

25th September 2020

**STATUTORY DECLARATION AS TO
APPLICATION UNDER S.88
LOCALISM ACT 2011 -
ASSET OF COMMUNITY VALUE
&
S.53 OF THE WILDLIFE &
COUNTRYSIDE ACT 1981- DMMO
LAND AT LYE GREEN, CHESHAM**

**By;
PHILLIP JOHN PLATO MRICS**

BROWN NOT GREEN CHESHAM LTD
2 Claridge Court
Lower Kings Road,
Berkhamsted, England, HP4 2AF

I am Phillip John Plato of [REDACTED] Chesham Bucks HP5 [REDACTED] and I do solemnly and sincerely declare as set out below.

1. I am a Chartered Surveyor and Member of the Royal Institution of Chartered Surveyors (member number 0847540) with over 22 years post qualification experience.
2. I am also a director of a company called Brown Not Green Chesham Limited (company number 10810899) whose registered office is situated at 2 Claridge Court Lower Kings Road, Berkhamsted, England, HP4 2AF (the **Company**) and I am authorised to make this statutory declaration on its behalf in support of a Nomination being made by the Company under S.88 of The Localism Act 2011.
3. This Statutory Declaration is hereby submitted with the following Annexes:
 - A. **Annex A** - An **OS Plan** identifying the subject Property shown edged red for the purposes of identification only and excluding any private residence.
 - B. **Annex B** – A collection of **Photographs** that I have assembled and labelled illustrating the contents of this Statutory Declaration including various Google aerial photographs as well as another OS Plan therein marked with reference points to aid identification of where each photo was taken or what it shows. I have also included several photographs that were presented by the Landowner to the former Chiltern District Council in 2019 which are also commented upon later herein.
 - C. **Annex C** – The **DMMO Routes** being considered upon the Property for inclusion in the Definitive Map of Public Rights of Way (PROW) under two separate applications (16855 CCU & CCV) made by the Company under s.53 of the Wildlife & Countryside Act 1981 together with further related information.
 - D. **Annex D** – **Log of Observations** made by me on 22 separate days between late April 2019 & August 2020 recording public use on the Property.
4. THE NOMINATION: - The Property as illustrated in Annex A, consists of open fields of circa 34.6 ha in total that are located NE of Chesham and situated between the north eastern edge of the town and the settlement known as Lye Green, (the Property).
5. There are two separate owners of the freehold interests of the Property both of which are registered at Land Registry under title numbers BM20138 and BM334723. The Property is crossed by several public rights of way (PROW) which are shown in yellow on the OS Plan within Annex A.
6. In 2019, I made a previous Statutory Declaration dated 29 April 2019 and an addendum to the OS Plan made on 30 April 2019 that was submitted with other evidence as part of an earlier Nomination of this land made under S.88 of the

Localism Act 2011. This latest Statutory Declaration, whilst reciting much of my original evidence from 2019, is now considerably updated and incorporates additional comments and evidence following further observations and research that I have since conducted. I will also recite herein other notable developments since then.

7. Because of the Nomination made in 2019, the Property was previously listed as an Asset of Community Value by the former Chiltern District Council (CDC) on 5 July 2019 hereafter referred to as the "Original Listing". The Original Listing was supported by 18 letters and 30 Statements of Truth provided by members of the local community in 2019 which were submitted to the former District Council describing the community's informal recreational uses of the land which from those statements, has clearly prevailed for at least 3 decades. Copies of these will be resubmitted by BNG to Buckinghamshire Council as evidence as part of this latest ACV Nomination.
8. The Original Listing was then the subject of a Review requested by the landowners which subsequently was conducted by CDC between 16 November & 3 December 2019 following which the Property was removed from the List of Assets of Community Value on 10 December 2019 (hereafter referred to as the "Review Decision").
9. On behalf of Brown Not Green Chesham Ltd, I have since made formal complaint regarding this Review Decision to Buckinghamshire Council (who are now the relevant authority following a local government reorganisation completed on 1 April 2020) and I have highlighted errors and oversights in the Review Decision as well as more recent case law that supports the Company's assertion that the Original Listing should have been upheld and that the Review Decision was wrong. This Statutory Declaration will therefore recite the evidence I have previously presented in 2019 that resulted in the Original Listing as well as new evidence and further observations by myself that supports this latest ACV Nomination, (hereafter referred to as the "New Nomination").
10. One important development that occurred between the date of the Original Listing and the Review Decision by CDC, was that it became clear to the Company from the evidence supplied by numerous members of the local Community that many of the informal but well-trodden tracks shown in the Photographs within Annex B may now be a prescriptive right of way capable of being added to the Definitive Map of public footpaths. In light of this, a substantial number of local people were also willing to offer formal evidence confirming long term use by the public of certain informal tracks upon the Property, and accordingly the Company instructed me to make two Definitive Map Modification Order (DMMO) applications under s.53 of the Wildlife & Countryside Act 1981. I submitted these to the former Bucks County Council in August 2019 together with 147 User Evidence Forms and these applications are currently awaiting determination. My evidence herein is also relevant to those DMMO applications. As I oversaw these two DMMO applications, I can confirm

that those people giving such evidence of personal use of the Property have all lived locally on average for just over 30 years, with one witness having lived locally to the land for 56 years. The DMMO Applications were also supported by a further 35 letters or Statements of Truth received from other people who have lived here less than 20 years in which they also recite their observations upon these routes or desire lines while they have lived nearby. This second group of witnesses have lived in the area on average for just over 10 years.

11. The six DMMO routes claimed are illustrated in "Annex C" (The "DMMO Routes") which includes a description of these six desire lines and a historic OS Map overlaid onto a Google Earth image in respect of one particular route. These DMMO applications and the evidence supporting them will be referred to later herein as I feel they also support the latest ACV Nomination.
12. In view of emerging proposals for the Property to be removed from Green Belt designation and earmarked for development in the draft Local Plan previously prepared by Chiltern & South Bucks District Councils, in 2019 the Company sought to have the Property listed as an Asset of Community Value and to secure the right to bid for this asset. Although the draft Local Plan has since been submitted for Examination in Public, the Examination Hearings have been cancelled due to the coronavirus pandemic. However, on 7 May 2020, the Local Plan Inspectors expressed "*significant concerns*"¹ about the draft Local Plan and it is unclear at this time if the Examination Hearings will resume or if the Local Plan will have to be withdrawn or significantly amended. Notwithstanding the uncertainty about the Local Plan, the community members of the Company are still keen to secure the Right to Bid for the Property in view of the importance it has to many people's wellbeing which has become even more apparent during the recent public health crisis.
13. THE NOMINATOR: As previously mentioned, the organisation making this ACV Nomination is Brown Not Green Chesham Ltd. For avoidance of doubt, I will recite the status of the Nominator Company (often referred to simply as BNG) which is a not for profit private company limited by guarantee that was incorporated in 2016 from a previous informally organised association of local people with the sole aim of protecting the Property for the benefit of local people specifically and the wider community of Chesham generally. The Company is a member of both the Open Spaces Society and the London Green Belt Council.
14. The Company has over 100 household members representing over 250 individuals from the local community. Membership is defined by any household who has donated funds to the Company. In addition, the Company has received support from circa 1,800 individuals who signed a petition in late 2016 organised by the Company calling for the Property to remain subject to Green

¹ See Exam Document 34 - <https://www.chiltern.gov.uk/examination-documents>

Belt designation. Over 1400 of these people have elected to remain on the Company's mailing list under GDPR as they want to be kept updated of news relating to this Property.

15. As a properly constituted not for profit private company with a Board of volunteer Directors, and with its own funds and bank account, that is not prohibited by its Articles of Association from borrowing money, it is realistic that the Company could purchase the Property and hold it in trust for the community it represents for future years if given the opportunity. I will explain this as follows
16. NOMINATOR FINANCES: - When I was required to respond on behalf of the Company to the Review of the Original Listing on 29 November 2019, BNG was asked to provide evidence of how realistic it would be for the Company to raise funds to acquire the land with or without planning permission. Although the former CDC appeared to subsequently accept that it was feasible for the Company to finance any Right to Bid, I felt I should recite some details on this point for the avoidance of doubt.
17. Although the Company was given only 7 days to respond to this Council's request on 29 November 2019 for proof of funding, during a period when several key members of the BNG Board were out of the country, I was able to collate significant information from certain BNG Members and I submitted a separate password protected document by email to CDC including detailed financial information and accounts that the Council had requested which demonstrated that the Company had access to significant cash funds from a number of high net worth Members as well as having received numerous cash pledges from others. As such, business accounts from other BNG Donor Members were submitted with this financial statement to CDC verifying the collective funds being pledged to BNG.
18. There was a subsequent and unfortunate breach of confidentiality by the former Chiltern District Council when conducting the Review Decision where the Council disclosed the general scale of cash funds that BNG had immediate access too. I am not authorized to recite the specific figures previously provided to Chiltern District Council within this Statutory Declaration because BNG continues to assert confidentially about the details of its finances and that of its Members as in any event, doing so may compromise any future negotiations when BNG might be seeking to buy the land. However, the Council do have all this confidential information and it will be apparent to any investigating officer of this New Nomination when reviewing such detailed financial information, that the Company does have access to significant cash funds.
19. The cash funds currently available to BNG and disclosed to the Council are however "a floor not a ceiling" given that the Company also has already demonstrated an ability to crowd fund from its 1,800 supporters and the Company would potentially have at least 6 months under any moratorium related to the Right to Bid in which to raise *additional* cash (namely much longer than the 7 days it had to demonstrate funding for the Review Decision) together

with an ability to seek third party funding too, this means that the Company could realistically contemplate purchase of the Property with or without planning permission.

20. As previously mentioned, this fact was accepted in the Review Decision of Chiltern District Council on 3 December 2019. The Council also acknowledged that the cash currently available is "*in addition to BNG being able to access finance*". I am restating these facts within this Statutory Declaration as I can confirm this situation remains unchanged since that time.
21. NOMINATOR PLANS FOR THE ASSET: I have previously responded to Chiltern District Council in respect of the Original Listing detailing the strategy that BNG would then deploy for managing the land if it subsequently acquired the Property and I understand this point will be expanded upon further in a covering letter to this Nomination from the BNG Board. Again nothing has changed since this strategy was recited in 2019 and in broad terms the objective of BNG is to manage the land and retain it (or as much of it as possible) for agricultural use as well as maintaining the separate recreational uses that have been enjoyed by the community on the Property for many years.
22. EVIDENCE SUPPORTING THE NOMINATION: S.88 The Localism Act 2011, requires that for any land or buildings to be Listed as an Asset of Community Value, it must be demonstrated that the actual current use of the land (or building - which is not an ancillary use) furthers the social wellbeing or social interests of the local community, and it is realistic to think that there can continue to be non-ancillary use of the land which will further the social wellbeing or social interests of the local community (whether or not in the same way). I can offer evidence to support this Nomination both as a professional Chartered Surveyor and by drawing upon my personal knowledge having lived near the Property for over 21 years, I will present this evidence herein under the subheadings of.
 - o Personal Observations & Evidence of Use
 - o Physical Evidence of Use upon the land
 - o Professional Factual Observations
 - o Photographs
 - o Social & Mental Wellbeing
23. From this evidence collectively, I will demonstrate how the community's informal recreational uses still prevail today despite the Review Decision and despite some recent action by the farmer and landowners to prevent public access onto the land taken around the time of the Original Listing. Accordingly, I will explain why I believe this evidence demonstrates that it is reasonable to assume that these community uses will continue for the foreseeable future.

24. I will also explain why the community's recreational use is *not* an ancillary use to the other agricultural uses of the land but represents a *separate actual use* and why it is realistic to think the Property will continue to be so used by the community in future and thereby how the Company feels it is realistic to be able to exercise any Right to Bid to acquire the Property for the community's long term benefit. I understand the Board of BNG are also providing details of relevant caselaw explaining why the community's recreational use is *not* an ancillary use to the other agricultural uses on the land.
25. In addition, since becoming involved with the Company, I have been required to appraise the extent of the public uses of the land and how access to this Property is valued by local people. From talking with the community and reading their Statements of Truth and letters, I have come to understand how the Property furthers the social wellbeing, health, education & social interests of the local community. Indeed, I have established that the community has enjoyed such recreational use of the land with all the associated benefits to their social wellbeing over many decades and I will also explain this later herein.
26. PERSONAL OBSERVATIONS & EVIDENCE OF USE: As I have worked with the Company since it was founded, and as I have lived at Deer Park Walk beside the Property for over 21 years since 1999, I can also offer first hand evidence of my own observations relating to public use of the land.
27. The community have submitted 30 Statements of Truth and 18 Letters supporting the Original ACV Listing plus a further 147 User Evidence Forms and a further 35 letters or Statements of Truth supporting the DMMO. I have processed and read all these and I can confirm that from my own personal experience the scale of this public support comes as no surprise to me and I can also confirm that the various statements from the community regarding the frequency and variety of recreational uses taking place on the Property reflect my own observations of public recreational use that I have seen taking place on the Property in the 21 years I have lived nearby.
28. Throughout the time I have lived nearby, I have observed these informal outdoor recreational uses which have involved hiking/rambling, dog walking, bird watching, jogging, and general outdoor exercise but has also included people just observing nature and local wildlife or picnicking with their family and children, as well as cycling, picking flowers and blackberries, I have seen children undertaking adventurous play or practicing for Duke of Edinburgh expeditions or for children walking to or from school as well as people socialising with other likeminded people from the immediate neighbourhood. I have also occasionally seen people kite flying upon the land and a more modern but unusual activity has been the use of drones that I have occasionally seen flown from a position upon the land. I acknowledge the landowner's comments that there are power lines over part of the land, however the Property is sufficiently large for these (less frequent) recreational uses to be conducted safely.

29. Throughout the period I have lived here, I have observed people regularly using the Property along the designated public footpaths, but I have also observed many people also using other areas of the Property for various types of aforementioned informal outdoor recreation too. I regularly see and hear people walking on the land when I am in my rear garden which overlooks the northern field near point ref #38 as shown in the OS Plan in Annex B. Indeed, I have included one typical photograph of two people I saw walking around the northern field of the Property and along the rear boundary of my home earlier this year which is labelled P44b within Annex B. Neighbours who have lived here even longer than myself, advise me this has been habitual and widespread practice for many years before I ever moved here some 21 years ago.
30. I have noted that most people only walk close to the boundaries or upon the informal tracks that have become established upon the land out of respect for the agricultural uses that the land is also put too and it seems to me that the public generally try to avoid trampling crops or they control their dogs when in proximity to any livestock grazing there.
31. However, a few of these informal but well-established tracks are shown in the Photographs within Annex B as also crossing the land and do not just follow the boundary notably (using the numbers OS Plan in Annex B) between point reference numbers, 5 through 4 through 36 to 35 as well as from point reference number 35 to 21 (on the other side of the fence to the PROW nearby) and from point reference number 21 to 34. I have also observed people very occasionally walking from point reference number 1 across the Northern field diagonally to point reference number 36 and I have also seen people more regularly walking across the southern field from point 14 directly to a point on the opposite western boundary between point reference numbers 12 & 11. This last described route would rarely conflict with crop growing as I note that corner of the southern field is periodically not cultivated for crops (see Photo P107)
32. I have walked upon the Property myself periodically since moving here in 1999. Aside from the designated public footpaths (marked in yellow on the Plan in Annex A) I have observed people regularly walking upon the numerous other tracks or desire lines that have become well-established across and mainly around the boundaries of the land. Many of these tracks are so well-trodden they are visible using images from Google Earth. Accordingly, this represents physical evidence that is apparent upon the Property, of long-term use by many people. The Photographs in Annex B illustrate this physical evidence and I will describe this separately.
33. PHYSICAL EVIDENCE OF USES UPON THE LAND: Physical evidence on the land has been apparent to support the assertion of public use of the Property for at least 3 decades. In 1999 I recall observing there was a network of well-trodden footpaths upon the Property mainly around the field boundaries and within the woods that adjoin the Property. These tracks are not part of the adopted network of public rights of way (PROW). As previously stated, prescriptive rights

of way may now have been established from this long practice. There are numerous photographs presented in Annex B of the physical evidence but I will explain the photographic evidence in greater detail later herein.

34. I also recall when moving to the area 21 years ago, seeing that there were numerous rear garden gates giving access into the Property from various private homes that share a boundary with the land. I am aware that those people who have enjoyed 20 years continued open and uninterrupted use of such gates without any apparent complaint or licence from the landowners, may now have an easement or prescriptive rights over the Property and where such gates and any uses related to them have prevailed for that period of time, I believe the landowner(s) of the Property now cannot prevent those people from continued access or use of these gates.
35. My observations over the last 21 years together with more recent enquiries has established that free and unrestrained access and use of the Property has been available on a more widespread basis that has not been confined just to people with garden gates along the boundaries of the Property. My observations and research indicate that there has been much more widespread public access for decades.
36. Such access by the public has historically been conducted without them having to force their way into the Property, either by them accessing the land through a habitually unlocked gate or by them entering through unfenced openings formed beside other field gates into the Property or via numerous other well-established openings through the field boundaries or at points where fences have remained broken for many years. Many of these access points or gaps in fencing including some very old and broken fencing along some boundaries have prevailed throughout the period I have lived nearby. Such observations are shown in Annex B (see Photographs labelled P6, 7, 14, 23, 39, 39B, 39D, 48, 49, 50 57, 60, 82 & 83) showing such gaps or areas of broken fencing. These photographs clearly do not reflect the landowner comments made when seeking a Review to the Original Listing in 2019, when they stated that the boundary fences are checked regularly to ensure the site is secure. However, I noted that their statement in respect of fencing was qualified by Mr Mash who added that to secure his pastoral farm activities there was "*occasional erection of electric fencing and a barbed wire fence surrounding the entire site.*"² I can confirm that I have seen such temporary electric and barbed wire fences occasionally strung around the boundaries, mainly of the northern field, but this raises the question that if the boundary fences are checked as claimed, then why is such occasional additional fencing necessary? I believe from my own observations that the main boundary fences are *not* secure as shown by several of my photographs and I think it is clear the additional extra fencing is therefore necessary to constrain livestock because the main boundaries are themselves

² Stat Dec by Mr Mash dated 21 June 2019 – paragraph # 5.

not secure. I should add that whenever I have seen the temporary fencing erected (whether using barbed wire or electrified fencing) it is *always* erected a couple of metres inside the field from the edge of the field boundary (as shown in Photographs P 11, P41, P42, & P44) and consequently it would NOT prevent public access onto these intermediate areas where several of the informal tracks and desire lines around the Property are located.

37. I have also been informed about some local people periodically cutting the grass on parts of the Property and of them cutting back any overgrowth of hedges at certain locations that are beside the informal tracks previously referred to, in order to keep these tracks open and accessible to themselves and others. However, it must be pointed out that general access into the Property is readily available via the various Public Rights of Way into and across the fields and so it is realistic to assume that public access *can* continue in the future as there is no hinderance to people straying off the PROW onto the network of other informal paths that are upon the Property.
38. The only attempts that I have observed or heard about of the landowner attempting to restrain public access have occurred in recent months between the date of the application for the Original Listing and the Review Decision when it became apparent that farm staff, had closed off some informal openings that had provided access into the fields in reaction to the original ACV application (see Photograph 39A in Annex B). There were also some efforts to now keep gates locked and to repair some openings between the date of the application for the Original Listing and the Review Decision. Specifically, I note that the gate to the North field from Lycrome Road (Point ref # 1) is now more habitually locked than in recent years and whilst some openings into the fields through the boundaries have been closed off, including barbed wire strung beside the gate post and an old field fence near point ref # 1 on OS Plan in Annex B (see Pic 94), I have since seen people accessing the Property through other openings that have subsequently been created by the public (for example see Photographs P39B to P39D inclusive). I have also occasionally seen people climbing over the gates into the fields. However, I have noted that most people access the land simply from the various other well-established open access points into the Property or by straying from the PROW.
39. I heard reports between June & October 2019, that some local people who habitually had walked upon the fields for many years, were, at that time, being approached by farm staff when they went walking upon the land. A few people have described to me being approached by the farm staff when walking off the adopted public footpaths and how such approaches were unusual and only a relatively recent experience. Invariably, those same people have described to me how they all informed the farm staff at the time when they were approached, that they had walked upon the fields in these areas for many years but the farm staff then either blocked their way personally or by use of a farm vehicle and insisted they turn back. Several people who recited such recent experiences to me complained that they felt intimidated and that they

had never been stopped or told to turn back in the many years they had walked on the unadopted tracks over and around the Property.

40. It is notable that such practices by farm staff only occurred over a few months in late summer/ autumn of 2019 and now appear to have ceased completely since the date of the Review Decision in December 2019. I have received no further comments from local people about any similar incidents since late 2019 though I continue to see lots of people still using the land for informal outdoor recreation and exercise.
41. Other than these most recent incidents and a brief period in early 2001 during the Foot & Mouth outbreak, I have not seen or heard of any efforts to prevent the public walking on or using the Property as they have done for decades.
42. No signs have ever been put up by the owner(s) prohibiting or restricting public access during the last 21 years I have lived here.
43. From my own observations I have concluded that public access to all extremities of the Property for various informal recreational uses, has for decades been habitual, open, and enjoyed by the public at large without secrecy or force. This fact and the period of time that these recreational uses have prevailed, suggests that (other than as described between the date of the Original Listing and Review Decision), that there has been prolonged indifference and acquiescence by the landowners to these continuing practices by the local community.
44. I noted that the landowners contested this assertion in their various statements to the Council when seeking a Review of the Original Listing in 2019 but it is notable that their comments were qualified and *only* directed towards stating that they had not seen people walking in the *middle* of the fields or damaging crops³. I would agree that it is rare to see people walking across the middle of the fields when crops are growing, nevertheless, I can confirm that I have seen it done occasionally at other times of the year.
45. Mr Mash & Mr Fitzgerald both confirm in their respective Statutory Declarations that periodically they too *have* observed people "straying" from the PROW onto other parts of the Property.⁴ This supports the Nominator's assertion that public access *does* occur upon the network of informal paths that surround, and in a few cases, cross the land. The landowners have further asserted that they see

³ Stat Dec by Mr Fitzgerald dated 21 June 2019 – paragraph 6 a) (concluding paragraph – "...to date parties have not crossed the fields when crops are growing...")

AND the Stat Dec by Mr Mash dated 21 June 2019 – paragraph 8 b) second paragraph "...and this year in crop, parties have not crossed the fields as crops are growing and there is no damage to crops to indicate use of the land..." & ..."given the size of crops grown to, it would be very evident if a path had been created by continuous passing over the land."

⁴ Stat Dec by Mr Fitzgerald dated 21 June 2019 – paragraph 7.ii

AND the Stat Dec by Mr Mash dated 21 June 2019 – second paragraph of point # 8 c.

no evidence of crop damage and I contend this reflects the fact that most people are responsible and respect the agricultural activities but also it illustrates that the public uses are unrelated to the agricultural uses and that community access is mainly utilising those areas that are *not* cultivated either for practical reasons or as the landowners have confirmed⁵, where crops are not planted in compliance with Defra requirements and where self-evidently no crop damage would therefore be apparent anyway.

46. PROFESSIONAL FACTUAL OBSERVATIONS: - I have maintained a record of the numbers of people I have seen using the land specifically between April 2019 & August 2020.
47. I first started taking notes of such activity upon the Property when preparing to submit the Nomination for the Original Listing but I continued taking further records in preparation for the DMMO applications, and I have now built up a record of my observations of public use on the land over a period of more than 17 months that not only support the latest ACV Nomination but the two DMMO applications too.. Specifically, I have recorded how many people I have seen using *only* the public footpaths (PROW), as well as the numbers using *only* the informal tracks or desire lines on the land and finally the numbers using *both* the PROW & desire lines.
48. I noted these observations over 22 different days between late April 2019 & August 2020, and I will outline later in greater detail what I did and how I have been able to quantify the number of people using the Property together with how many strayed off the adopted footpaths or how many people used only unadopted tracks. This is summarised in my "Log of Observations" included herein as Annex D. I will explain the process I used to gather this information and will refer to the specific data later within this Statement.
49. I have concluded it is impossible to ascertain precisely how many residents around the locality use the land for informal outdoor recreational purposes due to the fact that they will enter at all times and through the many access points described previously as well as via the public foot paths or via gates installed in the rear of their gardens. However, my first attempt to quantify the scale of public access was on a sunny Good Friday in 2019, when in *just a half hour period* during late afternoon between 5.00pm and 5.30 pm, I witnessed and made note of 12 people walking on the property some with dogs, plus one person cycling.
50. Although some of those people used only the public footpaths, I observed that 9 people used the other well-established informal tracks that I have previously described upon the property which are not designated as public rights of way.
51. I have since observed similar levels of activity on other weekends or during the summer months and when awaiting the first ACV decision / Original Listing and

⁵ Stat Dec by Mr Mash dated 21 June 2019 – paragraph # 6.

whilst preparing the DMMO applications, I began to keep a record of such observations. In my "Log of Observations" in Annex D, I have attempted to quantify the number of people using the Property together with recording how many people strayed off the adopted footpaths and indeed how many people used only unadopted tracks. This exercise is now described below.

52. Whilst it is not possible to see every part of the Property from just one vantage point, I found that by positioning myself on one of the adopted footpaths, I could see most of the routes being claimed on the DMMO applications other than Route 4 & part of Route 1c (as described in Annex C), though I would be likely to see any people leaving those Routes and coming onto the other parts of the Property. Alternatively, I would walk around the land myself recording what I saw in each 30-minute period of observation. For the reasons stated, I cannot be certain I saw everyone who might have entered or used the land during such periods of observation, but I felt this would give a good indication of the scale of public use.
53. Although it was not practical for me to conduct an observation survey for any prolonged periods, I decided to record the numbers of people I saw using the paths over 30-minute periods at different times of the day and on different days of the week. I kept a record of these observations over 22 different days chosen at random during late April, May & early June in 2019 as well as on one day in November 2019 & then between April & August 2020. I undertook the latter observations because following the Review Decision I felt I should resume recording these observations whenever time and my work permitted. The following was established or concluded from this data.
 - i. By extrapolating and averaging my observations, assuming only a 12-hour timescale of public access each day, over 22 different dates, I have calculated that on average, at least **301 people per day** now use the various footpaths upon the land.
 - ii. During the most restrictive periods of the Covid-19 "lockdown" (between April & late June 2020) the average numbers using the land was almost **400 people per day**. This represents a significant overall increase (+42%) in the average of recreational visitors to the Property compared to observations I had recorded in April to June last year where my data from that similar period equated to an average of **280 people per day**. –
 - iii. Significantly, the majority of those coming onto the land (**61%**) did NOT confine their use to just the PROW's and used *both* adopted and unadopted tracks.
 - iv. Just 39% of people appear to use only the adopted PROW's.
 - v. Over 30% of people used only the *unadopted* footpaths.

- vi. Users were predominately people walking with dogs but included children going to or from school, several joggers & occasional cyclists. This is reflected in the Photographs in Annex B – notably photos P1, P2, & P3, P35, P36, & P37, P52, P58, P59, P60, P61, P62 & P63. Although it is not practical to provide photographic evidence of *all* my sightings, I have supported my observations on certain days with photographs that include a digital date/time stamp to verify some of the aforementioned observations and these are also now shown in Annex B as Photographs P71 to P92 and I will now recite these observations which represent two typical 30 minute periods of observation that I have conducted:
- vii. On **Thursday 28 May 2020**, I walked onto the Property at circa 11.25 via the PROW beside Deer Park Walk at point ref # 35 as shown on the OS Plan in Annex B. I noted that there is now a very well-established track located a couple of metres to the right-hand side of the fence & stile adjacent to where the PROW is located. I walked along this more popular but unadopted track. At 11.28 I was overtaken by a cyclist shown in P71 and I observed this cyclist riding on the opposite side of the fence of the PROW (but therefore on an informal & unadopted track) from point ref # 35, through points # 21, where he turned right onto the PROW then cycling through points 18, 17, & 8 before then turning off the PROW again and cycling beside Brushwood School between points 8 & 7 before disappearing from my view at point ref #7. P72 timed at 11.29 shows the cyclist riding between points 8 & 7 which I took using the zoom feature on my camera.
- viii. At 11.30 I caught a glimpse of a person walking on the opposite side of the field from where I was on the PROW. I saw this person entering the woods from the unadopted track through broken sections or gaps in the boundary fencing between points # 5 & 4 on the OS Plan in Annex B, see P73 taken using the zoom feature on my camera.
- ix. A few seconds later also at 11.30, I saw a man walking alone on the PROW near point 17 towards point 18. There were some other people walking some distance behind him as shown in P74. As those people passed me, I took a further photo (P76 timed at 11.33) showing two women walking with a young girl and one woman was also carrying an infant in a back carrier (which obviously I did not count and recorded this as merely 3 persons). The man previously referred to and shown in P74 was subsequently seen by me at 11.31 turning SE through the PROW gate at point 21 and walking on the other PROW towards point 20 – see P75.

- x. The two women with the child & infant I saw as shown in P76, continued walking on the PROW towards point 18 where I lost sight of them.
- xi. At 11.32 I saw three people again on the far side of the field from me walking on the unadopted track between points 36 & 35 near Deer Park Walk as shown in P77. I observed that they turned right initially walking on the PROW then (like the cyclist earlier) they took the alternative unadopted route on the right side of the fence and stile and walked parallel to the PROW. They continued walking towards point 21 where I lost sight of them
- xii. I continued walking on the PROW towards Brushwood School (point 8) and I then followed the unadopted track towards point 7. At 11.41, I observed a woman walking with a small dog along the PROW (see P78 - the women & children referred to in P74 & P76 can be seen again returning in the background of this picture and obviously have not been counted twice in my observations). The woman with her dog turned off the PROW & walked through points numbered 8, 7 & 6 before she turned out of the Property into the Brushwood Estate through the opening previously described nearby. P79 shows her walking between points 7 & 6 at 11.49.
- xiii. At 11.49, I also observed another woman walking alone on the opposite boundary track between points 4 & 5 along the unadopted path by the woods as shown in P80. This represented the 11th person I had observed on the Property and the 7th person I had seen using the unadopted footpaths in 24 minutes whilst being upon the Property and these observations are reflected in my summary Log of Observations in Annex D and they reflect a typical 30 minute period of the other observations I have recorded on 21 other dates therein.
- xiv. Before concluding my 30 minutes of observation that day, I took some other photographs of the Property including P81 showing a tree that I deduced had fallen across the unadopted track during the stormy winds over 10th & 11th of May. I made this deduction as I had not seen that tree lying across this point when walking there myself previously on 8 May and due to the benign and pleasant weather the area had enjoyed aside from that previous weekend and Monday 11th, when Chesham experienced strong & gusting winds. P81 shows a clear new pathway was *already* being created around the fallen tree on 28 May. This pathway has therefore been created in barely 16 days since the tree is believed to have fallen which I feel indicates the amount of pedestrian traffic along this unadopted track between points 4 & 5 on the OS Plan in Annex B.
- xv. Photographs labelled P82 & P83 illustrates some of the various gaps in the fences and the degraded state of fencing around the property

specifically between points numbered 2, 3, 4 & 5 which have prevailed since before the Review Decision together with other gaps and openings elsewhere around the Property.

- xvi. Photographs labelled P84 & P85 show the unadopted footpaths & tracks through point ref # 7 & 8 and through 9, 10, and represents further physical evidence of people walking there regularly since the fields were ploughed in autumn 2019 and despite the absence of livestock in these areas during that period.
- xvii. I also attempted to repeat this exercise on a day chosen for when the weather was cool and unsettled, specifically on **Saturday 6 June 2020**. At that time around 16.50, the weather was breezy and cool with thunderstorms forecast with many threatening dark clouds overhead. As I approached the Property via the PROW, I could see a woman walking alone about 50m ahead of me also entering the land at the southern end of Deer Park Walk at point ref # 35. She continued walking straight ahead namely parallel too but not upon the PROW that was on the other side of the fence to her and she walked towards point ref # 21. (see P 88)
- xviii. As I entered the Property at 16:52, I saw three other people already on the land passing the woman previously referred to who were ahead of me – see P86. These three people and their dogs walked away from the PROW at point ref # 35 towards point #36 on the unadopted track as shown in P87.
- xix. At 16.53 as I walked towards point ref # 21, a couple were seen walking through the gate at that point and they had apparently walked across the adjoining field upon the PROW where cattle were grazing. Another family group of 4 people were also walking towards point ref # 21 from point # 18 as shown in P 89. They subsequently turned right off the PROW and walked past me at 16.54 (again on the unadopted path that runs parallel to the PROW) walking towards Deer Park Walk / point ref # 35 – see P90.
- xx. The couple shown in P89, walked along the PROW through point ref # 8 & # 17 at which point they turned left off the PROW onto the unadopted track at 16. 57 and walked towards point # 16 as shown in P91. At around this time, I heard several claps of thunder and lightning was visible flashing in the distant sky.
- xxi. I turned right off the PROW at point #8 walking now with haste, beside Brushwood School towards point #7. Light rain began to fall and as I looked back at 16.58, I saw another couple walking along the PROW between point # 18 & # 17. – See P92. This couple totalled 12 people that I had observed in just 8 minutes whilst upon the land that day.

xxii. By the time I had walked past point # 6, I had decided I may need to abort this observation exercise as the rain was becoming heavier and I observed several flashes of lightning overhead at around 17.00. Accordingly, I elected to discontinue my observations and to seek a safe place of shelter, as such my records of people on the Property on 6 June only represents a third of my normal time period of observation as every other date of recoding public activity on site had involved a full 30 minutes.

54. Unsurprisingly, I noted that weather and ground conditions can have a significant effect upon numbers using the land with the number of users normally diminishing on wet or colder days. Given that many of my observations were made in late Spring / early Summer, one would reasonably expect use of the paths to decline in winter months. My own casual observations in the winter months confirmed as much and this is verified from my Log of Observations where during the observations recorded in November the numbers using the land were less but even so, I still observed 5 people in my 30 min period of observation. This would still equate to 120 people per (12 hour) day using the land.
55. The only time I see very few people on the Property is during very wet days or periods of extreme weather and/or when ground conditions are extremely muddy following periods of prolonged rain but even then it is notable that there has NEVER been a day when I have not seen anyone using the footpaths and the informal tracks whenever I have visited the land to record such observations. Indeed, even during the heatwave on an August day in 2020 with temperatures of over 32c, I still saw 6 people upon the land in 30 minutes.
56. Conversely, from March to June 2020 my Log of Observations indicates a significant increase in public use of the land (+42%) which I attributed to the coronavirus restrictions imposed by the Government. It was apparent that the Property represented a most convenient and valued area for the public to undertake the limited amount of daily exercise that was permitted during this pandemic and significantly more people were seen in the late spring of 2020 using the land than in 2019 and notably more people were using the unadopted paths or desire lines too. I cannot establish if more people were using the land or just those who had used it historically were now using it more frequently.
57. I have concluded from my observations that the numbers of people habitually using the land is therefore between **280 & 400 people per day** during March to October and that during winter months there are still likely to be circa 120 people per day using the land for informal recreational use.
58. I contend that the scale of such recreational use could not be described as "occasional", trivial, temporary or "ancillary" but rather as habitual, significant, ongoing and an entirely separate actual use to the other agriculture uses upon the land.

NB: I am aware that BNG has since organised a community observation exercise over a continuous 12-hour period which was conducted during the holiday time on 20 August and which I understand has largely confirmed my findings and estimates of numbers using the land. This exercise also sought to interview people when using the land and I also understand BNG will be providing separate evidence on this exercise as part of the latest ACV Nomination. I am told that ALL those interviewed agreed with me that when they use the land they invariably see others using the land too which supports my earlier comment there has NEVER been a day when I have not seen anyone using the footpaths and the informal tracks whenever I have visited the land to conduct research.

59. I believe that such evidence of the numbers of people I have observed over the previous 17 months, reflects a habitual regular daily recreational use of the Property by the community. More recently the evidence suggests increased public usage even after the Review Decision of December 2019 and the landowner's efforts to stop the public using the informal tracks. My Log of Observations also shows consistent usage during late summer leading up to and immediately following harvest thereby disproving any landowner assertions that it is not possible for the community to use the land when crops are growing near harvest time. I have included several photographs in Annex B (labelled P24 A to D inclusive & P77, P80 taken on 28 June 2020 & P87 to P92 taken on 6 June 2020) showing people walking beside well-established crops as well as others taken immediately after harvest which illustrate the width and conspicuous nature of the various desire lines & unadopted tracks upon the land at that time of year.
60. I noted that when the landowners and farmer sought a Review of the Original ACV Listing, they submitted various statements with photographs to Chiltern District Council purporting to illustrate that,
- (a) the network of well-trodden footpaths upon the Property mainly around the field boundaries either did not really exist, or
 - (b) that the public could not walk upon the land due to the height of crops growing on the land especially at harvest time, or
 - (c) that any tracks visible around the boundaries were caused by livestock.

I will address these assertions in turn as follows.

21.a) In respect of photographs submitted by the landowners that claim to illustrate that the well-trodden footpaths mainly around the field boundaries do not exist, I would comment that:

- The landowners failed to offer any plausible explanation for the many photographs I had submitted in 2019 that *did* show such tracks.
- I have now included within my Annex B, several of the landowner aerial photographs they had submitted when seeking the Review of the Original Listing, some of which I note were taken as long ago as 1999 for comparison with several of the Google Earth images that I have previously presented. I have now highlighted in Annex B notable

similarities which are seen when the landowner's aerial photos are *enlarged* as I had done with my own Google Images and I will refer to specific photographs later in the remaining content of this Statement as appropriate.

- Further photographs taken at ground level were also submitted by the landowners when seeking a Review of the Original Listing which they also claimed illustrated the absence of footpaths or desire lines. However, it was notable that most of those photographs had been taken shortly after the fields had either been ploughed or shortly after crops were planted and it would be no surprise that tracks would not be evident at such times. This is because, as has been explained elsewhere and by others, the farmer when ploughing the fields each year, ploughs up the informal paths and desire lines but I have noted that these tracks are very soon re-established by the high level of footfall from members of the local community.
- Some more recent photographs taken by me are now included within Annex B of the same areas either for comparison with the landowner's images showing the existence of tracks throughout most of the year or to illustrate that after ploughing up these paths, how the informal tracks quickly become re-established upon the land by community footfall. I will refer to specific examples later in this statement.

21.b) In respect of assertions that the public could not possibly walk upon the land due to the height of crops, I should comment as follows.

- Clearly this claim cannot apply to the land to the NE where cattle habitually graze. Again, Photographs are included within Annex B showing people walking across those fields and some are clearly staying off the PROW too - (see Photos P 34C & P34D as examples).
- Similarly, on the brief occasions when livestock has been grazing on the Northern & Southern fields, that claim could also not apply either.
- I acknowledge that some crops listed on the farmers crop records can grow to above waist height, but this is confined only to the relatively short period leading up to harvest. It is also dependent on what crops are cultivated. In 2018 & 2019, the fields were laid merely to grass. In 2020, peas were grown which only reached around knee height as shown in numerous photographs taken during summer this year in Annex B (see specifically Pictures labelled P87 to P91 – dated / timestamped 6 June 2020 as well as other pictures within Annex B taken nearer harvest time this year).
- In any event, I submit that height of any crops grown prior to 2018 is irrelevant as Mr Mash also asserted in his Statutory Declaration, that

crops are not planted within 2m of the field boundary⁶ in accordance with Defra requirements which represents many of the very areas where most of the informal tracks and desire lines are located. If crops are not growing on these areas, they cannot be impeding public use of the land whatever the height of the adjacent crop happens to be.

- o I believe BNG have been conducting research by way of interviews with the public who use the land on this subject and I believe that every member of the public questioned by BNG asserted that the agricultural uses do *not* prevent or hinder their use of the land and I understand this research will be presented in more detail in a covering letter or supporting material presented by BNG with the latest ACV Nomination.

21.c) Finally, the assertion that any tracks visible around the boundaries were caused by livestock, and not by human footfall is simply not credible. I should comment as follows:

- o The landowner has confirmed⁷ that the Northern & Southern fields are primarily used for cultivation of crops or hay and that sheep have only occasionally grazed *imminently* on these areas⁸ and from my own recollection having lived here since 1999, I can confirm that claim to be correct. Sheep have not grazed these areas at all in 2019/2020 and therefore given that tracks are ploughed up each year, any tracks around *these* fields could have only been created by public footfall and not by livestock. I refer to photographs within Annex B (see pictures labelled P64 to P92 inclusive) all of which have been taken since the Northern & Southern fields were ploughed up last autumn, (together with all informal paths thereon) and the photos show that there are now once again numerous well established tracks and desire lines upon those same areas of the land that have all been created in the interim period and despite no livestock having grazed in those areas during that time. (The photographic evidence will be explained further later herein.)
- o The grazing of livestock (cattle) is primarily confined to the NE field. I acknowledge the presence of some cattle tracks in this NE field as well as tracks from the herdsman's vehicles. However, these are not being claimed by BNG but rather the presence of tracks that are not PROW that are also evident in that field as shown in the Photographs and I believe these tracks are caused by public straying off the PROW onto other areas as show by further photographs within Annex B of public

⁶ See Statutory Declaration by H Mash dated 21 June 2019 – paragraph # 6

⁷ See Statutory Declaration by H Mash dated 21 June 2019 – paragraph # 8 inc points a) to c) inclusive

⁸ See Statutory Declaration by H Mash dated 21 June 2019 – paragraph # 9 b) – sheep grazing for "6-8 weeks"

use of this field and the private stiles accessing the land that are not part of any adopted PROW. (I will highlight certain examples later herein.)

61. PHOTOGRAPHS: The Photographs within Annex B illustrate the extent of public use and access onto the land. Most were submitted in support of the Original Listing but an additional 53 Photographs to those submitted in 2019 are now included within Annex B of which the most significant are numbered P9A & B, P24A to P24D, P 39A to P39D inclusive and P64 to P106 inclusive, most of which have been taken by me subsequent to the Original Listing, namely between November 2019 & June 2020, to illustrate continuing community use of the land, physical evidence upon the land of community use or other observations described herein.
62. Many of the Photographs show different people undertaking a variety of informal outdoor recreation though mainly walking with or without dogs, jogging, cycling, picking blackberries, bird watching or observing nature. These photographs support the many public statements from the community about the variety of recreational uses that supported the Original Listing and this latest Nomination.
63. The Photographs in Annex B are presented first with an aerial picture from Google Earth of the whole of the Property marked with various red rectangles labelled A to I. These red rectangles approximately relate to subsequent *enlarged* Google Earth images that I also included within Annex B that are similarly labelled A to I and which I refer to as such by my narrative herein. Amongst other things, these enlarged Google Earth images show the physical evidence upon the Property of widespread use, namely several informal footpaths that have been created over time, which I can confirm have prevailed since I moved here some 21 years ago.
64. I note that the landowners themselves submitted various aerial photographs when seeking a Review of the Original Listing however, these were *not* enlarged to focus upon the specific areas as I have done and so I have now included a few such landowner aerial images in Annex B to illustrate how when enlarged, and where resolution permits, those aerial images also reveal very similar features to the informal footpaths shown in my other photographs taken at ground level. The only exceptions being where the landowner has supplied aerial photos clearly taken either shortly after ploughing or the planting of crops when as previously explained, all tracks will recently have been ploughed up anyway. Given the dates of these landowner images I feel they support my assertion that the well-trodden footpaths that I describe herein have prevailed for many years.
65. Specifically, I have included in Annex B, (Images P96, P98, P99 & P100) which are all enlargements of images supplied by the landowner dated between July 1999 & April 2010 to compare with some of my enlarged original Google Earth Images "A" & "B". I have also enlarged (as best one can due to the limited resolution) the landowner aerial images and labelled the landowner images to

illustrate that, when enlarged, these images also reveal many of the same features that I am describing that indicate long term community use of the land.

66. The Photographs numbered P1 to P63 inclusive are of images which were taken by me mainly in March/April 2019 from ground level upon the Property. Some show members of the public upon the land. The information submitted with the April 2019 Nomination included many of these photographs, which resulted in the Original Listing of this Property as an Asset of Community Value in July 2019.
67. The most notable feature of all these Photographs collectively is one of continuing physical evidence being upon the land that is illustrated in many of the Photographs in Annex B that clearly have existed (or keep being reinstated) for many years and which prevailed at least through most of 2019 or which have again been re-established in 2020. As previously mentioned, despite all the footpaths and desire lines being ploughed up in August 2019 following the Original Listing, the level of ongoing pedestrian footfall from community use has seen *all* these paths and tracks restored upon the land in very short periods of time by the continuing high levels of pedestrian traffic upon them. This cycle of paths being recreated annually after ploughing has prevailed for many years, at least since I moved here in 1999 as I recall seeing such tracks then.
68. For example, Photograph P9 was taken in April 2019 near reference point #7 and shows the unadopted track that runs beside the hedge boundary of Brushwood School. The unadopted track shown represents part of DMMO for Route # 2 (see Annex C) and part of the desire line between point reference numbers 8 & 7 as shown on the OS Plan in Annex B. Photograph P9A was taken in August 2019 and shows the same area where the unadopted track was when viewed from reference point # 8 but looking towards ref point # 7 and this photograph shows the extent of the ploughing undertaken shortly before this photograph was taken in August and illustrates that the unadopted track was at that time, ploughed up. All the other unadopted tracks and desire lines were similarly ploughed up at that time. However, Photograph P9B taken in May 2020 barely 9 months latter and from the same position as P 9A, clearly shows a reinstated and somewhat wider unadopted track to that in 2019 that has been restored. I do not believe the farm staff or landowners have restored this desire line or any other unadopted tracks on the Property and I have not overserved any such works to do so. I have also concluded that the restoration of tracks cannot have been caused by livestock as no livestock have been on this part of the Property throughout that period of time (livestock have only been in an area to the NE of the Property during these months and were in any event confined to an area within point reference numbers 20 to 35 inclusive).
69. As previously explained, the Northern & Southern Fields are ploughed most years and invariably this removes all the informal tracks around the boundaries. Shortly before concluding the preparation of this Statutory Declaration, the fields were ploughed once again on 11th/12th September 2020 and again aside from the PROW, all the other informal tracks around and over the land were destroyed by

this activity. I made a short inspection of the Property on **Thursday 17th September** and despite the recent removal of the informal tracks by the ploughing, within barely 10 mins of my being on the land I had observed 7 people of which 3 were walking off the PROW upon the recently ploughed edges of the fields. I attach three photographs labelled P101 to P103 inclusive In Annex B illustrating these observations.

70. I have also included several other photos from that same visit labelled P104 to P106 inclusive illustrating how within barely 7 days of the fields being ploughed, it was already apparent that there had been footfall around the edges of the fields and it was clear that such pedestrian traffic was once again re-establishing fresh tracks and desire lines upon the same areas of the land as described previously. I have seen this in previous years after ploughing. The restoration of all the other unadopted tracks upon the land that have been shown previously in the Photographs within Annex B was in some areas still somewhat incipient on 17 September but it was clear that within 7 days of the recent ploughing that people were again walking on the fields off the adopted tracks and that the informal paths or desire lines were being restored from this activity. I believe the rapid reappearance of such desire lines can only be caused by continued use of the land by the local community and that all the tracks will be fully re-established once again in the coming months.
71. The informal tracks or desire lines on the Property accord with the two DMMO applications I referred to previously relating to the adoption of 6 routes currently around or across the Property which are themselves supported by a large volume of evidence from members of the local community and these 6 claimed routes are currently awaiting determination by the Highway Authority.
72. This written evidence from such numbers of people within the community describing the length of time that these well-trodden informal footpaths have been used, is supported by all the Photographs within Annex B, illustrating that for several decades the land has been used habitually by a large number of local people.
73. The Photographs show that people who enjoy the Property are not confining their use just to the public footpaths but have walked upon other parts of the Property too. I have commented on this previously herein under "Personal Observations".
74. The Photographs also illustrate that the public enjoyment of the land is not related to or dependent upon the agricultural uses but therefore represents a *separate actual use* of the land. Many of the areas where the public walk is shown by the Photographs as not designated as a public footpath but represent desire lines that are in regular use by the public.
75. One such well-established track that crosses the land that is not a public foot path, is clearly visible in the enlarged Google Earth image labelled "A" within the Photographs in Annex B as well as within those Photographs labelled P1 to

P9 inclusive. As mentioned earlier, *enlargement* of the various aerial images supplied by the Landowners also reveal the presence of this track since 1999. This track runs from point numbered 35, through points numbered 36, & 3, 4, 5, 6, 7, until reaching a public footpath at point 8 on the OS Plan in Annex B. I have measured this route digitally and have found it represents circa 800m. It is even possible to observe people walking on this track in the enlarged Google Earth image labelled "B" in Annex B. Considering my previous comments, I think this informal track may now be eligible for adoption as a public footpath by prescription and as such it is now one of the DMMO applications (Route # 1 – see Annex C).

76. Since the Original Listing and the Review Decision, I have established from an old OS Plan dating back to 1898 and published in 1900⁹ that there has been a footpath shown on some historic OS plans running through Gee's Spring & what was previously known as Sycrome Wood in a roughly west to east direction towards what is now the southern edge of Deer Park Walk which approximately corresponds with the track described above as shown on Google Earth image labelled "A". I have included an image in Annex C of the 1898 OS Plan overlaid on Google Earth showing this historic path consistent with Routes numbered #1 and # 1b in the DMMO application made in August 2019 and as described in the previous paragraph.
77. The enlarged Google Earth Images labelled "A" & "I", together with associated photographs taken at ground level also included within Annex B and labelled P10 to P17 inclusive, show that there is another well-established track around the perimeter of the northern field of the Property namely through points numbered 1, 2, 3, and 36, 37, & 38 on the OS Plan included in Annex B. I have also measured this route digitally and have found it represents circa 700m. Evidence from members of the community suggest that part of this informal track may also be eligible for adoption as a public footpath by prescription. This is reflected in the subsequent DMMO Application for the route (labelled #1c as shown in Annex C).
78. The enlarged Google Earth images labelled "C", "D" & "E", together with associated photographs taken at ground level within Annex B labelled P18 to P29 inclusive, show that there is a further well-established track around the perimeter of the southern field too, namely through points numbered 5 to 17 inclusive. This path represents a circular walk and has also been measured digitally and it represents a total round distance of circa 1,400m. Similarly, this informal path links into the adopted PROW and the evidence from the community suggests therefore that all or parts of this informal track may also be eligible for adoption as a public footpath. This is reflected in the subsequent DMMO Applications for the routes (labelled # 2, # 3 & #4 as shown in Annex C).

⁹ Source National Library of Scotland - <https://maps.nls.uk/geo/find>

79. The enlarged Google Earth images labelled "F" & "G" shows part of the well-used public footpaths leading from Lye Green Road into and across the Property. These accord with the Definitive Map of adopted public footpaths.
80. The enlarged Google Earth image labelled "H" together with associated photographs taken at ground level within Annex B labelled P31 to P36 inclusive, show that there are various tracks across the land close to the northern boundary between points 31 to 35. I have measured this route digitally and have found it represents circa 390m. The Google Earth Image "H" also shows vehicular tracks presumably made by the farmer into the field from points 30 & 31 into the middle of the field and moving up to near point 34 and I have occasionally observed the public walking or jogging along these vehicular tracks too. Accordingly, as previously mentioned, other prescriptive footpaths may now prevail here too.
81. Whilst many of the boundary fences have fallen into disrepair as previously explained the Photographs illustrate that various areas of fencing remain in disrepair today. The Photographs show that the entrance gate near point 1 on the OS Plan in Annex B was often left unlocked again until the weeks immediately after the Original Listing in July 2019. It can be seen from the images in Annex B that there are numerous other points of access into the Property either from the PROW or through the areas of degraded fencing where there are still gaps that clearly facilitate entry and exit of the land by members of the local community.
82. I have observed people entering and leaving the Property at several different places on all days and times of the week and not just via the public footpaths. These additional entry points where I have seen people entering or leaving the Property include two of the field gates or via other openings in the boundary near or at points numbered 1, 6, 12, & 29 on the OS Plan within Annex B. Photograph P39 illustrates one such point. However, I should once again comment that despite the opening in Photograph P39 prevailing for many years, again shortly after the Original ACV Listing in 2019, this opening was closed off as shown in Photograph 39A. However, as the fencing near that gate and along most of that boundary remains largely broken and neglected, I have since observed several people entering the field from other openings nearby an example of which is shown in Photographs P 39B, P 39C & P 39D. This now appears to be the most popular new point of entry into the Southern field at that point near Lye Green Road though there is also evidence of access from other points nearby too and these demonstrates that the community use of the land is continuing despite the Review Decision and the ineffective and limited efforts by the landowners to discourage such practices.
83. Aside from the public right of way beside Brushwood School, there is also a very well-established path leading into the Property from Hillcroft Road near point numbered 6 on the OS Plan as shown by Photographs P47 & P48 in Annex B which provides a convenient access into the land from those living in the wider Brushwood housing estate too. Various Photographs illustrate the extent & use of this, and I have seen many people enter or leave the Property via this route.

Unlike the opening into the land described previously, this access point has remained open and unimpeded since the Original Listing and Review Decision and given its accessibility to the large Brushwood Estate it continues to provide access into the Property for many people.

84. There are also various tracks shown in the Photographs leading up through the nearby wooded area labelled as Nalder's Wood & Gee's Spring on the OS Plan in Annex B (see Annex B - P51 to P56 inclusive) which show people walking or running through this adjoining land from which they can then enter the Property from the woods either at point number 2 or at various other places between points numbered 4 & 5 on the OS Plan in Annex B. I have included some further photographs illustrating this in Annex B labelled P49, P50, P57 & P60. All these points of access have similarly remained open since the Original Listing and the Review Decision as fencing there is old or damaged or in some cases removed.
85. The Photographs in Annex B also show that there are a many private residences that share a boundary with the Property and as previously explained, many of these residences have gates installed into their rear boundary fences to afford them easy access into the Property. There are at least 18 such gates that directly access the fields plus a considerable number more from residences backing onto Nadler's Wood & Gee's Spring Wood where there are various tracks leading into the Property. Specifically, there are private gates located at (all with reference to the OS Plan within Annex B):
- o seven homes on the west side of Deer Park Walk (between points 36 & 38 – Shown in Photographs labelled P41 to P44A inclusive),
 - o several residences along the boundary (between points 14 & 15 - Shown in Photographs labelled P25 to P 27 inclusive),
 - o two residences at point 6 (shown in Photograph P8),
 - o residences near point 11 & point 32 respectively, (shown in Photographs P22 & P31 & P40),
 - o As previously mentioned, I have also observed a number of residences in Sycamore Dene, Birch Way, Hillcroft Road and Nalder's Road whose gardens back onto Gee's Spring or Nalder's Wood where they also have rear gates giving access onto several tracks that run through the woods leading up into the fields where, I have seen people entering the Property between points labelled 4 & 5 on the OS plan attached in Annex B. Photographs labelled P52, P54 & P55 illustrate just some of these observations.

Many of these rear garden gates shown in the Photographs have also been in use for a long time (many since I moved here in 1991) and these properties may now therefore have prescriptive rights of access over the Property.

86. The Photographs also illustrate that there are two stiles at Henry Mash Court (see P33 & P34B) that provide access over the fence into the Property from the Henry Mash Court communal gardens, where I believe there are seven private

dwelling within that neighbouring development. There is no PROW leading to either of these stiles. I have regularly observed people from the Henry Mash Court properties entering the land and walking on unadopted tracks across the land either to access the public footpaths from these stiles or to access other unadopted tracks or desire lines upon the Property. (See Photos P 34c & 34D & 35)

87. Other older stiles were noted elsewhere in the Property as shown in the Photographs at locations 3 & 36 on the OS Plan within Annex B as shown in Photographs P4 & P37. Both these stiles are old and are displaced about 1m north from the well-trodden track in use today. The stile near point 36 affords access to some Deer Park Walk residents into the field. I believe these stiles may also reflect the original route of historic path shown on old OS Plans in Annex C.
88. The wooded areas of Nadler's Wood & Gee's Spring do not form part of the Property and although they are heavily wooded and have steep slopes in places, I have observed and Photographed several informal well-trodden tracks within these woods too that are not public footpaths several of which lead into or out of the Property. I have seen children playing in these woods on numerous occasions. There are a couple of informal rope swings installed on tree branches within these woods where self-evidently children can indulge in adventurous play. (See picture in Annex B labelled P53) Several residents tell me these swings have prevailed for many years and people walk to or from them via the Property using several of the informal tracks on the land that I have described herein.
89. SOCIAL & MENTAL WELLBING: One measure of the number of people who appreciate and value the Property is that in 2016 almost 1,800 people signed a petition organised by the Company calling for the land to be retained within Green Belt designation.
90. This is significant because in my professional career I am aware that most Green Belt land does not afford widespread public access. This is also true of other areas of Green Belt nearby where only limited public rights of way prevail. As such this land is most unusual as it is accessible by hundreds of people without them even having to cross a public road to get onto it. It provides an opportunity for a range of widespread informal outdoor recreational uses by the community which clearly has been enjoyed by them for a very long time.
91. Whilst the aforementioned DMMO's reflect tracks or desire lines that are so well used they may be eligible for adoption as Public Rights of Way, the actual uses by the local community and the many statements I have read from community members indicates that it is the land as a whole that represents an area where the public can undertake various circular walks and other forms of outdoor recreation whilst being in an environment where they can enjoy other features notably the *openness*, local wildlife and nature. The community have stressed to me that these various actual uses do not conflict with the other agricultural uses on the land and in fact collectively with the general openness of this natural environment, improves their well-being and mindfulness.

92. Several people that I have spoken to have told me they have regularly used the land for such recreational purposes for decades for this reason. A significant number have also written letters or made Statements of Truth submitted to the Council when seeking the Original Listing which verifies all that I have seen and described above. Significantly, many of these letters and statements also illustrate how the Property is clearly part of the identity of Lye Green too and how it serves the wellbeing and social interests of many hundreds of people living in the NE of Chesham town particularly in or close to the housing estate near Brushwood School.
93. My conversations with local people combined with all the aforementioned letters and Statements of Truth that have been received in support of the Original Listing, reveal how important this Property is to the local community in terms of furthering the health, mindfulness & social interests of the local community.
94. I have concluded from recent enquiries as well as from my informal observations made over two decades, that many people regularly use all areas of the Property for informal outdoor recreation. Various photographs within Annex B illustrate different people indulging in such recreational uses, notably Photographs P58, P59, P61, P62, P63, P 66, P67, P68 & P71 to P80 as well as P86 to P92. Such recreational uses are recognised as an appropriate use of Green Belt land within National Planning Policy. Additionally, the land preserves a sense of openness for anyone using the land whilst also preventing sprawl or any coalescence of the settlement at Lye Green into "greater Chesham", which are also key purposes of Green Belt designation in the Government's NPPF. These features are important to local residents and increase its community value.
95. I have established from speaking with local people that they also value the Property's inherent accessibility, which some regard as an oasis of tranquillity from nearby congested highways. The land also supports diversity of wildlife that some people enjoy observing or showing to their children and I am also informed by those who are ornithologists, that several rare or endangered species of birds are regularly seen on the Property as well as there being other wildlife ranging from butterflies to badgers which the community value.
96. Chesham town suffers from bad traffic congestion with poor air quality¹⁰ along Berkhamsted Road which regularly exceeds particulate levels recommended by the World Health Organisation & EU and consequently part of Berkhamsted Road nearby is a designated Air Quality Management Area (AQMA). The World Economic Forum recently published a report¹¹ indicating that studies now suggest that the number of premature deaths caused due to air pollution is more than double that of previous estimates. The young and elderly are most at risk.

¹⁰ See https://www.chiltern.gov.uk/media/12398/Chiltern-Annual-Status-Report-2018/pdf/2018_Chiltern_ASR.pdf?m=636699468075170000

¹¹ See <https://www.weforum.org/agenda/2019/04/air-pollution-in-europe-is-reducing-the-average-lifespan-by-2-years>

Aside from providing a haven from such issues, the Property also represents green infrastructure that absorbs CO2 and other harmful air particulates and as such contributes to the wellbeing of the local community.

97. Although Chesham is located within the prosperous County of Buckinghamshire, the town has a surprising number of wards categorised as "deprived" in terms of health deprivation and living environment¹² with some areas of the town also scoring badly in terms of overall levels of deprivation in stark contrast to the scores in other wards nearby also within Chiltern District.
98. Public Health England and the UK Government want to see people of all ages being more active and taking regular exercise or increasing the number of steps they walk each day. ¹³ Those in deprived areas are more likely to suffer poor mental & physical health. Informal outdoor recreation such as that being undertaken by the community at the Property is a vital part of staying healthy and keeping fit and doing so in a tranquil and natural environment also improves mindfulness and mental health. ¹⁴
99. The coronavirus pandemic in 2020 has only made access to areas where the public can indulge in informal outdoor recreation even more important. A recent poll¹⁵ recited by the London Green Belt Council and reported on BBC & ITV news, highlights that people wish to see green spaces prioritised after the coronavirus lockdown with nearly two-thirds (62%) of those living in London asserting that protection and enhancement of local green spaces should be a higher priority after the public health restrictions and with almost half (44%) reported visiting green spaces more since the start of lockdown. This accords with my own Log of Observations referred to previously. Crispin Truman, chief executive of CPRE concluded from the poll results that. *"....the coronavirus pandemic has reminded us why the countryside next door, including our Green Belts, is so important to ordinary people. More people are aware of the health and wellbeing benefits that access to green spaces delivers and support for protecting and enhancing these after lockdown is impossible for the government to ignore."*
100. I have concluded that the ability for the community to continue to have access to this area where they can exercise informally and interact with nature improves physical and mental health and thereby improves the wellbeing of the community. This is evidenced by the number of people who support the

¹² See <https://www.buckscc.gov.uk/media/4508260/deprivation-in-buckinghamshire.pdf>

¹³ See <https://www.gov.uk/government/publications/health-matters-getting-every-adult-active-every-day/health-matters-getting-every-adult-active-every-day>

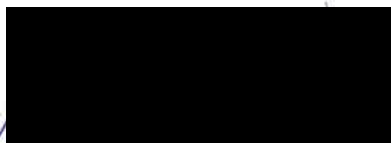
¹⁴ See <https://www.countryliving.com/uk/wellbeing/news/a180/mental-health-benefits-nature-outdoors-study/>

¹⁵ Commissioned by CPRE, the countryside charity and the National Federation of Women's Institutes (WII) and carried out by Opinium in April/May 2020- <https://www.itv.com/news/2020-05-07/people-want-to-see-green-spaces-prioritised-after-lockdown-poll/> & <https://www.cpre.org.uk/about-us/cpre-media/green-spaces-and-community-thrive-during-lockdown/>

Company and who have written letters or Statements of Truth regarding the community's long historic use of this land. Unlike many other areas designated as Green Belt where widespread public access is prohibited, this land is both easily accessible and has been habitually used for recreation for decades.

101. It is apparent from the decision in Banner Homes vs St Albans City & District Council 2018 where the Court of Appeal held that the legislative intention within the Localism Act 2011,(s 88) was plainly that 'actual use', in the statutory context, should mean what it says and it was upheld that the land should be registered as an Asset of Community value despite the fact in that case, that some uses had constituted trespass. The public uses of the land at Lye Green described by me in this Statutory Declaration in respect of this latest Nomination are very similar to the uses upheld in the aforementioned Court of Appeal "Banner Homes" decision. As with the Banner Homes case, the public recreational uses compete with the agricultural use on the Property. As has been demonstrated, they are not minor in terms of frequency or the sheer number of people enjoying those recreational uses. The recreational uses are clearly not related or subordinate to agriculture and neither do they have any relationship with the competing agricultural uses that take place upon the land. The community's use is therefore a separate actual use.
102. Even if the various informal tracks and prescriptive rights of way and accesses described herein were to be formally recognised as Public Rights of Way, by approval of the two DMMO applications, this alone would not safeguard the whole Property from being lost to large scale development. Such threats to the Property undermine its substantial community value. It is the general openness of the whole Property, with its tranquillity and access to nature and wildlife that encourages the recreational uses and public access described herein and which the community values and which thereby provides them with social and personal wellbeing.
103. The number of people who support the Company and who have donated funds since the Property came under threat from future development, is also clear evidence that the community would want the right to bid to acquire it in order to preserve the land for continued future recreational use and the social wellbeing of the local community around Lye Green & NE Chesham.
104. I have therefore concluded that the habitual use of this Property is valued by local people and that the Property furthers the social wellbeing, health, education & social interests of the local community, and it is realistic to think it will continue to do so in the next five years given the long history of public use, as well as the continuing public access not least of which is provided from the adopted PROWs that cross the land. Accordingly, I feel the Property should be listed as an Asset of Community Value.
105. I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835.

Sworn by



on

25 SEPTEMBER 2020

at

57 HILL AVENUE
AMERSHAM BUCKS HP6 5BX

Before me

S. MIR

Solicitor/Commissioner for oaths

SAAKEEL MIR



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