RE: LAND AT PINCENTS HILL, TILEHURST

COMMONS ACT 2006, SECTION 15

Registration Authority: WEST BERKSHIRE DISTRICT COUNCIL

REPORT OF THE INSPECTOR

MR ALUN ALESBURY, M.A., Barrister at Law

into

AN APPLICATION TO REGISTER THE LAND AT PINCENTS HILL

as a

TOWN OR VILLAGE GREEN

CONTENTS:

1. Introduction

1.1. I have been appointed by West Berkshire District Council ("the Council"), in its capacity as Registration Authority, to consider and report on an application received by the Council on 7th April 2009 for the registration as a Town or Village Green under the Commons Act 2006 of an area of land sometimes known as Pincents Hill, to the east of Pincents Lane, Tilehurst. The land covered by the application is within the Council's area.

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 Objectors to it. However I was also provided with copies of the original application and all the material (including letters and statements) provided in support of it; the objections duly made to it; and further correspondence and exchanges 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 on 7th April 2009 was made pursuant to section 15 of the Commons Act 2006 by Mrs Joan Lawrie of The Cottage, Pincents Lane, Tilehurst, Reading, RG31 4UQ. I understand that Mrs Lawrie has indicated that she acts not only for herself, but also for the 'Save Calcot Action Group'.

2.2. The Application was accompanied by a map, and various other documents including witness statements and photographs. Copies of all of these items have been provided to me, as indeed have copies of all other documents, etc, provided by the Applicant to the Registration Authority prior to my own appointment to consider the matter.

2.3. The map or plan accompanying the application identified as the application site a substantial area of land, which I was told measures some 48 acres, to the south east side of Pincents Lane between a point approximately opposite the Pincents Manor Hotel in the south-west, to the junction of Pincents Lane with City Road in the north-east. However the northern boundary of the site then continues a considerable way further east, generally following the southern boundary of the built-up area situated around the roads known as Farm Drive and Starlings Drive/Magpie Way, and a substantial mobile-home park between those built areas. The long southern boundary of the application site generally follows the northern boundaries first of the curtilage of a large Sainsbury's supermarket, and then of an (also large) recreation ground belonging to Tilehurst Parish Council.

2.4. Because the application site is large, and all parts of it do not have a common history, it became very useful at the eventual inquiry to have a plan identifying different parts of the site by number, and both the Applicant and the Objector(s) were content that

the site should be considered this way. For ease of reference and understanding I am attaching to this Report a copy of a plan ("Figure 1") identifying those numbered areas of the overall site, which was in practice used by all parties to the inquiry. The areas thus identified were:

(1) A field belonging to Mr Alasdair Barron, abutting Pincents Lane along (part of) its north western edge.
(2) A small area (shaped like an elongated triangle) between Areas 3 and 5 to its north, and the former golf course land (Area 4) to its south.
(3) A field (at the inquiry often called *"the horse field"*) in the northern part of the site, with Pincents Lane to its north-west, and (approximately) the developed area around Farm Drive to its north-east.
(4) (By far the largest part of the overall site) the area formerly occupied for the purposes of the Pincents Manor Golf Course.
(5) The curtilage and grounds associated with Pincents Hill House (including the house itself), belonging to Mr & Mrs March, and abutting Pincents Lane to the north-west.

In addition to these five numbered areas, the application site as originally shown by the Applicant included two other small pieces of land. The first, which became known as the *"northern finger"* appeared to consist of Pincents Lane itself, together with its well-wooded verges, between the northern corner of Area 3 and (approximately) the junction of the Lane with City Road. The second, the *"southern finger"*, in the extreme south-west corner of the overall site, is a strip of land consisting of part of a track known locally as Poplars Dive, with its associated verge.

2.5. I have referred to these matters somewhat laboriously at this stage because at the inquiry Mrs Lawrie, the Applicant, withdrew both Area 5 (Pincents Hill House and grounds) and the 'northern finger' from the scope of her application. No-one (and in particular not the Objectors) objected to this withdrawal, and there was no suggestion that removing these two areas changed the application so materially that it could no longer be properly considered, or that any party would or might be prejudiced thereby. My own view is similar in this respect, so I regard it as correct that both I and the Registration Authority should go on and consider the application in respect of the original application site ***minus*** the March property at Area 5 (Pincents Hill House), and the 'northern finger' (which appears in any event to consist entirely of adopted highway land).

2.6. I should perhaps mention at this stage also that at the inquiry Mrs Lawrie adopted a very markedly different approach to the way in which she suggested that the evidence justified registration of Area 3 ('the horse field') as village green, from that which she argued applied to the remaining parts of the site. However as she did not withdraw Area 3 from her application I regard it as appropriate to address this area later in this Report, when I am considering the evidence and submissions about all the various parts of the remaining application site (i.e. the original site as amended by the withdrawals noted in the preceding paragraph).

2.7. In her original application to the Council the Applicant indicated that the particular qualifying criterion for registration which she relied on was that to be found in ***subsection 15(2)*** of the ***Commons Act 2006***. However, in the light of evidence presented to the inquiry (principally about prohibitory signs erected on the land prior to the date of Mrs Lawrie's application), it became apparent that it would at least be arguable that even if such evidence precluded registration under ***Section 15(2)***, registration could still be appropriate under either ***subsection (3)*** or ***subsection (4)*** of ***Section 15***. In the course of discussion at the inquiry itself Mrs Lawrie requested that, in the alternative to consideration under ***subsection 15(2)***, her application should also be considered under the criteria of ***subsections (3)*** or ***(4)*** of the section. In practice, because of the nature of the (potentially relevant) evidence, it was ***subsection (4)*** which (arguably) might be applicable to this case if ***subsection (2)*** is not, and that is the way in which Mrs Lawrie put the matter in her closing submissions.

2.8. I should mention at this stage that the Objectors, although they did address this point in their submissions, expressed some concern at the proposition that an Applicant could invite consideration under a different subsection from that mentioned in the original application. I consider and comment on these concerns later in my report, but at the moment I merely observe that I do in fact address the question whether ***Subsection 15(4)*** might apply even if ***Subsection 15(2)*** might not, and will be recommending that the Council as Registration Authority does likewise in reaching its final decision on this matter.

2.9. The amended application site (see above), with its several distinct parcels of land, has in general a marked downward slope from north to south, and a lesser degree of downward slope from east to west. However the slope on the land is far from uniform, so that the overall site includes areas which are at least relatively flat, as well as other parts where the slope is steeper.

3. The Objector

3.1. An objection to the Applicant's application was received and registered by the Council as Registration Authority on 21st August 2009, on behalf of Blue Living (Pincents Hill) Limited. The objection indicated that the Objector company owns or has options on the majority of the application site. I note that Mr Alasdair Barron, who remains the owner of significant parts of the application site, was one of the Objector's principal witnesses. The objection was accompanied by documents including witness statements, plans and photographs, copies of all of which have been provided to me (and of course the Applicant).

4. The Pre-Inquiry Meeting

4.1. In order to secure the smooth running of the eventual Inquiry itself, on 11th December 2009 I held a Pre-Inquiry Meeting at the Council's Offices in Newbury. It was attended by the Applicant, the Objector's representatives, and some other interested persons. At the Pre-Inquiry Meeting a considerable number of matters were agreed between myself and the parties in relation to the procedure to be adopted at the Inquiry, and the production and exchange before the Inquiry of any further material to which the parties would wish to refer. Since those provisions were for the most part observed, 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, I paid an unaccompanied, informal visit to Pincents Lane in the vicinity of the application site on the day of the Pre-Inquiry meeting. Thereafter during breaks in the Inquiry itself, and given that it was held a few yards from one corner of the site, with the consent of the parties I made several unaccompanied visits to familiarise myself with the site itself, and its immediate surroundings. Finally, after the conclusion of all the evidence to the Inquiry, on the afternoon of 23rd June 2010 I made a formal site visit, accompanied by representatives of the Applicant and the Objector. In addition to entering, or at least looking at, all parts of the amended application site, we visited parts of the surrounding area which had been referred to in evidence, including the housing estates to the north, the public right of way just outside the east end of the site, and the Tilehurst Parish Council recreation ground to the south.

6. The Inquiry

6.1. The Inquiry was held over 7 sitting days, being 15th – 18th June 2010 (inclusive), then 22nd, 23rd and 25th June 2010. The Inquiry venue was the Pincents Manor Hotel, which is separated only by Pincents Lane from the western end of the application site.

6.2. With the express agreement of both main parties (i.e. the Applicant and the Objector), given at the Pre-Inquiry Meeting, all of the oral evidence to the Inquiry was given on oath or solemn affirmation.

6.3. I report on the evidence, and the submissions of the parties, in the later sections of this Report.

7. THE CASE FOR THE APPLICANT – EVIDENCE

7.1. As I have already noted in passing, the Applicant's original application was accompanied by documents including photographs and 'witness statements' (initially 44 in number), mostly in the form of letters. Further letters in support were subsequently added, as was an additional, somewhat more clearly drawn, map or plan seeking to show the intended extent of the application site. It has to be said that this second plan was noticeably different from the first one in several respects along its northern boundary. However, the parts of the site boundary to which this 'problem' applied were within the areas withdrawn from the application site by the Applicant during the course of the Inquiry (as noted in Section 2 of this Report above). Consequently the boundaries of the site under consideration by me (and the Registration Authority) are clear.

7.2. Thereafter (but still before my appointment to consider the matter took effect), the Applicant produced to the Council as Registration Authority in September 2009 a further substantial bundle of documentary material including plans, photographs, correspondence (and further statements by witnesses) etc. These were lodged in support of submissions in reply to observations on the application (with supporting material) which had been made on behalf of the Objector.

7.3. Subsequent to that, and principally following the directions given at the Pre-Inquiry meeting, the Applicant produced a further substantial amount of documentary material. This again included (but was by no means limited to) photographs and plans, and also included further witness statements, a good number of which served as 'proofs of evidence' for the oral evidence which was eventually given at the Inquiry.

7.4. I have read all of this written material, and also looked at and considered all the photographs, plans etc (indeed I also received some material on DVD, which I watched by myself – with the consent and agreement of both main parties). I have taken all of this material into account in forming the views which I have come to on the totality of the evidence.

7.5. However I made it clear to the parties, both at the Pre-Inquiry Meeting and during the Inquiry itself, that more weight will inevitably be accorded to evidence which is given in person by a witness, in this instance on oath (or affirmation), who is then subject to cross-examination, and questions from me, than will be the case for mere written statements, letters, evidence questionnaires, etc, where there is no opportunity for challenge or questioning.

7.6. With all these considerations in mind, I do not think it is generally necessary for me to summarise in this Report all the evidence contained in statements or letters by individuals who gave no oral evidence. They are broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing material stands out as being particularly worthy of having special attention drawn to it in this Report. The same

goes for other documentary material which was not the subject of discussion or submission during the course of the oral proceedings of the Inquiry. In any event all of the documentary and written material I have referred to is available to the Registration Authority as supplementary background material accompanying this Report, and may be referred to as necessary.

The Oral Evidence for the Applicant

What follows is not intended to be a verbatim transcript of all that was said, but rather an account of the main points addressed by each witness.

7.7. **Mrs Jean Gardner** lives at 5 Marling Close, Tilehurst, which is not particularly close to the application site. She was giving her evidence on behalf of Tilehurst Parish Council, which had sent a letter in support of the application to the Registration Authority. That letter (dated 7.9.09) was in the name of Mrs M. Coles, the Clerk to the Parish Council. It stated that the land had been extensively used by local residents for well over 20 years, with notices indicating that the land is private only appearing during the previous two years.

7.8. The letter also stated that the Parish Council had in the past tried (unsuccessfully) to purchase part of the site, and that the Birch Copse Ward of Tilehurst Parish is seriously underprovided with open space.

7.9. Mrs Gardner said she herself had had to deal with this land in her roles both as Parish Councillor, and as a West Berkshire Councillor. She did not from her own experience know whether local people had used the land as the application claimed; she did know people picked fruit and blackberries around it. It was not as easy now (she said) to get on the land as it once had been – it used to be very easy, there were too many accesses, leading to people getting on the land and behaving inappropriately. But the Police could not catch them. They (the Police) had been concerned however.

7.10. Mr (Alasdair) Barron was the only landowner who had had notices up saying 'Private'. The golf course, or Turnham's Farm Trust land, (she thought) had not had such notices. The golf course in her view could have been regarded as running down ever since it started.

7.11. People who used (or misused) the application land tended to use the Parish Council's land (the recreation ground to the south) as access – and they would damage the Parish Council's land too. The latest thing had been the starting of fires.

7.12. Mrs Gardner knew that it was important to use the right words if putting up signs to try to keep people off land. She had once been involved in a meeting with the Police and Alasdair Barron about notices and fencing to do with the land. Signs had appeared on the Blue Living (ex golf-course) land, bur mostly since Blue Living put them up in 2008.

7.13. 'Area 3' (the horse field) has fencing round all four sides, although some of it was put there in 2009 by Thames Water, where there had been a hedgerow before.

7.14. Tilehurst Parish Council (TPC) had bought its land to the south (the recreation ground) in 1972/3, and its own offices were put there on a small part of that land some 2 years later. The railings between the TPC land and the application land were put up some 2 or 3 years ago, to stop people crossing the boundary so easily. Some *"chicanes"* across the footpath access route between the two pieces of land had been there longer than that.

7.15. In cross examination Mrs Gardner confirmed that the letter of 7.9.09 had been the only document produced on behalf of TPC for the inquiry. That letter gave no detail about the past use of the land. Essentially TPC supports the objection to loss of the open space – although Mrs Gardner accepted that the merits of the site are not relevant to this inquiry.

7.16. It was not part of Mrs Gardner's own experience to say that locals had played on 'the hill'. That information had come from other people, including other councillors. It is difficult to see people on the land from the TPC offices, and the people Mrs Gardner had seen on the application land had generally been on the footpaths. However she did recall one occasion when she, with Mr Barron, observed someone walking across his field, not on a footpath. That was after the Golf Course closed, some 3-4 years ago.

7.17. The Golf Course, she acknowledged, did have planning permission, though she thought it did not observe all the relevant conditions. It operated from 1992 to 1999, spasmodically. People who used the land had told her the use was spasmodic.

7.18. People on motorbikes had been the main problem she had been aware of on the land – mainly since the closure of the golf course – though there had been a problem with itinerants on the land even before the golf course. The meeting with Mr Barron (and the police) about problems on the land could well have been in 2006, she thought.

7.19. There had always been a fence or hedge between the golf course land and the TPC land, but when it was a hedge it could be broken through easily.

7.20. Mrs Gardner had never seen any recreational activity by local people in the 'horse field' (Area 3) which was always securely fenced or hedged and used for grazing horses. As far as Mr Barron's other field further west (Area 1) was concerned, there had she thought always been *"private land"* signs, though sometimes they had to be replaced.

7.21. Then some other signs were put up following the meeting with Mr Barron and the police. The Police had told us (she said) there were specific words to use. There were no signs on the Turnham's land, only on Mr Barron's land. Mrs Gardner

accepted that (as photographs showed) some signs had appeared on the Turnham's land in 2006 – the Trustees might well have put them up – but they were not there by the time of the meeting with Mr Barron and the Police. She accepted that once they did appear the (Turnham's) notices were absolutely clear.

7.22. Mrs Gardner had seen Mr Anstead's written evidence, and the way he had gone through the background documentation. She had no reason to doubt the point that past TPC documents only ever referred to the use of *footpaths* on the application site, with never any reference to wider general use of the land. If that had been a genuine concern one would have expected it to be raised.

7.23. Before the golf course, the land was being farmed and maintained, and was being used productively – not like it is now. People would not have been walking through fields of hay; they would have been using the footpaths. Later on one of the footpaths had been moved because of conflict with golfing.

7.24. In re-examination Mrs Gardner said TPC had never received complaints about people using the open areas of the site for (low key, non-motorised) recreational purposes.

7.25. An application by the developers Charles Church in 1984/5 to develop housing on the site had not she thought included Mr Barron's land. Most of the hill back at that time was used for hay. She did not think there were many cattle on the land at the Charles Church period. She could not say when farming of the land had stopped.

7.26. To me Mrs Gardner said she thought the Turnham's land had probably stopped being used for hay just before it became used for the golf course. She never went on the golf course land while it was a golf course – she did not fancy being hit by golf balls!

7.27. The re-routeing of a footpath on the land had been from its going almost straight across the golf course (north-south) to its going right the way round the eastern edge.

7.28. ***Mrs Sally Jones*** lives at 5 Mayfield Avenue, Calcot. She has lived in the area for 51 years. She had used the land since 1975. She had previously filled in a questionnaire, and written a letter which went in with the application.

7.29. Latterly Mrs Jones uses the land for walking dogs. In the past she had used it for going there with children. There was one field at the top, where the gate is (she identified it as 'Area 1') which she did not normally go onto until 1997.

7.30. She has seen children playing on 'the hill' (which she called the site). There was a seat, which she thought was in 'Area 2', at the top of the hill, which is where she used to go. She had last used it in 1999. She and her family used to have picnics up there at the top of the hill, and perhaps play 'roly-poly', the children use bikes etc. She had used the seat there for reading.

7.31. She thought that when she used to use the land, the grass was slightly longer than it is now. She did not really remember too much whether hay crops were taken – 'we just used to go round the edge'. She did remember cows in the bottom field (later part of 'Area 4'). There used to be a stile by the stream, in the south east corner, in about 1981/2, when her son was a toddler – she could recall he started screaming there. Her son was born in 1979, her daughter in 1982.

7.32. She was never, at any time challenged for trespassing on the land. She had thought it was two old ladies who owned it. The only signs she had ever seen on the land are the ones which are there now.

7.33. In cross-examination Mrs Jones agreed that in her questionnaire she had said she had used *"all"* the land which was marked on the accompanying map. That was the area she was addressing. She accepted that included the Marches' land (Area 5), including their house and garden. She had never in fact used the house and garden – 'no-one has used that – it's someone's house and garden'. She said she had used all of the *land*, not someone's house and garden.

7.34. She then accepted however that she had never used Area 3 (the horse field), or any part of 'Area 5' – the Marches' garden and their paddock. As for the small 'Area 2', she thought the field where the horses are goes up to the fence line, and she had used the land up to (i.e. south of) that fence.

7.35. Around the point where Areas 1, 2 and 5 meet there is a gap which she had used, which had been open since 1997-8. She could be so precise because she knew which boyfriend she was seeing at that time, and she had been there with him. She didn't have to push through fences; there was a gap you could easily get through.

7.36. So before 1997 she had made no use of any of areas 1, 3 or 5. She was not sure exactly of the boundaries of 'Area 4'. The horses were behind the area where she used to sit. She thought Areas 4 and 3 met, with a hedge line separating them. She could feed the horses from the field where she was – this was earlier than 1997. It could have been 1996. The golf course was probably there. She did see golfers from time to time, but rarely.

7.37. She had a dog in 1996, and used to walk dogs there. She believed it was a golf course at the time, but not used a lot. Sometimes ten friends would meet, with dogs running all over the place. It was never very busy as a golf course; she just used it as land – although she would use the main path a lot.

7.38. In her questionnaire she had not mentioned golf as one of the things seen happening on the land – obviously it was a golf course – she had thought it meant other activities which the reader might not know about. She had known the golf course was there, but it did not stop her using the land. Towards the end a lot of the holes were overgrown. She had met golfers on the land.

7.39. She did not remember using Area 1 until 1997-8. But she knows she did use it at that time, and also ever since. The only signs she has ever seen are the ones now on the main Area 4. She had never seen any sign on Area 1, whatever route she had used to enter that area. She would have entered from Area 4, with the dogs – but she did also go there with the children, for a little picnic etc.

7.40. She had also ridden across the land about 15 years ago, with her daughter and niece. That would have been in Area 4, along animal tracks and the main footpaths; probably not on 'Area 1'. The last time she and the girls rode through, the golf course was there. They would have ridden on the main path only, not over the golf course. During the golf course period they did not ride often, and only on the main path.

7.41. Her (Mrs Jones's) activities on the land with her children took place when they were younger – when the land was farmed before the golf course was there; she remembers the cattle on Area 4. The houses right at the end of Starlings Drive were not there then, and there was a stile there to get into the field.

7.42. That area at the east had always been open land; Mrs Jones could not recall it having been divided up into smaller fields.

7.43. Mrs Jones had not supplied Mrs Lawrie (the Applicant) with any photos taken on the land. She never had a camera with her – she would not take one on a local picnic. In those days she would only take a camera with her for special events and on holidays.

7.44. In her questionnaire answer she had said she had seen a notice on the land, but it was not clear what land it referred to. In fact (she said) she had seen two signs, one at the end near the Pincents Manor Hotel, and one over on the other side, near the stream, at the east end. She could not recall when she first saw those signs; it was probably 2-3 years ago.

7.45. There are (she said) lots of paths on the land, eg. at the back of Sainsburys, yet very few signs, and she has never seen anyone on the land stopping other people from using it. The two signs she has seen say something like 'Private Property', she does not know the exact wording.

7.46. She personally had not objected to the Charles Church development proposals in the 1980s; nor did she object when the application was made for a golf course on the land.

7.47. 'Area 1' (Mr Barron's western field) she (Mrs Jones) had used regularly, probably at all times of the year. But it was not one of the main fields she liked using. She has been over to the fields (i.e. the application site) regularly, and in fact does use Area 1 quite regularly nowadays. She has been over to Area 1 recently, but not seen signs there. She also visited Area 1 in 1997-8, but not much. Between that time and 3 to 4

years ago she was not sure how much she had used field 1. Over the last 3 to 4 years, since the golf course closed, she had used the whole area more.

7.48. In re-examination Mrs Jones said she personally could not recall being with her children and watching ponies in the top field (Area 3); but when she sat on the seat in or near Area 2 she did see people riding in that field.

7.49. She personally had used all the different approaches or entrances to the application land regularly at different times over the years.

7.50. To me Mrs Jones said that her recollections of the bench at the top of the land were from the golf course period. When she had gone with her children she would take a rug; they were not sitting on a bench then, but they did quite like being at the top of the land. She could not remember if the bench had been there when her children were young.

7.51. ***Mr Christopher Jones*** also lives at 5 Mayfield Avenue. He said he had known the site, and used it, since 1996; in fact he had known it before in the sense of having seen it. He had played golf on the land a couple of times, and nowadays he uses it to walk dogs, and to run.

7.52. When he had played golf, he did see people on the course, not necessarily sticking to the footpaths. Nowadays he usually visits the land in the evenings, usually getting in via the Parish Council's playing fields, where there is a gap near the children's play area. Or else he gets in near Starlings Drive where there is a way in. He has on one occasion walked across the land to get to Sainsburys, but normally he is walking dogs.

7.53. When there with dogs he throws a ball or sticks, and always sees others doing similar things. The level of use of the land has stayed roughly the same, or increased a bit. He saw a horsewoman on the land 4-5 weeks ago. No-one had ever challenged his use of the land.

7.54. He did recall seeing two signs on the land, but had never read them; he had assumed they would be a Thames Valley Police warning about (not) using quad bikes.

7.55. In cross-examination Mr Jones reaffirmed that he had known the land since about 1996. He had had a pub in Upper Basildon, which he left in August 1996. He had been aware of the land before that, but had never used it.

7.56. It was twice he had played golf on the golf course; his other use for jogging and walking dogs would have been since about 1997. The use of the area by local people has not changed greatly over the years; even when the golf course was in use a number of people would be there walking dogs, or just walking. Perhaps there had been a slight increase in people using the land since the golf course closed. He (Mr

Jones) does not use the land during the day, but in the early morning or in the evening.

7.57. He had not been a member of the Golf Club; he had gone there with a friend; it was on Area 4, not Field 1 as far as he recalled. He was not sure if he had seen any signs on field 1. He had seen a sign in the western part of Area 4, near the Parish Council land. He had never used Field 3 (the horse field). 'Area 2' is very overgrown; he believed the bench referred to had been in Area 2, but it is overgrown with brambles.

7.58. Nowadays he walks his dogs quite regularly in Field 1, in fact he uses areas 4 and 1 on a regular basis, and has done since 1998-ish; he had not changed his pattern. He did see people (other than himself) playing golf on the land. When he played golf there, he was told to be careful if people were in the way.

7.59. He could not remember where he was on the golf course when he saw other people walking there. He could not recall seeing animals grazing on Mr Barron's Field 1.

7.60. He had objected to the (recent) planning application for development on the land.

7.61. ***Councillor Joe Mooney*** lives at 15 Childrey Way, Tilehurst, and is a West Berkshire District Councillor. He said he had lived 30 years in the locality, and knows it well. The application site is in his ward (Birch Copse).

7.62. He had first used the land when his children were young, for walking and seeing wildlife. They used to sit on the hill, take a picnic and enjoy the view. Access would be gained via the TPC land, through various gaps in the hedge. He never saw any signs on the application land; in fact he had thought it too belonged to the Parish Council.

7.63. He had certainly seen lots of other people using the land, and he himself had covered all the land over the years. When it was a golf course he himself had used it to play golf. He never saw people on the greens, but did see people on the course – which was quite dangerous. The golf course was in operation for about 10 years, and had 14 holes, he thought. When using it he would always see some locals using the land.

7.64. In cross-examination Mr Mooney said that for a long time he had not known there were footpaths on the land – he thought people just walked on the land. He first became aware of footpaths on the land when there was an application to move one – prior to that he had not known there were footpaths as such.

7.65. He did not recall seeing cattle or animals on the land when he had used it. His use would have been more in summer than winter, at least when it was weekend use.

7.66. When he first knew the land it was just a piece of open land, although he did notice that hay was occasionally cut. However he noticed no changes when it started to be

used as a golf course. He thought that since the golf course use ceased the land had become somewhat wilder.

7.67. It was, he acknowledged, difficult to think back – but he had always seen a number of people walking dogs and children at various times. However he did not count numbers. He had never taken any photos of past use of the land.

7.68. He had been quite familiar with the golf course, but had no involvement with its landscaping. It was rather a compact, or 'tight', golf course layout. Nevertheless he thought there were others using the land than those playing golf – e.g. children, or people with dogs. It was somewhat dangerous at times.

7.69. He could specifically remember seeing people near some oak trees – people coming down from the caravan park or thereabouts. Some would be going to the Parish Council's recreation ground, some using the land as a means of getting to the supermarket.

7.70. He recognised that Ms Cox's aerial photo of March 1998 showed 'the Hill' – i.e. 'Area 4' – as effectively taken up by the Golf Course – the Hill was covered by the golf course use. The Golf Course had no proper clubhouse on the land – for a while there was a portacabin 'kiosk' for the Club on the land.

7.71. His belief was that the golf course was abandoned in 1996 – that was his recollection without going back through the records. He had not looked at the documentation. He accepted from the aerial photographs that the land may well have been still laid out as a golf course in 1999. There was a clear difference between the 1999 and 2002 aerial photos. So the bunkers would still have been there in 1999 – however he still thought the golf use ended in 1996.

7.72. He did not recollect the golf course ever being busy. There would typically be one or two people playing – if there had been a great number the owner would not have gone bust.

7.73. He did recall seeing some signs on the land latterly, but many access routes do not have signs. He could recall a handwritten sign, nailed to a tree in land as you came down Pincents Lane, saying something like 'Private, keep out'. He accepted this was in Mr Barron's field no.1. He had visited Field 1 in 2006 for a meeting (with a policeman), to discuss motorcycle trespass; also a car had gone through the fence onto Mr Barron's land. However to see Mr Barron's sign you would have to be in the field.

7.74. He (Mr Mooney) had never used Field 1 for recreational purposes, and had never seen others using it, until perhaps recently. He had never seen people using the land in Area 5 (Pincents Hill House and grounds). Area 3 is a field grazed by horses – he had taken children to look at those horses from the gate, but never been in the field.

He had seen people in the field, but they could have been the people who owned the horses. He could not assist about 'Area 2'.

7.75. He had never noticed any signs when Area 4 was a golf course, but was aware that some signs had appeared latterly.

7.76. He (Mr Mooney) had been a ward councillor for the past 21 years, from the late 1980s – so he was a ward councillor when the Charles Church application was made. He personally had had discussions with the officers at West Berks Council (under its then name of Newbury District) about it. Local people had expressed concern, and after the planning committee had refused the application a public meeting was set up for local people to discuss the issues – there was quite a significant response. The officers said we would lose the appeal, and Charles Church would win – but they did not. He accepted that there was no reference at the appeal to 'local public' use of the land; also that the appeal decision was in 1988.

7.77. As for the Golf Course planning application, both he and Tilehurst Parish Council had made comments about it. He in 1992 had welcomed the scheme as being something which would protect the land, as did the Parish Council – although there were concerns raised as to the impact on the footpaths.

7.78. The context of the welcome was that golf course use would protect the land for the foreseeable future, which was what local people wanted. Local people did not want development here.

7.79. In re-examination Councillor Mooney confirmed that at the time of the Charles Church inquiry local people had been desperate to keep the land permanently open, as the last piece of really open land in the ward. Recreational (golf) use would preserve it as an amenity, people thought.

7.80. He told me that his home in Childrey Way was about half a mile north east of the nearest point on the application site. He had always lived there for the whole time since the 1980s.

7.81. ***Mr Ken Smith*** lives at 55 Farm Drive, Tilehurst. He had known this land for 31 years. He first went on there with his children for recreational purposes – mostly walking. His children were interested in wildlife.

7.82. He lives about 100 yards from the northern entrance to the site. There used to be a wooden stile to get in, where there is a gate now. There were no footpaths back then (around 1980), he just walked across fields. He had his first dog in 1986, and walked all over the land, seeing others do the same. His wife took the dog in the morning, and he in the evening.

7.83. Later he walked the dog on the golf course. He did see golfers, but it was never very popular; not that many played there.

7.84. Back in the early days he vaguely remembered hay-making. He did remember cattle – he had had a problem with them - they had got out and onto his front lawn. However cattle had never prevented him from using the field.

7.85. He had never seen a sign on the land until recent years, nor ever been challenged. He had been told that it was two old ladies who lived in the West Country who owned the land. The Golf Course was built in the 1990s, but no longer used by the end of the '90s.

7.86. In cross-examination Mr Smith said that although he lived to the north he had walked over virtually all the land. He had never used Area 3 – the horse field. That was always fenced off. Any people in there were tending the horses, he had assumed.

7.87. He had walked across Mr Barron's field No.1, both currently and with the dog he had had from 1986 to 2000. He never saw any signs in the field until recently – except for the ones there now. He would get into Field 1 from 'down the hill', and walk around the whole area.

7.88. He thought he would probably have used Area 2, but was not sure if it was fenced off. He thought he might have walked on it, but had no specific recollection.

7.89. As for Area 4, he thought he had last seen cattle there in about 1986, when he first had his dog. They were still there then. He had noticed no general change in the way people used the land over the years – neither in the way the land was used nor in the number of people using it. However he accepted that the Golf Course represented a change in the pattern of use of the land. It was a 'tight', compact golf course.

7.90. As for the DVD which he had produced, it shows people mainly (but not only) on the footpath, with dogs running round. His wife took the video – it would have been some time after 9 o'clock-ish, when she met others there with their dogs.

7.91. Some photos he himself had produced of dogs in Area 4 were from before the Golf Course, and showed his dog.

7.92. ***Mrs Karyn Cook*** lives at 3 Barley Walk, Tilehurst (close to the north of the application site). She had written a letter dated 8th May 2010. She moved into the area in 1988, and has used this land since then, with her family, also with her mother-in-law, and friends.

7.93. They use the footpath and cut across to the Birds estate. She used to take her children there, e.g. for sledging in winter. When the children were small they used the land a couple of times a week, to get down to *"the park"* (the Parish Council recreation ground).

7.94. She could not remember much of seeing golfers; she never saw hay-making, and her only recollection of cattle was of once seeing cattle pass in front of her house to get to the field.

7.95. In cross-examination Mrs Cook said she had not filled in a questionnaire, having been away at the time.

7.96. She had walked across the land using the paths, to get to the Parish Council's land, which had a play area. So, when the Golf Course was in use, she and her family would cross it on the paths to get to *"the park"*.

7.97. She had often seen horses in Field 3, but never used it, nor seen others doing so, apart from the horse owners. She thought she might have walked through Field 1 once, to get to the Sava Centre.

7.98. She used to let her children go out and play. She knew they had gone kite flying, but she never saw it, and it might have been on the Parish Council land.

7.99. In re-examination Mrs Cook said she did not know if the route she used to cut across to the Birds estate was technically a footpath; she was sure her children would not have stuck to the path.

7.100. ***Mr Antony Greenfield*** lives at School Bungalow, Curtis Lane, Calcot. He had signed a letter dated 25th March 2009, and filled out an evidence questionnaire.

7.101. He had lived in the area since 1991, and used the land on a regular basis for walking his dog – he has had two dogs – the current one is the second. He is very keen on wildlife, and likes to show his grandchildren the wildlife on the site, e.g. badger latrines.

7.102. He had made several friends through meeting people using the land, where you can get fresh air, chill out and relax. He did not stick to footpaths.

7.103. He could remember the golf course use. It was very 'hit and miss' from the start. Initially it has seemed it would be something special, but it started to go down rather rapidly. It began its demise in about 1995/6, he thought.

7.104. Many people played on the course unofficially, and there was also a yobbish element, and problems with people getting on to the land down at the western end.

7.105. The only time he had really been aware of any signs on the land was about 2 to 3 years ago, when 3 or 4 signs appeared on Blue Living's Land – Area 4.

7.106. He had got to know there were three footpaths on the land because they had been referred to in planning applications. Before that he had not been aware there were any official footpaths. Many paths on the land were made by motorcycles. Indeed

the police were concerned, because both cars and motorcycle carcasses were burnt out on the land. The police were involved several times, because of local complaints of motorcycle use late at night, or at weekends. For example, on about 1st May 2010 the Police intercepted a motorcyclist on Pincents Hill – this problem has been going on a long time.

7.107. He (Mr Greenfield) had never been approached by the owners of the land – he did not know who they were.

7.108. There were several footpaths on the site. There was originally one across the site, going from near the Tilehurst Parish Council offices to Farm Drive. It was later moved to become Footpath 15, but people did use the footpath on the old line even when it had been moved.

7.109. He recalled that there had been an accident on the land, when a motorcyclist without a helmet was injured. An air ambulance was called. He thought the signs on the land followed that incident 2-3 years ago, and were put up as a protection.

7.110. Then once there were travellers on the site, on Footpath 13. They were there for about 3 weeks. It was about 3 years ago, and caused many complaints.

7.111. He said he (Mr Greenfield) had used Field 1. He did see a sign, over by the gate, on an oak tree, facing inwards, half way up the tree – not somewhere he would be looking. There are other signs, but (he thought) you would be hard pushed to see them.

7.112. In cross-examination Mr Greenfield said he had been up to the edge of Area 5 (the March land), but not onto it. He had also not been on Area 3 (the horse field), but up to the edge where you can view across into that field, and had done photography into and across that field. He does not date his photos, but has plenty of photos of badger latrines, etc. However he does not always carry a camera when he visits the land.

7.113. The reference in his letter of 25th March 2009 to snowy winter conditions would be to somewhere near footpath 20 on the northern part of the land. He has also seen people flying kites on the land, again at the top of the hill in the northern part, near Farm Drive, in around 1995/6. He just saw it on the one occasion.

7.114. There was someone who flies model aircraft. He uses the Parish Council land as well, but Mr Greenfield had seen him on one occasion, in about 2000, doing it on Area 4 too.

7.115. He has seen people having picnics on Field 1, and also once saw a couple down there in a tent, in the eastern corner, within the last year or so.

7.116. The Golf Course closed in 1995/6, to his recollection. He had nothing to do with the Golf Club, so would have no way of knowing the use had gone on to 1999. He

accepted the Golf Course managers would have wanted to keep other people off the course.

7.117. To me Mr Greenfield said that there had been various changes on the land over the years – barbed wire had appeared, fence posts had rotted.

7.118. By a tree on the eastern side of Field 1 there is virtually a footpath entering that field. Deer would have gone through, and people have then followed – also motorcyclists. On the other hand he did know Field 1 was cut for hay once or twice a year.

7.119. ***Mr Brian Davies*** lives at 2 Farm Drive, Tilehurst. He moved into the area in 1991. [He had completed an evidence questionnaire]. He said he and his family and neighbours and lots of people had used the application site. They would get on via the end of Farm Drive (where the kissing gate is).

7.120. He did play golf on the Golf Course a couple of times. During the Golf Course period, he said people would mainly be walking through – as you go to the top of the course, there is a central path. People would not be picnicking on the Golf Course.

7.121. However he had taken his children on to the site for picnics in their earlier years. While the Golf Course was there (he said), it was more difficult to use the amenity. It was used, but not in the same way.

7.122. Of late there is a constant stream of people down Farm Drive to get to the land. He (Mr Davies) did not recall ever seeing signs on the land.

7.123. He said he had walked on Area 1 (Mr Barron's field). He did not recall ever seeing either cattle or haymaking on Area 4. No-one had ever told him he was trespassing on any part of the site.

7.124. In cross-examination Mr Davies confirmed he had signed his questionnaire on 24th April 2010, and had said in it that (apart from the footpaths) he used the *"main field overlooking the Savacentre"*. He agreed he had not used the horse-field Area 3. He was not sure if Area 1 had been part of the Golf Course.

7.125. He would access via the Farm Drive kissing gate, then go down the site into Area 1, which he believed was not fenced. He would not have jumped over fences to get into Area 1. He did not recall that you had to cross a fence to get in there.

7.126. He had produced some undated photographs of his children in Field 4. In 1991 it was fields with no development, an area one could readily walk on, e.g. to get down to the playing field.

7.127. He thought the golf course was put in around the late 1990s, but he is not good with dates. His eldest child was 7 when they moved to the area, and began using Area 4. They have had four more children since, and the youngest is now 14. Their usage of

the land would have dropped off in the last four years, because children are not so keen to go there after reaching the age of 10. However he had produced three recent photographs of children using Area 4 in the snow this last winter.

7.128. To me Mr Davies confirmed that the network of footpaths within the site had been like it is now for many years. He also confirmed that he had never noticed any signs on the site, even on his walk through the site on the way to give evidence at the inquiry.

7.129. ***Mrs Julia Smith*** lives at 55 Farm Drive, Tilehurst. She had known the land since 1979, and used it for going there with her family, dog walking, and with Brownies.

7.130. The Brownies in summer would have their meetings outside - looking at wildlife, and playing games. This could be on the top part of Area 4 near Farm Drive, but sometimes down lower too.

7.131. The separate field (Area 1) originally had donkeys and ponies, but became open when the Golf Course opened in about 1991. If you wanted to dodge the golf balls you climbed over into Area 1. The donkeys and ponies then disappeared – "too many wild balls".

7.132. A group of about 10 dog owners would meet on the land, and no one ever told Mrs Smith or the others that they were trespassing. She had never seen any signs until the recent large ones erected a few years ago, possibly when Blue Living took over.

7.133. At the bottom of Farm Drive there used to be a farm gate with an old wooden stile. The farmer used to complain because cattle got out – so it was changed to a metal kissing gate.

7.134. In cross-examination Mrs Smith said she had been involved in the Brownies between 1980 and 2000. They used to meet at Springfield School, but during good weather would meet in Farm Drive and go on the (application) land. The Golf Course, she thought, had lasted from the end of 1991 to the late 1990s.

7.135. However there were never very many golfers, and they did not stop her use of the land – there were always children riding bikes in the bunkers, which was a major complaint of the green-keeper. A footpath was moved for the sake of the golf.

7.136. The Golf Course did cover the whole of Area 4, but you just kept your eyes open if you saw someone playing. She (Mrs Smith) had gone on the land at least twice a day with her dog, morning and afternoon. She had produced photos of dogs on the land in the pre-Golf Course days.

7.137. The Golf Course made no difference to the way the land was used, but its arrival was when 'we' started to use the other fields to get away from the golf. There was a tee-off point by a bench, and 'we' used to sit there.

7.138. During the Golf Course time, there was still space at the top where we (she said) would take the Brownies – not onto the Golf Course itself.

7.139. As for Field 1, Children made gaps in the fence, about the time the Golf Course started up. There was a gap in the bottom half of the east side. She (Mrs Smith) assumed it had been forced through by the children, as they often played in there. She herself had been onto Field 1 before the Golf Course closed – she never saw any signs there when she walked through. It was just a field with lots of rabbits. Originally it had donkeys and ponies, but not while the Golf Course was there.

7.140. As for signs on the main golf course area, she (Mrs Smith) saw them go up in about 2000. They are the only signs she has ever seen on any of the land. There are about 3 of them, and at some stage she had read them.

7.141. Mrs Smith had never been in Areas 3 or 5; Area 2 she believed was very bushy, and she had not been in there.

7.142. In re-examination she confirmed that the bench on the land which she had sat on had always been part of the big field (Area 4).

7.143. ***Mr Gus Higgins*** lives at 4 Cowslip Close, which is off Farm Drive, Tilehurst. He had moved into the area in 1974, but on the other side of City Road. Then in 1978 he moved to his present house. [He had completed an evidence questionnaire].

7.144. His children were then very young, and the application site was the green space they used. They also had a dog which they walked there twice a day. This was not necessarily on footpaths, and other people used the land too. They were never told they were trespassing.

7.145. Signs appeared three, or four, or five years ago, saying the land was private, but people could use the paths.

7.146. The Golf Course started up in the early 1990s. Mr Higgins had no recollection of cattle on the land before that, nor of walking through anything that seemed like a hay field. He was sure he and his children had used Field 1 as well – always, mornings and evenings, and in the summer holidays.

7.147. In cross-examination Mr Higgins confirmed that he had used the land in the 1980s – but had never used Areas 3, 5 or 2. In the 1980s he would typically enter via Farm Drive, into what was an open field space. He could remember the southern tip of Starlings Drive being built, perhaps 10-14 years ago.

7.148. He did not recall fencing ***within*** the eastern part of Area 4 in the 1980s. It was always open (he said); you went down to where the Golf Course was; he could not remember before that; it was difficult to remember.

7.149. In his questionnaire he had answered that the general pattern of use of the land had remained the same during the period he had used it. He accepted that a Golf Course had been there for most of the 1990s – but he saw the Golf Course as being part of the land; it did not stop people using the land. You would stick to the footpaths during the Golf Course period.

7.150. He could recognise a noticeable difference between Ms Cox's 1998 and 2002 aerial photographs.

7.151. As for Field 1, the Golf Course was always further down and went round Field 1. He had not really used that field other than in the last couple of years – in fact he had never really used it.

7.152. In spite of his questionnaire answer, he did in fact have knowledge of signs on the land: "They allow me to use the land, but using the footpaths" (he said).

7.153. In re-examination Mr Higgins said he thought the signs were an acknowledgement that people could use the footpaths. Some of the paths are marked, and others have been used by locals for very many years – they are all very well-used tracks.

7.154. As for Area 1, it is well fenced to Pincents Lane, but has no fencing near the main path.

7.155. ***Mrs Ann Allum*** lives at 3 Barley Walk, Tilehurst. She had filled in a questionnaire and written a letter. She had known the land for 31 years, and used it mostly because she had a dog when she and her family moved to where they are now. Then they had grandchildren, and used to go for nature walks on the land, via Farm Drive. There were paths on the land where people walked and left tracks. She had never used Field 1.

7.156. She does not know anyone else who uses the land; her daughter and son-in-law do go down there occasionally – but she doesn't generally see anyone else on the field when she goes for a walk.

7.157. The Golf Course started in the early 1990s, and lasted two or three years (she said). While it was a Golf Course, she did not walk on the Golf Course part. No one has ever told her that she was trespassing on the land. She has seen a large sign on the land (near the Inquiry hall) which *"you can't miss"* (she said).

7.158. In cross-examination Mrs Allum said she mainly used the end of the land near her house. She usually goes around the land rather than across it. She would occasionally see someone else there. She kept above the Golf Course itself when the land was in that use.

7.159. In re-examination Mrs Allum said the Golf Course could have been there longer than three years. When the course was in use, she would follow a track towards the east end at the back of Starlings Drive.

7.160. ***Mrs Ann Osborne*** lives at 2 Cowslip Close, Tilehurst. She had moved to the area in 1982, initially to Stratford Way, just across City Road. Then in 1992 she moved to Cowslip Close. She and her husband had completed evidence questionnaires.

7.161. She and her family had used the land to walk the dog, taking children there, flying kites, walking to Calcot – generally enjoying the area. They (her family) would wander all over, especially if walking the dog or playing with children. She would use the land at least once a day when she had a dog; otherwise one or two times per week.

7.162. Other friends and neighbours would use the land too, enjoying the area, walking around. The Golf Course did not change this use. There were not very often golfers there. When they were there 'we would give way to them, or them to us'.

7.163. She and her family walked on Area 4 or Area 1. She did not remember Area 1 ever being fenced in. She had never seen signs on either area 4 or area 1; she was not sure if she had used area 2. No-one had ever told her she was trespassing.

7.164. She believed her children had gone on to the land with their school, while at Springfield School. Also her husband took football training down there (on the application land).

7.165. In cross-examination Mrs Osborne clarified that she claimed no use of areas 2, 3 or 5. She had never seen signs on Areas 4 or 1. She did not know that there were four big signs on Area 4. She had never seen signs on trees in Area 1 either.

7.166. After some uncertainty Mrs Osborne thought she could recall that Area 1 was once fenced, but that you could get in without having to climb over the fence. That situation has never changed since 1982 (she said).

7.167. She had never seen horses or cattle grazing on any part of the land (areas 4 or 1), and (loosely speaking) she was on the land every day from 1982 to 1999. Area 4 was just a field in the 1980s – she could not remember hay growing there. She had produced no photographs taken on the land.

7.168. She was happy to use the whole area even when it was a Golf Course – she could not remember that ever being an issue. As for her children's kite flying: they were born in 1975 and 1983, so it would have been before the Golf Course period. She could not remember how often her children would have flown kites. They would do it anywhere on the hill – starting off at the east end, then wherever the children ran. She would not have walked all the way down to the Parish Council land to fly kites.

7.169. In her recollection the field was just rough land, she did not recall any cattle on it. She personally never saw the football training which her husband did on the land.

7.170. ***Mrs Patricia Roffe*** lives at 1 Barley Walk, Tilehurst. She moved to the area in October 1978 [She had completed a questionnaire].

7.171. All her family have used the land. She had a black Labrador dog which took her all over the land. She would enter through the kissing gate and go out via the TPC land, or via Starlings Drive – but you can get out in lots of places.

7.172. She would say she had used all the areas, but had not been in Field 3 (the horse field) or Area 5 (the March land). She regularly goes to the land, even though her dog has now died.

7.173. She recalled that her daughter at one time got stuck up a tree on the land. She had been scared to get down because there were cows in the field. That was in the mid-1980s.

7.174. She had seen horses pass along Farm Drive, but never seen them actually on the land. But she had seen other people on the land – you would smile and chat if you saw them there; there was more of a community feeling then.

7.175. The Golf Course when it was there did not stop her (Mrs Roffe) using the land. She and the golfers would acknowledge each other, and either they would wait or she would. She never saw any signs except for one at the bottom.

7.176. In cross-examination Mrs Roffe said that when, in her questionnaire, she said she had used the *"whole area"* on the accompanying plan, she did not understand the plan, she is not an architect. She thought Area 4 on the current plans was the Golf Course, and imagined that Area 1 was part of the course too – she had no recollection of it being fenced off. She would have gone through Area 1 (she said).

7.177. She would imagine the first time she went on the land was in 1978. She has no recollection of any area ever being fenced off, or of going through such an area, or of seeing any signs. It was all open land in 1978.

7.178. Her daughter told her that she went on the land with friends to play, and had got stuck in a tree because of the cows. Her daughter had told Mrs Roffe that recently.

7.179. She (Mrs Roffe) did not personally ever see cattle in the field; she would cross the land all over, even in the 1980s. There may have been cows there until the mid-1980s, but she cannot remember them.

7.180. She could not recall seeing people keep to the paths on the land. Whenever she goes there she always sees several people. And when she is at home she sees many people

heading that way. She thought there may well be more people using the land nowadays than before.

7.181. She has recently noticed a sign at the bottom of the land, but she would not be looking for other signs. With reference to one of the other sign positions she said: *"whenever I pass that I'm looking in the other direction, going out of the field"*.

7.182. Although she had seen others taking photos while on the land, she personally had never done so; it was not something you did over the years.

7.183. In re-examination Mrs Roffe said she thought it was only in the last 3 years that the TPC recreation ground had been fenced off on the northern side.

7.184. To me she said that if one went off the paths on the site one had to watch one's step more closely and carefully. But nevertheless she used to go off the paths and cut across. During all the years that she had a dog, she would throw a stick and go diagonally across the land.

7.185. ***Mr David Osborne*** lives at 2 Cowslip Close, Tilehurst. In 1982 he moved to Stratford Way, North of City Road; in 1992 he moved to Cowslip Close. He has completed an evidence questionnaire.

7.186. Mr Osborne said he had used the application site for a number of reasons: recreational, observing nature, and also for gaining access through by the footpath. He had used the land for dog walking, and also with his children on bicycles, and for flying kites. His eldest son had used the golf bunkers as a BMX bike ramp.

7.187. He (Mr Osborne) used to gain access to the site at the north via the kissing gate, and go out at the bottom into the Parish Council's land. He has also used the site for running up and down the hill for football training – not for actual football. He said he knew that boy scouts also used to use the land.

7.188. When the golf course was there he said he did not stick to the footpath, either when walking dogs or when he was there with his children. He had no recollection of any fencing ever being on the land. He did remember some fencing around the TPC land around 1997/98. Personally he did not recall cattle on what became the golf course land.

7.189. He had never seen any signs on the land apart from the one close to the inquiry venue. No-one had ever told him he was trespassing on the land. In cross examination Mr Osborne said that the area he had mainly used was the golf course area, Area 4 on the plans, but he had also used Area 1 as well. There was no fencing around Area 1; there were some hedgerow bushes but no fence. He got into field 1 through a hole in the hedge. He could not be specific as to when he first went onto Area 1. He had seen no signs on Area 1 either.

7.190. He acknowledged that in his evidence questionnaire he had said that the pattern of the use of the land had been the same throughout the period he had known it. He acknowledged that during that period the golf course had in fact come and gone. He had seen the diggers when they were making bunkers and mounds for the construction of the golf course. He remembered that there were two fairways in the top part of the land, but there were no 'out of bounds' signs there during that time.

7.191. He acknowledged that there were footpaths on the land, but said that he had often seen people, particularly in the eastern end of the land, who were not specifically on the paths. Nobody had ever told his children off for using the golf course land. He accepted however that some people would not have liked to walk on the golf course itself.

7.192. He had seen people flying kites on the land, and indeed he and his children did so on more than one occasion. That would have been in Area 4, but he could not say where specifically.

7.193. He and his family would quite frequently cross the land to go down and see friends that they had down in Calcot. There were footpaths on the land down towards Calcot, but he would not necessarily use them; he might cross the land itself too.

7.194. His eldest son had used the golf bunkers as BMX ramps fairly regularly. This was more at the beginning than at the end of the golf course period because it was a novelty.

7.195. In Area 4 he had never noticed any signs other than the one at the bottom of the land near the inquiry venue. His dog walking on the land was before any of the signs were erected, but he personally did not recall ever seeing any of the present signs. Nor had he ever seen any signs at all in field No.1.

7.196. As for football training, they did not go to the application land every week. In fact they trained mainly elsewhere and would use this land only occasionally in the earlier part of the season. That would have been in the 1997 – 2005 period. He knew this from various football trophies etc. For the purpose of that training they would be running around the outside of the land, effectively around the perimeter of Area 4. However they did run all over the place as well. When they ran across the land he did not recall encountering any golfers; certainly he did not recall seeing any golfers such that they interfered with the training. Those doing the training would probably be on the land for about half an hour at a time. He had never asked anyone's permission to do this on the land, even when it was a golf course. They always went in via the kissing gate.

7.197. In re-examination Mr Osborne confirmed that he had used Area 1 on more than one occasion.

7.198. ***Mrs Joan Lawrie***, the Applicant, lives at The Cottage, Pincents Lane, Tilehurst. She herself did not claim long familiarity with the application site but gave evidence in order to produce (in a formal sense) and identify the collection of supporting documents which she had provided in several files for the benefit of the inquiry.

7.199. In cross-examination Mrs Lawrie said that she had moved to the area in 2008, at approximately the same time as Blue Living's purchase of most of the application site. She has no direct knowledge of the history of the site; nor indeed can she herself walk the site, because of health problems. In fact she has only a very limited personal knowledge of the application land.

7.200. She acknowledged that the village green application was the *"last throw of the dice"* to try to stop development on the application land. But the other half of the purpose of the application (she said) is to keep the amenity land available for local residents. Local residents particularly want to keep the big green open space near their houses. Local people had been content when the golf course was operating on the land. But since that time, local people have taken issue with the signs that have been erected on the land trying to keep people off.

7.201. The application site chosen had been largely based on the same site for which a planning application had been made for residential development. She had taken the view that the application site could not sensibly be broken down into separate parts. That had been her understanding from the evidence given to her by local residents, because she personally had not walked the land to examine it.

7.202. She explained why she had continued to include Area 3, the horse field, in the application. She had understood that one could make a case that one was using land for 'lawful sports and pastimes' merely by looking over the fence or hedge for the purpose of nature watching and observing horses in the field. It was only on that basis that she had included field 3, on the basis that it had been used for *"spectator sports"*. She does not rely on any actual recreational use of Area 3 itself. Indeed she accepts that it is a quite securely fenced area.

7.203. As for the remainder of the land, by which she meant Areas 4, 1 and 2, her view was that most people do not distinguish between the various parts but use the whole area, at least that is what they say. Mrs Lawrie's understanding is that people have said that they regularly sat on a bench which was in Area 2, for example. The plan used with the evidence questionnaire was for indicative purposes, and in fact it had a caveat written on it saying that not all the land shown was actually included within the village green application. Lots of people are very unclear about the full extent of the land, for example many people even at the planning inquiry or at the village green inquiry itself have difficulty in telling exactly where Pincents Hill is (she said).

7.204. It might be true that very few of the letters people had written make reference to the use of the land as a golf course. Mrs Lawrie's view was that this was because people had still used the land as if the golf course was not in fact there. She acknowledged

that the question whether the golf course use had fully observed all the conditions on its relevant planning permission was an academic one as far as the village green inquiry was concerned. She fully accepts that use as a golf course did take place.

7.205. She had produced very many photographs, but she acknowledged that she did not in general know the date of them. She had generally asked local residents for photographs, and lots of them came through her letterbox. It had not occurred to her to ask for dates. Some of the photographs show foliage very much lower than it is now, so they are clearly of some age. She acknowledged that she had not produced any photos showing kite flying, although she thought she had seen one. She had not produced any photographs showing picnics, nor of people flying model aircraft. She did know a gentleman who uses the land for paragliding, although she has no photos, nor indeed any statement confirming that. There are no photographs of people blackberrying on the land.

7.206. She had produced about 5 photographs of people horse riding on the land, although she did not know when those photographs were taken. Two of those photographs clearly showed girls riding horses on Mr Barron's field No.1. She accepted that Mr Barron had always maintained that land and cut the hay on the field.

7.207. In general Mrs Lawrie accepted that a fair number of the photographs she had produced had been taken at about the time the village green application was made. They had been taken to show that the land was still being used at that time.

7.208. It was true, she acknowledged, that no objections to the planning applications on the land in the 1980s had been made on the basis of loss of recreational use. Nevertheless in her opinion amenity and recreation are the same thing.

7.209. She accepted that the appeal decision of November 1988 on a planning appeal for residential development by Charles Church Developments had clearly recorded objections based on loss of amenity to local residents, but said nothing about loss of recreational space. Indeed Mrs Lawrie accepted that none of the historical documentation that she herself had produced referred to active recreational use of the land. It was the evidence of local residents that Mrs Lawrie relied on to establish that use.

7.210. Mrs Lawrie acknowledged that in the completed questionnaire produced by a Mrs Debra McCulloch (accompanying an affidavit sworn by Mrs McCulloch) it had been stated that in approximately 1985 a farmer used to keep cows in the field [presumably Area 4] and Mrs McCulloch went on to say that she thought the farmer might have discouraged the use of the land.

7.211. Mrs Lawrie said that on September 29th 2009 she herself had seen Mr Barron putting signs up in his field which were not there before. She heard hammering, and then a slight altercation between a neighbour and Mr Barron. She (Mrs Lawrie) does occasionally walk that far up the lane with her little dog.

7.212. ***Mr Alok Sharma MP***, the local Member of Parliament, gave evidence in support of the Applicant. Mr Sharma readily conceded that he had no personal twenty year knowledge of the land. He first became aware of the land at the time of Blue Living's planning application, which was 18 months to two years ago. The land is clearly very much valued by the local residents, he said.

7.213. He (Mr Sharma) had been very supportive of the residents' campaign against the proposed development, on grounds of traffic, public services, and the fact that the area was running out of green spaces. Local people had certainly told him that they had used the land for considerable, and in some cases, very lengthy periods. It is highly desirable to protect green areas which are of particular importance to local inhabitants.

8. SUBMISSIONS FOR THE APPLICANT

8.1. The Applicant made both opening and closing submissions. In opening she said that she represented the committee members of the Save Calcot Action Group, and nearly 1,000 members of the community who are supporting both the group and herself in this application for village green status of Pincents Hill.

8.2. The Applicant does not dispute that there was a golf course on the application site, but it was not nearly as well established as in the ***Redcar*** case for example.

8.3. It is not being said that Alasdair Barron is not a good landowner, it is acknowledged he does take care of his land.

8.4. The evidence would show (she said) that a lot of fencing and signing work had been done both by Mr Barron and Blue Living after the village green claim was made.

8.5. The pattern of usage of the lands on Pincents Hill has changed little over the years, as successive generations get older and their children grow up, and then another generation follows. Children get taken to play, dogs get walked and nature lovers follow the seasons, and also follow a precedent that was set a long time ago.

8.6. At least three failed attempts were made in the 1980s and 1990s to gain planning permission for development on the land. Only after that did the golf course appear, on a lease from the landowners. It was understood that it opened in 1992. There is much local feeling that this open area should not be lost to development.

8.7. The Applicant's claim is that local people have gained a prescriptive right to use this land as a village green over an uninterrupted period of 20 years from April 1989 to April 2009. The locality from which local users of the land have come is the Parish of Tilehurst, and if a smaller area is needed that could be further refined to the electoral ward of Birch Copse.

8.8. As for lawful sports and pastimes, local inhabitants' evidence is to the effect that various activities have been undertaken on the application lands over the whole of the requisite period. Some of the activity was just people going for a walk, and some of that would have been on footpaths. Other people have just walked on the grass generally, not necessarily on the footpaths. Many of the other activities are less ambiguous, such as letting a dog off the lead, chasing a ball or a Frisbee around. There is ample evidence of lawful sports and pastimes on this land.

8.9. There is no doubt that this use of the land still continued at the date of the application, and was being carried on as of right, without force and without permission, but in a way that would bring it home to a reasonable landowner that the users were asserting a right to use the land. Local inhabitants walked openly on the land, thinking that they had a perfect right to do so. They had an honest belief that they were exercising a right to do this. There was nothing secret about the way local people went on to the lands, and nor did they use force. The lands are open, and no physical force has ever been necessary.

8.10. There is certainly no question of local people ever being permitted to use the land by the landowners. When the golf course was there a pattern of mutual respect would appear to have been adopted by those parties who actually saw each other.

8.11. In closing Mrs Lawrie said that although her application had originally been made under ***Section 15(2)*** of the ***Commons Act 2006*** she also now wished to have included consideration of the application under ***Section 15(4)***. The latter might require consideration of a twenty year period ending in April 2004 or later.

8.12. The Applicant's case is that there has been actual use of the land by local inhabitants for a range of recreational activities, as of right, for well in excess of twenty years on either test. She summarised the provisions of ***Section 15*** of the ***2000 Act*** and drew my attention to the House of Lords decision in the well known ***Sunningwell*** case. As in ***Sunningwell***, Mrs Lawrie said, the recreational use of the lands claimed on Pincents Hill is based on three factors. Firstly the lands are crossed by unfenced footpaths, so that there is general public access to the land, and nothing to prevent people from straying from the public footpaths. Secondly the lands on Pincents Hill have been owned by private owners who would appear, by their lack of enforcement, to have been tolerant of harmless public use of the land for informal recreation purposes. Thirdly although Area 1 was said to have been used throughout for grazing or haymaking, in fact such use meant that informal public recreation on the land had not conflicted with its agricultural use. It is plain from the agricultural expert's report commissioned by the landowners as long ago as 1987 that it would in reality have been a brave farmer who grazed cattle in these fields. That report from 1987 (Thimbleby and Shorland) showed also that even as long ago as that the fencing around these fields was in poor condition, that the fields, particularly to the east, suffered badly from trespass and damage, and that it seemed there was very little that could be done to alleviate this.

8.13. Many of the Applicant's witnesses had indeed stated that they often suffered from cattle in their front gardens which had strayed from the application site. Had they escaped because of poor fencing, or because of the actions of vandals? Whatever the answer to that question it was clear that the landlords were not doing everything in their means to contest the recreational use of the application land. It is all very well erecting signs, but when there is little or no action to enforce them one can only conclude that the landlord has turned a blind eye to the use of the land as amenity land by local residents. She referred me to the 2007 case of ***McLaren v Kubiak***. This suggested (she said) that even if damage to fences was originally caused by vandals, later local users of the fields would not have entered by force, where no further action was taken to stop them using the land, so therefore local people's use was as of right.

8.14. As for the requirement for use by a significant number of local inhabitants, what matters is that the number of users is sufficient to indicate that their use of the land is a general use by the local community, rather than occasional use by trespassers. That test is clearly met on the evidence in relation to both Areas 1 and 4. The inquiry had heard oral evidence from 15 witnesses, and there were approximately 100 questionnaires and/or letters of support from other local people.

8.15. The activities carried on by local inhabitants on the application site clearly amounted to *"lawful sports and pastimes"* as that phrase has been judicially interpreted. A piece of land may in law qualify for registration as a green even if parts of it are not walked upon extensively or at all. It may still be found as a matter of fact that the land as a whole has been used for recreation. However in this case there are very limited areas of inaccessibility (due to dense growth), although plainly there are seasonal changes in the grassland. It is the Applicant's case that as much recreational use as can be made of the land has been made of it over the relevant period.

8.16. The witness evidence adduced in support of the application illustrates extensive and diverse uses by local inhabitants. These include walking, dog walking, children playing, contemplation, flora and fauna collecting, fruit picking, nature observation, bird watching, photography, picnicking, kite flying, meeting people, recreation, sports training, horse riding, cycling and running. In addition Mrs Smith had said she used the land for the Brownies. Evidence also showed that it had been used for the Barton Rovers Football Team, and for Scouts. Local schools have been known to use it for nature projects.

8.17. Mrs Lawrie then sought to summarise the evidence given by all of her oral witnesses. Mrs Lawrie said that it would have been possible to call many more local residents to give evidence, but that it had been decided to restrict the number to approximately 15. She expressly accepted in closing that there had been no requirement imposed, either by me or the Registration Authority, that she should restrict her number of witnesses to any particular level.

8.18. Mrs Lawrie drew my attention to the sworn affidavits which had been submitted from Mrs Debra McCulloch and Mr Douglas Murdoch. She also reminded me of the evidence I had heard from Mr Alok Sharma MP, the local member. There had also been a letter in support of the village green application from Sir Antony Durant, a former local MP.

8.19. Mrs Lawrie conceded that it would be very difficult on the evidence to include Areas 2 and 3 as being within the parts of the site which the evidence showed people had used for informal recreation.

8.20. It was impossible, in Mrs Lawrie's view, that the evidence which had been heard could be reconciled with the Objector's proposition that any off-path use of Pincents Hill had simply been incidental to or ancillary to use of the footpaths. People have clearly used the land much more widely than that; even people who had played golf on the golf course acknowledged that they saw local people on the land.

8.21. The Golf Club's use of the land over the relevant period is not contested by the Applicant, and indeed a number of the aerial photographs produced by the Objector, and the Applicant herself, did show that the land had been laid out as a golf course. However what are contested are the individual accounts by witnesses for the Objector who stated that they did not see local inhabitants crossing or on the greens when playing on the course. Aerial photography which happens not to show recreational activities is not necessarily conclusive evidence that the land is not being used for recreation. Local people did not normally walk crocodile fashion on tracks or paths, they wandered quite freely. It is much easier to walk on mown or tended grass than on long grass. While photographic evidence may not clearly show that local people walked the grassed areas of the site, nor does it actually show that the golfers themselves walked on the grass of the golf course, which clearly they did.

8.22. As far as Area 1 was concerned Mr Barron, its owner, had himself confirmed that such signs as he had erected there faced into the field rather than outwards. As far as the golf course area (Area 4) was concerned, it was clear from evidence called for the Objector itself that it was acknowledged that local people used to come on to the course during the golf course period.

8.23. Mrs Lawrie gave summary accounts of her view of how all the evidence of the individual witnesses for the Objector had emerged, both in chief and during cross-examination. She also commented on the various statements and statutory declarations produced on behalf of the Objector.

8.24. Mrs Lawrie acknowledged that Ms Cox's aerial photographs did show that more tracks were visible on the land after the demise of the golf club. However she suggests that this is most likely to be because the condition of the land became more difficult to walk on with the demise of the golf club, because of longer grass, and instead of walking on what had been reasonably maintained greens and fairways, these now became overgrown, and the local inhabitants in all probability used areas

more trampled or worn by animals, or others which were flatter and easier to walk on. The evidence given by local people who had visited and used the land regularly and frequently over twenty years or more is more reliable than snapshot aerial surveys.

8.25. The Applicant's picture of significant recreational use all over the application land is plausible, given the ready accessibility of the land, its convenience for the inhabitants of the neighbourhood, and the diverse environment it offers. There are so many easy access routes. The terrain is not as inhospitable as some of the Objector's witnesses have made it out to be. The use of the application site by local people had clearly carried on right through to the time of the making of the application, and since.

8.26. It is also clear from the ***Redcar*** judgment in the Supreme Court that it is beyond doubt that use of land as a village green can co-exist with the landowner's activities, such as running a golf course. Even if local people deferred to use of the land by golfers, that does not invalidate the village green claim.

8.27. The fact that nothing was said about recreational use of land at the time of the Charles Church appeal in 1988 has no significance. The amenity value of the land was clearly referred to, and amenity is an extremely similar concept to recreation. To a lay person it is difficult to differentiate or separate the two definitions.

8.28. It should not be held against the Applicant that the application site is large. Provided that the evidence shows use by a significant number of inhabitants of the neighbourhood, which the Applicant contends it does, then it satisfies the statutory definition. There is no requirement for any particular density of user from time to time, or at all times.

8.29. Areas 1 and 4 of the application site are areas on which it is possible to move freely, using footpaths, but given the size, nature and layout of the land it would be absurd to treat all activity on it as ancillary to the footpaths. The impression that a reasonable landowner would derive from observing the activities described by the Applicant's witnesses would be of use referable to a right to enjoy recreation over those areas of the application site.

8.30. Although she had previously referred in the inquiry to either Tilehurst or the Birch Copse Ward being a 'locality', it is important to have regard as well to the concept of *"neighbourhood within a locality"*. Lord Hoffman in the ***Oxfordshire*** case made it clear that 'neighbourhood' is a deliberately vague concept, not being defined by legally significant boundaries.

8.31. It is not necessary in this case to get into the *"predominant user"* issue, because while it is not the Applicant's case that there is little use from outside the neighbourhood, the evidence does show that the predominant use is from the Birch Copse neighbourhood of Tilehurst.

8.32. Technicalities should not be introduced by decision makers into the concept of *"neighbourhood"*. That much at least is clear from Lord Hoffman's judgment in the ***Oxfordshire*** case. To the extent anything said by Sullivan J in the ***Cheltenham Builders*** case was inconsistent with that, then Sullivan J was wrong. It is a question of fact and evidence whether any particular area is regarded locally as a neighbourhood. That is for local people, not outsiders, to say. They are best placed to know what the local perceptions are. In any event if the registration authority were to take the view on the evidence that the boundaries of the neighbourhood should be differently drawn from those which she suggested, then the authority should so find and register the land on that basis.

8.33. There is no real basis on the evidence for saying that the use of the land by local people was as a result of entry gained by force. In the majority of cases access to the site has been via the public footpaths which abut the site. There are many recognised access ways to the site, and many informal large gaps in hedging and fences. One does not have to knock down or climb any obstructions to access the land.

8.34. It has been confirmed in evidence from both sides that no prohibitory signs had been erected before 2006. The only signs up to that date were directional public footpath signs. The footpath signs did not forbid any other lawful activities on the rest of the area. There was some limited evidence of earlier signs on the site, but it is also clear that they disappeared or were vandalised very quickly, and this probably explains why only two witnesses to the inquiry were aware of any such signs. The majority of people who had used the land had no clear recollection of them. Their erection and short-lived presence would not have rendered the use not as of right. In fact the evidence indisputably establishes that most of the signs disappeared or were removed within a very short period and were never replaced. By no means all users of the application site would have seen them. Notices erected in 2006 were not placed at every entrance to the application site, but only on one claimed footpath, according even to evidence called on behalf of the Objector, and even these signs were placed away from the footpath itself. Anyone entering the site at any other point would not have been aware of these signs. Anyone who did see those 2006 notices would have had to leave the footpath to read them. Any landowner who was purporting to prohibit public access and/or enjoyment generally would have put notices at all of the many entrances, which would have explicitly stated that public access was prohibited (with an appropriate saving for footpaths). It is absurd to suggest that seeing signs in the distance, but being unable to read them, should get across to any reasonable person that they were prohibited from being on the land. Furthermore if a landowner puts up a few notices and then does nothing at all to enforce them, there is no state of contentiousness which the landowner can rely on where the notice is ignored and he does nothing more while the use continues for 20 years.

8.35. On the evidence it may not be possible for the Inspector to make findings on the balance of probabilities to the effect that any prohibitory signs were erected and/or maintained on the site. It would be a very strong thing to recommend rejection of this application on the basis of notices when, on the evidence, it would be extremely

difficult to make any clear findings as to how many signs there may have been, where they may have been, when they may have been erected, how long they may have remained in place, or how long they may have remained legible. The Inspector is requested to adopt a robust approach in dealing with this matter.

8.36. The evidence about an archaeological investigation that took place on the site in 2009 did not suggest anything which interrupted the recreational enjoyment of the land to more than a *de minimis* extent. In terms of time it occupied a mere 7 days out of the 20 year period. In terms of area, only 2% of the site was excavated. This work created no lasting impediment to use and enjoyment of the land.

8.37. There is an overwhelming need to preserve this space for local public use. It is a valued and much treasured amenity.

8.38. The application as submitted is under ***Section 15(2)***, but it is important that it should also be considered, as appropriate, under ***Section 15(4)***. There is no prejudice to the Objector or any other party, or to the Registration Authority in doing this. The Registration Authority has power to accept such an amendment, pursuant to the judgment of the House of Lords in the ***Oxfordshire (Trap Grounds)*** case. Clearly if such an application were refused then the Applicant or some other person could immediately submit a new application under ***s.15(4)*** anyway. This would put the Applicant, the registration authority and the Objector to considerable further expense and inconvenience. Therefore it is expedient that the registration authority should accept the application as being in the alternative, under either of the two subsections.

9. THE CASE FOR THE OBJECTOR – Evidence

9.1. Proofs of evidence, or statements, or statutory declarations, were produced in advance for all of the Objector's eventual oral witnesses. The Objector also produced a considerable volume of other documentation, including photographs and aerial photographs of the area of the application site. In addition, statements or statutory declarations were produced from persons who in the event did not give oral evidence at the inquiry. None of this written material calls for separate analysis and comment at this stage, beyond what emerges in consideration of the oral evidence, which I now report.

9.2. ***Ms Christine Diane Cox*** is a professional aerial photographic interpreter, and a Director of Air Photo Services Ltd. She provides specialist interpretation of aerial photographs for legal, environmental, planning and archaeological purposes.

9.3. In the context of the present application and inquiry she had been instructed to provide an expert witness report on the deductions she could derive from aerial photographs taken on various identified dates of the land concerned. She had particularly examined both the land itself and its boundaries, as these could be seen from the aerial photography.

9.4. She explained the procedure for the examination of aerial photographic evidence in a context such as this. She then explained how she had examined aerial photographs taken in 1991, 1993, 1994, 1996, 1998, 1999, 2004 and 2005. She explained how the various aerial photographs had been sourced.

9.5. By reference to an aerial photograph of July 1991, she explained in detail what it showed in relation to the state of the various parcels of land at that time. In particular she was able to identify that Area 1 (Mr Barron's field) was under pasture, and that Area 4 (later to be the golf course) was under grassland. She was able to identify the east-west public right of way footpath 13 across the site. She also examined the boundaries, and the presence and condition of access ways and entrances to the parcels of land. There was nothing about this photograph of July 1991 which suggested that any part of the land was at that time being laid out or used as a golf course.

9.6. In contrast an aerial photograph of September 1991 showed a marked change in relation to Area 4, which was clearly by that time under preparation for its subsequent use as a golf course. Linear fairways are under preparation, and there is a sign of a bunker in the north-western part of the site. It was also possible to see various tracks and paths on some parts of the site.

9.7. A later photograph of June 1993 recorded some changes to the south-eastern boundary of Area 4, and also clearly showed the golf course set up for use. The east-west public right of way across the land, footpath 13, was particularly clearly marked. A small number of other tracks were visible on the land, but some of the tracks which had been visible in the 1991 photographs were no longer apparent.

9.8. The next photograph was from October 1994; it showed Area 1 as pasture or managed grassland, she said. Area 4 was in use as a golf course, and indeed people could be seen on it in the photograph. The greens and tees and fairways looked well kept and well defined, and the grass was mown short. There was an area of rougher grass in the south-east part of the course, which had a definite edge between it and the smooth grass over the body of the course. She thought that the people visible in the photograph were likely to be golf players, because of their positions and their accompaniment by appropriate equipment. The golf course was clearly in active use as such at the time. There were no established tracks visible which were indicative of casual human land use.

9.9. An aerial photograph of September 1996 still showed Area 1 under short grassland, but its surface showed lined traces of recent cultivation, probably cutting. Area 4 was still laid out as a golf course. The whole area looked very green, and appeared well maintained with well defined greens, fairways, tees and bunkers. It was in a similar condition to 1994. There were some new track features in the south-eastern corner of the golf course area, which may have indicated more casual access to the land, or possibly activities associated with the maintenance of the golf course.

9.10. An aerial photograph of March 1998 still showed Area 1 under pasture or rough grass. Area 4 was still laid out as a golf course, as it had been in 1996. The greens, tees and fairways still appeared well tended, and the grass mown short. There were some light vehicle tracks in the western part of the course and in the central area, which tended to indicate that the course was being maintained. The east-west footpath across the land was still very apparent.

9.11. The next aerial photograph was from September 1999. Area 1 was still under short grassland. Area 4 was still laid out as a golf course, but an access track into it from the west had grassed over slightly. In contrast to previous years the golf course appeared to have become visibly less well maintained, but it was still clearly a golf course. Neither the bunkers nor the fairways were so clearly defined as in the previous pictures.

9.12. A gap in the western hedge to field 1 had appeared, in contrast to the pictures taken in earlier years. In relation to this, as in the case of all the other aerial photographs, Ms Cox acknowledged that more casual activities on the land may not leave traces which are visible on aerial photographs.

9.13. She then considered an aerial photograph taken in August 2002. This photograph showed a considerable change on Area 4, as compared with September 1999. Area 4 was now under rough grass. The former golf course was no longer in use. Bunkers, greens, tees and fairways were still visible but entirely grown over. The contrast between this photograph and the September 1999 one was very marked. There were now several tracks over the land which were not visible in 1999. These tended to indicate habitual access along worn paths by pedestrians and likely two wheeled vehicles. In contrast, the access track to the golf course in the western part of Area 4 was no longer apparent and had grassed over.

9.14. It was apparent from the August 2002 photograph that by this time, as far as Area 1 was concerned, a gap had appeared where access was being gained through the eastern hedge, and two pedestrian access points were apparent through the western hedge. Various areas of wear were also apparent on Area 4, which had not been detectable on the earlier photographs.

9.15. An aerial photograph of June 2005 showed that Area 1, Area 2 and the golf course were all under rough grassland, with a visible network of lighter toned well worn and well defined tracks and access ways. This was a vivid contrast to the condition of the land when observed in 1999.

9.16. Area 1 was now traversed by tracks, which were in differing locations from those visible in 2002. There is now a network of tracks over the former golf course Area 4, which traverses boundaries and indicates pedestrian or two wheeled vehicle access to the land. There were well worn, newly established tracks.

9.17. Ms Cox also compared the first of the (original set of) aerial photographs, of July 1991, which preceded the golf course use, with the last photograph from June 2005. The 1991 photograph she said indicated a maintained area of grass with no tracks on it. She felt sure that if there had been a level of access or ingress at all equivalent to the later photograph then she would have seen tracks. The 2005 photograph by contrast showed very well indicated paths. It could be deduced that the land use seen in 2005 had not occurred in 1991.

9.18. In cross-examination Ms Cox agreed that the area she had been examining from aerial photographs was a very extensive one. Examination by reference to aerial photographs does have some limitations. She explained that she uses un-enhanced photographs which she has not processed. In many of the instances she had been able to use photographs stereoscopically, when two photographs were taken in consecutive runs very close together in time. She acknowledged that aerial photographs can only show up activities which leave a visible trace. Nevertheless paths, and access through long grass, do leave traces, particularly habitual access. Indeed the aerial photographs of the golf course did show some golfers on the land. Nevertheless she accepted that one cannot, from an aerial photograph, definitely distinguish between use by golfers and use by other people. The public right of way footpaths were also clearly used.

9.19. The photographs were also clearly consistent with use of some of the land during the later period by people on motorcycles. The photographs were entirely consistent with the comment given in a statement by Mr Andrew March that there had been over 100 complaints about motorcycle use on the land.

9.20. Ms Cox acknowledged that she had not seen any visible animals in field 1 on any of the occasions photographed which she had examined prior to the inquiry.

9.21. Ms Cox said it was not possible to say how long it takes for a track or path to appear visibly in a way which is detectable in aerial photographs. Nor could she say whether people walking over the ground generally would leave tracks detectable from the air. Ms Cox was also able to produce and explain to the inquiry a recently obtained aerial photograph of the area of the application site, taken in November 1986. This was produced during the course of the inquiry, and had not been part of Ms Cox's original documents.

9.22. Ms Cox expressed the view that this colour vertical aerial photograph presented a very strong piece of evidence for the use of the relevant land as pasture or grazing in 1986. The area could be seen to be very firmly bounded, and animals were actually visible in Areas 1 and 4. Area 1 was shown under short grass, containing four animals which were likely to be cattle or horses. The field was appropriately bounded for that use.

9.23. Area 4 was under well managed grass, and sub-divided into securely hedged partitions within the body of the land. There was a small area of rough grass in the

south-east of the area. There were a group of eight, possibly nine, large animals in the eastern field, standing in a group. These were a little too large to be sheep and were likely to be young, light toned cattle. All boundaries were very well defined, and there was no evidence for external access to the area. The southern part of Area 4 again contained a group of grazing animals. They also were likely to be cattle. The area was firmly bounded, as appropriate for grazing land.

9.24. The conclusion to be drawn was that in November 1986 Areas 1 and 4 were bounded and used for the grazing of animals. There was no evidence of tracks or pathways across the site which would indicate any other land use beside the evident agricultural grazing use, which required firm boundaries and controlled access to the land.

9.25. ***Mr Geoffrey Parlour*** lives in Caversham, on the north side of Reading. He joined Pincents Manor Golf Course when it opened in 1992, as a founder member. He played on the first day of play on the nine-hole golf course in 1992, and was present at the official opening of the course in 1993. He was then closely involved with the course as a player and club member continuously until the closure of the course in 1999. He also had responsibility for aspects of the course's operations at various times. Indeed he had worked for 8 months in 1995 as full time course manager.

9.26. He first saw the golf course during its construction in the early 1990s. At that time he had lived in Tilehurst. He went down there a few times during the construction of the course, and walked along the east-west public footpath to observe the progress being made.

9.27. The course was completed in 1992, and opened for play in the Spring of that year. There were around 220 founder members of the club in total.

9.28. He was a frequent player from 1992 when the course opened, until 1995 when he started working on the course full time. During that time he visited the course to play golf on two evenings a week, and on Saturdays and Sundays during the summer, and most Sundays in the winter as long as the weather was reasonable.

9.29. The course had a particular niche in the market; it was aimed at learners and people having fun. It was very welcoming, and local lads would come to play and have a drink afterwards. It was particularly busy on Sunday mornings. There were also a number of competitions, which attracted a lot of people to play and spectate.

9.30. In the Spring of 1995, Mr Mogford, the owner of the course, asked him to work full time at the course as he was between jobs. Mr Parlour accepted and took on the role of course manager for eight months. He would oversee the maintenance of the course, which was undertaken by a team. Maintenance tasks such as mowing the fairways and tending the greens were undertaken on a daily basis.

9.31. He (Mr Parlour) continued to play the course a number of times each week after the end of his employment there, and after the course had been taken over by a Mr

Maurice Webb from Mr Mogford. Mr Webb invested a lot of money in improving the course. At that time the course was operated mainly on a pay to play basis, rather than a membership basis. During the time Mr Webb was running the course Mr Parlour had the role of competition secretary and handicap secretary. Eventually the golf course closed down in 1999, because Mr Webb was not able to agree terms with the Turnhams Farm Trust for a lease or purchase of the land. Towards the end an event was organised for everyone who had been involved with the golf course, and it was really well attended.

9.32. During the time that Mr Parlour was familiar with the course, he regularly observed people using the public footpaths, particularly in the evenings, and sometimes with dogs. The main footpath people used was the one running east-west across the course. Occasionally in the summer people strayed off the footpath, mainly dog walkers looking for golf balls to sell on. If they did it was the golf club's policy to explain to them that if they were hit by a golf ball while they were on the footpath it would be the club's liability, but if they were hit by a golf ball when they were not on the footpath it would be their own liability. The walkers would then invariably return to the footpath.

9.33. On one occasion during the eight years Mr Parlour was involved with the course, he witnessed a family having a picnic on the 8th fairway by the pond; that was in the summer of 1995 while he was working at the course full time. He had been called over by three female golfers who were playing nearby. The family was out of sight of the tee, and therefore in danger of being hit by a golf ball. Mr Parlour explained to the family in clear terms that they were in danger of being hit sitting there, and they moved their picnic to the Tilehurst Parish Council playing field instead. On no other occasion had Mr Parlour seen anyone having a picnic or using the course for any recreational activity other than golf. He did observe that there was a lot of football being played on the TPC playing field to the south of the site, but never once on the golf course.

9.34. There was trouble from time to time with children damaging the 9-hole golf course on the application site, stealing flags, or even riding motorbikes on the course on occasions. Mr Parlour would explain to them that they should not be trying to damage a facility which was for local people like them.

9.35. Mr Parlour did not ever see any members of the public using Mr Barron's fields. Mr Barron had the reputation of being a strict landowner who would not want people to access his land at all. When he (Mr Parlour) first started playing regularly he could remember some of his friends getting a good talking to from Mr Barron, telling them to get off his land when they went there to retrieve some missing golf balls.

9.36. Mr Parlour explained that during the operation of the golf course two different portacabins had been used in connection with it. One was on the hotel side of Pincents Lane, but there was another portacabin by the 1st tee at the bottom end of the application site.

9.37. He also said that he never saw anyone flying kites on the land; the only recreation he ever saw was people with or without horses on the path, or people walking round the outside of the course looking for golf balls. He did see model aeroplanes on the TPC land; it was much easier to land them there than on the application site. Some of those model aeroplanes did fly over the golf course land however.

9.38. He never saw any football training going on on the golf course land. He thought that quite late on in the golf course period there was one sign put up about keeping to footpaths. It was near the confluence of the main east-west path and Starlings Drive, over at the eastern end of the footpath. It said something like *"please keep to the footpath"*.

9.39. He remembered a bench at the top of the 4th green, on the upper part of the land. It was within the northern part of Area 4 on the plan, not within Area 2. There was a nice view from that bench. It was put there as there was quite often a queue of people waiting to play the 5th hole. The bench would have been put there in about 1993/1994. Area 2 was in effect an out of bounds area which was separated by a barbed wire fence. There was not much point in going in there. During the golf course period Area 1 was fully hedged in, and basically there was no access to it, it was fairly inaccessible from the golf course land. He thought that at one time it had had some nursery horse jumps in it, but Mr Parlour had never seen the field used for such jumping.

9.40. Mr Parlour had no recollection of ever seeing Brownies, Scouts or any such parties on the application land, nor of seeing children using the bunkers as BMX bicycle tracks. If he had seen anything like that going on he would have been upset.

9.41. During the time in 1995 when he worked on the golf course, he was often there from as early as 4.30am right through until 6.00pm, doing things like watering greens, and mowing greens and fairways. He would be there doing that three or four times a week, and also played golf at other times. Mr Parlour has no current involvement with the land or with its owners.

9.42. In cross-examination Mr Parlour confirmed that he did remember footpaths on the land, the main one being the east-west path. There was another one off that to the top of the land at the eastern end. There had been another footpath down across the middle of the land to the TPC playing fields. Mr Parlour had certainly seen people on those footpaths. However the middle footpath had been highly dangerous; it was mainly used by children; few adults would use it.

9.43. Children did occasionally run onto the golf course and take the flags that were there, and throw them into the trees. They would also collect lost golf balls and try to sell them. He personally did not remember any golfers getting into Area 1 to try to find balls, partly because the grass in there was too long, and it would be fruitless to look for balls in there.

9.44. He could not recall people sneaking onto the course to play golf who were neither members nor had paid to do so, but he accepted that it might have happened on the odd occasion. In re-examination Mr Parlour said it was very rare to see people who were not golfers using parts of the course other than the paths. In fact it was highly dangerous to do so; adults would not even use the cross-path down to the TPC land, and even children did not use it very often.

9.45. Mr Parlour said he had played golf on the course with Sir Antony Durant MP on a couple of occasions in around 1994. Then he had seen him once at a reunion in about 1998. He (Mr Parlour) did not think Sir Antony had been there much after that, once Mr Mogford had gone.

9.46. ***Ms Kate Clark*** lives at 16 Carters Rise, Calcot. She said she had been a grazier at the land known to the inquiry as field 3 since 1996. She had continued as a grazier since then, and currently has two horses stabled there. She sees those horses twice daily, morning and evening, and spends most of her weekends there.

9.47. During all the time that she has been a grazier Mr Barron has been a diligent and concerned landlord, who always maintains the fences in good condition. For as long as she could remember the land had been occupied with horses, and when she took over as grazier in 1996 she took over from a previous grazier. The only use of field 3 has been for horses grazing. There have never been any other activities there, and she had always had sole and exclusive use of the field.

9.48. In cross-examination Ms Clark acknowledged that almost half of the field had been lost during the period when Thames Water went through, excavating to put some pipework in. She had paid half rent during that period, and brought hay onto the land for the horses.

9.49. She (Ms Clark) had occasionally seen horses on the main area of Pincents Hill (Area 4). Occasionally she had seen the odd dog walker on that land, but never any children playing there, although she could not swear that they had not done so. She had also seen horses in field 1, but she did not know how long ago it was; it was quite some time ago, possibly years ago.

9.50. ***Mr Alasdair Barron*** lives in Camberwell, South London. He and his sister own farming land in the area, including Areas 1, 2 and 3 on the plan being used at the inquiry.

9.51. Field 1 had been used from 1956 for grazing bullocks, then from about 1970 for grazing horses, and latterly from about 1980 for hay. Area 2 is just a connecting strip between fields 1 and 3. Field 3 has been used continuously for horse grazing for about 45 years, and for grazing by stock for about 8 years before that.

9.52. All three parcels had been fenced off from the public since 1956. Three signs saying either *"Private – No Trespassing"* or *"Private Land – Keep Out"* had been erected by Mr Barron in field 1 in January 2006, replacing previous signs. The signs were placed quite high on trees within the field, because they would be vandalised if placed any lower down.

9.53. Mr Barron had never seen or been aware of any members of the public using any of his relevant fields for games, sports, picnics or any other recreational or leisure pastimes. He had occasionally seen walkers in field 1 from about 2005 on, but this was quite infrequent. Whenever he saw them he always informed them that there is no public right of way across field 1, and pointed out that there were warning signs to inform them of this, located on trees in the field. Nevertheless there do appear to be dog walkers, latterly, who usually follow the same route across the golf course land on the footpath, and then follow a circuit round and back through field no.1 .

9.54. In recent years, since about 2005, there had been an increase in numbers of incidents of trespass on the land. These included motor cycle access, vandalism and arson of cars. Because of these matters he had been involved in dialogue with Mrs Gardner, the Chairman of Tilehurst Parish Council, and the police for some time. He had also had communication with Councillor Joe Mooney about these matters.

9.55. He had regularly had to replace the field boundary wire between field 1 and the golf course, and to maintain the hedge on Pincents Lane. He had also removed a lot of fly-tipped waste, a burnt out motorbike, and various other household items and junk from his fields.

9.56. The motorcycling had been a relatively recent problem, and was mainly on the golf course land. However sometimes the motorcycling would extend into field 1. Someone was killed in the area, illegally motorcycling, and he did not want this to happen on his land, hence he made an effort to put up signs and replace the field boundary wire, and to maintain the hedges.

9.57. A steel field gate to field 1 was also knocked flat by a stolen vehicle on one occasion in 2005. In December 2005 another stolen car was driven through a hedge on his land. In contrast there had never been any issues regarding trespass on field 3, which has always been securely fenced.

9.58. Mr Barron did not really think it was right to describe his land as *"rough grazing";* it was more accurate to describe field 1 as being cultivated grassland, grazed by animals and smoothed by farm machinery. Cropping, grass cutting, fertilisation, spraying and haymaking had all occurred regularly on his land.

9.59. As far as his signs were concerned, he said it was always possible to select a particular viewpoint when the signs would appear partially obscured by foliage. However in his own view his signs had been clear, and he produced photographs showing them. The Parish Council had always been supportive and sympathetic

when he had asked for their assistance in relation to the problem of trespassers on the land. Certainly at no time had the Parish Council ever indicated to him their opinion that his land was somehow in recreational use.

9.60. Mr Barron produced some grazing records for his land during the years 1998 and 2000. He had also produced various letters or statements from people whose animals had grazed his land. He could not see how any recreational use could have taken place on that land. Mr Barron also produced various maintenance invoices relating to the maintenance of his fields and their boundaries, for the purpose of their agricultural or grazing use.

9.61. Mr Barron explained that he had put his signs in field 1 so that anyone who was actually in the field could see that they were trespassing there. As far as Area 2 was concerned, this is a narrow triangular area not overlooked by Area 3. This strip had frequently had a lot of brambles in it, but was sometimes cleared. It had occasionally been let to graziers in association with other land. The fencing of Area 2 had always been maintained, and indeed the fence was replaced in 1991. There had always been a fence between Area 2 and the golf course. In his view there never had been an access to that field via the golf course, access into Area 2 had always been through field 3. For a time the western part of Area 2 had had access into the land belonging to the Marches to the north. There is a spring line within Area 2 which makes it quite wet, and not particularly suitable for horse grazing.

9.62. At one time there used to be a field gate between Area 1 and Area 4, but that was vandalised and disappeared in early 2003/4 or so. Thereafter Mr Barron put barbed wire across, but that gets cut and has also subsequently disappeared.

9.63. Mr Barron did believe that there were previous signs in Area 1, before the ones he had put up in 2006. He thought the earlier sign or signs had said *"Private Wood"* or *"Private Land"*. There is a fox hole in Area 1, and a fox family still lives there today. He believed a fence had been put round that fox hole at some point, to prevent horses falling into it. That would probably have been in the early 1990s.

9.64. Although there had always been a fence between Area 2 and the golf course Area 4, the boundary between Area 2 and Area 3 had not always been maintained, so the field boundary integrity for field 3 in fact included the southern fence of Area 2. The eastern end of Area 2 had indeed been let as part of field 3.

9.65. In cross-examination Mr Barron agreed that the western part of Area 2 had at some times been grazed separately, and was known as *"Bobby's field"*. Bobby had been a horse whose owner had rented a field belonging to the Marches, and also that part of Area 2.

9.66. Mr Barron himself had lived locally in his childhood, but went off in the 1960s for education. However his mother and father remained. They were living in the house opposite field 1, which had in fact been built by his father.

9.67. Mr Barron said he was entirely familiar with the Rural Payments Agency, which makes payments for land in permanent pasture. Indeed he did receive such payments. None of his fields had been used as 'set aside'.

9.68. Area 1 had been somewhat altered in about 1958/9 as a result of a land exchange which had enabled Mr Barron's father to increase his area to the size it is today. Since then Area 1 has been as it is now.

9.69. Mr Barron confirmed that, as part of normal maintenance, a new sign had been put up in Area 2 earlier in 2010, and an additional sign in field 3. The Area 2 notice faces out towards the old golf course area. He had put that sign up on the 28th April 2010. At that time he also put a new sign up at the Pincents Lane entrance to field 3, facing out into Pincents Lane.

9.70. Motorcycle trespass on his land had never been a major problem until 2005, which was quite a problem year. The police were not ready enough to come out to prevent it, and he had suggested that the police should get an off-road motorbike themselves to try and catch the children who were coming either onto his land or Area 4. However the police were unwilling to borrow such a bike and do the job. Nevertheless there had been long breaks in the motorcycle problem subsequent to 2005, and these breaks could last almost a year. He, Mr Barron, keeps in touch with the police, and he had understood that the problem had stopped because some arrests had been made. Some problems had recurred since that time, but largely not. He, Mr Barron, had discussed with police the question of putting up signs on his land. Indeed that had been the subject of a meeting held with Councillor Mooney, the police, Mrs Gardner of the Parish Council, and also a neighbourhood warden in January 2006. The meeting had taken place in field 1 itself.

9.71. In re-examination Mr Barron said that there were five signs on Area 1 at the time of the meeting in 2006, two of which signs had subsequently been vandalised. The five signs had been put up by Mr Barron on the same day of the meeting in 2006, although as he had said previously there had been some signs in Area 1 before that. However he had not been particularly concerned about the signs before 2005/6, because there had never been a problem of ingress.

9.72. Although he had long moved away from the area, it was Mr Barron's desire to manage his land well, and to do that one has to visit it regularly. Accordingly Mr Barron visits the land about five or six times a year usually. Mr Tim Metcalfe had usually taken care of maintenance issues on Mr Barron's behalf, and if something needs doing in the fields Mr Metcalfe would tell Mr Barron. Indeed Mr Barron had some 51 invoices showing work carried out on this land. He was aware that since 1990 Mr Metcalfe's visits to the land on his behalf came to some 137 visits. He, Mr Barron, had visited the land 100 or so times since 1990. His own daughter lives in Reading, and when he visits her he also tries to visit the land. In addition, all his graziers have both his mobile and landline telephone numbers. Each of his fields has

a *"senior grazier"* or contact point who is the means by which messages are got through to him, Mr Barron.

9.73. ***Mr Alastair Mitchell-Baker*** lives at 38A Wendover Way, Tilehurst. He played golf at Pincents Manor Club, Pincents Manor Golf Course, between five and ten times over a period of about five years in the 1990s, around 1994-1999. He played with three or four colleagues from the hospital where he worked. They would travel by car to the golf course and park near the Pincents Manor Hotel.

9.74. He explained how the pay and play system operated on the golf course. The course itself was of medium quality, not as good as some in the area, but better than others. Pincents Manor Golf Course was reasonably well known among the people he had played golf with, it was one of the courses on the regular golf circuit. It was visibly very obviously a golf course with tees and greens with flags along its length. The course was reasonably maintained, especially in the earlier years of its operation.

9.75. When he and his friends played on the course there were generally other people playing golf, although it was never a crowded course. There would usually be five or six players in addition to his own group at any one time. There was a footpath running east-west across the course, and he could remember dog walkers using that path, however he did not remember encountering them elsewhere on the course when he played. When playing golf one always checks ahead before playing the shot, but he did not recall seeing anyone other than golfers on the course itself. However he did see people on the Tilehurst Parish Council playing fields to the south of the course, and in particular on the play area within that land.

9.76. He had seen people flying kites on the TPC field, but never on the golf course land. He did not recall ever seeing horses on the golf course land. He could recall that Area 1 was not part of the golf course, and that one had to play around it. He did not recall losing any of his own golf balls within that land. He, Mr Mitchell-Baker, has no interest in the land at present, and stands to gain nothing by giving evidence to the inquiry.

9.77. In cross-examination Mr Mitchell-Baker said that there had been a shop associated with the golf course for some of the time, and that when it was there, that was where one paid to play golf. Sometimes it was in the hotel barn which has subsequently been burnt down. Occasionally one had to pay to play golf when one was on the course itself.

9.78. Walkers he saw on the path across the land may or may not have had dogs with them, and Mr Mitchell-Baker could not be sure if such dogs would have been on leads. The main path that one is very aware of is the one down the middle of the course. He knew that there was a path at the Starlings Drive end of the course as well. It is certainly true that one cannot see the whole golf course from any one point.

9.79. In Mr Mitchell-Baker's recollection there had been a sign on the course in early years, pointing out that this was a golf course and that such and such was the place where one had to pay etc. The golf course looked like a golf course, there were tees and greens, and that was clearly the use of the land. There were also signs down by the TPC land saying that that was the Parish Council's land.

9.80. ***Mr Tim Metcalfe*** lives at Home Farm, Purley-on-Thames. He said that he is a farmer and farm contractor, and as such he has worked with and for the Barron family for the last 25 years. Indeed in the late 1980s he himself had grazed cattle in the field which is Area 1, as well as in another field that belongs to Mr Barron. Since that time he has regularly maintained the fences surrounding the fields belonging to the Barron family.

9.81. With regard to Area 1, which is known as *"little field"* the grass is a true permanent pasture, and Mr Metcalfe has been involved in taking a crop of hay off the field every year since he started with the Barron family, only missing out for a brief period around 2000 when a horse grazier occupied the field. During all that time the fences were fully stock-proof, although the demise of the golf course next door increased the number of walkers and motorcyclists who occasionally attacked the fences. After the meeting with Councillors, Police etc, in 2006, he undertook to block gaps in the road hedge and field hedge with trunks of fallen oak trees, in an attempt to reduce trespass and vandalism.

9.82. For many years he had been responsible for cutting the hedges surrounding the Barron fields. He had supplied copies of invoices dating back to 1990 in this respect. Field 3, known as *"Three Bar Field"*, has been grazed by horses for as long as Mr Metcalfe can remember. He had maintained the fences and topped the grass, and carried out any necessary maintenance work in that field. All the fields beside Pincents Lane had been continuously in use over the last 25 years, and well maintained. Field 3 had always been maintained for horses.

9.83. Field 1 had been used for grazing as well as for hay. He had noticed various signs within field 1, for example on an oak tree. However he could not say how far back in time those signs were present on the land.

9.84. The access into field 1 was quite difficult because the gate was very narrow onto Pincents Lane. With big farm machinery it was necessary to go in via the golf course, and enter via the top corner of the land. In order to do that he would take the fence down and re-erect it later. This was at the northern end of the west side of the land. Later on however he put in a double gate to Pincents Lane for field 1.

9.85. It is only latterly that he, Mr Metcalfe, had witnessed any kind of general recreational use of land on the application site. When the golf course was running there was secure fencing all round, and maintenance staff on the golf course kept people to the footpath. Occasionally the odd schoolboy would stray, but there was no general use of the land. Area 1 was always secure, for example when cattle were on there in the

1980s. Indeed in the 1980s cattle grazed what became the golf course. The grazing there was let annually by the firm of Thimbleby's. As far as Area 2 was concerned, when he first got to know the Barrons the western part of Area 2 was grazed by a horse which used to wander into it from the March land to the north. The eastern part of Area 2 was effectively part of field 3. When the horse which used to graze the March land died, the western part of Area 2 became very overgrown by brambles. When the golf course came, the owners of the course tried to take a piece of Area 2 and set up a green there. The Barrons complained about this and the golf course owners corrected their mistake and put the fence back up. Area 2 was always fenced from Area 4, and Mr Metcalfe maintained and replaced that fencing as necessary. He would visit the location on a very regular basis. Each invoice he submitted usually required him to have visited the land beforehand, so he went to the land even more often as a result of that.

9.86. In cross-examination Mr Metcalfe said that he was not involved in the development proposals for the land, but he had seen copies of those proposals.

9.87. The period when part of Area 2 was inadvertently taken into the golf course was only a matter of weeks before it was put right.

9.88. ***Mr Geoffrey Legouix*** lives in Finchhampstead, to the south of Wokingham. He became involved in Pincents Manor Golf Course in 1992. He knew it was 1992 because in January that year he finished his management contract on two municipal golf courses in the area, and was looking for new opportunities. He was approached in 1992 by Mr Mogford, who had recently established the Pincents Manor course. At that time Mr Legouix invested in the golf club, and became involved in its day to day operation, as well as acting as a Director. He ceased his involvement in 1995.

9.89. Mr Legouix's company was contracted by Pincents Manor Golf and Country Club from 1992 until 1995 to run some aspects of the golf course's operation. One of his employees was based in the shop associated with the golf course, and his responsibilities were to take players green fee, and to stock and operate a small golf shop. The shop was initially in one of the rooms in Pincents Manor, and then later in 1992 moved to a portacabin by the 1st tee. He, Mr Legouix, was in contact with his staff member daily, and visited Pincents Manor once a week to have update meetings with him and Mr Mogford. On such occasions he would also see the course. From time to time Mr Mogford drove him round the course in his Range Rover to show off improvements he had made. He, Mr Legouix, was paid on a commission basis for the services he and his firm provided.

9.90. He recalled that there were at least a couple of golf pros who worked on the golf course. During the period of his association with the golf course, he played golf there himself a handful of times, but not regularly. The course was a basic nine-hole course. It was a welcoming course, perfect for families or members who wanted a nice club in a charming building, as well as their game of golf. It was not too expensive either. It was in a good location close to the motorway.

9.91. The course itself was of average quality, and not as good as some other courses in the area. It was however regularly maintained. The club owned basic maintenance machinery, and the whole site was mown regularly, with the greens cut three or four times per week, in keeping with other golf courses. Without that level of maintenance, the golf course would not have attracted players.

9.92. A lot of people played regularly on the course, weather permitting. It attracted more people at weekends; Mr Legouix estimated that between 100 and 200 people playing on a weekend was not unusual when the weather was good.

9.93. During his visits to Pincents Manor, he had not seen or heard about any other activity on the land other than golf on the golf course. It would not have been possible to do anything else on the course at the same time because it would have been dangerous. There was a footpath going across the course from east-west, but that is very common for golf courses. He did not recall seeing anyone straying from the footpath, but if they had done so they would have been quickly told to get off the course by the golfers.

9.94. Mr Legouix never saw any football training, cycling, horse riding, picnics, blackberrying, para-gliding, Scouts or Brownies on the golf course land on any of his visits there. Trespassing on the golf course was not a problem at that time. The point would certainly have been raised with him if it had happened. He and his firm were very regularly monitoring the course.

9.95. In cross-examination Mr Legouix said that when he first got involved with the golf course he was quite heavily involved with it, so he visited a lot. Every time he went there he would have a look and check the condition and maintenance of the course. He and his employee were in charge of the collection of green fees, because his company had a contract to collect them. Also his team gave lessons on the course, and hired trolleys and sold equipment. The arrangement on the course was that people could either be members of the golf club or pay as a member of the public. They were very keen to encourage young people to play golf, teenagers for example. That is why he said families played there.

9.96. He had seen dog walkers on the golf course, but they seemed to be on footpaths and their dogs were on leads. He would have been very annoyed if he saw people walking with dogs off leads during that period. Personally he could only remember the one main east-west path across the land. It was approximately in the middle of the golf course. He only ever saw golfers on the greens. He had never seen or heard of children being on the greens, or indeed of flags being removed etc. There were other places in the area where people could have gone for recreation, but this land was a well maintained golf course.

9.97. It was true that there were means of getting on the land, but the golfers would report people getting in the way of their games to the management very rapidly. They

would have seen that as a real problem which needed to be resolved. The footpath across the golf course could be easily walked on, but on the golf course itself there were just golfers.

9.98. In re-examination Mr Legouix said that the day of his giving evidence to the inquiry was the first time he had been back since he left in the 1990s; the surrounding area was more rural at that time than it is now. To me he went on to say that during the golfing period almost the whole area of the land was used for golfing and was maintained for that purpose. On the peripheral non-golfing areas it was certainly not his recollection that people other than golfers were regularly on there either.

9.99. ***Mr Tony Timberlake*** lives in Harborne, Birmingham. He is a chartered accountant based in the Midlands. He was involved in Pincents Manor Golf Course for a two year period in the early 1990s, commencing at the time of the nine hole course's construction. During that time he assisted Mr Michael Mogford with certain aspects of the business.

9.100. Initially Mr Timberlake visited Pincents Manor at least once a fortnight, and sometimes more frequently. He would usually stay for at least a whole day to make the most of his visits, and would sometimes stay overnight at Pincents Manor as he lived two hours drive away. Towards the end of his involvement he visited less often, perhaps once a month.

9.101. When he first visited, the golf course was under construction, and earth moving machines were being used to form the layout of the course. He could remember that there was a formal opening of the golf course, although he did not attend.

9.102. He, Mr Timberlake, played on the course from time to time on his visits during the week, but not usually. The course was not of the highest quality. He recalled that there was a portacabin attached to Pincents Manor where green fees were taken; it also contained a Pro Shop.

9.103. There was a public right of way running across the golf course from east to west. During his time at the golf course he did not see people using the golf course land other than for walking on that public footpath, or for playing golf. It would not have been safe to do so, because of the golf being played. And during the construction of the golf course there were heavy machines moving earth around.

9.104. During his visits to the course he used to see the green staff mowing, tending the land and preparing the course for play, as well as golfers playing on the course. He never saw activities other than golf taking place on the course itself, although people did use the public footpath. He could remember some initial problems with people coming onto the land during the period the golf course was being constructed; he remembered hearing that being reported to Mr Mogford, although he did not see anything of that kind himself. He did see the construction works taking place however.

9.105. He had never seen anyone kite flying on the land or anything like that. He did recall one occasion of people being found with buckets and spades in one of the golfing bunkers, but they were moved off the land. He himself remembered seeing people walking or cycling on the footpath across the land.

9.106. In cross-examination Mr Timberlake said he remembered seeing people with dogs on leads. He was not sure if he had ever seen people with dogs which were off their leads.

9.107. It was only from information fed back to him, rather than because he had seen it himself, that he was aware that there was a little bit of a battle with people on the course to start with, during the period when the course was being constructed, but once the golf course was up and running that ended.

9.108. He could recall that there was some discussion as to where to put notices up to tell people their rights in relation to the use of the footpath. He thought initially there might have been a minor problem with people, including cyclists, straying off the path onto the course, but that then ceased.

9.109. ***Mr Jonny Anstead*** is a Director of Blue Living, the Objector. He told me that Blue Living had purchased the site of the former Pincents Manor Golf Course in January 2008. He, Mr Anstead, had investigated the factual background to the village green application, with specific regard to the site of the former golf course. He told me that this had included analysis of records within the possession of the Turnhams Farm Trust, the former owner of the golf course land, and public records. He told me he had suppressed nothing and had brought forward every documentary reference he had been able to find.

9.110. He gave a brief chronology of the golf course land (Area 4 as it was referred to at the inquiry), as that chronology had been established through his investigations.

9.111. In brief, up to 1991 the golf course land had been in agricultural use, and subject to a number of agricultural leases for the purpose of livestock and hay farming. However it had also been the subject of a number of planning applications for residential development in the 1980s, which were all refused. One of those refusals was appealed against in 1987, but the development was refused permission on appeal.

9.112. In 1991 an application was submitted for change of use from agricultural to a nine-hole golf course. In that same year the Trust permitted a firm called Bond Street Leisure to enter the land and prepare it for construction of a golf course, and then construction commenced.

9.113. In 1992 a lease was granted by Turnhams Farm Trust to Pincents Limited of the golf course land, and the nine-hole golf course was open for use in May 1992.

Approximately 12,800 rounds of golf were played in the golf course's first year of operation.

9.114. In 1993 the official opening of the golf course took place. The records show that security to the golf course was provided by a firm called Reliance Security, and signs to that effect were located on its perimeter fences. The golf course became affiliated with the Berks, Bucks and Oxon Golf Union (BBOGU), the regional golf union, and the English Golf Union. The golf course was recorded as having 201 male members. In that same year, 1993, operation of the golf course was taken over from Pincents Limited by the Pincents Manor Golf and Country Club Limited.

9.115. In 1995 the application for change of use from agricultural to nine-hole golf course, submitted in 1991, was finally granted planning permission. A footpath constructed as part of the golf course was also adopted as footpath 15. In that same year the club's affiliation to the English Golf Union was suspended due to non-payment of fees. The Turnhams Farm Trust declined to grant a new lease to PMGCC in July 1995, and the golf course was vacated in that month. However, in that same month, the Trust granted a short lease of the golf course to a Mr Richardson who then operated the course from July 1995 to February 1996.

9.116. In 1996 the operation of the golf course was taken over by a firm called Shieldpride Limited, who were also the new owners of Pincents Manor. Investment was made in that year in the form of improvement to and landscaping of the golf course, which was re-affiliated to the English Golf Union, now with 52 male members.

9.117. In 1997-1998 the operation of the golf course and its maintenance continued.

9.118. In 1999 the golf course's affiliation to the English Golf Union was suspended again due to lack of golfing members, the course now having only 27 male members. In October 1999 the golf course closed permanently.

9.119. In 2000 fly tipping was reported as taking place on the former golf course and was cleared. Other minor maintenance measures were undertaken, for example the cutting of grass, in case a new golf operator appeared. In 2002 travellers moved onto the former golf course but were evicted by bailiffs. In 2003 joyriders gained access to the former golf course and burned out cars were left on the site. In 2004 the former golf course was subject to trespass by motor cycles and all-terrain vehicles. In 2005 motor cycle trespass on the land continued to be the subject of numerous public complaints to the police. Turnhams Farm Trust sought advice in preventing the trespass from the police, the Country Landowners Association, its insurers and its lawyers. Signs were installed at locations across the site stating *"Private Property"* and instructing walkers to keep to footpaths. The signs also prohibited vehicles, motorcycles and horses from entering the land. These signs were erected either at the end of 2005 or very early in 2006.

9.120. Reverting in somewhat more detail to the earlier part of the history, Mr Anstead explained that in 1967 an agricultural lease had been granted by the then owner of Turnhams Farm to a Mr Hodge, covering some 151 acres which included the future golf course, at an annual rent of £1,000. In 1982 a valuation of Turnhams Farm was undertaken which noted its tenure as *"formal agricultural tenancy"*. There was no mention of any public use of any part of the farm. Planning applications submitted during the mid-1980s attracted reports written by planning officers, none of which made any mention of any public use of the site other than mentioning the public footpath which crossed it. The same is true of the evidence given to the appeal into one of those planning proposals which was heard in the Autumn of 1987. The Inspector's report following that appeal, dated January 1988, also makes no reference to public use of the site other than to note public footpaths crossing and adjacent to it. He did however note that the land served as a green lung which was valuable to the wellbeing and amenity of local residents.

9.121. In 1990 a short term agricultural lease was granted by Turnhams Farm Trust of what became the golf course land, and some additional land to the north of Pincents Lane, *"for the purpose of taking a hay crop and grazing only"*. The lease stated that the licensee should be responsible for making stock-proof all the existing fences and gates around the boundaries.

9.122. Mr Anstead gave much detail, which I do not need to recite here, of the history of the various leases which were granted of the golf course once the land had moved to being used for that purpose. Use of the land as a golf course was also noted in a Rating context from 1992 – 1999. The first entry in the Rating list which noted the existence of the golf course was on 31st May 1992. The golf course was eventually deleted from the Rating list from 31st October 1999.

9.123. A new footpath which became known as footpath 15 was dedicated around the north-eastern edge of the golf course land in 1995. The kissing gate at the very northern edge of the site was installed in 1996, pursuant to the footpath dedication agreement.

9.124. There was evidence of golf tournaments which took place on the golf course during its years of operation, particularly in the periods 1992 – 1993 and 1996 – 1997. Records show a very significant level of use of the golf course, particularly in the early years.

9.125. In 1994 the Turnhams Farm Trust sought a surveyor's report on the golf course. This report (by Messrs J. M. Osborne & Co) is noted as having been made following a site inspection. The report makes no reference to any public use or evidence of such on the site other than the footpath, which Mr Anstead considered was notable since such use would presumably have affected the value of the lease and as such would have fallen within the terms of the Report.

9.126. Correspondence showed that in 1995 a question arose regarding the safety of the footpaths on the golf course. This issue had been raised by the then Berkshire County Council.

9.127. It was notable, Mr Anstead said, that earlier than that in 1993 the County Council had notified Tilehurst Parish Council that the diversion of footpath 13 across the golf course was being considered. The Parish Council responded raising no objection to the diversion of the footpath provided the revised position would be as far away as possible (for safety reasons) from the golf green. The County Council had given a reassuring reply. Mr Anstead suggested that it was unlikely, given the Parish Council's diligence about this matter, that it would not have raised serious concerns at that time had the golf course been operating in an environment in which members of the public were using it for other purposes, and it therefore seemed likely that both before and during the operation of the golf course, users of the land kept to the route of the public footpaths rather than using the site more generally.

9.128. In a report from the year 2000 by the firm Haslams it was noted that the condition of the golf course was rapidly deteriorating, with there being some evidence of fly tipping. However it was also noted, from local investigations, that it was evident that members of the public were still using the rights of way, and some continued to attempt to pay golf. The report made no mention of other public use of the site.

9.129. There were also records kept by the Turnham Farms Trust which suggested that in the year 2000, for example, various actions to secure the site had taken place, including the erection of *"Keep Out"* signs. Indeed in October 2000 the Trust purchased signs saying *"Private Drive – No Unauthorised Access"*. It is assumed that these latter signs related to the track known as Poplar Drive, near the south-west corner of the site, which was not then as securely gated as it is today.

9.130. However from the year 2002 onwards it is clear that various problems with trespass and other unsocial activities on the site took place. In the second half of 2005 the Turnhams Farm Trust had produced and erected on the land four aluminium signs which said *"Private Property. Walkers keep to designated footpaths. Vehicles, motor cycles and horses strictly prohibited. Failure to observe may result in seizure by the police."* Mr Anstead understood that those signs were erected at the end of 2005 or very early in 2006. Mr Anstead himself saw the signs in October 2006. They were the signs that still remained in situ on the former golf course site at the time of the inquiry.

9.131. Mr Anstead commented further that he had noticed that the area of land shown on the plan with the original village green application had been effectively the same as the planning application line for the last planning application. Thus it included the land of Mr and Mrs March's house and land, and areas of highway verge. Those highway verge areas had only been included in the planning application as there was a wish to widen part of Pincents Lane. Including these areas in a village green application was a complete anomaly.

9.132. Mr Anstead first visited the site in October 2006; the four signs which he saw on the land at that time were not defaced. They were legible, and Mr Anstead took photographs of all of them. Since then he had visited the site very regularly at all times. During the time that he has known the site the grass on it has invariably been long. It does die back in winter, but not that much. In winter the grass is still long and wet and uncomfortable to walk on. It is obvious that people stick to the beaten tracks when they are on the site.

9.133. Mr Anstead had carefully examined all of the photographs produced by the Applicant, and had come to the conclusion, which he explained, that all except a very small number of them had been taken in quite recent times, in other words, during the period after the golf course had closed. Most of them had been taken in the last year or two. It was notable that there were no photographs at all of kite flying, model aircraft, picnics etc. Most of the photographs that there were were of walkers with dogs. He had also looked at the DVD which the Applicant had produced. This certainly appeared to have been taken before 2006. The grass was much shorter – it looked more like the golf course period, although it showed grass and moss growing through the bunkers. There was no sign of the golf course being in use at the time. Mr Anstead believed it had been taken shortly after the closure of the golf course probably in the period 1999 – 2001.

9.134. In cross-examination Mr Anstead said that Blue Living itself had not put up any signs on the land. The four signs on the land were the ones which he had seen which had already been put up by the previous owners.

9.135. Questioned about the people seen in some of the photographs of the land, Mr Anstead said that many of the photographs in fact showed no people in them, and others show groups of people on the footpaths on the land. In any event most of the photographs merely showed the current or recent use of the land.

9.136. Mr Anstead agreed that it seemed from the records that quite a lot of the anti-social behaviour on the land was associated with vehicles coming up Poplar Drive, which was open until a certain point in time. Then a gate eventually got put up which prevented this access.

9.137. Mr Anstead accepted that the people continuing to play golf on the land in the year 2000 who were referred to in the Haslam's report of that year could well be members of the public – indeed that is what Mr Anstead thought the report had meant. The public were using the rights of way on the land, and also going onto the recently closed golf course to play golf. Indeed it was apparent from the records that in the year 2000 the Trust as the landowners were still hoping that the golf course might be re-opened.

9.138. Mr Anstead accepted that there was material in the records of Tilehurst Parish Council showing that in late 1991 the line of the east-west footpath number 13

crossed the future golf course, and was not determinable in places, and that the Parish Council were seeking to secure the clearing of the line of that path and the erection of signs so that the public could follow the line of the path across the new golf course site which was then being proposed.

9.139. ***Mr Alistair Bath*** lives at 9 The Rise, Reading. Mr Bath is one of the Trustees of the Aldingbourne Trust, which is a beneficiary of the Turnhams Farm Trust.

9.140. As he had been involved with the Turnhams Farm Trust, and was also a local resident, he had been familiar with the land owned by the Trust at Pincents Lane for nearly 17 years. He first became acquainted with the site when it was a golf course in September 1993. In January 1994 he took over responsibility for liaising with the Turnhams Farm Trust, and because he lived in Reading he was asked by that Trust to keep an eye on the land. This involved visiting the site on average about once every six weeks, more often in the summer and less in the winter. He would normally go after he had played golf on another course nearby. He continued visiting the site at these regular intervals until the end of 2007 when Blue Living purchased the land.

9.141. The nine-hole golf course opened in 1992 and operated for around 7 years. Mr Bath was not a member, but he did play on the course three or four times in the later 1990s. The course was kept in reasonable condition although it was fairly cheap to play there. It was good for beginners and less experienced players.

9.142. From a golfer's perspective it was in places a very 'tight' golf course. In other words, several of the tees, fairways and greens were quite close together. He remembered having to exercise care to make sure there were no other golfers around that were likely to be hit. Two of the holes were very narrow, and it was between those two holes that the signed footpath passed through the site east – west. It would not be unexpected to see people walking on this.

9.143. During his visits, Mr Bath often saw other people playing golf on the course, rather more in the early days of the course than later. There was a hut by the first tee opposite Pincents Manor where people used to pay to play golf.

9.144. In about 1996 Mr Bath was involved in negotiating a lease for the golf course with Mr Maurice Webb on behalf of Turnhams Farm Trust. Mr Bath could not recall Mr Webb raising any concerns about the land being used for recreational purposes by members of the public.

9.145. In all his visits to the golf course during the 1990s Mr Bath had never witnessed anyone using the golf course itself for recreational purposes other than golf. There would be people walking dogs on the public footpaths, both the east-west path and the one along the eastern edge. Other people would be playing on the Tilehurst Parish Council fields, but Mr Bath never saw anyone picnicking, flying kites or anything like that on the golf course land. It would have been very unsafe and uncomfortable to sit and have a picnic on the golf course land. He did not recall

seeing any members of the public straying from the public footpath onto the golf course either. If they had done so they would quickly find themselves in conflict with the golfers.

9.146. The golf course closed in the late 1990s, and in more recent years since then, Mr Bath had occasionally seen horse and motorbike riders on the land. When specifically seen he had asked them to leave. In recent years, and since the closure of the golf course, he had also observed walkers deviating from the line of the original public footpath, particularly cutting across the land to go to the supermarket near the south west corner. He had not seen recreational use other than that on the land. On some occasions when he saw signs of vandalism he reported this to the Trust, but that did not happen often.

9.147. Following consultation in late 2005 with the Trust's solicitors and their insurers, it was arranged for signs to be put up on the site in early 2006. The Trustees and their advisers had gone round to work out where the signs would have the most impact. Four signs were put up in total, positioned where it was thought people who were using the land illegally would see them. One was near the footpath at the eastern entrance to the site near Starlings Drive, one was opposite Pincents Manor, one was where motorcycles were allegedly meeting near the TPC playing fields, and the fourth was close to where the third golf tee had been, to intercept people who were cutting across to the supermarket. These were the signs which said *"Private Property. Walkers keep to designated footpaths. Vehicles, motorcycles and horses strictly prohibited. Failure to observe may result in seizure by the police"*. On further reflection Mr Bath thought it might have been in the autumn of 2005 when the four signs were erected.

9.148. In cross-examination Mr Bath said that he was involved with the land until Blue Living acquired it in 2007/8. He agreed that it is not possible to see the whole former golf course from one place on the land. When he visited he used to park near Pincents Manor Hotel, and look at the western end and then walk up to where Mr Barron's land came down to meet the golf course. Then he would drive up to the top end, via the caravan park or Starling's Drive. Occasionally he would carry out his visit the other way round.

9.149. On those visits, when he saw people with dogs, sometimes the dogs were on leads, and sometimes not, sometimes the walkers had children with them, and sometimes not. The greatest concern at the time was actually about motorcycles, horse riders and the like.

9.150. The four large signs which were well erected, were put in positions where it was thought trespassers would see them, as opposed to people walking on the regular recognised footpaths.

9.151. In its early days the golf course had no equivalent competition in this area. This was until about 1996, when a pay and play golf course opened in Theale, and quite a lot of people who had formerly played at Pincents then moved there.

9.152. ***Mr John Francis*** lives in Oxford. He is one of the Trustees of the Turnhams Farm Trust, which had been the owner of the land known to the inquiry as Area 4, and other land in the locality. Area 4, the golf course land, was owned by the Trustees from January 1971 to February 2008.

9.153. Mr Francis said that prior to the creation of the golf course the land was enclosed largely by a barbed wire fence, and was divided into fields which were also fenced. It was farmed with livestock and arable crops. In 1987 the Trust had commissioned a report from the firm of Thimbleby & Shorland to assess the condition of the land. That report recorded that, while the fencing was in a stock-proof condition, it deteriorated from west to east, and that the fields to the east of the site suffered badly from trespass and damage. The land was affected by some unauthorised motorbike use in the 1980s. The boundaries were made more secure following the construction of the golf course; for example the lower part of the eastern boundary was secured by construction of a ditch and a steep sided bank. However intervening hedges and fences within the land were removed when the golf course came.

9.154. In September 1991 the Trust granted a licence to Mr Mogford to enter the land prior to its development as a golf course. From 1992 the Trust had asked Mr Francis to act as its agent, and in this capacity he visited the land on a regular basis at least once every other month. For example he had visited 14 times between late 1992 and late 1994.

9.155. In May 1992 play began on the golf course by club members and the public who played on a pay and play basis. In April 1993 the golf course was formally opened. Retrospective permission was granted in January 1995. A section 106 Agreement associated with the grant of permission required a new public footpath to be constructed on part of the eastern boundary of the golf course. The layout of the golf course was deliberately designed to avoid conflict with the users of footpath 13 which crosses the golf course. Indeed one of the conditions on the January 1995 planning permission had prevented the relocation of greens, tees or fairways without the consent of the local planning authority, precisely in order to protect users of the public footpath on the land (and users of the adjoining land and roads).

9.156. All of this was consistent, Mr Francis said, with his recollection that the vast majority of members of the public who were on the golf course land, both before and after the golf course use commenced, were there simply because they were exercising their rights to walk across along footpath 13. Mr Francis did accept that in recent years walkers had deviated from the exact route of footpath 13. The basis of the financial arrangement between the Trust and Mr Mogford, the initial golf course operator, was that the Trust was entitled to receive a percentage of the golf club's income from fees. Accordingly the Trustees were provided with data relating to the golf receipts. The

records show that in the first three and a half years of the golf club's operation there were approximately 8,500 golfers who played there. It was clear that the golf course was well used over that period.

9.157. When the lessee of the golf course changed in December 1996, the new lease was arranged on a different basis between then and October 1999. This new basis did not involve the payment to the Trust of a percentage of receipts.

9.158. Nevertheless it was to Mr Francis' own personal knowledge that between 1992 and 1999 Area 4 was used wholly as a golf course. Mr Francis visited the golf course on numerous occasions, and never observed any recreational use other than by the golfers. Throughout the period from 1992 – 1997 the golf course was kept secure by regular patrols of dogs carried out by a Mr Bertin. This was to prevent vandalism and other non-permitted trespass and use of the land.

9.159. The Trust had also put up warning signs stating that the area of the golf course was private. There are Trust records which refer to the erection of *"Keep Out"* signs on the golf course in 2000. Those signs were actually erected on the site, one was down Poplar Drive. The others were on a number of trees on the golf course. Mr Francis was not entirely sure exactly which trees, because it was the tree surveyor who put the signs up. The signs however were close to the public footpath, and it would have been clear to anyone that they would be trespassing if they had attempted to use the land for recreational purposes.

9.160. In about 2004 Mr Andrew March had notified Mr Francis that motor cyclists were using the land unlawfully and causing a nuisance. The police were alerted and confiscated at least one motorbike. Then in 2005 there were real problems with motorcyclists, in spite of the signage which the Trust had erected.

9.161. The Trust had always been keen to maintain fencing around its land. For example, Trust records of April 2000 showed a request from the Trust to contractors to close a gap in the fence opposite Pincents Manor, to prevent entrance by horses and motorcyclists. During the operation of the golf course the land was fenced off, save for access to the footpath.

9.162. Although there had been vandalism on the land, there was nothing to suggest that the local inhabitants believed they had a right of free access there. When the golf course was operating the Trustees were informed of several occasions when flags from the greens were taken down and damaged, and on occasions the greens were damaged. This was the reason that Mr Mogford employed someone to guard the site with dogs.

9.163. There was correspondence dating from 1994, which was a time when the Trust approached Tilehurst Parish Council to discuss the possibility of the Parish possibly taking over the running of the golf course. It was of interest to note that the takings for the golf course for the year ended May 1993 were recorded as being £97,261, of which golf course fees constituted £71,000. This indicated substantial usage of the

course, which is difficult to reconcile with the claim that members of the public were using it for recreational purposes.

9.164. The proposal for the Parish Council to take over the course never came to anything, but in his discussions with the Parish Council over the years, Mr Francis said that there was no suggestion that the Parish Council recognised or claimed that the land was subject to a general right to use it.

9.165. In relation to footpaths, the numerous tracks which exist across the land now have only been established in the recent past. Up until 1998 the golf course was well tended, and only the permitted paths were used by walkers across the land. It is only in the last 10 years that other pathways have been used. Mr Francis confirmed that the four signs erected in early 2006 were put up by the Trust and not Blue Living, and also that they had been deliberately sited away from the footpath, so that people who deviated from those paths would be able to see them.

9.166. In cross-examination Mr Francis said that it had been his grandfather who sold the fields which became the Parish Council playing field. The Parish Council had an obligation to fence the land they had bought, and did do so.

9.167. He confirmed that there has always been a footpath across the land along approximately the line of footpath 13, so that it was always possible for residents and others to get onto the land by that means. Although the signs erected in 2005/6 were not especially near the footpaths, nevertheless they are, in Mr Francis' view, clearly visible from them. The signs were put up where they were because the Trustees were aware that people were beginning to use the land in an inappropriate manner. Mr Francis told me that his recollection was that in the year 2000 the Trustees had asked a tree surgeon to put up signs on trees on the land. He had been told by a cousin who was a co-trustee that she could remember that this had in fact been done, but not the exact location of the relevant trees. He thought they were on the biggest trees on the site which were close to the footpaths.

10. SUBMISSIONS FOR THE OBJECTOR

10.1. Short opening submissions were made on behalf of the Objector, and indeed a statement of legal submissions by the Objector was produced for the benefit of the inquiry a short time before the proceedings started. These were helpful at the time, but consideration of them has led me to the view that they were effectively subsumed into the fuller closing submissions made on the Objector's behalf at the end of the inquiry, and it is accordingly these closing submissions that I now principally report on.

10.2. The Objector has consistently maintained that the Applicant cannot demonstrate compliance with ***Section 15(2)*** of the ***Commons Act 2006***. The Applicant has not produced sufficient evidence of recreational use of the application land as a whole, or demonstrated that any recreational use has been as of right.

10.3. The application land covers a large area, and the evidence presented in support of the application has to be evaluated taking that into account. It can be compared with the 20 acres of land considered in the ***Alfred McAlpine Homes Limited*** case for example. The application site here is much larger.

10.4. It is not adequate to rely on only a few assertions or snippets of evidence about possible recreational use. It would be surprising for an area of this size, with public rights of way across it, for there not to be some infrequent or sporadic trespass and incursion by people, or perhaps motor vehicles, as has indeed happened on this land, particularly since the closure of the golf course. For ***Commons Act*** purposes the evidence of sufficiency of use has to be convincing for the application site as a whole. The application site as a whole is some 48 acres, of which the former golf course land is between 36 and 37 acres.

10.5. The Applicant clearly does not persist in her application in relation to the whole site applied for. For example the Marches' property (Area 5) should never have been included in the first place. It should certainly not have been included in the plans shown to potential witnesses or supporters of the application. The 'northern finger' of land also should never have been included, and was indeed withdrawn from the application site during the inquiry. No basis or evidence at all had been produced at the inquiry for including the 'southern finger' of land also shown as part of the application site (i.e. part of Poplars Drive).

10.6. Similarly there is no evidential basis at all for the inclusion of Area 3 (the horse field). There has obviously been no relevant use of this area, which is entirely separate from the former golf course.

10.7. In relation to Mr Barron's other fields, Areas 1 and 2, the evidence of any substantive relevant use over the requisite 20 year period is non-existent. The evidence shows that Area 1 has been well fenced, and Mr Barron had the reputation of being a strict landowner who would not want people to access his land at all.

10.8. As for Area 4, the golf course, the Applicant's own evidence failed to substantiate sufficient relevant use over the relevant 20 year period, even on that part of the application land. The Applicant had failed to demonstrate sufficient use beyond that of, or arising from, the use of the rights of way on the land.

10.9. Thus, even considering the Applicant's evidence on its own, the Applicant did not demonstrate on the balance of probabilities that the application land has been used for lawful sports and pastimes for 20 years up to the date of the application in April 2009. That observation applies whether the land is considered as a whole, or when considering individual parts of it.

10.10. When the Objector's evidence is also taken into account, any doubt on the question is removed. With regard to Area 4, the absence of any reference to local recreational

use of the land in any of the documents dealing with the proposed housing developments in the 1980s, and the golf course application in the 1990s, is compelling evidence against the alleged recreational use by local people. Such documents emanated from both local authorities, as well as the Planning Inspectorate. There had also been oral evidence and statutory declarations from people familiar with the land. That evidence recognised use of the footpaths, and a minor degree of straying from them. It also recognised a few possible incidents of local recreational use, e.g. children taking flags from the golf holes, or one picnicking incident where the family were asked to leave the golf course and went onto the Parish Council's land. However, the evidence demonstrates convincingly that the interpretation the Applicant has put on the matter is exaggerated and unsupportable.

10.11. Even if that were not the case, any relevant use in the 20 years up to the date of application has not been 'as of right'. The failure of many of the Applicant's witnesses to have seen the four large clear notices which are still on Area 4 is astonishing. In any event some of the Applicant's witnesses had in fact seen the notices, and clearly understood the implications of them. With regard to Area 1, that has been securely fenced and appropriately signed at all times on the evidence, making it clear that the property was private.

10.12. If the effect of the signs on the land is accepted, the application would not be rescued by ***sections 15(3)*** or ***15(4)*** of the ***Commons Act 2006***. That is because sufficient use has not been demonstrated for any alternative 20 year period, which for Area 4 would end no later than January 2006.

10.13. Not all use that might fall within the meaning of *"lawful sports and pastimes"* is sufficient. Judicial authority shows that the level and nature of use has to be sufficient in terms of its character, degree and frequency to indicate an assertion by local people of a continuous right to go onto the land and use it.

10.14. It is accepted that not each and every part of the land may have to have been used for recreational purposes. However the evidence must be such as to indicate use as of right for lawful sports and pastimes of the land viewed as a whole. The circumstances at the present application site, however, are not at all analogous to those considered by the House of Lords in the well-known ***Trap Grounds*** case.

10.15. The Objector accepts that in principle a lesser area than that applied for can be registered under ***section 15***. However a degree of caution and commonsense is required in such circumstances.

10.16. In considering any claimed recreational use on the land, it is very important to distinguish the use of footpaths from use of the land as a whole for sports and pastimes. It is clear from the cases that where the public use defined tracks over land, that will generally only establish public rights of way unless the use of the land as a whole is plainly wider in scope than that, or the tracks are of such a character that use of them cannot give rise to a presumption at common law of a public highway.

10.17. Many of the Applicant's documents and submissions contain assertions which are either not linked to evidence, or in many cases are simply not supported by the evidence. Accordingly care is needed in considering them.

10.18. It is clear that much of the motivation for the application relies on planning objections to proposals for the development of the land. These proposals are not relevant to the application under the ***Commons Act***. The fact that the golf course initially began in the 1990s, before the planning permission for it was issued, is also not relevant. What is relevant is the nature, extent and use of the golf course as a matter of fact. There can be no doubt from the historical and photographic evidence that the golf course was constructed and did take up effectively the whole of Area 4.

10.19. A striking feature of the Applicant's case was the absence of reference to the golf course at all in the statements and letters originally submitted to support the application. This was particularly the case in the first 44 statements and letters which were originally submitted. Those statements which have not been open to cross-examination need to be treated with particular caution, given that in nearly all of them people purport to have used the whole of the application area, even though it is completely apparent from the evidence that that cannot be correct. None of them refer to the horses in Area 3, yet it is clear that there never has been any valid claim for a lawful sports and pastimes use in that field. None of them say anything specifically about the triangular area known as Area 2. All the evidence has clearly demonstrated that this was in fact an area always fenced off from Area 4, and heavily overgrown now for very many years. Also none of the originally submitted material referred specifically to Area 1; indeed much of the evidence in support of the application was characterised by a failure to recognise Area 1 as distinct from Area 4, particularly in the earlier years before 2002. All of this raises serious questions over many of the statements in support of the application.

10.20. The Applicant has generally failed to appreciate the importance of demonstrating clearly that use over the whole of the land, over the whole of the relevant 20 year period, is required in order to justify a ***Commons Act*** claim. The large number of photographs submitted by the Applicant are very largely undated and of little assistance. Only five of them can be considered with any degree of confidence to have been taken within the relevant 20 year period. Most of them appear to have been taken since the closure of the golf course, and indeed probably after the ***Commons Act*** application was submitted. Not a single photograph showed the various activities claimed to have taken place on the land, such as blackberrying, picnicking, model aircraft flying, paragliding or the claimed football training, or use by other groups.

10.21. It must also be remembered that recreational walking, and observing of wildlife, and indeed blackberrying, could be done from the designated footpaths used as such. Very often the Applicant's evidence did not make clear whether it was referring to use of the footpaths on the site, or other parts of the land.

10.22. Considering Area 1 specifically, it was remarkable how many people supporting the application did not distinguish this area with any certainty from Area 4. This was inexplicable, and underlined the need for very careful scrutiny of the alleged use of the application land. It is clear that Area 1 had been fenced off and separated to a significant degree for many decades. The evidence of recreational use of this land over the relevant 20 year period was very weak indeed.

10.23. The evidence about incursions into this land by motor vehicles, and breaking down of the fences and boundaries, has related to things which have happened in the last five years or so, as the evidence from Mr Barron made clear. The damaged fences were then repaired by Mr Barron. It is clear on the evidence also that there have always been signs on this particular area. To the extent that any of the evidence called by the Applicant related to use of Area 1, it was unreliable, particularly in relation to the earlier years.

10.24. The independent evidence produced in the form of aerial photographs by Ms Cox refutes claims of use of Area 1 during the requisite period. The aerial photographs show that between 1991 and 1999 the field was fenced and hedged, with its only access onto Pincents Lane. This land also appears in the photographs as grass land. There is no evidence of any recreational use on Area 1 between 1991 – 1999. Not until the August 2002 photograph is there any indication of pedestrian access. By the time of the 2005 aerial photograph tracks had appeared across the land. Hence the objective aerial photograph analysis does not support any substantive recreational use prior to 2002. It is suggested therefore that any such claimed use, even if it did occur, was only in the last 8 – 9 years.

10.25. As far as Area 2 is concerned, Mr Barron had confirmed that this area had been fenced off from the golf course area (Area 4) throughout the whole relevant period. All the evidence firmly points to this being correct. Mr Metcalfe, who has been involved in maintaining the area for the last 25 years, also confirmed this to be the case.

10.26. The Applicant's evidence in fact did not make any specific reference to Area 2 anyway. It was just included because it had been part of the overall planning application area. None of the witnesses called for the Applicant was in fact clear that Area 2 had been used by them. It appeared that the bench at the top of the golf course, which some witnesses had thought was in Area 2, was not in fact within that area.

10.27. As well as the evidence of Mr Barron and Mr Metcalfe in relation to Area 2, the evidence from the aerial photographs was entirely consistent in showing the lack of any apparent recreational use of this land.

10.28. Area 4 is by far the largest part of the application land, some 37 acres. In the light of this, the reference in the evidence questionnaires to people using the whole of the

application site, even if that were restricted to Area 4, needs to be treated with great caution. It has not in fact been demonstrated on the evidence that even Area 4 as a whole has ever been used for recreational purposes.

10.29. Most of the evidence about recreational use on the land, when objectively analysed, related to the eastern end of Area 4. However there are a number of footpaths in or just outside that part of the application site. Much of the claimed use of this area, and indeed the use of other parts of the site, was consistent with people crossing the land using the designated footpaths. Thus it is suggested that most of the use, even of the eastern end of the land, was clearly either of, or ancillary to, the use of footpaths. Indeed it is apparent that some of the claimed recreational use was in reality people passing through in order to use the Parish Council's recreation ground to the south.

10.30. It was striking how much of the Applicant's supporting evidence failed to note the agricultural use of the land, up to not long before the golf course was constructed in 1991/2. Several of the Applicant's witnesses were also confused about when the golf course opened or closed. Much of the evidence called on behalf of the Applicant in relation to the use of Area 4 was confused or inconsistent.

10.31. When looked at as a whole, the sum of the Applicant's evidence and documentation on the areas which remain in dispute (Areas 1, 2 and 4) does not demonstrate evidence of sufficient recreational use by a significant number of people, as required by ***Section 15(2)***.

10.32. The evidence called for the Objector about the use of the land as a golf course, and the nature and extent of that use, was convincing as to the inconsistency between that use and the sort of local recreational use which the Applicant seeks to claim. The aerial photographic evidence also demonstrates beyond any doubt the layout and use of the golf course, in a manner consistent with the other evidence which had been produced. It is accepted on behalf of the Objector that aerial photographs are not in themselves conclusive. That was why the Objector had gone to the trouble and expense of obtaining an objective assessment of the available aerial photographs, and also why the Objector called the additional evidence from actual witnesses in relation to the use of the golf course while it was operational.

10.33. The aerial photographs, and indeed all the photographs produced for the inquiry, are entirely consistent with the Objector's position that any use of the application land for recreational purposes (beyond use of and related to use of the rights of ways as footpaths) prior to the closure of the golf course was sporadic, and could not reasonably be interpreted as an assertion of recreational use as of right.

10.34. A further critical element of independent evidence supporting the Objector's case relates to representations made both in respect of proposed residential development in the 1980s, and the application for planning permission for the golf course on Area 4 in the early 1990s. There was a considerable amount of documented material in relation to these matters, and it showed clearly that there was not a single reference in

any of it to claimed implications for the recreational use by local people of the land. The only concern expressed was about the loss of it as open land in terms of its visual amenity, and specifically the impact on the rights of way.

10.35. The evidence of those witnesses who had actually used or worked on the golf course in the 1990s is also convincing. It is consistent to the effect that there was no material amount of local public recreational use of the land, indeed that such use was not something that could be safely undertaken while the golf course use was in operation.

10.36. In relation to the possible application to the circumstances here of ***Section 15(3) and (4)*** of the ***Commons Act*** the Objector submits that consideration of an alternative 20 year period does not assist the Applicant.

10.37. In terms of Area 4, if it is accepted that there had been effective signs and action by the landowner since 1994, then the two subsections would not assist the Applicant. It is acknowledged that Mr Francis in his evidence was not able to be specific about the wording or location of the signs erected in the year 2000. However the signs erected in late 2005/early 2006 must on any account be taken as having put an end to any recreational use (if it had been previously made out) being 'as of right'.

10.38. The Objector had not in fact investigated the period prior to 1989 to the same degree that it had analysed the period of 20 years up to the application in April 2009. Nonetheless there was evidence as to the pre-1989 position, including a 1986 aerial photograph, an analysis of which had been presented by Ms Cox.

10.39. If it were necessary to consider a 20 year period from 1986 to 2006, that would incorporate a period when the evidence showed clearly that Area 4 was used for agricultural purposes. Some of the Applicant's witnesses in fact remembered cattle on the eastern part of Area 4 in the 1980s, while others did not. The aerial photography from 1986 was certainly entirely consistent with agricultural use of Area 4 (as well as Area 1), and confirmed the view that Area 4 in the 1980s was split up into separate fields. Indeed animals are visible in the 1986 aerial photograph in the eastern field.

10.40. The evidence about the lack of any objections to the planning applications in the 1980s on the ground of local recreational use of the land is also relevant, if it is necessary to examine an earlier 20 year period than the one expiring in April 2009.

10.41. On the question of *"as of right"*, it is important to have regard to the evidence about signs erected on Areas 1 and 4. There can be no doubt that effective signs were displayed on Mr Barron's Area 1. In addition to those which were put up in January 2006, there seems little doubt that other signs were displayed long before then. The evidence from Mrs Gardner of Tilehurst Parish Council was very clear on this. She said that such signs had always been displayed.

10.42. With regard to Area 4, the evidence that signs were erected in 1994 is clear. Those notices were also clear in keeping people to the footpaths and off the golf course. It appeared that the wording was *"Golf Course. Keep Off. Keep to the footpath"*. Such wording was clear and unambiguous. The signs erected in 2000 are also likely to have been prohibitive in nature, although it was accepted that their precise wording was not known.

10.43. With regard to the 2005/6 signs (still on the site today), the wording is totally unambiguous. The signs are very clear, and spread well over the land. In stating *"Private Property"* the message is clear. Underneath that there is a reference to motorcycles and horses being strictly prohibited. In addition the signs state *"Walkers keep to designated footpaths"*. The fact that there are other pedestrian tracks on the land does not negate the effect in law of the notice.

10.44. Thus the 1994 notices, and certainly the 2006 notices, rendered any recreational use of Area 4 contentious and not as of right.

10.45. The Applicant seeks to rely on the decision of the Supreme Court in the ***Redcar*** case. However there is no comparison between the evidence of the extent of the recreational use in that case and the situation at Pincents Hill. The evidence in this case is simply not such that it can be contended that, over any potentially relevant 20 year period, the user by local inhabitants has been of such an extent and in such a manner as would reasonably be regarded as the assertion of a public right, so that it was reasonable to expect the landowner to resist or restrict the use beyond the manner which in fact happened in this case.

11. DISCUSSION AND RECOMMENDATION

11.1. Under ***Section 15*** of the ***Commons Act 2006,*** whichever out of subsections (2), (3) or (4) might apply, the legal position is that, in order to add the land at Pincents Hill to the Register of Town and Village Greens, the Registration Authority must be satisfied in respect of it that:

> *"a significant number of the inhabitants of any locality or 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"*.

The most 'normal' situation as far as ***Section 15*** is concerned (and the one which the Applicant herself claimed in her application applies to the land here) is that provided for by ***subsection (2)***, where the use is said still to continue on the date of the application for registration – in this case 7th April 2009. To the extent that this is such a 'normal' case, the relevant 20 year period to be considered is that measured by looking back from the date of the application, i.e. the period from early April 1989 to early April 2009.

11.2. However ***Section 15*** of the ***2006 Act*** also applies to two other situations. One is where there had been a continuous period of the relevant use for (at least) 20 years,

but which use ended, for whatever reason, ***before*** the date of the application, but ***after*** the date on which Section 15 came into effect – which in England was 6th April 2007. ***Subsection (3)*** of Section 15 provides that in such cases an application for registration can validly be made within 2 years of the cessation of use by local people. In this particular case this would only be relevant if there had been a period of at least 20 years use established, but which for some reason came to an end between 6th April 2007 and 7th April 2009. I can say with reasonable confidence that on the basis of the evidence I received and heard there is no part of the application site to which subsection (3) of Section 15 is realistically likely to be applicable.

11.3. ***Subsection (4)*** however applies to circumstances where there had been a sufficiently continuous period of the relevant use for (at least) 20 years, but which had come to an end ***before*** 6th April 2007 (again for whatever reason). In such cases a valid application for registration can be made within 5 years of the date the use came to an end. In this case it would be capable of applying if there had been a 20 year period of 'qualifying user' by local people, but which had come to an end at some point between 7th April 2004 (five years before the application date) and 6th April 2007.

11.4. Examples of reasons why local people might have ceased to use a piece of land in the relevant way before an application is made would include cases where they had been kept out by the landowner putting up fences or prohibitory notices, but could in principle also cover circumstances where people had just (for whatever reason) fallen out of the habit of using the land concerned at some point during the five years before an application is made.

11.5. In this particular case ***Section 15(4)*** in my view clearly needs at least to be considered in relation to evidence suggesting that new signs were erected on two of the most significant parts of the land (Areas 1 and 4) during the period late 2005 – early 2006. The Applicant at the Inquiry, following discussion between myself and the parties, requested that I should consider her application on the basis of ***subsection (3)*** and/or ***(4)***, in the light of the evidence, in the alternative to her main submissions based on ***Section 15(2)***.

11.6. As I have mentioned above, I do not believe on the evidence which emerged that ***Subsection (3)*** of ***Section 15*** will have any bearing on this particular case, and neither party at the inquiry suggested that it would.

11.7. As is already clear from what I have said in the preceding paragraphs, I take a different view about ***Subsection (4)***. On the evidence received from the parties and their witnesses, it most clearly does fall logically to be considered.

11.8. However that in itself does not necessarily mean that I and the Registration Authority ***should*** consider it. The Applicant's original application only mentioned ***Section 15(2)***, and as I noted in Section 2 of this Report, Counsel for the Objector expressed some concern about the proposition that I should consider the matter under other subsections as well. Indeed I understood him to "reserve his clients' position on the

matter", which I took to mean that his clients reserved the right to challenge the lawfulness of such wider consideration at a later stage, should circumstances require it.

11.9. I would express some sympathy with the Objector's concerns on this question, given that the application form only mentioned ***subsection (2)***, and the Objector's evidence and original submissions, not unreasonably, were initially marshalled on that basis.

11.10. Having said that, however, because the matter came up at an early stage in the inquiry (which eventually lasted for 7 sitting days over 2 weeks) the Objector was in fact able to produce evidence and make submissions about the somewhat earlier period(s) of 20 years which might need to be considered under ***Section 15(4)***, as opposed to the April 1989-2009 period relevant under ***Section 15(2)***.

11.11. From a general appreciation of what the courts are recorded as having said about the procedure on 'village green' applications, I take the legal position to be that it is lawful for Registration Authorities to accept amendments to applications, provided that doing so does not cause hardship or unfairness to the objector(s). In my judgment, in this particular case no hardship or unfairness was caused to the objector, who was able to deal with the point in evidence and submissions. Indeed it was acknowledged on behalf of the Objector at the inquiry that, were I to refuse to consider the matter under ***subsection 15(4)***, the applicant could submit a further application expressly mentioning ***subsection (4)***, based on the same evidence as she was calling anyway, and the Registration Authority would have to consider it.

11.12. I would go further in my advice to the Registration Authority here. It seems to me that in certain circumstances, of which this case is a good example, it would be procedurally unfair for a Registration Authority ***not*** to allow an applicant whose application had mentioned ***subsection 15(2)*** to have that application considered in the alternative under whichever might apply out of ***subsections (3)*** or ***(4)***.

11.13. The relevant circumstances are where, as in the 'normal' case, an application is made under ***subsection (2)***, requiring the Registration Authority to consider the 20 year period up to the date of the application. But then the Objector responds, saying *"No, 18 months, or 3½ years (say) before that date I/we put up signs and fences telling people to keep out of the land, so that thereafter the use could not have been 'as of right'."* Clearly the evidence about such signs or fences and their effect might be contested, but if that contest is resolved in favour of the Objector, it would mean that the application was bound to fail under ***subsection 15(2)***. However, if an application had been made that very same day, anticipating the objector's objection, and mentioning whichever would be the relevant *"fall-back"* position under ***subsection (3)*** or ***subsection (4)***, that application might have been an entirely sound one.

11.14. Accordingly my advice to the Council as Registration Authority would be that, where the possible need to consider ***subsection (3)*** or ***subsection (4)*** as an alternative to ***Section 15(2)*** arises out of the nature and content of the Objector's own evidence, the

Registration Authority positively ***ought*** to consider whether one of the two later subsections might apply instead, on the basis of that evidence. Not to allow the 'fall-back' consideration of the alternative subsection(s) in such a case would, it seems to me, potentially involve a marked procedural unfairness and injustice to applicants, which would tend to undermine the purpose of the ***Commons Act*** legislation. Thus I would strongly advise that it is appropriate to consider the application in this particular case on the basis of ***Section 15(4)*** as well as ***Section 15(2)*** of the 2006 Act.

11.15. I should just mention that ***subsection (4)*** of Section 15 is subject to an important limitation, that it cannot be applied in any situation where ***subsection (5)*** applies. ***Subsection (5)*** turns (in brief) upon whether a planning permission had been granted before 23rd June 2006 in respect of an area of land, and whether construction works pursuant to the permission had been commenced before that same date. There was no suggestion at the inquiry from either party that this limitation had any relevance to the present case.

11.16. As a result of the above considerations, this case is a little more complex than village green claims sometimes are, because different periods of 20 years may need to be examined in relation to different parts of the land.

11.17. I also remind the Registration Authority at this stage that (as already explained at paragraph 2.5 above) the Applicant also amended her application at the Inquiry by the removal of two areas of land from it ['Area 5' and the 'northern finger']. This amendment was acceptable to all parties.

11.18. As for the law more generally, the Council must determine the application on a correct and proper understanding of the law. In assessing the facts, I take the position to be that, where they are in dispute, they are to be determined on the balance of probabilities, but the onus to prove the required factual basis is essentially on the Applicant. I do not understand any of this to be contentious as between the parties.

The Facts

11.19. In this particular case there was a considerable amount of dispute about the facts, particularly about the periods during which any activity or activities might have taken place on the land, and the nature and extent of those activities. However the relationship between the facts and the various elements of the statutory definition(s) under Section 15 is quite complicated. Accordingly I do not propose to produce a set of 'findings of fact' in one long list, but rather to express conclusions about the balance of the evidence (where relevant) when considering the individual elements of the statutory test(s). As I have remarked above, the main part of the statutory test under ***Section 15*** is in the same wording whether it is subsection (2) or subsection (4) that is being considered, even if it is a different, albeit overlapping, period of 20 years that needs to be concentrated upon in the different cases.

11.20. Thus, bearing this last point in mind, I consider the various elements of the statutory test which are common to the two subsections; I shall then consider how the position appears to me to stand in relation to the points which are specific to one or other of the subsections. I shall try to do this in a logical order, but not completely in the order in which the words appear within Section 15.

11.21. I should also mention that, although I might express conclusions about the evidence during discussion of individual elements of the statutory test(s), it is not in reality possible to divide my factual conclusions up in quite such a neat way. Thus, wherever I might state them, I have had regard to all my conclusions about the facts in considering all the other relevant legal tests as well.

Locality or 'Neighbourhood within a locality'

11.22. There can be no doubt that the civil Parish of Tilehurst is capable of constituting a *"locality"* as that term has been interpreted by the courts. It would also be appropriate to the circumstances of this case, because my understanding of the evidence overall is that nearly all of those who have claimed to use the land for 'lawful sports and pastimes' do in fact come from within the parish of Tilehurst.

11.23. It was also suggested to me by the Applicant that the Birch Copse Ward of the Parish of Tilehurst (a plan of which I was provided with) was capable of being regarded as a *"neighbourhood within a locality"*, or even the relevant *"locality"* itself. The Birch Copse Ward, as it currently exists, seems to cover much of the south-western part of the Parish. Once again I would say that from my understanding of the evidence (oral and written), it did seem that most of those who claimed to have used the land came from within the area concerned (i.e. Birch Copse Ward). [I should mention here that I do understand that, on the case law as it currently stands, it is questionable whether there is any requirement that, for a successful claim, land must have been used ***predominantly*** by the inhabitants of the relevant locality or neighbourhood. However, as it turned out, this issue was not the subject of any real dispute at the inquiry in this case].

11.24. Judicial authority on ***locality*** in this context is to the effect that a 'locality' must be a recognised area known to the law: ***Ministry of Defence v Wiltshire County Council*** [1995] 4 All ER 931. Examples given in that case included boroughs, parishes (civil and ecclesiastical), and occasionally manors. I recognise that an electoral ward such as Birch Copse is in a sense an 'area known to the law', and indeed more recent *obiter* remarks in other parts of the village green 'case-law' have hinted that wards might be included in the list of possible 'localities'. I have to say that I have some reservations about whether relatively ephemeral things like the current boundaries of an electoral ward (which as a matter of common knowledge are changed much more frequently than those of boroughs or parishes, for example) really do fall within the same category as the other potential 'localities' pronounced upon in ***MOD v Wilts CC***, for example.

11.25. Hence I am entirely satisfied that Tilehurst Civil Parish is capable of being a *"locality"* for Commons Act purposes, but not so sure that an electoral ward like Birch Copse really is a 'locality'. However Birch Copse is a relatively cohesive part of Tilehurst, and I have no doubt that it is capable of being regarded as being a 'neighbourhood' within Tilehurst. Indeed this point as not seriously disputed on behalf of the Objector. Thus, if the other elements of the statutory criteria for registration were met, I would have no difficulty in recommending that the relevant locality should be regarded as Tilehurst Parish, and the relevant 'neighbourhood' within that locality the Birch Copse ward of the Parish.

Lawful Sports and Pastimes on the land

11.26. The evidence did suggest that at times certain things have been done on the land by people who were probably reasonably local, and which either were or probably were ***un***lawful. I have in mind reports of occasional criminal damage, or taking motor vehicles, e.g. motorcycles or 'quad bikes', on to public rights of way over the land. However there can be no doubt that most of the activities claimed in the evidence called on behalf of the Applicant related to activities which the case law on this subject would clearly accept as being 'lawful sports and pastimes'.

11.27. There are however a number of qualifications which need to be applied to that general observation. The first is that the Application relates to a large area of land, not all parts of which have been used in the same way during the potentially relevant period(s).

11.28. Thus, with regard to ***Area 3*** (the 'horse-field'), there is no convincing evidence at all that any 'lawful sports and pastimes' have been indulged in during any relevant period by anyone other than the grazing licensees who had a ***right*** to be there. At the inquiry Mrs Lawrie the Applicant did indeed accept that there was no evidence that local people had been on to that land; she suggested at one stage that looking over the fences or hedges at the horses or wildlife on the land was itself a 'lawful sport or pastime' on that land. In my opinion that point is completely without any merit or justification. There is simply no evidence at all of 'lawful sports and pastimes' of the sort required for 'village green' registration, on the land consisting of Area 3.

11.29. Although ***Area 2*** (a relatively small triangular area) was, along with Area 3, included on the plan circulated with the Applicant's Evidence Questionnaires, and thereafter on the plan accompanying the application, on actual examination of the evidence at the inquiry it became apparent that again there was no credible evidence that local people had ever been on to this particular piece of land. I discount any argument that because Area 2, like Area 3, and indeed Area 5 (the March family's house and ground), was shown as included on the area covered by the Applicant's Evidence questionnaire, it should therefore be concluded that there *was* evidence that all these areas had been used. It became abundantly apparent on all occasions when this topic was broached with 'live' witnesses at the inquiry that people in general had filled in

these forms with no careful scrutiny of the detail of the particular individual areas purportedly covered by the forms.

11.30. Area 2 currently contains a lot of brambles and dense vegetation, though clearly it may not always have been like this. The evidence called for the Objector that this land was always fenced off from and separate from Area 4 (the former golf course) to the south was to my mind completely convincing, supported as it was by the aerial photography taken over the period 1986-2005.

11.31. There was a belief among some of the oral witnesses to the inquiry that over a period they had habitually sat on a rustic 'bench' at the top of the golf course land (Area 4), which bench some witnesses thought had been in Area 2. That a bench had existed at the top of Area 4 during the golf course period was not in fact a matter of dispute between the parties. However I believe, on the evidence, that this bench was situated within Area 4, albeit near its northern edge. Indeed the remains of such a bench were visible, surrounded by brambles, on my site visit, apparently to the southern (Area 4) side of the fencing (itself now heavily overgrown with brambles) separating Area 4 from Area 2.

11.32. My conclusion therefore in relation to Area 2 is that, while I cannot exclude the possibility that over the years there may have been occasional incidents of trespass, there was no convincing evidence at all that this land has ever been used by significant numbers of local inhabitants for lawful sports and pastimes.

11.33. Finally in this particular context I consider the small area which became known at the inquiry as the *"southern finger"*. This is a small piece of land projecting southwards from the extreme south-west corner of the main body of Area 4. It consists in effect of the trackway and 'verge' of a lane which I believe is known locally as Poplar Drive.

11.34. I have to say that it was not clear to me why the Applicant included the 'southern finger' in the application in the first place, and then continued to ask for it to be included when she took the opportunity to withdraw other areas on which she was calling no evidence, such as Area 5 and the 'northern-finger' [apart from the fact that the 'southern finger' was apparently included in the site covered by a planning application made in respect of the rest of the 'village green' application site]. As far as I could detect no evidence was called or produced which suggested that the 'southern finger' specifically was ever used in any way which would meet the criteria of Section 15 of the Commons Act 2006. Indeed it is somewhat difficult to see how that could be so, as the 'southern finger' essentially consists of a right of way flanked by bushy and relatively narrow verges. However the principal reason why I recommend that this 'southern finger' should be excluded from further consideration is that there was effectively no evidence establishing that anything had ever been done there which meets the Commons Act criteria.

11.35. In spite of the fact that my observations in the last few paragraphs have excluded from the need for further consideration a number of identified areas within the 'village green' application site, that still leaves for consideration much the largest part of the overall site, namely that covered by Area 4 (the former golf course) and Area 1 (one of Mr Barron's fields).

11.36. As I said at the beginning of this part of this section of my Report, evidence plainly was called to the effect that activities which would have constituted 'lawful sports and pastimes' have been indulged in on parts of the remaining land (Areas 4 and 1) during at least some of the years which fall for consideration under Sections 15(2) or (4) of the 2006 Act.

11.37. I consider the important questions whether such use was *"as of right"*, and if so whether the 'as of right' use continued for any potentially relevant period of 20 years, in the following paragraphs of this section.

'As of right'

11.38. Because of the nature of the evidence in this case it is not really possible to draw a neat distinction between consideration of the 'as of right' point, and consideration, on the balance of probabilities test, of evidence about usage by local people during various identifiable phases in the history of the land concerned. This point arises more acutely in the case of Area 4 (the former golf course), because there have been more identifiable phases in the pattern of use of that land over the potentially relevant years than there have been in the case of Mr Barron's field no. 1.

11.39. I propose, under my 'as of right' heading, to consider such evidence as there was about prohibitory signs, and fences, on the two areas still being considered, although both of these points are still highly relevant to my next heading, where I consider which period of 20 years needs to be looked at, and what the evidence is as to 'use for lawful sports and pastimes, as of right' during any such period(s).

11.40. However before specifically turning to consider signs and fences, I ought to observe that the important expression *"as of right"* in the statutory test is generally taken to mean use of the land concerned without force, without secrecy and without permission. Secrecy (e.g. people sneaking into a piece of land at night) and permission do not appear to arise as relevant questions in the present case. 'Without force' however means that the evidence must show that any relevant use of land by local people was not achieved by breaking in through fences, and was not carried on in the face of clear and effective prohibitory notices aimed at forbidding such use. Use *"as of right"* is a topic on which there is a considerable amount of case law, some of it of exalted status, and some of it recent, to which my attention was drawn by the parties, and of which I am generally aware in any event.

11.41. With regard to ***Area 1***, there is clear, and largely undisputed evidence that Mr Barron in January 2006 affixed a number of signs saying either *"Private No Trespassing"* or

"Private Land" to trees on the land. He did this in response to problems which had already arisen by then of trespass and vandalism. Clearly it was his intention to convey the message that people should not come on to Area 1 other than by his licence or invitation. He took the mildly eccentric (it seems to me) decision that his signs would face 'inwards', i.e. towards the centre of Area 1, rather than outwards towards (say) Pincents Lane or Area 4, where one might have expected them to point if they were aimed at deterring people from coming onto his field in the first place. I recognise that there was a certain logic to Mr Barron's view that he wished to get it across to people who were already trespassing in his field that they should not (and were forbidden to) come back there. I would express the view that his signs would have had a somewhat surer legal effect if he had faced them outwards as well.

11.42. In any event its seemed clear to me from the balance of the evidence, and I so find, that these signs were quickly either vandalised, or stolen (or fell off), or became overgrown with ivy or vegetation which was growing on the trees to which they were affixed. It seems to me that, if there had been 'as of right' use of his field for lawful sports and pastimes already taking place before January 2006, it is rather doubtful whether these signs, given the way they were erected, and what happened to them afterwards, could have been relied on by themselves as having rendered the continuation of that use thereafter *"by force"* [in the sense of having been undertaken in the face of clear prohibition].

11.43. On the other hand, as I explain further under my next heading, I did form the conclusion on the evidence that Mr Barron's field 1 was well and securely fenced and hedged, and those boundary features regularly maintained, until the problem of regular trespass became more acute in the years since about 2000, following the cessation of the golf course use on the immediately adjacent Area 4.

11.44. As indicated above, in my judgment on balance, Mr Barron's signs of January 2006 were probably not effective in themselves in calling into question any 'as of right' use being made of his land. However, because this is an 'on balance' view, I have under my next heading also considered what the consequences would be in terms of the overall result if I were to be wrong on this point, and Mr Barron's January 2006 notices ***did*** render any subsequent use of field 1 *"by force"* rather than 'as of right'.

11.45. As far as ***Area 4*** is concerned, it has at all relevant times been crossed by public footpaths (and indeed other paths have appeared), and there have always been several entrance points through which (local) people could physically gain entrance to the land. There is thus no question of this land having been so firmly fenced off so that no-one other than its owners or licensees could get into it at all.

11.46. As far as the erection of signs is concerned, the evidence was not completely clear as to whether it was in late 2005 or early 2006 that the present four signs which are still visible on the land were erected. It was certainly much less than five years before the Applicant's application under the Commons Act was lodged. These are four large signs, at eye level, and although some of them have been subsequently defaced, their

essential message is still clear. I have quoted them in full before, but the key part of their message is *"Private Property. Walkers keep to Designated Footpaths"*.

11.47. As I have noted there are four of these signs. If they had been placed near to, and legible from, all of the principal entrance points where paths (designated or de facto) enter the land, it seems to me that it would have been quite strongly arguable that they were effective in calling into question any 'as of right' type use of Area 4 that had been taking place at the time of their erection. However once again their siting was somewhat eccentric. One of them, in the far western end of the land (near Pincents Manor Hotel) is next to an apparently well-used (albeit 'de facto') footpath at the point where it enters Area 4 from Pincents Lane. At the other (far eastern) end of Area 4, another of these signs is in the general vicinity of where the east-west (public) footpath 13 enters the land, but is not in fact adjacent to, or easily legible from, either the entrance point or elsewhere on the footpath. Another is in the 'central southern' part of Area 4, well away from any obvious path, and the fourth is fairly close to Footpath 13, in a location which is not near an entrance to the land, a little to the west of the south-west corner of Area 1. There is no sign at all near one of the (apparently) most well used entrances to the land, via the 'kissing-gate' from Farm Drive on the northern edge of the eastern part of Area 4. Nor is any such sign legible from the (apparently) well-used entrance to Area 4 from the northern edge of Tilehurst Parish Council's playing fields.

11.48. Having said all that, I must acknowledge that all four of the signs are placed on parts of the land where there is comparatively little vegetation growing above the height of grasses and the like; and they are fairly large signs. Accordingly it does seem to me that it is somewhat difficult for anyone who is at all observant to progress across Area 4 without at least being aware that there ***are*** some signs on the land, even if one might have to go off any obvious footpath, into areas of longer, more unkempt vegetation in order to read them clearly.

11.49. Thus I do have to express some scepticism about the evidence of those of the Applicant's witnesses who claimed both to be regular users of the whole of Area 4, and not to have seen that there were any signs on the land at all. In my judgment it would be difficult, without an element of wilful 'blindness' to things one disagrees with or disapproves of, both claim regular, extensive use of Area 4 and at the same time not to be aware at least that there have been prominent signs erected there since about the start of 2006.

11.50. However, as I have said above, the signs (or some of them) are in rather ineffective positions. For example, several of them require one to leave the footpath in order to read a sign telling one to stay on it; and signs are lacking in what would be some of the more obvious positions if one were trying to convey a message to the majority of those entering the land.

11.51. Thus again I conclude on balance that these signs were probably ***not*** effective in themselves in bringing to an end any 'as of right' type use of Area 4 which was by the

time of their erection in the process of becoming established. However, as with Area 1, because this is an 'on balance' view, I have also considered under the next heading whether it would make a difference to the overall conclusion if I were to be wrong on this point, such that the 20 year period needing to be examined was one expiring at the date of the erection of the signs, around the end of 2005.

11.52. Once again, as with Area 1, there was some evidence, but mostly of a rather vague and unspecific nature, that there had also been some signs erected on the golf course land at earlier dates, for example around 1994, in the early years of the golf course. However, there was no certainty as to exactly where these signs were, or what they said. It was thought (though this was little more than a guess, it seemed to me) that they might have said something like *"Golf Course. Keep Off. Keep to the footpath"*.

11.53. For my part I found the evidence convincing that there probably were some such signs, at some time around 1994, but in view of the lack of clarity as to what they said, where they were, or how long they lasted, I find I cannot give them significant weight in the overall balance of the evidence.

11.54. It seemed there may also have been some 'Keep Out' signs erected somewhere on Area 4 in about 2000, but the evidence about them was so scant that I can likewise give it no significant weight.

***"For a period of at least 20 years"* – Which period?**
"A significant number of the inhabitants"

11.55. I take these two elements of the statutory test together, because in the particular circumstances of this case they seem to me to be very closely inter-related.

11.56. I ask the question *"Which period?"* by reference to the discussion earlier as to whether in this case it might be appropriate, or indeed necessary, to look at the application as if it were made ***in the alternative*** under either ***Subsection (2)*** or ***Subsection (4)*** of ***Section 15*** of the ***2006 Act***. If the signs erected in Field 1 in January 2006 had been effective in bringing to an end any 'as of right' use then being established there, it would be appropriate under ***Section 15(4)*** to consider whether 'as of right' use by significant numbers of local inhabitants had already become established for (at least) the 20 year period January 1986 – January 2006. Similarly, if the signs erected in Area 4 in (say) December 2005 had been thus effective, ***Section 15(4)*** would invite examination of the 20 year period December 1985 – December 2005.

11.57. Of course I have indicated above that my judgment on balance is that neither set of signs can be relied on as having been fully effective in bringing to an end any 'as of right' type use. On this basis the correct period to examine is (as the Applicant herself contends in her principal argument) the period of (at least) 20 years expiring on the date of her application, 7th April 2009. However, for the reasons I have already canvassed, I believe it is appropriate, and wise, that I and the Registration Authority should also consider how the evidence would stand in relation to the

slightly earlier periods from (approximately) the turn of the year 1985/6 to the equivalent time 20 years later in 2005/6 – not least to see if this has any bearing on the level of confidence with which an overall judgment on the facts can be reached.

11.58. In the light of this, I have given consideration to the whole of the historical evidence as to what has taken place on the two remaining areas under examination, during the whole of the period 1985 to 2009 inclusive.

11.59. As far as ***Area 1*** is concerned, I found totally convincing the evidence called on behalf of the objector, notably from Mr Barron and Mr Metcalfe, that this field was in continuous use right through from before 1985 to well past the year 2000 for agricultural purposes, with a short period of horse-grazing, and that fences, hedges and gates were maintained in a stock-proof condition throughout. I accept and find credible the evidence of the objectors' witnesses that it was only after the demise of the adjacent golf course that trespass and vandalism became noticeable issues, and this tends to be corroborated by the evidence from the aerial photography, as analysed and explained by Ms Cox, which did not show any evidence of human incursion into Area 1 until the photograph of August 2002.

11.60. Conversely it was apparent that a number (but not all) of the Applicant's witnesses were clearly unaware of the distinction between Field 1 and the much large Area 4 which surround it on three sides, in spite of their having previously claimed in writing to have used the whole application site (including both areas 4 and 1, and other areas which they could not in fact have used) for a prolonged period.

11.61. It has to be said that even as at the time of the inquiry, in the summer of 2010, when there are clearly a number of de facto footpaths or tracks across Field 1, and associated access ways which have been pushed through its various boundaries with Area 4, it is far from clear on the evidence what basis there would be for asserting a more extensive use of the surface of Field 1 for 'lawful sports and pastimes' purposes, as opposed to use of the footpath routes now to be seen there.

11.62. However, looking further back, at the evidence relating to the period of (say) 1985-2002, in my judgment there was no convincing evidence of incursion by the (local) public into Field 1 on any basis other than sporadic and occasional trespass. I am perfectly prepared to accept that it may well be that at least two local people managed to find their way into this particular field for romantic purposes as early as 1997/8. While not suggesting that what they got up to there was unlawful, this is far from being convincing evidence that 'lawful sports and pastimes' were being indulged in by a significant number of the local inhabitants. I entirely accept the point that it has been held in the High Court that 'a significant number' does not necessarily mean a substantial or a considerable number. Nevertheless there has to be evidence sufficient to indicate that there was a general use by the local community for informal recreation, rather than occasional use by individuals as trespassers. In my judgment there was not convincing evidence, particularly for the period up to about 2002, for use of this field by local people in a way which remotely approaches that

requirement. Nor is this at all a case (in my judgment on the evidence) where there has been some sort of 'de facto' or accepted co-existence between some agricultural activity on the land, and a use for 'lawful sports and pastimes' by local people, in a way which was compatible with that agricultural activity. Certainly for the period up to about 2002 there was no convincing evidence that such a state of affairs existed on Field 1, and indeed on the evidence I am somewhat sceptical that the use of this field has really been of that character for much of the time since then.

11.63. Accordingly my recommendation to the Registration Authority will be that Field 1 should not be entered in the Register of Town and Village Greens, whether the qualifying period being considered is that of 1986 – 2006 or 1989 – 2009.

11.64. I now turn to consider ***Area 4***, which I have several times referred to as 'the former golf course'. Since the period I am giving consideration to extends as far back as late 1985, it is right to remind oneself that it was not until late 1991 that work even began on preparation for the construction of the eventual golf course, and that a period of at least two and possibly as much as six years before that needs to be considered as well.

11.65. I should perhaps mention, in case it is not obvious from what I have said already, that this consideration of the history of the use of Area 4 was by far the most contentious part of the dispute at the inquiry which I conducted, both because Area 4 is much the largest part of the whole application site, and because it was the area in respect of which there was the most marked conflict in terms of the evidence produced.

11.66. Before turning to evaluate the balance of that evidence, I should also mention that both parties, as well as producing evidence, presented me with considerable bundles of case-law authorities, as well as statutory extracts etc., concerned with the field of 'village green law', and associated topics. Indeed the Applicant in particular framed her closing submissions by way of quite extensive reference to the case-law, by way of 'markers' for the points she wished to make about the facts in the present case.

11.67. However in the event there was very little difference or dispute between the parties about the significance or interpretation of most of the case law. Accordingly it is not for the most part necessary for me to analyse and give a preferred view as between competing legal submissions.

11.68. The one rather notable exception to this general point is the recent decision of the Supreme Court in the case of ***R (Lewis) v Redcar and Cleveland Borough Council*** [2010] UKSC 11 (which I shall call ***"Redcar"***). This is not so much because there was intense dispute between the parties as to how one should understand or interpret this decision in terms of legal principle, as because it happens to concern another area, in another part of England, which had until fairly recently been used as (part of) a golf course, but on which the local inhabitants claimed also to have used the land 'as of right' for lawful sports and pastimes. In the circumstances it is clearly important that I and the Registration Authority should not be persuaded by either

party to form a view based on the evidence in this present case which is at odds with the judgments of their Lordships in the Supreme Court.

11.69. With this in mind it is appropriate to note some of the underlying facts in the ***Redcar*** case, as recorded in the Supreme Court decision. In that case the land concerned had been part of a coastal 'golf links' type course, among sand dunes and sand hills covered in rough grass, and the open parts of it had contained the tees, fairways and greens of two of the golf 'holes', and a small practice area. However (as noted in paragraph 9 of Lord Walker's judgment) these latter features *"did not, however, take up the whole of the ... land and there were substantial areas of rough ground beside and between these features."*

11.70. The Inspector in that case had also specifically found as facts that:

> *"from as far back as living memory goes, the open parts of the ... land have also been extensively used by non golfers for informal recreation and children's play"*; and
>
> *"the open parts of the ... land have been extensively used by non golfers for general recreational activities apart from* [meaning 'as well as'] *linear walking."*
>
> [as recorded in Lord Walker's judgment at paragraph 10]

11.71. The Inspector in ***Redcar*** had nevertheless gone on to recommend ***against*** registration as a town or village green because the evidence showed that local people using the land had almost always 'deferred' to the golfers using the land (who were licensees of the land's owner), in the sense of getting out of the way when golfers wanted to play their shots, etc. The Inspector had found that such 'deference' by local inhabitants on the land had meant that they had not been using the land 'as of right'.

11.72. The gist of the Supreme Court decision is that the Inspector was wrong on that point; the idea of 'deference' disqualifying a use from being 'as of right' is misplaced; all that was happening at Redcar was an element of courteous 'give and take' between the golfers and the local inhabitants, which was not inconsistent with the local inhabitants' long established use of the land being 'as of right'.

11.73. The factual circumstances at Pincents Hill (Area 4) are very different from those at Redcar. There had not been a long-settled inter-relationship between use by golfers and recreational use by local people. Indeed the Golf Course on Area 4 only began to be prepared for physically in the second half of 1991. It was then set up and brought into use quite quickly, but had ceased again as a use by 1999. So, on any view, the 'golf course period' is a block of time sitting somewhere 'in the middle' of whichever period of 20 years I and the Registration Authority are required to consider when evaluating the application here. Forming part of that 20 year period there will

inevitably be at least some years when (apparently) Area 4 was still in agricultural use, as well of course as the relevant years since the golf course's closure.

11.74. There was not a great deal of direct oral evidence about the nature and extent of the agricultural use of Area 4 in the pre-golf course years, but a clear, brief account of it was given in the written Statutory Declaration of Mrs Jean Francis, an elderly lady who had had a long family connection with the land, and had been a Turnhams Farm Trustee between 1971 and 1999. Since her account is generally consistent with the various pieces of documentary evidence produced, and the aerial photographs of 1986 and 1991, and indeed was broadly consistent even with the evidence of a number of the Applicant's witnesses, I am inclined to accept it.

11.75. She explained that the land had been let to a tenant farmer, Mr Hodge and more briefly to his widow, for the entire period 1967-86. During that period, Mrs Francis explained, the land was well farmed, for a mixture of arable and cattle breeding. Mrs Francis believed that during that time any public access was limited to walking along the public footpath. After Mrs Hodge went there was a short period of vacancy, then the land was let on licence to a cattle breeder called Mr Mattison *"for one or two seasons"*. Then there was a licence to a Mr Gardiner in 1990, for taking the grass keep. However during that time there were vandalism problems, e.g. the ripping open of hay bales and damage to stiles, so that Mr Gardiner did not renew his licence.

11.76. Then in 1991 (according to Mrs Francis) there was a problem with motorcycle trespass on the land, and indeed this point was prayed-in-aid in that year as one of the reasons why planning permission should be given for the proposed golf course – as it would stop this kind of activity.

11.77. As I said above, Mrs Francis's account is generally consistent with other evidence. In particular the November 1986 aerial photograph produced by Ms Cox clearly shows animals, whose scale and appearance suggest that they were cattle, on two of the fields within Area 4. Ms Cox's observation that Area 4 was securely divided into a number of separate fields is also convincing. Whether what was seen in that 'snapshot' photograph in early November 1986 represented the last days of Mrs Hodge's tenancy, or the occupation of one of the later licensees, must be a matter for conjecture, although other evidence suggests that the former might be more probable.

11.78. In particular a very useful and informative document which has survived, and was provided to the inquiry, was what I take to be an agricultural land surveyors' report on Turnhams Farm, produced by the firm of Thimbleby & Shorland, following what was clearly quite a detailed inspection on 1st September 1987.

11.79. I shall not repeat all the detail of that Report (though I have considered it all), but it is clear from it that the land as a whole had not been grazed or mowed that year (1987),

and had begun to deteriorate accordingly. The general conclusion under the heading *"Fencing"* was:

> *"Generally the fencing is in a stockproof condition but deteriorates from west to east. The fields to the east suffer badly from trespass and damage and it seems that there is very little that can be done to alleviate this."*

In the more specific parts of the report dealing with individual fields it is in respect of the eastern field (OS.7638) that the report makes most reference to trespass. The report notes that this parcel was divided into northern and southern halves which is consistent with what can be clearly seen in the November 1986 aerial photograph. Considering the parcel as a whole it is noted in the report that the northern and eastern boundary fencing showed evidence of trespass and damage. As for the surface of the land, it was also noted in respect of the southern half of that parcel that *"The field is criss-crossed with footpaths and there is much evidence of trespass"*.

11.80. Although there was another reference to trespass and fence damage in relation to the southern/eastern boundary of one of the other fields (OS. 2300) with the Savacentre and the Parish Council playing fields, the strong impression is created overall that it was the easternmost parcel of the land (OS.7368) that had begun to experience significant levels of regular trespass by that date (September 1987). This in itself is not in the least surprising, since that was the part of Area 4 which most clearly and closely abutted areas built up with housing and a residential caravan park.

11.81. The Applicant called a number of witnesses who claimed to have used the land for 'lawful sports and pastimes' in the pre-golf course period. I have to say that, considered overall, the quality of this evidence was decidedly erratic. Many witnesses who had claimed previously in writing to have used the whole of the application site (including parts they could not possibly have used in reality) turned out in the event to be unclear as to what parts they had used, or only really to have gone on the eastern part, or were passing on the second hand recollections of other members of their families. Some witnesses who claimed to have accessed the fields during the whole or most of the 1980s had no recollection of ever seeing cattle there, while others had clear and vivid recall of the presence of those animals.

11.82. Taking all the evidence into account, the view which I have formed on the balance of probabilities is that there probably was a considerable amount of trespassory incursion into the eastern field(s) comprising OS. Parcel 7638 from about the mid-1980s, and that this would have involved wandering over the surface of the land in general, rather than (say) just sticking to the main east-west footpath. The extent of it is rather difficult to judge, but I formed the impression that this would have been indulged in by a significant, as opposed to an insignificant, number of local inhabitants. I believe, on the evidence, that it was only the demise of more active agricultural management from about the mid-1980s that allowed this to happen.

11.83. Conversely I have formed the view, again on the balance of probabilities, that there is no convincing evidence that such use became established over the surface of the other fields west of OS.7638 during that period. There might have been sporadic acts of trespass and fence damage, or deviation from the east-west footpath, but nothing to suggest (convincingly) widespread use of the land as a whole in a manner which would meet the requirements of ***Section 15*** of the ***Commons Act***.

11.84. I believe on the evidence that the state of affairs I have thus characterised remained more or less the same until the work on the golf course began in late 1991. In particular there is nothing on the evidence which makes me believe that anything was done before the golf course period to halt the considerable amount of informal incursion that was taking place into parcel OS.7638.

11.85. I take account of the Objector's point, which is put convincingly, that there is no record in the planning proceedings of the 1980s, in particular the 1988 planning appeal, that objections to proposed developments on the current application site were ever expressed by local people (or the relevant local authorities) on the basis that the inhabitants had the right or habit to recreate themselves on the surface of the fields concerned, which would be lost if the fields were developed. The lack of any such recorded objections is true but, viewed as at that time, the slackening off of agricultural management of Turnhams Farm was still, on my view of the facts, fairly recent, so there was no question of ***rights*** of (local) public recreation by then being established over (say) the eastern fields. I also have regard to the fact that all this happened over a decade before the House of Lords decision in the ***'Sunningwell'*** case brought to wider public attention even the theoretical possibility of registering as 'village green' areas of low grade former agricultural land where (initially) trespassory incursion from neighbouring built up areas had begun to take hold.

11.86. However, on the view which I have formed of the evidence the situation on Area 4 was completely transformed by the coming of the golf course, works for the construction of which took place in the second half of 1991. It is apparent from the aerial photographs, quite apart from the oral evidence given by many of the Objector's witnesses, that this was a 'tight' golf course, with greens, tees and fairways tightly packed into the available land, so that they occupied almost the whole area apart from the east-west footpath and small patches in the northern and south-eastern corners. In this respect the situation was quite unlike that described in the ***Redcar*** case, of a coastal golf links in amongst the sand dunes, with extensive areas of rough ground between the golfing features.

11.87. In respect of the golf course period, from 1991/2 onwards, the Objector did call a considerable number of oral witnesses, many of whom had no financial interest in the present and future development prospects of this piece of land. I have to say that, taken as a whole, I found their evidence markedly more credible than, and preferable to, that given by most of the witnesses called for the Applicant. In any event some of the Applicant's own witnesses did acknowledge that during the golf course period it

was difficult and uncomfortable to be on the land anywhere other than on the east-west footpath, or perhaps walking around the perimeter.

11.88. I also found convincing the evidence that when the golf course was initially being constructed there was something of a 'battle', particularly in the eastern part of the land, with trespassers who had got used to coming onto that area during the latter, somewhat neglected, agricultural years, but that this 'battle' was in the end won by the golf course management, and the circumstances created by the actual operation of the golf course.

11.89. I find as a fact that for several years in the 1990s the golf course was quite carefully and closely managed, and busy with players, and that active steps were routinely taken to ensure that non-golfing members of the public were kept off the greens and fairways etc. I entirely accept, as indeed did the Objector itself, that there will have been sporadic instances of trespass onto those greens, bunkers and so forth, but I am convinced on the evidence that this was not remotely at a level sufficient to convey to an observant landowner that a ***right*** was being claimed by local people to wander freely over the golf course. I accept the evidence for the Objector that it would have been actively dangerous and uncomfortable to be on the course (other than as a golfer) for much of the time, and that active steps were taken to direct occasional trespassers back to the footpaths when they were seen.

11.90. I accept on the evidence that during the last short period of the golf course's existence the management of it might have become more slack, and the usage less, so that it might have become more feasible for local people to wander over the course for some of the time, although I did not hear any evidence which convinced me that this in fact happened to a significant degree until after the golf course ceased to function as such in 1999.

11.91. Thus my conclusion on the evidence is that, even if there had been in the eastern field OS.7638 the beginnings of a 'village green' type use by local people from about the mid-1980s to 1991, there was not any such use 'as of right' on any part of Area 4 for a period of several years from 1992 onwards. It follows, in my judgment, that it is not possible for the Applicant's application to succeed here, whether on the basis of ***subsection (2)*** or ***subsection (4)*** of ***Section 15*** of the ***Commons Act 2006***.

11.92. I entirely accept on the evidence that from 1999 on it probably did become feasible to wander generally over the surface of Area 4. Indeed all parties noted that there was a very marked difference in the appearance of the land in the aerial photograph dated August 2002, from anything seen in the photographs taken in the 1990s, up to and including the one taken in 1999. Indeed I should say that I formed the strong impression that many of the Applicant's witnesses, in giving their evidence, were running together in their minds the fact that it has been possible for 10+ years since about 1999 to wander fairly freely about this land, perhaps in some cases with a more distant recollection that back in the late 1980s a certain amount of more general

wandering took place around the eastern field(s), and rather excluding from their minds the actively managed golf course years in between.

11.93. I am quite satisfied on the balance of the evidence as I heard it that the situation during the active golf course years at Pincents Hill was not at all comparable with that described in the ***Redcar*** case. This was not a case of 'give and take' between golfers and other users of the same land. It was an actively managed golf course which took active steps to exclude trespassers. I found the evidence of the Objector's witnesses markedly more credible in this respect than that of those called by the Applicant who took a different line [while noting also that some of the Applicant's other witnesses did in fact acknowledge that local people had really only used the footpaths on the land during the golf course period].

11.94. I should perhaps observe as well that although I am sure that there will have been a period after 1999, when the previously maintained golf course had ceased to be used as such, when it would have been fairly easy to wander over the whole surface of Area 4, by the time 2010 had been reached (and therefore presumably by 2009 also), there were large parts of this land where (because of the vegetation) it is not actually very easy or comfortable to do that anymore, other than on the network of footpaths. Nor is it actually apparent over much of this large site that people really do wander off those paths to a significant extent. Once again (and not surprisingly), there is some land towards the eastern end of Area 4 where such general wandering looks more feasible.

11.95. I fully accept the important point of principle that it is not actually necessary to show that local people have used every square metre of land which is claimed as 'village green', but that one must look at the overall pattern of use as a whole, to see whether it is the assertion of a right to use the land generally, or merely the use of a footpath, with perhaps occasional deviations from it. I have to say that it is not obvious, even now, and having regard to the evidence I received, that large parts of Area 4 really are used in this extensive sense by local inhabitants. I say this in spite of being fully aware that some of the Applicant's witnesses, particularly some of the dog walkers, did assert that they regularly walk 'all over'. However the reality of the situation on the ground makes this seem somewhat less feasible or, to be frank, credible than their evidence would suggest.

11.96. However this last matter is not in reality the reason why I recommend rejection of the Applicant's application in respect of Area 4. It is because I markedly preferred and found more convincing the evidence of the Objector's witnesses about the state of affairs during the active golf course years of the 1990s, to the evidence to a different effect which was called for the Applicant.

Planning Matters

11.97. I do have to note that, in spite of my indications on several occasions, beginning with the Pre-Inquiry Meeting, that issues going to the planning merits of retaining this land

as an open area, as opposed to its potentially being developed, could not possibly be of relevance to any determination under the Commons Act, the Applicant did persist in addressing this point right up to and including the conclusion to her final submissions at the end of the inquiry. A large number of witness statements in support of the Applicant also made reference to this aspect.

11.98. I therefore do feel it appropriate to remind the Council as Registration Authority that, whatever might be the Council's position, wearing its local planning authority 'hat', about any potential development on this land, it is important to confine consideration of the present application under the Commons Act to the statutory criteria under that Act, which entirely relate to the factual aspects of the ***history*** of the pieces of land concerned (and their legal consequences), and not at all to the question of what ***ought*** to happen on this land in the future.

Conclusion and Recommendation

11.99. My conclusion and recommendation to the Council as Registration Authority is that ***no part*** of the application site at Pincents Hill (off Pincents Lane), Tilehurst, should be added to the register of town and village greens, because on the evidence it does not meet the statutory tests required for such registration, under any of the subsections of ***Section 15*** of the ***Commons Act 2006***.

ALUN ALESBURY
29th November 2010

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

APPENDIX I – APPEARANCES AT THE INQUIRY

FOR THE APPLICANT

Mrs Jean Lawrie (the Applicant), on behalf of 'Save Calcot Action Group', in person:

She gave evidence herself, and called:

Mrs Jean Gardner, of 5 Marling Close, Tilehurst
Mrs Sally Jones, of 5 Mayfield Avenue, Calcot
Mr Christopher Jones, of 5 Mayfield Avenue, Calcot
Councillor Joe Mooney, of 15 Childrey Way, Tilehurst
Mr Ken Smith, of 55 Farm Drive, Tilehurst
Mrs Karyn Cook, of 3 Barley Walk, Tilehurst
Mr Tony Greenfield, of School Bungalow, Curtis Road, Calcot
Mr Brian Davies, of 2 Farm Drive, Tilehurst
Mrs Julia Smith, of 55 Farm Drive, Tilehurst
Mr Gus Higgins, of 4 Cowslip Close, Tilehurst
Mrs Ann Allum, of 2 Barley Walk, Tilehurst
Mrs Ann Osborne, of 2 Cowslip Close, Tilehurst
Mrs Patricia Roffe, of 1 Barley Walk, Tilehurst
Mr David Osborne, of 2 Cowslip Close, Tilehurst
Mr Alok Sharma MP, House of Commons

FOR THE OBJECTOR

Mr Stephen Morgan – Counsel
Instructed by:
Messrs Lawrence Graham LLP
4 More London Riverside
London SE1 2AU
(Ref Mr Stephen Turnbull)

He called:

Ms Christine Cox, Director, Air Photo Services Ltd
Mr Alasdair Barron, of 121 Camberwell Grove, London SE5
Mr Geoffrey Parlour, of 6 West Dene, Caversham
Ms Kate Clark, of 16 Carters Rise, Calcot
Mr Alastair Mitchell-Baker, of 38A Wendover Way, Tilehurst
Mr Tim Metcalfe, of Home Farm, Purley-on-Thames
Mr Geoffrey Legouix, of Santolina, 9 Nine Mile Ride, Finchampstead
Mr Tony Timberlake, of 162 Park Hill Road, Harborne, Birmingham
Mr Jonny Anstead, Director, Blue Living (Pincents Hill) Limited (the Objector)
Mr Alistair Bath, of 9 The Rise, Reading
Mr John Francis, of 9 Perry Street, Oxford

APPENDIX II

LIST OF DOCUMENTS PRODUCED IN EVIDENCE TO THE INQUIRY

(NB. This list does not include the original application and supporting documentation, the original objection, or any material or correspondence submitted by the parties prior to the Pre-Inquiry Meeting. Nor does it include written notes of submissions, law reports, statutory extracts, etc, or the proofs of evidence of witnesses who gave oral evidence. Both main parties produced substantial bundles of documentation for the purposes of the Inquiry, which were for the most part well-indexed. It is not proposed in this Appendix to repeat the contents of those indexes. The bundles concerned were presented whole to the Registration Authority (and to me) by the relevant parties. All of the documents referred to were available to all parties at the Inquiry).

By the Applicant

- Bundle entitled 'Submission on Behalf of the Claimant' with supporting documentation
- Applicant's Statement of Case
- Map of Area with Photographs of Access/Exit Points
- Bundle containing statements of intended oral witnesses, and also Affidavits of Debra McCulloch and Douglas Murdoch, with their exhibits; and a DVD produced by Mr Ken Smith
- 2 large files containing Applicant's 'Documentary Evidence'
- Map of Birch Copse Ward of Tilehurst Parish
- Letter from Mr & Mrs T Neblett, 13/5/2010
- Letter from Sir Antony Durant, 25/5/2010
- 'Applicant's Replies to Objector's Clarification of Applicant's Photographic Evidence'
- Plan (produced 15th June 2010) showing amended boundary to application site, excluding the land belonging to Mr & Mrs March
- Documents relating to footpath modifications affecting the application site

By the Objector:

- Figures and Plates relating to evidence of Christine Cox
- Addendum Statement of Christine Cox, with aerial photograph dated 6th November 1986
- Large Bundle of Appendices to Proof of Mr J Anstead
- Letter (24/5/2010) from Lawrence Graham concerning Applicant's photographs
- 'Objector's Clarification of Applicant's Photographic Evidence'
- Statutory Declarations from Alastair Brown, Jason March, Andrew March, Valerie March, Cathy Goodall, Martin Goodall, Tony Wilson, Jean Francis and Julia Hall
- Signed statements from David Boot, John Smith, Kevin Grealis, Valerie Smith and Eric Jennings
- Letter (29/1/2010) from Hailey Wilder
- Email exchange (26/5/2010) between Alasdair Barron and Kylie Toms

By the Registration Authority:

- Annotated Plan (15th June 2010) showing highway boundary at 'Northern Finger' of Application Site