

APPLICATION TO REGISTER
LAND KNOWN AS "THE TRIANGLE", CURDRIDGE,
HAMPSHIRE AS A VILLAGE GREEN

APPLICATION NO: VG240

REPORT OF NIGEL FARTHING

Date: 23 March 2011

Hampshire County Council
Mottisfont Court
High Street
Winchester
Hampshire SO23 8ZF

Application Reference: VG240

In the matter of an Application to register land known as “The Triangle”, Curdridge, Hampshire as a Town or Village Green

REPORT

1. INTRODUCTION

- 1.1 This report concerns an application under Section 15 of the Commons Act 2006 (“the 2006 Act”) to register land known as The Triangle, Kitnocks Hill, Curdridge (“The Triangle”) as a town or village green (“the Application”). Hampshire County Council is the relevant Registration Authority and, under the 2006 Act is required to register land as a town or village green where the relevant statutory requirements have been met. The Registration Authority instructed me to hold a non-statutory Public Inquiry into the Application, to consider all the evidence and then to prepare a report containing my findings and recommendations for consideration by the Authority.
- 1.2 I held an Inquiry at the Reading Rooms, Curdridge over four days between 21 and 24 February 2011. I visited The Triangle unaccompanied on three occasions during the course of the Inquiry.
- 1.3 Prior to the Inquiry the Registration Authority made directions for the parties to prepare and serve bundles containing statements and documents each wished to rely upon. The Applicant provided a bundle which was not initially complete but the outstanding item, being a large scale plan of the locality relied upon, was provided at the commencement of the Inquiry. The Objector provided three bundles. I will refer to these bundles as “the Applicant’s Bundle” and the “Objector’s Bundle”. In addition to hearing the oral evidence given at the Inquiry I have read the documents contained in both parties’ bundles.
- 1.4 My role, and the purpose of this report, is to review and consider all of the relevant evidence and to make a recommendation to the Registration Authority. It is not my role to determine the application, the responsibility for this resting solely with the Registration Authority.

2. THE APPLICATION

- 2.1 The Application is made using standard form 44 and is dated 30 June 2008. It was made by Mr A R C Kemp of Thatchers Wood, Kitnocks Hill, Curdridge (“the Applicant”). The basis of the Application is said to be that Section 15(2) applies. It would seem that the Applicant had originally ticked the box that Section 15(4) applies but had deleted this. The immediately following box, which is to be completed if Section 15(3) or (4) applies, had been completed on the basis that use as of right ended “Christmas 2004” but these words have been deleted.
- 2.2 The land in respect of which the Application for Registration is made is described as “The Triangle, Junction at Lockhams Road, Kitnocks Hill, Curdridge, Southampton, Hampshire”. The Application identifies the relevant locality as the parish of Curdridge.
- 2.3 The Application is verified by a statutory declaration made by the Applicant and dated 27 May (presumably 2008 although this is not stated). The Application was accompanied by supporting letters from six residents of the parish of Curdridge.
- 2.4 I am advised that the Application was duly advertised in accordance with the statutory requirements and an objection was made on behalf of Mr C I C Collins, the owner of the Application site (“the Objector”). The Applicant subsequently submitted a response to the Objector’s submissions. Additional representations in the form of letters and questionnaires were also submitted to the Registration Authority in support of the Application and are contained in the Applicant’s Bundle.
- 2.5 At the Inquiry the Applicant conducted his own case. The Objector was represented by Leading Counsel, Mr Charles George QC.

3. THE APPLICATION LAND

- 3.1 The Application Land is identified on the map at page 25 of the Applicant’s Bundle. It is a triangular parcel of land bounded by roads on all three sides. To the south lies the A334 known at this point as Kitnocks Hill. To the northwest lies Lockhams Road and to the northeast Chapel Lane.
- 3.2 On first visiting The Triangle my initial impression was that it is in fact a very small area, measuring approximately 70m along the A334 boundary, approximately 60m along the Chapel Lane boundary and approximately 50m along the Lockhams Road boundary. At the present time The Triangle is relatively open in character but with a number of mature trees principally confined to the margins of the site. There is little in the way of undergrowth. The boundary with the A334 has a close boarded fence approximately one metre in height. The remaining two boundaries have continuous post and rail fencing with an entrance gate to Lockhams Road and to Chapel Lane.

- 3.3 Photographs, and the evidence presented at the Inquiry, indicate that prior to Christmas 2004 the character of the site was rather different. There were significantly more trees distributed throughout the site and the understory was overgrown, at least in parts, with bramble, saplings and young trees and general undergrowth, but with some open areas.
- 3.4 The Triangle is located centrally within the parish of Curdridge (which includes Curbridge) but the principal residential development is concentrated immediately to the north and the west of The Triangle. There is little habitation to the south of the A334. Habitation is sparse to the north of the parish. There are no public rights of way recorded on the Definitive Map affecting The Triangle.

4. THE EVIDENCE

CASE FOR THE APPLICANTS

Oral evidence in support of the Application

- 4.1 **Mrs Diane Keen** has lived at Governor's House, Lockhams Road, Curdridge since 1995. She had submitted a standard form letter dated 8 August 2009 and an undated email in support of the Application. She walked her dog on The Triangle and met others doing the same and chatted with them. She had enjoyed a picnic on The Triangle once on the occasion of her birthday. The Triangle was not impenetrable there being paths criss-crossing the site. She described it as pleasant with lovely trees, bushes and birds. She was distressed when the trees were cut down.
- 4.2 In cross-examination Mrs Keen said that she did not use the bus and could not remember buses stopping at The Triangle. She did not recall the land being used by others to get to the bus. She did not know that Mr Collins bought the land in 1998. She remembered the land being fenced with two openings being left. She did not go on the land after the tree felling, by which time her dog had died. She assumed that the fencing meant that the owners did not want people to go there. Her dog died in 2003 or 2004 and, whilst he was alive, she had used The Triangle most days. She could not remember when she last went on The Triangle but thought it was probably 2004.
- 4.3 Mrs Keen presented as a reliable witness and I give weight to her evidence of use between 1995 and 2004.
- 4.4 **Richard Quilter** of 8 Best Lane, Canterbury, Kent was the author of the document entitled "Response to Objectors' Submissions". He is a friend of Mrs Keen. He had sought to consider the Application objectively. He acknowledged that he had not been to the Application Site before 2009 and thus was unable to give relevant

evidence about use at the relevant times. He acknowledged that Mrs Keen had not told him that her use of the land had ceased in 2004.

- 4.5 Mr Quilter was unable to give any relevant evidence of use.
- 4.6 **Graham Richard Westcott** of Robins Wood, Kitnocks Hill, Curdridge read his written evidence contained at pages 130 to 132 of the Applicant's Bundle supported by an Evidence Questionnaire at pages 133 to 138. He moved to Robins Wood in 2001 and acquired a dog in late 2002. He stopped using The Triangle in late 2008 when the gates were locked. He saw other people using The Triangle. He attended the meeting with Mark Oaten.
- 4.7 Prior to 2004 he recalled there were a number of trees on the site but some were old and unsound. There was a lot of under and over growth. The Triangle was a bit of a wilderness with a couple of tracks through. He used The Triangle just about every day and most days at least once.
- 4.8 In cross-examination Mr Westcott confirmed that prior to moving to Crudridge he had lived in Borley Green and Burseldon and accepted that he had no reason to walk on The Triangle until he moved to Robins Wood. Prior to acquiring the dog he had used the land only for recreational walking. He recalled a bus stopping at the bus stop but recognised this was not the original service. He thought the service ceased altogether in about 2003.
- 4.9 Mr Westcott confirmed that he was the author of a letter dated 4 January 2005 addressed to the Chief Planning Officer at the City of Winchester which recorded his meeting with Mr Collins. Prior to this meeting he was unaware that the land was privately owned. He agreed that in conversation with Mr Collins he had expressed concern about the removal of trees and the possibility of development but did not raise any issue as to rights of access. He acknowledged that he had spoken to Mr Collins about continuing to exercise his dog on The Triangle. This was a separate conversation. Mr Collins said he could continue to use the land at his own risk and he had carried on as before.
- 4.10 Mr Westcott conceded that use of the path to the bus stop diminished when the bus service ceased in 2002.
- 4.11 He recalled a number of lorry loads of topsoil being deposited on the land in about 2006. Notwithstanding this he continued to exercise his dog on the land after the soil was deposited but had to wear boots. He accepted that after the fencing and deposit of the topsoil his pattern of use could have changed. He could not recall seeing children on The Triangle in 2006 and agreed that they would have been disinclined to wallow in the mud. He said that he continued to see children on the site "just larking about" but agreed they did not go there for the purpose of playing.

- 4.12 In re-examination Mr Westcott said that the grass had re-grown sufficiently by 2009 when horses were grazed on it.
- 4.13 I credit Mr Westcott's evidence of regular use of The Triangle between 2001 and 2005. I find that his use of the land after 2005 was permissive.
- 4.14 **Mr Martin Hughes** of Badgers Holt, Lockhams Road, Curdridge read his letter dated 27 December 2010 (Applicant's Bundle page 58). He has since April 2001 lived opposite Mrs Keen. His children were aged 7 and 5 when he moved to the village. He walked across The Triangle to access the footpath alongside the A334. His children played on The Triangle. His son rode his mountain bike there. He enjoyed the wildlife. He continued to use the land until the gates were locked. He described a footpath from approximately the apex of The Triangle to approximately the mid point of the base and a worn track leading off to the left. He usually used the tracks to exercise his dog. He would not walk through the undergrowth unless he had to.
- 4.15 He recalled soil being deposited on the land after the fencing was erected. The two gaps in the fencing allowed him free access. He accepted that after the soil was deposited on the site it was not a place one would want to walk but it soon recovered.
- 4.16 Under cross-examination Mr Hughes confirmed that he had not been on the land before moving the village in 2001. He had no knowledge of local buses. He accepted that one footpath finished about where the seat is and the other branched off approximately half way along the main track at approximately 90° and came out by the gate at Robins Hill.
- 4.17 He recalled the tress being felled and accepted that it would have been folly to go on to the land whilst the works were underway. He did not accept that the fencing suggested anything had changed other than it was reasonable to say that it indicated the land was being managed. It did not suggest to him that he was not welcome to come onto the land. He did not accept it was fair to say that the fence was designed to prevent people going on to the land – if that had been the case it would have continued all the way round. He did not know the purpose of the fence – it was not his business. He did not see any vehicles using the land other than for the delivery of the soil. He considered it “nonsense” to suggest the fencing indicated an intention to exclude. He considered a fence with openings an invitation to enter.
- 4.18 He accepted that there was a period when he stopped using The Triangle after the soil had been deposited. He could not remember how long he had kept off it but had begun using the land again before June 2008.

- 4.19 He said that in his letter of 27 December 2010 his reference to use “prior to June 2006” was in response to a request for that specific information. On examination it became apparent that the standard form letter sent by the Applicant had asked for evidence of use prior to June 2006. It was therefore not intended to indicate that was when his use ceased.
- 4.20 Mr Hughes was an impressive witness whose evidence was excellently delivered. He was unshaken under cross-examination and was vindicated over the reference to use “prior to June 2006”. I give credit to his evidence of use between 2001 and the installation of locked gates in 2008, recognising that there was a period after the deposit of the topsoil when he did not use the land.
- 4.21 **Dr David Cheetham** of Oakridge, Twynhams Hill lived at Robinswood for almost 50 years until selling to Mr Westcott in 2001 or 2002. His three children born in 1960, 1964 and 1967, used The Triangle especially as teenagers. He had used The Triangle “every day without exception”. He had deposited fallen leaves on The Triangle. He remembered use by dog walkers and children congregating there and there being a BMX track for a time in the 80’s and 90’s. He recalled one occasion when an armoured car, presumably on manoeuvres, had been camouflaged and stationed on The Triangle.
- 4.22 Dr Cheetham described The Triangle as an open area, flattish with ridges and bumps, which was there to be used. Under cross-examination he accepted that his principal use was before his children moved away to university and the youngest had gone by the mid-1980’s. He knew the owner and played tennis with him. He was aware that an application had been made for planning consent and that at the time he accepted there was no claim to public rights over the land. He agreed that after 1998 it was exceptional to see anyone on the land and that by the time he left the village in 2001/2 it was fair to say that “pretty few” people were using The Triangle. He accepted that the erection of the fencing was responsible for bringing an end to use, although by then he no longer resided in the village.
- 4.23 I found Dr Cheetham an honest witness doing his best to recall events long past. I formed the impression that he was, understandably, uncertain about some details. I attach weight to his evidence of use by his family and others during the very early part of the relevant period. Thereafter his evidence is of declining use by others which was brought to an end by the erection of the fence in 2005.
- 4.24 **Dr Robin Marsh** of Conon House Church Lane Curdridge moved to the village in 1967 and has lived in the same house ever since. He read his statement dated 19th February which was not included in the Applicant’s Bundle. He has regularly, on average once a week walked through The Triangle as part of a long walk. Sometimes he was accompanied by his wife and daughters, sometimes by his dog and sometimes he would visit his friend, Dr Cheetham, when in the vicinity. He

regularly saw others using The Triangle and particularly referred to children using a rope swing and riding BMX bikes and others walking with or without dogs. He suffered renal failure in autumn 2005 requiring a transplant in 2007. He has not used The Triangle since being ill.

- 4.25 Under cross-examination he recalled seeing children playing up to 2005 and thought the BMX use continued after 1998. He was steadfast in his evidence that use by children continued up to the time of the trees being felled, although acknowledged that the number of children doing so may have diminished over time although he ascribed this to demographic changes. He had seen scouts camping there once, he thought after 2001. He admitted to “wondering what was going on” when the trees were felled but originally thought this was for safety reasons and that the fencing was just “tidying up”. He accepted it was possible that he generally used the path through the middle but insisted that he could have taken any route that he chose.
- 4.26 I felt Dr Marsh was perhaps too keen to give the evidence that he thought would assist the applicant and that in so doing he lost a degree of objectivity. I accept his evidence of personal use although I find this was generally walking through The Triangle as part of a longer route. I accept his evidence of use by children up to, but not beyond, 2005, with that use declining towards the end of that period.
- 4.27 **Kevan Bundell** of Tanglewood, Outlands Lane, Curdrige had completed a standard form letter which is at page 50 in the Applicant’s Bundle. He moved to Curdrige in 1993. He enjoyed cycling and pony riding around the village. He was a smoker and would often stop at The Triangle for a smoke, it being the only place to get off the road. He recalled there being at least one “nice mound” which was ideal for BMX riding and he had seen children using this. He stopped using The Triangle when the fence went up although by that time he was trying to give up smoking and no longer had a pony.
- 4.28 Under cross-examination he said that he had a pony between 1995 and 2004. He confirmed he did not use the land after it was fenced at which time he recognised that it belonged to someone who did not want people on it. He became a member of the parish council in 2006 and could not recall any debate at any Council meeting about the fencing. He was aware that there were some paths or tracks across the land but could not recall the details. He recalled that the bus had ceased to stop at The Triangle by the early 2000’s.
- 4.29 I found Mr Bundell a reliable witness and I attach weight to his evidence that he used the land for recreational purposes between 1993 and 2005.
- 4.30 **John Osman** of Hillcrest, Kitnocks Hill, Curdrige moved to the village in 1946 as an infant. He attended the village school and used to play in The Triangle. He recalled meeting various named friends there. His use continued through his

teenage years into the 1950's. He used to go into The Triangle whilst waiting for the bus and on his return for the period 1955 to 1961. In 1963 he went to college but regularly returned home. He lived away until 1981 when he moved to Swanmore. He would regularly visit his mother in Curdrige and would walk up to and into The Triangle.

- 4.31 Mr Osman described The Triangle as overgrown at the Kitnocks Hill end but having open areas at the Lockham Road end, and he described various paths . He did not know it was private land. If asked he would have thought it belonged to the council as they owned the land opposite.
- 4.32 His mother died in 1993 and he then returned to live in her house. He could not recall going onto The Triangle from the time that he returned to the village.
- 4.33 Mr Osman presented as a reliable witness. He was, however, unable to give any evidence of use as a local resident during the relevant period.
- 4.34 **Mrs Anne West** of Pinewood, Chapel Lane, Curdrige had completed a standard form letter, had provided evidence in support of the application form and completed an Open Spaces Society evidence questionnaire, all of which are to be found at pages 120 to 129 of the Applicant's Bundle. She moved to Curdrige in 1976. She said that she had used The Triangle for 34 years up until the time it was fenced and soil deposited. Thereafter her only visit to The Triangle had been on the occasion when the local MP, Mark Oaten, visited. She explained that there was nothing to prevent use of The Triangle until the gates were locked. She had encountered people on the land. She had never been challenged and had seen no signs prohibiting entry. She recalled that her neighbour would often sit on the land taking his pulse after a run.
- 4.35 Under cross-examination Mrs West explained that her children were born in 1983 and 1986 and she would walk them round The Triangle when they were little. She acknowledged that she telephoned the Council to complain about the trees being cut down. She agreed that support for the village green application went hand-in-hand with her objection to the planning application for the site.
- 4.36 In her written evidence Mrs West stated that her children had played on The Triangle and that she had walked her dog there. Her use was weekly, sometimes several times a week.
- 4.37 I found Mrs West to be passionate in her evidence but perhaps, as a result, lacking objective focus. I accept that she and her children were regular users of The Triangle. That use ceased in or about 1995, but she continued to walk her dog until 2005.

- 4.38 **Peter Blogg** of 5 Hillside, Curdridge has lived in the village since 1966. His house is less than a quarter of a mile from The Triangle. He had completed a standard form letter which is to be found at page 48 of the Applicant's Bundle. "Off and on" he and his family had walked across The Triangle and the children had played there. The children rode their bikes. The children caught the bus at the stop adjacent to The Triangle and played in The Triangle on their way home. His hobby is natural history and The Triangle was a good place to indulge this. He had never been stopped and considered he had a right to use The Triangle.
- 4.39 He recalled the trees being cut down. He heard the equipment and walked to The Triangle. He saw and spoke to Chris Collins whom he knew. Mr Collins told him that the area was going to be left for wildlife.
- 4.40 Under cross-examination Mr Blogg said that his children were born in 1968 and 1970. They played on The Triangle when they were at senior school and agreed this would have been in the early 1990's. He did not know initially that the land had been sold to Mr Collins in 1998 but found out later. He was aware that an application for planning consent had been made for a mast to be erected on the site. He had not previously been aware that any trees on the site were dangerous but was told by Mr Collins that the trees had been surveyed and that some would have to come down.
- 4.41 He recalled a path behind the bus stop. It was not a designated path but a pedestrian could get through it. He did not remember a path from the apex to the bus stop. He did not use the paths but would walk around not keeping to any regular route. He could not recall whether he had gone onto the site after the fencing; he may have done but could not recall specially doing so. This was not because he felt that he should not but only because it was too muddy.
- 4.42 Mr Blogg was a consistent and reliable witness and I accept his evidence of use from 1966 until 2005. I accept that his children used The Triangle but their use largely pre-dated the relevant period.
- 4.43 **Mrs Janet Blogg** is the wife of Peter Blogg. She had not made any written statement nor produced any written evidence. She wished to add to her husband's evidence. She had used The Triangle to collect cones and to walk the dog. She confirmed that the children had used the land. Her use had been open and no-one had stopped her. She confirmed that she had not used The Triangle since the fence went up.
- 4.44 Mrs Blogg, like her husband, was a reliable witness whose evidence confirmed that of Mr Blogg.

- 4.45 **Mark Gregory** of 1 Hillside, Curdridge had not provided any written evidence. He moved to the area in 2003. He had made no personal use of The Triangle but had seen others on the land. He particularly recalled people collecting cones from the margin of The Triangle.
- 4.46 Under cross-examination Mr Gregory said that he had seen others using The Triangle when there was no fence. After the fence went up he did not recall it being used. In his words “As far as I was concerned that was pretty much it”.
- 4.47 I accept Mr Gregory’s evidence that he had seen people on The Triangle between 2003 and 2005. I can attach little weight to this evidence as Mr Gregory was unable to tell me who the people were and I cannot therefore assess whether such use was as of right.
- 4.48 [REDACTED] of [REDACTED] had completed a standard form letter and written in support of the application. These are to be found at pages 111 and 112 of the Applicant’s Bundle. He moved into his present house in 2004. Prior to that he had school friends who lived in Curdridge and at one time had a girlfriend who lived in Lockhams Road. He recalled visiting the village by bus on one occasion and walking across The Triangle to a party at his girlfriend’s house. Later that evening he recalled drinking in The Triangle. He was aware the dog users had used The Triangle until the fence went up but he was not aware of any use after that.
- 4.49 Under cross-examination [REDACTED] was asked if he recalled details of any paths on The Triangle. He did not.
- 4.50 I accept [REDACTED] evidence but am able to attach little weight to it as he did not give evidence of personal use of the land within the relevant period. Whilst he had seen others using The Triangle between 2004 and 2005 I cannot be satisfied that such use was as of right.
- 4.51 [REDACTED] is the wife of [REDACTED]. She jogs and used to run around The Triangle but did not ever recall venturing into it. She did not recall having seen anyone on the land after the fence went up.
- 4.52 I accept the evidence of [REDACTED] but it is not of assistance to me.
- 4.53 **Diane Clark** of The Ridge, Lockhams Road, Curdridge had completed a standard form letter and produced a written statement at the Inquiry. Her letter is at page 52 of the Applicant’s Bundle. She has lived in Lockhams Road since March 1992 and has a view of The Triangle from her house. She enjoyed the amenity and attraction of The Triangle and particularly the specimen trees, and was saddened by the removal of so many of them. Having moved to the village and after seeing others

using The Triangle to walk their dogs she was encouraged to do the same. She was never stopped or reprimanded. She had collected cones from The Triangle. She had used The Triangle for bird watching. She recalled a couple of trodden pathways. She acknowledged that she was “not a massive user”. She did not see lots of people there but did see the odd person there. She had not been on The Triangle since the fence went up from which time she considered it to have been spoiled. She estimated that it was probably two years from the time of moving into the village that she first used The Triangle.

- 4.54 Under cross-examination she agreed that the principle pathway through The Triangle began at point A and that a separate pathway branched off this. Asked what she meant by “the odd person” she clarified that she meant she occasionally saw a person on the site. It was put to Mrs Clark that there were no cedar trees within The Triangle and that she had mistaken these for Monterey Pines. (I note that in later evidence called by the Objector the presence of cedars on the site was confirmed with one still remaining)
- 4.55 I found Mrs Clark to be a good witness and accept her evidence without reservation. I find that she used The Triangle from about 1994 until 2005 but that her use was not frequent.
- 4.56 **John McNulty** of The Firs, Kitnocks Hill, Curdridge had provided written evidence which is at pages 88 to 91 of the Applicant’s Bundle. He read his manuscript statement at page 88. Mr McNulty moved to Curdridge in 1985. He used The Triangle occasionally on summer evenings when exercising his first dog. After that it was mainly used by the children and their mother on their way to school. On summer evenings children, including his own, would congregate on The Triangle and use it for BMX, riding and dug humps and hollows for the purpose. He described the northeast corner of The Triangle as being ideal for this activity. The southeast corner was more overgrown. He recalled a footpath coming in at the apex of The Triangle and coming out at the northwest corner. He recalled having seen other people playing on The Triangle when he was exercising his dog. He described his use as occasional. His use was for the period 1998 to 2003 and possibly once or twice after that when walking through it with the dog. He stopped using the land when the fence was erected and the soil deposited as a result of which it became undesirable. He estimated that the children used The Triangle perhaps once a week when the fancy took them. He had never been stopped or challenged and used the land freely.
- 4.57 Under cross-examination Mr McNulty identified the paths by reference to a plan. He described the area in the northeast corner as reasonably open and well defined and used for play. He agreed there were two paths traversing the site. He thought that the use of his children on bikes was probably from the final year at primary school to

their early years at senior school. His son Theo was born in 1985 and Ned in 1988. Accordingly, he agreed that their use would have predominantly been in the late 1990's and possibly early 2000. He confirmed use of The Triangle by other families and use for BMX riding. He was certain this continued beyond Mr Collins' purchase of the land in 1998. He said that Ned continued using it until he was 14 which was in 2002. He recalled lending his children a spade to create jumps.

- 4.58 My note records Mr McNulty as a good, firm and reliable witness and I accept his evidence of use by himself and his children between 1998 and 2003, the children's use probably ceasing the year before.
- 4.59 **Barbara Janet McNulty** is the wife of John McNulty, the previous witness. She explained that the family had only one car and she used to walk with Ned to The Triangle, taking the dog. She confirmed that she had not done so since the clay was deposited. After that time she would not have wanted to set foot on the land. She could not be sure if she had been onto The Triangle after the fence was erected but before the clay was deposited. She described it as a "forbidding place" after the fence was erected.
- 4.60 Under cross-examination Mrs McNulty was referred to her statement at page 262 of the Applicant's Bundle. She confirmed her use to 2005 and also confirmed that she did not use the site after the clay was deposited.
- 4.61 I accept Mrs McNulty's evidence although I find her principal use was prior to 2003 with perhaps occasional use thereafter until the fence was erected.
- 4.62 **Alastair Pepper** of Chapel Lane, Curdridge had completed a standard form letter which is at page 95 of the Applicant's Bundle. He recalled going to The Triangle with the family dog and riding a bike there from about the age of 7. It was a place where a group of friends living in Curdridge used to meet after school. There was a BMX jump in the middle of the area. He believed he used the whole of The Triangle and was never challenged. After the fence was erected he went in with the dog but not as much. After the clay was deposited he did use the area but even less frequently. He stopped altogether when the gates and signs were put up.
- 4.63 Under cross-examination Mr Pepper said that he was born in 1983. His use therefore commenced in about 1990. His use for bike riding continued until he was about 16, the end of the 1990's. Afterward he walked through The Triangle as part of a longer walk with the dog. He would play with the dog on The Triangle throwing a ball for the dog to fetch and then go home. He confirmed his continued use after the fence was erected. Because openings were left in the fencing he did not consider that he should not have been on the land. His use ceased when the gates and signs were put up when it became obvious that he should not be there. It was specifically put to Mr Pepper that he did not take the dog onto The Triangle after the

soil had been put down. He agreed that the area was unattractive once the soil had been deposited and could not say definitely that he went on after that time.

- 4.64 I found Mr Pepper an engaging and reliable witness. I accept his evidence of regular use in the summer months in the 1990's. I accept that he used The Triangle thereafter when exercising the dog. Some of that use was walking through The Triangle. I am not satisfied that Mr Pepper used The Triangle after the soil was deposited in 2006.
- 4.65 **David Picton-Jones** of Mabledon, Chapel Lane, Curdridge had written in support of the application, completed a standard form letter, provided a statement and completed an Open Spaces User Evidence form. His written evidence is at pages 96 to 106 of the Applicant's Bundle. He is a retired head teacher and part time educational advisor and a Justice of the Peace. He moved to Chapel Lane in 1983 with two young children. His house is approximately 50 metres from The Triangle. His son was born in 1980 and his daughter in 1981. His family had been regular users of the village green. They are enthusiastic walkers. As the children became old enough to ride bikes The Triangle was used for that purpose. The children rode along the paths and over the humps and bumps. They played fantasy games and took exercise. By the age of 9 James would go alone and would meet other, mostly local, boys. He recalled a rope strung from a branch which the children used as a swing. He collected greenery, particularly holly, at Christmas from The Triangle. It was a place that the family could walk to easily and was used as part of their home environment. He saw others there from time to time. He recalled a traveller sleeping there once. He had never been challenged. The erection of the fence interrupted use and the locked gates finally ended the family's use. He agreed that when the soil had been deposited on the site it had become unattractive and it was dissuasive.
- 4.66 Under cross-examination he said that he accompanied his children to The Triangle in the 1980's. It would have been the late 1980's when his son went on his own. The rope was probably used in the early 1990's. His son began using his bike accompanied before the age of 8 and continued until the age of about 16 (circa. 1996). It was put to Mr Picton-Jones that collecting cones and branches was an unlawful activity. He acknowledged that in his written evidence he had referred to being refused entry to the land on a Christmas Eve/Saturday. This was the occasion when the trees were being felled. He described the scene as chaotic. He was not specifically refused entry but he felt that he would not be welcome on the site. He was also referred to his Open Spaces Evidence Questionnaire where he stated that his use finished in "2007 (when it was fenced)". He explained that he could not remember the precise date but his intention had been to refer to the fencing works.

- 4.67 Generally I accept Mr Picton-Jones evidence of use of The Triangle by himself and his children. I felt his evidence as to the date that his use finished was uncertain. I prefer the description in his user evidence form that his use ceased when the fence was erected. Accordingly I give credit for evidence of use from 1988 to 2005.
- 4.68 **Margaret McLean** of Underwood, Curdrige Lane, Curdrige had written in support of the application. Her letter is at page 87 of the Applicant's Bundle. She read the letter. She has lived in Curdrige since 1991 but known The Triangle since 1982. She did not use it much until 1990 when she collected her children from school. On their way home they would often stop at The Triangle and she would allow the children to "run off a bit of energy". This began in about 1990 and continued until 1996/97 when they took up other interests. She collected pine cones and her husband used The Triangle to exercise the dog. When the land was fenced she spoke with the Parish Councillor who told her that it was private land. She had not previously been aware of this and did not go on it again.
- 4.69 Under cross-examination she said that her children did not use The Triangle after 1997 and that her personal use in that period was occasional. Her dog was too old to walk that far after 1999. Thereafter she did not use it with the dog and accepted that she was not a regular user, her only use being to collect cones and greenery.
- 4.70 I found Mrs McLean a sensible, reliable witness. Her main use, with her children, was between 1990 and 1996. Thereafter her use was only occasional and ceased when the fence was erected.
- 4.71 **Stuart Reay** of Tree Cottage, Lockhams Road, Curdrige had completed a standard form letter in support of the application which is at page 109 of the Applicant's Bundle. He had used The Triangle to walk his dog. His son had ridden his BMX bike over the jumps within The Triangle. His wife had collected cones. Use had been since the family moved to the area in 1986. He had seen other people using The Triangle. He was, for a time, gardener at Robins Wood. His home is about one third of a mile from The Triangle. He described himself as an occasional visitor to the site. His son used it from the age of about 10. He described the area as heavy scrub with pine and other trees. It was not a large area. He just walked and allowed the dog to roam around. He first became aware of any issue when the trees were cut down; subsequently the area was fenced and soil deposited. He ceased using The Triangle when the trees were cut down and confirmed that he had not been there since the fence was put up. It was clear to him that someone was trying to claim ownership of the land.
- 4.72 Under cross-examination Mr Reay said that his son was born in 1987 and was about 8 to 10 when using it on his BMX bike. He estimated that his son stopped riding there in about 2004. It was put to him that there were no jumps within the area after 1998. Mr Reay responded that after that period his son left the house to visit The

Triangle and he was certain that the area was used by other people until 2004. He could not be absolutely certain that his son went to The Triangle. He acknowledged that when his son was very young and had accompanied him when dog walking they had walked through The Triangle as part of a longer walk. He agreed that the fencing appeared to demonstrate an intention to claim the land and to prevent access.

- 4.73 Mr Reay gave his evidence in a straightforward and reliable fashion. I accept that the area was used by Mr Reay and his son from 1998 to the early 2000's. Mr Reay's use was occasional; his son's more frequent from the mid 1990's to the early 2000's.
- 4.74 **Mrs Heather Reay** is the wife of the previous witness. When her children were young she would visit The Triangle with them. They would walk around the area and stop and play. Her son would not have been allowed out on his own before the age of 9. When her son went out on his own she thought that he would have used The Triangle on the way to other places. She confirmed that she collected cones and walked the dogs but that this was an occasional activity. Her use ceased from about 2000 when she was working full time.
- 4.75 Under cross-examination Mrs Reay was asked whether she knew where her son went when he left the house on his own. She said that her son was well aware of The Triangle and would have ridden across it. She acknowledged that when walking the dog she would often have walked through The Triangle.
- 4.76 I accept Mrs Reay's evidence and this supports the evidence of her husband in relation to use by their son. I find Mrs Reay's personal use to have been only occasional and that some of that use was walking through The Triangle on the defined track. Her use ceased in 2000.
- 4.77 **Mrs Carol McDonald** of Acorns, Chapel Lane, Curdridge had written in support of the application and completed a standard form letter. Her written evidence is at pages 81 and 82 of the Applicant's Bundle. Mrs McDonald read her written statement. She has been a resident of Curdridge since 1985 when her children were aged 8 and 11. She believed The Triangle was owned by the Parish Council and access was available at all times. The children played there and she collected fir cones on a frequent basis. In 1987 the family acquired a dog and The Triangle became used for exercising the puppy. Occasional use for this purpose continued until the dog died in 2003. She recalled collecting cones from The Triangle in January 2006 to use as table decorations for her son's wedding. She regarded The Triangle as "our little bit of woodland on our doorstep". She recalled the clay being deposited on The Triangle. After this reeds had grown. The area was much less enjoyable to use. She gave further details of the collection of pine cones for use as decorations at her son's wedding. She said that it was in fact her daughter who had

visited The Triangle to collect the 150 cones needed. Mrs McDonald had ceased using The Triangle when her dog died in 2003 and had not been there since. She remembered her neighbour's son using The Triangle in the late 1990's for BMX riding and that he had created an earth ramp to use for jumps.

- 4.78 Under cross-examination Mrs McDonald accepted that there were clear paths through The Triangle. She had a long extending lead for her dog but did not let him off this. She recognised that her use of The Triangle decreased as the dog got older. She may have used it as a shortcut thereafter until the fence was erected, but not thereafter.
- 4.79 Mrs McDonald was a reliable witness. I accept her evidence of use for the period 1985 to 2003 but do not consider there was any significant use after that date. Some of her use was walking through The Triangle on a defined path.
- 4.80 **Alistair McDonald** is the husband of the previous witness. He endorsed his wife's evidence. He said that on occasion he took the dog on his own to The Triangle where he enjoyed the open woodlands. He thought it was parish land. He did attend the meeting with Mark Oaten.
- 4.81 Under cross-examination, he confirmed his wife's description of their pattern of use. Once the fence was put up he could no longer use the land as a shortcut. He accepted that it was then clear that the land was private and it was no longer an amenity.
- 4.82 I accepted that Mr McDonald has made occasional use of The Triangle but that his use was predominantly for dog-walking and that he generally walked through the area.
- 4.83 **Mrs Allison Janes** of Pinewood Cottage, Curdridge Lane, Curdridge had, together with her family, completed a standard form letter which is at page 59 of the Applicant's Bundle. She thought the land was parish land. Between 1998 and 2003 she would take the children through The Triangle on her way to the Reading Rooms. They would play within The Triangle. Her husband went on to The Triangle with the boys from about 1998. They had lived in the village since 1984 and sometimes used The Triangle as a cut-through but were not regular users before 1998. They used the whole area. Her son, David, was born in April 1998 and she began using The Triangle a few months after his birth until 2003 when Matthew went to primary school. She acknowledged that she had probably not used the area since then. She saw other people walking across or meeting to walk on The Triangle. It was easy to get in and out and she had never been stopped. Under cross-examination, she recalled the cutting down of the trees and the erection of the fence and accepted that this appeared to discourage use. She acknowledged that there were

other places in the village for children to play. She said that when in The Triangle her children would play off the path but she would generally have stuck to the paths.

- 4.84 I noted that Mrs Janes was a pleasant, honest, reliable witness and I accept her evidence of use between the years of 1998 and 2003. Earlier use was occasional and only for the purposes of using the area as a shortcut.
- 4.85 **Mrs Christine Maddison** of Summerlands, Botley Road, Curdridge was, at the time of the inquiry, in South Africa and gave evidence by telephone. She had written in support of the application and her evidence is contained at pages 35 to 40 of the Applicant's Bundle. The Triangle formerly belonged to her father, Group Captain R Fulljames. On his death in 1986, the land passed to her brother, her sister and herself. She described a well-worn path through The Triangle. She recalled children playing there regularly. The family were aware of this use and regarded it as common land. When the trees became dangerous and money needed to be spent to make them safe, the land was offered to the council who had offered a sum of £2,000 for it. Mr Collins offered £3,000. She asked him why he wanted to buy the land as it was common land used by the public. He told me that he was aware of this but said he wanted to name the land Collins Corner. It was a beautiful area full of enormous, old trees.
- 4.86 Under cross-examination, it was put to Mrs Maddison that the land was not common land. She said that she had always regarded it as such. She did not know about the need to register common land under the Commons Registration Act 1965. She was asked about applications made by her late father for the construction of a petrol filling-station and a house. She believed her father had done it for a joke. He knew that people were always walking on the land. It was suggested to Mrs Maddison that she and her family had accepted the best price on sale. She denied this and said that it would have been possible to put the land on the market. The family had offered it to the Parish Council in order that they could be responsible for it. The family could not afford the works needed. She was certain Mr Collins knew the land was used by local people. There was a well-worn path through it.
- 4.87 At this point the telephone connection failed and it was impossible to re-establish contact with Mrs Maddison.
- 4.88 I found the giving of evidence and cross-examination by telephone unsatisfactory and because the exercise could not be completed, I am unable to attribute any significant weight to the evidence of Mrs Maddison.
- 4.89 **Mrs Lynne Newton** of Acacia Cottage, Botley Road, Curdridge had completed a standard form letter in support of the application which is at page 92 in the Applicant's Bundle. She moved to the village in 1990. She had a cycle and would often stop at The Triangle to look at the adders and to collect pine cones. She

recalled the trees being cut down as she passed the area daily. She continued to access the site after the fence was erected in 2005 as she wished to look for the snakes. After the soil was deposited, she was very concerned about the reptiles. She was surprised that they had not been collected before the works were undertaken. She continued to monitor the site but saw no more snakes. She occasionally walked across The Triangle with her dog. She enjoyed the trees and birds but her particular interest was the adders. She could not recall ever seeing anyone else within The Triangle whilst she was there but she had seen others on the site when she had ridden or driven past. She confirmed the existence of a well-worn track and other tracks where children had been on bikes. She thought this was mainly in the period 1990 – 1995, possibly a little after that. She did not recall seeing anyone much on bikes after 1995 but saw people within the area up to about 2000. She did not see anyone on the land after the mud but did see some footprints generally around the site. She ceased use of the site after the gates were erected in about 2008. She was never challenged when using the area. She had never given any thought to the land being privately owned. Although she saw footprints in the mud after 2006 she saw no bike tracks. The grass had begun to grow back after the soil was deposited. Her use continued until the gates were locked.

- 4.90 Under cross-examination she accepted that she had seen no-one on bikes after 1995 and not seen any children on the site after about 2000. During the period 2000 to 2005 she estimated that she visited the site “a couple of times per month” but this depended on the time of year and was an average. She was generally on the site for between ten and twenty minutes depending on what she saw. Although she had never met anyone on site she had seen people, she estimated half a dozen times; she passes the site three or four times a week. Between the period 2005 and 2008 during the summer months, her visits continued at a rate of “a couple per month” but less frequently during the winter months (November to March) when her only reason for visiting would be the collect cones or see the birds. She would go at any time of the day.
- 4.91 Mrs Newton was a good, consistent and reliable witness and I accept her evidence of use for the period 1990 to 2008. I conclude that her use after the soil was deposited on the site was less frequent than before and can best be described as occasional.
- 4.92 **Norman Hibdidge** of 8 Oaktree Gardens, Hedge End, Southampton had completed a standard form letter in support of the application which is at page 57 of the Applicant’s Bundle. Mr Hibdidge lived in Curdrige for 40 years between 1954 and 2004. He recalled that when he first arrived in Curdrige The Triangle was very overgrown. One side became more used and worn and from time to time he saw children on bikes and children playing there. He had been employed by the Ordnance Survey as a cartographer. He had looked at old maps including

Curdridge Common. He had always assumed that The Triangle was a remnant of the Common. This was an assumption; he had no proof. He retired in 2002 and had not been round the village much since then. He was surprised to see the fence. He had not personally been on The Triangle. He had often carried out deliveries in the area on Saturdays and had frequently seen children in The Triangle but he had no need ever to go in it. He thought The Triangle probably came to be used from the 1970s and 80s. The area used grew larger over a period of time.

- 4.93 Under cross-examination he could not be sure of the dates when he had seen children with bikes on the site. He recognises that he was not very active after about 2002 and that he had moved to Hedge End in 2004.
- 4.94 Mr Hibdidge was an amiable and entirely reliable witness. I accept his evidence. Mr Hibdidge had no personal use of The Triangle. Whilst I accept his evidence of witnessing use by others, in the absence of knowing who the users were and the basis upon which they were using the land, I can attach only limited weight to his evidence.
- 4.95 **Mrs S D Pearce** of 3 Botley Road, Curdridge had completed a standard form letter in support of the application which is at page 94 of the Applicant's Bundle. She confirmed that the contents of her statement were correct but was not willing to answer any questions.
- 4.96 In the absence of being cross-examined, I can attach no weight to the evidence of Mrs Pearce.
- 4.97 **Mrs Vera Young** of 2 Darlington, Lockhams Road, Curdridge had written in support of the application and completed a standard form letter. Mrs Young is 97 years of age and has lived in the village since the age of 9. She recalled that boys and girls left the bikes at her house and then walked off to catch the bus. She used to meet her daughter off the bus from school and when she worked late in Southampton she would walk through The Triangle without ever thinking that she would be told-off. The only time when she did not go through The Triangle was when there was a man asleep in a car in The Triangle. The last time she met her daughter there was a really long time ago; well over twenty years ago.
- 4.98 Mrs Young is a remarkable old lady who gave an honest account of her use of The Triangle. Her use all pre-dates the relevant period and is, therefore, not of assistance to me.
- 4.99 **William Bellchamber** of Tanglewood, Lockhams Road Curdridge had completed a standard form letter and written in support of the application. His written evidence is at pages 33 and 34 of the Applicant's Bundle. Mr and Mrs Bellchamber have been resident at Tanglewood since May 2003. He described The Triangle as the only

safe area to meet in the vicinity, there being no footpaths in Chapel Lane or Lockhams Road. He described it as a quiet area. Until 3 or 4 years ago, a neighbour, Ethel Gamblin, had walked her dog twice a day to The Triangle. It was peaceful and safe from the traffic. He had used The Triangle after 2006 but stopped using it when the gates were erected. He occasionally went there after 2006 but could not be sure of the dates.

- 4.100 Under cross-examination, Mr Bellchamber said that Ethel Gamblin had walked her dog until shortly before she died. He used The Triangle until the dog died, which he thought would have been in or around 2007. He saw others on The Triangle, but agreed that it would not be appropriate to call it a meeting place. He remembered the mud. He used it less after that, perhaps only once or twice.
- 4.101 I accept Mr Bellchamber's evidence of use of The Triangle to exercise his dog between 2003 and 2006. I was not convinced that Mr Bellchamber made any significant use of The Triangle after the soil was deposited in 2006.
- 4.102 **John Taylor** of Calcot House, Calcot Lane, Curdridge had written in support of the application. His letter is at page 115 of the Applicant's Bundle. Mr Taylor read his letter dated 30 January 2007. He had driven past The Triangle since 1965 and was a frequent visitor to the village from 1982 before becoming a permanent resident in 1989. He would pass The Triangle every morning and evening and had seen people going in and coming out. There was a clear entrance at one corner. He once saw a person disappear into The Triangle with a barrow of leaves. He had a recollection of a lady in a red top and grey skirt with a white dog. He had not seen children or bicycles. He regarded The Triangle as a small area of woodland that was part of the character of the village.
- 4.103 Under cross-examination Mr Taylor acknowledged that neither he nor his wife had actually used The Triangle. He described the location of the path that he had seen when driving past. He had not known that there had been a bus-stop adjacent to The Triangle until the trees were removed. He had made no assumption about the use of The Triangle. He did not recall any change in the frequency or pattern of use.
- 4.104 Mr Taylor gave no evidence of personal use of The Triangle. I accept that Mr Taylor had seen others in The Triangle but I have to attach less weight to this evidence than that of personal use.
- 4.105 **Henrietta Taylor** is the wife of the previous witness. She, too, drove to work and noticed people going in and coming out of The Triangle at the point B/C. She particularly noticed people after 1989 when she travelled past every day. She was certain that she saw people until the fence went up. She could not specifically recall anyone in The Triangle after 2005. She confirmed that she had not been on The Triangle. She had lived away between 1983 and 1989.

- 4.106 I have no reason to doubt the reliability of Mrs Taylor's evidence but can only afford it the same weight as her husband's evidence.
- 4.107 **Robert John Podesta** of Silver Lake, Lake Road, Curdridge had completed two standard forms in support of the application which are at pages 107 and 108 of the Applicant's Bundle. He used to play in The Triangle when he was a child and named two or three other children that he met there. They rode bikes, played tag and climbed trees. They would go there in the summer evenings and at weekends, perhaps three times a week. He was born in 1942 and his use carried on until about the age of 16. He has two children, Tina, born 1967 and now 43 years of age and Mark, born in 1969 and now 42 years of age. His children played in The Triangle when they were younger. He would sometimes visit The Triangle and walk around. His wife sometimes accompanied him. This was mainly in the 1960s. The children's use of the land finished in the mid 1980s, although after that date they would still ride round there for a year or two afterwards. He walked his dogs in The Triangle and had a recollection of seeing Mr Short collecting firewood using a wheelbarrow.
- 4.108 Under cross-examination, he accepted that he stopped using The Triangle in the 1990s and that he had not been there at all in the 2000s other than to see the works which had been carried out. He had not seen anyone in The Triangle over that period of time.
- 4.109 I accept the evidence of Mr Podesta but the principal evidence of use relates to the period prior to 1988. I accept that Mr Podesta may have been an occasional user of The Triangle in the early years of the relevant period.
- 4.110 **Brian Calvert** of Ridgeway, The Plantation, Curdridge had written a standard form letter in support of the application which is at page 51 of the Applicant's Bundle. He has lived at Ridgeway since 1999 and made occasional use of The Triangle since that time for walking the dog and family walks. He has entered the land since it was fenced. He occasionally used the site after the mud was deposited but his use ceased when the gates were locked. He saw others using The Triangle when he had been walking along the adjoining roads. The family had several regular circular walks which would use The Triangle in various ways.
- 4.111 Under cross-examination, Mr Calvert estimated that prior to the locking of the gates, he used The Triangle on average twice a month as part of a longer walk. He described some of his routes. He recognised the defined paths described by other witnesses but would not necessarily have used these as he did not always follow the trails. It was a fairly open piece of land. He would follow where the dog went. Sometimes he stayed on the path, sometimes off it. He remembered the fencing being erected in 2005, but there were gaps. He had, on a few occasions, walked through or climbed over the fencing. He acknowledged that he used the area less

after the fencing had been erected. He acknowledged that the depositing of the soil on the site effectively prevented him from going on to the land. It was clear to him that someone was trying to prevent use and subsequent access was severely reduced, less than once a month. He could not recall the last time he had used the area. He did not accept that he had ceased using the site before the gates were put in. He maintained that his use was reduced and would not accept that his use had become minimal. He was certain that he had been on the land since 2006 and more than a couple of times a year, although he agreed that this might be described as infrequent.

- 4.112 Mr Calvert was a robust witness, unshaken under determined cross-examination. I accept that he was a regular user of The Triangle between 1999 and 2006. Some of that use was using the defined paths through the site. I accept that Mr Calvert may have used the site after the soil was deposited in 2006 but I find that at that time he was aware that the landowner was seeking to prevent use by the public and, therefore, his use was contentious.
- 4.113 **Mrs Dawn Tyson** of Tamarind House, The Plantation, Curdridge had completed a standard form letter in support of the application which is at page 118 of the Applicant's Bundle. Mrs Tyson had been on The Triangle with her family altogether on only one occasion. Her son had been once and her daughter a few times with friends. Her principal use had been with a friend from Chapel Lane walking her dog. She thought that she had first been on to The Triangle in about 2002. She had been only once since the trees were cut down and not at all after the area was fenced. Over the years she had seen children and mothers on the area. Her daughter would cycle there with friends. She estimated that her daughter had done this up to a dozen times, mainly in 2004 and over a period of some months. She had never been stopped. She had assumed that it was common land for the benefit of the village.
- 4.114 Under cross-examination, Mrs Tyson confirmed that she had only been on the site once after the trees had been cut down and not at all since the fence was erected. She conceded that once the fence had been put up, it was obvious that the owner did not want casual people to use it.
- 4.115 Mrs Tyson is a pleasant lady who presented as a reliable and truthful witness. I accept her evidence of use between the period 2002 – 2004.
- 4.116 **Mrs Diane Roberts** of Eastfield, Curdridge Lane, Curdridge had completed a standard form letter in support of the application which is at page 110 of the Applicant's Bundle. She confirmed that she had not been to The Triangle since the land was fenced. Prior to that she used to walk there with the children and walk round The Triangle. The character of the land changed a lot once the trees came down. She had lived in the village for 14 years and The Triangle was part of the

character of the village. Her children knew The Triangle well. They would cycle there.

- 4.117 Under cross-examination, Mrs Roberts said that she came to live in the village in 1998. Her daughter, Sian was born in 2000 and her son, Harry, in 2003. She recalled the trees being felled in 2004 and the fence erected in 2005. Prior to the fencing, she went there often with her pram. She would walk round The Triangle and then back. She did not go on it after the fencing. She accepted that this was a clear message from the landowner that public access was not welcome. She did not use the land before 2000.
- 4.118 In response to a question from me, Mrs Roberts acknowledged that she had never been on to Triangle but only walked round it using the roads. Accordingly, the evidence of Mrs Roberts does not provide any assistance to the applicant.
- 4.119 **John Allan** of Oaklands, Lake Road, Curdridge, had completed a standard form letter in support of the application which is at page 42 of the Applicant's Bundle. Mr Allan's family consists of himself, his wife and two daughters. They have lived at Oaklands approximately 17 years. They had a dog when they moved in the house and got a second dog 2 or 3 years later. He used to walk to The Triangle along the A334 and rest at The Triangle, letting the dog have a run. He was now on the third generation of dog since being in the village and has used the same regime with all of them. The Triangle was ideal for getting the dogs used to walking on or by a busy road. He ceased using The Triangle when the fencing went up when it became clear that he was not wanted on the land. He often saw young children using The Triangle. There was one main track with a smaller track with a hump used by children riding BMX bicycles. He did not know who the children were. His usual visits would have involved being on The Triangle from anything from a few minutes to 20 to 30 minutes. He visited at least once a week, sometimes twice. On occasions he had brought horses along Lockhams Road and onto The Triangle to allow them to get used to the traffic. He had never been challenged and he had seen nothing to suggest that he should not be on the land prior to the fencing. His wife occasionally accompanied him for a walk. His daughters did not join him.
- 4.120 Under cross examination, Mr Allan said that he had moved to Curdridge in 1994. He was unable to put a date to the BMX riding but recalled it as a "quite frequent" activity. He could not say whether it extended into the 2000's. He described the undergrowth of the rear of the site as being heavier and clearer at the front so that one could pass through. There were several access points.
- 4.121 Mr Allan was a conscientious and helpful witness. I accept his evidence that he used the area on a regular but limited basis to walk his dog between the years 1994

and 2005. I accept that he witnessed other activity within The Triangle throughout the same period.

- 4.122 **Howard Mancey** of Oak Lodge, Chapel Lane, Curdridge, had written in support of the application and completed a standard form letter. His written evidence is at pages 82 and 84 of the Applicant's Bundle. He moved to the village in 2000. He had made use of The Triangle. He particularly used it with his bike. He did not go there after the trees were felled and the fence erected. He acknowledged that after the soil was deposited, it was very soft and about 1ft deep and a person could not get onto it without being up to the knees in mud. His son was 4 when they moved to the village and 8 or 9 years of age when the trees were felled. His wife had joined them at times but had not ridden a bike. He would accompany his son to The Triangle and let him ride around the track. He had not met anyone there but had seen people using the land and walking dogs. His house is only 100 yards away. He described tracks around and through The Triangle with some humps making more fun for bike riding.
- 4.123 Under cross examination he acknowledged that he had felt that he was not allowed onto the land after the fencing went up. He accepted that his use was predominantly between the Spring and Autumn but was not consistent. Sometimes they would visit twice in one weekend and then not the next. His son would ride and he would walk. They would be there for about 20 minutes or so at a time.
- 4.124 I accept Mr Mancey's evidence of use of The Triangle between the years 2000 and 2004.
- 4.125 **Alexander Rory Kemp** of Thatcher's Wood, Kidknock's Hill, Curdridge is the applicant. Mr Kemp had produced written evidence in support of the application which is at pages 71 and 71a of the Applicant's Bundle. Mr Kemp read the statement at page 71a. He has been a resident of the village since 1959 and got to know The Triangle as a child. He moved to his present address, Thatcher's Wood, in 1985. Thatcher's Wood lies opposite The Triangle. His mother-in-law lived in the adjacent property. From Thatcher's Wood it is possible to see all the way into The Triangle and Mr Kemp had noted people coming in and out. He had seen horses on the site. Generally use declined after 2004. He specifically recognised Doug McLean and others walking dogs. He regarded The Triangle as almost an extension of his garden. He described The Triangle as having been in part covered in trees and undergrowth and in part with open areas. In earlier days he had seen

people riding bicycles within The Triangle and in recent times he had noticed the BMX humps. He described a huge change in 2004 when the trees were felled and then the mud added. It had gone from being a lovely copse to a water logged muddy area which people found distasteful and would have needed boots to access. He had spoken with Mr Westcott who had told him of the conversation with Mr Collins and that as a result he believed that he was able to continue using The Triangle as of right. This belief was reinforced by a conversation with Mrs Maddison.

- 4.126 After the area was fenced he understood that the public were not barred because the fencing was not continuous and the owner was tolerant or acquiescent as to continuing use. He did not discuss this with anyone else locally. He described the rubble and clay being deposited on the site and later bulldozed level. He and his wife walked onto it. It was quite hard going. He recalled doing this two or three times before the grass began to return. He acknowledged that it was “quite boring” but did it because it was next door and he wished to see what was going on. Sometimes they walked around the edge of The Triangle and other times walked through.
- 4.127 He had first submitted his application for registration of the land as a village green in about May 2008 or possibly earlier but it was not stamped by the Council until June 2008. At the time of his application The Triangle was fenced but no gates had been installed at the gaps. The application was made after the planning application had been put in. He thought the application was necessary to protect the land. The installation of the gates later in 2008 was the first time that access was prevented but this was after his application had been made and the signs were not put up until later.
- 4.128 Under cross examination, Mr Kemp was asked why he had changed part of his statement from describing the application for planning consent made by Group Captain Fuljames from “for some reason hatched a plot” to “a joke”. He said this was because his initial description had been inaccurate. It was not a result of anything said by Mrs Maddison in her evidence. He thought it was a joke because his wife’s father, who knew Group Captain Fuljames, had recounted a conversation when he had mentioned this. He said that the application had not been refused, it had been withdrawn. He could not comment on whether Group Captain Fuljames did or did not recognise any public rights over the site. He could not comment on a later application by Group Captain Fuljames for consent to erect a dwelling on the

site. He was unaware why The Triangle had not been registered under the Commons Registration Act but was horrified when he found it that it had not been. He did not recall any work to the trees in 1998/1999. He was not aware until 2004 that Mr Collins owned the land, when he was told by Mr Collins whilst speaking with him when the tree felling was in progress.

- 4.129 Mr Kemp was asked about a portable office which, it was put to him, Mr Collins had placed on the land in 1997 and had been there for 9 months. Mr Kemp was cross examined vigorously on this point but had no clear recollection of such a structure. He did not remember a blue shed. He had some recollection of something red and white but “honestly didn’t remember”. *The following day, Mr George QC acknowledged that this line of cross examination was mis-conceived as Mr Collins had since established that the structure was in fact there in 1977, before Mr Kemp moved to Thatcher’s Wood.*
- 4.130 Mr Kemp confirmed that he had seen runners using the land but accepted that a lot of runners used to come to The Triangle and then walk through. Mr Kemp conceded that he had personally not had a conversation with Mr Collins about continued use of the land. He understood that Mr Collins had spoken with Mr Westcott and Mr Collins had recognised that the public had the right to use the land. He thought this a reasonable inference from the conversation.
- 4.131 Mr Kemp recalled the fencing works in 2005 leaving two entrances. He understood that the fencing suggested an owner managing the land and knew by that time the owner was Mr Collins. He believed him to be tolerant of public use. He accepted from the evidence given by others at the inquiring that the fencing suggested to them an intention to keep out the public. He agreed that prior to the fencing access was available at all points but after the fencing only via the two entrances. He agreed that there was no evidence of public access to The Triangle being raised as an issue prior to 2008 whether with the Parish Council, the District Council or with the land owner. He considered the local people did not have a sufficient understanding of a complex issue.
- 4.132 Mr Kemp accepted that the site was not “designated” as an open space in any technical sense. He maintained however that it was in practice an open space. He agreed that electoral roll for the parish showed a population of 1,100 but it was necessary to add something for growth and children. He agreed that there was little

or no evidence of any use by person resident south of the railway. He identified Lynne Newton as a user from north or north east of the parish.

- 4.133 I found Mr Kemp's evidence disjointed and at times rambling. He is passionate about the issue but his evidence at times lacked objectivity. I believe he was essentially truthful and give credit for his constancy under cross examination, particularly where the cross examination was misconceived. I accept that Mr Kemp was a regular visitor to The Triangle prior to 2005 and an occasional visitor until 2008 when the gates were locked. I do not doubt that on occasion Mr Kemp has used The Triangle to dump garden waste and that some of his use was not for the purpose of lawful sports and pastimes.
- 4.134 **Peter Mason** of 6 Hack Drive, Calton Common, is a member of Hampshire County Council. He had been at a Curdridge Parish Council meeting some time ago when he was asked if he had seen any use of The Triangle. As a result of that conversation he had been asked to give evidence. During the election campaign of 2005 when he was canvassing within the village he did see people on The Triangle. He had seen other use historically but the only date that he could specifically recall was 2005 when he had seen at least 6 or 7 people within the land. He assumed that it was a single family.
- 4.135 Under cross examination Mr Mason confirmed that he was not a member of the Council's Regulatory Committee. He agreed that the election was in May 2005 and that his canvassing ought to have taken place in the 2 months preceding that. He could not recall whether the fencing had been there. He had seen the people at the Lockhams Road entrance. He could not recall any tree felling at that stage. His best recollection was that he could not remember the trees were missing.
- 4.136 I am satisfied that Councillor Mason wished to be helpful in giving his evidence. However, accepting that the use he witnessed would have been in March or April 2005, I am satisfied from other evidence that by that time substantial tree felling had been undertaken and the site was fenced. The fact that Mr Mason does not recall this calls into question the reliability of his recollection and I am therefore unable to attribute significant weight to his evidence.
- 4.137 **Mrs Margaret Blake** of Meadowland, Vicarage Lane, Curdridge, had completed a standard form letter in support of the application which is at page 47 of the Applicant's Bundle. Mrs Blake moved to her current address in 1966. She attended club meetings in Lockhams Road and was familiar with The Triangle which she

described as “an odd piece of land at the top of the hill”. She recalled children playing there in the summer holidays. She thought the land may have been a remnant of Curdrige Common. She had never been on The Triangle and had paid little recent attention to it. She was not aware of any specific activities between 1988 and 2008. She thought she probably had seen children on the site in that period.

- 4.138 Under cross examination, she said that the coffee morning she attended in Lockhams Road were in the late 1960’s and 1970’s. There were not as many such events in the 1990’s. She also had a friend in Kidknock’s Hill who she visited. She mainly saw the children when she went there frequently in the earlier period. She would not have been surprised to see the children playing in The Triangle at any time. She thought the children from the other parts of the village were less likely to go there.
- 4.139 I found Mrs Blake to be a knowledgeable and reliable witness. She was unable to give any evidence of personal use of the land. Her evidence of children playing on The Triangle relates primarily to a period prior to 1988 and therefore her evidence is of only limited assistance to me.
- 4.140 **James Stevens** of Meadows End, Chapel Lane, Curdrige, is a joint signatory to a standard form letter supporting the application found at page 289 of the Applicant’s Bundle. Mr Stevens has walked through The Triangle, ridden bikes on it and used it for a photo shoot. He was at secondary school from 1995 to 1999. The school bus stop was “just down the road” from The Triangle. During 1996 and 2001 he biked through The Triangle. In 2002 he was involved in a College photography project. He produced 4 photographs taken in The Triangle. One photograph shows the mound forming part of the BMX jumps in the background. He has not used The Triangle since 2002 and has had no reason to do so since the trees have been cut down. Since then he has only walked through.
- 4.141 He recalled that at least a dozen pupils would get off the school bus at his stop and they would frequently congregate on The Triangle for up to half an hour before going home. He saw others there. It was an open area with defined paths. He used the whole area other than the corner near Kitnocks Hill which was too overgrown.
- 4.142 Under cross examination, Mr Stevens said that he finished school in 2000. Up until 2002 he was heavily into mountain bike riding. Subsequently, he has been more interested in road bikes. The photo shoot took place over a couple of days at

various locations. All pictures are of him and were taken by a friend who lives in Bishops Waltham. He described the locations of the various photographs.

- 4.143 I was impressed with Mr Stevens' evidence. He was an excellent witness giving clear and cogent evidence. I give credit for his evidence of use of The Triangle between 1995 and 2002.
- 4.144 **Timothy Brumby** of Kinsale, Chapel Lane, Curdridge, had written in support of the application and completed a standard form letter. His written evidence is found at pages 49 and 49a of the Applicant's Bundle.
- 4.145 Kinsale is about 100 yards from The Triangle. The Brumby family moved to this address in February 2003. They identified The Triangle as a haven for wildlife and found a badger set in the middle of The Triangle and made regular visits in an attempt to see the creatures. He described the area as heavily overgrown and providing a safe crossing point for deer, badgers and foxes. He described the felling of the trees over Christmas 2004 and the construction of the fence. He had not visited The Triangle after the trees were felled as it ceased to have any attraction. Over the period that he had visited The Triangle he had seen children on bikes and recalled a rope swing.
- 4.146 Under cross examination, Mr Brumby said that there had been an oversight in that he had failed to tick the box saying that he had seen other people using the area when completing his standard form letter. He confirmed that he had seen other people.
- 4.147 Mr Brumby was another passionate witness. I accept his evidence of use between the years 2003 and 2005.
- 4.148 **Mrs Anne Brumby** is the wife of the previous witness. She endorsed the evidence of her husband.
- 4.149 **Neil Evans** of Glenview, Chapel Lane, Curdridge, had submitted a standard form letter in support of the application which is found at page 53 of the Applicant's Bundle. He produced a further written statement which he read to the inquiry. He has lived in Chapel Lane for 32 years. He occasionally drives past The Triangle. He has not owned a dog. His children's schooling was mostly out of the village. He has not been onto The Triangle. He had not seen others on The Triangle. He was keen that The Triangle should be preserved for the benefit of the village.

- 4.150 Mr Evans is a delightful gentleman with the best interests of the village at heart. Unfortunately, he was unable to give any evidence which will assist my deliberation.
- 4.151 **Mrs Louella Kemp** of Thatchers Wood, Kitnocks Hill, Curdridge is the wife of the Applicant. Mrs Kemp had submitted a user evidence questionnaire and produced a written statement which she read to the inquiry. She has lived in the village for approximately twenty years and is a teacher. She visited The Triangle from an early age accompanying her mother to collect firewood and cones. In 1986 she and her family, including Michaela, born 1982 and Tristram, born 1985, moved to Thatchers Wood. Her mother lived in the adjoining granny annex. The children visited The Triangle from a young age, played hide and seek and other games. Her mother walked her dog through The Triangle. As they grew older the children used the area for bike riding and other activities.
- 4.152 She described the felling of the trees at Christmas 2004. She recalled a conversation with her father, who had been friendly with the Fuljames family. She believed that Group Captain Fuljames was happy for local people to use The Triangle and that any plans for development on the site had been a joke.
- 4.153 Mrs Kemp confirmed that she had continued to use the area after it was fenced and, wearing wellington boots, after the clay had been spread over the site. She attended the meeting with Mark Oaten in May 2008. She has not been able to use the site since the gates were installed and locked in August 2008.
- 4.154 Her recollection is that her mother used The Triangle more as she got older and could not walk further afield. Her mother died in May 2007 but had continued to use The Triangle until mid way through 2006. She had seen others going on to The Triangle after the fencing was installed. She had seen a person on The Triangle with a strimmer cutting back the growth which had reappeared after the soil had settled. She recalled that at the meeting with Mark Oaten his suit and shoes had become very muddy and she had felt sorry for him.
- 4.155 Under cross examination Mrs Kemp said that Michaela had gone to university in 2001. Tristram had been to university but had returned home where he still lived. The children played there and used The Triangle until they went to university. Her mother walked through The Triangle using the established tracks. The other people that she saw on the site were not always known to her. She agreed that once or twice a month was a fair average of her own personal use.
- 4.156 I accept the evidence that Mrs Kemp used The Triangle from 1986 at least until the soil was deposited on the area in 2006. I accept that she may have been onto The Triangle after the soil was deposited but such use was no more than occasional.

Written evidence in support of the Application

4.157 In addition to the witnesses who gave oral evidence to the inquiry a further approximately 125 letters or evidence forms have been submitted to the registration authority or are included in the Applicant's Bundle. It is difficult to be precise about the actual number as some forms are not easily legible. A number of the forms bear the names or signatures of more than one person. I do not propose to analyse the forms individually. Many of them are insufficiently precise for any meaningful assessment of their evidential value to be made. However, I accept that in general terms the forms support the overall tenor of the evidence given by the oral witnesses which I assess hereafter.

CASE FOR THE OBJECTOR

Oral evidence on behalf of the Objector

4.158 **Beverley Smith** of Woodsmoke, Church Lane, Curdridge had provided a short or written statement found at Part 2, Tab 11, of the Objector's Bundle. Mr Smith has lived in Curdridge since 1982 and for the past five years in Chapel Lane, close to The Triangle. He is a parish councillor and editor of the village design statement. He has not seen and had no knowledge of The Triangle being used for any sports or pastimes. He considered it an unsafe place to exercise his family pet because of unseen broken glass and other material. He outlined the purpose and content of the village design statement and the manner in which it had been compiled. He noted that the statement made no reference to The Triangle. He could not recall any person having mentioned it during the entire exercise. He knew of no formal designation attaching to The Triangle.

4.159 Under cross examination Mr Smith acknowledged that he had been on to The Triangle once in 1982 with his dog. He thought it was dangerous for the dog. He acknowledged that there were tracks on the land. What he saw was a derelict piece of land not suitable for recreation. He had not seen anyone on the land.

4.160 I found Mr Smith a truthful witness and accept his evidence. However, whilst I accept that he may not have seen anyone using The Triangle he acknowledged indications of use and I consider that he must have been aware of some level of public use of this area.

4.161 **Mrs Marian Small** of The Woods, Gordon Road, Curdridge has provided written evidence which is to be found at Part 2 Tab 11 of the Objector's Bundle. Mrs Small was formerly the sub postmaster for the village for more than forty years. She said the electoral roll for the village was 1,098. She read a statement dated 14 January 2011 which described her duties as sub post master and grocer and her knowledge of the area. She described The Triangle as an area of derelict woodland overgrown

with brambles and dumped rubbish. She considered a number of the trees on the site to have been dangerous before works were undertaken after Mr Collins acquired the site. She did not consider the area to be accessible as a place for public recreation and she had not been aware of any public use of the land. She has been a member of the parish council for more than thirty years and chairman between 2006 and 2008.

- 4.162 Mrs Small had never personally set foot on The Triangle. She was aware that there had previously been a bus stop adjacent to The Triangle. She believed that it was a 2 hourly service. A seat was put alongside The Triangle with the consent of the then owner Mr Fulljames. She believes the official bus service ceased in 1987 but an irregular service continued until the early 2000's. She had not seen children playing on the land. The only person she had seen on the land was Mr Westcott taking plants from the land.
- 4.163 Under cross examination Mrs Small acknowledged that she had not visited The Triangle but had only passed it although her deliveries took her past it several times a day. She did not suggest that all the applicant's witnesses were lying but repeated that she had not seen anyone in the area although acknowledged that she was likely to have been watching the road rather than The Triangle. She recalls a meeting which took place on 11 February 2011. She described it as a rabble. She did not know who had produced a minute of that meeting. She confirmed the land is not the subject of any formal designation.
- 4.164 I found Mrs Small to be a proud lady who devoted a significant amount of time and energy for the benefit of the village. It was clear that she had been upset by the approach taken to this application by the applicants and I felt her evidence lacked objectivity. Whilst I am prepared to accept that Mrs Small may not have seen any recreation use of The Triangle I find it hard to accept that she was not aware that the area was so used.
- 4.165 **Russell Collins** of The Conifers, Botley Road, Shedfield, Hampshire is the son of Mr Christopher Collins, the owner of The Triangle. He read his statement dated 14 January 2011 to be found at Part 2 Tab 3 of the Objectors' Bundle. He was born in February 1974 and lived in Curdridge from 1979 to 1995. In his youth he had a paper round which required deliveries to be made to properties in the vicinity of The Triangle, and in particular to the house next to Robinswood and the house next to Woodlands. He had always known The Triangle to be privately owned. He passed the Triangle every day and was not aware that The Triangle was used for leisure activities. He did not recall the bus stop nor paths through The Triangle. He admitted to having once ridden onto The Triangle on his bike and was told by a lady to get off. He did not know who she was. He thought this was when he was about 14, thus around 1988. His paper round finished in 1990.

- 4.166 Under cross-examination Mr Collins said that his paper round was both in the morning and the evening. He confirmed that he had never seen anyone within The Triangle. He was employed by Martin's Newsagent and delivered to Thatcher's Wood. He denied having tailored his evidence because of his family connections.
- 4.167 I found Mr Collins to be a decent and reliable witness, but also felt that he was influenced by his father's ownership of the land, and I was surprised that he was wholly unaware of any use of The Triangle by local people.
- 4.168 **Sandra Collins** of Ivy Cottage, Wickham Road, Curdrige is the wife of Mr Christopher Collins. She read her statement which is at Part 2 Tab 4 of the Objectors' Bundle. She was born in Curdrige and lived in the village until she married in 1967. She moved away from the village before returning to live in Ivy Cottage in 1979. Before 1967 she walked across The Triangle to the bus stop. Her best guess was the regular bus service ceased in 2000. She has three children but was unaware of any of them playing on The Triangle; instead they used the village recreation ground.
- 4.169 Under cross-examination Mrs Collins said that she last walked through The Triangle in 1967. She was aware that the path continued to be used as a short cut to the bus stop but had not actually seen others using it.
- 4.170 Mrs Collins gave her evidence in a straightforward fashion. I give credit for the fact that she admitted to having walked across The Triangle when she was younger. I was again surprised that she was unaware of any use of the site by the public.
- 4.171 **Martin Small** of 41 Kingsfield Gardens, Bursledon, Southampton had responded to a request for information contained in a letter published in the Parish Magazine. His evidence is contained in an email dated 22 January 2011 which is to be found at Part 3 Tab 14 of the Objector's Bundle.
- 4.172 Mr Small was born in the village of Curdrige in 1970 and remained resident until leaving at the age of 27. He was involved in many village activities including the Scouts, the village show, the fete and the cricket club. He was the Scout Leader until 1996. As a youngster he had friends in the village. They would meet and play at the recreation ground and other areas of open land. He did not use The Triangle for his own purposes nor was it considered as a place the Cub and Scout Group might use. He described The Triangle as "overgrown and muddy".
- 4.173 Under cross-examination Mr Small said that he had no connection with Mr Christopher Collins. His mother, Mrs Small, had given evidence previously and was the Village Postmaster. He did know Mr Collins who had been a supporter of the Scout Group. He had never worked for Mr Collins.

- 4.174 **Conrad Collins** of Summerlands Cottage, Lockhams Road, Curdridge read his statement which is at Part 2 Tab 2 of the Objector's Bundle. He was born in 1972 and has lived in the village of Curdridge since 1979. He recalled The Triangle was, prior to 2004/2005, being covered in bushes and trees and incapable of use by local people for any purpose. He did recall there being some sort of clearing or path through The Triangle but had not seen anyone using it.
- 4.175 Under cross-examination Mr Collins said that he did not work for his father. He was asked how he was able to reconcile his evidence with that of the many local people who had given evidence of use. He said that he had played at the other end of the village. It was possible that people could have used The Triangle and not been seen by him. He had only written down what is true.
- 4.176 Mr Collins' evidence is of limited value to me. Again I am surprised that he could not have seen any use of The Triangle by local people but I give credit for the fact that he acknowledged the possibility that the land was used without him being aware of such use.
- 4.177 **Christopher Collins** of Ivy Cottage, Wickham Road, Curdridge is the owner of The Triangle. He read his statement which is to be found at Part 2 Tab 1 of the Objector's Bundle. He has lived at Ivy Cottage since 1979. His house is approximately a quarter of a mile from The Triangle which he passes on an almost daily basis. He has other business interests in the vicinity.
- 4.178 Mr Collins gave evidence about works carried out in 1997 when his company had a contract to carry out drainage connections from private houses to a new sewer in Curdridge. A portable office had been sited on The Triangle with the permission of the owner, Group Captain Fuljames. He identified the position where the office was placed and outlined the nature of the work, the workforce and their daily routine. The office was on the site for between six and nine months. During that time his workmen were using the office or in its close vicinity from approximately 7.30 in the morning until finishing work in the afternoon. They worked 5½ days a week. He visited the site more or less every day, either in the morning or at lunchtime or sometimes both. Throughout this time he did not see anyone using The Triangle. He described the structure as "Swannick blue" with a white board with "Swannick Construction" written in large red lettering.
- 4.179 He was referred to the evidence of Mrs Maddison. He acknowledged that he might have told Mrs Maddison that he wished to call the land "Collins Corner". He denied having given any suggestion that he would welcome the land continuing to be used by the local community. Indeed, he was not aware that the land was being so used. In purchasing the land his initial intention was to erect a phone mast. He thought the land suitable because it was the highest point in the village. However, he was beaten to it by a neighbouring landowner.

- 4.180 He had arranged for The Triangle to be inspected by Meon Valley Tree Surveyors. They had identified dangerous and diseased trees. Work to make these safe was carried out in about 1979 following receipt of a letter from Curdridge Parish Council.
- 4.181 Mr Collins remembered the bus stop. During the period 1998 to 2004 he had not seen any people on the land. He had seen a bike track but had not seen BMX mounds. He just assumed that someone had ridden through. He saw no families or groups of people. If he had he would have spoken to them.
- 4.182 Mr Collins described the tree felling operation carried out in 2004. His attention was drawn to the Tree Preservation Order and in particular the note endorsed of a visit by the County Council Officer on 29 January 2005. He recalled that visit.
- 4.183 When the site was fenced he had left two access points suitable for access by 8-wheel and 6-wheel tipper lorries. The purpose of the fencing was to stop people dumping their garden rubbish on the site.
- 4.184 Between December 2004 and Spring 2005 he attended the site almost every day and sometimes twice a day. The soil that was placed on the land was inert material rather than topsoil. It could have come from any site. He was paid to take it away. Such material usually came from the excavation of foundations.
- 4.185 He did not give permission to anyone to go onto the land. He would not have allowed Mr Kemp to go onto his land as Mr Kemp had caused him trouble. He did ask Mr Kemp not to dump any more garden waste on the land.
- 4.186 Under cross-examination Mr Collins acknowledged that he had employed many people from the parish over the years. He did not know the area was used by the neighbours. The fence was to keep people off and eventually to contain animals, especially horses. The access points were retained to allow access for lorries. He had not erected gates because of the expense. He restated that it was not his intention to allow the access points to be used by the public to gain access to his land.
- 4.187 The purpose of depositing soil on the site was to raise the level of the land on the Chapel Lane side. It was not to prevent access. The gates and signs were installed in 2008 because he intended to put animals on the site and he did not want the public to have access. He could not remember the exact date. He agreed it was probably August 2008. He accepted that it was after the application for registration of the land as a village green had been made.
- 4.188 Mr Collins attention was drawn to his statutory declaration of 27 February 2009 which claimed that there were no paths on the site. He acknowledged that there were tracks or paths "whatever you want to call them".

- 4.189 It was suggested to Mr Collins that he was aware that the land was used by the public. He disputed this and confirmed that his intention in purchasing the land was to install a telephone mask.
- 4.190 Mr Collins was asked how he had obtained permission to install the portable office on The Triangle. He said that he had seen Group Captain Fuljames and asked him. It was pointed out to Mr Collins that Group Captain Fuljames died in 1986. Mr Collins thought therefore that he must have asked one of the Fuljames' family [*This evidence was given before the acknowledgment made the following day by Mr Charles George QC that the portable office was in fact on site in 1977 and not 1997 as earlier claimed*]
- 4.191 **Steven Short** of Long Paddock House, Droxford, Hampshire had provided a written statement which is at Part 2 Tab 9 of the Objector's Bundle. He read the statement and the accompanying statutory declaration dated 12 February 2010. Mr Short, through his company, Chalkbank Estates, was employed to assist Mr Collins in obtaining planning permission for development on The Triangle.
- 4.192 Mr Short lived in Curdridge from 1968 until 1983. The family home, The Spinney, Kitnocks Hill, is only some 60 metres from The Triangle. He, together with other local children, caught the No 53 Bus from the bus stop adjacent to The Triangle and would cross The Triangle as a short cut. He described The Triangle as densely wooded and very overgrown until about 2005. As a boy he was aware that The Triangle was private land and that he was told not to use it. He did not recall any public activities or use of The Triangle.
- 4.193 During his involvement with the planning process he had visited The Triangle on numerous occasions through 2006, 2007, 2008. At no time had he seen any use being made of The Triangle.
- 4.194 Under cross-examination Mr Short said that he did not recall as a boy playing on the land although he accepted that he had walked across it. He said he had no financial interest in the outcome of the proposed development of The Triangle. He had been paid for the work that he had undertaken.
- 4.195 I accept the evidence given by Mr Short. He corroborates the evidence of a number of the witnesses who support the application in recognising that the land was used as a shortcut to the bus stop.
- 4.196 **Duncan McKellar** of 3 Charlecote Mews, Staple Gardens, Winchester is a director of Househam Henderson Architects responsible for preparing the design and access statement for the proposed development of The Triangle. His evidence is at Part 2 Tab 8 of the Objector's Bundle.

- 4.197 Mr McKellar carried out a site inspection in June 2008. He found the ground to be lumpy and not particularly open to walking on.
- 4.198 The “Context Analysis and Design and Access Statement” exhibited to his evidence contained various photographs which he described. They were taken in 2008 and showed the site to be generally open but the surface to be lumpy and uneven. Mr McKellar stated that in 2007 he had visited the land four times and on none of his visits did he see anyone using The Triangle.
- 4.199 I accept the evidence of Mr McKellar. The photographs he exhibits depict an unattractive but open site.
- 4.200 **Don Maule** of 1 The Shaves, Reading Room Lane, Curdridge has lived in the village since 2004. His written evidence is at Part 2 Tab 7 of the Objector’s Bundle. Although he has only lived in the village since 2004 he has been familiar with the area since 1980. He regularly passes The Triangle and at no time has he seen it being used for any recreational purpose.
- 4.201 Under cross-examination Mr Maule was asked whether he had any connection with the Objector. He replied that when he wrote the letter, which is addressed to Mr Gardener, he did not know the identity of the owner.
- 4.202 I accept the evidence of Mr Maule although the fact that he has not witnessed use of The Triangle does not persuade me that no such use has taken place.
- 4.203 **Mark Hinsley** of Wessex House, Wimborne, Dorset is an arboreal consultant who had been employed by Mr Collins to advise in connection with trees growing within The Triangle. His evidence is contained at Part 2 Tab 6 of the Objector’s Bundle and he read his letter of 14 December 2010 and gave an explanation of the ten colour photographs accompanying his evidence. He had visited the site on 14 October and 4 November 2004, as a result of which he had prepared a report. He had visited again on 23 May 2005 when he had taken the photographs. He had visited again in 2007 in connection with a planning application. On each of these visits he had wandered around the site with a clipboard taking measurements. He had not seen anyone else on site and had not been approached by any person.
- 4.204 At the time of his visits he had been unaware of the existence of a tree preservation order dated 2 November 1960. He had asked Mr Collins who had told him that he was unaware of any such order. He confirmed that the trees on the site included cedar trees, one of which remained. In his view his recommendations would not have breached the terms of the order.
- 4.205 He described the state of the ground within The Triangle in 2007 as “dreadful – very muddy” such that his shoes became completely “clagged up” with clay. There was

no surface vegetation at that time. He estimated that on the occasion of each visit he had been on the site for between 3 and 4 hours.

- 4.206 Under cross-examination he was asked whether the deposit of the soil on the site would have affected the health of the trees. He replied that it may or may not have an effect. He confirmed that his visits to the site had been on a weekday. He had undertaken occasional previous work for Mr Collins. On his first visit there was a considerable amount of vegetation on the site. On his second visit he had to pick his way round the site. On his last visit the site was like a “grimpen mire”. He wore waterproof shoes.
- 4.207 I accept the evidence of Mr Hinsley but it is of little assistance to me other than his description of the site following the deposit of soil.
- 4.208 **Wayne Collins** of Pinkmead Cottage, Kings Corner, Curdrige read his statement which is at Part 2 Tab 5 of the Objector’s Bundle. He is the son of Mr and Mrs Collins. Between 1986 and 1990 he had a paper round which required him to ride past The Triangle and, on some occasions, he rode through. The paper round took place in the morning between about 7 and 8 am and in the afternoon between 4 and 5 pm, every day except Sundays. On one occasion when riding across the land he was told to stay off. He could not say who it was that spoke to him. It was when he was with others and they were constructing BMX jumps. He thought this would have been some time during the period 1986 to 1990.
- 4.209 Under cross-examination Mr Collins said that he only rode his bike on the corner of the site from Kitnocks Hill. On the occasion that he was told to keep off he and his friends were jumping around making a lot of noise. He had not seen others using the site.
- 4.210 On re-examination Mr Collins described the route that he had cycled across The Triangle. He described the jumps as being alongside the A224 road.
- 4.211 Mr Collins was a clear and composed witness who gave cogent evidence. His evidence corroborates that of witnesses supporting the application who have referred to use of the site by BMX cycles and the existence of worn ways through the site.

Written evidence in support of the Objector

- 4.212 Part 3 of the Objector’s Bundle contains statements of 17 witnesses who the Objector did not intend to call to give oral evidence at the Public Inquiry. In fact, one of these witnesses, Mr Martin Small, did attend the Inquiry and give evidence. I have read the statements of the remaining 16 witnesses and do not propose to summarise their evidence individually. A number of the statements refer to use of a

track through The Triangle as a shortcut to the bus stop. Save for this use each of these witnesses states that he or she has not observed any other use of the Application site.

- 4.213 Part 4 of the Objector's Bundle contains a number of documents principally relating to the planning history of The Triangle but also including correspondence with the Registration Authority and an Opinion of Ms Ross Crail and other documents, all of which I have read.

5. LEGAL CONSIDERATIONS

- 5.1 The substantive law is contained in Section 15 of the Commons Act 2006 which was brought into force on 6 April 2007, the relevant provisions of which are:-

“Registration of Greens

- (1) *Any person may apply to the commons registration authority to register land 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, 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.*
- (4) *This subsection applies (subject to subsection (5)) where –*
- (a) *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
- (b) *they ceased to do so before the commencement of this subsection;*
- (c) *the application is made within the period of 5 years beginning with the cessation referred to in paragraph (b).*

- 5.2 The relevant elements of the definition of a village green are:-

...a significant number...

“Significant” does not mean considerable or substantial. What matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal

recreation, rather than occasional use by individuals as trespassers. *R(Alfred McAlpine Homes Ltd) v Staffordshire CC [2002] EWHC 76*. There is a need for the evidence to show that the users are distributed throughout the locality or neighbourhood rather than confined to only a single part of the relevant area. However, I do not consider that this requires there to be evidence of use from every corner of the locality or neighbourhood, so that an application will not fail simply because it is possible to identify an area from which there is no evidence of use.

...of the inhabitants of any locality...

A locality cannot be created by drawing a line on a map. Until very recently, it was thought that a locality must be some division of the county known to the law, such as a borough or parish. An ecclesiastical parish can be a locality.

...or any neighbourhood within a locality...

A “neighbourhood” need not be a recognised administrative unit. A housing estate can be a neighbourhood. However, a neighbourhood cannot be any area drawn on a map; it must have some degree of cohesiveness. In this case the application is not brought on the basis of use by the inhabitants of a neighbourhood and it is therefore not necessary to consider the point further.

...have indulged as of right...

The statutory creation of a village green is not based upon a presumption of dedication but, like the common law requirements for prescription, and the statutory presumption of dedication of a public right of way pursuant to the Highways Act 1980 Section 31, there is a requirement that the user relied upon has been undertaken “as of right”. The traditional explanation of this is that that user must have been *nec vi, nec clam and nec precario*; without force, secrecy or permission.

“Force” is not confined to physical force. To knowingly use land contrary to the clearly expressed intention of the landowner can be use by force. The best example of this is to ignore a clearly worded sign forbidding entry, but similarly to ignore other actions of the landowner which unambiguously demonstrate any intention to exclude use will amount to use by force. *R v Oxfordshire County Council ex parte Sunningwell PC [1999] 3WLR 160*.

Use is “secret” if it is undertaken in such a manner as to avoid it coming to the attention of the landowner who will accordingly have no opportunity to resist it.

Permissive use can arise from an express grant of permission, or by implication, although the courts have been slow to imply permission from the inaction, or even faint encouragement of the landowner.

In *Sunningwell* Hoffman LJ considered the meaning of “as of right” and having dismissed the need for any subjective belief on the part of the user he refers, with approval to the words of Lord Blackburn in *Mann v Brodie [1881] 10 App Cas 378.386* “namely that they must have used it in a way which would suggest to a reasonable landowner that they believed they were exercising a right”. Hence the test is not what was actually in the mind of the user, but rather how the users’ actions would have appeared to a reasonable landowner.

...in lawful sports and pastimes...

The courts have recognised that almost all lawful formal and informal outdoor recreational activities are to be considered lawful sports and pastimes [*Sunningwell*]. These include dog walking and recreational walking, but not using a defined linear route as such use is in the nature of use of a public right of way and can give rise to dedication under the Highways Act 1980 Section 31. *R(Laing Homes Ltd) v Buckinghamshire CC [2004] JPL 319*.

...for a period of at least twenty years...

This application is brought under Section 15(2) of the 2006 Act and accordingly the relevant twenty year period is that immediately preceding the date of the application. The requirement is that the land has been sufficiently used throughout the full 20 year period.

6. THE ISSUES

The issues which arise from this application are:-

- 6.1 Has the land been used by a significant number of the inhabitants of the relevant locality or neighbourhood? Further, is it necessary for the users to be distributed throughout the locality in order for it to be established that land is in general use by the local community, and if so, does the evidence demonstrate the necessary spread of users?
- 6.2 What is the relevant locality or neighbourhood?
- 6.3 Has the use been as of right?
- 6.4 Do such activities as have been carried on constitute lawful sports and pastimes?
- 6.5 Have the activities been undertaken throughout the relevant twenty year period? In this context it is necessary for me to consider an application made by the Applicant late in the day, at the end of the third day of the Inquiry, to amend the application so that it could be considered under Section 15(4) of the 2006 Act rather than Section 15(2) as referred to in the Application form.

6.6 In all these matters the burden of proof rests with the Applicant and the standard of proof is the balance of probabilities.

7. APPLICATION OF THE LAW TO THE FACTS

Application to amend

7.1 Before turning to the substantive issues it is appropriate for me to consider the Application to amend referred to in paragraph 6.5 above.

7.2 The Application was made on the basis that Section 15(2) of the 2006 Act applies. I have noted the fact that the Applicant appears to have initially considered the possibility of bringing the Application under Section 15(4) but to have rejected that approach. At the end of the third day of the Inquiry the Applicant indicated that he wished to make a formal application to amend the basis upon which the Application was made in order that the Application may be considered under Section 15(4) rather than Section 15(2). The difference between the two provisions is that an application brought under Section 15(2) requires the Applicant to prove that qualifying use continued up to the date of the application. An application brought under Section 15(4) can be brought where use ceased before the application was made provided that use ceased before the commencement of the Section (April 2007) and the application is made within a period of five years beginning with the cessation of use.

7.3 In *Oxfordshire County Council v Oxford City Council* [2006] 2AC 674 the House of Lords considered the extent to which a Registration Authority has power to amend an application. It was found that the Registration Authority has a discretion to amend an application provided that such an amendment would not occasion unfairness to any objector. I also have the benefit of an Opinion given to the Registration Authority by Ross Crail dated 14 October 2010 and included at Part 4 Tab 10 of the Objector's Bundle. Mr George directs me particularly to paragraph 24 of the Opinion. Ms Crail distinguishes between a procedural amendment, "putting [*the application*] in order" and a substantive change requiring a new and altogether different application. She concludes that a change to the provision under which the application is made is a substantive change requiring a new and altogether different application, and therefore not one which can be achieved by amendment. However, I note that in a report by Miss Ruth Stockley to East Sussex County Council in relation to land at Ghyll Road, Heathfield (which is at Part 6 Tab 5 of the Objector's Bundle) she recommended the Registration Authority to accept an amendment to the application so that it was made on the basis that Section 15(4) applied instead of Section 15(3) being the provision relied on in the original application form. I note, however, in that case, that the Objector recognised the amendment would cause no prejudice and had no objection to it.

- 7.4 It is therefore necessary for me to consider whether there is power to amend the Application and if so, whether the amendment should be allowed.
- 7.5 The Applicant's case is brought on the basis that use continued up to May 2008. The Objector has prepared to meet a case brought on that basis. The amendment sought, if agreed, would fundamentally change the basis of the Application and, it is my understanding, the Applicant would wish to assert that use as of right ceased in 2005 when the site was substantially enclosed with fencing. It is not now open to the Applicant to bring a new application on that basis as more than five years have now elapsed since 2005. Accordingly, the effect of allowing the amendment would be to permit the Applicant to bring an application on a basis which is otherwise out of time. This is not, therefore, an application to amend the detail of the original application, but rather to bring a completely different application. The application was opposed by the Objector. It proposes a substantive change to the Application and I am not persuaded that power exists for it to be made. Furthermore, in my opinion if acceded to it would occasion significant unfairness to the Objector. Accordingly I recommend that the application be refused.
- 7.6 Turning to the substantive issues I do not deal with these in the order set out above but rather in what I considered to be a more logical sequence.

Identity of the Land

- 7.7 There can be no uncertainty or ambiguity as to the extent of the Application Land, it being bounded on all sides by publicly maintainable roads.

Locality

- 7.8 It is accepted and agreed that the relevant locality is the parish of Curdridge as identified on the plan submitted by the Applicant.

Relevant twenty year period

- 7.9 In view of my recommendation in 7.5 above the only 20 year period that is relevant is that ending with the date of the Application, being May 1988 to May 2008.

Lawful sports and pastimes

- 7.10 From the evidence I discerned three different types of use made of The Triangle:-
- 7.10.1 Use of a defined route as a shortcut from the apex of The Triangle to the bus stop.
 - 7.10.2 Use of a defined route to pass through The Triangle as part of a longer recreational walk.

- 7.10.3 Other recreational activities, including walking with and without dogs, children and young people cycling, and in particular BMX riding, children playing and watching wildlife.
- 7.11 Use of a defined route either as a shortcut to the bus stop, or as part of a longer recreational route, is use of such character as could give rise to a presumption of dedication as a public right of way. Evidence of such use is not evidence of use for lawful sports and pastimes and accordingly does not assist the Applicant.
- 7.12 I have recognised and accepted the evidence of a number of witnesses who have enjoyed recreational activities on The Triangle. The oral evidence given to the Inquiry indicates that the Application site was used at different times by a number of local residents for exercising their dogs. This would seem to have been the predominant use. There is also some evidence of general recreational walking within The Triangle, for example, I accept that the land was used for this purpose by Mrs Kemp's mother. The small size of The Triangle precludes any significant recreational walking and limits the range of other activities it can sustain.
- 7.13 Evidence of cycling, particularly BMX riding, and children's play was given by various witnesses who attended the Inquiry. Some residents from the immediate vicinity had witnessed such activity, for example, Mr Westcott, Mr Hughes, Dr Cheatham, Dr Marsh, Mr McNulty and Mr & Mrs Kemp. Others had themselves used the land for these purposes, or accompanied their children when doing so. These witnesses included Mr Blogg, Mr Pepper, Mr Picton Jones, Mr Reay and Mr Stevens.
- 7.14 Other witnesses had used the land to watch and enjoy wildlife. These included Mrs Clark, Mrs Newton and Mr Brumby.
- 7.15 One of the activities identified by various witnesses was the collection of pine cones. It was asserted by Mr George that such activity constituted theft and could not therefore be relied upon as a lawful pastime. My understanding is that the Theft Act 1968 Section 4(3) specifically provides that it is not an offence to pick flowers, fruit or foliage from a plant growing wild on any land provided the activity is not carried on for reward or commercial purpose. I heard no evidence as to whether the trees on The Triangle were wild or not. The evidence given described an untended and overgrown area. I accept on a balance of probabilities that the growth was wild, that pine cones are the fruit of the pine tree and that no offence is committed in collecting them. Accordingly, I accept that collecting pine cones, in the same manner as blackberrying, is a lawful pastime within the meaning of Section 15 of the 2006 Act.
- 7.16 Whilst I cannot attach the same weight to the written evidence of those who wrote in support of the Application but did not attend the Inquiry, the general picture painted by that evidence is consistent with that which emerges from the evidence given at

the Inquiry. Accordingly, I accept that the Application site was, during the relevant period, used for lawful sports and pastimes within the meaning of the Act.

Significant number of the inhabitants

- 7.17 The issue for me to consider is whether the evidence demonstrates that The Triangle has been used by a sufficient number of the inhabitants of the parish of Curdridge to indicate that it is in general use by the local community. This involves both a quantitative and qualitative assessment of the evidence.
- 7.18 Forty seven individuals gave evidence in support of the Application and a further approximately 125 residents of the parish wrote in support. The electoral roll suggests that the population of Curdridge is approximately 1,100 but with children an estimate was made of a total population of approximately 1,300. In purely quantitative terms I would accept that if the evidence demonstrated use by approximately 170 individuals living within the parish that could be sufficient to satisfy the requirement for a “significant number of inhabitants”.
- 7.19 I did not have the benefit of hearing the evidence of the witnesses who only provided written evidence, and because their evidence was not tested by cross-examination the weight I can attribute to their evidence is limited. Furthermore, I have to recognise that of the 47 witnesses who did give oral evidence it became apparent that a number had not in fact used The Triangle in a manner or within the period necessary to support the application. It is therefore necessary for me to treat the number of 170 with some caution but nevertheless I am satisfied that, purely on a quantitative assessment, the number of individuals giving some evidence of use does represent a significant number.
- 7.20 I have also to consider whether it is necessary that the users are widely distributed throughout the locality. The Applicant helpfully provided a plan identifying the residences of the supporting witnesses. This demonstrates a cluster of witnesses residing in the Kitnocks Hill and Chapel Lane areas within a modest distance of The Triangle. However, the plan also identifies various witnesses living further afield. Only two witnesses live to the south of the railway line, but this area is very sparsely populated. Similarly, there are no witnesses from either the northeast or the northwest of the parish, but again the density of residential use is extremely low. I do not consider the absence of users from these sparsely populated areas is fatal to the Applicant. However, having accepted that the bare number of supporting witnesses is capable of amounting to a significant number of the inhabitants, it is also necessary for me to consider whether this use is qualifying use and the extent and continuity of such use.

Use as of right

- 7.21 Use will not be as of right if it is undertaken by force, secretly or with permission.
- 7.22 It is necessary for me to consider whether the erection of fencing around the perimeter of the site in 2005 was a sufficient act on the part of the landowner to indicate to local people that the landowner was seeking to exclude them from The Triangle. I have regard to the fact that the fencing was not a complete barrier to access as entry points were left open at two places, and these were not secured until 2008. The Objector's evidence is that his intention in erecting the fencing was to exclude the public. However, my task is not to consider the intention of the landowner but rather how the landowner's actions were perceived by the local community. In this respect I am greatly assisted by the evidence of the users. A significant number of the users conceded under cross-examination that the erection of the fencing indicated to them that the landowner was seeking to demonstrate that the land was private and that further public use was not welcome. Indeed, many of the witnesses acknowledged that the erection of the fencing was responsible for their ceasing to use The Triangle. By way of example, Mark Gregory said when asked about the erection of the fencing "As far as I was concerned that was pretty much it". [REDACTED] did not see anyone using the land after the fence was erected. Diane Clark had not used the land since the fence went up. John McNulty stopped using the land when the fence was erected. David Picton-Jones ceased use when the fence was erected, as did Stuart Reay. Alistair McDonald conceded that once the fence went up it was clear the land was private. Allison Janes accepted that the fence discouraged use. Brian Calvert said that he had climbed over the fencing but recognised that the landowner was trying to prevent use. Similarly, Dawn Tyson conceded that once the fence had been erected it was obvious the owner did not want casual use to continue. Diane Roberts accepted that the erection of the fencing was a clear message from the landowner that public access was not welcome. Howard Mancey did not use The Triangle after the fence was erected, nor did Mr and Mrs Brumby.
- 7.23 Some witnesses gave evidence of continued use after the erection of the fencing, and indeed after the soil was deposited on the land. There was a general recognition that after the soil was deposited the land was wet and sticky, and hugely unattractive to walk upon. Notwithstanding this, Martin Hughes, Lynne Newton and Rory Kemp continued some use until the gates were installed and locked in 2008, but each accept that their use diminished.
- 7.24 I find that the erection of the fencing was sufficient to demonstrate to the majority of users that the landowner was seeking to prevent further use. Accordingly, I find that the erection of the fencing was sufficient to bring home to a reasonable person the

fact that continued use was prohibited. Accordingly, I find that use of the land post 2005 was contentious and not as of right.

- 7.25 Mr Westcott was given permission by the Objector in early 2005 to continue use of The Triangle. Any subsequent use by Mr Westcott is accordingly permissive and not as of right.

Extent and continuity of use for lawful sports and pastimes

- 7.26 In order to satisfy the statutory criteria it is necessary that the use was sufficiently frequent to demonstrate to a reasonable landowner that the users were asserting a right. Furthermore, use of such frequency must be demonstrated throughout the full 20 year period, meaning that there must be sufficient continuity of qualifying use throughout the full period with no significant breaks where the land was not so used. Accordingly, it is necessary for me to make an assessment as to the extent and continuity of the use demonstrated by the evidence produced to the Inquiry.

- 7.27 In reaching an assessment as to the extent of the recreational use it is necessary for me to exclude from consideration use of a defined linear route akin to use of a public footpath. I have previously identified that such use would include use of a route through The Triangle as a shortcut to the bus stop and use of a route through The Triangle as part of a longer recreational route. It is also necessary for me to exclude use which was not undertaken as of right. I have considered this issue in preceding paragraphs, and in particular I exclude use after 2005 on the basis that after the erection of the fencing such use was contentious.

- 7.28 Excluding the “footpath” use and the contentious use I accept that for the period 1988 to 2005 there was some qualifying use of The Triangle. The predominant use was for dog walking and I accept that this activity took place on a reasonably regular basis but not necessarily every day.

- 7.29 In addition to dog walking, I accept that at times The Triangle was used for children’s play activities and particularly for BMX riding. The evidence given to the Inquiry suggests that these activities took place, possibly with some regularity, during the summer evenings particularly in the late 1980’s and throughout the 1990’s. Evidence of more recent use is, however, sparse. The evidence of such use that did take place suggested that users were on the land for relatively short periods, and this is unsurprising given the small size of the site. I accept that some children’s play activities may have been of greater duration but this was not the principal use.

- 7.30 The impression I have gained from the evidence is that such use was at a relatively low intensity, such that users rarely encountered others on the site and, certainly for long parts of any day, there was no use of the site. It is for this reason that the

evidence of the witnesses supporting the Application can be reconciled with the evidence of the Objector's witnesses, many of whom had not seen any use. I have considered whether the evidence indicates any period of time when the level of use was sufficient to demonstrate the assertion of a right. My impression is that the most intense period of use was in the late 1980's and early 1990's when BMX use was taking place, and before the regular bus service ceased. However, BMX use was mainly seasonal and, although at periods in the summer the use may have been sufficient, taking a longer period for assessment I am not satisfied that in any given year the use was of sufficient frequency and intensity to meet the requirement. I take note of the fact that The Triangle is not referred to in the Curdridge Village Design Statement which reviewed public open space in the village, nor is the Application supported by the Parish Council, which would seem to lend some support to my impression that it did not have the reputation of being a recognised village facility.

- 7.31 Whilst I accept that qualifying use took place between 1988 and 2005 I am not satisfied that this was at a level or intensity which was sufficient to bring home to a landowner the assertion of a right. I accept that a vigilant landowner would have been aware of the worn track leading to the bus stop but for the reasons I have given I do not accept this would have alerted him to use of the land for activities which might give rise to village green status.
- 7.32 For the sake of completeness I need to consider the actual extent of use of The Triangle for the period 2005 – 2008. I have dealt with this in paragraphs 7.23 and 7.25 above. The only witnesses who gave evidence of use in this period were Mrs Newton and Messrs Hughes, Kemp and Westcott. Their use was at best sporadic and trivial and wholly insufficient to suggest the assertion of a right.

8. CONCLUSIONS AND RECOMMENDATIONS

- 8.1 My conclusions are:-
- 8.1.1 That the application to amend the Application so that it is made on the basis that Section 15(4) applies should be rejected.
- 8.1.2 That the Application Land is in principle capable of registration as a town or village green.
- 8.1.3 That the parish of Curdridge is a qualifying locality.
- 8.1.4 That the relevant 20 year period is May 1988 to May 2008.
- 8.1.5 That the Application Land has, as a matter of fact, been used for some lawful sports and pastimes.

- 8.1.6 That the number and distribution of witnesses who have made some use (without regard to whether that use is qualifying use) of The Triangle is potentially sufficient to represent a significant number of the inhabitants of the locality.
- 8.1.7 That the use of the land for lawful sports and pastimes as of right ceased when the fencing was erected in 2005 and therefore has not taken place throughout the relevant 20 year period.
- 8.1.8 That the use of the land throughout the period 1988 to 2005 was not sufficient in extent or frequency to have created a town or village green.
- 8.1.9 That use of the land during the period 2005 – 2008 was spasmodic and trivial and wholly insufficient to alert a reasonable landowner to the assertion of a right.
- 8.2 In view of the above conclusions it is my recommendation that the Registration Authority should reject the Application and should not add the Application Land to its Register of Town and Village Greens on the grounds that the Applicant has failed to establish that the Application Land has been used for sufficient lawful sports and pastimes as of right throughout the relevant 20 year period.

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