Development and Regulation Committee

10:30	Friday, 22 May 2015	Committee Room 1, County Hall, Chelmsford, Essex

Quorum: 3

Membership:

Councillor R Boyce	Chairman
Councillor J Abbott	
Councillor J Aldridge	
Councillor K Bobbin	
Councillor M Ellis	
Councillor C Guglielmi	
Councillor J Jowers	
Councillor J Lodge	
Councillor M Mackrory	
Councillor Lady P Newton	
Councillor J Reeves	
Councillor S Walsh	

For information about the meeting please ask for:
Matthew Waldie, Committee Officer
Telephone: 033301 34583
Email: matthew.waldie@essex.gov.uk

Essex County Council

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Part 1

(During consideration of these items the meeting is likely to be open to the press and public)

		Pages
1	**Apologies and Substitution Notices** The Clerk to report receipt (if any)	
2	**Declarations of Interest** To note any declarations of interest to be made by Members in accordance with the Members' Code of Conduct	
3	**Minutes** To approve the minutes of the meeting held on 24 April 2015.	**7 - 14**
4	**Identification of Items Involving Public Speaking** To note where members of the public are speaking on an agenda item. These items may be brought forward on the agenda.	
5	**Minerals and Waste**	
5a	**Roxwell Quarry, Roxwell** To consider report DR/15/15, relating to the enhanced restoration of a former landfilling area by the importation of inert materials and biosolids to enable agricultural after-use and restoration scheme for the former mineral processing plant site to woodland, nature conservation and agricultural after-uses (including retention of hardstanding and workshop), at Roxwell Quarry Complex, Boyton Cross, Roxwell, Chelmsford, CM1 4LT. Reference: ESS/05/15/CHL	**15 - 38**
6	**Village Green**	
6a	**'Land off Oxford Meadow', Sible Hedingham** Application to register land known as 'Land off Oxford Meadow', Sible Hedingham, Essex as a town or village green. DR/16/15	**39 - 92**

7 Information Item

7a Applications, Enforcement and Appeals Statistics **93 - 94**
To update Members with relevant information on planning applications, appeals and enforcements, as at the end of the previous month, plus other background information as may be requested by Committee.
DR/17/15

8 Date of Next Meeting
To note that the next meeting will be held on Friday 26 June 2015 at 10.30 am.

9 Urgent Business
To consider any matter which in the opinion of the Chairman should be considered in public by reason of special circumstances (to be specified) as a matter of urgency.

Exempt Items

(During consideration of these items the meeting is not likely to be open to the press and public)

To consider whether the press and public should be excluded from the meeting during consideration of an agenda item on the grounds that it involves the likely disclosure of exempt information as specified in Part I of Schedule 12A of the Local Government Act 1972 or it being confidential for the purposes of Section 100A(2) of that Act.

In each case, Members are asked to decide whether, in all the circumstances, the public interest in maintaining the exemption (and discussing the matter in private) outweighs the public interest in disclosing the information.

10 Urgent Exempt Business
To consider in private any other matter which in the opinion of the Chairman should be considered by reason of special circumstances (to be specified) as a matter of urgency.

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All letters of representation referred to in the reports attached to this agenda are available for inspection. Anyone wishing to see these documents should contact the Officer identified on the front page of the report prior to the date of the meeting.

MINUTES OF A MEETING OF THE DEVELOPMENT AND REGULATION COMMITTEE HELD AT COUNTY HALL, CHELMSFORD ON 24 APRIL 2015

Present

Cllr R Boyce (Chairman)
Cllr J Aldridge
Cllr K Bobbin
Cllr M Ellis
Cllr C Guglielmi
Cllr J Jowers
Cllr M Mackrory
Cllr Lady Newton
Cllr J Reeves
Cllr S Walsh

1. Apologies and Substitution Notices

Apologies were received from Cllr J Abbott and Cllr J Lodge.

2. Declarations of Interest

Cllr Jowers declared a personal interest in agenda item 5a, Former Severalls Hospital Site, Colchester, as a member and chairman of the local Development Committee.

3. Minutes

The Minutes and Addendum of the Committee held on 27 February 2015 were agreed and signed by the Chairman.

4. Identification of Items Involving Public Speaking

One person was identified to speak in accordance with the procedure for the following item:

Construction of a two-storey, two-form entry Primary School with associated hard and soft play space, vehicle access and parking, hard and soft landscaping, drainage, lighting and fencing.
Location: Former Severalls Hospital Site, Northern Approach Road (Phase 3), Colchester, Essex, CO4 5HG.
Ref: CC/COL/52/14
Applicant: Essex County Council

Public Speaker: Jean Dickinson speaking for the application

And, speaking as local Member, Cllr A Turrell.

5. Former Severalls Hospital Site, Colchester

The Committee considered report DR/12/15 by the Director for Operations, Environment and Economy.

The Members of the Committee noted the contents of the Addendum attached to these minutes.

Policies relevant to the application were detailed in the report.

Details of consultation and representations received were set out in the report.

The Committee noted the key issues that were:

- Need and Principle of the development
- Policy considerations
- Landscape and visual impact
- Noise and pollution
- Traffic and highways
- Heritage impact and design.

In accordance with the protocol on public speaking the Committee was addressed by Cllr Jean Dickinson, a member of Myland Community Council, the local parish council. Cllr Dickinson said:

- When the public consultation was announced in September 2014, Myland Community Council (MCC) had heard nothing of the proposal since 2001, apart from the periodic renewals of existing planning consent. The public consultation was ineffective and did not include MCC.
- MCC has an adopted design statement relating to the site, an adopted parish plan, front runner status for the emerging neighbourhood plan, and the agreement in principle of the HCA, who actually own the site, that the relocation of the proposed community centre may be negotiated, once the developer is in place. None of these were addressed in the consultation process
- MCC would like to have seen the architectural style reflect the existing park, rather than merely copy the design used for Braiswick School. It also had concerns over the proximity to the NR3, and expressly sought monitoring and managing of pollution from particulates and noise
- Local authorities should be able to contribute to funding, design and operation of such services
- MCC reluctantly supports the application in the common interest, but asks that the Committee updates its guidelines to staff, to ensure the full involvement of appropriate local authorities in future developments.

Cllr Anne Turrell, local Member for Mile End and Highwoods, then addressed the meeting. Cllr Turrell said:

- There is certainly a desperate need for new schools in Colchester, as many children have to be transported considerable distances at present, to find school places
- She acknowledged some of the shortcomings noted by the community council, in particular the building design
- At present, there are very few houses nearby, so initially most of the pupils will be arriving by car. Once the new housing is up and occupied, and the pedestrian access points are opened, people must be encouraged to walk and cycle
- There is a need to monitor noise and pollution for a longer period than suggested in the report
- She drew Members' attention to the comments of Colchester Borough Council and confirmed her overall support for the application.

In response to questions raised by Members, it was noted:

- The application is Equality Act compliant, and the building does have a lift
- The roof is not of traditional flat roof design, but is an aluminium standing seam roof, which has a slight pitch
- The initial school intake will not come from the immediate area, as there is as yet very little housing around the site; but this is a good example of forward build, where such a facility is pre-planned into a development, rather than having to be added as an afterthought, when the bulk of the new housing is already built
- Children will arrive by car but the school will take seven years to reach capacity and the school's Travel Plan will encourage walking and cycling. There may some scope for using the proposed community facilities at the south end of the site as a drop off point
- The number of car parking spaces (28, including 2 disabled spaces) accords with the maximum allowed under Essex Parking Standards
- No further expansion of this site from the planned 420 capacity is envisaged
- The level of detail to be included in the agenda papers is always an issue, but a link to all relevant plans will be included in every report. A training session for Members will be arranged, to give Members a greater awareness and understanding of design issues.

Three further points were made by Members:

- The building reflected the same basic, functional design seen in other new build schools, in keeping with current ECC policy, to reduce costs but maintain quality
- The restrictions on numbers of car parking spaces at sites should be reviewed, as they seem unrealistic
- Some thought should be given to taking a longer term view of school buildings construction, with the possibility of making them more adaptable.

After further brief discussion, the resolution was proposed and seconded. Following a vote of nine in favour and one against, it was

Resolved

That pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992, planning permission be **granted** subject to the following conditions:

1. The development hereby permitted shall be begun before the expiry of 5 years from the date of this permission. Written notification of the date of commencement shall be sent to the County Planning Authority within 7 days of such commencement.

2. The development hereby permitted shall be carried out in accordance with the details of the application dated 28/11/14, together with:

   - Utility Services Statement by Silcock Dawson & Partners;
   - URS Travel Plan 47072825 Rev 1 dated November 2014;

- URS Transport Statement 47072325Rev 1 dated November 2014;
- Sustainability Report by Silcock Dawson & Partners dated November 2014;
- Archaeological Desk-Based Assessment dated October 2014;
- Statement of Community Involvement by Dalton Warner Davis dated 24 November 2014;
- Planning and Heritage Statement by Dalton Warner Davis dated 24/11/14, as amended by Heritage Assessment by Dalton Warner Davis Rev B dated 03/03/15;
- Arboricultural Impact Assessment by Arboricultural Solutions LLP Rev November 2014;
- External Lighting Analysis by Silcock Dawson & Partners dated October 2014;
- Landscape and Ecological Management Plan ref SS-HED-DOC-LA-108 version 3 dated 19/11/14;
- Primary School Places in Colchester dated November 2013;
- Site Investigation Report dated 13/11/14;
- Baseline Ecology Report and Assessment by Richard Graves Associates dated November 2014;
- URS Land Drainage Schedule;
- Construction Environment and Management Plan dated 06/02/15;
- External Lighting Analysis dated October 2014;
- External Lighting Calculation by Silcock Dawson & Partners dated 15/02/15
- Flood Risk Assessment and Drainage Strategy Report ref SS-STL-D-REP-0061 rev P02 dated 21/11/14;
- Arboricultural Scheme of Supervision dated 10 March 2015;
- Written Scheme of Investigation for archaeological trial trenching and excavation dated 10/03/15.

together with drawing numbers:

- SS-KSS-DWG-A-P003 Rev E dated 20/11/14;
- SS-KSS-DWG-A-P4600 Rev A dated 20/11/14;
- SS-KSS-DWG-A-P301 Rev D dated 20/11/14;
- SS-KSS-DWG-A-P300 Rev D dated 20/11/14;
- SS-KSS-DWG-A-P201 Rev A dated 20/11/14;
- SS-KSS-DWG-A-P200 Rev D dated 20/11/14;
- SS-KSS-DWG-A-P102 Rev D dated 20/11/14;
- SS-KSS-DWG-A-P101 Rev C dated 20/11/14;
- SS-KSS-DWG-A-P100 Rev C dated 20/11/14;
- SS-KSS-DWG-A-P004 Rev B dated 20/11/14;
- SS-KSS-DWG-A-P002 Rev A dated 20/11/14;
- SS-KSS-DWG-A-P001 Rev A dated 20/11/14;
- TCP_SEVERALLS_1 Rev A dated October 2013;
- SS-HED-DWG-LA-105 Rev B dated 19/11/14;
- SS-HED-DWG-LA-104 Rev D dated 19/11/14;
- SS-HED-DWG-LA-103 Rev C dated 19/11/14;
- SS-HED-DWG-LA-101 Rev F dated 18/11/14;
- SS-HED-DOC-LA-109 Rev A dated 19/11/14;
- SS-HED-DWG-LA-100 Rev C dated 19/11/14;
- SS-KSS-PRES-A-P001 Rev A dated 20/11/14 (Materials Sample Board)

- SS-STL-D-DWG-3000-01 rev P01 dated 21/11/14;
- 46384669/C/0516 Rev F dated August 2014;
- 46384669/C/0515 Rev E dated August 2014;
- 46384669/C/0525 Rev D dated September 2014;
- SS-SDP-DWG-E-600 rev P7 dated 27/02/15;
- SS SKC SPC C FEN1 dated 09th March 2015;

together with:

- Covering Letter by Dalton Warner Davis dated 28/11/14, letter from DWD dated 06/02/15, letter from DWD dated 27/02/15, letter from DWD dated 18/03/15, letter from Richard Graves Associates dated 09 March 2015 and letter from ECC Infrastructure Delivery dated 02/04/15;
- Emails from Skanska dated 09/01/15 and 16/01/15, emails from DWD dated 06/02/15 and 10/02/15, email from ECC Infrastructure Delivery dated 07/04/15

and the contents of the Design and Access Statement ref SS-KSS-REP-A-P001 Rev D

and in accordance with any non-material amendment(s) as may be subsequently approved in writing by the County Planning Authority, except as varied by the following conditions:

3. The development hereby permitted shall not take place unless in accordance with the Flood Risk Assessment and Drainage Strategy Report ref SS-STL-D-REP-0061 Rev P02 dated 12/01/15 and drawing ref SS-STL-D-DWG-3000-01 Rev P01 dated 21/11/14.

4. The noise rating value of the fixed plant associated with the expansion of the school, derived in accordance with the methodology of BS 4142:2014, shall not exceed the representative background noise level (LA90,T) at any existing or permitted noise sensitive property, the locations of which shall have been approved in advance in writing by the County Planning Authority.

5. Noise emanating from any activities associated with the school, including the use of the access road, playground and sporting activities, shall not result in an increase in ambient noise level (LAeq,1hr) at any nearby sensitive receptor by more than 3 dB LAeq,1hr.

6. No development or preliminary ground-works shall commence until a programme of archaeological work has been undertaken in accordance with the Written Scheme of Investigation for Archaeological Trial Trenching and Excavation dated 10/03/15.

7. Following the completion of the archaeological work approved under Condition 6 of this permission (within six months of the completion date, unless otherwise agreed in advance with the planning authority) a full site archive and report for deposition at the local museum, and publication report to an appropriate level (to be agreed by the County Planning Authority) shall be submitted by the applicant.

8. No development or any preliminary groundworks shall take place until:

   a. All trees to be retained during the construction works have been protected by fencing of the 'HERAS' type or similar. The fencing shall be erected around the trees and positioned in accordance with British Standard 5837:2012, and;

   b. All weather notices prohibiting accesses have been erected on the fencing demarcating a construction exclusion zone as detailed in BS5837:2012 section 6.

   c. Notwithstanding the above, no materials shall be stored or activity shall take place within the area enclosed by the fencing. No alteration, removal or repositioning of the fencing shall take place during the construction period without the prior written consent of the County Planning Authority.

9. Unless otherwise approved in writing by the County Planning Authority, no retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree's branches, stems or roots be pruned.

10. If the development hereby approved does not commence within 1 year of the date of the planning consent, the approved ecological measures shall be reviewed and, where necessary, amended and updated. The review shall be informed by further ecological surveys commissioned to i) establish if there have been any changes in the presence and/or abundance of protected species and ii) identify any likely new ecological impacts that might arise from any changes.

    Where the survey results indicate that changes have occurred that will result in ecological impacts not previously addressed in the approved scheme, the original approved ecological measures will be revised and new or amended measures, and a timetable for their implementation, will be submitted to and approved in writing by the local planning authority prior to the commencement of development. Works will then be carried out in accordance with the proposed new approved ecological measures and timetable.

11. No development shall take place beyond the installation of a damp proof membrane unless full details of the screening of all external roof plant excluding the south facing photovoltaic panels have been submitted to and approved in writing by the County Planning Authority. The details shall include the location of the proposed screening on the roof, height, materials and colours of the proposed screening. The screening shall thereafter be implemented in accordance with the approved details prior to the beneficial occupation of the school.

12. No fixed lighting (as approved under Condition 2 of this permission) shall be illuminated on site until precise details of the hours of use, automatic

sensors and use of dimmer switches have been submitted to and approved in writing by the County Planning Authority. The fixed lighting shall thereafter be illuminated only in accordance with the approved details.

13. The western 4m high grassed earth mound, as indicated on drawing ref SS-HED-DWG-LA-101 Rev F dated 18/11/14, shall be constructed in accordance with the details shown on drawing ref SS-HED-DWG-LA-101 Rev F dated 18/11/14, unless otherwise approved in writing by the County Planning Authority.

14. No beneficial occupation of the development hereby permitted shall take place until details of covered cycle parking provision, as indicated on drawing ref SS-KSS-DWG-A-P003 Rev E dated 20/11/14, have been submitted to and approved in writing by the County Planning Authority. The details shall include the design, location and number of spaces for cycle parking to be provided prior to the beneficial occupation of the development hereby permitted and details of additional cycle spaces including the number, location, design and timeframe for implementation based on a specified methodology to identify any additional need. The development hereby permitted shall be carried out in accordance with the approved details and shall thereafter be retained and maintained for the duration of the development hereby permitted.

15. The planting shown along the eastern boundary of the site adjacent to the acoustic bund shall be implemented in accordance with the details shown on drawing ref SS-HED-DWG-LA-101 Rev F dated 18/11/14. The planting shall be implemented within the first available planting season (October to March inclusive) following completion of the development hereby permitted and maintained thereafter in accordance with Condition 16 of this permission.

16. Any tree or shrub forming part of a landscaping requirement approved in connection with the development under Condition 15 of this permission that dies, is damaged, diseased or removed within the duration of 5 years during and after the completion of the development shall be replaced during the next available planting season (October to March inclusive) with a tree or shrub to be agreed in advance in writing by the County Planning Authority.

17. The western pedestrian access shall be implemented as shown on drawing ref SS-KSS-DWG-A-P003 Rev E dated 20/11/14 in order to connect with proposed pedestrian and cycle networks within the wider Severalls development.

18. The development hereby permitted shall not be constructed unless in accordance with the Construction Environment and Management Plan dated 06/02/15.

19. No construction of the ‘staff parking’ area, as shown on drawing ref SS-HED-DWG-LA-101 Rev F dated 18/11/14, shall take place unless a drawing showing the removal of the eastern turning head within the ‘staff parking’ area has been submitted to and approved in writing by the County Planning Authority. The car park shall be implemented in accordance with the

approved details prior to the beneficial occupation of the development hereby permitted.

Enforcement Update

6. Enforcement of Planning Control

The Committee considered report DR/13/15, updating members of enforcement matters for the period 1 January to 31 March 2015.

The Committee **NOTED** the report.

7. Statistics

The Committee considered report DR/14/15, Applications, Enforcement and Appeals Statistics, as at end of the previous month, by the Director of Operations, Environment & Economy.

The Committee **NOTED** the report

8. Date and time of Next Meeting

The Committee noted that the next meeting will be held on Friday 22 May 2015 at 10.30am in Committee Room 1.

There being no further business the meeting closed at 11.30 am.

Chairman

AGENDA ITEM 5a

DR/15/15

committee DEVELOPMENT & REGULATION

date 22 May 2015

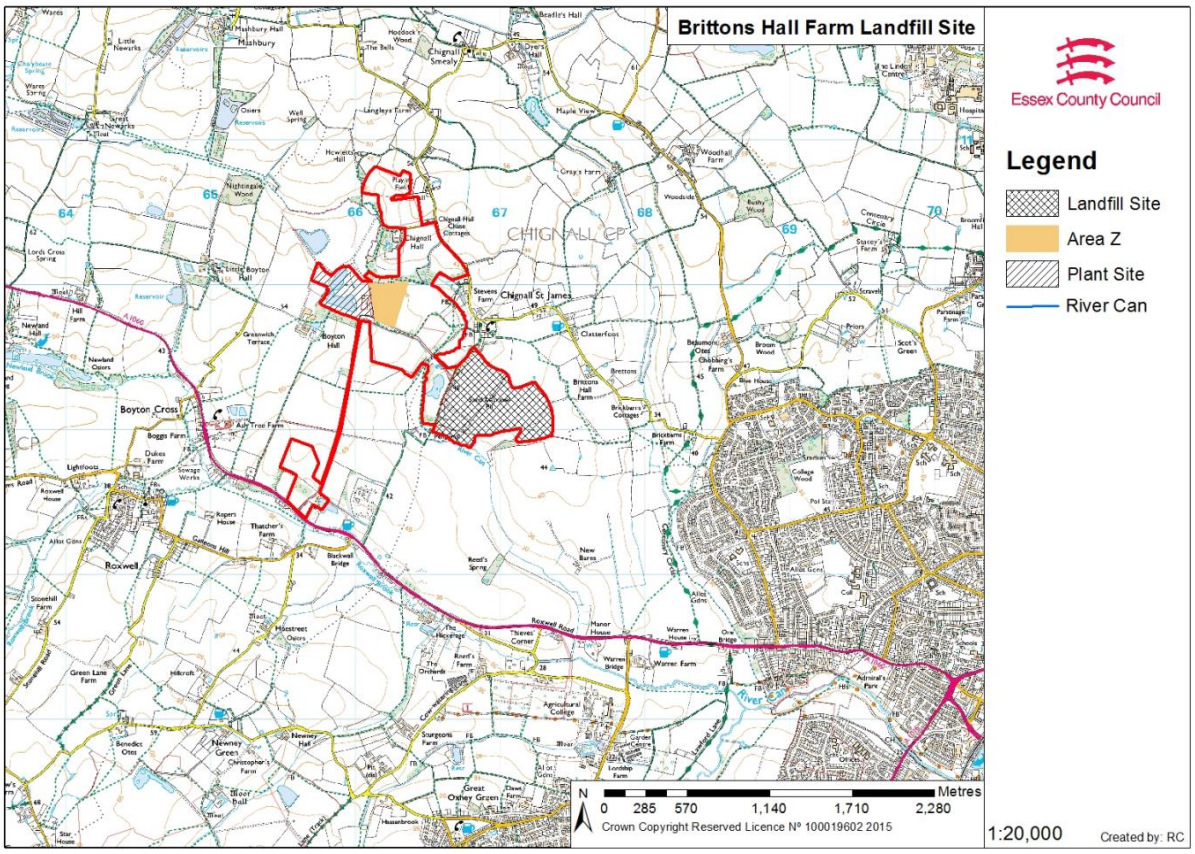
MINERALS AND WASTE DEVELOPMENT

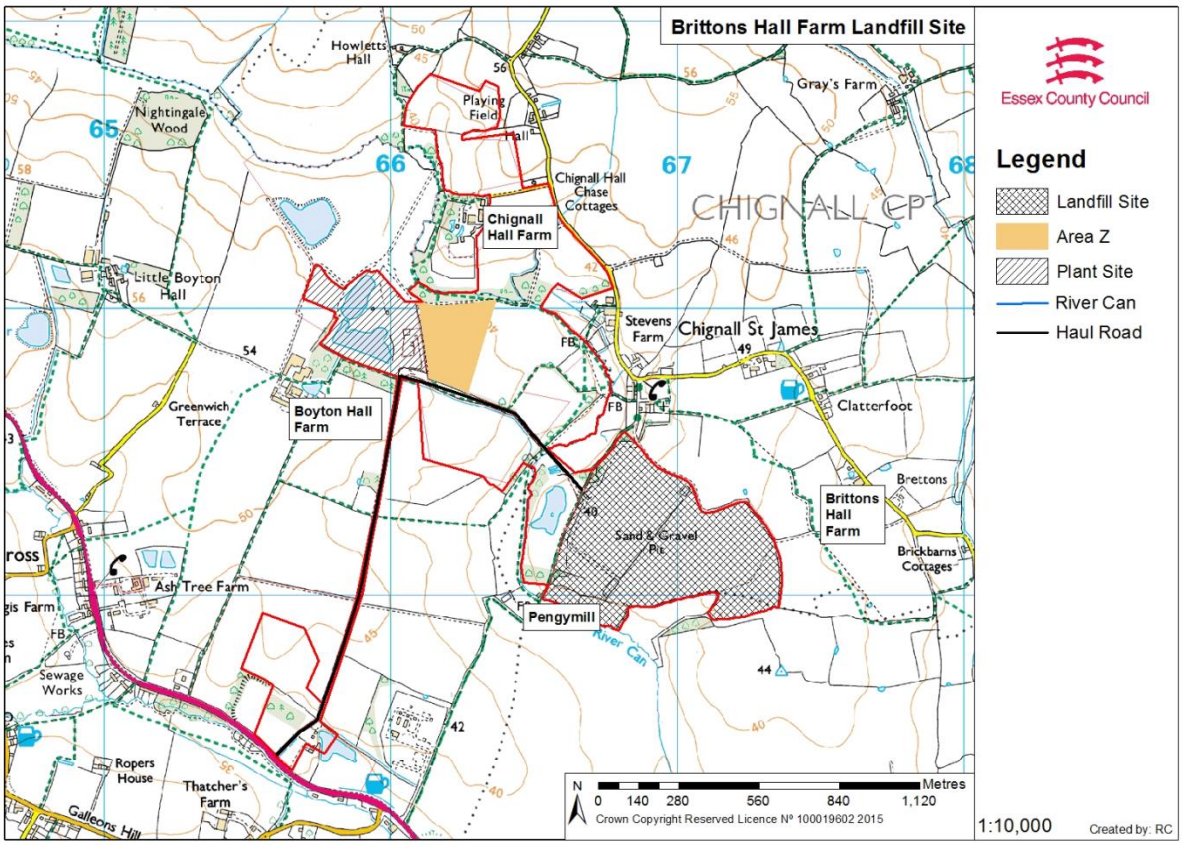
Proposal: **Modification to the restoration profile and the restoration scheme for the non-hazardous landfill arising from overtipping of approx. 85,250 cubic metres (part retrospective). Enhanced restoration of a former landfilling area by the importation of inert materials and biosolids to enable agricultural after-use and restoration scheme for the former mineral processing plant site to woodland, nature conservation and agricultural after-uses (including retention of hardstanding and workshop). All to be completed by 31 December 2015.**

Location: **Roxwell Quarry Complex, Boyton Cross, Roxwell, Chelmsford, CM1 4LT**
Ref: **ESS/05/15/CHL**
Applicant: **Lafarge Aggregates Limited**

Report by Director of Operations, Environment and Economy

Enquiries to: Charlotte Powell Tel: 03330 130469
The full application can be viewed at www.essex.gov.uk/viewplanning





1. BACKGROUND

Planning permission was first granted for the extraction of sand and gravel and landfilling operations at the Brittons Hall Farm Landfill Site in 1993.

In 2009 planning permission (ref. ESS/02/09/CHL) was granted to revise the pre-settlement restoration contours of the consented landfill operation to take into account a higher rate of settlement in the waste and to extend the life of the site and provide for restoration to amenity comprising conservation grassland, woodland and hedgerows.

On 28th March 2012 planning permission (ref. ESS/60/11/CHL) was granted to extend the time period for landfilling to 31st March 2015 with restoration works to be completed by 31st December 2015. Planning permission reference ESS/60/11/CHL is the extant planning permission for the landfill operations at the site.

In February 2013 Lafarge advised the Waste Planning Authority that an error had occurred and tipping had been carried out utilising the wrong restoration pre-settlement levels drawing and as a result tipping had taken place above the approved pre-settlement contours.

Two options for the regularisation of the waste levels were identified by Lafarge comprising;

- The excavation and removal from the site of the waste which had been placed above the consented pre-settlement contours; or

- Submission of a planning application to revise the consented contours to reflect the additional waste which had been deposited.

Lafarge carried out an assessment as to the likely impacts from both of the options. It was concluded that removal of waste would likely give rise to odour issues as it would have started to decompose and the waste would be required to be transported away, giving rise to additional traffic movements and potential odour issues on route, and at its destination. There would be some landscape impacts from the revised higher levels of regularising the landform but it was concluded these minor long term landscape impacts were less than the environmental impacts associated with removing the waste. Thus this application has been submitted to regularise the current landform.

In addition during discussions with the Waste Planning Authority it was identified that there are two further areas of the Roxwell Quarry complex in which restoration has not been completed known as Area Z and the former minerals processing Plant Site and thus these are also included in the application.

2. SITE

Brittons Hall Farm Landfill Site is a former sand and gravel mineral extraction site and forms one of a number of separate landfill areas at the Roxwell Quarry Complex.

The Roxwell Quarry Complex is approximately 4.5km north west of the centre of Chelmsford, Essex and approximately 200m south of the village of Chignall St. James. It is an allocated non-hazardous landfill (LNI.3) within the Essex Waste Local Plan (2001).

The access to the Roxwell Quarry Complex is from the A1060 approximately 1150m south west of the Brittons Hall Farm Landfill Site. A private haul road links the A1060 to the landfill. The weighbridge and reception area is located just to the east at its end.

The land use surrounding the Roxwell Quarry Complex is predominantly agriculture with several isolated dwellings.

The applicant proposes development on 3 parts of the site, the Plant Site located to the north of the weighbridge, Area Z to the north east and the recently completed landfill to the east, Brittons Hall Farm Landfill Site.

The proposals are in close proximity to the River Can which is 20m to the north of Area Z and 60m to the north east from the Plant Site. The River Can then flows east, south, then east to form the southern boundary of the Brittons Hall Farm Landfill Site.

To the north of the Roxwell Quarry Complex footpath 35 generally follows the River Can in a southerly direction before crossing footpath 38 and passing through the west side of Area Z and joining with footpath 40 which runs in an east-west direction adjacent to and south of the primary access road between the landfill site reception area and Brittons Hall Farm Landfill. Footpath 40 turns in a north easterly direction approximately mid-way between the site reception area and the landfill site before turning generally easterly towards Chignall St James. Footpath 38 runs in a generally east to south easterly direction along the River Can to the north of Area Z.

Footpath 37 runs in a south westerly direction between Brittons Hall Farm Landfill Site and Area Z and crosses the primary access road before splitting with footpath 37 continuing generally south westerly and then westerly and crossing the primary access road to the south of the landfill site reception area and footpath 38 which follows the River Can in a southerly direction and joins Bridleway 33 near Pengymill. To the north of Brittons Hall Farm Landfill, footpath 30 runs in a generally south easterly direction from Chignall St James.

Brittons Hall Farm Landfill Site Pengymill is a residential property and is located to the south west of the landfill area approximately 190m from the landfill and is the closest residential dwelling.

Properties to the north of the landfill area are a group of residential houses which form the southern edge of Chignall St James, the closest of which is located approximately 250m from the landfill.

To the north east of the landfill area are several properties located adjacent to an

unclassified road. The closest property is located approximately 410m from the landfill. To the east is Brittons Hall Farm approximately 320m from the landfill.

The village of Roxwell is located approximately 2km to the south west of the Landfill Site, south of the A1060.

There are two areas of landfilling at the Brittons Hall Farm Landfill Site, the western and eastern areas which are divided by a gas main corridor which runs in a generally north east to south west direction. The gas main corridor comprises an approximately 20m wide strip of ground that has not been worked for mineral or landfilled.

Plant Site The former plant site is located adjacent to and north west of the site reception area. The former plant site covers an area of approximately 9.7ha which is located below natural ground levels. Access to the former plant site is via a sloped hard surfaced access track from the site reception area (weighbridge, site office and car park). The former plant site was previously occupied by the mineral processing plant, aggregate stockpiles, and a concrete batching plant.

Following the completion of mineral extraction operations at the Roxwell Quarry Complex the mineral processing plant was removed but areas of concrete hardstanding remain. The former silt lagoon and the clean water lagoon remain in the south western and north western parts of the former plant site respectively and the office and workshop buildings remain centrally. A landfill gas management compound is located mid way along the eastern part of former plant site which would remain. The former plant site is predominantly surrounded by agricultural land with blocks of woodland adjacent to the southern and south western boundaries beyond which is Boyton Hall Farm.

Boyton Hall Farm is located approximately 310m west south west of the site reception area and Chignall Hall Farm is located approximately 350m north-north east of the gas management compound.

Area Z Area Z is located east of the former Plant Site. It is accessed from the south via the access road to Brittons Hall Landfill Site from the reception area and the access track forms the southern boundary of Area Z. The eastern boundary is delineated by a step feature which is between 1m and 2m high. The screening bund to the former Plant Site forms the western boundary and the River Can flows close to the northern boundary. The closest property is located approximately 230m to the north in Chignall Hall. Area Z covers approximately 5.6ha. The area is currently to grass but there is only a poor grass sward.

3. PROPOSAL

There are three elements to the proposal, namely:

- Amended levels and restoration of the Brittons Hall Farm Landfill;
- Restoration of Area Z; and
- Restoration of the Plant Site.

Amended levels and restoration of the Brittons Hall Landfill

The Landfill is in two parts divided by a gas main, the western and eastern areas.

i. Western Landfill Area

It was identified by Lafarge that waste had been deposited above the consented pre-settlement restoration contours in the area of the Brittons Hall Farm Landfill Site.

The maximum consented pre-settlement level in the western landfill is 52m AOD located in the northern part of the site and the maximum post settlement level is 47m AOD located in the northern part of the site.

The maximum proposed pre-settlement restoration contours would be 52mAOD. The area of the highest proposed pre-settlement restoration level is larger and extends further in a south-westerly direction in comparison to the consented levels. The proposed maximum post settlement level would be 50m AOD.

ii. Eastern Landfill Area

The pre-settlement contours are generally consistent with ESS/60/11/CHL however there are some areas which exceed or are lower than the consented pre-settlement profile. As a result there are areas where the gradient is lower than the minimum gradient for landfill sites which could result in the pooling of water. Additional material would be placed in these areas to achieve appropriate gradients.

Accordingly planning permission is sought for the modification to the restoration profile and the restoration scheme for the non-hazardous landfill arising from overtipping of approximately 85,250 cubic metres (part retrospective). All parts are to be completed by 31 December 2015.

The proposed restoration scheme for which approval is sought would result in higher spurs and steeper gradients than the approved scheme. The regularisation of the Brittons Hall Landfill Site contours includes a revised landscaping scheme in order to provide increased levels of screening and help integrate the site with surrounding land. It is proposed to create additional locally-characteristic copses and woodlands on the steeper areas of the landfill compared to those approved to soften the spurs and gradients further. This is proposed to soften the landform and reflect similar patterns already in occurrence in the Can Valley. It is still proposed to restore the site to grassland and meadow.

The new restoration scheme includes a new bridle way, circumnavigating the spurs and connecting with Bridleway 33 to the west.

A sustainable drainage scheme is proposed for the landfill site with the route of surface water drains constructed with sufficient capacity to accommodate surface water runoff from the eastern and western areas. No drains are proposed in the vicinity of the gas main.

Drains would discharge from the western spur to the lake, which in turn discharges into the River Can.

A drain is proposed which would intercept runoff on the eastern area to a channel located on land in control of the applicant. An additional drain would drain to a confluence with an existing drain which continues to the River Can.

Due to the topography of the site, a narrow strip accommodating the gas main would continue to drain to the southwest. Runoff would drain to the ground or to the wet grassland south of the landfill. It is considered in the report submitted with the application the volume of runoff would be small and unlikely to result in significant changes to the flood risk.

Perimeter ditches are being constructed around the landfill and the silt would be removed to maintain capacity of the ditches until vegetation is established. The report states there may be an increase in the rate of runoff as a result of the revised contours and surface water attenuation would be provided for in the existing lake.

Restoration of Area Z

Enhanced restoration is proposed for the former landfilled area by the importation of inert restoration materials and biosolids to enable agricultural after use comprising grassland for grazing. The importation of materials would create a landform consistent with the surrounding ground levels and provide for agricultural use comprising grazing together with peripheral tree and hedgerow planting.

Footpath 35 would be temporarily diverted or closed during the restoration works. The inert materials and biosolids would be mixed on site and placed using mobile plant. Works are anticipated to take 6 months.

The restoration of Area Z would require approximately 56,000m^3 of materials (inert materials and bio-solids (5,000m^3)) and would commence in mid-2015 for 6 months. Based on a 6 month programme it is estimated 66 HGV's would visit the site daily, which is in accordance with ESS/60/11/CHL. Deliveries would take place between 0700 and 1800 Monday to Friday, and 0800 and 1200 Saturday.

Following placement of restoration materials, it would be seeded and hedgerow/tree planting carried out to the northern and western sides.

It is proposed to retain as much natural regeneration as possible and supplement with additional planting. Tree and hedgerow planting is proposed along the boundary of Area Z and the Plant Site.

Surface water management is not proposed.

Restoration of Plant Site

It is proposed to restore the former mineral processing plant site to woodland,

grassland, nature conservation and agricultural after-uses (including retention of the hardstanding and workshop). The former silt lagoon located in the south western part of the site would be retained and would be allowed to dry out and naturally regenerate.

It is proposed to keep the majority of the existing vegetation alongside the restoration to grassland within the plant site. These features are characteristic of the local landscape.

The Plant Site comprises two lagoons and an ephemeral pond, rainfall incidents drains to the north west lagoon and the River Can. The restoration of Plant Site would not change the landform, with a rainfall incident continuing to drain to the ground, to the lagoon, or River Can. As a result surface drainage systems are not included.

The restoration of the Plant Site is anticipated to be completed using soils available at the Roxwell Quarry Complex.

4. POLICIES

The following policies of the Essex and Southend-on Sea Waste Local Plan (WLP), adopted 2001, the Essex Minerals Local Plan (MLP), adopted July 2014, and the Chelmsford Borough Local Development Framework 2001-2021 Core Strategy and Development Control Policies (CBLDF) adopted February 2008 and the Chelmsford City Council Core Strategy and Development Control Polices Focused Review Development Plan Document (CCCFR) adopted December 2013 provide the development plan framework for this application.

Policy	**MLP**	**WLP**	**CBLDF**
Sustainable Development			CP1
Development Control/Development Management Criteria	DM1	W10E	
The Countryside & Landscape	S10	W10E, W10A, W9A, W9B	CP13, CP14, DC13,
Noise generation		W10E	
Nature Conservation, Biodiversity	S12	W10E	DC13,
Water pollution and flood control		W4A & W4B	CP10
Transportation		W4C	DC41
Protection of amenity		W10G, W10C, W10F	DC4, DC29

The National Planning Policy Framework (NPPF), published in March 2012, sets out requirements for the determination of planning applications and is also a material consideration.

The NPPF combined and streamlined all planning policy except for waste. Planning policy with respect to waste is set out in the National Planning Policy for Waste (NPPW published on 16 October 2014). Additionally the National Waste Management Plan for England (NWMPE) is the overarching National Plan for Waste Management. All decisions must comply with the NPPF and NPPW, while the NWMPE is a material consideration in planning decisions.

Paragraph 215 of the NPPF states, in summary, that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF.

The MLP, adopted July 2014, is considered to have full weight in the decision-making process, since it has been adopted taking the NPPF fully into account.

5. CONSULTATIONS

CHELMSFORD CITY COUNCIL – No objection

ENVIRONMENT AGENCY – No objection

ESSEX WILDLIFE TRUST – Comment as follows:

- Object to the removal from the proposed restoration scheme of the small shallow pond in the south of the site, located in the flood meadows adjacent to the River Can.
- Support the creation of a circular footpath around Brittons Hall Site but consider this should be on a more permanent basis rather permissive.
- Expect measures to be taken to eradicate/prevent contamination of invasive species in Brittons Hall Lake and along the River Can.

Comment:

A revised Landfill Landscape Restoration Scheme plan (Drawing No. HDA9) was submitted in April 2015, which included the creation of 2 new waterbodies in the south of the site, located in the wet grassland.

HIGHWAY AUTHORITY (Public Rights of Way) – No objection

HIGHWAY AUTHORITY - No objection

PLACE SERVICES (Landscape) - No objection, subject to the following:

- A landscape plan shall be submitted showing species, numbers and densities.
- A landscape management plan shall be submitted and cover the first 25 years.

PLACE SERVICES (Ecology) - No objection, subject to the following:

- Details of planting and seed mixes should be supplied

PLACE SERVICES (Arboriculture) - No objection, subject to the following:

- Submission of planting details.

BRITISH PIPELINE AGENCY - No comments to make

RAMBLERS ESSEX AREA FOOTPATH SECRETARY – No comments received

BRITISH HORSE SOCIETY - No comments received

ESSEX BRIDLEWAY ASSOCIATION - No comments received

RINGWAY JACOBS (NOISE) - No objection

ROXWELL PARISH COUNCIL – Given the level of over tipping, breach of pre-planning applicant agreement, is there any fine or community compensation the Parish can receive.

Comment: Paragraph 204 of the NPPF states that *"Planning obligations should only be sought where they meet all of the following tests:*

- *Necessary to make the development acceptable in planning terms*
- *Directly related to the development*
- *Fairly and reasonably related in scale and kind to the development."*

As such it is not considered reasonable for the Waste Planning Authority to secure compensation for the Parish.

CHIGNALL PARISH COUNCIL - No objection

LOCAL MEMBER – CHELMSFORD – Broomfield and Writtle - No comments received

6. REPRESENTATIONS

18 properties were directly notified of the application. Three letters of representation have been received.

Observation	Comment
Objection to the placement of biosolids for grass meadow restoration in close proximity to the River Can, as this could be a potential source of pollution to the river.	See appraisal
Concerns regarding the spread of invasive species particularly along the River Can from Japanese Knotweed and Himalayan Balsam.	No invasive species have been identified within Area Z or the former Plant Site, but there are some present outside the application site.

The retention of the hardstanding and workshop is a concern on the basis that previously used sections of the plant site, no longer under Lafarge ownership, are now used as a dumping ground for hard-core materials and have not been returned to agriculture.	See appraisal
It is also unclear whether the intent is to keep the old plant office or remove it. We believe the workshop should be removed when no longer needed by Lafarge. The maximum size of the hardstanding to be specified within the permission to ensure it does not extend beyond existing concreted limits onto non-concreted but hard-packed gravelled areas of the site.	See appraisal
Public footpath 35 runs alongside the former plant site and we would ask that consideration be given to providing a spur and circular footpath around the restored site.	See appraisal
Disturbed to hear that no provision has been made for a shallow pool shown on the original plans, and insufficient attention paid to the needs of the wildlife found on and around the site, including rare great crested newts.	See appraisal

7. APPRAISAL

The key issues for consideration are:

A. PRINCIPLE OF DEVELOPMENT AND NEED
B. LANDSCAPE AND VISUAL IMPACT
C. RESIDENTIAL AND LOCAL AMENITY
D. WATER ENVIRONMENT
E. HIGHWAYS AND RIGHTS OF WAY
F. ECOLOGY
G. RESTORATION & AFTERUSE

As the application involves three different elements the appraisal is divided in parts and considers the various issues against the three elements namely the revised contours and restoration to the Landfill, restoration to Area Z and restoration of the Plant Site.

A PRINCIPLE OF DEVELOPMENT AND NEED

Brittons Hall Farm Landfill Site Brittons Hall Farm Landfill Site is a preferred site for landfill (non-inert waste) within the Waste Local Plan. Therefore the principle of landfill is established. As explained previously, consideration was given to removal of the overtipped material but the environmental impacts were considered to be

greater than retaining the overtipped material on site and revising the restoration scheme to accommodate the raised levels.

Policy S12 of the MLP in summary permits minerals development when restoration is capable at the earliest opportunity with beneficial after use and positive benefits to the environment, biodiversity and local communities. WLP policy W10C also seeks to ensure satisfactory restoration of landfill sites.

While it is disappointing that tipping was carried out above the previously approved settlement levels, it is considered with the proposed regularisation of the existing levels would enable satisfactory restoration of the site in compliance with the policies S12 and W10C and avoid the impacts associated with removing the waste. Policy W10C seeks to ensure restoration of landfills.

Area Z Area Z has not received an adequate amount of restoration soils following mineral extraction/landfilling. The soil quality is currently poor and is not adequate to establish a grass sward, which is reflected in the poor vegetation cover currently on site. The importation of soils and bio solids would improve the depth and nutrient content of soils across the site and return the land to productive after use.

It is considered the proposed quantity of inert materials would enable levels to blend with adjacent restored land, currently it has a step change in levels which prevents the area being managed as one field such that it can be brought into beneficial agricultural afteruse and are therefore justified. The volume of biosolids required would be dependent on the quality/nutrient levels of the soils imported to restore the area. Testing would be required by condition to ensure only the volume of biosolids necessary to achieve beneficial agricultural restoration would be imported.

Policy W9B of the WLP in summary states landfill will not be permitted when at a scale beyond that which is essential for the restoration of the site. On site stockpiles within Plant Site will be used alongwith the minimum amount of imported material to restore the land. Subject to conditions it is considered the imported material is justified and would bring the land into beneficial agricultural use.

Plant Site While conceptual restoration schemes were proposed for the plant site as part of previous mineral permissions, no final scheme was approved or required to be implemented. The opportunity has been taken to regularise this situation and a scheme submitted. The scheme retains the workshop and hardstanding for agricultural purposes. Essex Wildlife Trust (EWT) has raised concerns at the retention of the hardstanding for agricultural use but it is noted that no objection has been raised by Chelmsford City Council. EWT note that hard core has been stored within the plant site. This material is understood to maintain agricultural tracks and is a matter for Chelmsford City Council. The proposal is not to extend the agricultural storage area beyond the hard standing. If this was required it would be a matter for Chelmsford City Council.

The proposed restoration scheme would ensure satisfactory restoration of site to a combination of nature conservation/biodiversity after use and agriculture use apart from that retained for the landfill gas compound. This restoration is considered in

accordance with MLP Policy S12.

B LANDSCAPE AND VISUAL IMPACT

CBLDF Policy CP14 (Environmental Quality and Landscape Character) in summary, promotes the enhancement of the environmental quality of the City's countryside.

WLP Policy W10A in summary, states that when granting planning permission for Waste Management facilities, the WPA will impose conditions and/or enter into legal agreements as appropriate to ensure that the site is operated in a manner acceptable to the WPA and that the development is undertaken in accordance with the approved details.

MLP Policy S10 in summary permits minerals development that demonstrates opportunities have been taken to improve / enhance the environment and amenity and character of the landscape.

MLP Policy S12 in summary permits minerals development provided that it can be demonstrated that the land is capable of being restored at the earliest opportunity to an acceptable environmental condition and beneficial after-uses, with positive benefits to the environment, biodiversity and/ or local communities.

Policy W10E of the WLP in summary permits waste management development where satisfactory provision is made is respect of the effect of the development on the landscape and countryside.

Brittons Hall Farm Landfill The changes to the approved restoration profile at the Brittons Halls Landfill Site result in an increase in visibility of the landform by surrounding residential receptors due to the increase in height and gradients in parts of the scheme.

The landform profiles of the proposed and approved restoration both consist of steeper gradients than would occur locally but would be no greater in total height than that naturally occur to the North of the site.

It is considered the proposed landscaping to the western and eastern landfill areas which is designed to help mitigate the visual impact and soften the profile conforms to Policy S10 and S12 of the MLP and W10E of the WLP.

Area Z Area Z is currently only visible from Footpath 25 and the access road. The restoration of Area Z would restore features characteristic of the local landscape and return the land to a productive agricultural afteruse, comprising grassland for grazing and hay production (email dated 8th May 2015 ref. LT/BHF/ABW/1649/01). The initial loss of existing vegetation as a result of the re-profiling within Area Z is to be compensated through additional planting to the boundary of the site.

It is considered the proposed restoration of Area Z would create visual continuity with the surrounding area and provide a long term improvement to the landscape character as it returns to agricultural use. As such this proposal complies with MLP

Policy S10 and S12, WLP W10E and W9A, and CBLDF Policies DC13 and CP14.

Plant Site The Plant Site is located in a hollow and currently only visible from Footpath 25 and the access road, with the nearest residential receptor located 310m from the site. The restoration of former plant site would restore features characteristic of the local landscape.

Concerns have been raised regarding the retention of the hardstanding, workshop, and the old plant office, particularly that the agricultural storage might extend in the future beyond the existing concrete hardstanding. The area would be subject to 5 years of aftercare, beyond which, should the storage extend beyond the concrete hard standing this would be a matter for Chelmsford CC.

It is considered the proposed restoration of the Plant Site would create visual continuity with the surrounding area and provide a long term improvement to the landscape character and the use of the existing hardstanding and building would not give rise to adverse visual or landscape impact. As such this proposal complies with MLP Policy S10 & S12 and W10E, and CBLDF Policies DC13 and CP14.

C RESIDENTIAL AND LOCAL AMENITY

Policy W10E seeks to control the impact of noise and odour from waste development. In addition;

- CBLDF Policy CP13 (minimising environmental impact) in summary seeks to ensure that development proposals minimise their impact on the environment and that they do not give rise to significant and adverse impacts.
- CBLDF Policy DC4 in summary safeguards the amenities of occupiers of any nearby properties.
- CBLDF Policy DC29 (Amenity and Pollution) in summary ensures appropriate mitigation is in place to prevent emissions to land, air, and water.
- W10F of the WLP requires the restrictions of hours of operation;
- MLP Policy DM1 in summary permits development when it can be demonstrated that there will be no acceptable impact upon amenity, ecology, locality, and appearance.

Brittons Hall Farm Landfill The noise survey and email dated 8th May 2015 (ref. LT/BHF/ABW/1649/01) submitted by the applicants predicts there would be a 'fractional increase' in noise from restoration plant reaching the nearest residential receptor as a result of the restoration contours and profile. It is concluded that the increases in noise level would be 'imperceptibly higher' and there would no unacceptable impact and the existing maximum noise levels imposed under ESS/60/11/CHL could be complied with.

Odour controls have been routinely implemented within the Roxwell Quarry Complex and the controls would continue as far as is necessary given the completion of the landfilling and placement of the cap. The report submitted with the application states that the risk of nuisance associated with Brittons Hall Farm Landfill Site is low.

Area Z The nearest residential receptors are located 230m from Area Z. The noise

report submitted with the application concludes that the restoration of Area Z can be completed without unacceptable noise levels based on good practice and mitigation measures, such as white noise alarms.

The application states that there would not be any nuisance (odour, pests and litter) associated with the importation with inert materials. Nuisance controls would be implemented to minimise the risk of dust and mud on the road. Odour monitoring would be undertaken on site on a daily basis and odour controls implemented if necessary, including covering malodourous materials.

Deliveries associated with the restoration works would take place between 0700 and 1800 Monday to Friday, and 0800 and 1200 Saturday.

No objection has been raised by the County Council's noise consultant.

Plant Site The nearest residential receptor is 310m from the site boundary. The noise survey submitted by the applicants concludes that the restoration of the Plant Site can be completed without unacceptable noise levels based on good practice and mitigation measures.

It is therefore considered the works associated restoration and landscaping could be undertaken in accordance with the current noise limits and subject to good site practices impacts from odour and dust could be mitigated, such that the proposals would be in accordance with CBLDF Policies DC4, CP13, DC29, MLP Policy DM1 and WLP W10E and W10F.

D WATER ENVIRONMENT

In addition to the policies mentioned previously in the report that make reference to the water environment (WLP W10E, MLP Policy DM1, CBLDF DC29 Policy);

- WLP Policy W4B in summary permits development when there would not be an unacceptable risk to the quality of surface and ground waters or a risk of impediment to groundwater flow
- CBLDF Policy CP10 (Protection from Flooding) in summary deals with the protection from flooding and require that development is protected from flooding and that appropriate measures are implemented to mitigate flood risk.
- WLP Policy W4A in summary permits development where there would not be an adverse effect on the water environment, existing flood defences or the flow/storage of surface water.

It should be noted that the Environment Agency (EA) has not objected to this proposal.

Brittons Hall Landfill Site It is reported by the applicants that the revised topography of the Landfill Site would increase potential run off rates compared to the approved restoration profile and as a result it would be necessary to reduce the rate at which run off enters the surface water management system and as a result attenuation lakes have been included in the application. The report provided with this application highlights that subject to the implementation of current and

proposed measures to manage water flows; the change in profile would not represent an increased flood risk either for the site or surrounding area.

Area Z The restoration of Area Z would only result in minor topographical changes, with runoff continuing to drain to the River Can, and as such, surface drainage systems are not proposed.

The proposed restoration of Area Z includes the use of biosolids and inert restoration materials. Concerns have been raised regarding the placement of biosolids in proximity to the River Can as a potential source of pollution. The applicants state within the report *'the use of biosolids in the restoration of Area Z would not have a significant effect on water quality of surface water in the receiving watercourses or ground water'*. The bio solids will be subject to an Environmental Permit from the EA controlling the ratio and rate of the spread of the biosolids with the inert materials.

Plant Site The proposed restoration of the Plant Site would utilise on site soils and would not alter the landform significantly. The concrete pad and flare compound would remain and there would be no increase in the area of surface water runoff following restoration. As a result, surface water drainage systems are not proposed. The report provided with this application highlights that restoration would not result in changes to flow rates, and it is considered that the proposals would not represent an increased flood risk either for the site or surrounding.

In accordance with CBLDF Policy CP10, MLP Policy DM1, and WLP Policies W4A and W4B and W10E it is considered that the restoration schemes, changes to topography and proposed water management measures would not have any detrimental impact on water quality or flood risk

E HIGHWAYS AND RIGHTS OF WAY

The haul road from the A1060 would not be removed upon completion of the restoration as it has a separate planning permission from Chelmsford City Council to allow its retention.

Brittons Hall Farm Landfill No traffic movements are associated with the scheme, all materials are already on site.

Area Z The proposed HGV numbers would not exceed those under the current planning permission (60 in, 60 out) and therefore the proposals are considered to comply with WLP W4C which ensures sites are accessed by an existing road, MLP Policy DM1 and CBDLF Policy DC41 (Traffic Management Measures) which permits development with appropriate traffic management measures to facilitate the safe and efficient movement of people and goods whilst protecting and enhancing the quality of life within communities.

Plant Site As it is anticipated that restoration would be completed with soils available within the Roxwell Quarry Complex and as such no traffic movements are associated with the scheme.

EWT raised concerns regarding no provision of PROW to give access to the Plant

Site biodiversity restoration. A good level of public access already exists in the surrounding area and the Landfill Site restoration scheme includes the creation of a new circular route. Further PRoW are not considered necessary and leaves areas of biodiversity which would not be disturbed by walkers.

F ECOLOGY

In addition to the policies mentioned previously in the report that make reference to biodiversity and nature conservation (WLP Policy W10E), MLP Policy DM1, CBLDF Policy DC13 (Sites of Biodiversity and Geological Value) promotes opportunities for the incorporation of beneficial biodiversity and geological features within the design of development. MLP Policy S12 contains similar objectives regarding the creation of habitats.

Brittons Hall Landfill Site As it is an active landfill no ecological assessment of Brittons Hall Farm Landfill area was required by ECC as part of the application.

The applicant has submitted that the proposed changes to the landscape scheme and restoration works would provide and extended habitat for local species, enhance the biodiversity of the area and promote a coherent ecological network across the local landscape.

Concerns had been raised by EWT in relation to the loss of the southern pond in the wet grassland. The applicant has since submitted a revised restoration scheme which includes two southern ponds in the wet grassland to the south of the gas main in addition to the new pond to the east of the landfill and lake to the west.

EWT additionally raised concerns regarding the possible spread of invasive species. Japanese Knotweed is in proximity to the Site, but is not included within the application boundary. Management of invasive species outside the site is a matter for the landowner but if found within the site would be required to be removed.

Area Z An Extended Phase 1 Habitat Survey (September 2014) for Area Z has been submitted by the applicant which highlights that the habitats of highest nature conservation interest are the River Can and associated Woodland Corridor. The survey stated that no reduction in the ecological interest is likely to arise, with the restoration scheme providing opportunities to enhance the areas for a range of species and provision of habitats.

Plant Site An Extended Phase 1 Habitat Survey (September 2014) for the Plant Site has been submitted by the applicant which highlights that the habitats of highest nature conservation interest are the River Can and associated Woodland Corridor. The survey stated that no reduction in the ecological interest is likely to arise, with the restoration scheme providing opportunities to enhance the areas for a range of species and provision of habitats.

The applicant has advised that further ecological survey work will be completed by the end of May 2015 including surveys for bats, badgers, reptiles, great crested newts and invertebrates.

In accordance with CBLDF Policy DC13, WLP Policy W10C, W10E and MLP Policy S12 and DM1 it is considered that the proposed restoration to Area Z and the Plant Site would provide areas of improved biodiversity and the proposed restoration scheme for the Landfill Site would have a positive benefit in respect of nature conservation, habitat creation and biodiversity.

G RESTORATION & AFTERUSE

In addition to the policies mentioned previously in the report that make reference to afteruse;

- CBLDF Policy CP1 (Securing Sustainable Development) states development shall create well designed places and spaces, promote social inclusion, and work with the environment where they are located;
- WLP Policy W10E - Waste management development, including landfill, will be permitted where satisfactory provision is made in respect of a number of criteria including effect on landscape, traffic, and nature conservation;
- WLP Policy W10G in summary states that applications for waste management facilities should Include measures to safeguard and where practicable to improve the rights of way network, which shall be Implemented prior to any development affecting public rights of way commencing;
- WLP Policy W10C in summary states in considering planning applications for landfill proposals the WPA will require the proposed measures for restoring the land to an acceptable and sustainable after-use to be feasible;
- WLP Policy W9B permits land raising when necessary for restoration;
- MLP Policy S12 in summary permits minerals development when restoration is capable at the earliest opportunity with beneficial after use and positive benefits to the environment, biodiversity and local communities.

Brittons Hall Farm Landfill The restoration as previously permitted would be restored to meadow to be managed to promote biodiversity, with areas of woodland. The revised proposals for the Landfill site include the creation of a circular permissive bridleway giving access to the meadowland. EWT support the creation of a circular footpath around Brittons Hall Site but consider this should be on a more permanent basis rather permissive.

Initially the applicant had suggested a 20 year period for its maintenance and retention to be secured through a S106, but the Waste Planning Authority would seek to ensure a 50 year time scale is in place. The areas of biodiversity would be subject to long-term management to be secured through a legal agreement, should permission be granted

Area Z The restoration scheme would return the site back into productive agricultural after use and allow it to be farmed in conjunction with the adjacent land and would provide areas of biodiversity. Footpath 35 would be temporarily disrupted during the works, but not be affected once the restoration scheme has been completed.

Essex Wildlife Trust have raised no objections regarding the restoration of Area Z

however question that no Agricultural Survey has been carried out to determine the issues associated and alternative restoration measures.

Additional information submitted by the applicant states that the soils are very compacted with black deposits, suggesting anaerobic conditions. During rainfall events the soils become waterlogged with standing water which dries to form a crust. The applicants intend on importing 5000m^3 of biosolids which will be subject of an Environmental Permit and the Waste Planning Authority would require soils samples to be taken in order to assess the state of the soil and the volume of biosolids required in order to bring the soils back to productivity. The site would also be subject to 5 years agricultural aftercare, which may include the need for subsoiling or underdrainage to bring the site into beneficial agricultural afteruse.

Plant Site The restoration scheme would retain the hard standing and building for agricultural use and provide areas of biodiversity.

It is considered the restoration proposals for the three areas provide for a good mix of agricultural use, the creation of a range of habitats and a new circular route within the Landfill Site and therefore are in accordance with CBLDF Policy DC4 and CP1, WLP Policies W10E, W10G, and W10C and MLP Policy S12.

8. CONCLUSION

Whilst clearly unfortunate that over-tipping has taken place, in considering appropriate action in relation to a breach of planning control relevant Government Guidance is found in the National Planning Policy Framework (the Framework) and the Council's Local Enforcement and Monitoring Plan.

The Framework highlights that enforcement action is discretionary and the Local Planning Authority should act proportionality in resolving any breaches of planning control.

The procedure for dealing with breaches of planning control for the Council's own development is also set out in the Local Enforcement and Monitoring Plan. Upon concluding there has been a breach of planning control, negotiation has rightfully been the first step in addressing the situation.

The authority needs has considered the harm being caused and made a judgement as to whether or not planning permission is required and if so whether it is likely to be granted for the development in question.

It is considered that the principle of restoration in the three locations is well established and in accordance with Policy S12 and S10 of the MLP, and Policy W10E of the WLP.

The need for the restoration is considered to have been proven and the requirement within the NPPF and NPPW for restoration has been taken into account.

The landscape scheme of Brittons Hall Farm Landfill site is considered to be well

thought out with copses of woodland and scrubs to complement the surrounding landscape and soften areas of increased gradients. No ecological issues have been identified and the scheme incorporates extensive sustainable drainage systems to accommodate the increase in surface run off and altered gradients. The landscape scheme of the Plant Site and Area Z is again, considered to be well thought out with areas for biodiversity and measures to increase the nutrient content and levels of Area Z, allowing productive agricultural after use. It is therefore considered that the proposed development would comply with WLP Policies W10E, W10A, W9A and W9B, MLP Policy S10 and CBLDF Policy DC13 and CP14.

In terms of residential impact, it is considered the proposals can be carried out without any unacceptable detrimental impacts on surrounding amenity, in accordance with the provisions of WLP policies W10G, W10C and W10F, and CBLDF policies DC4 and DC29.

Finally, it is considered that gains would be made in the 3 dimensions of sustainable development: economic, social and environmental and that the development would fully comply with MLP Policy DM1, WLP Policies W4A, W4B, W10G, W10C and W10F, and CBLDF policies CP1, CP13, CP14, DC41 and CP10. There is therefore a presumption in favour of the development according to the NPPF.

9. RECOMMENDED

That planning permission be **granted** subject to the following conditions, which in summary are:

1. The development hereby permitted shall be carried out in accordance with the details of the application dated 04/02/15, together with;
   - report reference LT/BHF/ABW/1649/01 dated January 2015;
   - letter dated 1st May 2015 reference LT/BHF/ABW/1649/01;
   - emails dated 8th May 2015 reference LT/BHF/ABW/1649/01;
   - Figure 1 LT/BHF/01-15/18458;
   - Figure 2 LT/BHF/01-15/18459;
   - Figure 3 LT/BHF/01-15/18460;
   - Figure 4 LT/BHF/01-15/18461;
   - Figure 5 LT/BHF/01-15/18462;
   - Figure 6 LT/BHF/01-15/18463;
   - Figure 7 LT/BHF/01-15/18464; and
   - HDA9 dated April 2015.

2. The development hereby permitted shall be completed by the 31/12/15;

3. The total number of HGV movement's associated with the development shall not exceed 120 movements Monday to Friday or 60 movements on Saturdays;

4. Operations associated with the developments hereby permitted shall only be permitted between 0700 and 1800 Monday to Friday, and 0700 and

1300 on Saturdays;

5. Access to the Site shall be by way of the haul road and access via the A1060 as identified on drawing LT/BHF/01-15/18464 (dated January 2015). Other than at the identified crossing point, vehicles shall not use Pengymill Lane;

6. No waste other than those waste materials defined in the application details shall enter the site;

7. Noise emanating from any activities associated with the developments operation, shall not exceed 50dB at any noise sensitive receptor;

8. Noise emanating from any temporary activities associated with the development, shall not exceed 70dB at any noise sensitive receptor for a continuous eight week period;

9. No stripping or spreading of materials shall take place when the wind speed measured at the site equals or exceeds 28knots;

10. The development hereby permitted shall not take place until details of measures to prevent odour nuisance have been submitted to and approved in writing by the Waste Planning Authority;

11. No development shall commence in Area Z until a soil analysis has been undertaken to establish the existing nutrient content and the quantities required to bring the land into arable agricultural use;

12. Machinery, plant and vehicles used on the site shall be effectively silenced in accordance with the manufacturer's specification;

13. Any fuel, lubricant or/and chemical storage vessel shall be placed or installed within an impermeable container with a sealed sump and capable of holding at least 110% of the vessel's capacity. All fill, draw and overflow pipes shall be properly housed within the bunded area to avoid spillage. The storage vessel, impermeable container and pipes shall be maintained for the life of the development hereby permitted;

14. Unless the WPA otherwise agree in writing any building, plant, machinery, foundations, roadways, structures or erections in the nature of plant or machinery used in connection with the development hereby permitted shall be removed by 31 December 2015 and upon their removal the land shall be restored and placed into aftercare;

15. No removal of hedgerows, trees or shrubs, or excavation works shall take place between 1st March and 31st August inclusive, unless approved by an ecological assessment confirming that no wildlife will be harmed and/or appropriate measures are in place to protect existing wildlife;

16. The applicant shall notify the WPA at least 3 working days in advance of the

commencement of the final subsoil placement on each phase. On completion of the subsoil placement no further work is to be carried out for a period of 5 working days without the consent of the WPA, to allow an inspection of the site to take place;

17. The development hereby permitted shall not exceed the pre-settlement contours as shown on drawing number LT/BHF/01-15/18462 dated January 2015 and 2093.15/11B dated October 2014;

18. Commencement of the development hereby permitted shall take place until an aftercare scheme has been submitted to and approved by the WPA;

19. Any tree or shrub forming part of a landscaping scheme approved in connection with the development under Condition 28 of this permission that dies, is damaged, diseased or removed within the duration of 5 years during and after the completion of the development shall be replaced during the next available planting season;

20. All topsoil, subsoil and soil making materials shall be retained on site and used within the restoration scheme;

21. The development hereby permitted shall be implemented in accordance with the details relating to the restoration scheme as set out in 2093.15/05H dated April 2015 and 2093.15/11B dated October 2014;

22. Within 6 months of the date of this permission a Habitat Management Scheme shall be submitted to and approved in writing by the WPA;

23. The development hereby permitted shall be carried out in accordance with LT/BHF/01-15/18464 (dated 30th January 2015) and the Flood Risk Assessment (Reference LT/BHF/ABW/1649/01);

24. All watercourses existing on or adjacent to the site shall not be affected in terms of quantity and quality by the restoration operations except with the prior written approval of the Waste Planning Authority;

25. Where differential settlement occurs during the restoration and aftercare period, that is no greater than 10m2 the applicant shall fill the depression to the final settlement contour specified with suitable imported soils, to a specification to be agreed in advance by the WPA;

26. Prior to the commencement of the development hereby approved, a Landscape scheme shall be submitted and approved by the WPA; and

27. Landscape Management Plan.

INFORMATIVES

PROW diversion of Footpath 35

BACKGROUND PAPERS

Consultation replies
Representations

THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010 (as amended)

Following consultation with the County Council's Ecologist no issues have been raised to indicate that this development would adversely affect the integrity of the European site/s, either individually or in combination with other plans or projects.

Therefore, it is considered that an Appropriate Assessment under Regulation 61 of The Conservation of Habitats and Species Regulations 2010 is not required.

EQUALITIES IMPACT ASSESSMENT

This report only concerns the determination of an application for planning permission. It does however take into account any equality implications. The recommendation has been made after consideration of the application and supporting documents, the development plan, government policy and guidance, representations and all other material planning considerations as detailed in the body of the report.

STATEMENT OF HOW THE LOCAL AUTHORITY HAS WORKED WITH THE APPLICANT IN A POSITIVE AND PROACTIVE MANNER

The Minerals and Waste Planning Authority has engaged with the applicant over several months prior to submission of the application, advising on appropriate options for the regularisation of the waste levels and restoration within the Complex.

Throughout consideration of the application, the applicant has been informed of consultation responses. The opportunity has been given for issues to be addressed through the submission of additional supporting information, with the result of a timely decision.

LOCAL MEMBER NOTIFICATION

LOCAL MEMBER – CHELMSFORD – Broomfield and Writtle

AGENDA ITEM 6a

DR/16/15

committee DEVELOPMENT & REGULATION

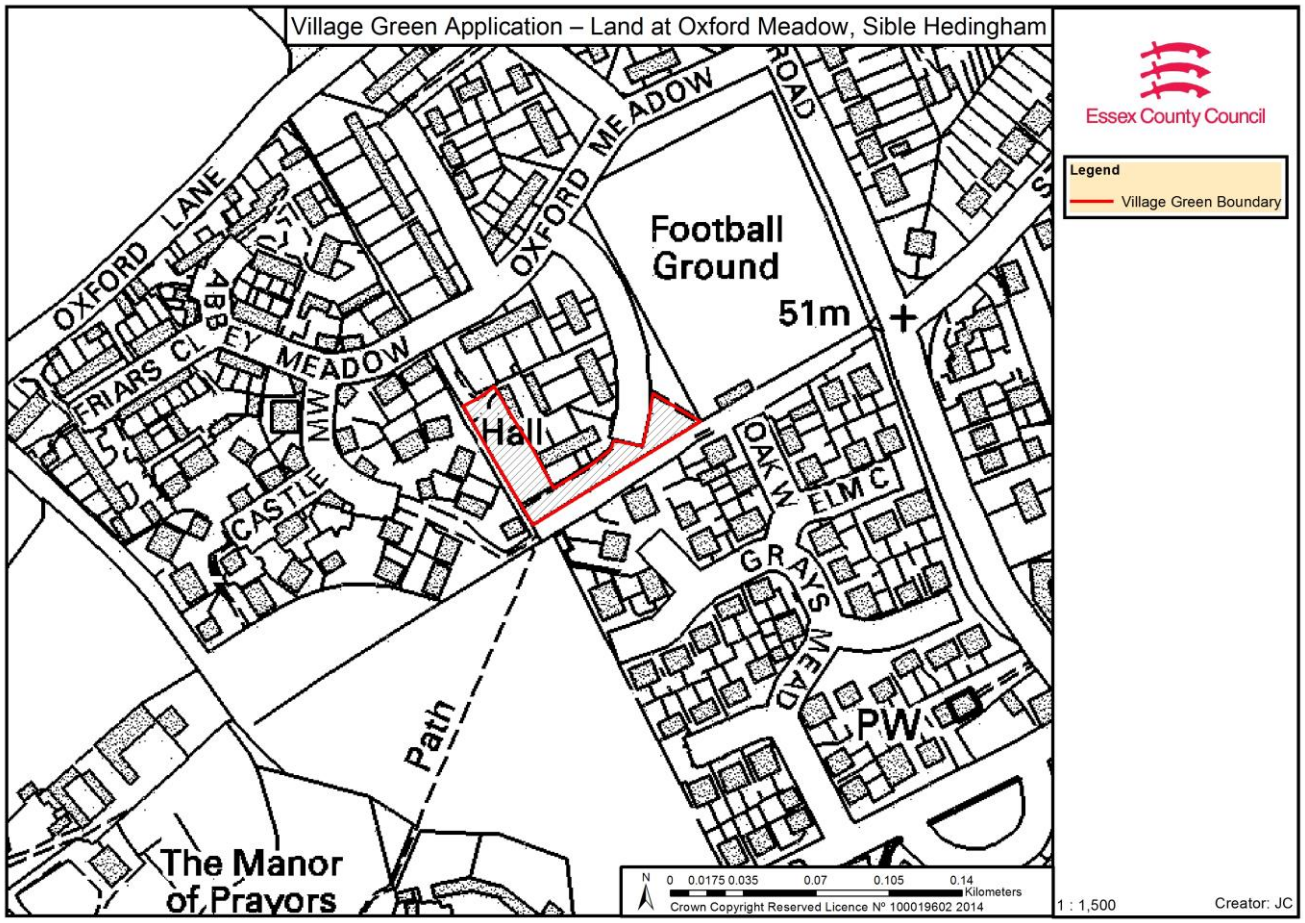
date 22 May 2015

VILLAGE GREEN APPLICATION

Application to register land known as 'Land off Oxford Meadow', Sible Hedingham, Essex as a town or village green

Report by Director for Essex Legal Services

Enquiries to Jacqueline Millward Tel: 033301 39671



1. PURPOSE OF REPORT

To consider an application made by Mrs Lisa Babbs of 76 Oxford Meadow, Sible Hedingham as a town or village green pursuant to Section 15(2) of the Commons Act 2006 ("the 2006 Act").

2. BACKGROUND TO THE APPLICATION

The application dated 24 April 2013 was made by Mrs Babbs as a local resident. 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 non-statutory public local inquiry to be held into the matter over a period of two days on 6th and 7th January 2015 before Mr Alun Alesbury of counsel. At the inquiry evidence and submissions were given in support of the applicant and on behalf of the objector, Braintree District Council.

With the agreement of the parties all of the oral evidence was heard on oath or solemn affirmation.
The Inspector made a preliminary and unaccompanied site visit on 5th January before the start of the inquiry and made a further accompanied site visit with representatives of the parties after close of the evidence to the inquiry on 8th January 2015. In addition to going on to the site and looking at all of it during an accompanied site visit the Inspector visited parts of the area in the vicinity that had been referred to in the evidence and carried out a walk from Hedingham School to the centre of the village and then to the site with the agreement of the parties.

In addition to the oral evidence at the inquiry, the objector had provided documentary evidence in advance of the inquiry date and additional documents were produced during the inquiry. All the material submitted was taken into account by the Inspector.

The Inspector's report is appended as Appendix 1 and he makes a recommendation at paragraphs 11.69 and 11.70 that the application should be refused so the site should not be added to the Register of Town and Village Greens.

Before the site can be included on the Register of Town or Village Green's the Applicant must be able to satisfy the Commons Registration Authority of the criteria set out in section 15 of the 2006 Act. These are;

- Is there a qualifying locality or neighbourhood?
- Have lawful sports and pastimes taken place on the land by a significant number of inhabitants of the locality or neighbourhood?
- Have these activities been carried out "as of right" as opposed to having been done with permission or by right?
- Have the activities been carried on uninterrupted for 20 years?

3. THE CASE FOR THE APPLICANT

The Applicant, Mrs Babbs, called 2 local witnesses to give evidence and gave evidence herself.

Mr David Church lives at 9 Castle Meadow, Sible Hedingham. He has lived there since 1996. He gave evidence that he had walked on the site weekly and that he had seen children playing, dog walking, team games, football, cricket, people walking, cycling and skateboarding. He had never asked for permission to use the site and nor had anyone given him permission. He had never been prevented from using the land nor had any fencing or notices been erected to prevent or discourage use. The inspector's summary of Mr Church's evidence is at paragraphs 7.7 to 7.33 of his report at Appendix 1.

Mrs Shirley Flegg lives at 25 Castle Meadow, Sible Hedingham. She has lived there since 1987. She stated that she had walked on the site daily and had participated in rambling, picnics, family games, sledging and dog walking. Furthermore she had witnessed children playing, rounders, dog walking, team games, football, cricket, picnicking, walking and cycling. She also had never been prevented from using the site nor had anything been done to prevent local residents using the site. The inspector's summary of her evidence is at paragraphs 7.34 to 7.51 of Appendix 1.

Mrs Babbs gave evidence that she has lived at 76 Oxford Meadow since 2006 but had known of the site since 2004. With her family she has used the site for games and other recreational activities almost daily. She stated that others walk across the site to reach other places and that it is used by others for dog walking and games. The inspector's summary of her evidence is at paragraphs 7.52 to 7.70 of Appendix 1.

In her submissions to the Inquiry she was ready to amend the application to exclude the Civil Defence hut and Scout hut because they were used by permission by the Objector. But she went onto to submit that the site had enjoyed uninterrupted use with no impediment for over 60 years since the estate was built. She stated that several of those local residents who had completed evidence questionnaires had lived in the village since they were born.

Mrs Babbs emphasised that the site had not been enclosed or fenced.

The Applicant had not made clear in her application form the rationale of the area she had identified on her application form as the relevant 'locality' or 'neighbourhood within a locality' as the map she had provided suggested an area of the village with relatively clear borders on its north-western and south-eastern sides but otherwise was bounded by an arbitrary east-west and north-south lines of the edges of the large scale ordnance survey extract she had provided. At the inquiry she put forward the whole of the Civil Parish of Sible Hedingham to be treated as the locality for the purposes of the Inquiry and no lesser area as a relevant neighbourhood. No objection was made to this amendment by the objector.

The inspector's summary of her submissions is at paragraphs 8.1 to 8.24 of Appendix 1.

4. THE CASE FOR THE OBJECTOR

When the application was advertised Braintree District Council objected to the application although the majority of the land in the area that they had owned had been transferred to the Greenfields Housing Association. At the inquiry they called 3 witnesses.

Mr Nicholas Day is the Parks and Open Spaces Manager of the District Council and has been since November 2004. He gave evidence of the parts of the site that had been maintained by the District Council and for which they had been used. The play area had been refurbished in 2005 and 2014. The more recent work had been partly funded by Greenfields Housing Association. Some of the signage also dated from the most recent refurbishment. The signage provided information to the users of the play equipment so did not relate to the rest of the application site. The inspector's report of his evidence is at paragraphs 9.1 to 9.9 of Appendix 1.

Mr Alan Mayle is currently Building Controls Manager with the District Council but has been an employee since 1983. His evidence included information about the various dates when housing in the area of the site had been constructed between the 1950s and early 1990s with Oxford Meadow being certificated in 1992. The inspector's report of his evidence is at paragraphs 9.10 to 9.12 of Appendix 1.

Mrs Sarah Stockings is the Property Law Manager and has been employed by the District Council since 2005. She gave evidence that the District Council's predecessor Authority, Halstead Rural District Council purchased the site in 1952 for the purpose of a housing site and by 1956 had created the Oxford Meadow housing estate. She then went on to give evidence of the various property transactions relating to the Scouts and the transfer of the District Council's housing stock to Greenfields Housing Association in 2007 followed by a transfer of the land west of the garages and 77 Oxford Meadow more recently and maintenance arrangements that have taken place since the transfers. The transfers included part of the application site. The only land now owned by the District Council was the land of the play area, transferred back to them in 2010. The inspector's report of her evidence can be read at paragraphs 9.13 to 9.35 of Appendix 1.

In the submissions of the Objector it was said that the part of the site that was used by the Scouts under permission contained in a lease could not be part of any Village Green; this equally applied to a Civil Defence hut leased to the County Council. This is on the basis that they were using it with the clear permission of the District Council and to satisfy the criteria under section 15 of the 2006 Act the local residents had to use the land "as of right" as opposed to "by right" on the basis of permission given by the District Council. The use of the land claimed was more in the nature of a route to short cut to other places rather than as a destination village green.

It was further argued by the District Council that the Applicant had failed to

establish that a significant number of qualifying residents had used the site for recreational purposes. Although there is no settled definition of “significant” it was argued that the evidence presented did not show that that threshold had been reached.

An important point was made by the Objector in relation to whether the site had been used “as of right” or “by right”. To qualify for registration the use by the residents has to be “as of right”. This means that the use of the site has to be based on long term use without permission being given by the owner or without use being lawful for some other reason.; In this case the site had been acquired by Braintree District Council’s predecessor under legislative powers in such a way to show that it had been made available for recreational purposes. The Objector argued that parts of the site were used with their permission in the case of the Scout hut and the Civil Defence hut. The part of the site that had been disposed of to Greenfields was advertised as land to be sold pursuant to statute under section 122 of the Local Government Act 1972 by the District Council and thus it could not be argued that the use was “as of right”. The inspector’s summary of the submissions of the Objector can be read at paragraphs 10.1 to 10.50 of Appendix 1.

5. THE ANALYSIS OF THE INSPECTOR

The inspector needed to assess the evidence produced at the inquiry and in the process leading up to that against various tests set out in the legislation and his conclusion on each relevant aspect is set out below.

‘Locality’ or ‘Neighbourhood within a locality’

The Applicant had identified the civil parish as the relevant neighbourhood. The inspector said that the commons registration authority can accept the Parish of Sible Hedingham as the qualifying “locality” for the purposes of section 15 of the 2006 Act. This still means that the applicant needs to have demonstrated that there has been a significant number of inhabitants from this area using the site in assessing the statutory test.

‘A significant number of the inhabitants of the locality’

Only 3 witnesses were called for the Applicant and so could be cross-examined. There were over 100 evidence questionnaires completed by local people however the Inspector considered that, as these people could not be cross examined, their evidence has less value than those who appeared to give evidence in a contested case. The inspector considered it appropriate to discount walking users who were using parts of the land which more or less corresponded to the footpaths and footways on the land as a route of passage or to get to and from their houses. Based on the evidence of the witnesses at the inquiry, the Inspector concluded that there was an insufficient number of residents of Sible Hedingham that had used the site in the way required by section 15 of the 2006 Act. Case law has made it clear that the number had to be significant enough for a “reasonably observant landowner” to recognise that a general right was being asserted on behalf of the inhabitants rather than a small number of incidents of trespass by a small group

(per paragraph 11.12 of Appendix 1). Sible Hedingham is a large village and the applicant's case did now show anything approaching a 'significant number' of the inhabitants of that locality had made any material use of the land for lawful sports and pastimes during the 20 year period required .

'Lawful sports and pastimes'

The evidence showed that most of the inhabitants using the site did so along footpath routes on the land. The Scouts had used part of the site and the north-western limb of the site had been used for car parking in connection with the Parish Church to the west. None of these activities are lawful sports and pastimes as the walking across the land has more the character of being used as a route of passage than for sports and pastimes. The Inspector concluded that the evidence did not meet this statutory criterion.

'On the land'

The Inspector said that the site had not had a uniform use and different parts were used for different purposes. Although the southern part had some use by children for playing he was not satisfied that it had used by sufficient children for sports and pastimes sufficient to constitute as of right use by a significant number of locality inhabitants. Another part of the site was used by the Scouts until 1999 and this was with permission. The southern arm of the site at its eastern end had been used by children as a play area. The area of sloping ground was only popular in a cold winter for sledging.

The small play are at the extreme eastern end of the site had been an equipped play area since 2004/5 and used as such since by younger children.

'For a period of at least 20 years'

The 20 year period for the application runs from April 1993 to April 2013, the application having been received on 25th April 2013. The Inspector was not satisfied that the site had been used for sports and pastimes for this period by a significant number of inhabitants, other than perhaps the children's play area. Although some use of the site had been used for sport and pastimes it was not sufficient to satisfy the statutory test.

'As of right'

The Inspector relied on the Supreme Court case of ***Barkas*** (***R (Barkas) v North Yorkshire County Council*** [2014] UKSC 31) that was cited by the Objector and is now a leading case on the subject which decided that there can be an implied permission given to inhabitants to use land acquired by a local authority. This site was acquired under the housing legislation and the District Council, through its predecessor Council, had given an implied permission or rights to enjoy the site. Moreover the Inspector concluded that the use of the site by the Scouts was with permission. Thus the inhabitants were not using the site as of right but with the permission of the District Council so the quality of user was not of the type requisite to enable the land to be registered.

Even if he had been satisfied on some of the other legal tests he would have been inclined to conclude their use of the land was 'by right' or 'by permission' and not 'as of right' in relation to most of the site. The area around the Scout hut was slightly less clear but, even if a **Barkas**-type argument did not apply, there was unconvincing evidence to establish the other statutory criteria.

His conclusion was that registration as a town or village green is not justified because the criteria in section 15(2) of the 2006 Act are not met and his recommendation to the Commons Registration Authority is that no part of the application site should be added to the Register. The Inspector's analysis of the various statutory tests can be read in full at paragraphs at 11.1 to 11.68 of Appendix 1.

He also made reference to a very recently published judgement in **R (Newhaven Port and Properties Ltd) v East Sussex County Council** [2015] UKSC 7 and concluded that it had no material bearing on his conclusions.

6. LOCAL MEMBER NOTIFICATION

The local member has been consulted. Any comments from Councillor Finch will be reported.

7. RECOMMENDATION

That:
The inspector's analysis of the evidence in support of the application is accepted and his recommendation is accepted that the application made by Lisa Babbs dated 24th April 2013 is rejected for the reasons set out in the inspector's report and in summary in this report.

BACKGROUND PAPERS
Application dated 24th April 2013 with supporting papers.
Inspector's report

Local Member: Hedingham

Ref: Jacqueline Millward CAVG/80

APPENDIX 1

RE: LAND AT OXFORD MEADOW, SIBLE HEDINGHAM

COMMONS ACT 2006, SECTION 15

REGISTRATION AUTHORITY: ESSEX COUNTY COUNCIL

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

into

AN APPLICATION TO REGISTER CERTAIN LAND OFF OXFORD MEADOW, SIBLE HEDINGHAM, ESSEX

as a

TOWN OR VILLAGE GREEN

CONTENTS:

Introduction

1.1. I have been appointed by Essex County Council ("the County Council"), in its capacity as Registration Authority, to consider and report on an application received by it on 25th April 2013 (dated 24th April 2013), for the registration as a Town or Village Green under Section 15 of the Commons Act 2006 of an area of land off the road called Oxford Meadow, in the village of Sible Hedingham. Sible Hedingham lies within Braintree District, which is itself within the County of Essex, for which the County Council are responsible as Registration Authority for these purposes.

1.2. I was in particular appointed to hold a Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of the application, and on behalf of the Objector to it. However I was also provided with copies of the original application and the material which had been produced in support of it, the objection duly made to it; and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of it may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of that earlier material in compiling my Report and recommendations.

2. The Applicant and Application

2.1. The Application received by the County Council in April 2013 was made by Mrs Lisa Babbs, of 76 Oxford Meadow, Sible Hedingham, Halstead, Essex. Mrs Babbs is accordingly *"the Applicant"* for present purposes.

2.2. It was indicated in the Application Form as completed that the Application was based on ***subsection (2)*** of ***Section 15*** of the ***Commons Act 2006.***

2.3. The boundaries of the application site were shown on a plan which accompanied the Application. The originally completed application form was however somewhat unclear as to what was being put forward as a relevant *"locality"* or *"neighbourhood within a locality"* for the purposes of Section 15 of the 2006 Act. A plan accompanying the application (as Map A thereto) appeared to suggest that an area of land within Sible Hedingham, with relatively clear borders on its north-western and south-western sides, but otherwise bounded by the arbitrary east-west and north-south lines of the edges of a large-scale Ordnance Survey extract, was being put forward as a *"locality/neighbourhood"*.

2.4. That such a thing should occur was not especially surprising or unusual, as the standard (national) form (Form 44) on which applications of this kind are to be made offers very little clear, useful guidance to applicants in relation to the rather particular views which have been taken by the courts as to exactly what is meant and required by the terms *"locality"* and *"neighbourhood within a locality"*, as they appear in the Commons Act.

2.5. However, in discussion which took place at the Inquiry, the Applicant Mrs Babbs in due course made it clear that she wished to amend this particular aspect of her

application, and to put forward the whole of the Civil Parish of Sible Hedingham as the suggested relevant *"locality"*, with no lesser area within that parish being put forward as a relevant *"neighbourhood"*. No objection to this amendment was taken on behalf of any party to the Inquiry.

2.6. As for the Application Site itself, this was reasonably clearly delineated on the plans accompanying the application, although the thickness of the drawn lines marking the intended boundaries produced some slight lack of clarity as to the precise intended position of some of those boundaries (which it was possible to resolve satisfactorily at the Inquiry). The site is essentially an L-shaped area of open ground within a housing estate; both arms of the 'L' are largely down to grass, but interspersed with some trees and a few bushes. However, at the eastern end of the southern, 'horizontal' arm of the 'L' there is a small, roughly triangular, fenced 'play area', with some play equipment for small children. At the time of my site visits, both arms of the 'L' shaped site (leaving aside the small play area) presented themselves as reasonably well maintained, mainly grassed areas (with some remnants of concrete footings in the north-western 'vertical' arm of the 'L'), on which there are (as mentioned above) also a modest number of trees and bushes. The play area also had a presentable (indeed quite newly equipped and furnished) appearance

3. The Objector

3.1. Objection was made to the Applicant's application by Braintree District Council, currently the freehold owner of a small part of the land of the application site, and previously (I was given to understand) owner of the whole of it. Braintree District Council is accordingly *"the Objector"* in this Report.

4. Directions

4.1. Once the County Council as Registration Authority had decided that a local Inquiry should be held into the Application (and the objections to it), it issued Directions to the parties as to procedural matters, dated 6th November 2014. Matters covered included the exchange before the Inquiry of additional written and documentary material such as further statements of Evidence, case summaries, legal authorities etc. Since those Directions were in the event, broadly speaking, observed by the parties, and no issues arose from them, it is unnecessary to comment on them any further.

5. Site Visits

5.1. As I informed the parties at the Inquiry, I had the opportunity on the day before the Inquiry commenced to see the site, unaccompanied. I also observed the surrounding area generally.

5.2. After the close of the Inquiry, on the morning of 8th January 2015, I made a formal site visit, accompanied by the Applicant and representatives of the Objector. In addition to looking at the site, we visited various parts of the area surrounding it which had been referred to in the evidence, and walked (and approximately timed) a round trip on foot from the site to the gates of Hedingham School, then from the school to the fish and chip shop in the centre of the village, and from that shop back to the site. This walking 'circuit' was carried out with the agreement of the parties' representatives present, and arose from evidence which the Inquiry had heard, as to a similar route being sometimes walked by local schoolchildren.

6. The Inquiry

6.1. The Inquiry itself was held at the Town Hall in Braintree, over two days, on 6th and 7th January 2015.

6.2. Both the Applicant and the Objector made submissions, and oral evidence was heard from witnesses on behalf of both sides, and subjected to cross-examination and questions from me as appropriate. With the agreement of the parties participating in the Inquiry, all of the oral evidence was heard on oath, or solemn affirmation.

6.3. As well as oral evidence, and matters specifically raised at the Inquiry, I have had regard in producing my Report to all of the written and documentary material submitted by the parties, including the material submitted in the early stages of the process, which I have referred to above. I report on the evidence given to the Inquiry, and the submissions of the parties, in the following sections of this Report.

7. THE CASE FOR THE APPLICANT – Evidence

Approach to the evidence

7.1. As I have already to some extent noted above, the Application in this case was supported by various documents including plans, a statement of further supporting information, a substantial collection of completed evidence questionnaires, etc., from local residents. There was also other supporting material, including some photographs, part of which material was provided in response to the objection to the application which had been submitted by Braintree District Council.

7.2. Although the Directions for the Inquiry had provided for further written or documentary material to be submitted on behalf of the Applicant in the run-up to the Inquiry, in the event at the Inquiry the Applicant's case (apart from new oral evidence, and submissions) substantially relied on the written and documentary material which she had submitted previously.

7.3. I have read all of this written material, and looked at and considered such photographs and other documentary items as I was provided with, and have taken it all into account in forming the views which I have come to on the totality of the evidence.

7.4. However, as is to be expected, and as indeed was the subject of discussion and acknowledgement at the Inquiry itself, more weight will inevitably be accorded (where matters are in dispute) to evidence which is given in person by a witness, in this instance on oath, who is then subject to cross-examination and questions from me, than will necessarily be the case for mere written statements, evidence questionnaires etc., where there is no opportunity for such challenge or questioning.

7.5. With all these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report all the evidence contained in any statements, or in particular questionnaires, by individuals who gave no oral evidence. In general terms they are broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing stands out as being particularly worthy of having special, individual attention drawn to it in this Report.

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

The Oral Evidence for the Applicant

7.7. ***Mr David Church*** gave evidence in support of the application. He lives at 9 Castle Meadow, Sible Hedingham. He has lived there from 1996. Mr Church had completed one of the evidence questionnaires lodged in support of the application.

7.8. In his evidence questionnaire Mr Church had stated that the land forming the application site was itself called Oxford Meadow, or sometimes referred to as the Old Scout Hut land. He used to gain access to this land from the Oxford Meadow footpath, and he went onto it to go for a walk once or twice a week. Walking was the activity he indulged in on the land.

7.9. He had also said that his immediate family uses the land; his son comes for a walk most weekends. He had also known of the Scouts engaging in activities on the land, although he himself had not participated in those activities. The activities he had said he had seen on the land were children playing, dog walking, team games, football, cricket, people walking, bicycle riding, and skateboarding.

7.10. He had never sought permission for any activities on the land, and nor had anyone given permission. He had never been prevented from using the land, and there had never been any attempt made by notice or fencing or other means to prevent or discourage use being made of the land.

7.11. In his oral evidence Mr Church explained that the two civil defence huts on the north-westerly arm of this L-shaped piece of land had still been in use in 1996. Both of them were used by the Scouts. They were both being actively used by the Scouts, and they were in fairly good condition at that time. That use stopped in the early-ish 2000s, something like 2004 he thought.

7.12. The item shown as *"Hall"* on the Ordnance Survey large scale maps was one of those huts. He thought that was what was known as the No.2 hut. The other hut was to the south of that one. The hut shown on the Ordnance Survey based plans did stay for some years after the other one went. However he personally did not use the Scout Huts. There had not been any fences around those huts.

7.13. When he had said he had seen team games happening on the land, he was meaning games of football and the like. He had also seen people playing with remote controlled cars on the land of the application site.

7.14. *In cross-examination*, having been shown some records kept by the Valuation and Estates Officer of Braintree District Council, Mr Church accepted that records showed that the civil defence hut on the land had been demolished in July 1999, and that in 2000 it had been recorded that the Scout hut had a useful life of one year. He agreed that perhaps the second hut to be demolished was demolished in about the year 2000, and that the other hut went a little before that.

7.15. As for his own use of the application site, he would go for a walk there one or two times a week, often using it as a short cut more than anything else. The majority of people use this land as a walk through, apart from the children playing on the land of course. As for the part of the land which has been set apart as a play area, the relevant age group of children would use that play equipment. It is not suitable for the older children as it is too babyish for them.

7.16. The majority of the skateboarders that he had referred to in fact use the roadway to the garages, at the northern tip of the north-west arm of the L-shaped site.

7.17. The skateboarders use the road from Oxford Meadow right round into the garages area. When he said 'skateboarders' he meant to include roller skaters as well.

7.18. Other children do in fact use the grassy area of the land, to play ball or run around playing other games, whatever they play nowadays. It might be football, cricket, tennis or just knocking a ball about.

7.19. He was not aware of a surfaced path leading to the southern of the former huts on the site. He could not recall under oath whether there had been a path that ran to the southern hut.

7.20. Children of the age he had been talking about are often out on the north-western arm of the L-shaped site, playing children's type football. The part where the old huts were is slightly visible from his house. He sees them playing on that arm of the 'L'. Sometimes he sees the children playing when he is walking as well. He cannot see the southern arm of the L-shaped site from his house.

7.21. He could not say how often he sees children playing ball on the application site. He does not make a note; he is just out for a stroll. It would depend on the weather, and the time of year. It happens a lot more in the summer, obviously.

7.22. Prior to 1999 the children could play on the football field (further east, not on the application site), and a lot of them did. The fencing in of the football field

increased the use of the land on the application site. Children used to play on the football field, and there were a lot of dog walkers there too.

7.23. As for the open green area of the Church field to the southwest, it depended on the age group whether children would use it. Five or six year olds would be out playing on the application site. This was not necessarily a lot of them, but certainly some of them. Some of them would play on the park swings too. There is also a play area off the southern side of Rectory Road (away from the site), but that is only suitable for a limited age group. Mr Church did not think that use by children of the application site land is only occasional; however he could not say definitely that one would see a child on there playing every single day.

7.24. Children used to play there when the Scout huts were there. It was not Scout land around the outside of the Scout huts. There were no fences around the huts. Children would draw their cricket stumps on the Scout hut wall, or use the hut as the goal. He was sure that he had seen children play cricket against the Scout hut wall. However that was ages ago. It was not the Scouts doing that, it was the children from the area generally. It was very rare for the Scouts to be there other than in the evenings.

7.25. Where he lives faces the area which contained the huts. He could not really see the huts themselves from his house however. His evidence is not based on the opposition which he has to housing development on part of the application site.

7.26. Scouts used to camp on the north-western part of the application site for one or two nights a year at the maximum. A fire would be going, and perhaps there would be half a dozen scouts sitting around a fire singing and indeed camping on the land. They were definitely camping there, but how many of them did it he could not remember. He thought there were possibly 2 or 3 or maybe 4 tents, and a little camp fire. There was no fencing or ropes that he could recall. That was in the north-western or top part of the L-shaped land. They only did it overnight, say from one afternoon until the day after, or possibly for a two night stay. He saw this camping from going onto the land himself. The tents tended to be more towards the garages side of the land, not the footpath side.

7.27. He personally tends to walk close to his boundary when he is on the land, in order to check his fence. The part alongside the fence used to be overgrown and wild until a couple of years ago. He would use the public footpath to check his fence. He would go there also to check his garage gutters. This would have been in the late 1990s or early 2000s, he could not be sure. One cannot walk down the footpath there for the whole length because there is an Oak tree in the way. He has been trying to get Braintree District Council to remove that tree.

7.28. The Scouts used to dry their tents on the land, as well as camping there. But that would be for 1 or 2 days at maximum as well.

7.29. He agreed that there had been no bank in the village for 20 years or so. Swan Street contains most of the village amenities. The application site land provides one of the routes for him to walk there. He thought the majority of people walking over the land would be doing that. However children who were playing would be

staying on the land, except that children do also cut through by the land in order to walk to school.

7.30. A lot of people used to park cars on the top north-western section of the L-shaped land, in order to go to church. They would park their cars there and walk across to the Parish Church. There is nowhere by the church itself to park. The area of the site where people used to park is now fenced off, so the parking no longer occurs. He thought that that blocking off of the land had been for a lot longer than the period since 2014 when the Greenfields Housing Association took over that part of the land. He thought that it had been blocked off several years ago, perhaps 2 or 3 years before the Inquiry. Prior to that people parked on the grassy part of the land between the entrance drive and the foundations of the old huts. They did that every Sunday. People could not play all over the land of course while cars were parked there, for perhaps 1½ hours or so for a church service.

7.31. In relation to Hedingham School, which is the senior school for the area, children might well walk to it. Also children from the school might typically come to this land, the application site, by the swings, in order to picnic in their lunchtimes. That only happens during the summer. He has seen 20 or more children do that.

7.32. As for the village hall, Mr Church does not use that as much as he used to. The Parish Council has in the past met at the Baptist Church, and it could be convenient to walk through the application site in order to get there.

7.33. As for signs, he had seen signs on the equipped play area. He goes past that play area every other day. He thought that some of the signs there were newer than the others.

7.34. ***Mrs Shirley Flegg*** lives at 25 Castle Meadow, Sible Hedingham. She said that her daughter lives at 77 Oxford Meadow. She had completed one of the evidence questionnaires lodged in support of the application. She had lived from 1987 to the present in her current house in Castle Meadow. In her evidence questionnaire she had stated that she goes onto this piece of land for walking, and that she did so daily. The activities she said she had taken part in included rambling, picnics, family games, sledging and dog walking. She had said that her immediate family uses the land.

7.35. She had also noted that the land had been used for Scouting for many years, but she did not know for how long. Activities she had seen on the land included children playing, rounders, dog walking, team games, football, cricket, picnicking, people walking and bicycle riding.

7.36. She had never been prevented from using the land of the application site, nor had anything been done to prevent use of the site by local inhabitants.

7.37. In her oral evidence at the Inquiry she reiterated that her use of the site was daily. The Scout hut part of the land is the only level area, which is why her grandchildren like to use it for games. It is much the better part of the site for ball games. Indeed both of her grandchildren had learned to walk on the Scout hut part

of the land. Her grandson had even camped out on that part. And children played badminton there. Conversely sledging would be on the other part of the land, where there is a slope. For dog walking she tends to use the Scout hut part of the land. Over the 20 year period relevant to the Inquiry she used to go all over the L-shaped area of land.

7.38. Her daughter had moved to 77 Oxford Meadow in 1989. The Scouts were very active at that time, and used to have camp fires and the like on the land. Her recollection was however that the Scout huts had been used for storage for a while before they were eventually demolished.

7.39. *In cross-examination*, when shown some photographs of the land apparently taken in July 2004, Mrs Flegg agreed that they showed that what appeared to be a portacabin was on the land at that stage, in the north-westerly part of the L-shaped area. One of those photographs also showed the part of the ground which was good for ball games, to the north of that portacabin.

7.40. She thought that the area used for ball games was all of the north-western arm of the site, not just the part that had been leased apparently to the Scouts. The Council grass-cutter machine used to be left on a part of that area, towards its northern end, where the grass was shown as worn away on an aerial photograph produced by the Objector.

7.41. The north-western part of the site was used for parking for people coming to funerals and the like at the Parish Church. A few people would park there every Sunday, but more for funerals and weddings.

7.42. As for the huts, when they were there people would obviously tend to stick to the grass. She would visit the land on a daily basis, and when she was more mobile the length of time she would spend on the land would depend on whether she had grandchildren with her. They would always tend to stop to play. Her grandchildren were born in 1993 and 1998. They liked to do things like playing on a rope swing. Her grandson, born in 1993, was quite adventurous. The rope swing was on the big tree on the corner of the site. That tree is visible in one of the photographs produced by the District Council.

7.43. Typically when she walks on this land she does a circuit which includes the application site, and then back to her house. She personally never used the site as a walking route to the shops. When she was more mobile she used to walk to the shops by cutting across what she called Grays Hall Meadow, the field towards the church. There is a public path around to the entrance to that meadow.

7.44. However her walking circuit nowadays involves using the application site land. She uses this land more than she used to for her walks. However even when more mobile she would go across the Scout hut land and then down to Yeldham Road, then up by the football field, and via the second (southern) arm of the application site, and so back to her house. That is an example of the sort of route she followed for recreation, or to walk the dog.

7.45. Nowadays she goes via the Scout hut field and back around to her house, a route taking only 10 to 15 minutes; that is much less than before.

7.46. For ball games you need a flat surface. The closing of the football field increased the use of the application site land somewhat, but children have always played on the application land. Children did not go off down to the football field all the time, when they were young. They were told to stay within sight of the house. Having this land nearby is part of the joy of living in a village in the country. She did not think that her grandchildren were any more fortunate than any other child would be, living in the houses surrounding the application site. It was a good area because people could supervise it while their children were playing. Her own grandchildren might have used the land more than children living in other streets, she could accept that.

7.47. When the Scout huts were on the land she did see the camping which took place. It tended to be in the summer holidays. They would have a bonfire at night, and camp on the site as well. There was a concrete surfaced area on the site which never had a building on it, and they used that for the bonfire, for their cooking. There would have been adults there with the Scouts.

7.48. As for community activities on the land, there was she recalled a table top bring and buy sale on that land, when the Scouts were still active. It was during the period when the Scouts used the hut. She thought it had been open to the public. She thought she had gone to it. It was to raise money for the Scouts, and was close to where the huts were. She could not recall if the Scouts made a charge to go to that sale.

7.49. When the Scouts used the land, she did not consciously keep out of their way. One could still walk through the land. When there were tents there, they were not so many as to cause problems if one wanted to traverse the land.

7.50. She recalled signs on the south-eastern part of the land, in association with the play area there. The first one she recalled was probably there from about 2005. She had certainly seen it.

7.51. *To me*, Mrs Flegg said that the area around the Scout huts was not fenced or roped off during the table top sales she had referred to. Any money made would have been from the sales alone. There had been nothing to stop anyone coming in from either direction.

7.52. ***Mrs Lisa Babbs*** (the Applicant) lives at 76 Oxford Meadow, Sible Hedingham. She had completed one of the evidence questionnaires lodged in support of her application.

7.53. She said that she had known the land of the application site since 2004, which is when her father-in-law moved onto the estate. In 2006 she and her family moved in from Braintree, and since then they have been using the land of the application site. They as a family play games on both parts of the L-shaped area, depending on which game.

7.54. Games of badminton are satisfactory on the grass in front of her house. Other games are played on the former Scout part of the land. The part in front of her house is sloping and is suitable for snowmen and sledging when there is snow. Those things tend to be on that southern arm of the land.

7.55. In her completed questionnaire she had said that she went onto the application site land typically for playing with her children, and walking to other areas of the estate and village. They played badminton and football in the summer, build snowmen in the winter, do sledging, cycling and walking children to and from school. She and her family use this land every day. She herself takes part in the ball games, cycling, walking, badminton, and generally having fun on the land. Her family use the land in a similar way. She had also known that a local walking group had used the land, and indeed the Palm Sunday Parade of the church sometimes uses the land.

7.56. In her evidence at the Inquiry she added that her own children do go out and play on this land on their own. She gives them boundaries as to where they can go outside the house. For example, people's dogs are let loose on the church field to the south west, and therefore that is not such a satisfactory place for children to go. Her children on this land have built dens, collected sticks and the like, and generally play games. Her daughter tends to tag along with her son. In the summer they are typically out on this land every afternoon or evening.

7.57. She said that she had heard from her husband that a nursery school used to use the civil defence hut on the western part of the land. Her husband indeed went to it.

7.58. Her reference to a local walking group had been to a group which meets on Tuesdays, and they do walk through the application site. She confirmed that the Palm Sunday Parade also passes through the application site, on its way between Castle Hedingham and Sible Hedingham churches; this happens every year.

7.59. As a family they used to park their car on the north-western part of the application land, the part known as the Scout hut land. This was in particular when football was taking place on the football field, because there was a lot of parking in the road on those occasions.

7.60. *In cross-examination* Mrs Babbs said that she uses the land of the application site every day. Indeed she lives right on top of it. She repeated that this use would be for playing games, or walking to other things in the village, including taking her children to school.

7.61. Adults mainly use the land in order to walk to places. She herself had only obtained witness statements from adults. When adults use the land they are usually either walking dogs or walking to or from somewhere. However children do play on this piece of land. Indeed children come over to this land from the school in the summer in order to eat their lunch. Year 8 children are allowed out of school, at the age of 14 or 15 years or so. So they are in about their third year at the school, and from then on they are allowed to go out at lunchtime. Perhaps there might be

up to 20 children on the land at lunchtime. They might go to the fish and chip shop in the village to buy food, or they may bring their own packed lunch.

7.62. Children having their lunch on the land do often leave litter, unfortunately. Girls among them will just sit on the ground. This happens from May to July mainly. She thought that the school children have nearly 1 hour 20 minutes off for their lunch time. The fish and chip shop is on the main road in the village. She thought it took the children about 5 minutes to walk to that shop. Then when they get to the application site they tend to be on it for about half an hour or so. They did that nearly every day in suitable weather.

7.63. Some do come over even in the winter if it is a nice cold crisp day, and then they might play football on the land. She did not know whether all the children who did that would be ones who actually live in the village. Indeed she did not know how many children go to the school.

7.64. She thought that it would be children who live in the village who would be the ones who walk across the application site land. Her own children had made friends with children who live on Castle Meadow through playing on this land. Probably her son has about 8 or 9 friends who he plays with on the land. They come from the houses behind the land, and to the side and over on Castle Meadow. Quite a few children from the immediate vicinity do use this land to play. They do not all necessarily play on this land all the time or all at the same time.

7.65. Some of the children will come to knock on her own door to see if her children will play. The children typically know their boundaries in terms of where they are allowed to go and play.

7.66. Generally she would say that she and her family live on an estate with quite a lot of elderly people, so there are not that many children. There are people who have lived in the local houses for 40 years or so. But then gradually the younger generation will move in.

7.67. Their children will then need this land to play on. Indeed the older people living locally have said, a lot of them, that they played with their own children or do play with their grandchildren on this land.

7.68. All of the evidence questionnaires she had produced had been collected in a three week period in the winter. She had had to ask the people who were actually there on the land at the time. The reason that she had pursued this application was that a lot of the population around are every elderly, whereas she realised that children need to have this area to play on in the future. Indeed that is her whole concern.

7.69. *To me*, Mrs Babbs said that people play with their dogs and perhaps throw balls for the dogs on the land. People also go out together for a general natter on the land with their friends. Usually people with their dogs are on a longer route somewhere, but they do play with their dogs on this land.

7.70. In relation to the school children using the land in the summer, she reiterated that some of them have packed lunches, and not all of them are eating fish and chips.

However she thought that all of them might have walked in a group from the school via the fish and chip shop, and then back to this land. They tend to walk with their friends, all together.

8. The Submissions for the Applicant

8.1. In submissions lodged before the Inquiry on behalf of the Applicant, in response to the objection from Braintree District Council, it was acknowledged that parts of the application site might have been occupied for periods by a civil defence hut and a Scout hut, and it was said that the Applicant was prepared to remove the relevant sections from the application site and continue with the application for the remainder of the site as a whole. Other than those matters the site had enjoyed uninterrupted use with no impediment to access over the 60 years or so that the housing estate had been in existence. Various other points were made about the early history of the land, which do not go to the criteria relevant to a ***Commons Act*** determination.

8.2. The civil defence hut was apparently given permission in July 1963. However it was only a small section of the application site; a large portion of the land remained used as of right by local people for the entire period of the civil defence hut lease. The civil defence hut lease itself was dissolved in 1968. It was said that there had been a period when a nursery school occupied the site run by a Mrs G Mansfield, but no official documentary evidence had been produced to show any details in relation to that.

8.3. A local Scout group were given permission to use the land in June 1984, but again the area was never fenced off nor notices erected to prevent access to local inhabitants. That Scout group would actively use the land during its once weekly meetings until 1991, when it was merged with another troop in Castle Hedingham and the meetings held in Castle Hedingham. The rest of the land, because of the lack of fencing etc., was used as of right during all that period.

8.4. It was suggested that the Second Hedingham Scout Group ceased to exist, thus making the lease void from 1992, which still provided 21 years of as of right access. The buildings and contents were overseen by the District Scout Association until 1999. At the time of those submissions it was thought that the buildings had been vacated and the equipment given to another Scout group in 2004. No new lease was ever agreed by the District Council. It was accepted that the eastern end of the southern part of the application site is occupied by a children's play area. However the work to this play area as it is now constituted was completed in January 2014. The play area is fenced.

8.5. The whole of the application site has always remained an open space since the housing estate was first built in 1952. The area has never been fenced. When parts of the area have been leased no notices have ever been erected to restrict the use of the land by local inhabitants, until late 2013.

8.6. This village green application has been made to ensure that the village as a whole is sustainable. There is no opposition to the idea of the provision of affordable housing in the village.

8.7. In her submissions to the Inquiry, Mrs Babbs pointed out that prior to 1952 it was clear from conveyance documentation that had been seen that the land's use was agricultural. The Council had rejected a few witness statements lodged on behalf of the Applicant on the basis that the land could not have been used before 1952. However in that era it was commonplace for children to roam free, including on agricultural land.

8.8. Several of those who had completed evidence questionnaires had lived in the village since they were born, some of them going back to dates like 1938. They did use to play in the fields as children.

8.9. Then in 1952 plans were made to develop a housing estate, and it was decided that the layout was to be as it was in fact built. It was seen fit not to put extra houses on the application land as it is, and to stop the road of Oxford Meadow where it in fact did stop.

8.10. When a new area to the west was developed in the 1980s and 1990s, that was by completely different developers. Again they did not develop the application site land.

8.11. Since one of Mrs Babbs's neighbours moved into her house in 1958, the land had always been in that state, open and with no fencing. Access was unrestricted. Yes, there had been some temporary buildings, the civil defence and Scout huts. But there was always open and accessible land around them. The very definition of a village green should be an open area within a settlement. Traditionally it would be an area of open grassland at the centre of a rural settlement.

8.12. With the new development that has been built, the area of the application site has remained a focal point, central to the housing estates around it. This land was left undeveloped to create an area where people can play, and not be completely surrounded by concrete.

8.13. As far as Grays Hall Meadow is concerned, part of that area is designated for an overspill burial site. It is true that children from the other end of the village do not necessarily come up to the application site to play, as they have a recreation ground in that part of the village. But children do come up to the application site from places like Brooks Meadow in the village in order to play. And more families are moving into the local area.

8.14. The fencing in of the football pitch area has caused the application site land to be used more frequently and more recreationally than in previous years.

8.15. Mrs Babbs confirmed that she wished this application to relate to use by the whole locality of the Parish of Sible Hedingham. In other words this should not be seen as a *"neighbourhood"* case.

8.16. The new play area and its fencing were put in in early 2014. However the grass was not cut in there for the whole of the summer, leading to months of complaints by local residents. There are now some signs around or attached to the fencing of the play area, but they were not installed straightaway. It took a fair few months for them to appear.

8.17. It was the Applicant's understanding that the civil defence hut was given permission in July 1963. It was clearly marked on documents that the area associated with it was no wider than the hut itself, so it did not extend into a large part of the north-western arm of the application site. So the remaining area would have been used as of right during the civil defence hut lease. People could use the area around the building as of right.

8.18. Then in June 1984 the Scouts were given permission to use the hut, but again the area was never fenced, nor local people prevented from using the land. The Applicant still believes that Scout meetings went on only until about 1991, when the group was merged with another troop in Castle Hedingham. Thereafter the Scout hut on the application site was not used other than for storage. But again the important point is that the whole area was never fenced off. The area outside the buildings was still all available for use by the relevant generation of local children. There was no-one to tell local children that they could not use the land around the buildings.

8.19. Even when the Scouts used their premises that did not interfere with local use. People could walk through the tents, for example, when the Scouts were camping there. They probably would not do that, but there was nothing to stop them.

8.20. The concrete bases on the land, some of which were associated with former buildings, have also been used for playing on by local children.

8.21. The main purpose of this application is to protect an area that has been left and developed around. It has been left as a green haven of open space. The cow field, or Grays Hall field, to the south west is lovely, but there are trees planted in it and the area is not so open. It is not easy to play football or Frisbee there. Indeed half of that meadow is full of trees, and the other part is sloping. It is not smooth ground, and there are lots of mole hills. None of that makes it very conducive for general play.

8.22. Children used to go to the football field as the main hub that they would use, until the fence was put there. Taking that away from the community has had a detrimental effect on the whole village. Since the fence was put up around that field, children have moved around to the only remaining area to play, namely the application site.

8.23. Mrs Babbs had not made this application for any kind of personal gain. Indeed she is looking to move away. She is pursuing this application for the benefit of future children. This space has been there and available for 50 years, and during that whole time it has never been inaccessible. Access to the land never stopped.

8.24. If this village green application fails, a lot of children will have nowhere to play, and that will be a very sad state of affairs. There are 300 houses going up in the village now, which is sad, because they are not needed. Local people have asked to use the application land for allotments. It certainly should be kept as a green space. If this land were built on children would only have a very small strip left to play on.

9. THE CASE FOR THE OBJECTOR – Evidence

9.1. ***Mr Nicholas Day*** said that he is the Parks and Open Spaces Manager of Braintree District Council. He has been in that post since November 2004, and is familiar with the application site land at Oxford Meadow.

9.2. To his knowledge the District Council had originally maintained the land to the south of 73 – 77 Oxford Meadow. They also maintained the play area at the eastern end of that land, near to the football field, but not the land on the application site to the west of the garages and No.77 Oxford Meadow (the 'north-western arm'). In June 2005 the District Council stopped maintaining the southern arm, nearer to the play area, and the Parish Council took over. Mr Day produced an email from the former Parks and Open Spaces Manager of the District Council relating to that.

9.3. The football field, to the east of the application site, has been leased to the local football club for many years, but used to be open for people to walk across. Mr Day recalled a fence being constructed around the field about 7 or 8 years ago, as he received a lot of complaints from adjoining owners. He had checked with the Council's Asset Management to see if the club were allowed to do this, and they said it had been authorised, as there had been trouble with dog fouling on the field. Although the land is leased to the football club, the District Council have always mowed the playing field under contract for the football club, and still do so.

9.4. The play area to the south-west of the playing field is owned by the District Council, and they have always maintained this. This is the play area that is within the extreme eastern end of the application site. That play area has recently been refurbished by the Council, in conjunction with Greenfields Community Housing Limited.

9.5. Mr Day confirmed that it was only the southern arm of the L-shape of the application site which the District Council's teams used to maintain. The area to the north-west was not maintained. He did not know if Sible Hedingham Parish Council had maintained that land to the north-west.

9.6. He produced some photographs taken in 2009, showing the fencing which had been erected around the football field. He confirmed that dog fouling had been a problem there, and that the football club had wished to stop that, and unauthorised users of that field.

9.7. The play area at the eastern tip of the application site had previously been refurbished shortly after November 2004. He produced a record showing that the work was in fact done in early summer 2005. Prior to 2005 the recreation area was not enclosed in the way it now is. All that was done in 2005 was the replacement of the play equipment. The present enclosure and equipment at that end of the site is new, from 2014, replacing the 2005 equipment. There were no fences until 2014. He confirmed that the 2014 work was partly funded by Greenfields Housing, who paid a £30,000 contribution. As for the 2004/5 revamp, the purchase of the equipment would have been through a capital programme, and part of the Council's overall budget. They would have to get three quotes for such work. Usually he would have the authority to authorise an order, and it would be checked by the Council's Procurement Department.

9.8. He explained what he understood about the signs which are currently to be seen around the play area. At least one of the photographed signs is of an early design which would have been there, he thought, since 2005. It is not attached to the new fencing. Another sign, in one of the photographs, was definitely part of the 2014 refurbishment. Then another of the signs on the site now looks like an intermediate one from between 2004 and 2014. It was more recent than 2005 but before the 2014 refurbishment. He thought it could have gone in at any time over the last 4 or 5 years. It is to a design which was introduced about 5 years ago. He acknowledged however that it could have been a sign from old stock which had been added when the work was done in 2014.

9.9. *To me* Mr Day confirmed that the signs around the play area were only intended to provide information to the users of the play equipment on that area (and therefore did not relate to the rest of the application site).

9.10. ***Mr Alan Mayle*** said that he has been employed by Braintree District Council since 1983, and is currently Building Control Service Manager with the Council. He produced information showing the dates of the final building certificates of some properties in the vicinity of Oxford Meadow. They were all on the road known as Friars Close, and all showed certificate dates in 1992. That was the last phase of the development which has been carried out to the west of the application site.

9.11. He also produced a new plan giving his estimate of the dates on which various pieces of development had happened in the general vicinity of the application site over the years. These were estimates based on the architectural style of the developments concerned, and various documents he had seen. His view was that most of the area closest to the application site and to the north-east of it had been developed in the 1960s. The area to the south-east had generally been developed in the 1970s, and the area to the west had been developed from the late 1980s to the early 1990s. The dates of some of the newer areas completed are in fact from computer entries kept by the Council showing when applications had been made, so they were from an actual record, rather than estimates.

9.12. The dates he had suggested for the original part of the development were something of a guess. It could have been from the 1950s or 1960s, based on

general knowledge, and building styles and materials. He was reasonably sure that the developed area to the south-east is from the 1970s.

9.13. ***Mrs Sarah Stockings*** said that she had been employed by Braintree District Council since 2005, and is currently the Property Law Manager with the District Council.

9.14. The application site was originally purchased by Halstead Rural District Council by a conveyance of April 1952. Prior to the purchase, a Valuation Office report indicated that the purpose of the purchase was for a housing site. Documents in the Council's records showed that by 1956 the Rural District Council had created the Oxford Meadow housing estate.

9.15. Mrs Stockings explained that she and colleagues had trawled through the deed packets retained by the Council. They had some difficulty initially finding documents relating to the period of ownership of Halstead Rural District Council, and the Objector, Braintree District Council, had now produced all that was available, for example on the matter of the civil defence hut. All of this involved a good two days' worth of searching through material, and she and colleagues had scoured the basement of the Council's premises to search for any more documents.

9.16. The records showed that there was a 1963 lease from the Rural District Council to Essex County Council for part of the western area of the application site, for a civil defence hut. However by 1968 the County Council had decided that the so-called Civil Defence Centre installed in that hut was surplus to requirements. It wanted the Rural District Council to accept a surrender of the lease, and indeed to pay the County Council for the value of the hut left there.

9.17. The plan associated with the civil defence hut lease showed that the area which had been leased in association with the hut was the area alongside No.77 Oxford Meadow. Mrs Stockings and the District Council's team had marked that area onto an annotated aerial photograph which also showed the boundaries of the present application site.

9.18. Various other documentation was produced from the records. Mrs Stockings reminded the Inquiry that Braintree District Council had come into existence in 1974, and it had inherited the property of the Halstead Rural District Council.

9.19. By a lease of June 1984 between the District Council and the Scout Association Trust Corporation, land to the east and north of the civil defence hut site was leased to the Scout Association for 21 years. The land leased to the Scouts extended westwards to the western boundary of the application site. In a northerly direction it did not reach up to the northern extremities of the present application site, but the northern boundary of the Scout lease land was significantly to the north of the northern boundary of the area that had been leased for the civil defence hut.

9.20. The relevant arm of the Scouts decided to surrender the lease of its area back to Braintree District Council in June 2005. The letter indicating that intention was

sent in February 2005. Mrs Stockings acknowledged that that took place several years after the Scouts had gone from the site in reality. She also pointed out that she herself had not been involved with any of this in 2005. However she became involved personally and professionally by 2007.

9.21. By 2007 she was in fact dealing with the transfer of the District Council's housing stock to the Greenfields Housing Association. There was an outside firm of solicitors acting for the District Council, but she herself was professionally involved as well. Large numbers of properties were transferred in those circumstances. Mrs Stockings produced a plan showing the areas of land around Oxford Meadow which were transferred to the Housing Association. The land constituting the bulk of the north-western arm of the L-shaped application site was not included in the transfer, as was clearly shown on that plan. The southern arm of the L was transferred to the Housing Association, as was the access road to the garages, which is included at the extreme northern end of the north-western arm of the present application site.

9.22. However, the play area at the extreme eastern end of the southern arm of the application site is now again the registered property of Braintree District Council. Mrs Stockings personally had been concerned with the transfer back to the District Council of that play area, and in fact in relation to several others of a similar character in the district. When then original stock transfer had taken place, there were a huge number of areas being transferred over, and numerous last minute changes. A number of play areas went over to the Housing Association, but it was later realised that Greenfields did not have the resources to maintain them, and the District Council had been maintaining them anyway. Mrs Stockings herself had not been involved in any of the discussion as to which recreation areas should be transferred back to the District Council.

9.23. Also in January 2014 the District Council entered into an agreement to transfer the land (within the application site) west of the garages and 77 Oxford Meadow, which land had been originally retained on the first transfer of housing stock, to Greenfields Community Housing Limited, requiring Greenfields to construct affordable housing on the site. After these transactions had taken place the only land remaining with the District Council on the application site was the land of the play area, transferred back to the District Council in 2010, as she had explained.

9.24. Mrs Stockings also produced some documentation relating to the Local Plans for the area. The land was not annotated or allocated for any specific purpose in the Local Plan of 1995. In particular it was not covered by allocations either for formal or informal recreation, unlike some other areas in Sible Hedingham. However in the 2005 Local Plan Review the eastern part of the southern arm of the application site, corresponding roughly to the current play area, was covered by an allocation for formal recreation, along with the football ground to its north-east. The large field towards the Parish Church, in common with a number of other areas, was allocated for informal recreation. Mrs Stockings herself had not been involved at all in the adoption of the Local Plan or its Review.

9.25. She explained the position in relation to the definitive map of rights of way. There is a public footpath running along the southern boundary of the southern arm of the

application site, and another public footpath running up the western boundary of the north-western arm of the site.

9.26. She produced documents dating from 1999, suggesting that the Scout hut was then in a dangerous condition and was due to be demolished, with a useful life of no more than 1 year. Documentation from 2000 showed that the civil defence hut had been demolished in July 1999, but still gave the Scout hut a useful life of 1 year. However another memorandum indicated that the Scout hut was in fact demolished in 2000. A memorandum of 2005 referred to the land being a cleared site, and said that a prefabricated building had now been removed.

9.27. A valuation carried out by the District Council for asset register purposes in 2010, in relation to the western arm of the application site, had valued it at £1 only, because no formal decision had been taken in relation to the sale of that asset, and it was not being positively marketed. It was therefore valued as amenity land only. It was noted however that there could be some potential for development of semi-detached houses on the site.

9.28. Other various records in relation to the land had been unearthed, through the search which had been undertaken for any relevant documentation. Mrs Stockings noted that in the 1990s the football club had been looking to improve its premises. The Scout huts by then had become dilapidated, and discussions had taken place as to whether the Scouts could relocate to the football field area. Indeed Lottery funding was sought for such a project. It seems however that this did not happen, presumably because funding could not be obtained.

9.29. The documentation relevant to those considerations did indicate that the Scouts had occupied both the area which had been formally leased to them and also the previous civil defence hut, even though no lease was ever completed on that particular property, and the Scouts never paid any rent on it.

9.30. Mrs Stockings reiterated that some documents from the Council's records would have been destroyed, so it should not be assumed that a complete record had been discovered of everything that had happened in relation to the application land and surrounding areas. Nevertheless she did search extensively for everything that was available.

9.31. That search had continued, and Mrs Stockings was able to produce a copy of a planning permission from July 1993 which had been granted for the erection of huts for use as Scout troop headquarters, adjacent to the civil defence hut on Oxford Meadow, Sible Hedingham. There was also a plan (even though it was rather difficult to read) associated with that application. That plan showed what was intended, but Mrs Stockings pointed out that neither she nor the District Council were sure whether the actual Scout hut as erected was precisely like that shown on the plan.

9.32. *In cross-examination* by Mrs Babbs, Mrs Stockings said that she was not personally aware of any fencing that had ever been on the site. She explained that the District Council's asset management file covering the years further into the

past had sadly been destroyed, and no-one in the Council's Asset Management Department now has personal knowledge of this site.

9.33. She acknowledged that there had been a reference in a 1952 covenant to fencing, but she did not have a lot of information about it. The conveyance provision had related to fencing along the southern boundary of the site, and she did not know why that fencing had never been carried out. She supposed that that conveyance could still be relevant, but she did not know whether there was anyone who would still be able to enforce it.

9.34. In relation to signs, she was not aware of any other signs that had ever been on the land other than those associated with the play area.

9.35. As far as the Scout hut was concerned, and the lease arrangements between the District Council and the Scouts, it was in reality up to the District Council and the Scouts at the end of the lease to agree what was a reasonable condition in which to leave the land. It was open to the District Council to accept the land back at a lesser standard than the lease might have implied. Mrs Stockings assumed that there was an arrangement between the District Council and the Scouts at the relevant time. A covenant in the Scouts' lease had only said that they had to maintain any fencing that was there on the site, not that they had to provide any fencing.

10. Submissions for the Objector

10.1. In submissions for the Objector produced before the Inquiry, it was pointed out that until November 2007 the Objector District Council had owned the freehold interest in the whole application site, whereupon it sold it to the Greenfields Community Housing Association. However, the area encompassing the present children's play area was retransferred to the Objector in 2010.

10.2. The Objector analysed the basis on which land may be registered as a town or village green under ***Section 15*** of the ***Commons Act 2006***, and the procedure by which such registration may be approached.

10.3. The onus of proof on such an application lies with the Applicant, and each qualifying element must be properly and strictly proved. The standard of proof is the normal civil standard, on the balance of probabilities.

10.4. The Registration Authority has no investigative duty in relation to town or village green applications so as to require it to find evidence or reformulate an applicant's case. The Registration Authority is entitled to deal with the application and the evidence as presented by the parties.

10.5. The Applicant must prove qualifying use of the application land for the whole of the relevant 20 year period. If the Registration Authority is not satisfied that there was qualifying use during all parts of the relevant 20 year period, the application must inevitably fail.

10.6. The Applicant does not hide the fact that the application here has been made in order to thwart the proposed development of the land concerned. The Objector's principal submission here is that the use of all of the application land has been 'by right' throughout the entire qualifying period. The ***Barkas*** case in the Supreme Court is highly relevant. It should be assumed by inference that the land here has been appropriated or lawfully allocated, in the sense discussed in that case, to public recreation. Such use of local authority land would be lawful, pursuant to either the ***Housing Act 1936*** etc,. or the ***Open Spaces Act 1906*** or the ***Public Health Act 1875***.

10.7. The relevant actions of the Objector Council which need to be considered under this heading include the designation of part of the site for recreation in the Braintree Local Plan, the maintenance of the site at the public expense, the installation of a children's play area on part of the land and the erection of signage in association with it, and the advertisement of the disposal of the land pursuant to ***Section 122*** of the ***Local Government Act 1972***. In other words the District Council held the land pursuant to a statute, the provisions of which were broad enough to encompass and enable the local authority to make the land available for recreational use, and the District Council clearly made the decision to use that land for recreational purposes.

10.8. In any event the land which was leased and occupied by the Scouts was clearly used permissively, and in accordance with the lease. It would not have been reasonable or legally possible for the District Council to oppose the use of the land by its own lessee.

10.9. Even if the Objector were wrong on that point, the fact that part of the application land was subject to a lease to the Scouts between 1984 and 2005 is relevant. Prescription should not run against the owner of a freehold interest whose land is tenanted, if the terms of the tenancy prevent the land owner from challenging trespassers, or if the landowner does not know of the trespass. Such use would effectively be secret as far as the owner of the freehold interest is concerned.

10.10. The children's playground area at the eastern end of the site was sold to the Housing Association in 2007 but reacquired in 2010. The obvious inference is that the Objector reacquired this facility and allocated it to public recreation in the ***Barkas*** sense. There is also a strong inference that the land had been acquired for the purposes of the ***Open Spaces Act*** or the ***Public Health Act 1875***, and this purpose was implicit in the acquisition.

10.11. The use of the land here which was not subject to the lease to the Scouts is impliedly permissive. The use of the site for sending children to playgroups being carried on there would not be a lawful sport of pastime. Scouting is not a lawful sport or pastime, it is an organised club for children. The use of motorised vehicles such as motorbikes on private land is not lawful.

10.12. Use that is more in the nature of a right of way, for instance that associated with a track or tracks, would also not qualify as a lawful sports and pastime, as a number of the reported cases have demonstrated.

10.13. Furthermore the requirement for use by a significant number of inhabitants has not been satisfied in this case. It is accepted that the term 'significant number' has never been defined, and does not necessarily mean a considerable or substantial number. Judicial authority suggests that it is a matter of impression rather than a mathematical exercise. Nevertheless the Applicant is put to strict proof that her application meets the significant number requirement, rather than there having been use by a very small number of immediately neighbouring people and children.

10.14. The Applicant must prove that it is more probable than not that the whole, as opposed to merely part, of the application site satisfies the statutory requirements for registration as a village green. The areas covered by the civil defence hut and the Scout hut, and a portacabin which appears to have been on the land, have clearly not been available for recreation while those structures were present.

10.15. In submissions during the course of the Inquiry it was suggested that the Objector District Council here provided the whole site for recreational use under ***Housing Act*** powers. There was of course the lease of part of the site to Essex County Council between 1963 and 1968, and then the lease of another part to the Scouts between 1984 and 2005. However that latter lease had excluded the area previously let to the County Council for the civil defence hut. The area of the old civil defence hut was never formally leased to the Scouts.

10.16. During the course of the Inquiry it was also acknowledged on behalf of the Objector that any objection was withdrawn based on the case of ***R (Mann) v Somerset County Council***. It was no longer argued that there was implied permission to use the whole of the application site based on such matters as the charging for admission to table top sales and the like organised by the Scouts. It was accepted that the evidence had been clear that local people could still access the land even while the Scouts had been carrying on activities like that, and that apart from the buildings themselves there had never been any fencing or obstruction to keep people off the rest of the open land.

10.17. In closing submissions on behalf of the Objector at the Inquiry, it was said that the first matter which needed to be dealt with comprehensively was the *"as of right"* test. The most important authority nowadays is the Supreme Court decision in the ***Barkas*** case. The Supreme Court had dealt with that case rather differently from how it was dealt with originally. The definition of *"appropriation"* has been broadened out by the Supreme Court from strict formal appropriation under ***Section 122*** of the ***Local Government Act 1972***.

10.18. It is clear from the Supreme Court that where a local authority lawfully sets aside land for recreation, people's use of that land is *"by right"*.

10.19. The ***Housing Acts*** are broad enough for a local authority to provide recreation land for local residents or the general public. So the structure of the analysis should be to ask first: for what statutory purpose did the relevant local authority acquire or hold land in the relevant period? In the ***Barkas*** case it was the ***Housing Act***. When the Supreme Court said that the ***Beresford*** case was wrong, Lord Carnwath

also referred to other relevant powers under which the land there was held. The decision says that the powers were very broad and did extend to recreation. Lord Carnwath thought that the land in that case could be used for recreation. Thus we have moved on and away from the ***Beresford*** idea of seeking a specific legal right to use the land in local people.

10.20. So the second question that can be asked is: were the statutory provisions under which the land was held broad enough to allow for recreational use by local people? The third question is whether or not by some action or decision of the authority there has been a formal appropriation, for example a formal minute related to the ***Open Spaces Act 1906***, or whether that was implicit in a decision, for example to open a public park or spend money on a public park. A decision like that would or might change the statute under which a piece of land was held. But if that sort of thing has not been done it is necessary to look at what Lord Carnwath said about appropriation in the ***Barkas*** case. Reference should be made to paragraph 73 of the ***Barkas*** judgment, and subsequent paragraphs. One sees that, in the documents referred to there, there had been no decision expressly appropriating or allocating the land concerned for recreation. It was simply noted along the way what the current use of the land was, and what the plans were.

10.21. One should also have regard to what Lord Neuberger said at paragraph 24 of ***Barkas***. In ***Barkas*** there had in fact been an allocation decision under the Housing Acts to allocate for recreation. So there was a statute which allowed for the provision of recreational facilities. In ***Beresford*** the New Town Corporation had had exceptionally wide powers to allocate the land for more or less anything that they thought appropriate.

10.22. From paragraph 5 of ***Barkas*** it can be seen that the statute there allowed for provision of recreation grounds, and more or less any facility which would serve a beneficial purpose in connection with the housing development. In ***Barkas*** Lord Carnwath did expressly agree with Lord Neuberger's analysis, as can be seen from paragraph 51. As for the express disapproval of the ***Beresford*** decision, even if Lord Neuberger did not agree with everything Lord Carnwath said, their other Lordships clearly all did, so that what Lord Carnwath has to say is binding as part of the decision.

10.23. Although Lord Carnwath in paragraph 66 of ***Barkas*** accepts that land in public ownership can be subject to the acquisition of village green rights, it is clear from paragraph 82 that he holds that inferences can be drawn as to the statutory powers under which land is held. The last part of paragraph 85 is particularly important. There Lord Carnwath agrees that one does not need a formal appropriation in order for land to be held for a recreational purpose. He agrees that there does not need to be a formal allocation or appropriation decision under the Act. Mr Wilmshurst for the Objector said that in his submission that only applies where the relevant Act contains a power wide enough to make such an allocation decision. In reality Lord Carnwath's approach to the matter ditches the whole allocation approach, and comes to a view based on 'implicit approval' of the purpose for which the land is being used. See for example paragraph 73.

10.24. So it can be said that there is a logical battleground as to the question: do we need a formal decision in order lawfully to allocate? That seems to be the position of Lord Neuberger. Or the alternative is the Carnwath approach. Paragraph 85 in Lord Carnwath's judgment suggests it is possible to draw an inference of implicit approval from, for example, officers' reports or the facts on the ground, or all the circumstances of a case. So each case will be very fact-specific, and there will be difficult cases on the borderline.

10.25. By way of recap, the first question to ask is: what is the formal statutory purpose for which land is held? The second question is: was that statute broad enough to include a power to provide for recreation? (as it was in both ***Barkas*** and ***Beresford***). The third question is: if the power is broad enough, has there been a lawful allocation, or decision taken so to allocate. There may be a fourth question as to whether that decision itself amounts to a formal or implicit appropriation to an entirely new statutory purpose. And then a fifth point might be Lord Carnwath's point, from his penultimate paragraph, where he seems to ditch all the decisions-based analysis, and refers to implicit approval and all the circumstances being relevant.

10.26. When one considers how to apply all these considerations to the present case, it does require the treating of different portions of the site in different ways. First there is what might be called the 'vertical' part of the L-shaped area of the site. That part itself is divided into a number of sub-areas. One might refer to the northern part as 'area A'. In fact some of that northern part is not even in the application site. That land had never been leased by the Council, and remained held under the ***Housing Act*** until its sale in 2007. That area clearly was acquired by the District Council's predecessor under the ***Housing Acts***.

10.27. Then there is an 'area B', which was not formally leased to the Scouts, but was leased to Essex County Council for a while for the civil defence hut and surrounding land. The first thing to be said about that area is that the footprint of the building was clearly not available for recreational use until the building was demolished in 1999. In reality it is not entirely clear where the buildings were on this land, but it is clear that there was a civil defence hut, and possibly another building to its left.

10.28. 'Area C' is the area which *was* leased to the Scouts, and where their new building seemed to go. It should be noted though in relation to area B that the District Council's records showed that, in respect of what had been the civil defence hut area, terms for a lease had been agreed between the District Council and the Scouts, but no lease was ever executed. In any event, in relation to both the civil defence hut and the later Scout building, the areas of those buildings clearly would need to be excluded from any possible designation under the ***Commons Act***. Logically one would exclude also the other footprint, to the west of the civil defence hut, because it is probable that was a structure too.

10.29. Since both areas B and C seem in reality to have been used and occupied by the Scouts, the logic would be to treat those similarly. Any use of the area actually leased to the Scouts, and logically use of the other area (B) just referred to, was clearly permissive under the lease, or the negotiations for a lease.

10.30. As far as area A is concerned, the District Council acknowledges that it has not maintained that area over the years. The Objector therefore can only rely on the penultimate paragraph of Lord Carnwath's judgment in ***Barkas*** for an inference, in all the circumstances of this case. It might be considered that there are other reasons why that land was provided by right. There was a clear connection with the other land to the south, and a lack of physical demarcation on the ground. Access was reserved to the Scouts over the accessway to the north, in order to get to the Scout lease land. Therefore it would be artificial to detach this land from the rest of the area concerned.

10.31. There is a further argument in relation to areas B and C, apart from the previous points. It can be said that by entering into the lease in relation to the Scout land, the land was allocated in effect for a use meeting the social needs of local people, like any other public facility. As for the civil defence land, it does not seem that the ***Housing Act*** provides any particular power to provide this. However ***Section 19*** of the ***Local Government (Miscellaneous Provisions) Act 1976*** includes a power enabling an authority to provide premises for the use of clubs or societies with athletic, social or recreational objects. It could be thought that there had been an implicit appropriation to the land being held for that sort of purpose.

10.32. Another question to ask is what happened when the Essex County Council civil defence lease came to an end. Did the land revert to housing use, or was the lease an implied appropriation to another purpose? The lease to the Scouts was in part within the qualifying period for the ***Commons Act***. There are fine distinctions to be drawn here.

10.33. It can also be questioned, by reference to the case of ***Williams v Sandy Lane (Chester) Limited*** [2006] EWCA Civ 1738 whether a ***Commons Act*** claim can be valid in respect of land which is leased to someone else, when the freehold owner was not able to do anything to deter trespassers on the land. In this case there was nothing in the Council's lease to the Scouts which enabled the District Council to intervene to prevent rights being accrued by local inhabitants. The Scout lease had no intervention provisions. So the question in this case would be what is meant by the District Council having knowledge of the matter. Would it mean that there needed to be knowledge of qualifying user by a significant number of people from the Civil Parish, or merely use by *some* local people? If it is the former, then at the time of the lease to the Scouts in 1985, the only developed areas in existence were the houses which had been built in the 1960s and 1970s, as identified on Mr Mayle's plan. So did the Council have knowledge of a significant number of people using the land before the Scouts' lease was granted? Alternatively one might have to conduct a discounting exercise, so that users who came from housing areas constructed after the Scout lease cannot generate a prescriptive right.

10.34. As for the bottom, more southerly section of the L-shaped application site, one must exclude the playground area. The remaining southern area was acquired for ***Housing Act*** purposes, and sold by the District Council in 2007. This land was never leased to anyone, and was continually maintained at public expense. It does also have a relation to the playground area at its eastern end. There was never any fencing around this land. So as far as the relevant period for this case is concerned

it was simply an area of grass provided by the Council, so as to encourage its use as an amenity or for recreation. There clearly is a power to provide recreation land under the ***Housing Acts***. The submission therefore is that that power includes more widely the making of land available to be used by the local inhabitants. Any decision taken in that respect, including decisions taken under delegated authority, should be assumed to have been lawful. As far as the southern part of the land is concerned, the District Council as Objector relies on the penultimate paragraph of Lord Carnwath's judgment. Appropriation or allocation decisions are not necessarily based on strict decision making.

10.35. As for the playground area, that was re-acquired in 2010, in company with a lot of other similar areas. The Council acquired it quite clearly so as to apply either ***Public Health Act 1875*** or ***Open Spaces Act 1906*** powers to these reacquisitions. Also there was public expenditure on the provision of the recreation equipment there, and the local plan allocations showed an allocation here for formal recreational use, which should be taken into account.

10.36. Also as far as the play area is concerned there plainly had been signage from at least the year 2005, which carried with it either express or implied permission to use that land.

10.37. The Applicant had now decided that this was a case to be based on the 'locality' of the Civil Parish of Sible Hedingham. There had in fact been no evidence to the Inquiry that that Civil Parish had been in existence for the entire 20 year period in a substantially unchanged manner. If the Registration Authority were minded to approve this application then further opportunity should be given for the Applicant to provide evidence to that effect.

10.38. As to the use made by the claimed users, the Objector's submission is that that use was overwhelmingly in the nature of a right of way, rather than as a destination village green. Of the three witnesses called for the Applicant, Mr Church was clear that he had used the land as a short cut to the village centre, and also said that children use the land as a route to or from school. He agreed that the majority of people would use the land to get to or from the village or the shops. It was also clear from his evidence that the northern part of the land had sometimes been used for car parking.

10.39. Mrs Flegg also said that land had been used for car parking for weddings and funerals. She said that the area covered by the Scout lease, being flat, was more suitable for ball games than the southern part of the land. She referred to herself doing circular walks, both nowadays and in her younger years. She also referred to a rope swing attached to a tree.

10.40. The positions of both Mrs Flegg's and Mrs Babbs's houses should be noted. They are very close to the application land, and not representative of other witnesses, including those who had just filled in questionnaires. These particular people can observe their own children on the land, unlike others in the locality. Thus it could be said that Mrs Babbs and Mrs Flegg are fortunate, but unusual and unrepresentative.

10.41. The witnesses had said that this is an elderly area. When one looks at the evidence questionnaires as to why people say they had been on the land, it is obvious that this is true, because time and time again people say that they use the land to get to somewhere else. It is reasonable to infer that this is the prime use of the land.

10.42. It should also be noted that using a route recreationally can, it has clearly been established, give rise to a public right of way. Therefore it should be inferred that people have been walking through this land in a way referable to the public right of way; it is not possible to have a satisfactory walk just on this land.

10.43. As to the question whether there has been use by a significant number of the inhabitants of the locality, this depends on discounting uses of the land which were not for lawful sports and pastimes. It is legitimate to have reference to the size of the locality selected by the Applicant. The locality eventually selected by the Applicant here is very large indeed.

10.44. Yet what we see is a small group of children, living in the immediate vicinity of this land, using the land perhaps with some degree of frequency. That sort of situation does not mean that the land should become a town or village green. Three or four children playing may well appear to fill this small space. And that is a view one might take if one were making the assumption that all of the evidence on the Applicant's side had been entirely truthful. In reality just a few people from the immediate surroundings using this small piece of land should not justify its registration as a town or village green.

10.45. Reference was made to the case of ***Powell v Secretary of State for the Environment*** [2014] EWHC 4009 (Admin). This was a decision of Mr Justice Dove in a public right of way case. It related to an Order extinguishing a public right of way, but never executed so as to appear on the definitive map. Paragraph 36 of the judgment is relied on. One has to consider how the use would have appeared to the owner of the land. There is no further test.

10.46. In this case there was an insufficient spread of use by people from throughout the claimed locality. Where there is an insufficient spread of use from the whole locality, as here, the quantitative and qualitative requirements of the 'significant number of the inhabitants of the locality' test are not met. On the basis of the Applicant's approach here, users from far away from the application site, but still within Sible Hedingham, would be given a right based on what had clearly, from the evidence, been no previous use by them of the land. Commons Act cases are not the assertion of a public right, but the assertion of a right on behalf of the inhabitants of a particular identified locality (or neighbourhood).

10.47. In his closing submissions, Mr Wilmshurst for the Objector made reference to the report of an Inspector (Mr Alan Evans of Counsel) in to a town or village green application in the Borough of Kirklees in West Yorkshire, on the question of the need for a spread of users within the relevant locality or neighbourhood. However he (Mr Wilmshurst) did not have a copy of that report with him at the Inquiry, and undertook, with the agreement of the Applicant, to provide a copy to me and to the Registration Authority (and to the Applicant) immediately after the Inquiry, identifying the paragraphs which were said to be relevant. The Applicant would

also be given a chance to comment on this report, and whatever points were said to arise from it.

10.48. That arrangement was duly followed, and I and the Registration Authority and Mrs Babbs were provided with copies of the report in question, and told that the paragraphs of the report which were relevant were those between paragraph 126 and 134.

10.49. In those paragraphs the Inspector concerned took the view that the application in that case should fail, as well as having failed on other grounds, on the basis that the applicant's evidence had shown insufficient evidence of geographical spread of users throughout the neighbourhood chosen by the applicant as the qualifying area for the application. That approach is entirely adopted by the Objector in the present case.

10.50. I should add that, although the Applicant Mrs Babbs was given the opportunity to comment on that Inspector's Report, and the paragraphs stated by the Objector to be relevant in support of its case, Mrs Babbs informed the Registration Authority that she did not wish to make any further comments in relation to the document.

11. DISCUSSION AND RECOMMENDATION

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

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

The application in this case was stamped as received by the Registration Authority on 25th April 2013. This therefore is the date which would normally be taken as the one on which the application was 'made'.

11.2. The date on which the application is made is important because it is the *"time of the application"* from which the *"period of at least 20 years"* has to be measured backwards for the purposes of ***subsection 15(2)***. The relevant period of 20 years in this case is thus that between 25th April 1993 and 25th April 2013.

The Facts

11.3. In this case the dispute over questions of fact, especially in terms of the oral evidence which was given at the Inquiry, was not in the event particularly extensive.

11.4. The Objector (Braintree District Council) however quite reasonably took the line that it must be carefully questioned whether the evidence produced or called by the Applicant really did meet the statutory criteria or tests prescribed by the wording of ***subsection 15(2)***.

11.5. To the extent that there were material differences, or questions over points of fact, the legal position is quite clear that these must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the evidence available – and bearing in mind the point, canvassed at the inquiry itself, that more weight will generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements, questionnaires and the like, which have not been subjected to any such opportunity of challenge.

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

"Locality"* or *"Neighbourhood within a locality"

11.7. I have already, much earlier in this Report (in Section 2), noted the point that the application form in this case showed that the Applicant had had (unsurprisingly) a less than clear appreciation of what the law envisages by the terms *"locality"* and *"neighbourhood within a locality"*. However, following discussion at the Inquiry, and with no objection from the Objector, the Applicant was given the opportunity to consider whether she wished to put forward a relevant *"neighbourhood"* whose boundaries were more appropriate to what is required than the distinctly arbitrary ones (defined to a significant extent by the edges of a large scale local map extract which happened to be available at the time) shown on the plan accompanying the application.

11.8. Having taken that opportunity, the Applicant took the decision, which she then indicated she intended to 'stick to', that she wished to have her application considered by reference to use of the land by the inhabitants of the *"locality"* of the Civil Parish of Sible Hedingham as a whole. She did not wish to have her case considered by reference to some smaller, identified 'neighbourhood' within that Civil Parish.

11.9. The Civil Parish of Sible Hedingham is certainly, in principle, an area capable of meeting the tests which the courts have laid down for being regarded as a 'locality'. It was clear from documents which were made available as part of the

evidence that it has been in existence for considerably longer than the 20 year period particularly relevant to this determination.

11.10. In spite of some hypothetical comments made on behalf of the Objector, it did not seem to me from the evidence available that there was the slightest basis for thinking that it was likely that the boundaries of the Civil Parish might have been materially altered during that 20 year period. Therefore, in my judgment, considering the application by reference to the 'locality' of Sible Hedingham Civil Parish is entirely open to the Registration Authority, indeed what is required in the circumstances of this case.

11.11. It is not for me at this point to make any observations as to the wisdom, or otherwise, on the part of the Applicant in choosing such a relatively large area, a significant number of whose inhabitants were claimed to have indulged in 'lawful sports and pastimes' on the land of the application site.

"A significant number of the inhabitants of the locality"

11.12. Case law in this field makes it clear that 'a significant number' does not necessarily mean a large number, or any particular defined proportion of the inhabitants of the locality (or neighbourhood) concerned. But it has to be a number, and a level of use, sufficient to get it across to a reasonably observant landowner that a general right to use the land is being asserted on behalf of the inhabitants, rather than there being (for example) incidents of trespass by a small number of individuals.

11.13. It is in reality quite difficult to apply such considerations to a composite area such as this application site, consisting of open unfenced ground, which it seems was deliberately left open when first a council housing estate, and later other housing, was developed around it. This is the more so when both arms of the 'L' shaped area have unfenced public footpaths running along their edges, and the southern arm is bounded on its north by another, surfaced footpath running alongside (and providing access to) part of the Oxford Meadow housing.

11.14. I mention these points now because, when deciding whether significant numbers of the relevant inhabitants have used the land for 'lawful sports and pastimes', one has (it seems to me) to discount all those who would have been using this land essentially as a route of passage, or to get to and from their houses, perhaps deviating to a greater or lesser degree from the footpath routes which they were essentially following.

11.15. In this instance it is perhaps particularly unfortunate that only three witnesses (including the Applicant herself) were called to give oral evidence in support of the application; and of those three only one (Mrs Flegg) had in fact been familiar with the land throughout the whole relevant 20 year period. Clearly it has to be accepted that it will be difficult for many people to come and give oral evidence at an Inquiry sitting during the working day, although it is my understanding that no request was made in this case for an evening sitting to be held, for example.

11.16. I do have regard to the fact that the Applicant obtained and submitted a considerable number (over 100) of completed evidence questionnaires from local people, but in a contested case they do not have the same status and weight as evidence from witnesses whose evidence can be tested and cross-examined. In any event the evidence questionnaires (all of which I examined) tend to confirm that the principal activity claimed by many local people was to walk across the land (sometimes with a dog).

11.17. Turning to the evidence which was able to be heard, and challenged, the witness Mr Church said he had used this land mainly as a 'short cut' when walking to or from other places in the village, and further that *"the majority of people use this [land] as a walk through"*.

11.18. It seemed clear from Mrs Flegg's evidence that her own main use of the land over the years had been as part (and often a rather small part) of one or other regular walking 'circuits' that she would follow.

11.19. In fairness, both Mr Church and Mrs Flegg did also give evidence about children (including Mrs Flegg's own grandchildren) playing on the land, and that was also the main theme of what Mrs Babbs had to say as a witness. I do not find it at all difficult to accept that Mrs Babbs's children (or Mrs Flegg's grandchildren), and a number of their very local friends, would have played reasonably regularly on the open ground of the application land, situated as it is, more or less right outside their homes.

11.20. I can also accept from the evidence given that some children from the local secondary school might from time to time congregate for a short period (in good weather) over their lunch break to eat their packed lunches, or fish and chips, towards the extreme eastern end of this site (around the small recreation/play area). The evidence overall however (even given the small number of witnesses) did give the strong impression that any such use of the application site by children had been very significantly less before the 'football field' was fenced, around 2006/7.

11.21. The Registration Authority does, it seems to me, need to bear in mind the principle that it is an important matter, potentially of great significance to a landowner, that his or its land should be registered as a town or village green. Although the standard of proof in these cases is the civil one of the balance of probabilities, it is clearly necessary that an adequate amount of convincing evidence be provided, in order to tip that balance in favour of registration.

11.22. In this case, I bear in mind that the Applicant quite deliberately chose (eventually) to frame her application in terms of use by the inhabitants of the locality of Sible Hedingham as a whole. Although I was not given a great deal of statistical information by either side, it was self-evident that Sible Hedingham is a large village, with many sizeable 20th century housing estates (as well as a wealth of more traditional buildings in some parts of the village). It is difficult in this context to see that the Applicant's case, as presented to the Inquiry, showed that anything approaching a 'significant number' of the inhabitants of that locality had made any material use of this land for 'lawful sports and pastimes', during the 20 year period required.

11.23. Even if the Applicant had sought to identify (as in my view she would have been more sensible to) a smaller 'neighbourhood' within this north-western part of Sible Hedingham, she would in my judgment have had some difficulty with establishing on the evidence she called that a significant number of the relevant residents had with any regularity used this land for 'lawful sports and pastimes'. Her evidence might well suggest (and does to my mind) that a significant number of people in the north western part of Sible Hedingham do fairly regularly follow walking routes along or across this land – which more or less correspond to the footpaths and footways on the land, or minor deviations from them. But that in my judgment does not help her case in terms of the statutory requirements of the ***Commons Act***.

11.24. I entirely accept that ***some*** children from the immediate vicinity will have played regularly on this land; indeed it would be surprising if they had not. But the Applicant has simply failed, in my judgment, to establish through evidence that anything close to a significant number of the inhabitants of Sible Hedingham have, with any kind of regularity, indulged in 'lawful sports and pastimes' there.

11.25. I reach this conclusion without even having needed to broach the somewhat vexed question (raised on behalf of the Objector) as to whether an applicant must show a sufficient geographical 'spread' of claimed users throughout the locality (or neighbourhood) concerned, in order for a claim to succeed.

11.26. Judicial authority on this point does not (it seems to me) lead very clearly in any particular direction on it. I have some reservations about the fairness of, or justification for, an approach which might in some cases arbitrarily 'catch out' lay applicants, acting perhaps without any specialist legal advice. To such applicants it may be far from obvious what might be the legal significance and ramifications of the choice of 'locality' or 'neighbourhood within a locality' in respect of which to make a claim, and the 'guidance' on the standard application form used in these cases is (in my view) of very little assistance to applicants in this regard. Clearly the users of any potential town or village green are always likely to come in greatest numbers from the houses closest to the claimed green. It must be a matter of judgment in each case whether usage has been sufficiently wide and general to constitute general use by then people of a 'neighbourhood' or (when relevant) 'locality'.

11.27. However, as I have noted above, in this particular instance the Applicant's case has not in my judgment met the statutory criteria in terms of 'significant number'. As will be seen, however, that is by no means the only respect in which I have concluded that the statutory criteria are not met in this case.

"Lawful sports and pastimes"

11.28. In reality most of what I need to say under this sub-heading has already been said under the previous one. The evidence overall has led me to conclude that, during the relevant period, the principal use by local people of this application site has been for various routes of passage on foot, more or less on the lines of the footpath routes on the land. There has also been use of the various versions of the fixed

recreation equipment (more recently enclosed as a small fenced play area) at the extreme eastern end of the site.

11.29. There has been use, during part of the period, by a local Scout group, and use of part of the north-western limb of the site for the parking of vehicles associated with services of various kinds at the Parish Church to the west; and also perhaps for the parking of a piece of grounds maintenance equipment.

11.30. For reasons which are either self-evident, or are ones I have already discussed, or will do later, none of the activities I have just listed consist of 'lawful sports and pastimes as of right'. Clearly, as I have acknowledged above, there has been *some* 'as of right' (i.e., without permission) use of this land by local children for games, etc., but not enough (in my judgment) to 'register' as use by a significant number of the inhabitants of Sible Hedingham.

11.31. And in particular (as discussed above), the fairly extensive use of this land for walking across it to get to places, or as part of a walk, has in my judgment had more the character of use as a route of passage, with minor deviations, than of lawful sports and pastimes 'on the land'. Therefore this aspect of the statutory criteria is also failed by the current application, in my view.

"On the land"

11.32. Under this sub-heading I intend to consider the point that this L-shaped piece of land in reality contains a considerable number of sub-areas, whose histories are materially different in a number of respects.

11.33. First, at the extreme northern end of the north-western limb of the 'L', the Applicant included in the application site (whether she intended to or not) a significant part of the vehicular access route to the block of garages situated to the east of that part of the site. Clearly it made no sense that that land should have been included in the application site, and in fairness the Applicant did not at the Inquiry suggest otherwise.

11.34. To the south of that is a part of the site, mainly grassy in its current state, which has never been let to the Scouts, or for a civil defence hut, or anything else. That is part of an area on which I accept (in the way I have discussed above) on the evidence that ***some*** lawful sports and pastimes probably have been indulged in with reasonable regularity by a small number of very local children, but which was also subject to the occasional (but regular) parking of vehicles connected with the church (and possibly also some grounds maintenance equipment).

11.35. To the south of that area is the area (forming the remainder of the north-west arm of the 'L'), is the area which, at least for part of the relevant period, was occupied by the local Scout group. About three quarters of that area was occupied pursuant to a formal lease to the Scouts, from 1984, and the other quarter (where the old civil defence hut was situated) was also occupied by the Scouts, following discussions with the District Council which never led to a formal lease of that part.

11.36. It seems clear from documentary evidence which the District Council were able to unearth that the Scouts were still in occupation of 'their' area and buildings until 1997, though further documentary records show that by 1999 the state of the building(s) was so poor that they were having to hire alternative premises elsewhere. The evidence then suggested that some element of the buildings was removed about 1999/2000 – but nevertheless some credibly dated photographs from July 2002 appeared to show that a structure looking like a portacabin was still on the 'Scout land' at that time. There remain some concrete bases on the site, apparently corresponding to the Scouts' own building and the old civil defence hut, and also another concrete base to the west. No one present at the Inquiry knew what purpose the latter base had originally served.

11.37. Clearly the sites formerly occupied (during at least part of the relevant period) by the two huts used by the Scouts cannot be capable of registration under the ***Commons Act***. It is not however impossible in principle, given the current state of the law, for the open area around the former huts, which the evidence showed had never been fenced off, to be 'eligible' for registration, if the evidence otherwise suggested this, even though most of this land was nominally occupied by the Scouts under their lease. This is because the evidence suggested that the Scouts were not present for much of the time, and even when they were present – e.g., having occasional overnight camps, or table top sales – it was possible for local people still to pass through the area unimpeded.

11.38. However, as I have indicated above, I am not satisfied on the totality of the evidence that local people (and in particular children) did in reality use this land for lawful sports and pastimes to a sufficient extent to constitute as of right use by a significant number of Sible Hedingham inhabitants.

11.39. The fact that adults on their walks, or dog walks, could still pass by, or through, even while the Scouts were engaged in their activities, does not in my view support a claim for a 'lawful sports and pastimes' use by those adults. This is because those activities were more referable (in my judgment) to the footpath routes passing through or alongside both main arms of this L-shaped site.

11.40. The southern arm of the site, apart from the small play area at its eastern end, has a noticeably more uniform appearance than the rest of the site. It seems clear from the evidence that it was always – at least from well before the relevant 20 year period – regarded and maintained as an amenity area associated with the nearby housing estate. Because of its nature and location, and from the evidence provided, I have no doubt that it will have been used from time to time by (at least) very local children for recreational purposes. However it was noticeable that even the witnesses on the Applicant's side took the view that this area was used significantly less for recreational purposes than was the flatter area in the north-west arm of the 'L'. The evidence suggested that use of this southern arm was more popular only in a cold winter, when snow made the sloping ground more attractive.

11.41. In general then, this southern arm is part of the area to which my overall conclusion applies, that the Applicant has simply failed to produce convincing

evidence of 'lawful sports and pastimes' use by a significant number of Sible Hedingham inhabitants.

11.42. Finally, under this sub-heading, I consider the small play area at the extreme eastern end of the site. It was clear from the evidence of Mr Day for the District Council that this area had only existed in the form in which I saw it since early 2014, i.e., a time outside the 20 year period which I am principally considering. The low fencing around the ground dates from the 2014 refurbishment.

11.43. In spite of the its having been unfenced until then, there is in my view no doubt on the evidence that a small play area, with appropriate equipment, was provided at that location by the District Council from at least as far back as 2004/5, and very probably before that. While I have little doubt that this play area will have been used for 'lawful sports and pastimes', in particular by younger children, the statutory criteria have not been met on that land for other reasons, which I shall discuss shortly.

"For a period of at least 20 years"

11.44. I would observe that, from the papers originally lodged with the Registration Authority by both sides of this matter, there was some lack of clarify as to the dates, both within and without the main relevant 20 year period, at which various changes had taken place in respect of the use or status of the component parts of this application site.

11.45. Thanks in large part to the extensive 'trawl' through the District Council's documentary records by that Council's witnesses, in particular Mrs Stockings, the position has been made noticeably clearer in many respects, and appropriate recognition is due for that.

11.46. In reality there is little that remains to say under this sub-heading relating to the 20 year period (April 1993 – April 2013). I have already indicated that I was not persuaded (on the balance of probabilities) that there had been 'lawful sports and pastimes' use of any part of the application site (except possibly the small recreation ground area) by a significant number of Sible Hedingham inhabitants for the requisite period of 20 years.

11.47. I am, as I have indicated above, satisfied from the evidence that *some* Sible Hedingham inhabitants (particularly some children living very close by), will have made *some* reasonably regular lawful sports and pastimes use of parts of the land during the 20 years. But that is not, in my judgment on the evidence, sufficient to meet the statutory criteria under ***Section 15*** of the ***Commons Act***.

"As of right"

11.48. Extensive reference was made, in the submissions on behalf of the Objector, to the judgment of the Supreme Court in the fairly recent case of ***R (Barkas) v North Yorkshire County Council*** [2014] UKSC 31. This was entirely appropriate, as

'Barkas' is clearly the leading case on what might be called the interaction between ***Section 15*** of the ***Commons Act*** and land owned by public authorities, in particular local authorities.

11.49. All practitioners in this field have had to familiarise themselves with the totality of what their Lordships had to say in ***Barkas***. Without detracting from the importance of considering the whole judgment, I would summarise matters by saying that what seems to me to be the key principle to emerge from ***Barkas*** is that, where a local authority has deliberately provided a piece of open land for local people to enjoy and use recreationally (including informal recreation), then the actual use of that land by those people will not be *"as of right"*, which implies something trespassory about the use. It will be 'with (implied) permission', or possibly 'by right', and will not support a claim for registration made under the ***Commons Act***.

11.50. This will be the case most strongly where evidence indicates that the land had been formally acquired or appropriated for some public recreational purpose, such as a recreation ground (as in ***Barkas*** itself), a park or a public open space. But the same principle will apply where the evidence suggests that the local authority has intentionally allocated or committed the land to local public recreation, whether or not a formal 'appropriation' to such purpose can be identified or inferred.

11.51. But on the other hand, it is still clear that local authority owned open land has no general exemption as such from ***Section 15*** of the ***Commons Act***.

11.52. With those considerations in mind, it is clear in my view that the (small) part of the application site which has been made available as a specifically provided 'play area' within the statutory 20 year period cannot be registered as 'town or village green', as use of it by the public (including local people) has been permitted, or 'by right'.

11.53. As for the entire remainder of the southern 'limb' of the application site, it seems clear by inference that it was deliberately set aside and provided by the District Council's predecessor as an open area of amenity land, associated with the immediately adjacent council housing estate built (apparently) in the 1950s. It certainly was the case, from the evidence which I received, that the District Council regularly maintained this land for amenity purposes, during most of the period of its ownership of the land (and then passed the task on, by agreement, to Sible Hedingham Parish Council).

11.54. There has been no suggestion that the land was deliberately and formally provided as a 'recreation ground', in the way that the land in ***Barkas*** had been. Indeed laying out land as a 'recreation ground' within a housing estate seems to require some formal step to be undertaken, as had been done in ***Barkas***.

11.55. However local housing authorities have long had the power, in laying out housing estates, to provide 'open spaces' in association with the housing. This is currently to be found in ***Section 13*** of the ***Housing Act 1985***, but it is my understanding that an effectively identical provision had existed for many previous decades, under earlier versions of the Housing Acts.

11.56. I mention this because in the Inspector's Report in a (town or village green) case at Chickenley Dewsbury [Borough of Kirklees, West Yorkshire] which counsel for the Objector introduced during his closing submissions, there is a discussion of this very point, by reference to one of the earlier versions of the housing legislation.

11.57. In that case, which was heard and decided several years before the Supreme Court judgment in ***Barkas***, the Inspector (Mr Alan Evans, of counsel) took the view (notably at paragraph 124) that the power to lay out 'open spaces' on housing land, under what is now ***Section 13*** of the ***Housing Act 1985***, did ***not*** imply the giving of any right or permission to local people actually to use such open spaces for recreational enjoyment. He contrasted this with the provision of 'recreation grounds' under what is now ***Section 12*** of the ***1985 Act***, which ***does*** give such rights or permission.

11.58. I have to express some considerable doubt as to whether now, in the light of the Supreme Court's judgment in ***Barkas***, that view expressed there in 2011 by the Inspector can still be right. It seems to me that the deliberate provision of an 'open space' on land held and provided for housing purposes, does not imply merely leaving a plot or patch of land un-built on, but implies an 'open space' [even if not a ***1906 Act*** *"Open Space"*, or a more formal (and usually larger) "*recreation ground"*] which has been intentionally provided for amenity and informal recreational use by local people. In such circumstances, in the light of the ***Barkas*** judgments, I cannot see that local people using that 'open space' land for 'lawful sports and pastimes' would have been trespassers, vis a vis the District Council or its predecessor, who (it can be reasonably inferred) deliberately provided this land for their amenity and use.

11.59. Thus, even if I had concluded, on the evidence, that a significant number of Sible Hedingham inhabitants had, for the requisite period, indulged openly in 'lawful sports and pastimes' on this particular part of the land (as opposed to just passing through it while walking somewhere, as discussed above), I would have been inclined to conclude that their presence on the land had been 'by right', or 'by permission', not 'as of right'.

11.60. The positon as to the north-western 'limb' of the application site is somewhat different. It seemed clear from the evidence that the District Council had never regularly maintained that area as a piece of amenity land, or 'open space', during its period as owner.

11.61. I have already reached the conclusion that the parts actually occupied by 'huts' or buildings during any part of the relevant 20 year period are clearly incapable of being registered as 'town or village green'. Use by the Scouts themselves of the land which they occupied, either under a formal lease or *de facto*, cannot in my view be 'as of right' use, as against the District Council as owner.

11.62. It would in my view be theoretically possible, especially in the light of the Supreme Court's decision in ***R (Lewis) v Redcar & Cleveland Borough Council*** [2010] UKSC 11, for a claim based on 'lawful sports and pastimes' use by local people to be engendered on the open land around the Scouts' huts, if there had

been mutual 'give and take', with neither the Scouts' nor local people's use interfering with each other.

11.63. However, I have already concluded that the evidence submitted and called for the Applicant was not sufficient to convince me (on the balance of probabilities) that there actually had been 'lawful sports and pastimes use' here, over the full 20 year period, by a significant number of the inhabitants of the locality of Sible Hedingham.

11.64. I reached the same conclusion on the further patch of open ground lying to the north of the area which was occupied by the Scouts. And the surfaced access road to the block of garages should never sensibly in my view have been included in the application site in the first place; as noted above, the Applicant at the Inquiry gave the strong impression that she agreed with this view. There was certainly no evidence that would have justified its registration under the ***Commons Act***.

11.65. Thus, looking at the north western 'limb' of the site as a whole, although it is not so clear as elsewhere on the site that any recreational 'sports and pastimes' use by local people would have been 'by right', or with permission, there was still insufficient convincing evidence that use meeting the statutory criteria had taken place, to the extent and for the duration required.

11.66. Thus my overall conclusion for the site as a whole is that no part of it merits registration as 'town or village green'. Before making my formal recommendation however, there is one further matter I should mention.

11.67. At the Inquiry very brief, passing mention was made of the fact that judgment was expected from the Supreme Court reasonably soon in the yet further 'town or village green' case of ***R (Newhaven Port and Properties Ltd) v East Sussex County Council***. That judgment has indeed been issued and published during the final days of my work on this Report, as [2015] UKSC 7.

11.68. I have needed to familiarise myself with it for professional reasons unrelated to this present Report. However I would express the view that in my opinion nothing in that judgment, important though it is, has any material bearing on any of the conclusions I have reached in this present Report. Accordingly it is not in my view necessary to ask the parties to this present case to put forward further arguments or submissions based on the ***Newhaven*** decision.

Final Conclusion and Recommendation

11.69. In the light of all that I have explained and set out under the previous sub-headings in this section of my Report, my conclusion is that on the evidence I have received, together with the submissions and arguments of the parties, registration as a town or village green is not justified, because the criteria in ***Section 15(2)*** of the ***Commons Act 2006*** are not met, for the reasons which I have given.

11.70. Accordingly my recommendation to the County Council as Registration Authority is that ***no part*** of the application site here should be added to the Register of Town or Village Greens under ***Section 15*** of the ***Commons Act 2006***.

ALUN ALESBURY
9th March 2015

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

APPENDIX I

APPEARANCES AT THE INQUIRY

FOR THE APPLICANT:

Mrs Lisa Babbs (the Applicant)

She gave evidence herself, and called:

Mr David Church, of 9 Castle Meadow, Sible Hedingham

Mrs Shirley Flegg, of 25 Castle Meadow, Sible Hedingham

FOR THE OBJECTOR:

Mr Paul Wilmshurst - Counsel
- Instructed by Mrs Sarah Stockings, Braintree District Council

He called:

Mr Nicholas Day, Parks and Open Spaces Manager, Braintree District Council

Mr Alan Mayle, Building Control Service Officer, Braintree District Council

Mrs Sarah Stockings, Property Law Manager, Braintree District Council

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY

N.B. This (intentionally fairly brief) list does not include the original application and supporting documentation, the original objections, or any material submitted by the parties or others prior to the issue of Directions for the Inquiry. It also excludes the material produced in the prepared, paginated bundles of documents produced for the purpose of the Inquiry on behalf of the Applicant and Objector, and provided to the Registration Authority (and me) as complete bundles.

FOR THE APPLICANT

No additional documents at the Inquiry

[Post-Inquiry] Email of 23 January 2015 from Mrs Babbs, indicating that she wished to make no further comments in relation to 'Village Green' Report re site at Chickenley, Dewsbury, West Yorkshire

FOR THE OBJECTOR (Braintree District Council)

Plan showing estimated completion dates of nearby housing estates.

Photographs of 'Play Area' signs

Planning Permission (10/9/1993) for Scout Huts

Bundle of Additional Information containing:

Extract of Braintree District Local Plan Adopted 1995

Extract of Braintree District Local Plan Review – Adopted Plan July 2005

Extract of Public Rights of Way Definitive Plan with legend

Plan No. 76A annexed to housing stock Transfer of 12 November 2007, with land transferred to Greenfields edged red, land previously sold coloured green and retained open spaces coloured blue

Pages 1 & 2 of Official Copy of Title No. EX865557

TP1 Transfer dated 23 June 2010 made between Greenfields Community Housing limited (1) and Braintree District Council (2) in respect of the play area.

Braintree District Council Valuation Report for Asset Register Purposes 31.3.1999

Braintree District Council Valuation Report for Asset Register Purposes 14.11.2000

Braintree District Council Valuation – Valuation and Estates Section – Property Record and Valuation Sheet – 24.3.2000

Braintree District Council Valuation Report for Asset Register Purposes – 10.3.2005

Braintree District Council Valuation Report for Asset Register Purposes – 31.3.2010

Extract of Halstead Area Housing Committee Minutes 1985/1986

Further Extract of Halstead Area Housing Committee Minutes 1985/1986

Extract of Finance and Land Committee Minutes 1985/1986

Extract of Finance and Land Committee Minutes 1986/1987

Extract from Halstead Area Housing Committee 1986/1987

Report to Land and Development Sub-Committee of 11.10.1990

Extract of Minute from the Land and Development Sub-Committee 11.10.1990

Information as to delegated decisions to Finance and Land Committee 5.2.1992

Information as to delegated decisions to Finance and Land Committee 14.5.1992

Extract from Minutes of Finance and Land Committee 14.5.1992 endorsing action re Football Ground, Oxford Meadow

Report to the Halstead Area Housing and Community Committee 12.5.1997 re Sible Hedingham Football Club and Scout Group

Extract from Minutes of Halstead Area Housing and Community Committee 12.5.1997

Report to the Halstead Area Housing and Community Committee 25.2.1999

Draft Minutes of Halstead Area Housing and Community Committee 25.2.1999

Minutes of Finance and Land Committee 1.4.1999

Halstead Local Committee Agenda 31.7.2007 including report re Lease of Hedingham

C

United Football Club Ground at Oxford Meadow

Extracts of correspondence from Asset Management Sible Hedingham Football Club file 30.8.1990 – 19.7.2007

[Post-Inquiry] Inspector's Report on 'Village Green' application at Chickenley, Dewsbury, West Yorkshire (2011), and covering note from the (present) Objector's Counsel, headed 'The Objector's Case on "Spread" '.

AGENDA ITEM 7a

DR/17/15

Committee DEVELOPMENT & REGULATION

Date 22nd May 2015

INFORMATION ITEM
Applications, Enforcement and Appeals Statistics

Report by Director of Operations, Environment & Economy

Enquiries to Robyn Chad – tel: 03330 136 811
or email: robyn.chad@essex.gov.uk

1. PURPOSE OF THE ITEM

To update Members with relevant information on planning applications, appeals and enforcements, as at the end of the previous month, plus other background information as may be requested by Committee.

BACKGROUND INFORMATION

None.

Ref: P/DM/Robyn Chad/

MEMBER NOTIFICATION

Countywide.

SCHEDULE

Major Planning Applications

Nº. Pending at the end of March	**14**
Nº. Decisions issued in April	**4**
Nº. Decisions issued this financial year	**4**
Overall % in 13 weeks or in 16 weeks for EIA applications or applications agreed within the extensions of time this financial year (target 60%)	**100%**
Nº. Delegated Decisions issued in April	**0**
Nº. Section 106 Agreements pending at the end of April	**0**

Minor Applications

% of minor applications in 8 weeks this financial year (Target 70%)	**80%**
Nº. Pending at the end of March	**12**
Nº. Decisions issued in April	**5**
Nº. Decisions issued this financial year	**5**
Nº. Delegated Decisions issued in April	**5**

All Applications

Nº. Delegated Decisions issued in April	**5**
Nº. Committee determined applications issued in April	**4**
Nº. of Submission of Details dealt with this financial year	**23**
Nº. of Submission of Details pending at the end of April	**117**
Nº. of referrals to Secretary of State under delegated powers in April	**0**

Appeals

Nº. of appeals outstanding at end of April	**1**

Enforcement

Nº. of active cases at end of last quarter	**24**
Nº. of cases cleared last quarter	**15**
Nº. of enforcement notices issued in April	**0**
Nº. of breach of condition notices issued in April	**0**
Nº. of planning contravention notices issued in April	**0**
Nº. of Temporary Stop Notices issued in April	**0**
Nº. of Stop Notices issued in April	**0**