

COMMONS ACT 2006, SECTION 15(4)

APPLICATION NUMBER TVG/2008/01 FOR THE REGISTRATION OF LAND AT BRIXHAM AS A TOWN OR VILLAGE GREEN

INSPECTOR'S REPORT AND RECOMMENDATION TO THE REGISTRATION AUTHORITY –TORBAY COUNCIL

The Application Site

1. The application site is located on the south-eastern outskirts of Brixham close to the coast at St Mary's Bay. It is a rectangular-shaped field of about 3 acres and is owned by Mudstone LLP (*'the Objector'*) which objects to the application to register the land as a new town or village green (*'TVG'*). Title is registered under title number DN394231 and office copies of the Objector's registered title (with accompanying filed plan) will be found in the Objector's bundle at pp.8-1. For ease of reference, this bundle will be referred to in this report by the initials OB, followed by the particular page reference. The position is the same in relation to the commons registration authority bundle which will be referred to by the initials RAB.
2. The application site is known by at least 3 names, namely Wishings Field, Pathfields and Weststar Field. For ease of reference, I shall refer to such land in this report as either *'the application site'* or *'the field'*.
3. The application site is bounded by a partially completed residential development known as Sharkham Village (formerly the site of the Dolphin Bay Holiday Camp) to the south, by the gardens of the properties at the end of the cul de sac at Higher Penn to the west, by the Riviera Bay Holiday Camp to the east (which I believe may be owned by an organisation called Cinque Ports which also currently leases the application site from the Objector) and the rear

of a number of properties fronting Wishings Road to the north. It should be noted that the eastern end of Wishings Road (and the road is uphill as one travels east) opens onto an open area of rough ground at a higher than the road itself through which there is a well-worn track that leads (via what seemed to me to be a well-established gap in an old hedgerow) directly onto the public footpath which, after only a matter of yards, takes you into the application site which it then crosses from east to west. This footpath is designated Footpath Number 9 on the definitive map for the area (see RAB/ Part 1) and is only a short distance away from the southern end of Mudstone Lane. The public footpath leaves the application site on its south-western side before running downhill alongside the rear of those properties lying on the south side of Higher Penn until it joins the public highway at Briseham Road. These entry points are the primary means of access onto the application site which is largely fenced.

4. The application site slopes downhill from south to north. It falls roughly 10m from top to bottom (see OB at p.115). The main feature on the application site now, that is, since its erection in around February 2007, is the fence which encloses the footpath crossing the field. Photographs of the fence will be found in OB/132-137. The aerial photo at OB/136 shows that, in all probability, the new fencing does not coincide with the original route taken by the footpath which, on the face of it, did not run in anything like a straight line across the field. Although at the outset the fencing would have prevented access onto the field on either side of the fencing, my understanding is that it was not long before two openings were forced in the fencing on its southern side. To all intents, the public now has unrestricted access to the whole of the field to the south of the fencing as one retreats back up the slope towards the boundary with the Sharkham Village development site. Any access to the north of the fencing on the lower slope would involve clambering over the fencing or, more likely, the gate which lies mid-way along the footpath which has a padlock and chain. I was not provided with any precise measurements of the width of the field from east to west but I would judge it to be in the region of 200-250 yards. At its widest point, which is on its eastern side, where the field abuts

the holiday camp, the distance is likely to be in the region of 100-150 yards. Running up this boundary there is a concrete path which lead directly into what at one time had been the Dolphin Bay Holiday Camp site (now Sharkham Village).

5. The application site is generally unkempt. When I viewed it in the winter months the grass was in clumps whereas when I returned in the early summer the uncut grass was much longer. I have visited the application site now on three occasions. My second visit took place on 6/02/09 when I walked around the field and the local area with representatives of the Applicant and the Objector. I later typed up my notes of this visit which I circulated amongst the parties.
6. I observed on this visit that there was nothing on the ground to show that the public footpath ran anywhere other than between the existing fencing. The path was not made up and in places was quite muddy under foot. For instance, no scalplings, gravel or other compacted materials have evidently been put down on the path making it easier to walk upon. The fencing is substantial and was intended to be stock-proof. The fencing was, however, down at the Mudstone Lane end on its north eastern side (broken remnants of the former fencing were still in situ on the ground and it was easy to walk over) enabling access to be gained up the concrete path which runs up the slope on the eastern boundary where it abuts the holiday camp. The gate on the south side of the footpath, roughly mid-way along its length, had also been removed but the gateway opposite was still in position and we had to clamber over it to get access on this side. There was no apparent footpath on the northern perimeter of the field nor on the southern perimeter either at the top end of the field although it was pointed out to me that there might have been a walkway between a corridor of trees which ran part way along the top of the field. This was unclear and the undergrowth was too heavy for any closer inspection.
7. At the upper end of the field, close to the opening into the Sharkham Village development, the field has been terraced as there are two level areas, one

larger than the other which is lower down the slope. The larger (and higher) of the two level areas would, in all probability, have been wide enough to accommodate substantial free-standing objects on the ground which is, nonetheless, decidedly uneven. The top end of the field is, however, exposed and windy and it is probable that any tall structure in this location would have to be secured very firmly to the ground on all sides or may even have had to be constructed off a level platform or decking of some description about which there is admittedly no evidence. The two terraced areas are separated by a small embankment. I cannot imagine that either of these two relatively level areas to the south of the fencing would be suitable for ball games and the slope and general unevenness of the field as a whole makes it unlikely, in my view, that it would have been suitable for organised sports. On any reckoning, the field would undoubtedly be suitable for informal recreation such as dog walking or as a rough patch of land for children to play and run around on and the undergrowth at the bottom end of the site would be exactly the sort of place where children would be expected to make dens for themselves. Reference should again be made to the plan in the OB/115 in relation to the topography at the top of the field.

8. As already indicated, Sharkham Village is only partially developed. Work on the eastern half of the development, say from a point roughly due east from the top of the concrete path, has seemingly been suspended or at least has slowed down recently. I gather that the proposed development of the site would be known as Phase 7 of the overall development on both sites.
9. The top of the concrete path which led into the former Dolphin Bay Holiday Camp site was apparently bricked off in 1992 following the closure by fire of the holiday camp. I was not told when this point of access into the field was re-opened but it may well have coincided with what I understand to be the fairly recent development of Sharkham Village at which point the development site beyond the ridge was, in all probability, enclosed behind *Herras* fencing but would still have left sufficient for access towards the coastal footpath (i.e. Footpath No.8) which, until it reaches the coastal footpath, has only ever been informal and / or may even have been closed off anyway with *Herras* fencing

long before the path connects with the coastal footpath, such that any access into the old holiday camp site would have had to be forced.

10. It is much easier to access the coastal path via Mudstone Lane than from the ridge of the application site unless, perhaps, you specifically want to walk to Sharkham Point. Berry Head is in the opposite direction. There are public footpaths running along the coastline. I was told that there is a car park at Sharkham Point and it would be much easier to drive up to the car park and then walk around Sharkham Point. The walk to Sharkham Point, via the ridge of the application site, would, as it seems to me, be much more difficult for elderly or less mobile users even if they had unimpeded access. The informal path is, however, a better access to the beach at St Mary's Bay. This is the only sandy beach in Brixham and is a popular local feature.
11. Evidence was given, both written and oral, by a Mr Daniel Salt who is the Managing Director of Millwood Homes (Devon) Ltd (*'Millwood Homes'*) which acquired an option to purchase the field from the Objector on 2/02/2007. It was following the acquisition of its option to develop the land that Millwood Homes erected the above-mentioned fencing along with various signs attached to such fencing indicating (as he puts it in his statement in OB/106) that the field was private property. None of these signs were available for inspection. In his oral evidence Mr Salt said that planning permission in principle has been agreed for the development of 48 houses on the application site (a development which he said would include a mix of affordable and social housing), subject to the execution of an acceptable section 106 agreement with the planning authority (which is Torbay Council) which he said was on the verge of being signed. The proposed access to the new development will be on its south-western side, via the existing access into Sharkham Village, which is called St Mary's Hill and which runs parallel with Higher Penn.
12. I shall be dealing with the history of the application site and the surrounding holiday camps later, but if one looks at the copy of the Objector's filed plan in OB/11, the field abutted what was then known as Homelea Camp. The

concrete path running along the eastern boundary of the field (described on the plan as '*Playing Field*') is delineated on the filed plan and on inspection I was shown the point along this boundary where there was once a pedestrian access between Homelea Camp and the field which has been boarded up. The access would have been no wider than around a yard. The area on the Homelea Camp side of the gateway was not viewed. This entry lies towards the start of the concrete path. At the top of the slope there are double gates leading into the Homelea Camp site which were closed.

13. In contrast to the approximately straight boundary shown on the plans, the alignment of the physical boundary between the field and the adjoining properties in Wishings Road is not particularly clear on the ground. This is attributable to the heavy undergrowth and the rather chaotic fencing arrangements which appear to exist at the rear of most, if not all, of the affected properties in Wishings Road. Indeed, it is fair to say that most of the periphery of the site to the north of the fencing (i.e. abutting the rear of the affected properties in Wishings Road and at the end of Higher Penn) is covered with impenetrable undergrowth although it was, as I recall, possible to go right up to the fencing in the case of two or three of these properties on Wishings Road.
14. There was, however, a good deal of dumped rubbish on the field in the vicinity of the boundary with the rear of the properties in Wishings Road. This is unlikely to be of recent origin. A number of dumped tyres could also be seen in the field to the south of the fencing. I had not seen these tyres on my previous visit on 22/01/09. It is probable that children are using some or all of the accessible space close to the rear of some of the properties in Wishings Field as a play area.
15. There was no evidence of the any older signage within the field to which reference was made in the evidence given at the inquiry. I asked whether any old nail holes or fixings had been found but nothing was available for inspection. At the Mudstone Lane end, undergrowth (mainly ivy) covering the walling was heavy and had not been cut back. At the Higher Penn end of the

public footpath there was a defaced sign that was recent, i.e. post 2007. Someone had also put down some clay chippings to make walking easier at this end of the footpath which, as already indicated, runs alongside the rear of the properties fronting onto Higher Penn before leading into Briseham Road.

16. Moving further away from the land, the playing field at Mudstone Lane (which I was told was developed within the last 5-7 years – and judging from the age of the new dwellings this seemed likely – see *'Playing Field'* marked on OB/11, to the west of Mudstone Lane) was the pre-Weststar sports field for St Mary's Holiday Camp which at one time occupied the land to the east of Mudstone lane. The Weststar history will be dealt with later but this organisation (namely Weststar Holidays Ltd – *'Weststar'*) never took a title to this field. The Objector says this explained the importance to Weststar of the application site, not least in relation to the schools' business (with which I deal later). I should add at this point that a Mr Brian Meaden, a former director of Weststar and partner within the Objector's business, told me that informal recreation near the pool and tennis court shown on OB/11 was less desirable because of its proximity to local housing. This area was mainly used for swimming sports and, occasionally, archery. I did not visit this area.
17. The development to the north and west of the field (except for the housing on the former playing field off Mudstone Lane which is recent) i.e. within Wishings Road, Penn Meadows, Penn Lane, Higher Penn, Queen's Crescent, Edinburgh Road, Sellick Avenue, Briseham Road, Briseham Close and Metherell Avenue (all streets in close proximity to the application site), are likely to have been developments dating back to the 1950s and 60s. There is little doubt in my mind that the application site, which is enclosed and well away from passing traffic, is located at the edge of what I took to be a heavily populated area and would be a relatively safe haven for children to play on and for locals to walk with their dogs. On the accompanied site visit we walked as a group in the immediate area and afterwards I drove further afield and am confident that I had seen as much of the general area as was necessary. I repeated this exercise when I visited the application site (unaccompanied) for a third time on 5/06/09.

18. I should also mention that there are four small roadside greens abutting Penn Meadows (on both sides of the road). The largest is that lying in front of Nos.10-16 on the northern side of the road. The other 3 greens are small verges at the western end of Penn Meadows on its southern side. It would not be safe for small children to play on any of these greens because of the volume of passing traffic.
19. Before I close on my description of the application site and its environs, I should also mention two things:
 - (a) When I first visited on 22/01/09 I observed two fairly indistinct tracks in the grass on the south side of the right of way running in a curve down slope between the concrete path and the south west corner of the site. I cannot recall whether they were evident on my accompanied visit on 6/02/09. I noted on a plan where I saw these tracks which I showed to the parties at the inquiry. On my third visit I observed tracks through the long grass from the upper reaches of the concrete footpath. On my first visit I had observed a handful of dog-walkers, possibly as many as 4 or 5, who were walking off the footpath upslope, having entered the field, as I recall, from the entry point at the Mudstone Lane end. On my third visit on 5/06/09 I also observed two individuals walking their dogs in the field to the south of the fencing.
 - (b) In view of the delay since the end of the public inquiry on 20/03/09 and my second visit to the site on 6/02/09, I visited the application site and surrounding area for a third time on 5/06/09 in order to satisfy myself that my recollection of what I had observed on my earlier visits was accurate.

History of the application site and its association with local holiday camps

20. It may be convenient to refer to the plans at OB/26/27. The plan at OB/26 shows edged in green the former Dolphin Bay Holiday Camp (which I shall refer to hereafter as the '*Dolphin Camp*'). To the north of this camp one sees

Homelea Camp (which I shall also refer to hereafter as '*Homelea Camp*') which later became incorporated in the St Mary's Bay Holiday Park business (which I shall refer to hereafter as '*St Mary's Camp*'). I gather that Homelea Camp was the area within St Mary's Camp which was set aside for self-catering holidays whereas the remainder of St Mary's Camp provided all the facilities that one might expect of a traditional family holiday camp. The application site abutted Homelea Camp and was used by holiday makers at this camp and, I suspect, to a much lesser extent, by those at St Mary's Camp. As already indicated, the combined Homelea / St Mary's Camps are now known as the Riviera Bay Holiday Camp.

21. It is known that in October 1962 the application site fell within the curtilage of a much larger parcel then owned by Dolphin Holiday Camps Ltd ('*DHC*') as part of its Brixham holiday park portfolio which included (i) the Dolphin Camp (ii) St Mary's Camp, and (iii) the self-catering chalets within Homelea Camp.
22. In 1962 Pontins Ltd ('*Pontins*') purchased the holiday camps of DHC in Brixham.
23. Sometime in the 1970's St Mary's Camp and Homelea Camp merged to become the St Mary's Bay Holiday Park. (It is perhaps worthy of note that before they merged these camps had separate sports fields. The application site is alleged to have been the sports field for Homelea Camp. After the merger, however, they used the facilities at St Mary's Camp in the case of, say, inter-camp sports.)
24. In April 1995 St Mary's Camp and Homelea Camp (including the application site) was sold by Pontins Ltd and Scottish & Newcastle PLC to Manor Parcs Ltd.
25. In 1998 Weststar purchased St Mary's Bay Holiday Park, including the application site, from Manor Parcs Ltd.
26. In 1999 Weststar applied for planning permission at St Mary's Camp which included the addition of parking facilities on the application site. This is covered in the evidence of Andrew Thomas whose statement for the Objector

will be found in OB/110. Planning permission was granted under a decision notice dated 2/03/2000 which, had it been implemented in relation to the land (which it was not), would have enabled Weststar to use a portion of the north eastern part of it (in the area of the entry point into Mudstone Lane, an area measuring some 40m x 50m – as roughly shown on Mr Thomas’s plan at OB/115) for additional parking. (I should mention at this point that I attach no significance to the failure of any local inhabitant to oppose this application as I think it unrealistic to attribute to such persons any detailed knowledge of what the application entailed.)

27. In 2001 Weststar sold St Mary’s Bay Holiday Park (excluding the site) to Landscope Holidays Ltd (*‘Landscape’*).
28. On 14/02/2004 the Objector purchased the site from Weststar.
29. On 14/02/2005 the Objector granted a lease of the site for a term of 5 years to Landscope. A copy of this will be found in the OB/63. The permitted use under the lease is described as being *‘for the purposes of an open space utilised by the Tenant in connection with the business operated by the Tenant at St Mary’s Bay Holiday Park which adjoins the premises’*. In the result, when the application to register the application site as TVG was made on the current application, which is dated 2/04/2008, it was available for use by Landscope as part of its adjoining holiday camp business.

The town green application – there have in fact been two applications to register since 2007

The first application

30. The first application was made by a Mr Ronald Lovell and was received by the commons registration authority on 28/08/07. The application was accompanied by a number of documents to which reference will be made

later. It was however withdrawn on the ground of Mr Lovell's ill-health. The documents comprised within this application will be found in RAB/tab 8 and Mr Lovell's letter to the commons registration authority dated 3/03/08, in which he says he is withdrawing his application and that he wanted his documents returned, will be found in RAB/tab 9.

31. I asked Mr Blohm QC, who was acting for the Objector, at the start of the public inquiry for his submissions on how I should deal with the evidence comprised within the first withdrawn application to register and he indicated that it was entirely a matter for me although he said that the fact that the application was withdrawn was likely to (as he put it) *'impinge on its weight'*. He is clearly right about this and I will only return to this evidence after having addressed the written and oral evidence which was adduced on the second application to register.

The second application

32. On 2/04/08 Mr Malcolm Edward Efford applied under section 15(3) of the Commons Act 2006 (*'CA 2006'*) to register the site as a new green. Pausing there, I gave Mr Efford permission to amend his application to substitute section 15(4) for the reference to section 15(3) in paragraph 4 of his application form (see direction at 7.1 in the directions which I gave on 11/09/08). Section 15(4) applies to a case where the usage ceased before the commencement of the section (i.e. before 6/04/07) whereas section 15(3) applies where the use ceased after this date and the application is made within two years of such cessation (the period of grace under section 15(4) is five years). In this case the usage ceased in February 2007 which means that the application should have been made under section 15(4).
33. The application was in the prescribed form 44. The application form (see RAB/tab 4) contained the following entries:

- Question 1: the form was addressed to Torbay Council as the commons registration authority.
- Question 2: Malcolm Efford gave his name and address as applicant.
- Question 3: was left blank as he was not acting through solicitors.
- Question 4: the application was based on CA 2006 s.15(3) (later amended to s.15(4), as already explained).
- Question 5: the application land was stated to be usually known as follows: *'Known by older generations as "Pathfields"; younger generations as "Wishings Field" and developers (Millwood Homes (Devon) Ltd) as "West Star"'*. A scale map was attached.
- Question 6: the relevant locality or neighbourhood within a locality was described as *'In the electoral ward of St Mary's with Summercombe'*. A street map of this ward (and of the adjoining ward to the north, namely *'Berry Head with Furzeham'*) will be found at RAB/Part 3.
- Question 7: the justification for the application was said, in summary, to be recreational use for at least 60 years until February 2007 when the public right of way through the site was fenced off on both sides.
- Question 8: identified Mudstone LLP as the owner.
- Question 9: was not relevant (dealing with voluntary registration).
- Question 10: Mr Efford stated that *'Witness statements'* and *'letters of support'* were to follow and a schedule of documents was later received by the registration authority on 22/04/08 identifying 19 witness statements and 17 letters of support (which I will consider in more detail below)

34. The application was publicised by the commons registration authority in accordance with the regulations (*The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007*). The publicity notice invited objections and the only objection received was from Mudstone LLP, as owner of the site.
35. The main points taken by the Objector were as follows:
- There had been no sufficient user by local inhabitants as a matter of fact to justify registration.
 - Such user as there had been (if any) would not have brought the existence of the claimed right to the attention of the landowner.
 - Such user would not have been '*as of right*', being (at times during the relevant period of 20 years) contentious or permissive or secretive.
 - The alleged use, having ceased by February 2007, does not fall within the ambit of section 15(3) of the CA 2006.
 - The '*locality*' claimed to benefit from the right is not a locality for the purposes of section 15 of the CA 2006.
 - Neither is this area a '*neighbourhood*' within the meaning of section 15.
36. I was instructed by Torbay Council (as commons registration authority) on 15/08/08 after which I gave directions (No.1) dated 11/09/08 dealing with procedure at the public inquiry. For the record, I gave further directions on 3/11/08 (No.2), 26/01/09 (No.3) and 10/02/09 (No.4).
37. In his letter dated 14/11/08 the applicant notified the commons registration authority that he wished to withdraw his application to register the site as a TVG on health grounds but (and as he put it in his letter) '*I still strongly believe with the evidence I have that the open green space known to me throughout my life as Pathfields and others of a younger generation as Wishings Field would have become a Town/Village green as has been the case since 1948*' (see RAB/Part 5/84-B54). However at a meeting of Torbay

Council on 11/12/08 members resolved unanimously to refuse the applicant's application to withdraw his application as the Objector opposed the application and there was also sufficient public interest in the application being determined. The commons registration authority were advised by me that they had a discretion either to take no further action on the application (i.e. to allow it to be withdrawn), or to go ahead with the public inquiry and to determine the application based on the evidence available and this is what the members resolved to do. The commons registration authority duly issued a public notice to this effect in the local press to ensure that anyone who wished to make submissions to the Inspector at the public inquiry (either in support of the application to register or otherwise) could do so.

38. The public inquiry was held over 5 days at Brixham Theatre, New Road, Brixham, TQ5 8TA, on 4, 5 and 6 February and on 19 and 20 March 2009.
39. Representation at the public inquiry was as follows:
 - The applicant, Mr Efford, was represented by Keith K. Polyblank and Martin Piper both of whom, I gather, are friends of the applicant but are not lawyers.
 - Mr Leslie Blohm QC appeared for the Objector, as owner of the land, and was instructed by Stephens Scown, solicitors, of Curzon House, Southernhay West, Exeter EX1 1RS.
40. I would like to thank the parties' representatives for their very careful and helpful presentations of their respective cases. I would also particularly like to thank Ms Claire Ammar of the commons registration authority who made all the administrative arrangements for the public inquiry with exemplary efficiency.

New Greens: Law and procedure

41. Section 15(1) of the CA 2006 enables any person to apply to the commons registration authority to register land as a TVG in a case where subsection (2), (3) or (4) applies.

42. Section 15(4) applies (albeit subject to subsection (5) whose disapply provisions are not material on the current facts) where:

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

(b) they ceased to do so before the commencement of this section; and

(c) the application was made within the period of five years beginning with the cessation referred to in paragraph (b).'

In this case, as already explained in paragraph 32 above, the criteria laid down in subsections (b) and (c) are satisfied. It then becomes necessary to analyse what is meant by the various elements of the qualifying criteria laid down in section 15(4)(a).

43. ***'a significant number'***

This term has never been defined but in *R v Staffordshire County Council, ex parte Alfred McAlpine Homes Ltd [2002] EWHC 76 (Admin)* Sullivan J (as he then was) said (under the heading *'My Conclusions'*) that *'significant'* did not mean a considerable or a substantial number. He said that the correct answer is that what matters *'is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers'*. It is, therefore, very much a matter of impression from the evidence whether the usage relied on is by a *significant number of the inhabitants of any locality or of any neighbourhood within a locality*.

44. In the *McAlpine Homes* case Sullivan J also said this:

'84. It is difficult to obtain first-hand evidence of events over a period as long as 20 years. In the present case there was an unusual number of witnesses who were able to speak as to the whole of the period. More often an inspector at such inquiries is left with a patchwork of evidence, trying to piece together evidence from individuals who can deal with various parts of the 20 years period. In the present case, however, the evidence of the 6 witnesses who were able to cover the whole 20 year period was amply supported by many other witnesses who dealt not simply with the last few years but with a very considerable part of the 20 year period, some of them going back almost 20 years, some going back to times before the 20 year period began ...

In addition to the oral evidence, the inspector had the written evidence. Clearly, he had to treat that evidence with caution because it was not subject to cross-examination but, having looked at the totality of that evidence, he was entitled to conclude that it was largely consistent with and supportive of the oral evidence given by the applicant's witnesses to the effect that many local people from Leek had been using the meadow for informal recreation for more than 20 years without permission or objection ...

In addition, the inspector was entitled to have regard to the matters set out in paragraphs 7.3 to 7.8 of his report: that is to say, the meadow is within easy walking distance from the centre of Leek. There are footpaths leading to it. It is beside the Ladydale Well, which is a well-known local attraction. It is very easy to get into the Meadow from Ladydale Well over the stile. There is also the Carriage Drive Gate, which the inspector concluded was rarely locked and sometimes open. There were no signs forbidding entry and generally the surrounding circumstances were entirely consistent with the contentions of the applicant's witnesses that people were using it for informal recreation: there was an absentee landowner: the land had little agricultural value; the agricultural licensee had little interest; and so forth ...

In short, all of the pieces of evidence referred to above pointed in the same direction. That is to say that there had indeed been use for 20 years or more by a significant number of the inhabitants of Leek and of the adjoining estate.”

45. In the *McAlpine Homes* case the Inspector had concluded that substantial use had been made of the land for informal recreation for more than 20 years before the application. He referred specifically to six of the witnesses who could give evidence covering the whole of the 20-year period. The objector had argued that six out of a population of 20,000 was not a significant number. The judge accepted that if all of the six had said that they had not seen others on the land over the 20 year period, then it would be difficult to see how six out of 20,000 or one out of 200 could be said to be significant. But the judge said that the fact of the matter was that the six did not give such evidence: they were able to give evidence, not merely about what they did themselves, but what they saw others doing on the land over the 20-year period.
46. The claimed locality in the *McAlpine Homes* case was the town of Leek in Staffordshire which at that time had a population of 20,000 and the Inspector had concluded that the claimed green had been used for recreational use by a significant number of the inhabitants of the town. The judge also concluded that the Inspector had approached the matter correctly in saying that ‘*significant*’, although imprecise, is an ordinary word in the English language and little help was to be gained by trying to define it in other language. In addition, the judge found that the Inspector had correctly concluded that, whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the land for informal recreation was very much a matter of impression. What matters, as the judge determined, was whether the number of people using the land was sufficient to indicate that the use of the land was (as already explained) ‘*in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers*’. In short, where the locals’ user is insignificant, in the sense that it is merely trivial or sporadic, then it is unlikely to be qualifying use.

47. In dealing with the issue of '*significant number*' I intend to approach the matter from the standpoint of whether the evidence as a whole indicates, on the balance of probabilities, that a *significant number* of local inhabitants from the claimed locality are using the site for informal recreation. We are, in this case, not dealing with a locality as large as Leek. The claimed locality, which is alleged to be a local electoral ward, is obviously less populous, although I was not presented with any statistics dealing with this, and I shall simply judge this issue as best I can on the basis of the available evidence and from my own observations of the area.

48. ***the inhabitants of any locality, or of any neighbourhood within a locality,***

The origins of this lay in the fact that that it has long been the common law of England, before the law changed in 1965, that a customary right to indulge in *sports and pastimes* could only exist for the benefit of some legally recognised administrative division of the county otherwise it would be termed a *right in gross* which would be a right without limit on the number of people using it which could not support a claim to a TVG. Indeed, in *Ministry of Defence v Wiltshire County Council [1995] 4 All ER 931 at 937b-d, per Harman J*, it was held (following *Edwards v Jenkins (1896) 1 Ch 308*) that a *locality* had to be an administrative area known to the law. There is no case law to suggest that an electoral ward can be a locality within the meaning of section 15, and although this may be implicit in the margin notes to paragraph 6 on Form 44, I think Mr Blohm was right to caution me against relying on these notes as an aid to construing whether an electoral ward can in fact constitute a locality in law. On any footing, however, an electoral ward is an administrative area known to the law and in my view section 15 operates in practice to distinguish between, on the one hand, *localities* which are known to the law and, on the other, *neighbourhoods* which need not be a recognised administrative unit, and which may very well straddle more than one *locality*.

49. ***neighbourhood within a locality***

In *Cheltenham Builders Ltd v South Gloucestershire District Council [2003] EWHC 2803 (Admin)* Sullivan J (as he then was) rejected the notion that a

neighbourhood is any area of land that an applicant chooses to delineate on a plan. He said this at para 85:

'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. If parliament had wished to enable the inhabitants of any area (as defined on a plan accompanying the application) to apply to register land as a village green, it would have said so'.

50. *In the Trap Grounds' case* Lord Hoffmann at 27 speaks of a *neighbourhood* as not being an area of legal or technical significance.

51. It follows from all this that a plan showing an area within which people use the green will simply not be good enough unless it embraces what can be identified either as an administrative unit (i.e. a locality such as a parish or village) or what might sensibly be regarded as a discrete area (i.e. as a neighbourhood, say a district) within that locality. The answer to this question is plainly a question of fact. It will be recalled that in this case, the applicant is relying on the electoral ward of St Mary's with Summercombe as the claimed locality from which it follows that this is not a *neighbourhood* case.

52. ***as of right***

The term *as of right* involves statutory *prescription* which is the legal process by which long use of another's land is converted into a legal right to use the land. In the context in which it arises (i.e. in the case of private law easements, inferring dedication as a highway and TVGs) 20 years uninterrupted user *as of right* will usually suffice to lay claim to the right in question.

53. The *as of right* issue is at the heart of TVG law. The meaning of the expression *as of right* remains, however, far from clear. The applicant must though show that he has used the right as if he were entitled to it. What it traditionally comprehends is user which is not by force, stealth or with the express or implied licence of the landowner. The essence of the rule is that for

at least 20 years the landowner has acquiesced in the claimed use as in an established right and the landowner cannot be regarded as acquiescing unless the user would appear to the reasonable landowner to be an assertion of the right claimed.

54. Since the recent decision in *R (Lewis) v Redcar and Cleveland Borough Council & Persimmon Homes (Teesside) Ltd* [2009] EWCA Civ 3, one now has to add to the list without also *deferring* to the landowner's superior user. The ratio of *Redcar* is that if there is a conflict between the landowner's use and recreational use by local people, and the use of the local people materially *defers* to the use by the landowner, the recreational use will not have the appearance to the landowner of use *as of right*.
55. *Redcar* is an issue in this case as the Objector contends that any local user would have deferred to or otherwise been subordinate to the use which the landowner had authorised on the application site, specifically its use out of season, by children from schools from all over the country on activities-based holidays. If this is right then user *as of right* will be precluded as by voluntarily desisting from interfering with the owner's activities it would not have appeared to the landowner that the local inhabitants were asserting a right to use the land for the sports and pastimes in which they were indulging. I shall return to this point when I come to examine Mr Blohm's closing submissions. It should though be noted that in paragraph 47 of his judgment in *Redcar* Dyson L.J said this:

'... that it is a question of fact and degree for the fact-finder to resolve whether in practice there is inconsistency between the activities on his land of the owner and the recreational activities of the local inhabitants. In some cases the activities of the owner may "in practice" make no difference to the activities of the local inhabitants in the sense that they will not need to adjust their activities to allow for those of the owner. In such cases, provided that the use has been nec vi, nec clam, nec precario, it is likely that it will be held that the activities of the local inhabitants have the necessary appearance of asserting a right against the owner. But in a case where there is a conflict

between the activities of the owner by the local inhabitants, and the activities of the local inhabitants can only be accommodated with those of the owner by the local inhabitants deferring to the owner's use, then the activities of the local inhabitants may not have the appearance of asserting a right against the owner. On the contrary, those activities may have the appearance of an acknowledgment by the local inhabitants that they have no right at all. Those who always defer to the owner whenever his competing use of the land threatens to interfere with their use of the land are not likely to convey to the reasonable owner the impression that they are claiming the right to use the land'.

56. ***in lawful sports and pastimes***

This term was considered in *R v Oxfordshire County Council, ex parte Sunningwell Parish Council* [2001] 1 AC 335 at 356/7, where Lord Hoffmann said that it was '*not two classes of activities but a single composite class ... As long as the activity can properly be called a sport or a pastime, it falls within the composite class*'. He also said at p.357 that he agreed with Carnwath J. in *R v Suffolk County Council, ex parte Steed* [1995] 70 P & CR, 487, 503, when he said that dog walking and playing with children were, in modern life, the kind of informal recreation which may be the main function of a village green. In practice, therefore, use of the site for dog walking, children's play and general informal recreation will normally suffice as qualifying user under section 15.

The effect of registration

57. There are 3 main consequences: (a) land becomes a new green only when it is registered as such; (b) registration as a new green confers general recreational rights over the green on local people; and (c) registration as a new green subjects the land to the protective provisions of section 12 of the *Inclosure Act 1857* and section 29 of the *Commons Act 1876*, which in practice preclude development of greens.

Determination of the application

58. The regulations provide no procedure for an oral hearing to resolve disputed evidence. The regulations seem to assume that the registration authority can determine disputed applications to register new greens on paper. A practice has grown up, repeatedly approved by the courts (most recently by the House of Lords in *Oxfordshire County Council v Oxford City Council & Anor* [2006] 2 AC 674), whereby the registration authority appoints an independent Inspector to conduct a non-statutory public inquiry into the application and to report whether it should be accepted or not. In some cases, procedural fairness will make an oral hearing not merely an option but a necessity. In *R (Whitney) v Commons Commissioners* [2005] 1 QB 282, it was held that the procedure by non-statutory public inquiry did not infringe art.6 of the ECHR because any decision of the registration authority is subject to review by the courts.

Procedural issues

59. The onus lies on the applicant for registration.
60. It is no trivial matter for a landowner to have land registered as a green and all the elements required to establish a new green must be '*properly and strictly proved*' (*R v Suffolk CC ex p Steed* (1996) 75 P&CR 102 at p.111 per Pill LJ, approved by Lord Bingham in *R (Beresford) v Sunderland City Council* [2004] 1 AC 889, at para 2).
61. There is no obvious reason why the standard of proof should not be the usual civil standard of proof on the balance of probabilities.
62. It was held in the *Oxfordshire* case that an application is not to be defeated by drafting defects in the application form. The issue for the commons registration authority is whether or not the application land has become a new green.
63. It was also held in the *Oxfordshire* case that the commons registration authority can register part only of the application land if it is established that

part but not all of the application land has become a new green. Indeed, it was thought that a larger or different area could be registered if there was no procedural unfairness. On the present case, severance has not been argued, nor, in my view, would be feasible either in the circumstances.

64. In the *Oxfordshire* case it was said by Lord Hoffmann at para 61 that *'the registration authority has no investigative duty which requires it to find evidence or reformulate the applicant's case. It is to deal with the application and the evidence as presented by the parties'*. In my experience this is a common dilemma facing Inspectors at non-statutory inquiries in what is a complex branch of the law where, more often than not, the applicant's case is being advanced by individuals without proper legal training.

Evidence for the applicant

I deal firstly with the oral and written evidence of those who attended the public inquiry. I shall then turn to the written evidence of those who did not attend the inquiry and I will also consider the evidence presented on the first, albeit withdrawn, application to register. Where the context permits, the owners of the application site from time to time will hereafter be referred to generally as *'the landowners'*.

Tom Sleep

65. Mr Sleep (who is in his mid-70s) lives at 9 Briseham Road which is close to the application site and within the claimed locality. His written statement will be found in the RAB/Part 4/67.
66. Mr Sleep said that he also lived at 12 Higher Penn (again close to the application site and within the claimed locality) between 1962-67 when he went to live at 31 Hillside Road until 1992, which lies just within the neighbouring ward of Berry Head with Furzeham. He has lived at 9 Briseham Road since 1992.
67. Mr Sleep said that he had used the application site (which he said was only enclosed in 2007) continuously from growing up to marrying in the 1970s and

had never been asked to leave, nor had he seen any signs saying that it was private land. He says he never saw holidaymakers camping on the field. He mentioned that his own two children had played there when he was living at Higher Penn (1962-67) and that he had facilitated access into the field by opening up a gap in No.12's hedge which was at the end of the cul de sac. This was mainly when he and his family used the field.

68. He said that he did not use the field himself so much after his own children had grown up, say by around the mid-1970s.
69. Mr Sleep agreed that people at the camps would also use the field. He also agreed with the contents of the statement which he signed in which he states that he and his family had used the field for 45 years for playing football, cricket, flying kites, playing war games, cowboys and Indians, playing in the trees and bushes and for picnics. The trouble with the statement is that it is in a rather unusual type of standard form and contains a lengthy preamble in which the applicant deals with the context and invites the responder, in this case Mr Sleep, to fill in the gaps. It by no means replicates the sort of detail which one finds nowadays in the sort of questionnaires which are commonly used on these applications. On the other hand, Mr Sleep did say when he was cross-examined about this that either his own children or other people's children had done the things described on the statement which he signed.
70. My impression of Mr Sleep's evidence is that he and his family's use of the field was probably fairly intensive until around the mid-1970s but that since this time it has, at least in his case, probably been only sporadic. In short, his own user in the period of 20 years ending with the cessation of use in February 2007 has been very limited, and although he was living close by after 1962, there was an undoubted gap in his user in the period 1967-92 which includes the first five years of the 20 window before user ceased in 2007. I have to say that I do not attach much weight to Mr Sleep's evidence although I do not doubt for one moment that he was trying to help the inquiry.

Paul Hemmings

71. Mr Hemmings has lived at 71 Wishings Road since 1969. This road is close to the site and also well within the claimed locality. His home actually backs onto the site. His personal written statement will, be found at RAB/Part 4/51, where he says that since 1969 he has freely walked his dogs on the field. He says that his children (who were born in 1973/75) also played there with other children and he recalls that the field was used for the silver jubilee festivities in 1977 which, as he says, *'involved the local community'*. He says he was able to walk around the whole of the field until the fencing was erected in 2007.
72. His oral evidence in chief was equally robust. He says he mainly uses the whole of the field when walking his dog (he said that he had had dogs for the last 25 years) and that children also played football there. He made the point that the field was *'special'* and was *'one of the last open spaces in the area'*. He has never seen a sign saying *'Private'* and had never been asked by uniformed personnel to leave it. Nor had it been fenced off until recently. He said there were *'always'* people he knows on the field and he mentioned the names of two people). He also said that he had never seen any climbing frames on the field or camping.
73. When cross-examined he said he worked on buildings and also drove a lorry between 8 am and 4.30 pm. He said there used to be a path at the top of the field which is now grown over and that he normally walks around the edge of the field. He said he had never seen any holiday-makers on the field although he agreed that he saw a pitch and putting course being laid (at the top of the site where it is level) *'but it never got used'*. He said he had been using the site for over 30 years and when asked *how often* he had been using it he said twice, sometimes three times a day. He also denied having seen organised activities taking place on the field other than in the case of the Silver Jubilee and 2002 Golden Jubilee festivities for which he thought permission might have been obtained. He also recalls seeing the grass being mowed recently a couple of times. This was done by an individual with a tractor which accessed the field via the camp gates at the top of the site. More than 15 years ago he

said that a farmer used to take a hay crop off the field. The impression I gained from Mr Hemmings is that grass cutting had, in recent years, probably been only sporadic and from what I myself saw on my three visits there is no evidence that the field has actually been maintained in recent years by the landowner.

74. The evidence of Mr Hemmings was very compelling and greatly assisted the applicant's case.

Andrew Hine

75. Mr Hine lives at 79 Penn Meadows which is one street away from Wishings Road and is also within the claimed locality. His written evidence dated 24/03/08 will be found at RAB/Part 4/34. It states that until 2007 he had used the field for recreation since 1974. During his childhood and teenage years he says he frequently went there with friends to camp in tents, play ball games and for bike riding. As he got older he says he used the field for walking his dogs, flying kites and toy planes with his children. He reiterated this in his oral evidence.
76. Mr Hine said that he had never seen any '*Private Property*' signs on the field (i.e. before 2007) although some years ago he could recall a '*keep Out*' sign on the gateway half way up the concrete path which was never explained by the Objector. Mr Hine said that he had never been asked to leave the field, nor had he ever seen anyone in uniform there. He said he had been angered by the fencing in February 2007. No area of the field had ever been fenced off before this. He also said that he had seen '*a lot of local dog walkers up there*' but he could not name them. He said that you can take children up there and that he uses all the field with his dog for exercise. He also said that he never saw any structure on the field, nor had he seen holiday makers camping there.
77. In cross-examination Mr Hine says that he never saw anyone using the pitch and putting course or groups of people engaged in organised activities on the field (i.e. with specific reference to the Travelclass business to which

reference will be made later). He also says that he saw people using a climbing tower but it was located on the adjoining Homelea Camp site even though the place he marked on my plan lay just inside the old Dolphin Camp site just beyond the south west corner of the site. He also said that he had seen other people on the field but he does not know their surnames.

78. Mr Hine has in fact lived at a number of local addresses. Between 1985-93 he lived at 6 Lytes Road which is in the adjoining ward. In 1993-2002 he lived at 4 Briseham Close (which is within the claimed locality) and between 2002-07 he lived in 11 Higher Copythorne which again lies within the adjoining ward. In other words, in the 20 years before the user ceased in 2007, Mr Hine only lived within the claimed locality for around 9 years although he nonetheless considered himself to be, as he put it, a '*local person*'.

Barry Young

79. Mr Young lives at 55 Wishings Road which again lies within the claimed locality. His statement dated 21/03/08 will be found at RAB/Part 4/31. In it Mr Young notes that he has lived at this address since 1961 which is when his parents bought it when he was only 2 years old. He says that he and his brother played in the field when they were children, along with the children from other families living in Wishings Road. He mentions football, war games, games of cowboys and Indians, rounders and hide and seek, horse riding and bonfire night parties all taking place on the field. He obviously has fond memories of his childhood and his use of the field when young. Mr Young says that he continued to use the field until it was fenced off in 2007 with his step-son, nephews and nieces to play football, rounders and to fly kites.
80. In his oral evidence Mr Young confirmed the contents of his statement. He said the site was a '*safe haven*' and that bonfire night parties were organised events with some 10-30 people attending. He too recalls seeing no '*Private Property*' signs before 2007, nor had he ever been asked to leave the field. He mentioned a number of locals whom he had seen using the field, three of whom he was able to name and he recalled games of football involving 20-30 people. He also said that he had never seen any structure on the field.

81. Mr Young was also able to tell the inquiry that the surrounding streets were developed in the 1950s and 1960s and that his parents had purchased No.55 in 1961 soon after it had been built. He also said that when he was young the site was known as '*Homelea Field*'. Like Mr Hine, he also recalled seeing a '*Private*' sign on the Homelea Camp gates. This was the only sign he could recall seeing. He also says he may have seen the odd person or family using the pitch and putting facility.
82. He said in cross-examination that he had used the field over the last 20 years with a frequency of some two to three times a week, mainly at weekends. There is direct access into the field through a make-shift door at the rear of his property which is bolted on the inside.
83. The evidence of Mr Young was also very compelling and again greatly assisted the applicant's case.

Glenys Wright

84. Mrs Wright lives at 63 Wishings Road which lies within the claimed locality. Her statement is at RAB/Part 5/84(e). Mrs Wright has only lived at this address since November 2007 and is dismayed at the prospect of development behind her home. Because of her very recent acquaintance with the application site her evidence is of limited value and she was not even cross-examined.

Kenneth Richards

85. Mr Richards lives at 16 Higher Penn which is again close by and within the claimed locality. He has been living at this address since 1984. His two statements will be found at RAB/Part 4/54 (dated 4/04/08), and at RAB/Part 5/79 (dated 21/01/09). In his first statement he says that he used the field regularly both as a recreation area and a right of way until the fencing went up in 2007. He says he used the field as a short cut to the coastal path to Sharkham Point. He says he met locals there and that his own daughter and her friends used the field as a play area (she was aged 4 in 1984). He also says that he has never been asked to leave the field, nor has he seen any

notice indicating that it was private property. His second statement is in similar vein and Mr Richards is obviously very anxious that what he calls '*a haven and habitat for our wildlife*' should not be lost to development and should continue '*to be enjoyed as an open space and as a recreational area*'.

86. He covered the same ground in his oral evidence. He said he was brought up in the area and that a lot of his friends used the field. His daughter would also go up there to play. More often than not he said he used the field as a way to the coastal footpath. He said that he often saw people there with their dogs and children with their parents and that it was a haven for wildlife. He also said that he had never been asked to leave the field, nor had he seen a structure or camping associated with the holiday business.
87. When cross-examined he said his daughter had used the field around twice a week in the period 1984-94. He said he also lived in Briseham Road in the period 1976-80 when he also used the field, both as a right of way and sometimes for recreation but this was not very often. He never saw it being mown or cut and is not aware of the name Travelclass either or that they may have carried on activities in the field. He also denied that he had seen any structure or any other area within the field fenced off. He says he used the field once or twice a week as a short cut on a circuit that included the coastal path to Sharkham Point (and presumably back again).
88. Mr Richard's also gives compelling evidence for the applicant.

Martin Piper

89. Mr Piper has, since 1991, lived at 85 Wishings Road, again in the claimed locality. His statement will be found in RAB/Part 4/38. Mr Piper first used the field for recreation in 1977 when I think he would have been only 10 as he says he started secondary school in 1978. He says he used it regularly, playing there with school friends. When he went to college in 1983 he says he used the field as a meeting place for old friends in the evenings and at weekends. The fact that the field was close by and was a safe place for children was a factor in his choice of home at 85 Wishings Road. He now has

teenage children and the whole family uses the field for recreation and he cites the fact that his children use the field for bike riding, flying kites, playing ball games, playing in the trees and bushes with their friends. He says that even his father told him that he played in the field after the war when he was a teenager. He also says that he has seen many Brixham people using the field and that until 2007 he never saw any signs saying that it was private land or that he was told to leave.

90. His evidence in chief was little more than a reiteration of his written evidence. He said he had grown up using the field. He said that he had also seen others from the locality using it and he mentioned four people by name with whom he was friendly. He also said that he had never been excluded from the land or otherwise been told by uniformed personnel to leave. He said that a lot of people use the field and that it is a safe place and that he uses the field all the year round. He said that he would have used the whole of the field and that he had never seen camping in the field in connection with the holiday camp business.
91. Mr Piper lived at Windmill Close until 1991. This address lies within the neighbouring ward. He has therefore lived within the claimed locality for only around 16 years until user ceased in 2007 although his use of the field has been for a good deal longer than this. However, the only period that counts in his case is the time which he has spent at Wishings Road although it is obviously relevant that he is able to give direct evidence in relation to unhindered access being enjoyed by the public from the late 1970's onwards.
92. Mr Piper was pressed in cross-examination about organised activities taking place on the field. He accepted that he had seen people using the field but he had never seen a group with a leader and a number of children there. He was certain that he had never seen organisers wearing uniforms using the field. He recalls seeing a climbing frame but this was stationed in Homelea Camp and was not within the field. He remembers seeing the pitch and putting area but he does not recall its construction. In fact his own children had used it. He also mentioned that he walked his dog on the field before and after work.

Finally, Mr Piper also provided me with an interesting DVD clip lasting only a few minutes showing he and his small son Christopher walking and playing in the lower end of the field on what was a sunny summer's day in 1993.

Mr David Madgwick

93. Mr Madgwick lives at 5 Bonair Close which is just off Castor Road and is also within the claimed locality. Mr Madgwick's statement is at RAB/Part 4/48. As a child, Mr Madgwick lived at 7 Edinburgh Road which lies just within the claimed locality. He says that he played with friends in the field in the period 1960-70. He says that in his younger years he would have played football and rugby and other children's games and from time to time (when he was 12) he and his friends even camped in the field. At some point he was living at Alma Road in Brixham (which is in the neighbouring ward) but in 1986 he moved to 5 Bonair Close and ever since he has used the field regularly, initially with his children when they were growing up and, latterly, with his dog on his walk to the coastal footpath to the beach at St Mary's Bay. He has never been prevented from using the field and he has never been asked to leave it.
94. In his oral evidence he said his children played there with kites, kicking a football around and crossing it to walk to the beach. He said it was a safe place to go. When he lived at Edinburgh Road it was close enough that his mother would put a towel outside an upstairs window when it was time for him to go home (Edinburgh Road was around 400m from the field). He said that he has never seen anyone using the field wearing any kind of uniform. The field had always been open and no one has ever asked him to leave it.
95. Mr Madgwick said that the field is well used by people living in a number of nearby roads (10) which he named. He also said that he had seen no structures in the field, nor the pitch and putting course. He did though say that he had seen some apparatus in the camp at the top end of the field within the car park (this is a reference to Homelea Camp). He said that it was a climbing frame (or climbing wall) and was some 25-30' high. He said that he had never seen a group of people using the field except for the group of wrestlers which I will come to later on. He said that at one time activities at St Mary's Camp

took place on the playing field off Mudstone Lane (which was developed some 5-7 years ago). He accepted that people at the holiday camps had walked their dogs on the field but it was predominantly locals who used it, at least when he was there with his dog in the mornings. He cannot say how many holiday-makers were using the field when he was at work between 7.30 and 5pm. He says he stopped going to the field when his daughter was 12 which would have been around three years ago although he would still go at weekends on his walk to the beach although he did not use the field predominantly for access. His use had been more frequent when he was younger. He recalls kite flying and saw wrestling taking place there before it moved to the community college.

Colin Gifford

96. Mr Gifford lives at 8 Penn Lane, Brixham which lies within the claimed locality. His statement is at RAB/Part 4/26. In his statement he says he has been using then field for over 40 years but gives no address history. This only emerged in his oral evidence. He says he played in the field when he was young with other children *'from other parts of Brixham'* and can also remember playing football there in the 1960's. He says that in later years he used the field with his dog as access to St Mary's beach and to Sharkham Point.
97. In his oral evidence he repeated this evidence. He says he never saw any signs and was never was asked to leave the field by uniformed personnel. He says that he has seen several people whom he recognises as being local to the area although he was only able to mention one person by name. He says that he has used the field throughout his life although not necessarily on a regular basis. He also recalls seeing a structure located within Homelea Camp (he last saw this some 4/5 years ago) but has never seen camping in the field.
98. In cross-examination, he said that the name Travelclass meant nothing to him, nor did he recall a pitch and putting course at the top of the field. From the evidence he gave he lived outside the claimed locality in the period 1979-

2000 when he said he possibly only used the field once a year as a means of access to the beach and the coastal path.

99. Mr Gifford's evidence is thus of limited value to the applicant as he was only resident in the locality for around 8 years before the application to register was made and his own user of the field, certainly in recent years, appears to have been referable mainly, if not exclusively, to that of a right of way to the beach and coastal path rather than as a place for informal recreation.

Claire Howard

100. This witness lives at 17 Wishings Road. Her statement is at RAB/Part 4/32. She says that she has been living in Brixham since 1985 when she lived at Greenwood Road, virtually all of which lies just within the locality. At some point she moved to 4a Knick Knack Lane (which again lies within the claimed locality) before moving to live at 17 Wishings Road in 1988. She says in her statement that she has used the field for many activities over the years, especially with her children. She says that it is a safe place to experience nature and to enjoy sports. She says that the fencing means that she is now unable to exercise her dog or enjoy field sports or otherwise enjoy the open space and its views or to introduce her grandson to what she described as this lovely place. She also says that the field has been used as a public place for as long as she has known it and has been used for different activities by those of different ages. She says that she has never been told to leave the field, nor has she seen any notices saying that it is private land.
101. In her evidence in chief she said that she and her dog use the whole of the field. She also said that she had never seen uniformed personnel in the field. She also said that whilst using it she had also seen locals there. She emphasised the natural beauty of the field, its wildlife, the fact that it had lots of hedgerows and that it was, as she put it, a very safe environment as there were no cliff-edge boundaries. She also said that she had seen no camping on the field nor any structures on the land.

102. When cross-examined she said that she had always been in employment, working part-time when bringing up her children. She thinks the fencing has ruined the field which she said had '*gone down*' since it had been put there. She said that there is more rubbish in the field since the fence went up and that youngsters had reacted to the fence. She said that from 1985 until 2007 she had not been aware of any rubbish on the field although, as she put it, it had never been a well kept area although she had seen the grass cut once or twice a year by a man on a mower. The cutting did not tie in with, as she put it, the camps' seasons. The grass had been allowed to grow up to children's head height. She said that part of the beauty of the field was that it was a natural area like Sharkham Point.
- 103 She vaguely remembers the pitch and putting area. It had been roughly made and she never saw anyone using it. She had not connected this with the holiday camp as locals had also done things in the field. She said there was also a rope swing and some earth had been moved for use by BMX bikes both of which looked like locals had done them. She was though aware that local residents were using the field for dog walking (perhaps 3 times in 2006) because someone had stopped to talk to her. She said that she tended to see certain faces there. She did see a group of youngsters congregating at the edge and at the top of the field for one or two years. She also saw the same group of youngsters at Sharkham Point engaged in various activities. She also said that she had never seen any apparatus on the field, nor any private property signs at either end of the footpath. She said that she had not reacted to the application to develop the field as she thought it was an area for the public, like Berry Head and Sharkham Point, and she was unaware that the field would be affected. Nor had she reacted to the fencing going up either because she could not see what she could do about it.

Mrs Christina Burridge

104. Mrs Burridge lives at 7 Penn Meadows (at the hospital end) which lies within the claimed locality. Her statement dated 29/03/08 will be found in RAB/Part 4/45, where she says that she has used the site since 1970 when she was 12

years old when she used to take her brothers to play there. She carried on using the site as a teenager where she met up with friends, including her husband of 32 years, as she says there were few places for courting couples to go in the 1970's. She says that she has four children whom she used to take to the field where they could play and, as she put it, run off steam. She has lived at 7 Penn Meadows since 1982. She says that she was always aware of other children playing on the field or people who were there with their dogs. She also says that when her husband was ill for a time he took gentle walks on the field which was very convenient as it is close to their home and it did not over-stretch him. She says that she has *'always felt a sense of belonging and peace in this field and enjoyed others enjoying the field'*. She also says that at no time has she been asked to leave the field or seen signs to that effect.

105. Her oral evidence in chief was in similar vein. She cites the fact that she used to take her children there when they were young and in later years has taken her dog there for exercise. She says that she sees several people on the field with their dogs and she mentioned two people by name whom she knew. There were also others whom she also recognised and to whom she would say good morning or good afternoon. She has always been able to use the whole of the field and cannot recall fencing in the field, nor had she seen any structure or camping within the field.
106. When cross-examined she said that she had not seen people walking out from Homelea Camp with their dogs. She said that her peak use with her own children had been between 1976 and 1982 and that she would have stopped going there with the children (which would have been around once or twice a week) in about 1990. She thinks that she would have gone there more frequently when she had two dogs when she only used to let one of them off the lead. One of these dogs was put down about 6 years ago. In the 1990's she only went there for walks until the late 1990's when she had more dogs. This was usually in the evenings, but mainly on a Sunday. She said that she could not recall seeing anyone playing golf on the field and had never heard of Travelclass. She says that she has only seen children playing and had not

seen young children doing archery or climbing as a group. She also said that she had only seen a private property sign since 2007. She says that she has noticed that the grass is longer now than it has been for ages particularly at the top end of the field. She agreed that the field was being managed in the sense that the grass was being cut but not recently. She also says that since 2003 she visits the field occasionally for exercise.

Anthony Heard

107. Mr Heard lives at 26 Berry Head Road in Brixham which is within the adjoining ward and is some distance from the site. Mr Heard wrote to me on 26/02/09. His letter will be found in RAB/Part 5/84m. Mr Heard's letter describes how, during the 1980's, whilst at secondary school, his best friend, who lived close to the site, and he used to play regularly on the field, particularly football and cricket. The impression he had was that the field was a public open space. He also writes that he is a keen off-road runner and the field is, as he puts it, a turnaround point on what are usually his daily training runs. He says that over nearly 20 years he has only ever encountered members of the public using the field. He says that things have changed in the last couple of years with the development of the Sharkham Village site and with fencing running across the site.
108. In his oral evidence Mr Heard covered the same ground. His evidence was useful in a number of ways. Firstly, he said that the field had only become completely rutted in recent years. In the 1980's it looked more like a meadow. Secondly, he thought that the field was rather like a country park as opposed to a traditional recreation field. He said he used the whole of the field to do his runs. Third, he also recognised some of the people using the field and saw people walking their dogs and children playing there.
109. Mr Heard says that he ran on the field on a daily basis and he was never asked to leave and had never seen fencing before Feb 2007. He said that the field was like a true meadow in a countryside setting yet close to the homes of the people who used it. He said the field was ideal for playing and making dens and gave a different, more exciting experience than would be found at

Astley Park and St Marys, which were just open space and designed for structured activities. Mr Heard said that he used the whole field as a turn-around point after 2 or 3 miles of a 5 mile run which he does on a virtual daily basis (usually in the evenings). Using the field regularly, he recognised the same faces regularly dog-walking and using bikes. This was true during two different periods of use, the first when playing with his friend and other locals, and the second, when out on his runs from the age of 16 onwards, for the last 20 years. He has evidently ran the same route for the whole of this period. Put shortly, Mr Heard's evidence, as I understand it , was to the effect that he had run on the field on a virtual daily basis until around 5 or 6 years ago, and until the summer of 2008 he said that he had been running there around 3 or 4 times a week. He said that his peak running years had been in the early 1990s

110. When cross-examined it was learned that he usually goes out on his run between 5-8pm which means that he is in a good position to tell us about what has been happening on this field on a very regular basis (at least during the evenings) when he was usually out running around the perimeter of the field, now hindered, of course, by the presence of the new fencing. He said that he ran on the field in all weathers for probably the whole of the 20 year period before the fencing was erected in 2007. At one time he would have run there on a daily basis and he still continuing to do so as often as 4 or 5 times a week. For this reason, although he is not a local, he is nonetheless able to give direct evidence about matters which are germane to the inquiry.
111. Mr Heard said that he has never seen anybody maintaining the field although the grass was trampled down from people using it. He thinks it was cut once a year and was kept to a reasonable length although he has never actually seen it being mown. He says he would have noticed if it became difficult to run through. He also said that the grass had never been at an unmanageable level other than in the last two or three years. He also saw a climbing frame of some description in a small area at the top end of the field. This would have been during one summer holiday, and for a period of 6 weeks.

112. Mr Heard also said that he thought the field belonged to the council although there was no indication on the land that this was the case or that he had been told this.
113. He recalled that there may have been a pitch and putting course on the field for one season but it was barely used. He never saw anyone using it over the years. He said he saw people walking dogs, throwing balls for dogs. He was unable to put names to faces but he could recall seeing one person with a dog on the field whom he had gone to school with. He said he would have recognised other people on the field as well. He was unable to say who he might have seen on the field but he was sure that he had seen numbers of people there. He said he recognised people walking dogs from one year to the next in which case they were, as he put it, obviously not on holiday. He said he saw people walking on a circular route of the field with their dogs. He actually said this: it was *'only once in a blue moon that I did not see people up there engaging in recreation of some description'*.
114. Mr Heard described the structure he had seen in the top of the field as a climbing frame. He said that something like it had also been located over the wall in the adjoining camp which had been tall and unsightly but he had never seen anyone using it. He had a vague recollection of it being something like a climbing frame. It had been controversial as people had complained that it could be seen from as far away as Berry Head, nearly a mile away. The structure located in the field had been smaller. He could not say whether it was made of scaffolding but he has a vague recollection that it looked like a climbing frame and when asked whether it was 20' high and 30' deep he said it was not of that magnitude.
115. Mr Heard said that he did not recall any areas within the field being cordoned off although he recalled, as he put it, *'little white discs'* on the ground which he assumed identified what he described as a *'little small area where things were going on for a little period'*. These discs did not prevent him from entering the area which had been marked out in this way on the ground where, as he also put it, *'they were carrying on their sporting activities'*. Mr Heard said that this

had only happened during a few weeks in the summer holidays in a single year. This would have been in the peak of summer. He never saw anyone using these discs, quite possibly because he was only running on the field in the evenings, say between 6-7pm as it was still light (in the winter he went out running earlier).

116. Mr Heard said that he sometimes saw children in the field playing in the trees and on the grass. He said the climbing structure in the field was not fenced off. He thinks it was there for only one season (although he cannot recall how long it remained there) between 4/5 years ago although it may have been as long ago as 10 years. At any rate, it never prevented Mr Heard from running around the edge of the field as it was just off the area where he would normally run.
117. Put shortly, Mr Heard's evidence was to the effect that he had been out running on the field on a virtual daily basis until around 5 or 6 years ago. By the time we get to the summer of 2008 he was running some 3 to 4 times a week, again on a circuit that took in the field. He also observed signs of organised activity (at least in the early evenings when he was out on his run) within a small area at the top of the field close to the entrance of Homelea Camp. He was not impeded on his run by what he observed on the ground which appear to have been small white marker discs of some description. Mr Heard indicated that the width of the marking out on the ground was around the size of the stage of Brixham Theatre where the public inquiry took place. He can also recall seeing a climbing frame on the field (which was smaller than the tower-like structure he had seen located within the top corner of Homelea Camp by the chalets just over the wall from the field – in fact he may even have seen the two structures there at the same time but he cannot remember) but it was not there for very long and it did not prevent him from running around the edge of the field.

Barbara Clarke

118. Mrs Clarke gave her oral evidence right at the end of the public inquiry. She lives at 6 Nelson Road, Furzeham in Brixham which is in the neighbouring

ward. Mrs Clarke has, from the very start, objected to the development of Sharkham Village out of the ruins of the former Dolphin Camp. She frankly admitted in cross-examination that she has no love for Millwood Homes. However, she only came to live in Brixham in 1999 but within 2 years had become active in moves to prevent development. She said that she had been taking photographs of the Sharkham Village development site since 2000.

119. Her particular concern has been the removal of the asbestos material within the old Dolphin Camp buildings. She says that the developers took no precautions to eliminate the risk of contamination when the site was cleared in 2004. She did though say that she had never seen any security guards on the application site. She also said that she had seen people walking dogs on the field and she mentioned four people by name: the applicant, Mr Efford; Lesley Bissett; Cynthia Thomas who lives at Castor Road (which lies within the claimed locality); a gentleman called Bryan whom she knew lived at Wishings Road; an ex-policeman who had a dog with only 3 legs; and a person who had Dalmatians. Mrs Clarke also said that she had seen the climbing tower located within Homelea Camp but had never seen groups of children playing on the field even though she had been visiting the area some two or three times a week. I am not sure from her evidence when this would have been the case but I think it would have been in the early stages of the development at Sharkham Village given her particular interest in relation to the safe removal from the site of the asbestos content within the demolished buildings.
120. Mrs Clarke also wrote to me on 1/02/09 supporting the application to register which will be found at RAB/Part 5/84g1. This letter was in fact counter-signed by Anthony Tostevin whose address is 11 Crosspark, Brixham, which is within the claimed locality. Both declare themselves to be members of the *Open Spaces Society*. There is another letter from Mrs Clarke dated 31/01/09 at RAB/Part 5/6 (within a short clip of documents numbered 4-27 after the letter at 84m in this part of the bundle). In her second letter she says that she exercised her dogs on the field every week between 2000 and 2007 when the fencing went up. She also says that she observed others walking their dogs

and youngsters playing in the field and that until this happened she saw no *'private land'* notices anywhere in the field or at the points of entry.

121. There is another document from Mrs Clarke to be found at RAB/Part 5/19, which is a letter dated 29/06/08 which she wrote to Torbay Council's planning department in which she deals (amongst other things) with (a) an ecological assessment (with which I deal below) in which the comment is made that the application land *'appears to be heavily used for recreation by dog walkers and children'*; and (b) an archaeological assessment of the land from which she quotes: *'This field represents a marginal part of the very extensive OPEN or COMMON field system'*; and *'This field is a greenfield site where historically there has apparently been no other residential, commercial or industrial development'*. Although addressed to the planning authority, the letter was written in support of Mr Efford's application for *'Green Status'*. Mrs Clarke appears to have written in these terms in order to refute the claim made in a letter from the Objector's solicitors dated 5/12/06 that the *'land is private land and has been used for commercial purposes for many years'*.
122. The archaeological assessment was carried out by Terry Green MA on behalf of South West Archaeology for Millwood Homes and will be found at RAB/Part 5/84k (second and third pages). The quote taken from the report should actually read as follows: *'The field represents a marginal part of the very extensive Brixham open or common field system, lying on the southern boundary of the original manor lands. It is almost the last undeveloped remnant of manor land which was finally sold off to individual buyers in 1926. Through the 1930s and 40s holiday camps developed on adjacent land and this field may have been briefly caught up in the development as a potential sports ground in the late 20th century. Quarrying and mining activities on or near Sharkham Point may also have affected it. Earthworks visible in the field may have an agricultural, industrial or leisure industry origin'*. My own view about this is that the levelling off of the land in the upper reaches of the slope may, at least in part, have resulted from the ground works associated with the establishment of a pitch and putting course at the top end of the field. The report advises, however, that it is also possible that the topographic features

visible within the field may equally relate to medieval cultivation terracing although we are told that evaluation trenches would probably resolve any uncertainty.

General impression of witnesses in support of the application

123. I found them to be honest and genuine witnesses doing their best to assist the public inquiry. Whilst I accept that they may all have had the ulterior motive of preventing development on the application site, I accept their evidence about their own recreational use of the land and about the recreational usage which they observed on the part of others whom they also saw in the field. In the event, oral evidence was given by six witnesses who lived within the claimed locality who spoke of their own user for the whole of the 20 year period before user ceased in 2007 along with user which they observed on the part of others (namely Hemmings, Young, Richards, Madgwick, Howard and Burrige). In the case of Mr Piper, the period is 16 years. The evidence of Mr Heard (although not a local) was also clearly important in view of the frequency of his visits to the site over the last several years, as was that of Mrs Clarke (again not a local) who was also making frequent trips to the Sharkham Village development in the period before 2007 and would, I am sure, have been keenly aware of what was going on around her as she walked across the application site, via the concrete path, on her way to the side entrance of the former Dolphin Camp.

Written evidence in support of the application

124. In addition to the oral evidence given by the witnesses who attended the inquiry, the applicant and Mr Polyblank have submitted a number of other statements and the like. I obviously have to treat this evidence with caution as I have not had the opportunity to see and assess these witnesses, nor has the Objector not had the opportunity to test it by cross-examination. Much of this evidence is vague and imprecise. However, I have read and taken account of all this evidence which I shall summarise below. Within this body of additional evidence there is the material which accompanied the first withdrawn application to register which was made by Mr Lovell in August 2007.

125. **Mrs Leslie-Ann Golden**

She lives at 47 Wishings Road. Her statement is at RAB/Part 4/28. She says that she has known the application site since 1969 when she used to live in Penn Meadows. All her four children also played in the field. Her youngest child, aged 14, still plays there. She says that she walks her two dogs in the field. She does not give a full address history. No one has ever prevented her from using the field for recreation.

126. **Ann Mead**

She lives at 74 Windmill Close, Brixham. Her statement is at RAB/Part 4/29. She says that she has regularly used the application site for over 40 years. After 1967 she lived at 59 Penn Meadows before moving to her present address which lies outside the claimed locality. She was never prevented from using the field.

127. **Mrs Jean Buley**

Mrs Buley lives at 3 Broadacre Close which again lies outside the claimed locality. Her statement is at RAB/Part 4/36. Mrs Buley used the application site when she was a child. She is now in her early 70s. Her husband's parents lived at Higher Penn between the 1960s and 1980s and she and her husband used the field to walk their dog and/or when visiting her in-laws. Her son also played there when visiting his grandparents *'and there were always many children playing in it'*. She also says that she has used the field for many years to walk her dog and to gain access to St Mary's beach. She has never been prevented from using the land.

128. **David Caunter**

Mr Caunter lives at 41 Wishings Road. His statement is at RAB/Part 4/37. He says he played there as a child with his siblings over 30 years ago. His father had also played on the field as a child. He says he bought his house in 1995 *'so that my son could enjoy the safety and freedom as his grandfather and*

father had done'. He is anxious not to lose 'the remaining playing field which has been used for generations of local families'.

129. **Christine Brown**

She lives at 81 Wishings Road. Her statement is at RAB/Part 4/42. Mrs Brown is aged 54 and was brought up at 8 Penn Meadows and she says she was allowed to play with her friends on the application site in 1965. She moved to Peaseditch Road in 1974, again within then claimed locality, where she brought up her own children who also used the field as a place to play. She recalls that her father used to walk back home from work at Sharkham, and when passing through the field he would, on many occasions, join in a game of football with boys who were playing there. She lived away from Brixham for nine years before returning in April 2007 to live at the top end of Wishings Road as this was near where her daughter lives in Douglas Avenue, which lies partly within the claimed locality. I have no idea whether her daughter is in fact a local inhabitant but Mrs Brown certainly is. She says that she regularly uses the field with her grandchildren and with her dog and she says that they have the run of the field. She also says that on her walks to Sharkham and to St Mary's beach (she does not use the coastal path) she sees *'other local people walking through the playing field'*.

130. **Mrs P. Nortrop**

Mrs Nortrop lives at 3 Windmill Hill which is not within the claimed locality. Her statement will be found at RAB/Part 4/46. She says she used the application site after she moved to Brixham in 1982. She says the field is *'enjoyed as a playing field by many people, children and adults'*.

131. **Shaun Sloman**

Mr Sloman lives at 3 Wishings Road. His statement will be found at RAB/Part 4/47. He is aged 46 and has used the application site since he was a child. He can recall being taken there by his mother to play football with his brother. There was also a home-made swing which he says was popular with other children. He also played games there with other local children as he grew

older. Later on, he speaks of using the field for walking his dog and going to St Mary's beach with his son who also plays in the field.

132. ***Cynthia Thomas***

Mrs Thomas lives at 20 Castor Road and says that she was born in 1936 at an address which is now known as Briseham Close. She moved with her family into her present address in 1967. She has always used the application site for informal recreation and as a short cut on walks to St Mary's Bay and to Sharkham Point. Her own children and grandchildren have also used the field as a play area. She has never been prevented from using the field and until 2007 there were never any notices warning her off the land on the basis that it was private property. Her statement dated 30/03/08 will be found at RAB/Part 4/49, and is important evidence for the applicant.

133. ***Paul Chinnock***

Mr Chinnock lives at 49 Wishings Road. His statement dated 31/03/08 is at RAB/Part 4/50. He says that he has been using the application site for 24 years since he was 11 when he played there with his friends before and after school and at weekends. Since this time he has used the field for informal recreation with this family and he mentions walking his dog, flying kites and riding bikes. Mr Chinnock also says that he was never prevented from using the field, nor were there any private property notices or the like on the field. His evidence is also important for the applicant.

134. ***Mr R. Weymouth***

Mr Weymouth lives at 18 Higher Penn and his statement dated 5/04/08 will be found at RAB/Part 4/52. He says that he and his family have been using the application site since around 1968 and he produces photos taken in 1981 of himself, his wife and child and other locals from Wishings Road and Higher Penn picnicking in the field on the day Prince Charles married Lady Diana, after which he said they had races. He too says that they used the land unhindered and there were never any notices saying that it was private land. This again is important evidence for the applicant.

135. **Mrs T Chapman**

Mrs Chapman lives at 9 Higher Penn. Her statements will be found in RAB/Part 5/72/81. She says she has known the field since 1972. She does not actually say she uses it but she does say that the land *'was always used for recreational purposes by either the local residents or the holiday makers from the nearby holiday camps'*.

136. **Scindia Cutler**

Ms Cutler, who lives in Chippenham, sent an email to the commons registration authority on 19/01/09 (see RAB/Part 5/77) saying that she played on the application site in the period 1948-52 (when she lived at 12a Briseham Road) and she says that one year she was actually hit on the head by a rocket at a bonfire party which was held there.

137. **Wendy Parton**

Ms Parton, who is Ms Cutler's sister, also sent an email to the commons registration authority (see RAB/Part 5/78) confirming that she and her sister regularly played in the field. Ms Parton (who lives at 14 Smardon Avenue in Brixham, which is in the neighbouring ward) says that she went to the field about 8 years ago and there were no private property signs.

138. **Mr D.J Hine**

Mr Hine lives at 20 Higher Penn. His statement is at RAB/Part 5/84A. He says that he moved to *'44 Briseham'* (this must be a reference to Briseham Road) in 1973. He says he has used the application site *'with my children/friends and our dogs'*. He also says that he has never been prevented from using the field or seen signs saying that it was private land. He thought it *'was/is common land with a right to coastal walks and to the beach'*. This again is important evidence for the applicant.

139. **Mrs Bessie Hine**

She is Mr D. Hine's wife and she too lives at 20 Higher Penn. Her statement is at RAB/Part 5/84B. In her case she has lived in Brixham *'for over 61 years'*.

She was born in 1948 and the family moved to 1 Orchard Close in 1951. This is within the claimed locality. She says her parents used to take her to the application site where they played and picked blackberries. They also played games and met up with friends and family on the field. It seems that she lived for a time outside the claimed locality in Wall Park Road before moving back to an address in Metherall Avenue, and then to another address inside the claimed locality in 1974 (see her husband's evidence), before moving to Higher Penn on a date unknown. She speaks of using the field for recreation with her grandchildren and the family dogs and she says that she has never been told to leave or seen notices saying that the field was private property. She has always believed the field was common land and a public right of way.

140. **Malcolm Efford**

Mr Efford is the applicant and has put in a lengthy Statutory Declaration dated 3/02/09 which will be found at RAB/Part 5/84B2. Mr Efford lives at 5 Briseham Close. He says he has lived in Brixham all his life and that he has regularly used the application site since 1948. He has also witnessed others using the field during this time. He deals with the Objector's evidence. Put shortly, he challenges the notion that there were times when the field was used predominantly by those using the holiday camps. He says that he and others freely used the whole field for recreation and that he has never seen (that is, until 2007) any '*private property*' signage or security in the field. Nor can he recall any fencing within the field either. In fact he says that he actually worked at St Mary's Camp and at the Dolphin Camp in 1989/90 and in that period he was never instructed to check on the field, nor was there any security log kept for such purpose. Interestingly, he recalls the location of the climbing tower at the top corner of Homelea Camp where it was placed on a hard standing parking area. He also observed no camping in the field either although he can recall a pitch and putting area at the top end of the field.

141. Mr Efford's declaration includes as a first exhibit a short statement from his sister, **Sadie Day** of 28 Cambridge Road, Brixham dated 5/10/08 at RAB/Part 5/84B20. This address is in the neighbouring ward. She says she used the

application site during the 1940's *'and in later years, with my grandchildren. I was not aware, or was informed that this land was private'*. Without an address history or, for that matter, greater detail of the user relied on, this evidence does not carry that much weight.

142. Of greater importance, however, Mr Efford's declaration introduces at RAB/ Part 5/84B24, the ecological impact study obtained for Millwood Homes in 2006 in connection with their application for planning permission in relation to the application site. The author of the report, which is dated 18/08/06, is Dr David Fee who acts on behalf of a firm known as Ambios Environmental Consultants. The report letter to Millwood Homes (which is date stamped as having been received by Torbay Council on 10/01/08 under the planning reference number 08 – 0031PA) is entitled: *'BASELINE ECOLOGICAL ASSESSMENT – GREENFIELD SITE ADJACENT SHARKHAM VILLAGE DEVELOPMENT, BRIXHAM'*. The report describes the site in some detail. On the second page of the report, under the heading *'General habitat value'*, the following is stated: *'The site comprises an open field of semi-improved rough grassland which appears to be heavily used for recreation by local dog walkers and children'*. It is certainly true that the survey was never intended to be a record of the recreation use by locals of the field, nor are we really aware of the basis on which such a statement was made. However, in my view, the observation cannot sensibly be ignored in this instance as it is plainly consistent with the evidence, both oral and written, in support of the application to register. However the report does not tell us who was using the land, where they lived and over what period, and because of this I must caution myself against attaching excessive weight to the document.

143. In addition to his lengthy Statutory Declaration Mr Efford completed Part 7 of the Form 44 in which, as previously indicated, he said that the justification for the application was said to be the recreational use of the application site for at least 60 years until February 2007 when the public right of way through the site was fenced off on both sides. He also says that he has (with only one short interruption) lived at 5 Brisham Close all his life (having been born in 1943) and that he and other locals (although it is noteworthy that some of his

school friends in the early 1950s would have come from the other side of Brixham) have regularly used the land for recreation since 1948. He also says that he recalls no notices on the land or otherwise being prevented from using the field. Mr Efford's application form is of course supported by the Statutory Declaration to be found at RAB/Part 4/18.

144. Finally, Mr Efford produced what he describes as an *Applicant's Opening* dated 3/02/09 which will be found at RAB/Part 5/84i. In it he speaks of the efforts made by he and others to prevent development on the application site. Mr Efford says that he has been '*a longstanding Countryside campaigner and of late Chair of Brixham Countryside Campaigners an ad hoc group of people wanting to protect and safeguard our countryside making the environment a better place for us all to live in and enjoy and also particularly for future generations*'. He says he is nearly 60 years old and he speaks of the longstanding and unhindered use of the land by he and others for recreational purposes.

145. ***Lesley Bissett***

Mrs Bissett has, since 2005, lived at 8 Higher Penn although in her letter to me dated 31/01/09, she says that she has lived in the area since 1981 since when she has walked her dogs on the field (her letter is at RAB/Part 5/84d). She says she has never seen private property notices and that local children use the field as a play area, particularly youngsters practicing '*martial arts*'. It is a pity that Mrs Bissett did not provide an address history as its absence considerably weakens her evidence.

146. ***Mrs Jessica Churchill-Bissett***

Mrs Churchill-Bissett lives at 15 The Crescent which is within the new Sharkham Village development. Her statement is dated 6/02/09 and will be found at RAB/Part 5/84k. She says she was born in Brixham in 1976 and has used the application site '*on a number of occasions throughout my childhood and adult years*'. She says she rode her horse around the field with her cousin between 1982-86. She says that she has also walked the field with dogs. It

seems that she lived in Mount Pleasant Road in 2003 (this road is in the neighbouring ward) and by 2006 she was visiting the land with her dogs some three or four times a week. She also saw other dog walkers there. It is a pity that she gives us no address history for the 20 years before 2007.

147. ***Mrs R Greathead***

Mrs Greathead (who lives at 22 Briseham Road) sent an email to the commons registration authority on 3/02/09. Her email at RAB/Part 5/84L, offers general support in principle to the application. She also says that she uses *'the area for exercising my dog as do countless other people as many of us do not have suitable or even any garden area for their recreation'*.

148. ***Pro forma statements (at RAB, Part 4, at pp.55-71)***

There are then a batch of pro forma statements devised by Mr Efford in which he asks the responders whether *'you or your family have for 20 years or more continuously used this playing field'* (which Mr Efford has identified by name as well as by reference to a map which is attached to none of the statements in my bundle (nor elsewhere as far as I am aware). The responder is also asked to give their age and the number of years which they and their family have used the land and to indicate whether they reside within or outside the claimed locality. The responder's address is to be inserted at the top of the sheet. In each case the recreational activity is given as *'playing football, cricket, flying kites, playing war games, cowboys and Indians, playing in trees and bushes, and picnics'*. The *pro forma* also says that the responder gives his full support to the application and that the land must be retained as a *'community playing field'* for use by their children and later generations. Finally, the responder is asked to confirm that they and their family have enjoyed *'continuous, uninterrupted, enjoyment and recreational use of this community playing field'* and that *'I have never been asked to leave or seen any notice saying it was private land that is until early 2007'*. At the bottom of the page the responder is supposed to sign and print his name alongside the name and address of the applicant, Mr Efford.

149. This rather unusual and somewhat chaotic document is of limited value to the inquiry. If it had made proper provision for an address history (although only in three instances did any of the responders answer the form with sufficient care in this respect by stating whether they had in fact lived inside or outside the claimed locality) then it might have been of some assistance but it seems to me that its only conceivable relevance now lies in the fact that those who gave their evidence in this way (some of whom, I might add, have also provided statements) are telling the inquiry that they have been using the land over a number of years for recreational purposes some of whom, no doubt, may well have been qualifying local inhabitants during the relevant 20 year period. Such evidence is at least consistent with the other oral and written evidence which was before the inquiry although, by itself, such evidence cannot sensibly be relied on as to the existence of a new green and would need to be deployed with other and more cogent oral and written evidence.
150. What I propose to do is to set out below a short summary of the *pro formas* who have given their evidence in this way:-

No.	Name & address	Years used	Qualifying residency
1.	A.D Criddle 14 Douglas Ave	54	Unclear
2.	J. Amber 7 Briseham Close	29	Unclear
3.	A.Pickin 9 Briseham Close	50	Unclear
4.	A.Bicknell 10 Briseham Close	50	Unclear

5.	<i>I.Widdicombe</i>		
	1 Briseham Road	55	Unclear
6.	<i>L.Hole</i>		
	28a Briseham Road	40	Unclear
7.	<i>D.James</i>		
	33 Penn Meadows	43	Unclear
8.	<i>B.Snell</i>		
	30 Queen's Cresc	52	Unclear
9.	<i>J.Giffard</i>		
	22 Castor Road	43	Unclear
10.	<i>C.Fry</i>		
	17 Briseham Close	52	Unclear
11.	<i>R.Gardner</i>		
	51 Castor Road	40	Unclear
12.	<i>K.Evans</i>		
	15a Metherell Ave	59	Outside
13.	<i>A.Chinnock</i>		
	49 Wishings Road	23	Unclear
14.	<i>K.Waldon</i>		
	29 Nelson Road*	21	Unclear
15.	<i>S.Williscroft</i>		
	8 Orchard Grove	33	Inside

16. **S.Knights**

8 Westfield Close 28

Inside

Notes:

1. * denotes address *outside* claimed locality, otherwise inside.
2. The references to *Unclear* mean that the responders have not indicated on the form where asked (i.e. by making an appropriate crossing out) whether they have lived inside or outside the claimed locality. This only happened in three cases, namely at Nos 12/15/16.

151. We then have four (somewhat brief) sheets of questionnaires to be found at Exhibit "MEE5" at RAB/Part 5/pp.84B34, 84B37, 84B39 and 84B40.

152. I propose to deal with this evidence quite shortly. The question posed was this: *'If you and, or your family have used this playing field for 20 years continuously or more, or you have knowledge of 20 years continuous use, or more, please sign below'*. This is clearly not very helpful and the applicant would have been better served if he had used the evidence questionnaires provided in these case by the *Open Spaces Society*. In truth this material is of little use in that no provision is made for the responder's address history or user frequency although it is possible to draw an inference of sorts from the fact that because each responder has bothered to insert the number of years in the case of their own continuous user, the application land has, in all probability, been used by members of the Brixham public for a great many years and is thus not inconsistent with other more reliable evidence advanced in support of the application to register.

153. A total of 27 people responded to these questionnaires. Of this number 7 people lived in the adjoining ward and the rest, i.e. 20, lived within the claimed

locality. The user period claimed within this number of responders falls between 21 and 70 years. In only one instance was a user period not given.

154. ***Torbay Local Access Forum***

A Mr John Gibson, the Chairman of this body (which bodies – *Local Access Forums* – exist to provide advice in relation to the improvement of public access to land), has also put in a short statement (see RAB/Part 5/84f) supporting the application to register saying that there *'appears to be clearly strong public support, and user evidence, in support of the Application'*.

155. Mrs Clarke also produced a note dated 11/09/08 from Kate Ashbrook, the General Secretary of the ***Open Spaces Society*** who had opposed the application by Millwood Homes for planning permission (as they put it) *'so that Wishings Field may remain open for people to enjoy'*.

156. A letter was also produced from the ***Ramblers Association*** to the Public Rights of Way Officer at the commons registration authority dated 15/02/07. This arose out of the fencing off of the public right of way. The letter called for the removal of the fencing *'as soon as possible so that the open grass space can continue to be used as a recreational area'*.

157. I was also provided with DVDs of youths engaged in what passes for organised wrestling activity. I looked at these disks but do not attach any weight to them as there is nothing to suggest that any of those taking part were residents of the claimed locality and (as Mr Blohm puts it) the activity appears to relate to a club or association that hails from Torbay as a whole (*Torbay Wrestling Foundation*). I also think Mr Blohm is right when he says that the wrestling was intermittent which would preclude user *as of right*. He is also right when he says that there is evidence from a Mr Benson that they were told to leave, and did so.

Evidence for the applicant on the first withdrawn application

158. I have looked at the evidence and it seems to me that it is largely of limited value on the second application to register. The photographs going back to

December 2006 are, however, interesting in that they not only show no fencing on the application land, but altogether superior ground conditions than were observed by me when I visited the field in February 2009 when, as I recall, the uncut grass of the previous summer had sunk to the ground and there were clumps of grass in many places. Judging from these photographs, the field was likely to have been considerably easier to walk upon before the fencing was erected in 2007 than it is today. See RAB/Part 8/ pp.124/125/126/187.

159. There are also questionnaire sheets from 16 witnesses of whom 9 give addresses outside the claimed locality. This includes Mr Lovell himself (and his wife). The remainder (7) give addresses within the claimed locality and they give details of their knowledge of and use of the land for recreational purposes for, in some cases, well over 20 years. There is also a petition with 99 entries, some of whom feature in the evidence given on the second application. The signatories come from inside and outside the claimed locality although all but one are local to Brixham. The responders are merely invited to support Mr Lovell's application to register. I have to say that I attach little weight to the material mentioned in this paragraph.

General impression of the written / documentary evidence adduced in support of the application to register

160. There are a common threads running throughout the written statements of those who did not attend the public inquiry. Firstly, a number of them used the application site, both for the purposes of informal recreation and as access to the beach at St Mary's Bay and the coastal path, for in excess of 20 years before 2007, and also observed others on the field doing likewise. Secondly, none of them were ever prevented from using the land or otherwise observed signage (that is, until 2007) indicating that the land was private property. Thirdly, none of them say that they observed organised activity taking place in the field which they associated with the business of the neighbouring holiday camps.

161. The ecological impact study obtained for Millwood Homes in 2006 was particularly helpful, as was the evidence of Leslie-Ann Golden, David Caunter, Christine Brown, Shaun Sloman, Cynthia Thomas, Paul Chinnock, R. Weymouth, Mr and Mrs Hine and Mr Efford, the applicant himself. I quite accept that the evidence of these witnesses was untested by cross examination. On the other hand, none of the witnesses who gave oral evidence in support of the application to register said anything which harmed the applicant's case or was of any assistance to the Objector, and I take this into account in deciding what weight I should attach to the written evidence of those individuals whose evidence, in my view, is unlikely to have changed materially even if it had been subjected to cross examination.

Evidence for the Objectors

162. ***Andrew Thomas***

Mr Thomas is a design consultant. His statement is at OB/110. He assisted Weststar on their planning application in the period 1998-2000. He says he would have visited the application site on numerous occasions in this period yet he can only remember *'seeing some people walking on the footpath through the field, some with dogs'* on, as he puts it at para 5 of his statement, *'the odd occasion'*. In his oral evidence he said that he would have visited around 100 times once he had been retained in February 1998. He also said that he stopped visiting after three or four years. He said that he visited once a week in Winter, Spring and Autumn and that he saw a climbing frame in the top part of the field adjacent to the holiday camp and he marked on my plan at OB/115 where this would have been. This would have been for around 10 weeks. He said the structure was tall with a small base. He saw it from Homelea over the fence early on in the year in Springtime. He said it towered above the single-storey chalets. He estimated that it was some 30' high and that it was an 8' to 10' square all the way up. He cannot recall seeing children on the climbing frame when he was there *'as it was normally early morning'*.

163. It may be that when Mr Thomas was on the application site early in the day he did not observe much in the way of recreational activity taking place on the

application land. However, qualifying user does not have to take place all the time and he may either not have seen people who were there or else he may have been concentrating on his work rather than what was happening elsewhere in the field. I do though find it hard to accept that if Mr Thomas had in fact visited the field around 100 times after 1998 he would have only seen people walking in the field on the odd occasion. Moreover the evidence he gives about the siting of the climbing frame at the top of the field is also at variance with the evidence of the applicant's witnesses (with the exception of Mr Heard), whose evidence I accept, who place it on the Homelea Camp side of the fence. (It will be recalled that Mr Heard said that he saw a climbing frame of some description in a small area at the top end of the field. This would have been during one summer holiday, and was only for a period of 6 weeks.)

164. I should mention the planning application itself which would have been the subject of public notification. In this regard, I accept Mr Polyblank's point that there was no reaction to it by locals as they are unlikely to have been aware of the relevance of the application.

165. ***Derek Hardy***

Mr Hardy's statement will be found in OB/28. Mr Hardy (now retired) was at one time involved in a managerial capacity in running the Pontins' holiday camp business in Brixham (in fact he had earlier been involved in managing the Dolphin Camp when it had been under different ownership). He was, between 1979-86, controller of all the Pontins' holiday parks in the south west of England and in South Wales. As controller, his offices were, during the season, located at Homelea Camp. It will be recalled that, sometime in the 1970s, St Mary's Camp and Homelea Camp merged to become the St Mary's Bay Holiday Park. Pontins disposed of their interest in these camps in 1995. Mr Hardy is therefore in a position to give evidence about the application site in the period 1961-85 which happens to fall two years short of the commencement of the 20 year period ending with the enclosure which took place in February 2007.

166. Mr Hardy says that the application site was originally the recreation field for Homelea Camp. St Mary's Camp had its own sports field elsewhere on Mudstone Lane (now, of course, developed, as previously indicated – see OB/62). Once the two camps merged the application site was not used as often as holiday-makers then had access to the level field used by St Mary's Camp which would have been ideally suited to ball games.
167. In the early years (which I take to be in the 1960s-70s) Mr Hardy told the inquiry that the footpath crossing the application site was originally at the bottom of the field (see OB/38). He says that there was a gate at the south west corner of the field (i.e. at the entrance to the Dolphin Camp) and during the day a security guard would be stationed at the gate and after lights out, the gate would then have been '*locked shut*' (see para 11 of his statement) but security guards would nonetheless have continued to patrol the area, including the application site. I have to say that I find it hard to believe that entry into the field at the top end would have been policed in this way. There is no reference to this either in the evidence in support of the application to register. At any rate, access at either end of the public footpath would not have been obstructed. Mr Hardy tells us in his statement that the concrete path was laid in the early 1960s to facilitate access between the Dolphin Camp and Homelea Camp which had a bar.
168. In para 13 of his statement Mr Hardy says that the application site '*was never used as an open green ... between 1961 and 1986*' when he left his position as controller of all the Pontins' holiday parks in the south west of England and in South Wales. This is evidence which I cannot accept as it is wholly contrary to the evidence given by many witnesses whose evidence in support of the application to register goes back as far as this, all of whom say that they have enjoyed unhindered access onto the field. I therefore reject Mr Hardy's evidence that (as he puts it in para 22 of his statement) that he is '*absolutely sure that local residents were not using Pathfields for recreation during my management*', or (see para 24) that he '*is satisfied that the persons supporting the application will have difficulty in showing use certainly before 1986 let alone as of right*'. It seems to me to be more probable that Mr Hardy

had more than enough on his plate as controller of Pontins' holiday camp business in this part of the country and elsewhere and, as the photo at OB/39 shows, the application site would not have been of particular interest to the holiday-makers anyway and was rather on the periphery of things. It seems to me to be far more likely that provided members of the public using the field for recreation did so peaceably and did not interfere with what was going on at the nearby camps, the management and security personnel employed by Pontins simply left them to get on with it. Why should they have done otherwise? Why provoke a confrontation with locals by turning them off the field if they were not keeping to the footpath, if they were not even remotely interfering with Pontins' business operations?

169. Mr Hardy says that Homelea Camp was run separately as a self-catering camp and that the application site was the only area of open land available to guests at this camp, although I cannot imagine that it was used that often as it is, and always has been, just an open, sloping field and the sports field at St Mary's Camp would have been a much better place for youngsters to play ball games and run around on. Mr Hardy also makes the point that children of employees at the camps may well have played on the application site, yet he could only name two of the applicant's witnesses whose parents worked for him – Messrs Richards and Young. It is possible that this may have happened but I discount entirely the notion that those using the whole of the field were either holiday makers or the children of staff employed at the camps and, further, that security personnel would have known who these children were and would have permitted them to carry on playing in the field rather than turning them off it. I find this hard to believe. Nor do I see why, if it was necessary to ensure that non-residents were not using the bar or bars at these camps, that it would have been necessary to turn people off the application site at all, unless that is they were trying to gain access to these bars, which is another matter in which case the gates into Dolphin Camp, Homelea Camp and St Mary's Camp might well have been attended by uniformed security personnel, but in my view there was no active policing by

Pontins' security personnel taking place within the field itself unless that is, it was warranted by exceptional circumstances.

170. Mr Hardy's oral evidence was in much the same vein as his written statement. Interestingly he said that he used to run cattle on the field until the late 1960s after which time it was managed by cutting and (as he put it) '*kept tidy*'. He also conceded in his evidence in chief that '*residents of the camp did not make a lot of use of the field – very little for anyone to do in the field*'. I think this evidence reinforces my own view that members of the public were regularly using the field. Indeed, some support for this can be found in the fact that Mr Hardy also conceded in his evidence in chief that users of the field '*would have been challenged if they had strayed toward the Dolphin entry point, but not otherwise*'. I consider this to be an important admission and I find it difficult to reconcile this with his assertion in cross examination that if anyone was found in the field who had no right to be there they would be escorted off. I simply cannot accept that this would have happened and, of course, none of the applicant's witnesses say that they were ever challenged whilst on the land and, as already indicated, I prefer their evidence about this and reject that given by Mr Hardy.

171. **Daniel Salt**

Mr Salt's statement will be found at OB/106. Mr Salt is the managing director of Millwood Homes (Devon) Ltd. His company acquired an option to purchase the application site on 2/02/2007. It was soon after this date that he told the inquiry that (in effect) planning permission for 48 houses has been agreed in principle with Torbay Council subject to the execution of a section 106 agreement. He says in his statement that, following the acquisition of the option and with the consent of the Objector, his company erected fencing on either side of the footpath which crosses the land upon which '*private property*' signs were attached.

172. Mr Salt said that his involvement with the application site began in December 2000. He said that in the period 2000-05 he was on the field about once or twice a month engaged in investigatory work. He elaborated further by saying

that in 2005 he would have been there at least once a fortnight, if not weekly, for any period between half an hour up to a whole day. He also said that if he had seen anyone on the field he would have asked them politely to move on, although he never spoke to anyone himself. In cross examination he said that he had never seen anyone doing anything other than use the footpath. In para 6 of his statement he says that he *'was not aware of any significant usage by the public'* although he *'can recall people using the footpath across the site but not using the area as a general amenity area'*. Against this backcloth, he said in cross examination that he was surprised by the observations contained in the ecological assessment (in which it was stated that the application site *'appears to be heavily used for recreation by dog walkers and children'*) as he said that *'he had never seen anyone there'*.

173. Mr Salt was recalled at the end of the inquiry to give evidence about why the fencing came to be erected at all in 2007. He told the inquiry that the fencing was erected following legal advice after a leaflet had been posted through the site agent's letterbox which (as he said) mentioned the words *'village green'*. He was unable to produce the leaflet but he said that the fencing cost some £12,000. This was an extraordinarily large sum to pay for fencing when, on his own evidence, there would have been only minimal usage of the field as a whole.

174. I do not accept Mr Salt's evidence as I prefer the evidence of the applicant's witnesses which seems to me altogether more plausible. I am also loath to accept that so large a sum was spent on fencing if it had been intended merely (as he put it) to *'define'* the route taken on the ground by the footpath. I am also reluctant to accept his evidence that the fencing resulted from legal advice. It seems to me altogether more probable that Millward Homes and / or the Objector erected this fencing in order to protect their interests by keeping locals off the land (whom they knew were using it in large numbers) in advance of development.

175. **Deborah Meaden**

Ms Meaden's statement will be found at OB/92. Ms Meaden is a partner in the Objector. Before this she was a director of Weststar (after 1992) and in 1995 became its Managing Director. In practice, her involvement was probably fairly limited. She says that Weststar purchased St Mary's Camp from Manor Parcs Ltd in 1998 (it will be recalled that in the 1970's St Mary's Camp and Homelea Camp had merged to become the St Mary's Bay Holiday Park). We are told that Weststar sold the St Mary's Bay Holiday Park business to Landscope Holidays Ltd (*'Landscape'*) in 2001, although the application site was excluded from the sale but was subsequently leased by the Objector to Landscope in 2005. At the time of its purchase in 1998, Weststar had other holiday parks in the West Country. Ms Meaden says that the application site was important as it was (as she puts it in para 5 of her statement) *'the prime informal recreation area for guests of St Mary's Bay Holiday Park'* and was used *'predominantly by children and by those who had brought their dogs with them on holiday'*. I think this is something of an exaggeration as the application site is no more than a sloping field at the rear of the camp. I cannot imagine, for instance, that youngsters would have chosen (or at least not very often) to recreate on the application site if they could go and have fun somewhere else which was more interesting, and there were, of course, plenty of competing attractions, both at the camp and elsewhere. In my view, this field would have been used primarily by holiday-makers with dogs.

176. Ms Meaden (who does not live locally) says that she visited St Mary's Camp around once a fortnight. She says she would make a point of walking around the entire site on her visits. She says in para 9 of her statement that the footpath across the application site *'never appeared to me to be well used'*. She says she saw people on the field (some with dogs, some without) but they *'kept approximately to the footpath'*.

177. She also says that had she been aware that people other than guests at the holiday camp were using the field, that is, other than by keeping to the footpath, she would have taken steps to have them removed. She says: *'If I*

had been asked by a member of staff for guidance on the subject, I would have given instant instructions for them to require the trespassers' removal and, in default, call the police'. She says in paragraphs 17/18 that uniformed staff are likely to have patrolled the field at least three times a day and (as she puts it) *'would have certainly asked the local residents to keep to the footpath if any had been seen wandering from the path or from using Pathfields in any other way than sticking to the footpath'*. I find this evidence to be inherently implausible and I have no hesitation at all in rejecting it. As I say, I prefer the evidence of those supporting the application to register. It seems to me that it must have been obvious to Weststar that the whole of the land was being used by locals for informal recreation, yet no steps were ever taken to prevent this. There is certainly no record of any local being taken to task by any member of staff at Weststar and I rather think that, in all probability, Weststar, in common with their predecessors, simply acquiesced in the regular use of the whole of the application site by locals as it usually never interfered with the operations of the holiday camp. I also suspect that Weststar would not have been looking for any unnecessary confrontation with locals either. I also consider that, during her infrequent trips to St Mary's Camp, Ms Meaden is unlikely to have had sufficient time (and, I suspect, any real interest in the matter either) within which to arrive at an informed view as to the true level of use which was taking place in the field and that her evidence about this was simply not credible even if it was not deliberately partisan.

178. Ms Meaden mentions the schools' business organised by Travelclass which entailed large groups of school children using the facilities at St Mary's Camp in off-peak periods. Travelclass paid Weststar a fixed price and in return the children had the run of the camp under the supervision of their teachers. We are dealing here with activity holidays for children and I gather that a good deal of extra equipment had to be imported into the camp by Travelclass. In her statement Ms Meaden said that after disposal by Weststar of its interest in St Mary's in 2001 (including the sale of her interest in Weststar) she no longer had (as she put it in para 13 of her statement) any *'promotional brochures detailing the activities at St Mary's Bay'*. In the event, documents were

produced and I shall return to this later when I deal with the evidence of her sister Gail Massey.

179. At any rate, in para 14 of her statement Ms Meaden says that the area within the field used by Travelclass '*would command a fair proportion of the 3 acres*'. She goes on to say this: '*The equipment which was set up and the other activities organised at Pathfields by our staff at that time would certainly have been to the exclusion of local inhabitants. They were strictly for Travel Class' customers ... in addition to those staying at the park through Travel Class, other guests and their children would have been welcomed to use Pathfields but of course could not have been included within the activities organised by Travel Class. Weststar ran a weekly programme of activities at St Mary's Bay, many of which would take place at Pathfields. It was the only viable and safe open space at the Park for organised activities and ball games*'. In my view, the field is unlikely to have been used as extensively as this. If it had been then the locals who were using it regularly for informal recreation would have seen what was going on and would have given evidence about it. The notion propounded by Ms Meaden in paragraph 26 of her statement, namely that if locals were using the field, she was not aware of it, in which case it '*would have been secret in an attempt to be seen as guests of the Holiday Park*', is, as it seems to me, too farfetched to be credible.
180. For instance, no one saw anyone camping in the field (this venture had not been a success) and Ms Meaden's evidence that the features shown in the aerial photo at 'DM2' were tents and camping equipment was palpably wrong as they are bound to have been part of the pitch and putting facility introduced by Weststar which, I might add, none of the witnesses ever saw being used (in her evidence in chief she said that she merely assumed it was tents when she looked at the photo). Moreover, none of the applicant's witnesses ever saw any children engaged in organised activities on the land although I accept that Mr Heard mentioned seeing a climbing frame in the top of the field a few years ago and some white discs on the ground within a small area which may have marked on the ground where some activity had probably taken place,

but there is no credible showing that the entire field was used exclusively by Travelclass, either at all or for prolonged periods.

181. Ms Meaden also mentions in paragraph 21 of her statement that she can recall '*an old and quite tatty*' sign attached to a post at the Mudstone Lane corner of the field. Curiously she cannot remember the exact wording on the sign but she can recall that one of the words was '*Private*'. She remembers seeing the sign there when Weststar purchased the camp in 1998. I do not accept this evidence. None of the applicant's witnesses observed any signage of a kind that would indicate that the field was private property and I prefer their evidence about this. It also seems to me that if, as she says, maintaining security at the camp meant that staff would have taken steps to ensure that locals did not wander off the footpath, more attention would have been paid to effective signage in order to achieve this result, in which case there would have been evidence of signs (i.e. more than just a single '*tatty*' sign) or of signs being torn down or evidence showing that such signs were ordered and paid for by Weststar and were erected on or in close proximity to the application site. No such evidence was produced, nor was even I shown on my accompanied site visit where the solitary '*tatty*' sign was placed and no one had checked in advance of my visit to see whether in fact any fixings or evidence still existed in order to show that a sign may have been placed at a particular location. Some evidence of signage was produced but this concerned signs which had been supplied in 2002 and from what I recall, such signage (see OB/Supp/53A – coming at the end of the bundle in the supplemental batch of documents which were produced during the inquiry) was not and / or was never intended to be displayed in the field. In fact, I recall that this sign could be seen outside the main entrance to the Riviera Bay Holiday Camp and was nowhere near the application site.

182. In her oral evidence Ms Meaden covered the same ground. In the case of the Travelclass business during 1998/2001, she said that there would have been around 100-150 children on site, along with their teachers (I gather that the child / teacher ratio was 4:1 – these figures are not, however, borne out by the figures disclosed in para 191). I believe that this would have been at any one

time. They brought their own equipment with them and they self-catered. She said they *'would have required a fair proportion of Pathfields'*, which area, she said, had been earmarked for their use, although they would not all have been there at any one time as they were also using the facilities of the entire camp (such as the clubroom). Because of the importance of this evidence to the Objector's case I asked Ms Meaden about the current status of Travelclass and was told that it no longer traded although she did not know whether it had been dissolved and struck off the register of companies. She mentioned someone called Alan who had been involved with the business and may even have been its owner. Surprisingly, no one had searched online or otherwise made appropriate inquiries with a view to finding out more about what had happened to Travelclass and those who had been involved with its business with a view to assisting the inquiry. I gather that someone had been spoken to at RT Tours (which firm had, following the demise of Travelclass, organised out of season trips to St Mary's Camp by youngsters) who had said that the individual called Alan was no longer in the business and, rather surprisingly, it seems that the Objector had simply left it at that. I should add that RT Tours deals with football tours at junior club level and has no practical relation to the activities undertaken by Travelclass.

183. In her oral evidence Ms Meaden added to her written evidence in relation to signage. She said that in about 1999 the sign at the Mudstone Lane corner (which was the only one she could remember) had been replaced. She also said that people only walked sporadically on the footpath. She also said that it was part of park life that you could tell who were holiday-makers and who were not (and she cited the fact that holiday-makers behave as if on holiday and their dress and actions distinguish them from locals) and that it would have been quite easy for a member of staff to notice someone who was not a holiday-maker walking on the field and who, by necessary inference, would presumably have to be told to leave if they were not keeping to the footpath. I have to say that I do not accept this evidence, nor do I accept Ms Meaden's rather extraordinary observation that holiday-makers on the application site are likely to be readily distinguishable (at least to members of staff) from local

users. In truth she probably had very little knowledge of what was happening on the field, least in relation to the more mundane aspects of day to day operations on site, since (as she accepted in cross examination) she was not on site at St Mary's Camp which was being run through a General Manager.

184. **Gail Massey**

Ms Massey was a director of Landscope between 1993-2007. Her statement is at OB/56. She had also been a director of Weststar between 1989-93. It will be recalled that Landscope purchased the St Mary's Bay Holiday Park business from Weststar in 2001.

185. In her statement Ms Massey says that the application land was used for *'activities and dog walking'*. The only activities mentioned were *'sports as part of the entertainment package run at St Mary's'* and those undertaken by Travelclass which, she said, included archery and group games. Although Ms Massey says that St Mary's Camp had an organised events / activities programme which she says were *'held probably a couple or three times a week (weather permitting)'* I rather doubt whether much in the way of organised activity took place in the field which was, of course, well away from the busier parts of the camp. Indeed, even if parts of the field were used for organised camp activities, I do not accept for one moment that it materially interfered with informal recreation on the part of locals over the whole of the field. As indicated previously, I suspect that in practice this was a place where holiday-makers mainly walked their dogs.

186. Ms Massey deals with incidents involving teenagers when the police had to be called. I doubt whether much turns on this as they almost certainly involved episodes of public disorder and the police were, I imagine, rightly called to the scene, and that this would have happened anyway regardless of the legal status of the field. Indeed, in her oral evidence Ms Massey said that they did not want to antagonise the locals or be confrontational by calling in the police unless it was a serious incident.

187. Ms Massey does not believe that the public were using the field other than as a footpath although she said that they were *'obviously unable to police it 24/7'*. She said in cross examination that she thought trespassing was dealt with on an *ad hoc* basis, vis *'can you move on'*. If it had been more serious than this then (as she said) it would have been logged in the incident book and she would have been told about it afterwards. If this is right then, in all probability, the locals must have been able to use the field without hindrance from the staff at the camp. For her part, Ms Massey she did not even live at the camp which was run by a Manager who lived on site and, in all probability, she would not have been involved with the more mundane aspects of day to day life at the camp unless, that is, it interfered with the commercial operations of the camp. In this way, I suspect that she had little idea of who was using the field and that if, in truth, Landscope had seriously been concerned about locals using the field, there would have been ample permanent signage making it abundantly clear to locals that, with the exception of those using the public footpath to cross the field, the field was private property and was only available for use by guests at St Mary's Camp.
188. I thought that Ms Massey was rather vague when it came to signage, both in her statement and in her oral evidence. In her statement (para 12) she said that signs *'were trashed quite a lot'* and had to be replaced and she was looking for records of this. She too mentions the signage at the Mudstone Lane end but there is no hard evidence, as far as I can see, of any suitable signage being within or close to the field sufficient to indicate to locals (as opposed to residents at the camp) that they had no right to use the field and that public user was confined to the footpath. As I say, no one showed me where any signage would have been when I inspected the field (and Ms Massey mentions two possible locations in para 13 of her statement) and I consider this to have been an important omission. Indeed, in her oral evidence in chief Ms Massey said that *'we had so many signs – we couldn't get evidence of invoices'*. I have to say that I am unable to accept this evidence and prefer the evidence of the applicant's witnesses all of whom say that they saw no signs.

189. Ms Massey was equally vague when it came to what happened to Travelclass whose business appears to have ended at the close of the 2006 holiday season. She said she made some enquiries but nothing seems to have come of it and I doubted whether she had in fact gone to great lengths to find out more about Travelclass in connection with the application to register. She said though that she had contacted the contractor who had done her signs (a gentleman called Simon of Abbey Signs) who was unable to remember much although he could recall doing signs for her and invoicing for them but this was of limited assistance as she had three other holiday camps at the time.
190. Later on, Ms Massey returned to give more evidence following the discovery of further documents during the course of the inquiry. These are comprised within the bundle of additional documents in OB/Supp/1-55. This further evidence had been obtained after it had become apparent in the course of the evidence that it was going to be important to find out exactly how often Travelclass had used St Mary's and the number of children involved.
191. Ms Massey told the inquiry that she had been in contact with the individual who had been in charge of their computer back-up (Simon Greenwood) and he had gone through the records of their operational director and had emailed her anything which would have been relevant from the period when Travelclass and RT Tours were using St Mary's for their activity holidays. She had also been in contact with an individual called Simon who dealt with the signage.
192. This material is largely self-explanatory. The first 35 pages were print-outs covering Weststar's and Landscope's business with Travelclass in the period between April 2001 and July 2006. Because this material arrived late in the day I asked the Objector's solicitors whether they could reproduce it in a more coherent format and I was kindly provided with a schedule which makes it much clearer to see what was happening on site in the case of the Travelclass business. What this schedule shows is this (and I have tried to make the figures as simple as possible):

2001

- (1) A total of 848 children and instructors attended between 23/4/01 and 20/7/01.
- (2) This is a period of 12.4 weeks producing an average of 68 children and instructors on site each week.

2002

- (1) A total of 598 children and instructors attended between 6/4/02 and 19/7/02.
- (2) This is a period of 14.8 weeks producing an average of 40 children and instructors on site each week.
- (3) The figures for 2002 are slightly distorted as in the period 3/05/02 to 3/06/02 there were a total of 1533 children and staff on site in connection with R & T Tours.

2003

- (1) A total of 869 children and instructors attended between 25/04/03 and 18/07/03.
- (2) This is a period of 12 weeks producing an average of 72 children and instructors on site each week.

2004

- (1) A total of 842 children and instructors attended between 12/04/04 and 16/07/04.
- (2) This is a period of 13.5 weeks producing an average of 62 children and instructors on site each week.

2005

- (1) A total of 713 children and instructors attended between 06/05/05 and 15/07/05.

- (2) This is a period of 10 weeks producing an average of 71 children and instructors on site each week.

2006

- (1) A total of 943 children and instructors attended between 15/05/06 and 21/07/06.
- (2) This is a period of 9.5 weeks producing an average of 99 children and instructors on site each week.

193. The 3 spreadsheets produced (which I have given the numbers OB/42A/42B/42C and have added at the end of the sheets which were produced at the inquiry) show that there is a great deal of variation in the number of children attending St Mary's Camp from time to time and the above-mentioned averages are derived from the overall figures in each year. At any rate, the actual figures produced are a good deal less than the estimates given at the inquiry. For instance, Ms Meaden said that there would have been around 100-150 children on site (i.e. at any one time), along with their teachers. Such figures were, however, never attained in practice. The highest we have in the case of the Travelclass business was 87 in one 4 day period in June 2001. This was the month when there was obviously some event taking place which also involved a large number of children being booked into St Mary's Camp by R & T Tours.

194. However what these spreadsheets do not show is the extent and frequency of the recreational activities which were taking place on the application site by Travelclass.

195. In relation to the other documents produced, I have read the following:

- a note of a meeting in 2003 involving a review of R & T Tours at St Mary's Camp in 2002 – I do not have any details for R & T Tours in 2003 although judging from the minutes they were also there in 2003 (OB/43).

- Guidance notes for Contract Security Team meeting on 3/05/03 (OB/45).
- Uniformed Security Personnel costs (Landscape) re R & T Tours in 2005/06 (and in terms of numbers, I am without figures for these years) – I understand this to be additional security provision which would have been re-charged (OB/46-51).
- A guide put out by Landscape to those involved in running the R & T Tours activities – we are dealing here with junior football taking place at local venues (OB/53).
- Copies of signage used by Landscape.
- A leaflet of 'St Mary's Bay Holiday Village' showing (a) the 'Fun Pitch and Putt Area' and (b) the so-called 'Doggy Walk' area both of which are within the application site. The leaflet is interesting as it shows the epicentre of St Mary's to be the main clubhouse where a great deal of activity obviously takes place (e.g. indoor pool, 10 Pin bowling, club and catering) and is, I suspect, where the children are most likely to congregate when not outside taking part in organised activity (OB/54/55).
- At OB/55 there is a plan which was used by Landscape in meetings with representatives of Travelclass and R & T Tours showing the general layout of the camp site (or 'Holiday Village' as it was then known) – the relevance of the plan is that it identifies (i) the area where the climbing tower was intended to be located which was at the top of the slope, and (ii) the application site, which was described on the plan as an 'Open field area, general use'.

196. When examined in chief on this additional material Ms Massey said that the children would need an amenity area – extra space to kick a ball around. She also said that in the case of R & T Tours, Landscape merely provided accommodation and the children would go off and play football at local clubs

in the area. She said that the application site was the only place they could have kicked a football around and that she saw boys doing this.

197. **David Tye**

David Tye's statement is at OB/125. Mr Tye was employed by Weststar between 1994-2006 as their Finance Director. He was based at their head office in Exeter. He says that he had been aware at the time of the purchase of the holiday camp from Manor Parcs in 1998 that the application site was important to Weststar. He also knew about the footpath running through the field *'but as a company we were keen to ensure that people kept to the footpath ... we didn't want people's dogs causing a mess on the grass adjacent to the footpath'*. He also says that he arranged for public liability cover to be extended to the field after a couple of large trees had blown down in a storm. He also mentions that their insurers had advised him that signs should be erected warning members of the public that they were only allowed to use the footpath and he recalls seeing one such sign at the entrance to the field at the Mudstone Lane end. He believes that a similar sign would have been erected on the other side of the field. He also says that he recalls the application land *'being in use every day during the season except in bad weather'*. He says there were monthly management meetings at St Mary's which *'always included a walk around the site ... During those inspections I never recalled being alerted to locals using Pathfields other than walking along the footpath'*.

198. Mr Tye also dealt with the Travelclass business which Weststar had inherited. He said they would set up their equipment on the field, including climbing frames, ropes and archery targets. He said some of the *'activity stations'* would be cordoned off and that *'I know that after lights out, security would patrol the park and that particular attention would be paid to Pathfields whilst the equipment was standing'*. He goes on to say that even during the school holidays (i.e. when Travelclass were no longer at the camp) *'security would continue to patrol the entire park to ensure that locals were not using the facilities'*.

199. In his oral evidence he said that he visited the site at least once or twice a month. He said there were regular site visits during busy times which always included a tour of the site, including the application site. These tours involved Deborah Meaden and Gail Massey and some of the other departmental managers as well. He remembers seeing half a dozen archery targets, climbing frames with ropes and activity frames on the slope in the field.
200. When cross examined he was sure there *'were signs put up telling people that the land was private land'* and that uniformed security would patrol regularly. To the best of his knowledge the equipment used by Travelclass was not in Homelea Camp but within the field. It seemed clear that after the business had been purchased by Weststar in 1998 works were carried out at St Mary's Camp (a £2m upgrading programme) when he would be visited more regularly that was usually the case (as he put it) after the business had bedded down and that from then on his visits were usually confined to his monthly management meetings when he, in company with others, would undertake a tour of the whole site which would include having a look at the application site.
201. When asked about equipment on the field Mr Tye said he saw climbing frames with ladders covered by tarpaulins which were also roped off to prevent people from using the ladders and getting onto the equipment. When asked by me to describe the size of this equipment he described something which he said was practically as high and as wide as the auditorium of the theatre in which the inquiry took place, which was plainly absurd. He also said that each time Travelclass were there *'I would have seen the equipment roped off in the daytime'*. He said he saw *'hordes of children – they were everywhere'* and that whilst Travelclass were there they *'took over the entire park'*. He explained that Travelclass did not bring the same equipment with them every year.
202. I was troubled by Mr Tye's evidence as it seems to me to be improbable that he would have taken in so much of what was happening on the application site on his infrequent visits to St Mary's Camp. He was, after all, based in

Exeter and was not directly involved in day to day operations at the camp. He was also only concerned as Finance Director in the period of Weststar's ownership between 1998-2001 and I find it implausible that he is now able to give so detailed and accurate an account of what took place on the application site which, operationally speaking, would not have been of particular importance to Weststar as compared, for instance, to the clubhouse and other busy areas of the camp. My feeling about Mr Tye's evidence is that his memories and recollections have probably been coloured by the interests of those on whose behalf he was called to give evidence. This is precisely why this case cried out for independent evidence, something which I remarked upon more than once during the course of the inquiry.

203. **Brian Meaden**

Mr Meaden's statement is at OB/78. Mr Meaden was a director of Weststar between 1998-2005. He is now a partner in Mudstone LLP, the Objector and owner of the application site. Mr Meaden himself lives in London.

204. In his written evidence Mr Meaden stresses the importance of the application site to Weststar as amenity land at the time of its acquisition of St Mary's Bay Holiday Park in 1998, the football field in Mudstone Lane having by then already been sold. He said the field was to be used for guests at St Mary's Camp with dogs and for casual or organised activities at the camp and he specifically mentions the schools' business with Travelclass whom he says constructed climbing and abseiling frames.

205. Mr Meaden says that he was *very 'hands-on'* in his time as a director of Weststar. He says that the application land was used either by guests with their dogs or for activities that were run through or by the entertainment staff at the camp. The Weststar site plan for the 2000 season which he produces at OB/88 is similar to the Landscope plan mentioned in para 194 above which refers to the *'Doggy Walk'* and *'Fun Pitch & Putt'* areas within the application site which, on any reckoning, in my view, was well away from the main areas of activity on the camp site. The brochure he produced at OB/89 for the

(possibly) 2001 season mentions the same items plus an assault course. He also mentions short-term camping taking place on the field.

206. Mr Meaden was not involved in the day to day running of St Mary's which he says he visited *'on average, at least every month and at some stages in the year, possibly weekly'* (see para 14 of his statement at OB/83). Mr Meaden says that he himself never saw more than the odd person walking on or near the footpath and he cannot recall seeing children or adults in any number in the field other than as part of the organised camp entertainment. He says that during the height of the season there would have been between 1,200 – 1,400 guests at the camp making it difficult (as he says in para 18 of his statement – when cross examined he said it would be *'almost impossible'* to tell the difference) to identify whether people were guests or local residents (something with which Ms Meaden would no doubt disagree). Despite this, he says that he was not aware of the field being used by non-residents for any purpose other than as a footpath. In his statement Mr Meaden also tells us that, in around 2005, it was agreed with Landscope (the application site was sold by Weststar to the Objector in 2005 and had been leased to Landscope until 2007) that the grass would be left longer *'to create a less manicured, rougher dog walking exercise area'*. I find this hard to accept if, as I have been told, this area was such an important amenity area for the holiday camp (see evidence of Gail Massey). If this had, in truth, been the case then I rather suspect that the field would have been actively managed although I think the grass was usually kept a little longer towards the top of the slope.

207. When cross examined, Mr Meaden recalls seeing the (presumably) climbing tower on the tarmaced area at the top of Homelea Camp. It apparently moved from place to place in successive years. It had been down by the swimming pool but had been moved following objections by residents in Douglas Avenue. He said the structure was *'too tight'* for Homelea Camp and had been moved outside to the application site. He said it was around 25-30 feet high and he is surprised local residents never saw it. He also said that he had been told at management meetings that *'Private Property', 'Please Keep to the*

Footpath' and *'No Dog fouling'* signs had been erected and were continually being pulled down.

208. Mr Meaden conceded that camping never really worked and that the Pitch and Putting facility was only tried in the 2000/01 seasons. He also said that after hearing the evidence in support of the application to register he had never been aware of the fact that large numbers of people were using the field and only occasionally had he seen people with dogs. The fact that the grass was not cut after 2005 and that, in his evidence in chief, Mr Meaden complained that locals were abusing the land by removing signs, dumping rubbish and allowing their dogs to foul the land, is, as I find, consistent with a good deal more in the way of local usage taking place on the application site than the Objector is now prepared to admit. It seems to me that the absence of grass cutting after 2005 was very probably intended to deter local usage rather than *'create a less manicured, rougher dog walking exercise area'* for guests at the camp, as Mr Meaden puts it in his statement.
209. I do not accept Mr Meaden's evidence in relation to the signage. As I have already indicated in the case of Ms Meaden, none of the applicant's witnesses observed any signage of a kind that would indicate that the field was private property and I prefer their evidence about this. It also seems to me that it must have been obvious to Weststar that the whole of the land was being used by locals for informal recreation, yet no steps were ever taken to prevent this as it is unlikely to have interfered with the business operations at the camp. In common with Ms Meaden, I also think it unlikely on his infrequent trips to St Mary's Camp, that Mr Meaden would have applied much (if any) thought to what was happening on the application site as would have enabled him to arrive at an informed view as to the true level of use which was taking place in the field. I think his evidence about this was simply not credible and, at times, even far-fetched as, for instance, when he said in para 24 of his statement that if the field had been used by locals (and he conceded that he only ever saw *'the odd person wandering along or adjacent to the footpath'* – see para 16 – or as he put it in para 18, that *'I was not aware of the use of Pathfields by*

non-residents for any purpose other than using the footpath) it had been *'secretive and certainly not 'as of right''*.

210. **Susan Hill**

Ms Hill's statement is at OB/44. She is currently marketing director of the Eden Project and between 1996-2001 held the same position at Weststar. She was not based at St Mary's Camp although she says she visited on *'on a needs basis'* (see para 5). This might be every two months or even every other week. She thinks, however, that on average she might have visited St Mary's Camp on a monthly basis. In cross examination she said that sometimes she would visit once every two weeks but that her visits were sufficient.

211. In her statement she deals with Travelclass. She says that supervised activities run by Travelclass involving climbing walls, assault courses, games and competitions, took place on the application site. She also says that Travelclass equipment *'was fenced off at various times to discourage any youngsters trying to use it when it wasn't in use by Travelclass'*. On the face of it, this is consistent with the fact Weststar and / or Travelclass (more likely both) recognised that local people also used the field who might otherwise be tempted to use equipment which had been left there by Travelclass.

212. Ms Hill's statement is rather thin but she elaborated on matters in her oral evidence. She said that the climbing wall (as she put it) was particularly large that it had to be fenced off at one point. She also mentioned that there were other items which were packed up by Travelclass at the end of the day (tunnels). There was also a climbing frame which was at least 20 feet high. She said that activities changed from year to year and she cited watersports and canoeing. She said that Travelclass also undertook activities around the pool. She said equipment moved around the field and that they were using *'all the area'*. She mentioned that there were other games which did not involve the use of equipment. She said that she saw the field being used on many occasions with the children being broken up into groups. She said there were 50 plus children using the field at any one time. The Travelclass employees

also wore uniform and the children with Travelclass could not be mistaken for anyone else. She recalls that there were no problems with locals also wishing to use the field and it was essential that Travelclass had '*a smooth operation*'.

213. In cross examination she said that she found it hard to believe that locals never saw the climbing frame. She also said that the equipment was fenced off each evening. It was noteworthy, I think, that she did not remember the climbing frame being located by the pool when we know it had to be removed after complaints by locals.
214. She said that if there had been an issue with locals using the field she would have found out about it. Her concern though had been with Travelclass and their equipment. She described the climbing frame as being around 20 feet high and about 6 – 10 feet wide. She said that the equipment changed and became larger each year, with more additions. She said it was located in the long grass close to the path at the bottom of the field and over a 3 year period moved around within the field. No one else said it was located at the bottom of the field.
215. She then described the assault course which appeared to consist of tubes 6 feet in length through which the children presumably had to clamber in a race with others within a square measuring some 30 to 40 feet. She also mentioned balls and hoola hoops. She said there were groups of 50-60 children whenever she went to the field but it could have been more whenever there was a sports day. She said that she would be there when the first group arrived but would not stay on the field during the whole event. She said that Travelclass youngsters monopolised the field and other areas of the camp.
216. Ms Hill drew a diagram of the climbing frame and tubes. Mr Piper did his own drawing of the climbing frame at the same time. The two drawings had a passing resemblance. It was plainly a substantial structure held down by guy ropes on all sides with, in Mr Piper's case, platforms within the structure and integral ladders leading up to each stage. This is presumably how those who had ascended the climbing wall on one side of the structure, descended to the

ground. It will be recalled that Mr Piper located this structure at the top of the slope within Homelea Camp and not on the application site.

217. It is worth remembering that Ms Hill was not engaged in day to day operations at St Mary's Camp, and that she probably only visited once or twice a month. Her job was to ensure that the arrangements were in place for the groups of children staying at the camp from time to time. She was not responsible for the equipment which Travelclass brought in themselves and which seemed to undergo adaptation and / or change from one year to the next. It seems to me that she is unlikely to have been on the field with sufficient frequency to be able to offer an informed view about what would have happened there on anything like a regular or day to day basis in the time that Travelclass spent at St Mary's Camp. In her case, she left Weststar's employment in 2001. I am not sure whether she saw out the 2001 season when Travelclass were on site for some 12.4 weeks but if the pattern in the period 2001/06 for which we have figures was replicated in the period after 1996 when she was employed by Weststar, it seems probable that Travelclass would have been on site for around 12 weeks a year within which period Ms Hill would probably only have visited St Mary's Camp on no more than say 6-9 occasions. I can scarcely imagine that the whole of her time would have been spent on the field on these occasions when she no doubt would have had other commitments to attend to and people to see elsewhere at the camp in the course of her infrequent visits. There is a real risk, in my view, that Ms Hill's recollection of events occurring some 8-11 years ago is less reliable than she thinks (the fact that she placed the climbing frame at the bottom of the field near the path and also could not recall it being located near the pool are good examples of this) in contrast, in my view, to the evidence of the applicant's witnesses (whose evidence I prefer), none of whom observed organised activities involving numbers of children and their adult supervisors taking place in the field.

218. ***Beverley Dore***

Ms Dore was employed by Weststar between 1996 and 2001 as a Bookings and then as a Contracts Manager. She was based at the Exeter office. Her

statement is at OB/15. In common with Ms Hill, her evidence also deals with events occurring some 8-11 years ago in the case of the St Mary's Bay Holiday Park, which Weststar purchased in 1998.

219. Her statement deals with the booking of the Travelclass business during off-peak periods. She dealt with the booking, accommodation and payment arrangements. She also says in her statement that Travelclass *'used the field pretty much exclusively during the periods when they were on site'* (para 5). She particularly mentions A-frames for climbing and zip slides which were set up on the field (she even recalls seeing these structures being assembled) for use by the children. She also says that the Travelclass instructors were all in uniforms. She says in her statement that she would go to St Mary's Camp at the beginning and end of the season to help out (she even said that she went on holiday there herself although she never took her dogs with her). She said that she might also help out in reception *'to welcome the first intake of children for the season and again at the end of the season'*. (I take it that she is referring to the low season block bookings with Travelclass.) Although she concedes that in the high season she only visited the camp occasionally, she nonetheless felt able to say that the field was *'used predominantly by guests who brought pets with them'*. She also says that when she did visit the camp *'to meet with Travelclass and to attend focus or manager's meetings, I cannot recall seeing any members of the public using the field'*. That she might have visited the field at all in her position or with sufficient frequency to be able to deal with such important evidence as this (and I rather doubt whether she monitored what was happening in the field whilst she was on holiday there), and, if she did, that she would have been able to distinguish between residents and non-residents, are perhaps matters which are open to serious debate.

220. Ms Dore said she saw A-frames in the field *'some years'* (these are two metal structures, one at a higher level than the other, between which there is a zip wire allowing children to slide between the 2 main A-frames whilst suspended from the wire). She says these A-frames were about 20 feet high and were located at the top of the slope in the south east corner of the field which is

precisely where you would expect them to be located (she pointed this out to me on a plan – she also thinks that this area would have been roped off to stop children *'on the park getting in'*). She cannot recall any other structure being set up in the field. She also mentioned bean bags and hoops. She said that the Travelclass leaders were all in uniform and she thought the children were in the age bracket of 10-14. She said the children would kick a ball around but the field was unsuitable for matches and they would only practice there. She saw children four or five times playing with a ball in the field. She remembers this as they were shouted at for playing near the accommodation. She said she remembers the noise of the children in the field. She said Travelclass had sole use of the application site and that in the high season the field was the *'doggy exercise area'* although there was not a huge amount of use by dogs in the season as there were more non-pet owners than pet owners amongst the residents. She also said that she never saw anybody in the field who was not from the holiday camp although she never explained how you could spot the difference between a resident at the camp and someone who lived locally.

221. In cross examination she said that Travel Class took over the whole site and had exclusive use of the field. She said that (presumably outside the high season) there would have been no one else using the field apart from people from the camp walking their dogs *'or private groups we had in'*. When pressed about her visits to the field she said that she would have visited the field at the start of the season around four or five times. She would visited again during the main part of the season (i.e. when Travelclass were not on site) and again at the end of the season. In all these visits (and she has even holidayed at the camp herself) she said that she never saw local residents using the field. She said that she visited during the day (afternoon or late morning – never in the evenings) and she stated categorically that *"I did not see any local people"*. When she visited the camp she would either be there for a day at a time whenever she was needed or else she would just check in earlier in the day or in the after. If they happened to be short-staffed then she would also help on reception.

222. She rounded off her evidence by saying that the organised activities on the field took place in smaller groups of 8 to 10 children. One year there were two groups with 25 children in total plus an adult playing in the field. She visited twice when there were large groups in the field. These were informal sessions where the children were practicing their shots rather than organised activities. There were no goal posts or jumpers on the ground. In the high season, whenever she talked to customers at the camp when reviewing services or facilities, she never saw anyone in the field.

223. My concern about the evidence of Ms Dore is that she was able to descend into such detail in circumstances when she was, in substance, only an occasional visitor to St Mary's Camp. I rather think that whenever she did call there her visits to the field are more than likely to have been fleeting rather than prolonged as I imagine that she had other things to do on her visits than hang around and be a spectator to what was happening in the field. Also, in common with others who have given evidence about this, she was not engaged in day to day operations at the camp when Travelclass were in situ and it seems to me to be improbable that she was in a good position to explain what would have been happening on a regular basis in the field. In common with what I consider the position to have been in Ms Hill's case, I also think that there is a real risk in Ms Dore's case that her recollection of what she saw on the field some 8-11 years ago is less reliable than she thinks. As I have already said more than once, I prefer the evidence of the applicant's witnesses, none of whom observed organised activities involving numbers of children and their adult supervisors taking place in the field and it seems to me that if this happened at all then it was not to any great extent nor prolonged and certainly did not conflict with informal recreation on the part of local inhabitants which, as I find, regularly took place in the field, whether Travelclass were using it or not for their own activities.

224. ***Aiden Glover***

Mr Glover's statement is at OB/20. Mr Glover was employed by Pontins in a managerial capacity between 1977 and 1992, by which time he had become

the General Manager of the Dolphin Camp which post he held for two and a half years. There was then a gap (whilst he was at Pontins in Southport) when he returned as General Manager of St Mary's Camp at a time when it was owned by Weststar. It seems probable that he would have held this position from a date in 1998/99 until Weststar sold the business to Landscope in 2001, during which time he actually lived at Homelea which is right at the entrance to St Mary's Camp and he told us that he had a view from his house window over the application site. I am not sure how many seasons he would have been in place whilst Travelclass used St Mary's Camp, say 3, perhaps 4 at most.

225. Mr Glover is obviously familiar with the application site in view of his acquaintance with the various holiday camps in the period 1977-92 and between 1998/9 to 2001.
226. In his statement at para 12 he says he '*often*' had to ask people to leave the field and he speaks of the '*huge number of events held at Pontins for guests of the holiday parks. They could be honey pots for local kids and teenagers. In those instances security had a nightly task of asking them to leave Pathfields*'. He also says in the same paragraph that locals '*generally used the path as a walk through and did not use the rest of the land*' and in para 13 he says that both St Mary's Camp and Dolphin Camp '*practiced strict security controls*' which meant that they had to '*manage who came into the parks particularly during peak holiday periods*'.
227. In the remainder of his statement (specifically at para 16) he speaks of the footpath being used as a '*short cut by local residents*' and he says that in his time at both camps locals '*did use the path which ran along the wooded border and later, diagonally through Pathfields*' but were '*not permitted to use Pathfields for recreation or for any other purpose*'. He then says this: '*If locals did use Pathfields and were not identified and asked to leave then their presence was secretive*'. In para 16 he says he '*strongly disputes*' that Pathfields was used by Mr Efford and others '*as of right*' for 20 years as this was not the case in his time at the two camps.

228. In his oral evidence he said that Travelclass provided their own activities and also had the use of the camp's internal facilities. He said they had a climbing tower and a climbing wall. Judging from Mr Piper's sketch, I think this would have consisted of a single scaffold- type structure which would have been assembled on site. He said there was a doorway at the bottom which had locks on it which I find rather hard to visualise and about which no one else has given evidence. He said that it was at least 25 feet high and was secured at the base with mesh which I think he probably means was wrapped around the structure so that no one could wander around inside it. He says it was located in the top part of the field and he explained that when the climbing tower was in use, groups would sit at the base of the structure, before going up two up at a time wearing health and safety gear and when they got to the top they would be helped down in a climbing harness. He said they had to cater for anything from between 150-200 children when Travelclass were on site. I think this included children of other camp residents but as Travelclass were, I think, mainly there during term time, this was probably something of an over-statement.
229. He said there were other *'floor based'* activities. He says there were lots of team games. When asked about R & T Tours he said they played local school teams (involving teams of 8 year olds and upwards) in football tournaments. He said it was a very professional operation involving teams plus family and coaches making a holiday of it. He said that the application land was a crucial amenity for the children on the R & T Tours as a kick-around field as it was the only place they could go seeing as it would have been frowned upon if they had played too close to the chalets. He said *'we'* encouraged it. Finally in chief he said that he was unaware of public use interfering with R & T Tours (i.e. when they were presumably kicking balls around on the field).
230. In cross examination he said they had many security officers who were *'all radioed up'* on a network with the other parks. My distinct impression is that security was a good deal more intense in the days when Pontins ran these camps (Pontins used to employ a group security officer and in the Brixham area alone they employed 25 security officers). He remembered asking a

number of children who were *'all shouting'* to leave the field and they did. This happened at a weekend when there was a Karaoke function taking place in one of the camps. He also said that there were *'many occasions'* when they had had *'to eject people'* who were misbehaving. He cited as another example of this some locals who were engaged in some kick boxing in the field who were also asked to leave. He said that *'as you are near houses, a lot of people would want to get into the parks'*.

231. Mr Glover was sure that security staff also patrolled the application land in the day time and at night. I have to say that it was a pity that the Objector never called evidence from security staff who, it seems, were employed at these camps in some numbers who might have been able to tell the inquiry exactly where and how often they routinely patrolled.
232. Mr Glover also said that there were a variety of signs when Pontins owned these camps and there were even more when Bass took over Pontins. In cross examination he said that there were signs at the *'Dolphin end'* and (as he put it) where *'I lived in the house at Homelea'*. In para 15 of his statement he said there were signs *'at both ends of Pathfields which confirmed that the land was private property'*. He said these signs *'were done at the request of the insurance company, Bass Hotels and Holiday Villages'*. When asked about this he had no recollection of any sign at the *'far end of Pathfields'* (i.e. on the Briseham Road side of the field). He said the sign said *"Private Property"* which I am reluctant to accept if in fact it was located at the entry point to the field which was, of course, crossed by a public footpath and which is far more likely to have been located at the entrance to St Mary's Camp itself and, likewise, in the case of the Dolphin Camp when it was still in operation. I am more confident in my finding about this because Mr Glover conceded that signage was not under his jurisdiction but was the responsibility of Derek Hardy whose association with Pontins had, of course, ended in the mid 1980's. I think it must follow from this that his evidence in relation to signage at a time when he was employed by Weststar (and he said there were *'lots of signs put on walls'*) is unreliable.

233. Mr Glover also said that the climbing tower was there for the time Travelclass were at St Mary's Camp, and when Mr Polyblank suggested that it must have been for less than 28 days (i.e. as temporary structure for planning purposes) Mr Glover expressed surprise that planning permission would have been required for any longer period. He also said that the equipment was 25 feet high and would therefore be hard for locals to miss. He said it would have been in situ (i.e. in the field) *'for a period of many weeks during the year, say 8 weeks a year'*. Interestingly he also said that it was erected by a professional firm but he cannot remember who this was or where they came from. He recalls that the climbing frame was *'down towards Homelea'* on one occasion. He also said that the Travelclass activities *'did not take up the whole of the field'* and that those at St Mary's Camp on R & T Tours played their football away from the camp. He had no recollection of the pitch and putting facility.
234. Mr Glover gave his evidence robustly and is obviously proud of his record in management. It was though obvious to my mind that he had little patience with locals and, in common with other witnesses called by the Objector, he was at pains to downplay as best he could the public's usage of the application site. In my view, there is a real risk that Mr Glover was motivated by an understandable desire to protect his record in his time in management at St Mary's Camp and Dolphin Camp. In this regard, he is most unlikely to have conceded that locals were recreating on the field (which I find they were) and that this would have been tolerated (which I find it was) or that the signage would have been anything other than that which he describes (which I find was not the case).
235. As already indicated, I prefer the evidence of those who gave evidence in support of the application to register and am therefore unable to accept a good deal of what Mr Glover has said, specifically in relation to signage and the public's usage of the field. In my view, it is altogether more probable that those in charge at St Mary's Camp and Homelea Camp would have been far less concerned about what was happening on the application site (which area was, in any case, open to the public) than with what was going on within the

enclosed perimeters of the camps where security issues were altogether different and more critical. To have been proactive in its management of the application site might also have risked unnecessary confrontation with locals and I scarcely imagine that Weststar or their predecessors would have welcomed this.

236. I also thought that Mr Glover's evidence in relation to the location of the climbing tower and time which it would have remained in situ at the top of the field was unreliable in the light of the evidence given by others about this. I consider it more probable that it would have been stationed at a location which was well out of harm's reach from locals who might otherwise have been tempted to have a go on it themselves, which is more than likely to have occurred if, as Mr Glover suggests happened, it had simply been left in the field for prolonged periods. I also consider that Mr Glover probably dealt more with what the position may have been whilst St Mary's Camp and Homelea Camp were owned by Pontins (i.e. whilst he was on the scene in the period 1977-92) which may have changed by the time the merged St Mary's Camp was owned by Weststar.

237. **Alex Benson**

Mr Benson's statement is at OB/314. Between October 2002 and June 2006 I think he lived in the same property at St Mary's Camp (now, of course, the Riviera Bay Holiday Centre) where Mr Glover had lived (being either 1 Gate House Cottage or 1 Mudstone Lane) which is located reasonably close to the entry point into the application site at the Mudstone Lane end. Mr Benson is therefore in a position to give evidence in relation to the position when St Mary's Camp was owned by Landscope who, after 2005, rented the application site from the Objector. Mr Benson had also been a local police officer in the period 1991-93.

238. Mr Benson was employed as Landscope's Operations' Director. This firm ran two holiday camps in the area and his work covered both of them. He says that he routinely walked around St Mary's Camp (normally at weekends), including the application site. He said that he often found *'kids playing on the*

field doing various activities which I would always break up and send the kids away'. He said that he has seen children starting fires on the field, as well as playing with motor bikes and on one occasion had even seen a large number of children taking part in an amateur wrestling event on the field. Indeed, it will be recalled that the inquiry was provided with CDs of wrestling taking place on the field on a number of occasions in 2004/05, all of which seems to have carried on without protest from anyone in authority at Landscope, although Mr Benson is, however, at pains to tell us that on each of these occasions he *'went over and told them to get off the field'*. On the face of it, his evidence on this is inconsistent with what one sees on the wrestling CDs.

239. He also mentions the climbing tower which he says had at one time been located in the top corner of the field but was re-located *'on the other side of the wall inside the holiday centre'*. This had been on account of *'vandalism the previous season'*. His description of the tower resembles Mr Piper's sketch and he explains that the green mesh around it was like what one would see on the outside of buildings undergoing repair etc, and would prevent objects falling off the various platforms to the ground below, quite possibly injuring someone in the process. Amazingly, he said that the tower was as high as 60 feet with a 10-12 feet square at ground level. I cannot imagine for one minute that inexperienced youngsters would have been allowed to clamber up the side of something as high as this.

240. He also deals with Travelclass and the fact that they ran activities in the field. He also mentions camping in the field. He also says that when R & T Tours were at the camp they had a security team of around 10-12 people and he is confident that they also patrolled the field. We have, of course, some evidence that in 2002 R & T Tours would have been at St Mary's Camp for only a month. A combination of the children on holiday with Travelclass and with R & T Tours would have meant that there would have been well over 1600 children at the camp and I suspect that Landscope's security team would have had quite enough on their hands without having to watch out for locals on the application site who were not sticking to the footpath. In his statement Mr Benson also says that the field was managed and that there

were problems with *'low level vandalism and fly tipping'*. He also says that they *'erected signs saying no fly tipping as it was such a persistent problem'*. It is clearly relevant that he does not mention signage as would indicated to locals that they were not allowed to wander off the footpath.

241. In his evidence in chief he said he did not think that the R & T Tours children made any use of the field. He also complained that the *'No Fly Tipping'* sign (which I think was on the wall leading up to the field) was repeatedly torn down and had to be replaced many times.
242. In cross examination he said that he knew the camp (meaning St Mary's Camp, which incorporated the former Homelea Camp site) and the routes to the coastal paths very well but that he did not know the field particularly well. He said that as Operations Director, he probably went round the camp once a week but that the two General Managers under him would have patrolled the site more regularly. I think he must be referring to the two Landscope camps, each with their own General Manager, rather than the fact that the Riviera Bay camp (which, by that time, St Mary's Camp was then known) itself had two General Managers, which I rather doubt – at any rate I infer from the evidence he gave that he had competent staff under him who would have kept an eye on the whole of the camp site and who would no doubt have reported back to him if the circumstances had warranted it (if he had to become involved i.e. if, as he put it, there was *'unrest'* in the field) and, of course, he himself lived close to the field anyway.
243. He also mentioned fires lit with timber near the boundary wall. He said that the children ran away when he approached them. He said he had also spoken to the motor cyclists and they had left the field. He also recalled that one of the wrestlers had worked in the bar at the camp. He said that the children had carried in mattresses from the nearby estate. He said he thought they were committing a public nuisance but they moved off. When it was suggested to him that the wrestling CDs did not show him asking the wrestlers to leave he said this only happened when he saw it going on as it seemed to him to be a disorderly event.

244. Mr Benson also said that in 2003 the climbing frame had initially been located in the car park opposite the Management House (i.e. at the lower end of the camp) but Travelclass had wanted it at the back of the accommodation at the furthest point (upslope) at the former Homelea Camp (Mr Benson had never seen the climbing tower in the field in his time, i.e. between 2002-06). He also said this: *'The field was not as good as local children were getting in there and causing damage to the netting around the frame'*. (Mr Glover's evidence about this does not sit easily with this evidence.) He was also asked about his estimate that the frame was 60 feet high. He said it was only an estimate of what he could recall: *'That's my perception of it'*, and although he could not be sure that it was as high as this, he did not know the exact height and he was, I think, eventually prepared to accept that it may only have been as high as only 20 feet. He also said that the climbing tower had a view over Brixham and that it was a challenging piece of equipment. He thought that the children using it were aged between 12-16.
245. He then dealt with the exhibits to his statement. The first at "AB.1" is a copy of a letter which Mr Benson had written to a Melanie Whitehead, an officer of Travelclass, which I see was based at New Milton in Hants. The letter is dated 6/02/04 and deals with arrangements for the 2004 season. There is an accompanying collection of somewhat poor images showing those areas on the camp which would have been available for use by Travelclass. The second document at "AB.2" is a similar document dealing with arrangements for the 2004 season (the item at 7 in this letter is interesting in that it states that the *'climbing tower would be erected at the new location and highest point of the centre, specifically in the car park behind the accommodations'*). It seems clear from these documents that the Travelclass holidays were highly organised affairs. The document "AB.3" is a contract between Landscope and Travelclass dealing with the arrangements for the holidays. One observes that Landscope undertakes to provide Travelclass with what are described as *'Amenity facilities'* which are set out in Schedule 1 which include *'Sufficient amenity land within the premises for the safe conduct and satisfactory operation of activities in Schedule 2'* which includes a number of recreational

activities, some of which might very well have taken place on the application site.

246. Mr Benson said that the field was used by residents on the camp for dog walking. He said that as there was a public footpath which *'runs around the edge of the field'* (which is, of course, at variance with the location of the fencing now in situ across the field). Mr Benson also said that he had seen people walking dogs around but he could not say whether they were residents at the camp or locals. Later on in his evidence, he accepted that he had never told dog walkers walking around the field to leave the field. This is important evidence. He said that as he lived next to the field he could *'practically hear things going on in the field'*.
247. In re-examination Mr Benson said that before the re-location of the climbing frame in the top car park in the 2004 season, i.e. behind chalet nos D1-4 (and Mr Benson only joined Landscope at the end of the 2002 season), the climbing tower had been in an unsuitable car park location. He did not explain where this was but the plans at OB/Supp/54/55 (i.e. within the later documents produced at the end of the Objector's bundle) do mention another *'Car Parking'* area further down the slope, although I accept that there may well have been parking areas elsewhere within the perimeter of the camp site. At any rate, Mr Benson said that before 2003 he *'understood'* that the climbing frame was in the field, something which I find it difficult to accept.
248. Mr Benson also said that the *'Camp Fire Site'* shown on image no.9 in the collection of photos attached to his letter dated 6/02/04) lay within the field. When I asked him how large the camp fire area was Mr Benson told me that it was only two metres square with, I think, a small earth embankment around it. There were no benches and you just sat on the grass. There was no grill, just a pit and Travelclass would bring any equipment they needed.
249. It was also clearly relevant that, towards the end of his evidence, Mr Benson indicated that when Travelclass were not in the field there was (as he put it) *'not a lot going on'* there. He also mentioned activities such as a *'blind man's trail'* taking place in the field in one year before it moved into the woodland.

The area involved would have been no wider than the width of the stage of Brixham Theatre. In response to a question from me, Mr Benson also agreed that he only intervened on the field when public disorder was taking place. He said that if something was happening in the field and it was reported to reception by holiday-makers then he would intervene to put a stop to it. He said he would go onto the field in situations where, for instance, rocks were being thrown through the windows.

250. In all probability, Mr Benson had more than enough on his plate to devote time to keeping watch on what was happening on the field. He conceded that not a lot was happening on the field when Travelclass were not using it and he also conceded that he had seen people walking dogs around the field (none of whom he had ever asked to leave) but could not say whether they were residents at the camp or locals. It is also relevant that he had never seen the climbing tower in the field. I did not think that Mr Benson's evidence was of much assistance to the Objector and, as previously indicated, I certainly prefer the evidence of the applicant's witnesses. It also seemed to me that on the very rare occasions when he did intervene to clear the field of trouble-makers, he was acting to keep the peace and I suspect that training as a former police officer would have been more than handy. Overall, I find that it would not have occurred to him to question people whom he saw in the field who were acting peaceably, and that he never did so.

251. ***Debbie Hutchinson***

Lastly, there was the written evidence of Ms Hutchinson which was at OB/46. Ms Hutchinson was employed by Weststar between 1994-2001 and dealt with bookings. Between 1994-96 she was based at their Exeter office. She then moved to Weststar's Sandford Holiday Park in Dorset but from 1999-2001 she was employed at St Mary's holding various positions from Reception Manager to Assistant General Manager. Between 2001-03 she was employed as '*Centre Manager at St Mary's Bay for Landscope, working for Gail Massey*'. It was a pity that Ms Hutchinson was unable to give oral evidence in view of her recent hands-on experience at St Mary's Camp (I do not recall that I was told

why she was unavailable to give oral evidence). She left Landscope in 2005 and returned to work for Weststar.

252. She speaks of the application land as the 'Doggy' field which was used by guests at St Mary's Camp for dog-walking. She actually lived at St Mary's Camp towards the end of 1999. She says the field could be divided into 3 parts. On the top area it was laid out as a pitch and putting area with flags and mounds. She says the lower *'tiers were used either for dog walking or for activities that were set up'*. She says that when Travelclass were at the camp the field *'was used almost exclusively by Travelclass and their guests'*. She mentions climbing frames being set up, archery targets, blind man's' trail and camp fire nights taking place in the field. She says the equipment *'would take up much of what I would describe as the lower tiers of D-field ... The pitch and putt area was on the higher tier'*. She also says that between July and November guests would play *'Frisbee, pitch and putt, and football on Doggy field'*.
253. She also mentions security staff who would have carried out regular patrols of the camp, including the field. There was a log kept in the office to confirm that patrols had visited but this was not produced. I think it would only note incidents which took place. It seems there were problems with youngsters at the time that arson was taking place on the old Dolphin Camp site who would congregate on the field to watch the fire or fires and who would have to be dispersed by security personnel.
254. She was not aware that locals were using the field for recreation, other than by walking along the footpath. She asserts that the field *'was the only real field and area of open space of some size within which you could play games or hold activities'*. My view about this evidence is that as it was flatly contradicted by those of the applicant's witnesses who gave oral evidence, it is of little evidential value. I am also inclined to accept that Mr Benson was probably nearer the mark when he said that when Travelclass were not in the field there was not a lot going on there, by which he meant holiday related activity on the part of residents and their families.

Closing Submissions

For the Objector (initial)

255. Mr Blohm submitted a 22 page document dated 20/03/09 in which he outlined the following submissions which I have considered in conjunction with the Notice of Objection dated 14/07/08, which he also drafted and in which he outlined the legal basis of the objection to the application to register. Mr Blohm also made oral submissions at the end of the inquiry.

Conclusions of Fact which Mr Blohm QC invites me to draw

- (1) The application land was used significantly by Homelea over many years up to 2007.
- (2) The evidence of those who supported the application to register was plainly flawed in that they gave little or no credence to the use by Homelea of the application land – Mr Blohm suggests that these witnesses were *'honest but inaccurate'*.
- (3) The public's intermittent use *'has been corrected and prevented by the owners of the land and their agents'*.
- (4) Non peaceable user (precluding user *as of right*) arising from the unlawful removal of signs indicating that there were no public rights over the land.
- (5) Some user in the 1980s and 1990s by families and staff members by permission of the management of Homelea.
- (6) Such local usage as there was, was intermittent *'and not such as to indicate ... that the claimed right was being exercised'*.
- (7) Such local usage as did take place deferred to the landowner's use and (i) was not a use that demonstrated the existence of a public right and (ii) was explicable by way of an implied licence.

- (8) The evidence of usage does not indicate the existence of a right conferred on the residents of the electoral ward of St Mary's with Summercombe, but a much more limited right than that.
- (9) In any event an electoral ward is not capable of being a locality in law for the purposes of s.15 CA 2006.
256. I quite accept that it is no trivial matter for a landowner to have land registered as a TVG and that it is accordingly necessary that all ingredients of the definition should be met before the land is registered (see *Beresford* at para 2).
257. It is, of course, difficult to obtain first-hand evidence of events over a period as long as 20 years and decision-makers must do the best they can to discern where the truth lies, and inevitably more weight must be attached to those witnesses whose evidence has been tested by cross examination. Mr Blohm also cautions me to bear in mind that the applicant's witnesses may well have had the ulterior motive of preventing development, and although this is common to many applications it does not mean that such evidence has necessarily been coloured by this result or is of little or no evidential value. It was though something which I bore in mind in assessing the weight to be attached to such evidence.
258. Mr Blohm asks me to bear in mind that throughout the relevant period the application site was used '*as an adjunct to Homelea*' and that, as a result, during the season and at other specific times (as for instance when playing host to Travelclass) the land was being used for such purpose. At other times, the land would admittedly have been left open. Mr Blohm then analysed the evidence of the Objector's witnesses which he argues '*gave consistent use of Pathfields*'. I have read what he says about this on pp.6-9 of his written submissions and the evidence to which he refers has already been largely covered by me in this report.
259. Mr Blohm invites me to accept that those witnesses whose evidence he has mentioned (i.e. Dore, Glover, Hill, Hutchinson, Massey, Brian Meaden,

Deborah Meaden, Tye, Thomas and Benson) were *'impressive witnesses'* – *'They were independent people'* – I am not inclined to accept this. In my view, these individuals were not disinterested witnesses and they all strove in their various ways to underplay the public's user of the application site for informal recreation in the face of a good deal of compelling evidence to the contrary. In my view, what took place on the application site over the years was a great deal less important to the occupiers of St Mary's Camp and Homelea Camp than they now seek to suggest it was and the evidence given about this by the Objectors witnesses is, to my mind, an attempt to rationalise what they think must have happened long after these events actually took place.

260. Mr Blohm also mentions a number of documents at para 7.3. The Travelclass documentation and the brochures are not very helpful. In the case of the former, it is undoubtedly true that a number of children were at the camp on activities-based holidays for a number of weeks in the approximate period April – July in the years for which records are available (i.e. between 2001 to 2006, and there is, of course, evidence that Travelclass were in the picture right at the outset with Weststar, i.e. in 1998) but they tell us nothing about user of the application site itself, whereas at least the brochures for 2000/01 tell us that the field was available for guests with dogs (something which, to my mind, was not incompatible with it also being used by locals for informal recreation, with or without their dogs) or as a pitch and putting facility which was a notably unsuccessful venture and which none of the witnesses ever saw being used for this purpose.

261. I have considered Mr Blohm's suggested findings of fact at para 7.4.

262. In relation to Mr Blohm's submissions at pages 12/13 of his submissions, I accept, as I must, the meaning to be applied to the term *'significant number'* in the *McAlpine Homes* case (see para 43) where Sullivan J (as he then was) said that *'significant'* did not mean a considerable or a substantial number. He said that the correct answer is that what matters *'is that the number of people using the land in question has to be sufficient to indicate that their use of the*

land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers’.

263. As already indicated by me earlier in this report, it is very much a matter of impression whether user is in fact by a *significant number* of the inhabitants of the claimed locality in this case. It is though worth recalling that in the *McAlpine Homes* case there was (as here) evidence from six witnesses who were able to cover the whole 20 year period and who also gave evidence of what they saw others doing on the land over the 20-year period. As previously indicated in para 43 above, I approach the matter from the standpoint of whether the evidence as a whole indicates, on the balance of probabilities, that a *significant number* of local inhabitants from the claimed locality were using the field for informal recreation before the fencing was erected in 2007. I also accept that the usage relied on will not qualify if it is trivial or sporadic during the relevant period.
264. It seems to me that provided there is evidence showing that a *significant number* of local inhabitants resident within the claimed locality use the application site, then the application to register will not necessarily fail just because there is evidence that the application site is also used by people who live elsewhere. In *Sunningwell* it was held that it was sufficient that the land ‘*is used predominantly by the inhabitants of the village*’ (see p.358). Whether this means user by as many as 51% or by a clear majority or by virtually all the local inhabitants is left undetermined by Lord Hoffmann. On the face of it, however, provided user by local inhabitants is ‘*significant*’ within the meaning of section 15 CA 2006 then it really does not matter, in my view, whether the qualifying users outnumber those people who do not live within the claimed locality. The point is that unless the number of users is significant (and it need not predominate) it will not signify that it is in general use by the local community for informal recreation, on which a view has to be taken as the test is not simply a numerical one.

265. I do not propose to deal with Mr Blohm's somewhat abbreviated analysis of the applicant's evidence as I have already gone into all this evidence in some detail.
266. Mr Blohm also submits that insofar as any usage is referable to that of a public footpath then it would not be qualifying user for TVG purposes and should be disregarded. He is clearly right about this but it seems to me that in those instances where dog-walking is involved the usage is more likely to be referable to use as a public footpath and for recreational activities. In *Oxfordshire County Council v Oxford City Council [2004] Ch 253* at 105 Lightman J said that the question '*must in all cases be how a reasonable landowner would have interpreted the user made of his land*'.
267. In my view, there is, in this case, likely to have been a good deal of dog-walking with dogs running off the leash and with their owners veering off the footpath and wandering at random around the field before leaving it at one of at least three access points. In practice, unless the circumstances show that the usage is referable to the exercise of a right of way, as for instance, if an individual habitually sticks to the path across the field as a means of access from A to B, then it is, in my view, perfectly acceptable to view the usage relied on as the exercise *as of right* of the rights incident to a green. In this case there a number of witnesses for the applicant who fall into this latter category and of the four named by Mr Blohm on p.16 of his submissions (at para 3) only Colin Giffard can sensibly be said to fall outside it.
268. Mr Blohm also submits that any evident usage of the field by locals during the holiday season would have been challenged by security staff. He argues that the absence of any such action shows that any such usage would have been '*intermittent, limited and not evident*'. I do not accept this as I find that there was, at least in the period of 20 years prior to the fencing in 2007, no systematic patrolling or control exercised by the landowners over locals acting peaceably on the land which, except in very rare instances, was the normal situation.

269. Neither do I agree with Mr Blohm's submission that the high concentration of witnesses to the north of the field meant that the reasonable landowner may not have appreciated that the user relied on was indicative of a right being exercised for the benefit of those living within the claimed locality which is over a much larger area. In my view, the spread of user evidence in this case is quite sufficient to support a right for the benefit of the claimed locality.
270. Mr Blohm also submits that the high use from Wishings Road may in part be explained by the very easy access from the back gardens to the land. Apart from Mr Young at No.55, there was no evidence to support this submission. On the contrary, there is an established and altogether more convenient pedestrian access at the end of Wishings Road across some open land which leads directly into the footpath at the Mudstone Lane end. I see no necessity for persons living in this road to access the field at the bottom of their gardens, even if they could do so.
271. Mr Blohm also submits that user must have been non-peaceable in that there was evidence that security arrangements were in place at St Mary's Camp and at Homelea Camp which are likely to have resulted in locals being turned off the land.
272. In very rare instances (as for instance in cases involving public disorder on the field) this might have happened but the dates for this are unclear. What I certainly do not accept is that the landowners' security personnel warned locals off the field or that camp security as a whole played any role in fettering public access into the field, although I do not doubt for one moment that understandable importance was attached to the issue of security within the confines of the camp site itself (i.e. within the fenced and gated perimeter) and that the systems in place from time to time would have ensured that it would have been adequate to prevent intrusion by those who had no right to be there.
273. The Objector's evidence on this issue was, to my mind, unreliable and struck me as implausible in so far as it concerned public access to the field. Had I,

for instance, been presented with contemporaneous records or other cogent evidence from, say, security personnel employed at the time showing that locals were systematically warned off the field (or of particular instances when this happened) during the relevant qualifying period then I might have been prepared to accept that user was non-peaceable.

274. The Objector adduced no evidence that I was prepared to accept showing that the public knew or ought to have known that their use of the field as a whole (other than the footpath crossing it) was being objected to and had become contentious. I certainly prefer the evidence of the applicant's witnesses on this issue and I do not find that, other than perhaps in those isolated and no doubt memorable instances involving serious disorder on the field on perhaps no more than a handful of occasions over many years, locals were turned off it or that they would have known from the presence of signage that they had no right to be there.

275. I certainly prefer the evidence of the applicant's witnesses when it comes to signage, none of whom could recall seeing any signs before 2007 warning them off the field or otherwise indicating to them that the land either side of the footpath (which was, in all probability, not clearly delineated on the ground anyway before 2007) was private land. Having inspected the land myself, there would have been a number of vantage points in the field or close by where the owners of St Mary's Camp and Homelea Camp could have erected suitable signage yet, as I find, they did not do so. As previously indicated, it was, I think, perfectly understandable why they would not have wanted to go out of their way to court unnecessary confrontation with locals in circumstances where they were unlikely to have prevented locals from trespassing on the field anyway. I am sure that the staff employed from time to time over the years at St Mary's Camp and at Homelea Camp had much better things to do with time than keep a look out for dog-walkers straying off the footpath or prevent local children from innocently playing in the field, that is, even if they could be distinguished from residents at the camp site doing much the same sort of thing, which I doubt very much. Out of season, I rather doubt whether the landowners would have been particularly interested in what

was going on in the field anyway, although I am prepared to accept that, on one occasion, Mr Benson told the local wrestlers that they had to leave. The fact that wrestling took place at all in the field on a number of occasions out of season is, I think, indicative that I am liable to be right about this, otherwise the landowners are liable to have stamped down hard on this activity and I see no evidence that they did so other than on the one occasion when Mr Benson said he intervened.

276. Mr Blohm submits (in effect) that this is a case where the principle enunciated in *Redcar* (see para 54) is engaged. The ratio of *Redcar* is that if there is a conflict between the landowner's use and recreational use by local inhabitants, and the use of the local people materially *defers* to the use by the landowner, the recreational use will not have the appearance to the landowner of use *as of right*.
277. I have looked closely at the evidence in relation to the use which the landowners may have made of the field, including that occurring when youngsters and their supervisors associated with Travelclass were using it in (as I find) the period 1998 – 2006. Apart from the Travelclass business, user of the field was limited. Other than residents walking on the field with their dogs and sporadic use by campers and those who, for the brief period when it would have been available, used the pitch and putting facility, user of the field on the part of the landowners (i.e. by their lessees or licensees) would have been negligible. I was told that the field was important amenity land but I was presented with no evidence of any organised activity taking place there, although I dare say that youngsters would play intermittently.
278. The field itself does not lend itself to ball games and there are only a couple of areas where the land is terraced at the top of the field where it would even be practicable to station large structures. For the most part, the field is uneven and slopes at quite an angle and other than dog walking or informal recreation it is difficult to see what the landowners could sensibly do with such land apart from designate it as an area for dog-walking. The field was also at the periphery of these camps, outside the fenced perimeter and, as I find, access

to the general public was never impeded and, for these reasons, I rather doubt whether, in truth, the landowners would have been that interested in actively encouraging holiday-makers to use the field (apart from Travelclass or in the case of guests walking their dogs) or that holiday-makers would have consciously elected to do so in view of the attractions elsewhere, both within the camp site and elsewhere.

279. In *Redcar* it was accepted by Dyson L.J at [2009] EWCA Civ 3, para 47, that it is a question of fact and degree for the fact-finder to resolve whether in practice there is inconsistency between the activities on his land of the owner and the recreational activities of the local inhabitants. It is my finding that the activities of the landowners (and their lessees or licensees) made no difference in practice to the activities of the local inhabitants when they were using the field for informal recreation, and accordingly I find that their user would have had the necessary appearance of asserting a right against the owner.

280. Although I accept that from time to time in the weeks when Travelclass were using the camp between April to July in any one year, organised activity took place in the field, it was neither prolonged on the days when it was taking place, nor particularly frequent. I also consider it improbable that a substantial climbing frame would have been left out in the field for any appreciable length of time or that archery would have taken place at all in the field. I can imagine that organised games of some description might have taken place but I do not believe that the extent or duration of these activities would have been such as to exclude local inhabitants wishing to use the field for informal recreation. I simply cannot imagine that locals would have had to adjust their own activities to make way for Travelclass who, in my view, would have utilised little more than some of the flatter ground at the top of the field at times during the day but this is unlikely to have been for the whole day every day in the weeks that Travelclass were at the camp. It seems to me that my findings on this issue are consistent with the applicant's witnesses, none of whom were ever impeded in their use of the field by organised activity taking place. In fact

none of the applicant's witnesses (whose evidence I prefer on this issue) ever witnessed such activity.

281. The *Redcar* issue was altogether more difficult to deal with in view of the absence of any independent evidence. I mentioned this more than once during the inquiry and I am surprised that, given the importance of this issue to the Objector, evidence was not called from others who may have been in a position to tell me what precisely happened on this field during the Travelclass holidays. For instance, I had no photographs or brochures of any of the equipment which must have been utilised on these activity holidays which meant that I was, for instance, forced to rely on the differing descriptions of a number of witnesses of what the climbing tower looked like, of how high it was and, more importantly, of where and when it was located for what duration. The best evidence about this came from Mr Piper whose rough sketch I have added to my file of papers at RAB/tab 9/189. For the sake of completeness, I have also added at RAB/tab 9/190/1 sketches made by Susan Hill (again of the climbing tower) and by Beverley Dore (of the A-frames) both of whom gave evidence for the Objector). (I might add that all of these sketches were only provided at my request at the time each of these witnesses gave their evidence.) It will also be recalled that it was Mr Piper's evidence that the climbing frame was only ever located at the top of Homelea Camp and not on the application site, which seems to me highly probable in view of the unevenness of the ground for so large and tall a structure as this must have been.

282. I think I would also have been assisted if I had heard from witnesses who had had either assisted in the assembly of either the climbing or A-frames, or who had even used any of the Travelclass equipment. Large numbers of children and their supervisors had visited the camp over the years on Travelclass holidays and it seems to me that if some effort been made to trace witnesses then it is likely that some very worthwhile evidence may have come of it. For instance, some of these schools could have been approached with requests for assistance and some useful leads may have been found. As it was, it seemed to me that precious little (if any) meaningful effort appeared to have

been made by the Objector to trace witnesses who would have had firsthand knowledge of what actually took place on the application site when Travelclass were at the camp. This is also consistent with the observations which I made during the first phase of the inquiry which led to the production overnight of the material at OB/Supp/1-55 and, much later on, to the late production of Alex Benson's statement who gave evidence that he only became involved after a chance conversation with Gail Massey who had told him that the inquiry was taking place and she had asked him whether he might be able to '*shed light*' on the matter.

283. The fact that the foregoing lines of inquiry were never pursued (and in my view, they should have been) has meant that, at the end of the day, I have had to make a finding of fact on the *Redcar* issue which has not assisted the Objector, and it seems to me that the Objector has only itself to blame for this. In closing on this, I should perhaps add that Mr Blohm apologised for the absence of independent evidence by technicians, brochures and teachers, and although he cited the fact that Travelclass no longer exists, this hardly explains why, on the face of it, so little attention was paid to this important aspect of the Objector's case when the evidential conflict with the witnesses supporting the application to register was known to be so acute.
284. I am also against Mr Blohm on his submission that user was permissive. The question of inferring a licence to come onto land was considered by the House of Lords in *Beresford* (see para 60). Their Lordships were clear that inaction or even positive encouragement to come onto the land could not be regarded as demonstrating an implied licence. The licence of the landowner requires more than mere neighbourly toleration. He must do something, take some overt action.
285. Mr Blohm also invites me to infer a licence from the fact that the landowners so conducted themselves from time to time as to make it clear that the local inhabitants' use of the land was pursuant to their permission. This they did, it is claimed, by excluding the inhabitants (and not just on occasional days) both by reason of the general use of the application site by the guests of the

holiday camps and by the organised usage of the land by Travelclass. It is further alleged by the witness Derek Hardy that Pontins granted permission to members of staff and their families to use the application land for the purposes of recreation, and that insofar as those persons lived in the relevant locality, such user on their part would be permissive and would thus preclude user *as of right*. I find against the Objector on this issue. In the first instance, I do not find that the landowners took overt action to exclude local inhabitants from the application site, and, in the second, none of the witnesses for the applicant fell within the latter category of invited guest in the period when these camps were owned by Pontins. On the contrary, by mowing the grass until fairly recently, the landowner actively encouraged local inhabitants to come on to the land (a situation that was commented upon in *Beresford* at para 7, where I accept that the landowner in that case had provided other facilities as well as mowing the grass).

286. Lastly, Mr Blohm alleges that an electoral ward cannot constitute a locality within the meaning of section 15 CA 2006. Mr Blohm is right when he says that it had not be argued at the inquiry that this part of Brixham constituted a *neighbourhood*. This is a difficult area of the law of TVGs and is not helped either by the note in the margin at 6 in the Form 44 application form which makes reference to an electoral ward as a locality but which, in my view, cannot operate to change the pre-existing definition of the term *locality* which, in my view, continues to apply after CA 2006.
287. I agree that a locality for the purposes of section 15 must be an administrative area known to the law. I am unaware of any case on this but on established principles there can be no doubt, in my view, that an electoral ward is an administrative area known to the law. The *locality* issue was considered by Sullivan J (as he then was) in the *Cheltenham Builders* case, starting at para 72 (see para 49 above), wherein reference was made to the decisions of *Edwards v Jenkins* and *Ministry of Defence v Wiltshire County Council* (see para 48) which, in my view, require me to find that the claimed locality consisting of the electoral Ward of St Mary's with Summercombe is indeed a qualifying locality within the meaning of section 15 CA 2006.

For the Applicant

288. Mr Polyblank responded, on behalf of the applicant, to Mr Blohm's closing submissions in a 30 page document in which he reviews the evidence adduced in support of the case for registration. I have considered this document very closely and indeed Mr Blohm has responded to it (over 9 pages) in a document dated 1/05/09, which I have also read and considered. I shall return to this later.
289. I have already analysed the applicant's evidence in some detail and do not wish to cover the same ground again. Put shortly, Mr Polyblank says that all the ingredients for registration of the application site as a new green under the CA 2006 have been made out and he asks me to prefer the evidence of those who gave evidence for the applicant, which I do. However there is one matter on which I ought to comment.
290. I cannot allow Mr Polyblank to introduce a *neighbourhood* claim in his closing submissions – it is far too late for this. This issue was never explored at the inquiry or in any of the evidence tendered at the inquiry and it is no function of the commons registration authority to reformulate the applicant's case and (absent any application to amend) it must deal with the application and the evidence as presented by the parties and not on some other basis. I therefore approach this application as being a *locality* claim based on the claimed electoral ward and not as a *neighbourhood* claim based on the local ecclesiastical Parish of St Mary's within that ward. Mr Blohm rightly deals with this in his response and I agree with what he says in paras 1-5.
291. In his response Mr Blohm deals with other matters and it is only right that I should cover them in this report. In the first instance, he reiterates that an electoral ward cannot be a locality within the meaning of section 15 CA 2006. I am against him on this and having considered the judgment of Harman J in *Ministry of Defence v Wiltshire County Council* (at [1995] 4 All ER 931 at 937), it is clear to me that an electoral ward is perfectly capable of qualifying as an administrative entity known to the law, not least as the area in question will be defined on a plan and will contain a body of persons capable of exercising

TVG rights. I do not suggest that every ward must be a locality in law, merely that it should be capable of being one, and in this case I consider that St Mary's with Summercombe would fall into this category. The ward maps at RAB/Pt 3/9/10 show that Brixham is divided into two wards of roughly similar size and there is, in my view, ample evidence of qualifying usage within the claimed locality which is both an identifiable area and whose inhabitants might reasonably lay claim to rights extending to sports and pastimes generally on the application site.

292. Mr Blohm also takes Mr Polyblank to task on his understanding of the *deference* issue, and I think he is right about this. It is not simply a question of looking at whether the public's usage of the land was interfered with. It is still necessary to comply with the requirement that the user must have the appearance to the reasonable landowner of an assertion of the legal right claimed. As already indicated, I take the view that the activities of the landowner and of his lessees and licensees on the application land made no difference in practice to the activities of the local inhabitants which, as I find, had the necessary appearance of asserting a right against the landowner (see again *Redcar* at [2009] EWCA Civ 3, Dyson L.J at para 47). In my view, this is not a case of deference and, looking at the matter as a question of fact and degree, I take the view that the local inhabitants did sufficient to bring home to the landowner that they were asserting a right to use the application site for informal recreation. In this regard it is clearly important that the local inhabitants' use of the land was both prolonged and extensive and (as I find) was acquiesced in by successive landowners until the fencing went up in 2007.

293. Mr Blohm also submits that there must be (as he puts it) '*some good evidential basis for suggesting that the usage was such that it was being used by a significant number of inhabitants of the locality*'. I agree. It is though my view that the evidence in this case is sufficient to raise the inference that the application site is in general use by the local community in the ward for informal recreation. It seems to me that the surrounding circumstances are

also consistent with the contentions of the applicant's witnesses that local people have been using the application site for informal recreation in that:

- (a) it lies within easy walking distance of a sizable local community;
- (b) it is easy to get into;
- (c) it is safe for children and dogs to play and run around in;
- (d) it is well away from any traffic;
- (e) it did not have signs forbidding entry; and
- (f) where the landowner had little use for it until recently.

In this regard, it is, I think, useful to refer to what was said about this in the *McAlpine Homes* case in para 44 above.

294. It is not uncommon in these cases for most of the witnesses supporting the application to register to live close to the application site. There is no requirement in law that the qualifying usage must be distributed evenly throughout the claimed locality although it will clearly assist an applicant in those cases where it does. In this case, I take the view that the distribution of usage was adequate to satisfy the test laid down in the *McAlpine Homes* case (see para 43 above). In my view, successive landowners can have been in no doubt that local inhabitants were using the application site for informal recreation, and it was only when the Objector wished to it for some other purpose that active steps were taken to put a stop to such usage.

Conclusion

295. In light of the above discussion, I find that the qualifying criteria laid down in Section 15(4) *CA 2006* for a new green in the case of the application site (which is known by at least 3 names, namely *Wishings Field*, *Pathfields* and *Weststar Field*, and is shown edged blue on the plan marked A which is attached to the Application Form 44) are satisfied.

296. Accordingly, I recommend that the application to register such land in the register of town or village greens kept by the commons registration authority should be allowed.

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5th August 2009

