

APPLICATION BY MRS CATHERINE BAKER TO REGISTER

LAND AT LONGBRIDGE ROAD, BRAMLEY

AS A TOWN OR VILLAGE GREEN

INSPECTOR'S REPORT

Preliminary

Introduction

1. I am instructed by Hampshire County Council ('the Council') to advise it in its capacity as registration authority, regarding determination of the application dated 1st November 2008 ('the Application') submitted by Mrs Catherine Baker ('the Applicant') seeking the registration of land at Longbridge Road, Bramley ('the Land') as a town or village green pursuant to section 15(2) of the Commons Act 2006 ('the 2006 Act').
2. The Application is the subject of objections by the landowner, Radiotropic Ltd, and by Mr John Bell, the director of a company known as Park Estates Southern Ltd ('PESL'), which purchased the freehold of the Land in 2001 and which retains a financial interest in it. These two objecting parties lodged a joint objection dated 23 February 2009, and are referred to collectively for the purposes of this Report as 'the Objectors'.
3. I held a public inquiry ('the Inquiry') which sat for five days on 26 – 28 April, 21 June and 28 June 2010 at Bramley Village Hall, The Street, Bramley. At the Inquiry, the Applicant presented her case in person, whilst the Objectors were represented by Mr Vivian Chapman QC, of counsel. I am grateful to both individuals for the helpful and courteous way in which they endeavoured to assist me in the course of the Inquiry.
4. In the course of the Inquiry I conducted two site visits. The second of these visits was an accompanied visit at which both the Applicant and the Objectors were represented.

The Legislation

5. The Relevant legislation for the purposes of the Application is, as already noted, to be found in the Commons Act 2006. Insofar as is relevant section 15 of that Act provides:

(1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.

(2) This subsection applies where-

(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application.

The Land

6. The Land comprises a triangular shaped area located at the southern end of Longbridge Road. To the north lie no.s 24 and 25 Longbridge Road, and to the east lies a development known as the Forge Field Estate. The Land is bounded to the west by a pedestrian route known as 'the Cinder Track', behind which lies the railway line. The residential property at the southern 'tip' of the Land is known as 'The Laurels'.

7. There are a number of informal routes which run across the Land. However, I am advised that none of these routes are recorded on the Council's Definitive Map of rights of way.

The 20 Year Period

8. The Application was made pursuant to section 15(2) of the 2006 Act. As such the relevant period within which the Applicant must show that the Land has been used in the requisite manner in order to satisfy the statutory requirements of the 2006 Act is the 20 year period 1st November 1988 – 1st November 2008 ('the Relevant Period').

Neighbourhood & Locality

9. At the outset of the Inquiry the Applicant confirmed that for the purposes of the Application she relied on the use of the Land by the inhabitants of the civil parish of Bramley as justifying

its registration as a town or village green. In doing so she stated that the civil parish should be considered a 'locality' for the purposes of the 2006 Act.

10. In the course of the Inquiry I was provided with a large-scale plan of civil parish (referred to hereafter in this Report as 'the Locality').

The Applicant's Evidence

11. At the Inquiry the Applicant called 26 people (including herself) to give oral testimony in support of the Application¹. All those who appeared at the Inquiry in support of the Application, produced a witness statement or written document of some form.
12. In addition, the Applicant relied upon witness statements from a further 30 individuals who did not appear before me at the Inquiry, to which I have also had regard². However, I have attached significantly less weight to this evidence than to that given by persons who appeared at the Inquiry, owing to the fact that Mr Chapman was unable to test it in cross-examination.
13. The Applicant also submitted additional documentary evidence in support of the Application. I have studied all this documentary evidence, and had regard to all of it in preparing this Report.
14. In the following paragraphs, I summarise the evidence given by those of the Applicant's witnesses who did appear before me at the Inquiry. This section of my Report is not a precise minute of each witness's evidence, but rather a general record of what I considered to be the thrust of their testimony (both written and oral), insofar as it was relevant to the matters to which I must have regard in making my recommendation.

¹ In recording the number of witnesses, I have not had regard to a number of young children who were called to give evidence (e.g. Katie Baker). Although doubtless they did their best to assist me, I do not consider it appropriate to attach material weight to the evidence of those witnesses. I note in this context that Mr Chapman, understandably, declined the opportunity cross-examine their evidence, limited though it was.

² Again, it appeared that a number of the authors of these statements were children (Violet Cole, Amy Cowling, Matthew Cowling). As explained in the body of the Report I have attached relatively little weight to this written evidence in any event, owing to the inability of the Objector's team to test it in cross examination. However, I have not had any regard to those three statements which I consider were written by young children.

Mrs Catherine Baker (the Applicant, 32 Longbridge Road)

15. The Applicant has lived at her present address since 2000, prior to which she lived elsewhere in Longbridge Road at no.29 from 1994.
16. She explained that as far as she could remember, the development of the Forge Field Estate ('Anvil Way', 'Farrier's Close' and 'The Smithy') had been built in 1999. She said that prior to this development being constructed, children would play on the Land, and also move out to play on 'Forge Field'.
17. Her children (son 18 months old at time of moving to Longbridge Road in 1994, daughter born in 1996) had played on the Land as they grew up. Her son had been friends with the children of 6 or so other families on Longbridge Road who would all play on the Land, with activities being football, den-making and general play. Other friends living on other roads in Bramley – Lane End, Pheabens Field, Moat Close, Bromelia Close, Coopers Lane, Ringshall Gardens and Strawberry Fields – also played on the Land. Her son's use of the Land lasted broadly from 1998-2006. Her daughter has also played on the Land, and learned to ride her bike on the Land. From around 2006 she has walked the family dog on the Land unsupervised.
18. Mrs Baker acquired the dog in 2001 or 2002, and has since used the Land for dog walking most days. She felt that she would have used the Land less in winter and more in summer, however she said she used the Land as a cut-through almost every day throughout the year. When visiting the Land she has watched the wildlife (butterflies and bats, for example) and chatted with people she has met. She explained that in recent times she has seen children sitting on the tree trunks on the eastern side of the Land, and seen others cycling bikes. She felt that the use of the Land changed over the years and was seasonal to some extent.
19. She disagreed with the description of the Land by Mr Harris of 5 Longbridge Road in a letter dated 12 December 2005 (Objectors' Bundle p.270³) as a "dog toilet", and said that there *"isn't a day goes by when the Land is not used by a person"*.
20. She had no recollection of seeing a fence being erected along the Cinder Track in January 2002, and did not know why people had not seen the fence being erected. She felt that she would have visited the Land within a week of the fence being erected. Her recollection was

³ For the remainder of this Report all references are to 'OB' (Objectors' Bundle) or 'AB' (Applicant's Bundle).

that there had always been gaps in the fence, which she felt may have been deliberate, and she remembered seeing a roll of fencing wire on the ground. She said that she did not recall ever having to squeeze through the fence

21. She did remember seeing the installation of the gate at the Longbridge Road entrance to the Land ('the LR Entrance'), and also that her husband had mentioned that he had seen it closed (although not locked), saying that he would be *"very cross if we can't get in"*. However, she recalled that the next day when they went to the Land the gate was open and did not prevent access. Since the gate was open, she had not thought there was any point in complaining to BDBC.
22. She stated that until the very recent fencing of the Land (which post-dated the Relevant Period) it was not apparent to her that she was being excluded. She queried why, if the landowner had wished to prevent access, he had not fenced the entirety of the Land and erected signs to that effect.
23. She accepted that Mr Bell had discussed the prospect of developing the Land with BDBC from as early as 2001, but said that she had not been aware of this (*"He wasn't publicising his intentions to local residents"*). She explained that she was unaware of any issue relating to the Land prior to the submission of a planning application in 2004. Until that date she had understood the Land to be owned by BDBC. She accepted that the letter written by the Clerk to the Parish Council to Basingstoke and Deane Borough Council ('BDBC')⁴ dated 26 March 2001 (ABp.242) suggested that local people were concerned about the status of the Land at that date, but felt that all it really indicated was that they had found out that the Land had been sold.
24. She accepted that 26 objections were made to the first planning application in 2004 (also a petition with some 70 signatures) and that 34 were made to a second planning application in 2008. However, she said that local people did not see the submission of the planning applications as a "challenge" to their use of the Land.
25. Her recollection was that the Land had been maintained by Basingstoke and Deane Borough Council ('BDBC') until 1999. She said that she had not been aware of a letter sent by Mr Bell

⁴ In addition to using BDBC as an abbreviation for Basingstoke and Deane Borough Council, the term is used to refer to the predecessor authority of the borough council, where appropriate.

to Mrs Walker requiring that she cease mowing the Land⁵, and said that in fact several residents had mowed it over the years, including John Cooper. She said that the last time it had been mowed was in 2008/9. She said that in Summer the grass did grow to knee height, but that did not mean the Land was not used.

Mr Ian Cameron (15 Longbridge Road)

26. Mr Cameron has lived at his current home for 14 years.
27. He explained that since he had moved to the area, he had seen his children (now 18 and 11 years old) and other local children playing on the Land. He explained that his children had both gone to Bramley school, and in doing so had met other children from all over Bramley with whom they had played on the Land. Until the new fencing was erected in 2010 they had used the Land for activities such as kicking balls about and building camps. He explained that he had been happy for his children to use the Land since it was a safe area, and kept the children off the roads.
28. He felt that children used the Land more in summer, spring and autumn than in wintertime, but that teenagers sat out on the Land in the evenings all year round.
29. He remembered that initially the grass had been mown by BDBC, but that at some point they stopped maintaining the Land. After this Mr and Mrs Walker mowed it from time to time. He accepted that at times the Land had become more overgrown, but maintained that children played in long grass as well as short grass.
30. As regarding his own use, he considered that in summer he or his wife would have cause to go on to the Land most days, and that in midwinter he would perhaps have visited once a week.
31. He stated that he had not noticed new fencing in January 2002, but that he would only have noticed it in the event that it had restricted his access. He felt that there had always been gaps in the fence through which one could pass. He had never been under the impression that access to the Land was restricted. He remembered seeing the gate, but since it was always open he had wondered who had put it up and why. He had never seen a broken chain or a padlock.

⁵ OBp.93

32. Similarly, he remembered the tree trunks appearing on the Land, but had not assumed that they were intended to prevent access. He didn't remember them being across the route of the path, and noted that children had played on them and teenagers had sat on them.
33. He had been told of the planning applications and had objected.

Mr Thomas McCafferty (51 Longbridge Road)

34. Mr McCafferty has lived at his present address since 2002. Since moving to the Land he had walked his dog there and had observed wildlife. He had also played with his nephew. All in all, he felt that he probably used the Land on a daily basis throughout the year. When visiting he had regularly seen other local children playing there and relaxing.
35. He had also regularly used the Land as a cut-through to the station.
36. The Land had initially been in good condition, but had become increasingly overgrown. However, he continued to use Land until 2008, playing football and 'catch' with his nephew and walking his dog. He felt that his nephew had also played with other children on the Land.
37. The first time that he felt his access to the Land was restricted, was following the erection of the new wooden fence in January 2010. He did not recall the gate at the LR Entrance as having been in place initially, thinking that it had been installed in 2003. He thought the gate was open most of the time, but when closed it had never been padlocked.
38. He recalled there being a fence along the Cinder Track, but felt that there had always been a gap at both ends.
39. He remembered the appearance of the tree trunks on the Land, but felt that if the intention in depositing them had been to 'block the access' then it had not been successful since people simply walked round them,
40. He had objected to development on the Land, but felt that his objection to the development was separate to the question of the village green application. He did not accept that there was a "dispute" or "state of war" between local people and the landowner. He still felt free to go on to the Land even after the planning applications had been submitted, because they had not been determined and he did not think they amounted to a restriction on access.

Mrs Roberta McCafferty (51 Longbridge Road)

41. Mrs McCafferty has lived in her current home since 2002.
42. Since getting a dog in 2003 she felt that she had used the Land for walking and for dog training on an almost daily basis. In 2002, she made use of the Land only at weekends. She and her husband now share the 'dog-walking' duties, with her doing the morning walks. She said that she always picked up after her dog, and that the description of the Land as 'dog toilet' was "incorrect" and somewhat "insulting". She regularly met and saw other people on the Land in the course of her visits. In particular, she had seen children playing there engaged in activities such as skateboarding and riding bikes.
43. She felt that the land was used by many as a cut through, but that it was also used for recreational purposes.
44. She felt that she had never been told not to use the Land prior to the erection of the most recent fence. She remembered that there had been a gate at the LR Entrance since when she first arrived, but that this had always been open. She explained that she didn't notice the new fence being erected; she had always known there to be large gaps at either end of it. She had never seen any sign telling her to 'keep out', nor had to climb over any gate.
45. She couldn't remember precisely when the tree trunks were deposited on the Land, although she had felt that the developer had put them there in order to "block" the route from Forge Field Estate. However, she explained that the remainder of the Land had been left 'open', so that she did not feel that the dropping of the Tree Trunks was an attempt to stop *her* from accessing the Land. She had known of the 2004 and 2008 planning applications and had signed the petition resisting development.

Mrs Maria Owen (48 Longbridge Road)

46. Mrs Owen has lived at her current property since 2001.
47. Her children have used the Land for football, den making and general play. She herself has used the Land for blackberrying, nature observation, as part of a route for dog-walking or jogging. She walks her dog almost every day. She had never felt she was trespassing, but has not used the Land since the new wooden fence has been erected.

48. She did not see the Cinder Track Fence actually being erected, but she recalled noticing it afterwards. She had presumed its purpose was to stop people going through the brambles, and there were gaps at either end of it. She thought that these gaps were intentional.
49. She could not recall whether the gate and the Cinder Track Fence were erected at the same time. She accepted that the probable purpose of the gate was to “block people”, but had never seen it closed or padlocked.
50. She remembered that there was a time when people mowed the grass.
51. She had objected to the planning application in 2004, and accepted that she had known since that date that the owner of the Land wished to develop it for housing. She further accepted that such development would have meant stopping people going on to the Land.

Miss Janice Spalding (20 The Smithy)

52. Miss Spalding has lived at her current address since 1999. At that time, there had been a route onto the Land from the estate, across the Dry Ditch. The path was not an ‘established one’, but rather one that “had developed”.
53. Her recollection was that when she had first moved in, the Land had been maintained. She was familiar with the Land from this point since she used it as her route to the train station every day. Indeed she had used it from 1999 until the date when the wooden fence was put up recently (after the Relevant Period)
54. She remembered the seeing the new Cinder Track Fence, but when she saw it there was already a gap in it through which she could pass.
55. She remembered the tree trunks appearing on the Land, since had had to clamber over them in order to get to work. She had thought that teenagers had put them there. Later, she noticed that the Trunks had been moved. She did not understand that the trunks had been put there to block the route, and considered that if that had been the landowner’s intention she would have expected to see a notice to that effect.
56. She had seen children playing frisbee and football on the Land. Indeed, when she and her partner had moved to their home, they had had a 16yr old boy staying with them who had used the Land for football. In the summertime she also hears a lot of activity from behind

her house – the noise of children playing for example – which she has always felt was coming from the Land.

57. She did not think that she had been aware of the 2004 planning application in respect of the Land, but felt that she may have known about the 2008 application. She knew that the developer wanted to build houses on the Land.

Cllr Ranil Jayawardena (40 Taylor Drive)

58. Cllr Jayawardena moved to Bramley in 1999 and had been elected as a councillor for BDBC in 2008.

59. In the period 1999-2008 he had walked the Cinder Track once every one or two months, and since 2008 he had walked it some weeks and not others. He recalled that when passing he had seen some people on the Land in the period 1999-2008.

60. He did not recall the Land ever having been properly fenced, and did not recall any new fence. He did however remember seeing wire (from fencing) on the ground. He did not recall a gate, but felt that if one had been open he would not have noticed it.

61. As far as his own use of the Land was concerned, he thought that he may have used it occasionally as a short cut through to a shop. His feeling was that it had always been easy to get from one side of the Land to the other.

Mrs Ann Squibb (16 Lane End)

62. Mrs Squibb has lived in Lane End for some 55 years.

63. She herself had still been using the Land in 1988 for activities such as walking dogs, but had stopped using it in the 1990s. However, she had seen children playing on the Land until recently. She also saw dog walkers. She considered it a good place to pick blackberries.

64. Her children had played on the Land between 1972 and 2000 (her youngest daughter would have been 15 in 2000). She recalled them having used the Land for pastimes such as camping out, football, barbecues and british bull dogs.

65. She remembered the Cinder Track Fence being erected, but when she saw it she felt that it was not attached at either end. As such, she felt one could pass on to the Land. She did not recall there being any notice telling people not to go across the Land.

66. She had walked through the fence to go up Longbridge Lane occasionally, and did not remember a gate ever stopping her.

Mr James Watkins (31 Longbridge Road)

67. Mr Watkins has lived at his present address since 1982.

68. His evidence was that his two children had both used the Land for playing with their friends from the village, and with the family dog. He had seen his children and also other children from the village playing on the Land between 1982-2009, and indeed, he had been accustomed to play with the children and dog on the Land himself. He had also used to jog along the Cinder Track once or twice a week, and would have observed the Land in the course of these excursions. He did not accept that the 'overwhelming use' of the Land had been as a short cut.

69. He recalled that until around 2001 the Land had been maintained and mown, by a party that he presumed to be BDBC.

70. He had been aware of the planning applications in 2004 and 2008 and indeed had objected to them. On 1 February 2006 he had written an email to BDBC in which he complained that the landowner had tried to restrict access to the Land by means of fencing and gating it. Notwithstanding his evidence that there were always gaps at the northern and southern ends of the Cinder Track Fence he confirmed that he had thought the erection of the fencing was an attempt to restrict access, and also that he had thought that the Objector had been trying to restrict access to the Land by depositing the tree trunks at the eastern access point.

71. He said that he was aware of the gate at the LR Entrance, but that it had never been locked when he saw it. He had also never seen any sign or notice on the Land prior to 2010

Mr Scott Naylor (3 Lane End)

72. Mr Naylor has lived at his present address since 1994. However, he was also familiar with the Land during the 1970's and 1980's, having lived in Moat Close and visited relatives in

Bramley when living abroad. During this period (when he was young) he had played various games and camped on the Land

73. He remembered the Cinder Track Fence going up, but had not actually seen it being constructed. He explained that it had never prevented his access to the Land, since there was a gap which had been left at the northern end. He thought this gap had been left by contractors. Initially however, there had been no gap at the southern end – this had appeared later.
74. His recollection was that work had been undertaken to the Cinder Track at roughly the same time as the erection of the Cinder Track Fence, and he had presumed the latter works were connected with the improvements to the Track itself. Prior to the recent works he had never seen any 'private' sign on the Cinder Track Fence, or on the ground. However, he did recall signs of some kind in the 1970s, which were taken down after a couple of weeks.
75. He could not remember a time when there had not been a gate across the LR Entrance, and indeed he recalled there was a gate in 1970s. He had never seen the gate closed, prior to the recent works (ie after the Relevant Period).
76. In 2002-6 he had used the Land with his children, accessing it via the Cinder Track. He had taught his son to ride a bike on the Land, and at the weekends had played football. He had visited the Land 3 times a week for recreational purposes, not for the purpose of using it as a cut through. However had not been well in 2003 and had not made use of the Land in that year. In the years 2006-8 he had visited the Land once a week, playing cricket and frisbee with his son.
77. He recalled that since 2002 the Land had been kept trimmed until people were told to stop maintaining it.

Ms Julia Horsfield (22 Farriers Close)

78. Ms Horsfield has lived at her current address since the property was built in 1999. When she bought the house she had understood from BDBC and the developer of Forge Field Estate that the path from the development leading to the Dry Ditch would be extended so as to formally 'link' Farriers Close and The Smithy with the Land. Indeed she also recalled having been told by someone in the Council's planning department that the Land was owned by

BDBC and that there was a right of way across it. However, she had never seen documentary evidence to this effect.

79. She remembered that the Land was well-maintained at this time, being mown by BDBC.
80. She said that in 2002 she would have been going onto the Land as part of her route to work or to the school. Also, her son was using the Land for play at this time. However, she did not make much if any use of the Land in the winter months, since when it was wet her 'route' across the Dry Ditch would have been muddy and so she would have travelled another way. As such, she did not recall seeing the Cinder Track Fence being erected, although she remembered her son telling her of it. She remembered seeing the Fence at a later date, and assumed that BDBC had put it up due to a problem with people using the Cinder Track for mini-bikes. She recalled the fencing having been attached to the MOD posts, and that it only ran for about half the length of the Land. In particular, she recalled that the fence did not reach to the wall at the northern (Longbridge Road) end.
81. She said that she had no recollection of a gate at the LR Entrance, but that because that was not part of her route, she would not have noticed it in any event.
82. She remembered her son telling her that the tree trunks had been deposited on the Land. She noted that they had been quickly moved, and assumed that young people had moved them. She said that they were often used by local teenagers to sit on and socialise with their friends. She had no idea why they had been put there, and she had never had to climb over them.
83. She felt that adults used the Land as a short cut and for walking dogs, which she had often seen people doing. She also felt that children played games there, rode bikes and camped. However, she accepted that use of the Land for football and cricket had diminished after mowing of the Land ceased. She recalled her own son using the Land for play with his friends almost every day after school. He had ridden his bike there between 2000-2007, making use of dips and troughs that other bike riders had created.

Mrs Sarah Naylor (3 Lane End)

84. Mrs Naylor has lived at her current address since 1994, prior to which she lived in Moat Close (also in Bramley).

85. She felt that she walked across the Land on more or less a daily basis, to visit either shops, schools or friends.
86. She did recall seeing the Cinder Track Fence, but said that it had not stopped her from walking onto the Land since there were gaps at either end. She could not recall seeing the fence in the course of its construction, though she felt that this might have been because she worked late at an after school club the day that it was erected.
87. She explained it was not obvious to her why the fence had been erected. Her understanding had been that BDBC had put the Fence up. Her recollection was that the fencing had only been renewed along the 'middle section' of the Land – it had not been apparent to her that parts of the fence had been pulled down, as the Objector suggested.
88. She recalled the gate at the LR Entrance, but felt that there had always been a gate there. However, she felt that the gate had always been fully opened, so that it rested against the wall. She had never seen it closed or padlocked, and didn't know why it had been erected. She remembered children climbing on the gate and using it as a ladder.
89. She did not recall seeing any signs.
90. She confirmed that she sometimes accessed the Land across the Dry Ditch, and recalled the tree trunks appearing. She thought that BDBC had put them there, and had got the impression that the children enjoyed playing on them.
91. Her children had played on the Land since 1997, meeting friends and riding bikes. Her younger son had learned to ride his bike there in 2000. She said that many of the children in the area played on the Land, and that parents were happy for them to do so as it was a safe play area, with many parents being on hand to keep an eye on things.

Mrs Judith Watkins (31 Longbridge Road)

92. Mrs Watkins has lived at her current address since 1982.
93. When she moved to the property she had an 8 year old daughter and an 18 month old son, and she explained that her daughter began playing on the Land with her friends from soon after their arrival. She also explained that her son began playing on the Land with friends after a few years, when he was a little older.

94. Her recollection was that at this time there were 30 or so children living on Longbridge Road, of varying ages, and that these children used the Land for a variety of different games. Many of these were ball games and general play, but she has also seen people flying kites and model aircraft on it. Further, she also explained that parents would sometimes prepare picnics and eat out on the Land. Her daughter ceased using the Land in around 1989, and her son around 1996-8. At this time, the Land was still being mown by BDBC. She felt parents were happy to have their children play there because it was safe, not being near any busy roads which the children might have to cross.
95. She herself used the Land with her children, and has continued to use it for walking. She sometimes walks her daughter's dog on the Land has also seen many other dog walkers there; in addition she enjoys blackberrying on the Land when the fruit is in season. She had a dog of her own until 1999, which she used to walk on the Land.
96. She retired in 2000 since when she has walked in the village a great deal, and felt she has seen more of what goes on on the Land; in this context she mentioned the fact that it is visible from her bedroom window. In more recent years she noted that the Land has been used by children for cycling activities, with older children sitting out on the tree trunks on the eastern edge of the Land
97. Following BDBC ceasing to maintain the Land, one of her neighbours began mowing it until she received a letter from Mr Bell requiring that she stop doing so. She had been aware of the planning applications and had sought to raise them with the Parish Council.
98. She recalled having seen the Cinder Track Fence having been erected, and indeed had spoken to the contractor who was engaged in the work. Her recollection was that the fence had been attached to the existing concrete posts, and that the contractor had tried but been unable to attach it to the wall at no.24 Longbridge Road because that would have entailed blocking a gate from the rear of that property, and so the fencing had been rolled back. Similarly, she felt that the Fence had not extended along to the end of Lane End. However, she confirmed that the contractor had not finished his job when she had examined the fencing and discussed the matter with him.
99. She also recalled the gate being installed, but said that to her knowledge it had never been closed or locked but had rather always been pushed back against the wall of 24 Longbridge

Road. Indeed, she said that in recent years the undergrowth had grown up through it so that one could not have swung it closed.

100. She said that she had not seen any notice.

101. She recalled that in around 2007 she had seen the Objector moving tree trunks onto the Land with heavy machinery. She recalled a JCB being driven by someone with a familiar face, and assumed that landowner was trying to block the track from the Forge Field Estate.

102. She didn't feel people were trying to stop her getting onto the Land however, since the Tree Trunks had no effect on the access from Longbridge Road.

Mr Terence Baker (32 Longbridge Road)

103. Mr Baker explained that he had lived in Longbridge Road since 1994, moving to his present home in 2002.

104. His feeling was that the Land was used by children for play when the weather was good, but that even when the weather was poor adults still used it for dog-walking. His own son had used the Land for play from 1998-2006 (approx) with a dozen or so other children from various neighbouring roads including Lane End, Pheaben's Field, Moat Close and Ringshall Gardens. They had used it for football, picnics and play generally. His daughter had also used the Land, and indeed had learned to ride her bike on it, as well as to pick blackberries.

105. He had acquired a dog in 2002, since when he had used the Land for dog walking almost every day.

106. He explained that at the time when the Objectors claimed that the Cinder Track Fence had been erected in 2002, he would have been using the Land for dog-walking and for recreation with his children. He explained that he would walk his dog on the Land most days, and that he would have been on the Land twice a week with the children. However, he accepted that he would have been on the Land more in summer than in winter.

107. He did not recall seeing a fence along the boundary of the Land with the Cinder Track. He only ever remembered seeing a bundle of wire on the floor. He did recall the gate being present at the LR Entrance but his feeling was that it had never been padlocked, and had always been open save on one occasion. He had never seen any signs.

108. He was also aware of the tree trunks near the Dry Ditch. However, these had not blocked his route when he had walked through the Land and his impression was that children had used them to sit on and for play.

Mr Chris Constantinidou (17 Longbridge Road)

109. Mr Constantinidou has lived in Bramley since 1973, and had moved to his present home in 1997. As a boy he had played on the Land between 1976-1986 (approx) with a friend in Longbridge Road. He recalled that many children from the village played there. At that time he felt that the grass was always cut, and his impression had been that the work was done by BDBC.
110. By the time he moved to Longbridge Road in 1997 he no longer 'played' on the Land himself, but recalled seeing children playing there. He himself bought a puppy in 1997 and had exercised it on the Land since that time, in the course of which activity he had enjoyed meeting his neighbours. However, he would generally walk across the Land as part of a route, rather than spending time on it.
111. In 2002 he felt that he would have been going on to the Land most days to walk his dog. He recalled that the gate at the LR Entrance was never closed, but rather swung back onto the brick wall. He did not remember the erection of the Cinder Track Fence, and did not accept that a new fence had been "commissioned". In any event, he felt, there had always been a significant 'gap' at the northern end of the fence along the Cinder Track, at the points where it reached 24 Longbridge Road.
112. When the Council ceased maintaining the Land it became more overgrown. He recalled that in recent years a particular neighbour, Brenda Walker, had mowed the grass, but he could not remember precisely when this was. Since 2002 his memory was that a number of different people had cut it on an irregular basis.
113. During the Relevant Period he had never seen signs on the Land, either on the fence along the Cinder Track or on the ground. He was aware of the tree trunks, and indeed recalled them being put down. However, he did not understand that they had been deposited as a "deterrent" but rather presumed they had been put there for children to use.

Mr Andrew Oram (12 Bromelia Close)

114. Mr Oram was born and brought up in Bramley, and recalled playing on the Land since when it was still part of a sewage installation in the 1960s. He remembered it as being a very 'communal' play area, one which was used by children from all over the village. He played there with children from different parts of Bramley, including Freddy Wakes.
115. He recalled that at one stage, in the 1970s he thought, there had been a sign on the Land (attached to the wall of 24 Longbridge Road) which appeared to have been erected by BDBC which read "Longbridge Road Play Area". Indeed, he remembered pulling the sign off the wall, only to see it replaced by another.
116. He himself left Bramley in 1983, but would see children playing on the Land on the occasions when he returned to the village to visit his mother. These visits took place once or twice a month initially, although after 1994 he would have visited once a week. Sometimes on these occasions he would walk dogs on the Land, or else go to fetch his younger sister.
117. He did not recall the fence being erected along the Cinder Track. He remembered the gate as having always been open, and presumed that the Council had installed it to keep travellers out. He had never seen a 'private' sign on the Land.
118. Mr Oram had himself only returned to live in Bramley (at his current address) in November 2009.

Mrs Paula James (49 Moat Close)

119. Mrs James has lived at her current address for some 45 years and had herself had made use of the Land as a child. She had only begun using it once it had ceased to be used as a sewage facility, although her brothers had used it while it was still put to that use.
120. Her own children had played on the Land until recently. From 1993, for the next 7 or so years, she had walked on the Land almost every day. However since 2000 she had not been there so often. She couldn't recall whether or not she had seen the Cinder Track Fence.

Mrs Carol Taylor (20 The Smithy)

121. Mrs Taylor has lived at her current address since 1999.

122. She explained that the builders of the Forge Field Estate had left a pathway through to the Land, which led across the Dry Ditch.
123. In 1999 the Land was not overgrown. She did not use it for recreation herself, but generally used it as a cut through once or twice a week throughout the year. She would often see children playing there and people walking dogs.
124. She did not remember the Cinder Track Fence being erected, because there was no time at which her access to the Cinder Track was impeded. Similarly, she was not aware of any gate being installed but felt that she would not have noticed this because she would never have used the route through to Longbridge Road. She never saw any signs.
125. She was aware that in January 2007 tree trunks were deposited on the Land. However she had assumed that youngsters had put them there to sit on. It did not occur to her that the trunks were put there to block access, and she herself never had to climb over them but was always able to walk round.
126. She became aware of the planning application in 2008, but didn't object.

Mr David Greggor (27 Longbridge Road)

127. Mr Greggor moved in to his property in January 2002.
128. When he moved in, the grass was still being cut on the Land, and his recollection was that maintenance continued until 2004. He thought that the work was done by "a professional set up", and that it was done regularly. He was confident that it was BDBC that had done the work.
129. He heard subsequently (in around 2004) that Mrs Walker had been told not to mow the grass on the Land, and he understood that this was because the Objector wished to develop the Land.
130. He felt that while he had lived in Bramley the area was widely used by local children and by people walking dogs. His step son had played on the land and ridden his bike there for some 4 or 5 years during this period. He had seen children playing on the Land until recently, and indeed he could see onto the area from his bedroom window. However, he was not aware of anyone playing on it since the recent fencing had been erected and the gate padlocked.

131. He thought that On 13 October 2008 he wrote to BDBC complaining about the condition of the Land, in terms that suggested that the latter was no longer suitable for children's play (O.214), however he confirmed in evidence that at that time children were still going to the Land, playing and sitting on the Logs.
132. He did not remember any fence being erected, and thought that the gate at the LR Entrance had always been there. To his mind this gate had always been open and never shut or padlocked. He remembered the tree trunks appearing on the Land, but could not remember them ever lying across the pathway.
133. He stated that he himself did not use the Land that often, on average a few times a year. He would cross it on his way to visit friends.
134. He was aware of the 2004 planning application, but he didn't object to it. He did not consider that in making the planning application the Objector was challenging his right to use the Land.

Mr Mark King (26 Longbridge Road)

135. Mr King has lived at his current address since 1999.
136. Since moving to the area, he has used the Land both for recreational purposes and as a 'cut-through'. So far as the latter is concerned, prior to the recent erection of the closeboarded fencing, he used to walk from the Forge Field Estate across the Land both to the Cinder Track and to Longbridge Road.
137. Frequently when going onto the Land he saw children playing, some of whom he recognised, (such as Leah from no.15 Longbridge Road and Matt from no.24 Longbridge Road). As far as his own recreational use was concerned, he used to play football with his step-son on the Land, or fly model aircraft with him. He also played with his step-daughter. He felt that he went to the Land once or twice a week.
138. He also saw people walking dogs on the Land, such as 'Ron' from no.25 Longbridge Road, Mrs Baker and Mr McCafferty.
139. He said that while he had been familiar with the Land, part of the grass had been cut, but he did not know who had cut it. This cutting of the grass had ceased over time.

140. He had not noticed the tree trunks being deposited on the Land, and assumed that they had been there for quite some time when he saw them.

Mrs Alison Cooper (42 Longbridge Road)

141. Mrs Cooper had lived at her current home since 1995. She has two children aged 8 and 12 who have played on the Land since they were 2 years old.

142. She has a dog which until this year she has walked daily across the Land. However, if her children are playing on the Land she will stay there with the dog. She has kept a dog for the entire time that she has lived at her current address (barring 3 days, after the first died and before she acquired another).

143. She could not remember when BDBC had ceased mowing the Land, but felt that after it had done so a number of local people carried out the work instead. Indeed, she and her husband had done so 2 or 3 times over the last few years.

144. She didn't remember the Cinder Track Fence being erected, but did recall the gate being installed. She said that the gate had never been locked to her knowledge, but had rather always been folded back against the wall of 42 Longbridge Road.

145. She thought that she might have had a partial view of a 'private' sign in amongst some brambles on the Land, but had never seen the sign erected on a fence.

146. She was aware of the planning application submitted in 2004, and had objected to it. She felt that the submission of the application was a challenge to her use of the Land.

147. At that time she accepted that part of the Land was covered in vegetation, but maintained that there was still a sufficient area for children to play on. She said that half of the Land remained available in this manner.

148. She didn't see the tree trunks being deposited on the Land, but didn't give them much thought. She was aware that someone had tried to burn them, because although she didn't see the fire she heard the fire engine. She hadn't seen anyone moving the trunks.

149. She said that although her principal use of the Land had been as a short cut, she knew that her children and indeed other children used it for recreation. Friends of her children who had used the Land included Jo Smith from Farrier's Close, Mason from Cpbell

Court and George Dom from Campbell Road. She could not say that children had played on the Land everyday, but when the sun was shining there would be a fair amount of children using it.

150. She had also seen "*lots of different people*" dog walking on the Land, including Mrs Baker.

Mr Simon Watts (22 Farrier's Close)

151. Mr Watts has lived at his current address since 1999.

152. He felt that he walked or cycled through the Land on an infrequent basis, maybe 6-8 time per month, mostly at weekends. He said that he had never experienced any difficulty getting onto or across the Land. He would cut across the Land to get to either shops or to the station. He said that he had principally used the route as a cut through, but that on occasion he had used it recreationally with his step-son.

153. He said that when visiting the Land he saw the occasional dog walker, and also "*often saw other people there, particularly in summer with kids*". He said it was very common to see children playing in and around the ditch area and on the Land. His own step son and his friends had played on the Land in the early part of the decade.

154. He recalled the appearance of the Cinder track Fence, but did not see it being erected. He said that by the time he saw it, it was not blocking his way to the Cinder Track. He said that he had no reason to think that the landowner was trying to keep anyone off the Land, but rather thought the erection of the fence was concerned with "defining boundaries".

155. He had only noticed the gate recently, and presumed this was because it had been open. Until this year he had never seen it closed or padlocked, nor had he heard any talk of padlocks. He said that his partner had used to walk across the Land up Longbridge Road most days, and that if the route had been closed she would have mentioned it.

156. He had never seen a sign on the Land.

157. He recalled the appearance of the tree trunks on the Land, which he said had been a topic of conversation in 2007. He said that when he saw the trunks they were not blocking the path from the Forge Field Estate. He didn't know why they had been put there, and it

never occurred to him that someone was trying to close off the route from the Estate. He presumed that teenagers had put them there.

158. He had not seen anyone maintaining the Land.

Mr Malcolm Green (7 Longbridge Road)

159. Mr Green has lived at his current address since 1985, prior to which he had lived at no 28 Longbridge Road. From his front garden, he has a view down the road into the Land

160. His own children had used the Land when they were younger, but the last had ceased using it in the late 1990s. They had played football on it, and had made dens in the dry ditch.

161. He recalled that on the occasion of one of the royal weddings, local people discussed holding a celebration on the Land. However, in the event, the weather on the relevant day was very poor, so that the celebration was instead held in someone's garage.

162. He could not remember when BDBC had stopped mowing the grass, - he had simply become aware that it was no longer being mown. He had a vague recollection of there being a 'no ball-games' sign having been erected on the Land at one time. Before 1983 he recalled that there had been a BDBC sign erected which read 'Longbridge Road Play Area'. He had not seen any 'private property' sign on the Land however.

163. In recent years he has used the Land himself , particularly since his retirement in 2002. Until the wooden fencing was erected, he had been accustomed to walk on the Land on a daily basis. Prior to 2002, he felt that he would have visited 2 or 3 times a week, sometimes to collect his children from the Land. He had often seen children playing games there like 40/40 and hide and seek. He had also often seen dog-walkers on the Land, although he himself did not have a dog.

164. He had never seen the gate at the LR Entrance locked or closed, and his memory was that it had always been swung back against the wall, lodged in the undergrowth. He remembered the tree trunks appearing in 2007, but had not been clear as to their purpose. He didn't recall their being burnt, nor their being moved by a JCB. He felt that it was more likely that people would have just worn a path around them

165. He had not regarded the making of the planning applications as a challenge to his use.

Mrs Sharon Barrett (Dunroymn, Sherfield Road)

166. Mrs Bennett has lived at her current address for 19 years.

167. She agreed that she had been given help with her statement, insofar as her husband had helped her with dates, and Mrs Baker had provided her with the wording for the first paragraph.

168. When she first arrived she had kept a dog, and felt that she visited the Land daily. During such visits, she would walk the dog with her children playing. Both her children had played on the Land, her son particularly so.

169. She herself had used the Land to picnic with her children, pick blackberries and walk her dog. Her typical circuit would involve going down the Cinder Track and onto the Land, sometimes passing through it and sometimes staying on it to play with a ball. She would generally stay on the Land if she met people there. After leaving the Land she would go up Longbridge Road, through Strawberry Fields, Bramley Lane and then home. She remembered walking with her dog around 'cycle ramps' on the Land from 2005 onwards. The ramps had been built by children who ride their bikes on the Land.

170. She didn't recall seeing the fence at all, nor any BDBC signs. However, she remembered BDBC maintaining the Land. She could not be entirely certain, that it was BDBC personnel that had been carrying out the work, but remembered seeing BDBC lorries with equipment being parked nearby.

171. She couldn't remember a gate being erected at the LR Entrance, but did recall seeing it. Her memory was that it had always been open, pushed back against the wall with brambles growing through it.

172. She had not seen any 'private property' sign on the Land, and would not have gone onto the Land had she seen one.

173. She remembered the tree trunks appearing, and having seen children sitting on them. She didn't know whether they had blocked the track to the Forge Field Estate since

she did not use it herself. She didn't recall the trunks either being burned or moved. She said that she thought that they were parts of a tree which had fallen down and then been cut up.

Mr John Cooper (42 Longbridge Road)

174. Mr Cooper had lived at his current address since 1995.
175. His sons had played on the Land, with friends from Moat Close. They used the Land "more than frequently", however he accepted that they did so less in winter time. They used the Land for activities such as football and building camps. About 5 years ago they had built a BMX track on the Land.
176. He recalled that BDBC had used to cut the grass, but then they stopped. After that he remembered that there was a lady "*who cut it on her own for a long time*" and who did "*a top class job*". However, one day his children had told him that it was too overgrown, so that he had cut a small area of the grass. After this, he and others had continued to cut the grass until "*not long ago*", though he couldn't recall when. In addition to himself, he knew that Mr Steve Povey, Mr Cooper, Mr Neil Child and Mr John Bedford had all mown the grass. The area mown had been "*about twice the size*" of the inquiry venue⁶. He was told prior to this Inquiry about the letter to the owner of no.50 Longbridge Road telling her to cease mowing the Land.
177. He had used the Land himself for dog obedience/hunting training, and continued to do so. He felt that he visited the Land in this way 4 or 5 times a week other than on holidays, and found the Land an "ideal place for teaching spaniels".
178. He had not noticed the new fence, as he didn't have much cause to use the Cinder Track. He recalled seeing the gate being put up at the LR Entrance. Despite the fact he had never seen it padlocked, it had been his impression that the purpose of the gate was "*obviously to exclude people going on*".
179. He had not seen any 'private property' sign on the Land until recently – the sign he had now seen was that on the gate at the LR Entrance.

⁶ I estimated that the Inquiry venue measured approximately 10m x 15m.

180. He had been told of the planning applications and had objected to them. However, he stated that he didn't regard them as a "*challenge as such*" to his use of the Land. He had simply objected because Bramley was a small village which he felt was overdeveloped.

181. He remembered the appearance of the tree trunks in 2007, since he had found the path to the Forge Field Estate blocked. He had thought that the trunks had been fly-tipped, and had called the police to complain. He recalled the burning of the logs, but thought they had been moved by local youths who used them as a seating area.

Mr Graham Brailey (40 Longbridge Road)

182. Mr Brailey had lived at his current address for 24 years.

183. He felt that his statement comprised his and his wife's words, although Mrs Baker had drafted the first paragraph.

184. He himself had used the Land for picnics with his children, mainly at weekends. He said that these events might have happened as many as 30 or 40 times a year in the period 1986-1995. He had bought the children plastic crockery for these picnics. He had also picked blackberries with them. His daughters had used the Land with friends, playing with dolls and playing ball games. When his son (born in 1990) had grown old enough he had also played on the Land

185. He had personally used it to play football with his son until about 5 years ago. There were 6 or 7 other boys they would play with. They would play once or twice a weekend – he himself acted as 'football coach'. He felt that this activity had taken place during the period 1995-2005. After 2005 he said that the grass was too long for football, and that the children didn't play football after that, as. He thought that the mother of one boy, John Walker had received a letter to the effect that she should not cut the grass.

186. When he moved to the area, he thought that BDBC had mowed the Land. He said he had not seen any sign telling him not to use the Land, either on a fence or in the undergrowth. If he had seen such a sign, he would not have used the Land. He was aware of the fence, but did not recall it being erected. He didn't notice it, and could only remember the "*remnants of the old wire fence*". He said that if the fence had been a "*bar*" to entry on the Land, he "*wouldn't have gone on it*". His children had passed from the Land to the Cinder

Track when doing paper rounds, and he did not recall the fence ever having barred their way.

187. He said that if the landowner had intended to communicate a message by erecting a fence, then "*he didn't make a good job*".

188. He couldn't recall much about the logs being introduced on the eastern flank of the Land. He wasn't aware of the 'burning' incident. He assumed they had been put there by the owner but didn't feel that they made any sort of statement.

The Objectors' Evidence

189. At the Inquiry the Objectors called 4 people to give evidence, one of whom was Mr Bell. All of the Objectors' witnesses produced a witness statement⁷.

190. In addition, the Objectors relied upon the witness statement of a Mr Lesley Monger, who did not appear before me at the Inquiry and in particular on a letter from Mr Harris to which I have also had regard. However, as with the Applicant's evidence I have attached significantly less weight to this evidence than to that given by persons who appeared at the Inquiry, on account of the fact that the Applicant was unable to test it in cross-examination.

191. The Objectors also relied upon additional documentary evidence. I have studied all this documentary evidence, and had regard to all of it in preparing this Report.

192. In the following paragraphs, I summarise the evidence given by those of the Objectors' witnesses who did appear before me at the Inquiry. This section of my Report is not a precise minute of each witness's evidence, but rather a general record of what I considered to be the thrust of their testimony (both written and oral), insofar as it was relevant to the matters to which I must have regard in making my recommendation.

Mr David Tuffin

193. Mr Tuffin is an employee of South Coast Fencing, a company based in Eastleigh.

⁷ Mr Bell produced 3 witness statements, with the third being produced in the course of the Inquiry.

194. He explained that in late 2001 he had been asked by Mr John Bell to quote a price for a job of fencing work on the Land. He had visited the Land in this connection, and remembered it as being rough scrubland crossed by paths, with patches of brambles.
195. Initially, the proposal had been to fence the entirety of the Land, but after some discussion with Mr Bell he had only been asked to quote prices for the fencing of the western side of the Land (where it abuts the Cinder Track) and the installation of a gate at the entrance to the Land leading on to Longbridge Road. The reason for this was because there was "*only one opening across [the] eastern boundary*", and so it was felt that a "*fence was not needed*". He had duly quoted a price for the work in December 2001, and his quote had been accepted.
196. He did not carry out the works himself but had detailed an employee, Mr Gary Bull, to undertake the work. Mr Bull still worked for the company, albeit in a different capacity, and prior to the Inquiry Mr Tuffin had discussed with him the works that he had carried out on the Land.
197. Mr Bull had confirmed to him that the work had been carried out. Although Mr Tuffin had not visited the Land in 2002 to verify the position, he felt that it must have been done satisfactorily, since he had been paid in full and he would not have expected to have received payment if the job had not been done properly. He thought the job would have taken between 1 and 2 days to complete.
198. As regards the suggestion that 'gaps' were left at either end of the Fence, he did not believe that there were instructions from the client to leave any such gaps, and he did not think that such gaps would have been left.

Mrs Eileen Wakes (19 Lane End)

199. Mrs Wakes has lived at her current address for some 43 years. In this time, she explained that she has often had cause to walk along the Cinder Track, and is therefore familiar with the Land. However, she had not been past the Land for the last 10 years or so.
200. Her recollection was that the Land was never used by local children, and that the only use made of it by adults was as a short cut from the Cinder Track to Longbridge Road. She felt that it had effectively been a wasteland since the sewerage facility which had previously existed there had been decommissioned.

201. She did not think that it was a fit and/or suitable as a play area for children. She also explained that children living in properties on Lane End had not gone onto the Land because they had been told by Longbridge Road residents that they were not allowed to use it. She said that none of her children had ever used the Land.

Mr Nigel Notley (24 Lane End)

202. Mr Notley had lived in Bramley since 1970, and had moved to his current address some 6-7 years ago.

203. From 1970-83 he would cycle along the Cinder Track almost every day on his way to and from work, with the Ministry of Defence. The Land was also visible, to some extent, from where he worked with the MoD, so that he would sometimes be able to see what was going on there while he was working. Since 1983 he has continued to pass along that route fairly regularly.

204. He said initially that in the course of his journeys to work he had never seen any recreational use being made of the Land, the only activity being persons using it a 'cut-through', although he had seen children playing in the bushes to the east of the Land, and in the Dry Ditch that ran along its eastern boundary. However, he later confirmed that he had seen children playing on the tree trunks (although not on the main area), and that he had seen people walking their dogs on the Land "*quite frequently*".

205. He had also seen, within the last 10 years or so, someone cutting some of the grass on the Land although he said he had no idea why someone would do this. He had also seen BDBC cut the grass on one occasion, about 6 or 7 years ago.

Mr John Bell

206. Mr Bell is a chartered surveyor and a director of the company known as Park Estates Southern Ltd ('PESL'). He explained that PESL had purchased the Land from administrators in 2001. He described the Land as being uneven, and covered in long grass and brambles at the time of purchase.

207. He explained that he did not live in the area, but rather in Petersfield; however since 2001 he had visited the Land on "*countless*" occasions. In broad terms he felt that he visited

it every month or so. These visits took place at a variety of different times, sometimes in the working week (if visiting with professional consultants) and sometimes at weekends.

208. In the winter of 2001/2 he had commissioned Mr Tuffin's company, South Coast Fencing, to fence the Land on its western side (where it ran alongside the Cinder Track) and to erect a gate at the LR Entrance. He commissioned these works with a view to securing the Site.
209. He had originally intended also to fence the entirety of the eastern boundary of the Land (where it was bounded by the Dry Ditch and after that the Forge Field Estate). However it had not made financial sense to fence the eastern boundary of the Land in 2001/2 because the vegetation along the boundary was "*fairly impenetrable*". He explained that this part of the Land had a very different appearance at the present time to how it had looked in January 2002, since a great deal of scrub had been cleared in order to install the fence that had been erected in 2010.
210. However, he acknowledged in 2001/2 he had been aware there was a "*small path*" from the Forge Field Estate running across the Land to the Cinder Track, and indeed had seen a school child using it as a "*short cut*". Nevertheless, his impression had been that the entrance onto the Land from Forge Field Estate "*wasn't being used to any great degree*".
211. He had arranged for the works to be carried out on the 7 January 2002. He thought that he had visited the Land on pretty much the day the works were completed, since he would have wanted "*to get there as they were finishing*". He recalled seeing that the Cinder Track Fence extended the whole way along the western boundary of the Land. He did not think there was any way to pass through the Fence at the time he saw it. He also explained that at this time he had padlocked the gate.
212. He explained that later that year he had arranged for signs to be erected, indicating that the Land was private property. He had commissioned two signs, one of which had been attached to the Cinder Track Fence, facing out onto the Cinder Track. He had intended that the other be affixed to the gate at the LR Entrance, but the man detailed to attach it had not been equipped with the necessary fixings to carry out the job. Mr Bell had not felt the need to pursue the erection of the second sign, because he felt that there was a sign in place by the "*main footpath*", because it was "*from that point that people were going to gain access to the Land*".

213. When he had gone back some 3 weeks or a month after his visit in January 2002 to inspect the fencing and install the padlock, he found that the padlock was no longer in place. On the occasion of this visit, he also noted that some of the fencing had been pulled back.
214. On finding the padlock gone and the gate pushed open, he had purchased another padlock and closed & locked the gate once more. This padlock was stronger than the earlier one, but when he visited a further month or so later, he again found that the lock had been removed.
215. Thereafter he had not sought to 'secure' the Land; in particular he had not sought to close off the informal route from Longbridge Road to Lane End, since he had "*no objection*" to it. He had "*always known of the short cut*" and didn't see any reason to "*block it off*" because he was "*happy to include a footpath*" as part of the development of the Land. He said that he "*didn't want to upset locals by preventing them from using the short cut*", and felt that he had "*made his point by locking the gate once or twice*". However, he said that he on "*several occasions*" he had closed the gate, even though he did not lock it.
216. In terms of the use of the Land, he himself had "*never seen anyone playing*" on the Land, and had not been aware that residents thought it was being used as a play area. However, he confirmed that there was "*no dispute that dogs were being walked on it*".
217. He also explained that that he had discussed the matter with Mrs Martin (24 Longbridge Road) and Mr Mummery (23 Longbridge Road), when he had been negotiating with them regarding the acquisition of their properties. The former had told him the Land was "*an area of dog fouling*", and "*never said it was put to recreational use*". The latter said that the Land was used as an informal route from Longbridge Road to Lane End. He confirmed that when speaking to Mr Mummery and Mrs Martin he had not told them not to use the Land.
218. He had also spoken to Mrs Ford (who lives at 'The Laurels', the property at the southern end of the Land). She had initially told him that the Land hadn't been used as claimed in the village green application, but had later said that she "*didn't want to get involved, didn't want to sign anything*". He felt that her decision not to become involved was understandable since it was difficult for local people who live in the vicinity to speak out. Mr Monger (3 Marguerite Close) had also confirmed to him that the Land was not used for recreational purposes.

219. He had become aware of someone mowing the Land in May 2002, and had learned from Mrs Martin that the person in question was Mrs Walker. However, he felt that the area being mown was small, and that the remainder of the Land was "*very overgrown*". He had written to Mrs Walker in July 2002 telling her to cease mowing the Land (OBp.94), and subsequent visits had led him to believe that such mowing activity had ceased.
220. As the years passed he gained the impression that the access from Forge Field Estate was being more intensively used. As such, he decided to block that access and in January 2007 he had arranged for a contractor (the Englefield Trust Estate) to deposit tree trunks on the Land. He had witnessed this operation taking place. The trunks had been laid across the route from the Forge Field Estate with their 'branch stubs' locking them in place, and had been intended to block that path.
221. He was aware that subsequently the trunks were moved. He felt that they were huge, and had been at a loss to know how they had been moved. However, having heard the evidence of Mrs Watkins, he thought it likely that a local farmer had moved them with a JCB. He felt sure that this was the case since Mrs Watkins described having seen a JCB being driven on the Land by a local farmer, who was moving the tree trunks. He knew that no JCB had been used to deposit the logs and so his view was that this farmer must have been moving the trunks off the path. He had heard about the logs being set on fire, and was aware of the incident. He had notified the Police regarding this.
222. He did not feel that the Land had been used as a village green. Rather he felt that he had been "*allowing people on to the Land for specific purposes...allowing people to use it as a short cut*".

Discussion & Conclusions

223. In order for registration of land to be justified, an applicant must demonstrate on the balance of probabilities⁸ that it has been used for lawful sports and pastimes by a significant number of the inhabitants of a neighbourhood or locality during a relevant 20 year period, such use being as of right.

⁸ In having regard to the burden of proof, I note the comments of Lord Bingham at paragraph 2 of the decision in R (on the application of Beresford) v Sunderland City Council [2004] 1 AC 889, citing with approval Steed LJ in R v Suffolk County Council ex parte Steed (1996) 75 P&CR 102.

224. In the following paragraphs, I consider the extent to which the Applicant in the present case has satisfied each of the elements of the statutory 'test'. In so doing, I address the submissions of the Objector as and when they arise in the context of each of these separate elements.

Locality

225. In making the Application, the Applicant relied upon use of the Land by the inhabitants of the civil parish of Bramley. I am satisfied that this Locality is one that satisfies the statutory definition⁹. The Objector does not seek to resist the Application specifically in respect of this particular issue.

Lawful Sports and Pastimes

226. The evidence in support of the Application was to the effect that the Land was used by both adults and children. The claimed activities were varied in nature, and included dog-walking, football, bike riding, picnics and general children's play.

227. I do not understand it to be any part of the Objectors' case that such activities do not comprise lawful sports and pastimes for the purposes of the 2006 Act, such as might justify registration of the Land. Nor, do I understand it to be said on behalf of the Objectors that these activities did not take place on the Land at all.

228. Rather, and in particular having regard to Mr Chapman's closing submissions, I understand that the Objectors' challenge is more targeted at the extent to which these activities were carried on by a "significant number" of the inhabitants of the Locality for the entirety of the Relevant Period.

229. Accordingly, I consider it sufficient to note at this juncture that having regard to the decision in R v Oxfordshire County Council ex parte Sunningwell Parish Council (2000) 1 AC 335, I am satisfied that the activities claimed by the Applicant to have taken place on the Land comprise lawful sports and pastimes for the purposes of the legislation. Further, I

⁹ At the close of the Inquiry, a question arose as to whether the boundaries of the Locality had remained unchanged throughout the Relevant Period. Mr Chapman, on behalf of the Objectors, indicated that he was content for me to make inquiries of the Council in this regard, and notify the parties only if I considered the results of these investigations merited further comment. It has since been confirmed to me by the Council that the most recent boundary change took place prior to the Relevant Period, in 1985. Accordingly, in the absence of any evidence to the contrary, I am satisfied that there has been no material alteration to the claimed Locality during the Relevant Period.

accept that such activities have been carried out on the Land, to some degree at least, during the Relevant Period.

20 Years – ‘the Relevant Period’

230. As I go on to consider in more detail later in this Report¹⁰, the undisputed evidence before me is that during approximately the first half of the Relevant Period (at least from 1991 – 1999) the Land was maintained by BDBC. The Objectors themselves do not have any first-hand knowledge of how the Land was used in the years 1988-1999¹¹, and I do not understand that they materially dispute use of the land for sports and pastimes during this period¹². Rather, their evidence is focused on the second half of the relevant period (1999-2008).

231. The evidence given in support of the Application was to the effect that use for sports and pastimes continued throughout the Relevant Period. Some of the witnesses who gave evidence in support of the Application could only speak to its use in recent years (eg Mr Greggor), others could speak to the period since 1999 (Mrs Taylor) or earlier in the 1990s (eg Mrs Baker and Mrs Naylor). However, some spoke to the entirety of the Relevant Period (eg Mr & Mrs Watkins and Mrs Squibb). Subject to findings of credibility, I am content that the Applicant’s witnesses provided sufficient evidence in respect of extent/intensity of user throughout the Relevant Period.

232. I reach this conclusion having had particular regard to the evidence I heard regarding the latter years of the Relevant Period. In this context I noted that local people had continued to mow grass on part of the Land until relatively recently¹³, which activity would have facilitated its use for sports and pastimes. Further, I note that there is no suggestion that the level of dog-walking fell away during the latter years of the period. I also note that several witnesses gave evidence to the effect that following the introduction of the tree trunks onto the eastern part of the Land in 2007, teenagers used that area for recreation and socialising.

¹⁰ In the context of considering whether use of the Land was ‘As of right’.

¹¹ Albeit that the Objectors rely on evidence from witnesses who do speak to the history of the Land during this period.

¹² See paragraph 13 of the Objectors’ closing submissions.

¹³ See evidence of Mrs Cooper.

233. It seems likely to me that the user of the Land did indeed alter during the Relevant Period, since land that is not subject to 'formal maintenance' would not lend itself to certain activities in the same way that a mown play area would. However, the evidence I heard indicated that while the nature of some of the activities changed (less organised ballgames, more children's bike riding, for example) the intensity of use did not diminish to a material extent. Accordingly as already noted, subject to findings of credibility, I accept that use of the Land for sports and pastimes continued throughout the Relevant Period.

234. However, it is therefore necessary that I reach a view as to the extent to which that evidence is sufficiently credible for me to conclude that the Applicant has discharged the burden of proof. I have considered the question of the credibility of the parties' witnesses in the following section of my Report, which is concerned with the issue of whether use of the Land was carried on by a 'significant number' of people during this period. I have done so in part because Mr Chapman's closing submissions expressly identify the 'significant number' issue as being at the "core" of the dispute¹⁴, with less direct emphasis being placed on the statutory requirement that qualifying user take place throughout a 20 year period.

235. It is of course fundamental that qualifying use of land take place throughout the entirety of such a 20 year period. However, in these circumstances my conclusion as to whether use of the Land continued throughout the Relevant Period as required by the 2006 Act are necessarily linked to my findings in respect of the 'significance' issue. As such, my conclusions in respect of this issue are set out at the end of that section of my Report.

Significant Number

236. I accept the submission of Mr Chapman that in considering whether use for sports and pastimes was undertaken by a 'significant number' of people, I should have regard to the comments of Sullivan J in R (on the application of McAlpine Homes Ltd) v Staffordshire County Council (2002) PLR 1. In that case the judge held that the term 'significant' should not be read as necessarily meaning 'substantial' or 'considerable'. Rather, he held that what was necessary was that the number of people using the land should be "*sufficient to indicate*

¹⁴ See paragraphs 3 of the Objectors' closing submissions.

*that their use of the land signifies that it is in general use by the local community...rather than occasional use by individuals as trespassers*¹⁵.

237. Further, I also accept that in grappling with this issue I should have regard to how matters would have appeared to the reasonable landowner. This has long been accepted as the correct approach to an assessment of whether user of land is such as to justify registration as a town or village green – see R v Oxfordshire County Council ex parte Sunningwell Parish Council (2000) 1 AC 335 where Lord Hoffman relied on the comments of Lord Blackburn in Mann v Brodie¹⁶ in confirming that the question for the court to consider was *“how the matter would have appeared to the owner of the land”*¹⁷.

238. Lastly, I also accept that when considering how matters would have appeared to the landowner, I should have in mind the extent to which the use of the Land might have presented as the exercise of a right of way, as opposed to village green rights. This is of particular importance in the present case, since there was a material volume of evidence regarding the use of the Land as a ‘cut-through’; that is to say that several witnesses spoke of going onto the Land for the purposes of venturing across it – for example travelling from the LR Entrance to Lane End or from the Forge Field Estate to the Cinder Track.

239. Mr Chapman drew my attention to paragraphs 102-111 of the decision in R (on the application of Laing Homes v Buckinghamshire County Council (2004) 1 P&CR 573, and also paragraphs 96-105 of the decision at first instance in Oxfordshire County Council v Oxfordshire City Council¹⁸, where Sullivan J and Lightman J both considered the difficulties posed by a situation where use of land may be referable either to use as a right of way or as a village green. In particular, I have had regard to the following views expressed by Lightman J:

“Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential Green will ordinarily be referable only to exercise of a

¹⁵ See paragraph 71 of the judgement.

¹⁶ (1885) 10 App. Cas. 378.

¹⁷ at 352H.

¹⁸ (2004) Ch 253.

public right of way to the Green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential Green may be recreational use of land as a Green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green)"¹⁹.

Conclusions

240. Having heard and read the evidence of both parties, I am satisfied that use of the Land for sports and pastimes was carried on by a "significant number" of local people for the purposes of the 2006 Act.

241. As is evident from the earlier section of this report, 22 people gave oral evidence at the Inquiry in support of the Application. The overwhelming majority of these witnesses stated that, albeit to varying degrees and over varying periods, they had participated in and witnessed others taking part in activities which I consider to be lawful sports and pastimes. Having regard both to the number of witnesses from whom I heard and also the extent to which they attested to having witnessed others using the Land²⁰, I am satisfied that the degree of user was such as to signify that the Land was in 'general use by the local community' as opposed to being subject to occasional trespass. Accordingly, I consider that the intensity of user described was such as to meet the statutory test.

242. In reaching this conclusion I have had full regard to the submissions and evidence relied upon by the Objectors.

243. In this context, I note firstly that in his closing submissions, Mr Chapman challenged the credibility of the Applicant's witnesses²¹. In particular, he made reference to the fact that whilst many claimed to have visited the Land on a daily basis, virtually none could recall having seen the Cinder Track Fence being erected in January 2002, and very few said that

¹⁹ At paragraph 102.

²⁰ See the reference to 'witnessed activities' at the end of paragraph 72 of McAlpine.

²¹ See paragraph 10-12 of Objectors' closing submissions.

they had even noticed it thereafter. He also pointed out that the Applicant's witnesses all claimed to have written their own statements, notwithstanding that the wording of the first paragraph in most of these statements was all but identically worded. This paragraph was to the effect that:

"During the whole of [my residence] I can categorically state that the children's play area adjacent to 24 Longbridge Road has been used daily by a considerable amount of people including children and adults from Longbridge Road together with other residents of Bramley for recreation without anyone ever challenging or trying to prevent them from doing so".

244. Lastly, Mr Chapman asserted that the claim made by various witnesses that they had thought the introduction of the tree trunks onto the Land in 2007 was connected with recreational purposes, was 'disingenuous'.

245. In respect of the first of these points I am quite satisfied that the Applicant's witnesses, whatever they said in evidence, did not write the entirety of their statements but were rather provided with a broad 'template' in which the first paragraph was virtually completed. However, this dispute regarding the process by which their statements were prepared does not cause me to doubt the substance of the evidence which they gave at the Inquiry. Regarding it as little more than a formulaic introduction, in all cases I entirely disregarded the contents of the 'template paragraph 1' and focused upon what may be described as the 'personal text' in the witnesses' statements and, more significantly, on the evidence they gave in answers to questions posed by Mr Chapman and myself. Having listened to them and observed their demeanour when giving evidence, I am satisfied that these witnesses were doing their best to provide me with their honest recollections of the historic use of the Land. I found their evidence to be credible and persuasive.

246. Turning to the second of Mr Chapman's points, I do not find it altogether surprising that of the witnesses called by the Applicant only one recalled having witnessed the erection of the Cinder Track Fence. The work was carried out in less than two days, in the middle of winter. I am aware that the evidence of several of the witnesses was that they visited the Site 'on a daily basis', but the reality is that this phrase cannot be interpreted literally (in the sense of 365 days a year), and rather should be taken to mean 'most days'. Indeed, many of the witnesses accepted that this was a more accurate description of their use.

247. Given that the works were undertaken relatively swiftly, at a time when the weather and conditions would be such as to make it unlikely that people would overly linger at the Land, I do not find it surprising that the witnesses did not generally recall seeing the erection of the Fence.
248. As regards their having failed to notice the fence at all, once again I do not find this particularly surprising and the statements to this effect do not cause me to doubt the witnesses' credibility. Firstly, it must be borne in mind that for all intents and purposes there had always been a fence along Cinder Track – the erection of the 'new fence' in 2002 effectively replaced an existing one of a similar (if not identical) height along the same boundary. As such, the existence of a fence would not be something that could be expected to strike local people making use of the Land.
249. Further, the general thrust of their evidence on this point was 'I would have only noticed a fence in the event that it had blocked my way'. As I describe later in this Report, it is my view that the Cinder Track Fence was 'peeled back' at either end almost as soon as it was erected. In such circumstances, the fence would not have proved an obstacle to people looking to enter/exit the Land since access would have been available in the same way as prior its erection.
250. Lastly, I am not persuaded that I should distrust the evidence of the Applicant's witnesses on account of the views expressed regarding the tree trunks. Again, as I note later in this Report, when these 'obstacles' were introduced in 2007 there was no notice erected, nor any announcement made regarding their purpose. They simply 'appeared', at a time when access onto the Land was readily available from various other vantage points. Albeit that one or two witnesses did recognise the deposition of the trunks as an attempt to restrict user of the Land²², I am not at all surprised that other witnesses did not perceive it as such.
251. In reaching my conclusions on this issue I have also had regard to the evidence relied upon by the Objectors regarding use of the Land by "a significant number". However, I found the extent of this evidence to be limited, both in terms of substance and extent, so that it is outweighed by the evidence in support of the Application.

²² I note that Mrs McCafferty and Mr Watkins gave evidence to this effect.

252. Mr Monger provided a statement to the Inquiry, but I can attach only very limited weight to it since the gentleman did not attend to give oral evidence. Similar considerations apply to the letter dated 12 December 2005 from Mr Harris, resident at 5 Longbridge Road since 2004²³.
253. Mrs Wakes did give evidence to the Inquiry, and I am perfectly content that she was doing her best to provide me with her truthful recollections regarding how the area was used. However, her evidence was limited insofar as she accepted that she had no real experience of the Land during the last decade. As regards earlier years, it seems to me that while her views were honestly held, I am not persuaded that she was correct. In this context, I note that while she appeared to be of the view that her children had never played on the Land, Mr Oram was equally clear that he had played there with her son Freddy. Similarly, while Mr Wakes said that children from Lane End had not played on the Land, that was contrary to a development control note of BDBC in which reference was made to a Mrs Pocock complaining of use of the area by 'Lane End children'²⁴, and also to the evidence of Mrs Squibb.
254. Mr Notley's evidence was significant, and once again I entirely accept that he was providing me with his honest recollection of how he had seen the Land used during the Relevant Period. However, much of his evidence related to what he would have seen in the working week and during the working day, since it was largely his journeys to and from work at the MOD premises (and in some form the extent to which he saw the Land when touring those premises) which provided him with his 'knowledge' of the Land. In these circumstances, I think it very possible that he may not have witnessed play by children on the Land, in the evenings and at weekends. Further, the years during which he appeared to have the most detailed knowledge was 1970-83, outside the Relevant Period.
255. I am aware that he continued to pass the Land "*fairly regularly*" thereafter, but this does appear to have been at a diminished frequency. Furthermore, I note that Mr Notley readily accepted that he had seen people walking dogs upon the Land²⁵.
256. Lastly, and significantly, Mr Bell gave evidence regarding the use of the Land which he had witnessed. His evidence is perhaps of particular importance, since in the period

²³ OB.270

²⁴ OBp.81

²⁵ Such activity is of course well recognised as a lawful sport or pastime – per Lord Hoffman in Sunningwell.

following 2001 he was effectively the landowner²⁶ and as such it is arguably how matters appeared to him that is most significant.

257. Mr Bell explained that despite having visited the Site on many occasions, he had never once seen it being used for "*recreational purposes*"²⁷. He confirmed that he was aware that local people were going onto the Land, but felt that their purpose in doing so was to use it as a 'cut-through' or 'short-cut'. He felt that the presence of worn paths on certain defined routes, and the overgrown nature of much of the remainder of the Land justified him in reaching this view.

258. I have some sympathy with Mr Bell, insofar as I accept that there were indeed factors which, taken in isolation, might have pointed towards a conclusion that use of the Land was limited to linear activities consistent with the exercise of rights of way. Further, I accept that people did indeed use the Land as a 'cut through' or 'short cut' – indeed some used it solely for that purpose²⁸. However, the evidence regarding the extent of use of the Land for lawful sports and pastimes was, to my mind, so extensive and compelling that I am satisfied that taken as a whole, use of the Land should properly be characterised as 'village green use', as opposed to anything else. Mr Bell's evidence, even when considered in conjunction with that of the remainder of the Objectors' witnesses does not persuade me that the position was unclear to any material extent. Rather, looking at the position in the round, I think the circumstances were such that it would have been evident to a reasonable landowner that the Land was being used by local people as a town or village green.

259. In reaching this conclusion I have particular regard to the fact that Mr Bell readily acknowledged that local residents were going onto the Land and walking dogs there – indeed he confirmed that there was "no dispute" to that effect.

260. As regards the use of the Land by children, I note also that while Mr Bell visited the Land regularly during the second half of the Relevant Period, his visits only occurred every month or so. Whilst he said that these visits took place at all times of day and on all days of the week, as a matter of probability I find it likely that the majority of these visits would have happened during the working day, and as such would not have taken place at a time (early

²⁶ In fact, he was one of the directors of the landowner company, PESL.

²⁷ See paragraph 19 of his first witness statement (OB p.16).

²⁸ See for example Mrs Cooper.

evening weekdays and during the weekend) when children would have been most likely to have been playing on the Land.

261. In addition, I consider that a reasonable landowner would have been on notice of the fact that the Land was used for play, having regard to the various pieces of documentation which referred to such use, with which he must be fixed with having knowledge. In this context I note in particular BDBC's letter of 3 May 2001 to Mr Bell²⁹ ("*...the land has obviously taken on an amenity space function over the passage of time*"), the 'standard form' letters of objection to the 2004 planning application (claiming that the land was laid out "*as a play area for which purpose I understand, it has been used since [the existing development was built]*"³⁰), the officer's report in respect of the 2004 planning application (records grounds of objection to the proposal as including "*loss of play area*" and "*danger to children finding other play areas*", whilst also noting that "*The site is considered to be informal open space*", and that "*The land is used for recreational purposes*"³¹).
262. Further, I do not accept that after cessation of BDBC's maintenance programme in 1999 (or thereabouts), the Land was thereafter too overgrown for it to be used for recreational purposes. I find that local people mowed parts of the area – notably Mrs Walker (who received a letter from Mr Bell telling her to desist³²) and others such as Mrs Cooper. This would have facilitated its use for recreation. In this context, I note the photograph at ABp301. This photo shows the Land at some point after the gate had been installed in January 2001 – indeed the vegetation which has grown up through the gate (which is folded back) is such as to suggest that some considerable time has passed since its installation. The foreground of the photo shows part of the Land where the grass is certainly, to my mind, sufficiently short to enable it to be used for lawful sports and pastimes. I do not accept that a reasonable landowner would have concluded that land in this condition was too overgrown to be put to recreational use of one form or another.
263. Accordingly, having regard to the view which I have taken regarding the respective parties' evidence, it is my view that the Land was used for lawful sports and pastimes by a

²⁹ OBp.88

³⁰ See for example OBp.108

³¹ Albeit that the report goes on to note that such use takes place "only informally" so that it cannot be protected.

³² OBp.93

significant number of inhabitants of the Locality. Moreover, I consider that such use continued throughout the Relevant Period.

264. In reaching this conclusion I have regard to how matters would have appeared to the reasonable landowner. Having regard to all that he would have seen, and all the documentary information which would have been available to him, it is my view that it would have been readily apparent that use of the Land was not confined to the occasional trespass, nor was it consistent with the exercise of rights of way. Rather, it would have been apparent that local people were making use of the Land for lawful sports and pastimes, consistent with use of it as a town or village green.

As of Right

265. In order for use of land to be 'as of right' and so justify registration as a town or village green, it must be carried on 'nec vi', 'nec clam' and 'nec precario'; which is to say that use must be neither 'by force', nor 'in secret' nor 'by permission'. In the context of the present case, I do not understand there to be any contention on the part of the Objectors that use of the Land was carried on 'in secret'. Certainly I do not consider I have been provided with evidence which would justify such a conclusion.

266. Accordingly, I turn then to consider the two remaining elements of the test that user be 'as of right'.

User by Force

267. It is submitted on behalf of the Objectors that in the period 2001-8 the landowner took various steps to prevent use of the Land by local people and that to the extent that use continued during that period, such use was carried on 'by force' and so should be disregarded for the purposes of the Application. Indeed, it is said that the effect of the landowner's efforts should be to frustrate the Application.

268. There does not appear to be any dispute that in 2010 a comprehensive scheme of works was undertaken to secure the Land. This apparently included the erection of a close-boarded fence around almost the entirety of the area³³ save at LR Entrance, where the gate

³³ A small strip of the Land running along the boundary of 24 Longbridge Road has been left 'outside' the fencing so as to afford a route from Longbridge Road to the Cinder Track.

was fastened shut by a heavy padlock and chain. However, these works fall outside the Relevant Period³⁴ and as such they do not act to defeat the Application.

269. In making my recommendation, I am of course concerned with the state of affairs *during* the Relevant Period. As such it is necessary to consider the various steps taken by Mr Bell to resist the use of the Land by local people following its acquisition by PESL, and the extent to which any intention to exclude people from the area was communicated to local inhabitants.

270. Having heard the evidence of the Applicant and the Objectors I make the following findings of fact in this context.

Fencing

- Having heard the evidence in respect of this issue, I am satisfied that on or about 7 January 2002 works were carried out to fence the western flank of the Land, where it abutted the Cinder Track. I accept that when the fencing was erected by Mr Bull, the employee of South Coast Fencing, it extended the entirety of the length of that flank so as not to leave any 'gaps'. I also accept that the fencing was intact when it was examined by Mr Bell shortly after the job of erecting it was complete.
- Further, I find that a very short time later, perhaps even later that day, a member of the public 'peeled' back the fencing at the northern end, so as to enable passage from the Land onto the Cinder Track. I find that a short time after that, the fence was similarly peeled back at the southern end.

Gate

- I am satisfied that Mr Bull, as part of the same job of work as erecting the fencing, erected a gate at the LR Entrance to the Land. I accept that Mr Bell subsequently padlocked this gate on two occasions in the months immediately after its erection, and thereafter in 2002 closed it from time to time.
- I find that on both occasions after one was installed, a member of the public removed the padlock shortly afterwards.

³⁴ The period expires in November 2008.

Signage

- I am satisfied that at some point after 15 August 2002³⁵ a single sign was erected on the new 'Cinder Track' fence, which read 'Private Property'.
- I find that this sign was removed by a member of the public and discarded into undergrowth on the Land.

Tree Trunks

- I find that in 2007 some large tree trunks were deposited on the eastern edge of the Land, and that they were left across the pathway leading in the direction of the Forge Field Estate.
- I accept that these tree trunks were moved off the pathway shortly after they were deposited, and that some time later they were partially burnt by a member of the public.

Planning Applications

- I am satisfied that in 2004 and 2008 the landowner (acting through its agents) submitted planning applications to BDBC which sought consent for residential development on the Land.

Analysis

271. On their face, and in the absence of any other evidence, the facts set out above might be thought sufficient to make out the Objectors' case that the landowner had rendered use of the Land contentious in the period 2002-2010, and that such use of the Land as did take place during this period was therefore not 'as of right' for the purposes of the 2006 Act.

272. However it is my view that the Objectors' case in respect of this issue does not bear scrutiny. When read in their broader context, I do not consider that the actions of Mr Bell or PESL were sufficient to render user of the Land 'by force'.

273. Firstly, and by way of a general assessment, I find that at no stage during the Relevant Period was there any *comprehensive* attempt to secure the *entirety* of the Land,

³⁵ The invoice for the signs is dated 15 August 2002, see OBp.55F

and so exclude local people from it. Rather, for whatever reason, the landowner always left local people with access on to the Land. Further, it is my view that such efforts as were taken to exclude people were not carried on in such a way as would necessarily communicate to them the nature of those acts. Indeed, having regard to the evidence of Mr Bell himself, it is questionable the extent to which there was in fact a genuine intention to exclude people from the Land at all.

274. As regards the events of 2002, I note that the works to erect fencing were only undertaken along the western boundary of the Land. The eastern flank, which bordered the Forge Field Estate, was left unsecured until 2007 notwithstanding that Mr Bell acknowledged he had been aware in 2001/2 that there was a route onto the Land from that direction.

275. Having heard the evidence given by the Applicant's witnesses, I am satisfied that residents of Forge Field Estate were accustomed to access the Land, both as a 'cut through' and for leisure purposes, ever since that development was occupied in 1999. Those persons living on the Forge Field Estate who were accustomed to make use of the Land would not, in my view, have been given sufficient reason to think that the Landowner was seeking to exclude them from the Land by the actions taken at this time.

276. It is right to say that in the immediate aftermath of the erection of the Cinder Track Fence, those people who were accustomed to access the Land from the Cinder Track (or those who sought to access the Cinder Track from the Land when coming from either the Forge Field Estate or Longbridge Road) would have found their route blocked. However, as indicated above, having heard the evidence it is my view that very shortly after that fence was erected it was 'peeled back' at either end. I accept that the action of peeling back the fence is an 'act of force' in itself. However, I do not consider that such action on the part of an individual has the consequence of rendering 'forcible' the use of all those who subsequently entered/left the Land through the gap in the fence which had been created. It is of course conceivable that an individual, entering the land in this way, might have thought that the landowner was making their use contentious. However, as I have noted, local people had access on to the land from other places, so that the 'message being sent' was a mixed one. In this context I note that at no point after this initial damage was done to the fence, did the landowner make any effort to repair it or otherwise secure the western boundary of the Land. As such, it is hard to characterise the use of the gap as being contentious.

277. Further, I do not think that the erection some months later³⁶ of a single 'Private Property' sign on the fence, facing out onto the Cinder Track, would have any material effect on this situation. In expressing this view, I note firstly that the access points from the Cinder Track onto the Land were at either end of the Fence, so that it might well be that someone could walk on to the Land through one or other of them without seeing the sign. Secondly, it is relevant that at the erection of the sign was not accompanied by any effort to secure the Land by repairing the fence. Furthermore, there were other accesses (at the LR Entrance or the Forge Field Estate Entrance) where no sign was erected at all. Finally, as noted above I have found that the sign was removed shortly after it was erected. As with the peeling back of the fence, I accept that the removal of the sign was an 'act of force'. However, once again, I do not think that it rendered subsequent use of the Land 'forcible'.

278. It is my view that the message of the landowner, if indeed it was to the effect that use of the Land was no longer permitted, was similarly unclear in respect of the efforts taken to secure the LR Entrance. As already stated, I accept that a gate was erected in January 2002. However, no notice was erected on that gate which might have communicated to local residents that it had been installed by the landowner with the intention of excluding them. In this context, I note that Mr Bell had commissioned a 'Private Property' sign which it had been his intention to have attached to the gate, but that such notice was never installed. The reason for this was, Mr Bell related, that when his employee visited the site he was not equipped with the necessary 'fixings' to erect it. No further efforts were made to attach it. In the absence of any sign, I am not surprised it was not apparent to residents of Longbridge Road³⁷ that the gate had been installed by the landowner in an attempt to prevent access.

279. In expressing this view, I note of course that Mr Bell did attempt to secure the gate by means of two padlocks. However it is one thing to lock a gate if it provides the only entry on to land via a fence; it seems to me to be something rather different if such locking takes place in circumstances where there are other accesses on to the land. Insofar as it sends a message, it is along the lines that access should not be taken by the gate, not that the use of the land as a whole was being rendered contentious. And of course users of the gate after the padlocks were removed would not have seen them, and would not have known who it was that had removed them. Thus, once the padlocks were removed – which action I accept, once again, would be an 'act of force' – there would have been nothing to inform people

³⁶ The erection of the sign must have taken place no earlier than August 2002.

³⁷ As almost all of them attested.

accessing the Land from Longbridge Road that their use was resisted by the landowner. As such, in the absence of a sign indicating that the land was now private property to which access was no longer permitted – combined with the fact that the Land had not been comprehensively secured – I do not consider that the installation of the padlocks would have been an unequivocal statement.

280. Further in this context I note that for the vast majority of the time the gate was not closed but rather folded back across the wall of 24 Longbridge Road³⁸. Mr Bell said that he closed it a handful of times in 2002, on the occasion of his monthly visits to the Land. However, thereafter there is no evidence that it was ever closed during the Relevant Period.

281. The next action taken by the landowner was the deposition of tree trunks on the eastern edge of the Land, on the route of the path from Forge Field Estate. However, once again I am not persuaded that this act was such as to render use of the Land contentious.

282. Importantly, the deposition of the tree trunks was not accompanied by any act to secure the remainder of the Land's boundaries. As such, access to the Land remained readily available. In these circumstances, it is not difficult to understand why members of the public did not interpret the action of the landowner as being an attempt to prevent access to the Land.

283. Further, the introduction of the tree trunks was not accompanied with any sign, notice or announcement as to their purpose. As such, I readily accept the evidence of those of the Applicant's witnesses who claimed that they had not understood that the tree trunks were intended to prevent their using the Land. I note that a small minority of witnesses³⁹ did recognise the deposition of the trunks as an attempt to prevent access, however I am satisfied that the majority did not⁴⁰.

284. As regards the 'moving of the tree trunks', I should say that I do not accept that local people arranged for a JCB or other industrial vehicle to move the trunks to the side of the pathway. I regard Mrs Watkins' evidence on this point to be confused⁴¹. Rather, I think it

³⁸ See for example the photo at ABp.301

³⁹ For example Mr and Mrs Watkins.

⁴⁰ For example Mr Constantinidou, Mrs Taylor, Mrs Naylor and Mr Watts.

⁴¹ Her evidence was to the effect that a JCB had been used to deposit the tree trunks on the Land (consistent with ABp.169, the statement of her husband). Mr Bell explained that a JCB had not been used to move the

likely that a group of local teenagers – very likely those who several witnesses spoke of having seen sitting on the logs and socialising – managed to roll the trunks slightly to the side. Given the lack of any clear message regarding why the trunks had been deposited in the first place, I do not regard this act as in any way rendering subsequent user of the Land ‘forcible’. I reach the same conclusion in respect of the incident in which the tree trunks were partially burned.

285. Lastly, there is the question of the planning applications. Mr Chapman put questions to the Applicant’s witnesses regarding these applications, suggesting that the submission of the applications amounted to a ‘challenge’ to their use of the Land. I note that some of the witnesses accepted that they had recognised the submission of the planning applications as having been such a challenge⁴². However, I note also that many others did not accept this proposition⁴³.

286. For my part, I do not consider that an application for planning permission to develop land does amount to a ‘challenge’ to the rights of people to use that land as a town or village green, even in circumstances where the development in question – if ultimately constructed – would preclude the carrying on of lawful sports and pastimes. In the event that permission were granted, the site secured and development commenced, then of course it could be said that any right to use the Land had indeed been challenged. However, the submitting of the application itself is no more than a formal attempt to secure planning permission to develop, which permission may or may not be implemented.

287. Further, if one considers how matters would have appeared to the ‘reasonable landowner’, I do not believe that such an individual would presume that in submitting his planning application he was rendering use of land ‘contentious’.

288. The last matter I have regard to in this context was the concession by Mr Bell that for the majority of the period 2001-2008, he was not in fact seeking to prevent people accessing the Land, since he was content that they use it for the purposes of an informal right of way. His evidence was to the effect that he had sought to secure the Land initially in 2002, but thereafter had been happy that local people have access. This would explain why

trunks onto the Land but rather some other vehicle. I think it likely that the confusion has arisen due to the Watkins’ having mis-described the vehicle which they saw depositing the trunks.

⁴² For example Mrs Cooper.

⁴³ For example Mrs Baker, Mr McCafferty and Mr Greggor.

after the initial activity in 2002, nothing further was done to secure the Land or to communicate to local people that the landowner objected to the use being made of the Land, save the deposition of the tree trunks⁴⁴.

289. Whilst Mr Bell's desire to maintain amicable relations with the local community by continuing to allow them onto the Land is to be commended, the consequence is that it is difficult for him to contend that such access was 'forcible'.

290. In this context, I note that at no point did Mr Bell appear to tell anyone – whether a local organisation, or an local inhabitant – either that access to the Land was prohibited, or that access was permitted solely insofar as necessary to enjoy a right of way. For example, there is no evidence that in his dealings with the Parish Council Mr Bell wrote a letter or otherwise informed it of his intention that people be excluded the Land. Similarly when he wrote to Mrs Walker⁴⁵, albeit he told her to desist from mowing the Land, Mr Bell did not tell her to keep off it. Further, Mr Bell confirmed that at no stage in his conversations with the owners of 24 and 23 Longbridge Road, did he tell either of those persons that access to the Land was not permitted and that they and their neighbours should keep off it, or that they should go onto the Land only so as to use the informal footpath.

291. I was referred to a number of legal authorities on the point of whether or not use of land should be regarded as having been undertaken 'by force', and as such incapable of supporting an application to register land as a town or village green. These included Smith v Brudenell-Bruce [2002] 2 P&CR 51, which Mr Chapman submitted set the bar too high in terms of what steps a landowner could be expected to take in order to render use 'vi', the decision of the House of Lords in R (on the application of Lewis) v Redcar and Cleveland Borough Council [2010] 2 WLR 653, and the recent decision in R (Oxfordshire & Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council [2010] EWHC 530.

292. Having regard to these authorities and the others cited, I consider that the correct test is that of whether the landowner (or indeed another party with an interest/right to

⁴⁴ In this context, I note that while he may have desired to secure the Land, he never in fact did so since even in 2002 (during the very brief period before the new fence was peeled back) access was readily available by means of the route from Forge Field Estate to the east.

⁴⁵ OBp.93

exclude others from land⁴⁶) took sufficient steps to demonstrate to persons using the Land that he/she disputed that they had a right to use it, so as to render their use of the Land contentious.

293. On the facts of the present case, it seems to me that as a matter of fact and degree the actions of PESL (through Mr Bell) were not sufficient to render use of the Land contentious so far as the population of the Locality were concerned. Accordingly, I conclude that use of the Land during the Relevant Period was not carried on 'by force'.

User 'By Right'

294. The Objectors contended that during part of the Relevant Period, use of the Land for lawful sports and pastimes – insofar as it took place at all – was carried on not 'as of right', but rather 'by right'. Such submission is, as I see it, if not to the effect that use of the Land was 'precario' (that is 'by permission'), then closely analogous to it.

295. In making his case in respect of this issue, Mr Chapman relied on evidence given by certain of the Applicant's witnesses, regarding the involvement of BDBC with the Land in the period prior to its acquisition by PESL in 2001. In closing he drew attention to the following:

- BDBC had maintained the Land (mowing the grass etc) throughout the Relevant Period until approximately 1999⁴⁷; and
- Prior to the Relevant Period BDBC had, at some point during the 1970s erected signs identifying the Land as 'Longbridge Road Play Area' and prohibiting ball games⁴⁸.

296. That such 'management' of the Land as is described above has taken place does not appear to be in dispute. I note that in a letter dated 3 May 2001⁴⁹ Mr Tony Curtis of BDBC states in respect of the Land "*...it has apparently been 'managed' by the Borough Council for a period of some years, despite the site apparently not being in the Council's ownership*".

297. Mr Chapman relied on these circumstances as evidence that, during part of the Relevant Period, the Council had maintained the Land as public open space pursuant to one

⁴⁶ Such as a tenant farmer, as in Laing Homes.

⁴⁷ Various witnesses attested to this; indeed some opined that the Council continued to maintain the Land for some years afterwards.

⁴⁸ See evidence of Mr Naylor and Mr Oram.

⁴⁹ OBp.88.

of two statutes. The first of these is the Open Spaces Act 1906 (the relevant provisions being sections 9 & 10), the second is the Public Health Act 1875 (the relevant provision is section 164). Insofar as is relevant, section 9 of the 1906 Act provides:

"A local authority may, subject to the provisions of this Act –

(a) ...

(b) undertake the entire or partial care, management, and control of any such open space..., whether any interest in the soil is conveyed or not; and..."

Insofar as is relevant, section 10 of the 1906 Act provides:

"A local authority who have acquired any estate or interest in or control over any open space or burial ground under this Act shall, subject to any conditions under which the estate, interest or control was so acquired-

(a) Hold and administer the open space or burial ground in trust to allow, and with a view to, the enjoyment thereof by the public as an open space within the meaning of this Act and under proper control and regulation and for no other purpose; and

(b) Maintain and keep the open space or burial ground in a good or decent state;

..."

298. Mr Chapman contends that, in the event the Land had been administered by BDBC pursuant to the provisions set out above during the period 1988-1999 (or indeed any part of that period), then use of it by local people would not have been carried on 'as of right' but rather 'by right'.

299. There is no decision of the courts whose ratio directly addresses the proposition that where land is held/operated by a public authority pursuant to these provisions it cannot be used in such a way as would justify registration as a town or village green. However, notwithstanding this lack of authority, I readily accept the submission that where land is held by a public authority expressly for the purpose of providing a recreational facility for members of the public, those same members of the public cannot use the land in such a way

so as to acquire the right to use it as a village green. I consider that any use of land for sports and pastimes in such circumstances, would amount to use 'by right' as opposed to 'as of right'. In expressing this view I note the various observations of the court in Beresford⁵⁰, which I consider provide support for such a doctrine.

300. In his closing submissions Mr Chapman acknowledged that in order for sections 9 and 10 of the 1906 Act to be engaged, it is necessary that I assume that when BDBC administered the Land pursuant to those provisions it did so with the consent of the owner. Such an assumption is justified, he contends, by reference to the principle '*omnia presumuntur rite esse acta*' ('presumption of regularity') which requires that I presume that maintenance of the Land was carried out by BDBC staff/agents "*not as trespassers but with the permission of the landowner*"⁵¹.

301. The presumption of regularity is a rebuttable presumption. As such it is only applicable in the absence of evidence sufficient to rebut that presumption. In the present case I consider that there is a material volume of evidence weighing against my applying the presumption so as to assume that consent was granted to BDBC to maintain the Land.

302. Having regard to pages 67-83 of the Objectors' Bundle, it is evident that during the 1970s it was mooted that BDBC might acquire the Land. Following a period of correspondence between BDBC and the MOD (as owner of adjacent land), Mr Dye (owner of the residential property at the southern end of the Land, known as 'The Laurels') and Norwest Newbury Ltd (the developer), the position appeared to culminate in BDBC officers understanding that the council was acquiring the Land. In this regard, I have read the 'Note to Development Control' dated 7 June 1976, in which the officer is recording a complaint from a Mrs Pocock⁵². This note envisages that BDBC is to acquire the Land ("*I advised her it would be difficult for the District Council to take action...until it owned the Land*"), as does the ensuing letter to her⁵³ ("*The position is that the District Council is in the process of acquiring the play area from the developers and agreeing maintenance terms*").

303. This documentary evidence suggests that there was apparently an understanding on the part of officers that the Land was actually being acquired by BDBC. If indeed such was

⁵⁰ See for example, Lord Bingham at paragraph 9.

⁵¹ See paragraph 25 of the Objectors' closing submissions.

⁵² OBp.81

⁵³ OBp.82

the understanding of officers, it is perhaps understandable that thereafter its staff began to maintain the Land⁵⁴, being under the mistaken impression that acquisition had taken place and that as such responsibility for maintenance lay with BDBC.

304. I have only limited material from BDBC regarding how it regards the maintenance that it has carried out on the Land in the past 20 years or so. However, such evidence as I have is consistent with the council having undertaken the work under the misapprehension that it had acquired the Land. In this regard I note both the content of the officers' report regarding a petition submitted by local residents protesting about proposals to develop the Land, and also the content of the officers' report regarding the 2008 planning application in respect of it. The former document states:

*"For some years following the development of Longbridge Road, the Council's staff undertook maintenance on the land in question (i.e. mowing) in the mistaken belief that it had become Council land"*⁵⁵.

The latter reads:

*"It can be...be confirmed that the land was maintained by BDBC from 1991 to 1999, apparently it seems now in error..."*⁵⁶.

305. A further consideration to which I have regard in this context is that, in the event some form of permission had been granted to BDBC to maintain the Land and an agreement been entered into, I would have expected that some form of record would have been produced documenting such an arrangement. Had such record existed I would have expected the Objectors' team to have found it and provided it to the Inquiry. To my mind the absence of any such record provides support for the view of BDBC officers⁵⁷ that the works to maintain the Land were undertaken in error.

⁵⁴ The only further document of this period which post-dates those I have referred to, is a memorandum dated 11 October 1979 (OBp.83). However, that does not seem to take matters further, since it comprises a recommendation from the Director of Technical Services that the council neither acquire the Land nor maintain it.

⁵⁵ ABp.283

⁵⁶ ABp.187

⁵⁷ I regard the views expressed by BDBC officers in this context as being effectively impartial, since the District Council has no material interest in the outcome of these proceedings and at the time these views were expressed officers would not have known of their significance to the Application.

306. In these circumstances, that is to say in the light of the 1970s documentation and the views expressed by BDBC officers, I am not prepared to apply 'the presumption of regularity' so as to assume that the landowner granted permission to maintain the Land pursuant to the 1906 Act. In the absence of any permission having been granted, I do not regard the maintenance of the Land as having had the consequence of rendering use of the Land 'by right'.
307. Accordingly, I do not accept that during part of the Relevant Period BDBC maintained the Land pursuant to the 1906 Act, so as to render use of it for sports and pastimes 'by right', rather than 'as of right'.

The 1875 Act

308. Having approached the Objectors' submissions in respect of the 1906 Act in this way, I can deal with their case in respect of the 1875 Act relatively briefly. Insofar as is relevant section 164 of the 1875 Act provides:

"Any urban authority may purchase or take on lease lay out plan improve and maintain lands for the purpose of being used as public walks or pleasure grounds, and may support or contribute to the support of public walks of pleasure grounds provided by any person whomsoever".

309. I was provided with a number of cases which addressed, directly or otherwise, the consequences of land being held/administered pursuant to section 164 of the 1875 Act. Having regard to these cases, and in particular Hall v Beckenham Corporation [1949] 1 KB 716, I accept that in circumstances where this provision is applicable to land, such land cannot be used by local people in such a way as would allow them to acquire the right to use it as a town or village green. It seems to me that where land is held/maintained pursuant to section 164 of the 1875 Act, the public would have a right to use it for recreation in any event.
310. However I have already made a finding to the effect that, having regard to the evidence available and on the balance of probabilities, the maintenance of the Land undertaken by BDBC was carried out 'in error' in circumstances where no permission was granted to the district council to maintain the Land as it did.

311. In this scenario I do not consider that the Objectors are entitled to rely on section 164 of the 1875 Act to defeat the Application on account of user having been 'by right'. Rather I find that, in the absence of BDBC having been entitled to maintain the Land pursuant to an agreement with the landowner, use of it for sports and pastimes by local people would have been 'as of right'.

Conclusions & Recommendation

312. Having regard to the evidence provided to me at the Inquiry, by both the Applicant and the Objectors, it is my view that the Applicant has proved her case and demonstrated that the Land was used as of right by the inhabitants of the Locality for lawful sports and pastimes throughout the Relevant Period.

313. As such, in these circumstances it is my recommendation that the Council grant the Application and register the Land as a town or village green.

Alexander Booth

28 September 2010

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