Development and Regulation Committee

10:30	Friday, 23 November 2012	Committee Room 1, County Hall

Quorum: 3

Membership:

Councillor Nigel Edey	Chairman
Councillor Bill Dick	Vice-Chairman
Councillor R Boyce	
Councillor M Garnett	
Councillor T Higgins	
Councillor S Hillier	
Councillor G McEwen	
Councillor M Miller	
Councillor D Morris	
Councillor R Pearson	
Councillor I Pummell	
Councillor J Reeves	

For information about the meeting please ask for:
Matthew Waldie, Committee Officer
Telephone: 01245 430565
Email: matthew.waldie@essex.gov.uk

Essex County Council

Essex County Council and Committees Information

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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 Committee Officer to report receipt (if any)	
2	**Minutes** To approve as a correct record the Minutes of the Development and Regulation Committee held on Friday 26 October 2012.	**7 - 12**
3	**Declarations of Interest** To note any declarations of interest to be made by Members	
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	**Park Farm** The winning and working of sand and gravel and associated dry screen processing plant, temporary storage of minerals and soils and associated infrastructure. In addition backfilling of the void with soils and overburden arising from the development of mixed uses (Ref. 09/01314/EIA) on land adjacent to the mineral working. Location: Land to the South of Park Farm, Springfield, Chelmsford. Ref: ESS/21/12/CHL **DR4112**	**13 - 62**
6	**County Council Development**	
6a	**Castle View School** The erection and use of a hammer cage and associated landscaping (part retrospective) - Enforcement of Planning Control. Location: Castle View School, Foksville Road, Canvey Island, Essex, SS8 7AZ. Ref: CC/CPT/36/12 **DR4212**	**63 - 84**
7	**Village Green**	

7a	**Wethersfield Way** Application to register land known as The Green, Wethersfield Way, Wickford, Essex (in the parish of Shotgate) as a town or village green. **DR4312**	**85 - 124**
7b	**Kent View Road** Application to register land known as Kent View Road recreation ground, Kent View Road, Vange, Basildon as a town or village green. **DR4412**	**125 - 204**
8	**Enforcement Update**	
8a	**Weald Place Farm** Enforcement Notice Issued for a material change of use has taken place without planning permission from what appears to be agricultural land to land used for the deposition of waste soils and builder's rubble, substantially raising the land levels. Location: Land at Weald Place Farm, Duck Lane, Thornwood, Epping, CM16 6NE. **DR4512**	**205 - 208**
9	**Appeal Update**	
9a	**Coronation Nursery** Proposal: Construction of a 'wet' anaerobic digestion plant including combined heat and power plant with ancillary equipment. Location: Coronation Nursery, Hoe Lane, Nazeing, Essex, EN9 2RN. ECC Reference: ESS/26/11/EPF (Planning Inspectorate Reference: APP/Z1585/A/12/2173919). **DR4612**	**209 - 224**
9b	**Maple River** Use of the site as a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles. Proposed associated development to include the erection of a workshop, modular building, weighbridge and 6m high boundary fencing (part-retrospective). Location: Unit 7, Maple River Industrial Estate, River Way, Harlow, Essex, CM20 2DP. ECC Reference: ESS/52/11/HLW (Planning Inspectorate Reference: APP/Z1585/A/12/2173892).	**225 - 242**

DR4712

10 Information Items

10a Statistics November 2012 **243 - 246**

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. **DR4812**

11 Date of Next Meeting

To note that the next meeting will be held on Friday 14 December 2012.

12 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.

13 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.

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 26 OCTOBER 2012

Present

Cllr N Edey (Chairman)
Cllr R Boyce
Cllr W Dick
Cllr M Garnett
Cllr T Higgins
Cllr S Hillier
Cllr G McEwen
Cllr M Miller
Cllr D Morris
Cllr I Pummell
Cllr J Reeves

1. Apologies and Substitution Notices

Apologies were received from Cllr R Pearson.

2. Minutes

The Minutes and Addendum of the Committee held on 24 August 2012 were agreed and signed by the Chairman.

3. Matters Arising

There were no matters arising.

4. Declarations of Interest

Councillor Theresa Higgins declared a non-pecuniary interest in Agenda Item 5b as a Member of Colchester Borough Council.

5. Identification of Items Involving Public Speaking

The persons identified to speak in accordance with the procedure were identified for the following item:

The erection and use of a hammer cage and associated landscaping (part retrospective)
Location: Castle View School, Foksville Road, Canvey Island, Essex, SS8 7AZ
Ref: CC/CPT/36/12

Public speakers: Mrs Sally Collins speaking for

Local Member: Cllr Brian Wood.

Minerals and Waste

6. Castle View School

The Committee considered report DR/36/12 by the Head of Environmental Planning.

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

The Committee was advised that the proposal was for the erection and use of the hammer cage and associated landscaping on the site.

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
- Impact on Residential Amenity
- Landscape and Visual Impact
- Flood Risk.

In accordance with the protocol on public speaking, Mrs Sally Collins was offered the opportunity to speak but declined.

The Committee was addressed by local Member, Cllr Brian Wood, who tabled some photographs of the site.

Cllr Wood said:

- The nearest bungalow to the cage is totally dominated by the cage, which is three metres higher than the bungalow
- A new 2-storey house has had its view of Hadleigh Castle obscured
- The outlook from the bungalow at the junction of the roads is filled by the cage
- The impact of the proposed new trees will be to block out even more light from the nearby houses
- The previous cage was sited at the north end of the playing field, in a non-residential area
- The case for the health and safety considerations cited for not moving the cage to another part of the field was very weak.

A number of concerns were raised by Members.

Members discussed the installation noting, in particular, the location, use and visual impact.

The resolution was moved, seconded and following a vote of five in favour and six against, a 2nd resolution to refuse planning permission was moved, seconded and following a vote of six in favour, five against, it was:

Resolved

That planning permission be refused for the following reasons:

That the structure is of an overbearing and oppressive nature and is detrimental to the visual amenity.

In accordance with the Committee Protocol, it was agreed Officers present a report to the next meeting setting out appropriate advice as to the clarity and reasonableness of the reasons put forward for refusal of the application and a plan for appropriate enforcement action, if necessary.

7. Queen Boudica School

The Committee considered report DR/37/12 by the Head of Environmental Planning.

The Committee was advised that the proposal was to extend the accommodation and facilities of the school, as part of the expansion of school roll to 420 places.

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
- Design & Renewable Energy
- Impact on Playing Field Provision
- Highway Impacts.

In response to a question raised by Members it was noted that

- The playing field area would not be used by the general public, but purely by the school, within school hours.

Members also noted that, if the proposal is granted by Members, contrary to the Sports England Objection, the decision will need to be referred to the Secretary of State, who has 21 days to determine if he wants to call in the decision,

The resolution was moved, seconded and unanimously agreed and

Resolved:

That subject to the Secretary of State not wishing to call-in the application for his own determination, planning permission be **granted** pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992, 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.

2. The development hereby permitted shall be carried out in accordance with the details of the application dated 05 September 2012, together with drawing numbers: 01 (location plan); 02 (existing site plan); 102 (proposed site plan (overall)); 103 (proposed site plan); 104 (site and contractor access) REV.A;200 (GA plan); 400 (Elevation proposed); 402 (sections); 500 (3D views and sections); 501 (3D cutaway) all dated July 2012; BCE/3995/PH01 (REV.B) phasing plan; BCE/3995/PH02 (REV.B) phasing plan. Also the Design and Access statement dated 05 September 2012, the construction timetable dated 01 May 2012, the site methodology statement from Donovan Steward at 20:53 on 10 October 2012, the Ecological Survey Report dated July 2007, the Entomological Survey of Turner Village, Colchester dated March 2008 and the letter from MLM Consulting regarding an updated Ecological Assessment dated 03 September 2012. Also the Archaeological Field Evaluation ref 66960 dated August 2007, the Site and proposed trench location dated 10 August 2008, the Phase II geo-environmental assessment report dated 22 August 2012, the flood risk statement dated 13 August 2012, the contents of the Primary School places in Colchester developed in 2011 and The Queen Boudica Primary School Travel Plan dated summer 2012, the pre-consultation feedback responses dated 11 July 2012 and the letter from Sport England dated 07 August 2012.

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 only be constructed during the following times:

07:00 to 18:30 hours Monday to Friday

07:00 to 13:00 hours Saturdays

and at no other times, including no other times on Sundays, Bank or Public Holidays.

4. No works or development shall take place beyond the installation of a damp proof membrane until details, colours and materials samples to be used for the external appearance of the building have been submitted to and approved in writing by the County Planning Authority. The details shall include the materials, colours and finishes to be used on all buildings and fences. The development shall be implemented in accordance with the approved details.

5. No works or development shall take place until a landscape scheme has been submitted to and approved by the County Planning Authority. The scheme shall include details of areas to be planted with species, sizes, spacing, protection and programme of implementation. The scheme shall also include details of any existing trees and hedgerows with details of any trees and/or hedgerows to be retained and measures for their protection during the period of construction of the development. The scheme shall be implemented within the first available planting season (October to March inclusive) following commencement of the development hereby permitted in accordance with the approved details.

6. Any tree or shrub forming part of a landscaping scheme approved in connection with the development 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.

Minerals and Waste Development

8. Minerals and Waste Site Monitoring Protocol

The Committee considered report DR/38/12 by the Head of Environmental Planning.

The Committee was advised that the proposal was to set out a Minerals and Waste Site Monitoring Protocol that covers both 'chargeable' and 'non-chargeable' minerals and waste sites taking into account best practice and changes to legislation.

Details of the proposed protocol were set out in the report.

In response to comments, concerns and questions raised by Members it was noted that:

- The fees (currently £288 for active sites and £96 for inactive sites) were under review and were likely to rise to £331 and £110 in the near future. These rates were fixed by the Regulations.
- The regulations are aimed at planning conditions, rather than the nature of the waste itself, so Bradwell was included in the list, as were the civic amenity sites
- The list attached to the papers dated from March 2011; an updated list would be used.

Having noted the proposed protocol, the Committee **Endorsed** the methodology for chargeable and non-chargeable site monitoring for mineral and waste sites in Essex, as set out in the paper.

Information Items

9. Enforcement Update 2012 (July-September)

The Committee considered report DR/39/12, Enforcement Matters for the period 1 July to 30 September 2012 by the Head of Environmental Planning.

The Committee **NOTED** the report.

10. Statistics

The Committee considered report DR/40/12,Applications, Enforcement and Appeals Statisitics, as at end September 2012, by the Head of Environmental Planning.

The Committee **NOTED** the report

11. Date and Time of Next Meeting

The Committee noted that the next meeting will be held on Friday 23 November 2012 at 10.30am in Committee Room 1.

Before closing the meeting, the Chairman informed Members that Tony Sullivan, Enforcement Officer, Minerals and Waste Planning, will be retiring shortly, and his replacement will be joining the Department in December. The Committee wished him well for the future.

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

AGENDA ITEM .....5a.....

DR/41/12

committee DEVELOPMENT & REGULATION

date 23 November 2012

MINERALS AND WASTE DEVELOPMENT

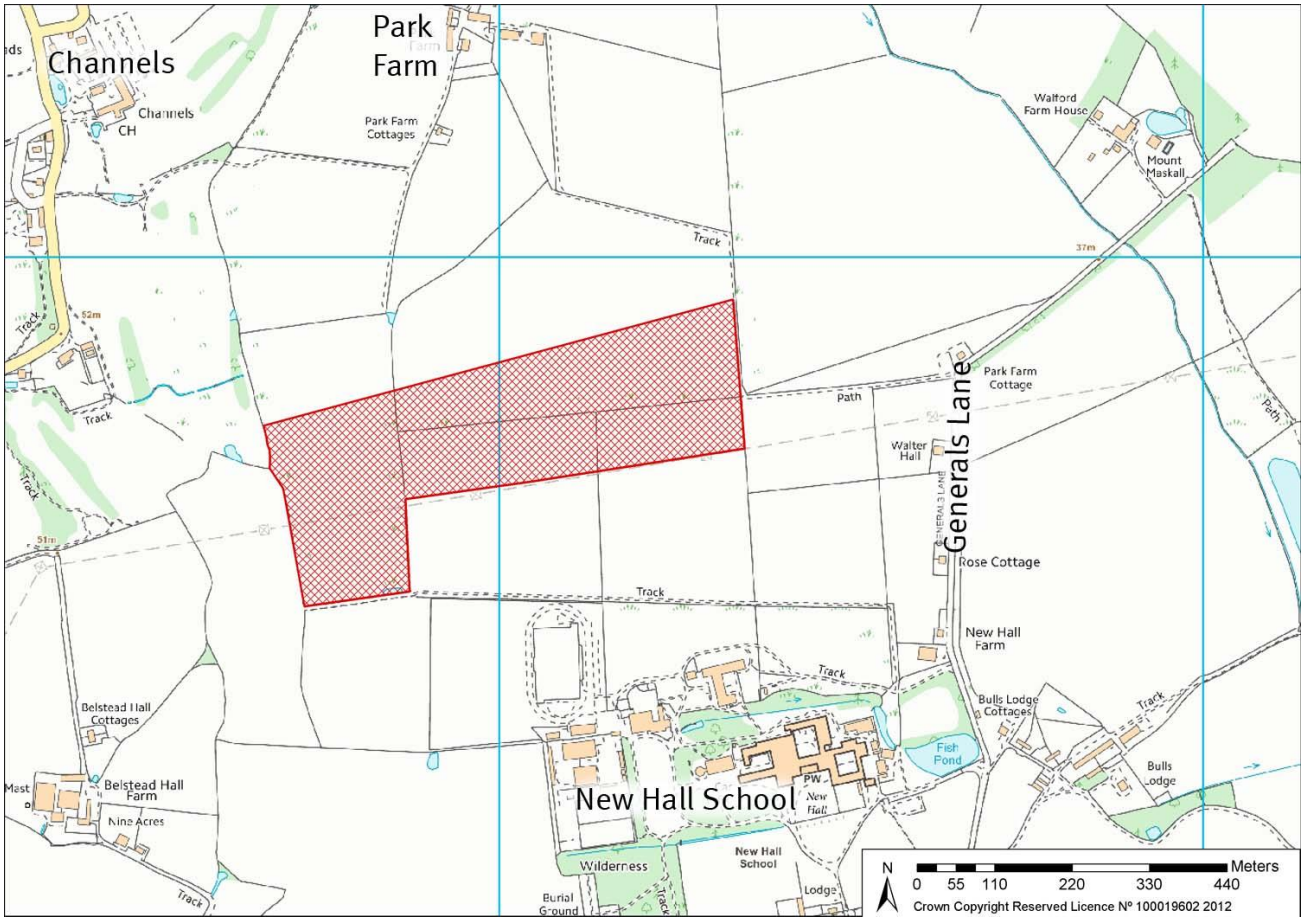
Proposal: **The winning and working of sand and gravel and associated dry screen processing plant, temporary storage of minerals and soils and associated infrastructure. In addition backfilling of the void with soils and overburden arising from the development of mixed uses (Ref. 09/01314/EIA) on land adjacent to the mineral working.**

Location: **Land to the South of Park Farm, Springfield, Chelmsford.**

Ref: **ESS/21/12/CHL**

Report by Head of Environmental Planning

Enquiries to: Claire Tomalin Tel: 01245 437541



1. BACKGROUND AND SITE HISTORY

The principle of mineral extraction has already been established through the grant of planning CHL/1890/87 in June 1990. This mineral reserve is currently permitted to be worked as part of the Bulls Lodge Quarry, but is not phased to be worked for a number of years. The application site is within the Chelmsford Borough Local Development Framework - North Chelmsford Area Action Plan identified for mixed use development. This application has been brought forward to ensure the mineral reserve is worked prior to the development of land as part of the mixed use development i.e. the Greater Beaulieu Park (GBP) development currently subject of an application to Chelmsford City Council (Ref. 09/01314/EIA). To the west of the site planning permission has already been resolved to be granted by Chelmsford City Council for residential and leisure use on land north and south of Belsteads Farm and Channels Golf Club.

The proposals were subject to a request for an EIA Screening Opinion (Ref ESS/61/10/CHL and an EIA Scoping Opinion (ref ESS/48/11/CHL/SPO)

2. SITE

The site is located north east side of Chelmsford, approximately 800m from the urban edge (existing Beaulieu Park) of Chelmsford. The land is currently in agricultural use and is made up of parts of three fields, divided by hedgerows. The nearest properties are New Hall School (Listed Building and Registered park & garden), the school boundary at approx 70m at the closest point, the nearest school building at 300m to the south east, which includes residential properties for staff and accommodation for boarding pupils. In addition there are properties along Generals Lane to east, the closest being Park Farm Cottages at 300m and Walter Hall at 270m and Park Farm at 490m to the north and Belstead Hall Cottages and Belstead Hall Farm 380m and 350m respectively to the south west. Abutting on the north west corner of the site lies Channels Golf Club and 600m to the west north west lies Falcon Bowling and Social Club.

The application site is wholly located within the adopted Chelmsford Borough Local Development Framework - North Chelmsford Area Action Plan area; the majority of the site is within site allocation 11 – Land north of the new road and part within Site Allocation 8 – Land North of New Hall School. To the west of the site lies Site Allocation 6 - Land north and south of Belsteads Farm Lane and Channels Golf Club.

There is public footpath Springfield No. 4 which lies to the south of the site and forms part of the Centenary Circle Trail around Chelmsford. An electricity power lines crosses, the southern part of the site, but no pylons are within the site.

The site lies within Springfield Parish, but lies adjacent to 3 other Parish Councils, Boreham, Broomfield and Little Waltham.

3. PROPOSAL

The proposal is to work 325,000 tonnes (203,000m^3) of sand and gravel over a 2 -

3 year period. The sand and gravel would be dry screened using a mobile screening plant. The plant would be located below natural ground levels, after the initial excavation of overburdens to make a void.

The sand and gravel would be utilised in the construction of the adjacent GBP development, such that would be no need for sand and gravel to be exported via the public highway. Vehicle movements to and from the public highway would be limited to staff and plant. Access from the site to the GBP development would be in the lower south east corner of the site via a haul road and access for staff and plant to the public highway would be controlled by the planning permission for GBP development (Chelmsford Borough Council Ref. 09/01314/EIA).

The site would be worked in 13 phases working in an east to west direction. The base of the sand and gravel and the thickness of the seam ranges significantly across the site from 4.7m to 16.5m below ground, the thickness ranging from 0.4m to 8.4m. Approximately 30% of the sand and gravel is saturated with water; such the site would require to be dewatered to allow extraction below the water table. The water would be discharged to the west to a settlement pond forming part of the drainage system for the GBP development.

Soils and overburden would be stored on the south side of the site which dual as screening bunds. These bunds rise up to 5 m above natural ground levels.

It is proposed to use soils and overburden generated by the adjacent GBP development to partially infill the mineral void approximately 131,000m^3, bringing the site levels to existing natural ground levels in the south east of site and then sloping down towards the south, the Radial Distributor Road part of the GBP development to be located 3m below natural ground levels and then dropping to 6m below ground levels, such that it would in the future tie in with the low level restoration of Bulls Lodge Quarry. The applicant anticipates that sufficient material would have been generated by 2016 from the GBP development.

The northern edge of the site would be restored at the time Bulls Lodge Quarry completes its extraction to the north of the application site.

The applicant has proposed that the while it is anticipated that the extraction would take 2 to 3 years and restoration with backfilling complete in the fourth year, due a range of factors that could influence the programme of development of the GBP development (and therefore the rate at which mineral would be used and backfill materials generated) and the uncertainty as to when Bull Lodge Quarry operators extraction and restoration to the north would be completed, a period of 8 years has been proposed to complete the extraction and restoration.

The application is accompanied by an Environmental Statement submitted under the EIA Regulations 2011.

4. POLICIES

The following policies of the:

- Regional Spatial Strategy for the East of England, adopted May 2008 and

Submission Revised Regional Spatial Strategy (sRSS) for the East of England (sRRS) submitted 2010,

- Essex and Southend on Sea Replacement Structure Plan (RSP), adopted 2001 (saved policies September 2007),
- Minerals Local Plan, adopted 1997 (saved policies September 2007)
- Essex and Southend Waste Local Plan (WLP), adopted 2001 (saved policies September 2007)
- Chelmsford Borough Development Framework 2001-2021 Core Strategy and Development Control Policies (CBDF - CSDC) the adopted Feb 2008
- The North Chelmsford Area Action Plan adopted July 2011

provide the development plan framework for this application. The following policies are of relevance to this application:

5.

	sRSS	RSP	MLP	WLP	CCBDF-CSDC
Achieving Sustainable Development	SS1				CP1
Strategic and Regional Road Networks	T6				
Landscape Conservation	ENV2		MLP13	W10E	
Biodiversity and Earth Heritage	ENV3		MLP13	W10E	
Agriculture, Land and Soils	ENV4				
The Historic Environment	ENV6		MLP13	W10E	
Ground water protection	WAT3		MLP13	W4B	
Flood Risk Management	WAT4				
Regional aggregates supply	M1		MLP1		
Sterilisation & safeguarding of Mineral Sites		MIN4			
Mineral working at preferred sites			MLP2		
Preferred methods of access to highway network			MLP3 MLP13	W4C	DC6
Restoration and aftercare			MLP8		
Feasible & timely restoration scheme			MLP9	W10 C	
Location of processing plant			MLP10		
Environmental Standards			MLP13	W10E	
Sustainable waste management				W3A	
Protection of water environment				W4A	CP10
Protection of groundwater				W4B	
Landfill on non-preferred sites				W9B	
Conditions & legal agreements				W10A	
Hours of operation				W10F	
Protect & enhance Rights of Way				W10 H	
Securing Sustainable Development					CP1
The Borough-Wide Spatial Strategy					CP2
Protection of Historic Environment					CP9

Minimising Environmental Impact					CP13
Environmental Quality and Landscape Character					CP14
Development in the Countryside					DC2
Protection of amenity					DC4
Health Impact Assessments					DC8
Biodiversity					DC13
Listed Buildings					DC18
Registered Parks and Gardens					DC20
Archaeology					DC21
Amenity & pollution					DC29
Traffic Management					DC41

It is noted that the Localism Act includes a Government commitment to revoke Regional Plans. Until the Regional Spatial Strategy for the East of England has been revoked, it remains part of the development plan. However, the Government's intention to revoke the plan is a material consideration in planning decisions.

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.

Paragraph 214 of the National Planning Policy Framework (NPPF) states that for 12 months from the day of publication, decision-takers may continue to give full weight to relevant policies adopted since 2004 (i.e. Development plan documents adopted in accordance with the Planning & Compulsory Purchase Act 2004 or published in the London Plan) even if there is a limited degree of conflict with the Framework.

It is considered that the Chelmsford Borough Development Framework 2001-2021 Core Strategy and Development Control Policies (adopted Feb 2008) and The North Chelmsford Area Action Plan (adopted July 2011) fall within the meaning of paragraph 214 and should be given full weight even if there is a limited degree of conflict with the Framework.

Paragraph 215 of the NPPF states, in summary, that due weight should be given to relevant policies in existing plans and for 12 months following publication of the NPPF, according to their degree of consistency with the Framework. The level of consistency of the policies contained within the Essex & Southend-On-Sea Structure Plan, Minerals Local Plan and the Essex and Southend Waste Local Plan is considered at **Appendix 1**.

6. CONSULTATIONS

CHELMSFORD CITY COUNCIL – No objection, subject to planning conditions, requiring mitigation as set out in the Environmental Statement, full details of the restoration programme, including that restoration levels are capable of accommodating the Radial Distributor Road (forming part of the GBP development) and the levels marry with the restoration levels of Bulls Lodge Quarry.

Further that the applicant should be asked to demonstrate that the GBP development, would generate enough surplus material in the infill the void to the proposed restoration levels.

Comment: Additional information was submitted to demonstrate that would be adequate material generated within the GBP development to achieve the proposed restoration levels.

ENVIRONMENT AGENCY: No objection subject to imposition of conditions to address the following matters:

- Groundwater – Due to potential for dewatering to impact upon private groundwater abstraction points, groundwater monitoring is required both prior to dewatering, during operations and post restoration. Preferably monitoring also undertaken at private abstraction points to establish pre-extraction conditions;
- Flood risk – Flood risk mitigation measures described in the Flood Risk Assessment should be secured by condition;
- Scheme for removal of suspended solids from surface water run-off

NATURAL ENGLAND: No objection, subject to conditions to

- ensure proposed mitigation with respect to protected species is in accordance with that proposed in the ES;
- protect the soil resource, in terms of soil handling , storage and afteruse.

ESSEX WILDLIFE TRUST: No comments received.

ENGLISH HERITAGE: No objection, subject to the application being considered in the context of the mixed use development 09/01314/EIA due to the setting of New Hall grade 1 Listed Building.

NATIONAL GRID: No comments received.

NATIONAL PLANNING CASEWORK UNIT: No comments.

CPRE: No comments received.

CHELMSFORD BOROUGH RAMBLERS ASSOCIATION: No comments received

HIGHWAY AUTHORITY – No objection, subject to conditions to:

- ensure the made up ground over which the Radial Distributor Road associated with application Ref 09/01314/EIA being dealt with by CCC is backfilled with appropriate material and compacted to finished levels to support the new RDR design requirements;
- The schedule of work and timescales shall be carried out to accommodate the infrastructure delivery plan set out in the proposal of application ref. 09/01314/EIA.

HIGHWAY AUTHORITY (Public Rights of Way) – No objection, as the route of the public right of way is not directly affected. Protection and future enhancement

would be delivered through the GBP development.

COUNTY COUNCIL'S NOISE CONSULTANT – No objection, consider that the proposed development is unlikely to result in adverse impact, due largely to the separation distances. Consider it would be appropriate to impose maximum noise limits for nearby properties and require monitoring as necessary to demonstrate compliance.

PLACE SERVICES (Ecology) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS – No objection. Comments that the ES relies upon ecological mitigation provided within the ES of the GBP development ES, the mitigation should have been presented within the ES for this development, in particular with respect loss of 50m hedge protection of veteran trees. Essential mitigation proposed within the GBP development is secured as part of these proposals. Welcomes the potential for Biodiversity off-setting.

PLACE SERVICES (Landscape) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS – Raises concern that the landscape and visual assessment does not appear to have assessed the impact of the workings on all the adjacent properties. Screening is not provided on all the boundaries of New Hall School, particularly that adjacent to the playing fields.

PLACE SERVICES (Archaeology) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS – No objection. The ES has identified a number of archaeological sites will require excavation and recording secured through appropriate conditions.

PLACE SERVICES (Historic Buildings) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS – No objection. Mineral extraction and the wider development are undesirable in the context of a Tudor palace at New Hall and its former parkland, the ES and mitigation are appropriate response in the circumstances.

SPRINGFIELD PARISH COUNCIL – No comments received.

LITTLE WALTHAM PARISH COUNCIL (adjacent) – No comments received.

BOREHAM PARISH COUNCIL (adjacent) – No objection.

BROOMFIELD PARISH COUNCIL (adjacent) – No comments received.

LOCAL MEMBER – CHELMSFORD – Springfield: No objection.
LOCAL MEMBER – CHELMSFORD – Broomfield & Writtle (adjacent): Any comments received will be reported.
LOCAL MEMBER – CHELMSFORD – Chelmer (adjacent): Any comments received will be reported.

7. REPRESENTATIONS

No properties lie within 250m of the boundary and therefore no properties were directly notified of the application. No letters of representation have been received as a result of site or press notices.

8. APPRAISAL

The key issues for consideration are:

A Need & Principle of the Development
B Relationship With Mixed Use Development And Legal Agreements
C Landscape and visual Impact
D Impact on Residential & Local Amenity – air quality, dust and noise
E Ground & Surface Water
F Ecology
G Historic Environment
H Traffic and Highways
I Agriculture and Soils
J Public Rights Of Way
K Phasing, Reinstatement/Restoration & Timescale

A NEED & PRINCIPLE OF THE DEVELOPMENT

The application site already has an extant planning permission for sand and gravel extraction (Ref: CHL/1890/87). At that time the site was a preferred site in the Minerals Subject Plan (Adopted 1991) and the reserves within the site form part of the Landbank of sand and gravel for Essex. Therefore the principle of mineral extraction is already accepted and established and therefore the proposals are in accordance with M1 and MLP2.

The application site also lies within Site Allocations 8 and 11 of the adopted North Chelmsford Area Action Plan (NCAAP)(which allocates the land for mixed use development). At the preparation stage for this document it was highlighted that it was essential that the mineral within the site should be worked prior to the mixed use development to prevent its sterilisation. This was accepted by all parties, landowner, mineral owner, District and County Council, to ensure it's conformity with MIN4 of the Replacement Structure Plan and protect the permitted mineral reserves of Essex. Under the existing mineral permission CHL/1890/87 the mineral is not phased to be worked for a number of years, beyond the timescale for the mixed use development. A Statement of Common Ground was submitted to the Examination In Public with respect to NCAAP, with agreement that an application to work this area for minerals prior to the mixed use development would be made; hence the current application has been submitted. The application meets the requirements of the North Chelmsford Area Action Plan which requires prior extraction and is in accordance with MLP policy MIN4.

The current application also proposes the partial infilling of the void created by mineral extraction to enable the levels to be blended with the adjacent unworked land to the south and ensure the Radial Distributor Road forming part of the mixed use development was not required to have unnecessary slopes. The inert waste to infill the void would utilise overburdens and soils generated by the excavations required as a result of the adjacent mixed use development. The site would be restored to pre-existing ground levels in the southern half of the site, the northern half would be restored at 3m below natural ground levels and utilised to locate the

Radial Distributor Road for the GBP development and remainder dropping to 6m below existing ground levels, such that in the future it would tie with the low level restoration of Bulls Lodge Quarry.

WLP policy W9B seeks to minimise landfilling and landraising for it's own sake, the amount of landfilling permitted only being that necessary and essential to achieve satisfactory restoration. It is considered that while low-level restoration had been proposed under the original restoration scheme permitted under CHL/1890/87, this was appropriate with respect to agricultural restoration, but due to its proposed afteruse for mixed development, including the radial distributer road the proposed partial reinstatement of levels is necessary. It is therefore considered the proposals accord with W9B. In addition by utilising waste overburdens and subsoils from the adjacent site, it avoids the need for this material to be disposed of elsewhere and the associated HGV movements. It is therefore considered that the development is considered to be sustainable development as set out in NPPF meeting the economic role, by assisting in providing infrastructure, while ensuring extraction of a valuable mineral resource, the social role helping to deliver housing and environmental role finding a sustainable use for waste materials arising from the development.

The sand and gravel would be processed through a mobile dry screen plant to be located within the void; this is conformity with MLP policy MLP10 which seeks to locate primary processing plant within the mineral extraction site. Mineral at Bulls Lodge Quarry is currently processed through a wet screen process, while this ensures the best use of the quality of the material, there is nothing to prevent sand and gravel being exported direct from the Bulls Lodge Quarry without processing, such that while the current proposals would not result it the most beneficial processing and maximising of value of the mineral resource than if it had been processed through the Bulls Lodge Quarry Plant, it has to be recognised that this could have happen even if worked as a phase of Bulls Lodge Quarry rather than separately. In addition because this section of reserve is being worked in isolation of the bigger reserve in Park Farm, it is economically unviable to establish either a haul road or conveyor to Bulls Lodge Quarry processing plant and transportation by road would have increased road miles. On site wet processing would require disposal of silt which could potentially lead to instability in the restored land which would be subject to built development, therefore dry screening is considered acceptable in the circumstances.

The dry screened minerals are proposed to be used in the construction of the mixed use development, reducing the amount of mineral requiring to be imported to the GBP development and reducing the number of vehicle movements associated with both export of the processed mineral.

It is therefore considered that the use of dry screening accords with MLP policy MLP10 and is sustainable in that it is meets the NPPF economic role by co-ordinating development requirements and the environmental role by using natural resources prudently.

While the principle of the development is accepted it is necessary to consider whether there would be any significant adverse environmental effects or other

material considerations that would prevent the grant of planning permission.

B RELATIONSHIP WITH MIXED USE DEVELOPMENT AND LEGAL AGREEMENTS

As explained above, the need for this application and early working of this mineral is a direct result of the requirement to ensure the mineral is worked prior to its redevelopment for mixed use development. The mineral application area is only a small part of the application area of the GBP development. In addressing the impacts for the mineral/waste development the ES has it relied upon mitigation proposed as part of the ES for the GBP development. In order to ensure this mitigation is deliverable it is essential that the mineral development can only be commenced when the GBP development has commenced.

In addition as the mineral is to be wholly used within the GBP development, with no proposed export of minerals from outside the GBP development, it is essential to ensure that the GBP development is commenced prior to mineral extraction to ensure there is a use for the mineral.

To address these two matters it is necessary for the developer to provide a legal obligation through a legal agreement not to commence the mineral development until the GBP development has lawfully commenced (the developer is the same for both developments), both CCC and ECC would be a party to the legal agreement. The developer is willing to enter into such an agreement, subject to planning permission being granted.

There is an existing legal agreement (Section 52) signed in 1990 associated with the Bulls Lodge Quarry permissions to which the application land is subject, which involved various parties including all landowners, the mineral company and both Chelmsford Borough Council and Essex County Council. This existing legal agreement covered a number of matters, including protection of the North East Chelmsford By-Pass route (at that time), restoration obligations and all the conditions of the two Bulls Lodge Quarry permissions. Subject to planning permission being granted. There would need to be a legal agreement to address the existing agreement and carrying forward and update any relevant clauses of the s52 agreement to the application site, as to whether this is a separate legal agreement or part of S106 is a matter being resolved by the applicant and County's legal team.

Also through this report other matters requiring legal obligations as a result of the mineral/waste development have also been identified.

The need for such an agreement meets the key dimensions of sustainable development set out within the NPPF by achieving the economic role supporting growth through co-ordinating development and the environmental role contributing to protecting and enhancing the environment.

C LANDSCAPE AND VISUAL IMPACT

The landscape is characterised by medium fields with hedgerows, with small

copses and concentrated isolated farmsteads. The surrounding land consists mainly of urban fringe (existing Beaulieu Park housing development); land in rural use and of note is the Grade 1 Listed New Hall Buildings and associated registered park and garden which contribute to the value placed on this landscape. However, the Boreham airfield and past and current mineral workings to the north east and west have eroded the landscape quality through loss of hedgerows. The site itself is not subject to any National or local landscape designations. The ES concluded the impact would be low adverse.

Policies MLP13, W10E, ENV2, CP9, CP13, DC18 and DC20 seek to protect and enhance the landscape, countryside and historic landscape character, including Listed Buildings and Historic Parks and Gardens.

The elements of the proposal most likely to impact on the landscape character are the storage bunds, plant and equipment. Storage bunds have been located on the southside of the development to screen views of the mineral extraction and the processing plant is to be located below natural grounds levels to reduce its impact.

Concern has been expressed by the County's landscape officer that the ES could have more thoroughly considered the landscape and visual impact particularly with respect to New Hall School and nearest residential properties. The applicant was requested to provide additional bunding to supplement that proposed but is unable due to the need to retain stand offs from existing vegetation and ponds. The applicant states that no advanced planting has been proposed as part of the development, due to the short-timescale of the development. Landscaping on the boundary of New Hall School is proposed as part of the GBP development and in order to ensure this is planted at an early stage a commitment for such could be required through a legal obligation, should planning permission be granted.

The proposed storage bunds in themselves would introduce features into the landscape and in order to soften there impact it is considered that where the storage mounds face south and east their slopes should be slackened from 1:1 to 1:3 and topsoiled to ensure successful grass seeding to soften their impact, this could be secured by condition.

With respect to the visual impact the ES included a visual impact assessment. The ES concluded that the development would result in a slight significant impact, with the main impact being on users of the PROW, from most residential properties in most cases it was concluded within the ES that the development would not be visible.

Policies MLP13, W10E, CP13 and DC4 seek to protect local and residential amenity from adverse effects of visual intrusion.

The nearest residential properties are within the New Hall School grounds to the south, along Generals Lane to the east and at Belsteads Farm to the south west. In addition footpath Springfield 4 runs outside the site but along the southern boundary. The ground in the vicinity of the site is relatively flat, but does fall to the south towards New Hall School. Views are interrupted by hedgerows and hedgerow trees. All hedgerows, apart from a 50m section which does not provide

screening to nearby residents, would be retain and protected on site. Proposed bunding would further prevent views of the extraction areas from residential properties. Views from the public right of way would in part be obscured by the existing hedgerow and copse to its north and a overburden bund is proposed in the south west of the site screening views of the majority of the south west area of the mineral extraction and processing area, apart from views of the haul road and entrance to mineral void (which lies between the screening bunds). However the hedge and copse in the south east of this part of the site would screen views to a certain extent.

It is considered subject to the slackening of outwards faces of the bunds and grass seeding of the bunds and early planting of vegetation as part of the GBP development, as described above, it is considered the development would not result in an adverse visual impact. It is therefore considered the proposals would be in accordance with policies MLP13, W10E, CP13 and DC4. It is considered subject to the suggested conditions and obligations there would be no significant adverse visual impact and proposals comply with NPPF objectives with respect to its social and environmental role, supporting healthy communities and protecting the natural and historical environment.

D IMPACT ON RESIDENTIAL & LOCAL AMENITY – AIR QUALITY, DUST AND NOISE

The ES included a noise impact assessment of the proposals and impact upon air quality assessment which addressed dust only. The matter of vehicle emissions was not considered as the urban fringe location was likely to have low pollutant levels such that increase caused by the development would be unlikely to exceed national air quality levels.

Policies MLP13, W10E, CP13, DC8, and DC29 seek to protect residential and local amenity from the adverse impacts of noise and dust.

<u>Dust</u>
The nearest residential properties are at Belsteads Farm (240m), New Hall School (270m) and properties on Generals Lane (approximately 300m). In addition the playing fields of New Hall School are located within 100m of the extraction area. The Channels Golf Course lies within approximately 70m of the extraction, although this area is now in principle resolved to be redeveloped for housing, in order to protect the residential amenity of the occupants of these new houses (from both dust and noise disturbance) the nearest areas to the mineral working are either areas of public open space or occupation of residential properties within 100m of the mineral working are to be controlled by condition, through the housing permission, to be only occupied after completion of permitted mineral extraction.

It was concluded within the ES that with respect to residential amenity due to the distances of greater than 100m and prevailing winds from the south-west, subject to utilisation of standard dust suppression measures (which could be secured by condition) the ES concluded there would negligible adverse effects.

In order to protect the residential amenity of the occupants of properties to be built

as part of the GBP development a condition would be imposed by CCC on the GBP planning permission preventing occupation of any new houses within 100m of the proposed mineral extraction.

It is therefore considered subject to appropriate conditions with respect to dust suppression the proposal are in accordance with policies MLP13, W10E, CP13, DC8, DC29 and proposals comply with NPPF objectives with respect to its environmental role, by minimising pollution.

Noise

The nearest noise sensitive residential properties are as those described above with respect to dust, in addition within the grounds of New Hall School the closest residential property is 300m from the mineral working. The noise assessment calculated likely noise levels during the proposed operations in relation to the surrounding properties.

Policies MLP13, W10E and DC29 seek to protect residential and local amenity from adverse noise impact.

The noise assessment demonstrated that the mineral and infilling operations could be carried out such that the recommended increase in noise levels above background would not be exceeded, except for temporary operations, such as soil stripping and bund formation which are permitted for a limited period each year at a high noise levels. The noise would in part be minimised by the construction of the proposed overburden/soil storage mounds between the mineral/landfill workings and the residential properties.

The County Council's Noise consultant has raised no objection to the application, subject to appropriate conditions setting the maximum noise limits for the nearest noise sensitive properties, setting the maximum temporary noise level limit and requiring noise monitoring as necessary to show compliance with the permitted levels. It was noted that the noise assessment was made against guidance within MPS2 which has now been superseded by the NPPF, but it is considered that the noise assessment is still appropriate and meets the noise requirements of the NPPF.

With respect to both noise and dust it would be appropriate to impose hours of operation conditions to protect residential amenity from disturbance outside normal operating hours.

It is therefore considered subject to securing the conditions with respect to the proposed bunding and noise limits, noise monitoring and hours of operation; the proposals would accord with policies MLP13, W10E and DC29. Also that the proposals deliver sustainable development meeting the environmental role of the NPPF by minimising pollution

E GROUND & SURFACE WATER

The ES includes a hydrogeological assessment, surface water assessment and Flood Risk Assessment. The proposal would require dewatering of the mineral

void to enable full extraction of the reserve.

Policies WAT1, WAT3, WAT4, MLP13, W10E, W4A, W4B, CP13 and DC29 seek to protect groundwater, prevent increased flood risk and ensure sustainable drainage systems.

The hydrogeological assessment identified that there appeared to differing zones of saturation with partial saturation in the north and full saturation of the sand and gravels in the south. In addition that there appears hydraulic barrier in a general south west and north east direction. There are 5 licensed abstractions: 3 are located in New Hall School and the others at New Hall Farm and Walter Hall Farm on Generals lane, and these are understood to be for domestic or agricultural uses. It is unclear the general flow of the groundwater, a number of different investigations having concluded different directions. The effect of dewatering and the potential draw down impact has been assessed and there is potential for impact upon the licensed abstraction points. The applicants have proposed mitigation would be to connect the users to mains water supply should serious degradation be caused. The applicant has been reluctant to investigate these private abstractors to ascertain existing conditions, due to the fact that it is unlikely there would be an adverse impact. Investigations by the MPA indicate that the abstractors are already connected to mains water, but it is considered appropriate to require groundwater monitoring in and outside the site, to assess the extent of any impact and through a legal obligation to provide connection to the mains, should this prove necessary, should planning permission be granted.

There are seven ponds within the vicinity of the site (considered important due to the potential for Great Crested Newts) including that within Channels LWS. These were assessed not to be in hydraulic connectivity with the groundwater and therefore would be unaffected by the dewatering. It was assessed that groundwater was likely to have connectivity to springs in the south west and Boreham Brook in the northwest, but the distance to these features was such that the impact was not significant.

Water from the dewatering of the site is proposed to be discharged into the surface water system drainage system proposed as part of the GBP development, which would go via a settlement pond within the Neighbourhood development before being discharged to River Chelmer. Groundwater quality in the site was assessed to be good such that it would have no adverse impacts when discharged to the River Chelmer. The settlement pond would ensure that suspended solids would have settled before being discharged to the River Chelmer.

The site in terms of surface water straddles a watershed boundary, whereby water to the south and west drains to the River Chelmer, while water to the northeast drains to the Boreham Brook and then to the River Chelmer. As water from dewatering would be discharged to the River Chelmer while there might be some reduction due to evaporation, there was unlikely to be an adverse impact on flows within the River Chelmer.

With respect to Flood Risk Assessment the site is located within Flood Zone 1 with the River Chelmer 1.2km to the west, such that no flood risk issues would arise as

a result of the development.

The EA have raised no objection to the proposals, subject to appropriate condition/obligations to control the impact of the development with respect to dewatering controlling the rate of discharge, ground water monitoring to assess the impact on groundwater levels and drawn down effects. The EA has advised the applicant should contact current holders of abstraction licence in the area to establish current conditions of the abstraction, such should there be degradation it can be established whether this is associated with the mineral working or not.

It is considered subject to appropriate conditions as required by the EA (as described above) and with respect to good site practice, the quality of ground and surface water could be protected. It would be necessary to secure mitigation with respect to ground water abstraction users through a legal agreement, as well as for the management of surface water which is proposed to be discharged off site within the GBP development. Subject to such controls it is considered the proposals are in accordance with Policies WAT1, WAT3, WAT4, MLP13, W10E, W4A, W4B, CP13 and DC29 and meet the environmental objectives of the NPPF.

F ECOLOGY

The ES included an ecological assessment. The only locally designated nature conservation site is LWS Channels Golf course, abutting the site on the north west boundary. Notable habitats and species within the site were assessed to be ponds that could support GCN populations species rich hedgerow, with mature tress, that could support bats and breeding birds

Policies ENV3, MLP13, W10E, and DC13 seek in combination to maintain and enhance sites of biodiversity and geological value.

The ponds identified as potential GCN habitat are considered not to be in hydraulic connectivity with the groundwater and would therefore be unaffected by the dewatering operations. However, if upon implementation this was found not to be the case, topping up of the ponds could be controlled through condition/obligation utilising water within the GBP development. A 10m standoff is proposed from field margins to protect hedgerows and hedgerow trees to be retained and newly planted trees belts which contain slow worms and lizards. A section of “important hedgerow” to be lost contains no veteran trees and subject to avoiding bird nesting season and bio-diversity mitigation proposed within the GBP development, there would be no significant adverse impact from the loss of this potential habitat corridor.

The cumulative effects of the mineral development, Belsteads Farm Development (Channels Golf Club land) and the GBP development have been considered, few habitats of high conservation value would be directly affected, however loss of linear features such as hedges and stream channels would result in fragmented habitats and corridors, which could result in significant impact. Mitigation is proposed through the master plan process for the developments, which includes retention of the majority of ponds, key wildlife corridors and utilising water drainage to feed ponds and recharge groundwater. An ecological Management Plan is

required as part of the GBP development. In order to ensure this is in place, a legal obligation could be required as it relates to development not in the control of the Mineral Planning Authority.

Natural England has raised no objection to the application, subject to the interconnection of the mitigation proposed within the two application minerals and mixed use development being appropriately secured. The County's ecologist has also raised no objection, although did comment that while it's appreciated that mitigation is to be provided via the GBP development, the ES should have specifically set out the mitigation necessary for the minerals development within the minerals development ES.

It is considered, subject to conditions and a legal obligation to ensure proposed mitigation is secured, it is considered there would not significant adverse impact on bio-diversity and the proposals are in accordance with policies ENV3, MLP13, W10E, and DC13 and meets the NPPF requirements with respect to achieving an environmental role, protecting and enhancing our natural environment.

G HISTORIC ENVIRONMENT

The application was supported by an historic environment assessment including archaeological assessment, historic built heritage and historic landscapes. The archaeological assessment identified some archaeological remains of Iron Age and Ramon British rural settlement and mitigation is proposed through preservation by recording. No Listed Buildings are within the site and eleven Listed Buildings were noted, in particular New Hall Grade 1 Listed Building and New Hall Grade II registered park and garden. It was noted that New Hall Tudor palace has been substantially altered by truncation and addition, but does retain considerable architectural and historical value. The outlook to the north towards the mineral site is considered not to contribute to the asset as there are modern school developments. Other Listed Buildings are at such a distance with intervening vegetation that there was considered to be no adverse impact on their setting.

Policies ENV6, MLP13, W10E, CP9, DC13, DC20 and DC 21 seek to protect, enhance and preserve the historic environment, including archaeological remains and the setting of Listed Buildings, Registered Parks & Gardens.

The county's historic environment team have raised no objection, subject to an appropriate archaeological assessment. It was commented by the County's Historic building officer that the impact of mineral extraction was undesirable on the New Hall Tudor Palace, but in the context of the GBP development the assessment and mitigation proposed was an appropriate response.

It is considered subject to appropriate conditions to ensure archaeological assessment and an obligation for early planting on the northern boundary of New Hall School proposed as part of the GBP development the proposals would not have a significant adverse impact on the archaeological remains or setting of the surrounding listed buildings provided the site is operated as proposed. It is therefore considered the proposals are in accordance with ENV6, MLP13, W10E, CP9, DC13, DC20 and DC 21 and is in compliance with the NPPF in that the

proposals achieve the social role supporting the cultural well-being and protecting and the environmental role enhancing the built and historic environment.

H TRAFFIC AND HIGHWAYS

The application would generate only limited traffic movements. Mineral extracted from the site is proposed to be utilised in the construction of the GBP development, while fill material to restore the void is to also be sourced from the construction works from excavations, such that there would be no need for HGV's exporting mineral outside the confines of the GBP development scheme for which there are internal haul roads proposed.

Policies T6, MLP3, MLP13, W4C and DC6 seek to ensure that suitable safe access is provided onto the public highway and that sustainable forms of transportation are utilised.

The only traffic to be generated would be the initial bringing on site of necessary plant and machinery and daily movements associated with staff. Access to the public highway would be controlled through the traffic and access arrangements for the GBP development. Appropriate conditions could be imposed to ensure access from the site is only from the proposed internal haul roads and through an obligation in a legal agreement that access to the public highway only via those routes/access points approved under the GBP development.

It is considered that the would no adverse impact on the highway network and that the utilisation of minerals and disposal of materials in association with GBP development ensures a sustainable use of mineral resources and sustainable mean of disposing of excavation waste minimising the need for HGV movements to the public highway. It is considered that the proposals are in accordance with policies T6, MLP3, MLP13, W4C and DC6 and meets the NPPF aim for planning to sustainable development through co-ordinating development requirements, its economic role, and reducing carbon emissions from vehicles achieving its environmental role.

I AGRICULTURE AND SOILS

The proposal would result in the loss of agricultural land; however, the principle of this loss of agricultural land has already been established and accepted through the adoption of the Chelmsford North Area Action Plan.

Policies MLP8 and MLP9 seek to ensure restoration to a beneficial afteruse and where appropriate return best and most versatile land to agricultural. Policies MLP8 and W10E seek to protect best and most versatile agricultural land. Since preparation of the MLP and WLP the emphasis on restoration to agriculture has been amended through the both the sRSS policy ENV6 and the NPPF (paragraph , such that while agricultural land should be protected more importantly it is the soil resource that should be protected, such that should it be required for agriculture it is still available. The NPPF refers to the protection of soils.

Natural England in their consultation response has highlighted the need for

protection of soils and their sustainable afteruse.

The soils stripped from the mineral working are proposed to be stripped according to best practice and stockpiled on site and conditions to secure such could be controlled through conditions. Topsoil is valuable resource that should be protected, it is considered appropriate to impose a condition requiring the applicant to demonstrate that topsoil would be utilised in a sustainable manner in the GBP development such that they are protected for future use, should planning permission be granted.

It is considered subject to the above suggested conditions that there would not be a significant adverse effect on agricultural soils and the proposals would be in accordance with policies MLP13, W10E, ENV6 and the NPPF supporting sustainable development achieving the environment role through protecting rural resources.

J PUBLIC RIGHTS OF WAY

Footpath Springfield 4 (part of the Chelmsford Centenary Circle trail) runs along the southern boundary outside of the application site, such that it would only impact on users of the footpath rather than its actual route.

The ES considered the visual impact of users of the footpath is was acknowledged that there would be some adverse impact, but that existing hedges and a copse on the southern boundary when combined with proposed soil and overburden storage bunds would screen the majority of the operations from users of the path. It also has to be acknowledged that the impact of the mineral working is relative in the context of the development of the GBP development. The footpath is proposed to be incorporated into the GBP development within areas of public open space.

Policies MLP13, W10E, W10G and DC41 seek to protect and enhance public rights of way. It is considered that with the proposed screening bunds that would not be a significant adverse impact on users of the public right of way and would not be contrary to the planning policies.

K PHASING, REINSTATEMENT/RESTORATION & TIMESCALE

The site is proposed to be worked in a phased manner establishing the processing plant at low level in the east of the site, the initial stripped material to be used to form soil storage and overburden bunds. The site would then be worked in 14 phases working in a west to east direction across the site with infilling following extraction. It is anticipated that sufficient material would have been generated by the GBP development in 2016 complete the restoration. The application site is phased to be the last area for development as part of the GBP development anticipated to be developed in 2020. As there is likely to be a potential delay between completion of infilling and redevelopment for mixed use it would be appropriate to require an interim restoration scheme that would require phased interim restoration scheme for the site, such that the land is restored to rough grassland in order to minimise its impact upon the countryside and subject to such conditions would be in accordance with MLP9 and W10C.

On the northern boundary, the site abuts the land still in the control of Bull Lodge Quarry operator which will be worked under the existing permission, but not planned currently to be worked for a number of years. This land is also within of the Chelmsford North Area Action Plan, and it is understood Bull Lodge Quarry operator do intend to come forward with an application to work this land at an earlier stage than currently planned. It would be necessary to leave a face/slope on the northern boundary of the current application site such that the operators of Bulls Lodge Quarry can work through this face when working mineral to the north. The restoration scheme for the land to the north is permitted to be restored at low level; the levels within the current application and within the Bull Lodge Quarry operator would have to be reconciled in the future to provide an acceptable landform which enables mixed use development. As the restoration levels to merge the two sites are not known at this time it is considered that the final restoration levels along this northern boundary could by condition to be submitted prior to completion of mineral extraction in the control of Bulls Lodge Quarry's operator. Subject to such conditions the proposals would be in accordance with policies MLP8 and W10C and ensure the landform is suitable for built development as part of the NCAAP.

The application anticipates a timescale of 4 years for mineral extraction and restoration, but requests that the planning permission be granted for 8 years to allow greater flexibility as progress of the extraction and infilling is dependent on the rate of progress within the GBP development. The ES has been based on the proposals being implemented over a 4 year period many of the impacts would remain the same but occur over a longer period, however there is potential of adverse impact with respect to ecology and hydrogeology if the extraction/infilling were to be undertaken for a loner period. Therefore if extraction and or infilling is not completed within 4 years of commencement it is considered appropriate to require review of the impact of the proposals on the ecology and water environment and require any necessary mitigation prior to further working, this could be achieved by condition.

It is acknowledged that reinstatement/restoration on the northern boundary is dependent on Bull Lodge Quarry operators completing their extraction, over which the applicant has no control and therefore it is considered reasonable that details with respect to restoration of this area could be required over a longer period.

All of the above factors meet the NPPF objectives for planning achieving the economic role supporting growth through co-ordinating development including infrastructure, social role facilitating delivery of housing and environmental role ensuring prudent use of resources in this case minerals.

9. CONCLUSION

The principle of mineral extraction had already been established through the grant of planning for Bulls Lodge Quarry in 1990 and therefore in conformity with policy MLP1. The need for its early extraction ensures the mineral is not sterilised by the GBP development and therefore meets the requirements of both policy MIN4, while enabling the implementation of the North Chelmsford Area Action Plan.

With respect to environmental and other considerations, subject to legal obligations and conditions to control the environmental impacts and other materials matters it is considered there would be no adverse impact, in particular:

- restructuring or alteration of obligations within the existing s52 that relate to the application land;
- conditions to control screening of the development and protection of existing vegetation to minimise visual and landscape impact, in particular New Hall Tudor Palace, in accordance with policies MLP13, W10E, DC18, DC20;
- conditions to control noise and dust impact to minimise impact on residential and local amenity in accordance with policies MLP13, W10E, W10G, DC8, DC29 and DC41;
- conditions and legal obligations are required to minimise the impact of the development on the water environment, in particular with respect to monitoring of groundwater and mitigation if adverse impact results on existing water abstraction licence holders or ecologically sensitive areas and an obligation to ensure the off site water management mitigation provided within the GBP development is secured in accordance with policies WAT1, WAT3, WAT4, MLP13, W10E, W4A, W4B, CP13 and DC29;
- obligations to ensure delivery of ecological mitigation provided for through the GBP development and conditions to ensure protection of habitats and species including stand offs to hedgerows, timing of operations and removal of the hedgerow, in accordance with policies ENV3, MLP13, W10E, DC13;
- conditions to ensure recording of archaeological remains and an obligation for early planting north of New Hall School the proposals would be in accordance with policies ENV6, MLP13, W10E, CP9, DC13, DC20 and DC 21;
- conditions to ensure protection soils and an obligation to utilise topsoils sustainably within the GBP development, the proposals would be in accordance with policies MLP13, W10E, ENV6; and
- conditions to ensure logical phasing and timely working and restoration within 4 to 8 years, the re view of impacts on ecology and water environment in year 4 and a longer period for restoration of the northern boundary which will dependant of the adjacent area being worked by Bulls Lodge Quarry operators.

By requiring the above conditions and obligations it is considered the development could be properly controlled and would achieve the social and environmental roles as set out in the NPPF by protecting the health, social and cultural well-being, protecting and enhancing the natural, built and historic environment, enabling growth and co-ordinating developments, the economic role.

It is considered in conclusion the proposals including the mitigation proposed which could be secured through conditions and obligations would achieve sustainable development in accordance with the NPPF.

10. RECOMMENDED

That planning permission be **granted** subject to

i. The prior completion, within 12 months, of Legal Agreements under the Planning Acts to secure obligations covering the following matters:

- Scheme of obligations relating to the existing s52 agreement associated with CHL/1890/87 & CHL/1019/87 will require to be altered and/or restructured to take account of the proposals

- Not to commence implementation of the mineral/backfill development until lawful commencement of GBP development (CCC application ref:09/01314/EIA)

- Prior to commencement approval of habitat management plan, including construction and environmental management plan as required by CCC application ref:09/01314/EIA

- Prior to commencement approval of drainage management system within GBP development (CCC application ref:09/01314/EIA), particularly with respect to settlement pond and discharge of water resulting from dewatering and surface water from the application site

- Groundwater monitoring outside the site.

- Scheme of mitigation to be submitted should the water level in ponds outside the site drop significantly due to activities associated with the mineral/backfill development

- Requirement for applicant to serve Unilateral Undertakings (UU) (the wording of which to be agreed in advance with MPA) on licensed abstractors. The UUs obligating to put licensed abstractors on mains supply should there be significant detrimental impact upon abstractions resulting from mineral/backfill development

- Early implementation of planting on the boundary of New Hall School and the GBP development, as proposed by planning application CCC Ref: 09/01314/EIA

- Access/egress from the public highway only at locations as permitted by planning application CCC Ref: 09/01314/EIA

ii) And conditions relating to the following matters;

- COM1 Commencement
- COM3 Compliance with Submitted Details
- PROD 1 Export restriction - no greater rate than 325,000 tonnes per annum
- CESS5 Cessation of Mineral Development within 4 years, cessation of landfilling and restoration within 8 years except for restoration of boundary with Bulls Lodge Quarry extraction
- CESS3 Removal of Ancillary Development

- CESS7 Revised Restoration in Event of Suspension of Operations
- HOUR2 Hours of working (Mineral Specific)
  07:00 to 18:30 hours Monday to Friday
  07:00 to 13:00 hours Saturdays
  and at no other times or on Sundays, Bank or Public Holidays.
- The schedule of work and timescales shall be carried out to accommodate the infrastructure delivery plan set out in the proposal of application ref. 09/01314/EIA
- South and east facing slopes of stores of overburden and subsoil shall be no greater than 1:3 and shall be topsoiled and seeded in first available planting season and subject to a programme of maintenance
- LGHT1 Fixed Lighting Restriction
- ECO3 Protection of Breeding Birds
- Submission of method statement with respect to removal of hedgerow
- Scheme of mitigation should ponds within the site dry due to mineral operations
- 10m standoff to all retained hedgerow and hedgerow trees
- NSE1 Noise Limits
- NSE2 Temporary Noisy Operations
- NSE3 Monitoring Noise Levels
- NSE5 White Noise Alarms
- NSE6 Silencing of Plant and Machinery
- HIGH3 Surfacing/Maintenance of Haul Road
- HIGH2 Vehicular Access
- DUST1 Dust Suppression Scheme – including source of water for dust suppression
- POLL6 Groundwater Monitoring
- Flood risk mitigation in accordance with FRA Dec 2011
- Details of method of soil stripping and placement
- LS4 Stripping of Top and Subsoil
- LS5 Maintenance of Bunds
- LS8 Soil Handled in a Dry and Friable Condition
- LS10 Notification of Commencement of Soil Stripping
- LS12 Topsoil and Subsoil Storage
- ARC1 Advance Archaeological Investigation
- No material other than overburden, subsoils and excavation waste (except topsoils) shall be disposed in the void
- POLL 4 Fuel/Chemical Storage
- POLL 8 Prevention of Plant and Machinery Pollution
- Scheme for removal of suspended solids from surface water run-off
- RES4 Final Landform
- Interim restoration scheme to rough grassland for phases where infilling complete, but redevelopment under GBP development not planned within 6 months
- Submission of restoration details for northern boundary area as indicated hatched on ES4.16 ensuring levels tie in with those permitted as part of CHL/1890/87 or any subsequent amendment
- Nature and use of infilling materials in accordance with report by URS

Mineral Extraction and Backfill dated May 2012 and ensure the made up ground over which the Radial Distributor Road associated with application Ref 09/01314/EIA being dealt with by CCC is backfilled with appropriate material and compacted to finished levels to support the new RDR design requirements.

- MIN1 No Importation
- WAST6 No Crushing of Stone
- GPDO2 Removal of PD Rights
- Scheme of mitigation should ponds inside the site dry due to mineral operations
- No extraction or infilling at the site 4 years after commencement until the submission and approval of a reassessment of the impact of the proposals on ecology and the water environment.
- Submission of details of use of surplus topsoils

BACKGROUND PAPERS

Consultation replies

Ref: P/DC/Claire Tomalin/ESS/21/12/CHL

EQUALITIES IMPACT ASSESSMENT: The report only concerns the determination of an application for planning permission and takes into account any equalities 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.

THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010

The proposed development would not be located within the screening distance for SACs/SPAs and the nature of the development is such that it would not adversely affect the integrity of such sites, 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.

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

Essex County Council has worked with Chelmsford City Council, the applicant and other interested parties, during the preparation and adoption of the Chelmsford North Area Action Plan, to ensure that permitted minerals resources were protected from sterilisation by facilitating its early extraction so as to assist in the delivery of the development of this area for mixed uses. Subsequent to this ECC has been engaged in pre-application discussions with the applicant, including the issue of EIA Screening and Scoping Opinions to ensure all issues were appropriately addressed within the application and Environmental Statement to minimise delays in its determination.

During determination of the application ECC forwarded on all statutory consultation responses received in a timely manner to the applicant This provided the applicant with the opportunity to see and comment on any and all issues which were raised and provided additional information where necessary. ECC has continued to liaise with CCC with respect to the interrelationship between the mineral application and the GBP application.

LOCAL MEMBER NOTIFICATION

CHELMSFORD Broomfield & Writtle
CHELMSFORD – Boreham
CHELMSFORD - Springfield

APPENDIX 1

Consideration of Consistency of Policies

Essex & Southend-On-Sea Replacement Structure Plan adopted April 2001		
Ref:	Policy	Consistency with NPPF and PPS10
MIN4	Wherever possible, potentially workable mineral deposits will be safeguarded from surface development that would sterilise the minerals or prejudice their working. If, in the opinion of the Mineral Planning Authority, surface development should be permitted, consideration will be given to the prior extraction of the minerals to the extent that such extraction would not be likely to render the site unsuitable for the development proposed, and that the deposit is, or may become, economically significant.	Paragraph 142 of the NPPF requires MPAs to set out policies to encourage the prior extraction of minerals, where practicable ad environmentally feasible, if it is necessary for non-mineral development to take place. Paragraph 142 of the NPPF places an obligation on MPAs to define Minerals Safeguarding Areas to prevent needless sterilisation of known locations of specific mineral resources. In addition Paragraph 144 of the NPPF requires MPAs in determining applications to not normally permit non-mineral development where this would constrain future working of the minerals. Policy MIN4 is therefore considered to be in conformity with the NPPF.
Minerals Local Plan Adopted January 1997		
Ref:	Policy	Consistency with NPPF
MLP1	The Mineral Planning Authority will endeavour to ensure that reserves of land won sand and gravel are always available, with planning permission, sufficient for at least seven years' extraction or such other period agreed as National Policy based on the production level that may be periodically agreed by them as part of the Regional apportionment exercise.	Paragraph 145 of the NPPF places an obligation on the MPA to plan for a steady and adequate supply of aggregates using landbanks as an indicator of the security of aggregates supply and making provision for maintenance of at 7 years for sand and gravel. Policy MLP1 is therefore considered to be in conformity with the NPPF
MLP2	Mineral working will be permitted only where there is an identified national, regional or local need for the mineral	Paragraph 145 of the NPPF places an obligation on MPAs to take account of National and Sub

	concerned. In the case of preferred sites the principle of extraction has been accepted and the need for the release of the mineral proven. Applications would be allowed unless the proposal fails to meet a pre-condition or requirement in Schedule 1 or there are unforeseen unacceptable environmental or other problems.	National guidelines when planning for the future demand for and supply of aggregates. Landbanks are stated as being "principally an indicator of the security of supply" in paragraph 145 of the Framework, whereas policy MLP2 treats it as the only indicator. At paragraph 11 & 12 the NPPF states that "the development plan as the starting point for decision making…unless other material considerations indicate otherwise. The NPPF leaves the MPA to identify sites. It is considered that MLP2 is in conformity with the NPPF
MLP3	1. Access from a mineral working will preferably be by a short length of existing road to the main highway network, defined in Structure Plan policy T2, via a suitable existing junction, improved if required, in accordance with Structure Plan policies T4 and T14. 2. Proposals for new access direct to the main highway network may exceptionally be accepted where no opportunity exists for using a suitable existing access or junction, and where it can be constructed in accordance with the County Council's Highway standards. There is a presumption against new access onto motorways or strategic trunk roads. 3. Where access to the main highway network is not feasible, access onto a secondary road before gaining access onto the network may exceptionally be accepted if in the opinion of MPA the capacity of the road is adequate and there will be no undue impact on	Paragraph 32 of the NPPF requires LPAs decisions to take account inter alia that "…safe and suitable access to the site can be achieved for all people…" and in Paragraph 35 developments should be located and designed where practical to…" inter alia "…create safe and secure layouts" It is therefore considered that MLP3 is in conformity with NPPF has it seeks to provide safe and suitable accesses.
MLP8	Planning permission will not normally be given for the working of minerals unless the land concerned is capable of being	Paragraph 144 of the NPPF requires LPAs when determining planning application inter alia

	restored within a reasonable time to a condition such as to make possible an appropriate and beneficial afteruse. Where planning permission for mineral working is given on Grade 1, 2 and 3A of the Ministry of Agriculture's Land Classification, the land will be required to be restored within a reasonable time and as nearly as possible to its former agricultural quality. Where filling material is necessary, permission will not be given until it is shown that suitable material will be available and that the compatibility of the landfill gas and leachate monitoring and control structures and processes with the afteruse is demonstrated. Wherever possible land permitted for mineral working will be restored to agricultural use, but due regard will also be had to the need for areas for nature conservation, water based recreation, afforestation and leisure activities. Where permission is given, conditions will be imposed to secure: i) progressive working and restoration; and ii) aftercare and maintenance of the restored land for not less than 5 years, and iii) a beneficial afteruse of the restored land including the use of areas that remain waterfilled.	"provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards. Paragraph 109 of the NPPF requires protection of soils. The NPPF does not place such weight as the MLP on the need for restoration to agriculture for land that is best and most versatile, however it is recognised in paragraph 112 that the economic and other benefits of the best and most versatile land should be taken account of. In addition at Paragraph 109 it does require protection of soils. MLP8 recognises and does not preclude restoration to alternative afteruses. It is therefore considered that MLP8 is largely in conformity with the NPPF
MLP9	In considering planning applications for mineral working or related development, the Mineral Planning Authority will permit only those proposals where the provisions for working and reclamation contained in the application are satisfactory and the implementation of the proposals is feasible.	The NPPF at Paragraph 144 requires when LPAs are determining planning applications to "…provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards…". To ensure such restoration can be achieved applications need to demonstrate any restoration scheme is feasible. It is therefore considered that MLP9 is conformity with the NPPF
MLP10	The primary processing plant will normally be expected to be located within the limits of any mineral working at either a low	The NPPF at Paragraph 144 requires when LPAs are determining applications to ensure

	level or with the step being taken to mitigate its visual and aural impact. Sites with their own processing plant will be preferred to minimise movement of material on public roads and, by conditions imposed on permission, plant will not normally be available for material imported on to the site.	applications does cause inter alia"…unacceptable adverse impacts on the natural and historic environment, human health…" In addition Paragraph 4 requires "…decisions should ensure developments that generate significant movement are located where the need to travel will be minimised…". MLP10 seeks to reduce the environmental impact of mineral processing plant, by locating it at low level. MLP10 also seeks to co-locate mineral extraction with the primary processing plant, reducing unnecessary traffic movements. It is therefore considered that MLP10 is in conformity with the NPPF
MLP13	Planning applications for mineral extraction and related development will be refused where there would be an unacceptable effect on any of the following: The visual and aural environment; Local residents' (or others') amenity; Landscape and the countryside; The highway network; Water resources; Nature conservation.	The NPPF at Paragraph 144 requires when LPAs are determining applications to ensure applications does cause inter alia"…unacceptable adverse impacts on the natural and historic environment, human health…" and In addition in paragraph 144 "…that any unavoidable noise, dust and particle emissions and blasting vibrations are controlled…and establish appropriate noise limits…" The NPPF supports sustainable transport including requiring development to have safe and suitable access (Paragraph 32) and locating development to "…accommodate the efficient delivery of good and supplies…" (Paragraph 35)
Essex & Southend Waste Local Plan adopted 2001		

Ref:	Policy	Consistency with NPPF and PPS10
W3A	The WPAs will: In determining planning applications and in all consideration of waste management, proposals have regard to the following principles: • Consistency with the goals and principles of sustainable development; • Whether the proposal represents the best practicable environmental option for the particular waste stream and at that location; • Whether the proposal would conflict with other options further up the waste hierarchy; • Conformity with the proximity principle. In considering proposals for managing waste and in working with the WDAs, WCAs and industrial and commercial organisations, promote waste reduction, re-use of waste, waste recycling/composting, energy recovery from waste and waste disposal in that order of priority. Identify specific locations and areas of search for waste management facilities, planning criteria for the location of additional facilities, and existing and potential landfill sites, which together enable adequate provision to be made for Essex, Southend and regional waste management needs as defined in policies W3B and W3C.	Paragraph 6 of the NPPF sets out that the purpose of the planning system is to contribute to the achievement of sustainable development. PPS10 supersedes 'BPEO'. PPS10 advocates the movement of the management of waste up the waste hierarchy in order to break the link between economic growth and the environmental impact of waste. One of the key planning objectives is also to help secure the recovery or disposal of waste without endangering human health and without harming the environment, and enable waste to be disposed of in one of the nearest appropriate installations. See reasoning for Policy W8A. Therefore, Policy W3A is considered to be consistent with the NPPF and PPS10.
W3C	Subject to policy W3B, in the case of landfill and to policy W5A in the case of special wastes, significant waste management developments (with a capacity over 25,000 tonnes per annum) will only be permitted when a need for the facility (in accordance with the principles established in policy W3A) has been	Paragraph 3 of PPS 10 highlights the key planning objectives for all waste planning authorities (WPA). WPA's should, to the extent appropriate to their responsibilities, prepare and deliver planning strategies one of which is to help implement the

	demonstrated for waste arising in Essex and Southend. In the case of non-landfill proposal with an annual capacity over 50,000 tonnes per annum, restrictions will be imposed, as part of any planning permission granted, to restrict the source of waste to that arising in the Plan area. Exceptions may be made in the following circumstances: • Where the proposal would achieve other benefits that would outweigh any harm caused; • Where meeting a cross-boundary need would satisfy the proximity principle and be mutually acceptable to both WPA5; • In the case of landfill, where it is shown to be necessary to achieve satisfactory restoration.	national waste strategy, and supporting targets, are consistent with obligations required under European legislation and support and complement other guidance and legal controls such as those set out in the Waste Management Licensing Regulations 1994. The concept of the proximity principle has been superseded by the objective of PPS10 to enable waste to be disposed of in one of the nearest appropriate installations. Therefore, as Policy W3C is concerned with identifying the amount of waste treated and its source the policy is considered consistent with the requirements of PPS10.
W4A	Waste management development will only be permitted where: • There would not be an unacceptable risk of flooding on site or elsewhere as a result of impediment to the flow or storage of surface water; • There would not be an adverse effect on the water environment as a result of surface water run-off; • Existing and proposed flood defences are protected and there is no interference with the ability of responsible bodies to carry out flood defence works and maintenance.	Paragraph 99 of the NPPF states that 'Local Plans should take account of climate change over the longer term, including factors such as flood risk, coastal change, water supply and changes to biodiversity and landscape. New development should be planned to avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure'. In addition Annex E of PPS10 highlights at section *a*. *protection of water resources* that 'Considerations will include the proximity of vulnerable surface and groundwater. For landfill or land-raising, geological conditions and the behaviour of surface water and groundwater should be assessed both for the

		site under consideration and the surrounding area. The suitability of locations subject to flooding will also need particular care'. Therefore, as policy W4A seeks to only permit development that would not have an adverse impact upon the local environment through flooding and seeks developments to make adequate provision for surface water run-off the policy is in conformity with PPS10 and the NPPF.
W4B	Waste management development will only be permitted where there would not be an unacceptable risk to the quality of surface and groundwaters or of impediment to groundwater flow.	See above.
W4C	1. Access for waste management sites will normally be by a short length of existing road to the main highway network consisting of regional routes and county/urban distributors identified in the Structure Plan, via a suitable existing junction, improved if required, to the satisfaction of the highway authority. 2. Exceptionally, proposals for new access direct to the main highway network may be accepted where no opportunity exists for using a suitable existing access or junction, and where it can be constructed in accordance with the County Council's highway standards. 3. Where access to the main highway network is not feasible, access onto another road before gaining access onto the network may be accepted if, in the opinion of the WPA having regard to the scale of development, the capacity of the road is adequate and there would be no undue impact on road safety or the environment. 4. Proposals for rail or water transport of waste will be encouraged, subject to compliance with other policies of this	Paragraph 21 (i) of PPS10 highlights that when assessing the suitability of development the capacity of existing and potential transport infrastructure to support the sustainable movement of waste, and products arising from resource recovery, seeking when practicable and beneficial to use modes other than road transport. Furthermore, Paragraph 34 of the NPPF states that 'Decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised'. Policy W4C is in conformity with paragraph 34 in that it seeks to locate development within areas that can accommodate the level of traffic proposed. In addition the policy seeks to assess the existing road networks therefore, being in accordance with the NPPF and PPS10.

	plan.	
W9B	Landfill, or landraising, for its own sake, without being necessary for restoration, will not be permitted. Landfill outside the boundaries of the preferred sites will not be permitted unless it can be demonstrated that satisfactory restoration cannot otherwise be achieved. Landfill will not be permitted when at a scale beyond that which is essential for restoration of the site.	PPS10 sets out the key objectives to achieve sustainable waste management including Paragraph 3"…driving waste management up the waste hierarchy, addressing waste as a resource and looking to disposal as the last option, but one which must be catered for:…" Policy W9B seeks to minimise landfill ad landraising to that essential to achieve restoration, thereby minimising the amount of waste going to landfilling pushing waste management up the waste hierarchy. This is supported by Paragraph 144 of the NPPF which states that when determining planning applications, LPAs should amongst other consideration "… Provide for restoration and aftercare at the earliest opportunity to be carried out to high environmental standards…" By minimising the amount of landfill, the delivery or restoration would not be unnecessarily delayed.
W10A	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.	PPS10 states that 'It should not be necessary to use planning conditions to control the pollution aspects of a waste management facility where the facility requires a permit from the pollution control authority. In some cases, however, it may be appropriate to use planning conditions to control other aspects of the development. For example, planning conditions could be used in respect of transport modes, the hours of operation where these may have an impact on neighbouring land use, landscaping, plant and buildings, the timescale of the

		operations, and impacts such as noise, vibrations, odour, and dust from certain phases of the development such as demolition and construction'. Furthermore, paragraph 203 of the NPPF states that 'Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition'. Policy W10A inter alia only seeks to impose conditions and/or enter into legal agreements when appropriate to ensure that the site is operated in an acceptable manner. Therefore, the policy is in accordance with the requirements of the NPPF and PPS10.
W10E	Waste management development, including landfill, will be permitted where satisfactory provision is made in respect of the following criteria, provided the development complies with other policies of this plan: 1. The effect of the development on the amenity of neighbouring occupiers, particularly from noise, smell, dust and other potential pollutants (the factors listed in paragraph 10.12 will be taken into account); 2. The effect of the development on the landscape and the countryside, particularly in the AONB, the community forest and areas with special landscape designations; 3. The impact of road traffic generated by the development on the highway network (see also	Policy W10E is in conformity with the NPPF in that the policy is concerned with the protection of the environment and plays a pivotal role for the County Council in ensuring the protection and enhancement of the natural, built and historic environment. However, with respect to loss of agricultural land it should be noted that the NPPF places both a requirement to protected soils paragraph 109 as well taking account of the economic and other benefits of the best and most versatile agricultural land paragraph 112 when considering non agricultural land uses. The policy overall therefore is linked to the third dimension of

	policy W4C); 4. The availability of different transport modes; 5. The loss of land of agricultural grades 1, 2 or 3a; 6. The effect of the development on historic and archaeological sites; 7. The availability of adequate water supplies and the effect of the development on land drainage; 8. The effect of the development on nature conservation, particularly on or near SSSI or land with other ecological or wildlife designations; and 9. In the Metropolitan Green Belt, the effect of the development on the purposes of the Green Belt.	sustainable development in the meaning of the NPPF.
W10F	Where appropriate the WPA will impose a condition restricting hours of operation on waste management facilities having regard to local amenity and the nature of the operation.	In addition Paragraph 123 of the NPPF states that planning decisions should aim to mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new developments, including through the use of conditions. Furthermore, paragraph 203 states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. It is considered that as policy W10F is concerned with the protection of amenity and seeks to impose conditions to minimise this policy W10F is in conformity with the requirements of the NPPF. Also see above regarding PPS10 and conditions.

APPENDIX 2

APPRAISAL OF ENVIRONMENTAL IMPACT ASSESSMENT (EIA) FOR:

The winning and working of sand and gravel and associated dry screen processing plant, temporary storage of minerals and soils and associated infrastructure. In addition backfilling of the void with soils and overburden arising from the development of mixed uses (Ref. 09/01314/EIA) on land adjacent to the mineral working.
At Land to the South of Park Farm ESS/21/12/CHL

An Environmental Statement (ES) dated February 2012 has been submitted with the application.

The nine key subject areas identified in the ES are:

- Landscape and Visual effects
- Biodiversity (ecology)
- Noise and Vibration
- Historic Environment
- Air Quality (Dust)
- Groundwater
- Surface Water
- Other Issues
- Cumulative Impacts

The Environmental impacts of the proposed scheme have been considered by reference to baseline conditions at the time of the preparation of the ES (2011) based on the requirements of the current planning consents for the site.

The severity or magnitude of environmental impacts are categorised in the ES as "Major/High/Substantial/Severe", "Moderate/Medium", "Minor/Low/Slight" or "Negligible", dependent upon criteria set out in the individual topic chapters. The significance of the potential effect of an environmental impact has then been assessed on the basis of the magnitude of the impact and the sensitivity, importance or value of a resource, receptor or group of receptors. Where impacts have been identified which may give rise to significant effects, mitigation measures are presented as a means of avoiding or reducing or compensating any adverse effects on the environment.

The key environmental issues identified throughout the ES have been presented. This includes those impacts of the proposed scheme that may give rise to significant direct and indirect environmental effects, and identifies whether any residual effects are anticipated once mitigation measures have been taken into account

The residual effects have been presented as well as consideration of whether those effects are direct or indirect; national, regional or local; short or long term; temporary or permanent. Mitigation measures have also been proposed where applicable.

Appraisal of EIA

The following seeks to consider whether the EIA process has adequately addressed all the relevant environmental impacts, particularly those identified in the Scoping Opinion issued by ECC on the 20 Sept 2011, whether the degree of environmental impacts has been appropriately assessed and the proposed mitigation considered adequate.

Landscape & Visual Effects

Landscape Effects

The ES appropriately assess the baseline landscape character in the context of any relevant landscape designations and National and Local landscape character assessments. There are no national or local landscape designations affecting the site. The site lies within the National Character Area (Natural England) of NCA 86 "South Suffolk and North Essex Claylands" and the application area demonstrates some of the key characteristics. The site lies within the Central Essex Farmlands (B1) of the Glacial Till Plateau character area as set out in the Essex Landscape Character Assessment (2002), this highlights historical features such as New Hall and Boreham Airfield and sand and gravel pits. It notes that these mineral workings have resulted in an erosion of the character of the area due to loss of hedgerows and as a result landscape quality/condition is described as moderate. The site lies within the Boreham Farmland Plateau as described in the "Brentwood, Chelmsford, Maldon, Uttlesford Landscape Character Assessment" 2006. The application site was considered to exhibit the key characteristics of this character area, including medium fields with hedgerows, small copses and concentration of isolated farmsteads.

A site specific landscape character assessment was also undertaken and looked at the key landscape characteristics of the site, the landscape quality, and the sensitivity and capacity to absorb change or development. It is noted that the surrounding land consists mainly of urban fringe and rural land use and the grade 1 listed New Hall and associated registered park and garden also contribute to the value placed on the relatively undisturbed arable fields and are considered to be a local landmark. It was considered that previous sand and gravel operations and construction of the airfield had had a detrimental impact on the overall quality of the landscape, through the removal of characteristic elements and introduction of new land uses. The landscape quality of the development site was assessed as being of medium quality and value.

The application site was assessed as being of low sensitivity to the proposed development and included the following reasons, landscape has accommodate large similar operations, part of a pre-existing planning permission, vegetation loss would be kept to a minimum, development would not be visible due to existing hedgerows.

The site was assessed as having high capacity to accommodate the proposed development within the landscape, due the fact the landscape has historically accommodated similar larger operations and therefore would not introduce an uncharacteristic land use in the area and would only result in the loss of a few characteristics and elements such as hedgerows and therefore was assessed as having high capacity to accommodate the proposed development.

The site was assessed to have medium Tranquillity, the site is in a largely rural landscape but noise from the A130 impacts on the tranquillity.

The potential landscape impacts where assessed based on the storage bunds, plant and equipment required to extract the mineral over a 3 to 4 year period.

The assessment considered both direct (bunds, new permanent landform) and indirect (dust and water) impacts

The proposal includes mitigation to minimise views from the PROW to the south and from New Hall Grade 1 Listed building and registered park and garden. The proposals also include phased working and restoration to limit the extent of working at any one time. The proposals do not include any on or off site planting, justified by the applicant due to the short-timescale of the proposals.

Residual landscape effects the proposals would not result in any landscape elements of value or that cannot be replaced. Overall the impacts of the proposed development during extraction are considered to be low adverse and upon completion very low, due to the short-term nature, that the development does not introduce a new land use. The residual landscape impacts are assessed as being negligible to adverse effect on the baseline landscape character.

Appraisal of Landscape Assessment
The assessment of the baseline landscape character was considered to be sound and the assessment of the landscape quality, landscape sensitivity of the site and landscape capacity to accommodate the proposed development to be fair.

In considering the potential effects, the elements of the proposed development were considered appropriate accept the assessment was based on 4 years as apposed to the proposed potential of 8 years and the timescale for working would ultimately dependent on the progress of the adjacent mixed use development.

Visual Effects
Visual impact was firstly assessed from a desk top study to identify potential viewpoints and the potential theoretical zone of visibility. Photos were taken from publicly accessible view points.

Views were assessed from north south, east and west.

The Zone Of Theoretical Visibility of the proposed development was assessed by a 3D modelling package, but takes no account of existing intervening vegetation.

The combination of the above assessments identified that there were only very localised views into the site.

The nature and sensitivity of the viewpoints was assessed on the functions receptor, degree of exposure to view and period of exposure, the magnitude of the visual impact was assessed based on value of existing view, degree of change, availability and amenity of the alternative views and distance.

11 view points were assessed intended to be representative of likely views from properties, although it was acknowledge that views from the north, Park Farm & Park

Farm Cottages and Belstead Farms were unobtainable from publicly accessible locations.

Views from the PROW were considered to be the most significant, particularly Springfield FP4 (Centenary Circle National Trail). Assessment of views of the site from public roads Belstead Farm Lane, Domsey Lane, Cranham Road, Boreham Road or Main Road were not possible due to intervening existing vegetation. Some views were possible from the A130 and Mill Lane.

Existing screening is identified as established field boundaries along the western & southern boundaries, which provide screening of the site. To the north views are identified as screened by hedgerows and small plots of woodland around Park Farm & Boreham airfield. Views from east & west, apart from those close to the locality are noted as partially or fully obstructed by a combination of landform and vegetation. As a result the development site is assessed as not being well defined in the landscape.

The southern east edge of the site does not benefit from existing vegetation and mitigation is proposed in the form of storage mounds to screen views from the PROW and New Hall.

Overall it was assessed the site was identifiable in the landscape by the pylon features located in the vicinity of the development site. Distant views from west, east & south fringe of the area, such as Broomfield & Springfield were not possible. However, a combination of landform and existing vegetation largely screen contributed to providing screening the site from most directions. Views of the development were noted in close proximity to a very few residences and the PROW.

The potential factors that were likely to give rise to visual effects were, change in view, increased visibility of arable fields particularly from the south, impact of temporary use of plant, upon restoration arising from change in topography, particularly for close receptors.

Mitigation is proposed for views from the east in terms of grassed soil storage bunds. Planting is not proposed.

<u>Appraisal of Visual Impact Assessment</u>
Potential viewpoints were established via a desk top study and the photos taken from publicly accessible view points. It is considered that while this gave a broad indication of the visual impact from visual receptors, attempt should have been made to assess impacts from private property, particularly within the grounds of New Hall School, which was particularly identified within the Scoping Opinion. While screening mounds are located along most of the southern edge there are sections from the south west where there would not be bunding and the visual impact of the 5m high bunding itself has not be considered.

<u>Overall Appraisal of Landscape & Visual Assessment</u>
While screening bunds have been proposed on the eastern area of the development, no screening mounds have been proposed around parts the western half of the site despite this being highlighted in the Scoping Opinion.

It is considered that overall the landscape and visual assessment were adequate.

Biodiversity (ecology)

An ecological Impact Assessment was carried out and formed part of the ES. The assessment included a desk study and consultation and an extended Phase 1 habitat survey was undertaken in 2011, this updated surveys that have been previously undertaken in relation to the Neighbourhood Scheme development which have been undertaken since 2006. Additional surveys were undertaken in 2011 for Great Crested Newts (GCN) and reptiles.

The assessment describes the potential ecological receptors. There are no statutory designations for nature conservation, there is a non-statutory Local Wildlife Site (LWS) adjacent to the western boundary Ch83 (channels Golf Course and 2 other LWS within 2km radius

It was identified that there were the following protected and notable habitats hedgerows and standing water, with potential for protected and notable species as follows: bats, breeding birds, GCN, reptiles and badgers.

The site survey identified that the site consisted of arable fields surrounded by small 1-2m of semi-improved grassland margins and hedgerows. Mature trees were recorded within the hedgerows. Two ponds were recorded, in the site and one approximately 100m north of the northern boundary. Within the site there are areas of newly planted tress (3 to 5 years old).

Protected and notable habitat and species were identified on site as follows: ponds could support GCN; and species rich hedgerows with hedgerow trees with a number of mature and semi mature broadleaf standard trees which could support bats and breeding bird. With respect to bats due to numerous hedges and ponds in the Channels LWS commuting and foraging bats on site was likely. Birds were assessed as being garden, hedgerow and woodland edge with potential for white throat and grey pigeon. The ponds on and off site were found populated with GCN. The fenced off area around new planting had potential for foraging reptiles such as common lizard, slow worm and grass snake, one juvenile grass snake was found during the survey. A known badger sett was identified to be active, while another sett was no longer in use, no other setts were found.

Temporary impacts during extraction, significance & proposed mitigation were assessed as follows

Receptor & effects	Significance	Mitigation proposed
Temporary disturbance/damage		
Disturbance to arable field margins	Certain effect significant at Site level	Working corridors demarcated to prevent disturbance
Compaction of soils adjacent to trees and hedgerows	Probable effect could be significant at district level	Fencing to protect tree and hedge roots for all retained
Light disturbance to bats at dusk impacting upon	uncertain effect of significance at site level	No night-time working and where lighting required for

commuting and foraging		H & S shall be directional
Breeding birds – 3 to 4 breeding seasons disturbed	Probable effect of significance at site level	As above, and no soil stripping hedgerow removal between Mar & Aug unless supervised by ecologist
GCN – disturbance to foraging and commuting	Likely effect unlikely significance above local level	AS above
<u>Direct & Indirect Mortality</u>		
Bats – no trees to be removed	No significant impact predicted	
Badgers – sett not to be directly impacted & no machinery within 30m. Potential for badgers to move into soil mounds. Badgers falling into excavation	No impact Likely significant effect Unlikely, but would be infringement of WCA 1981	Fencing described above would deter badgers, mammal ramps out of excavation, badger fencing if necessary site monitoring required prior to & during development for badger activity
GCN – no ponds to be lost, but potential mortality during hedgerow removal and if hibernate in soils mounds which are subsequently removed	Probable impact significant at site level	Fencing to protect terrestrial habitat required, removal of hedgerow to be undertaken under Method Statement. Also enhancements to existing GCN/reptile habitat through management plan. Translocation programme not anticipated, but would be undertaken in necessary,
Reptiles – most habitat to be maintained, but some potential during hedgerow removal and as a result of plant movement	Probable impact significant at site level	See above
<u>Hydrological Impacts (Siltation & dewatering)</u>		
Channels LWS	No likely impact	
Ponds & ditches – potential for surface water runoff to bring silt from disturbed ground, also loss of water to due to dewatering affecting groundwater levels	Probable impacts of significance at local level	Works compound away from water courses, soil storage covered to prevent runoff. Replaced soil grassed prior to Neighbourhood scheme.
GCN – siltation could effect breeding habitat on and off site	Probable impact significant at local level	See above

The residual temporary effects of the development were considered with respect to temporary effects as relating mainly to be breeding birds, with disturbance insignificant due to habituation to shrub nesting birds, but may be significant for ground nesting birds.

The residual permanent effects related to the loss of 50m of hedge causing loss of commuting routes for bats, loss of nesting sites for birds and commuting and sheltering habitats for GCN/reptiles, but this would be compensated for as part of the proposals within the neighbourhood scheme.

Cumulative effects

The cumulative effects were also assessed as potentially the proposed development would be happening at the same time as the Neighbourhood scheme, both at the Channels Golf Club and GBP development. The developments would mainly affect areas of open arable field, improved grassland and golf course, few habitats of high conservation value would be directly affected. However, loss of sections of linear features such as hedges and stream channels and as such losses to and fragmentation of habitats and corridors is likely assessed as potentially significant at district level and if all developments take place at once significant at county level.

Mitigation is proposed through the master plan process for the developments, which retains intact the majority of ponds, key wildlife corridors within broad areas of open space, to be managed for public amenity and nature conservation. It is also includes utilising surface water drainage schemes to feed existing ponds and recharge groundwater. An ecological Management Plan is to be required as part of the neighbourhood scheme.

Appraisal of ecological impact assessment

The assessment has appropriately assessed the potential notable and protected habitats and species and proposed mitigation. It is noted that the assessment was based on 4 years of disruption while in fact the application is seeking 8 years. ECC ecologist did find the presentation of the assessment fragmented. The assessment also relies on mitigation to be provided through the Neighbourhood scheme for residual permanent and cumulative effects, which cannot be controlled by condition through this planning application. The assessment was considered adequate.

Noise and Vibration

A noise assessment was carried out for the development. Due to the distance between the site and residential receptors a vibration assessment it was considered highly unlikely that increased vibration would be experienced and was scoped out.

The noise assessment established receptor locations in consultation with CBC and surveys undertaken to establish background noise levels at

Park Farm – north of site	LA90 dB - 41
Blue Post Cottages – north west of site	LA90 db – 41
Nine Acres/Belstead Hall Farm – south west of site	LA90 dB - 43
Walter Hall, Generals Lane – east of site.	LA90 dB - 38
New Hall School – south east of site (shorter period of monitoring)	LA90 dB - 46

Noise modelling software was then used to predict noise from mineral extraction activities and maximum noise limits set for temporary activities and non-temporary activities based on MPS2. While MPS2 has been superseded by the NPPF since preparation of the noise assessment, the acceptable limits have not changed.

The predicted noise levels were modelled for 4 locations within the site, SW corner, NW corner, NE corner mid N area and far E area of the site, both for temporary activities (soil stripping bund formation) and extraction operations (including haulage and operation of processing plant and for simultaneous operations (i.e. temporary operations with extraction operations).

Mitigation measures include the creation of soil storage bunds which were taken account of in the noise modelling. In addition best practice measures would be employed including quieter reserving alarm, maintaining plant and haul roads and minimising drop of materials.

Modelling demonstrated that temporary operations and simultaneous operations were predicted not to exceed 70 dB LAeq, 1h at all noise sensitive receptors and not exceed the maximum noise limits set at the noise sensitive receptors.

Noise impact of proposed operations was concluded to be negligible.

Appraisal of Noise & Vibration Assessment
It is considered acceptable that due to distances involved no vibration assessment was required. It is disappointing that only limited background noise assessment was under taken and not at the closest location of school buildings to the development, particularly as the background plus 10dB would exceed the maximum noise limit of 55dB, however, the applicant is willing to except a 55 maximum and predictions have shown this limit would not be exceeded.

Historic Environment

The historic assessment included archaeological assessment and assessment of built and landscape heritage. The assessment sought to

- Identify known archaeological remains, built heritage receptors and historic landscape character
- Asses likely survival significance of archaeological deposits within the site
- Assess the potential impact of the development upon archaeological deposits, cultural heritage assets and their setting
- Propose mitigation

Archaeology
Baseline conditions were established with reference to appropriate national and local data and an updated walkover. Also reference was made to previous studies both intrusive and non-intrusive archaeological surveys undertaken for Neighbourhood scheme. An archaeological trench survey was undertaken in 2011.

The data sets were evaluated utilising a GIS system to enable the character, extent, date and significance of any heritage assets and their settings established and the archaeological potential of the site determined.

The significance of Heritage assets was assessed in line with PPS5, now superseded by the NPPF, but has not changed the overall approach, and the following factors were considered: significance of the heritage asset, magnitude of impact and significance of effect.

No assets of Very High or High or Unknown significance have been identified within the site. Iron Age and Romano–British rural settlement site have been assessed as being of Medium significance and extent defined by the 2011 trial trenching.

Five archaeological assets identified within the site were assessed as being of Low significance, including

- the pond located in the southeast corner possible a feature of the early post-medieval deer park or agricultural feature for watering deer or livestock
- hedge bank forming a surviving section of the later 18th century parks pales
- dense and well established hedgerow with several mature oaks thought to be post-medieval park pales dating from 17th century
- broad, shallow curvilinear crop mark representing course of the former park pale
- two narrow linear features containing bricks (16th to 18th century) and large infilled hollow.

Five archaeological assets were identified as being of negligible significance having no research potential.

The excavation of soils, overburden and sand and gravel would result in direct impacts with total loss or disturbance of known archaeological remains. Mitigation is proposed comprising preservation by record.

The impact upon archaeological of medium significance is assessed with mitigation as Moderate adverse effect. The impact on archaeological assets of low significance would result in slight adverse effects. The impact on archaeological assets of negligible significance would result in slight adverse impact. Overall the proposed development would have a moderate adverse impact.

<u>Built Heritage</u>

There are no designated or undesignated built heritage assets in the site. Within the Study area 11 designated and 8 non-designated heritage assets were identified.

Very High Significance

- New Hall Grade I Listed building
- New Hall Grade II registered park and garden

High Significance -

- Belsteads Farmhouse Grade II Listed building
- Channels Farmhouse Grade II Listed Building
- Mount Maskells Grade II Listed Building
- Old Farm Lodge a collection of Grade II Listed buildings

Four undesignated assets or medium, significance were identified and 3 non-designated assets of low significance

The assessment of impact was restricted to their settings only.

New Hall, Tudor in origin has been substantially altered by truncation and addition, but does retain considerable architectural and historical values. The registered park includes the gardens areas which surround the buildings particularly significant is the avenue that extends south. The landscape beyond the registered park is assessed of little significance and is considered to contribute little historical value to the asses. The outlook to the north is considered not contribute to the asset as there are modern school developments. The mature trees on the north aspect provide a screen to views from the listed building north to the application site. The proposed screening bunds would assist in further screening the development. It is assessed the development would have a minor to negligible impact on the asset.

With respect to all other built heritage assets the impact on setting is assessed as being minor to neutral, mainly due the screening/filtering effect of vegetation.

Historic Landscape Character-
One HLC is defined as 18th century rectilinear enclosure (the field pattern survives with a degree of time depth with relict features from New Hall's historic parkland landscape incorporated into the late 18th century agricultural landscape) assessed as being of low significance.

The developed is assessed to have a number of direct but short-term impacts on the historic landscape namely soil removal, storage of soils/overburden, extraction and processing of minerals, water management and movement and operation of plant. These would temporarily change the historic land-use pattern and introduce noise & visual disturbance.

The HLC has a moderate sensitivity and capacity to absorb change. The development would preserve the extant relic elements of the historic landscape largely unaltered.

No specific mitigation is proposed but the proposed screening bunds would assist to screen the temporary effects of the development. The magnitude of impact was assessed as being moderate negative resulting in a slight adverse effect following mitigation.

Overall the Heritage Assessment concluded that the highest significance of impact was on New Hall and New Hall Registered Park & Garden with moderate to minor impact, while all other assets were assessed as the impact would be minor to neutral.

Appraisal of Historic Assessment
The appraisal was considered adequate.

Air Quality

The air quality assessment considered dust and vehicle emissions.

Emissions
The need to assess vehicle emissions was not undertaken on the basis that levels of nitrogen dioxide are currently low as the site is edge of urban fringe and additional plant traffic would be unlikely to exceed national air quality levels.

Dust
The dust assessment included consideration of those uses/properties closest to the site, namely Belsteads Farm 240m, New Hall School (270m) and Channels golf course (10m at its closest). The assessment looked at the nature of the activities likely to be undertaken at the, namely soils stripping, mineral extraction and processing movement of plant and vehicles and qualitative estimates based on dust emissions from large construction projects and road building schemes was used. Potentially significant effects from large projects are considered likely in terms of soiling at 100m and impact on vegetation 25m.

The aim of any scheme with mitigation was considered to be to ensure the impacts would give rise to negligible or minor effects.

Metrological data from Luton airport showed prevailing winds are from the west, and southwest and south sector and occasionally from the north.

Mineral operations at any one time would be 100m from residential properties. It was concluded that if standard dust suppressions measures were employed under normal meteorological conditions would be low giving a negligible effect. Subject to best practice control measures being undertaken even during periods of adverse metrological conditions it is unlikely there would be significant impacts from dust.

Mineral operations are likely to be in close proximity to vegetation; although a 10m unworked margin would be retained around all boundaries

Appraisal of dust and noise
The dust assessment was carried out prior to publication of the NPPF; however, the principles of assessment are very similar in the Technical appendix to NPPF as that set out in MPG2. The assessment utilises metrological data from Luton airport, which while not considered unrepresentative is less representative than Stansted Airport for which there is also metrological data and only 22km away. The assessment did not acknowledge that sometime winds are from the north (7%) of the time. New Hall School is categorised as school buildings, but in fact does include residential both staff and boarding pupils, however the closest residential property is 240 away while residential buildings within the school are 300m away. The mitigation relies on best practice measures being undertaken, the proposed method of working does not include screening bunds around all the working areas, such that dust generated could impact upon the playing fields, athletics track and all weather pitch located from within 100m from the extraction site.

Groundwater
The EIA includes a Hydrological Impact Appraisal in accordance with EA guidance and also seeks to address specific issues raised by the EA at Scoping Opinion Stage.

The assessment methodology used a tiered approach as recommended by the EA and based on certain factors namely, aquifer characteristics, water-dependent conservation sites, water-resource availability status and dewatering quantity, a level 2 tier (intermediate) of assessment was undertaken. A tier 2 assessment includes fieldworks to confirm the aquifer conditions via groundwater level monitoring and pump testing, production of cross-sections and hydrogeological conceptual model and modelling.

The hydrogeology of the area was summarised as the sand and gravel within the site are partially saturated along the northern parts and fully saturated in the central and southern sections. In addition there is a hydraulic barrier (groundwater shed boundary) that appears to cross the site in a general south west to north east direction.

The site is not situated within any Source Protection Zones. There are five licensed abstractions the closet located 570m from the site, three are located within New Hall School, one at New Hall Farm and one at Walter Hall Farm, these are understood to be for domestic or agricultural uses.

The groundwater level was found to be lie at approximately 45.5mAOD. The groundwater flow direction was found to be unclear, with investigations over the years indicating slightly different directions. Flows have been described as to the north/north west, while other investigations would indicate the flow is south east. It has been concluded that there is no overriding regional flow pattern and that local factors play a large part in determining the groundwater flow regime in the sand and gravels.

Surface water features have been investigated. The site has been concluded to straddle a watershed boundary, with surface water to the south and west draining to the south west towards the River Chelmer and the remainder of the site draining to the northeast towards Boreham Brook (Park Farm Brook) which in turn feeds into the Chelmer. Ponds are located on the southern edge of the site and to the north-east within Channels Golf Course. Due to the thickness of the overlying Boulder Clay it was concluded the ponds within the golf course were unlikely to have hydraulic connection with groundwater. Based on the groundwater elevation the southern pond may be a source of recharge to the sand and gravel aquifer.

The closest water that was concluded to hydraulic connection to the sand and gravel is the tributary of Boreham Brook 500m from the site. To the SW (850m) there are a series of drains and springs.

Other water features in the vicinity of the site are a fishing pond in New Hall School, feed from surface water drains from New Hall School and the Neighbourhood Scheme area and ponds around Bulls Lodge Quarry although these are beyond the Boreham Brook and unlikely to have hydraulic connectivity to the site.

<u>Impact on Surface Water Features</u>
Two surface water features are susceptible to flow impacts the tributary of the Boreham Brook (500m NE) and the drain/springs to the SW. Water dewatered from the site would be discharged to the new improved surface water management system. The flow out from surface water management would be slightly less than the abstraction rate due to evaporation and leakage into ground water from the settlement pond and surface water drains, but this is not considered to be significant. But in general the surface

water flow would be greater than the contribution from groundwater flow as it would not only include the base flow but the water extracted from the aquifer. However, the base flow would be reduced upon completion as the base flow recharges the aquifer.

Impact on groundwater
The drawn down effects have been assessed based on natural and man features. Out crops of clay are noted on the north-east, east and south of the site. To the north-west sand and gravel has been extracted and the land infilled. The licensed groundwater and domestic abstractions are identified has being potentially impacted upon. The impact of draw down effects was assessed using modelling and potentially indicated there could be a draw down effect on the water table of up to 0.5m.

The proposed mitigation should serious detrimental effect on the local abstractions occur would be to provide an alternative water supply.

Subsidence & Desiccation
Due the nature of the overlying Boulder Clay it is not considered that dewatering would result in desiccation and therefore subsidence.

Ground water quality
Groundwater analysis indicates the existing groundwater quality across the site is relatively good and therefore no adverse effects are anticipated from discharging the groundwater to surface water courses. Dewatered water is proposed to be discharged to a settlement pond before discharge to surface water, to reduce suspended solids entering the water courses. To minimise risk from spills during operations a minimum of 1m is proposed to be maintained above the groundwater in any quarry operations areas.

Monitoring programme
A programme of monitoring is proposed, including operational monitoring (recording abstraction rates, water quality and monitoring groundwater levels within the site) and impact monitoring (monitoring of groundwater levels and quality at specified locations outside the mineral extraction site boundary.)

Appraisal of Groundwater
The assessment is adequate but relies upon management of water from dewatering to be managed outside the application site.

Surface Water (& Flooding)

The ES assessed the impact upon surface water features. The main features being the Boreham Brook east of the site. The River Chelmer is 1.2km to the west and as it flows into the Blackwater which is classified as Special Area of Conservation the river is considered of high importance. The site is located within Flood Zone 1. There are seven ponds in the vicinity of the site considered to be of high importance due to potential to support Great Crested Newts. There are a network of drainage ditches in the vicinity of the site that are also considered to be of high importance due to their potential to support GCN.

The potential impacts during the development were considered to be suspended solids from dewatering operation; agricultural chemicals mobilised through discharge of water from dewatering into surface waters, discharge from dewatering operation contamination from plant and suspended solids in water runoff.

Mitigation proposed includes a settlement pond to prevent suspended solids entering the water courses. Previous assessments of agricultural chemicals level has shown low levels such that this impact is considered to be negligible

Other Issues

Traffic
No significant traffic generation onto the public highway would result from the proposals and the majority of movements being on internal haul roads within the Neighbourhood Scheme and have been assessed as part of that proposal

Socio-Economic
Socio-economic affects including, impact on residential amenity caused by noise, air quality and visual and landscape impacts have been assessed under the appropriate sections.

Ground contamination
Assessment of contaminants within the soils and overburden on the site showed no evidence of contaminants at levels that would pose a risk when deposited in the void.

Lighting
No working is proposed which would require illumination. If lighting were required details would be submitted for approval.

Cumulative Impacts
Cumulative impacts were considered with respect to the combination of the following development occurring at the same time.
Greater Beaulieu Park Neighbourhood & Railway Station Scheme
Bulls Lodge Quarry – extraction of sand and gravel
Mid Essex Gravels/Channels Area – expansion of existing uses, employment uses, possible indoor recreation uses and extension of existing Channels Golf course
Land at Belsteads Farm Lane – residential lead development as set out in NCAAP site allocation no. 6 and outline application
Boreham Airfield – continued promotion by owners of the site as a strategic location, inter alia residential development.

The cumulative assessment looked at the impact on residential amenity of existing properties, PROW, Landscape Character, setting of New Hall, archaeology, protected species, water resources and quality.

It was concluded that the main sensitive receptors were those affecting habitats, those affecting landscape character particularly setting of New Hall, those affecting PROW and archaeological remains. A Construction Environmental Management Plan, programme of archaeological mitigation and other impacts are addressed through the ES for the GBP development.

Appraisal of Cumulative Impacts

Adequate but relies on mitigation within the ES of the GBP development, rather than set out within the ES in relation to this application. However as the mineral development would not commence without the GBP development this is considered acceptable.

AGENDA ITEM.....6a.....

DR/42/12

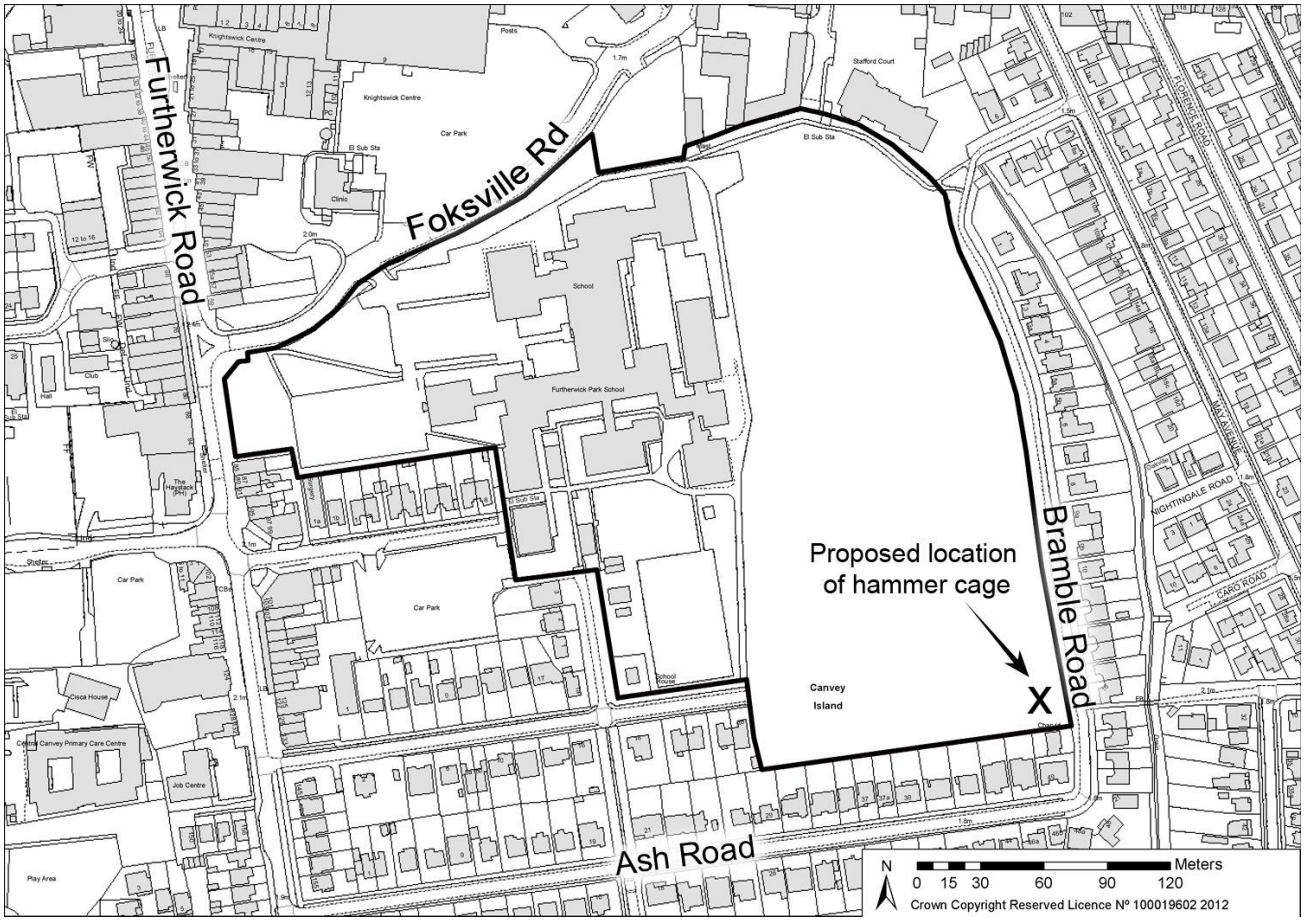
committee DEVELOPMENT & REGULATION

date 23 November 2012

ENFORCEMENT OF PLANNING CONTROL – COUNTY COUNCIL DEVELOPMENT

Proposal**: The erection and use of a hammer cage and associated landscaping (part retrospective)**
Location: **Castle View School, Foksville Road, Canvey Island, Essex, SS8 7AZ**
Ref: **CC/CPT/36/12**

Report by Head of Environmental Planning
Enquiries to: Matthew Wood Tel: 01245 435755



1. BACKGROUND

The planning application for the above development was considered at the Development and Regulation Committee on Friday 26 October 2012. The officer report (inclusive of the addendum) is attached at Appendix 1.

Members resolved to refuse the application for the erection and use of a hammer cage and associated landscaping (part retrospective) for the following reason:

- The structure is of an overbearing and oppressive nature and is detrimental to the visual amenity of the residential occupiers of the adjacent properties.

It was noted that as the development has already, in part, been carried out, the unauthorised development may require enforcement action to remedy any breach of planning control.

In accordance with the Committee Protocol, a formal decision on the application was deferred until the November 2012 meeting of the Development and Regulation Committee. The deferral was to allow officers to provide an appropriate and reasonable recommendation, based on planning policy, setting out the reasons for refusal in full as well as a consideration of whether it is expedient to undertake enforcement action to remedy the existing breach of planning control.

However, on 7 November 2012, the application was formally withdrawn by the applicant. As part of this withdrawal, and in line with the County Council's adopted protocol[1] (attached at Appendix 2), the applicant has outlined remedial works and the timescales for these to be undertaken in order to remedy the breach of planning control. Consideration of this is discussed later within this report.

2. SITE

Castle View School is situated within a predominately urban area on Canvey Island. The site itself is accessed via Foksville Road to the north of the site which itself is accessed from Canvey Island High Street. Both vehicular and pedestrian access to the site is from Foksville Road.

The main school buildings on site are situated to the west of the site, with the school's grass playing field located to the east of the site. The hammer cage is located in the south east corner of the site adjacent to residential properties in Ash Road to the south and Bramble Road to the east of the site. The development is approximately 5 metres from the façade of the nearest residential property.

Along the southern and eastern boundaries of the site there is some partial screening from a hedgerow beyond which are residential properties. There are a number of residential properties adjacent to the south west corner of the site which are also be partially screened from view by vegetation. Other residential properties

[1] 'Development Control Remedial Action Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the Town and Country Planning General Regulations 1992'

to the west of the site are adequately screened by the school's permanent buildings. There are no residential properties adjacent to the north boundary of the site.

The application site is within a Flood Zone 3 area and therefore there is a high risk of a flood event occurring. The site is also within the Essex Coast, Vange-Benfleet Coastal Protection Belt and Southend Outer Airport Safeguarding Zone.

A full description of the development is set out in the report at Appendix 1.

3. DISCUSSION

As the application has been withdrawn, but the unauthorised development remains, it is necessary to consider what remedial works, including appropriate timescales for their implementation, are required to remedy the breach of planning control (in line with the County Councils adopted protocol at Appendix 2).

The applicant has stated their intention (at Appendix 3) to amend the proposal and re-submit a planning application seeking the hammer cage's erection and use on the site by the end of 2012 whilst retaining the hammer cage in its current form during this time. The applicant has also stated that this timescale for re-submitting the planning application is needed in order to allow sufficient time for the applicant to discuss with the manufacturer the possibility of lowering the cage to five metres in height and in order to be able to obtain suitable confirmation of insurance coverage in relation to the cage and its use should it be reduced to five metres in height. If it transpires that the cage cannot be lowered then an alternative location would be sought on the school's playing field for the hammer cage even though this is only likely to be possible with significant reconfiguration of the existing playing pitches on the sports field. The cage in either case would still be proposed to be screened by landscaping similar to that previously proposed.

A submission of a planning application by the end of year would allow the application to be considered by the County Planning Authority and, without prejudice to any decision made, would allow for the hammer cage to be amended and landscaping implemented in the school's summer break. However, should planning permission be refused, the applicant has stated the hammer cage could be permanently removed from the site.

This approach is considered acceptable given the school's continued requirement for such a facility on the school site and consideration of the potential options for amending the proposed development.

4. RECOMMENDATION

That:

1. at this time, it is not considered expedient to take action, in accordance with the Council's protocol ,to remedy the breach of planning control, given that efforts are being made to alter the development in an effort to reduce its impact, and;

2. a further update will be provided at the January 2013 Committee meeting, should a revised planning application not have been submitted to the County Planning Authority by 31 December 2012.

5. BACKGROUND PAPERS

Ref: P/DC/Matthew Wood/CC/CPT/36/12

6. LOCAL MEMBER NOTIFICATION

CASTLE POINT – Canvey Island East
CASTLE POINT – Canvey Island West

APPENDIX 1

AGENDA ITEM 5a

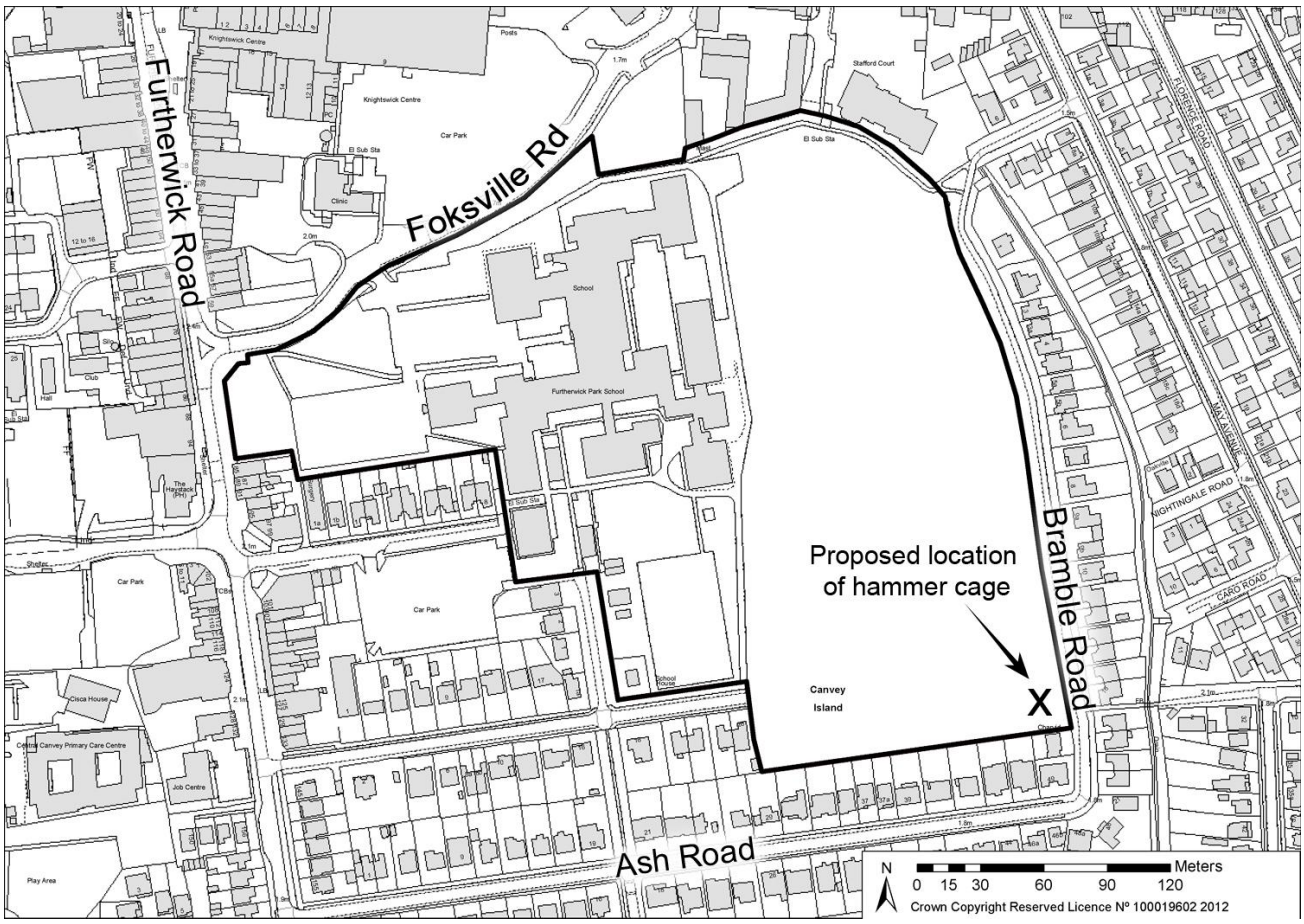
DR3612

committee DEVELOPMENT & REGULATION

date 26 October 2012

COUNTY COUNCIL DEVELOPMENT
Proposal**: The erection and use of a hammer cage and associated landscaping (part retrospective)**
Location: **Castle View School, Foksville Road, Canvey Island, Essex, SS8 7AZ**
Ref: **CC/CPT/36/12**

Report by Head of Environmental Planning
Enquiries to: Matthew Wood Tel: 01245 435755



7. BACKGROUND

The redevelopment of the former Furtherwick School to form the new Castle View School was completed in early 2012. As part of the planning process a scheme for the phasing of sports facilities on the site was agreed with Sport England and approved by the County Planning Authority on 19 July 2010. This approval referred to drawing number SRM-PL-CVS-L-007 which highlighted the layout of sports pitches for the summer and winter.

During Summer 2012 the County Planning Authority (CPA) received a complaint from a local resident that a 'hammer cage structure' had been erected by the school adjacent to residential properties with no prior consultation having been undertaken. After investigating the matter further it appeared that the school had erected the hammer cage on the understanding that it had planning permission via the scheme for the phasing of sports facilities at the school as shown on drawing number ref: SRM-PL-CVS-L-007. However, the CPA consider that insufficient detail was given on this drawing to warrant planning permission for the hammer cage. The applicant has submitted this planning application seeking to regularise the erection and use of the hammer cage on the site.

8. SITE

Castle View School is situated within a predominately urban area on Canvey Island. The site itself is accessed via Foksville Road to the north of the site which itself is accessed from Canvey Island High Street. Both vehicular and pedestrian access to the site is from Foksville Road.

The main school buildings on site are situated to the west of the site, with the school's grass playing field located to the east of the site. The hammer cage is located in the south east corner of the site adjacent to residential properties in Ash Road to the south and Bramble Road to the east of the site. The development is approximately 5 metres from the façade of the nearest residential property.

Along the southern and eastern boundaries of the site there is some partial screening from a hedgerow beyond which are residential properties. There are a number of residential properties adjacent to the south west corner of the site which are also be partially screened from view by vegetation. Other residential properties to the west of the site are adequately screened by the school's permanent buildings. There are no residential properties adjacent to the north boundary of the site.

The application site is within a Flood Zone 3 area and therefore there is a high risk of a flood event occurring. The site is also within the Essex Coast, Vange-Benfleet Coastal Protection Belt and Southend Outer Airport Safeguarding Zone.

9. PROPOSAL

The application seeks approval for the erection and use of a hammer cage and associated landscaping.

The hammer cage measures a maximum of 9m in height above existing ground level and comprises of a main cage of painted metal poles and green coloured fibre mesh netting. The hammer cage is located in the south east corner of the site approximately 3m from the site's boundary.

It is proposed to screen the hammer cage from neighbouring properties by the introduction of landscaping comprising a number of Betula (Birch) trees which would be envisaged to grow to soften views of the cage.

10. POLICIES

The following policies of the Castle Point Borough Local Plan adopted 1998 (CPLP) provide the development plan framework for this application. The following policies are of relevance to this application:

	CPLP
CF2	Education Facilities
EC3	Residential Amenity
EC16	Protection of Landscape

There are no policies within the RSS of relevance to this application.

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.

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 Framework. The level of consistency of the policies contained within the Castle Point Local Plan is considered further in the report.

11. CONSULTATIONS

CASTLE POINT BOROUGH COUNCIL – No objection.

SPORT ENGLAND – No objection.

ENVIRONMENT AGENCY – No comments to make.

PLACE SERVICES (Urban Design & Landscape) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS – No comments to make.

PLACE SERVICES (Trees) ENVIRONMENT, SUSTAINABILITY AND HIGHWAYS – No objection.

CANVEY ISLAND TOWN COUNCIL – No objection.

LOCAL MEMBER – CASTLE POINT – Canvey Island East – Objects, on the following grounds:

- The dominance and ugliness of the cage affects the views from windows, gardens, and balconies of all the properties near to the cage. It can also be seen from surrounding streets;
- There is no room for additional tree landscaping to hide the cage. There are only a couple of metres between the cage and the bungalow fence and walls. This boundary is already full of trees planted by Essex CC for the school 20 years ago that are no longer maintained. One local resident at present has to use the light in the bathroom at all times because of the closeness and overhanging of the existing trees, let alone any additional ones;
- It is considered that the Health and Safety argument for situating the cage and leaving it in its present position (elsewhere the thrown hammer would make dents in the playing field surfaces causing a trip hazard) to be unjustified with the real reason likely to be the financial expense of relocating the hammer cage elsewhere on the playing field.

LOCAL MEMBER – CASTLE POINT – Canvey Island West – Any comments received will be reported.

12. REPRESENTATIONS

107 properties were directly notified of the application. Two letters of representation have been received. These relate to planning issues covering the following matters:

Observation	Comment
Concerns over proposed landscaping and maintenance of it	See appraisal
Development is an eyesore/visual impact when viewed from adjacent residential properties	See appraisal
Hammer cage has already been erected by a company which has a background of redevelopment with ECC and who should be aware of planning law	The applicant initially understood that they had planning permission for the cage under permission ref: CC/CPT/19/10, however later understood that insufficient detail provided in relation to hammer cage meaning that planning permission was still required for the hammer cage on the site
No thought has been given to the impact on local residents	As part of this application process all issues including the impact of the development on local residents are taken into consideration and appraised within this report
Existing boundary hedge overgrown and not maintained	This issue is outside the scope of this application, however concerns have been forwarded onto the applicant

The old School had the cage located at the other end of playing field where it did not cause a problem	See appraisal
There are several other locations where the cage could be located	See appraisal
The proposed planting/landscaping would have to grow a considerable height to screen the cage blocking sunlight with root damage to property also possible	See appraisal

13. APPRAISAL

The key issues for consideration are:

- Need;
- Impact on Residential Amenity;
- Landscape and Visual Impact;
- Flood Risk.

A NEED

There is a clear mandate at all levels of Government for sport to be supported for young people and the school itself has stated that the retention of the hammer cage is an important aspect to school sports provision at Castle View School.

The NPPF also recognises the importance of sports provision. It states that access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities.

This is also recognised by CPLP policy CF2 (Education Facilities), which states, in summary, that the enhancement and improvement of existing educational facilities will be supported subject to proposals not detracting from the amenities of the local area by reason of noise or general disturbance. This policy is considered to be consistent with the NPPF in supporting educational facilities including those for sports provision. The potential impact of the development on local amenity is discussed later in this report, however in principle developments such as this are supported.

The school has also stated that Castle View students are currently national ranked in all throwing disciplines and at all age groups, a number of which are in the top ten of the UK. The cage itself is enabling the school to achieve excellence and inspire students to achieve and succeed in athletics events in and out of school which the school believe has been evident since the purchase of the hammer cage. Therefore without the hammer cage, these students would be severely disadvantaged.

The school has highlighted that an ex-commonwealth Hammer throw champion has expressed an interest in becoming a school community partner which would involve them attending the school and giving gifted and talented students some

coaching sessions which could also involve the wider community and gifted and talented students from around the Castle Point area. In addition the school now holds teacher/coach training courses that enable teachers and coaches to throw in a competitive environment and learn the technique of all throwing events.

Further, the school state that the hammer cage gives everybody a chance to throw in a competitive environment which some students (particularly those attending other schools without hammer cages) may never get to experience.

Therefore it is considered that there is a justified need for the development in order to enable the school to achieve excellence and inspire students to achieve and succeed in athletics events both in and out of school as well as to retain an important part of the school's sports provision complying with CPLP policy CF2. It is further considered that the development would improve local sports provision and contribute, in some way, to the health and well-being of the local community, particularly for younger generations, therefore complying with the NPPF.

B IMPACT ON RESIDENTIAL AMENITY

One of the core planning principles of the NPPF is to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. The NPPF also states that to prevent unacceptable risks from pollution, decisions should ensure that new development is appropriate for its location with the effects (including cumulative effects) of pollution on health, the natural environment and general amenity, and the potential sensitivity of the area or development to adverse effects from pollution being taken into account.

CPLP policy EC3 (Residential Amenity) states, in summary, that development proposals which would have a significant adverse effect upon the residential amenity of the surrounding area by way of noise or other forms of disturbance will be refused. This policy is considered to be consistent with the NPPF in seeking to protect and safeguard residential amenity.

The closest residential properties to the site are situated in Ash Road to the south and Bramble Road to the east of the site. These properties are adjacent to the school sites boundary and are located approximately 5 metres from the development which is located in the south east corner of the site.

The development is partially screened from view from beyond the south and east boundaries of the site by a hedgerow running along the eastern and southern boundary of the site. Approximately the bottom 4 metres of the development is screened by this with the highest 5 metres still clearly visible.

The Local Member for Canvey Island East and a number of representations have raised objection to the development partly due to the dominance and ugliness of the cage making it an eyesore and its impact on the views from windows, gardens, and balconies primarily from all the adjacent residential properties situated in Ash Road and Bramble Road with the cage also being seen from surrounding streets.

A number of representations have been received which state that the cage could located elsewhere on the school extensive playing fields and that the old school included a hammer cage at the opposite end of the site away from residential properties where there was no problem.

In terms of the location for the hammer cage on the school site the applicant has stated that this is most suitable and really the only viable option for health and safety reasons given the layout of the various sports pitches on the playing field and in particular the safety of students whilst participating in sporting activities on the field when the hammer cage is in use. The applicant has also stated that changing the position or location of the hammer cage would have an impact on the quality and safety of the playing field with divots potentially more likely to be created by the hammers themselves potentially giving rise to injuries.

It would also not be possible to lower the cage height or associated netting as this would pose another health and safety risk which would make the insurance for the use of the cage invalid. The height of the cage, measuring 9 metres in height is justified by the applicant in order to minimise and prevent any flying apparatus from potentially escaping the site and potentially damaging adjacent properties.

In relation to the previous layout of the school, the school did have a hammer cage of a similar height to this development, located at the northern end of the site. However, this cage was lost when the school was redeveloped in accordance with the planning permission ref: CC/CPT/19/10 granted by the County Planning Authority in April 2010. The current layout of the new school and in particular the summer and winter layouts for sports facilities on the playing fields were agreed with Sport England. The northern end of the site where the previous hammer cage was located now includes discus and shot put facilities in the summer and a football pitch in the winter. The applicant has stated that the present location of the hammer cage is the only area on the site where the hammer cage can be safely accommodated given the layout of other sports facilities on the playing field.

It is worth noting that the development is located on a sports playing field within a school which has been established on the site for many years. It is considered that sufficient evidence has been provided to demonstrate that there is no alternative location off site where the hammer cage could be located.

Although it is considered that the cage does have a visual impact on views from the adjacent residential properties this is not considered to be wholly unacceptable or adverse given that the cage is not a solid structure. Further, the closest property to the development is located in Bramble Road right on the south east corner of the site. This residential property is orientated east west with the lounge area facing east with the cage to the north. Taking this into account along with the need for the school to have such a structure and the existing layout of the sports pitches affecting the school’s ability to re-locate the cage on the site it is further considered that any visual impact from the development is outweighed by the benefits of such a facility to the school.

The Local Member has also stated that it is considered that the Health and Safety argument for situating the cage and leaving it in its present position (elsewhere the thrown hammer would make dents in the playing field surfaces causing a trip hazard) to be unjustified with the real reason likely to be the financial expense of relocating the hammer cage elsewhere on the playing field.

The location of the hammer cage and the possibility of re-locating it elsewhere on the site was discussed with the applicant prior to the submission of this planning application. The applicant confirmed that there is no viable alternative location for the hammer cage to be re-located given the current layout of sports pitches on the playing field and health and safety considerations. A possibility could be to re-model the entire playing field to incorporate a new location for the hammer cage although this is considered to be an option which would involve considerable financial expense and re-consultation with Sport England who have already approved the existing layout of the sports facilities on the site. There would also be an element of uncertainty in this in that any re-modelling would again require the approval of Sport England.

The Local Member has also questioned the viability of the proposed landscaping to screen the development. The Local Member states that there are only a couple of metres between the cage and the adjacent properties fence and walls with this boundary already full of trees planted by ECC for the school approximately 20 years ago which are no longer adequately maintained. The Local Member also states that, at present one local resident has to use the light in the bathroom at all times because of the closeness and overhanging of the existing trees, let alone any additional ones.

Two letters of representation have also been received regarding the proposed landscaping and maintenance of this and that the proposed landscaping would be allowed to grow up too high potentially blocking sunlight and causing root damage to nearby properties. Concern has also been raised that the proposed planting could affect the cage itself as the planting matures.

It is considered that the proposed landscaping would be beneficial in terms of reducing the visual impact of the development from beyond the site, by breaking up its dominance and softening views onto the school site. The layout of the proposed landscaping includes spacing with planting placed to ensure sunlight to adjacent residential properties would not be adversely affected. Further it is considered that there would be no impact arising from lack of sunlight to those properties in Ash Road to the south of the site as the sun tracks to the south.

In terms of potential root damage to adjacent residential properties as the proposed planting would be growing up and maturing, this is considered to be unlikely given the nature of the planting proposed, Betula (Birch) trees which are regarded as a low water demanding species with the applicant’s landscape consultant also recommending this species of tree in this location in the knowledge of the proximity of adjoining properties. This species are also lightly branched and have small leaves and therefore would not cast a dense shade. Further, the species proposed is multi-stem and is therefore unlikely to grow to a great height in maturity. Therefore it is not considered that the addition of the

planting itself would not have an adverse impact on local residential amenity. It is also considered that there would be enough room between the cage and boundary of the site to implement the planting successfully without any adverse impact.

The County Councils Landscape and Tree Consultant have raised no objection to the development or proposed landscaping. However, the County Councils Tree Consultant has stated that it may be more beneficial to plant a maximum of four trees, rather than the six that are proposed, as this would allow for the siting of the trees further away from the hammer cage structure and adjacent residential properties. The proposed planting of six trees is also more likely to create an increase in shading to those properties immediately adjacent to the site than the addition of just four trees. The applicant is happy to reduce the number of trees to four and re-position them and this has been reflected in an amended landscape scheme for the development.

In terms of the maintenance of the proposed planting, the applicant has stated that the school does have a maintenance contract which would include the proposed landscaping. However, should planning permission be granted a condition could be attached requesting a management plan for the proposed landscaping to be submitted for the approval in writing of the County Planning Authority to ensure that the proposed planting would be adequately maintained.

In relation to the existing established trees in the south east corner of the site, this is a maintenance issue outside the scope of this planning application. However, these concerns have been forwarded on to the applicant for them to action.

The development is unlikely to create additional noise as the hammer cage and activities associated with it are not considered to be particularly noise intrusive. Noise levels emitted from the site are very unlikely to increase as a result of the development given the current use of the site as a school including the associated sports playing field.

Further, Castle Point Borough Council has raised no objection to the development.

Therefore it is considered that the development does not have an adverse impact on local residential amenity provided further landscaping is introduced and it is further considered that the development conforms to the principles of the NPPF in terms of residential amenity and CPLP policy EC3.

C LANDSCAPE AND VISUAL IMPACT

The development is located within the Essex Coast, Vange-Benfleet Coastal Protection Belt and Southend Outer Airport Safeguarding Zone.

The NPPF states that planning decisions should address the connections between people and places and the integration of new development into the built environment. The NPPF also goes to say that the planning system should contribute to and enhance the natural and local environment by protecting and

enhancing valued landscapes.

CPLP policy EC16 (Protection of Landscape) states, in summary, that development which would have a significant adverse visual impact on the surrounding landscape will not be permitted. When assessing the impact of development regard will be had to the prominence of the development in terms of its scale, siting and external materials. This policy is considered to be consistent with the NPPF in minimising visual intrusion and protecting landscapes from inappropriate development.

Although the development measures up to 9 metres in height it is adequately screened from view from the surrounding landscape by existing residential properties (a mix of one and two storey structures) situated along the southern and eastern boundaries of the site. Given that the nearby area surrounding the site is urbanised it is considered that, due to the nature, scale, size and siting and external materials of the development that it does not have an adverse impact on the local landscape including the Essex Coast, Vange-Benfleet Coastal Protection Belt and Southend Outer Airport Safeguarding Zone and therefore it is further considered that the development conforms to the NPPF in terms of landscape impact and CPLP policy EC16.

D FLOOD RISK

The application site is situated within a Flood Zone 3 area as it is located on Canvey Island and therefore there is a high risk of a flood event occurring.

The NPPF states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.

Given the nature, size and scale of the development it is not considered that the development does have an impact on flood risk in the local area or increase the likelihood of flooding elsewhere. It is therefore considered that the development is not be inappropriate development within this flood zone. Further, the Environment Agency has raised no objection to the development.

Therefore it is considered that the development does not have an impact on flood risk in the area and it is further considered that the development conforms to the flood risk principles of the NPPF.

14. CONCLUSION

It is considered appropriate to grant planning permission for the development in order to enable the school to achieve excellence and inspire students to achieve and succeed in athletics events both in and out of school.

It is further considered that the development is sustainable in light of the NPPF and that the Castle Point Borough Local Plan Policies (CPLP) referred to in this report are consistent with the NPPF.

It is also considered that with mitigation there would be no adverse impact upon

the residential amenity of the surrounding occupiers' properties, the local landscape or the flood risk zone considering the development. Therefore the development is considered to comply with CPLP policies CF2, EC3 and EC16.

15. RECOMMENDED

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 carried out in accordance with the details submitted by way of the application CC/CPT/36/12 dated 11 September 2012 and validated on 17 September 2012 together with Covering Letter including supporting statement dated 11 September 2012, drawing numbers plan CC/002, plan CC/003 titled 'Location of Hammer Cage', 0207 Rev PO1 titled 'Tree Planting to South East Boundary' dated 10 May 2010, photographs of structure and proposed landscaping received on 12 September 2012, e-mails from Tony Collins of Collins & Coward Ltd dated 08 October 2012 at 13:42 and 16:02 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:

2. Within 31 days of the date of this permission a Landscape Management Scheme shall be submitted for the approval in writing of the County Planning Authority. The scheme shall include how often the planting will be pruned and how this will be undertaken as well as how the planting will be maintained. The approved scheme shall be implemented and maintained during the life of the development hereby permitted.

3. Any tree or shrub forming part of the approved landscaping scheme as shown on drawing number 0207 Rev PO1 titled 'Tree Planting to South East Boundary' dated 10 May 2010 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.

BACKGROUND PAPERS

Consultation replies
Representations
Ref: P/DC/Matthew Wood/CC/CPT/36/12

THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2010

The development is located approximately 1km from a European site (Benfleet and Southend Marshes SPA) and is not directly connected with or necessary for the management of that site for nature conservation.

No issues have been raised to indicate that this development adversely affects

the integrity of the European site, 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: The report only concerns the determination of an application for planning permission and takes into account any equalities 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.

LOCAL MEMBER NOTIFICATION

CASTLE POINT – Canvey Island East

CASTLE POINT – Canvey Island West

APPENDIX 2

ESSEX COUNTY COUNCIL

Planning Service Group

Development Control Remedial Action Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the Town and Country Planning General Regulations 1992

Introduction

This document sets out how the County Planning Authority (CPA) would regulate any breaches of planning control relating to development undertaken by County service providers under Regulation 3 of the Town and Country Planning General Regulations 1992.

Where development is approved the CPA is obliged to ensure that all planning conditions attached to planning permissions are complied with in full. In addition, the CPA is obliged to investigate any allegation that a County Council development is taking or has taken place without the pre-requisite deemed planning permission.

The Town and Country Planning Act 1990 imposes a general but not mandatory duty to ensure compliance with planning control.

Accordingly, because there is an element of discretion as to whether or not it might be expedient to take appropriate action, there is a need for procedures to be adopted and followed to ensure that the CPA's approach is consistent and effective when deciding what action should be taken.

This protocol for Regulation 3 planning matters establishes formal procedures to enable the CPA, both the Development and Regulation Committee (the Committee) and officers acting under delegated powers to be consistent and effective in their approach. Additionally, promoting service providers would understand that should there be any breaches of planning control the CPA would take action under the terms of the protocol to remedy them.

The protocol would make the processes involved transparent, and would, if followed in full, avoid the need for ombudsman or District/Borough Council intervention.

Breaches of Planning Control

Breaches of planning control are likely to be brought to the attention of the CPA either by routine site monitoring inspections or following a complaint from a member of the public or other third party.

All complaints received from the general public would be logged on the complaints database and acknowledged within 2 working days. The complainant should, if the complaint is accepted, be able to expect a response within 14 working days setting out how the County Council intends to deal with the problem. The matter would then be dealt with, in the first instance, in the same manner as for non-County Council development, ie in accordance with Development Control Enforcement Policy, Complaints Code of Practice.

Site Monitoring and Gathering of Information

The CPA has the responsibility for determining all Regulation 3 development the County

Council wishes to carry out. Officers acting for the CPA may need to investigate alleged breaches of control once informed about them. In addition, in respect of planning permissions, officers may undertake routine monitoring to ensure planning conditions are met. County Council officers and contractors working with or for the County Council shall enable site inspections to take place and assist in providing any necessary information.

Regulation of Breaches

The Head of Planning has delegated powers to initiate enforcement action, although matters will be referred to the Committee if a Member decision is desired. For clarity, where a local resident or firm brings a confirmed breach of planning control to the attention of the CPA and, in officer's opinion, it would not be expedient to seek remedial action, then this would always be referred to the Committee for a final decision.

Remedial Action Procedure

Initial Action. The investigating officer will, under normal circumstances, visit the site in question to determine whether or not a breach of planning control has taken place. Reference will need to be made to extant planning permissions (where they exist) and to the General Permitted Development Order 1995 to ascertain if permitted development rights exist. When necessary, District/Borough Councils will be consulted to determine if they have granted planning permission.

If no breach of planning control were found the complainant would be informed accordingly. Additionally, the local member would be informed of the complaint and the outcome of the investigation.

Follow-up Action Upon concluding there has been a breach of planning control, negotiation would be the first step in addressing the situation. The investigating officer will discuss the situation with the relevant officer(s) acting for the promoting service provider and try to reach an agreed settlement including a timescale to carry out any remedial works, make any rectifying application, etc. Where the promoting department is willing to comply with an agreed way forward and agreed time periods, this will usually result in no further action being required.

Where remedial action is agreed to address the breach of planning control, the investigating officer will write to all parties involved setting out what has been agreed to correct the situation, including timescales.

The service provider should respond in writing stating that they are willing to carry out these works and in the time period.

If the works do not progress, or a commitment is not received to carry out the necessary remedial works, the investigating officer will then consider taking a more formal approach to resolving the situation.

At all times, any complainant would be kept informed as well as the local Member.

Committee Involvement Should the necessary action not be agreed, or the agreed action not be undertaken in full, then the matter would be brought to the attention of the Development and Regulation Committee for resolution.

If the Committee consider that remedial action is not necessary then no further enforcement action is required. The complainant and the local Member would be informed accordingly.

If the Committee determine that the breach of planning control does justify remedial action, then it would also determine any necessary action to overcome the breach, and refer the matter to the relevant Cabinet Member for action. The complainant and the local Member would be informed accordingly.

Cabinet Member Involvement

Service providers may wish to involve the relevant Cabinet Members throughout the whole process. However, Cabinet Members will be brought formally into the process at the stage of the Committee determining action needs to be taken.

Should the Cabinet Member determine that it would be appropriate to take the action recommended by the Committee, then this should proceed.

Should the Cabinet Member determine that different or no action is required, then the Committee will be informed.

Final Resolution

If the Committee accept this determination, then accordingly the matter will be resolved, subject to the completion of any agreed action. If the Committee consider this would not resolve the issue satisfactorily, then the matter would be referred to full Council for a decision, which shall be final.

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COLLINS COWARD C&C PLANNING and DEVELOPMENT CONSULTANCY

Ref: CC/1218

7 November 2012

Matthew Wood
Planner
Essex County Council
County Hall
Chelmsford
Essex
CO6 4BS

Westwood Park
London Road
Little Horkesley
Colchester
Essex
CO6 4BS

By Email

Dear Mr Wood

APPLICATION CC/CPT/36/12 – WITHDRAWL OF APPLCIATION

I refer to the recent planning application submitted on behalf of the County Council and Skanska Construction UK Ltd for the retention of the hammer cage at Castle View School.

I'm now formally request that the above application be withdrawn in order that a new planning application might be prepared and resubmitted to your Council. It is intended that the new planning application would be submitted by the end of the year in order to allow time to discuss with the manufacturer the ability to lower the cage to five metres in height and to obtain suitable confirmation of insurance coverage. If it transpires that the cage cannot be lowered then an alternate location would be sought although this is likely to not be possible without significant reconfiguration of the playing pitches. The cage in either instance would still be screened with landscape.

A submission by the end of the year would allow the application to be considered by your Council and then implemented in the school's summer break, if planning permission were granted or if refused the cage could be permanently removed.

I trust that this is satisfactory but should you have any queries please do not hesitate to contact me at this office.

Yours sincerely

Tony Collins
Director

AGENDA ITEM .....7a.....

DR/43/12

committee DEVELOPMENT & REGULATION

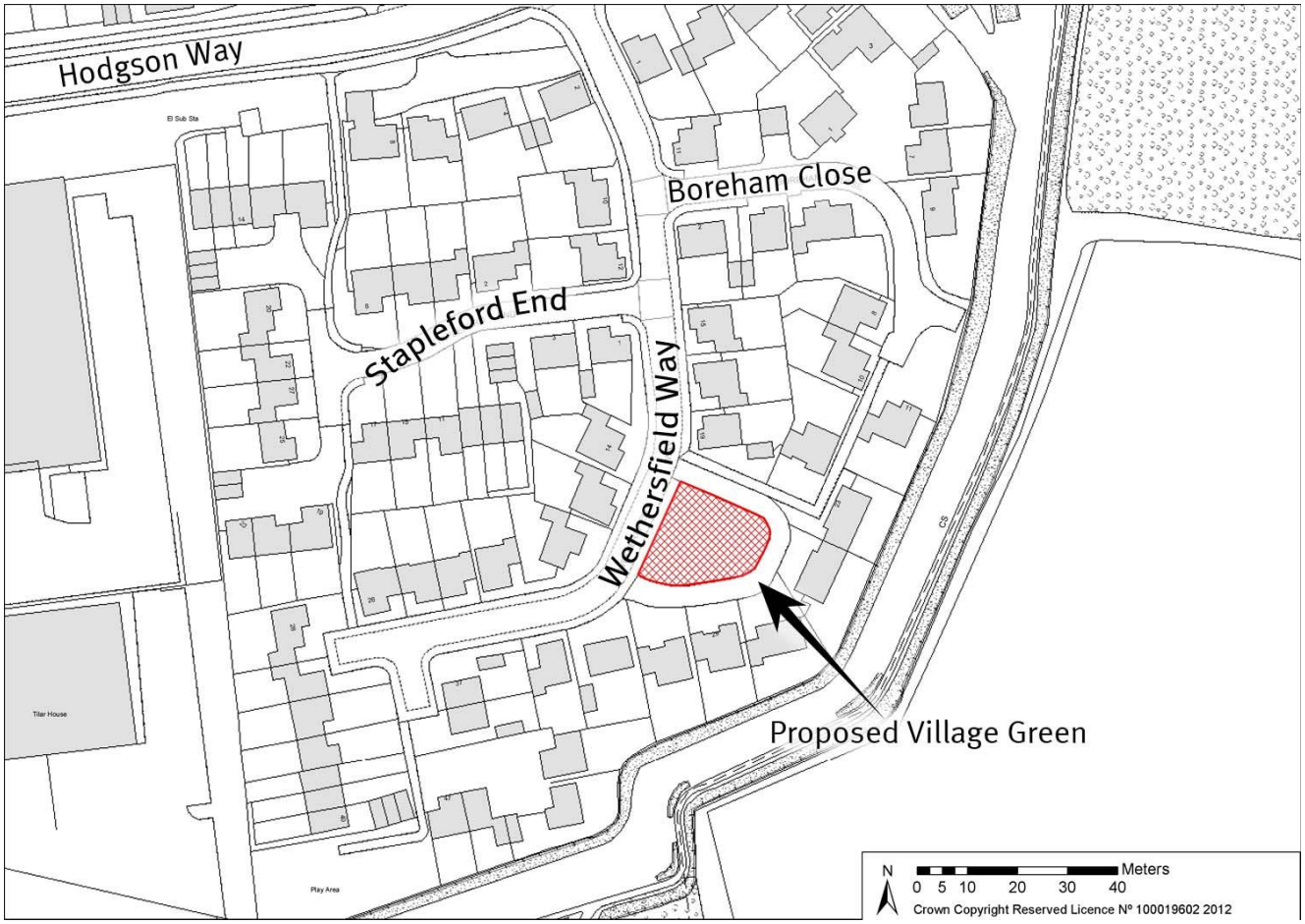
date 23 November 2012

VILLAGE GREEN APPLICATION

Application to register land known as The Green, Wethersfield Way, Wickford, Essex (in the parish of Shotgate) as a town or village green

Report by County Solicitor

Enquiries to Jacqueline Millward Tel: 01245 506710



1. PURPOSE OF REPORT

To consider an application made by Mrs Tristan Marriott to register land described as “the Green”, Wethersfield Way, Wickford 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 was made by local resident Mrs Tristan Marriott in May 2011 for registration of land adjacent to Wethersfield Way, Wickford. 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, namely 25th to 26th September 2012 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, the current owner, Mr Michael Pritchett.

With the agreement of the parties all of the oral evidence was heard on oath or solemn affirmation. The proposed inquiry was advertised in advance both on site and in the local press.

The Inspector made a preliminary and unaccompanied site visit on 25th September 2012 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 26th September 2012. In addition to looking at the site on the accompanied site visit he visited virtually the whole of the suggested ‘neighbourhood’.

In addition to the oral evidence at the inquiry, both parties had exchanged 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.The applicant and the two objectors have had sight of the inspector’s report.

3. DESCRIPTION OF THE LAND

The applicant provided a plan defining the boundary of the application site when she submitted her application.

The application land is clearly delineated on the ground bounded by the access road to the adjacent properties and Wethersfield Way. At the time of the inspector’s site visits it was a fairly small grassed area with a number of relatively small trees and was reasonably well maintained.

4. THE APPLICATION

The original application form was 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 appeared to suggest that an area of land bordered for the most part on the north by Hodgson Way but otherwise bounded by the arbitrary east-west and north-south marks on the Land Registry plan provided was put forward as the locality.

In discussion which took place at the inquiry the applicant made it clear that she wishes to amend this area and substitute an area which more appropriately accord with judicial pronouncements on the topic. She confirmed that this was the area shown on Appendix 3 of her application (Appendix 2 to this report) consisting of the housing estate developed in the 1980s by Abbey Homesteads to the south of Hodgson Way, and containing, as well as Wethersfield Way itself and some houses fronting Hodgson Way, the residential streets of Stapleford End and Boreham Close. The objector did not object to this clarification.

Both the application site and the identified neighbourhood lie within the civil parish of Shotgate which had been in existence since 2007. Both areas have lain within the borough of Basildon and the inspector considered Basildon administrative area as the locality within which the neighbourhood was located.

5. THE EVIDENCE IN SUPPORT OF THE APPLICATION

In addition to the oral evidence at the inquiry the applicant had provided plans, an explanatory statement, a collection of completed evidence questionnaires or letters from local residents and other supporting material including photographs.

24 people gave oral evidence in support of the application and their use of the application land – the applicant Mrs Tristian Marriott (paragraphs 7.7 to 7.22 of the inspector's report), Mr David Harrison (paragraphs 7.23 to 7.31), Mrs Lyndsay Mackay (paragraphs 7.32 to 7.40), Mrs Tolu Kalejaiye (paragraphs 7.41 to 7.45), Mrs Jane Morris (paragraphs 7.46 to 7.53), Mrs Michelle Perham (paragraphs 7.54 to 7.61), Mrs Sharon Scofield (paragraphs 7.62 to 7.72), Mr Mick Day (paragraphs 7.73 to 7.80), Mrs Sara Teixeira (paragraphs 7.81 to 7.85), Mrs Lucy Garrod (paragraphs 7.86 to 7.90), Mr David Marriott (paragraphs 7.91 to 7.99), Mrs Geraldine Grisley (paragraphs 7.100 to 7.109), Mr Ben Lovejoy (paragraphs 7.110 to 7.112) and Mr Tony Forster (paragraphs 7.113 to 7.117).

The uses stated included children playing, community celebrations for royal events, snowball fights, ball and team games and socialising with others.

The applicant stated that Basildon Borough Council had mowed the grass for the first 11 years of her occupation. At least 8 homeowners had lived on Wethersfield Way for a long time. From when the first residents moved onto the estate the sales literature from Abbey Homes had illustrated the land known as The Green as exactly that. The houses were first occupied in the autumn of 1988.

No permission for use had been sought and legal documents appeared to state the

land was adopted. Signs on the land confirmed that Basildon District Council had been in charge of it. She confirmed that the industrial estate to the east and Hodgson Way to the south separated the neighbourhood from other residential areas.

6. THE OBJECTOR'S CASE

The application was advertised in accordance with regulations and an objection was made by Mr Michael Pritchett who acquired ownership of the site following a transfer from Mr Hammond dated 31st January 2011.

The objector did not give oral evidence but his written notes said that he had visited the land 12 times and never seen anybody else on it.

He called Mr Trevor Hammond, the owner of the application land from January 2007 to Spring 2011 to give evidence. He said he had never given permission to use the land. Sometimes cars would be parked on it and he would ask them to move so he could cut the grass. There was damage to the trees and rubbish for him to clear up. Local people didn't show an interest in the land until he put it up for sale through auctioneers. He had offered to sell it to them at well below market value.

Mr Hammond bought the land from Mr Herbert Humphreys who had bought it from the builders about 10 years previously. Mr Humphreys had told him the council had mown it whilst he owned it. Mr Hammond bought the land as a building plot. He bought it as part of a package of 4 plots.

Mr Hammond said he would not have stopped children playing there or other people going on to the land. He was not aware of community events taking place on the land.

The inspector's summary of the objector's evidence is at paragraphs 9.1-9.17 of the inspector's report at Appendix 1.

The objector put the applicant to proof the various factors required to establish their case and repeated his offer to sell the land to the residents (see paragraph 10.3 of the inspector's report).

7. ISSUES RELATING TO THE USER EVIDENCE AND THE STATUTORY GROUNDS

The date when the application was submitted was not clear and the inspector looked at a period of at least twenty years commencing between 1st April 1991 and 31st May 1991.

The burden of proving that the land has become a town or village green lies with the applicant and the standard of proof is the balance of probabilities.

In order to add the application land to the Register of Town and Village Greens it

needs to be established that “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.”

There were disputed facts between the previous owner Mr Hammond and the evidence of the local residents which the inspector needed to resolve on the balance of probabilities.

Because the applicant relies on s15 (2) of the 2006 Act it has to also be the case that the use continues at the time of the application.

8. AS OF RIGHT USE ON THE LAND FOR THE RELEVANT 20 YEAR PERIOD AND CONTINATION AT THE TIME OF THE APPLICATION

From the evidence given at the inquiry and the documentary material it appeared clear that from the time of the original planning of the estate around Wethersfield Way in the mid-1980s, it was always intended that the application site should be a landscaped and probably grassed amenity area for the benefit of the new estate, both as a visual amenity and (presumably) somewhere where things like lawful sports and pastimes could take place.

It seemed that this area was laid out as something looking like a conventional ‘village green’ for the new estate and envisaged that it would end up under the ownership and management of Basildon Council. The District Council had mown it for a considerable number of years apparently as a result of some kind of misunderstanding or mistake. Whatever the intentions, the transfer did not happen. The land had therefore never been used by the local residents ‘by right’ as public open space or something similar.

The application land had always been open and unfenced and there was no evidence that use had been with secrecy. Local people had never asked anyone’s permission to use the land and the evidence for the objector acknowledged this.

The inspector was able to conclude from the evidence that the use of the claimed green by local people had been ‘as of right’ in the sense required by the 2006 Act.

It was similarly clear and not in serious dispute that the use continued at the time the application was submitted. The inspector considered that there was some truth in the objector’s suggestion that the level of use had increased in recent times and that a significant proportion of the photographic evidence of activities on the claimed green was recent. However it was also clear that other photographs showed earlier events such as Mrs Grisley’s photograph of a party on the green in July 2003.

The relevant evidence was however in the sworn testimony of local people. A significant proportion of the witnesses had not in fact been living locally for the whole relevant 20 year period so their evidence inevitably only related to part of the period. However some witnesses had been in their homes before the 20 year period started in 1991 and their evidence was entirely convincing that use of the land by local people for sports and pastimes took place back then, from when they

first moved to their houses, and has been continued since. There were also some written statements from others supporting use in the earlier years of the estate.

Mrs Grisley's photograph of 1993 showed the green in an open accessible state, surrounded by houses, and entirely suitable for lawful sports and pastimes. It also showed the land was in a similar state as it was grassed with small trees.

Taken together with the other evidence the inspector considered that for the entire period of the existence of this estate the claimed 'Green' has in fact been available as an open, grassy area which physically could clearly be used for lawful sports and pastimes, consistent with the modest size of the area of land concerned. The evidence from actual witnesses was convincing that the land in fact been so used over the whole period. Nothing about this was surprising, given that the land concerned was plainly laid out in the first place as an amenity area potentially available for just such use. On the contrary, it would have been rather surprising if this land, in that situation, had not been so used.

The inspector concluded that, on the balance of probabilities, the applicant's evidence shows that the use of the claimed green by local people in significant numbers was begun substantially before either April or May 1991 and has continued ever since.

9. USE BY 'A SIGNIFICANT NUMBER OF THE INHABITANTS' FOR 'LAWFUL SPORTS AND PASTIMES'

Many of the visits referred to by the objector would be outside the relevant twenty year period. Mr Hammond, the previous owner, acknowledged that during his four year ownership he would not stop other local people from using the land and knew children used to play on it.

In any event there was plentiful and credible evidence from many witnesses that considerable numbers of local people from the neighbourhood, both adults and children had used the land regularly. The inspector concluded on the balance of probabilities that the evidence amply justified the conclusion that a significant number of local people from the neighbourhood have regularly used the land.

The inspector was in no doubt that the activities indulged in by local people on the application land whether they be games played by children or children with adults, parties or much more informal 'chats' between residents, are all capable of constituting 'lawful sports and pastimes' in the terminology of the 2006 Act. This is not a large piece of land and the feel and type of activity claimed do appear to be consistent with and credible in relation to its size and location.

The inspector accepted that cars had been seen parked on the grass of the claimed green. He had no doubt that this sometimes happened but not to an extent significant enough to constitute a material interruption to the continuing regular use of the land for lawful sports and pastimes.

10. NEIGHBOURHOOD AND LOCALITY

Paragraphs 11.7 to 11.9 of the inspector's report confirms that he found the area shown on Appendix 3 with the application (now Appendix 2 to this report) comprising the areas of the housing estate of Wethersfield Way, Stapleford End and Boreham Close to be of a cohesive and distinct character and could be regarded as a neighbourhood in this context. It was also an area from which the evidence of use of the application land overwhelmingly came.

He considered that, Shotgate parish having only relatively recently come into being, Basildon Borough, formerly District, was the relevant locality.

11. LOCAL MEMBER NOTIFICATION

The local members have been consulted. Any comments from Councillors Morris and Pummell will be reported.

12. INSPECTOR'S CONCLUSION AND RECOMMENDATION

The inspector's conclusion is that the evidence in relation to the application has met the statutory criteria set out in section 15(2) of the 2006 Act in relation to use of the application site for lawful sports and pastimes over at least the requisite period by a significant number of the inhabitants of the neighbourhood identified on the plan on Appendix 3 of the application and on Appendix 2 to this report.

13. REPRESENTATIONS FOLLOWING INSPECTOR'S REPORT

The applicant and the objector/landowner were given an opportunity to comment on the inspector's conclusions. Any comments will be reported.

14. RECOMMENDED

That:

1. The boundary of the identified neighbourhood on Appendix 2 is accepted as the neighbourhood and that Basildon Borough, formerly Basildon District, is the locality area in relation to the application;

2. The inspector's analysis of the evidence in support of the application is accepted and his recommendation that the application made by Mrs Marriott received in May 2011 is accepted for the reasons set out in the inspector's report and in summary in this report and the land applied for is added to the Register of Town and Village Greens.

BACKGROUND PAPERS

Application received in May 2011
Inspector's report

Local Members Wickford Crouch - Councillors Don Morris and Iris Pummell

Ref: Jacqueline Millward CAVG/64

APPENDIX 1

RE: LAND KNOWN AS THE GREEN, WETHERSFIELD WAY, SHOTGATE, WICKFORD

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 LAND KNOWN AS THE GREEN, WETHERSFIELD WAY, WICKFORD, ESSEX (in the Parish of SHOTGATE)

as a

TOWN OR VILLAGE GREEN

CONTENTS:

Introduction

1.1. I have been appointed by Essex County Council ("the Council"), in its capacity as Registration Authority, to consider and report on an application submitted to the Council in May 2011, for the registration as a Town or Village Green under Section 15 of the Commons Act 2006 of an area of land known as The Green, adjacent to Wethersfield Way, Wickford (within the Civil Parish of Shotgate). Wickford and Shotgate fall within the Borough of Basildon, 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 May 2011 was made by Mrs Tristan Marriott, of 29 Wethersfield Way, Wickford, Essex. Mrs Marriott 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 clearly shown on a plan which accompanied the Application. The originally completed application form was 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 Appendix 2 thereto) appeared to suggest that an area of land, bordered on the north (for the most part) by Hodgson Way, but otherwise bounded by the arbitrary east-west or north-south lines of a plan provided by the Land Registry of the area surrounding The Green, was being put forward as a *"locality"*.

2.4. That such a thing should occur was neither surprising nor particularly unusual, as the standard (national) form (Form 44) on which applications of this kind are to be made offers virtually no 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, between the parties and myself, the Applicant Mrs Marriott made clear that she wished to amend this

particular aspect of her application, and to put forward a suggested relevant *"neighbourhood within a locality"* which more appropriately accords with judicial pronouncements on the topic. Accordingly she put forward as the relevant *"neighbourhood"* the area which was in fact (as it happens) shown on Appendix 3 to her application, consisting of the housing estate developed in the 1980s by Abbey Homesteads to the south of Hodgson Way, and containing, as well as Wethersfield Way itself, and some houses fronting Hodgson Way, the residential streets of Stapleford End and Boreham Close.

2.6. I shall return to this point later, but for the present I note that no objection at all was taken to this clarification by the Objector Mr Pritchett. [Indeed it would have been difficult logically for Mr Pritchett to take such an objection, even had he wished to, given the apparent approval which the courts have shown to the proposition that it is open to the Registration Authority to take a view, on the evidence, as to what should be seen as the appropriate 'locality' or 'neighbourhood', even if the applicant has not identified the most appropriate area(s) on his/her application form].

2.7. As for the question of *"locality"*, the application site and the 'neighbourhood' as just discussed both lie within the Civil Parish of Shotgate, which is clearly capable of constituting a *"locality"* meeting the judicial pronouncements as to the meaning of that term. However I learnt from the evidence that this particular civil parish has only been in existence since 2007, and so did not exist for most of the 20 year period which the Commons Act requires to be considered in this case. On the other hand there was no dispute that for the entirety of the 20 year period the application site, and the 'neighbourhood' discussed above, have lain within the Borough of Basildon (albeit that for part of the period it was known, I understand, as Basildon District). There was no question or dispute raised by the parties as to the proposition that Basildon Borough is capable of being a 'locality' in accordance with the relevant judicial pronouncements.

2.8. Therefore I have considered the application (and I advise the Registration Authority to do likewise) in relation to the 'neighbourhood' as discussed in my paragraph 2.5 above, within the locality of the Borough of Basildon.

2.9. As for the Application Site itself, it is very clearly delineated on the ground, and at the time of my site visits, presented itself as a reasonably well maintained, fairly small grassed area, on which there are also a number of relatively small trees.

3. The Objector

3.1. Objection was made to the Applicant's application by Mr Michael Pritchett, who is the freehold owner of the land of the application site. I understood from written material which he presented that Mr Pritchett had acquired ownership of the site pursuant to a transfer from the previous owner, Mr Hammond (who gave evidence for Mr Pritchett), dated 31st January 2011. As well as his original objection, Mr Pritchett produced a number of documents, many of which were referred to in evidence at the Inquiry, and all of which I have considered.

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 10th August 2012. 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, 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 in the morning 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 26th September 2012, I made a formal site visit, accompanied by the Applicant and the Objector. In addition to looking at the site, we visited and observed virtually the whole of the suggested 'neighbourhood' surrounding the site.

6. The Inquiry

6.1. The Inquiry was held at the Wickford Centre, Alderney Gardens, Wickford, over two days, on 25th and 26th September 2012.

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

7.1. As I have already to some extent noted above, the Application in this case was supported by various documents including plans, an explanatory statement in support, a collection of completed evidence questionnaires or letters from local residents, and various other supporting material, including photographs.

7.2. Other written or documentary material was submitted on behalf of the Applicant in the run-up to the Inquiry, in accordance with the Directions which had been issued. Some of this consisted of written statements from witnesses who would in due course give evidence at the Inquiry itself.

7.3. I have read all of this written material, and also looked at and considered all the photographs, plus other documentary items with which I was provided, 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 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, letters etc, 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. ***Mrs Tristan Marriott*** the Applicant lives at 29 Wethersfield Way. She has lived there for over 13 years, and she and her husband have got to know many of their neighbours very well. There is a great sense of community in their little hamlet, she said.

7.8. Her own first big community experience on the 'Green' was the night they celebrated the Millennium. There were several individual 'family and friends' parties going on in many homes, and the front doors were open for everyone to join in. Just before midnight they all came together on the Green with their champagne in their hands, and watched as some of the residents, including her husband, let off fireworks. After that they all stood around the perimeter of the Green, linked arms and sang Auld Lang Syne. That was the first of many more events since.

7.9. Over the years they have enjoyed picnics on the grass, barbeques and street parties, and they have watched young children grow as they have played on the Green. Now many of those children have grown into well rounded young adults, but the circle continues. Their own son Ryan is five years old, and it is now his turn to experience the wonderful recreational land they have on their doorstep. If it had

not been for this piece of open space he would not have learned to ride his bicycle at the age of four. He is out in all weathers playing with his friends on the Green. They run around, skip, jump and chase each other. There is often a plethora of children's playthings strewn across the Green at the end of a play session.

7.10. Mini-Olympics have been held on the Green, with beanbag races, egg and spoon, the sack race, the three-legged race and the wheelbarrow race, to name but a few. Due to regular interaction with their neighbours they have built up great trusting friendships. This has produced an informal neighbourhood watch. Since where they live is a cul-de-sac, separated from other residential areas, the Green is their focal point, their meeting place, and the heart of the community.

7.11. Other than the Green the nearest open space is Shotgate Park, which is within walking distance. However between the estate and the park there is an extremely busy road, Hodgson Way. Parents do not allow their children to cross that road alone. Even parents with babies in prams or buggies do not feel particularly safe crossing that road.

7.12. However the Green provides just enough open space, and helps to promote good health and wellbeing as neighbours gather there with their children. For her, like many of the residents, it was a shock in October 2010 to receive a letter stating that the land was to be sold at auction. She had not even known it was privately owned.

7.13. When she and her husband moved into Wethersfield Way, one of the biggest attractions was the outlook from their front window. They assumed that as the Green displayed signs mentioning Basildon District Council it was owned by the Council. Likewise they assumed that it was amenity land for their use. That was the main reason why they never sought permission from anybody to make use of the land. To add to the confusion the local council did in fact mow the Green for many years.

7.14. Since October 2010 she and many of her neighbours have come together to find a way to protect and preserve the land in its current form. The land is also home to several trees and sprouting flowers.

7.15. She has researched the origins of the Wethersfield Way housing development, from its receipt of planning permission given by Basildon District Council, to the history of the ownership of the land. On her own Land Registry title it shows the Green, and three other parcels of land in the vicinity, as *"adopted land"*.

7.16. The information she had gleaned from Basildon Council appears quite woolly with no definitive answers. Much of the information she had sought from that council appears to be no longer on file, or does not appear to have been saved.

7.17. A year ago she prepared a petition against the development of the land. All 75 signatures on it were from residents signing on behalf of their households; there are only 78 houses on the estate, so the petition covers most people. This year she has formed a Facebook group, which now has 214 members showing their support for the cause.

7.18. Mrs Marriott produced a planning permission of 1987 for the development of the estate of 78 houses which includes Wethersfield Way. That permission includes a condition requiring the submission and approval of a landscaping and planting scheme. She also produced some documentation from the Land Registry relating to the house which they had purchased. A plan associated with the transfer to the original owner of her house, dated 28th October 1988, appeared to show the area of the Green identified as an *"adopted area",* but Mrs Marriott was not sure exactly what that term had meant.

7.19. She also produced some correspondence by letter or email which she had had with Basildon Council, relating to the history of the Green and the planting scheme on it. It was clear from that, she said, that the intention had been that the development of the estate would create some open spaces within it, which would then be transferred to the Council. However it appeared that the Council had had a review of its policy, and decided to change that policy, so that the open spaces were not in fact transferred to the Council.

7.20. The Council had said it did not have any information about the chain of ownership of the site constituting the Green. However the Council's Parks Department did in fact maintain the land on a goodwill basis up until about five years ago. The Council's Planning Service had as yet received no planning applications or formal enquiries in relation to the land, and nor in the Council's view did the site have any development potential. Mrs Marriott added that the local people from the estate have maintained the area of the Green by mowing, since Basildon Borough Council stopped doing that. It was true that Mr Hammond, the previous owner of the Green, did maintain the land himself until he sold the land to Mr Pritchett.

7.21. *In cross-examination* by Mr Pritchett Mrs Marriott said that the Green is used a lot by the local people. Yes there is a park in Shotgate, but the issue is the traffic in Hodgson Way which needs to be crossed in order to get to that park.

7.22. Using the land of the Green was not something that just started recently. For example she had an old invitation dating from 2003 for an organised party on the Green in front of her house. In her own experience residents have always used that land.

7.23. ***Mr David Harrison*** lives at 49 Alicia Avenue, Shotgate. He is currently the Chairman of Shotgate Parish Council. Wethersfield Way falls within the Parish of Shotgate.

7.24. Mr Harrison said he had been a resident of Shotgate for over 40 years, and during the time that the Wethersfield Way area was developed he was a member of Basildon Council. As Chairman of that Council he attended an official opening of the Hodgson Way development, he thought it was in 1986. It took place in a marquee situated on the Green in question.

7.25. At the time when the planning permission was given for the development in this area he, Mr Harrison, was chairman of Basildon Council's Planning Committee and, as was the normal practice, areas such as this Green were expected to be

adopted by the Council. The plans in this case showed and indeed still show that that was the case. As far as Mr Harrison was aware it was and still is the policy of Basildon Council for there to be provision of areas of green open spaces with developments, for community use. The Green at Wethersfield Way falls within that category.

7.26. Mr Harrison said that it was unclear how the current situation had arisen. At some point a decision was made to sell off this area, it seemed. Mr Harrison did not know who had initiated that sale, or who had received payment in the first instance. He had tried to find out through local councillors how the policy of Basildon Council in relation to such areas of land had changed. However he had not got any very clear understanding of exactly how that had happened.

7.27. It was his understanding that Basildon District Council had cut the grass on the green here until 2007. Having been involved in the local community in various capacities he personally had had the pleasure on many occasions to visit the area and see how well the Green was used by the local community. He had seen that on many occasions, going back some considerable time before Mrs Marriott moved to the area for example. It was his understanding that at one time Basildon Council put up signs on the Green hoping to prevent ball games, in order to prevent annoyance to other users. Basildon Council had routinely maintained the Green until five years ago, and apparently the council department responsible was not aware that the Green had in some inexplicable way become unadopted.

7.28. Although he was speaking from his personal knowledge of the area, Mr Harrison was also authorised by Shotgate Parish Council to speak in support of the application for village green status for the Green on Wethersfield Way. He is also the Vice-Chairman of the Wickford Action Group, and had been instructed on their behalf also to give total support to the application.

7.29. Mr Harrison explained that the Shotgate Parish had been formed as a Civil Parish in 2007.

7.30. *In cross-examination* Mr Harrison confirmed that he had visited the Green on numerous occasions. He had long been involved in local politics, and this Green was on one of his delivery routes for delivering leaflets and other information to people's houses. He had seen activities taking place on the Green while he was in the area, although he personally does not live in the same part of Shotgate where Wethersfield Way is situated.

7.31. He confirmed that Shotgate Parish Council is supportive of the Town or Village Green application here. It is important that there must be green spaces in developments for people to use. He acknowledged that it was not appropriate at this Commons Act inquiry to discuss the question of any potential planning application for development on the land.

7.32. ***Mrs Lyndsey Mackay*** lives at 21 Wethersfield Way. She and her husband had bought their house in 1989, and they consequently were some of the remaining original residents of the estate. They live opposite the Green on Wethersfield Way. They chose their current home because of the wonderful green space outside their

front door. Over the years the Green has evolved into the centre of the community. They are a small estate of houses very much on their own, and they have watched generations of children over the last 20 odd years play safely on this land. For example only the previous week a group of local children were playing on the Green, using it as an imaginary Olympic Stadium, and they played there contentedly for hours, with their parents knowing where they were and having the peace of mind to allow their children to play outdoors with freedom.

7.33. It is wonderful to see the younger children using the Green in holiday times or after school, for recreation and general well being, as there is no other park that can be reached without parental presence. It is distressing to think that this communal space might be taken away from local people.

7.34. As a community local people from the estate regularly gather on this Green to hold barbeques, whether it be on Sundays or Bank Holidays, or to celebrate special occasions such as the Royal Wedding, the Queen's Jubilee, or fireworks at New Year. There is even the occasional birthday party, and also summer events with bouncy castles and mobile food outlets that have taken place from time to time, giving families an opportunity to gather together.

7.35. In all of the years she and her family have been there, they have used this land freely and openly, without objection from any party. The Green was obviously intended by the original house builders to be left open and free for all to enjoy. It would be a travesty if this much loved and cared for open space were to be taken away from local people.

7.36. Mrs Mackay confirmed that the use of the Green by local people had been similar ever since she and her husband moved there in 1989. For all that time it had been a focal point for the neighbourhood. People regularly chat out there on the Green, and it has made local people all the more aware of each other and familiar with each other.

7.37. *In cross-examination* Mrs Mackay said that she and her family and other neighbours had used the Green in the early days of her time in Wethersfield Way, not just recently. She had seen people come and go within the neighbourhood, there have always been like-minded people in the neighbourhood during their whole time in their house.

7.38. Having the Green available teaches their children responsibility and respect. That land has always been free and open to be used at all times by all local people.

7.39. She reiterated that her family and others have used the land freely and openly for the whole time that they had been there as residents. It has been free to use right from the moment that her family and indeed her neighbours first moved into their houses.

7.40. *In re-examination* Mrs Mackay said that in giving evidence she was not just doing things which Mrs Marriott had asked her to do. This was not just one person speaking. This, said Mrs Mackay, was the whole local community speaking.

7.41. ***Mrs Tolu Kalejaiye*** said that she and her family had moved to 25 Wethersfield Way in July 2007. Since moving in she had witnessed children playing on the land and using it on a regular basis. In fact her own son has played on the land, and as a family they have joined in with special events that have taken place on the Green, such as the Diamond Jubilee celebration.

7.42. She produced a picture of her son building a snowman on the land in 2008 with one of the younger boys. The land has been used by the residents and families of the neighbourhood throughout the whole time that she has lived there. It is a place where everyone gathers for community events, as well as children's day to day play.

7.43. *In cross-examination* Mrs Kalejaiye said that it was her understanding that the Village Green application had been made because there was some possibility of an application for a building being put on the Green.

7.44. If it had not been for the Green she would not have got to know everyone in the surrounding neighbourhood. The Green encourages the mixing of the people.

7.45. Her children do use Shotgate Park as well, either to play football, or she herself goes jogging there. However it is not the same as the Green.

7.46. ***Mrs Jane Morris*** lives at 23 Wethersfield Way. She and her husband moved there in 2002. Part of the appeal was the family atmosphere and friendly environment, and the regular gatherings on the Green with the neighbours. This was what they wanted for their children, a safe happy place to grow and develop.

7.47. As a family with two growing boys they had spent many a happy evening out in the front of their house on the Green, with the children playing and adults talking. Their lives had changed when her husband had a stroke in December 2006, and their world was turned upside-down. This was a horrific experience for her family, but was made easier by friends and neighbours. This friendship had been fostered by the gatherings of neighbours on the Green.

7.48. In December 2010 they had become a family that foster other children. Once again the Green provided a lifeline, by giving their foster children a safe secure place to play. It gave those children, who have not had the opportunity to be normal children, the chance to ride a bike, play with others or join in a football game, or tennis, or a snowball fight etc. Yes indeed there is a park the children can also go to, but not on their own as it involves crossing a busy main road.

7.49. The children she cares for have not had the same boundaries and upbringing as her own children, and it would not be good parenting to allow them to go off on their own, mixing with the older children that sometimes frequent Shotgate Park. The Green allows them independence within a safe controlled environment. There they can play with a range of other children of various ages and mixed abilities.

7.50. Their friends and neighbours get to know their extended family while they socialise at various events, such as the Royal Wedding celebrations, the Jubilee,

summer barbeques, Easter egg hunts, playing in the snow, firework nights etc. The Green is invaluable as part of the community.

7.51. *In cross-examination* Mrs Morris said that she would indeed like to preserve the grassy area of the Green as a place for her children and others to play on. In her estimation, nine times out of ten that one looks out, there is someone else out there on the Green for the children to play with. Her foster children are vulnerable children who could be preyed on by others, so she does not let them go to the park.

7.52. In the 10 years they have been in their house they have always used the Green regularly.

7.53. *In re-examination* Mrs Morris said that when they purchased their house from the previous owners, the vendors had in fact told them about the summer parties that had been held on the Green. They also heard about other parties; it was a big part of the selling aspect in relation to the house. Those vendors did tell them that the Green was maintained by the Council as an open space.

7.54. ***Mrs Michelle Perham*** lives at 27 Wethersfield Way. She and her family have lived there since August 2007 with two young sons (one being a step-son who stays twice a week), who regularly play out on the Green. She produced some photographs showing this.

7.55. When they first moved to Wethersfield Way they immediately sensed a community spirit. Neighbours would open up their garages and put toys out on the Green, allowing all the children in the area to play together. That had led to their being friends with all of the neighbours. Most of them she thought would probably consider the Green as almost part of their front garden. It is a safe, quiet place for the children to play where they can be supervised. The parents will often get involved in the games as well, and this has led to many ad-hoc barbeques being arranged. This is immensely important in maintaining a safe pleasant residential estate where everybody knows everybody.

7.56. In August 2011 her son celebrated his first birthday on the Green with a big party that many of the neighbours attended (she produced a photograph), and there have been community parties to celebrate the Royal Wedding in April 2011, and the Queen's Jubilee in June 2012 (more photographs).

7.57. The only other green space in the area is across a very busy road leading to an industrial estate. Heavy HGVs use that road, and the speed limit just before reaching the place where one has to cross is 40mph. However many of the vehicles travel faster than that. There is no safe place to cross, which means that children are unable to access green space other than the Green at certain times.

7.58. Since the land of the Green has been owned by the current owner, her husband and their neighbours have maintained the land, mowing the grass and tending the trees. Before that the previous owner maintained the land. There had never been any restrictions placed upon them regarding the use of the land for community gatherings and sporting ventures.

7.59. As had been the case with Mrs Marriott, a plan with the Perhams' Title Deeds had also said that the land of the Green was *"adopted"*.

7.60. *In cross-examination* Mrs Perham said that when they moved into their house the previous owners told them that the land of the Green was owned by the Council. However after they had moved in a chap up the road had told them that the land was privately owned. She knows of no other similar areas around the place where she lives.

7.61. *In re-examination* Mrs Perham said that the people they had bought their house from were certainly under the impression that the Council had owned the land of the Green.

7.62. ***Mrs Sharon Scofield*** lives at 19 Wethersfield Way. She has lived there since July 1991. She bought the house second-hand, but it was empty when she had first looked at it because the previous owners had gone.

7.63. An important factor when purchasing her house was the lovely village green that was directly to the side of it. It was then, and has been to date, an attractive greensward with trees providing some character and shade to it. The Green has always been maintained by either Council contractors or local residents.

7.64. Since the very day that she moved into her house she has had the pleasure of seeing her own daughter, and countless other children and families, enjoy the use of the Green. All those children have had the pleasure of playing in a safe and friendly environment, watched over by the residents of the properties all round the Green. The children have always had the use of this safe area, without the need of having to cross the main road to reach the park.

7.65. She can remember numerous occasions when she had visitors to her property, and their children would also have an opportunity to play on the Green. It has always been a social hub for the entire local area, and generations of children have enjoyed the activities that have taken place. There is barely a time when the Green is not the centre of a gathering of children.

7.66. People have used the Green for picnics, to play ball games; they gather to play other sports, and generally to enjoy the social aspect. Families have had parties on the Green, and on several occasions the neighbours have arranged organised activities and parties there.

7.67. On one occasion at the end of the school summer term the neighbours had a party to celebrate the end of school term. There was a bouncy castle, a burger van providing refreshments; there was bunting all around the Green, and all the residents and children enjoyed a day of fun. On another occasion again a gathering of residents took place with barbeques alight, music playing and an evening of general socialising.

7.68. Her own daughter has grown up in the same house since her birth, and has played for endless hours on the Green. She had even got into trouble with Mrs Scofield

for throwing the crab apples from the trees there – this was at a young age when that was a game played by many of the children.

7.69. Whenever there is an occasion to celebrate, there will be bunting, ribbons, balloons etc., displayed on the Green. It would be a disaster to allow this area to be taken away from the residents. In common with many others she had made decisions about the major purchase of a property, and a place to raise a family, based on the close surrounding area.

7.70. *In cross-examination* Mrs Scofield said that when she first moved in she had not had any children. She worked in the City at the time. However there have always been children playing on the Green, especially in the lighter evenings.

7.71. Her daughter was born in 1993. The Green has always been used by the local children. The estate was full, (i.e. all the houses were occupied) when she first moved in, although there were not as many children in as early years as later on. More families had moved into the estate more recently.

7.72. *In re-examination* Mrs Scofield said the trees had already been planted on the Green by 1991, the time she moved in. There were regular gatherings of adults on the Green as well as children. What happened on the Green depended a bit on the length of the grass.

7.73. ***Mr Mick Day*** lives at 16 Wethersfield Way. He and his family moved there in 1998.

7.74. They have held numerous summer parties for their children, when they break for their six week school holidays, on the Green. Summer holidays bring all the neighbours together, creating a community spirit and fostering friendships. Many of these parties have involved playing games, setting up stalls, bouncy castles and marquees with food and drink – there is photographic evidence to support this.

7.75. The Green is an ideal location for younger children to play on. His own children had done this when they were young, and spent many happy hours playing safely on the Green. It is particularly ideal, owing to the fact that the main park area in Shotgate involves crossing a busy road. The Green also comes in handy on odd occasions for extra parking when someone in the neighbourhood is holding a party etc. Parking is otherwise rather limited for visitors.

7.76. Looking out of their lounge window they see a well kept green with a few trees. That green has been maintained on many occasions by themselves and their neighbours as a collective. Certainly in the last 18 months if they as a community had not maintained the land it might have become overgrown and unusable by all. It would have become an eyesore and would have detracted from the visual amenity that they have today.

7.77. Their estate was built in 1987. They believe that the Green has always been used in the same way by local residents for various activities for longer than 20 years, without asking permission of the owner. This indeed was mainly due to the fact that everybody thought that it was Council land. There are several residents who

have lived here throughout that period who can confirm this. The Green is the focal point and the heart of their small community.

7.78. The Council used to cut the grass; then they stopped and Mr Hammond cut it for a while. Since then however Mr Palmer and he, Mr Day, had cut the grass on the Green as they had two motor mowers. He thought that all that had happened since about 2007. Then Mr Hammond bought the land and maintained it, and later when Mr Hammond sold it Mr Palmer and he Mr Day went on to maintain the land.

7.79. *In cross-examination* Mr Day said that he had parked a car on the Green on the odd occasions when there had been a delivery coming to their house.

7.80. *In re-examination* Mr Day confirmed that the Green is currently in a good state. It is maintained by the local neighbours, and needs to be cut about every two or three weeks during the summer.

7.81. ***Mrs Sara Teixeira*** lives with her husband at 31 Wethersfield Way. They moved in in June 2002.

7.82. The Green outside their house is used by children virtually every day, particularly their own son Luc. He is an active seven year old who loves the outdoors and enjoys the freedom that the Green offers him. They can let him go out on his own to knock for the neighbours, while keeping an eye on him out of the window. They themselves often sit outside on the Green having a chat with their neighbours while they watch the kids play.

7.83. To take this land away would completely spoil the community atmosphere, as the land is also used for social events. There has been much to celebrate in the last two years alone, what with the Royal Wedding and Diamond Jubilee, and most recently the Olympics. During the Olympics the Green was used as a Velodrome, a gymnastics mat and a badminton court amongst its many other uses.

7.84. Aside from the social element, on a more serious note, to build on the Green would impair their drainage, parking, rights of light and air, and of course their view.

7.85. Mrs Teixeira was not cross-examined.

7.86. ***Mrs Lucy Garrod*** said that she and her husband moved into their house at 14 Wethersfield Way in December 2006. They live opposite the Green. It was a plus point when buying their house that the Green was there for their future family to enjoy.

7.87. They have seen many children playing on the Green over the years, and their daughter is now old enough to enjoy playing games on the Green with them as a family, and being able to play with other children from the surrounding houses. It is a safe place to play, rather than in the road, which she has seen in other streets which do not benefit from having a green like this one. It is also a place to bring the neighbours together. There have been many good times on the Green over the years, of neighbourly casual get-togethers and parties.

7.88. They had previously lived on another modern housing estate in Hockley. There was nothing like the Green that they have here, and they only knew their next door neighbours and there was no community spirit. Conversely the Green here brings neighbours together and they have made lovely friends. If the Green was not there to use then the community spirit would be lost.

7.89. The Green provides opportunities for children to do all sorts of activities safely in the sight of their homes. The main park requires two roads being crossed, one of which is very busy. A local area like this to meet and play makes for a happy, healthy lifestyle.

7.90. *In cross-examination* Mrs Garrod said that she had seen lots of people playing on the Green over the years. Some of them were people she did not know, but also of course many others that they do know, and her own daughter.

7.91. ***Mr David Marriott***, the husband of the Applicant, said that he has lived at 29 Wethersfield Way for more than 13 years, along with his now wife and more recently their son Ryan. It was a big attraction to purchase their house that there was the lovely Green right outside their front door, and access via the private driveway around the Green. This resulted in them purchasing the house at a higher price than other properties elsewhere on the estate at that time.

7.92. Over the years he had seen the Green used for various events, such as social gatherings among the neighbours and their friends, and the local children playing games or sporting activities. He has often seen and helped many of his neighbours, all lending a hand to erect a marquee on the Green, or to supply patio chairs and tables and the like.

7.93. The Green has been a focal point for locally arranged events such as the Millennium, the Golden Jubilee, Royal Wedding and Diamond Jubilee, and some of these events made it into the local newspaper. All of those events were organised by the local people, for the local people.

7.94. As father of a young son, throughout the year he is regularly out on the Green with his son, playing football, tennis, frisbee, bike riding, whatever his active son wants him to do. His son also plays out with the other local children, and their parents know it is a safe environment for them to go out and do that.

7.95. The Green is only a small piece of land when compared to the local park, but it is a safe haven for younger children to play. It is also a meeting point for adults, and a central safe location to host various community events throughout the year for everyone to enjoy. It is also a visual aid to the street, giving the road some character and a sense of community spirit.

7.96. As far as access to the land of the Green is concerned, Mr Marriott was not aware of anybody ever being refused access to the land. The only signs there are ones saying no ball games, which everyone assumed were put there by Basildon Council. Clearly that rule has been broken over the years.

7.97. For many years the Green was in fact cut by the Council mowers, along with all the other greens in the area, but this suddenly stopped. The grass and weeds then grew unsightly for a while, and they made enquiries, only to be told that it was not Council land. This was a surprise, as it was not their and many of their neighbours' Deeds had stated. The previous owner to the current one then started cutting the grass, and was well aware that the land was used by the local community, and access was never refused to it. That previous owner was Mr Hammond. Since the land was sold to the current owner, it has not been maintained by that owner, to the best of Mr Marriott's knowledge. In order to maintain the land he, Mr Marriott, and a number of neighbours now regularly mow the lawn, rake the grass and tend to the trees when necessary, all of this in order to keep the Green looking nice and presentable. This brings out the community spirit in people, and before you know it there are a number of adults and children all helping with the necessary tasks.

7.98. Mr Marriott said that he was probably known in the area for regularly being out on the Green playing with his son. But other children also play there from the estate, not just from immediately around the Green.

7.99. *In cross-examination* Mr Marriott said that there had been a little corner of the community park in Shotgate which got sold off, and he was sad when that happened. As far as the Green in Wethersfield Way was concerned, Mr Marriott knew that there had been a planting scheme for the Green when the estate was first put up and he presumed that it had been like that ever since.

7.100. ***Mrs Geraldine Grisley*** lives at 33 Wethersfield Way. She and her husband moved there from the East End of London in April 1993, with their 15 year old daughter and 4 year old son.

7.101. When they lived in London they would not let their son play outside, but when they moved to Wethersfield Way they had a playground behind them and the Green beside them. So when the neighbours' children knocked they were more than happy for their son Jack to play out on the Green under supervision.

7.102. She could recall many great celebrations held out on the Green. For instance at the end of each school year her friend and neighbour Mrs Palmer used to hold events on the Green for the children all to get involved in. Many of the neighbours and their children used to join in and fun was had by all.

7.103. More recently the neighbours have used the Green to celebrate special events such as the Royal Wedding last year and the Diamond Jubilee in 2012.

7.104. The Grisley children have now grown up and had children of their own. As grandparents they are pleased that their grandsons also have a safe place to play when they visit. They love to ride their bikes and electric cars around the Green and they do so often. The Grisleys also regularly meet other neighbours out on the Green with their children. It is lovely getting to know the next generation, and seeing all the children integrating with their own extended family.

7.105. Mrs Grisley often sits on the Green with her grandson, having a snack and enjoying the sunshine. The Green has been extremely important for three generations of her own family, and she wholeheartedly supports the village green application.

7.106. When they first moved in they took a photograph of the Green in April 1993, and a copy of that photograph was produced to the Inquiry. Mrs Grisley also produced a photograph of a notice and invitation relating to a party held on the Green in 2003. In addition Mrs Grisley brought to the Inquiry a handwritten letter by her daughter Sarah Grisley, which was generally confirmatory of the evidence which her mother had given.

7.107. Mrs Grisley explained that when she and her husband had bought their house the property had been previously lived in, but was empty because the sale was one which followed a repossession.

7.108. *In cross-examination* Mrs Grisley said that the Green had always seemed to be a piece of grass available for the community to use, for everyone to use, that was the feeling that they got about the Green right from the start.

7.109. *In re-examination* Mrs Grisley said that when they first moved into their house they did not think about who actually owned the Green. Her understanding had been that the Council thought that they (the Council) owned the land.

7.110. ***Mr Ben Lovejoy*** said that he has lived at 30 Wethersfield Way since 2001.

7.111. The Green is an amenity which has been regularly used by the residents of Wethersfield Way throughout the time he has lived here, he said. It served as a focal point for the community being used as a children's play area, for picnics and for occasionally street parties. Taking away this area would create dangers for young children who would end up playing in the road instead. The Green is also a visual amenity for everyone who lives here.

7.112. *In cross-examination* Mr Lovejoy said that he personally had never seen cars parked on the grass of the Green.

7.113. ***Mr Tony Forster*** said that he had lived in his present house at 15 Wethersfield Way since January 1995. At that time his children were aged 5 and 7.

7.114. From that time, and throughout their whole childhood, his children had unrestricted use of the land of the Green to play games, and furthermore they never needed permission from any known person in order to do so. Mr Forster personally could recall them engaging in the following games during that period: ball games such as football and catch, running games such as chase, making and using make-shift Wendy houses, playing in the snow, snowball fights and making snowmen and cycling.

7.115. Over the years since he moved in, and up until the present day, he had regularly witnessed other children and his own playing on the Green. Again the activities had been such as football, cricket, running around or cycling. He also remembered

taking part in a community event on the Green at the time of the Queen's Golden Jubilee, with other residents, and more recently the Queen's Diamond Jubilee.

7.116. When he comes home from work he often sees children playing on the Green. They play there after school and at weekends. When he bought the house he was attracted by the fact that it was in a cul-de-sac, had a safe environment, and had the Green available. He had always thought that the Council owned the land of the Green; there were in fact Basildon District Council notices on the Green, and the Council used to cut the grass. So it was a surprise to Mr Forster when he learned that the Council did not in fact own the Green.

7.117. *In cross-examination* Mr Forster said that he had never spoken to anyone about the question of being able to use the Green; he had never spoken to Mr Hammond about it for example, after Mr Hammond apparently bought the land.

8. THE SUBMISSIONS FOR THE APPLICANT

8.1. In opening Mrs Marriott explained how she and all the neighbours whose evidence she was to call aimed to provide sufficient evidence that they as a local community had indulged as of right in lawful sports and pastimes on the land known as The Green in Wethersfield Way for a period of at least 20 years, and that they continued to do so at the present time. She outlined the evidence that would be heard, and pointed out that as well as the oral evidence there were a number of statements and letters of support from other members of the local community. She accepted that the relevant neighbourhood and locality had not been very clearly set out in her application, and she agreed that a more appropriate neighbourhood could sensibly be defined [as I have discussed in an earlier section of this Report].

8.2. In closing, Mrs Marriott pointed out that, as well as the other written material which had been put forward, there were additional statements that she had put in from a Mrs Curry, who had lived at 22 Wethersfield Way since 1997, and Mr and Mrs Spires, who had lived at 20 Wethersfield Way since March 1992. Both of these written statements indicated that the Green had been used by local people, in particular children, to play on for the entire periods of their residence in the neighbourhood.

8.3. Mrs Marriott said that she and her neighbours had indeed produced sufficient evidence to prove that they, as a local community, had indulged as of right in lawful sports and pastimes on the land known as The Green for a period of at least 20 years, and that they continued to do so. Some of the residents who have given evidence on oath have lived here for more than 20 years, and there is no way that their evidence can be disputed. If these current residents state that they have been afforded unrestricted use of the Green during the 20 year period relevant to this Inquiry, then this would also have applied to all former residents. Indeed a letter had been obtained from Mr and Mrs Keith Woods, the former owners of the house in which the Marriotts themselves now live. That letter indicated that Mr and Mrs Woods had lived in the property 29 Wethersfield Way from December 1988, and right from that time had believed that the Green in front of their house had been adopted by the Council. They, Mr and Mrs Woods, confirmed that the Council

had mowed the Green for the 11 years that they lived in the house. During the time of their occupation (Mr and Mrs Woods) they said they often used to meet up on the Green for a chat with neighbours, or a drink to celebrate the New Year for example. The Green certainly gave a place to socialise and get to know the neighbours. Although they did not have children at the time, many children from the neighbourhood used to play on the grass and learned to ride their bikes on that land.

8.4. Mrs Marriott said that it is unusual these days for homeowners to stay in one house for more than 20 years. Nevertheless they were fortunate enough in Wethersfield Way to have at least 8 homeowners on their housing development currently who have lived there for at least that long a time. She produced a list showing who they were.

8.5. It was clear that from as far back as the time when the first residents moved onto the estate the developers, Abbey Homes, had provided sales literature (which was available to the Inquiry) illustrating the land which is now known as the Green as exactly that. The housebuilders themselves had had a clear vision, which was delivered as a matter of fact by the provision of the Green.

8.6. Throughout all the years up to and including the present time, no resident had ever sought permission to use the land. In the first instance the majority of the residents were under the impression that the Council owned the land, by means of some kind of adoption. Evidence in the form of legal documents appeared to state that the land was adopted. Signs on the land also appeared to confirm that Basildon District Council was in charge of it, and the Council as a matter of fact maintained the land for many years. Even when the land became owned by Mr Hammond, and more recently by Mr Pritchett, the local people have continued to use the land without seeking permission, and without any restrictions imposed.

8.7. Mrs Marriott acknowledged that the opening statement by Mr Pritchett the Objector had said that he had no intention of developing the land currently. However the application for village green status is the only way in which local residents can protect the land and ensure the continuity of use for now and the future.

8.8. Mrs Marriott confirmed that she wished to have regarded as the relevant neighbourhood the area of the estate which includes Wethersfield Way, to the south of Hodgson Way and to the east of the industrial estate. These boundaries separate the neighbourhood from other residential areas, and therefore highlight the value of the Green as the focal point for the local small community.

8.9. It appeared clear from all the evidence, including written material, that the houses on the estate were first occupied in the autumn of 1988, and it is clear that the intention was that the land of the Green was to be adopted by the local Council on completion of the development. Recent research shows that that never happened, but local residents were never made aware of that, and so made use of the land unaware of its legal ownership. In any event it was clear from the evidence that the Green had been used by local people for significantly in excess of the 20 years

required under the ***Commons Act***, and so, regardless of who owned it, it should be registered as a Village Green to ensure the continuity of use for now and the future.

9. THE CASE FOR THE OBJECTOR – Evidence

9.1. The Objector, Mr Michael Pritchett, did not himself give oral evidence, though he produced written material relating to his acquisition of ownership in the land constituting the claimed Green, and in fact did say in one of his written notes that he had visited the land 12 times and had never seen anybody else on it.

9.2. Mr Pritchett called one oral witness, ***Mr Trevor Hammond***, who lives at 7 Wethersfield Way. Mr Hammond explained that he had lived at 7 Wethersfield Way since November 2002, and still lives there.

9.3. He, Mr Hammond, was the owner of the plot of land constituting the Green from January 2007 until Spring 2011. He said that during that period the local residents had never had permission from him to use the land in any way whatsoever. Sometimes they would park their cars on it, which Mr Hammond would have to ask them to move so that he could cut the grass, or children would play on it, damaging the trees and leaving rubbish behind for him to clear up. Local people never showed any interest in the plot of land until he put it up for sale. Even then they only wanted to stop him from selling it, or for him to donate it to the Council for the local residents. Mr Hammond had offered to sell it to them at well below market value, but they could not raise any money and never made a proper offer.

9.4. The land was put up for auction once, and local residents were invited to attend, but on that occasion the plot had not made the reserve price. It was then entered into the following auction, but was sold to Mr Michael Pritchett the Objector just prior to the auction date.

9.5. The person Mr Hammond had purchased the land from was a Mr Herbert Humphreys, who had himself bought it from the builders of the estate. He Mr Humphreys had apparently put the land up for sale to local people. Mr Hammond was offered it and decided to buy it. He believed Mr Humphreys may have owned it for about 10 years before he, Mr Hammond, bought it.

9.6. Basildon District Council have not mowed the grass on the land since Mr Hammond bought it. However Mr Humphreys had told him that the Council had mown the land during the period that he, Mr Humphreys, owned it.

9.7. Mr Hammond had never thought of the land as a town or village green. He bought it as a building plot, and then eventually sold it on.

9.8. *In cross-examination* Mr Hammond said that he had never tried to restrict residents from using the Green. He would not stop a child playing there, indeed he would not stop other people from going onto the land. Mr Hammond said he had no photographic evidence of cars having been parked on the Green, nor indeed of people damaging trees. Nevertheless it was true that every time he went onto the

land to cut the grass he always had to pick up litter that was on there. He had even had to pick up a dirty nappy that was on the land on one occasion.

9.9. When Mr Hammond decided to sell the land, the auctioneer's first idea was that it should be suggested to the local residents that they should buy it. He personally never approached other local residents, because usually one gets an agent to do this rather than deal privately. The auctioneers put out a letter to everybody locally, trying to get the local residents interested. In fact the auctioneers tried very hard to get an offer out of the local residents. He, Mr Hammond, was not told that the local residents had ever made any offer. If there was such an offer, it could be that it was well below what the auctioneers knew he, Mr Hammond, would accept, and the auctioneers would not have bothered telling Mr Hammond in those circumstances. He, Mr Hammond, did not want to deal directly with anyone.

9.10. In terms of the merits of the application, Mr Hammond is basically 'on the fence', as he put it; it does not really matter to him what happens to the land. However he does not see why it should be a town or village green.

9.11. When Mr Hammond had the land, he had not wanted to develop it, and he could not see why Mr Pritchett would want to develop it in the near future.

9.12. He, Mr Hammond, had also offered the land to the local Parish Council through the auctioneers. As far as he was concerned, whoever owns the land has the right to say what it is used for. He believed the land would have been offered to Basildon District Council as well.

9.13. Mr Humphreys in fact used to be the owner of the house which Mr Hammond now lives, in but it was later on, after Mr Hammond had bought the house, that Mr Humphreys had offered to sell him the freehold of the current application site, and a number of other plots in the neighbourhood. He was not offered that other land at the time of his purchase of his house in 2002.

9.14. *To me* Mr Hammond said that during the period he owned the land, as far as he was aware, no Jubilee or party events took place on it. Things like that had only taken place there since he sold the land.

9.15. He had bought four pieces of land from Mr Humphreys, and before that Mr Humphreys had bought them from the builders. He did not believe that he, Mr Hammond, was the only person who Mr Humphreys had offered those plots to at the time of Mr Hammond's purchase.

9.16. One of the other plots Mr Hammond bought was what had been an intended playground area in the south-west corner of the estate. Mr Hammond understood that planning permission to develop that site had been obtained by the new owner, after it had been bought from Mr Hammond at auction.

9.17. When Mr Hammond bought the plots of land, they were sold to him as building land. Indeed that was what it said on the Land Registry Deeds for all four plots, said Mr Hammond. Similarly when he had sold his plots of land via the

auctioneers he sold it as building land, in the same way as when the land was sold to him.

10. SUBMISSIONS FOR THE OBJECTOR

10.1. In opening Mr Pritchett said that he is objecting to the application to register his land as a Town or Village Green, because turning it into a village green will be of no use to anyone, and the application is unfair and unreasonable. He is the owner of the land, and he feels that there have not been a significant number of inhabitants of the locality indulging as of right in lawful sports and pastimes on the land for a period of 20 years.

10.2. There is not any evidence of use of this land as a village green for 20 years. There is ample green space in the locality very close to Wethersfield Way. Of the 12 times he has visited the land he has not seen anybody on it. He had not made any planning applications in respect of the land, and was fully aware that local inhabitants would like his land turned into a village green. Nevertheless he does not feel that local residents have anything to be concerned about. He has offered to sell the land to the residents at a vastly reduced rate, which would enable them to do as they choose on the land.

10.3. In closing Mr Pritchett said that he was objecting to the application for village green status on the land because:

- the Applicant has not provided proof that a significant number of the inhabitants of the neighbourhood had indulged as of right in lawful sports and pastimes on the land for the past 20 years;
- any evidence, including photographic, has been recent, mostly since the application;
- there appeared to be an unusually large number of claimed events after the application had gone in;
- the Green has been used for non-permitted or irrelevant reasons such as car parking;
- there is ample green space in the locality, including a well used and large park very close to Wethersfield Way;
- Mr Pritchett believes that a large number of the residents have not had clear understanding, or have been confused, about the village green application, and are concerned more about any building or planning on the area, which is not relevant;
- the residents have had the opportunity to purchase the land at earlier stages and did not do so;
- the residents have not sought permission from the landowners (even after any confusion regarding council ownership was cleared up) for use, thus proving that they have not indulged as of right;
- again Mr Pritchett repeated his offer to sell the land at a vastly reduced rate to enable the Applicant and residents to do as they please with the land.

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 statutory declaration by Mrs Marriott in support of the application bears the date 12th April 2011, but I understand from my instructions from the Registration Authority that it was received by the County Council during the month of May 2011. The application form as I have it does not bear a stamp showing its date of receipt.

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 application in this case was clearly made not later than 31st May 2011, and was prepared for submission not earlier than 12th April 2011. In these circumstances the relevant period of 20 years could in theory be displaced by just over a month and a half in one direction or another. I have decided therefore to have regard to a notional period of at least 20 years which might have begun any time between the start of April 1991 and the end of May of that year. Clearly if there were any question of the claimed use for lawful sports and pastimes having started for the first time during those two months in 1991, this uncertainty about the precise dates would present a serious evidential problem. Conversely if, on the evidence, it would not make any difference to the conclusion whether the relevant 20 year period had commenced on 1st April 1991 or 31st May 1991, or on any date in between, there is no reason for the Registration Authority (or myself) to be concerned over the very precise date which should be taken as the 'time of the application'.

The Facts

11.3. In this case the dispute over questions of fact was not particularly extensive. The Objector Mr Pritchett did not himself choose to give any oral evidence, for the entirely understandable reason that he himself did not begin to have any personal involvement with the land in question until the first half of 2011, i.e. almost at the time when the application before me was itself made.

11.4. There was an element of disputed fact between the evidence given by Mr Hammond, the previous owner of the application site between 2007 and early 2011, and that given to me by local residents in support of the application; and Mr Pritchett in his representations 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 clarified that the relevant *"neighbourhood"* should be taken as being the area of the housing estate comprising Wethersfield Way, Stapleford End and Boreham Close, which was in fact identified on the plan Appendix 3 accompanying the application. I note also that the Objector Mr Pritchett addressed his closing submissions (in this respect) to the concept of the 'neighbourhood', and it was perfectly clear at the inquiry that he understood which area was meant when that term was used.

11.8. In my judgment the area thus identified is of a cohesive and distinct character, and wholly appropriate to be regarded as a 'neighbourhood' in this context. It was also the area from which the evidence of use of the land of the application site overwhelmingly came.

11.9. As far as 'locality' is concerned, I noted earlier that the neighbourhood just discussed lies currently within the undoubted 'locality' of Shotgate Civil Parish. However since that Civil Parish did not exist during the bulk of the relevant 20 year period, it seems to me safer and more appropriate to regard the relevant locality, within which the 'neighbourhood' lies, as having been the Borough (formerly District) of Basildon, which undoubtedly was in existence over the whole period.

"A significant number of the inhabitants"

11.10. I note that (although he gave no oral evidence) one of the written statements of the Objector said that he had visited the land 12 times and not seen anybody on it. That representation was written in August 2012, and it seemed clear from the circumstances that many of these visits would have been outside (i.e. later than) any relevant period of 20 years. Further, because he gave no oral evidence, there was no opportunity for Mr Pritchett to be questioned as to the times or days of the week on which any of those visits which were within the relevant 20 year period would have been made.

11.11. The one oral witness called for the Objector (Mr Hammond) did acknowledge that children used to play regularly on the land, and that (during his 4 year ownership) he did nothing to stop them. He also said that he would not stop other local people from using the land. He did not however believe that any 'Jubilee' or other party events had taken place on the land during his period of ownership.

11.12. It appeared to be generally acknowledged that Mr Hammond had mowed the grass on the land with reasonable regularity during his 4 year ownership period, during the relevant part of the year. However, given the fact of where Mr Hammond lives, and that his natural route(s) to and from his house would not regularly take him past the claimed 'Green' (which is in a cul-de-sac), it was not clear to what extent his evidence was able to cover use of the land at all other times during the relevant 20 years.

11.13. In any event there was plentiful, and credible, evidence from many witnesses that considerable numbers of local people, from the 'neighbourhood', both children and adults, had used the land with regularity during the period covered by those witnesses. It is my understanding that the word 'significant' [in *"significant number"*] implies that there must have been a number sufficient to show to a reasonable observer that people from the neighbourhood more generally were using the land, rather than perhaps just a few acts of sporadic trespass by individuals. In my judgment on the balance of probabilities, the evidence amply justified the conclusion that a significant number of local people, from the neighbourhood, have regularly used this land.

"Lawful sports and pastimes"

11.14. There can in my judgment be no doubt that the activities indulged in by local people on the application site, whether they be games played by children, or children with adults, parties or much more informal 'chats' between residents, are all capable of constituting 'lawful sports and pastimes'. This is not a large piece of land, and the level and type of activity claimed do appear to be consistent with, and credible in relation to, its size and location.

11.15. I note that Mr Hammond said that during his period of ownership (and maintenance) he sometimes found items of rubbish on the land (even once a baby's nappy). I also could not fail to notice the surprised and indignant reaction of some residents to that observation, and the suggestion that any such items had probably been dropped by the refuse collectors. Whatever might be the truth of that

suggestion (and it does have some inherent credibility in the circumstances of this location), nothing that Mr Hammond said caused me to doubt my overall conclusion that 'lawful sports and pastimes' have been indulged in regularly on this land by the local people.

11.16. I include within that general observation Mr Hammond's mention that he had sometimes seen cars parked on the grass of the claimed green. I have little doubt on the evidence that this has sometimes happened, but not to an extent significant enough to constitute a material interruption to the continuing regular use of the land for 'lawful sports and pastimes'.

"As of right"

11.17. This expression is usually understood to mean without force, without secrecy and without permission. It also seems from the case law that use of land by people who actually have some formal ***right*** to be there (e.g. the public having a right to be on land held as 'public open space', so that their use is 'by right') may be excluded from the meaning of *"as of right"*.

11.18. From the evidence, including the documentary material that I was shown, it seems clear that from the time of the original planning of the estate around Wethersfield Way in the mid-1980s, it was always intended that the application site should be a landscaped and probably grassed amenity area for the benefit of the new estate – both as a visual amenity and (presumably) somewhere where things like 'lawful sports and pastimes' could take place. In other words it was always intended that this small area should be laid out as something looking like a conventional 'village green' for the new estate.

11.19. The understanding which I have obtained from the evidence is that it was originally envisaged that this piece if land would eventually end up under the ownership and management of Basildon Council, as something akin to a 'public open space'. Indeed it is a matter of some irony that the land of the claimed 'green' was mown and maintained for a considerable number of years by that council, apparently as a result of some kind of misunderstanding or mistake.

11.20. Nevertheless, whatever may have been the original intentions or plans, the land never did fall into the ownership or control of the (then) District Council. The ownership passed from the original developers of the estate to a Mr Humphreys, then from him to Mr Hammond in 2007, and latterly to the Objector Mr Pritchett. The land has therefore never been used by the local residents 'by right', as it would have been had the land ever become 'public open space', or something similar.

11.21. As far as use of the land by local people is concerned, it has clearly never been 'by force' – the land has always been open and unfenced, and there have never been signs prohibiting use. [The mysterious signs, attributed (whether rightly or wrongly) to Basildon District or Borough Council, purporting to discourage ball games, do not affect this conclusion]. On the evidence, I do not believe there is any basis for thinking that use by local people was 'with secrecy' – which implies people sneaking into land in the dark, or matters of that kind. My conclusion is that local people have always used this land in a perfectly open manner.

11.22. As for *"without permission"*, it is quite clear to me from the evidence that local people from the neighbourhood have never asked anyone's permission to use this land. Indeed I cannot fail to observe that it was one of the specific points made by the Objector himself in his closing submissions that the residents had never sought permission from the landowners.

11.23. In the circumstances therefore it is my clear conclusion from the evidence that the use of the claimed green by local people has been *"as of right"* in the sense required by the statute.

"On the land ... for a period of at least 20 years"
"continue to do so at the time of the application"

11.24. There can be no doubt on the evidence, and it was not in serious dispute, that such use of the application site as has been made by local people still continued throughout the whole of April and May 2011 and beyond, so that the use certainly (I conclude) still continued at the time of the application.

11.25. I believe there is probably some truth in the Objector's suggestion that the level of use of the application site by local people has increased in recent times, from about the time the 'village green' application was being made or prepared, right through to the present. He also made the fair observation that a significant proportion of the large number of photographs of 'activities' on the claimed green were recent, including many taken after the application was submitted.

11.26. However it was also clear from the explanation given of them that many of the other photographs were from earlier years, well before a 'village green' application was in contemplation. Mrs Grisley's discovery of photographic confirmation of a 'Party on the Green' having been advertised among local people in July 2003 is a particularly convincing item of evidence in this respect.

11.27. However this question does not fall to be determined on the availability (or not) of dated photographs, and in any event convincing photographs from 2003 do not in themselves take the matter back anywhere near the 20 year period concerned.

11.28. The relevant evidence therefore has mostly to be found in the sworn testimony of local people in relation to the use by local people of the claimed green during their period of residence in the neighbourhood. It is true, as the Objector, and indeed the Applicant herself, observed, that a very significant proportion of the witnesses had not in fact been living locally for the whole relevant 20 year period, so that their evidence inevitably related only to part of that period.

11.29. However some of the witnesses had been in their homes since before whatever date in April/May 1991 constituted the start of the relevant 20 year period, and their evidence was entirely convincing that use of the land by local people for sports and pastimes took place back then, from when they first moved to their houses, and has continued since. Indeed this evidence was not seriously challenged by or on behalf of the Objector. It was also fortified by a small number of other written statements

from people who were not able to come and give evidence orally, about use in the earlier years of the estate.

11.30. I note also the interesting photograph produced by Mrs Grisley, taken on her moving in to her house on 30th April 1993, showing the 'Green' in more or less the same state as it is in now, apart from the small trees obviously then being very much smaller. This photograph clearly does not take matters back to 1991, and nor does it show any activity occurring on the application site. What it does show however is the 'Green' in an open, accessible state, surrounded by houses, and entirely suitable for 'lawful sports and pastimes'.

11.31. Taken together with all the other evidence, what does appear to be indicated is that for the entire period of the existence of this estate, the claimed 'Green' has in fact been available as an open, grassy area which physically could clearly be used for lawful sports and pastimes, consistent with the modest size of the area of land concerned. The evidence from actual witnesses was convincing that the land has in fact been so used over the whole period. Nothing about this is surprising, given that the land concerned was plainly laid out in the first place as an amenity area potentially available for just such use. On the contrary, it would have been rather surprising if this land, in that situation, had not been so used.

11.32. Therefore it is my clear conclusion, on the balance of probabilities, that the Applicant's evidence has shown that the use of the claimed Green by local people (in significant numbers) was begun substantially before either April or May 1991, and has continued ever since.

Conclusion and Recommendation

11.33. In the light of all that I have set out under the previous sub-headings in this section of my Report, my conclusion is that the evidence I have received, together with the submissions and arguments made by the Applicant, have met the statutory criteria set out in ***Section 15(2)*** of the ***Commons Act 2006***, in respect of use of the application site for lawful sports and pastimes, over at least the requisite period, by a significant number of the inhabitants of the neighbourhood represented by what is shown on Plan Appendix 3 attached to the Applicant's application.

11.34. Accordingly my conclusion and recommendation to the County Council as Registration Authority is that the application site in this case ***should*** be added to the statutory register of Town and Village Greens under ***Section 15*** of the ***Commons Act 2006***.

ALUN ALESBURY
26th October 2012

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

APPENDIX I – APPEARANCES AT THE INQUIRY

FOR THE APPLICANT

The Applicant in person (Mrs Tristan Marriott)

She gave evidence herself, and called:-

Mr David Harrison, of 49 Alicia Avenue, Shotgate, Wickford
Mrs Lindsey Mackay, of 21 Wethersfield Way, Wickford
Mrs Tolu Kalejaiye, of 25 Wethersfield Way, Wickford
Mrs Jane Morris, of 23 Wethersfield Way, Wickford
Mrs Michelle Perham, of 27 Wethersfield Way, Wickford
Mrs Sharon Scofield, of 19 Wethersfield Way, Wickford
Mr Mick Day, of 16 Wethersfield Way, Wickford
Mrs Sara Teixeira, of 31 Wethersfield Way, Wickford
Mrs Lucy Garrod, of 14 Wethersfield Way, Wickford
Mr David Marriott, of 29 Wethersfield Way, Wickford
Mrs Geraldine Grisley, of 33 Wethersfield Way, Wickford
Mr Ben Lovejoy, or 30 Wethersfield Way, Wickford
Mr Tony Forster, of 15 Wethersfield Way, Wickford

FOR OBJECTOR

The Objector in person (Mr Michael Pritchett)

He called:-

Mr Trevor Hammond, of 7 Wethersfield Way, Wickford

APPENDIX II

LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY

NB. This (intentionally brief) list does not include the original application and supporting documentation, the original objections, or any material submitted by the parties prior to the issue of Directions for the Inquiry. It also excludes the material contained in the prepared Bundles of Documents produced for the purposes of the Inquiry on behalf of the Applicant and Objector.

By the Applicant:

'Shotgate Parish Plan' document, including map (Mr Harrison)
Two large collections of generally undated photographs
Mrs Grisley's photograph of the 'Green', 30th April 1993
Photographs of Party announcement 2003 (Mrs Grisley)
Letter/Statement from Ms Sarah Grisley
Letters from Mrs Eileen Curry and Mr & Mrs Spires

List of current residents who have lived on Wethersfield development for the 20 year period, who have provided either Witness Statements or Supporting Letters

Abbey Homes Sales Brochure Extract for *"Berkeley Gardens"* (now Wethersfield Way Estate)

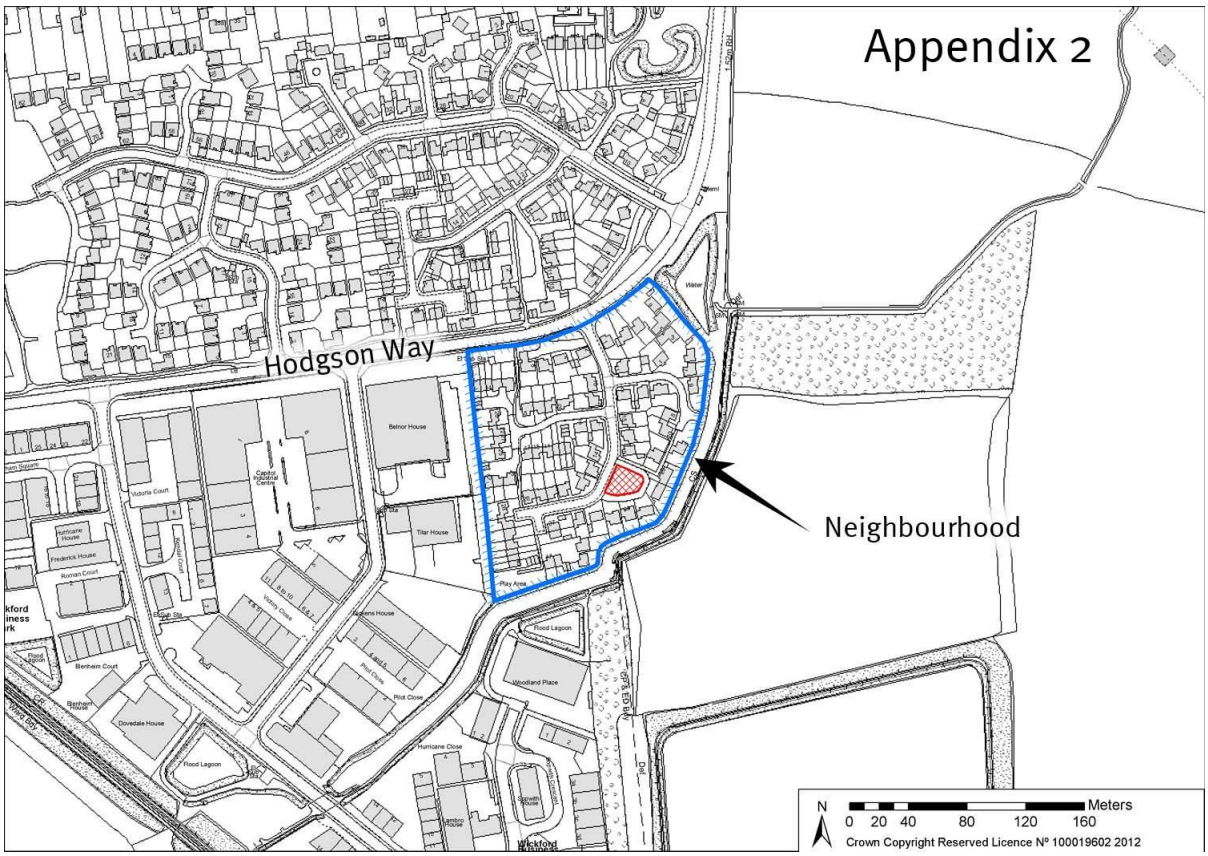
Letter from Keith and Denise Woods

Written Closing Statement

By the Objector:

Written Closing Statement

APPENDIX 2


Appendix 2
Hodgson Way
Neighbourhood
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Meters
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AGENDA ITEM .....7b.....

DR/44/12

committee DEVELOPMENT AND REGULATION

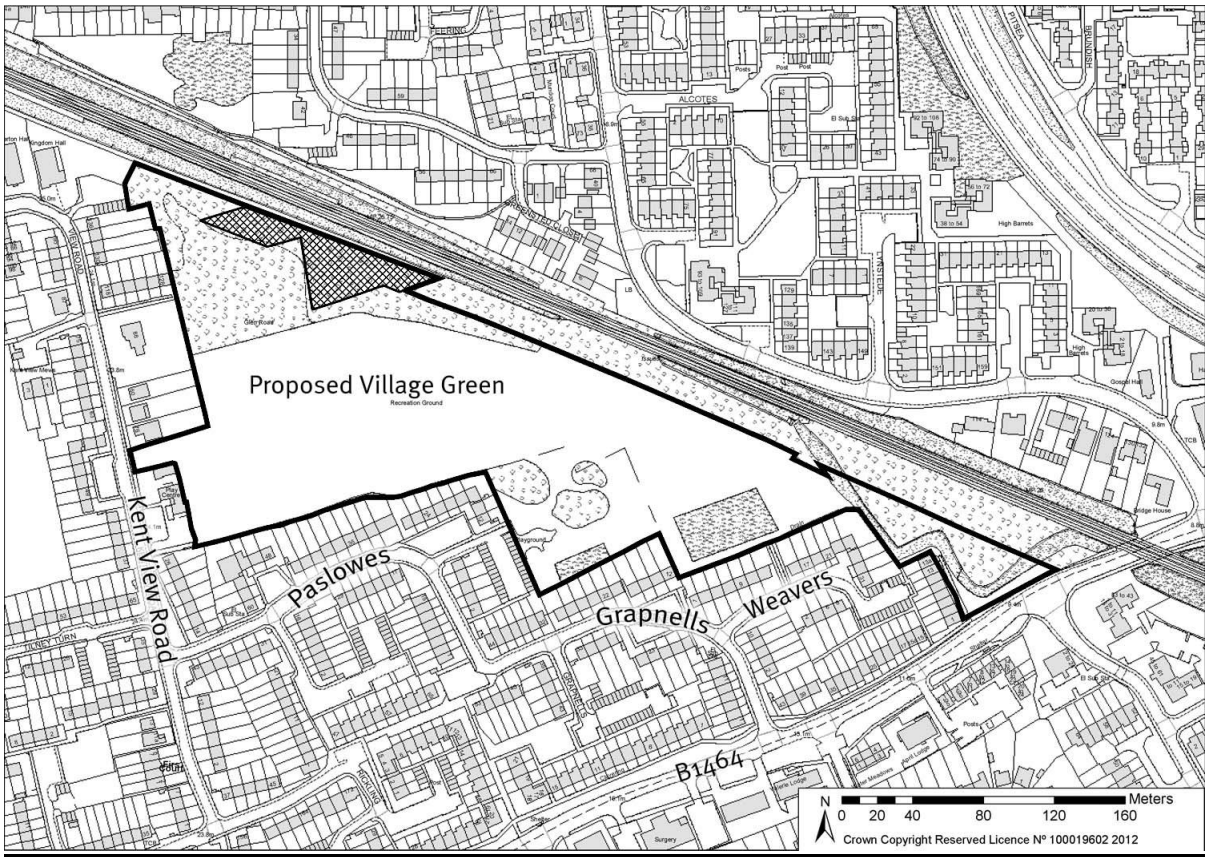
date 23 November 2012

VILLAGE GREEN APPLICATION

Application to register land known as Kent View Road recreation ground, Kent View Road, Vange, Basildon as a town or village green

Report by County Solicitor

Enquiries to Jacqueline Millward Tel: 01245 506710



1. PURPOSE OF REPORT

To consider an application made on by Mr N E Hart of 88 Kent View Road, Vange, Basildon under Section 15 of the Commons Act 2006 ("the 2006 Act") , to register land at Kent View Road Recreation Ground, Vange as a town or village green**.**

2. BACKGROUND TO THE APPLICATION

The County Council has a duty to maintain the Registers of Commons and Town and Village Greens. Under Section 15 of the 2006 Act applications can be made to the Registration Authority to amend the Register to add new town or village greens.

The County Council as Registration Authority has received an application made by local resident Mr Hart to register the application site as a Town or Village Green under the provisions of Section 15(2) of the 2006 Act. The twenty year period for the application is 1990 to 2010.

The application was advertised in the local press and on site. Notice was also served on landowners. The County Council received objections to the application from the landowner, Basildon Borough Council.

Prior to the advertisement the landowner had made representations that it had 'appropriated' the land from open space so that it could obtain planning permission and dispose of the land. The appropriation took place on 19 July 2010 for planning purposes under section 122(2A) Local Government Act 1972, including the prescribed publicity in the local press, in response to which no objections were received. This is in fact disputed by the applicant who says that substantial objection was made to the appropriation. However the objector does not consider that this affects the validity of the objection.

They argued that this would effectively prevent the land having village green status. The Registration Authority took counsel's advice on this issue and was advised that this was not the case so the formal advertisement of Mr Hart's village green application took place. As the appropriation came at the very end of the relevant twenty year period it does not bear on the situation for all but one month.

The application was advertised on site and in the local press in December 2010 with objections to be made no later than 28 January 2011. Direct notification was sent to the landowner identified by the applicant.

Basildon Borough Council objected on 28th January 2011. They indicated that they would in any event require the applicant to be put to proof as to the level, nature and duration of the use of the land which is claimed in his application and supporting documents to have been made and as to the proper identification of a "locality or neighbourhood within a locality" from which the users of the said land are said to have come.

The main thrust of their objection was however that the land constitutes the Kent View Road Recreation Ground, which was acquired by the Borough Council on various dates between 1976 and 1998 from the former Basildon Development Corporation, and then the Commission for New Towns, and laid out since that time as a public open space, and for recreation, under the Open Spaces Act 1906, and/or Section 164 of the Public Health Act 1875, as amended. They stated that because the power of a local authority to acquire land as public open space is and was Section 9 of the Open Spaces Act 1906, that by virtue of Section 10 of that Act**,** any land acquired is held by them "… in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act…"

They stated that the land concerned has also, since no later than March 1997, been expressly subject to byelaws made by them as to Pleasure Grounds and Open Spaces, made under Section 164 of the Public Health Act 1875 and Sections 12 and 15 of the Open Spaces Act 1906, which byelaws were confirmed on behalf of the Home Secretary on 24th February 1997. They stated that prior to that date the land concerned was subject to earlier byelaws of a similar nature.

They asserted by way of objection that in these circumstances members of the public generally have had a right to use the said land as public open space and that such use 'of right' by the public is inconsistent with the establishment of a town or village green claim by 20 years' use 'as of right' (i.e. without permission), as provided for by Section 15 of the Commons Act 2006

In summary they argued that it follows that it will not have been legally possible on this particular land for use 'as of right' by local inhabitants to generate by 'prescription' (i.e. 20 years use without permission) the status of town or village green. They therefore requested that the application for registration made by Mr Hart should therefore be rejected without the need for further consideration of evidence.

They also confirmed that on 20th July 2010 the land concerned was appropriated to planning purposes by the Borough Council, following the procedure laid down by Section 122 of the Local Government Act 1972 (in particular Section 122(2A)).

Planning permission for 73 residential units on the application land was granted on 11 January 2011.

In the case of Village Green applications the County Council has a discretion whether to hold an oral hearing before confirming or rejecting the application as there is no prescribed procedure in the relevant legislation. Where there is a dispute which "is serious in nature", to use the phrase of Arden LJ in ***The Queen (Whitmey) v The Commons Commissioners*** *[2004]* EWCA Civ. 951 (para 29), a Registration Authority "should proceed only after receiving the report of an independent expert (by which I mean a legal expert) who has at the registration authority's request held a non-statutory public inquiry". A non-statutory public inquiry was held before Mr Alan Evans, barrister at law, between 24 and 26 July 2012. He made a report with a recommendation to be considered by the Registration Authority which is at Appendix 1.

3. THE APPLICATION LAND

The application land is a roughly triangular area of some 11 hectares in extent. To the west it is bounded (on the northern part of this boundary) by the rear gardens of houses in Kent View Road and (on the southern part of this boundary) by a rectangular area of land off Kent View Road on which stand two single storey community buildings and their associated land. To the north of the northern of the two buildings a finger of the application land extends up to Kent View Road itself. To the south the application land is bounded by the rear gardens of houses in the streets of Paslowes, Grapnells and Weavers. In its far south east corner a narrow stretch of the application land extends through to High Road, Vange. The eastern boundary of the application land is marked by a railway line. The boundaries of the application land are, on the whole, characterised by extensive vegetation in the form of hedges and trees. The eastern boundary to the railway line is formed also by a steel palisade fence.

The application land is broadly level in its northern part but slopes perceptibly down toward the south or south east in its southern part. The major part of the application land consists of a grassed field. There is a full size football pitch in roughly the middle of the application land which is oriented on a west-east basis to the north of, and roughly parallel with, the line of the rear gardens in Paslowes. The goal posts were in place on the inspector's site visits. To the north of the football pitch, in the north west part of the application land and alongside the railway boundary, there is an area which is wooded in character. The narrow stretch of the application land in its far south east corner extending through to High Road, Vange is also wooded. There are also some areas in the southern part of the application land to the rear gardens of houses in Paslowes and Grapnells where there are smaller groups of trees and bushes. In the right-angled corner of the application land formed by the rear gardens of houses on Paslowes and Grapnells there is a children's play area which has a slide, swings and a bench. There is another bench about half way along the eastern, railway line, boundary.

Access to the application land is available in several places. There is an access from Kent View Road. From a spur of Paslowes there is access next to the children's play area. There is then an access which leads through from Weavers. The south east corner of the application land is accessible from High Road, Vange. Here there is a set of steps just off the High Road which leads up to a path through the wooded area in this location before the path descends by another set of steps on to the `grassed part of the application land. There is also, apart from the formal access points, a well-worn path into the application land in its very north west tip from a garage court at the point where, at the northern part of Kent View Road, the street turns to the west into Bardfield. This access point involved going over, or through, a fence consisting of two metal bars between concrete posts.

There were no signs or notices on the application land at the time of the inquiry in July 2012 save for two Borough Council signs on a single pole at the Kent View Road access; one in relation to the offence of dog fouling and the other in relation

to the offence of littering. There was a pole in the grassed area at the bottom of the steps in the south east part of the application land but there was no sign on it.

There are no footpath or bridleway rights across the application site or in the immediate vicinity but the linking routes to the surrounding development are adopted highways.

4. DEFINITION OF A TOWN OR VILLAGE GREEN

The grounds for the registration of greens are now contained in the Commons Act 2006, section 15. Section 15 provides that any person may apply to the Registration Authority to register land as a town or village green in a case where the following requirements 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. It is for the applicant to establish that these criteria are satisfied in relation to the area claimed in their application.

In determining the period of 20 years referred to there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment and the use is to be regarded as continuing and in appropriate cases where permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining whether persons continue to indulge in lawful sports and pastimes on the land “as of right”.

5. THE APPLICATION AND EVIDENCE IN SUPPORT OF THE APPLICATION

Mr Hart’s application is stated to be made for the Vange Community Group (as authorised by the Meeting on 18th August of the group) and was supported by evidence questionnaires demonstrating use for a wide variety of activities over a period of twenty years or more up to 2010 when the forms were completed in a format supplied by the Open Spaces Society.

The applicant’s definition of locality was not accepted by the objector when the application was advertised. At the inquiry the applicant presented his case on the basis of the ‘neighbourhood within a locality’ limb of section 15(2). The neighbourhood was identified as an area which was referred to in the inquiry as ‘the Triangle’, its three sides formed by Clay Hill Road to the west, High Road, Vange to the south the railway line to the east. This is shown on Appendix 2. Most of the forms are accompanied by a map on which they have marked their residence within the locality area. In the evidence forms the users say that there is a cohesiveness to the locality because it has a school catchment area, a local church or place of worship, sports facility local shops, area policeman, chiropodist/podiatrist, community activities and a scout hut. The locality was identified as Vange Ward. This is also shown on Appendix 2.

Uses stated in his supporting evidence included children playing including play school; various ball games including rounders, football, cricket, rugby, french

bowls, golf and tennis by teams and individuals; community celebrations; group activities with the guides, scouts and cubs; winter activities including snowboarding; jogging, frisbee throwing; bird watching and nature observation; picknicking, fetes, people walking or using it as a shortcut; dog walking and dog training; carnival preparations; bonfire parties and fireworks; caravan club rally; bicycle riding and use on electric wheelchair; picking and eating several varieties of fruit; sponsored walks; watching trains and wedding photographs.

As well as written material submitted with the application and exchanged in bundles in advance of the inquiry, 22 witnesses gave evidence at the hearing. That evidence is set out in paragraphs 21 to 43 of the inspector's report at Appendix 1 (pages 7 to 16). There were a further 15 witness statements and a total of 120 evidence questionnaires, 85 in respect of those who had used the application land for 20 years or more and 35 who had used it under 20 years. The applicant's bundle also included letters of support, photographs, press clippings and a submission in support of an application to register a village green at The Downs, Herne Bay.

One person spoke in support of the application, Borough Councillor Byron Taylor, a Borough Councillor for the Vange Ward. He stated that the Borough Council had not notified the existence of nor enforced, the bye laws and could not therefore, he argued, rely on the claim that use had not been 'as of right'. He also stated that was a clear natural community in and around Kent View Road which relied on the application land and for whom the application land was integral to quality of life. He made the point that before local government re-organisation the High Road had not formed a boundary and the community he spoke of extended to the south of this road.

After the evidence had been given at the inquiry the applicant made the submissions set out in paragraphs 88 to 96 of the inspector's report, at pages 36 to 38 of Appendix 1.

6. EVIDENCE IN SUPPORT OF THE OBJECTION TO THE APPLICATION

Basildon Borough Council's objection letter of 28 January 2011 objected to the application on the basis that the land had been acquired and used as public open space. They called two witnesses at the inquiry whose evidence is set out in paragraphs 45 to 71 of the inspector's report, at pages 17 to 28 of Appendix 1.

Basildon Borough Council had acquired the application land on various dates between 1976 and 1998. There is an area to which they had no documentary title which is cross-hatched on a plan appended to Mr Topsfield's witness statement and marked on the map at the front of this report. Mr Topsfield was the Principal Estate Surveyor.

The application land was acquired by the Borough Council (then Basildon District Council) on various dates between 1976 and 1998. The main part was acquired in 1976 from the former Basildon Development Corporation with the remainder having been acquired from Commission for the New Towns between 1994 and 1998. The application land had been laid out since 1976 as a public open space

and for recreation. The detail of the acquisitions is set out in paragraphs 55 to 61 (pages 19 to 22) of the inspector's report in Appendix 1.

Mr Topsfield also produced an extract from the relevant page of the Borough Council's Terrier record. It records in respect of "Land at Kent View Road" that: the contents upon acquisition were 11.67 hectares approximately; the date of acquisition was 21st June 1976; the purpose involved was open space; the statute was Physical Training and Recreation Act 1937; the price was £20,600; and The vendor was Basildon Development Corporation.

The objector's barrister made detailed submissions on the effect of the acquisition of the land in relation to the grounds to be established under s15(2) Commons Act 2006 which are set out at paragraphs 73 – 87 (pages 28 to 26) of the inspector's report at Appendix 1. He also submitted that the same view should be taken of the cross hatched land as no-one else had claimed the land and so far as it had needed managing it had been managed by the Borough Council and was indistinguishable from the remainder of the open space land which the Borough Council had provided for public use.

The inspector accepted that even before the land was acquired by Basildon Borough Council it was laid out as open space or a recreation ground. So the land subject to the 1976 Conveyance and 1976 Transfer would have met the definition of 'open space' in section 20 of the Open Spaces Act 1906. He accepted that the pre-acquisition material makes it clear that the transaction which was then in contemplation between Basildon Development Corporation and the Borough Council was regarded by both sides as a proposed purchase of open space for open space purposes and that, while the transaction did not go through until 1976, it is clear that it was the same transaction as previously contemplated. He also accepted as undeniably correct that the 1976 Conveyance contained (as did the 1976 Transfer) the clearest possible covenant not to use the land other than for purposes of public open space and recreation. He considered that these matters provide a compelling inference that the land which was the subject of the 1976 Conveyance (which was the vast bulk of the application land) and the 1976 Transfer was acquired as open space under the 1906 Act.

Evidence was also given by the Manager of Parks and Grounds Maintenance who set out the maintenance of the application land to reflect the activities. It included pitch marking, cutting and reinstatement, general amenity grass cutting, pruning of hedges and shrubs on an annual basis, tree pruning when required, litter picking and general inspections. Since 2010, when a contract was entered into, formal hedges were cut twice a year and informal once a year. He also set out the history of byelaw coverage of the application land since 1978.

7. INSPECTOR'S FINDINGS

The inspector's findings and analysis are set out in paragraphs 97 – 152 (pages 39 to 63) of the inspector's report at Appendix 1. The relevant issues for consideration are:

a. Has the use been for lawful sports and pastimes?
b. Has there been 20 years of such use?
c. Is there a specific locality the inhabitants of which have indulged in lawful sports and pastimes or is there a neighbourhood within a locality of which a significant number of the inhabitants have so indulged?
d. Has the user by inhabitants been as of right?

The key issue in this case, and the one which was so treated as the key issue by both parties, is whether use of the application land has been "as of right".

Has the use of the application land been for lawful sports and pastimes for at least 20 years?

The inspector had no doubt that the application land has been used for lawful sports and pastimes for the relevant 20 year period and he so found. The evidence in support of the application clearly establishes as much. The Borough Council has not advanced any evidence which suggests otherwise and has not sought to dispute that lawful sports and pastimes have taken place there for 20 years because that is exactly what would be expected on land which has been provided as a recreation ground.

In relation to the impact of the byelaws on such use, the inspector took the view that, if one were to discount activities which were in breach of bye-laws, the abundance of other activities which were not in breach (such as walking, dog walking, football, cricket, rounders, kite flying and general play) is amply sufficient to establish use of the application land for lawful sports and pastimes for the relevant 20 year period.

The finding that the application land has been used for lawful sports and pastimes for the relevant 20 year period is a finding that the whole of the application land has been so used i.e. the area set out on the map at the front of this report. In making that finding he had borne in mind the observation of Sullivan J in ***Cheltenham Builders Limited v South Gloucestershire District Council*** and adopted the approach there suggested. What was said in that case was that *"the applicants had to demonstrate that the whole, and not merely a part or parts of the site had probably been used for lawful sports and pastimes for not less than 20 years. A common sense approach is required when considering whether the whole of a site was so used. A registration authority would not expect to see evidence of use of every square foot of a site, but it would have to be persuaded that for all practical purposes it could sensibly be said that the whole of the site had been so used for 20 years."* It is no doubt true that some parts of the application land, such as the football pitch area, have been used more than others but that is as is to be expected. It is also true that a number of witnesses spoke of no, or limited, use of the southern part of the application land owing to waterlogging after wet conditions but others were more emphatic in their use of the whole of the application land and some pointed to the seasonal nature of the problem with the southern part of the application land (in autumn and winter). A good number of witnesses specifically referred to use of the wooded areas.

On a common sense approach to the evidence in this case he considered that it is sensible to say that it establishes that the whole of the application land has been used in the requisite qualifying way for 20 years. No contrary submission has ever been put forward by the Borough Council.

Has there been use by a significant number of inhabitants of any neighbourhood within a locality?

This matter was ultimately not contentious at the inquiry. The objector accepted that the Triangle described by the applicant and shown on Appendix 2 was capable of being a neighbourhood and that, whatever reservations there might be about Vange Ward as a locality, those reservations could be assuaged by regarding the borough of Basildon as the locality. The objector also made it clear that the Borough Council did not dispute that significant numbers of people from the neighbourhood had used the land recreationally for at least the relevant period of 20 years. The inspector considered the objector's acceptance of these matters was well-founded.

He looked at whether the Triangle falls to be considered as a neighbourhood. Neighbourhood is undefined in the 2006 Act as was also the case under section 22 of the Commons Registration Act 1965 Act as amended by section 98 of the Countryside and Rights of Way Act 2000. However, there are various judicial observations which need to be considered and which he set out in paragraphs 103 - 109 (pages 41 to 44) of his report at Appendix 1.

Taking those issues into account he was of the view that the Triangle is properly to be regarded as a neighbourhood in this case. It is an area which is meaningfully described as such and one which has clear and strong boundaries, formed on two sides by main roads (Clay Hill Road and High Road, Vange) and on the other by a railway, which mark it off from elsewhere. It is an area in which there is a cohesiveness arising from its inter-connected streets and overall similarity of housing stock. It could not fairly be described as a disparate collection of pieces of residential development cobbled together for the purposes of the claim. It is also an area where people might reasonably regard themselves as living in the same portion or district of town. On a more impressionistic level, some of the evidence also provided a flavour of community identity in the Triangle.

As to the issue of whether Vange Ward constitutes an appropriate locality, it is correct that there has been judicial recognition of the proposition that a ward may constitute a locality for the purposes of town or village green registration. Older dicta pointing the other way can be found in the case of ***Laing Homes Limited v Buckinghamshire County Council*** where Sullivan J said that the objectors there would have had a good prospect of persuading an inspector that there was no qualifying locality if the case had been advanced on the basis of electoral wards *"either because electoral wards are not localities or, if they are, because the wards constituted two localities and the inhabitants of one would not be the inhabitants of the other."*

In the light of the more relaxed view that is now being taken by the courts as to what constitutes a "neighbourhood within a locality" and the emphasis which has been placed on the loosening of the links with historic forms of green which this phraseology was intended to achieve, the inspector saw no real reason why a ward could not be a locality for the purposes of establishing a claim on the basis of a "neighbourhood within a locality". As to issue of the present boundaries of the ward being the product of relatively recent boundary change, again he was not sure why any such change should matter for the purposes of a claim for registration on the basis of a neighbourhood within a locality. The neighbourhood has remained the same over the 20 year qualifying period and thus there is certainty as to those local inhabitants who would enjoy the right to recreate on the green were it to be registered. He did not consider that it mattered whether he was right or wrong on that because the borough of Basildon itself would serve as the requisite locality within which to locate the neighbourhood. There is no evidence of any change in the borough boundaries over the relevant 20 year period. If authority were needed for the proposition that the borough could be the relevant locality it can be found in a passage from the judgment of HHJ Behrens in ***Leeds Group plc*** at first instance. The judge stated that*" if … Yeadon cannot be a locality for the purpose of limb (ii), I would hold that the parish of St Andrew is the relevant locality. I see no reason to limit the meaning of 'locality' in limb (ii) in the manner suggested in paragraph 37 of Mr Laurence QC's skeleton argument* [which had contended that in limb (ii) a locality had to be of a size and situation such that, given the particular activities which had in fact taken place, it might reasonably have been capable of accommodating a proper spread of qualifying users undertaking activities of that type]. *There is nothing in the wording of the 2000 Act which refers to the size of the 'locality'. Furthermore one of the main purposes of the amendment, as it seems to me, was to allow inhabitants in a neighbourhood to qualify in a situation where the locality itself was too big. It cannot, in my view, have been the intention of Parliament that both the neighbourhood and the locality had to be small enough to accommodate a proper spread of qualifying users."*

In relation to the issue of "significant number", this again was not a matter in contention, the Borough Council not disputing that significant numbers of people from the neighbourhood had used the application land recreationally for at least the relevant period of 20 years. Sullivan J dealt with the issue of "significant number" in ***McAlpine Homes Ltd v Staffordshire County Council*** where, in a well-known passage, he said that *"the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers".* On the evidence he found that this test is met in the present case.

He concluded therefore that the application land has been used by a significant number of the inhabitants of a neighbourhood within a locality for lawful sports and pastimes for a period of at least 20 years and went on to consider the key issue, whether that use 'as of right'.

<u>Has the user by inhabitants been as of right?</u>

Although no challenge to specific types of use has been indicated Basildon Borough Council confirmed that the land had been used for " open space" since its transfer to them and its use restricted with byelaws to ensure effective management of this and other Basildon park areas. They claim that none of the use cannot be 'as of right' because it has been 'by right'

The inspector considered that the issue of whether use has been "as of right" is inextricably bound up with the question of the power under which the application land was acquired and held. As a local authority is a creature of statute it can only acquire land under some statutory power. He agreed with the proposition that, if express identification of the relevant statutory power is absent from the resolution authorising the acquisition in question or the conveyance effecting that acquisition, the task of identification of that power becomes a matter of inference in all the circumstances of the case.

The history of the Borough Council's acquisition of the application land in this case starts with the 1976 Conveyance, the 1976 Transfer and the documentary material from 1973-74 pre-dating these documents. It is clear that the 1976 Conveyance and the 1976 Transfer represented the completion of the transaction which had been proposed in, and was the subject of, the dealings between Basildon Development Corporation and the Borough Council in 1973-74. This follows not just from the correspondence between the final 1976 documents and the earlier documentary material of 1973-74 in terms of the subject matter (land at Kent View Road) and the price of £20,600 but also from the fact that the covenants embodied in the 1976 documents ("not to use the land hereby conveyed/transferred or any part thereof other than for the purposes of a public open space and for recreation") match the fact that (as is reflected throughout the 1973-74 documentary material) the proposed purchase of the land was as open space. The 1973-74 documentary material is therefore to be read in conjunction with the 1976 Conveyance and the 1976 Transfer and properly to be considered as pre-acquisition material. However, neither the 1973-74 documentary material nor the 1976 Conveyance/1976 Transfer contains any express identification of statutory powers. The question then becomes one of inference from all the circumstances of the case.

The inspector accepted that even before the Borough Council acquired the land which was the subject of the 1976 Conveyance and the 1976 Transfer, this land was laid out as open space or a recreation ground by Basildon Development Corporation which was consistent with the evidence of some of the witnesses called on behalf of the applicant who spoke of the application land being essentially unchanged from the days of the Development Corporation.

The inspector considered that the land subject to the 1976 Conveyance and 1976 Transfer would have met the definition of "open space" in section 20 of the Open Spaces Act 1906 ("the 1906 Act"), which so far as relevant, is *"any land, whether inclosed or not, on which there are no buildings or which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which … is used for the purposes of recreation".*

He accepted that the whole of the pre-acquisition material from 1973-74 makes it clear that the transaction which was then in contemplation between Basildon Development Corporation and the Borough Council was regarded by both sides as a proposed purchase of open space for open space purposes and that, while the transaction did not go through until 1976, it is clear that it was the same transaction as previously contemplated. It is undeniably correct that the 1976 Conveyance contained (as did the 1976 Transfer) the clearest possible covenant not to use the land other than for purposes of public open space and recreation. He considered that these matters provide a compelling inference that the land which was the subject of the 1976 Conveyance (which was the vast bulk of the application land) and the 1976 Transfer was acquired as open space under the 1906 Act and he did not consider that this inference is displaced by other matters which he set out in paragraph 120 of his report on page 49 of Appendix 1.

He also considered the impact of the 1979 and 1997 Bye-laws. He had no doubt that it was intended that both the 1979 and the 1997 Bye-laws should apply to the application land. He accepted the objector's submission that the selection of the combined section 12 and 15 bye-law making power in the 1979 Bye-laws and in form BYE 5/3 should not deflect from the conclusion that the land which was the subject of the 1976 Conveyance and 1976 Transfer was acquired under the 1906 Act. He agreed that it would be simple prudence to refer to both sections 12 and 15 in circumstances where, despite the public open space covenants, there was no express reference to the 1906 Act in the 1976 Conveyance and 1976 Transfer and where the Terrier referred to the purpose of open space but also to the 1937 Act. The choice of the bye-law making power is explicable as a cautious "belt and braces" approach by those responsible for the bye-laws and need not have involved any implicit rejection by them of the proposition that the land was acquired under the 1906 Act.

Given that the land which was acquired under the 1976 Conveyance and the 1976 Transfer was acquired under the 1906 Act, this means that this land was subject to the statutory trust for public enjoyment found in section 10 of the 1906 Act.

He also considered those areas of land which formed the subject of the CRA Transfers. The Borough Council had produced the relevant documentary material of two "community related assets" transfers which took place between Commission for the New Towns and Basildon District Council. The first such transfer took place on 31st January 1994 and the second on 12th February 1998 ("the 1994 CRA Transfer" and the 1998 CRA Transfer", or, collectively, "the CRA Transfers").

The Objector's evidence was the areas subject to these transfers had been maintained as one with the rest of the land in the Borough Council's ownership before the transfers took place and the inspector had no hesitation in accepting that. There is no evidence to contradict it and, indeed, all the evidence is consistent with these areas long having formed undifferentiated parts of a wider whole. The memorandum of 18th October 1976 refers to the parcel of land which became the subject of the 1994 CRA Transfer as a piece of remaining land at the Kent View Road Open Space which was then available for purchase by the

Borough Council from Basildon Development Corporation. He had no doubt that this land satisfied the definition of open space in section 20 of the 1906 Act when it was acquired by the Borough Council in 1994. The same would have applied to the parcel of land which was the subject of the 1998 CRA Transfer.

The objector submitted that in respect of the plots of land which were the subject of the CRA Transfers, in spite of the somewhat widely worded covenants in the transfer documents, there was nothing inconsistent with the Borough Council's acquiring this land in reality to add to the public open space. The areas were already de facto part of the same public open space, managed as such and then, in the 1990s, fully added in ownership terms as well. It would be absurd to treat them differently and the inspector agreed with and accept that submission. Neither the 1994 CRA Transfer nor the 1998 CRA Transfer identifies any specific statutory provision which bears on the purpose of the Borough Council's acquisition. The 1994 CRA Transfer was made under the aegis of an agreement between Commission for the New Towns and Basildon District Council which dealt with the transfer of various areas of land, including the plot of land subject to the 1994 CRA Transfer. The agreement recited that the transfer to the Borough Council was pursuant to section 120 of the Local Government Act 1972 and to the powers contained in the New Towns Act 1981. Of those two powers, the one which relates to the Borough Council's acquisition is section 120 of the Local Government Act 1972 ("the 1972 Act"). Section 120 provides a wide power for councils to acquire land by agreement for the purposes of any of their functions under the 1972 Act or any other enactment or for the benefit, improvement or development of their area. It would seem probable that this wide general power was selected because the transfer was of various areas of land and different areas might be used for different purposes. That point also serves to explain the width of the covenant in the 1994 CRA Transfer extending to use for "landscape area highway or for the provision of amenity and recreation areas for the use of the public including (without limitation) housing access parking and garden areas and any other uses which in the reasonable opinion of the .. Council... are required in order to allow full public use and enjoyment of the land".

It seemed to the inspector that, in strict terms, the land which was the subject of the 1994 CRA Transfer was acquired under section 120 of the 1972 Act rather than under the 1906 Act. In those circumstances it is probably not possible to say that section 10 of the 1906 Act applies as such because the land was not acquired "under" the 1906 Act although Lord Scott envisaged in ***Beresford*** that there might be some flexibility in approaching the question of when section 10 of the 1906 Act was engaged. He said *"that the 1906 Act should not have been set to one side in the present case simply on the ground that in the documents relating to the transfer to the council no express reference to the 1906 Act can be found. It would be, in my view, an arguable proposition that if the current use of land acquired by a local authority were use for the purposes of recreation and if the land had not been purchased for some other inconsistent use and the local authority had the intention that the land should continue to be used for the purposes of recreation, the provisions of section 10 would apply (c/f counsel's argument in the Poole Corporation case, at p 27)."* Lord Scott acknowledged, however, that no concluded view could be expressed given the concession that had been made that the acquisition had not been "under" the 1906 Act. It is also

to be noted that the present case is not simply one where the relevant documents are silent on the acquisition power but one where they contain specific reference to a power other than one found in the 1906 Act. For present purposes, he proceeded therefore on the basis that section 10 of the 1906 Act was not directly engaged as such.

However, the reality of the present case is that in 1994 the Borough Council was adding to its ownership for open space purposes another smaller piece of open space to a much larger area of adjoining open space, which had been acquired under the 1906 Act, where the larger composite area had all along been managed in the same way and was all already used for the purposes of public recreation. Moreover, while the direct acquisition power was section 120 of the 1972 Act, the purpose of the acquisition was the provision of open space to the public as a function of the Borough Council under the 1906 Act. In those circumstances it would indeed be absurd to think that any different consequences should follow in law from any inability to say that the added land was subject to a statutory trust for public enjoyment in the strict sense for want of direct acquisition under the 1906 Act. The inspector considered that this reasoning fits entirely with the observations of Lord Walker in ***Beresford*** in which he envisaged that there would be situations where, although there might not be a statutory trust in the strict sense, the legal position would be equivalent thereto. He concluded therefore that from 1994 the land subject to the 1994 CRA Transfer should be regarded as in such position. He also considered that the reality of the acquisition of the land which was acquired under the 1998 CRA Transfer is no different from the reality of the acquisition of the land which was the subject of the 1994 Transfer. This was another case where the Borough Council was adding to its ownership for open space purposes a further small area of open space to a much larger area of adjoining open space, which had been acquired under the 1906 Act, where the larger composite area had all along been managed in the same way and was all already used for the purposes of public recreation. In his view it too is therefore to be approached on the basis that its legal position from acquisition in 1998 is equivalent to land subject to a statutory trust for public enjoyment in the strict sense.

In relation to the cross-hatched area shown on the map at the front of this report the objector accepted that it had not been acquired under any local government statute. However, they invited the inference that, as no-one else claimed it and the Borough Council had been managing it for a long time, the Borough Council had acquired title through adverse possession, had effectively added it to its landholding and made it available, in common with the rest, as public open space. The cross-hatched area was an indistinguishable part of a wider publicly provided recreational area. The inspector did not accept this submission for the simple reason that there is no evidence which establishes that the Borough Council has carried out any significant management of the cross-hatched area or has otherwise occupied or controlled it. Their witness Mr Reynolds himself confirmed that the cross-hatched area was a wooded or scrubland area within which there was probably no maintenance. The inspector did not consider that the evidence establishes that the Borough Council has ever been in factual possession of the cross-hatched area. The Borough Council could not therefore have been in the position where it was making that particular piece of land

available to the public as open space. It was not theirs to make available. Whether the cross-hatched area is or is not physically distinguishable from the wider adjoining area does not seem to me to affect the matter. He also noted that the Borough Council has not taken any formal steps to obtain a possessory title to the cross-hatched area.

Having concluded that the land which was the subject of the 1976 Conveyance and the 1976 Transfer was land which was acquired under the 1906 Act and thus subject to the statutory trust for public enjoyment in section 10 of the 1906 Act and that the land acquired in 1994 and 1998 under the CRA Transfers is to be treated as being in an equivalent position from the dates of the transfers the inspector had no doubt that the use of this land (which comprises the whole of the application land save for the cross-hatched area) cannot have been "as of right" from the dates on which the various parts of it were acquired until the eventual appropriation of the application land for planning purposes in July 2010. This is therefore fatal to the application (save in respect of the cross-hatched area). The position is made clear in a series of dicta in Beresford which are of the highest persuasive force and clearly correct in principle.

The inspector also considered the position if his finding that the land which was the subject of the 1976 Conveyance and 1976 Transfer was acquired under section 9 of the 1906 Act were wrong and this land were in fact acquired, as recorded in the Borough Council's Terrier record, under the Physical Training and Recreation Act 1937. He did not consider that this would alter the position. If the land had been acquired and laid out under the 1937 Act and made available thereunder to the public for the purposes of recreation, he considered that the land would still have been used "by right" rather than "as of right"

In the same context the inspector considered the effect of the byelaws. Assuming activities carried on in breach of bye-laws were not lawful and so fall to be discounted, the abundance of other activities which were not in breach was amply sufficient to establish use of the application land for lawful sports and pastimes for the relevant 20 year period. The 1979 and 1997 Bye-laws were intended to apply to the application land. The bye-law making power utilised did not deflect from the conclusion that acquisition had been under the 1906 Act. There were two other issues on the byelaws in relation to the legal nature of the use of the application land. The first issue relates to the central plank of the applicant's case in this regard, namely, that as there had never been any bye-law signs or notice boards at the application land, that was fatal to the contention that use of the application had been with the permission of the Borough Council. The second issue is the applicant's further contention that activities carried out in breach of bye-laws were trespassory and therefore to be regarded as taking place "as of right". In considering this issue he considered whether activities carried out in breach of bye-laws can qualify as lawful sports and pastimes. The inspector found that no bye-law sign or notice ever was displayed at the application land during the relevant period. On this point he regarded the direct evidence of all witnesses in support of the application that no such sign or notice ever was displayed as plainly preferable to the hearsay evidence provided by the objector's witness who could speak only of the recollection of an unidentified officer of the Borough Council unsupported by any documentary evidence.

Communication of the existence of bye-laws would be necessary if the case against use "as of right" were to be put on the basis of an implied, revocable permission. In ***Newhaven Port and Properties*** Ouseley J said that *"[t]he very existence of bye-laws communicated in some way, would have shown that the recreational use was by implied, revocable permission." [emphasis added].*

However, that is not the case which is made by the Borough Council here against use "as of right". The Borough Council was not contending that by putting up bye-law signs or notices it was saying to the public that they were permitted to come on to the application land. The Borough Council was contending that, because of the status of the application land, the public had a right to be on it. The inspector did not therefore accept the applicant's submission that absence of communication defeats the Borough Council's argument. Part of the applicant's case was that, by failing to publicise the existence of bye-laws and by not enforcing them, the Borough Council had not fulfilled its legal requirements. He did see how this argument, whether it be right or wrong, assists the applicant's case. Assuming it were right (which he did not decide) and it could be said, for example, that the Borough Council had not fulfilled its trust duty under section 10 of the 1906 Act to hold and administer the open space under proper control and regulation. That would mean that the Borough Council were in breach of that duty. It would not mean that the Borough Council's trustee status was removed nor would it mean that the trust for public enjoyment ceased to be applicable. And so its relevance to the 'as of right' issue.

The applicant further contended that activities carried out in breach of bye-laws were trespassory and therefore to be regarded as taking place "as of right". This contention is defeated by the judgment of Ouseley J in ***Newhaven Ports and Properties***. *"[A]ny activities carried on in breach of the byelaws, whether the byelaws are enforced against them or not, are unlawful and have to be discounted"* and further: *"[b]yelaws, albeit unannounced and unenforced, are relevant to a prior aspect on which the Inspector concluded in favour of Newhaven Port. If they had prohibited all the activities relied on by the inhabitants to establish their recreational user rights, there would have been no lawful sports and pastimes. The issue of user as of right would not even have been reached."* The inspector considered that he should follow this very clear guidance from the High Court.

The final consideration is the cross-hatched area. The inspector did not see that there is any legal basis left to say that local inhabitants' use of this area has not been "as of right" even if access thereto had been from the rest of the application land, the use of which was enjoyed "by right". No other impediment to registration of the cross-hatched area is suggested by the Borough Council and none was apparent to the inspector. In finding that the whole of the application had been used for lawful sports and pastimes for at least 20 years I noted (in paragraph 100 above) that a good number of witnesses specifically referred to use of the wooded areas on the application land. The cross-hatched area is a wooded area. No suggestion was made that there would be any future issue of access to the cross-hatched area were it to be registered in isolation, let alone that any such issue should bar registration. Any such suggestion would have fallen foul of Ouseley J's finding in ***Newhaven Port and Properties*** that *"[i]t would be wrong*

for rights which on the evidence have been proved to exist not to be registered as required by the statute, simply because they could not be exercised."

8 INSPECTOR'S CONCLUSION AND RECOMMENDATION

The inspector's overall conclusion is that all requirements for the application to succeed are made out except for use "as of right" but, for that reason, the application must fail, save for the cross-hatched area, where all requirements for the application to succeed, including use "as of right", are made out. As a matter of procedure the Registration Authority is entitled to register only that part of the application land in respect of which the case has been proved.

He therefore recommend that the application should be rejected save for the cross-hatched area, in respect of which it should be accepted.

9 REPRESENTATIONS FOLLOWING INSPECTOR'S REPORT

The inspector's report was circulated to applicant and objector. The applicant has indicated that he intended to approach Basildon Borough Council to see if they would be willing to enlarge the area that has been recommended to be registered as a village green. Basildon Council confirmed it did not wish to make any comments in relation to the Inspector's Report.

10. LOCAL MEMBER NOTIFICATION

The local county councillors for Pitsea Ward, Councillors Abrahall and Hillier were notified of the inspector's recommendation on 10th October. Any comments will be reported.

11. RECOMMENDATION

It is RECOMMENDED

1. That, with the exception of the cross hatched area on the map at the front of this report, the application is rejected as the land has a legal status which defeats the acquisition of village green rights over it.
2. The part of the application land shown with cross hatching on the map at the front of this report is registered as town or village green.

BACKGROUND PAPERS

Application by Mr N Hart dated 19 August 2010
Inspector's report

Local Members Pitsea: Councillors Abrahall and Hillier

Ref: Jacqueline Millward CAVG/57

APPENDIX 1

APPLICATION TO REGISTER LAND KNOWN AS KENT VIEW ROAD RECREATION GROUND, KENT VIEW ROAD, VANGE, BASILDON, ESSEX AS A TOWN OR VILLAGE GREEN

REPORT

By

Alan Evans

Kings Chambers

36 Young Street

Manchester

M3 3FT

CONTENTS

Recommendation: the Application should be rejected save for the Cross-Hatched Area, in respect of which it should be accepted.

Introduction

1. I am instructed in this case by Essex County Council in its capacity as registration authority for town or village greens ("the Registration Authority") in order to assist it in determining an application ("the Application") to register land known as Kent View Road Recreation Ground, Kent View Road, Vange, Basildon, Essex ("the Application Land") as a town or village green.

2. The Application is dated 19th August 2010 and was made by Mr Neil Edmund Hart ("the Applicant") of 88 Kent View Road, Vange, Basildon, Essex, SS16 4JX on behalf of the Vange Community Group.

3. My instructions were to hold a public inquiry to hear the evidence and submissions both for and against the Application and, after holding the inquiry, to prepare a written report to the Registration Authority containing my recommendation for the determination of the Application.

4. I held the inquiry at the Wickford Centre, Alderney Gardens, Wickford, Essex, SS11 7JZ on 24th to 26th July 2012.

5. At the inquiry the Applicant represented himself and the objector, Basildon Borough Council, was represented by Mr Alun Alesbury of counsel. I thank the Applicant and Mr Alesbury for the valuable assistance of their advocacy at the inquiry. I also thank the Registration Authority for arranging the inquiry and its administrative support.

6. I made an unaccompanied visit to the Application Land on the morning of 24 July 2012 to familiarise myself with it before the inquiry began. I made a further unaccompanied visit on 25th July 2012 after the inquiry had finished for the day. With the agreement of the parties I did not hold an accompanied site visit. I familiarised myself with the surrounding area by driving round it on the occasions of my two site visits.

7. The Council was formerly Basildon District Council and before that again, pre-1974, Basildon Urban District Council. References in this report to "the Council" should be taken to include, where appropriate, its statutory predecessor authorities.

The Application

8. The Application sought the registration of the Application Land under section 15(1) of the Commons Act 2006 ("the 2006 Act") on the basis that section 15(2) applied.

9. Section 15(2) of the 2006 Act 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."

10. The relevant 20 year period for the Application in this case is 1990-2010.

11. At the inquiry the Application was presented on the basis of the "neighbourhood within a locality" limb of section 15(2). The neighbourhood was identified as an area which was referred to in the inquiry as "the Triangle" and I will use that term in this report. The Triangle is an area which is indeed of triangular shape. Its three sides are formed by Clay Hill Road to the west, High Road, Vange to the south and a railway line to the east. The locality was identified as Vange Ward.

12. The Application was supported by, inter alia, over 100 completed evidence questionnaires.

13. The Application was objected to by the Council on 28th January 2011 in its capacity as owner of the Application Land. The main ground of the objection was on the basis that use of the Application Land had not been, and could not be, "as of right" because the Application Land had been acquired and laid out for public open space and for recreation. The Council's objection was later supplemented by a "submission of factual

position" (my copy being undated) in which the Council explained the history of its acquisition of the Application Land and the statutory basis for it.

14. The Applicant responded on 20th June 2011.

The Application Land

15. The Application Land is a roughly triangular area of some 11 hectares in extent. To the west it is bounded (on the northern part of this boundary) by the rear gardens of houses in Kent View Road and (on the southern part of this boundary) by a rectangular area of land off Kent View Road on which stand two single storey community buildings and their associated land. To the north of the northern of the two buildings a finger of the Application Land extends up to Kent View Road itself. To the south the Application Land is bounded by (respectively from west to east) the rear gardens of houses in the streets of Paslowes, Grapnells and Weavers. In its far south east corner a narrow stretch of the Application Land extends through to High Road, Vange. The eastern boundary of the Application land is marked by a railway line. The boundaries of the Application Land are, on the whole, characterised by extensive vegetation in the form of hedges and trees. The eastern boundary to the railway line is formed not just by a hedge and trees but also by a steel palisade fence.

16. The Application Land is broadly level in its northern part but slopes perceptibly down toward the south or south east in its southern part. The major part of the Application Land consists of a grassed field. There is a full size football pitch in roughly the middle of the Application Land which is oriented on an west-east basis to the north of, and roughly parallel with, the line of the rear gardens in Paslowes. The goal posts were in place on my site visits. To the north of the football pitch, in the north west part of the Application Land and alongside the railway boundary, there is an area which is wooded in character. The narrow stretch of the Application Land in its far south east corner extending through to High Road, Vange is also wooded. There also some areas in the southern part of the Application Land to the rear gardens of houses in Paslowes and Grapnells where there are smaller groups of trees and bushes. In the right-angled corner of the Application Land formed by the rear gardens of houses on Paslowes and

Grapnells there is a children's play area which has a slide, swings and a bench. There is another bench about half way along the eastern, railway line boundary.

17. Access to the Application Land is available in several places. There is an access from Kent View Road to the south of the southern of the two buildings I mentioned in paragraph 15 above. From a spur of Paslowes there is access next to the children's play area described in the previous paragraph. There is then an access which leads through from Weavers. The south east corner of the Application Land is accessible from High Road, Vange. Here there is a set of steps just off the High Road which leads up to a path through the wooded area in this location before the path descends by another set of steps on to the grassed part of the Application Land. The area at the bottom of these latter steps was noticeably wet when I visited. I also noticed, apart from the formal access points, a well-worn path into the Application Land in its very north west tip from a garage court at the point where, at the northern part of Kent View Road, the street turns to the west into Bardfield. This access point involved going over, or through, a fence consisting of two metal bars between concrete posts.

18. On the occasions of my site visits there were no signs or notices on the Application Land save for two Council signs on a single pole at the Kent View Road access, one in relation to the offence of dog fouling and the other in relation to the offence of littering. There was a pole in the grassed area at the bottom of the steps in the south east part of the Application Land referred to in the previous paragraph but there was no sign on it.

19. The history of the Council's acquisition of the Application Land is set out later in this report as part of the account of the evidence of one of the Council's witnesses, Mr Topsfield. I do not therefore deal with that at this point.

20. For the sake of narrative completeness there is, however, one other matter which I mention here. On 19th July 2010 the Council appropriated the Application Land for planning purposes under section 122(2A) of the Local Government Act 1972 and, following that, outline planning permission for the residential development of the Application Land for up to 73 units was granted on 11th January 2011. These actions were part of a wider strategy by the Council to raise funds for the development of a new "Sporting Village" within the borough, a strategy which has not been without

opposition and controversy. Nevertheless, as the appropriation came at the very end of the relevant 20 year period, it does not bear on the situation which pertained for all but one month of that period and, in consequence, it did not feature in the inquiry save as a piece of background information. I refer to it here for no other purpose.

The evidence in support of the Application

21. In the succeeding paragraphs under this section I set out a brief summary of the evidence given by the witnesses called by the Applicant in support of the application. I heard from 22 "live" witnesses.

22. **Barry Burman** of 56 Paslowes said that he had lived at that address for 36 years from 1975 to 2012. His family had used the Application Land all this time. His two boys had played football for Vange United, he had played football, cricket and golf and walked the dogs with his family and he had flown model aircraft with his grandchildren. His grandchildren also climbed trees. He was now too old to play sport himself and used the Application Land for walking and taking his dogs out. He had used all parts of the Application Land over the years but the football pitch area was the area used more frequently. He had seen others flying kites and playing cricket and golf. Mr Burman had never seen any signs indicating that he had permission to use the land or displaying bye-laws.

23. **Dennis Wilson** of 58 Bardfield said that he had lived at that address for 34 years. He and his wife had used the Application Land regularly over that time, including use with their daughter, who was now 33. Activities which they had taken part in five times a week were walking the dog, flying kites, climbing trees, meeting neighbours, picnicking, playing games like football, taking photographs, snowball fights and so on. It was mainly the south side which was used. He never used the bottom bit because it got very wet. He had a job getting the dog out of the wooded bit. He had seen others flying aeroplanes and playing cricket and golf. Mr Wilson had never seen any signs indicating that he had permission to use the Application Land.

24. **Tim Pink-Gyett** of 65 Kent View Road said that he had lived in the Kent View Road area for over 36 years. He had used the Application Land constantly since moving to

Vange in 1975. As a child he would go over there most days, playing sports on the field or in the woods at the side. As a teenager, he would use it as a place to sit and chat with friends. He now used the Application Land and play area with his own children. As far as concerned activities which he had seen others taking part in, Mr Pink-Gyett said that there had been a lot of people having picnics recently, he had seen rounders being played and golf had taken place occasionally, although not recently. In all the time Mr Pink-Gyett had used the Application Land he had never seen or been aware of any signs relating to its use. It was only when the Council cut the grass (which was three or four times a year but once or twice a year on the bottom half which flooded in winter) that he was aware that the Council was doing anything to maintain the area. The Application Land now was very similar to how it had been in 1975 but there had previously been more play equipment in the play area.

25. **Leonard Spenner** of 55 Kent View Road said that he lived there with his wife. They had moved to that address in 1976 with their two children, having previously lived at 17 Wendene when they first moved to Vange in 1971. They had used the Application Land regularly since moving to Vange for playing games with their children including kite flying, football, blackberrying, camping, building snowmen, snowball fights and generally socialising with other users. They had also used the Application Land almost daily over the past 25 years for exercising and training various dogs and had started using it for playing with their two young grandchildren when they came to visit. They used pretty much all the Application Land, including the wooded area. Until recently they had had springer spaniels which required a great deal of exercise and had been let off their leads. Mr Spenner said that he had seen golf being played on the Application Land, usually youngsters whacking a ball up and down the middle of the field. There had been a spate of motorcycles recently which had been annoying. There was also quite a selection of birds in the area for bird watching. Mr Spenner said that he and his wife had never seen or heard of any bye-laws relating to the Application Land. The Application Land was virtually unchanged from how it had been in 1971 when in the hands of Basildon Development Corporation.

26. **Joyce Backham** of 34 Paslowes said that she had lived at that address since August 1962 and had used the Application Land on a regular basis since that time. She used it roughly twice a week. Over the years she had used the Application Land for pleasure,

games, relaxation, walking, dog walking and had also cycled there. She picked litter from the Application Land, something she had never seen Council workmen doing and tried to get over there when she could. She had covered every inch of the Application Land but her main usage was of the top half which was virtually level. Mrs Backham's daughter took her disabled daughter on to the Application Land. Mrs Backham had seen scouts using the Application Land and picnics, football training and rounders taking place there. There had been parties there for Prince William's wedding and the Queen's Diamond Jubilee which had brought the community closer together. Mrs Backham said that she had never been challenged by any official notices.

27. **Jennifer Rogers** of 32 Paslowes said that she had lived at that address for 40 years. She had used the Application Land every day to take her dog out, meeting other dog walkers when she did. She had been on all parts of the Application Land with her dog, including the wooded area, and had twice been down to the bottom, swampy area with her dog but the bit she liked most was the little park area near Kent View Road. The Application Land was used by footballers and by children playing. Mrs Rogers said that she had never been challenged by any official notices. The Application Land contributed to the cohesion of the community, which extended to all the roads in Vange.

28. **Kim Moffat** of 30 Grapnells said that she had lived there since 1974 when her family moved from London. As a young girl she spent all her free time on the Application Land with her brothers and sister and their friends. They played rounders and football, picked blackberries, walked dogs, had picnics, climbed trees and made camps. There had been a little wooden fort in the woods next to the field. The former play centre organised fetes, fun days, competitions, parties and firework evenings which were all held on the Application Land. She now had two sons, aged 14 and 11. They played football and rounders there, had picnics, flew kites, erected tents, had snowball fights or sometimes just accompanied her on one of her early morning jogs. The Application Land was a wonderful haven for wildlife and was used avidly by bird watchers and RSPB members. Older members of the community used it for dog walking or simply taking in some fresh air. Vange United played on the Application Land. The area that she had mostly used was the square, straight field. She had not used the swampy end because it was not fit for purpose. Children came to the Application Land from more

widely than just the Triangle and people also came from other areas but the majority of the use of the Application Land came from within the Triangle. She agreed with the proposition that the name of the Triangle had probably come into being in the context of the present dispute. In the 38 years that she had lived here, Mrs Moffat had never seen any sign indicating that there was permission to use the Application Land or any bye-law notices.

29. **Reginald Maginn** of 28 Grapnells said that he and his wife had lived at that address since moving from London in 1964. They became involved with the parent association which helped with the play leadership scheme which the Council had set up. It held fete days. The association drew from more or less within the Triangle. It had ceased to exist before the 20 year period relevant to the Application. Apart from the association's activities, together with friends and neighbours they had had football matches on the Application Land and they even cut the grass to make their own cricket strip at one time. Barbeques were also held with friends and neighbours. The Application Land produced blackberries and damsons. Mr Maginn's grandchildren and great grandchildren were excited by the wildlife on the Application Land. He had used all the Application Land apart from the bottom end which was a quagmire. He had seen youngsters practising golf on the Application Land and many a time had come back with a golf ball. The Council had marked out a football pitch and the goalposts used to be taken down when the season was over. Local inhabitants used the pitch when teams did not play. The Application Land now was more or less the same as when Basildon Development Corporation had it. Mr Maginn said that the only notices which were displayed were in relation to litter and dog fouling.

30. **Alan Backham** of 34 Paslowes said that he had moved to that address in 1962. The Application Land had been well used by his children, the boys playing football, cricket and rounders and the girls playing rounders, picnicking and walking the dogs. He had used virtually all of the Application Land during the time he had lived here but had not used the boggy or marshy area so much and tended to steer clear of that. Bye-law notices had never been displayed. Mr Backham was not able to give any particular name to the part of Vange where he lived.

31. **Ted French** of 45 Tilney Turn said that he had lived at that address for 25 years and, before that, for 19 years in Clay Hill Road. For the last eight years he had been taking his dog over to the Application Land three or four times a day. He had also picked blackberries on the Application Land. He had used every bit of the Application Land. His dog had got covered in sewage in the wooded area. He had never seen any notices giving permission to use the Application Land. Mr French said that he knew for a fact that people from areas other than the Triangle used the Application Land. There was no name for this part of Vange.

32. **Phil Jacobs** of 32 Grapnells said that he had lived at that address for 28 years. He and his family had used the Application Land for a whole variety of leisure activities and continued to do so. He had taught his son how to play rugby union and football, had taught his son and daughter how to interact with nature and fly a kite and had taught his daughter how to serve at tennis there. He had arranged through his children local fun football matches and rounders games with 30 plus children taking part. He had had family picnics there, played frisbee, cricket, picked fruit, exercised dogs and trained one of them to become a successful show dog. He had also used the Application Land to keep fit, for jogging and for nature and bird watching. He was one of the local residents who kept the Application Land tidy and free from litter, having done this for a number of years. He had used every part of the Application Land. The football pitch area was the area mainly used. Kids ran through and made camps in the wooded areas. He had seen all kinds of leisure activities on the Application Land. The downward sloping part of the Application Land always got very boggy and muddy in prolonged wet weather, especially in the autumn and winter months. The football posts had not been taken down this year at the end of the season as in previous years. There had previously been two football pitches; the other one had been slightly down the slope but it had been too wet and had gone about six, seven or eight years ago he guessed. In the northern part of the Application Land it was also possible to see water bubbling up in wet weather. He called the Application Land "the Rec" but it used to be known as "Campbell's Field". Adults came from outside the Triangle to use the Application Land. There were some 600 residents in the Triangle. Mr Jacobs had never seen any signs indicating that there was permission to use the Application Land nor had he seen any bye-law notice boards.

33. **Neil Hart**, the Applicant, of 88 Kent View Road said that he had lived in Kent View Road since 1973, having lived at his present address since 1999 and, before that, at 87 Kent View Road. He had used the Application Land continuously for all those 39 years for all manner of activities: walking, playing with his children and grandchildren, watching wildlife, relaxing, picking fruit and meeting neighbours. Mr Hart also referred to bicycle riding, playing games, his daughter having erected a tent on the Application Land and taking photographs. While his use had changed over time, in the past having been on the flatter area around the football pitch, Mr Hart had used pretty much all of the Application Land. The first thing that he did each morning when he got up was to look out at the Application Land from his bedroom window to enjoy the scenery and watch the early morning dog walkers. There were not many activities that he had seen on the Application Land which had not already been mentioned by others. Mr Hart did, however, make reference to golf, stating that his house had become a target for the driving of golf balls. If the Council's bye-laws applied, they could have stopped this. There had never been any signs on the Application Land which had indicated that there was permission to use it nor had there ever been any bye-law boards. He knew that the Application Land was a recreation ground but it had different names: Kent View Recreation Ground; Kent View Park; Campbell's Field. He did not dispute that it was a recreation ground but said that it was not regulated. The Council occasionally mowed the grass and pruned the hedges. The wooded area in the north east had been pruned for the first time this year as far as he was aware. The Triangle was a name he had used for the area for very many years. Most users of the Application Land came from that area.

34. **Mick Pink-Gyett** of 15 Clavering said that he had lived at that address for nearly 37 years. Over the years he had watched his children enjoy many a game of football and other sports on the Application Land. Now he went to the Application Land with his grandchildren and pet dogs. He used the Application Land at least twice a day to walk his dogs. He used all of the Application Land in the summer; in the winter the bottom end was a "no go" area. Mr Pink-Gyett had never seen any signs or notices about the use of the Application Land.

35. **Karen Jacobs** of 32 Grapnells said that she had lived at that address for 28 years. For all of that time she had used the Application Land both on her own and with her family.

They had used it for playing rounders, rugby, frisbee, shuttlecock, kite flying and football matches with their children, their friends and others. They had had many happy family picnics on the Application Land in the summer and had had snowball fights and built snowmen in the winter. She had picked fruit and watched and surveyed birds there. She had also used it for jogging and keeping fit as well as dog walking and training one of their dogs to become a successful show competitor. She had used all of the Application Land over the years but for the most part used the top area; her jogging route was around the perimeter. She had used the tracks in the wooded area and children played hide and seek, climbed trees and watched nature there. Mrs Jacobs had regularly seen golf being played on the Application Land and had had a near miss with a golf ball about ten years ago. She had never seen any signage or bye-law boards informing of any restrictions. There had only been two small notices in relation to litter and dog fouling.

36. **Lawrence West** of 75 Kent View Road said that he had lived at that address from 1991 to 1998 and then from 2008 to the present. Since living there he had used the Application Land for exercise and walking the dog nearly every day. When his children were younger he and they were always on the Application Land, playing football, cricket, kiting and bike riding along with other local people. This was mainly on the football pitch area but he had been all over the Application Land. Mr West had never seen any sign indicating that he had permission to use the Application Land.

37. **Peter Stanley** of 21 Paslowes said that he had lived at that address for 14 years since 1998. He and his family had used the Application Land almost every other week other than when they had been on holiday. They mainly gained access from the Paslowes entrance. They had walked dogs around the whole perimeter of the Application Land. He had played cricket and football on the Application Land, jogged on it and picked blackberries and small plums there. Both his girls had learnt to ride bikes on the Application Land and he had pulled his children on sledges in the snow there several times. He had used all the Application Land including the woods and the whole of it was used by others, including the trees, where children loved to climb. Mr Stanley had never noticed or been aware of any boards or signs at the entrance to the Application Land or on it indicating that there were bye-laws or that he might have permission to use the Application Land.

38. **Sheila Painter** of 12 Kent View Road said that she moved to 58 Paslowes with her parents and older brother in 1962 when the estate was first built. She married at 18 and moved to 15 Wendene where she lived for six years before moving to her present address where she had lived for over 30 years. She and her brother had spent many years on the Application Land in the 1960s playing football and rounders, climbing trees, flying kites and running around with their dog. Her two own children, who were both now in their 30s, had also spent many happy years playing on the Application Land and had been taught to ride their bikes there. She now had four grandchildren who she and her husband took to the Application Land. Mrs Painter had never seen any signs indicating that she had permission to use the Application Land. Over the years she had used every single piece of the Application Land. She and her family and friends called the Application Land "Campbell's Field".

39. **Amanda Hart** of 265 Timberlog Lane said that she had lived in Kent View Road for 33 years, from 1978 to 2011, first at No. 87 from 1978 to 1999 and then at No. 88 from 1999 to 2011. All her life she had used the Application Land on a regular basis, several times a week in the summer but less so in the winter. She had played games, climbed trees, ridden her bike and made camps in the woods with her friends when she was a child. She had also used it for walking, meeting friends, picnics, snowball fights, building snowmen and giant snowballs, watching wildlife and many other activities. She still used it on a regular basis when she visited her parents and also took her daughter to play there. She also went with her husband and family and had picnics when the weather was fine. Over the years she had used all of the Application Land. Miss Hart had never seen any signs indicating that there was permission to use the Application Land or that bye-laws applied. She called the Application Land simply "the Field" but her friends called it "the Rec".

40. **Anne Dowling** of 525 Clay Hill Road said that she had lived at that address for the last 37 years. Every day she walked through the Application Land, unless it was too wet, and she took her grandchildren there to run around and play as it was a wonderful space for bashing a ball about, playing chase, climbing trees, flying kites and so on. In the winter it was great for building snowmen and sledge rides. Her own children had spent a lot of time there playing with their friends. She had seen varied wildlife on the

Application Land (foxes, squirrels, herons and woodpeckers, etc.) and there was fruit which could be picked there, including blackberries, sloes, rose hips and wild plums. She used different bits of the Application Land at different times of the year but had used pretty much all of it although the bottom south east corner was a low point and got very wet. Her grandchildren climbed trees and went through the woods. She knew the Application Land as "the Field". Mrs Dowling said that there had never been any signage indicating that permission was needed to use the Application Land or that there were any rules and regulations for its use.

41. **Angela King** of 21 Paslowes said that she had lived at that address for 26 years. She and her family had used the Application Land on a regular basis over that time. She played with her daughters there and taught her youngest daughter to ride a bike there. They loved climbing trees on the Application Land and running around there. She walked dogs there around the perimeter of the whole field. In the winter it was used for building snowmen and having snowball fights. Mrs King also used the Application Land to keep fit by jogging around its perimeter. She used it to relax and spend time with her family and they had also picked blackberries there. She had used all the Application Land but the marshy bit did get really wet. She had never seen any signs indicating that there was permission to use the Application Land or any bye-law boards.

42. **Jill Pink-Gyett** of 65 Kent View Road said that she had lived at that address for 13 years. For all that time she had regularly used the Application Land for exercise and for meeting neighbours. Since starting a family she had taken her children to play there as well. The children loved going into the woods. She had taught her little girl to ride a bike on the Application Land. She had used all the Application Land but the parts used most were the football area, the little playground and the area where the willows were. Mrs Pink-Gyett had never seen any signs giving her permission to use the Application Land.

43. **Norman Dowling** of 525 Clay Hill Road said that he had lived at that address for 37 years. He had used the Application Land with his children when they were younger and now used it with his grandchildren. All of the Application Land was used. Mr Dowling had never seen any signs on the Application Land.

44. In addition to calling 22 witnesses, the Applicant submitted a further 15 witness statements. The statements paint a similar picture to that which emerges from the evidence given by those witnesses who were called. The Applicant also submitted a total of 120 completed evidence questionnaires, 85 in respect of those who had used the Application Land for 20 years or more and 35 in respect of those who had used the Application Land for under 20 years. Almost all the witnesses who produced witness statements, whether called or not, had also completed evidence questionnaires as well so that the figures for the number of witnesses are subsumed within the figures for the evidence questionnaires. I should finally mention that the Applicant's bundle produced for the purposes of the inquiry contained a body of documentary material which included letters of support, photographs, press clippings and a submission put forward in support of an application to register a village green at The Downs, Herne Bay. I have taken everything referred to in this paragraph into account in writing this report and coming to my recommendation.

The evidence called by the Council

45. Mr Alesbury called two witnesses on behalf of the Council as objector to the Application, Andrew Roger Topsfield and Hugh David Reynolds.

46. **Andrew Roger Topsfield** said that he was employed as a Principal Estate Surveyor at Basildon Borough Council. He had started work with the Council in 1973. Basildon District Council had come into being in 1974. Before that it was Basildon Urban District Council and Mr Topsfield had worked for the District Council since its original "shadow" year. In the course of his duties Mr Topsfield had been involved in the acquisition, management and disposal of property. Part of this work was the acquisition of a number of areas of land from Basildon Development Corporation, including the Application Land. He said that his involvement would have been in valuation, negotiation, verification of boundaries and assistance in the conveyancing process. The operational management of open space was, however, a function of the Council's Parks Section.

47. Mr Topsfield said that the Application Land was acquired by the Council (then Basildon District Council) on various dates between 1976 and 1998. The main part was acquired in 1976 from the former Basildon Development Corporation with the remainder having been acquired from Commission for the New Towns between 1994 and 1998. The Application Land had been laid out since 1976 as a public open space and for recreation.

48. The Council's Estates Section acquisition file (as distinct from the primary land acquisition documents themselves) could not be traced (a not unusual occurrence as lots of old files had been destroyed) but copies of some documentary material giving some background to the Council's acquisition had been located. Mr Topsfield said that there were a number of areas of open space, including the Application Land, proposed to be acquired from Basildon Development Corporation in the early 1970s and these were referred to in the documents which had been found. All the areas were open space, intended for use by the public of Basildon. Mr Topsfield produced by way of exhibit to his witness statement the documents he referred to as providing the background to the Council's acquisition and it is helpful if I next describe these.

49. The documents begin with a letter dated 12th September 1973 from the Chief Estates Officer of Basildon Development Corporation to the Town Manager, Basildon Urban District Council. The letter is headed "Proposed Sale of Land for Open Space" and refers to a meeting to take place with the District Valuer on the question of valuation of land for open space purposes, following which it was hoped that the Development Corporation would be able to write to the Council with detailed proposals for the various parcels of land which the Council wished to purchase from the Development Corporation. The letter further stated that its author was prepared to recommend to the Development Corporation that it sell its freehold interests in a number of sites, which the letter then went on to list, at a price to be agreed with the District Valuer. One of the sites was "Kent View Road Open Space". Mr Topsfield said that, while he did not have personal recollection of the 1970s, a large part of the Application Land had been laid out as open space by the Development Corporation even before the Council acquired it.

50. The next document in chronological order is a letter dated 28th November 1973 from the Council to the District Valuer and bears the heading "Proposed Purchase of Open Space from Basildon Development Corporation". The letter refers to a meeting held between the District Valuer, the Development Corporation and the Council and states that its author was prepared to recommend to the Council that it acquire a number of areas of open space which were then identified. The second identified area was "Kent View Road Open Space area 11.67 acres".

51. There is then a letter dated 7th December 1973 from the Chief Estates Officer of the Development Corporation to the Council which is headed "Proposed Sale of Open Spaces". The letter stated that the Chief Estates Officer had asked the District Valuer to give his consideration to the proposed sales listed in the letter with a view to his issuing formal reports. The first listed sale was that of "Kent View Road Open Space".

52. Following this is an internal memorandum dated 18th February 1974 from the Council's Town Manager to the Chairman of the Council's Executive Committee concerning the topic of "Purchase of Open Space from Basildon Development Corporation". The memorandum states that the District Valuer's reports had now been received for the purchase of the areas of open space in question, which included "Kent View Road open space, area 11.67 acres, purchase price £20,600." The memorandum recommended approval of the purchase on that basis and invited the formal approval of the Chairman. The memorandum itself does not record the giving of approval but the subsequent requisitioning of a cheque for the purchase and the later conveyance of the land in question means that it can readily be inferred that any necessary approval was given.

53. On 19th March 1974 a requisition form was completed by an officer of the Council (it is not clear from the form which particular one, save that the officer was a Departmental Chief Officer) which was addressed to the Treasurer and asked for a cheque payable to the Development Corporation for the purchase of seven open space areas. One of the seven areas was "Open Space – Kent View Road" where the purchase price, in accordance with the earlier memorandum, is given as £20,600. Mr Topsfield added that this was a document which would have been produced by the Urban District Council in the last month of its existence.

54. Having described the background documents available from 1973-1974, it is next convenient if I turn to the primary land acquisition documents themselves which Mr Topsfield went on to produce as exhibits to his witness statement.

55. The first of these documents is a conveyance of 21st June 1976 ("the 1976 Conveyance") between Basildon Development Corporation and Basildon District Council. By this document the Development Corporation conveyed to the Council the vast bulk of what is now the Application Land for the price of £20,599. The 1976 Conveyance also included an area fronting Kent View Road, on which stand the buildings mentioned in paragraph 15 above, but which is not part of the Application Land. The 1976 Conveyance recites an earlier agreement of 28th March 1974. The agreement of 28th March 1974 is not in evidence but it is reasonable to infer that it represented the culmination of the sale negotiations between the Development Corporation and the Council which find expression in the background documents for 1973-1974 which I have already described. The date of the agreement follows shortly after the cheque requisition of 19th March 1974. It will be recalled that the purchase price referred to in the background documents was £20,600 rather than £20,599. The 1976 Conveyance refers to an apportionment of the total purchase price. The apportionment in question is explained when reference is made to the next land acquisition document produced by Mr Topsfield, which is a transfer document bearing the same date as the 1976 Conveyance, that is, 21st June 1976 ("the 1976 Transfer"). By this document the Development Corporation transferred to the Council a very thin sliver of land in the south west part of the Application Land for the sum of £1. Thus the total purchase price in respect of the combined area of land which was the subject of the 1976 Conveyance and the 1976 Transfer was indeed £20,600. Mr Topsfield was not able to explain why there should have been such apportionment but nothing turns on this for present purposes. What can be said is that the land transactions of 21st June 1976, the 1976 Conveyance and 1976 Transfer, represent the final execution of the matters which had been the subject of the earlier dealings between the Development Corporation and the Council in 1973-74. Mr Topsfield was not able to say why matters were not completed until 1976 other than to suggest it was possible that money may not have been available sooner but, again, I do not think that anything turns on this.

56. Returning to the 1976 Conveyance, Mr Topsfield drew attention to clause 3 thereof. By that clause the Council covenanted with the Development Corporation that the Council and its successors in title should not "use the land hereby conveyed or any part thereof other than for the purposes of a public open space and for recreation".

57. While not matters highlighted by Mr Topsfield in relation to the 1976 Conveyance, it is worth recording two other points before leaving it. The first is that the one of the schedules to the document refers to earlier conveyances to the Development Corporation of parts of the land from persons named Campbell. I mention this as it echoes the evidence of some of the witnesses called on behalf of the Applicant who mentioned the name "Campbell's Field".[1] The second is that the plan which accompanies the 1976 Conveyance labels the land as "recreation ground" and shows a playground on the land off Paslowes. Again, this is consistent with the evidence of some of the witnesses called on behalf of the Applicant who spoke of the Application Land's being essentially unchanged from the days of the Development Corporation's ownership.[2]

58. I have already referred in paragraph 55 above to the 1976 Transfer. I return to it at this point to note that, as Mr Topsfield pointed out, it contained a covenant (in clause 2) on the part of the Council which was in the same terms as the covenant given by the Council in the 1976 Conveyance. Thus, the Council covenanted that the Council and its successors in title should not "use the land hereby transferred or any part thereof other than for the purpose of a public open space and for recreation."

59. Mr Topsfield next referred to two "community related assets" transfers which took place between Commission for the New Towns and Basildon District Council. The first such transfer took place on 31st January 1994 and the second on 12th February 1998 ("the 1994 CRA Transfer" and the 1998 CRA Transfer", or, collectively, "the CRA Transfers"). Mr Topsfield produced the relevant documentary material in relation to the CRA Transfers. I turn therefore to provide a description of what those documents reveal.

[1] Mr Jacobs (paragraph 32); Mr Hart (paragraph 33); Mrs Painter (paragraph 38). (Report paragraph numbers).
[2] Mr T Pink-Gyett (paragraph 24); Mr Spenner (paragraph 25); Mr Maginn (paragraph 29).

60. The 1994 CRA Transfer took place under the aegis of an agreement of the same date between Commission for the New Towns and Basildon District Council which recited that the Commission and the Council had "agreed proposals for the transfer to the .. Council .. pursuant to section 120 of the Local Government Act 1972 and to the powers contained in the New Towns Act 1981" of various areas of land. The areas of land which were the subject of the 1994 CRA Transfer, which were all transferred for a global consideration of £1, included, so far as relevant for present purposes, a strip of land which runs west to east across the northern part of the Application Land. The strip appears to represent the footprint of a former road, Glen Road, and a small rectangular plot of land to its north. There is no evidence that Glen Road ever existed as a physical feature on the ground during the 20 period relevant to the Application. Mr Topsfield drew attention to the covenant on the part of the Council which was contained in the fourth schedule to the 1994 CRA Transfer. The covenant applies to all the land which was the subject of the transfer and thus applies to so much of the Application Land as was transferred to the Council at this time. The Council covenanted, during the period of 17 years from the date of the transfer, not to use or occupy the land transferred or any part or parts thereof other than "as landscape area highway or for the provision of amenity and recreation areas for the use of the public including (without limitation) housing access parking and garden areas and any other uses which in the reasonable opinion of the .. [Council] .. are required in order to allow full public use and enjoyment of the Land."

61. The 1998 CRA Transfer between Commission for the New Towns and Basildon District Council was a second phase of transfers. It again related to a number of areas of land within Basildon which were transferred from the Commission to the Council for a consideration of £1. So far as relevant for present purposes, the 1998 CRA Transfer included a small plot of land which forms the northern tip of the Application Land. Mr Topsfield again drew attention to the covenant on the part of the Council contained in the fourth schedule. The covenant applies to all the land which was the subject of the transfer and thus applies to that part of the Application Land transferred to the Council at this time. The covenant was in the same terms as the covenant in the fourth schedule to the 1994 CRA Transfer. The Council thus covenanted, during the period of 17 years from the date of the transfer, not to use or occupy the land transferred or any part or parts thereof other than "as landscape area highway or for the

provision of amenity and recreation areas for the use of the public including (without limitation) housing access parking and garden areas and any other uses which in the reasonable opinion of the .. [Council] .. are required in order to allow full public use and enjoyment of the Land."

62. Mr Topsfield said that there was an area within the Application Land to which the Council had no documentary title and which was unregistered. The area in question is cross-hatched on a plan which was appended to Mr Topsfield's witness statement as exhibit ART9 (found at page 89 of the Council's bundle of documents). For convenience I will call it "the Cross-Hatched Area". The Cross-Hatched Area is a small area in the northern part of the Application Land which takes the form of an irregularly shaped strip next to the railway boundary. Mr Topsfield said that the Council was not aware that anyone claimed title to the Cross-Hatched Area. He also said that, notwithstanding that the Cross-Hatched Area was mostly vegetation, it had been laid out, made available and maintained in the same way as the Council's adjacent land at Kent View Road, that was, as open space.

63. Mr Topsfield also produced an extract from the relevant page of the Council's Terrier. It records in respect of "Land at Kent View Road" that:
    - the contents upon acquisition were 11.67 hectares approximately
    - the date of acquisition was 21st June 1976
    - the purpose involved was open space
    - the statute was Physical Training and Recreation Act 1937
    - the price was £20,600
    - the vendor was Basildon Development Corporation.

    Two title numbers are written on the bottom of the relevant page. They correspond with the two separate title numbers in respect of the land which was the subject of (i) the 1976 Conveyance and (ii) the 1976 Transfer.

64. Mr Topsfield did not know why the Terrier referred to the Physical Training and Recreation Act 1937. That entry would have been made by a clerk in the legal section, fairly soon after the conveyance had taken place when all the deeds had been packaged up.

65. Mr Topsfield was asked in cross examination why it was that the area of the Kent View Recreation Ground recorded as 11.36 acres in the Council's "Parks and Grounds Maintenance Services – Land Book Register" (produced by Mr Reynolds as his exhibit HDR1 and found at page 108 of the Council's bundle) was less than the 11.67 acres which had been acquired in 1976 and which had been added to subsequently. Mr Topsfield said that the 11.36 acres might just be the recreation area excluding the area fronting Kent View Road (outside the Application Land but part of the 1976 acquisition) or it might be the grassed area rather than the wooded area. It was correct that the Council did not know who owned the Cross-Hatched Area and Mr Topsfield was not aware of the Council's having done anything to get a possessory title to it. Mr Topsfield was also asked about another document produced by Mr Reynolds, namely form BYE 5/3, which was submitted by the Council to the Home Office in 1991 seeking approval to revised bye-laws for pleasure grounds and open spaces. The form asked how the Council held its legal interest and, in respect of Kent View Road Recreation Ground, it was put to Mr Topsfield that a tick had been placed in the box on the form which related to "donation of the freehold". Mr Topsfield disagreed; his reading was that the tick was in the box which related to "purchase of the freehold". That is my reading too.

66. **Hugh David Reynolds** said that he was employed by Basildon Borough Council as the Manager of Parks and Grounds Maintenance. He had started work in Basildon in 1989. His involvement had been with the operational management and maintenance of the Application Land. The Application Land had been managed by the Council as an area where formal sports and amenities were provided adjacent to much more informal activities. The formal activities had included an adult sized football pitch and changing facilities which had been the home pitch for Vange United for many years and, in the past, junior football pitches. The amenities had included an equipped play area and benches. The type of informal inactivity which took place was dog walking and, on occasion, the Application Land was used for local events.

67. The maintenance of the Application Land reflected the activities which took place there. It included pitch marking, cutting and reinstatement, general amenity grass cutting, pruning of hedges and shrubs on an annual basis, tree pruning when required,

litter picking and general inspections. Mr Reynolds said that, although parts of the Application Land had not been in the direct control of the Council before the CRA Transfers, it had always been maintained as one since at least the early 1990s when compulsory competitive tendering was introduced. That included the Cross-Hatched Area.

68. Mr Reynolds produced as an exhibit to his witness statement an extract from the Council's "Parks and Grounds Maintenance Services – Land Book Register" relating to the Application Land under the heading "Open Space Details – Kent View Recreation Ground". The Land Book Register was used only in the Parks Service. It had been compiled by a former officer in that service in the 1990s simply on the basis of the officer's local knowledge and not in co-operation with the Council's legal service. The relevant entry in respect of the Application Land contains various pieces of information of which I note the following. The area of the land is given as 4.733 hectares or 11.36 acres. Mr Reynolds did not know why this figure differed from other figures. The land is described as general open space with games facilities, parking and play leadership (since deleted). Some acquisition details are also given. These include some extra information in respect of that part of the Application Land which was the subject of the 1994 CRA Transfer which was dealt with in Mr Topsfield's evidence. In this connection there is reference in the Land Book Register to the area of the soil of Glen Road which is described as an old plotland road acquired by Basildon Development Corporation. It is stated that this area was purchased by the Council in the financial year 1976/77. This piece of information is incorrect because it is apparent from Mr Topsfield's evidence, and the documents he produced, that this part of the Application Land was not transferred to the Council until 31st January 1994 and then by Commission for the New Towns and not the Development Corporation. The Land Book Register also refers to a memorandum of 18th October 1976 in respect of this part of the Application Land and that memorandum was produced by Mr Reynolds. The memorandum is from the Manager of Administrative and Legal Services at the Council to the Manager of Recreation and Leisure Services and is accompanied by a plan which identifies the land referred to as that which was later to form the subject of the 1994 CRA Transfer. It refers to a notification from the Development Corporation that its compulsory purchase order in respect of the remaining land at the Kent View Road Open Space had been confirmed and that the land was available for purchase by the

Council. The memorandum asks the Manager of Recreation and Leisure Services whether the land was required in the current financial year or whether it should be programmed for the next year. The Land Book Register also makes reference to the "Act/Authority" applicable to the Application Land, recording in this respect "Physical Training & Recreation Act 1937, Open Spaces Act 1906".

69. Mr Reynolds said that the Application Land had been covered by Pleasure Grounds and Open Spaces bye-laws since 1978. He produced a copy of the "Basildon District Council Bye-laws Pleasure Grounds 1979" ("the 1979 Bye-laws") and the "Basildon District Council Byelaws Pleasure Grounds and Open Spaces 1997" ("the 1997 Bye-laws"). The 1979 Bye-laws identify the pleasure grounds to which they apply in Schedule 1. Schedule 1 is divided into three parts, listing the pleasure grounds by reference to the enabling power for the bye-laws. The three parts are: part 1 which lists the grounds for which bye-laws were made under section 164 of the Public Health Act 1875; part 2 which lists the grounds for which bye-laws were made under section 15 of the Open Spaces Act 1906; and Part 3 which lists the grounds for which bye-laws were made under sections 12 and 15 of the Open Spaces Act 1906. Under Part 3 there is listed "Kent View Park". Mr Reynolds said that this was the Application Land. "Kent View Park" was one of the names by which it was known in the past. The reference could not conceivably be to anywhere else. The 1997 Bye-laws simply state that they are bye-laws made by the Council under section 164 of the Public Health Act 1875, section 15 of the Open Spaces Act 1906 and sections 12 and 15 of the Open Spaces Act 1906 with respect to pleasure grounds and open spaces. The 1997 Bye-laws do not identify which bye-law making power was thought to be applicable in the case of any particular pleasure ground or open space. Schedule 1 to the 1997 Bye-laws categorises the areas to which they apply as being either in Basildon or in Billericay. Under the heading of Basildon there is found "Kent View Drive Recreation Ground (formerly Kent View Park"). Mr Reynolds said, with reference to a suggestion which had been made by Mr Hart on the basis of the listing of "Kent View Drive Recreation Ground", that there was no doubt that the 1997 Bye-laws related to the Application Land. He could not explain why "Kent View Drive" had been referred to because there was no such street. However, there was no requirement for bye-laws to be accompanied by any plan of the land to which they related. Mr Reynolds also produced a copy of the form BYE 5/3 submitted by the Council to the Home Office in 1991 when seeking approval

for revision of the bye-laws. The form correctly referred to "Kent View Road Recreation Ground" and also gave the correct area of 11.36 acres. Mr Reynolds further said that the Application Land was quite commonly referred to simply as Kent View Recreation Ground. Although it was not a matter that Mr Reynolds himself noted, it is to be observed that, in answer to the question in the form relating to what bye-law making power was appropriate for regulating the ground, the Council completed the form by referring to sections 12 and 15 of the Open Spaces Act 1906.

70. Mr Reynolds said that, after 1997, when the 1997 Bye-laws were adopted, a current parks officer of the Council could remember a sign being installed on the Application Land displaying the bye-laws. This was done as part of a larger programme to display the updated bye-laws in the parks to which they applied.

71. When cross-examined by Mr Hart, Mr Reynolds accepted that there was no grass to be cut in the Cross-Hatched Area because it was wooded or scrubland. Mr Reynolds told me that he thought the trees here would be self-set; there was no evidence that they had been planted. Vegetation would be "faced back" where it encroached over the grass but, within the area itself, there was probably no maintenance. More generally, since 2010 when the maintenance went out to contract, formal hedges were cut twice a year and informal once a year. Formerly, all had been cut twice a year. Mr Reynolds did not accept, as Mr Hart put to him, that contractors had cut off fruit at the Application Land but accepted that he did not visit the Application Land himself as often as he would like, his visits being twice a year. In relation to the enforcement of bye-laws, Mr Reynolds said the Application Land was not a manned site and the bye-laws would be hard to enforce. The Council would also have to consider the public interest in enforcement and might choose only to take action if there was a nuisance rather than curtail legitimate activities. The bye-laws were there as a back-up. If Mr Hart had been told by the Council that nothing could be done about incidents when golf balls were aimed at his house from the Application Land, that was wrong. I interpolate here that the reason that Mr Reynolds gave this answer was because golf is contrary to bye-law 16 of the 1979 Bye-laws and bye-law 28 of the 1997 Bye-laws. When asked why a bye-law board had not been erected, Mr Reynolds said that one of the officers did recall that one was erected at the High Road end of the Application Land; the employee in question had purchased it and had had it installed. Mr Reynolds could give no

further details as to how long the board was there or why it was not replaced and did not know why the officer in question had not been called as a witness. Mr Reynolds told me that bye-law boards were usually put up along with information boards at the major parks. There was no information board at the Application Land and it was not a major park.

Evidence given by members of the public

72. One person spoke when I extended an invitation to any member of the public present to contribute to the inquiry, namely, Councillor Byron Taylor, a Borough Councillor for the Vange Ward. So far as relevant for present purposes Councillor Taylor made two points. The first was that the Council had not notified the existence of, nor enforced, the bye-laws and had thereby not asserted its ownership of the Application Land. It could not therefore, he argued, rely on the claim that use of the Application Land had not been "as of right". Secondly, there was a clear, natural community in and around Kent View Road which relied on the Application Land and for whom the Application Land was integral to quality of life. Councillor Taylor did make the point, however, that before local government re-organisation the High Road had not formed a boundary and the community he spoke of extended to the south of this road.

The submissions

(a) The Council

73. Mr Alesbury first accepted on behalf of the Council that the Triangle was capable of being regarded as neighbourhood. He submitted that, while the courts had appeared to accept wards as entities which might be "localities", the chosen locality in this case, Vange Ward, was not very satisfactory as such given its relative ephemerality and the fact that Councillor Taylor had referred to a recent boundary change. This was not, however, the Council's main point. Mr Alesbury accepted in response to my intervention that there would be nothing to stop the borough of Basildon being regarded as the relevant locality.

74. Mr Alesbury next made it clear that the Council did not dispute that significant numbers of people from the neighbourhood (but also from a wider area) had used the Application Land recreationally for at least the relevant period of 20 years. That was exactly what one would expect on land which had been deliberately provided as a recreation ground/open space. Further, and for the same reason, the Council did not dispute that lawful sports and pastimes would have taken place on the Application Land over 20 plus years. However, the Council did very strongly dispute the suggestion that unlawful activities on the Application Land (in the sense of being contrary to the applicable bye-laws although the same would apply to any other unlawfulness) could count towards a prescriptive period of 20 years. The Applicant's point seemed to be that the unlawfulness made the users trespassers so that such use (if it continued throughout) was "as of right". This argument was self-evidently wrong and untenable but, happily, the same view had been very clearly expressed by Ouseley J at paragraph 93 of his judgment in *Newhaven Port and Properties Ltd v East Sussex County Council.*[3] In that paragraph Ouseley J said that the *"making of bye-laws can have the effect of making some sports and pastimes unlawful, or unlawful at certain times or in a part of a potentially registrable village green. Any activities carried on in breach of the bye-laws, whether the bye-laws are enforced against them or not, are unlawful and have to be discounted..."*.

75. Mr Alesbury then made submissions directed to the question of whether use was "as of right" which he characterised as the key issue in the case. The Council's essential point was that the Application Land could not have been used "as of right" (that is, in a trespassory way) as for the vast bulk of any relevant period it was made available for use "by right" as a public open space/recreation ground.

76. In terms of the history of the matter, it was clear that, regardless of ownership, the Application Land was in fact laid out as open space or a recreation ground by Basildon Development Corporation even before Basildon District Council formally acquired any of it in 1976. In respect of the land which was bought in 1976, which was the vast bulk of the Application Land, the whole of the pre-acquisition correspondence which was traceable – conducted in the dying days of the Council's predecessor – made it crystal

[3] [2012] EWHC 647 (Admin).

clear that the transaction was regarded by both sides as a proposed purchase of open space for open space purposes. Although the transaction did not go through until 1976 it was clear that it was the same transaction previously contemplated for exactly the same price of £20,600. The 1976 Conveyance contained the clearest possible covenant not to use the land other than for purposes of public open space and recreation. Thus the available documents leading up to the acquisition by the Council showed that the land was to be acquired as open space and the conveyance directly contemporaneous with the acquisition showed that the land was specifically acquired as public open space. As a matter of necessary inference this must mean open space under the Open Spaces Act 1906; there was no other sensible inference from the preparatory documents and the conveyance itself.

77. In support of his argument Mr Alesbury referred to an opinion of 15th October 2008 provided by Mr Vivian Chapman QC to Oldham Metropolitan Borough Council in the case of an application to register the Oak Colliery Site, Hollingwood, Oldham as a new green. The opinion (which is found at page 193 of the Council's bundle) provides confirmation of the report of an inspector who had previously considered the application and thus provides in practice a second inspector's report for the case in question. Mr Alesbury said that he wholly adopted Mr Chapman's reasoning which was self-evidently correct and in accordance with the underlying law. In the opinion Mr Chapman began from the proposition that a local authority created by statute could only acquire land under some statutory power. If neither the conveyance nor the resolution authorising the purchase expressly identified the relevant statutory power, then the identification of the relevant statutory power had to be a matter of inference in all the circumstances. Mr Chapman then identified the candidate statutory powers available and considered which provided the "closest fit" with the facts of the case before him. On the particular facts of that case Mr Chapman concluded that the closest fit was with the acquisition power in respect of open space found in section 9 of the Open Spaces Act 1906 given the repeated use of the words "open space" in the relevant minutes of the local authority and in the relevant conveyance. Mr Chapman then pointed out that the land had been held on the statutory trust found in section 10 of the Open Spaces Act 1906 which provides that a *"local authority who have acquired any estate or interest in or control over any open space … under this Act shall, subject to any conditions under which the estate, interest or control was so acquired – (a) hold*

and administer the open space … in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose". Mr Chapman further opined that it would make no material difference to the position if the site had been purchased under section 164 of the Public Health Act 1875 (or under a similar provision in a Local Act of Parliament). That was because of *"the long line of authority"* which Mr Chapman identified which was *"to the effect that (subject to any bye-laws properly made under the section) the public have a legal right of access to land acquired and made available to the public under s. 164 PHA 1875."*[4] Mr Chapman was thus of the view that, whether the acquisition was under section 9 of the Open Spaces Act 1906 or section 164 of the Public Health Act 1875 (or under a similar provision in a Local Act of Parliament), the public would have had a legal right of access to the land. Finally, Mr Chapman advised that, in such circumstances, relying on dicta *"of great persuasive force"* of the House of Lords in *Beresford v Sunderland City Council*,[5] use could not have been as of right: *"[i]f the public have a legal right of access to land for recreation, their user of the land is explained by the existence of that right and there is no reason to regard that user as amounting to the prescriptive acquisition of a different legal right under CA 2006 s. 15."*

78. Mr Alesbury then dealt with the Terrier. He pointed out that the Terrier, compiled at some uncertain date after the acquisition, stated that the "purpose" of the acquisition was for "open space". It was for no very obvious reason that it then referred to the Physical Training and Recreation Act 1937. No present member of the Council's staff knew why this was entered or exactly when but it was known that it would have been done by a legal clerk. The entry had nothing to do with anything in the conveyance, the pre-acquisition correspondence or the authorisation for the purchase being sought. The inference had to be that it was a quirky insertion by a legal clerk with no apparent or inferable justification. The only conceivably relevant power in the Physical Training and Recreation Act 1937 (which had been repealed in late 1976) was that contained in section 4(1). That provided that a local authority might, inter alia, acquire, lay out and maintain lands for the purpose of playing fields. Mr Alesbury submitted that this was a

[4] The authorities cited by Mr Chapman include the well-known decisions of Finnemore J in *Hall v Beckenham Corporation* [1949] 1 K.B. 716 and of the Court of Appeal in *Blake v Hendon Corporation* [1962] 1 Q.B. 283.
[5] [2003] UKHL 60.

completely inappropriate power to refer to for justifying the purchase of land such as that at Kent View Road, especially with the covenant in the 1976 conveyance expressly mentioning "public open space". However, even if the land was acquired under the Physical Training and Recreation Act 1937 and made freely available thereunder, it would still have been used "by right" rather than "as of right". Mr Alesbury submitted that this conclusion would follow from the court's endorsement in the case of *Barkas v North Yorkshire County Council*[6] of the approach which had been taken by the inspector in that case (again, Vivian Chapman QC) which had been to proceed on the basis that *"where a statute empowers a local authority to acquire and lay out land for public recreation, the public have a legal right to use it."*[7]

79. In relation to the bye-laws, Mr Alesbury submitted that the Applicant was labouring under a misapprehension as to the significance of the bye-laws to the Council's case. The Council's case was that the existence of the Open Spaces Act 1906 bye-laws tended to be yet further corroboration of the point, evident from other material anyway, that the land was held and made available to the public as public open space and so used by the public "by right", not by trespass "as [if] of right". The Council was not contending that by putting up bye-law notices it was saying to the public that they were permitted to come on to the Application Land. The Council was contending that, because of the status of the Application Land, the public had a right to be on it. It was entirely accepted that the evidence was less than clear cut about the existence of any bye-law notices and how long they might have lasted although the Council's case was that there was at least one notice for a time. However, the situation in the present case was different from that in *Newhaven Port and Properties* in that visibility of the bye-laws was not particularly relevant here as it was the status of the land which conferred the right, not a notice giving a revocable permission. This was recognised by Ouseley J in paragraph 85 of the judgment. In that paragraph Ouseley J said that *"[t]he status of the land, which attracts a regulatory power, may suffice to show that its use is by licence; this was so in the case of land held under the Open Spaces Act 1906."*

80. In dealing with the question of what the use of the particular bye-law making powers said about the power under which the Council acquired and held the Application Land,

[6] [2011] EWHC 3653 (Admin).
[7] See paragraph 11 of the judgment, quoting the inspector's report.

Mr Alesbury's submissions were as follows. Section 15 of the Open Space Act 1906 (*"A local authority may, with reference to any open space ... in or over which they have acquired any estate, interest, or control under this Act, make byelaws for the regulation thereof"*) was only appropriate to land where, at the time of bye-law making, the officers advising the Council were certain that the land was specifically acquired under the 1906 Act. Section 12 (*"A local authority may exercise all the powers given to them by this Act respecting open spaces ... transferred to them in pursuance of this Act in respect of any open spaces ... of a similar nature which may be vested in them in pursuance of any other statute, or of which they are otherwise the owners"*) was appropriately referred to as well where there was an element of less than total clarity about the situation. In this case, although the 1976 Conveyance mentioned "public open space", it did not specifically mention the 1906 Act. Any officer who had happened to have seen the Terrier would quite justifiably have thought that it was better to refer to section 12 as well as section 15 in preparing or advising on what should be said in the 1979 Bye-laws. Accordingly, nothing adverse to a conclusion that the land was acquired as 1906 Act public open space could be derived from the reference to sections 12 and 15 in the 1979 Bye-laws and in the 1991 form BYE 5/3. Interestingly, the 1997 Bye-laws no longer made clear which power was thought to apply to which individual piece of land.

81. So far as concerned nomenclature, the 1979 Bye-laws referred to "Kent View Park". It was clear from Mr Reynolds's undisputed evidence that the Application Land used to be called that,[8] and that this was the land those bye-laws were meant to refer to. It was clear that the 1997 Bye-laws mistakenly said "Kent View Drive Recreation Ground" but equally clear that that meant the same area which used to be called "Kent View Park". There was no Kent View Drive. It was clear that the 1997 Bye-laws should have said, and were meant to relate to, Kent View Road Recreation Ground. The case was not about a bye-law prosecution and it mattered not how the Council would fare in such a prosecution with that inaccurate nomenclature. The important point was that the bye-laws were meant to refer to the Application Land and were treating it as appropriately included in the Council's "Pleasure Grounds and Open Spaces."

[8] Paragraph 69 above.

82. The Applicant's own questionnaire fillers had named or described the Application Land as follows. There were 84 answers and the names given were: "Kent View Road Recreation Ground" 55; "Playing Field" 5; "Kent View" 5; "The Field" 1; "Kent View Field" 6; "Kent View Play Area" 2; "Recreation Ground Playing Field" 4; "Kent View Rec" 3; and "Kent View Playing Field" 3. In answer to the question whether the Application Land had other names, 73 said "no". Of those who said "yes": 1 gave the other name as "Nursery Field"; 2 as "Kent View Recreation Ground"; 1 as "Recreation"; 1 as "The Field"; 2 as "Campbell's Field"; and 4 left the answer blank. It was known from evidence in the inquiry (for example, from Amanda Hart)[9] that the Application Land was commonly referred to as "the Rec", or the Recreation Ground, by people in the surrounding area. This was not in the least surprising and was exactly what one would expect. In sum, there was in reality overwhelming public recognition that the Application Land was a recreation ground available for the public to use. Even the Applicant used that terminology in the Application. This was all totally consistent with the Application Land being publicly provided, publicly available land, used "by right" and, in fact, public open space.

83. As to the areas of the Application Land not included in the 1976 Conveyance, it was clear that these areas were provided and managed, and made available, in exactly the same way, even before they came into Council ownership. Mr Reynolds's direct personal evidence was that this had been so since at least 1990.[10] Mr Alesbury asked for it to be inferred from the evidence that this would also have been so since well before then (though this might not matter under the Commons Act 2006 test because the relevant period was from 1990-2010). There were really two distinct elements:
    (a) the two areas transferred under the 1994 CRA Transfer and the 1998 CRA Transfer;
    (b) the Cross-Hatched Area.

84. In spite of the somewhat widely worded covenants in the CRA Transfers, there was nothing inconsistent with the Council's acquiring this land in reality to add to the public open space. The areas were already de facto part of the same public open space and managed as such. They were then, in the 1990s, fully added in ownership terms as well. In the spirit of *Barkas*, it would be absurd to regard the (local) public as having

[9] Paragraph 39 above.
[10] Paragraph 67 above.

been trespassers on this land, forming an indistinguishable part of the publicly provided recreational area.

85. Mr Alesbury submitted further that the same view should be taken of the Cross-Hatched Area which he called the "adverse possession" land. It was clear that this area was not acquired under some local government-related statute. But no-one else claimed it. The Council had been managing it (so far as it needed managing) for a long time. It was indistinguishable from the remainder of the open space land which the Council provided here for public use. The reasonable inference was that the Council had acquired title through adverse possession, had effectively added it to its landholding, and made it available, in common with the rest, as public open space. It would not therefore have been used "as of right" by local people, at least during the period when it could reasonably be inferred that the Council would have acquired ownership. There was no basis on the evidence for concluding that this "adverse possession" ownership by the Council would only have come about during the last two years since the Application was made. Therefore the Applicant could not have established, on the balance of probabilities, 20 years' "as of right" use even on this area.

86. Contrary to the reliance placed thereon by the Applicant, the remarks of Lord Bach, Parliamentary Under-Secretary of State, DEFRA, made in debate in the House of Lords during the passage of the Commons Bill in 2006 in relation to the "as of right" issue, were not relevant. The same was true of the rights of way decision letter which the Applicant relied on. The Applicant's submissions in respect of which these submissions of Mr Alesbury were a response are reported in, respectively, paragraph 94 and paragraph 92 below.

87. The overall conclusion was that the Applicant had not established his case on any of the Application Land. None of it had been used "as of right". The Application Land was a public park, recreation ground or open space, which had been provided for, and in fact used "by right" by, local people (and others) over the relevant period, most probably (as a matter of inference from all the documentation) under the Open Space Act 1906, but, in any event, not in circumstances where an "as of right" claim could lawfully be generated by prescription.

(b) The Applicant

88. The Applicant submitted that the Council had failed to provide sufficient evidence to establish under which statute or statutes the Application Land had been acquired. Moreover, whichever statute or statute applied, it was up to the Council overtly to give permission to use the Application Land if it was to defeat the claim that use had been "as of right". This was the case whether the relevant statute was the Public Health Act 1875, the Open Spaces Act 1906, the Physical Training and Recreation Act 1937 or the Local Government (Miscellaneous Provisions) Act 1976.

89. The Council had failed to submit evidence of ownership of the Cross-Hatched Area and the Council had not actively maintained that area.

90. It had not been confirmed that the Council had included the Kent View Road Recreation Ground on the list of parks and open spaces that it submitted to the Secretary of State for approval.

91. The Council had provided no evidence that it had ever erected any bye-law boards or other signs overtly to indicate to the public that they had permission to use the Application Land or that there would have been conditions attaching to the permission. The Council had never prevented the public from undertaking any of their legal sports and activities that would otherwise have been prevented under the Council's standard bye-laws. Therefore, even if the Council could provide proof as to the statute(s) under which the Application Land was acquired, and that the bye-laws were applicable thereto, the Council had never fulfilled its legal requirements under whatever were the relevant statute(s) to regulate the use of the Application Land by erecting bye-law boards or communicating to the public that they had permission to use the Application Land and that conditions were attached. Further, the Council had never enforced any of its bye-laws during the relevant 20 year period. In fact, the public had been allowed to do as they pleased on the Application Land for many more years than the 20 year period required to gain village green status. The Council could at any time have taken steps to alert the public to the fact that they had only a temporary licence to use the Application Land but the Council chose not to do so.

92. The Council could not argue that the Application Land had been used by force or in secret. What was disputed was the Council's claim that the public had been given permission to use the Application Land. However, that permission was limited to activities which the Council allowed and the public could not possibly know which activities were or were not allowed if the Council had not informed them of that. That is why a bye-law board or some other permission sign was so important. It would overtly let the public know what they could and could not do and also protect the Council against the acquisition of prescriptive rights by the public. The Council had never regulated the use of the Application Land in this way because it had never erected any bye-law boards nor had it enforced the bye-laws. The Applicant asked that there be taken into account a decision of the Planning Inspectorate dated 8th February 2010 in relation to a definitive map modification order (Order Ref: FPS/Z1585/7/43) about a footpath at Basildon Golf Course, which he said bore on the issue of the effect of the lack of signs.

93. The Applicant next submitted that members of the public whose lawful activities fell outside the scope of the limited permission which was granted would be trespassers, their use would therefore be "as of right" and the Council had acquiesced in such use of the Application Land. In this connection, what was said in *Newhaven* notwithstanding, reliance was placed on the decision of the House of Lords in *Tomlinson v Congleton Borough Council,*[11] a personal injury case, in which a person who dived into a lake in contravention of a notice forbidding swimming, was treated as a trespasser.

94. Moreover, the Applicant submitted that the Council was wrong that acquisition of the Application Land under a particular statute could automatically confer on the public permission to use the land. In the making of 2006 Act there had been 41 years (since 1965) to consider what should and what should not be included. Cases such as *Beresford, Hall v Beckenham Corporation* and *Blake v Hendon Corporation* would all have been relevant to the consideration of matters. They all pre-dated the 2006 Act. In those circumstances the words of Lord Bach, Parliamentary Under-Secretary of State, DEFRA, made in debate in the House of Lords during the passage of the Commons Bill in 2006 were important. He said that *"what matters when local inhabitants use land owned or managed by a body that has recreational functions, such as a local*

[11] [2003] UKHL 47.

authority, is the nature of that use and whether the actions of the landowner during the period relied upon would have made them aware that their use took place by permission rather than 'as of right'." The Council in the present case should therefore have taken overt action to let the public know that they had permission to use the Application Land and what they could and could not do on it. It had not done that and the Council's case had to fail.

95. In consequence, a significant number of local inhabitants had been using the Application Land for lawful sports and pastimes without force, without secrecy and without permission during the required 20 year period. The use had been "as of right".

96. Finally the Applicant submitted that there should be taken into account the discrepancies in areas which had been raised previously with the Council's witnesses.

Findings and analysis

(a) Introduction

97. The key issue in this case, and the one which was so treated as the key issue by both parties, is whether use of the Application Land has been "as of right". It is necessary therefore to devote most of the analysis in this section to that particular issue. However, before turning to that issue it is convenient to deal with other matters first.

(b) Use of the Application Land for lawful sports and pastimes for at least 20 years

98. To begin with, I have no doubt that the Application Land has been used for lawful sports and pastimes for the relevant 20 year period and I so find. The evidence in support of the Application clearly establishes as much. The Council has not advanced any evidence which suggests otherwise and has not sought to dispute that lawful sports and pastimes have taken place there for 20 years because that is exactly what would be expected on land which has been provided as a recreation ground.

99. In finding that the Application Land has been used for lawful sports and pastimes for the relevant 20 year period, I do not intend at this point to discuss the question whether

recreational activities carried on in breach of the 1979 or 1997 Bye-laws (assuming at this point that they were intended to apply to the Application Land) were or were not lawful. Some activities which have been described in the evidence would have contravened those bye-laws. The most obvious example of that, and one which received some emphasis in the evidence in support of the Application, would be golf[12] as that was prohibited by bye-law 16 of the 1979 Bye-laws and by bye-law 28 of the 1997 Bye-laws. The finding I make at this stage is simply that, if one were to discount activities which were in breach of bye-laws, the abundance of other activities which were not in breach (such as walking, dog walking, football, cricket, rounders, kite flying and general play) is amply sufficient to establish use of the Application Land for lawful sports and pastimes for the relevant 20 year period. I return to the question of whether activities in breach of bye-laws are in fact to be discounted in paragraph 148 below.

100. My finding that the Application Land has been used for lawful sports and pastimes for the relevant 20 year period is a finding that the whole of the Application Land has been so used. In making that finding I have borne in mind the observation of Sullivan J in *Cheltenham Builders Limited v South Gloucestershire District Council*[13] and adopted the approach there suggested. What was said in that case was that *"the applicants had to demonstrate that the whole, and not merely a part or parts of the site had probably been used for lawful sports and pastimes for not less than 20 years. A common sense approach is required when considering whether the whole of a site was so used. A registration authority would not expect to see evidence of use of every square foot of a site, but it would have to be persuaded that for all practical purposes it could sensibly be said that the whole of the site had been so used for 20 years."* It is no doubt true that some parts of the Application Land, such as the football pitch area, have been used more than others[14] but that is as is to be expected. It is also true that a number of witnesses spoke of no, or limited, use of the southern part of the Application Land owing to waterlogging after wet conditions[15] but others were more emphatic in

[12] Referred to specifically by: Mr Burman (paragraph 22); Mr Wilson (paragraph 23); Mr T Pink-Gyett (paragraph 24); Mr Spenner (paragraph 25); Mr Maginn (paragraph 29); Mr Hart (paragraph 33); Mrs Jacobs (paragraph 35).
[13] [2003] EWHC 2803 (Admin) at paragraph 29.
[14] The following spoke of greater use of the football pitch area: Mr Burman (paragraph 22); Mrs Moffat (paragraph 28); Mr Jacobs (paragraph 32); Mr West (paragraph 36); Mrs Pink-Gyett (paragraph 42).
[15] Mrs Rogers (paragraph 27); Mrs Moffat (paragraph 28); Mr Maginn (paragraph 29); Mr Backham (paragraph 30); Mr Dowling (paragraph 40).

their use of the whole of the Application Land[16] and some pointed to the seasonal nature of the problem with the southern part of the Application Land (in autumn and winter).[17] A good number of witnesses specifically referred to use of the wooded areas.[18] On a common sense approach to the evidence in this case I consider that it is sensible to say that it establishes that the whole of the Application Land has been used in the requisite qualifying way for 20 years. No contrary submission has ever been put forward by the Council.

(c) Use by significant number of inhabitants of any neighbourhood within a locality

101. I next turn to the question whether the use of the Application Land for lawful sports and pastimes for at least 20 years has been by a significant number of the inhabitants of any neighbourhood within a locality, the basis on which the case was put. This matter was ultimately not contentious at the inquiry. Mr Alesbury accepted on behalf of the Council that the Triangle was capable of being a neighbourhood and that, whatever reservations there might be about Vange Ward as a locality, those reservations could be assuaged by regarding the borough of Basildon as the locality. He also made it clear that the Council did not dispute that significant numbers of people from the neighbourhood had used the land recreationally for at least the relevant period of 20 years. For my part I consider that Mr Alesbury's acceptance of these matters was well-founded for the reasons which follow.

102. I consider first whether the Triangle falls to be considered as a neighbourhood. Neighbourhood is undefined in the 2006 Act as was also the case under section 22 of the Commons Registration Act 1965 Act as amended by section 98 of the Countryside and Rights of Way Act 2000. However, there are various judicial observations which need to be considered.

[16] Mr Burman (paragraph 22); Mr Spenner (paragraph 25); Mrs Backham (paragraph 26); Mr French (paragraph 31); Mr Jacobs (paragraph 32); Mr Hart (paragraph 33); Mrs Jacobs (paragraph 35); Mrs Painter (paragraph 38); Miss Hart (paragraph39); Mrs King (paragraph 41); Mrs Pink-Gyett (paragraph 42); Mr Dowling (paragraph 43).
[17] Mr T Pink-Gyett (paragraph 24); Mr Jacobs (paragraph 32); Mr M Pink-Gyett (paragraph 34).
[18] Mr Spenner (paragraph 25); Mrs Rogers (paragraph 27); Mr Jacobs (paragraph 32); Mrs Jacobs (paragraph 35); Mr Stanley (paragraph 37); Miss Hart (paragraph 39); Mrs Dowling (paragraph 40); Mrs Pink-Gyett (paragraph 42).

103. In *Cheltenham Builders v South Gloucestershire District Council*[19] Sullivan J said that *"[i]t is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood. For the reasons set out above under 'locality', I do not accept the defendant's submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word 'neighbourhood' would be stripped of any real meaning. If Parliament had wished to enable the inhabitants of <u>any</u> area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so."*[20]

104. Lord Hoffman in *Oxfordshire County Council v Oxford City Council*[21] pointed out that the expression *"any neighbourhood within a locality"* was *"obviously drafted with a deliberate degree of imprecision which contrasts with the insistence of the old law upon a locality defined by legally significant boundaries."*[22]

105. In *Oxfordshire and Buckinghamshire Mental Health Trust v Oxfordshire County Council*[23] HHJ Waksman QC said that *"[t]he area from which users must come now includes a neighbourhood as well as a locality. On any view that makes qualification much easier because it was accepted that a locality had to be some form of administrative unit, like a town or parish or ward. Neighbourhood is on any view a more fluid concept and connotes an area that may be much smaller than a locality."*[24] In the same case HHJ Waksman QC also made the following observations: "*[w]hile Lord Hoffman said that the expression* [sc., neighbourhood within a locality] *was drafted with deliberate imprecision, that was to be contrasted with the locality whose boundaries had to be legally significant – see paragraph 27 of his judgment in Oxfordshire (supra). He was not saying that a neighbourhood need have no boundaries at all. The factors to be considered when determining whether a purported neighbourhood qualifies are undoubtedly looser and more varied than those relating to*

[19] [2003] EWHC 2803 (Admin).
[20] At paragraph 85.
[21] [2006] UKHL 25.
[22] At paragraph 27.
[23] [2010] EWHC 530 (Admin).

locality … but, as Sullivan J stated in R (Cheltenham Builders Ltd) v South Gloucestershire Council [2004] JPL 975 at paragraph 85, a neighbourhood must have a sufficient degree of (pre-existing) cohesiveness. To qualify therefore, it must be capable of meaningful description in some way."[25]

106. In *Leeds Group plc v Leeds City Council*[26] HHJ Behrens said that *"I shall not myself attempt a definition of the word 'neighbourhood'. It is, as the inspector said an ordinary English word and I have set out part of the Oxford English Dictionary definition.* [Sc., "A district or portion of a town; a small but relatively self-contained sector of a larger urban area; the nearby or surrounding area, the vicinity"]. *I take into account the guidance given by Lord Hoffman in paragraph 27 of the judgment in the Oxfordshire case. The word neighbourhood is deliberately imprecise. As a number of judges have said it was the clear intention of Parliament to make easier the registration of Class C TVGs. In my view Sullivan J's references to cohesiveness have to be read in the light of these considerations."*[27]

107. The words of the judge which I have quoted in the previous paragraph seem to me to be a reflection of the views of the inspector in the case who had said that it seemed to him *"that the 'cohesiveness' point cannot in reality mean much more, in an urban context, than that a neighbourhood would normally be an area where people might reasonably regard themselves as living in the same portion or district of the town, as opposed (say) to a disparate collection of pieces of residential development which had been 'cobbled together' just for the purposes of making a town or village green claim."*[28]

108. In relation to the question of the need for a neighbourhood to have boundaries, HHJ Behrens said *"I agree with Miss Ellis QC that boundaries of districts are often not logical and that it is not necessary to look too hard for reasons for the boundaries."*[29]

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[24] At paragraph 69.
[25] At paragraph 79.
[26] [2010] EWHC 810 (Ch).
[27] At paragraph 103.
[28] Paragraph 13.32 of the inspector's report quoted at paragraph 36 of the case report.

109. When the case reached the Court of Appeal the issue in relation to neighbourhood that was considered was whether HHJ Behrens was right to uphold the inspector's view that neighbourhood did not have to be limited to a single neighbourhood and could include 2 or more neighbourhoods. The Court of Appeal upheld the judge on this point (by a majority)[30] but, for present purposes I need note only that, in the course of so doing, Sullivan and Arden LJJ endorsed[31] Lord Hoffman's dicta, which I quote in paragraph 104 above, in *Oxfordshire County Council v Oxford City Council* in relation to the "*deliberate degree of imprecision"* in the drafting of the expression any neighbourhood within a locality. All the judges in the Court of Appeal also recognised that Parliament's intention in enacting the neighbourhood amendment (which was originally introduced by section 98 of the Countryside and Rights of Way Act 2000 and is now incorporated in section 15 of the 2006 Act) was to make easier the task of those seeking to register new greens and to avoid technicality by loosening the links with historic forms of greens.[32] In *Adamson v Paddico (267) Limited*[33] Sullivan LJ stated again that in the *Oxfordshire case "Lord Hoffman clearly considered that the new 'neighbourhood' limb had materially relaxed the previous restrictions relating to 'locality'".*[34]

110. In the light of the above I am of the view that the Triangle is properly to be regarded as a neighbourhood in this case. The Triangle is, to my mind, an area which is meaningfully described as such and one which has clear and strong boundaries, formed on two sides by main roads (Clay Hill Road and High Road, Vange) and on the other by a railway, which mark it off from elsewhere. It is an area in which, I find, there is a cohesiveness arising from its inter-connected streets and overall similarity of housing stock (which I saw on my site visits). I do not consider it could fairly be described as a disparate collection of pieces of residential development cobbled together for the purposes of the claim. It is also, I find, an area where people might reasonably regard themselves a living in the same portion or district of town. On a more impressionistic level, some of the evidence also provided (as I perceived it) a flavour of community identity in the Triangle.

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[29] At paragraph 105.
[30] Sullivan and Arden LJJ, Tomlinson LJ dissenting.
[31] See paragraphs 26 and 52.
[32] See, for example, paragraphs 24, 25, 26, 44 and 52.
[33] [2012] EWCA Civ 262.

111. As to the issue of whether Vange Ward constitutes an appropriate locality, it is correct, as Mr Alesbury observed, that there has been judicial recognition of the proposition that a ward may constitute a locality for the purposes of town or village green registration. I refer to the first quoted passage from *Oxfordshire and Buckinghamshire Mental Health Trust* in paragraph 105 above. Older dicta pointing the other way can be found in the case of *Laing Homes Limited v Buckinghamshire County Council*[35] where Sullivan J said that the objectors there would have had a good prospect of persuading an inspector that there was no qualifying locality if the case had been advanced on the basis of electoral wards *"either because electoral wards are not localities or, if they are, because the wards constituted two localities and the inhabitants of one would not be the inhabitants of the other."*[36]

112. In the light of the more relaxed view that is now being taken by the courts as to what constitutes a "neighbourhood within a locality" and the emphasis which has been placed on the loosening of the links with historic forms of green which this phraseology was intended to achieve, I see no real reason why a ward could not be a locality for the purposes of establishing a claim on the basis of a "neighbourhood within a locality". As to issue of the present boundaries of the ward being the product of relatively recent boundary change, again I am not sure why any such change should matter for the purposes of a claim for registration on the basis of a neighbourhood within a locality. The neighbourhood has remained the same over the 20 year qualifying period and thus there is certainty as to those local inhabitants who would enjoy the right to recreate on the green were it to be registered. It matters not, however, whether I am right or wrong on that because, as Mr Alesbury accepted, the borough of Basildon itself would serve as the requisite locality within which to locate the neighbourhood. There is no evidence of any change in the borough boundaries over the relevant 20 year period. If authority were needed for the proposition that the borough could be the relevant locality, I consider that it can be found in a passage from the judgment of HHJ Behrens in *Leeds Group plc* at first instance. The judge stated that *"if … Yeadon cannot be a locality for the purpose of limb (ii), I would hold that the parish*

[34] At paragraph 27.
[35] [2003] EWHC 1578 (Admin).
[36] At paragraph 138.

of St Andrew is the relevant locality. I see no reason to limit the meaning of 'locality' in limb (ii) in the manner suggested in paragraph 37 of Mr Laurence QC's skeleton argument [which had contended that in limb (ii) a locality had to be of a size and situation such that, given the particular activities which had in fact taken place, it might reasonably have been capable of accommodating a proper spread of qualifying users undertaking activities of that type]. *There is nothing in the wording of the 2000 Act which refers to the size of the 'locality'. Furthermore one of the main purposes of the amendment, as it seems to me, was to allow inhabitants in a neighbourhood to qualify in a situation where the locality itself was too big. It cannot, in my view, have been the intention of Parliament that both the neighbourhood and the locality had to be small enough to accommodate a proper spread of qualifying users."*[37]

113. In relation to the issue of "significant number", this again was not a matter in contention, the Council not disputing that significant numbers of people from the neighbourhood had used the Application Land recreationally for at least the relevant period of 20 years. Sullivan J dealt with the issue of "significant number" in *McAlpine Homes Ltd v Staffordshire County Council*[38] where, in a well-known passage, he said that *"the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers".*[39] On the evidence I have considered I find that this test is met in the present case.

114. I am able to conclude at this point therefore that the Application Land has been used by a significant number of the inhabitants of a neighbourhood within a locality for lawful sports and pastimes for a period of at least 20 years.

(d) *"***As of right"**

115. I turn therefore to the key issue of whether such use has been "as of right".

(i) Power under which Application Land was acquired and held

[37] At paragraph 90. This passage was not the subject of later treatment by the Court of Appeal.
[38] [2002] EWHC 76 (Admin).

116. The issue of whether use has been "as of right" is inextricably bound up with the question of the power under which the Application Land was acquired and held. As a local authority is a creature of statute it can, as Mr Chapman reminded himself in the opinion commended to me by Mr Alesbury, only acquire land under some statutory power. I further agree with the proposition put forward in that opinion that, if express identification of the relevant statutory power is absent from the resolution authorising the acquisition in question or the conveyance effecting that acquisition, the task of identification of that power becomes a matter of inference in all the circumstances of the case.

117. The history of the Council's acquisition of the Application Land in this case starts with the 1976 Conveyance, the 1976 Transfer and the documentary material from 1973-74 pre-dating these documents. It is clear that the 1976 Conveyance and the 1976 Transfer represented the completion of the transaction which had been proposed in, and was the subject of, the dealings between Basildon Development Corporation and the Council in 1973-74. This follows not just from the correspondence between the final 1976 documents and the earlier documentary material of 1973-74 in terms of the subject matter (land at Kent View Road) and the price of £20,600 but also from the fact that the covenants embodied in the 1976 documents ("not to use the land hereby conveyed/transferred or any part thereof other than for the purposes of a public open space and for recreation") match the fact that, as is reflected throughout the 1973-74 documentary material, the proposed purchase of the land was as open space. The 1973-74 documentary material is therefore to be read in conjunction with the 1976 Conveyance and the 1976 Transfer and properly to be considered as pre-acquisition material. However, neither the 1973-74 documentary material nor the 1976 Conveyance/1976 Transfer contains any express identification of statutory powers. The question then becomes one of inference from all the circumstances of the case.

118. In considering those circumstances I consider that Mr Alesbury was correct to submit that it is clear that, even before the Council acquired the land which was the subject of the 1976 Conveyance and the 1976 Transfer, this land was laid out as open space or a recreation ground by Basildon Development Corporation. This land is

[39] At paragraph 71.

referred to as open space throughout the 1973-74 documentary material. The plan which accompanies the 1976 Conveyance labels the land as "recreation ground" and shows a playground on the land off Paslowes.[40] These matters are consistent with the evidence of some of the witnesses called on behalf of the Applicant who spoke of the Application Land being essentially unchanged from the days of the Development Corporation.[41] In the light of this I consider that the land subject to the 1976 Conveyance and 1976 Transfer would have met the definition of "open space" in section 20 of the Open Spaces Act 1906 ("the 1906 Act"), which so far as relevant, is *"any land, whether inclosed or not, on which there are no buildings or which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which … is used for the purposes of recreation".*

119. I also agree with Mr Alesbury that the whole of the pre-acquisition material from 1973-74 makes it clear that the transaction which was then in contemplation between Basildon Development Corporation and the Council was regarded by both sides as a proposed purchase of open space for open space purposes and that, while the transaction did not go through until 1976, it is clear that it was the same transaction as previously contemplated. It further seems to me to be undeniably correct, as Mr Alesbury also argued, that the 1976 Conveyance contained (as did the 1976 Transfer) the clearest possible covenant not to use the land other than for purposes of public open space and recreation. I consider that these matters provide a compelling inference that the land which was the subject of the 1976 Conveyance (which was the vast bulk of the Application Land) and the 1976 Transfer was acquired as open space under the 1906 Act.

120. I do not consider that this inference is displaced by other matters. I consider first the Terrier. The Terrier states that the purpose of the 1976 land acquisition was "open space" but the statutory power then referred to is the Physical Training and Recreation Act 1937 ("the 1937 Act"). The only potentially relevant power in the 1937 Act is that which is found in section 4(1) which provides that a local authority might, inter alia, acquire, lay out and maintain lands for the purpose of playing fields. Section 4 of the 1937 Act was repealed by the Local Government (Miscellaneous Provisions) Act 1976

[40] See paragraph 57 above.
[41] See paragraph 57 above again and footnote 2 above.

("the 1976 Act") with effect from 14th February 1997[42] and replaced by a different power (to provide recreational facilities) in section 19 of the 1976 Act. Section 4(1) of the 1937 Act remained in force at the time of the 1976 land acquisitions. I consider that the Terrier must be given some weight because it is a formal record of the Council's landholdings and, according to Mr Topsfield, the relevant section in this case would have been completed soon after the 1976 land acquisitions.[43] I also consider that Mr Alesbury's submission that the power contained in section 4(1) of the 1937 Act would have been completely inappropriate goes too far given the football pitch provision which has existed on at least part of that part of the Application Land here under consideration. Nevertheless, there is a mismatch between the purpose of the land acquisition identified in the Terrier - "open space" – and the identified statutory power of the 1937 Act. Moreover, the identification of that power as the relevant one reflects neither the pre-acquisition documentary material from 1973-74 nor the express terms of the covenanted restriction for the purposes of "public open space and recreation" found in both the 1976 Conveyance and the 1976 Transfer. I consider that the 1976 Conveyance and the 1976 Transfer provide a surer guide to the question of the applicable statutory power than the subsequent assessment of that question by the Council in the Terrier. The power contained in section 9 of the 1906 Act is a significantly closer fit with the terms of the 1976 Conveyance and 1976 Transfer than the power contained in section 4(1) of the 1937 Act.

121. I next consider the 1979 and 1997 Bye-laws. I deal with them at this point only to the extent, if any, to which they cast light on the question of the relevant statutory power under which the Application Land was acquired and held. I have no doubt that it was intended that both the 1979 and the 1997 Bye-laws should apply to the Application Land. The 1979 Bye-laws applied to "Kent View Park". Mr Reynolds's evidence, which was uncontested on this point, was that this was one of the names by which the Application Land used to be known in the past.[44] I agree with his observation that the reference to "Kent View Park" could not conceivably be to anywhere other than the Application Land.[45] The 1997 Bye-laws applied to "Kent View Drive Recreation

[42] See section 81 of, and Schedule 2 to, the Local Government (Miscellaneous Provisions) Act 1976 and article 2 of The Local Government (Miscellaneous Provisions) Act 1976 (Commencement) Order 1997.
[43] See paragraph 64 above.
[44] Paragraph 69 above.
[45] Ibid.

Ground". It is clear that the reference to "Kent View Drive Recreation Ground" was simply an error of nomenclature and that the intention was that these bye-laws should apply to Kent View Road Recreation Ground and thus to the Application Land. The recreation ground referred to in the 1997 Bye-laws was also identified as "formerly Kent View Park" and that undoubtedly was the Application Land, there is no Kent View Drive and form BYE 5/3, completed in 1991 to seek approval from the Home Office for revised bye-laws, had correctly referred to "Kent View Road Recreation Ground".[46]

122. So far as concerns the statutory powers identified in the 1979 and 1997 Bye-laws, the 1979 Bye-laws, as I have already described in paragraph 69 above, placed Kent View Park in part 3 of the schedule which listed those grounds where the applicable statutory bye-law making powers were derived from sections 12 and 15 of the 1906 Act rather than section 15 alone or section 164 of the Public Health Act 1875. As I have also already mentioned in paragraph 69 above, the 1997 Bye-laws do not identify which bye-law making power was thought to be applicable in the case of any particular pleasure ground or open space to which these bye-laws applied although the form BYE 5/3 had identified that the appropriate bye-law making power for regulating Kent View Road Recreation Ground was, again, the combination of sections 12 and 15 of the 1906 Act. Section 15 of the 1906 Act (set out at paragraph 80 above) is the power applicable to open space which has been acquired under the 1906 Act. Section 12 of the 1906 Act (also set out in paragraph 80 above) extends that power to cases of open spaces of a similar nature which might be vested in a local authority in pursuance of any other statute or of which they are otherwise the owners. There is therefore no need to rely on section 12 as well as section 15 when open space has been acquired under the 1906 Act.

123. However, I accept Mr Alesbury's submission that the selection of the combined section 12 and 15 bye-law making power in the 1979 Bye-laws and in form BYE 5/3 should not deflect from the conclusion that the land which was the subject of the 1976 Conveyance and 1976 Transfer was acquired under the 1906 Act. I agree that it would be simple prudence to refer to both sections 12 and 15 in circumstances where, despite the public open space covenants, there was no express reference to the 1906 Act in the

[46] Ibid.

1976 Conveyance and 1976 Transfer and where the Terrier referred to the purpose of open space but also to the 1937 Act. In those circumstances an element of doubt or uncertainty might arise as to how the land which was the subject of the bye-laws had been acquired. Seen in that way the choice of the bye-law making power is explicable as a cautious "belt and braces" approach by those responsible for the bye-laws and need not have involved any implicit rejection by them of the proposition that the land was acquired under the 1906 Act.

124. Given that the land which was acquired under the 1976 Conveyance and the 1976 Transfer was acquired under the 1906 Act, this means that this land was subject to the statutory trust for public enjoyment found in section 10 of the 1906 Act. I have already set out section 10 in paragraph 77 above so I need not repeat that at this point.

125. I turn next to consider those areas of land which formed the subject of the CRA Transfers. Mr Reynolds's evidence was the areas subject to these transfers had been maintained as one with the rest of the land in the Council's ownership before the transfers took place.[47] I have no hesitation in accepting that. There is no evidence to contradict it and, indeed, all the evidence is consistent with these areas long having formed undifferentiated parts of a wider whole. The memorandum of 18th October 1976, which I refer to in paragraph 68 above, refers to the parcel of land which became the subject of the 1994 CRA Transfer as a piece of remaining land at the Kent View Road Open Space which was then available for purchase by the Council from Basildon Development Corporation. I have no doubt that this land satisfied the definition of open space in section 20 of the 1906 Act when it was acquired by the Council in 1994. The same would have applied to the parcel of land which was the subject of the 1998 CRA Transfer.

126. Mr Alesbury's submission in respect of the plots of land which were the subject of the CRA Transfers was that, in spite of the somewhat widely worded covenants in the transfer documents (see paragraphs 60 and 61 above), there was nothing inconsistent with the Council's acquiring this land in reality to add to the public open space. The areas were already de facto part of the same public open space, managed as

[47] Paragraph 67 above.

such and then, in the 1990s, fully added in ownership terms as well. It would be absurd to treat them differently. I agree with and accept that submission for reasons which I explain below.

127. Neither the 1994 CRA Transfer nor the 1998 CRA Transfer identifies any specific statutory provision which bears on the purpose of the Council's acquisition. The 1994 CRA Transfer was, as I note in paragraph 60 above, made under the aegis of an agreement between Commission for the New Towns and Basildon District Council which dealt with the transfer of various areas of land, including the plot of land subject to the 1994 CRA Transfer. The agreement recited, as I also set out in paragraph 60 above, that the transfer to the Council was pursuant to section 120 of the Local Government Act 1972 and to the powers contained in the New Towns Act 1981. Of those two powers, the one which relates to the Council's acquisition is section 120 of the Local Government Act 1972 ("the 1972 Act"). Section 120 provides a wide power for councils to acquire land by agreement for the purposes of any of their functions under the 1972 Act or any other enactment or for the benefit, improvement or development of their area. It would seem probable that this wide general power was selected because the transfer was of various areas of land and different areas might be used for different purposes. That point also serves to explain the width of the covenant in the 1994 CRA Transfer extending to use for "landscape area highway or for the provision of amenity and recreation areas for the use of the public including (without limitation) housing access parking and garden areas and any other uses which in the reasonable opinion of the .. Council .. are required in order to allow full public use and enjoyment of the land".

128. It seems to me that, in strict terms, the land which was the subject of the 1994 CRA Transfer was acquired under section 120 of the 1972 Act rather than under the 1906 Act. In those circumstances it is probably not possible to say that section 10 of the 1906 Act applies as such because the land was not acquired "under" the 1906 Act although Lord Scott envisaged in *Beresford* that there might be some flexibility in approaching the question of when section 10 of the 1906 Act was engaged. He said *"that the 1906 Act should not have been set to one side in the present case simply on the ground that in the documents relating to the transfer to the council no express reference to the 1906 Act can be found. It would be, in my view, an arguable*

proposition that if the current use of land acquired by a local authority were use for the purposes of recreation and if the land had not been purchased for some other inconsistent use and the local authority had the intention that the land should continue to be used for the purposes of recreation, the provisions of section 10 would apply (c/f counsel's argument in the Poole Corporation case, at p 27).”[48] Lord Scott acknowledged, however, that no concluded view could be expressed given the concession that had been made that the acquisition had not been “under” the 1906 Act. It is also to be noted that the present case is not simply one where the relevant documents are silent on the acquisition power but one where they contain specific reference to a power other than one found in the 1906 Act. For present purposes, I proceed therefore on the basis that section 10 of the 1906 Act was not directly engaged as such.

129. However, the reality of the present case is as Mr Alesbury described it. In 1994 the Council was adding to its ownership for open space purposes another smaller piece of open space to a much larger area of adjoining open space, which had been acquired under the 1906 Act, where the larger composite area had all along been managed in the same way and was all already used for the purposes of public recreation. Moreover, while the direct acquisition power was section 120 of the 1972 Act, the purpose of the acquisition was the provision of open space to the public as a function of the Council under the 1906 Act. In those circumstances it would indeed be absurd to think that any different consequences should follow in law from any inability to say that the added land was subject to a statutory trust for public enjoyment in the strict sense for want of direct acquisition under the 1906 Act. I consider that this reasoning fits entirely with the observations of Lord Walker in *Beresford* in which he envisaged that there would be situations where, although there might not be a statutory trust in the strict sense, the legal position would be equivalent thereto.[49] I conclude therefore that from 1994 the land subject to the 1994 CRA Transfer should be regarded as in such position. I also consider that the reality of the acquisition of the land which was acquired under the 1998 CRA Transfer is no different from the reality of the acquisition of the land which

[48] At paragraph 30.
[49] See paragraph 87, set out in this report at paragraph 136 below.

was the subject of the 1994 Transfer.[50] This was another case where the Council was adding to its ownership for open space purposes a further small area of open space to a much larger area of adjoining open space, which had been acquired under the 1906 Act, where the larger composite area had all along been managed in the same way and was all already used for the purposes of public recreation. In my view it too is therefore to be approached on the basis that its legal position from acquisition in 1998 is equivalent to land subject to a statutory trust for public enjoyment in the strict sense.

130. In relation to the Cross-Hatched Area Mr Alesbury accepted that it had not been acquired under any local government statute. However, he invited me to infer that, as no-one else claimed it and the Council had been managing it (so far as it needed managing) for a long time, the Council had acquired title through adverse possession, had effectively added it to its landholding and made it available, in common with the rest, as public open space. In making this submission he also placed reliance on the fact that Cross-Hatched Area was an indistinguishable part of a wider publicly provided recreational area. I cannot accept this submission for the simple reason that there is no evidence which establishes that the Council has carried out any significant management of the Cross-Hatched Area or has otherwise occupied or controlled it. Mr Reynolds himself confirmed that the Cross-Hatched Area was a wooded or scrubland area within which there was probably no maintenance.[51] I do not consider that the evidence establishes that the Council has ever been in factual possession of the Cross-Hatched Area. The Council could not therefore have been in the position where it was making that particular piece of land available to the public as open space. It was not theirs to make available. Whether the Cross-Hatched Area is or is not physically distinguishable from the wider adjoining area does not seem to me to affect the matter. I also note that the Council has not taken any formal steps to obtain a possessory title to the Cross-Hatched Area.[52]

(ii) Effect of conclusions on land acquisition/holding power on use "as of right"

[50] The agreement between Commission for the New Towns and the Council underlying the 1998 CRA Transfer is not in evidence but I have no reason to think that it would have been in any different terms from the agreement underlying the 1994 CRA Transfer. The transfers themselves are in all but identical terms.
[51] Paragraph 71 above.
[52] Paragraph 65 above.

131. I turn next to consider the effect of my conclusions above on the issue of whether use of the Application Land has been "as of right". I have already concluded that the land which was the subject of the 1976 Conveyance and the 1976 Transfer was land which was acquired under the 1906 Act and thus subject to the statutory trust for public enjoyment in section 10 of the 1906 Act. I have also already concluded that the land acquired in 1994 and 1998 under the CRA Transfers is to be treated as being in an equivalent position from the dates of the transfers. I will therefore deal with all this land (which comprises the whole of the Application Land save for the Cross-Hatched Area) together. I have no doubt that the use of this land cannot have been "as of right" from the dates on which the various parts of it were acquired until the eventual appropriation of the Application Land for planning purposes in July 2010. This is therefore fatal to the Application (save in respect of the Cross-Hatched Area). The position is made clear in a series of dicta in *Beresford* which are of the highest persuasive force and, to my mind, are clearly correct in principle.

132. Lord Bingham began by explaining in *Beresford* that it was *"plain that 'as of right' does not require that the inhabitants should have a legal right since in this, as in other cases of prescription, the question is whether a party who lacks a legal right has acquired one by user for a stipulated period."*[53] He went on to explain that the concern of the House of Lords had been to explore the possibility that "*the local inhabitants might have indulged in lawful sports and pastimes for the qualifying period of 20 years or more not 'as of right' but pursuant to a statutory right to do so"* because *"[s]uch use would be inconsistent with use as of right."*[54]

133. Lord Scott was more specific. He said that he thought that it was accepted that, if the council in that case had acquired the land in question *"under the 1906 Act"*, then *"the local inhabitants' use of the land for recreation would have been a use under the trust imposed by section 10 of the Act. The use would have been subject to regulation by the council and would not have been a use 'as of right'"*.[55]

[53] At paragraph 3.
[54] At paragraph 9.
[55] At paragraph 30.

134. For his part, Lord Roger recognised that, if any local authority statute had conferred on local inhabitants a right to use the land in question, the result would be *"that their use would be 'of right', as opposed to being "as of right".*[56]

135. The most extensive treatment of matters was provided by Lord Walker. In paragraph 86 he stated that *"[t]he city council as a local authority is in relation to this land in a different position from a private landowner, however benevolent, who happens to own the site of a traditional village green. The land is held by the city council, and was held by its predecessors, for public law purposes. A local resident who takes a walk in a park owned by a local authority might indignantly reject any suggestion that he was a trespasser unless he obtained the local authority's consent to enter. He might say that it was the community's park, and that the local authority as its legal owner was (in a loose sense) in the position of a trustee with a duty to let him in. (Indeed that is how Finnemore J put the position in Hall v Beckenham Corpn [1949] 1 KB 716, 728, which was concerned with a claim in nuisance against a local authority, the owner of a public park, in which members of the public flew noisy model aircraft). So the notion of an implied statutory licence has its attractions."*

136. In paragraph 87 Lord Walker made comments which were directly related to section 10 of the 1906 Act. He there said that, after the approach reflected in his remarks above had been suggested, "*there was a further hearing of this appeal in order to consider the effect of various statutory provisions which were not referred to at the first hearing, including in particular section 10 of the Open Spaces Act 1906, sections 122 and 123 of the Local Government Act 1972 and section 19 of the Local Government (Miscellaneous Provisions) Act 1976. Where land is vested in a local authority on a statutory trust under section 10 of the Open Spaces Act 1906, inhabitants of the locality are beneficiaries of a statutory trust of a public nature, and it would be very difficult to regard those who use the park or other open space as trespassers (even if that expression is toned down to tolerated trespassers). The position would be the same if there were no statutory trust in the strict sense, but land had been appropriated for the purpose of public recreation."*[57]

[56] At paragraph 62.

[57] For the sake of completeness it is right to record that, in paragraph 88, Lord Walker also stated that the situations he had been considering *"would raise difficult issues but in my opinion they do not have to be decided by your*

137. The speeches of their Lordships in *Beresford* thus clearly establish the distinction between use "as of right" and use pursuant to a statutory right or, to express the same idea in other ways, use which is "of right" or "by right". Lord Walker's remarks in relation to trespassers illuminate the fact that a person who is not a trespasser will have a legal right to use land and that such a person cannot sensibly be regarded as using land "as of right" if in fact he has an actual right to do so. The distinction is plainly correct in principle. As Mr Chapman put it in the opinion to which I have been referred (see paragraph 77 above), *"[i]f the public have a legal right of access to land for recreation, their user of the land is explained by the existence of that right and there is no reason to regard that user as amounting to the prescriptive acquisition of a different legal right under CA 2006 s.15."*

138. The speeches of their Lordships, in particular those of Lord Scott and Lord Walker, also make it clear that the paradigm case of a statutory conferment of a right to use land for public recreation is where land is subject to the statutory trust under section 10 of the 1906 Act. That is the case here. Use has been "by right".

139. It is also worth recording that the view I express above that open space land subject to the trust for public enjoyment under section 10 of the 1906 Act cannot be used "as of right" for the purposes of the establishment of a new green is a view held by many experienced practitioners in this field. The same view is commonly also held in relation to land acquired under section 164 of the Public Health Act 1875. Mr Vivian Chapman QC's views to this effect are exemplified in the opinion of his which I deal with in paragraph 77 above. The same view is also exemplified by the fact that in the recent case of *Malpass v Durham County Council*[58] two leading practitioners in the field[59] were able to agree as common ground that if the application land there in question *"had indeed been held for the purposes of s 10 of the Open Spaces Act 1906 or under s 164 of the Public Health Act 1875, then the land was held on statutory trusts for public recreation resulting in the public's use of the land being by right and not 'as*

Lordships on this appeal, and would be better left for another occasion. The undisputed evidence does not establish, or give grounds for inferring, any statutory trust of the land or any appropriation of the land as recreational open space."

[58] [2012] EWHC 1934 (Admin).

[59] Charles George QC and George Lawrence QC.

of right' and in those circumstances the CRA would have been correct in refusing registration".[60] It is all of a piece with this that in *Barkas* the court dismissed a challenge to a registration decision founded on an inspector's conclusion that use of a recreation ground originally provided under section 80 of the Housing Act 1936 and latterly maintained under section 12 of the Housing Act 1985 had not been used "as of right". The inspector[61] had proceeded on the basis (see paragraph 78 above) that the case was covered by the principle that *"where a statute empowers a local authority to acquire and lay out land for public recreation, the public have a legal right to use it."*[62]

(iii)The relevance of the 1979 and 1997 Bye-laws to use "as of right"

140. The next question I deal with is how the 1979 and 1997 Bye-laws fit into the picture in terms of their relevance to the issue of use "as of right". I have already made the point in paragraph 99 above that, assuming activities carried on in breach of bye-laws were not lawful and so fall to be discounted, the abundance of other activities which were not in breach was amply sufficient to establish use of the Application Land for lawful sports and pastimes for the relevant 20 year period. I have also already found, in paragraph 121 above, that the 1979 and 1997 Bye-laws were intended to apply to the Application Land. I discussed at that point the issue of the extent, if any, to which the selection of the power to make the 1979 and 1997 Bye-laws cast light on the question of the relevant statutory power under which the Application Land was acquired and held. I found that the bye-law making power utilised did not deflect from the conclusion that acquisition had been under the 1906 Act. There are two other issues which I now need to address in connection with the 1979 and 1999 Bye-laws in relation to the issue of whether use of the Application Land was "as of right". The first issue relates to the central plank of the Applicant's case in this regard, namely, that as there had never been any bye-law signs or notice boards at the Application Land, that was fatal to the contention that use of the Application had been with the permission of the Council. The second issue is the Applicant's further contention that activities carried out in breach of bye-laws were trespassory and therefore to be regarded as taking place "as of right". In considering this issue I return to the issue I deferred in

[60] At paragraph 41. In the case a registration authority's decision foundered on an inspector's approach to the issue of appropriation. No appropriation issue arises in the present case.
[61] Again, Mr Vivian Chapman QC.

paragraph 99 above whether activities carried out in breach of bye-laws can qualify as lawful sports and pastimes.

141. Turning to the first of these issues, it is necessary to begin by reaching a finding on the question of whether there ever was any bye-law sign or notice at the Application Land during the relevant period. I find that no bye-law sign or notice ever was displayed at the Application Land during the relevant period. On this point I regard the direct evidence of all witnesses in support of the Application that no such sign or notice ever was displayed as plainly preferable to the hearsay evidence provided by Mr Reynolds who could speak only of the recollection of an unidentified officer of the Council unsupported by any documentary evidence.[63]

142. I also make it plain that I accept that communication of the existence of bye-laws would be necessary if the case against use "as of right" were to be put on the basis of an implied, revocable permission. In *Newhaven Port and Properties* Ouseley J said that *"[t]he very existence of bye-laws communicated in some way, would have shown that the recreational use was by implied, revocable permission."*[64] [My emphasis].

143. However, that is not the case which is made by the Council here against use "as of right". I consider that Mr Alesbury was right to submit that the Applicant was labouring under a misapprehension as to the significance of the bye-laws to the Council's case. As Mr Alesbury put it, the Council was not contending that by putting up bye-law signs or notices it was saying to the public that they were permitted to come on to the Application Land. The Council was contending that, because of the status of the Application Land, the public had a right to be on it. This point is clearly recognised in another passage (already referred to in paragraph 79 above) in the judgment of Ouseley J in *Newhaven Port and Properties* in which he said that *"[t]he status of the land, which attracts a regulatory power, may suffice to show that its use is by licence; this was so in the case of land held under the Open Spaces Act 1906."*[65] Thus it is the status of land attracting a regulatory bye-lawing making power (as well as the fact of being held under the 1906 Act) which is important for present purposes, not the

[62] Quote from the inspector's report at paragraph 11 of the judgment.
[63] At paragraph 70.
[64] At paragraph 96.

question of whether the bye-laws were ever communicated. I cannot therefore accept the Applicant's submission that absence of communication defeats the Council's argument.

144. I do not derive assistance from the words of Lord Bach when the Commons Bill was passing through the House of Lords, on which reliance is placed by the Applicant. The meaning of the words "as of right" did not change with the passing of the 2006 Act and my guide to that meaning must be found in judicial interpretation of the phrase both before and after 2006. I also consider that Lord Bach's words appear in any event to have been focused on communication of permission, which this case is not about for reasons I have just explained, and do not appear to have given full consideration to the speeches in *Beresford.* The Planning Inspectorate decision dated 8th February 2010 in relation to a definitive map modification order (Order Ref: FPS/Z1585/7/43) about a footpath at Basildon Golf Course, which the Applicant also asked me to take into account in relation to the absence of signs or notices, is irrelevant.

145. Before leaving the first issue I identified in paragraph 140 above (the effect of the absence of communication of bye-laws on the question of whether use was "as of right") I turn to one final matter. I record in paragraph 91 above that part of the Applicant's case was that, by failing to publicise the existence of bye-laws and by not enforcing them, the Council had not fulfilled its legal requirements. I do not see how this argument, whether it be right or wrong, assists the Applicant's case. Assuming it were right (which I do not decide) and it could be said, for example, that the Council had not fulfilled its trust duty under section 10 of the 1906 Act to hold and administer the open space under proper control and regulation, that would mean that the Council were in breach of that duty. It would not mean that the Council's trustee status was removed nor would it mean that the trust for public enjoyment ceased to be applicable.

146. I turn next to the second issue I identified in paragraph 140 above, namely, the Applicant's further contention that activities carried out in breach of bye-laws were trespassory and therefore to be regarded as taking place "as of right".

[65] At paragraph 85.

147. This contention is defeated by the judgment of Ouseley J in *Newhaven Ports and Properties.* In paragraph 93 of the judgment Ouseley J stated (in a passage which I quote more fully at paragraph 74 above) that *"[a]ny activities carried on in breach of the byelaws, whether the byelaws are enforced against them or not, are unlawful and have to be discounted".* In paragraph 103, Ouseley J went further: *"[b]yelaws, albeit unannounced and unenforced, are relevant to a prior aspect on which the Inspector concluded in favour of Newhaven Port. If they had prohibited all the activities relied on by the inhabitants to establish their recreational user rights, there would have been no lawful sports and pastimes. The issue of user as of right would not even have been reached."*

148. I consider that I should follow this very clear guidance from the High Court. I do not find any help in decision of the House of Lords in *Tomlinson v Congleton Borough Council*,[66] which was referred to by the Applicant. That was not a village green case, arose in a quite different context (personal injury) and did not involve bye-laws (but simply notices erected by a local authority as landowner). The answer to the question whether it is appropriate to discount activities which were in breach of bye-laws (which I left over from paragraph 99 above) is therefore that it is. I should add here that, if that were wrong, and if it were the case that all other activities were carried out "by right" (as I have found), with the consequence that the only activities carried out "as of right" were those in breach of bye-laws, those activities in themselves would not be sufficient to sustain the case for registration.

(iv) The Cross-Hatched Area

149. At this point I need to return to the Cross-Hatched Area. Mr Alesbury accepted that the Cross-Hatched Area had not been acquired under any local government statute. Further, I have rejected Mr Alesbury's submission that this area was made available to the public as open space by the Council after it had acquired title thereto on the basis of adverse possession. In these circumstances I simply do not see that there is any legal basis left to say that local inhabitants' use of this area has not been "as of right" even if access thereto had been from the rest of the Application Land, the use of which was

[66] [2003] UKHL 47.

enjoyed "by right". No other impediment to registration of the Cross-Hatched Area is suggested by the Council and none exists to my mind. In finding that the whole of the Application had been used for lawful sports and pastimes for at least 20 years I noted (in paragraph 100 above) that a good number of witnesses specifically referred to use of the wooded areas on the Application Land. The Cross-Hatched Area is a wooded area. No suggestion was made that there would be any future issue of access to the Cross-Hatched Area were it to be registered in isolation, let alone that any such issue should bar registration. Any such suggestion would have fallen foul of Ouseley J's finding in *Newhaven Port and Properties* that *"[i]t would be wrong for rights which on the evidence have been proved to exist not to be registered as required by the statute, simply because they could not be exercised."*[67]

(e) Other matters

150. Finally, I deal with three other matters. First, I consider what the position would be if my finding that the land which was the subject of the 1976 Conveyance and 1976 Transfer was acquired under section 9 of the 1906 Act were wrong and this land were in fact acquired, as recorded in the Terrier, under the 1937 Act. I do consider that this would alter the position. If the land had been acquired and laid out under the 1937 Act and made available thereunder to the public for the purposes of recreation, I consider that the land would still have been used "by right" rather than "as of right" on the basis of the general principle identified by Mr Chapman in the case which formed the subject of the litigation in *Barkas*, which I have already twice made reference to (in paragraphs 78 and 139 above) that "*where a statute empowers a local authority to acquire and lay out land for public recreation, the public have a legal right to use it."*[68] It is my view both that such a principle exists and that it would apply in the case of playing fields acquired and laid out under the 1937 Act and made available to the public for recreation thereunder. The fact that section 4(1) of the 1937 Act does not use the expression "public playing fields" does not defeat this argument if the playing fields were in fact (as they were here) made available to the public for recreation. The inspector's reasoning in *Barkas* was not found flawed by the absence of reference in

[67] At paragraph 173.
[68] See paragraph 11 of the judgment, quoting the inspector's report.

section 80 of the Housing Act 1936 to "public recreation grounds" given that the recreation ground there was made available to the public for recreation.

151. Secondly, one of the matters which I mentioned in paragraph 44 above when describing the documentary material submitted by the Applicant in support of the Application was a submission put forward in support of an application to register a village green at The Downs, Herne Bay. That submission deals with the issue of use "as of right". In the course of my consideration of that issue above I have already dealt with those matters which the Applicant chose to highlight from the Downs submission. For the rest I need say no more than, if and to the extent that arguments in that submission do not concur with the reasoning I have followed in my treatment of the issue of "as of right", I do not regard those arguments as correct.

152. Finally, the Applicant submitted that I take into account the discrepancies in areas which he had raised with the Council's witnesses. I have considered this but my conclusion is that nothing turns on it.

Overall conclusion and recommendation

153. My overall conclusion is that all requirements for the Application to succeed are made out except for use "as of right" but, for that reason, the Application must fail, save for the Cross-Hatched Area, where all requirements for the Application to succeed, including use "as of right", are made out.

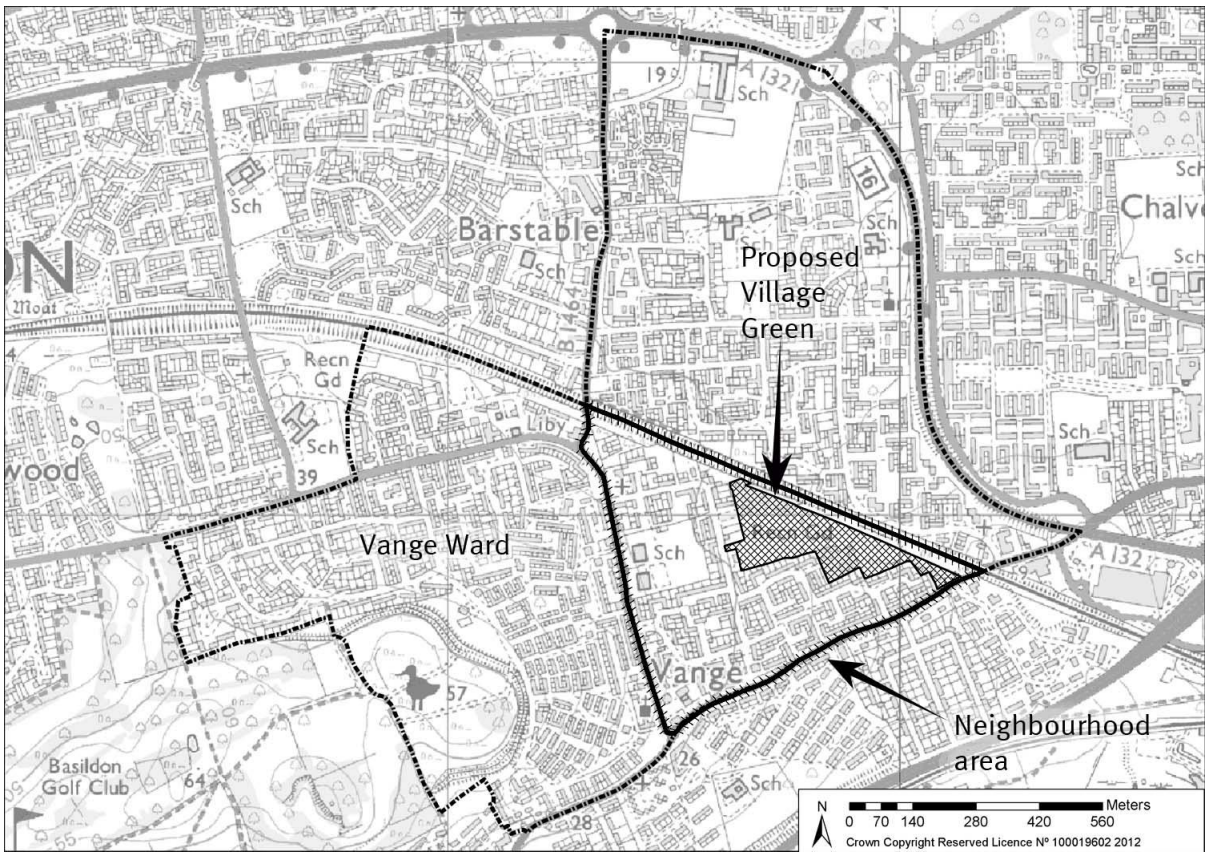
154. As a matter of procedure the Registration Authority is entitled to register only that part of the Application Land in respect of which the case has been proved.[69]

155. I therefore recommend that the Application should be rejected save for the Cross-Hatched Area, in respect of which it should be accepted.

21st September 2012 Alan Evans

[69] Oxfordshire County Council v Oxford City Council [2006] UKHL 25 at paragraphs 62, 111, 114, 124 and 147.

Appendix 2 Locality and Neighbourhood



AGENDA ITEM .....8a.....

DR/45/12

committee DEVELOPMENT & REGULATION

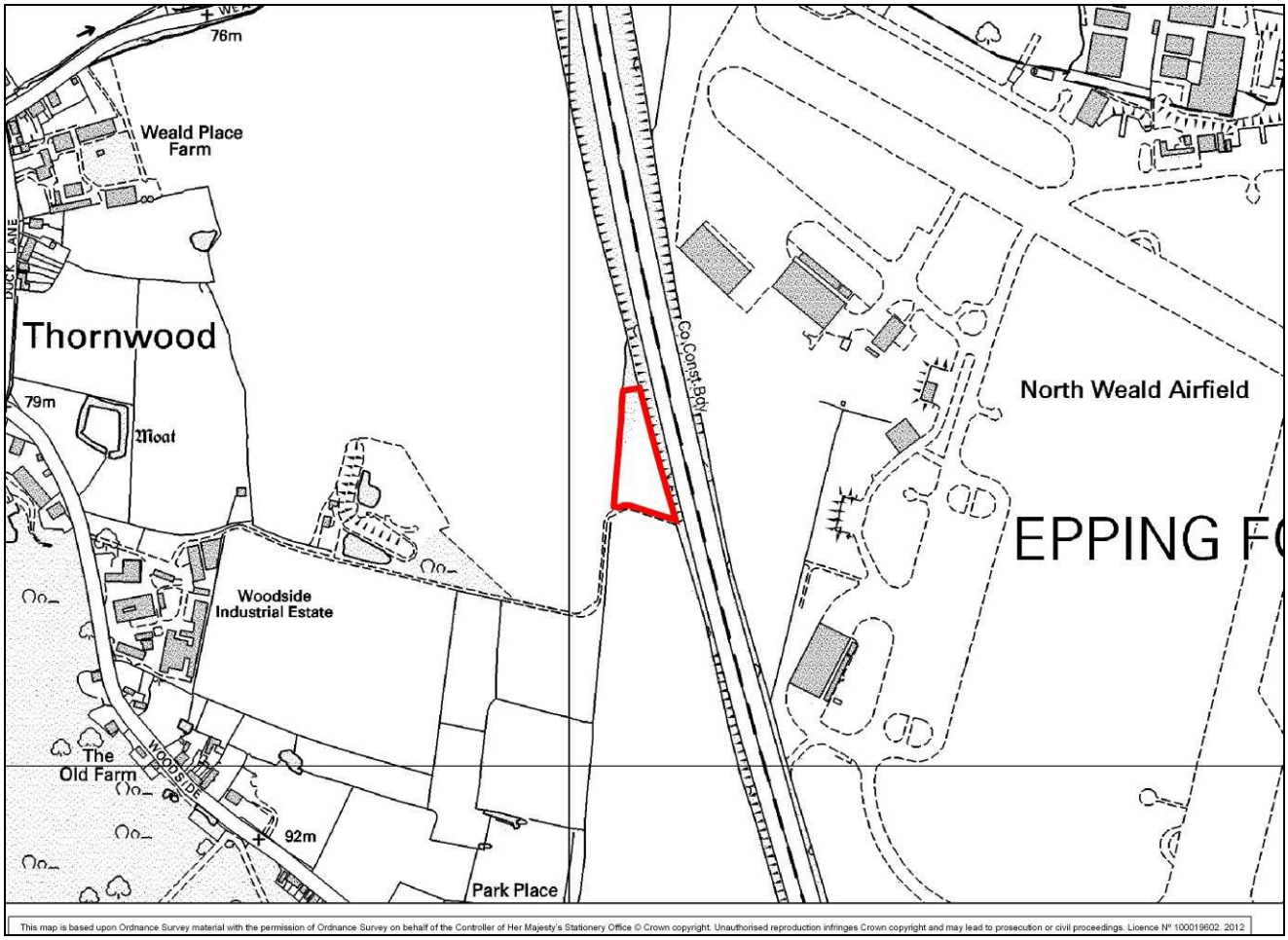
date 23 November 2012

INFORMATION ITEM - ENFORCEMENT OF PLANNING CONTROL

Enforcement Notice Issued for a material change of use has taken place without planning permission from what appears to be agricultural land to land used for the deposition of waste soils and builder's rubble, substantially raising the land levels
Location: **Land at Weald Place Farm, Duck Lane, Thornwood, Epping, CM16 6NE**

Report by Head of Environmental Planning

Enquiries to: Tom McCarthy Tel: 01245 437507



1. BACKGROUND AND SITE

The unauthorised importation and deposit of waste materials namely waste soils and builder's rubble, has taken place on land adjacent to the M11 within Weald Place Farm, Thornwood. The site which is accessed from Woodside Road via Woodside Industrial Estate is in the majority secluded from the public eye.

A retrospective planning application was originally submitted to Epping Forest District Council (EFDC) (reference: EPF/1394/12), in an attempt to regularise this development. However, following consultation with Essex County Council it was concluded that due to the level of importation this proposal represented a County Matter, i.e. an application which would be best determined by the County Council.

On the basis of the information submitted within the application to EFDC and from information obtained from site visits it is estimated that 4500m^3 (circa 6750 tonnes) of material has been imported to the site. The material has been engineered, on the area edged red on the plan, in the form of a 2-3m high screening bund/landform. The justification put forward by the landowner was security to his apiary, which is directly to the north of the area in question.

2. CURRENT POSITION

As there appears to be no overriding justification or benefit for this development to outweigh the unacceptable environmental and landscape impact, Green Belt inclusive, it was considered expedient to serve an Enforcement Notice (EN) on the landowner in this case.

The EN, which was served on 24 October 2012, becomes effective on 29 November 2012, unless an appeal is made against it beforehand. The EN requires the landowner to:

a) Cease, and do not resume, the importation and deposition of waste materials on the land within 1 day of the notice taking effect.
b) Remove from the land all the waste materials within 6 months of this notice taking effect.
c) Restore the land to its condition prior to commencement of the unauthorised development within 7 months of this notice taking effect.

At the time of writing no appeal had been lodged with the Planning Inspectorate. An update will nevertheless be provided to Members once the EN becomes effective or, in the event of an appeal being lodged, a decision is issued by the Planning Inspectorate.

LOCAL MEMBER NOTIFICATION

EPPING FOREST – Epping and Theydon Bois
EPPING FOREST – North Weald and Nazeing

AGENDA ITEM ....9a.....

DR/46/12

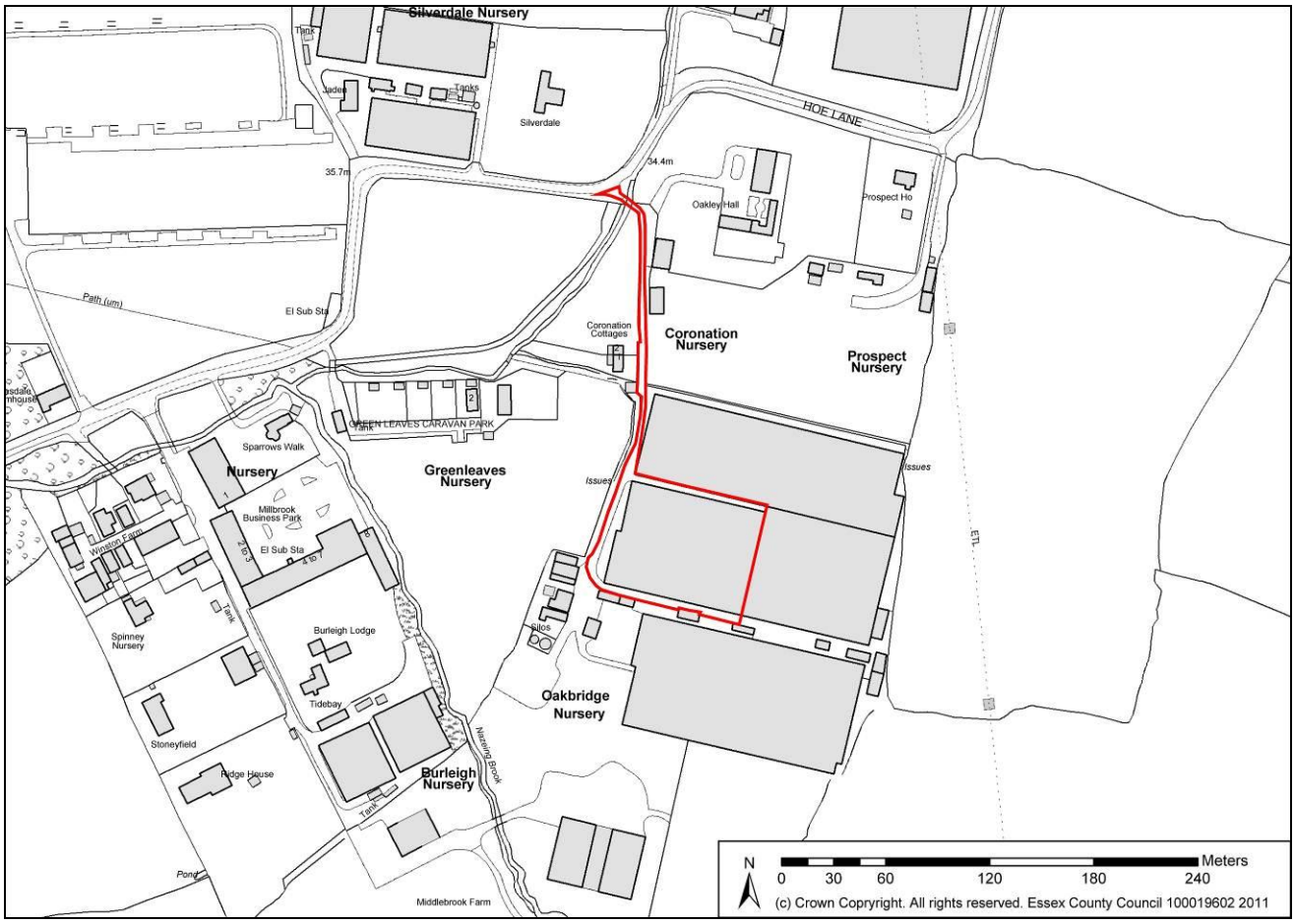
committee DEVELOPMENT & REGULATION

date 23 November 2012

INFORMATION ITEM - APPEAL DECISION
Proposal: **Construction of a 'wet' anaerobic digestion plant including combined heat and power plant with ancillary equipment**
Location**: Coronation Nursery, Hoe Lane, Nazeing, Essex, EN9 2RN**
ECC Reference: **ESS/26/11/EPF**
Planning Inspectorate Reference: **APP/Z1585/A/12/2173919**

Report by Head of Environmental Planning

Enquiries to: Tom McCarthy Tel: 01245 437507



1. BACKGROUND AND SITE

Coronation Nursery is an existing glasshouse Nursery, specialising in growing cucumbers and peppers. An application was made to Essex County Council, as Waste Planning Authority, in June 2011 for a wet anaerobic digestion (AD) plant including combined heat and power with a justification largely revolving around a need to increase business viability.

The facility was proposed to be constructed over part of the existing glasshouses, to the west of the Nursery as a whole. It was proposed that the facility would accept up to 15,000 tonnes of waste per annum; predominantly commercial food waste, source separated kitchen waste and organic waste from the Nursery itself. It was suggested that as this 'waste' decomposed, as part of the AD process, the methane gas produced would be fed into a gas engine to produce electricity and heat for use on site and for export. In addition the carbon dioxide and fertiliser by-product would be utilised on site and/or in respect of the fertiliser exported to nearby agricultural/horticultural industries as available and necessary.

The application was refused, under delegated powers, in October 2011 for five reasons; inappropriate development in the Green Belt; loss of glasshouse development; landscape impact; inadequate information to demonstrate no ecology impact; and inadequate information to demonstrate no unacceptable impacts on health and amenity.

2. CURRENT POSITION

An appeal was lodged against the refusal and the case was determined by way of a hearing held on 26 July 2012. The Planning Inspector's decision, which was subsequently issued on 26 October 2012, is attached at Appendix 1.

The Inspector in determination of the appeal considered the main issues in this case were:

i. *"The nature and scale of the benefit accruing from the proposed development, for the Nursery business itself and generally.*
ii. *The adverse effects of the proposed facility.*
iii. *Whether the harm to the Green Belt through inappropriate development and any other harm is clearly outweighed by other considerations and, if so, whether very special circumstances exist that justify inappropriate development in the Green Belt."*

In context of the above the Inspector notes *"there are clear synergies between the main activity at Coronation Nursery…and the proposed recycling facility".* That being said the Inspector, at paragraph 13, goes on to state that the *"benefits need to be considered in light of the fact that…Coronation Nursery itself generates only around 300 tonnes of organic per annum (tpa). But the capacity of the proposed facility would be 15,000 tpa and the assessments of power/heat production and consumption seem to be on, the basis of it operating at that level. Thus almost all*

of the waste would be imported from external sources yet to be confirmed. Evidence for the appellant also indicated that some 15% of the compost produced would be used on-site, with the remaining 85% being exported." Concluding that on balance, in relation to point (i), the proposal would *"bring only limited benefits in terms of public interest."*

Further to the above the Inspector goes on, in respect of point (ii), at paragraph 29, that the *"proposed facility would be harmful and contrary to policy in a number of respects"*. Concluding that the proposed facility *"would not meet the criteria in WLP policies W7C and W8C... (and) fail to meet the requirement of LP policy CP2 (Protecting the Quality of the Rural and Urban Landscape), especially in respect of conserving countryside character, in particular its landscape, and protecting countryside for its own sake."*

In relation to the Green Belt, and point (iii), the Inspector, at paragraph 30, considers that in this case that the benefits to the proposal *"are not sufficient to outweigh the harm through inappropriateness and in other respects"* and as such concludes that *"very special circumstances…do not exist in this case".*

Accordingly, in view of the above, the appeal was dismissed.

LOCAL MEMBER NOTIFICATION

EPPING FOREST – North Weald and Nazeing
HARLOW – Harlow West

APPENDIX 1

The Planning Inspectorate

Appeal Decision

Hearing and site visit held on 26 July 2012

by Alan Boyland BEng(Hons) DipTP CEng MICE MCIHT MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 October 2012

Appeal Ref: APP/Z1585/A/12/2173919
Coronation Nursery, Hoe Lane, Nazeing, Waltham Abbey, EN9 2RN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Franco Pullara against the decision of Essex County Council.
- The application Ref ESS/26/11/EPF, dated 18 May 2011, was refused by notice dated 17 October 2011.
- The development proposed is establishment of an organic recycling facility involving the development of a 'wet' anaerobic digestion facility with ancillary equipment.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

   (i) The nature and scale of the benefits accruing from the proposed development, for the nursery business itself and generally.

   (ii) The adverse effects of the proposed facility.

   (iii) Whether the harm to the Green Belt through inappropriate development and any other harm is clearly outweighed by other considerations and, if so, whether very special circumstances exist that justify inappropriate development in the Green Belt.

Reasons

Inappropriateness in the Green Belt

3. It is undisputed that the site lies within the Green Belt. Buildings for waste developments do not fall within the exceptions to the policy principle that the construction of new buildings in the Green Belt should be regarded as inappropriate, as set out in policy GB2A (*Development in the Green Belt*) of the Epping Forest Combined Local Plan and Local Plan Alterations (LP) and the National Planning Policy Framework (NPPF).

4. I recognise, however, that the enterprise here is horticultural. This falls within the accepted ambit of agriculture, which is one of the excepted purposes. Nevertheless, it seems to me that the proposed recycling facility would not be integral to the horticultural activity. Much of the material to be recycled would come from non-horticultural/agricultural sources, and it seems to me that to the extent that it would relate functionally to the existing business the

relationship would be ancillary rather than direct. I address this in more detail below.

5. The appellant, the County Council (CC) and Epping Forest District Council (DC) all agree that the proposed development should be considered as inappropriate in the Green Belt, and I concur with this. As the NPPF makes clear, such development is by definition harmful.

Issue (i) : Benefits of the proposed development

6. There are clear synergies between the main activity at Coronation Nursery – the growing mainly of salad crops such as cucumbers and peppers under 2.5 hectares of glass – and the proposed recycling facility. The nursery process produces some 300 tonnes of organic waste annually. Currently this is disposed of off-site by commercial contractors at a cost to the business. The appellant was unable to confirm the method(s) of disposal as this is a matter for the contractors, but suggested that much of it is composted at a site some 50km away though some may go to landfill.

7. The proposed facility would enable treatment of this waste on-site, with direct savings in cost and travel. It would produce compost to replace the current growing medium required on this site, which is imported to the UK. Further benefits would accrue from the production of liquid organic fertiliser which would replace the man-made fertiliser currently bought in, and reducing the amount of water extracted from the on-site borehole.

8. Most electrical power and all heating for the glasshouses is currently produced on-site by a combined heat and power (CHP) plant, with a separate boiler providing additional heat only. These are powered by natural gas, the cost of which has increased significantly in recent years and seems likely to continue doing so. Carbon dioxide is recovered from the exhausts and fed into the glasshouses to enhance plant growth. When the CHP plant is running, surplus electricity is fed back into the national grid; at other times power is imported from the grid.

9. The proposed facility would include an additional CHP unit powered by bio-gas from the digester. The heat produced would meet around about two thirds of the annual requirement for the nursery, but there are considerable seasonal variations in this. In the warmest months the new CHP plant would meet the full demand, but at other times the balance would be met by the existing CHP plant, supplemented in the very coldest months by the boiler. This would reduce the consumption and hence costs of natural gas and, it appears, increase the net export of electricity to the grid. It would also enable greater use of the glasshouses in the depths of winter, making year-round growing possible (which is not currently the case).

10. The reduction in natural gas consumption and net reduction in electricity imported from the grid would bring sustainability benefits through reduced use of fossil fuels. There would also be economic benefits to the business through reduced costs of energy, growing medium and fertiliser. However the adverse financial effect of the reduction in the area of glasshouses would be only partially offset by increased income from the extended growing season. On figures presented by the appellant orally at the Hearing, there would be a modest overall financial gain.

11. It was submitted that this gain would help to sustain the business which, it was said, is struggling as are many growers in the area. I understand the economic pressures faced by the business, but the financial evidence given orally at the Hearing did not represent a full financial appraisal demonstrating that the proposed development is essential to the future of the horticultural enterprise rather than merely desirable.

12. Moreover I note that, while the appellant indicated that the profit currently generated by the business was barely sufficient to enable investment in the enterprise, the financial summary given did not include the capital cost of the proposed facility, the revenue costs thereof or any external income arising from it. I share the views of the Councils and others that there would remain the risk of the horticultural business ceasing, potentially leaving the recycling facility as a free-standing unit.

13. All the above benefits need to be considered in the light of the fact that, as the CC pointed out, Coronation Nursery itself generates only around 300 tonnes of organic waste per annum (tpa). But the capacity of the proposed facility would be 15,000 tpa and the assessments of power/heat production and consumption seem to be on, the basis of it operating at that level. Thus almost all of the waste would be imported from external sources yet to be confirmed. Evidence for the appellant also indicates that only some 15% of the compost produced would be used on-site, with the remaining 85% being exported.

14. I recognise the significance of economies of scale and that such a facility might not be technically or economically viable at the 300 tpa level. Nevertheless, most of the identified benefits would accrue from importation of waste rather than from the Nursery itself. It was suggested for the appellant that there is a general need for a facility to recycle organic waste in this locality. However, I share the view of the DC that the need, scale and appropriate location for any such provision, particularly if it were to operate independently, should be addressed initially through the development plan so that the wider implications and issues could be considered fully.

15. I have seen no indication that a need or location – within or outside the Green Belt - has been identified through that process. Certainly this is not a location identified for waste management facilities through policies W8A (*Preferred Sites*) and W8B (*Non-preferred Sites*) in the Essex and Southend Waste Local Plan (WLP). Policies W7C (*Anaerobic Digestion Facilities*) and W8C (*Small Scale Facilities*) do provide for such facilities such as this elsewhere, including rural locations. However, this is subject to criteria that, as I indicate below, would not be met in this instance.

16. I conclude on the first issue that the proposed development would, on balance, bring only limited benefits in terms of the public interest. To the extent that it would aid the viability of the horticultural enterprise, it would be consistent with the aims of LP policy E13B (*Protection of Glasshouse Areas*). I note the suggestion that loss of 20% of the area of glasshouses here would run counter to that policy, but I do not share that view as the policy is concerned with preserving the concentration of glasshouses and the viability of the industry rather than prevention of any individual loss of glasshouse coverage.

17. Loss of the whole area of glasshouses at Coronation Nursery might conflict with the aims of the policy but, while this may be a possibility, it seems that this applies irrespective of whether the development now proposed is implemented.

Issue (ii) : Adverse effects

18. While the proposed facility would bring undoubted benefits to the business, some of these could equally be gained from any economically viable development irrespective of whether it had a functional relationship with the horticultural enterprise. Moreover, many of the benefits would accrue from imported material and exported products in much the same way as a general industrial unit. I consider that these considerations further confirm that proposed development as a whole would represent inappropriate, and hence harmful, development in the Green Belt.

19. The NPPF advises that one of the essential characteristics of Green Belts is their openness. As LP policy E13B implicitly recognises, the cluster of glasshouses already reduces the openness of the Green Belt but to a lesser extent than would a more scattered disposition. The visual impact of the proposed facility would be partially offset by a reduction in the area of glasshouses, and it would have a smaller footprint, but a number of significant elements would be up to 5m higher than the glasshouses. While this is still lower than the water tower on site, that is close to trees that significantly reduce its visibility, whereas the combined elements in question would be bulkier and in a more open location. In any event, the proposed facility would be in addition to, not instead of, the water tower. There are several chimneys on site too, but these are relatively slim and have only limited visual impact.

20. The flatness of the valley floor and vegetation in the surrounding area largely screen this site from views from the north and west, but I saw that higher ground to the east and south east affords clear views from properties and public rights of way at a distance of some 500m. Some screening is afforded by trees, particularly while the deciduous specimens amongst them are in leaf, and some further screening could be secured through planning conditions, but I still consider that the development would have a significant effect on openness.

21. The countryside here is not, in current plans, subject to any landscape designation. Its character and appearance is heavily influenced by the extensive coverage by glasshouses, but remains attractive. The glasshouses are largely low, uniform and light in appearance whereas the proposed development would be significantly higher and more solid. As a result it would have a greater adverse impact on the countryside. I recognise that many agricultural buildings are of similar size and form, but these are accepted on the basis of their functional necessity for the farms on which they stand. To a large extent that would not be the case here. It seems to me that this development would therefore be contrary to LP policies LL1 (*Rural Landscape*) and, for this reason and others indicated above, LL2 (*Inappropriate Rural Development*). It would also conflict with LP policy GB7A (*Conspicuous Development in the Green Belt*).

22. The site is close to the boundary of the Nazeing and South Roydon Conservation Area, which includes a wide area of attractive countryside to the east including preserved medieval settlements and closed field patterns. I share the view of the Council that the industrial nature of the proposed development would be detrimental to the setting of the Conservation Area, contrary to LP policy HC6 (*Character, Appearance and Setting of Conservation Areas*).

23. The proposer of a care home immediately north of the site, for which planning permission has been granted, expressed concern about the visual impact of the proposed recycling facility from the proposed home. From what I saw on site, I judge that the existing glasshouses would screen the recycling facility completely from the 2-storey care home.

24. Access to the site is via Hoe Lane, a narrow and winding country lane that serves a scatter of horticultural business and homes. The lane is not suited to the passage of large vehicles, though the existing uses along it inevitably generate such traffic already. As I have discussed, most of the waste material to be treated here would come from off-site, and most of the products of the process would go off-site. Transport would inevitably be by road, adding to the number of lorry movements along the lane. At the Hearing the Council accepted the appellant's estimate that there would be 3 additional movements in and 3 out per day on average.

25. The CC suggested a condition to control the routeing of HGVs entering or leaving the site, with a view particularly to precluding use of the length of the lane east of the access, which is especially narrow with sharp bends. While I understand the rationale for this, Circular 11/95: *The use of conditions in planning permissions* advises that planning conditions are not an appropriate means of controlling the right of passage over public highways. However I agree that a condition to restrict deliveries and collections to normal working hours on weekdays and Saturday mornings would be necessary in the interests of the living conditions of residents along the lane and in existing and proposed homes alongside the access to the site.

26. While adding HGV traffic to Hoe Lane is not ideal, in the circumstances and subject to such a condition I do not consider it to be unacceptably harmful.

27. Concerns about the potential direct effects of the proposed facility in terms of noise, odour, air quality, litter and vermin are understandable. However, as the appellant points out, the facility would be completely enclosed. Moreover, since the application was determined by the CC the appellant has submitted technical assessments on most of these aspects. These are mostly unchallenged, though the Council raises some specific concerns and points to some areas that have not been adequately assessed. Nevertheless, it seems to me that, subject to conditions to secure further information, monitoring and controls and to the further controls available under other powers, adverse effects in these respects could be mitigated adequately.

28. I share the consensus view that, given the current nature of the site, it is unlikely that any protected species would be found there. Appropriate mitigation in the event of any such species being found to be present could be secured through a planning condition.

29. I conclude on the second issue that the proposed facility would be harmful and contrary to policy in a number of respects. I further conclude that for the same reasons it would not meet the criteria in WLP policies W7C and W8C. It would also fail to meet the requirements of LP policy CP2 (*Protecting the Quality of the Rural and Urban Landscape*), especially in respect of conserving countryside character, in particular its landscape, and protecting countryside for its own sake.

Issue (iii) : Green Belt : Very Special Circumstances

30. The NPPF states that inappropriate development in the Green Belt should not be approved except in very special circumstances, and that these will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In this instance the factors in favour of the development, having regard to the extent that it would be almost completely reliant upon importation of material for recycling and upon the exporting of a high proportion of the final products, would be modest. I consider that they are not sufficient to outweigh the harm through inappropriateness and in other respects. I therefore conclude that the very special circumstances required to justify approval do not exist in this case.

Overall conclusions

31. In the light of the above conclusions on the main issues, I conclude overall that the proposed development would on balance be harmful and contrary to policy in the WLP, LP and NPPF.

32. I share the view of the CC that given the Government's stated intention to abolish the Regional Strategies, little weight should be attached to the Revised Regional Strategy for the East of England in this instance. However, I consider that the development plan policies to which I have referred are, insofar as they bear on this proposal, broadly consistent with the NPPF.

33. For the reasons given above I conclude that the appeal should be dismissed.

Alan Boyland

Inspector

AGENDA ITEM .....9b.....

DR/47/12

committee DEVELOPMENT & REGULATION

date 23 November 2012

INFORMATION ITEM - APPEAL DECISION

Proposal: **Use of the site as a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles. Proposed associated development to include the erection of a workshop, modular building, weighbridge and 6m high boundary fencing (part-retrospective)**

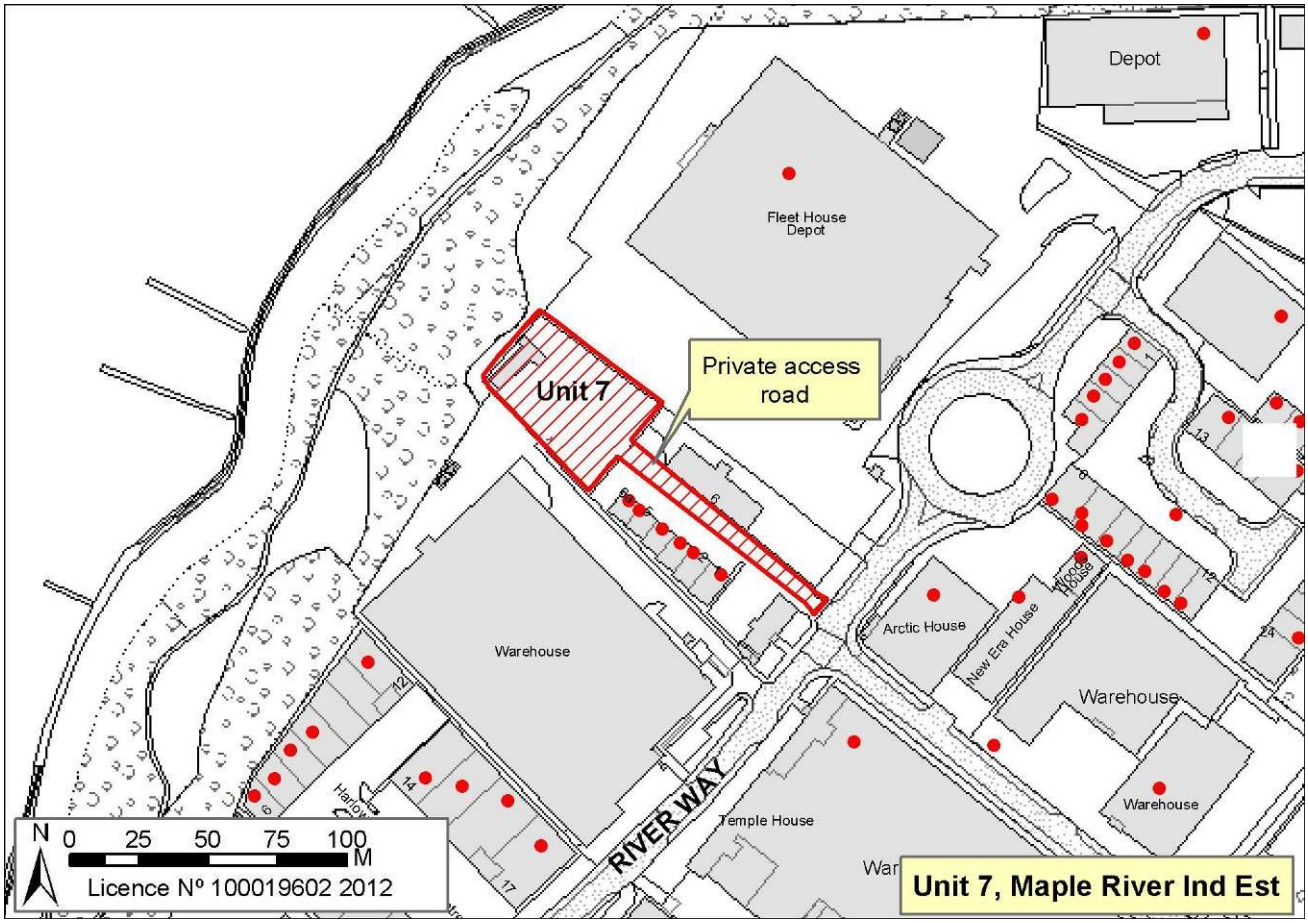
Location: **Unit 7, Maple River Industrial Estate, River Way, Harlow, Essex, CM20 2DP**

ECC Reference**: ESS/52/11/HLW**

Planning Inspectorate Reference: **APP/Z1585/A/12/2173892**

Report by Head of Environmental Planning

Enquiries to: Tom McCarthy Tel: 01245 437507



1. BACKGROUND AND SITE

Members of the Development and Regulation Committee resolved to refuse an application for a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles (part retrospective), at the February 2012 meeting (with the reason for refusal being agreed at the March 2012 meeting).

The facility which would have had capacity for up to 75,000 tonnes of waste per annum was refused for the following reason:

1. The proposed development represents an over-intensification of use of the site and would lead to an unacceptable increase in vehicle movements, causing congestion, which would be detrimental to the efficient and safe use of the private access road and would have a detrimental impact on the operation of the adjacent business units, contrary to Harlow Local Plan (2006) policy ER6 (Retaining Existing Employment Areas)

2. CURRENT POSITION

An appeal and application for costs against the decision was lodged with the Planning Inspectorate and was determined by way of written representation. The Planning Inspector's decisions (proposal and costs), which were issued on 30 October 2012, are attached at Appendix 1.

The Planning Inspectorate accepted and treated the appeal against 'non-determination' as it was claimed by the appellant that the decision notice was not received until after the appeal had been lodged. In treating the appeal as such the Inspector concluded that *"no party to the appeal would be disadvantaged as a result."*

With regard to the application, the Inspector considered that the main issue was *"whether the proposed development would cause unacceptable harm to the character of the area or the business environment, by reason of increased traffic generation."*

At paragraph 11, of the decision, it is considered by the Inspector that *"the proposed use would not have a significantly worse effect on traffic conditions in the vicinity of the appeal site than an alternative employment use, as envisaged by the site's designation."* Elaborating on this he states that he is *"not persuaded that the new use would cause undue congestion, undermine highway safety or efficiency or, in consequence, cause unacceptable harm to the character of the area or business environment."*

Furthermore, at paragraph 13, he considers *"the proposed development would not cause unacceptable harm to the character of the area or the business environment, with by reason of increased traffic generation or more generally"* and in this instance the concerns raised, by occupiers of neighbouring businesses, do not

justify a refusal of planning permission. As such the Inspector decided to approve planning permission, subject to 18 conditions.

The claim for costs was been made in respect of Paragraph A3 of Circular 03/2009 that inter-alia aims to ensure Authorities properly exercise their development control responsibilities and rely only on reasons for refusal which stand up to scrutiny and do not add to development cost through avoidable delay. It was claimed the Council had relied on a small number of third party objections, which themselves have failed to substantiate a clear planning objection. Further to this, in support of the claim, Paragraph B18 was also citied, in that; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, are more likely to result in a costs award.

The Inspector, in respect of the above, at paragraph 9, states that *"in this case, the Council's case focussed on the argument that potential traffic movements would cause congestion on nearby roads but they did not produce substantial evidence to justify their assertions, in the face of the technical evidence presented on behalf of the appellants or in the light of their own officers' technical advice. Nor was there any substantive evidence to show that significant harm would be caused to the character of the surroundings or the operation of nearby businesses, especially bearing in mind the nature of the industrial estate the previous use of the site itself."*

In conclusion to the above the Inspector considers that, in failing to provide such evidence, the Council has acted *"unreasonable…resulting in unnecessary expense…and that a full award of costs is justified."* As such *"it is hereby ordered that Essex County Council shall pay to GBN Services Limited the costs of the appeal proceedings described in the heading of this decision."* It is anticipated, as alluded to at paragraph 12, that details of those costs will subsequently be forwarded to Essex County Council with a view of reaching an agreement as to the payable amount.

Therefore, at the time of writing, the full amount required to be paid by the County council is not yet known.

LOCAL MEMBER NOTIFICATION

HARLOW – Harlow North

The Planning Inspectorate

Appeal Decision

Site visit made on 23 August 2012

by Roger C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCIArb MIL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 October 2012

Appeal Reference: APP/Z1585/A/12/2173892
Unit 7, Maple River Industrial Estate, River Way, Harlow, Essex CM20 2DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by GBN Services Limited against Essex County Council.
- The application (reference ESS/52/11/HLW) is dated 27 October 2011.
- The development proposed is described in the application form as follows: "Use of the site as a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles. Proposed associated development to include the erection of a workshop, modular building, weighbridge and 6m high boundary fencing".

Application for Costs

1. An application for costs has been made by GBN Services Limited against Essex County Council. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission is granted, on land at Unit 7, Maple River Industrial Estate, River Way, Harlow, Essex CM20 2DP, for the following development: "Use of the site as a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles; proposed associated development to include the erection of a workshop, modular building, weighbridge and 6m high boundary fencing". Planning permission is granted in accordance with the terms of the application (reference ESS/52/11/HLW, dated 27 October 2011, subject to the conditions set out in the attached Schedule of Conditions.

Procedural Point

3. The application which is the subject of this appeal is dated 27 October 2011. The Council's decision is dated 23 March 2012 and was issued on the same day, though it was not received by the appellant until after the appeal had been lodged. The appeal is dated 4 April 2012 and was expressed as being against a failure to give notice within the prescribed period.

4. The Planning Inspectorate have advised that the appeal would be treated as

being "against non-determination" and I have concluded that no party to the appeal would be disadvantaged as a result.

Main issue

5. I have concluded that the main issue to be determined in this appeal is whether the proposed development would cause unacceptable harm to the character of the area or the business environment, by reason of increased traffic generation.

Reasons

6. River Way is a main thoroughfare serving an extensive area of industrial and commercial development in Harlow. The Maple River Industrial Estate is a small estate in its own right, comprising a number of busy premises along a subsidiary cul-de-sac access road leading from River Way. The whole area provides a modern business setting, within a reasonably spacious environment, but it is plainly industrial and commercial in character and generates significant traffic along River Way.

7. The appeal site lies at the north-west end of the access road serving the Maple River Industrial Estate, with woodland beyond. The site itself is a predominantly open area of land, occupied by an office building of a temporary nature and a large "wall" structure, and it was vacant at the time of the site visit, though it was previously in use as a ready-mix concrete plant. By contrast, business units stand either side of the access road, each with their own parking and servicing areas but creating a more closely built up character.

8. At the time of my inspection there was relatively little traffic on River Way, though other roads were rather busy in the wider area (it being about 1700 in the afternoon on a working day). Even so, there was some congestion on the Maple River Industrial Estate access road itself, caused by lorries which were loading or unloading in the roadway.

9. The proposed new use would involve the introduction of additional lorry traffic (and other traffic) in the cul-de-sac access road, though the vacant site could be brought back into use, in any case. Information submitted in support of the planning application explains that the site has good road links and is well located in relation to the area to be served. The access road itself would need to be managed, to prevent neighbouring businesses from interrupting each other's operations, but that would be required in any case (as at present) and it is not necessary for additional controls to be imposed through the planning system in connection with the appeal scheme.

10. In their decision notice, the Council make clear their concern regarding an "over-intensification of use of the site" that would lead to an "unacceptable increase in vehicle movements". The proposed use would, of course, need to be serviced by large lorries and other vehicles. Evidently, it would add to traffic in the Maple River Industrial Estate, since the site is currently vacant.

11. Nevertheless, the proposed use would not have a significantly worse effect on traffic conditions in the vicinity of the appeal site than an alternative employment use, as envisaged by the site's designation. Therefore, I am not persuaded that the new use would cause undue congestion, undermine

highway safety or efficiency or, in consequence, cause unacceptable harm to the character of the area or the business environment.

12. Turning to more general matters, it is self evident that poorly managed waste sites can cause a variety of problems. Even so, it must be acknowledged that conditions can be imposed and that other controls exist to ensure that such sites do not cause harm to human health or to the environment. Thus, the site would not have an undue effect on the amenities of the area, bearing in mind the industrial and commercial nature of the locality, especially in the light of the previous use of the site as a ready-mix concrete plant.

13. In short, the proposed development would not cause unacceptable harm to the character of the area or the business environment, either by reason of increased traffic generation or more generally. Nor do the concerns raised by occupiers of neighbouring businesses justify a refusal of planning permission in this instance.

14. Policies in the 'Essex and Southend Waste Local Plan' provide a policy framework for making decisions on planning applications relating to waste management proposals. They emphasise the principles of sustainable development and identify the characteristics of suitable locations and other relevant criteria for waste management development. The appeal site is not a preferred site within the Waste Local Plan but is suitable for the proposed use in principle, bearing in mind the characteristics of the location.

15. Policy ER6 of the 'Adopted Replacement Harlow Local Plan' is concerned with "Retaining Existing Employment Areas". It points out the need to avoid the change of "employment land" to "non-employment uses" and records that "there have been a few significant losses of employment land to other uses, notably retailing, car showrooms and leisure uses". Policy ER5 of the Local Plan identifies the uses suited to "general Employment Areas" as being "within use classes B1, B2 and B8".

16. The National Planning Policy Framework, which was published in March 2012, does not include specific policies relating to waste management proposals but does give greater emphasis to the need to apply principles of sustainable development and to encourage economic activity.

17. Although the waste management proposal is not a use that falls within the definitions of use classes B1, B2 and B8, it does have the general employment characteristics of an industrial use, in broad terms. The appeal site is within a busy industrial area and, although the proposed waste management activity has some obvious special characteristics, it would not be essentially inimical to the surroundings. It would, moreover, be an employment generating use in its own right, as well as providing a practical service for the locality.

18. Evidently, the appeal site lies within an established urban area at a location which is suited to its function and which is "sustainable" in planning terms. The contribution that the appeal scheme would make to the provision of necessary services, in a location which would be convenient in relation to the sources of the waste to be processed, weighs in favour of the appeal. I have concluded that the project would not be in conflict with the Development Plan, in principle, and that objections to the scheme can be overcome by the imposition

of suitable conditions. In short, I am persuaded that the scheme before me can properly be permitted, subject to conditions.

19. Although I have taken account of all the matters that have been raised in the representations, in relation to the appeal and at the application stage, including those made by the Highway Authority and those made by interested persons, I have found nothing to cause me to alter my decision.

20. I have, however, also considered the need for conditions and I have concluded that a number of conditions are necessary. In imposing conditions, I have taken account of the conditions suggested by the Council in the usual way, without prejudice to their main arguments in the appeal, subject to modifications that are necessary, in my opinion, in the interests of enforceability, clarity and simplicity.

21. Conditions numbers 1 and 2 are needed to define the planning permission, though I am convinced that, in the interests of achieving clarity, it is sufficient for condition 2 simply to specify the application drawings (incorporated in the 'Planning Design and Access Statement', dated October 2011) as the approved drawings.

22. Conditions are also needed to ensure that quality is maintained and that the proposed recycling centre waste would be operated in a way that would mitigate its effect on its surroundings. As suggested by the Council, the conditions imposed include controls on the size of stones to be transported away from the site on un-sheeted lorries, the storage and handling of waste, ground surface treatment, drainage details, cleaning facilities for vehicles leaving the site and other matters.

23. Bearing in mind the relative lack of detail of the proposed new buildings and structures included in the application drawings, a condition has also been imposed to require full details of those buildings and structures to be submitted to and approved by the planning authority, prior to the commencement of development.

Roger C Shrimplin

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this decision.

2. The development hereby permitted shall be carried out in accordance with the following approved drawings (except as required by other conditions of this decision):
Drawing number 31049/PA/01 (Rev 0) 'Site Location Map', dated September 2011;
Drawing number 31049/PA/02 (Rev 2) 'Existing Site Layout', dated October 2011;
Drawing number 31049/PA/03 (Rev 2) 'Proposed Site Layout', dated October 2011;
Drawing number 31049/PA/04 (Rev 0) 'Proposed Buildings Elevations', dated October 2011;
Drawing number 31049/PA/05 (Rev A) 'Perimeter Elevations', dated 2011;

3. No deliveries or collections shall be made to or from the premises outside the times of 0600-1800 on Mondays to Saturdays (or at any time on Sundays and Bank Holidays).

4. The recycling centre hereby permitted shall not be operated outside the following times:
0600-1800 on Mondays to Saturdays
1000-1600 on Sundays and Bank Holidays

5. No development shall take place until details of all ground surface finishes (including kerbs and manhole covers) have been submitted to and approved in writing by the planning authority. The development shall be implemented only in accordance with the approved details.

6. No development shall take place until full details of all the buildings and structures to be erected on the site have been submitted to and approved in writing by the planning authority. The development shall be implemented only in accordance with the approved details.

7. No development shall take place until details of wheel washing facilities to be provided on the site have been submitted to and approved in writing by the planning authority. The development shall be implemented only in accordance with the approved details.

8. No vehicles shall leave the site unless they are clean in accordance with the standards achieved by the use of the approved wheel washing facilities.

9. No loaded vehicles shall leave the site un-sheeted, except those carrying only washed stone in excess of 500mm in dimension.

10. There shall be no intake of waste to the site until the measures to prevent odour nuisance and the measures to prevent to minimise dust emissions, as detailed in section 4.2 of the Planning and Design and Access Statement dated October 2011, have been implemented. There shall be no intake of waste to the site at any time that those measures are not being continued.

11. No demolition or groundworks shall take place on the appeal site other than in accordance with a written scheme of archaeological investigation which has been submitted to and approved in writing by the planning authority.

12. No development shall take place until details of surface and foul water drainage have been submitted to and approved in writing by the planning authority. The development shall be implemented only in accordance with the approved details.

13. All fuel, lubricant or chemical storage vessels on the site (whether temporary or not) 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 said container to prevent spillage. No fuel, lubricant or chemicals shall be stored on the site other than within a storage vessel in accordance with this condition.

14. Waste brought on to the site shall be deposited and handled only within the areas shown for the relevant activity on drawing number 31049/PA/03 (Rev 2) 'Proposed Site Layout', dated October 2011.

15. No waste shall be stored or deposited on site at any time to a height of more than 5 metres above ground level.

16. No waste shall enter the site other than waste originating either from within the administrative area of Essex and Southend or from within a radius of 15 miles from the boundary of the site. No waste shall enter the site other than waste the origin of which is recorded in records kept by the operator and available to the Waste Planning Authority within seven days of receipt of a written request for the information.

17. No salvaging operations, including the de-pollution and dismantling of end-of-life vehicles (ELVs) shall take place outside the processing workshop shown on drawing number 31049/PA/03 (Rev 2) 'Proposed Site Layout', dated October 2011.

18. There shall be no direct sale of vehicle parts or components to the public. Recovered vehicle parts or components may be sold only wholesale, for onward distribution.

The Planning Inspectorate

Costs Decision

Site visit made on 23 August 2012

by Roger C Shrimplin MA(Cantab) DipArch RIBA FRTPI FCIArb MIL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 October 2012

Costs Application in relation to Appeal Ref: APP/Z1585/A/12/2173892
Unit 7, Maple River Industrial Estate, River Way, Harlow, Essex CM20 2DP

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The appeal is made by GBN Services Limited for a full award of costs against Essex County Council.
- The appeal was made against the refusal of planning permission for: "Use of the site as a recycling centre for inert and non-hazardous household, commercial and industrial waste and end of life vehicles. Proposed associated development to include the erection of a workshop, modular building, weighbridge and 6m high boundary fencing".

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for GBN Services Limited

2. The appellants point out that the Council's decision was made against officers' advice. They argue that the Council have failed to substantiate the basis of their concerns either in terms of traffic generation or otherwise. They go on to assert that the Council have had undue regard to the objections of others and have failed to make their own objective appraisal of the proposals.

3. The appellants claim that the Council has failed to support with substantive evidence their assertion that the proposed use would lead to an unacceptable increase in vehicle movements as stated in the sole reason for refusal. They have disregarded the sound evidence provided in the 'Transport Statement', prepared on behalf of the appellants by Waterman Boreham who are respected consultants.

4. In support of their application for costs, they draw particular attention to paragraphs B16, B20 and B21 of Circular 03/2009.

The response by Essex County Council.

5. The Council state that their decision involved a judgement concerning the character of the area and the effect of the development on adjoining occupiers. Likewise, they argue that they were entitled to make a judgement on potential traffic movements and to conclude that the proposals would cause congestion on nearby roads and loss of amenity for the surroundings.

6. Thus they argue that the Council acted reasonably and that their decision in this case was entirely justified.

Reasons

7. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

8. Nevertheless, paragraph B16 of the Circular makes it plain that "authorities will be expected to produce evidence to show clearly why the development cannot be permitted". While they "are not bound to accept the recommendations of their officers", they are expected to produce "relevant evidence on appeal to support their decisions in all respects" (paragraph B20) and, though they are expected to consider any objections that may be raised, they need to "make their own objective appraisal and ensure that valid planning reasons are stated and substantial evidence provided" (paragraph B21). In cases where matters of judgement are involved, it is also necessary for "realistic and specific evidence" to be provided "about the consequences of the proposed development" (paragraph B18).

9. In this case, the Council's case focussed on the argument that potential traffic movements would cause congestion on nearby roads but they did not produce substantial evidence to justify their assertions, in the face of the technical evidence presented on behalf of the appellants or in the light of their own officers' technical advice. Nor was there any substantive evidence to show that significant harm would be caused to the character of the surroundings or the operation of nearby businesses, especially bearing in mind the nature of the industrial estate and the previous use of the site itself.

10. I have allowed the appeal and, furthermore, I have concluded that the Council have, indeed, failed to produce substantive evidence in support of their case. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a full award of costs is justified.

11. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Essex County Council shall pay to GBN Services Limited the costs of the appeal proceedings described in the heading of this decision.

12. The applicant is now invited to submit to Essex County Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

R C Shrimplin INSPECTOR

AGENDA ITEM ..10a.....

DR/48/12

Committee DEVELOPMENT & REGULATION

date 23 November 2012

INFORMATION ITEM
Applications, Enforcement and Appeals Statistics

Report by Head of Environmental Planning

Enquiries to Tim Simpson – tel: 01245 437031
or email: tim.simpson2@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/Tim Simpson/

MEMBER NOTIFICATION

Countywide.

SCHEDULE

Minerals and Waste Planning Applications

No. Pending at the end of previous month	**24**
No. Decisions issued in the month	**6**
No. Decisions issued this financial year	**37**
Overall % age in 13 weeks this financial year	**81%**
% age in 13 weeks this financial year (NI 157a criteria, Target 60%)	**81%**

Nº Delegated Decisions issued in the month	**6**
Nº Section 106 Agreements Pending	**1**

County Council Applications

Nº. Pending at the end of previous month	**14**
Nº. Decisions issued in the month	**3**
Nº. Decisions issued this financial year	**22**
Nº of Major Applications determined (13 weeks allowed)	**0**
Nº of Major Applications determined within the 13 weeks allowed	**0**
Nº Delegated Decisions issued in the month	**3**
% age in 8 weeks this financial year (Target 70%)	**91%**

All Applications

Nº. Delegated Decisions issued last month	**9**
Nº. Committee determined applications issued last month	**0**
Nº. of Submission of Details dealt with this financial year	**84**
Nº. of Submission of Details Pending	*******
Nº. of referrals to Secretary of State under delegated powers	**0**

Appeals

Nº. of appeals outstanding at end of last month	**3**

Enforcement

Nº. of active cases at end of last quarter	**16**
Nº. of cases cleared last quarter	**21**
Nº. of enforcement notices issued last month	**1**

Nº. of breach of condition notices issued last month	**0**
Nº. of planning contravention notices issued last month	**2**
Nº. of Temporary Stop Notices Issued last month	**0**
Nº. of Stop Notices Issued last month	**0**