an appropriate approach to identifying a locality for the purposes of the TVG legislation. What follows is that a locality must have legally significant boundaries that are defined by reference to a community of interest on the part of the inhabitants of that locality, an example of which would, of course, be a parish.

… or of any neighbourhood within a locality …

15. A "neighbourhood" need not be a recognised administrative unit or an area that is known to the law (in other words it does not have to meet the same stringent criteria that applies to establishing a locality). A housing estate can be a neighbourhood[9], as can a single road[10]. However, a neighbourhood cannot be just any area drawn on a map. It

[6] *Ministry of Defence v Wiltshire County Council* [1995] 4 All ER 931, 937.
[7] *R (Cheltenham Builders Limited) v South Gloucestershire District Council* [2004] 1 EGLR 85, paras [41] – [48].
[8] [2012] EWCA Civ 262, para [29]
[9] *R (McAlpine) v Staffordshire County Council* [2002] EWHC 76 (Admin).
[10] *R (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxford County Council* [2010] EWHC 530 (*Warneford Meadow*).

has generally been accepted that it must have some degree of cohesiveness[11].

… have indulged as of right …

16. User "as of right" means user that has been without force, without secrecy and without permission (traditionally referred to by lawyers as *nec vi, nec clam, nec precario*). The basis for the creation of rights through such user is that the landowner has acquiesced in the exercise of the right claimed (in the case of applications to register a new TVG the period of user required is twenty years)[12] and the user can rely upon their long use to support a claim to the right enjoyed.

17. The landowner cannot, of course, be regarded as having acquiesced in user unless that user would appear to the reasonable landowner to be an assertion of the right claimed[13]. If the user is by force, is secret, or is by permission, (ie *vi, clam*, or *precario*) it will not have the appearance to the reasonable landowner of the assertion of a legal right to use the land.

Force

18. Force is not limited to physical force. User is by force not only if it involves the breaking down of fences or gates but also if it is user that is contentious or persisted in under protest (including in the face of prohibitory signage) from the landowner[14]. However, 'perpetual warfare' between landowner and users is not necessary[15] to prove

[11] *R (McAlpine) v Staffordshire County Council* [2002] EWHC 76 (Admin).
[12] *Dalton v Angus & Co* (1881) 6 App Cas 740, 773.
[13] *R (Lewis) v Redcar & Cleveland Borough Council* [2009] 1 WLR 1461.
[14] *Smith v Brudenell-Bruce* [2002] 2 P & CR 4.
[15] *Cheltenham Builders,* at para [71].

contentiousness. In *Taylor v Betterment Properties (Weymouth) Limited*[16] Patten LJ considered the question what is sufficient to make user contentious and in the context of signage in particular he said at paragraph [52] that "*… the landowner is not required to do the impossible. His response must be commensurate with the scale of the problem he is faced with … if most peaceable users never see any signs the court has to ask whether that is because none was erected or because any that were erected were too badly positioned to give reasonable notice of the landowner's objection to the continued use of his land*". And at paragraph [60] "*It seems to me there is a world of difference between the case where the landowner simply fails to put up enough signs or puts them in the wrong place and a case such as this one where perfectly reasonable attempts to advertise his opposition to the use of his land is met with acts of criminal damage and theft. The judge has found that if left in place, the signs were sufficient in number and location; and were clearly enough worded; so as to bring to the actual knowledge of any reasonable user of the land that their use of it was contentious. In these circumstances is the landowner to be treated as having acquiesced in that user merely because a section of the community (I am prepared to assume the minority) were prepared to take direct action to remove the signs? … [63] It would, in my view, be a direct infringement of the principle (referred to earlier in the judgment of Lord Rodger on Redcar (No 2)) that rights of property cannot be acquired by force or by unlawful means for the Court to ignore the landowner's clear and repeated demonstration of his opposition to the use of the land simply because it was obliterated by the unlawful acts of local inhabitants …*".

[16] [2012] EWCA Civ 250

Stealth

19. User that is secret or by stealth will not constitute user as of right because such use would not come to the attention of the landowner and he could not, therefore, be said to have acquiesced in such use.

Permission

20. Use that is permissive is 'by right' and is, therefore, not capable of being 'as of right', a point reinforced by the recent decision of the Supreme Court in *R (on the application of Barkas) v North Yorkshire County Council and Another* [2014] UKSC 31. In *Barkas* lengthy consideration was given to the earlier decision of the House of Lords in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 that appeared to accept that possibility that even use that on the face of it might appear to be permissive was also capable of constituting use 'as of right'. However, in light of the decision in *Barkas*, where use of land is pursuant to a public right to use (where, for example, land is held by a public body or authority for the purpose of recreational use by the public), use of that land for recreational purposes is clearly by right and cannot constitute use as of right.

21. Lord Neuberger in *Barkas* at para [24] said "*where the owner of the land is a local, or other public, authority which has lawfully allocated the land for public use (whether for a limited period or an indefinite period), it is impossible to see how, at least in the absence of unusual additional facts, it could be appropriate to infer that members of the public have been using the land 'as of right' simply because the authority has not objected to their using the land. It seems very unlikely that, in such a case, the legislature could have intended that such land would become a village green after the public had used*

it for twenty years. It would not merely be understandable why the local authority had not objected to the public use: it would be positively inconsistent with their allocation decision if they had done so …". The question to be addressed regarding whether or not use was permissive needs to be looked at in the context of each case, particularly if the relevant land is held pursuant to statutory purposes.

Concurrent use by landowner

22. In circumstances where there has been concurrent use by the landowner it is well established that use by the landowner alongside use by recreational users will not automatically prevent land qualifying for registration as a new TVG if the co-existing uses are not incompatible with each other[17]. It is accepted that low level agricultural use of application land is not necessarily inconsistent with use of the land for lawful sports and pastimes[18]

… in lawful sports and pastimes …

23. The term "lawful sports and pastimes" is a composite phrase that includes informal recreation such as walking, with or without dogs, and children playing[19] and, indeed, any activity that can properly be called a sport of pastime. Lord Hoffmann in *Sunningwell* expressly agreed with what had been said in *R (Steed) v Suffolk County Council* (1995) 70 P & CR 487 about dog walking and playing with children being in modern life the kind of informal recreation which may be the main function of a village green. However, in Warneford Meadow the court interpreted the word lawful as meaning to exclude any activity that would constitute a criminal offence.

[17] *R (Lewis) v Redcar & Cleveland Borough Council* [2010] 2 AC 70.
[18] *Oxfordshire, per* Lord Hoffmann at para 57; *Redcar, per Lord Walker* at para 28.
[19] *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2000] 1 AC 335, 356F-357E.

…on the land …

24. It is not necessary for the whole of the land to have been used for lawful sports and pastimes but only that the land has been used in the appropriate manner. There may be land, for example, that has a pond on it or, as in *Oxfordshire*, that is not wholly accessible for recreational use. The fact that some of the application land might have been inaccessible for use for lawful sports and pastimes does not preclude registration. It is not necessary for a registration authority to be satisfied that every square foot of a piece of land the subject of an application has been used.

… for a period of at least twenty years …

25. In the case of an application under section 15(3) of the 2006 Act the relevant period is the twenty year period immediately preceding the date upon which the claimed qualifying use ceased. In the present case the relevant application period, as noted above, is 24 January 1991 to 23 January 2011.

PROCEDURAL MATTERS

26. The burden of proof that the Application Land meets the statutory criteria for registration as a new TVG lies firmly with the Applicant. It is no trivial matter for a landowner to have land registered as a TVG and all the elements required to establish a new green must be "*properly and strictly proved*"[20]. That means that if any part of the statutory test is not satisfied, an application must fail as a matter of

[20] *R v Suffolk County Council, ex parte Steed* (1996) 75 P & CR 102, 111, *per* Pill LJ, approved by Lord Bingham in *R (Beresford) v Sunderland City Council*, para [2].

law. The standard of proof is the usual civil standard of proof of the balance of probabilities.

27. An application will not be defeated by drafting errors or defects in the application form[21]. It is the substance of an application, supported by evidence, that dictates whether an application is successful or not. The issue for the Commons Registration Authority is whether or not the Application Land has become a new TVG by virtue of all the components of the statutory test being met.

PRELIMINARY POINTS

28. Firstly, in light of the fact that the part of the land owned by CTC was historically used as a recreational facility for members of the public, and the name of the land recorded in the registered title is the "Humpty Dumps Recreation Ground", I do not see how that can possibly qualify for registration under the test set out in section 15(3) of the 2006 Act as use by members of the public for recreation would clearly appear to be use 'by right' and therefore not qualifying use for the purposes of an application such as this according to the decision in *Barkas*.

29. The foregoing point was made, neutrally, by Mr Chapman in opening on behalf of the Objector. I concur with the view he briefly expressed. I am unable to recommend registration of the land owned by CTC notwithstanding CTC's support for the Application. However, it is, of course, open to CTC to apply to voluntarily register the land that it owns, pursuant to section 15(8) of the 2006 Act.

[21] *Oxfordshire County Council v Oxford City Council & Another* [2006] 2 AC 674.

30. Secondly, it was not until the evidence had closed and closing submissions were about to be made that the Applicant finally confirmed that the Application was to be determined on the basis that it was a 'locality' application, not a 'neighbourhood' application, and that the locality relied upon is the "Cirencester Stratton Whiteway Ward". Until that point there had been some doubt about how the Applicant intended to advance its case in this regard but that is the locality identified in the Application Form and all of the evidence had been produced and heard on that basis.

EVIDENCE FOR THE APPLICANT GIVEN ORALLY

31. Having set out the generality of the substance of the law as it relates to the test for registration of a new TVG I now turn to consider the witness evidence produced on behalf of the Applicant. I will deal first with the witness evidence given orally to the public inquiry and which was subjected to cross examination by the Objector. I will summarise the evidence that I heard in the order in which the witnesses gave their evidence. However, what follows is not intended to be a *verbatim* account, or even necessarily a complete account of the evidence given to the Inquiry. It is simply a précis of some of the more salient issues dealt with in evidence, particularly those that form the basis of my findings of fact. The précis is simply intended to be a sufficient account of the evidence for the Council to understand the reasons and reasoning behind my conclusions.

Tim Bennett

32. Mr Bennett produced an evidence questionnaire ("EQ") dated 11 May 2011 and a witness statement ("WS") dated 26 September 2014. He

moved to Bowling Green Road in November 1993. Whilst I know from his written evidence that he has lived in Cirencester all his life I do not know where he lived prior to November 1993 so do not know if he was living in the claimed locality notwithstanding that in his statement he says that he would go to the Application Land and other fields to walk his dog prior to moving to Bowling Green Road.

33. Mr Bennett agreed that in the early part of the Application Period, until around 1994 or 1997, Henry Freeth (the then owner) grazed livestock on the land (cattle and sheep). After Henry Freeth died a local farmer, Mr Greenaway, by arrangement with the management agents acting on behalf of Mrs Freeth and then her estate, took a hay crop from the land and grazed cattle there. This continued until around 2009 when Mrs Freeth's executors sold the Application Land. Mr Bennett said that he knew Mr Greenaway and had done so for around 20 years. He agreed that the boundaries were largely stockproof although he did recall sheep escaping.

34. Mr Bennett denied that he had seen any prohibitory signs on the Application Land or even just outside it concerning use of the Application Land. Whilst he was aware of prohibitory signs in the area he said they were away from the Application Land and were not concerned with use of the same. He also denied seeing Mr Freeth on the land, he was not aware that Mr Freeth remonstrated with anyone that he saw using the land and he said that Mr Greenaway had not done so either. He said that Mr Greenaway owned other land adjacent / nearby (eg the water meadow on the opposite side of Monarch's Way) and he did not seek to prevent people using that, save for the field he uses to take hay from where he has erected prohibitory notices. He said that until the present owner erected signage prohibiting use of the Application Land other than the public footpath he had never been told not to use it.

35. Of his own personal use the picture Mr Bennett painted was particularly sketchy. He had said in his written evidence that he used the Application Land for dog walking. I did not hear anything about whether Mr Bennett still has a dog, whether he has owned one throughout the whole of the Application Period, the frequency with which he used the Application Land to walk his dog or the routes that he took. There is passing reference to an attempt to fly kites on the Application Land. I do not know when or where that occurred or how many times. Mr Bennett's evidence says that he picked fruit from the trees and bushes in the bottom corner. That would presumably have been a seasonal activity and I do not know if that is something he has done every year or just occasionally. There are certainly fruit bushes / trees away from the public right of way, FP9. Again, the sledging referred to is clearly a seasonal activity, dependent upon there being snow. I do not know if that is something Mr Bennett did every year or just some years. The same observation applies to his reference to bird watching. I do not know when or how frequently Mr Bennett engaged in that activity or where on the Application Land he did so.

36. Mr Bennett also gave evidence of his use of the Application Land in connection with his membership of a group known as the Churn Valley Hash House Harriers, the function of which was to organise runs / hashes (following pre-laid trails) for the club's members. Mr Bennett said that as part of that group he had hashed on the Application Land several times a year (all over although when there were animals grazing he said use was more restrained). It is clear from the signed declaration that Mr Bennett produced annexed to his statement [AB3/429 & 450] that the majority of signatories did not come from the claimed locality. Mr Bennett also told the Inquiry that other hashes such as the Cheltenham and Gloucester Gourmets have

also used the Application Land for the same purpose when in Cirencester.

37. In both his EQ and WS Mr Bennett makes reference to activities engaged in on the Application Land by other people. I heard no elaboration upon the frequency with which the activities identified have occurred, by whom (ie whether they are people from within the claimed locality) or where on the Application Land those activities took place.

38. In answer to Q11 on the EQ that deals with recognisable facilities within the claimed locality Mr Bennett had identified school catchment area, residents' association and neighbourhood watch ("NW"). Of the two schools he had in mind one is outside the claimed locality and the other is in Stratton. The residents' association that he was referring to is North East Cirencester Amenities Society ("NECAS") which, despite its name, also extends to North West Cirencester, but excludes Stratton according to its defined area. In respect of a NW scheme Mr Bennett just said he had seen signs on lamp posts but he was not a member of any NW scheme and he was unable to say which areas were within any NW scheme.

39. Some time was spent discussing with Mr Bennett the process by which people had produced their EQs given that Mr Bennett is a member of FROTH and one of the people centrally involved with pursuit of the Application. There is, in the Applicant's Bundle [AB3/680-1], a note providing advice on how to fill in the EQ (much of which appears to be very prescriptive). Mr Bennett said he did not recall the advice sheet or it being given to people to assist them in the completion of their EQ. Mr Bennett agreed that the advice sheet provided witnesses with a fair amount of 'coaching' on matters of extreme importance but he said he did not know if it was given out with every EQ.

Philip Cook

40. Mr Cook produced an EQ on behalf of himself and his wife, Charlotte, dated 12 March 2011, signed by his wife, and a WS dated 26 September 2014. Mr Cook has lived in Berry Hill Road since 2001. He says that before that he has lived locally for most of his life, between 1990 and 2001 at another address in Cirencester during which time he had used the Application Land but only the public right of way, FP9.

41. Mr Cook recalled the land being used to graze cattle between the mid 1990s and 2009. He said the presence of cattle was sporadic, then there would be periods of non-use and then there might be sheep. He said until 2011 he had never seen prohibitory signs on or relating to the land. He agreed that attempts were made to repair the fence at what was referred to throughout the Inquiry as Point A but that the attempt was a poor one and people continued to use that point of access regardless.

42. His evidence was that he and his family (son born 2001) have used the land regularly for activities such as kite flying (photo provided from 2004) sledging, walking and frisbee, gaining access, according to the EQ, from Bowling Green Road (where FP9 enters the land). However, it appears from his oral evidence that he would also use the access point in the South Western corner at point A. He also said in oral evidence that his son had taken a tennis racket and ball to the land. Mr Cook has used the Application Land as part of a jogging route and since 2010 the family has owned a dog and has used the land for dog walking. It is notable that one could not have gleaned from the EQ that the Cook family had only acquired a dog in 2010. The activities that the EQ says the authors took part in included dog walking (Q16) and the question asking if the authors' general pattern of use had remained

basically the same throughout the periods of use was answered in the affirmative (Q10). That is clearly not accurate at least as far as the dog walking element of the Cooks' use is concerned.

43. Mr Cook described the areas of his and his family's use by reference to points on an annotated aerial photograph [AB1/18]. That use ranged far and wide around the perimeter of the land and across it in a number of directions. It was suggested to Mr Cook that during the time that Mr Greenaway was using the Application Land for agricultural purposes the predominant use was of the playground in the South Eastern corner. Mr Cook said that when he moved to his current address there were still some swings in there that were later removed but that the equipment was broken down and not properly maintained. He said that people played on other areas of the field.

44. In respect of the recognisable facilities identified in Q11 of the EQ Mr and Mrs Cook had ticked school catchment area and local church or place of worship. In respect of the former Mr Cook said that was reference to Powells School (outside the claimed locality) where his son went and Stratton School. When it was pointed out to Mr Cook that Powells School was outside the boundaries of the claimed locality he said he was not aware of the boundaries so delineated and that in completing the EQ he and his wife had thought that they should answer the questions "relative to what we know". Further, an error that was made by most if not all of those who completed the EQ was that Q3a and Q3b were answered in the affirmative, confirming that the area delineated on Map A by way of red edging represented the boundaries of the claimed locality, whereas the red line on Map A clearly identifies only the extent of the Application Land.

Edwin Cuss

45. Mr Cuss produced an EQ dated 7 April 2011 and a WS dated 27 September 2014. He and his wife moved to Bowling Green Road in 1966 where they brought up their family. Some of Mr Cuss's evidence related to the use that his children made of the Application Land but given that such use was well before the beginning of the relevant period I am not going to summarise that here.

46. It is Mr Cuss's evidence that throughout the Application Period he has used the Application Land up to 10 times per week. He said that most days he would go for a breath of fresh air but not if it was pouring with rain. It appeared to me from his evidence that that use within the Application Period was referable to walking rather than any other activity. Mr Cuss did say that he and his wife would generally use the path (FP9 or the worn path to point A). He said that the path was the easiest route as the rest of the field is quite tussocky. He did, however, say that if there were people walking dogs on the path they would take a detour, away from the path, as both he and his wife, his wife in particular, were frightened of dogs having both been bitten in their early years. I formed the view that the vast majority of Mr and Mrs Cuss's use was of FP9, the informal worn path to point A and very occasional deviations in the face of approaching dogs.

47. Mr Cuss said that he had not seen signs prohibiting use of the land until the signs in 2011. He had not knowingly seen farmers (Freeth or Greenaway) on the land although he said animals appeared and disappeared (he mentioned horses as well as cattle and sheep). He had never been challenged regarding his use of the land. He was aware of the fence repairs in 2008 and said that it was not long before the newly wired fence was totally demolished and he said he thought people were incensed at having been fenced out.

48. Like other witnesses Mr Cuss had misunderstood the substance of Q3a and 3b (he also said that he had seen no advice note). I asked him if he thought that the Application Land and the locality were one and the same thing and he replied yes. Clearly he had completed those sections of his EQ on a false premise. When asked during re-examination if he had any idea where the locality boundaries were he said no and that he just thought that where he lived was the locality.

49. Mr Cuss had identified school catchment area, local church or place of worship, local shops and area policeman as the recognisable facilities available to the local inhabitants of the locality. Clearly, given that Mr Cuss had no appreciation of what the claimed locality was it is hardly surprising that he identified, in cross examination, facilities that were outside the claimed locality.

50. For school he named Powells School, where both of his children had been educated, the church he was thinking of was the Parish Church in Market Place in the centre of Cirencester, the local shops are in fact outside the claimed locality, in Gloucester Street, near to the school and the area policeman that he had occasionally seen walking around the area had been replaced by a panda car and the police station from which any police presence might come is in the centre of Cirencester.

John Dew

51. Mr Dew produced an EQ dated 15 March 2011 and a WS dated 29 September 2014. He has lived in The Whiteway since 1976 and he lived in Berry Hill Crescent for 6 years before that. It seems clear that use of the Application Land with his children pre-dates the Application Period. The photographs of his daughters sledging in the snow date back to 1979. I note that the only people visible in Mr Dew's

photographs are his two daughters. There do not appear to be any other people playing there at that time.

52. In his EQ Mr Dew identifies a number of activities that he has participated in and he says he has used the land 3 / 4 times per week. In answer to Q10 he said that the general pattern of his use had remained basically the same. This illustrates the lack of care with which these questionnaires are often completed, albeit probably not at all deliberately, as is clearly the case in relation to Mr Dew. The references to sledging appear to have been with his children (he did not tell the Inquiry he went there to sledge by himself). However, that use appears to have finished before the beginning of the Application Period and certainly does not seem to be use that was consistently made of the Application Land by this witness throughout the entirety of the 27 year period to which his EQ relates. Further, in oral evidence it became apparent that Mr Dew had stopped using the land so regularly about 7 or 8 years before the Inquiry for medical reasons (at most once a week) but that, too, is not reflected in his answer to Q10.

53. In his EQ Mr Dew makes reference to use that other people have made of the Application Land. Whilst Mr Dew did make reference to other people using the land generally in his oral evidence I did not hear any detailed evidence from him about the activities that he had identified in reply to Q23 of his EQ, the frequency with which those activities took place, where they took place or who had undertaken them.

54. Mr Dew said that he had never been prevented from using the Application Land. He had never been told by any occupier of the land that he was to stick to the public footpath and he said that until 2011 he had never seen any prohibitory signs on or relating to the Application Land. It was put to Mr Dew that fencing works in 2008 were designed to close up unofficial entrances to the land to encourage people to stick

to the public footpath and whilst Mr Dew agreed that that is what the landowner was trying to achieve he said that it did not mean people were stopped from using the Application Land and there were no notices erected at that time.

55. When challenged on his answers to Q3a and 3b of the EQ Mr Dew insisted that he thought his interpretation of the questions was a legitimate one. When asked about the facilities that he had identified on Q11 he said the school catchment area related to Powells School, the residents' association was NECAS (of which he is a member but not a committee member) which he considered predominantly covered the area of Bowling Green and Whiteway, the local shops were those located on Gloucester Street near to Powells School and he was unable to identify the boundary of the NW area he was referring to save that he knew it covered the Whiteway area.

Ian Grange

56. Mr Grange produced an EQ dated 11 August 2011 and a WS dated 28 September 2014. He moved to Bowling Green Road in October 2009 with his wife and young family. In his written evidence he refers to, amongst other things, geocaching but in his oral evidence it appears that took place on a couple of occasions in 2012, so outside the Application Period. Other than that Mr Grange's written evidence refers to walking, bird watching, jogging and sledging (naturally, when conditions permit). He says these activities are carried out on a weekly basis usually. The areas he pointed to as being their most used are the PF9 from point 1 to 4 and the area on the more Westerly side between points B, 3 and 4. Also, the humpty dumps themselves where the ground is particularly uneven where the quarrying took place. Mr Grange also mentioned using the Application Land to cut across to the water meadow to collect frogspawn and collecting blackberries from in

and around the Application Land (so presumably some of that use, at least, was outside the land).

57. Like the other witnesses Mr Grange appears to have completely misunderstood the nature of Q3a and 3b, agreeing that the area outlined in red on Map A represents the boundaries of the locality relevant to this Application. When challenged Mr Grange said the question may be technically flawed (because no locality is, in fact, delineated on Map A) but he thought it was probably obvious that the locality will be the houses round and about. When I asked him what he regarded as the locality he said Bowling Green and Beery Hill (the section to the East of the Application Land). He said it could extend to around Gloucester Street as they are quite small terrace type houses so might appreciate the green space.

58. Asked about the school catchment area he was referring to in his answer to Q11 he identified Powells School. The reference to local shops was specifically to the Texaco service station and Spar shop (outside the claimed locality boundary). He then said he supposed there is also a Post Office and small shop at location 5 [OB/26] within the boundaries of the claimed locality and he said they occasionally use that. In relation to NW he said he had seen signs on lamp posts but was not sure to which area the NW referred. The final facility that he identified was the rugby club that is within the claimed locality boundary.

59. In relation to management of the Application Land Mr Grange recalled fencing at point A in 2009. He said that when they first moved to their current home they accessed the land at points 1, 4 and A as it was still possible to gain entry and point A. Mr Grange is a teacher of matters relating to the countryside and environment at the Royal Agricultural College and when asked if he was aware the land had been grazed he

said he had assumed so as there was no evidence of scrub invasion even though the grass was tussocky. He did also mention that footfall can control scrub invasion depending upon numbers. It was put to Mr Grange that topping was also a means of controlling it but Mr Grange said he had not seen the Application Land being topped, he thought it would be difficult and dangerous in the area of the humpty dumps and the presence of anthills there suggests that there has been no disturbance of that area by vehicles.

Ian Merchant

60. Mr Merchant produced an EQ dated 1 October 2014 (which it transpired during oral evidence had been completed by his partner but he said it was his evidence) and a WS dated 22 September 2014. During the past 52 years Mr Merchant has lived in the claimed locality, in Bowling Green Lane (now) and Bowling Green Crescent. It became apparent during Mr Merchant's oral evidence that some of the answers appearing in his written evidence were inaccurate. By way of only one example, the box stating that a residents' association was one of the facilities available in the locality had been ticked but when asked about it he said he did not understand as there is no residents' association. In light of the very obvious confusion that seemed to have arisen out of Mr Merchant having not been the person that completed the EQ his oral evidence was abandoned. Much of his WS concerned historic use when he was a child (well before the Application Period) and the evidence that did relate to the relevant period was not subject to cross examination given the difficulties that had arisen during Mr Merchant's oral evidence (through no fault of the Objector's).

Amanda Thorogood

61. Mrs Thorogood produced an EQ dated 10 September 2014 and a WS dated 28 September 2014. She has lived with her husband and two sons in Shepherds Way since 1999 and in her written evidence she said she has been using the Application Land since 2000 for running, dog walking, exercise and relaxation generally and for sledging (when conditions permit). She gains access to the Application Land at point 1 (then over the stile at 2). If she is walking through the land she uses point 4 too. She has never been told she was not to use the Application Land.

62. In her oral evidence Mrs Thorogood said she had only acquired her dog in October 2013 (after the Application Period) and she has used the land much more since then. Prior to that she said she used it in the summer every 2 or 3 days but less so in the winter. She would use it then with her two sons or friends. It was suggested to Mrs Thorogood that the way in which she had answered the questions in the EQ was very misleading and she said that she had not intended to mislead anyone but that the question is not very clear. I accept that it was not Mrs Thorogood's intention to mislead anyone but this does further illustrate the problem of simply accepting the content of EQs as being an accurate representation of use that has been made over a full 20 year period (or whatever period any witness is able to provide evidence in relation to) given the extent to which oral evidence often exposes the inaccuracies that arise out of a literal reading of the content of EQs (and, indeed, scantily produced WSs).

63. Mrs Thorogood could not recall whether there were cattle on the Application Land. She did not know if Mr Greenaway used to drive around the land to check on livestock. She was never asked to go back onto the footpath. She saw no signs before 2011. She had a vague

recollection of fencing in 2008 but she said when she entered the land at point 1 she would always walk straight to point 2 and into the land from there so would not have noticed if holes in the fence between 1 and 2 had been blocked up. She also had no recollection of any decrepit gate at point 4 that was replaced. She did have some recollection of point A being blocked up but she did not know when and she did not generally use that point of entry / exit in any event.

64. When asked about her answers to Qs 3a and 3b and the suggestion that she had been in too much of a hurry in completing her EQ to read it carefully Mrs Thorogood said she hadn't read it properly, she thought it was probably a formality and that it was not particularly important (presumably this was a reference to the accuracy of the answer she was giving). She was then asked about the facilities she had identified as being in the locality and her reference to school catchment area was a reference to Powells School. She had ticked local churches and when asked said she could think of the Baptist Church and the Parish Church in the centre of Cirencester. When it was put to Mrs Thorogood that the churches were outside the ward that was the claimed locality she said she did not think she had understood the question and what the locality was. That does of course beg the question, if one does not understand a question, why simply go on and answer it anyway without seeking clarification?

65. The sports facility Mrs Thorogood identified was one in the centre of town by Waitrose. The local shops she said were in town or maybe the garage (ie the Spar at the Texaco garage). For area policeman she had the police station in the centre of town in mind and the doctor's surgery is also in town, not far from the centre. The community activities she had thought of were Beavers and Scouts held at Powells School, exercise classes at the Parish Hall in the centre of town and various parties held at the rugby club. Whilst she had seen NW signs

on lamp posts she was not a member of any NW scheme and had no knowledge of the areas covered save that she assumed it was the streets in which the lamp posts were located.

Nick Manners

66. Mr Manners produced an EQ dated 30 August 2011 and a WS dated 2 October 2014. He moved to Bowling Green Avenue in May 1999 and his children were 4 and 8 at that time. In his written evidence he says they used the land monthly and when it snowed. The activities they have undertaken on the land include walking, sledging, snowballing, kite and model aircraft flying. In oral evidence he said the main use of the Application Land was between 1999 and 2006 when the children were younger. Again, it seems that the WS and EQ do not portray an accurate picture of use throughout the period of Mr Manners' residence because there is a failure to distinguish between differing uses throughout the period.

67. In his oral evidence Mr Manners said the main entrances they used were 2 and 4 although in his WS he had said his children and their friends sometimes dropped over their rear fence directly into the field. He did not recall works in 2008 to the gate at point 4 because the main use of the land had ceased by then. It was not clear if this meant 'main use' or 'any use' although he did say that by 2008 use of the land was occasional. He said it was when it snowed and half a dozen times during the summer months. When the kite and helicopter flying occurred it was between points D and E and 3 and G (the furthest points away from the electricity lines). However, I am not at all clear how often those activities took place or in which years.

68. Mr Manners did recall the fact that an annual hay crop was taken most years from 1999 onwards and that cattle were kept on the land. He did

not, recall, however any farmer driving around the Application Land or anyone being told by the farmer to keep to the path. Nor did he see any signs saying dogs should be kept on leads or that people should stick to the footpath. He did recall fencing to the rear of his garden boundary but he is not sure when that was installed. He thought it was to prevent sheep escaping.

69. Mr Manners said he did recall some general guidance notes being provided at the time he completed his EQ but he was unable to say if they were the ones appearing in the Applicant's Bundle at pages 680-1. He accepted that he had misunderstood Qs 3a and 3b but said he would not have just slavishly followed any advice and would have looked at each question before answering it. The facilities he had in mind when answering Q11 were Powells School in relation to the school catchment area, the rugby club as the sports facility and the Spar shop at the Texaco garage. He had seen NW signs but he did not know what NW scheme they related to.

Vincent Harris OBE

70. Mr Harris produced an EQ dated 13 September 2014, a WS dated 30 September 2014 and a further statement dated 18 November 2014. He has lived, with his family, at Whiteway View in Stratton, Cirencester, since 1990. At the time of moving to that address his sons were aged 11 and 7. In his written evidence Mr Harris said that his sons spent much time playing on the Application Land over the years and that, at present, they have two mid-life dogs that they walk daily on the local fields, including the Application Land. He had no recollection of signs on the land or access to it being fenced off.

71. Asked about the extent of his use between the mid 1990s and late 2000s he said annually about 80 times per year (roughly twice a week) and

his use is generally of the perimeter of the land. Whilst he knew Mr Greenaway he was not aware that any animals grazing on the Application Land belonged to him. He said he had never met him there and never realised there was a relationship between Mr Greenaway and the Humpty Dumps. He has only ever seen him on other land. He also said that Mr Greenaway was hardly ever in the area during the daytime.

72. Points of entry were generally the slip stile and gate at point 4. Mr Harris said there has traditionally been a stile at point A but that has now been fenced off. When asked if he was sure it was a stile and not a broken down fence Mr Harris said it was difficult to tell as there are various stiles around in different states of repair. However he said that at point A his dogs just ran through it suggesting that what had been there had just disintegrated.

73. When challenged about the way in which he had answered Qs 3a and 3b of the EQ Mr Harris conceded that in light of the interpretation that was put to him he had answered it incorrectly. He said he did not think it was possible to delineate a neighbourhood. He said he had friends that come from Kemble to use it in the snow and school friends of his son came from all over town. The Humpty Dumps is one of just 3 or 4 places one might go to be entertained.

74. In relation to Q11 Mr Harris said that the school catchment areas he was referring to were Stratton, Powells and Deer Park School. The community centre he had in mind was Stratton School which is also used as a community centre. He also said that the rugby club and the church in the centre of Cirencester were used as community centres. The churches he was referring to were Stratton Church and the Parish Church in the centre of town. The sports facility he had in mind was, once again, the rugby club. Shops included the Stratton Post Office and

Spar. He said there were also shops in the Bowling Green area but he said they did not use those very much. He said perhaps they are gone now. When it was suggested to him that there was a Texaco garage on Gloucester Street but that no-one had heard evidence of shops to the North of Abbey Way Mr Harris said he might be mistaken but as they live on the other side of the river they do not have much to do with them. That was, however, said in jest.

Lyn Gillam

75. Mrs Gillam produced an EQ dated 28 September 2014 and a WS of the same date. She and her family have lived in Berry Hill Crescent since February 2006. In her written evidence she says that she uses the Application Land at least and often twice a week. She walks the dog there and runs there and in the winter goes sledging on the Application Land. She also says that her son (aged 12 at the date of her WS) and his friends play there. I do not know how frequently that is.

76. In her oral evidence Mrs Gillam said that she had a number of running routes. They included points 1 to 4, points A to B to C and then back to the play ground and sometimes she would go from A to B to 3 to 4. Those routes were often used in conjunction with a longer run to Baunton fields or across the water meadow. At the time of moving into Berry Hill Crescent she was running less regularly, maybe once every couple of weeks. Now she runs more frequently.

77. Mrs Gillam was challenged about her answers to Qs 3a and 3b and she acknowledged that the answers she gave were not an answer to the question although she did say she thought the question was ambiguously worded. She then said she thought it would be impossible to define the locality. She said in respect of use of the Application Land for sledging, for example, that people came from

other areas such as Kingshill and Chesterton so that defining who uses the land would be incredibly difficult.

78. Mrs Gillam was asked about the fact that she had not identified any facilities in Q11. She said that she had not really understood the question very well and she again confirmed that it really is impossible to define the locality.

79. Mrs Gillam did recall seeing someone that she thought was Mr Greenaway but not on the Application Land and he had never challenged her on her use of the land. They would exchange a 'good morning' when she was out running. She also said she had never seen him on the Application Land in a tractor. She recalls sheep in the field over the period that she has lived in Berry Hill Crescent and cattle more recently. She said there were some holes in the fence because on occasion sheep escaped.

80. Mrs Gillam did recall some changes to the entrance at point A but could not recall when. She also recalled that the fence was damaged. She said she thought that the fencing inflamed locals to carry on as before. Mrs Gillam also said that she had some recollection of signs. It was put to her that Mr Greenaway put signs up asking people to keep dogs on a lead and to keep to the footpath. She replied that she had seen signs occasionally to that effect but they were never up for any length of time. In re-examination she was asked where the signs were and she said at point 4 on the main gate. She thought it might have been in around 2009 or slightly later.

81. Finally, it was put to Mrs Gillam that during the time she had lived in Berry Hill Crescent up to the end of the Application Period the predominant use of the Application Land was of the playground and not the agricultural field. Mrs Gillam replied that for the period she has

known the land the main footpath and the informal paths have been equally used.

Thomas Kolb

82. Mr Kolb produced an EQ dated 12 September 2014 and a WS dated 23 September 2014. He has lived in Cirencester since 1961 and specifically on The Whiteway since 1964. Whilst Mr Kolb's written evidence gave the impression of use that was consistent throughout the period his evidence covered (answer to Q10 says general pattern of use has remained basically the same until wire fence erected) it became apparent in cross examination that there were distinct periods of use for different purposes. In the 1970s and 1980s he and his children used the land. In the 1980s and early 1990s (to 1991 or 1992) he used the land for dog walking. There was then an apparent gap and more recently use has been with the grandchildren who visit from Cardiff and Amersham although they visit less frequently now that they are growing up.

83. Mr Kolb has no recollection of seeing livestock grazing on the Application Land. He has no knowledge of what works may or may not have been carried out at point A as his usual points of entry / exit were points 1 and 4. It is fair to say that his memory of the state of boundary features on the land (ie gates, fences, stiles) was poor generally.

84. Mr Kolb said he was a member of NECAS and that it extended right across to Stratton although he was unable to define the limits of the area that NECAS covered. He did, however, go on to say he thought that members could come anywhere north of the market place in the centre of town. He said it was just a friendly association to ensure the amenity of the area was preserved and maintained. He had no

knowledge of there being any set of rules or a constitution and said he had never turned his mind to it but he later said he thought there may be some 'aims and objects'.

85. Mr Kolb was then challenged on the way in which he answered Qs 3a and 3b. He said that Map A could not possibly have any boundary other than the Application Land on it as the scale was too large. He went on that in any event, in modern society, it is almost impossible to define locality. He did accept that he must have misunderstood the question, however, and said he thought the question was ambiguous. He agreed that for the purposes of answering Q3b he did not given any consideration to where the users of the Application Land came from.

86. In response to Q11 of the EQ the school catchment area Mr Kolb had in mind was Powells School, the residents' association was NECAS, the churches were Stratton and the Parish Church in the centre of town, the sports centres he identified were the one in town and the rugby club and the NW is one that Mr Kolb's wife belongs to which covers the whole of The Whiteway and round the corner into Berry Hill Crescent. He said he assumed there were other NW schemes but that that is the one they are in.

Keith Miller

87. Mr Miller produced an EQ dated 10 August 2011 and a WS dated 28 September 2014. His written evidence spans a period of 74 years. He was born and grew up in Stratton and he used the Humpty Dumps to play with his friends. I do not know whereabouts in Cirencester he lived as a younger adult but in 2002 he moved to his present home in Berry Hill Crescent. At that time he said the field was occupied by a herd of around 15 cows. In more recent years, however, the Application Land has been rented to a Peter Trotter for his sheep. Mr

Miller acquired a West Highland Terrier in 2005 (and later another terrier) and he installed a gate in his rear boundary fence to facilitate access to the field to walk his dog(s). In 2011 Mr Miller entered into a licence agreement with the Objector giving himself and Mrs Anna Miller permission to have access to the land, meaning that their use thereafter was permissive.

88. As with so many of the other witnesses, Mr Miller answered Q10 to the effect that his use of the Application Land had remained basically the same throughout the time he had used it. That is clearly not correct when one looks at the totality of Mr Miller's evidence. In fact, it would be very surprising if his use had remained basically the same over such an extensive period of time.

89. In cross examination Mr Miller confirmed that prior to the gate at point 4 being replaced there was a gate there but that it needed to be lifted carefully as it was falling apart. He said that he had not seen Mr Greenaway going around the land on his tractor. He had seen him walking the boundaries sometimes with his dog. Mr Miller had no real knowledge of the entrance at point A as he had not walked in that area but he said there were paths leading down to point A. He recalled cattle on the land until about 2008 although he later told the Inquiry that a photo in which cattle could be seen had been taken in around 2009 (the photo showing raised beds in Mr Miller's garden). He said sheep arrived in around 2011 / 12 after the field was fenced. Between the cattle and sheep the grass was topped but Mr Miller was unable to say when.

90. Mr Miller produced photographs dating from around 2003, 2007 and 2009. Only in one of those photographs, the one dated 2009, was a person visible and Mr Miller said that were on the line of PF9. It was put to Mr Miller that apart from sledging in the snow the predominant

use of the Application Land was confined to the public footpath. He replied that the footpath was used mainly but that there are other paths all over the field.

Clare Pywell

91. Mrs Pywell produced an EQ dated 12 September 2014 and a WS dated 1 October 2014. She lives with her husband and family in Bowling Green Avenue where she moved to in August 2001 (her children then were 7 and 3). At the time of writing her WS her children were 20, 16 and 11. In her EQ Mrs Pywell says she uses the Application Land about 6 times a year other than use in the snow. In her WS she says her evidence deals with use by her family as well as herself. She refers to playing in the snow, kite flying, remote control aircraft flying and playing with a remote control car. However, the references in the WS appear to be to activities that were occasional or perhaps single events. I heard no further detail in her oral evidence. It does not give the impression of activities carried on with any degree of regularity over the full period to which her evidence speaks.

92. In oral evidence Mrs Pywell said that use of the footpath and use in the snow were split about 50 / 50. She accepted that it did not snow every year and that when it does snow it tends to last for a matter of days. The amount of time her family will spend out there when it has snowed depends upon whether it is during the school holidays. Mrs Pywell said that she did go off the footpath if she was picking blackberries as they are along the boundary between points A and 4. She agreed that she had not personally used the Application Land much other than on the public footpath but she said her children had used it more as they had more time. She also said that dog walkers used the whole of the Application Land.

93. Mrs Pywell said she had not used the entrance at point A as she used points 1 and 4 so she was not familiar with the repair works that were carried out to the fence there in 2008. She has not seen the owner of the land on the Application Land.

Dale Hjort

94. Mr Hjort produced an EQ dated 15 September 2014 and a WS dated 25 September 2014. He lives in St John's Close, Stratton and has known the Application Land for 46 years. His written evidence provided little insight into the extent of his use of the Application Land over the period he has known it. Indeed, it appears from his WS that he was living away for some of the time he refers to as he talks about visiting his parents in Stratton and joining them for a stroll.

95. Mr Hjort said he had typically gained access to the Application Land at points A and 4. He recalled no obstruction at point A although he was unable to recall whether there was a stile, gate or fence. It was suggested to him that the last time he went on the Application Land was 15 or 20 years ago. He said he had been on it regularly and used point 4. Mr Hjort's evidence of use of the Application Land was vague in the extreme and I was unable to form any clear view of the extent or nature of his use or the period in which his use mostly occurred. I also do not know for what part of the 46 years he referred to he was actually resident in the claimed locality.

Richard Winstanley

96. Mr Winstanley produced an EQ dated 8 August 2011 and a WS dated 24 September 2014. He moved to Rosehill Court (at the end of Bowling Green Lane, adjacent to the Application Land) in 1997. In his written evidence he says that he uses the land infrequently, walking

occasionally across the field (his EQ says once or twice a month). However, his evidence is directed more towards the use that he has seen other people making of the Application Land.

97. The point of access that Mr Winstanley has usually used to gain access to the Application Land is point A as it is the nearest point of entry to where he lives. He said there was originally a get there but it was not used by Mr Greenaway. It was later replaced with planks of wood and then with a stile, probably before 2000. If Mr Greenaway had cattle in the field he would make running repairs as necessary. He was unable to say how long after he moved in Mr Greenaway put up a post and barbed wire barrier.

98. Mr Winstanley agreed that when cattle were on the field people were more diffident. He said sheep arrived in about 2011. He said that after the sale of the land in 2010 notices were displayed at point 4. He did not, however, tell the Inquiry what they said. By reference to EQ Q29 Mr Winstanley was asked if he understood his own use of the land to be use in the nature of a public right of way to which he replied that he did.

GENERAL OBSERVATIONS ABOUT THE APPLICANT'S WITNESSES

99. My general impression was that the Applicant's witnesses were being honest and were doing their best to assist the Inquiry. However, it was clear that in some cases (all, in fact, as far as the topic of locality was concerned) that they had given too little thought to the answers they provided in their written evidence. Many of these points are illustrated by my summary of the evidence above.

100. For example, not a single one of the Applicant's witnesses had identified the fact that Map A did not delineate any locality, only the

Application Land, notwithstanding that Q3a says "Map A is the map showing the claimed land and the locality which uses the land …" and Q3b asked respondents to confirm that they agreed with the boundaries of the locality. Whilst many said during cross examination that the question was ambiguous, no-one raised this point at the time of completion or declined to answer the question on the basis that it was not clear what was being asked for.

101. Further, and I have highlighted numerous examples of this in my summary of the evidence I heard, written evidence gave the express impression of consistent use throughout the whole period to which the evidence related. Whilst that is no doubt partly attributable to the way in which the EQ is constructed, designed (very poorly) to elicit only the most simplistic of information, it would have been open to anyone completing one of those EQ's to say this form simply does not do the nature of my use justice or to elaborate much more accurately in the WSs they produced. As it was, the written evidence I saw turned out to be, at times, wholly misleading.

102. None of the written evidence, in EQ form or WS form, addressed the use made of the land either by the witnesses or other people in anything like sufficient detail. It is an unfortunate and persistently recurring feature of applications to register new TVGs that the written evidence wholly fails to set out in any satisfactory or adequate detail the factual matters relevant to establishing that the statutory test has been met.

103. By way of example, many of the witnesses that appeared at this Inquiry had lived in the claimed locality for the whole of the Application Period (and long before that in some cases). It became clear, as one would expect, that over the course of years, even decades, peoples' use of the land had changed, often as a result of acquiring or

losing dogs, children arriving, children growing up, ill health, retirement and so on, yet each witness had answered Q10 in the affirmative stating that their general pattern of use of the land had remained basically the same during the time that their evidence of use related to. The fact that every witness had signed up to that statement when it was clearly not correct demonstrates a worrying lack of concern for the accuracy of the evidence contained in the EQs.

104. The evidence relating to the claimed locality was to all intents and purposes non-existent and, therefore, wholly unsatisfactory. The Map that purported to identify the relevant locality and in respect of which each witness was asked to indicate their agreement or otherwise identified no boundaries of any locality edged in red as the EQ stated it did. It simply identified the Application Land. When asked to elaborate upon their answers to Q11 a large number of the Applicant's witnesses identified recognisable facilities that were outside the claimed locality and were not exclusive or particular to inhabitants of the claimed locality and it was clear that some witnesses had given the matter little thought at all (for example, some identified NW schemes just because they had seen signs on lamp posts but were not members, had no idea where the scheme was or what area it covered). Further, some witnesses simply said it would be impossible to identify a locality. What is certain is that none of the Applicant's witnesses provided answers by reference to the case being advanced by the Applicant.

105. There was one further issue that emerged early on during the Inquiry and that a number of the Applicant's witnesses were asked questions upon. At pages 680 and 681 of the Applicant's Bundle, Volume 3, is a document that purports to provide advice for completing the EQ. It is pretty prescriptive and anyone following that advice could not necessarily be regarded as having provided evidence

that might be considered independent. Most of the Applicant's witnesses denied having seen that document. One or two mentioned that they had seen some guidance of some description but were unable to say whether it was this document or not. I am prepared to accept that those who denied knowledge of that advice guidance had not seen it but there are a substantial number of other EQs that the Applicant relies upon and I have no idea whether the people completing those EQs had had sight of and, indeed, followed the advice document. It was clearly produced for a reason and I cannot be at all sure who has actually been provided with a copy of the same.

106. In light of all of the foregoing I arrived at the conclusion that the EQ evidence ought to be treated with a considerable degree of circumspection as witnesses appear to have been too ready to sign EQs in particular (but WSs to some extent too) without properly scrutinising the content of the same and ensuring that the evidence contained therein was evidence that was accurate and could be properly relied upon.

107. Beyond the erroneous answers provided to Q3b of the EQ and the identification of a number of recognisable facilities that were clearly outside the claimed locality, I heard no evidence at all about what might make the area identified by the Applicant as the relevant locality (and delineated by a green boundary at [OB/26]) a locality by reference to any community interest on the part of its inhabitants.

108. Finally, some of the witnesses made reference to use of the land by other people. Some of that evidence expressly identified those people as coming from outside the claimed locality (eg sledgers from Kingshill and Chesterton). However, those that were not specifically identified by reference to their geographical origin may or may not be from within the claimed locality. I cannot make assumptions about

where people might have come from. Whilst inferences can be drawn that some of the other users probably did come from within the claimed locality it is for the Applicant to prove, on the balance of probabilities, that there has been use by a significant number of the inhabitants of the locality. I heard very little by way of evidence that specifically identified where other users had come from. That may, of course, be because the witnesses did not know who the other users were.

109. On the whole, the evidence of actual use was very generalised and superficial and, in my view, inadequate for the purposes of painting any clear and detailed picture of the use that has been made of the land by the inhabitants of the claimed neighbourhood throughout the whole of the twenty year period with which the Application is concerned. The relevance of this will become apparent when I turn to make my findings of fact and then apply the statutory test to those findings.

WRITTEN EVIDENCE FOR THE APPLICANT

110. In addition to the evidence of those witnesses that appeared at the Inquiry the Applicant also relies upon a number of other WSs (appearing behind tab 3 of the Applicant's Bundle 3) together with the material originally submitted in support of the Application (including, amongst other things, a large volume of EQs all of which appears in Volumes 1 and 2 of the Applicant's Bundle) and further supporting documents (Tab 4 of Volume 3 of the Applicant's Bundle) which also includes further EQs as well as other documents (eg photographs). Some of that evidence covers the whole of the twenty year period and some does not. Nevertheless, it amounts to a substantial body of further evidence that does, cumulatively, cover the whole of the Application Period and well before that too.

111. It would unnecessarily lengthen this report to analyse all of the additional written evidence provided by the Applicant and referred to above. However, I can confirm that I have reviewed and read all of the written evidence and additional documents provided in support of this Application in addition to that in respect of which I had the benefit of hearing first hand from the witnesses. I attach considerably less weight to that evidence, which has not been tested by cross examination, for the reasons that I have identified above.

EVIDENCE FOR THE OBJECTOR GIVEN ORALLY

112. I will deal with the Objector's evidence in the same way that I have dealt with the Applicant's evidence above. As with the foregoing, my review of the Objector's evidence is intended to be nothing more than a précis, not a complete transcript of everything that was said by each witness. I will address the Objector's evidence in the order in which it was presented to the Inquiry.

Mark Freeman

113. Mr Freeman is the managing director of Freeman Consultancy Limited which company assists developers on potential opportunities. He is a consultant for Baylight Properties Limited, a company associated with the Objector. Mr Freeman has been a consultant to the Objector since its inception, dealing with acquisitions and project management. He produced a WS dated 23 October 2014 to which he exhibited a number of documents.

114. The scope of Mr Freeman's written evidence was to set out the history of ownership and tenancy of the Objector's land, to produce correspondence with neighbouring owners regarding gates in their

rear boundaries giving access directly therefrom onto the Objector's land and a licence agreement entered into with Mr and Mrs Miller, to set out the steps taken upon the Objector's acquisition of the land to secure the boundaries and prohibit general use (by signage) save for use of FP9, to relay the substance of conversations he had had with others (Greenaway, Moore, Elphick) but who would not be appearing at the Inquiry and to provide information about what he had personally seen on the land during his 30 or 40 visits to the land since 2 June 2010 when the Objector acquired it.

115. In cross examination Mr Freeman confirmed that he had visited the Application Land between 2 and 5 times prior to the Objector's acquisition of the same. He said he was aware of the evidence of paths on the land and paths to people's gates. He was taken to a number of photographs of the same. He was then asked about the extent of his visibility across the whole of the Application Land and he accepted, by reference to photographs he was taken to, that there were places where one could not see from one side to the other. There was extensive discussion about who Mr Freeman spoke with when he visited the land and questions about who visited with him, what he knew of previous quarrying before the land was purchased and how that had been discovered.

116. There then followed questions about a meeting at the rugby club and the fencing that was carried out in 2011. Mr Freeman confirmed that he had since spoken with Mr Trotter (the grazier) and he had complained about the fact that the fence had been vandalised.

Nigel Evers

117. Mr Evers produced a WS dated 22 October 2014. He is a landscape architect and was, as an employee of the Cooper

Partnership, responsible for the preparation of a site appraisal of the Objector's land. The purpose of Mr Evers' WS was to exhibit that site appraisal and to put it in evidence before the Inquiry.

118. The site appraisal covers all of the topics one would expect to see dealt with: location, historic development, community facilities and landscape context. The appraisal contained a number of maps and plans that were cross referred to in the text, one of which was much used during the Inquiry, the plan appearing at [OB/26], identifying the location of local amenities in relation to the boundary of the claimed locality.

119. In cross examination Mr Evers explained in some detail the methodology adopted in producing the site appraisal and further explained his evidence.

Ian Thomas

120. Mr Thomas produced a WS dated 21 October 2014 together with a number of exhibits thereto (including documents and photographs). He was managing director of Langdale Western Limited from 1 May 2003 until 16 April 2012. He and his fellow directors of Langdale set up a special purchase vehicle, the Cirencester Partnership, upon receipt of sales particulars of the land on 8 June 2009 for the purposes of acquiring the land. The purpose of Mr Thomas's evidence was to set out his involvement with the Application Land as a result of that process of acquisition and subsequent disposition of the land, together with details of his continued involvement thereafter.

121. The substance of Mr Thomas's observations from his visits to the land were that the majority of use of the land was of the main PF9, there was some evidence of short cuts to the rear gardens of some

adjacent properties, there was evidence of a regularly used shortcut between points A and C on his plan (points 1 and A, via C and B, on the Applicant's plan at page 18 of its bundle) and the land was otherwise rough and clumpy under foot.

122. Cross examination involved some elaboration of Mr Thomas's evidence and going through the photographs Mr Thomas had adduced. Mr Thomas also confirmed that he did not recall seeing signs prohibiting or limiting access.

Christopher Graham

123. Mr Graham produced a WS dated 22 October 2014. He is a partner and member of the LLP known as Moore Allen & Innocent. Mr Graham's involvement with the land dates back to Henry Freeth's ownership of the same. Once Mr Freeth had died (1994) Moore Allen & Innocent managed the land on behalf of his widow. The grasskeep was sold in May 1994 and was re-let on an annual basis until the field was sold. Management of the land involved yearly visits to the land which included visual inspection (not necessarily a full boundary inspection) together with any further contact with the occupier as and when necessary. Mr Graham said it was not always him that visited the land. He did it about 50% of the time.

124. During cross examination there was discussion of the habits of cattle and whether their presence would have caused people to be more likely to stick to the footpath. Mr Graham did not disagree with the proposition that if there are cattle on one part of the field that does not preclude people using other parts of it. He also agreed that if there were cattle on a footpath most people would move off the footpath to avoid them.

125. Mr Graham said he did not recall Mr Greenaway ever having complained to him about the condition of the fencing or about trespassing on the land. He also said he had no recollection of having seen any signage on the land before 2011.

Nicholas Parsons

126. Mr Parsons produced a witness statement dated 25 October 2013. He is a Solicitor and Partner in the firm of Sewell Mullings Logie LLP. Upon the death of Mrs Freeth on 5 November 2002 Simon Logie was appointed as one of the trustees under the terms of her will. He retired in 2008 and Mr Parsons was appointed in his place. The purpose of Mr Parsons' evidence was to confirm the steps taken in the management of the Application Land and to exhibit documents, including attendance notes wherein the issue of trespass was identified and invoices for fencing works carried out to address the same.

127. During his oral evidence Mr Parsons confirmed that the nature of the boundary feature at point A was old iron railings attached to old posts. He said they were not particularly high and people just climbed over them. That is one of the areas in which he ordered corrective work to be undertaken. Attention was also drawn to the invoices for topping the land.

128. One of the documents exhibited to Mr Parsons' evidence is a letter from Katharine Foot to Mrs Organ (executor and trustee) stating that it was anticipated the instructions would likely be to erect a prohibitory sign. It was Mr Parsons' evidence that as far as he was aware the sign was put up and he said had there been no sign he would have notice that.

Ivor Hall

129. Mr Hall (and his wife after him) gave evidence at their home in Berry Hill Crescent. He is relatively elderly, has some health issues and expressed concern about coming to the Inquiry and giving evidence for the Objector. Whilst there was some suggestion that Mr and Mrs Hall felt intimidated I heard no direct evidence of the same. I do, however, accept that they might have felt intimidated by the circumstances and that is why their evidence was heard away form the Inquiry venue. Representatives of both parties and a representative of the Commons Registration Authority were in attendance at Mr and Mrs Hall's home. Mr Hall produced a WS dated 20 October 2014.

130. Mr Hall's evidence focused on the use of the Application Land over the preceding 25 years. His property abuts the land and before he had his current fence erected he said he had a very open view of the land. He did, however, have a tall fence installed about 12 to 15 years ago which prevents visibility of the Application Land.

131. He said that the majority of use (about 97%) was of the footpath although some people walk the route A to C on his plan (1 to A on the Applicant's plan). He said some walkers allowed their dogs to stray from the footpath but most kept dogs on leads, especially when there were livestock in the field. He did, however, recall seeing someone flying a kite on the land in 2012 / 13 which is the first time for a long time. He had never witnessed use of the land for sports such as football or cricket. He said that it was fair to say that whilst the land is lumpy it is flatter at the rear of the bungalows.

132. He did say in his WS that Mr Greenaway had asked Mr Hall not to go onto the Application Land for the purposes of cutting his hedge as he had no right to do so. Thereafter, Mr Hall did have a bonfire on

the land but with Mr Greenaway's permission and for payment. He also said he had seen Mr Greenaway on the Application Land on his tractor during hay making and agreed that it was no more than 6 years ago.

133. In cross examination Mr Hall said he had witnessed youths on the land as distinct from children. He had seen a group of them sniffing aerosols and had reported them to the police because he was so concerned. That was about 7 or 8 years ago.

134. Mr Hall said he had walked on the footpath across the field many times. He said he had gone off the footpath when he had walked his son's dog there. He said they had seen a flurry of activity in the last few months in that they could hear people calling their dogs. He estimated he would hear 2 or 3 people a day.

Christine Hall

135. Mrs Hall produced a WS dated 20 October 2014. In that evidence she says the for the past 23 years she has seen and heard people entering the land from the Bowling Green Lane direction, mostly dog walkers she says by virtue of the shouting of dogs names. To some extent Mrs Hall's evidence echoed some of that given by her husband, including that she had seen Mr Greenaway on his tractor in the field, but she did also observe that people often used the Application Land as a means of getting across to other places such as Baunton (walkers and dog walkers) and the water meadow (children).

136. Mrs Hall was unable to give any evidence relating to sledging. She said that the land falls away steeply and they have no visibility over that part of the land.

GENERAL OBSERVATIONS ABOUT THE OBJECTOR'S WITNESSES

137. All of the witnesses, except for Mr and Mrs Hall who I shall deal with separately, were witnesses who had had some professional involvement with the land, some over a relatively short period and some for an extensive period. I accept their evidence. It was factual and dispassionately conveyed, limited to matters upon which the witnesses were able to give evidence and supported by documentary evidence of the matters to which they spoke, in so far as possible.

138. Mr and Mrs Hall's evidence I treat with more caution. Like the evidence produced by the Applicant their evidence was very vague and lacking in detail and from reading their statements I had formed the view that for part of the year at least they had a good view of the Application Land. Upon visiting their property it was apparent there was a tall fence that precluded any real opportunity to observe the Application Land and that was erected some 12 to 15 years ago. Mr and Mrs Hall did make reference to hearing people calling dogs but I do not see how they can give accurate evidence of whereabouts on the land people were walking if they could only hear them and not see them.

WRITTEN EVIDENCE ON BEHALF OF THE OBJECTOR

139. In addition to the evidence given orally to the Inquiry the Objector relies upon the written statements of Brian Thomas (nephew of Henry Freeth) and Warren Titcombe (conducted survey after end of Application Period). I have read that evidence and I attribute appropriate weight to it having regard to the fact that the evidence has not been tested in cross examination. The Objector relies upon no further documentary evidence, all documentation having bee exhibited to the various witness statements.

MEMBERS OF THE PUBLIC

140. A number of members of the public also spoke to the Inquiry. A summary of what they each said is provided below and I have, of course, had regard to their contribution in the same way as I have had regard to the parties' witnesses contributions.

Councillor Joe Harris

141. Mr Harris is a County Councillor for Cirencester Park Division, the Cotswold District Council Councillor for Cirencester Park Ward and Cirencester Town Council and the Mayor of Cirencester. He spoke on his own behalf and on behalf of County Councillor Nigel Robbins, Councillor for the Cirencester Beeches Division in which the Humpty Dumps is situated.

142. His written statement deals with memories of playing on the Humpty Dumps as a child when visiting his grandfather (and memories of his mother too who played there as a child) who lived in Bowling Green Road. He said he used it as a teenager with his friends. They would go there for a quiet smoke. He said that neither he nor his mother were challenged in their use of the land. I do not know whereabouts Mr Harris lives and whether he is or was at the time of use resident within the claimed locality.

143. Mr Harris said he considered it irrelevant what the ward boundaries are. He said that the boundaries are determined on the basis of population, not amenities, and that at the next election the Bowling Green area will be part of Abbey Ward. He said Bowling Green is a distinct community. That, however, is not the community on whose behalf the Application is made.

144. Mr Harris was prepared to be asked questions by Mr Chapman. The extent of his questioning related to whether or not Mr Harris was conflicted by his active involvement in favour of this Application. He confirmed that he is not on the Committee that will make a decision on this Application and that neither he nor Councillor Robins will express any partisan views to any member of the Committee that does make the decision.

Councillor Andrew Lichnowski

145. Councillor Lichnowski has been a Councillor on Cirencester Town Council since 2007 and a District Councillor since 2011. He is one of the Councillors for the Stratton Whiteway Ward and has lived in Stratton since 1998. He said he is very aware that the Application Land is the only major open space that is safely accessible in the Bowling Green area. He said he had walked across it once or twice but does not claim to have used it.

146. He said that he is aware from what he has seen and from his discussions with local people that the land has been used for recreation. He said that having spoken to local residents he has received lots of comments about how they have used the land and their children and grandchildren have done so too. He said that he is also aware from anecdotal discussions that people from Stratton go there too. He supports the Application and supported the Town Council's decision to support designation as a TVG. He also told the Inquiry that he believes the statutory test to be met.

147. It was put to him by Mr Chapman that registration would diminish the value of a public asset. He replied that he did not realise that and was acting in good faith. Mr Licknowski confirmed the extent

of his own use and that the last time he walked along the bridle path was in the spring time (2014). He said he saw people with dogs walking across the land and when it was suggested to him they were entitled to do that on the footpath he replied they were playing on the area. However, when pressed he said he would have difficulty assessing whether the people he saw were on the footpath or not.

Richard Gunner, Chair of NECAS

148. Having become aware of the frequent references to NECAS Mr Gunner very helpfully attended the Inquiry and produced a copy of the Constitution of NECAS and an 'Introduction to NECAS' (produced later) which shows the area covered by it and provides some general information about its formation and functioning.

149. I will not recite the full content of those documents but it is worth noting that the Constitution says membership of NECAS is open to anyone subject to payment of a £1 subscription per household, there being no apparent residency requirement. Rather interestingly, the 'Introduction', quite at odds with the Constitution, defines very clearly the area and that excludes most of Stratton and the majority of Cirencester. In fact, it covers very little in the way of residential area beyond Bowling Green.

Amanda Fuller

150. Mrs Fuller produced a written statement. She has lived in Bowling Green Lane with her young family since 2001 but she has lived in Cirencester all her life. Her statement was directed at the use that her family has made of the Application Land including riding BMX bikes, flying remote controlled aeroplanes, playing, picking fruit, sledging in the snow, observing wildlife and walking with her mother

who travels from across town to walk her dog there. She said, when asked by Mr Chapman, that she was referring to use of the Objector's land, not the playground.

Councillor Mark Harris

151. Councillor Harris is the Town Councillor for the Stratton Whiteway ward. He produced a typed statement which was directed at three points. Firstly, his own experience and knowledge of the Humpty Dumps which was largely concerned with visiting Bowling Green Road where his wife's parents lived and where his sons would play after school. They would often be told the boys were playing 'up the Humpty Dumps'. He also said it is the first place you go when it snows. When asked if he had personally used the land he said he had many times to walk dogs, play frisbee and throw a ball and he denied that it was footpath use.

152. Secondly, he made the same point that had been made earlier that ward boundaries are determined on the basis of population, not any logical use of amenities. Thirdly, he said that the area known as Bowling Green (or sometimes Berry Hill) is a distinct area and community.

SITE VISIT

153. As is usual practice at inquiries dealing with applications to register land as a new TVG I conducted a site visit. This took place on the penultimate day of the Inquiry, Thursday 20 November 2014. We met at the Inquiry venue and then convened on site at 10.35 am. Representatives of both parties accompanied me on my site visit as did Janet Smith of Gloucestershire County Council, the Commons Registration Authority. We walked the whole of the site boundary and

the paths that crossed the site. The site visit lasted approximately 1 hour and 10 minutes.

154. During my site visit I heard no evidence but was very mindful of the evidence I had seen and heard. Those accompanying me were able to point out features that they wanted me to pay particular attention to (paths, topography, fences, gates into gardens, points of access, fruit bushes, etc). I did, of course, have in the forefront of my mind all of those features of the site that had been particularly prominent in evidence. As well as walking the site itself I also ventured further along Monarch's Way to see where FP9 continued towards Baunton and I walked into the water meadow on the other side of Monarch's Way.

THE PARTIES' SUBMISSIONS

155. I do not propose to set out the entirety of the parties' closing submissions, word for word. It is enough for present purposes to identify the salient points being advanced as to why it is said that this Application should succeed or fail.

156. The Applicant inevitably contends that each and every part of the statutory test under section 15(3) of the 2006 Act is met. As I have already mentioned in the foregoing, before the Objector's closing submission was presented I sought clarification form the Applicant as to the basis upon which the locality aspect of the Application was being advanced. It was confirmed that the locality relied upon was the ward of Stratton (and) Whiteway as identified in box 6 of the Form 44 Application Form (as amended).

157. Whilst it is clear the Applicant must contend that the statutory test is met, the following specific points were made in closing (in addition to a commentary on the Objector's evidence):

- The original application sought to rely upon Bowling Green and the ward of Stratton Whiteway but it was amended at the request of the Council (although the Applicant accepted there was no instruction or advice from the Council as to what amendment to make - the Applicant was simply asked to provide clarification);
- Repairs to the boundary fences / gates, etc , do not make use contentious, nor do they limit use of the land;
- Initially it was said that the advice guidance (pp 680-1, AB3) was produced to assist one person, Shaun Stancombe, in completing his EQ by Helen Ashton (Mr McGrath's mother and not a committee member of FROTH). However, when I asked further questions about this, whilst it was known that Helen Ashton had provided assistance, it was not known what form that assistance took and no-one had spoken to Helen Ashton about it since the start of the Inquiry to get clarification so it was not clear whether she was the author of the guidance or not;
- The confusion caused by Q3b was universal;
- Following reference in the Objector's closing submissions to the statement of Michael Wallis (AB3/824] the Applicant sought to distance itself from the content of paragraph 14 therein, referring to the basis upon which ward boundaries are drawn, stating that it represented that witness's opinion and not that of the Applicant.
- The boundary of the NECAS area includes some houses in Stratton;

- The 2008 fence repairs were a response to dangerous boundaries rather than a message for people to keep out / stick to the footpath;
- Lack of photographic evidence of day to day use does not amount to evidence of lack of use – the reason there are numerous photos of people in the snow is because it represents a special photographic opportunity.

158. The Objector made a number of points in closing beyond simply putting the Applicant to proof on each and every part of the statutory test (which was also submitted) and beyond summarising the evidence of the Applicant, as follows:

- FROTH is an unincorporated association and is not a "person" in law so the Application is invalid;
- The Application was out of time because it was resubmitted on or after 15 February 2013 and does not, therefore, come within the two year window of opportunity following cessation of use provided for under section 15(3)(c);
- The claimed locality is not a locality for the purposes of the relevant provisions of the 2006 Act;
- Use of the Application Land was overwhelmingly referable to use of the public footpath;
- Even use of informal paths is referable to footpath type use and is therefore use of a potential prescriptive right of way rather than TVG type use;
- User in the face of the steps taken by the landowner (fencing, signage, requests to keep to the footpath, letters sent to frontagers) meant that user was contentious;
- The significant number test is not met when one discounts all non-qualifying use; the users mostly come from nearby streets and does

not amount to use by the inhabitants of the claimed locality; there is no local community of Cirencester Stratton Whiteway;

- There has not been qualifying use for the 20 year period for the reasons recited above;

FINDINGS OF FACT

159. I turn now to make my findings of fact on the various issues that have been 'live' at this Inquiry.

The claimed locality

160. I am unable to make any positive finding about the claimed locality being a cohesive community or having some community interest. The Applicant appears to simply rely upon the ward boundary as delineating the claimed locality and has not sought to adduce any real evidence directed at questions of community. What little evidence I have heard (as a result of cross examination on Q11 of the EQ) has not identified the existence of community facilities or associations that are particular to the claimed locality.

161. In light of the answers given to Q3 of the EQ it is not surprising that I heard no real evidence related to locality because it appears that no-one had ever really turned their mind to addressing that issue.

Agricultural use

162. It was not contentious that the Application Land was owned and farmed by Henry Freeth until his death in 1994. It was then let to Mr Greenaway until 2005 and from 2011 it has been let to Mr Trotter. As well as grazing livestock a hay crop was also taken from the land (by both Freeth and Greenaway) although I do not know in which

years. I certainly heard evidence of Mr Greenaway on the land in his tractor during hay making (Hall) although I am not convinced of the accuracy of the timing given that Mr Hall said it was no more than 6 years ago but Mr Greenaway had given up the land by 2008. In the period between Greenaway and Trotter the land was topped in 2008 and 2009 (invoices exhibited to Parsons' WS).

163. The majority of the Applicant's witnesses had, if they were using at the relevant time, seen livestock including cattle, sheep and there was even mention of horses by one witness (Cuss). It was never made quite clear how long animals were on the land for at any one time and the number of cattle was not entirely clear either, there being anything between around 15 (Miller, oral evidence and photographs) and 35 (Graham). Their presence on the land was described as sporadic (Cuss), appearing for a while, there being periods of non-use and then sheep appearing.

164. Whilst the presence of animals did have some bearing on the behaviour of users of the Application Land as they would be more diffident (Winstanley) it is not suggested that there was any incompatibility between the agricultural use and any recreational use and the evidence that I heard did not indicate the contrary.

Attempts by the landowner to prohibit / discourage non-footpath use

Fencing

165. There are three areas where there were said to be repair works to boundaries (except for the references in the evidence to Mr Greenaway carrying out running repairs as was necessary to keep the boundaries stock proof, although I did hear evidence of occasional escapes by sheep despite running repairs). The Fenced Section did

have gaps in the more Westerly of the fences (the one abutting the Objector's land) where people had been gaining access to the Application Land and repairs were effected in September 2008 forcing the public entering the Application Land at point 1 to follow the line of the footpath to the stile at point 2. The old fencing at point A, another place where unauthorised access was being gained, was removed and a new fence was constructed in its place. Finally, the old gate at point 4 had been replaced with a new galvanized gate. All of the above works were carried out pursuant to instructions from Mr Parsons by Philip Dickerson (invoice, OB78).

166. In respect of the fence near entry point 1 and the fence at entry point A, both were vandalised thereafter. It is not clear that any further works of repair to that fencing were undertaken before the much more extensive works in 2011.

Signage

167. All of the Applicant's witnesses except for Mrs Gillam denied having seen any signs on the Application Land prohibiting use, telling people to stick to the footpath, and so on. They did, however, recall prohibitory signage a little further up FP9 in relation to another of Mr Greenaway's fields from which he took a silage crop. Mrs Gillam said she had some recollection of signs asking people to keep their dogs on a lead and keep to the footpath. She said the signs were never up for any length of time, they were on the main gate at point 4 and she thought they first appeared in 2009 or slightly later.

168. Mrs Gillam's evidence is inconsistent with the evidence of the other of the Applicant's witnesses and in terms of timing is inconsistent with the Objector's evidence. There is clear evidence that signage was put in place at the time of the Objector's acquisition of the

Application Land and it is my view that her evidence was more than likely referring to those signs. The only real evidence of any earlier signs produced by the Objector was exhibited to the statement of Mr Parsons, a letter dated 8 August 2008 from Katharine Foot of Moore Allen & Innocent to Mrs Organ (one of the executors of Mrs Freeth's estate) wherein it is said that there are likely to be (as yet unconfirmed) instructions to put up a sign saying that there is no public right of way in the South Western corner (point A). Whilst Mr Parsons said in oral evidence that he was sure he would have said something if his instructions to put up signs had not been carried out, it is clear that at the time of the letter the instruction to erect signs had not been confirmed.

169. I am not satisfied that there is sufficient evidence of prohibitory signage prior to 2011, and I find that there were no signs put up on the Application Land or even just outside the boundary of it and relating to the Application Land prior to that date.

Verbal warnings to stick to the path

170. The Objector contended that both Mr Freeth and Mr Greenaway told people that they saw straying from the public footpath to keep to it. All of the Applicant's witnesses denied having ever been taken to task over their use of the Application Land beyond the public footpath. That is likely to indicate one of two things. Either, the users did not stray from the path and there was, therefore, no reason for anyone to challenge their use of the Application Land or people did stray from the path and were not challenged.

171. Very few people saw either Mr Freeth or Mr Greenaway on the land and the picture painted by the Objector of frequent presence on the land was not established in my view. In the absence of direct

evidence of people being challenged on their use of the land (save for Mr Hall who was taken to task over his hedge cutting and leaving the cuttings in the field by Mr Greenaway) I am unable to make any positive finding that such challenges occurred.

Use of the Application Land

PF9

172. I find that, on the evidence, there was relatively extensive use of FP9. I need say little more about this because that use was by right. It is, of course, worth noting that the presence of a public right of way over a piece of land is in fact capable of facilitating and encouraging more widespread use of that land.

Informal paths

173. There have been a number of informal paths over the Application Land. As much is evident fro the Applicant's (undated) aerial photograph at page 18 which is entitled 'established walking routes', a description that is, in itself, instructive. There is very little in the way of aerial photographs produced at this Inquiry. There are a further two images produced [AB1/17] but the quality is so poor that there is a limit to what can be gleaned form those photographs and I am unable to decipher the date upon which those images were captured. They take matters no further.

174. There have clearly been paths worn between garden boundaries where people have installed gates (there is a very clear path to Mr Miller's garden) and the public footpath. There is also a well worn path between point 1 and A, via points C and B. Beyond that there appear to be some other paths on the Applicant's aerial photograph and there

were a couple of well worn paths visible on the day of my site visit (more than three and a half years after the end of the Application Period so not necessarily representative of what I might have seen on the ground during the period).

175. The permanent existence of paths is caused by footfall. In a field where there has a predominance of user that has wandered anywhere and not stuck to any defined route one would not expect to see paths. One can draw some inferences as to use from the presence of paths and that inference is consistent with the evidence I heard from some of the Applicant's witnesses who said that use of the land was predominantly of FP9 and the informal paths, in particular the one leading to / from point A (Cuss, Miller, Pywell).

Other recreational use

176. I heard about walking, dog walking, children playing, kites being flown, model aeroplanes and cars, bikes, balls, sledging, fruit picking and bird watching, amongst other things. It became apparent to me that some of the evidence I heard related to a period prior to the period with which I am concerned.

177. Further, whilst I am satisfied that some of these activities did take place on the land during the Application Period I am not able, on the strength of what I heard in evidence, to pinpoint the frequency with which these activities took place, during which parts of the Application Period, whereabouts on the Application Land or by whom (this is reference to the possibility that some of the users were not from the claimed locality). I was simply unable to form any clear view of the use that was being made of the land throughout the whole of the relevant twenty year period because the evidence I read and heard was so vague, imprecise and lacking in detail. I am unable to draw more

satisfactory conclusions on recreational use even by differentiating between the periods of agricultural use (ie Freeth, Greenaway, vacant land). I can, therefore, make no positive findings of fact about these matters.

178. However, the one activity that I am certain did take place was sledging in the snow, not least because I have seen a number of photographs depicting the same. I do not, however, know which of the relevant years had sufficient snow fall (if any) to cause people to go to the Application Land to sledge and play snowballs and so on. Moreover, it was clear from the evidence I heard that the Humpty Dumps was quite an attraction and drew crowds from further afield so was not confined only to use by those coming from the claimed locality. Therefore, some of the use for sledging, at least, was clearly not qualifying use.

APPLYING THE LAW TO THE FACTS

179. I turn now to the legal test that I set out at the beginning of this report and apply that test to the evidence I have heard and read and the facts I have found. I will approach this task, for simplicity, by reference to the various components of the legal test set out in section 15(3) of the 2006 Act. It is to be remembered that each and every part of the statutory test must be properly and strictly proved on the balance of probabilities and that the onus or burden of proof rests firmly with the Applicant.

180. As already noted at paragraphs 28 and 29 above, I do not consider that the Application is capable of succeeding in relation to the CTC Land in light of the decision in *Barkas*. There is no need for me to consider the rest of the statutory test in relation to that land and even if I were wrong and that were necessary I would find that evidence of

use of that particular part of the Application Land was so sparse as to be incapable of supporting any application for registration. It is hardly surprising that the Applicant did not focus its attention on use of that land given CTC's support for the Application. Nevertheless, it is my view that the Application in respect of the CTC land should be rejected. It is then a matter for CTC is if wishes to voluntarily register that land.

181. The remainder of this report is concerned purely with that part of the Application Land owned by the Objector.

… a significant number of the inhabitants of any locality …

182. I shall begin this section by considering whether the claimed locality is a locality for the purposes of the statutory test. The ward of Cirencester Stratton Whiteway was created by The District of Cotswold (Electoral Changes) Order 2001 which abolished all existing wards and came into force on 1 May 2003. It is clear, therefore, that the locality relied upon has not been in existence throughout the whole of the Application Period.

183. Whilst judicial authority pre-*Paddico* has been inconclusive as to whether an electoral ward is capable of being a locality for the purposes of the TVG legislation, the dicta of Sullivan LJ is instructive in this case, not only because of what he said at paragraph [29] of the judgment (referred to at paragraph 14 above) but because of his observation at paragraph [30] about the alternative locality considered in that case (the Conservation Area) where he said "*in any event, the Conservation Area was not in existence for the full 20 year period relied upon* …".

184. In this case it is clear that the electoral ward relied upon has not been in existence for the whole of the Application Period. Further, the ward boundaries are not determined by reference to any community of interest. As the two Councillors who spoke to the Inquiry impressed upon me, the ward boundaries are determined solely by reference to population. It is, essentially, a number crunching exercise and it has nothing to do with amenities for residents within the defined area. That is a point that was also independently made by Mr Wallis in his written statement wherein he says that ward boundaries are nothing to do with community and he highlighted the fact that the ward boundaries were due to change again and would exclude Stratton from the ward within which the Application Land is located.

185. It is my opinion that the claimed locality is not a locality for the purposes of the statutory test that I have to apply. Therefore, on that basis alone the Application fails. I do not, therefore, need to go on to fully consider the point urged upon me about the fact that the users come from nearby streets and the contention that their use does not, therefore, amount to general use by the inhabitants of the ward of Cirencester Stratton Whiteway. Mr Chapman said this was not a 'spread of users' point which had been rejected by Vos J in *Paddico*, although I am not convinced of that. Saying that the users are not sufficiently evenly spread throughout any claimed locality and saying that the concentration of users in one area means that it cannot be said that use is by the inhabitants of the claimed locality seem to me to amount to the same thing.

186. For completeness, and notwithstanding the implication of my finding in relation to the claimed locality, I will go on to consider the remainder of the legal test and apply it to the facts I have found.

187. The question whether there has been use by a 'significant number' of inhabitants can only be sensibly asked by reference to particular locality. Given that I have concluded the claimed locality is not a locality for section 15 purposes there is no qualifying locality by reference to which this question can be addressed. However, had I found that the ward of Cirencester Stratton-Whiteway is a qualifying locality I would have concluded, once one strips away the use that does not contribute to the section 15 test (eg use by people from outside the locality, actual public right of way use, public right of way type use such as walking on worn paths and using the land as a throroughfare to cut through from one place to another, which I will turn to shortly), that I cannot be satisfied that there is evidence of qualifying use of the land by a significant number of inhabitants throughout the whole of the 20 year period.

188. For completeness, I do not consider it would be open to me to recommend registration on the basis of a different locality to that relied upon by the Applicant. It is not for the registration authority to make the Applicant's case. The registration authority has no investigative duty which requires it to find evidence or reformulate the applicant's case, para [61], *Oxfordshire*, per Lord Hoffmann.

189. Moreover, there is, in my view, no authority for the possibility of such an approach. Whilst there are cases where this approach has been adopted / considered (*Warneford Meadow* / *Laing Homes*, respectively), they are clearly distinguishable from the present case. Both of the applications for registration in *Warneford Meadow* and *Laing Homes* were made under the 1969 Regulations and the 1965 Act. The application form at that time (Form 30) did not require identification of any particular locality or neighbourhood. However, under the 2007 Regulations, Regulation 3 requires the application to be made in the prescribed form and Form 44 makes it mandatory for every applicant

to identify and commit to a particular locality or neighbourhood, defined by name or map. It is, therefore, for the Applicant to specifically and clearly identify the locality or neighbourhood it relies upon and to prove that it is a qualifying locality or neighbourhood.

190. Further, even if, contrary to my view, it is open to the registration authority to recommend registration on the basis of a different neighbourhood or locality, I have heard no evidence of any other neighbourhood or locality that would satisfy the statutory requirements in any event.

191. Finally, it would be grossly unfair to the Objector for the registration authority to consider any neighbourhood other than that put forward by the Applicant because at this point in time the Inquiry has concluded and the Objector has closed its case, having conducted its entire case on the basis of the way the Applicant has put its case both before and during the Inquiry.

… have indulged as of right …

192. I find there has been some qualifying use of the Application Land. I have no doubt that people have sledged and played there in the snow. I also accept that there have been occasions when people have played with remote control toys there, ridden BMX bikes there, flown kites there and picked fruit, for example. However, in my view, the extent of that use (both physically within the land and in terms of frequency) is not sufficient on the evidence that I heard to support an application for registration of the Application Land as a TVG.

193. A good proportion of the use I heard about in evidence, however, has had to be discounted from that assessment because it either was use by right, along PF9, or it was use that would appear to

the reasonable landowner to be referable to use of the informal paths. Sullivan J in *R (on the application of Laing Homes Limited) v Buckinghamshire County Council & SOS for the Environment and Rural Affairs* [2004] 1 P & CR 36 at para 102 said "*…it is important to distinguish between use which would suggest to a reasonable landowner that the users believed they were exercising a public right of way – to walk, with or without dogs, around the perimeter of his fields – and use which would suggest to a landowner that the users believed they were exercising a right to indulge in lawful sports and pastimes across the whole of his fields*".

194. Further, in *Oxfordshire County Council v Oxford City Council & Another* [2004] Ch 253, at para 102, Lightman J said "*The issue raised is whether user of a track or tracks situated on or traversing the land claimed as a green for pedestrian recreational purposes will qualify as user for a lawful sport or pastime for the purposes of a claim to the acquisition of rights to use as a green. If the track or tracks is or are of such character that user of it or them cannot give rise to a presumption of dedication at common law as a public highway, user of such a track or tracks … may readily qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green. The answer is more complicated where the track or tracks are of such a character that user of it or them can give rise to such a presumption. The answer must depend on how the matter would have appeared to the owner of the land … if the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green)*".

195. It is my view that use of the informal paths for any form of walking with or without dogs is likely to have created an impression of footpath type use, as is use of the land as a cut through on the way to

Baunton for example, or the water meadow on the other side of Monarch's Way. As stated by Lightman J, in those circumstances the inference drawn should be of the less onerous right which is that of footpath type use. Therefore, any use that is footpath type use does not contribute to the qualifying use and must be discounted from the evidence base upon which the Application is to be decided.

196. Once the footpath use and footpath type use is discounted, together with any other use that must be discounted (for example because it is not possible to determine if users were from within the claimed locality or not) I am not satisfied that the Applicant has discharged the burden of proof upon it to establish that there has been sufficient use (ie by a significant number) for lawful sports and pastimes on the Application Land for the entirety of the Application Period. The use I have heard evidence of (notwithstanding that I do not accept that it is use by inhabitants of a qualifying locality), minus the footpath type use, is in my view use that can best be described, for the most part, as occasional acts of trespass.

197. For completeness, I have not found that prohibitory signs were erected on the Application Land during the Application Period and use was not, therefore, contentious in that regard. I also heard no direct evidence of users being told to stick to paths so that takes the matter no further. I have, of course, accepted the Objector's evidence that fencing repairs occurred in 2008, three years before the end of the Application Period. I am invited to find that the fencing was conveying to anyone seeking to use the land the message that their use other than on the public footpath was not being acquiesced in and was therefore contentious.

198. Whilst I accept that 'perpetual warfare' between landowner and recreational users is not necessary for use to be contentious, it is my

view that simply repairing a fence / closing up a couple of gaps does not necessarily convey the message that general use is resisted. It could equally be a measure to improve the boundaries for the purposes of keeping stock in. The failure by the landowner to take any further steps at all when the repairs were soon afterwards vandalised (and other people then took advantage of that) meant that the message to users was not sufficiently clear that general recreational use was being objected to. I do not accept, therefore, that any of the use of the Application Land was *vi* during the Application Period.

… on the land …

199. Reference to the land is reference to the whole of the Application Land. Of course, it is not necessary for each and every part of the land to have been subject to qualifying use. Indeed, in some circumstances it may be impossible to use the whole of the land due to its topography and nature, as was the case in *Oxfordshire County Council v Oxford City Council*.

200. However, it will be clear from the conclusions I have drawn in relation to the evidence I have read and heard that I do not accept that the whole of the Application Land (as distinct from the footpath type use which I have discounted), or indeed any part of it, has been used in a qualifying manner throughout the whole of the relevant period for the reasons already set out above.

… for a period of at least twenty years ending on 23 January 2011…

201. I accept that the Applicant has produced evidence spanning the whole of the twenty year Application Period. However, that use has

not been qualifying use sufficient to satisfy the statutory test of the whole or any part of the Application Land throughout the whole of that period.

OTHER ARGUMENTS ADVANCED BY THE OBJECTOR

202. Give the conclusions I have drawn above and the inevitable recommendation that flows from them, it is unnecessary for me to deal with the two further arguments advanced by Mr Chapman regarding the legal status of the Applicant and the contention that the Application is out of time in any event. I will, however, address them briefly.

203. Firstly, had the Objector seriously intended to pursue these lines of argument I would have expected to see some application to deal with these matters as preliminary issues. That is not a course that has been proposed to the Council and the pre-inquiry meeting would have provided a good opportunity to raise the possibility of dealing with these issues first, in advance of an inquiry to hear the whole of the substantive application.

204. The 'legal person' point is perhaps technically correct. An unincorporated association does not have a legal personality of its own and is not, therefore, a 'person' with a separate legal identity for the purposes of the law. However, in other contexts (besides TVG law) unincorporated associations have frequently been parties to litigation[22] and they are capable of being so through one of their named members

[22] There is a wealth of case law on the dissolution of unincorporated associations ("UAs") and distribution of surplus funds where the UAs are parties to the litigation.

if necessary. Further, it is not at all uncommon for Applicants to be named as an action group or a residents group of one sort or another.

205. If, however, the point was likely to be determinative of the Application (which clearly it is not) I would be prepared to give the Applicant an opportunity to consider making an application to substitute the name of the Applicant for one of the Applicant's members to put the Application in order. I do not consider that the Objector would be prejudiced by such an approach given both the lack of active pursuit of this point until the end of the Inquiry (notwithstanding it having been raised in the Objection Statement) and the fact that the Objector has understood the fullness of the case advanced and presented by the Applicant and has had an opportunity to adduce and test all of the evidence on the same.

206. The second point, the argument that by returning the application form for some amendment meant that when it was sent back in by the Applicant it was effectively a re-submission and should be given a new date of valid receipt, is not one that in my view can succeed in light of the decision in *Church Commissioners* case. The effect of this proposition, if correct, must mean that there has been an implicit rejection of the original application in order for there to have been a re-submission (or new submission). That proposition is not consistent with the commons registration authority having already indicated the valid date of receipt.

207. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 prescribes in Regulation 4(1) that "*On receiving an application, the registration authority must (a) allot a distinguishing number to the application and mark it with that number; and (b) stamp the application form indicating the date when it was received*". That is what the Council did in this case.

208. In Regulation 5(1) the procedure for notifying every person whom the registration authority has reason to believe to be an owner, lessee, tenant or occupier of any part of the land affected by the application to be notified in the prescribed form is set out together with directions for the publication of notices advising of the application. Regulation 5(4) says "*where an application appears to the registration authority after preliminary consideration not to be duly made, the authority may reject it without complying with paragraph (1), but where it appears to the authority that any action by the applicant might put the application in order, the authority must not reject the application under this paragraph without first giving the applicant a reasonable opportunity of taking that action*". It is implicit in the foregoing that it is quite proper for a registration authority to regard an application as duly made (requiring it to be given a distinguishing number and stamped indicating the date of receipt in accordance with Regulation 4(1)) notwithstanding a need for amendments to the application to put it in order.

209. What occurred in this case is that the Council accepted the application as duly made by stamping the application form and recording the valid date of receipt. The Objector was clearly notified in accordance with Regulation 5(1) indicating that the Council did not consider that the Application was not duly made. The fact that the Council invited the Applicant to make some amendment to the Application, the appropriateness of which is expressly recognised in Regulation 5(4), does not mean that the original date of receipt was not the valid date of receipt. Nor does the wording of that Regulation contemplate the need for any resubmission or new submission of an application that is required to be amended, as suggested by the Objector. Any such amendment is clearly of the application already submitted and not a different application (whether resubmitted or newly submitted).

210. In *Church Commissioners for England v Hampshire CC* [2013] EWHC 1933 (Admin) Collins J, in the context of a *similar* argument to that being advanced by the Objector in this case, said this. "… *Regulation 4 required that any application was stamped and recorded. There was no provision that, where it was regarded as not duly made, once put in proper form a fresh record was made. There was nothing in the wording of the Regulations which required that there could not be retrospective effect of a corrected application. Provided a landowner was notified that an application had been made, there was no unfairness. Many applications for registration of greens were made by interested persons acting without legal assistance and applications should not be defeated by technicalities. A corrected application could have retrospective effect*".

211. Further, in the *Church Commissioners* case in the Court of Appeal [2014] EWCA Civ 634 at paragraphs [39] and [40] Arden LJ says "[39] *…if the application does not comply with the regulations, Regulation 5(4) enables the registration authority to reject it without going through the procedure of giving notice to the landowner and others. But if the registration authority thinks that the applicant can correct the errors, it can give him a reasonable opportunity to do so. If within the reasonable opportunity so given the applicant corrects the errors, the original application has full force and effect and therefore the Regulation must be retrospective. [40] I reach this conclusion on the basis that the Regulations throughout refer to one and the same application. In addition, the application is given a date on the receipt. Dating the application must be for some purpose. Furthermore there is no reason why Regulation 5(4) should restrict the opportunity for correction to a reasonable opportunity if a correction made within a reasonable opportunity achieves nothing that would not have been achieved by a new application*".

212. Arden LJ concludes on this issue at paragraph [44] of her judgment (a conclusion with which Richards LJ and Vos LJ agree)

"*accordingly, I conclude on this issue that Regulation 5(4) provides a means for curing deficiencies in an application which does not provide all the statutory particulars, and, once an application is so cured, it is treated as duly made on the date on which the original defective application was lodged …*".

213. Richards LJ at paragraph [71] says "*the answer to the retrospectivity issue has to be found within the Regulations … the only provision in the Regulations relating to date is the requirement in Regulation 4(1) that on receiving an application the registration authority must allot a distinguishing number to it and "stamp the application indicating the date when it was received". That is a strong indication that the application is to be treated as made on the date when it is received … Regulation 5(4) expressly contemplates, however, that an application that is not duly made at the date of receipt may be put in order within such period as may be allowed by way of reasonable opportunity. An application put in order within that period is duly made. There is no provision for its resubmission, renumbering or further date-stamping at the time when it is put in order. The process contemplated is simply one of putting in order the original application. It is implicit, in my judgment, that an application put in order in that way is to be treated under the Regulations as having been made at the date when it was originally received*".

214. It is my view that the fact that the Council has stamped the Application and indicated a date of valid receipt and that the Objector was notified in accordance with Regulation 5(1) indicating that the Council accepted the Application as duly made notwithstanding the need for some amendment, that the Application was submitted to the Council and accepted as having been validly received on 17 January 2013. The fact of the return of the application form to the Applicant to make some amendment does not alter that in my opinion. The valid date of receipt remains 17 January 2013 and I do not consider the Objector's argument that the Application is out of time to be correct.

ACKNOWLEDGEMENTS

215. Before I set out my final conclusion which by now will have become apparent, I would like to express my thanks to the Commons Registration Authority for their efficient organisation of the Inquiry and the assistance that was provided to me. In particular I would like to express my gratitude to Janet Smith and Carrie Denness who dealt with all matters arising prior to and throughout the Inquiry process in a very helpful and highly efficient manner. I would also like to express my thanks to the witnesses and members of the public who attended and spoke to the Inquiry. Finally, I was greatly assisted by the parties' representatives. I am grateful to them for their thoughtful analyses and submissions on the issues before the Inquiry.

FINAL CONCLUSION AND RECOMMENDATION

216. I conclude that the Application fails in respect of both the CTC Land and the Objector's Land. I recommend that the Application to register the Application Land as a new TVG should be rejected. The reasons for rejection, subject to the relevant Committee following my recommendation, can simply be stated to be those set out in this report.

ROWENA MEAGER
No 5 Chambers
17 March 2015