

DR/07/13

committee DEVELOPMENT & REGULATION

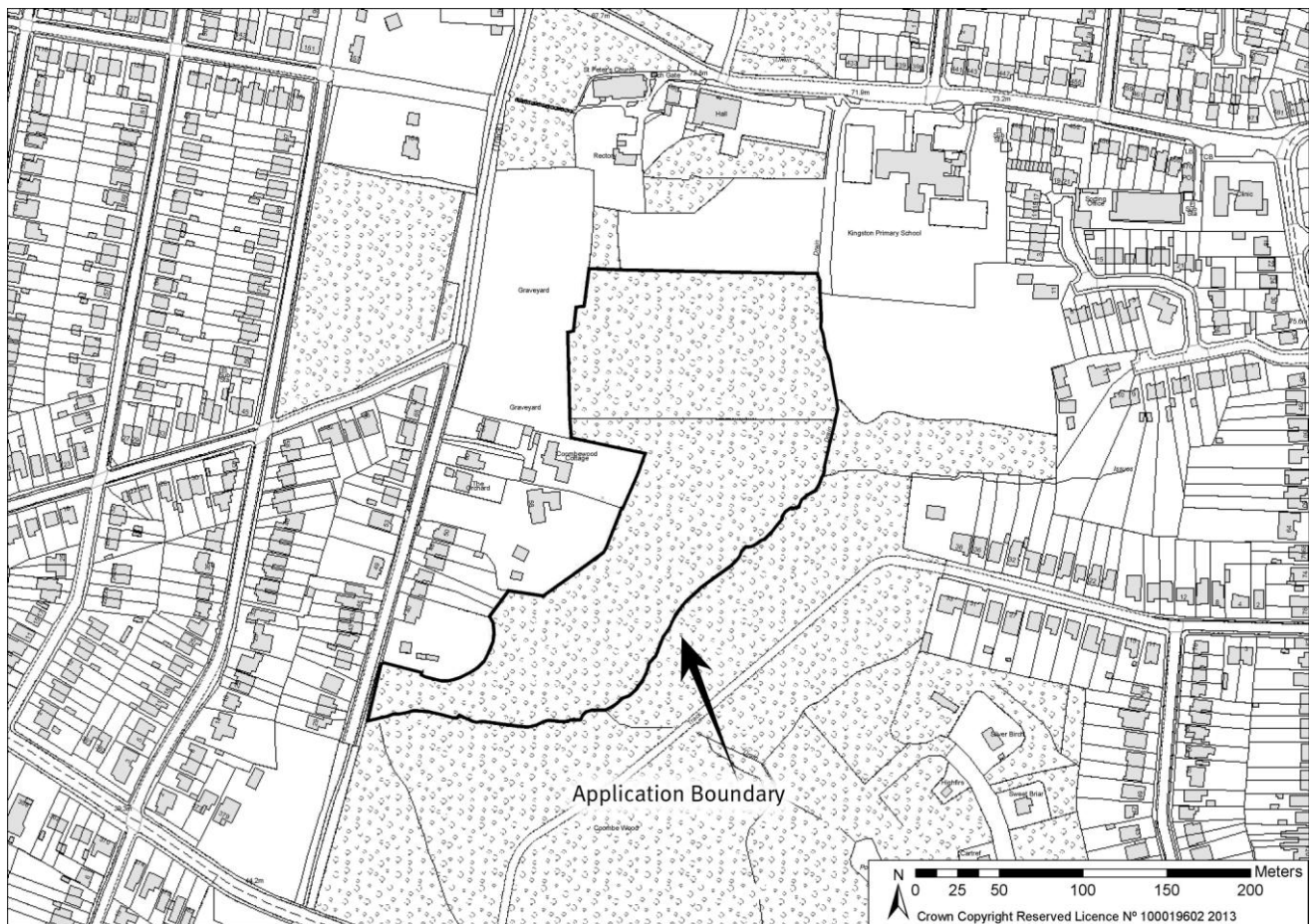
date 22 FEBRUARY 2013

VILLAGE GREEN APPLICATION

Application to register land at Coombe Wood, Thundersley as a Town or village green

Report by County Solicitor

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1. **PURPOSE OF REPORT**

To consider an application made by Mrs Eileen Elizabeth Peck to register land at Coombe Wood, Thundersley, Essex as a town or village green pursuant to the provisions of Section 15 of the Commons Act 2006 ("the 2006 Act").

2. **BACKGROUND TO THE APPLICATION**

The application was dated 25th July 2008 and made by Mrs Peck, a local resident, for registration of land at Coombe Wood, Thundersley, Essex as a town or village green. The area applied for is on the plan at the front of this report.

Essex County Council is the Commons Registration Authority in relation to the 2006 Act and caused a local public inquiry to be held between the 14th and 16th June 2011. At the inquiry evidence and submissions were given in support of the application and by and on behalf of the objector, Mr R. Allen. The applicant was represented by Mr. C. Ormondroyd of Counsel and the objector represented himself.

The Inspector carried out an unaccompanied site visit on 13th June 2011 and viewed the site from adjacent public vantage points. He carried out a further unaccompanied site visit on the following day having received permission from Mr. Allen to enter upon his land. An accompanied site visit took place following the close of the inquiry on the 16th June 2011. This again was from public vantage points with the exception of the land owned by Mr. and Mrs. Allen. The Inspector concluded that, although he had not seen all of the land, he had seen sufficient to enable him to make a recommendation.

Following the close of the inquiry the Inspector requested the Registration Authority to provide a number of documents including a coloured copy of the evidence questionnaire of Mr. R. French and extracts of Land Registration documents. It was agreed at the inquiry that these documents were not material to the case and were subsequently circulated to the parties for information only.

The inspector's report of the evidence produced and his conclusions is at Appendix 1 to this report.

3. **DESCRIPTION OF THE LAND**

The application is the second application made in respect of Coombe Wood. The first application was made on 21st July 2003 and subsequently a non statutory inquiry was held by Mr. Charles George QC. The Inspector concluded that the land to the south of the brook passing through Coombe Wood (identified as the principal brook) should be registered as a town or village green. However, the Inspector did not recommend that the land north of the brook (the land now subject to this application) should be so registered.

On the 29th June 2007 the Development and Regulation Committee considered the Inspector's report and accepted his recommendation.

The application land for the 2008 application by Mrs Peck is bounded along its eastern and south eastern side by a brook (referred to above as “the principal brook”) which runs from the north east to the south west of the application land where it passes under Rhoda Road North. The western boundary follows the rear boundary fences of the properties on the eastern side of Rhoda Road North and the graveyard of St. Peter’s Church. The northern area of land is adjacent to an area of land identified as the Church field.

The northern part of the application land is owned by Mr. and Mrs. Allen under title number EX738946 (“the Allen land”). The remainder of the application site appears to be unregistered apart from a small plot of land towards the south western part of the site which is reputed to be owned by Castle Point Borough Council. A caution exists against the first registration of a section of land to the north and east of Coombewood Cottage in favour of Mr. B. Smith and Mr D. Stephenson (EX134770). The inspector considered it unlikely that Coombewood Cottage fell within the Application site area.

The land is mainly comprised of mature woodland although it may be the case that the wood on the Allen land is younger than that on the remainder. An area to the south west of the application land adjacent to the brook is more open and marshy but still essentially woodland in nature. The Allen land is fenced to the north, west and southern sides with steel palisade fencing. This fence excludes some of the Allen land which is adjacent to the graveyard and also at the south western corner where a worn track leads from the graveyard to the remainder of the application land.

The area immediately south of the application land had been the subject of a previous application to register the land as a complete parcel. The land to the south was registered as VG245 but the land to the north was not found to fulfil the necessary criteria. This application therefore deals with the area previously rejected.

Reference was also made at the inquiry to a plan prepared by the applicant for the first application, Mr Morley, which was included as Appendix 4 to the Development and Regulation Committee report dated 29 June 2007 which is said to show a network of paths on part of the application land prior to the fencing in 2005. This was referred to at the hearing as ‘the Jordan plan’.

4. THE EVIDENCE IN SUPPORT OF THE APPLICATION

The application was accompanied by 217 evidence questionnaires. The bundle submitted by the applicant, following directions for the inquiry by the Registration Authority included copies of the 217 witness questionnaires and witness statements of those who appeared at the inquiry and others. Other evidence, including photographs and correspondence, was also submitted and given weight in the inspector’s consideration of the matter.

At the inquiry the applicant submitted further evidence which included correspondence between Mr Allen and the Reverend Sanberg, correspondence

with a Mr Jillings and a copy of the statement Mr Allen had made at the earlier inquiry.

The Inspector also had before him a copy of the original and supplementary report of Mr. George QC who sat as inspector for that application and the report to the Development and Regulatory Committee in relation to this land and land to the south.

In all twenty six witnesses were called in support of the application and gave evidence as to their use and knowledge of the application land.

The inspector's analysis of the witnesses' evidence at the inquiry is at paragraphs 32-35 of his report at Appendix 1, at pages 7-15. The user evidence was given by the following individuals: Mrs. E. Peck; Mrs H. Rowe; Mr. W. Garwood; Mr. Harris; Mr Tom Griffin; Mr. R. French ; Mrs. C. French; Mr. I. Howe; Mr. K. Thompson; Mrs. G. Soar; Mr. S. Vasey; Mr. Ponton; Mr. D. Waller; Mr. E. Philcox; Mr. J. Hounsell; Mrs. B. Watkins; Mr. P. Hughes; Mr. M. Berry; Mr. B. Byford; Mr. P. Klinker; Mrs. C. Sharp; Mr. T. Hall; Mr. J. Saward; Mr. G. Jordan; Mrs. B. Cerny and Mr. J. Cerney.

The land had been used for walking with family, ancillary bird watching, scout and cub scout activities including collecting firewood, tracking, orienteering, treasure hunts, bridge building, climbing trees, building swings and tree houses, erecting bird boxes and nature walks, exercising dogs, cycling, games, picking blackberries, making camps, fishing in the brook for sticklebacks, Holiday Fellowship walks, Essex Hash House Harrier runs, Boys Bridge summer activities, recreation and children playing.

Mrs Curtis of the British Horse Society also attended the inquiry. She did not live in the neighbourhood claimed but did live in the parish of St Peter's. She had completed an evidence questionnaire confirming use from 1945 to 2008 for horse riding and walking. Other witnesses had also seen riders on the application land.

5. OBJECTOR'S EVIDENCE OPPOSING THE APPLICATION

The inspector's analysis of the evidence produced by the objector is at paragraphs 36-45 (pages 36-45) of his report at Appendix 1.

Mr. R. Allen is the owner of the Allen Land. He came to live in a bungalow opposite Coombewood Drive in 1955. He was often in the woods and on turning right it was possible to leap the brook and push north through the undergrowth. There was a post and wire boundary to the southern boundary of the Allen Land. Beyond that there was a field with long grass and hawthorn covering much of it. On viewing the property before purchase in May 1983 the previous owner had pointed out a dilapidated wire fence marking the southern boundary of the land. In 1984 Mr Allen and a friend, Mr Leighton, ran two lengths of wire to re-establish the fence but these were soon vandalised and subsequently almost disappeared.

On moving to Fox Meadows in 1985 the whole of the western part of the property and some of the eastern part was overgrown. There was a path leading from the

Church field to the west of the brook and a path leading from the graveyard across the SW corner of the land. Soon after moving into the property he contacted a Mr. D. Dunn to clear the land to the east of the brook. The western side of the brook was difficult to penetrate due to the hawthorn. It was dark and there were no blackberries apart from on the north, west and eastern boundaries. There were animal tracks but no evidence of established tracks before 1988. He was unable to explore the land fully until the early 1990s because of its impenetrability. Mr Allen took the view that in the 1980s it would have been dangerous for children to push past the thorny bushes rather than use the path leading to the more open part of the wood.

Mr. Allen pointed out that the Jordan plan was not quite accurate and it would have been difficult to identify the boundaries of the land from the outside. Given the difficulty he questioned how witnesses could be expected to recall exactly where they were twenty years ago.

From 1983 Mr & Mrs Allen would take their dog into the woods. On its death, they acquired another dog which would not take himself into the woods and visits to the woods became more frequent, mostly at weekends. They would occasionally meet someone walking along the path from Coombe Wood to the Church field and, very rarely, on the path to the graveyard. They did not recall seeing anyone emerging from or entering into the main area of their land.

Following an article in a local newspaper concerning dogs on a 'public footpath' alongside Kingston School into the Church field, Mr Allen asked the Reverend Sanberg to follow the article up with a statement that the path was not public. Arrangements were then made to drive in posts along the boundary of the Church field but Mr. Allen confirmed that he was willing to give occasional access to the scouts and guides and anyone else at Mr. Sanberg's discretion.

In 2004 signs were erected on steel poles at the south east, north east and south west corner of the Allen Land stating that the land was private but giving permission to enter. Within days the sign at the south east corner was pulled out but immediately reinstated and the same happened to the sign at the south west corner. In May 2005 Mr & Mrs Allen erected a steel fence around the three sides of the application land owned by them. The fence excluded a 5 metre strip along the boundary of the graveyard and a corner of the land to the south east.

Mr Allen called his daughter, Mrs. Lorna Greenslade, to give evidence and her evidence is summarised in paragraph 42 of the inspector's report at Appendix 1.

Mr Allen also submitted three signed statements from Mr D. Dunn, Mr D. Burton and Mrs. A. Leighton which the inspector gave some weight although they had not been subject to cross-examination. The inspector summarised these at paragraphs 43 – 45 of his report at Appendix 1.

ISSUES RELATING TO THE USER EVIDENCE AND THE STATUTORY GROUNDS

The burden of proving that the land has become a town or village green lies with

the applicant and the standard of proof is the balance of probabilities.

7. THE RELEVANT 20 YEAR PERIOD FOR THE 2006 ACT APPLICATION

As the application is made under section 15(2) land is to be registered as town or village green 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.

Use of the Allen land had ceased with the erection of a steel palisade fence in May 2005. Use needed to be shown in accordance with section 15(4)(a) from at least May 1985 to May 2005.

In relation to the remainder of the application land the use has not ceased so the relevant period is April 1988 to April 2008.

The inspector also looked at an alternative 20 year period if it was considered that the objector's argument was valid that from December 2004 they had made clear the fact that it was private property. The inspector considered the notices referred specifically to the fact that there is no footpath and granted permission to use the defined path on foot. He considered that there is nothing that would have brought it home to those using the land for lawful sports and pastimes that such activities were being restricted. If the registration authority chose to disagree with that view he considered that the registration authority could consider the application for a twenty year period from December 1984 to December 2004 as, on the balance of probabilities, he also concluded that the land had been used for lawful sports and pastimes as of right for the earlier period of 1984 to 2004 in relation to the Allen land by a significant number of the inhabitants of the neighbourhood.

8. AS OF RIGHT

Use of the land 'as of right' is use without force, without secrecy and without permission. There is no requirement that the use must have been in the belief that the land was a town or village green.

The evidence before the inspector caused him to conclude that the use was not secretive in that children playing and the scouting and guiding activities were likely to be rather lively and noisy. The user evidence would allow a conclusion that the use was not secretive.

The evidence of Mr Allen and supported by both Mrs Greenslade and Mrs Leighton is that a fence was erected on the lands southern boundary in 1984 which replaced an earlier dilapidated fence. This fence was subsequently vandalised and disappeared. There is no evidence that those using the land were prevented from gaining access to the Allen land before or after 1984 until the fence was erected in 2005.

In December 2004 Mr Allen erected notices on the land. This is accepted by a number of witnesses. It was not Mr. Allen's case that the notices terminated any qualifying use but that the notices rendered such use as subject to permission.

The argument was that there was no public footpath and that the land was private property did not affect the claimed use as a village green.

The inspector took the view that the wording of the notices was, in terms, ambiguous. In his view they referred specifically to the fact that there was no footpath and granted permission to use a defined route on foot.

Members will note that the use of a defined route will not give rise to the registration of land as a town or village green. The issue the inspector took was that the notice made no reference to the use of the adjacent land or make any reference to sports and pastimes. He concluded therefore that such notices did not bring it home to those using the land for lawful sports and pastimes that such activities were prohibited. On balance he concluded that there was no evidence that the use of the land for lawful sports and pastimes ceased until the fence was erected in 2005 or that the notices could be seen as preventing that use. It is correct that the fact that the land is in private ownership does not prevent its registration as a village green or whether users believe the land to be so. The inspector concluded that the erection of notices in 2004 did not render the subsequent use as contentious and therefore with force.

An issue which the Inspector appears to have raised but which may not have been fully argued at the Inquiry was the objection made by Mr and Mrs Allen to the application to register the land in 2004. On the 2004 Application, the Inspector recommended (and the commons registration authority accepted) that the land to the south of the brook passing through the wood should be registered as a town or village green but did not recommend that the land to the north of the brook should be so registered. Again the commons registration authority accepted that recommendation.

The Inspector in the present application took the view that *Betterment Properties (Weymouth) Ltd –v- Dorset County Council* [2010] EWHC 3045 (Ch) should be applied. The Judge in that case concluded that the objection made was not sufficient to render the user contentious and not as of right. His reasoning for this was that nothing changed on the ground in terms of the character or the extent of the user. Mr Allen made no immediate physical attempt to follow up his objection or to publicise it widely.

It is however a matter which is relevant. Mr Allen's objection would have been known to the applicant and witnesses on the 2004 application. The commons registration authority accepted the findings of the inspector and registered part of Coombe Wood as a town or village green but not the Allen land. This is a matter of public record. Morgan J. in *Betterment* concluded some people may have known of the landowner's objection and that the user had been contentious but that some, possibly the majority, of the users would not have been aware of the objection.

The inspector concluded on the facts that the objection in 2004 did not render subsequent use of the land as being contentious such that subsequent use was with force.

Mr and Mrs Allen argued that the Allen land was used with permission and referred

to the discussions with the Reverend Sanberg in which the occasional permission would be given to the scouts, guides and other church activities.

The applicant provided evidence that the former incumbent believed that the permission related to the use of the footpath and that the use by the scouts, guides and other church related activities on the Allen land was not included within that permission.

The Inspector took the view that the key element as identified in *R(Beresford) –v- Sunderland City Council* [2004] 1 AC 889 is that permission must be communicated to the users of the land. He concluded that none of those using the application land, including those involved with the scouts or guides, had any knowledge that permission had been given or that it was required.

On balance, the inspector concluded that the land had therefore been used without force, secrecy or permission and therefore fulfilled the requirements as detailed in *R –v- Oxfordshire CC ex p. Sunningwell Parish Council*.

9. LOCALITY, NEIGHBOURHOOD WITHIN A LOCALITY

In relation to the neighbourhood, there is no statutory definition of locality or neighbourhood within the 2006 Act but there is case law in relation to previous legislation where the court have determined that a 'locality' must be a recognisable division of an area known to the law (such as a parish, borough or electoral ward). The locality was identified as the Ecclesiastical Parish of St Peter's, as it had been for the first application.

The neighbourhood had been identified on a map which was the same map as used for the first application and the inspector considered there was nothing to suggest that the area was not correctly identified. This is shown on Appendix 2.

There appears common ground that the majority of users were from the neighbourhood and the evidence of those living outside was not given weight in the context of this requirement. However many had been involved in the scouting and guide activities and some 75% of the participants were from within the neighbourhood and the inspector also accepted that those from outside the neighbourhood could give evidence of user by those who were.

On balance, the inspector considered that the test that use was by a significant number of the inhabitants of the neighbourhood has been satisfied.

10. USE OF THE LAND FOR LAWFUL USE AND PASTIMES, ON THE WHOLE OF THE APPLICATION LAND

This was addressed in paragraphs 46-97 of the inspector's report.

The main uses of the land were dog walking, walking, scout and guide activities and children playing. Other activities included blackberrying and picnicking. The evidence showed that the wood itself could be used for this purpose. Bicycle riding was more limited to the main north to south path and horse riding appeared to have been limited to the north to south path. Fishing and pond dipping was in

the brook and the pond to the south of the brook. The inspector was satisfied that the activities which took place are all capable of being legitimately described as lawful sports and pastimes.

None of those using the application land understood that they their use was permission or had actually been given permission.

The inspector concluded on the balance of probabilities that use of the land for lawful sports and pastimes during the relevant period had been as of right.

Although there was a conflict of evidence about the extent to which use had taken place and the parts of the application land where it could take place the inspector considered the evidence demonstrates the use of all of the application land either along defined or less defined tracks. *Oxford City Council v Oxfordshire County Council* [2004] Ch 253 was authority for the proposition that land may be registered even if a significant percentage of it were not accessible for lawful sports and pastimes and the inspector did not consider in this case that registration was prevented by any issue on accessibility due to the nature of the land.

He concluded that the evidence shows this test satisfied throughout the periods identified for the enclosed and unenclosed sections of the application land being 1985 to 2005 and 1988 to 2008, and dates from the 1940s. He also concluded the evidence of use was sufficient to put a reasonable landowner on notice that the land was being used for lawful sports and pastimes.

11. **LOCAL MEMBER NOTIFICATION**

The local member has been consulted. Councillor Dick said that he was pleased that the inspector found in favour of the village green but had hoped that the landowner would have come to an agreement with the applicant.

12. **INSPECTOR'S CONCLUSION AND RECOMMENDATION**

The inspector's conclusion (see paragraph 102 of his report at Appendix 1) is that the evidence in relation to the application indicates use of the application land for lawful sports and pastimes as to right for at least twenty years from 1985 to 2005 for the Allen land and 1988 to 2008 for the remainder of the application land. The application also satisfied the test of use by a significant number of inhabitants of the neighbourhood.

The inspector considered the test would also be met for an earlier date of 1984 to 2004 in relation to the part of the application site subject to the notices erected by Mr Allen but he did not consider the notices had been effective to prevent as of right use continuing.

13. **REPRESENTATIONS FOLLOWING INSPECTOR'S REPORT**

The report was circulated to the parties. Mr Allen entered into discussions with the applicant in relation to a small reduction of the area to be registered. This was to allow a pond at the rear of his house and some fencing around it.

Although it appeared that the parties were likely to reach agreement this ultimately was not the case.

In the event that the parties had reached agreement it is likely that the matter would have been referred back to the inspector as the land discussed between the parties was not differentiated from the remainder of the application site at the inquiry and his findings related to the whole of the site.

14. **RECOMMENDED**

That:

1. The inspector's recommendation of the relevant locality, neighbourhood and his analysis of the evidence in support of the application is accepted.
2. The inspector's recommendation that the application made by Mrs Peck dated 25 July 2008 is accepted for the reasons set out in the inspector's report and in summary in this report.
3. The land shown on the front of this report as applied for is added to the Register of Town and Village Greens.

BACKGROUND PAPERS

Application dated 25 April 2008
Inspector's report

Local Member - Thundersley

Ref: Jacqueline Millward CAVG/38

List of Appendices

Appendix 1 - inspector's report
Appendix 2 – Neighbourhood boundary plan

APPENDIX 1 – INSPECTOR'S REPORT

COMMONS ACT 2006

REPORT

**IN RESPECT OF TOWN OR VILLAGE GREEN
APPLICATION**

**RELATING TO LAND AT COOMBE WOOD,
THUNDERSLEY, ESSEX**

MARTIN ELLIOTT BSc. FIPROW

(An Inspector with the Planning Inspectorate)

Essex County Council Reference: CAVG38

Planning Inspectorate Reference: VG17

Date of Report: 21 September 2011

Case details

- The application dated 25 April 2008 was made by Mrs Eileen Elizabeth Peck under the provisions of Section 15 of the Commons Act 2006 (the 2006 Act).
- The application is for land at Coombe Wood, Thundersley, Essex to be registered as a town or village green.
- An inquiry was held on 14 to 16 June 2011.

Summary of Recommendation: That the application be approved.

Preliminary matters

1. I have been appointed by Essex County Council, in their capacity as the Registration Authority, to hold a non-statutory public inquiry and to write a report in respect of an application to register land at Coombe Wood, Thundersley as a town or village green. I have been asked to include a recommendation on whether or not the land should be so registered.
2. Following the making of the application one objection was made by Mr and Mrs Allen which has not been withdrawn. The objection relates to the land in their ownership which I shall refer to in this report as the Allen land.
3. I held a non-statutory public inquiry in the Council Chamber at Castle Point Borough Council Offices, Kiln Road, Benfleet, Essex on 14, 15 and 16 June. The Registration Authority did not give evidence to the inquiry and maintained a neutral position.
4. I carried out an unaccompanied visit of the application land and surrounding area on the evening of 13 June 2011. I did not have permission to access the land subject to the application and therefore viewed the application land from adjacent public vantage points. I carried out a further unaccompanied inspection of the Allen land on the evening of 14 June 2011 following the granting of permission to access this land.
5. I carried out an accompanied inspection of the application land following the close of the inquiry on 16 June 2011. This again was from adjacent public vantage points with the exception of the land owned by Mr and Mrs Allen who gave permission for access to the land for the accompanied visit. Although I have not seen the entire land subject to the application I consider that I have seen sufficient to enable me to make my recommendation.
6. The application is the second application made in respect of Coombe Wood. Following an initial application on 21 July 2003 a non-statutory inquiry was held by a Mr George QC in October 2004. The Registration Authority accepted the recommendation of the inspector which was that the land to the south of the brook passing through

Coombe Wood, identified by the inspector as the principal brook, should be registered as a town or village green. However, the inspector did not recommend that the land north of the brook, now subject of the current application, should be registered.

7. Following the close of the inquiry and as requested by me the Registration Authority submitted a number of documents including a coloured copy of the evidence questionnaire from Mr R French and extracts of Land Registry documents. It was agreed at the inquiry that the documents were not material to the case. The documents were subsequently circulated to the parties for information only and I did not invite comments thereon.

The application land

8. The application land lies to the north of an area of land which, following the previous application under the Commons Registration Act 1965 is now registered as a town or village green. The application land is bounded along its eastern and south eastern side by a brook, the principal brook, which runs from the north east to the south west of the application land where it passes under Rhoda Road North. The western boundary follows the rear boundary fences of the properties on the eastern side of Rhoda Road North and the graveyard of St Peter's Church. The northern boundary is adjacent to an area of land identified as the Church field.
9. The land is mainly comprised of mature woodland although the evidence to the inquiry suggests that the wood now formed on the Allen land is younger than that on the remainder of the land. An area to the south western corner of the application land adjacent to the brook is more open and marshy but still essentially woodland in nature. The Allen land is fenced along the north, west and southern sides by steel palisade fencing. The fence excludes some of the Allen land which is adjacent to the graveyard and also at the south western corner where a worn track leads from the graveyard into the remainder of the application land.
10. The northern part of the application land, the Allen land, is owned by Mr and Mrs Allen under title number EX738946. The remainder of the application site is unregistered in title with the exception of a small plot of land towards the south western part of the application site which is said to be owned by Castle Point Borough Council; I have not seen the title plan for this land. A caution under Section 53 of the Land Registration Act 1925 has been lodged in favour of Mr B Smith and Mr D Stephenson against the first registration of a section of the application land to the north and the east of the boundary of Combewood Cottage, Rhoda Road North (EX134770).
11. The Registration Authority indicate that part of the application land is also registered in title to Mr S and Mrs S Gilham. This is land forming part of Combewood Cottage (EX649494). From my inspection of the title and application plans it does not appear that this land forms part of the application land. The Registration Authority may wish to

consider this aspect of ownership further but in any event the extent of the ownership of Mr and Mrs Gilham is not material to my recommendation.

Statutory provisions

12. Section 15(1) of the Commons Act 2006 provides that any person may apply to the Registration Authority to register land as a town or village green if certain specified circumstances pertain. The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007¹ ('the 2007 Regulations') brought these provisions into force on 6 April 2007 and set out the procedures to be followed.
13. The application was made on 25 April 2008 and therefore falls to be determined in accordance with the provisions of the 2006 Act. The application has been made under Section 15 (2) and (4) of the 2006 Act.
14. Section 15 (2) provides that an application may be made where;
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
 - (b) they continue to do so at the time of the application.
15. Section 15(4) provides that an application may be made where;
 - (a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;
 - (b) they ceased to do so before the 6 April 2007 (the commencement of this section of the Act); and
 - (c) the application is made within the period of five years beginning with the cessation of use referred to in paragraph (b).
16. The task of proving the case in support of registration of the land as a town or village green rests with the person making the application, and the burden of proof is the normal, civil standard: the balance of probabilities.
17. There are no issues as to the validity of the application.

Summary of the evidence submitted by the applicant

18. The application was accompanied by 217 evidence questionnaires. The inquiry bundle submitted by the applicant, following the Registration Authority's directions for the inquiry, includes witness statements from those who appeared at the inquiry and others, and

¹ Statutory Instrument 2007 No. 457

additional evidence including photographs and items of correspondence (inquiry document 1A). The bundle also includes copies of the 217 evidence questionnaires (inquiry document 2A) and a copy of the original and supplementary report of Mr George QC in relation to the earlier application, a copy of the committee report to the Development and Regulation Committee and an extract from the Commons Act 2006 (inquiry document 3A).

19. At the inquiry the applicant submitted further evidence which included correspondence between Mr Allen and the Reverend Sanberg, correspondence from a Mr Jillings and a copy of the statement of Mr Allen given to the previous inquiry (inquiry documents 4A to 7A).
20. Twenty six individuals were called to give evidence to the inquiry on behalf of the applicant as to their use and knowledge of the application land.
21. The applicant notes that the original application under the 1965 Act for Coombe Wood was rejected in respect of the land to the north of the principal brook now subject to the current application. The Inspector had concluded in respect of the current application land that use for lawful sports and pastimes was 'sporadic and insufficient'. The current application includes 217 evidence questionnaires which were not previously before the inspector or the Registration Authority. The applicant contends that the questionnaires demonstrate regular and intensive use of the land for lawful sports and pastimes for at least the requisite 20 year periods.

Summary of evidence submitted in support of the application

22. The statement from Mr Morley (inquiry document 1S) raises issues in connection with the ownership of the land and the erection of the fence along the boundary between the Church field and the Allen land.
23. Mrs Curtis, on behalf of the British Horse Society, expresses support for the registration of the land as a green and requests that horse riding is included in the lawful sports and pastimes. Mrs Curtis contends that the use of a new green would be a valuable addition (inquiry document 2S).

Summary of evidence submitted in opposition to the application

24. Mr and Mrs Allen provide a statement as to their knowledge of the land (inquiry document 1Ob). In addition witness statements were provided by a Derek Dunn, Don Burton, Lorna Greenslade and Ann Leighton (2Ob). Mr Allen and Lorna Greenslade, the daughter of Mr and Mrs Allen, gave evidence to the inquiry as to their knowledge of the land.
25. In opposition it was asserted that the claimed activities were impossible on the Allen land due to the dense undergrowth. This would suggest it would have been difficult for those claiming use of the land to be clear as to the application land. Whilst there are still worn down tracks on the land these could not now be caused by the public since the land has been fenced off since May 2005

26. Following the establishment of the boundary between the Allen land and the Church field permission was granted in 1989 for Church related activities; this was understood to include Scouts, Guides and Brownies. Use of the land was therefore with permission.
27. It is not considered that the witness statements justify the re-opening of the matter as they do not alter the fact that the land in question has been too densely covered for anyone to have passed freely over sufficient parts so as to qualify for registration. Of those completing evidence questionnaires 51 do not claim to have passed through the Allen land. There are also 25 who do not, or have not, lived inside the boundary of the neighbourhood. Others who have moved in and out of the neighbourhood have not been asked to give their dates of moving.

Reasons

Identification of the relevant 20 year period

28. There are two qualifying periods which are relevant to the application. In respect of the Allen land use ceased following the erection of a steel palisade fence in May 2005. Given that use of the land has ceased on this land section 15(4) of the 2006 Act is relevant. It is therefore necessary to show use of this land in accordance with section 15(4)(a) from at least May 1985 to May 2005. Mr Allen at the commencement of the inquiry accepted that this was the relevant period.
29. In respect of the remainder of the application land the use has not ceased and therefore section 15(2) of the 2006 Act is applicable. The application was made on 25 April 2008 and this sets a relevant twenty year period of April 1988 to April 2008. It is necessary to show use of this land in accordance with section 15(2)(a) from at least April 1988 to April 2008.
30. There is no evidence before me to suggest that the two relevant twenty year periods identified are not applicable to the application.

Identification of the locality or a neighbourhood within a locality

31. In asserting their case the applicant contends that the qualifying use has been by those from a neighbourhood within the locality. Arising from the inquiry relating to the first application the Registration Authority has accepted that the relevant locality is the Ecclesiastical Parish of St Peter's. The Registration Authority also accepted the recommendation of the inspector, Mr George QC, as to the neighbourhood within the locality. The neighbourhood is identified on 'Map B' (inquiry document 1A page 21). It was common ground at the inquiry that the area identified represented the neighbourhood. There is nothing before me to suggest that the area identified on 'Map B' does not correctly identify the neighbourhood.

Whether there has been use of the area for lawful sports and pastimes as of right for at least twenty years by a significant number of the inhabitants of the neighbourhood

Summary of the evidence

32. Twenty six individuals gave evidence to the inquiry on behalf of the applicant:

- i) Mrs E Peck has been resident in Thundersley since 1965 and has lived at her current address since 1989; she lived in Keswick Road for ten years prior to then. She recalled walking through the woods with her children and grandchildren or alone. An ancillary activity to the walking was bird watching. Access was gained from a number of points but was no longer possible from the Church field. Whilst there were a number of access points she said that in effect she wandered into the woods where there may have been a defined track. She said that she wouldn't have gone into the woods if it had been a struggle but said she wasn't scrabbling through undergrowth. In her experience children had a tendency to wander off the paths to explore.
- ii) Mrs H Rowe, a Cub Scout leader for the 2nd Thundersley Group, has lived in The Chase since 2004 but previously lived in Tudor Close from 1986. Before that she lived in Woodside Avenue although was born in The Chase in 1955. From a child she used Coombe Wood which stretched from St Peter's Church field to the A13 road; the woods were considered to be her playground. She also took her children to the woods from 1985 up to when her sons were 10 or 11 (1993/94). From 1989 she became a Beaver Scout and Cub Scout leader. Scout meetings were held on a Friday evening and activities regularly took place in Coombe Wood particularly during the summer months. Activities included collecting firewood, tracking, orienteering, treasure hunts, bridge building and nature walks. Some ¾ of the members of the scout group came from Thundersley and the group was never approached in respect of access to Coombe Wood. Mrs Rowe thought that the land was owned by the Council and that there was a right to use the land.
- iii) Mr W Garwood has lived at Spencer Road for 35 years and he and his family have used the woods for family walks, exercising dogs, cycling and games. Dog walking through the 1980s was on a daily basis. From 1982 Mr Garwood became involved in the local cubs and scouts, firstly as a parent helper and then a scout leader. The woods were frequently used for scouting activities, a couple of times a month during the summer. Mr Garwood said that there was a network of paths but that access to the remainder of the wood, including the Allen land, could be gained easily. He observed other uses of the land but only saw a horse rider on one occasion.

- iv) Mr Harris became Assistant District Commissioner for Castle Point District Cub Scouts from March 1980 and from March 1990 until January 1991 was the Scout Group leader. It was said that the woods have been easily accessible to the cubs and scouts with activities taking place throughout the wood. Some activities including the building of an aerial ropeway took place in the woods immediately adjacent to the Church field. Mr Harris accepted that the pictures accompanying his statement were taken in the Church field and acknowledged that the limit of the wood was not the boundary of the Allen land. Mr Harris said that he was also involved in the making of bird boxes some of which were put on trees in the application land. Some 85% of pack members came from the neighbourhood but Mr Harris did not live in the area. The 2nd Thundersley Scout Group consisted of 30 to 36 cubs and 20 to 30 scouts. Mr Harris did not recall the area being totally overgrown and it was possible to get off the various paths.
- v) Mr Tom Griffin moved into his property on Borrowdale Road in 1965. From 1976 he helped the Thundersley cubs but was most active from 1980 onwards. Whilst activities took place on the Church field these also took place in the top part of Coombe Wood. His son, born in 1969, played in the woods and used the woods for metal detecting from 1986 to 1987. Mr Griffin walked all of the land where the fence now is and recalled that the paths in that area were as marked on the Jordan² plan but there may have been others. There were islands of bramble and hawthorn. He recalled dog walkers and children using the wood but could not recall any other use. His wife makes jam and she used to pick blackberries in the top half of the wood. He was never asked to leave and did not have any permission to use the area.
- vi) Mr R French had lived in Downer Road North for 46 years and enjoyed the use of Coombe Wood; entry was always from the graveyard. Between 1985 and 1988 he used the land with his daughter, using the land less from the mid 1990s. In 1985 the wood was not overgrown, but thickly wooded, and it was quite easy to get around. Mr French said that he had a tendency to go off the beaten track to explore. The layout of paths was probably as shown on the Jordan plan. He frequently saw children playing in the wood and down by the brook but dog walkers mainly kept to the paths. Mr French had never been challenged nor told the woods were private until notices were erected on the palisade fence around the Allen land.
- vii) Mrs C French, living in Downer Road North, outlined her use of the land from 1964 onwards; use was greater when the children were younger. The children would play in the woods at

² The Jordan plan is a plan prepared by an A Morley and can be found at appendix 4 of the Development and Regulation Committee report dated 29 June 2007 (Inquiry document 3A Appendix 2, Section 3, Page 3 of 26). The plan is said to show the network of paths on part of the application land prior to the fencing in 2005.

weekends and in school holidays, riding bikes or making camps. She went into the woods as a group and her husband used to wander off. Mrs French did not remember the land being overgrown in the 1980s to the extent that the land was unusable. The network of paths shown on the Jordan plan was 'about right'. Mrs French observed other activities taking place in the wood, not so much bike riding but mainly children playing, including in the brook. Mrs French had never been prevented from using the land, other than when the Allen land was fenced, and did not recall any notices on the application land.

- viii) Mr I Howe moved to Stanley Road with his parents in 1981 when he was two years old. Mr Howe joined the cubs in about 1985 and was then a scout until 1990/91. Mr Howe said that he was taken into the woods by his brother and this was between 1983 and 1991. From moving to senior school in 1990/91 Mr Howe would go to the woods with his sister and in his teenage years of 1993 to 1995 he used to go into the woods to relieve the stress and strain. Mr Howe used to fish in the brook for sticklebacks. As part of cub and scout activities Mr Howe said that they would be in the woods on a weekly basis apart from when it was wet. Activities were mostly to the south of the Church field but sometimes ventured further. Mr Howe's earliest recollections from 1983 to 1985 were that the land was always accessible and that you could run through the woods without getting snagged. The vegetation was not that dense although there was hawthorn; Mr Howe used to build dens in the gaps. The layout of paths on the Jordan plan was a fair representation of the paths and he would use all of them. Mr Howe recalled seeing others using the land but not on all occasions; children and dogs tended to go all over the woods but the dog walkers themselves kept to the paths. There were clearings where one could go blackberrying. Whilst Mr Howe accepted that the wood was expanding he was certain that there were blackberry bushes on the Allen land.
- ix) Mr K Thompson has lived in Spencer Road since 1975. From 1985 until the fence on the Allen land was erected in 2005 he used the Coombe Wood for leisure and as a cub leader. Leisure activities usually involved dog walking, using different routes for variety. As a cub leader between 1988 and 1996 he used the wood for nature awareness and conservation activities. Cub activities were restricted to the land to the north of the brook for safety reasons and the woods were used in the summer months. Meetings were every week and around 75% of the members were from the neighbourhood. Mr Thompson said there were lots of tracks through the woods; the Jordan plan was considered to be a fair representation of the layout of paths. The wood was not inaccessible and there was no problem running through the wood. Mr Thompson was never prevented from using the land and did not think about whether or not the cubs had permission to use the woods.

- x) Mrs G Soar has lived in 445 Church Road for 46 years. Mrs Soar had been involved with guiding for 40 years from 1959 during which time the application land was used regularly by the Guides, Brownies and Rainbows. Meetings were held twice a week on Mondays and Thursdays and activities included nature walks, tracking and wide games, during the summer this was nearly every week. Use of the application land by Brownies was constant from 1985. Around 75% of Rainbow guides, a group started in 1988, 70 to 75% of Brownies and 50 to 75% of Guides were from the neighbourhood. Groups of guides were in the region of 25 to 30, Brownies 24 and Rainbows 12 to 15. The condition of the land had not changed over the last twenty years and, whilst there were areas of hawthorn, the land was not impenetrable. There were always paths between 12 to 18" wide (300 to 450 mm). She recalled seeing others in the woods mainly people walking, children playing and blackberrying; there was little bicycle use. Mrs Soar remembered seeing some notices on the land but this was after the fence had been erected.
- xi) Mr S Vasey has lived at Baracombe Close since 1984; it was acknowledged that this was outside the neighbourhood. Mr Vasey joined the Cub Scout pack in 1986 and, although he used the wood with the pack, he also regularly used the wood for playing with friends, cycling, climbing trees, collecting acorns and building swings and tree houses. As part of Cub Scout activities the woods were used for tracking, orienteering, tree identification, wide games and collecting wood for fires. He thought that some 80% of group members were from the neighbourhood. Mr Vasey did not recall the land being overgrown and the Jordan plan was a fairly close representation of the tracks. He did not consider the land to be impenetrable and there was nothing which stopped the Cub Scout activities which took place over the whole area. Mr Vasey accepted that some activities were more confined to the paths. Mr Vasey observed others using the woods with the majority using the whole area. Mr Vasey did not have permission to use the land and did not recall seeing notices or being challenged.
- xii) Mr Ponton has lived at 449 Church Road for 26 years and before that lived in Thundersley Park Road. As a child in the early 1970s he used the wood with his brother and sister for a variety of activities. On leaving the Merchant Navy in 1986 Mr Ponton used the land frequently. In 1986 he said that the land was quite accessible with some brambles near the Church field; the Jordan map was thought to be a reasonable representation of the tracks. He did not think that the land was impenetrable because he remembered taking large pieces of polystyrene through the wood when carrying out pond clearance. Mr Ponton frequently saw other activities taking place particularly on the Allen land and children played over the whole area.

- xiii) Mr D Waller of Villiers Way regularly used the land up to 1984/85 but continued to use the land after this time. Mr Waller said that whilst the land was fairly overgrown with a lot of bramble there were a lot of footpaths though the land. The tracks shown on the Jordan plan roughly equated to his memory of the paths; paths were between 12 and 18" wide (300 to 450 mm). Mr Waller disagreed with the suggestion that the land was impenetrable in the 1980s. From 1993 to the present day Mr Waller has been involved in leading walks through the wood for the Holiday Fellowship; the route varied. Mr Waller occasionally saw others on the application land, mainly dog walkers. He recalled cyclists using the land but this was on the main path from the Church field.
- xiv) Mr E Philcox, of 37 The Finches outside the neighbourhood, came involved in the Thundersley Scout group in 1986 when his son was eight years old. With his first involvement the cub pack regularly used Coombe Wood for many associated activities. Meetings would be held on Friday evenings between 6:00 and 7:30 and the group would spend around 50 minutes engaged in an activity. The time spent on the Allen land depended on the activity and this could be the whole period or a short time whilst passing through. Mr Philcox thought that some 75-85% of cubs were from the neighbourhood. Mr Philcox stopped going into the woods around 2000. At the time when he first joined the cub group the land was not inaccessible. The Allen land was an area which was used and played in by the cubs; Mr Philcox recognised the Allen land from its shape. The tracks were roughly as set out on the Jordan plan. Mr Philcox recalled seeing others using the land although cycling mainly took place on the paths.
- xv) Mr J Hounsell moved to Dark Lane in 1985 having previously lived in Borrowdale Close for 10 years. Mr Hounsell had been a frequent visitor to Coombe Wood from as far back as the 1950s. In the 1970s Mr Hounsell used to take his children into the woods. On moving house he continued to take his children to the woods and whilst there were bushes, trees and brambles the land was quite accessible; the children were in short trousers. Mr Hounsell never found the Allen land difficult to walk through. Mr Hounsell was a scout leader from 1989 until about 18 months ago and assisted with activities in the woods. The northern part of the wood was used more than other parts as it was easier to round the scouts up. The land was also used more in the summer and access was always from the Church field. The scout group met on Friday evenings from 8:00 to 10:00 and activities normally concluded at around 9:50. Mr Hounsell saw dog walkers and also children playing on the land. Older walkers tended to keep to the main paths but others would use all the tracks. Mr Hounsell did not recall any notices before the fence was erected and never had permission to use the land.

- xvi) Mrs B Watkins, living opposite Coombe Wood in Grasmere Road since 1977, has visited the woods since that time. Mrs Watkins took her daughters to the woods and was using the wood in 1985. Mrs Watkins also used the wood to walk to work at Kents Hill School this was from 1993 when she would use a variety of routes through the wood. From 1998 Mrs Watkins used the land two to three times a week for dog walking. Mrs Watkins did not remember any problems with access from 1985 and said that there were a lot of paths to choose from; this was mainly in the area now fenced off. The paths shown on the Jordan plan were probably a fair reflection of the paths in the 1980s. Mrs Watkins said that she saw others using the woods, dog walkers would tend to stick to a network of paths but this depended on whether the dog was on a lead. Children used the whole of the area for playing. Mrs Watkins was never challenged and did not have permission.
- xvii) Mr P Hughes has lived in The Chase since 2001 but before that lived outside the neighbourhood. Mr Hughes walked the entire area 2 to 3 times a year and could recall passing through the Allen land without difficulty but said that you couldn't go wherever you wanted. On at least two occasions Mr Hughes has run through the wood with the Essex Hash House Harriers. Routes used on these occasions were variable and members were mainly from The Common and not the neighbourhood.
- xviii) Mr M Berry has lived in The Chase since 1980 but the property falls outside the neighbourhood. He used the paths individually or as a leader of walks for the local Ramblers once or twice a year since 1994. Group walks were attended by 12 to 24 individuals mainly following the path along the brook. Mr Berry said that there were some members of the local Ramblers group which lived in the neighbourhood but he wasn't sure if these members had attended the walks. Mr Berry was never stopped but he recalled a notice on the path leading from the church car park; there may have been a notice before reaching the fencing around the Allen land. Mr Berry could not be more specific about the wording on the notices.
- xix) Mr B Byford does not live in the neighbourhood but has been a member of Thundersley Congregational Church for 60 years and youth leader of the Boys Brigade for 45 years. From 1994, as leader in charge of the junior section of the Boys Brigade, he said that some 50-60% of these members came from the neighbourhood. Around two or three times each summer activities took place in Coombe Wood including the wood towards St Peter's Church boundary and Rhoda Road North. Mr Byford recalled the vegetation in the northern part of Coombe Wood as being less mature than the remainder of the wood.
- xx) Mr P Klinker, a scout leader since 1988 who does not live in the neighbourhood, used Coombe Wood up to 2005 on a regular basis for activities such as wide games and tracking. He did not

use the land much before 1989. The section of the wood now fenced off was extensively used for the wide games. The Allen land was not overgrown but criss-crossed by paths with two main paths running down each side from the Church field. Mr Klinker recalled the use of the land by others for activities including bicycle riding and on the odd occasion dog walkers and children; bonfire parties were held on the Church field. Mr Klinker was never challenged in his use of the land and did not see any notices before the erection of the fencing.

- xxi) Mrs C Sharp, living in Grasmere Road since 1968, has enjoyed Coombe Wood for over 40 years. In the early years Mrs Sharp walked in the woods with her oldest son. Her youngest son, when about six years old, used to go into the woods on most days to play. In later years Mrs Sharp would take her grandchildren, born in 1995 and 1998, into the woods. From 1985 to 1986/97 she would walk her dog on a daily basis; when her last dog died she walked a friend's dog. Mrs Sharp recalled criss-crossing paths which the dog used and along which she followed. There was no passage for a horse and whilst there was hawthorn on the Allen land it was easily walkable. Mrs Sharp saw others in the wood almost every time she visited, there were children playing or 'fishing' in the brook. The children tended to use all of the woods. If in the wood for most of the day she would take a picnic box. Mrs Sharp recalled a 'no trespassing' notice on the main road. In cross examination, when asked if she had seen a notice in the wood granting permission, Mrs Sharp said that she remembered a sign somewhere in the wood which was erected prior to the fencing being erected. Mrs Sharp said that she did not have permission to use the land.
- xxii) Mr T Hall, living in Thundersley Grove all his life, started using the woods in around 1997 or 1998 and from that time to the present day has been a member of the Thundersley Scout Group. As part of the scout group he would partake in activities throughout the wood, this was until 2005 when the fence was erected. When Mr Hall first started using the woods he did not recall that the land was overgrown or inaccessible and there was never a time when the Allen land was inaccessible until 2005. There were one or two main paths and several other paths which formed a network; The Jordan plan was considered to reflect the paths at that time. Mr Hall saw others on the land and he was certain that other activities took place on the Allen land. Adults tended to use the network of paths whilst children played throughout the wood. Mr Hall was never prevented from gaining access to the wood and never received permission.
- xxiii) Mr J Saward has lived on Thundersley Grove all his life and has been a regular visitor to Coombe Wood since the 1960s. From 1985 his activities have included walking and bird watching; this was often early in the morning before the dog walkers. From the 1980s Mr Saward thought that the larger trees had shaded

out the undergrowth and the wood was pretty much overgrown with various trackways leading through. Mr Seward's interest was mainly along the path to the east side of the land looking along the ditch towards a swampy area nearer to Rhoda Road North. When on the land Mr Seward saw others, children when he was younger but dog walkers in more recent years. He never sought permission to access the land and had never been told it was needed. Mr Seward said that there were no notices on the land prior to the fence being erected but indicated that he didn't visit the Church field very often.

- xxiv) Mr G Jordan explained that the Jordan plan had been produced to show the layout of paths in 2004 all within the fenced area. The plan was considered not to be more accurate than within 2 to 3 metres. Mr Jordan had also produced photographs of the various access points onto the land (inquiry document 1A p396). In cross examination Mr Jordan accepted that the northern boundary of the wood extended into the Church Field not as shown on the location map. He did not argue that the photograph of the seat was located incorrectly on the accompanying plan. Mr Jordan had dashed out to take the photographs and the various points were not measured. Mr Jordan also accepted that there was no public access from Mr and Mrs Allen's garden. Mr Jordan considered that the various paths were probably made by scouts and would only have been kept open by people walking. Mr Jordan gave a background to the ecological development of the woodland on the Allen land. He considered that in the 1980s the wood would have been established and paths established by walkers, scouts and animals. He did not think that it would be impossible to get through.
- xxv) Mrs B Cerny moved to Spencer Road in 1980 and soon discovered Coombe Wood. Mrs Cerny took her two sons, born in 1986 and 1988 to walk and play in the area. The earliest recollections were that there were tracks everywhere, possibly more than shown on the Jordan plan, and that you could move around freely. The Allen land was not inaccessible. Mrs Cerny also walked through the woods as part of walks organised by the Church and playgroup when she did not keep to the paths but used the whole area. Mrs Cerny saw a number of other activities taking place on most of the occasions that she visited the Woods. Bike riding did not probably take place on the top part of the wood. Mrs Cerny did not have permission to use the land and first saw a notice by Kingston School, the fence followed soon after the erection of the notices.
- xxvi) Mr J Cerny, moving to Spencer Road in 1980, used all parts of the Wood since that date. A typical walk with the family would be through the graveyard into Church field and to enter Coombe Wood at its north eastern corner next to Kingston School. From that point he would wander along tracks on the west side of the brook. Mr Cerny did not remember being unable to get to all

parts of the wood including the Allen land. In 2004 Mr Cerny recalled the erection of blue notices at the north east corner of the wood and at the southern boundary of the graveyard. The notices were worded something to the effect that the landowner was allowing access. In 2005 heavy duty fencing prevented access to the land which he had used for the last 25 years.

33. A number of individuals identified by the applicant did not, or were not able, to give evidence to the inquiry but have submitted additional statements which are included in inquiry document 1A. The statements indicate the use of the application land for walking, recreation, scouting activities and by children playing. This evidence has not been subjected to cross examination and therefore the weight which can be attributed to it is diminished. Nevertheless, a reasonable amount of weight should be given to the signed statements given that they are consistent with the live evidence given to the inquiry.
34. In addition to the evidence given to the inquiry the applicant has submitted 217 evidence questionnaires which in my opinion demonstrate use of the application land for a variety of lawful sports and pastimes from as early as the 1940s to 2008. This is with the exception of the use of the Allen land where the questionnaires recognise that use of this land was prevented from 2005 with the erection of the palisade fencing. Those completing the questionnaires indicate that they also saw others engaging in a variety of activities. I note that a number of questionnaires relate to the use of the land by two individuals but have only been signed by one. As such these can only be considered as evidence for one individual. Although the evidence contained in the evidence questionnaires has not been tested in the same way as the oral evidence to the inquiry it is in my view consistent with that evidence. As such some weight should also be attributed to the questionnaires.
35. Mrs Curtis of the British Horse Society recognised that she did not live in the neighbourhood but nevertheless in the parish of St Peters. Mrs Curtis referred to her evidence questionnaire which indicates use from 1945 to 2008 for horse riding and walking. The questionnaire says that she saw others using the woods for a variety of purposes including horse riding. Mrs Curtis made the point that witnesses confirmed seeing riders on the land. Further, the evidence of Mr Allen's daughter showed that, in addition to using the Allen land, she regularly followed the brook further south which she then jumped to gain access to the woods further south.
36. Mr Allen gave evidence as to his recollections (inquiry document 3Ob). In summary Mr Allen came to live in a bungalow opposite Combewood Drive in 1955. Mr Allen was often in the woods and if one turned north after jumping the principal brook it was possible to push north through the undergrowth. There was a post and wire fence which was along the line of the southern boundary of the Allen land. Beyond that point you could see a field with long grass and hawthorn covering much of it. On viewing the property prior to purchase in May 1983 the

previous owner pointed out a dilapidated wire fence marking the southern boundary of the property. In 1984 Mr Allen and a friend (Denis Leighton) ran two lengths of wire to re-establish the fence but this was soon vandalised and subsequently almost disappeared.

37. On moving to Fox Meadows in 1983 the whole of the western part and some of the eastern part of the property was overgrown. However, there was a path running to the west of the brook leading from the Church field and a path leading from the graveyard across the south eastern corner of the property. Soon after moving into the property Mr and Mrs Allen contracted a Mr D Dunn to clear the land to the east of the brook. The western side of the brook was thick and difficult to penetrate and it was only possible to get in by pushing carefully, trying to avoid being scratched by the hawthorn. The area was dark and there were no blackberries other than around the north, west and eastern edges. There were animal tracks but no evidence before around 1988 of established tracks. In the 1980s Mr Allen considered that it would be quite dangerous for children to push past the thorny bushes rather than use the path leading to the more open part of the wood. Much of the land was impenetrable and Mr Allen was not able to explore the area fully until the early 1990s. By the time of the previous application made in 2003 a few narrow winding paths had appeared.
38. Mr Allen referred to the Jordan plan and made the point that the representation was not quite accurate; it would have been difficult to identify the boundaries of the land from the outside. Given the difficulty, he questioned how witnesses could be expected to remember exactly where they were 20 years ago.
39. From 1983 Mr and Mrs Allen would take the dog, Paddy, brought home by their daughter, into the woods. When Paddy died, and Mrs Allen retired from the business in 1996, Mr and Mrs Allen acquired another dog called Ollie. Ollie would not take himself into the woods and therefore visits to the wood were quite frequent, mostly on weekends. Mr and Mrs Allen would occasionally meet someone walking along the path from Coombe Wood to the Church field and, very rarely, on the path to the graveyard. Mr and Mrs Allen did not recall seeing anyone emerging from or going into the main area of their land.
40. Following an article in a local newspaper concerning dogs along a 'public footpath' alongside Kingston School into the Church field Mr Allen asked the Reverend Sanberg to follow the article up with a statement that the path was not public. Arrangements were then made to drive in posts along the boundary with the Church field. Mr Allen indicated that he was willing to give occasional access to the scouts and guides and anyone else at Reverend Sanberg's discretion.
41. In 2004 signs were erected on steel poles (inquiry document 40b) at the southeast, northeast and southwest corner of Mr and Mrs Allen's land. According to Mr Allen the signs stated that the land was private property and gave permission to enter. Within days the sign at the

southeast corner was pulled out but immediately re-erected; the same happened to the sign at the southwest corner. In May 2005 Mr and Mrs Allen erected a steel fence around the three sides of the application land owned by them. The fence excluded a 5 metre strip along the boundary of the graveyard and a corner of the land to the south east. Following the rejection of the previous application Mr and Mrs Allen have made more use of their land.

42. Mr Allen called Lorna Greenslade, the daughter of Mr and Mrs Allen, to give evidence to the inquiry. Mrs Greenslade lived at 11 Fox Meadows until 1990. In 1983 the land between the house and the brook was partly cleared. Her father and a friend renewed the wire fence between the brook and the churchyard but a gap was cut in the wire and the fence was subsequently vandalised. Mrs Greenslade recalled that she was able to ride from their field at the southernmost end and cross the brook into the main part of Coombe Wood. She would continue into Coombe Wood where there were wide paths and little undergrowth; it was not possible to proceed to the north as the path was too narrow and overgrown for horse riding. Mrs Greenslade said that you could not walk on their land to the west of the brook and never remembered seeing anyone coming out of the wood.
43. Mr Allen submitted three other statements (inquiry documents 20b). Although this evidence has not been subject to cross examination some weight should be given to these signed statements. The statement of Mr Dunn outlines the clearance of the land in 1986 to the east of the brook and describes the land as consisting of dense hawthorn and well established ash. Mr Dunn remembers that the land to the west of the brook looked similar in character and considers that it would have been very difficult for anyone to have walked on the land without pushing through thick hawthorn.
44. A handwritten statement from a Mr Burton indicates that, when the fence was erected, Mr and Mrs Allen's land was 'heavily bushed' and, with the trees, made a thick curtain. Mr Burton refers to a number of animal tracks which were also used by children playing and by 'curious adults'. Mr Burton adds that the fencing offered security to the children very often playing in the church field. Mr Burton says that the Church did not object strongly to children playing in the wood but thought that with so many unknown people walking in the wooded area it was not a safe area to play in.
45. Ann Leighton, living from 1968 to 1995 at 397 Church Road opposite St Peter's Church, recalls Mr and Mrs Allen asking her husband to supply barbed wire and assist with the reinstatement of the boundary fence. Mrs Leighton along with her two sons used to walk their dogs on a partly overgrown path alongside Kingston School through the land owned by Mr and Mrs Allen and over the brook into the more open part of the wood. The statement indicates that Coombe Wood had tall chestnut trees and it was mostly possible to walk between them. The land owned by Mr and Mrs Allen contained smaller trees with thick thorny bushes between them. Mrs Leighton refers to a path on the far side of Mr and Mrs Allen's land to come out into the

graveyard but says that she was never tempted to stray from the path or take a short cut.

Whether the land has been used for lawful sports and pastimes

46. The question of what constitutes lawful sports and pastimes has been considered by the courts, and in particular in *R v Oxfordshire County Council and Oxford Diocesan Board of Finance ex parte Sunningwell Parish Council* [1999] UKHL 28. In that case Lord Hoffman expressed the view that the term 'sports and pastimes' was a composite phrase which covered any activity that could properly be described as a sport or a pastime. The term was relative; the definition of what is a sport or pastime alters through time so that modern informal pastimes such as dog walking and playing with children are just as applicable as more formal sports or pastimes such as cricket or maypole dancing may have been in the past.
47. Evidence to the inquiry indicates that the main uses of the land were dog walking, walking, scout and guide activities and by children playing. This use is supported by the evidence questionnaires. As regards other activities reference was made to using the woods for blackberrying. Although I note the assertion of Mr Allen that the brambles are to be found beside open areas, the evidence to the inquiry, subjected to cross examination, indicates that the wood itself could be used for this purpose. It was accepted by witnesses that the best blackberries were towards the edge of the woods but that blackberry bushes were on the land now enclosed by the fencing. Mrs Sharp also collected damsons from the woods. The application land was also used for bird watching either as part of visits to the wood or with the specific intention; Mr Saward would often get up early to go bird watching. It may be the case, as contended by the objector, that the best place to go bird watching was in the ancient wood but the evidence is that bird watching took place throughout the application land.
48. Reference was also made to the use of the land for bicycle riding and whilst the evidence for this is more limited, noting the observation of the objector as to the likelihood of punctures on the Allen land, it nevertheless took place. However, bicycle riding tended to be more limited, but not exclusively, to the main north to south path from the northeast corner of the application land. Similarly whilst the land was used for horse riding this appears to have been limited to the north to south path. However, it is recognised that other parts of the application land were used but not to any great extent. I put no weight on the use on horseback of the Allen land by Mrs Greenslade, albeit that it would only relate to the south eastern corner of the land, as her use, as the daughter of the landowner, would have been 'of right'. A further activity was fishing and pond dipping. In terms of fishing this was along the principal brook but this was nothing more serious than fishing for sticklebacks or dabbling in the brook. As regards pond dipping as pointed out by Mr Allen there was no pond on the Allen land. The only pond of which I am aware is on the land to the south of the principal brook.

49. Mr Allen made reference to other activities including rounders, cricket, community celebrations, kite flying and picnicking. I accept that these activities would have taken place on the Church field. However, as regards picnicking there is evidence that this also took place to a limited extent on the application land. In relation to the use of the application land for fires there is no clear evidence to suggest that this took place. Although firewood was collected from the Allen land by scouts and guides any fires were on the Church field.

50. It appears to me that the activities which took place on the application land are all capable of being legitimately described as lawful sports and pastimes.

Whether the lawful sports and pastimes could have taken place on the whole of the application land

51. It is the case of the objector that the Allen land could not have been used for lawful sports and pastimes as the land was overgrown. The objector contends that any activities would have been limited to two main paths being the path from the north east corner of the application land down towards the principal brook and the path from the south east corner of the graveyard.

52. In relation to the use of a network of paths for lawful sports and pastimes the evidence indicates that there were two main paths across the land (paragraph 51 above). These paths were used by the public and it is noted that some users of the land kept to the more major tracks. However, there were also a number of narrower paths and animal tracks which could be used, and were used, for lawful sports and pastimes.

53. The applicant and the objector both referred to the observations made by the inspector in relation to the earlier application where he said that *'I had no evidence that the dense texture of paths disclosed by the applicant's drawings and photographs of the 2004 situation was reciprocated in the early 1980s. Thus though the scouting and church groups may have been establishing footpath rights over the Allen wood, they were not establishing VG rights.'* However, in relation to the current application witnesses were clear that the network of paths identified on the Jordan plan reflected the situation in the 1980s; this evidence was not diminished by cross examination.

54. The objector questioned whether it could be taken that the network of paths on the Jordan plan would have been the same at the beginning of the relevant period. Whilst it is recognised that some of the witnesses thought that the network was the same and others said it changed over time, the evidence clearly indicates that there was a network of paths and tracks over the land. The fact that the paths may have moved over time does not diminish the weight that can be given to this evidence. In my view, the fact that the paths moved further demonstrates the wider use of the application land. I consider whether the use of the tracks equates to establishing footpath rights at paragraphs 64 to 67 below.

55. The objector made the point that the Jordan plan showed the southern path as being well outside the boundary of the Allen land. At the inquiry Mr Jordan accepted that the plan was not completely accurate but in my view the plan nevertheless represents the network of paths which existed at the time and to some extent in the 1980s. The plan may suggest the difficulty in identifying the exact boundaries of the Allen land but witnesses were clear as to their understanding of the boundaries in the context of their use. Further, there is nothing to indicate that the paths identified on the plan or entry points shown on the photographs submitted by the Jordan family did not exist at the time the photographs were taken.
56. In relation to the use of the remainder of the land, not the various tracks, a number of those giving evidence indicated that they used to wander off the beaten track into the wood. Although the impression is given that the area was wooded and contained islands of thicket the evidence in support of the application was that the land was not impenetrable.
57. The application land was used by those involved in the scouting and guiding activities and a wide variety of activities took place on all of the land, not just the paths and tracks. The extent to which the land was used depended on the activity. The land adjacent to the Church field which includes the Allen land was used more for activities. This was mainly due to safety issues but it was also said to be easier to 'round up' the participants. Nevertheless some activities took place across the whole of the application land. Witnesses referred to the principal brook being the limit to the area used for scouting activities as this was easily identifiable. There is nothing which suggests that the land was impenetrable such as to prevent activities taking place.
58. Another significant use of the land was by children playing. Again whilst some use was made of the paths children accompanied by adults, or otherwise, did not keep to the paths. Other parts of the wood were used for example for the making of dens, climbing trees and exploring.
59. In contrast to the evidence in support of the application the evidence from Mr Allen and Mrs Greenslade is that the Allen land was considered to be overgrown. The statement from Mr Dunn indicates that the land to the west of the brook would be difficult to get through. However, it is noted that Mr Dunn did not cross the brook and therefore his direct experience of the land is more limited. The evidence from Mr Burton does not in my view assist with the argument that the land was overgrown and impenetrable. The statement makes reference to the land being used by children playing and curious adults. This does not suggest that the land was impenetrable. Mrs Leighton kept to the two well defined paths but the statement provides no evidence as to whether the land was impenetrable. Mrs Leighton describes the land as containing smaller trees with thick thorny bushes between them.

60. There is in my view a conflict of evidence between that given in support of the application and by the objector. The evidence in support of the application given to the inquiry, although subject to cross examination, was not undermined. Some significant weight should therefore be given to this evidence. There is no indication as to any collusion between the witnesses as those giving evidence clearly gave their independent recollections. In contrast other than the evidence provided by Mr Allen and Mrs Greenslade the evidence is untested.
61. On balance whilst Mr Allen and Mrs Greenslade took a view that the land was overgrown and impenetrable, and I have no reason to dispute their interpretation of the situation, looking at the evidence as a whole I consider, on balance, that this was not the case. The evidence demonstrates the use of all of the application land either along defined or less defined tracks. Additionally the land received more widespread use particularly for scouting and guiding activities and by children playing. It is accepted that the evidence from Mr Jordan suggests that the land was more overgrown in the 1980s. However, there is nothing to suggest that, if the land was indeed more overgrown, it prevented lawful sports and pastimes from taking place; even Mr Jordan considered that it would have been possible to get through the hawthorn.
62. Although raised in the context of recreational use by way of paths, the applicant refers to the case of *Oxford City Council v Oxfordshire County Council* [2004] Ch 253. This considers a situation where only 25% of the area was actually available for lawful sports and pastimes. The view was taken that the inaccessibility of part of an area does not preclude an area being held to be a green. The issue was subsequently considered in the House of Lords (*Oxfordshire County Council v Oxford City Council and Ors* [2006] UKHL 25). In the House of Lords it was not held to be detrimental to registration that only 25% of the area was actually available for use for lawful sports and pastimes, the remainder of the land being bushes, scrub, or marshy land. Indeed the nature of the land in itself was held to be the reason for its use for such activities. I draw a parallel with the current application and even though I have concluded that the lawful sports and pastimes took place over the whole of the land, it remains the case that some of the land would not have been used because it would have been covered by dense vegetation. In view of the above I can see no reason why the overgrown nature of the land ought to be taken as preventing the registration of the application land. Further, the nature of the land in itself provides a reason for its use for lawful sports and pastimes. Evidence from the scouting fraternity suggests that the erection of the fence in 2005 has prevented the various scouting activities from taking place.
63. In relation to the network of paths the objector has estimated, on the basis that some witnesses considered the paths to be 300 to 400mm in width, that the network of paths would represent about 5% of the Allen land before the erection of the fence in 2005. Whilst there is nothing which disputes this estimate, I revert to my conclusions at

paragraph 63 as to the use of the whole of the application land for lawful sports and pastimes.

64. The applicant raises the issue as to the use of the paths giving rise to public footpath rights. I was again referred to *Oxford City Council v Oxfordshire County Council* [2004] Ch 253 (*Oxford*) at paragraph 102:

'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 for pedestrian recreational purposes may readily qualify as user of a lawful pastime'

65. The applicant argued that in this case the shifting nature of the network of paths probably means that the majority of them would not give rise to a presumption of dedication of a highway. Use should therefore readily qualify as a lawful sport or pastime. However, even if the tracks could potentially give rise to a dedication as a footpath then use may still qualify as a lawful sport or pastime. Again in *Oxford*:

'Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending on the context in which the exercise takes place, which includes the character of the land and the season of the year'

66. The applicant asserts that the nature of the land is unmanaged woodland which, of necessity, will tend to be used recreationally by way of paths. Further, the wooded nature of the land was an essential component of its use for recreation. As it was put in *Oxford* it should be readily found that use of the paths was for lawful sports and pastimes, not just footpath use.
67. In my view there is nothing to suggest that the network of smaller paths would have been used in the context of the exercise of a public right. It appears to me that the use of these paths was as a consequence of the lawful sports and pastimes as previously identified. The use of these tracks in my view equates to a more general wandering and as such would not give rise to the presumption of dedication of any highway. In respect of the main paths, one leading from the north east corner of the application land and the other from the south eastern corner of the graveyard, the position is less clear. However having regard to *Oxford*, where users of a track veer off and play or meander leisurely over the land either side then such user is more particularly referable to use as a village green. The evidence before me is that whilst some used the main tracks, others veered off onto the more minor tracks in the pursuit of other activities including scouting activities and play.
68. Having regard to all of the above I conclude, on the balance of probabilities, that all of the application land has been used for lawful sports and pastimes. This is subject to that caveat that not all of the

land would have been accessible but that this does not preclude the registration of the land as a town or village green.

Use as of right

69. The judgement in *R v Oxfordshire County Council ex parte Sunningwell Parish Council* [2000] 1 AC 355 sets out clearly the definition of what is to be considered use 'as of right'. Use must have been exercised without force, without secrecy and without permission. There is no requirement that use must have been in the belief that the land is a town or village green.
70. There is no evidence before me to suggest that use was secretive. The point was made that children playing and scouting and guiding activities tended to be on the more lively and noisy side.
71. As regards use by force it is acknowledged that Mr Allen erected a wire fence in 1984 but this was soon vandalised and subsequently disappeared. There is no evidence that those using the land during the relevant period were prevented from gaining access to the land until 2005 when the Allen Land was fenced. Neither is there any evidence that access was prevented prior to 1984.
72. In December 2004 Mr Allen erected notices at various points on his land and their existence is recognised by a number of those who have given evidence. Photographs showing the wording of the notices are to be found at inquiry document 4Ob. The objector did not argue that the notices terminated any qualifying use but that the notices rendered use as with permission. The applicant argued that the signs, stating that there was no footpath and that the land was private property, had no effect on the use of the village green. Although the objector only argues that the notices gave permission to use the land I think it is appropriate to consider the effect of the notices in relation to use by force.
73. In my view the notices refer specifically to the fact that there is no footpath and grant permission to use the defined path on foot. The Registration Authority may wish to note that the use of a defined route would not give rise to the registration of land as a town or village green and I have already considered this issue at paragraph 67. The notice makes no reference to the use of the adjacent land neither does it make any reference to lawful sports and pastimes. There is nothing which would have brought it home to those using the land for lawful sports and pastimes that such activities were being restricted. Indeed there is nothing to indicate that use of the land for lawful sports and pastimes ceased until May 2005, with the erection of the fencing, or that the notices were seen as preventing such activities. Whilst the heading of the sign states private property I consider that this wording is somewhat ambiguous as to its intentions. The fact that the land is private property does not preclude lawful sports or pastimes or the registration of land as a town or village green.

74. On balance I do not consider that the erection of the notices in December 2004 rendered the subsequent use of the land to be contentious and therefore with force.
75. The Registration Authority may wish to note that, in consequence of the earlier application, Mr and Mrs Allen lodged an objection on 21 February 2004. At the inquiry I made reference to the case of *Betterment Properties (Weymouth) Ltd v Dorset County Council & Anor* [2010] EWHC 3045 (ch). In that case Morgan J disagreed with the view that an earlier objection rendered subsequent use contentious. The applicant acknowledged the case law but took the view that in any event the point had not been argued. The objector said that on the basis of the case law the earlier objection did not change the challenge date of May 2005. In light of the judgment, noting that there is no evidence that those using the land considered that use had been challenged, I do not consider that the objection in 2004 renders subsequent use of the land as being contentious such that subsequent use was with force. Additionally I do not consider that the earlier objection changes the date of challenge as to the use of the land.
76. On balance I do not consider that the use of the land was with force.
77. Mr and Mrs Allen argue that use of the Allen land was with permission. In this respect reference was made to discussions with the Reverend Sanberg when Mr Allen indicated that he would be willing to give occasional access to the scouts and guides and to anyone else at the discretion of Reverend Sanberg. The letter of objection to the current application also indicates that permission would be granted for Church related activities.
78. The applicant contended that there were obstacles to the use of the conversation between Mr Allen and the Reverend Sanberg. The evidence did not support the version of the permission given by Mr Allen. The Registration Authority may wish to note that the inspector, when considering the previous application and based on similar submissions did not discount any use of the Allen land as being permissive. This point was made by the applicant but I am required to make a recommendation on the evidence before me.
79. From the evidence provided by the applicant (inquiry documents 4A to 6A) the letter, from the former incumbent of St Peter's Church dated 20 May 2004, makes it clear the understanding that the permission related to 'the footpath which you said you were prepared to allow use on a permissive basis'. Although Mr Allen's understanding may have been different, some weight should be given to the evidence from an independent witness. There is nothing to suggest that the permission related to the use of the Allen land by the scouts or cubs or for any church related activities. At the inquiry Mr Allen accepted that scouts and guides were not a church related activity and I heard evidence from the applicant to this effect. The permission would therefore not have any bearing on the scout and guide activities noting that in any event the permission related to the use of 'the footpath'.

80. The applicant referred to the case of *R (Beresford) v Sunderland City Council* [2004] 1 AC 889 (paragraphs 47 to 49) and the fact that none of the permission granted was expressed to be temporary or revocable and as such there was no reason why any of the permissions would render use to be with permission. Further, by reference to the same case (paragraph 75) it was a key requirement that any permission should be communicated by some overt act; in the case of the permission granted by Mr Allen this was not communicated.
81. In my view a key element in relation to permission as identified in *Beresford* is that any permission must be communicated to users of the land. None of those using the application land, including those involved in the scouts or guides, understood that their use was with permission or had actually been given permission. Further, the consensus was that permission to use the land was not needed. None of the 217 evidence questionnaires indicate that permission was given to indulge in any activities on the land. The only reference to permission being granted is in the evidence questionnaire of Vicky Onley who said that the school gave permission. The school would have no authority to grant permission for the use of the land and therefore this permission would be ineffective. In any event the granting of permission to one individual does not prevent use by others from being without permission. A letter, 13 October 2004, from Keith Jillings (inquiry document 6A) indicates that he did not recall ever discussing with any of the clergy any question of authority for individuals or groups to access the woods behind the Church field.
82. I conclude that the use of the Allen land was not as a consequence of any permission communicated between Mr Allen and Reverend Sanberg. There is no indication of any other permissions being granted to use the application land.
83. I have already considered the effect of the notices in respect of the use of the land by force and for the same reasons I do not think that the notices can be construed as giving permission to use the land for lawful sports and pastimes.
84. Having regard to the above I conclude, on the balance of probabilities, that use of the land for lawful sports and pastimes during the relevant period has been as of right.

Whether the land has been used for at least twenty years by a significant number of the inhabitants of the neighbourhood

85. In the case of *R (on the application of Alfred McAlpine Homes Limited v Staffordshire CC* [2002] EWHC 76 (Admin), it was held that the term "significant number" found in the statutory test is to be considered in its ordinary meaning. It was also held that use by a "significant number" had to be use which was sufficient to indicate that the land was in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers.

86. It is the contention of the objector that the land was not used for lawful sports and pastimes by a significant number of people throughout the 1980s.
87. Although it is accepted that some of the witnesses did not come from the neighbourhood, the evidence to the inquiry demonstrates the regular use of the application land for lawful sports and pastimes from the 1950s to 2008, 2005 in respect of the Allen land.
88. In relation to the scouting and guiding, the various outdoor activities took place on the application land particularly the Allen land because it was close to the scout hut. Activities took place on a regular basis on several nights during the week. Groups were generally in the region of 20 to 30 and a large proportion, up to 75% of pack members came from the neighbourhood. The use of the land for scouting activities dates from the late 1970s although the majority of the evidence indicates use from 1980 onwards. It is the case that use of the land was on a seasonal basis or dependent to some extent on the amount of daylight. However, there is no requirement that all the activities should have taken place throughout the year.
89. Additional statements submitted by the applicant from those who did not attend the inquiry also confirm use of the land by those in the neighbourhood during the relevant period from the early 1980s. Although this evidence was not subject to cross examination it is consistent with the live evidence given to the inquiry and therefore some weight should be attached thereto.
90. I have already considered the 217 evidence questionnaires (paragraph 34) and take the view that the forms demonstrate the use of the land for lawful sports and pastimes from the 1940s. This evidence is consistent to that given to the inquiry. The use of the land by 217 individuals represents a significant use of the application land.
91. It is accepted that some of those who have completed evidence questionnaires do not appear to have used the Allen land; Mr Allen contends that some 51 people have not used their land. Nevertheless if these questionnaires are discounted there remains a significant number of individuals who claim use of the application land. In any event there is nothing to indicate that these 51 individuals did not use the remainder of the land. Further, as pointed out by the applicant, it should be taken into account that the evidence questionnaires are a representative sample of those who have used the land. The evidence questionnaires do not amount to the sum total of all of those who have used the application land. Mrs Peck indicated that the witnesses were found mainly through word of mouth and it is likely that others will have used the land.
92. It is further noted that not all of those completing the questionnaires are resident in the locality. It is necessary to show that use of the land was by a significant number of the inhabitants and therefore the direct evidence from those who live outside the neighbourhood will not support the case. However, a number of those who do not live in the area were involved in scouting activities and the evidence is that, of

the numbers identified at paragraph 87 above, up to 75% of the participants in those activities were from the neighbourhood. This evidence supports the view that the land was used by those from the neighbourhood. Further, those from outside the neighbourhood observed use of the land by others. Whilst it cannot be concluded that all this use would have been by inhabitants of the neighbourhood, given the location of the application land in the context of the neighbourhood, it is likely that some of the observed use was by inhabitants of the neighbourhood. As such the evidence from those outside the neighbourhood adds weight to the use of the land by inhabitants of that neighbourhood.

93. The objector questioned why, if the land had been in constant use, the paths on the Allen land would not be wider. In my view whilst the physical characteristics of the major tracks might indicate that these were more frequently used, this does not mean that the inhabitants of the neighbourhood did not indulge in lawful sports and pastimes on the Allen land to a significant level. The evidence suggests that both the major tracks and the surrounding land were used for lawful sports and pastimes.
94. Looking at the evidence as a whole I take the view that it shows use of the land by a significant number of the inhabitants of the neighbourhood for at least twenty years. The evidence also indicates that use of the land was not by the occasional trespasser. Use is throughout the two relevant periods identified at paragraphs 28 and 29 above and dates from the 1940s.
95. The objector raises the issue as to whether or not the use was sufficient to put them on notice that a village green was being established. It was said that in the whole time that the objectors had lived in their current property they had not identified the noise which would inevitably arise from the scout and guide activity as coming from within their land; it was presumed that the noise was coming from the Church field or the school field. The objector believed that most of the scouting and guiding activities took place on a Friday night when they would have been at work. The only thing to show for these activities on the objectors land by 2004 was a network of narrow paths.
96. The applicant considers that the issue was how use would have appeared to a reasonable landowner and that was a matter for me to judge, I concur with this view. The point was made that even though the objector was not around on a Friday evening they did hear noise but assumed it was coming from the Church field or School field; that assumption was wrong.
97. I have already concluded that there was use of the application land by a significant number of inhabitants from the neighbourhood and that use was not by the occasional trespassers. With this in mind I consider that the evidence of use was sufficient to put a reasonable landowner on notice that the land was being used for lawful sports and pastimes. The objector acknowledges that the only thing to show for

these activities in 2004 was a few narrow paths. These are the paths which were being used for lawful sports and pastimes. It is also noted that in the cross examination of Mr Allen, in relation to the permission given to the Reverend Sanberg, said that he did not want to stop use. This in my view acknowledges that to some extent Mr Allen was aware of the use of the land for lawful sports and pastimes.

Alternative twenty year period

98. The objector contends that from December 2004 they made it clear to anyone approaching the boundaries of their land that it was private property. I have already considered the effect of the notices erected in 2004 (paragraphs 72 to 74 and 83 above) and have concluded that they did not render the use to be not as of right.
99. Should the Registration Authority disagree with the view I have taken, and consider that the notices rendered use of the Allen land after December 2004 to be contentious and therefore not as of right, then it would be appropriate to consider an earlier twenty year period of December 1984 to December 2004. In my view there is nothing to indicate that use of the Allen land between December 2004 and May 2005 changed such that the use of the land for lawful sports and pastimes was not as of right or not by a significant number of the inhabitants of the neighbourhood.

Other Matters

100. The objectors have noted the tone of the comments of the witnesses in relation to motives for enclosing their land, the effect that the application would have on the scout group and on the quality of life. I also note the observations of the objector in relation to the effect the application would have on their property. Whilst I note the various comments and can appreciate the concerns in respect of the objector's property they are not matters which I can take into account in making my recommendation. My recommendation must be made on the basis of the criteria I have set out at paragraphs 12 to 16 above.
101. Mr Morley, in response to observations made by the objector, clarified that the Friends of Coombe Wood made no direct comments about ownership in an edition of the newsletter. This is not a matter before me for consideration. I refer to paragraphs 10 to 11 as to the ownership of the application land.

Conclusion

102. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that, on the balance of probabilities, the evidence indicates use of the application land for lawful sports and pastimes as of right for at least twenty years. In this case the two relevant periods being 1985 to 2005 for the Allen land and 1988 to 2008 for the remainder of the application land. Use was by a significant number of the inhabitants of the neighbourhood. In respect of any earlier period of use of the Allen land from 1984 to

2004, which the Registration Authority may wish to consider, I also conclude, on the balance of probabilities, that this land has been used for lawful sports and pastimes as of right for the full twenty year period by a significant number of the inhabitants of the neighbourhood.

Recommendation

103. I recommend that the application be approved.

Martin Elliott

INSPECTOR

Planning Inspectorate
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APPEARANCES

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who called
Mrs E Peck
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Mrs C French
Mr I Howe
Mr K Thompson
Mrs G Soar
Mr S Vasey
Mr D Ponton
Mr D Waller
Mr E Philcox
Mr J Hounsell
Mrs B Watkins
Mr P Hughes
Mr M Berry
Mr B Byford
Mr P Klinker
Mrs C Sharp
Mr T Hall
Mr J Saward
Mr G Jordan
Mrs B Cerny
Mr P Cerny

Interested persons in support of the application:

Mr A D Morley
Mrs M Curtis

British Horse Society, Access and Bridleways
Officer

The Objector:

Mr R Allen
who also called
Mrs L Greenslade

Objector

DOCUMENTS submitted by the applicant

- 1A Inquiry bundle
 - Section 1.0, Copy of application number 35
 - Section 2.0, Ordnance Survey maps and geographical data
 - Section 3.0, Applicant's list of witnesses
 - Section 4.0, Evidence Questionnaires and other data in support of the application
 - Section 5.0, Case summary and legal authority
- 2A Inquiry bundle Appendix 1 Volumes 2 of 2, Evidence questionnaires
- 3A Inquiry bundle Appendix 2 Volume 1 of 1, legal authorities in support of the application
- 4A Correspondence dated 18 May 2004 from Mr R Allen to Reverend Peter Sanberg
- 5A Correspondence 20 May 2004 from Canon Peter Sanberg to Mr R Allen
- 6A Correspondence 13 October 2004 from Mr K Jillings to Charles George Esq. QC
- 7A Witness statement of Roger Allen to previous village green inquiry
- 8A Closing submissions on behalf of the applicant

DOCUMENTS submitted by the objector

- 10b Correspondence from Mr Allen to the Planning Inspectorate 26 May 2011 including grounds for objection 22 June 2009
- 20b Correspondence from Mr Allen to Mrs E Peck 8 June 2011 including statements from Derek Dunn, Don Burton, Lorna Greenslade and Ann Leighton
- 30b Witness Statement of Roger Allen and Sandra Allen
- 40b 8 No. photographs of notices on Allen land
- 50b Closing submissions of Mr and Mrs Allen

DOCUMENTS submitted by interested parties

- 1S Statement of Alan Douglas Morley
- 2S Statement of Mrs M Curtis

DOCUMENTS submitted by the Registration Authority

- 1RA Extracts of the definitive map and plans of public rights of way

Appendix 2 – Neighbourhood

