

THE COMMONS ACT 2006
LAND ON THE NORTHEAST SIDE OF LYE GREEN, CHESHAM, BUCKINGHAMSHIRE
SECTION 15 COMMONS ACT 2006
APPLICATION TO REGISTER LAND AS TOWN OR VILLAGE GREEN
APPLICATION REFERENCES (140 AND 141)

STATEMENT OF CASE BY APPLICANT

INTRODUCTION:

1. This Statement is made in respect of a non-statutory public inquiry being convened to consider the two applications made to Buckinghamshire Council on 31 October 2020, under s.15 The Commons Act 2006 by Brown Not Green Ltd (BNG) – (The Applicant).
2. The Council having previously advised the Applicant of two Objections, invited the Applicant to respond to both (redacted) Objections by 3 April 2022. The Applicant submitted a detailed Response on 1 April 2022 and this Statement is hereby submitted to summarise the Applicant's case. To avoid repetition, the Inspector is respectfully directed to the Applicants Response to Objections dated 1 April 2022 which addressed the Objectors comments in full and referred to the Evidence submitted at the time of both Applications in October 2020.
3. Since that time, considerable additional evidence has emerged which is described herein as Supplementary Evidence which has been submitted to the Registration Authority prior to the 30 December 2022 deadline for submissions and which will also be referred to herein as well as to numerous previously submitted documents and evidence accompanying both the applications, numbered 140 for the 15(2) application and number 141 for the 15 (3) application.

4. Given the aforementioned Objections were redacted, and the name(s) of the Objector(s) or the company they represent are also not disclosed, the Applicant when referring to the Statements of Objection (where necessary) has done so by denoting one, "*Objector # 1 - Freeths*" (being the undated Objection prepared by Freeths) and "*Unknown Objector #2*" in respect of the second redacted Objection dated January 2022 submitted by an unknown author.
5. Both Objectors make similar points and there is considerable overlap between them. The Inspector is directed to the Applicant's detailed Response to both Objections dated April 2022.
6. It should be noted that the Applicant has not been provided with some of the material that was recited by Objectors as annexed to their Objections but have assumed this to be the landowner statements with annexes previously submitted in response to the earlier ACV Nominations made under s.88 of The Localism Act 2011 in 2019 and there has been no subsequent notification by either the Council or the Objectors that this assumption was incorrect.

EXECUTIVE SUMMARY OF EVIDENCE

7. The Applicant contends in respect of *both* applications that Village Green status should be granted to the subject land because a significant number of the inhabitants of the neighbourhood within a locality, have indulged as of right in lawful sports and pastimes upon the land for a period of at least 20 years; and they continue to do so at the time of the application thereby satisfying the statutory requirements for registration as a Village Green.
8. The Applicant's separate covering letters accompanying both the s.15 (2) and s.15.(3) Applications dated 31 October 2020 (with a subsequent Addendum dated 12 November 2020), explained the reasons for the two Applications and justified the validity of both. Since then, supplementary evidence has been identified which is described herein.

9. The s.15 (3) application was made without prejudice to BNG's assertion that the Landowner Notice deposited for the larger title number BM 334723 (the Mash Land) under provisions of s.15A(1) was not properly advertised or promulgated in accordance with Regulation 4 and is thereby ineffective. In any event, the purpose of the landowner lodging the Deposit Notice was to seek to bring to an end the previous uses and to prevent future applications being made on the land, but that Deposit Notice by the landowner (if effective) itself triggers the period of grace under section 15(3). Thereafter, Section 15(C)(8) says (emphasis added) "*For the purposes of determining whether an application under section 15 is made within the period mentioned in section 15(3)(c), any period during which an application to register land as a town or village green may not be made by virtue of this section is to be disregarded*" is also engaged, as the trigger event in this case means that an application to register the land is a period to be disregarded.

10. Both Applications are supported by voluminous evidence including;

- Competed questionnaires or Statements of Truth from 71 local people all attached with OS maps & some including further photographs Fifty-Five of these Questionnaires or Statements are from people who have lived in the area or who have all used the land for at least 20 years (some for more than double that amount of time and in one case for over 85 years).
- Other letters or Statements of Truth have been provided by local people who have lived nearby for a significant period (but less than 20 years) of a similar nature confirming the variety and frequency of sports and pastimes they have observed taking place on the land some of which were submitted in relation to a previous Nomination to list the Land as an Asset of Community Value in 2019 and these are also included as they corroborate and illustrate the variety of recreational uses being undertaken upon the land and the scale of the community use.
- A Statutory Declaration dated 25 September 2020 sworn by Mr Phillip Plato MRICS that was prepared in relation to the previous Nomination under s.88 of the Localism Act seeking to list the land as an Asset of Community Value (ACV). This Statutory Declaration has been submitted as evidence with the

Annexes A to D therein which include over 100 photographs and a Log of 22 separate Observations undertaken by Mr Plato over a 17 month period from which he has extrapolated that up to 400 people per day use the land for a variety of informal recreational purposes and that the majority do not confine their uses of the land to the Public Rights of Way (PROW) that cross the land.

- A Report by BNG including a detailed Community Observation Exercise conducted by a team of local volunteers over a continuous 12-hour period on 20 August 2020 documenting the number of people they observed using the land and where they went upon the land on that date as well as the findings from a brief questionnaire conducted by the BNG volunteers on site together with Appendices therein numbered 1 to 3 which includes eight signed Statements of Truth from those same BNG volunteers who conducted this exercise. This exercise revealed that during the continuous 12-hour period on Thursday 20th August 2020, a total of 219 people were seen using the land by the team of observers in that 12-hour period. Furthermore that:
 - Just under 22% (48 people) only used the public footpaths or PROW.
 - Nearly 32% (70 people) only used the unadopted tracks or desire lines upon the land.
 - The majority, over 46% (101 people) were seen using both the public footpaths and the unadopted tracks upon the land.

Of the 48 people spoken to that day who were seen using the land,

- 56% of people questioned asserted that they used the land at least once a day or more.
 - 35% asserted that they used the land several times (up to 6 times) per week.
 - Only 8% using the land on a monthly basis or less.
- Additional and more recent Supplementary Evidence includes;
 - A Statement of Truth dated 29 December 2022 by Phillip Plato MRICS (which was intended to be presented as a Statutory Declaration but

which was unable to be sworn over the Festive Season for the TVG Inquiry) which Mr Plato has submitted on behalf of BNG with the following annexes;

- ANNEX 1 Supplementary Evidence – Being photographs taken in 2021 & 2022 including Observation Logs of unlocked gates and miscellaneous photographs of the Land and various members of the public undertaking a variety of recreational activities upon the land. This illustrates that contrary to Landowner assertions that field gates are regularly left open and that the public continue to use the land as a whole for various informal outdoor recreational activities
- ANNEX 2 Supplementary Evidence – Being results from an online Smart Survey exercise undertaken from November 2022 to 22 December 2022 with 169 Individual responses (as at 20 December 2022) submitted by local people of which 101 are from people who have been living nearby for more than 20 years (NB: Of these only 14 are from people who have *previously* completed Council Questionnaires or submitted Statements presented in evidence previously and are therefore “new” respondents - only 5 have requested their contact details are not shared with the Council).
- ANNEX 3 Supplementary Evidence – Analysis of 331 images taken by movement activated camera positioned near Ref Point #35 on a labelled OS Plan¹ for 7 days between 27th August and 3rd September 2022 illustrating that 180 people were seen within circa 80 feet of *that* location (equating to 35 people per day) and that nearly 55% of people seen were *not* confining their uses to the nearby PROW.
- ANNEX 4 Supplementary Evidence - Analysis of 250 images taken by movement activated camera between Ref Points 5 & 6 on the same labelled OS Plan taken between 27th and 29th August 2022 illustrating that 114 people were seen in less than 48 hours at this location entering or leaving the land.

¹ Being the same numbered OS Plan used within the Statutory Declaration by P Plato MRICS dated Sept 2020

- ANNEX 5 - Supplementary Evidence - Analysis of 279 images taken by movement activated camera West of OS Plan Ref Point 15 taken over 7 days between 17 and 24 October 2022 illustrating that 55 people were seen near this location during the period of the camera's operation.
- ANNEX 6 – Supplementary evidence – including some 118 images taken by movement activated cameras at other locations around the land in August & October 2022.

11. The Applicant contends that *collectively* the Evidence is persuasive and supportive of both Applications being approved and the whole of the Land being registered as a Village Green.

12. With regard to more detailed comments concerning the Applicant's Statement of Case, the following is submitted for the Inspector's consideration:

THE LAND & USES OF THE LAND:

13. Mr Plato's Statutory Declarations² with annexed photographs and the further photographs provided by the Applicant within the evidence, show people using *both* the cultivated areas and the grazing land for sports and recreational purposes. These uses primarily involve non-linear walking with or without dogs over a variety of circular or semi-circular routes over all the different parts of the land including several photographs where people can be seen walking/jogging on areas that are not a PROW³. The public uses also include running/jogging, cycling, children playing, people observing nature or wildlife or birdwatching, picking flowers, blackberries, or foraging generally as well as flying kites, radio controlled model aircraft or drones.

14. Some of the Statements of Truth submitted in evidence by the Applicant, also highlight how the agricultural activity is part of the attraction to people who use the

² See both previous Stat Decs by Mr Plato MRICS dated Swept 2020 & Dec 2022

³ See Annex B to P Plato's Statutory Declaration of Sept 2020 specifically images P34c, P34d, P35 & P61.

land. By way of (just one) example, the joint Statement of Truth by Mr & Mrs Hardy (in relation to the earlier ACV Nomination in 2019) states that,

“...we have found this land to be beneficial to our family, friends and neighbours. It provides a tranquil environment that is valued by all of us living nearby...”

Whilst the community uses of the land are largely undertaken in deference to the agricultural activities, it is apparent from various comments within the numerous Statements of Truth included within the Applicant’s evidence, that it is the *whole* of the land that is attractive to those using it to observe and enjoy the pastoral nature and openness of the fields including the agricultural activities taking place upon it. Accordingly, it is the land as a whole that nurtures the recreational enjoyment that the community derives from using the land and which makes it attractive for such lawful sports and pastimes.

15. It is acknowledged that there are two different owners of the freehold interests of the Property registered at Land Registry as described more fully within the covering letters by the Applicant to Buckinghamshire Council dated 31 October 2020. It is also acknowledged that there are several public rights of way (PROW) that already cross both titles.

16. However, it is important to emphasise that the multiple informal tracks and other well-trodden footpaths that encircle or cross the subject fields, interact with the adopted PROW’s. These are explained within the evidence supporting both Applications including photographs where effort has been made by Mr Plato MRICS in his Statutory Declaration of September 2020 to fairly differentiate between those tracks caused by long term public access, from those made by farmers vehicles or by animals walking around feeding areas and water troughs. (See specifically page 19, paragraphs 60 (20.1), a), b) & c).

THE EVIDENCE

17. Given the number of people submitting Questionnaires (55) plus personal letters, and Statements of Truth (which are *not* all from those providing Questionnaires), as

well as some 169 responses from the community to a more recent online survey (of which 101 are from people living nearby for *more* than 20 years - 87 of these are *new* respondents whose evidence has emerged *since* submitting the subject TVG applications) all of which are now included within the Applicants evidence. It is inconceivable to suggest (as the Landowner's have done), that so many people could be influenced to "distort" their recollections and yet still have such consistency in their statements.

THE STATUTORY TESTS:

18. The Applicant recognises the statutory requirements for registering land as a Town or Village Green within s.15 of the Commons Act 2006.
19. **"Lawful"** –The uses undertaken by the public are entirely peaceful. Aside from a brief period in 2001 during the Foot & Mouth epidemic, no signs have ever been displayed prohibiting public access. Gates are frequently unlocked and some boundary fences are in a dilapidated condition with many gaps providing access as well as people entering upon the land by straying off the PROW's.
20. The Applicant's Responses to Objections in April 2022, recite important caselaw which explain why the uses even of a trespassory nature are lawful.
21. The Statutory Declaration by Phillip Plato MRICS and numerous Statements of Truth by others in the community, explain that they have used the land regularly because they have seen others habitually doing so for at least 3 decades.
22. Accordingly, the activities undertaken by the community over more than 20 years are lawful.
23. **"As of Right"** – The Applicant acknowledges that for a use to be "as of right", it must have been undertaken without force, openly and without secrecy and without permission of the owner.

24. No such claim of landowner consent is being made by *either* of the 2 Objectors in this matter at Lye Green as clearly no consent or licence for public use has been given.
25. The evidence supporting the Applications includes many photographs and Statements from numerous witnesses who have confirmed their sports and pastimes on the land have all been undertaken “as of right”, openly, and without consent with some people confirming they have maintained hedges or cut the grass at various locations to access the informal tracks on the subject land.
26. There are multiple images within the evidence submitted of different people using various parts of the land in broad daylight and the Applicant contends that this is not the behaviour of people acting secretly. Indeed, as mentioned in the landowner statements submitted in response to the earlier ACV Nomination of 2019, the landowners confirm that the farmer and the landowner have been aware of incidents of people walking on the land but away from the PROW’s⁴. It is apparent that the public were not enjoying themselves upon the land by stealth: on the contrary, they have used the land openly.
27. All the Statements of Truth relating to the s.15 Applications provided by people who have all lived in the locality for more than 20 years assert they have *never* been told not to continue their respective sports and pastimes on the land until relatively recently.
28. The Statutory Declaration by Mr Plato dated 25 September 2020 further explains recent events and the historic lack of any action to prevent public access and that where action has *recently* been taken by the landowners, it has been done belatedly only after local people have enjoyed more than 20 years access and use of the land.

⁴ See Statutory Declaration by Mr Fitzgerald dated 21 June 2019 page 4, ii, - ...”*I have personally informed persons politely on several occasions, I have seen straying from the public footpaths, to observe normal courtesy and act responsibly... I am informed by Harvey Mash that he also informs persons likewise as he farms the land.*”. Mr Harvey Mash confirms likewise in his Statutory Declaration also dated 21 June 2019 (page 2 para 6) - *Attachments numbers 5 & 6 herewith*

29. This is confirmed in the Statements of Truth submitted by 55 people who have lived in the locality for more than 20 years, which is further corroborated by 29 further Statements from other local people who have lived locally *less* than 20 years but who have lived nearby for on average of 12 years that were also submitted by the Applicants within their evidence. Additionally, there are 169 responses to the recent Smart Survey (101 of whom have lived nearby more than 20 years) who likewise confirm that people have openly enjoyed freedom to use the land with no attempt by the landowners to dissuade people from using the land until relatively recently. It is apparent that despite the landowners belated attempts to close off certain points of access, that community use of the land still prevails despite these tardy efforts by the farmer, either by means of the public entering the land via other gaps in hedges or broken fences or simply via deviation from the PROW's.

30. No signs have *ever* been evident upon the land requiring the public to remain only on the PROW or keep out (other than during times of foot and mouth outbreak) and matters are further complicated by the presence of rear garden gates from many of the homes surrounding the fields. Many of these homes may have acquired rights of prescription over or across the land.

31. The Applicant suggests that no force is necessary in order to access the land given that agricultural field gates have either habitually been left open or unlocked (as shown in the evidential photos P23, P38 & P39 annexed to Mr Plato's Statutory Declaration of September 2020 and his supplementary evidence dated December 2022) as well as the fact that there have been various openings around the field boundaries and because there are so many other broken fences around the fields that prevail to this day⁵ to provide access. These are illustrated in many of the photographs within the Applicant's evidence and which can still be observed by any site inspection that might be undertaken at the present time.

⁵ See Pics numbered P6, P7, P11, P14, P23, P39, P39B, C & D, P47, P48, P49, P50, P57, P60 & P83 within Annex B of Mr Plato's Statutory Declaration dated 25 Sept 2020

32. Anyway, as “Objector #1 – Freeths”, acknowledge themselves in paragraph 84 of their Objection,

“Force is largely unnecessary to enter onto the land on the public footpath network since the footpaths afford access to it.”

33. Accordingly, there has been no “force” to access the land as access is openly available from the footpaths and the many gaps in fences and the community’s use has been conducted openly and without consent, namely “as of right”.

“Significant number of the inhabitants of the locality” -

34. The Applicant contends the locality or *neighbourhood within a locality*, must be assessed in its proper context particularly whether there is a “*sufficient degree of cohesiveness*” in a neighbourhood as per the referenced *Cheltenham Builders v South Gloucestershire Case*⁶ where it was decided that,

“The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word “neighbourhood” would be stripped of any real meaning.”

35. A Ward Map of Chesham is included within the Evidence that shows that the Townsend ward is not adjacent to or in immediate proximity to the subject land. The Ward Map shows that the fields at Lye Green are bisected by the Ward boundaries of *both* Hilltop & Newtown Wards. Townsend Ward is located to the south of both Hilltop & Newtown Wards.

36. The Applicant contends that it is the “neighbourhood” *around* the subject land that is the proper and relevant area to assess in terms of this test rather than any Ward boundaries as is borne out by the Evidence which illustrates that there is a “*sufficient degree of cohesiveness*” around the more immediate neighbourhood typified by the catchment area of Brushwood School.

⁶ See para 85 of *Cheltenham Builders v South Gloucestershire Council [2003] EWHC 2803 (Admin)*.

37. The more recent Smart Survey exercise commissioned by BNG⁷ reveals that nearly 80% of all respondents are from Hilltop & Newtown wards and over 98% of respondents agreed that the “neighbourhood” *around* the subject land *is* the proper and relevant area to assess in terms of this test (as shown on the OS Plan submitted within in Evidence and also available to Smart Survey respondents to access) .
38. The Applicant’s detailed assertions regarding the neighbourhood within a locality are detailed within the Applicant’s Response to Objections dated 1 April 2022.
39. The Registration Authority is of course free to determine the appropriate area having regard to the evidence which may involve reliance on a different neighbourhood or locality. - *See Sullivan J in Laing Homes at [143]*⁸.
40. The Applicant therefore contends that, in terms of the subject village green applications, the “neighbourhood” within the locality is therefore represented collectively by *the* areas, of Hilltop Ward, and other *areas* within the NW of Newtown Ward including Lye Green. The Applicant has submitted a plan illustrating these areas which has also been made accessible to *all* respondents of the recent online Smart Survey.
41. The Applicant therefore believes that these areas are collectively the most relevant to consider when appraising the “neighbourhood” within the locality of the subject land.
42. The areas previously referred to herein which the Applicant contends to represent the relevant “neighbourhood”, probably represents a maximum combined population of between 1,500 to 2,000 people given that the number of registered voters in Hilltop Ward in 2021 was 1,399.

⁷ See Annex 2 of Supplementary Evidence within Mr Plato’s more recent Statement of Truth dated Dec 2022

⁸ See *R on Application of of Laing Homes vs Bucks County Council [2003] EWHC 1578 (Admin)*

43. When taking the evidence of the number of people believed to using the land every day that has been presented by the Applicant, this represents between circa 18% and 27% of those living in the “locality” of the Hilltop & Lye Green areas in the “neighbourhood”. Therefore, the Applicant contends that the number of people using the subject land is a sizable proportion of the neighbourhood around Lye Green and Hilltop Ward and as such satisfies the “test” of being used by a significant number of the inhabitants of the locality. In comparison to other decided cases, the numbers of people using the land for sports and pastimes at Lye Green Chesham is very much higher than several of those cases and the Applicant respectfully suggests therefore that this test is also satisfied.

“Whether use is continuing or had ceased within 12 months as at date of Application” –

44. This is a matter of fact, and the Applicant contends the evidence of lawful sports and pastimes is voluminous and illustrative of a wide variety of informal outdoor recreational uses constituting lawful sports and pastimes that have prevailed over more than 3 decades and which are shown to continue to this day.

45. This assertion is further demonstrated by the Supplementary Evidence presented by Mr Plato in his recent Statement of Truth involving nearly 900 additional photographs (or clips from short videos) showing lawful sports and pastimes being undertaken at various points around the land as recently as December 2022.

46. Whilst it is acknowledged that specific uses such as cricket or horse riding referenced by some older persons offering evidence may have now ceased, they point to a pattern of long-established or customary community recreational uses having been enjoyed *upon all of the land* and such historic uses should not be considered in strict isolation.

47. The point is that a wide variety of lawful informal recreational sports and pastimes uses have been undertaken by custom upon the land and many continue to this day.

48. Various cases recited within the evidence or the Applicant's Responses to Objections demonstrate that there is no requirement for the Applicant to demonstrate that *all* parts of the land are used for lawful sports and pastimes. However, the Applicant contends that the evidence submitted demonstrates that a significant proportion of the land *has* been used for lawful sports and pastimes and statements from local people indicate that the land is enjoyed *as a whole*.

49. Similarly, caselaw confirms there is no justification in the Objectors claims that the agricultural use of the land is "incompatible" with village green status as previously explained within the Applicant's Responses to Objections. If Government had intended there to be a compatibility test, it would have included it within the legislation. If golf courses, coastal shoreline, inland lakes, airports and commercial harbours are "compatible" with being registered as village greens, then the Applicant contends that the subject agricultural land within Green Belt designation must likewise be "compatible".

50. **CONCLUSION:** The Objectors statements offered no convincing justification for refusal of the subject applications under s.15 of the Commons Act 2006. Conversely, the weight of evidence presented by the Applicant is voluminous, detailed and clearly demonstrates on the balance of probabilities that a significant number of people in the neighbourhood have customarily exercised lawful sports and pastimes upon substantial areas of the land and have enjoyed the land as a whole for over 20 years and that such uses have been conducted openly, without force or permission and still prevail today. As such the land should be registered as a Village Green.

Submitted on behalf of Brown Not Green Ltd

29 December 2022