

**COMMONS ACT 2006, SECTION 15**

**RE: LAND AT CHURCH HALL FIELD,  
APPLEBY MAGNA, LEICESTERSHIRE**  
(Application to register land as a Town or Village Green)

**Registration Authority:  
LEICESTERSHIRE COUNTY COUNCIL**

**REPORT OF THE INSPECTOR**  
**MR ALUN ALESBURY, M.A., Barrister at Law**

**into**

**AN APPLICATION TO REGISTER  
THE ABOVE-NAMED LAND**

**as a**

**TOWN OR VILLAGE GREEN**

## **CONTENTS:**

1. Introduction
2. The Applicant and Application
3. The Objectors
4. Directions
5. Site Visits
6. The Inquiry
7. THE CASE FOR THE APPLICANT – Evidence
- 7.8 The Oral Evidence for the Applicant
8. The Submissions for the Applicant
9. THE CASE FOR THE OBJECTORS – Evidence
10. The Submissions for the Objectors
11. DISCUSSION AND RECOMMENDATION

**Appendix I** - Appearances at the Inquiry

**Appendix II** - List of Documents produced in evidence

## 1. Introduction

- 1.1. I have been appointed by Leicestershire County Council (“the County Council”), in its capacity as Registration Authority, to consider and report on an application formally received by the County Council on 13<sup>th</sup> June 2013 for the registration as a Town or Village Green under Section 15 of the Commons Act 2006 of an area of land known as the Church Hall Field (but also apparently by other names) in the Parish of Appleby Magna, situated (in general terms) on the west side of the village of Appleby Magna. The land covered by the application is within the County Council’s area.
- 1.2. I was in particular appointed to hold a Public Local Inquiry into the application, and to hear and consider evidence and submissions in support of the application, and on behalf of the Objectors to it. I was also provided with copies of the original application and the material (including signed and other statements) which had been produced in support of it; the objections duly made to it; and such further correspondence and exchanges as had taken place in writing from the parties. Save to the extent that any aspects of these items may have been modified by the relevant parties in the context of the Public Inquiry, I have had regard to all of that earlier material in compiling my Report and recommendations.

## 2. The Applicant and Application

- 2.1. The Application registered by the County Council on 13<sup>th</sup> June 2013 was made pursuant to Section 15(2) of the Commons Act 2006, by Mrs Clare Marsh, on behalf of ‘Appleby Environment’, of Church Barn, Church Street, Appleby Magna, Swadlincote, Derbyshire, DE12 7BB [ in spite of its appearance, this address, like the application site, is in fact in Leicestershire]. The application was accompanied by a letter from the ‘Chair’ of Appleby Environment (Mrs Sonia Liff), confirming that that organisation wished to submit the application.
- 2.2. ‘Appleby Environment’ (with Mrs Marsh acting on its behalf) is accordingly “*the Applicant*”, and that is how I shall refer to it in this Report, except where it is necessary or appropriate to draw attention specifically to matters relating to its status or character as an organisation.
- 2.3. It was indicated in the Application Form as completed that the Application was based on *subsection (2) of Section 15 of the Commons Act 2006*. There has (I am advised) been no ‘Trigger Event’ relating to planning which might prevent this application from being considered under the Act (as amended). The Application was accompanied by a plan intended to show the boundaries of the land to which the Application related. I have already briefly mentioned that the Application was accompanied by a

substantial quantity of other supporting material. Copies of all of this material have been provided to me by the County Council.

- 2.4. The Application Form as completed answered the question as to the 'Locality' or 'neighbourhood within a locality' in respect of which the application was made with the words "*The field lies in the Parish of Appleby Magna, North West Leicestershire*", and referred to an accompanying 'Map of Locality'. In fact the 'map' as originally provided was an aerial photograph of the general area of Appleby Magna, and did not specifically identify the boundaries of the Parish of that name. Nevertheless it was a matter of agreement between the parties to the Inquiry which I held that there is indeed a Civil Parish of Appleby Magna, and that this parish is appropriately to be regarded as the 'Locality' in respect of which the 'village green' application was made.
- 2.5. The Application Site lies adjacent to what can sensibly be called the western edge of the settlement of Appleby Magna, south of Rectory Lane, and north of Bowleys Lane. For most of its western boundary the application site abuts other open land, but the northern end of that boundary lies adjacent to the curtilage/garden of what I understood to be the Rectory.
- 2.6. The Application Site itself, as at the time of my visits, presents the general appearance of an attractive and reasonably well-maintained grassy field, albeit with a modest amount of other vegetation in the form of trees and shrubs. A pond, which I was plausibly told could be larger in wetter winters, is situated towards its western edge. The northern part of the field in particular shows marked topographical signs of former 'ridge and furrow' usage, but there was no suggestion that arable cultivation had taken place in recent times. Subject to those ridges and furrows, the northern part of the field was relatively flat; however from about the centre of the field the southern part sloped away to some extent southwards, with a more marked southerly slope just south of the footpath which crosses the centre of the field in an east-west direction. That path, and another one running down to join it from Rectory Lane to the north, are officially recognised Public Footpaths, although there was some sign of other path or track-type usage on other parts of the field.

### **3. The Objectors**

- 3.1. A single objection to the Applicant's application, bearing the date 7<sup>th</sup> November 2013, was submitted to the County Council by Messrs Freeth Cartwright, Solicitors, on behalf of Westinghouse Investments Limited, Mark Ottewell, Sarah Holt and Luis Vitoria Spyer ("the Objectors"). I understood that all of the objectors had interests of various kinds in the land of the Application Site. The objection was accompanied by two bundles of documentation, including witness statements and other supporting documents. Both I and the Applicant have been provided with copies of all of this material.

#### **4. Directions**

- 4.1. Once the County Council had decided to appoint me to hold an Inquiry into Appleby Environment's application (and the objection to it), I issued Directions to the Parties as to procedural matters, including the exchange before the Inquiry of additional written material, such as Proofs of Evidence, submissions, legal authorities etc. Since those Directions were, broadly speaking, observed by the Parties, and no issues arose from them, it is unnecessary to comment on them any further.

#### **5. Site Visits**

- 5.1. As I informed the parties at the Inquiry, I had the opportunity, in good weather, on the day before the Inquiry to see the site, unaccompanied, from the public footpaths which cross it. I also saw some of the village of Appleby Magna.
- 5.2. On the last day of the Inquiry, 7<sup>th</sup> March 2014, I made a formal site visit, accompanied by representatives of the Applicant and the Objectors, and Mr Law of the Registration Authority. In addition to entering, or at least looking at, all parts of the application site, we visited parts of the immediately surrounding area which had been referred to in evidence, including some private gardens, and the adjacent open land to the west, into which the public footpath across the site continues.

#### **6. The Inquiry**

- 6.1. The Inquiry was held at the Appleby Inn Hotel, Appleby Parva, over the four days 4<sup>th</sup> to 7<sup>th</sup> March 2014.
- 6.2. With the agreement of both parties (i.e. the Applicant and the Objectors), all of the oral evidence to the Inquiry was given on oath or solemn affirmation.
- 6.3. As well as that oral evidence, I have had regard in producing my Report and Recommendations to all of the written and documentary material submitted by the parties, including the material submitted in the early stages of the process, which I have referred to above. I report on the evidence, and the submissions of the parties, in the following sections of this Report.

## 7. THE CASE FOR THE APPLICANT – Evidence

- 7.1. As I have already noted in passing, the Applicant’s original application was accompanied by substantial bundles of documents including plans, some aerial photographs, written statements from local people, etc.
- 7.2. Other written or documentary material was submitted later on behalf of the Applicant [and also the Objectors], and then further material was provided in the run-up to the Inquiry, in accordance with the Directions which had been issued. Some of this consisted of further written statements from witnesses who would in due course give evidence at the Inquiry itself.
- 7.3. I have read all of this written material, and also looked at and considered the photographs and other documentary items with which I was provided, and have taken it all into account in forming the views which I have come to on the totality of the evidence.
- 7.4. However, as is to be expected, and as indeed was mentioned in the pre-Inquiry Directions, and at the Inquiry itself, more weight will inevitably be accorded (where matters are in dispute) to evidence which is given in person by a witness, who is then subject to cross-examination and questions from me, than will be the case for mere written statements, completed questionnaires etc, where there is no opportunity for challenge or questioning of the author.
- 7.5. With these considerations in mind, I do not think it is generally necessary for me specifically to summarise in this Report such evidence as was contained in statements, letters, questionnaires etc by individuals who gave no oral evidence. In general terms it was broadly consistent with the tenor of the evidence given by the oral witnesses, and nothing stands out as particularly needing to have special, individual attention drawn to it by me.
- 7.6. In any event all of the written and documentary material I have referred to is available to the Registration Authority as supplementary background material to this Report, and may be referred to as necessary.
- 7.7. A small amount of the material produced to the inquiry dealt with matters relating to the planning history and possible planning proposals affecting the area of the application site. I made it clear at the inquiry that issues of town and country planning, or statements expressing views as to what *ought* to happen on the land in the future, would not be relevant to the resolution of a claim under the Commons Act.
- 7.8. **The Oral Evidence for the Applicant**
- 7.8.1. *Mr Peter Selby* lives at 36 St Michael’s Drive, Appleby Magna. He said he lives there with his wife and they have lived there for approximately 27 years.

- 7.8.2. The application site field has always been an important recreational area for their family, and also for the majority of villagers. It also has a significant landscape benefit for the character of the village and its setting.
- 7.8.3. He and his family have all walked regularly along the linked public footpaths, either on their way to other parts of the village, or simply for the enjoyment of the countryside, including time spent taking photographs there. When their two daughters were growing up it was one of their favourite places to go with their friends, visiting the horses and sheep grazing there, running up and down the ridge and furrow, or pond dipping, black-berrying in the autumn, and in the winter tobogganing down the bank and safely ice skating on the areas of the high water table that had frozen.
- 7.8.4. Most weekends at least one of the family continues to walk through the field with one of their daughters, who is now an adult living in Measham.
- 7.8.5. Mr Selby had also been involved in painting the kissing gates when they were installed to replace the stiles, giving access to the footpaths for more of the inhabitants.
- 7.8.6. When the Village Design Statement was compiled, drawn up by the villagers after lengthy consultation, one of the things most valued by the village was this area and the benefit it provided. It was also identified as being particularly important for the setting of the church and the surrounding conservation area. Villagers also believe it is worth preserving the ridge and furrow and the earthen remnants of the former Hall and clay workings on the land for their historical interest. Local people are entirely happy that if it becomes a village green it can continue as now with animals grazing to keep the grass short. There is no ambition to turn it into a more ornamental area. He added however that it would be useful if this land could provide an extension for the graveyard associated with the church, which has nearly run out of available space.
- 7.8.7. Mr Selby and his wife had completed one of the evidence questionnaires which had been submitted in support of the application. He acknowledged that in his questionnaire he had stated that some of the people who use this land are occasionally from other nearby villages, for example Measham.
- 7.8.8. Personally he goes on the land every two weeks or so. This is to walk, mainly for leisure, but also to go from the church to his allotment. Generally he keeps to the footpaths but when black-berrying he goes to the west side of the land along the hedge.
- 7.8.9. He confirmed that his children had actively used the field for playing with their friends, although they are grown up now. The field is attractive to children, the pond and the area to the east of it which would freeze over were good for ice skating and the banks for tobogganing. However his children were, at the time of the Inquiry, now 29 and 27. He would go

with them when they were much younger, but they went by themselves later on.

- 7.8.10. The ridge and furrow formation of the northern part of the land is an interest, and indeed he and his wife had both studied history. This field not only has the ridge and furrow but also remains associated with the original Hall, the leading house of the village.
- 7.8.11. Mr Selby said he had seen other users on the land, especially in winter. One could see 10 or so people or families playing there, and also see other people walking their dogs. One would stop to chat with them. Some people used the land every day. He himself had not seen archery on the land, but his wife had said she saw that.
- 7.8.12. Pond dipping would be an activity in the summer. He also had engaged in photography on the land, and also bird watching around the pond. He is not an expert but there is quite a lot of bird life there.
- 7.8.13. His wife and his younger daughter go more often to the field than he does himself. He pointed out that there is a derelict barn in the field in the southern part, he has seen it. It has always been in a state of disrepair while he has known it. He did not know if that itself is attractive to people to go to. He has not seen it a great deal but he has photographed it once.
- 7.8.14. He acknowledged that he had seen various types of animals grazing in the field. He understood that the field is sub-let to people who want to keep animals there.
- 7.8.15. He has also seen Scout and Girl Guide activities taking place on the field on a summer's evening. He believed that they had been around the pond.
- 7.8.16. Among the people who he has seen on the land are a Mr John Passey of St Michael's Drive who walks his dog there twice a day. He goes off the path and takes a route round the edge of the field. There is also one other person who he believes is called Arthur who he regularly has seen there.
- 7.8.17. *In cross-examination* Mr Selby said that he is not a member of the group called "Appleby Environment". However he does receive their newsletters. He had known that the application was being submitted and had been asked to provide his statement. He had been contacted by Clare Marsh.
- 7.8.18. In terms of his own use of the land, by and large he has stuck to the designated footpaths, but occasionally he has strayed off. In blackberry season which lasts about one to one and a half months he would probably go there once a week or so. He acknowledged that the terrain can be difficult to walk over as the paths are on ridges, and one can get water in the dips. His photography of the church had been when he was in fact on one of the footpaths.

- 7.8.19. His own bird watching in the field was very occasional because as he repeated he is not an expert. They do he said occasionally go off the path near the blackberry bushes, but that is relatively infrequent.
- 7.8.20. The grazing which takes place in the field is usually not in the wet season he said.
- 7.8.21. The Scouts and Brownies he had seen on the field had been in the summer. They mostly meet in the evenings, so they would only be there on summer evenings. They meet in the church hall. He did not know if they had sought permission to use the field.
- 7.8.22. Clearly tobogganing would only take place in the field if there was snow, but he estimated that in 75% of the years there had been at least some snow for a few days. The ice-skating area which he had referred to was something which was only used when the temperature is really cold and the land also had been flooded.
- 7.8.23. He acknowledged that he had supplied a couple of the photographs for the Village Design Statement.
- 7.8.24. *In re-examination* Mr Selby said the Village Design Statement was produced in about the year 2000. Its aim had been to draw the attention of the local planning authority to areas with special historic interest.
- 7.8.25. **Mr William Arthur Gothard** lives at 33A Church Street, Appleby Magna. He explained that his property overlooks the application field. He used to live in the front house, but then moved into what could be described as a ‘granny flat’ which he developed at the back. He had lived in the same street all his life with his family. He had completed one of the evidence questionnaires which had been submitted in support of the application.
- 7.8.26. The work called “*A Son Of The Rectory*” [of which I had been provided with extracts], describing Appleby Magna at the dawn of the 20<sup>th</sup> century, had explained that the land of the application site used to be known as Parkers Field, from one of the farmers who owned the land. Mr Gothard pointed out that a gentleman known as ‘Punch’ Gothard had been his cousin. He, Mr Gothard, had lived in the village for 77 years, and his father and other forbears before that.
- 7.8.27. Mr Gothard explained that prior to living in his present property he had lived in two cottages further down, which had later been demolished for the recreation ground. In the past this field known as Parkers Field used to be the only place to go to, because there was no recreation ground then. He used to go to this field from the age of about 5 or 6 in order to play ball and kick a ball around etc. The children then mostly played in the bottom right hand corner of the field where there was a low fence that they could climb over. He played there with his brother and various other children. He used to go there most days in the school holidays, and most nights in summer.

- 7.8.28. They used to use a pig's bladder from the slaughterhouse to kick around.
- 7.8.29. Nowadays he walks dogs round the field 5 days a week. He walks around the boundaries of the field. That is if it is dry, he stays on the public footpaths if it is wet. He sees several other people, for example people called Bob and Celia, who walk their dogs there regularly. They mostly meet up at the gate leading into the field from Rectory Lane.
- 7.8.30. As far as the old barn in the southern part of the field is concerned, as children they used to go in there looking for birds' nests. Also a friend of his used to rent it, and kept pigs there about 10 – 15 years ago.
- 7.8.31. As for blackberry and mushroom picking, that is mostly around the boundaries of the field, and the same was true for elderberries. As children they did not go into the field so much in winter time, except that there are slopes where the field dips and holds water. They used to slide down the slopes in the winter when he was a child, probably 2 or 3 times a day. Most people in the village used to go in there, especially children when he was a child; that was where they all played.
- 7.8.32. His own children are now aged 50 and 49. They as children had done more or less the same as he and his friends had done. But they had more access to the recreation ground by then than Mr Gothard's own generation did. But nevertheless they did go into the application site and pick blackberries and elderberries to make wine for example.
- 7.8.33. In the last 20 years or so he had not used the field so much as he used to. Nevertheless during the last 9 years since he had retired he still uses the field 5 times a week. He always sees someone else in there whenever he is in there.
- 7.8.34. *In cross-examination* Mr Gothard acknowledged that he knew that it was the period 1993 to 2003 that the Inquiry was principally concerned with. He explained that his house used to overlook the field, and then he moved into the unit behind about 10 years ago, and he personally no longer overlooks the field from where he lives.
- 7.8.35. His own use is primarily to go walking with dogs. He meets 2 or 3 other people regularly there, also walking dogs. He goes all around the edge of the field, weather permitting, as it is easier to walk there.
- 7.8.36. He repeated that his own children who are now aged 50 and 49 used to use the field when they were small. They used to go in there and collect blackberries and elderflowers. His children in fact live in the front house on his plot now, as they have done for the last few years. His children only use the field, apart from what he had already mentioned, for a walk around it from time to time.

- 7.8.37. The field he thought is mostly used for grazing sheep, but occasionally there are cows or horses in there, and also sometimes pigs. Animals could be in there for more or less 12 months a year he thought.
- 7.8.38. There are occasionally mushrooms in the field but not a lot of them.
- 7.8.39. In his questionnaire he had mentioned seeing football in the field; that had been in the area at the bottom of the field. He has not seen it played in there during the last 20 years though. It would be nice to be able to keep this field for recreation.
- 7.8.40. *In re-examination* Mr Gothard said that generally when he goes into the field he will walk round the whole circumference of it on a good weather day. Elderberries are typically picked later in the year, and the elderberry season lasts about one month or 5 weeks.
- 7.8.41. He had seen children playing in the field in the last 20 years, near Bowley's Lane. This was not something he had seen regularly, but he had seen it on several occasions.
- 7.8.42. He said that cows and sheep have occasionally escaped from the field. On reflection it was not usual for animals to be in the field for the whole of the 12 months of the year, except when there were pigs there, which was at some point during the last 20 years.
- 7.8.43. *To me* Mr Gothard said that both of his sons in fact live in the front house on his plot, which is divided into two flats.
- 7.8.44. **Mr Clive Jayne** lives at Adelaide House, 32 Church Street, Appleby Magna. However he explained that his front door is in fact in Bowley's Lane. He moved there in July 1976 and had always lived in this house while in the village.
- 7.8.45. He has lived here with his second wife since the time when they got married in 1993. However before that she too had lived in the village of Appleby Magna.
- 7.8.46. Mr Jayne with his wife had completed one of the evidence questionnaires supporting the application.
- 7.8.47. He had understood the owner of the application site field to be a Mr Ottewell. Someone had told him that. However it was not well known in the village who owned the field.
- 7.8.48. Mr Jayne said that he uses the field himself very little. He does use it a little more nowadays, as he is trying to lose weight. But he has never had a dog and so he has not really used it himself. But he has seen a lot of other people using the field walking dogs. He sees or recognises several people walking their dogs there. He only really sees this in the south eastern part of the field, up to the slope.

- 7.8.49. Since he himself has started walking there, he usually goes in via the entry near the church and up to the north, where the grass is the shortest; he follows a curving diagonal route.
- 7.8.50. He does not see others in the field a great deal when he is there; he does see some people, but he could not give their names. There may be someone called Darren who is in there with his dog. Nevertheless he often sees people when he looks out, and one or more of them is usually there with a dog. Over the years he has certainly seen people in the field. He has seen children tobogganing there when there is snow on the ground.
- 7.8.51. During the last 20 years he had seen people blackberrying in the field. There had been no kite flying there for a while now he thought. He had not seen Brownies in the field in recent times. However he did have a feeling that he had seen a pack of Brownies in the field on one occasion.
- 7.8.52. As for livestock in the field, they are usually sheep. In one or two years in the past he felt the field had not been used at all for livestock, but usually it is sheep. Occasionally there are cows, he thought about once in the last 4 years. There had also been pigs, and occasionally horses, he thought.
- 7.8.53. Animals had escaped from the field in the past, and Richard Denson had rounded them up. The sheep escaped from the field for the last time he recalled about 3 years ago.
- 7.8.54. *In cross-examination* Mr Jayne said that he sees the field only from his upstairs windows while he is in his house. His observation of the field tends to be a periodic glance, and is not something that happens the whole time.
- 7.8.55. He himself opens up the Parish church every morning with the key. He acknowledged that he never used to be a walker himself. When in his questionnaire he had referred to seeing children playing in the field, that had not really been to do with his own children; however he had seen other children playing there. When he had said he had seen people painting in the field, that had not been frequent; he was not suggesting that any of what he had seen had been frequent. He acknowledged that the Bowley's Lane gate into the field is usually locked when there is livestock in there.
- 7.8.56. **Mr David Gray** lives at 2 Moore Close, Appleby Magna. He has lived there since October 1993. He said it was evident to any resident of the village that the application land has historically been used as a village green amenity for many years. His own family and he have been using the field since 1993 for walking, dog walking, bird watching, photography, picnics, Easter egg hunts and astronomy. They had picked blueberries there, and in winter they had used the field for sledging whenever they get enough snow. He later corrected himself and said that it may not have been blueberries that he had picked in the field, but perhaps it was blackberries. His family at the time of the Inquiry consisted of himself, his

wife and two daughters currently aged 25 and 22. His 22 year old daughter Sarah still lives here in the village.

- 7.8.57. He has used the application field since 1993 for walking and dog walking. Their dogs had now died, but nowadays he looks after his sister's two elderly dogs. From 1993 he had used the field with dogs more frequently than weekly. He would probably go in via Bowley's Lane and then let them run around near the western end of the main footpath, and then go out by the church. Occasionally he would go up to the north end of the field, but he never went out onto Rectory Lane. He would keep the dogs on the lead if there was livestock in the field but otherwise not.
- 7.8.58. As for bird watching he is not really a 'twitcher', but has slight twitching tendencies. He would not be in the field for the purpose of bird watching as often as he would be for dog walking.
- 7.8.59. He would typically let the dogs off the lead in about the middle of the field. He was not really aware that there were footpaths in the field, except in some small parts. He did not follow a footpath himself.
- 7.8.60. His own dog walking in the field was about 2 or 3 or 4 times a week. He had seen other people walking dogs, but he had not seen other people bird watching. He had for example seen Clare Marsh in there with her dogs. He would say that about 50% of the time he would see someone else in the field walking their dogs when he was in there doing that.
- 7.8.61. He would take his elder daughter Emma to do astronomy in the field when she was younger. That would be near the church, approximately on the footpath. They would set a telescope up there, when Emma was about 9 or 10 years old. She had an interest in astronomy. It was a good spot as it was far from street lights. They would do that about 2 or 3 times a year during the period they did it, for example to see Saturn.
- 7.8.62. It was his other daughter who was the photographer. And that activity could be all over the field. She would take arty photographs of grasses or people in the field.
- 7.8.63. He had never seen anyone in the derelict barn in the field. As for his daughter Sarah taking photographs in the field, that would be about weekly on Sunday mornings. In the summer of 2012 or 2011 she did a photography project and took a lot of pictures there about one or twice a week over a 6 week period. As for picnics in the field, they had done that regularly when the children were younger, for example when his daughter Emma was between the ages of about 7 and 10. They would also take visitors from northern England to picnic there in the summer, probably about 3 times a year. They also had Easter egg hunts in the field.
- 7.8.64. Also some of their neighbours from the village used to picnic in the field together with them. His daughter had told him she used to go there with

the Brownies for some sort of trail activity, and also she went on a night walk. The Brownies operated from the church hall.

- 7.8.65. The recreation ground in the village tended to be used for people playing football and more formal games.
- 7.8.66. *In cross-examination* Mr Gray explained that when watching birds in the field he would usually be walking around the perimeter. He walks the field less now, probably once a week while walking his sister's dogs, in other words about 4 days a month. He would never let the dogs off the lead while there were animals in the field. However he might still go off the path for a bit, for example with an extending lead for the dogs.
- 7.8.67. As far as the astronomy activities with the telescope were concerned, that would tend to be fairly close to the footpath.
- 7.8.68. He himself had not done photography in the field; that was his daughter's project in one particular year. But his daughter has always been interested in photography, as is his wife, and they perhaps take photographs in there about 5 or 6 times a year.
- 7.8.69. He does not know exactly where they went in the field to photograph.
- 7.8.70. As for the Brownies, he thought that their night-time activity in the field might take place perhaps once a year, and they might do other things in there a few times a year.
- 7.8.71. **Mr Duncan Saunders** lives at Leyland House, 22 Botts Lane, Appleby Magna. They have lived there for 17 years, and formerly lived in Eastgate House, Top Street, also in the village, for 30 years. He said that his son Andrew is now aged 47 and has a daughter aged 11 and a son of 13. Andrew had written stories for his children; he had written 5 books for his children, and a colleague printed them. He, Mr Duncan Saunders, had not known they existed until 6 months ago. His son Andrew now lives in Stockton Heath, Cheshire.
- 7.8.72. Mr Duncan Saunders has another son aged 46 called Julian. When his boys were younger they were drawn to the application site field. The recreation ground is a more formal area where one is visible. Also one of the residents who was a neighbour to the recreation ground used to discourage ball games taking place there because the balls went into his garden. Because of that children would tend to go into the application site field in order to do things unobserved. Examples of things they would do would be ice-skating or sledging, but he Mr Saunders did not really know their other activities.
- 7.8.73. The application field was a good area for children with their friends to do the sort of things children like to do without being disciplined or watched. They tended to go into the southern part of the field because it was more of

a challenge. At times also the pond in the field was really full of water, and that was also slightly off the beaten track.

- 7.8.74. Mr Saunders had completed one of the questionnaires which supported the application. In that he had indicated that he thought he knew the name of the owner of the field, but neither he nor his boys had ever seen that owner.
- 7.8.75. He had seen grazing of animals in the field, sheep and cattle. There is also a photograph in the Village Design Statement which shows horses in there. He thought that had been taken around 1999 or 2000, when the design statement was produced. He had had input into the Village Design Statement. In 1998 the Countryside Commission had encouraged parish councils to take an interest in the design of their villages. Some locals from Appleby had gone on a course and tried to produce a Village Design Statement. From 1999 it took 3 years to finalise the statement. The group doing it had divided into several sub-groups with topics. Cameras were supplied, and photographs and notes were to be taken of anywhere important. However it was not in the remit at that time to recognise areas specifically as village greens.
- 7.8.76. In doing the Village Design Statement they could only mention what they had got in the village. The fields on the application site did not seem to relate to the traditional idea of a village green. He acknowledged that the Village Design Statement specifically stated (on page 16) that "*Appleby has no village green as such, but it does have significant valuable fields and open areas*". As the Village Design Statement also acknowledges, people do tend to walk around the village because there is a good footpath network.
- 7.8.77. He himself used to use this field to walk through for the period from 1966 to 1995, in order to get to the bus stop. He still walks in the field now. He goes to a grave in the churchyard several times a week, and when he feels like it he goes further than that. He tends to use the footpath across the centre of the field from the vicinity of the church. He does see others in the field, and he named one gentleman who he regularly sees there with his dog. He would see that gentleman coming out of the gate and walking down the side of the graveyard while he himself was in the graveyard. He thought that gentleman was called Alan Babbington. He also sees someone called Dominic Middleton coming through the gate, and a lady called Celia, as well as Mr Arthur Gothard who he had seen walking around the field.
- 7.8.78. The Village Design Statement had wished to see the ridge and furrow pattern in this field retained and cherished. There is wildlife in this field such as newts and rabbits that he is aware of.
- 7.8.79. In his questionnaire he had stated his belief that the field had been used for community activities in the more distant past. For example he had understood that there had been Maypole dancing and the like in the field,

but he could not put a timeframe on that. He personally is not a Rambler, but there are many footpaths in Appleby and he knows that it is a popular place for rambles.

- 7.8.80. His boys and he have done blackberry picking in various places around the village, including this field around its edges, but away from the public footpath.
- 7.8.81. He had not noticed other people in other parts of the field apart from Arthur Gothard, and indeed he had not really seen other people using the field.
- 7.8.82. *In cross-examination* Mr Saunders acknowledged that for 18 of the last 20 years he has lived on the other side of the village. So his own use of the field has been minimal, other than when visiting the graveyard, rather than the site itself. His direct knowledge is therefore limited, but he does cycle along Church Street and Bowleys Lane. He is around and about in the village, even if not on the site. He repeated his acknowledgement that he personally had never seen Maypole dancing on this land.
- 7.8.83. In his questionnaire he had mentioned football on the land; he knew his sons had played there, and he would have gone to collect them when they did not come home on time. That would have been in the period 1974 – 1977 or so, when his sons were young.
- 7.8.84. He is a member of ‘Appleby Environment’, and he understood that it does have a constitution. When the Village Design Statement was done he was on the Parish council, but not in Appleby Environment at that time. The Village Design Statement had involved the whole village, and many villagers became active and joined in.
- 7.8.85. He had joined Appleby Environment fairly recently, about 12 months ago. That was before he completed his evidence questionnaire.
- 7.8.86. The Countryside Commission course that he had been on was he thought in 1998; he had probably gone on it with Elsie Jeffery who was secretary to the Parish Council. He was fairly sure that specific matters like town and village greens were not mentioned on that course. A lady called Marilyn Dunkelman did the draft Village Design Statement. She no longer lives in the village. There had been constant contact with the planning department at North West Leicestershire. They had had to agree what planning guidelines to put into the design statement. The text for it had been agreed among all of those involved. He was the Chairman at the time. Thus it was fair to say that they were all agreed at that time that there was no village green in the village. He confirmed that the work on the statement took from 1999 to publication in 2002. One would not have said that the village had a village green unless there had been a formal town or village green in the village. Historically the fields around the village, including the application site, have been valuable fields and open

spaces, an area with freedom of movement and access. No-one at that time was saying “*we want a formal village green*”.

- 7.8.87. The centre of the village he would say is the Moat House and the Church, and the paths across that part.
- 7.8.88. In the plan in the centre of the Village Design Statement the application site is shown as paddocks and pasture land. Also then as now the field had footpaths across it.
- 7.8.89. He confirmed that his son Andrew now lives in Cheshire, but the little book he had written for his children related to life in Appleby. The pond referred to in one of his son’s stories is not there all year round and does dry up from time to time, as that story confirmed.
- 7.8.90. *In re-examination* Mr Saunders explained that his son Julian lives at Ashby de-la Zouch, and visits his mother’s grave regularly, and also takes his children into the field. Mr Saunders’s wife died 5 years ago. His son Julian comes about once a month. One of his children comes to Mr Saunders senior every week; and they always come once or twice a week during school holidays.
- 7.8.91. Mr Saunders has a granddaughter who is now aged 16. She and her younger brother will wander in the village during holiday times, but not on a regular basis. His son Julian does take them to show them the field.
- 7.8.92. ***Mrs Maria Lewis*** lives at 1 Duck Lake, Appleby Magna. She has lived in Appleby for at least 25 years, and has two grown up children, who were under 5 years old when they first moved to the village. When they were young they enjoyed going to the field behind the church hall (the application site) each time there was snow, to join lots of other children playing on their sledges there.
- 7.8.93. Their children no longer live in the village, but every winter Mrs Lewis sees groups of children and parents having fun there in the snow. Then village’s Brownie unit meets in the church hall on Tuesday evenings, and during the summer they try to get out in the village as much as possible, often starting their activities in this field.
- 7.8.94. Mrs Lewis had completed one of the evidence questionnaires produced in support of the application.
- 7.8.95. Her daughter Clare was just 5 when they moved to the village. Mrs Lewis is now a partly retired teacher. She works here in Appleby School and she runs the Brownies.
- 7.8.96. Her own children had used the application site field mainly for sledging. However they would go at other times too. Sometimes they would go in the Rectory Lane end and sometimes they would go in at the entry near the church. That was to go sledging. She herself did not know exactly where

her children went to play, but certainly this field would have been a safe place to go. Her son Timothy certainly went to that field.

- 7.8.97. The village Brownie pack meets every Tuesday all year round. They would often start their activities in this field, for example with a walk across the field to go further, or around the perimeter hedgerows. They might go out once in the late spring, and then perhaps twice in the summer term, and maybe once in the early autumn. They plan to go out late in the spring term in 2014 she said. Brownies are for girls aged 7 – 10.
- 7.8.98. It is safe for the children to start off going in that direction, i.e. into the application site field. There are currently 15 Brownies in the pack, but they have had 24 in the past. One of the things the Brownies have to do is to spot 5 different plants in order to win a badge.
- 7.8.99. Mrs Lewis acknowledged that they do not really use the application site as an area for the Brownies to play in. They go to the recreation ground in order to play, because the ground is flatter there.
- 7.8.100. Nevertheless her son Timothy did go off into the application site field with his friends, perhaps several days a week in good weather. However she did not really know where he went.
- 7.8.101. Reverting to the Brownies, when they went tracking they would either go around the edge of the field or across it. The tracking would be with little piles of stones or piles of grass, it was not something that was harmful. When on the field she had often passed people taking their dogs out, or just out walking. This could be people either crossing the field from the entrance near the church to the gate out to the west, or people walking from the Rectory Lane entrance to the western gate out of the field. She herself had never been into the bottom end of this field. Her children possibly had, but she herself had not.
- 7.8.102. She had seen livestock in the field, and recalled that animals had occasionally got out. She had not known who owned the field until these proceedings started. Of the people she had seen walking in the field with their dogs, some of them she would recognise.
- 7.8.103. When out there with the Brownies they have to have one adult for 8 children; when there they would see others on the field.
- 7.8.104. In her questionnaire she had referred to a group called “Happy Hedgehogs” who are a pre-school group. They use the field. When her now 27 year old son was aged 3 – 4, that group did use the field. They probably just went round and looked at plants. She herself had not taken children from the school around that field.
- 7.8.105. She had seen blackberry bushes around the field, and pointed out on aerial photograph where they tend to be around the perimeter of the field. She

had taken the Brownies to pick blackberries there. She herself does not pick elderberries.

- 7.8.106. As for bird watching, she has seen people do that in the field, and also taken the Brownies to do it there. As for kite flying in the field, her children had done it there with friends when they were aged under 10.
- 7.8.107. As for people walking in the field with and without dogs, and also people jogging, she had seen that on the footpath. Her own son jogs round the edge of the top part of the field. She had not seen joggers in the bottom part of the field.
- 7.8.108. There are a number of paths in the field. She had thought that there was a diagonal path from the Rectory Lane entrance to the field and the gate out to the west, roughly north of where the pond is. But that did not seem to be the official line of the footpath running from the Rectory Lane entrance, she said. She also understood that her daughter does go running in the field too when she is at home, but she does not know precisely where.
- 7.8.109. *In cross-examination* Mrs Lewis acknowledged that the period of interest of the Inquiry is 1993 – 2013. She herself has never seen either her son or her daughter running round the field. Duck Lane where she lives is about 5 minutes away from the site.
- 7.8.110. She has run the village Brownie pack for 24 years. She would take the Brownies onto this land once in the spring, once in the autumn, and two or more times in the summer. They would be out there for about 1 hour. They would go across the field from the entrance near the church and carry on beyond, or alternatively they would stay on the land and go round the edges of the field. The Brownies would find wild flowers such as buttercups and daisies. However they would not go into the field if there were cattle in there. It was alright to go in when there were sheep in the field however.
- 7.8.111. As for tobogganing in the field, she had not done that herself but children certainly would do that when there was snow. When there was snow children would go there every day. The school had sometimes been closed for a couple of days if there had been a snowfall.
- 7.8.112. She had been a member of Appleby Environment since it began. The recreation ground in the village tended to be used for more structured activities, also often on a Tuesday there is a cricket practice on the recreation ground, and they do not like the Brownies going in there.
- 7.8.113. As for her children's kite flying, she could not remember when it was, it was a phase, not something regular.
- 7.8.114. *In re-examination* Mrs Lewis said that it had not been very often that they had been put off by cattle from going into the field with the Brownies; it was a rare occasion that that would happen.

- 7.8.115. *Mrs Dulcie Hincks* lives at 53 Church Street, Appleby Magna with her husband Jack. She and her husband had completed one of the evidence questionnaires supporting the application.
- 7.8.116. They had been in the village from 1993. They have no direct view of the application field. They have a son who is now 45 and a daughter who is 41. Their daughter came with them to the village in 1993.
- 7.8.117. They know the application land as the church field. She used not to know who the owner of the field was, and had assumed that it was common land.
- 7.8.118. Kirstie, her daughter, lives in St Michael's Drive in Appleby, and she, Mrs Hincks, has grandchildren aged 11 and 7.
- 7.8.119. She knows where the access points to the field are, and she is aware of the footpaths in the field. She or members of her family use the field daily for dog walking. If she enters by the entrance near the church she would walk around the edge of the northern part, or sometimes around the back of the pond. She does see other people in the field, not always dog users. Children play in the field, in the northern part. They like running up and down the ridge and furrow. Her granddaughter and she like going to the pond.
- 7.8.120. Her daughter uses the field twice a day with her dog, and always uses the same route via the Rookery Lane entrance and around the edge, to the exit on the western side north of the pond. Sometimes she would enter via the Rectory Lane entrance and go diagonally across and out via the other fields.
- 7.8.121. There is a whole group of mothers with dogs, 2, 3 or 4 of them who all walk together on the field. All of them walk from the school together in the morning. In the afternoon her daughter usually walks that route with one friend and her dog.
- 7.8.122. They have a game at home making lists of nature things that they can find in the field. It is completely safe there. Their favourite part is anywhere with mud or water. They do not go to the derelict barn however. There are also seasonal activities such as 'fishing' with a jam jar or net.
- 7.8.123. She Mrs Hincks takes her grandchildren to the field, but she is not able to quantify how often that would be. It could for example be in the winter, or even when it is raining; the children just like being there. About once every three years there is snow worth really bothering about; in the other years there is not true snow on the field.
- 7.8.124. The best blackberries on the field are around the perimeter area, in particular around the west side of the pond. She also makes elderflower cordial, and the picking time for elderberries is about the same time as for blackberries.

- 7.8.125. Mrs Hincks has trained dogs on the field. She has also seen some drawing and painting on the field; she has seen a person drawing for example. She was not sure if she had seen people walking on the land without dogs, because she tends to concentrate on what she is doing. Lots of people do let their dogs off lead on the field.
- 7.8.126. She had not seen cattle on the field for a good year or more, but she had seen sheep on the field in this past year. There is a partial fence running across the field just to the south of the east/west footpath; that had been there for about 6 months so it was comparatively recent. She understood that sheep had got out of the field in the past.
- 7.8.127. She had done her kite flying on the field with her son who now lives in London. The recreation ground is often full of footballers and the like, so it is not a good place for kite flying. She thought she had done the kite flying on two occasions.
- 7.8.128. *In cross-examination* Mrs Hincks said that she is not a member of Appleby Environment. She confirmed that she had lived in the village from 1993, so she had been in the village for precisely the relevant period of 20 years.
- 7.8.129. As for dog training on the field, that has been teaching her dog to sit or stay. She has had two dogs but now has one. A typical instruction to teach the dog might be to 'fetch', in other words normal domestic dog training.
- 7.8.130. The pond in the field usually is there, and in her memory had seldom dried up. She uses the field to educate her grandchildren, for example about water and what lives there, the ridge and furrow in the field, and country life generally. She acknowledged that when in her questionnaire she had said she had seen ice-skating on the field, that was a slight exaggeration.
- 7.8.131. She uses the field now for recreational purposes. If there is stock in the field her dogs are on their leads. As for games going on in the field, that would usually be much more in summer. For example she plays games there with her grandchildren, and has done over the last 7 or 8 years.
- 7.8.132. *In re-examination* Mrs Hincks said that she has seen other children in the field; one does tend to see more there in the holiday times. In winter times daylight is generally when the children are at school.
- 7.8.133. At the southern end of the field the gate is usually locked. She thought she had seen children in the southern part of the field, particularly around where the pond is.
- 7.8.134. **Mr Richard Wood** lives at 16 St Michael's Drive, Appleby Magna. He has lived there since 1982, and prior to that lived in Blackhorse Hill from about 1973. Even before that he had lived in Mawbys Lane. He had completed one of the evidence questionnaires in support of the application.

- 7.8.135. He explained that one of the photographs in the Village Design Statement had shown two horses in the application field, one of which was his daughter's horse. The other horse had belonged to another girl in St Michael's Drive. His daughter had been born in 1977, and was 14 or 15 years old when she had the horse, so the photograph was from 1992 or so. She had put her horse into that field because she wanted to. The horse was in the field for some 8 to 10 weeks because she thought it was better off in there than in the very limited grazing that existed at Jubilee Farm. His daughter had had no permission to put her horse in the application field, and no-one turned or the horse off. Indeed they were unaware of who owned the land. The sheep in the field had got out, which was something which concerned his daughter. The gate at the southern end of the field had not been locked; maybe this was in about 1994 or 1995.
- 7.8.136. His daughter left to go to college in 1995 or 1996. She and her friend had rounded the sheep up one morning, and some villagers had helped with the task. No owner or tenant farmer had been there to assist, and there never seemed to be much maintenance of the field. Certainly at that time the gate at the southern end of the field had not been locked and could be easily opened. Mr Wood had thought that there was no clear owner of the field, and a negligible amount of management of it.
- 7.8.137. In terms of his own use he had mostly used the gate from Rectory Lane because that was close to where he lived. He uses the field for exercise once or twice a week. It is a lovely wind-down from business activity. He always makes a beeline for the pond because it attracts him. There used to be newts in there.
- 7.8.138. His eldest son was born in 1969 and his other son in 1971. There is usually someone else on the field when he goes in there, mainly a dog walker. His neighbour John Passey, who has 5 dogs, does not by any means stick to the footpath. As far as the recreation ground in the village is concerned, his understanding was that the footballers and cricketers who use that field tend jealously to guard their territory there. He had not however known there was a threatening neighbour who deterred children from playing ball games on the recreation ground. However he knew that children preferred the application site field. His own children had played a version of rounders on the application field, for example. He had cut a few thistles for his children in about 1987, in the northern part of the field, he recalled.
- 7.8.139. His daughter was out there with her horse for hours on end over that particular summer of 1993. His daughter's friend also rode her horse in the field at that time. They then moved to another field on the other side of the Rectory. That was on a formal basis, where his daughter had paid rent.
- 7.8.140. As for other people he had seen on the field, Mr Wood would see John Cooper there with a greyhound or whippet. He had seen him come out of

the gate onto Rectory Lane. He did not think he had seen the Brownies playing there. His own walks are at about 8.00 – 8.30 or so. As for the barn in the field, he could recall some children being discouraged by their parents from going into it. He had never seen joggers on the field.

- 7.8.141. *In cross-examination* Mr Wood said that the photograph of his daughter's horse in the field had been from 1993. He confirmed that his daughter left it there for about 8 – 10 weeks, but never left it there again.
- 7.8.142. His reference to having seen fishing in the field was just a reference to fishing with a jam jar or a net. This had been something that had been done with all his 3 children over the course of their lifetimes. His boys did it from the age of about 6 or 7 to 1989 perhaps, and also the same for his daughter up to about 1989. Walking or dog walking on the field had been by him throughout the relevant 20 year period.
- 7.8.143. It was his children who had played rounders on the field when they were young. Also they had played football with jumpers for goal posts in the southern part of the field. Similarly bike riding with his son had been in the southern part of the field. He has seen other children on the field with bicycles, particularly since the invention of the mountain bike.
- 7.8.144. A year or so ago he had seen a group of children with mountain bikes at about 3pm in the field; that was a one-off viewing while he was there with a grandchild. He had seen a group picnicking in the south/west corner near the gate. There were people who seemed to have parked in the gateway; that was also a one-off occasion.
- 7.8.145. Animals are not on the field that frequently, which had been a matter which had surprised him. He thought cattle had last been on the field at least 7 or 8 years ago. And sometimes they are only on for a short time.
- 7.8.146. Mr Wood is not a member of Appleby Environment. He has been in Appleby village from 1966. One of the great attractions of Appleby was this field; he had realised this even from the time when he had not yet moved into his first house in the village.
- 7.8.147. *In re-examination* Mr Wood said that he had 5 grandchildren living within about 6 miles of the village, and 2 more within 35 miles. Oddly the ones who live furthest away visit the most. They have a regular routine, going via the swings in the recreation ground and then into the application field, to the pond. These activities can involve the other 5 grandchildren as well. Their ages are from 10 down to 4. The two grandchildren who live furthest away belong to his daughter.
- 7.8.148. *To me*, Mr Wood explained that his daughter had actually moved her horse away from the application site field because there was too much passing pedestrian traffic in this field.

- 7.8.149. *Mr Andrew Saunders* gave his address in Stockton Heath, Cheshire. However he used to live in Appleby Magna until about 1985, before moving to the north west from 1986. He said that he had been born in Shrewsbury, but moved here to Appleby Magna within a year with his parents, from 1968. He lived in 26 Top Street, Appleby Magna when he was living here.
- 7.8.150. Mr Saunders had completed one of the evidence questionnaires in support of the application. He is the son of Mr Duncan Saunders who had also given evidence.
- 7.8.151. Mr Saunders was aware that there were public footpaths across the field, in particular the one crossing westwards from near the church. There was also a diagonal path from Rectory Lane to the western gate of the field, but not following the official public path. He said that as a child he did not stick to footpaths, although he has tended to do that more recently.
- 7.8.152. When he was a child he used the application site for dog walking weekly between about 1974 and 1985. This was as part of a route across from near the church to the western exit from the field, or he would go around the perimeter of the application field and across the ridge and furrow. At times they had more than one dog.
- 7.8.153. From 1986 onwards he had used this field about monthly when back at home, up until 1995. They still did the walk in the field, around the pond and in the upper half of the field mainly.
- 7.8.154. As a child he did go to the field with his brother, because they shared friends, but they also went to the field separately. His brother, he understood had used a dinghy on the pond in the field with a friend on a number of occasions, although he had no direct personal knowledge of that.
- 7.8.155. From 1995 to date he had still used the field for walking without dogs, this was more walking across the middle of the field and around the pond, but this was certainly less often than he had walked it before. This would be as part of a walk all around Appleby Magna.
- 7.8.156. As a child he could recall seeing others on the field. It was a very well used path across the field westwards from near the church. One would see people walking dogs more in the northern part of the field and less in the southern part. The northern part really was quite well used.
- 7.8.157. He remembered the barn in the southern part. He would say that he had been in the field just for generally playing between about 1974 and 1981 more frequently than weekly; this would be around the pond or the barn. The barn sometimes had pigs in it. It was interesting, a focal point. It was a free area where one could wander off the path, unlike the other footpaths around Appleby.

- 7.8.158. From 1974 to 1980 he recalled that the Cub Scouts in Appleby had a cross-country route and that part of that cross-country route they used was on the path that crossed the application site. They met in the church hall, but they broke out, perhaps after the official session of the Cub Scouts, into the area around the pond and the barn in the field. Also in his view the best location for sledging, the best non-road slope in Appleby, was the slope on the application site. He also remembered indulging in 'skateless skating' on the frozen pond.
- 7.8.159. He has two children, Joseph who is 14, and Millie born in 2002. For his children he had had printed a number of small books which he had written; one of them was the book called the "Five Pence Piece" which his father had produced for the Inquiry. When Mr Andrew Saunders' son was younger he used to name things that he wanted his father to write a story about. Mr Saunders made up the stories and produced the books as Christmas presents. There were 6 of them, and one of them was based here in Appleby, because there really was a tree there and a five penny piece which the story related to.
- 7.8.160. After his children had been born they had visited Appleby monthly, and took the children into the fields; that included the time when they would be carrying a very small child. While doing that one used to see others on the field, including friends. They were mainly people just using the footpath. He named some of the friends he would see. One did not see people in the southern part so much, except around the pond. However there was a path going down to the southern gate out of the field which people did use. In fact in his view there were innumerable paths across the whole field of the application site.
- 7.8.161. In terms of livestock, he remembered the pigs that had been in the field. The grass was always fairly low in the field, showing that animals were eating it; he thought there were sheep; he could also remember horses later on in the northern part of the field. But livestock was not in this field as often as it is in some other fields.
- 7.8.162. When in his questionnaire he had referred to seeing children playing in the field he was referring to himself, his brother and their friends; and also his brother's children, although that had been infrequent. He had however seen other children playing there, mainly around the pond and the slope, since moving away in 1986. People are in there irrespective of the seasons, not just in summer or when it is snowy. In his experience there usually were a number of children or a family with a couple of children in the field. He had seen people drawing or painting in the field in the area to the west of the church, roughly on the footpath. He had seen that a few times, perhaps 2 or 3 times in all, not very often. His reference to seeing photography in the field was really just a reference to himself, because it is a very pleasant view eastwards across the field back towards the church and the church hall.

- 7.8.163. He did have some photographs taken in about 1984, before the age of digital cameras. Since then he has taken digital photographs, probably from about 2003 onwards when they got a digital camera.
- 7.8.164. In more recent times too he had seen children playing in the field around the pond. Just recently he had not visited the site so often. But he had on more than one occasion been there in the last year at weekends. Every couple of months he would go in there and see people in there, and that was representative of previous years too. His visits to the field in these latter years have usually been on a Saturday or a Sunday, and would be once on a weekend when he was in Appleby.
- 7.8.165. *In cross-examination* Mr Saunders said that he had left the village in 1985, and from 1993 to 2013 he had a home elsewhere.
- 7.8.166. If sheep are in the field he would not let his dogs off the lead. However there were rarely any livestock in the northern part. The path running westwards from near the church was the main area where people stopped and talked in the field and let their dogs off the lead. He confirmed that he personally had not witnessed a dinghy being used on the pond.
- 7.8.167. The barn in the southern part of the field did have pigs in at one stage, although his memory is quite hazy. He could not recall if those pigs were ever loose in the southern part of the field.
- 7.8.168. ‘Escaping’ from the Cubs out onto the field was quite a frequent occurrence, perhaps once a month. Also when there was snow this field was the place to go, apart from a bigger hill which was about 2 miles away. There was significant snow perhaps every other year. Freezing of the pond and any water in the field was more frequent than the appearance of snow.
- 7.8.169. As for his answers in the questionnaire about things that he had seen happening on the field, that mostly reflects things he had seen in more recent visits. Last year he came back here to Appleby about 8 times for a weekend. Each of those times he thought he had gone onto this land, mainly to walk, but perhaps with some loitering around the pond and the slope near the pond. This was more as part of a general walk in the countryside. Nevertheless this field would still be the place on the walk where one would tend to tarry the longest.
- 7.8.170. On walks it was reasonably common to walk in through the entrance near the church and go out through the southern gate onto Bowleys Lane; walks did not always just go across the east/west path from the church. So these days on a walk he would normally be on the application land with his family for perhaps a quarter of an hour. However when his children were younger there was a lot of running up and down the slope, which took longer.

- 7.8.171. He thought he had seen drawing or painting going on in the field about once last year. The last time he had been walking in the field he could remember seeing 3 people in it, a couple and one other person with a dog. They were standing chatting close to the east/west path for some time. As for his little book, which had been produced to the inquiry by his father, it was true that the pond in the field does get fallen debris in it, but it also does dry up a bit from time to time. He himself could not recall it ever being fully dried up, but he can remember it having exposed logs lying in it that one could walk on.
- 7.8.172. *In re-examination* Mr Saunders said he had visited the field on the day before giving his evidence at about 5pm. There was a person walking a dog just south of the main east/west footpath. There was a couple near the entrance close to the church. These people were still chatting, having walked towards each other, about 15 minutes later.
- 7.8.173. **Mrs Wendy Stark** lives at 42 Top Street, Appleby Magna, with her husband David and their son Douglas. She has lived in the village since 1999. She had completed one of the evidence questionnaires supporting the application, and had also produced a statement supported by a number of her photographs.
- 7.8.174. She pointed out that the application field is known to some as “*Dormer’s Field*” or “*Parker’s Field*”. It needs to be kept as it is, not only for its historic value but because of what it represents for the village community, past present and future. She said that like many others in the village the Starks as a family have walked, played, sledged, been blackberry-picking and enjoyed the company of others in this field. Snowy weather particularly unites the community and many gather, of all ages, to play on the slopes around the pond.
- 7.8.175. She personally had used the field nearly every day for 13 years, with her two dogs, and has used it as a social meeting place with friends from the village. They enjoy the wildlife in the field, pheasants, rabbits, foxes and the variety of species attracted to the pond. Also the occasional livestock in the field are an enjoyable feature, particularly the friendly sheep.
- 7.8.176. She still did not know who owns the field, but she had recently heard the name Ottewell mentioned.
- 7.8.177. She enters the field most frequently by the entrance near the church. However she also enters by a gate from Mrs Laura Graves’s garden, which goes into the field in its south-eastern part; that is less frequent. She thought she had used the Graves’s gate perhaps about 20 times in all. Sometimes however she comes into the field from the other direction via the gate in its western edge.
- 7.8.178. Whichever way she enters, as a general rule she goes with her dogs into the southern part, because it is easier there to find a stick for the dogs to play with. She tends to circumnavigate the southern part of the field rather

than to walk a straight line. Then she walks up the western edge of the land and along the top by the hedge. Then she tends to cross diagonally across the northern part of the field to the western gate and go out through that. However if she meets someone on the field she would continue walking with them; for example she used to meet Laura Graves on the field on a daily basis.

- 7.8.179. Their dogs were usually off the lead. Mrs Graves used to have two dogs but she has one now. All of that started when the Starks moved in in 1999. They used to see lots of other children and parents on the land as well, several of them walking dogs. For example she had a friend called Jessica who would enter with her dog through the western gate, and her dog was always off the path. In the north-western part of the field she would tend to see Mr John Passey. She used to walk her dogs twice a day on the field, but now only once. She named various other people she used to see on the field, including Mr and Mrs Marsh (the Applicant). This was a social meeting place. She could guarantee that if she took her dogs there she would bump into someone she knew. She knows some dogs' names better than she knows their owners' names.
- 7.8.180. She has also seen children playing in the field. When her son was younger he spent a lot of time in the field, and she spent a lot of time with her son by the pond. The area near to the pond which floods when it is wet becomes a rather cleaner pond than the main pond. She could name some of the children from the village who she would typically see sitting near the pond when they were younger. Her own son is now 20. He played in this field with various of his friends. The Scouts used to meet in a hall in Measham Road, not in the church hall. However they did do things in this field.
- 7.8.181. Her son would often take their dogs for a walk without her, or sometimes with her. He has also used part of the field for running. He would typically run round the perimeter of the top section of the field.
- 7.8.182. Sledging would always take place in this field when there was snow. Sometimes the school would be shut because of the snow, and there would be lots of children in there. She had seen a lady called Linda who was a child minder from Top Street, who would be in there with the 4 or 5 children in her charge; that would be in the southern part. She also remembered a time when two teenagers who she did not know built a massive snowman in this field. That was not such an unusual sight. She could name other people who she had seen either playing or walking in the field, for example in the northern part of the site.
- 7.8.183. She had engaged in blackberry picking in the field. That would be up the western boundary of the northern part. She had seen several other people doing it as well, not just herself, it was a regular thing to do in the season. Also they do mushroom picking in the field in the area to the south of the east/west footpath. She had never seen anybody in the derelict barn in the field; it did not appear to be a focus of interest.

- 7.8.184. At various times there have been different sets of sheep in the field and she had photographed some of them. She had also encountered horses there, she thought three at one point. However it was only periodically that animals were in the field grazing.
- 7.8.185. She had indulged in kite flying in the field with her son Doug. This was a sporadic thing but they had a go at it. They did it on the slope near the pond, but she had not seen others doing the same.
- 7.8.186. As for picnicking, she could remember seeing Laura Graves's children their picnicking on the slope. She had certainly seen people walking in the field, including people who live on Top Street.
- 7.8.187. The Happy Hedgehogs is a pre-school group. Her son Doug did not go to it because he was too old when they came to the village. However she has seen them on the land behind the parish room. She presumed that they would have been fulfilling Ofsted requirements and taking in nature when they were out on the field.
- 7.8.188. *In cross-examination* Mrs Stark said that she is not a member of Appleby Environment. She tends to reach the application site from her house via a cut-through via the Crown pub. She has lived in Appleby since 1999, and before 1999 her husband used to come to Appleby Magna to play cricket, and she came too. The cricket games were on the recreation ground.
- 7.8.189. When she had described the application field as a 'social meeting place', she was referring to the fact that she would go onto the land for the purpose of meeting friends there, and she would arrange sometimes to go on the land in order just to chat with friends; in other words she didn't meet people there just by chance. That was most usually with Laura Graves, who was her most frequent companion on visits to the field. The occasions when she used Mrs Graves's gate into the field would usually be after she had been looking after Mrs Graves's chickens or her dog.
- 7.8.190. She would usually see others on the field that she knew, but not usually as a pre-arranged walk with them. Her son had also told her that he used to play on the field with some of his friends; it was her son also who told her that the Cubs used to play on the field.
- 7.8.191. She did recall there being cows on the field, but could not be very specific about the details. She thought that for a period sheep had been in the field for a while each year, but just for a few weeks and then they were gone again.
- 7.8.192. She would not be inclined to agree with any other witness who said that animals were typically on the field for 9 months of the year. She thought it was less than that. She could not be specific because she had not paid much attention to the matter. She herself would let her dogs off the lead even if there were sheep in the field. The sheep had never been lambing in

this field. She was sure the farmer would put up a notice if they had been, as used to happen in the other field further to the west. She herself is not an expert in animal husbandry.

- 7.8.193. *In re-examination* Mrs Stark said that when sheep were in the field they usually tended to be all over the field. However they did not stop use of the land by people. They used to follow people. Cows on the other hand used generally to stand there and not move when people were near them.
- 7.8.194. **Mrs Celia Smith** lives at 3 Didcott Way, Appleby Magna. She has lived here from the 8<sup>th</sup> October 1993 to the present time. She had completed one of the evidence questionnaires lodged in support of the application.
- 7.8.195. She uses the field every day twice generally, first between 9.00am and 10.30 am and then between 1.00pm and 2.30pm, depending on when she goes out.
- 7.8.196. She does not know who the owner or occupier of the field are. She might enter the field from the gate at the southern end which used not to be locked, although it is now. She would then go up the western edge near the pond, and up the western edge of the northern part of the field. She would then typically go along the northern edge and then diagonally across the northern part. However she likes to vary her dog's walk. She goes round the boundaries sometimes, and then she might change her route. The north-east corner of the field is nice and flat in order to train her dogs.
- 7.8.197. Her dogs are always off the lead. She often sees others on the land when she is there. She might see Mr Gothard with his two chocolate Labradors. She might see a gentleman called Bob with his dog called Ella. She would see them every day or at least 3 or 4 times a week. She chats to these people. Mr Gothard she would usually see near the western gate to the field, or crossing up towards the Rectory Lane gate diagonally. The gentleman called Bob usually comes in at the Rectory Lane gate, or she may meet him at the western gate to the field. Her dogs will greet anyone. There is also a lady who lives in the almshouses in Mawbys Lane who has a dog. She sees that lady 2 or 3 times a week. There is another walker with a Lurcher called Lottie who she tends to see at weekends.
- 7.8.198. She has seen children in the field; that tends to be more in the summer holidays. She sometimes sees young ones there with their parents. The older ones are generally walking across, going somewhere else, she is not sure where. She had also once seen the Cubs or Scouts doing a nature walk and being taught about the countryside.
- 7.8.199. She had taken her nephews (now 14 and 12) into the field. Whenever they come and stay, which is 5 or 6 times a year, she would take them there. It is a favourite place to go when they are staying. When she takes them there they go by the pond and also round the edges of the field. Her nephews look for rabbits, pheasants, or insects around the pond. They

have a kite at home for the nephews. She could remember about 3 occasions of flying that kite from the bank near the east/west footpath.

- 7.8.200. When there is snow the field is a popular place to toboggan. This would tend to take place just south of the main east/west footpath, and you might see about 20 or 25 people there in those conditions. It is a very nice sight.
- 7.8.201. Blackberry picking tends to be up the western boundary of the northern part of the field mainly. She quite often sees another lady picking there as well.
- 7.8.202. She has also seen the Happy Hedgehogs being taken into the field via the gate near the church. They usually walk straight across the line of the footpath to the western gate. She thought she had seen that about half a dozen times since 1993.
- 7.8.203. Since 2011 she had been at home and not working. Thus in the last 3 years she has had the opportunity to see them. Before 2011 she would walk her dogs there rather earlier in the day.
- 7.8.204. She had produced some photographs with her questionnaire; one of them had been taken in January 2013 in the snow. This field is very social she would say; one knows that the dogs will be safe in there. So one feels one can stop and chat to people safely.
- 7.8.205. As for animals in the field, sheep are the most frequent and they are quite tame. Her dogs are very good with sheep. There were some horses in the field about 3 years ago for 2 - 3 months. Also 15 years ago a horse had been on there. She knew who it belonged to, but did not know if the young lady had had permission. She, Mrs Smith, had also seen cattle in the field a little bit.
- 7.8.206. There is now some fencing partly across the field but one can still get through. The posts for that fence went in in 2012, and wire was put on those posts in 2013.
- 7.8.207. She has seen a person jogging in the field. She thought that was Mr Gothard's son Jeremy. He goes all the way round the field, and also runs on the recreation ground. She has also seen ramblers on the field more recently during the week. They have come in from the western gate and also from the gate near the church. More ramblers have been seen in the village in recent times. She has seen Jeremy Gothard running normally in the morning during the football season, probably twice a week.
- 7.8.208. *In cross-examination* Mrs Smith said she is not a member of Appleby Environment. Until 2011 she was working full or part time. Her own house is about a quarter of a mile from the field. She would go for a walk on the field about 7.30am, including in winter when it was dark. In winter she would go into that field in particular because it feels very safe in there.

- 7.8.209. She has walked in that field so often that she knows which paths she regularly follows and she follows them. In the morning or in the evening, even in the dark she follows her own paths. She thought she herself had created a lot of them. Also quite a lot of the paths are in fact sheep tracks too. Both for her morning and her evening walks in winter it would be in the dark, so she would stick to her well-trodden paths. However she is not often on the established public footpaths. Also on the official north/south footpath there is a big animal hole which is quite dangerous, so she avoids that.
- 7.8.210. One does not see as many people walking there in the dark as when it is light. She did also go onto the field there at the weekends, in daylight. In winter she would not have seen people in the field drawing or painting, she agreed. Also children playing is more a summer activity, near the pond usually. Sheep do not put the children off. Cows are not there very much, and they are not troublesome when they are there. Her own nephews have done bird watching in the field, about 6 times a year. She had taken her nephews into the field for picnics about 3 times within the relevant 20 year period.
- 7.8.211. The photograph taken in the snow which she had produced showed her own 3 dogs. In her other photograph she was there with three of her own dogs and other dogs belonging to a friend of hers.
- 7.8.212. There does not tend to be a lot of litter on this land. The children in this village tend to be quite respectful of their surroundings. It is true that the gate out onto Bowleys Lane is locked nowadays, but there is a broken bar on the gate which enables dogs to get through.
- 7.8.213. *In re-examination* Mrs Smith mentioned that there had been a broken toy near the pond for some considerable time.
- 7.8.214. **Mr Paul Cooper** lives at 5 Garton Close, Appleby Magna with his wife Alison and their children, Emma who is 20, Zoe who is 17; and also Matthew and Isobel who are twins aged 15. They have lived in the village for 20 years, initially at No. 10 Top Street, and then they moved to Garton Close. Mr and Mrs Cooper had completed one of the evidence questionnaires supporting the application.
- 7.8.215. Mr Cooper said that he does go into the field most regularly for dog walking, at least once a day. He has had a dog for 10 years. He usually goes in through the western gate and does a circuit round the field and then out of the gate near the church, after a circuit of the northern part. Sometimes he will go out via the northern gate onto Rectory Lane and around the village.
- 7.8.216. He works for himself at home, so he may go out in the morning or after lunch, or late afternoon, or indeed between 7pm and 8pm. Sometimes he takes the dog out more than once a day.

- 7.8.217. He had not known who the landowner was, although he is now aware that there is an owner of this field. Before they acquired a dog 10 years ago they always went to this field with the children. His wife took them there, they liked the ridge and furrow and the 'swishy grass' in the field. The majority of the time when the weather was nice they would go there. With 4 children it is good to get outside as much as possible. They used to walk the children home from school via this field as part of a circuit. They mainly used the northern part and circled round the pond. Water is always an attraction for children.
- 7.8.218. He had never seen a great deal of litter in the village. There is a lady called Dawn who acts as the village litter keeper. She does it wonderfully.
- 7.8.219. He does himself pick blackberries up the north-western boundary of the site. He also once pulled a sheep out which had got stuck in those bushes on the north-west of the site.
- 7.8.220. One can guarantee always to meet somebody when one is on the field, it is one of the nice things about the village. One gets to know or recognise people and their dogs. Sue Taylor, the wife of the local butcher, he sees quite regularly on the land around the east/west footpath. Their dogs are not on the lead when they are on the land. Laura Graves who lives by the south-eastern part of the land is someone else he sees there. His wife Alison runs in the field, usually in summer when the weather is dryer. She follows various routes round or across the field. She is not necessarily on the public footpaths. She often runs around the edge of the northern part, for example; that is not affected by the ridge and furrow on the field.
- 7.8.221. When he goes for a dog walk in the field he will always go around the edges where there is more of interest to dogs.
- 7.8.222. When his children were younger they would have picnics in the field, perhaps once a fortnight, but there was not really a regular pattern. He had seen other children playing on the land too. He could name at least one of them who was a good friend of his daughters. More recently he has seen children there who his own younger children have been friendly with. Friendship groups among children tend to change. His youngest daughter goes into the field more often in summer, and his young son perhaps all year round. He used to take his BMX bicycle there, or a skateboard which had big wheels so that it was useable in the field. That was a couple of years ago, and then he became keen on his BMX bike.
- 7.8.223. His daughter Zoe also used the field for various games, and groups of girls who were friends used to mill around on the field. Indeed one of the biggest plus points of this village is that there is a field for adventure which is at the same time safe.
- 7.8.224. He had seen other children apart from his own son out using BMX bikes on the field, and could name some of them. Some were from the village,

although he could remember a boy from Measham on the field with his bike too.

- 7.8.225. He himself had done bird watching on the field; there is a lot of nature on the western boundary of the site in particular. He had also done some drawing and painting in the field. Occasionally he does it there; he is a designer by trade, and also his girls do it a little bit. He has sat and sketched the back end of the church from there for example.
- 7.8.226. Between 1993 and 2003 he would not have used the land daily, but perhaps every other day or every 3 days.
- 7.8.227. As for animals, he had seen sheep on the land, and indeed that had enabled his dog to get used to them. On occasion he had seen horses in the field but that had not been for a while now, perhaps a year or two ago. Cattle also were occasionally in the field, and he remembered seeing a cow near the pond for example. It is very haphazard whether or not there are sheep in the field, there is not continuous grazing. They seem to come on for about 4 – 6 weeks and then go again.
- 7.8.228. As for the barn in the field, he knew it was there but he had not seen any activities around it. He had not seen the Brownies in the field, but his girls had been Brownies and he knew that they had gone there. He had also seen a rambler with walking poles quite regularly in the field.
- 7.8.229. *In cross-examination* Mr Cooper said he goes onto this field more or less every day, and had done for the last 10 years. Before he had a dog he did not go onto the field so much, except when he was picking up his children from school. They would come from the school via the recreation ground and then do a circuit round this field. They would come up outside the western edge of this field and then enter via the western gate. That was not every single day, for example they would not do that if it was wet. But when it was daylight and not dark, and when it was dry they would do that. Nowadays he uses the field mostly with his dog, and it is very rare not to meet others on the land at the same time. He could name several of them. One stops and says hello, but maybe one does not know the name of the people because they are not particular friends. However walking a dog is a social thing and one tends to exchange a few words with people. He thought he probably saw about 9 or 10 different people on the land on a regular basis.
- 7.8.230. As for BMX bikes his son still has his. He has had it since he was about 9. He has always taken bikes over there to the field, perhaps even since he was 7. He would tend to go onto the field about 3 or 4 times a month perhaps. He meets up there with a couple of other lads. However not everyone in the village does this, and there isn't anything like a BMX track on the site. He believed they did their cycling on the banks near the pond and on the ridge and furrow.

- 7.8.231. He is not himself a member of Appleby Environment. He confirmed that he himself had done drawing and painting and sketching on the land, but he did not know of others who had done it. He had done it there about 2 or 3 times. As for bird watching, he used to be a member of the RSPB although he is not any longer. He is not a 'twitcher' but he does take an interest. It is sporadic really, a consequence of walking the dog.
- 7.8.232. As for picnicking on the field, his daughters would take a rug or perhaps load up their toy prams with dolls and blankets and go there for a picnic. His daughter Emma with one of her friends, while they were at primary school, did that quite regularly over a period of possibly 4 years. Kite flying he had done sporadically on the field with his son, who has had a motley collection of kites. They would do that perhaps every day for a week but then there would be a break from that activity.
- 7.8.233. *In re-examination* Mr Cooper said that it would be true to say that from 1993 onwards he did not stick to the footpaths while using the field. Apart from the 9 or 10 regular people he would see in the field one would see other people occasionally. His wife when not working full time used to meet up with a group of other mothers who would go for a walk across the fields. So others use the field apart from the 9 or 10 regulars.
- 7.8.234. ***Mrs Christine Wedgbury*** lives at 55A Church Street, Appleby Magna. She had produced one of the evidence questionnaires in support of the application.
- 7.8.235. She said that she had run the Happy Hedgehogs pre-school from the church hall in Appleby for the last 24 years. They meet every morning in term time and cater for 2 year olds up to school age. They have used the field behind the church hall on a regular basis. There are various reasons why they use the field. One is that the outside environment is very important to a pre-school, and Ofsted encourage the children to experience the outdoors. They use the field behind the hall for listening skills with the children, in order to see what the children can hear and recognise sounds.
- 7.8.236. Also it is a safe way for children to be able to move around the village to get to the recreation ground. And the blackberry bushes at the back of the church hall are a good way to cover the concept of understanding the world, which includes the taste and shape of fruit growing wild in the countryside. In addition the children can run freely around the field letting off steam and using their physical skills to advantage. The field would be greatly missed by the group if it were not available.
- 7.8.237. She continues to run Happy Hedgehogs every morning, and they use the field on a weekly basis. In summer it can be twice weekly and in winter they use it if the weather allows. They use the field in the vicinity of the footpath crossing from the church towards the western gate, and they also use the area to the south of that path on the slope down to the pond. The blackberry picking they do is near the gate from the church, behind the church hall.

- 7.8.238. In the mornings, if they plan a picnic they would go out about 10.15am. If they were going out for listening skills or recreation it could be 11am or so. The Happy Hedgehogs pre-school finishes at 12.15. There are 5 members of staff and 28 children in all. The group could go out there with all 28 children at once or in small groups of about 6, with two staff.
- 7.8.239. They do not see a great many people on a regular basis on the field, although they do see Mrs Celia Smith. There are often sheep in the field, and they have seen cows there. She produced some photographs of the children in the field, which had been taken in October 2011 in the area to the south of the main east/west footpath.
- 7.8.240. There was also a photograph from June 2013 showing children in the field with cows.
- 7.8.241. They make a lot of use of the field and they regard it as a valuable resource for children, who have often come from an urban background.
- 7.8.242. *In cross-examination* Mrs Wedgbury said that the October 2011 photograph which she had produced was on an occasion when a member of the staff had taken the children out there; she was not sure exactly which part of the field it was. Her June 2013 photograph she had taken herself, and in it one could see one of the posts in the field to which wire had been attached.
- 7.8.243. They have a maximum number of 28 children at Happy Hedgehogs, and the average at the moment is 23. The lowest number she had had was 22.
- 7.8.244. She did not see a great many people in the field when she was on there, but she does arrive at 8am to set up, and at that sort of time she sees several people she recognises go past the hall. From inside their building they do not overlook the field. However the side of the hall has windows so they see people pass on their way to the field.
- 7.8.245. If they go out with the children it could be for 20 minutes or so for listening skills, or say an hour or so for a picnic. They certainly do see sheep in the field, or cows. There are sheep more often than cows; probably for the majority of time there are sheep in the field.
- 7.8.246. She has 5 members of staff. When on the field she has seen people she knows walking dogs there or just ambling across. She had not seen other children on the field however, as she tends to be on the field in school time.
- 7.8.247. *In re-examination* Mrs Wedgbury said it was a benefit to children to see sheep and cows as part of their education. She did have some urban children coming to the group.

- 7.8.248. Dog walkers would typically put their dogs on the lead if they came up to the group of children. This also is beneficial as one could talk to the children about different types of dog. She felt sure that the people she saw going past the hall were heading towards the field.
- 7.8.249. **Mr Peter Graves** lives at Church Farm House, 22 Church Street, Appleby Magna with his wife Laura, and they have 3 children. Their 23 year old son still lives with them, and they have 2 daughters who are not currently living at home. He and his wife had completed one of the evidence questionnaires supporting the application.
- 7.8.250. The family have been in Appleby Magna since July 1996. He knew that the land of the application site was owned by the Ottewells. He had requested to buy a piece of the land from them after they moved in.
- 7.8.251. He personally does go dog walking on the land, and his wife runs there. In 1996 when they moved in they had no dog, but in around 1999 they got their first dog, and then got another one when the first dog died. When they had their old dog he would walk there at least once a day.
- 7.8.252. They had had a gate from their garden onto the field since about 2004. In terms of walking on the field, they would usually walk around the edge of the northern part, around the pond and sometimes down to Bowleys Lane.
- 7.8.253. Their present dog is not so keen on walking as the previous one was, so they do not do the dog walk so often. When they first came to the village they quite often took their children out onto the field, probably about once every couple of weeks on average, possibly more to start with and then less later on. Their children used to take nets in order to fish in the pond. At that stage they, the Graves family, had no gate onto the field.
- 7.8.254. He himself did not know much about the Cubs or Brownies in the village. He had however seen other children playing in the field, especially if there was a decent amount of snow there.
- 7.8.255. Their own son did not use to use his bike on the land but he had seen a few other boys do that, albeit not many.
- 7.8.256. Blackberry picking was something they had done as a family. They used to find a lot of blackberries along the western edge of the field. He had also done bird watching while walking on the field.
- 7.8.257. He had seen other people using the land. Typically he walks their dogs on the field at the weekend in the mornings. He would usually see at least one other person walking a dog at such a time. Typically people walk around the perimeter, where it is flatter than in the middle. Most people walk around the perimeter of the northern part, and also around the pond.
- 7.8.258. He himself has climbed over the gate at the south-western corner of the field. He used to play football for Appleby Football Club for some 6 or 7

years. That was on a Sunday morning; every other week it would be on the home pitch. This would take place from August/September through to March, approximately.

- 7.8.259. *In cross-examination* Mr Graves said that when he was going to play football he used the field as an access route to get there.
- 7.8.260. Before they had their own gate onto the field they used to step over the wire of the broken down fence from their garden into the field, and their dog would jump over. He had twice tried to buy some land from the Ottewells. The land they had sought to buy was fairly close to their property, essentially the patch to the south of them. The second of these attempts was in 2000. It had not occurred to him at that time that the land might be regarded as a village green; that was a thought that simply did not cross his mind.
- 7.8.261. He confirmed that he had seen other people walk around the pond in the field. He would see that every Saturday or Sunday when he walked around it himself with his dog. His wife walks the dog on weekdays. Their previous dog needed a lot more walking than their present one.
- 7.8.262. They cannot see the undulations in the field from their house, but they can see across the field from upstairs. He recognises the majority of the people he sees on the land. About 3 or 4 of them he would see who are fellow dog walkers. Most people he sees are just walking along a route on the field, and do use the footpaths.
- 7.8.263. ***Mrs Laura Graves***, like her husband, lives at Church Farm House, Church Street, Appleby Magna. She said that they have lived in Appleby Magna for 17 years, and when their children were small they would take them for walks around the application field and collect tadpoles from the pond. In more recent years they have used the field to walk their dogs and meet other dog walkers.
- 7.8.264. When they first moved in they did not have a dog. Their daughter Georgia was 7, and they allowed her to go onto the field without her parents. She would walk up Church Street and then past the churchyard and into the field through that entrance. She would go there with other children, or their own two other children. She also sometimes had visiting friends from Rickmansworth, where they used to live.
- 7.8.265. This field was easy to get to, easier than the recreation ground, and the children would play in it around the pond. The children would just play there, and they also used to do a lot of dressing-up.
- 7.8.266. She herself uses the field for dog walking every day, except weekends. Nowadays she goes in through their own gate, and follows various routes on the field. Wendy Stark sometimes used to meet her to walk the fields together. Having sticks to throw helped their dogs to stop quarrelling.

- 7.8.267. Mrs Graves does go running on the field. She had an operation in 2013 and can only run on soft ground. She belongs to a running club and they do run around the field.
- 7.8.268. Her children were involved in nature studies on the field when they were younger. They used to go on the field with other families. The hedgerow between the field and Church Street gets very overgrown, and people thought that they the Graves family used to own it, so they got letters from the local authorities asking them to cut the hedges down.
- 7.8.269. Their son had used the field at the age of about 14 or 15 to play golf out there. And their dog would retrieve the golf balls the next day. Their children used to go to the Sir John Moore School at Appleby. Some mothers do come across the field with their children from the school, in fact a whole group of them with a whole lot of dogs. They come in through the gate on the west side of the field and walk around the perimeter of the field.
- 7.8.270. In her own experience blackberry picking tends to take place to the west of the pond. She personally has done it more to the south-east. Their children have engaged in newting in the pond.
- 7.8.271. The barn in the field is close to their property. There had been the odd child mucking around in or near that barn, but that was not regular and indeed the building is dangerous.
- 7.8.272. She has seen animals in the field, both cows and sheep. They would tend to be spread around the field, depending on how many were there. There have also been a few cows in there with sheep at the same time on occasion.
- 7.8.273. Her reference to people drawing or painting in the field was a reference to her own daughter Georgia who had done it just the once.
- 7.8.274. She sees various dog walkers in the field on a regular basis, and named several of them. However there were lots of other people who walk dogs there. They could be on any part of the land. Most dog walkers are on their own but some are with children or grandchildren. Most children go to school for most of the time.
- 7.8.275. It is very busy in the field if it is snowy, however they cannot see the snowy slope from their own house. She herself had not seen the Happy Hedgehogs, the Brownies or the Scouts in the field.
- 7.8.276. *In cross-examination* Mrs Graves said that the gate from their own garden was for their own use from their own land, and not a general access point for the general public.
- 7.8.277. For the purpose of her running, this field is rather uneven and not ideal. Her own running on the field has been after an injury, meaning she had to

run on soft ground. She ran around the field about half a dozen times. Normally runners mostly tend to stick to footpaths, especially running clubs.

- 7.8.278. She herself tends to go out with their dog early in the mornings on weekdays. They had now lived in the village for 17 years, and she knows most but not all of the people she sees by name. The mothers walking back from school in the field would tend to be the same group usually.
- 7.8.279. *In re-examination* Mrs Graves said that it is mostly in the morning that she sees people walking in the field with dogs. A long time ago they had had sheep getting into their own garden from the field. She had also seen a sheep in the field which was not very well. However they had not known who the farmer was to contact. There had been a couple of incidents. The group of mothers using the field is quite a large group, and people tend to filter in and out of that group.
- 7.8.280. **Ms Sarah Daft** lives at 13 Blackhorse Hill, Appleby Magna, with her husband and three children. Her husband is David Pickering. One of their children, a daughter, is at university, and they have a 16 year old and a 9 year old.
- 7.8.281. It is a 5 minute walk from their house to the field. They as a family call this the sheep field or the dog walk field. They have had a dog for over 6 years.
- 7.8.282. She meets a group of mothers (which does change from time to time), and she gave names of a number of the other members of this regular group of mothers. The group has expanded over the years, and she believes it is a different group from the one Mrs Graves had talked of. They walk from the school across the recreation ground, and they get into this field via the western gate. They then turn left up the western boundary and come out at the Rectory Lane exit on the northern side, and then go down St Michael's Drive.
- 7.8.283. Prior to having a dog, she and her family used this field for blackberry picking. Her children also do walk their dog on the field, and when it snows this is where all the children congregate. Her children had been in the Happy Hedgehogs, and also the Brownies. They had been on the field with those groups but she did not know where.
- 7.8.284. Before they had a dog their visits to the field might be part of a family Sunday walk, around the western perimeter of the northern part. They would do that weekly probably.
- 7.8.285. It is rare that one would be in that field on one's own. There are generally others there walking dogs, or groups of boys hanging around. She had produced a photograph taken either by her husband or herself which showed winter activities in the field in the snow. She had known and used the field from 1993 to the present.

- 7.8.286. *In cross-examination* Ms Daft said that she did not know the name of everybody who was in the photographs which had been taken in the snow, but she knew the names of several of them and recognised the children.
- 7.8.287. When she comes into the field, if she is walking with people, for example her sister, she would cut to the Bowleys Lane gate. She had often seen children playing in the field, either sledging or boys hanging around there, in twos or threes.
- 7.8.288. ***Mrs Paula Ashfield*** lives at 3 Bowleys Lane, Appleby Magna, and had been there since 1985 with her husband. They have two daughters currently aged 25 and 22. Her older daughter has moved out recently and is a teacher in Warwickshire. She had completed one of the evidence questionnaires supporting the application.
- 7.8.289. She said she had owned a dog since she had been in Appleby, but her Springer Spaniel had died in March 2013. Other than now, therefore, she had always had a dog. She would typically get into the field via the gate near the church, and then go down into the southern part and around the pond, and then out through the western gate, or sometimes go up the western side of the northern part of the site. Her dog, when it was younger, was typically on a lead. Then later on she would let it off the lead. She would go into the field daily or twice daily.
- 7.8.290. She works full time as a senior NHS Manager. She walks her dog at about 7am or so and again in the evening between 6 and 7pm. In winter she would use the field both early and late, even if it is dark. There had been many instances of sheep tipping over in the field, but they (she and her dog) were alright. She is the main dog walker in their house, but her husband and daughters used to do it sometimes.
- 7.8.291. Her children had had many other child friends in the village, and they used to play all over this field from the age of about 6 onwards. As for the barn in the field, she had never seen anyone in or near it, and she herself does walk past it. She does however see other children on the field, for example playing football, golf, flying kites, by the pond, walking dogs, sledging or blackberry picking.
- 7.8.292. Some of those who she had seen walking in the field are dead now. It is a very sociable field. A lot of elderly people go there and socialise, as well as the younger ones. She knows a fair proportion of the village she would say. She thought probably over 60% of the village use the field at some time or another. How they use it depends on where they come from. She sees people constantly on that field.
- 7.8.293. As for footpaths in the field, there are not just two distinct footpaths on the field as the definitive map suggests, but numerous other defined paths, for example around the pond but also all over the field as well. There have also been lots of different animals on the field. She herself thought the

paths were mainly made by people walking, even if to some extent they were made by the animals.

- 7.8.294. If there were ever problems with the animals in the field, people would go to Richard Denson as he farms in his own right, even though he is not the farmer of this field.
- 7.8.295. As for the fencing that has appeared across the field, her recollection was that posts had been put in at various times throughout her time, mainly near the western edge, but that that had never stopped access across the entire field.
- 7.8.296. A lot of the children who used to play in the field are now grown up. They all used to attend the Sir John Moore School. Her own children had been in the Happy Hedgehogs, the Brownies and the Guides. Her own girls did that, and in that context they had done trails on the field.
- 7.8.297. As for fishing in the little pond, her own family had done that; her reference to drawing and painting was a reference to herself, because she does draw. This is somewhere to go to sketch, mainly from the pond side with a view of the church. It is not so regular now, but when her girls were younger she would do it once every couple of months or so.
- 7.8.298. The blackberries are very good around the pond, and up the western boundary. She would go there, and also her children and family visitors. Others from the village would also pick the blackberries, so one needs to get there early.
- 7.8.299. She herself is quite keen on bird watching. She also used to fly kites in the field when her girls were younger, quite a lot but depending on the weather; it would probably be about every 2 months if the weather was suitable.
- 7.8.300. She thought that the photograph she produced showing the field in snow dated from about 13 or possibly 12 years ago. A picture showing horses on the field was from around 1986. She said that she had known who owned this land.
- 7.8.301. *In cross-examination* Mrs Ashfield said that she had a fairly good view of the field from her house, apart from a hedge partly obstructing the view. Since 1993 she had worked full-time in the NHS, and so was not at home during the working week. However in the early stage she worked very varying hours, up until about 1989. From 1989 onwards her work pattern became more 9 to 5. However her parents were there to look after her daughters.
- 7.8.302. She is not a member of Appleby Environment. She has been in the village now for nearly 30 years. She thought that about 60% of the people in the village have used the field at varying times over the year. She believed that the population of Appleby Magna had been said to be 1084, and

thought it had used to be about 800. She accepted that 60% of the present population would be 650 people. She thought that a fair number of them do go through the field; a large number therefore, different people not the same ones all the time. She thought that during the time she had lived in Appleby Magna a number something like 650 people would have used the field. She could say that from the people she had seen while dog walking, or when she had been over there with her own children. Her dog walking is between 7am and 8am or 6pm – 7pm, and sometimes at weekends possibly.

- 7.8.303. Of the number she had referred to, she thought about half or more of them would be on the footpaths, 70% perhaps. During the time that she has known then field, there have been a lot of people coming and going to and from the village. There are a lot of people who one does not know by their surnames for example. People come and use this field from all across the village, and she gave some examples. She was quite good at recognising people facially, even if she did not know their names. Appleby Magna is a small friendly village.
- 7.8.304. She was aware that there had been Brownies or Cubs or Guides picnics on the land. Her own girls would go over, possibly every month, for some kind of activity there. She herself belongs to the RSPB, although she does not keep records of birds on the land. She has seen children playing on the land at various times. As for fishing on the pond, her own children had done it but she had also seen other children doing it. She knows that the pond sometimes dries out. She has seen football being played in the field occasionally. As far as picnics are concerned, that had been with her family, but probably not when cattle or sheep were in the field. As for flying kites, that of course depends on the weather, it needs to be windy. She could not find any other photographs of people in the field other than the ones she had produced.
- 7.8.305. *In re-examination* Mrs Ashfield said that she had made a note of all the things she had seen in the field, and passed this note around for everyone to see. She had made it as a reminder to herself. However this list was not an exhaustive list of all the names of the people she had seen on the land.
- 7.8.306. She typically spends longer walking her dogs at the weekend, perhaps 2 to 2½ hours. She confirmed that she had been in the village for nearly 30 years, and knows most of the older people here by sight if not by name. She really did believe that she had seen about 60% of the population of the village on the field at some point. She confirmed that in her view there were a number of footpaths on the field, not just the two official public footpaths. People do tend to use the other paths, not just the designated footpaths, she said.
- 7.8.307. **Mr Terry Grice** lives at 13 Bowleys Lane, Appleby Magna. He had lived in the village from 1981. From 1981 to early 1992 he had lived in a bungalow on Hillside, then from 1992 onwards he had lived in Bowleys

Lane. He lives there by himself now. He had produced one of the questionnaires in support of the application.

- 7.8.308. He has a 14 year old dog, and he had another dog for 16 years before that. He himself mainly enters the field at the southern gate, but also from the western gate, or from the north or from the one near the church.
- 7.8.309. At the northern gate from Rectory Lane there are tracks either to the east or the west of the public footpath, or around the western edge of the site.
- 7.8.310. He would go for a walk in the field early in the morning about 7am, also at lunchtime for about 30 minutes, and then for a longer walk in the evening, so he uses the field 3 times a day. He uses the main east/west path, or walks all around the southern part. He uses the whole field. He sees other people on the field. When he has a cup of tea before going out, he would always see someone with a dog on the field. He named some of the people he often meets on the field, in particular on the east/west footpath. There was one particular lady who lives in Church Street who walks around the field every morning. He does not know everyone's name, and indeed there are a lot of newcomers in the village nowadays.
- 7.8.311. In the evening he has a longer walk, which includes cutting across the field. That would be about a 45 minute walk.
- 7.8.312. When grownups are on the recreation ground the children play on this field. His own two children played on this field, in particular when there was snow or when they were messing around near the pond. His two sons are now aged 21 and 17. His two sons would prefer that field to the recreation ground. They went there with other friends from school, perhaps with a group of 4 or 5 of them.
- 7.8.313. He had seen people painting or sketching on the field quite regularly around 10 years ago. Also there is a lot of blackberry picking, especially on the western edge of the field; he thinks everyone picks blackberries there. He has seen people bird watching in the field; indeed he has done it with his own children with binoculars.
- 7.8.314. He himself he thought had the best of views into the field. His elder son used to fly a kite in the field, in the area around the slope. He has seen horses, sheep and cows in the field. In the last couple of years it had been mainly sheep. He does put his own dog on the lead if there are sheep there.
- 7.8.315. He had not been to a bonfire party in the field, but he had heard words to the effect that this is where they used to take place regularly years ago, up near the north end. He thought he had only known of it on one occasion, but he had heard that it used to be regular in years gone by.
- 7.8.316. He acknowledged that he had to climb over the gate at the southern end of the field, but he did that as do some other people.

- 7.8.317. As for the stock fence that had appeared across the field, the stakes were put in quite a considerable time before the wire appeared last summer.
- 7.8.318. *In cross-examination* Mr Grice confirmed that he had lived in the village from 1981, and from 1992 in his present house. He used to work a shift pattern over at Red Banks for over 30 years.
- 7.8.319. One would regularly see walkers on the field, most crossing on the east/west path, with or without dogs. It was the field that inspired him to buy his present house.
- 7.8.320. He finished working at Red Banks 5 years ago. He had been on a 3 shift pattern for 5 years before that.
- 7.8.321. He knows the names of some of the people he sees using the field, but many more of them he just recognises. He thought there were probably 30 or 40 people he would recognise as people he sees regularly in the field.
- 7.8.322. He also knows that other children than his played in the field, but he did not know all their names. He knew who many of them were, but he did not know their names, he just recognised them as people who lived in the village.
- 7.8.323. As for bird watching, he had seen one or two people with binoculars, but really they are just people enjoying the countryside. As for picnics, in summer one would see this going on quite often, on a nice bank of grass, one would see ladies with children. That has always been an event in nice weather, and takes place near to where the two footpaths join in the centre of the field.
- 7.8.324. The bonfire on the land which he himself had seen about 30 years ago was up in the north/west corner of the land. But in the village there are always stories of what went on years ago. His own principal use of the field now is as a route to walk his dogs.
- 7.8.325. *In re-examination* Mr Grice said that there are a lot of paths or tracks on the field which are used as regularly as the official paths. They are just made by people using them. People use those paths regularly.
- 7.8.326. ***Mrs Sue Taylor*** lives at The Eaves, Mawbys Lane, Appleby Magna. She is married to “Bob the Butcher”. Her children are now aged 37 and 32, and do not live in the village. Her 32 year old daughter left the village at age 19, and her 37 year old son left at 22 or 23. She had produced one of the evidence questionnaires in support of the application. She explained that for 5 years she had lived at Hillside, off Mawbys Lane.
- 7.8.327. She owns dogs, and from 1975 to 2013 she had had two dogs. That is also the period for which she has known the application site. One of her dogs died in 2008 at 14, and she got another one 5 or 6 years ago. She walks

her dog on the application site. She does not have a particular name for this land.

- 7.8.328. She gets into the field via the gate near the church. She uses the field at least once a day, and sometimes twice. She throws a ball for her dog and walks round. If it is a nice day she walks all around the perimeter. Her times for walking are usually 8.15am, or if it is lunchtime 12.30 or so.
- 7.8.329. She sees other people on the land, and she produced a list showing the names of people she remembered seeing regularly on the land. She sees these people all over the field, for example she named one lady who she sees in the north-eastern part. However in reality she sees them all over the field, not just in one area. Her own dogs are typically off the lead. There are no signs saying that one's use of the field is restricted to the footpaths.
- 7.8.330. Also her children used to go and play in the field. They used to go there by themselves to play, from the age of about 7 or 8. When they were older they went to the recreation ground, perhaps from the age of about 13 or 14 or so, and they stopped playing in the field. When they did play in the field they might play on sledges, or with kites or a football. Her recollection was that there often used to be snow, although she personally did not go to the field to play in the snow.
- 7.8.331. Blackberry picking however she had done in the field from the hedge on the north-west boundary. Her husband usually goes to the land on Sundays, or over the weekends. Apart from the dog walkers she sees there, there are other people who use the field, for example one gentleman runs round the field as does Mrs Graves, and she sees those occasionally; probably she sees one or other of those running 20 times in the course of a year, but she has never seen a running group in the field.
- 7.8.332. As for the Happy Hedgehogs, she herself had not seen them in the field at the times she goes there. Similarly she had not seen picnickers in the field, and nor did her children have picnics in the field. However she was certainly aware of other children than just her own who used to play in the field, with her children.
- 7.8.333. *In cross-examination* Mrs Taylor said that the Butchers firm run by her husband is in the village, but is not a shop; it is a unit on the farm. However people from the village do shop there. She confirmed that the list she had produced is of the people she would see regularly on the field.
- 7.8.334. She accepts that Laura Graves has run in the field mostly in recent times, but she thought that over a couple of years she had seen her do it on a few occasions, not just in the last few months. She has also seen other people on the land. She sees people cutting through the land. People do use it as a means of passage even if they haven't got a dog, but they are not necessarily on the public footpaths. Her own dog is too heavy to lift over

the locked gate at the southern end, or to get through the gap there, so she does not go into the field that way.

- 7.8.335. The blank questionnaire had come through her letterbox in August 2013. However she had previously written a letter to Clare Marsh in about May 2013.
- 7.8.336. *In re-examination* Mrs Taylor confirmed that the list she had produced was the people she nowadays sees regularly on the field. Earlier on she would have seen lots of other people. They were probably a similar number of people as now, but they would be different people, mostly dog walkers. She gave examples of some names of people she would have seen walking in the field in earlier days. She acknowledged that some people do come into the field at one point and go around the field and then go out the same point.
- 7.8.337. **Mrs Christine Denson** lives at 11 Bowleys Lane, Appleby Magna. She has lived there from June 1976. In fact she lived in the village with her mother-in-law for a few months before that; they owned a smallholding. She had filled out one of the questionnaires lodged in support of the application, dated 12<sup>th</sup> August 2013.
- 7.8.338. She said that for the whole time she has lived in her present property she has enjoyed the open views across the countryside, and in particular the application site, which is a rare thing in villages today. There had been an absentee landlord of the application land, and over the years that land had been let out for pigs, cattle, sheep and also horses. She herself had great fun riding horses there in the 1980s, when a riding school operated out of the fields.
- 7.8.339. The application field, which is opposite her property, has always been used more like common land, with people walking where they like, either with dogs or without, and not always keeping to footpaths. Children and families have played in all parts of the field, and when there was snow in the field.
- 7.8.340. However she does not use that field very often herself. She thought it was perhaps once a month over a 12 month period. Her family have their own land which they work, and they get their exercise in that way; they had sold in fact 5 years ago. She had had an illness, and then used the application land for exercise to get her out of the house. But she had used it to an extent while they had their own land, and it was in that period that she used the application land about once a month. Her use of the application land had been more regular than that in these last 4 or 5 years.
- 7.8.341. To use the land she would usually go in via the gate in the south west corner; however if she went via the post office she might go in through the gate near the church. When they first moved to their present house there was an access into the field near to what are now the converted barns

where the Graves family live. She thought that the gate in the south-west corner had been made in the 1980s.

- 7.8.342. There used to be pigs in the southern part of the field. Then after that she thought the land had been rented for various purposes such as the grazing of cattle or sheep. In the past there had never been a fence across the field; the fence that was partly across the field now had only been put in within the last year. That fence had been broken down at its western end, but not at its eastern end.
- 7.8.343. She has a wonderful view of the application land from her house, from her kitchen, a full view of it. She has certainly seen other people on the land. She produced a written aide-memoire with a list of the people who she remembered having seen on the land. This list contained some 20 names, and also mentioned various other categories of people she had seen on the land, such as ramblers or Brownies or other dog walkers etc. She said there had been lots more whose names she did not know. This list she had produced by way of an aide-memoire went back over the years, and at least three of the people on the list had died.
- 7.8.344. She had seen the Brownies on the top field, walking through on the footpath. She had seen them in passing. She had seen them come in the gate near the church, and had also seen them around the line of the east/west footpath. Whether they were on the path was unclear as there is not a hedge or fence that the path follows in that location. There are lots of paths on the application site, and she knows where people tend to walk. She sees people walk around the northern perimeter of the site for example, and around the pond. She sees people cross on the line of the east/west footpath, or going from the western gate to the northern gate via the western perimeter of the land. She also sees people walking along the southern boundary of the land but inside it, within the hedge, and then they go up the west of the land around the pond; people are all over the land she said. She does have binoculars because she is a bird watcher; she overlooks this field from the ironing board.
- 7.8.345. There are people whom she does not know that she has seen on the field, for example ramblers with backpacks. She has seen them around the pond with backpacks and maps, perhaps 10 or so of them in a group. As well as the Brownies she has seen the "*Happy Hedgehogs*", with adults with them. The hedges around the land are in poor condition, and the Council she understood had had to act to get them cut back about 4 years ago. She had known that the Ottewell family owned the field, but she herself did not know them.
- 7.8.346. As for children playing in the field, within the last 20 years she had seen them all round the pond, and around the fallen down barn and generally in the field. A boy called Justin Jones from Rectory Lane was one she particularly recognised. She had seen him there from a little boy. One can see gangs of children on the land, perhaps 6 of them at a time.

- 7.8.347. The police had been called on an occasion, because cattle could jump over the fence out onto Bowleys Lane and go up towards the motorway. The gate put in in the south-west corner was useful because it was possible to get the animals back in. Sheep had also got out of the application field into the recreation ground. She had only seen the police come on the one occasion when the cows got out.
- 7.8.348. The RSPCA came once, because various people were concerned that the sheep in the field were not in very good order. However the RSPCA said that because there were bales of hay in the field, albeit they were rotten, the sheep had enough feed. Animals in the field did not impede the use of the field by people. There had never been any signage to stop people going into the field. She had however seen a sign in the past to the west of the application field, when a stockbroker had owned the parkland further to the west, saying keep dogs on a lead on that land.
- 7.8.349. She goes into the field about once a month, for example if she sees something interesting there such as ducks on the land. Her own son had played there in the 1970s and 1980s, but he is in New Zealand now.
- 7.8.350. Snowballing and sledging is regular in the field when there is snow. It takes place near the pond where the land dips down. Children also slide on the land when there is frost, and water in the field freezes over. Because of the ridge and furrow in the field, which is known as 'lants' or 'lonts', snow gathers in those lonts, she said.
- 7.8.351. *In cross-examination* Mrs Denson explained that she is a farmer's wife. They had a smallholding with sheep, pigs, ducks, geese etc. She acknowledged that land in the countryside had had to be closed off in 2001 because of the foot and mouth epidemic. She did remember a time when there had been no animals on the present application land, and it was used for hay. However that land had never been well cared for in order to produce hay. It is old pasture land, and it is also difficult to take hay from that field because of the lonts. The grass did not grow to more than about 1 foot, or 18 inches at the most. This was not like lush rye grass hay. These are old swards.
- 7.8.352. Her own view of the field is from her kitchen downstairs, and also while ironing in one of the bedrooms of her house. She spends a lot of time in that third bedroom. She paints and she sews, for which purpose she uses her ironing board. Each day she is in there, sometimes all day, other days only briefly. She acknowledged that street lights in Bowleys Lane are turned off early which makes the field very dark.
- 7.8.353. When she is in her workroom (bedroom 3) her attention is mainly on her task, but she does look out from time to time, or for example when she answers the phone. Also sometimes she is out gardening and observes the land. Her husband works full time away from the house. However, for the last 10 – 12 years he has worked from a base at home.

- 7.8.354. What she had said about the RSPCA coming was second-hand. She herself had not spoken to them.
- 7.8.355. The letter she had written to Mrs Marsh on the 8<sup>th</sup> August 2013 was the first time she had written to Mrs Marsh; some signage had gone up about the village green application, and Clare Marsh had come to see her. She then filled in her questionnaire. She had sent a letter by email and Mrs Marsh had contacted her, and then she filled in the questionnaire form. All this happened after some signage had gone up about the application.
- 7.8.356. Her reference to the land having had an absentee landlord was intended to convey that she did not know the owner of the land, and the place had been rather left. She had not known who Mr Ottewell was. She merely knew that an Ottewell was the owner. Indeed she had always joked that this field was like common land, rather like a national park.
- 7.8.357. People in the field do not always keep to the footpaths. Most people do a circular route, e.g. around the pond, or they follow the hedges.
- 7.8.358. There are often people in the field. She does not know if they are all from the village, but she presumes that they are. Ramblers are usually distinctive. As for village people, she might not know their name, or exactly which house they live in, but she is sure they live in the village.
- 7.8.359. As for her list of people seen on the land, she had put it together over a number of days. It was something she had been working on.
- 7.8.360. **Mr John Passey** lives at 15 St Michael's Drive, Appleby Magna with his wife Kim. They have children, Nick who is 28, Lucy who is 26 and Kate who is 23. Nick still lives with them in the house, and the other two live locally. Lucy had moved out 5 years ago and Kate 2 years ago. Mr and Mrs Passey had completed one of the evidence questionnaires in support of the application, dated 15<sup>th</sup> August 2013. Mr Passey said he had lived in Appleby Magna from about 1989/90, but had known the land since 1974. He had been brought up in Austrey, and used to come to Appleby for youth clubs.
- 7.8.361. The application land used to be known as 'Parker's field'. Mr Parker used to live up Bowleys Lane.
- 7.8.362. As youngsters Mr Passey and his friends used to go into the field from the church hall. If his memory served him right there had been a village bonfire held in that field in the past. He and his friends went in to play football. The bonfire he thought had not been too far from the gate near the church. He acknowledged that this field was not an ideal football field, but nevertheless he had seen people kick rugby balls and footballs around in it.
- 7.8.363. Indeed within the last 12 months he had seen people kicking balls, and he named some people who he had seen doing that who had just moved away

from the village. He used to see the sons of that family on the land with a dog and a rugby ball. They had moved away within the last 12 months, but had prior to that been in the village for 5 to 10 years. Their surname was Smith. He had seen them with a dog in the field, and maybe once a week with a rugby ball throughout the year. However the mother and father of that family would walk the dog without a rugby ball.

- 7.8.364. He himself has 2 dogs, but his daughter Katie also has 2 dogs which are often with them, and Lucy has one dog so that he often has 5 dogs to look after. He tends to go into the field via the northern gate and then around the western perimeter of the northern half of the land, then round the pond and back up the public footpath to the northern gate. He always goes into the field via that northern gate, but sometimes goes out via other gates, for example the western gate which leads onto other footpaths.
- 7.8.365. He does let the 5 dogs off the lead. He is in the field about twice a day, and indeed had walked dogs in that field even before he moved to Appleby, i.e. before 1989/90. Since living in Appleby Magna he had used the field twice a day unless he was on holiday, although occasionally his wife does the dog walks, or even more occasionally his son. There are not many days when one does not see someone else in the field. Even at 6am one sees people there. At the time of year of the Inquiry he would typically walk there about 7.30am – 8.00am, and then one does seem people there.
- 7.8.366. It is not a problem to walk in this field in the dark. He named a number of other villagers who he sees walking in the field. Some people he knows and recognises more by their dogs than by their names. He named about 12 couples, but said that on a weekly basis he would see easily double that number of couples. Some of them he chats with, but he does not have all day to stand around chatting.
- 7.8.367. His list of names would have been different in 1993, and he mentioned some other names of people who for various reasons are no longer seen on the field. Some people had lost their dogs, or others had left the village. There were not many days when he would not see 3 or 4 people on the land on a short walk there.
- 7.8.368. He said that he personally very rarely walked around the north-eastern part of the land, but people do walk in that part. He alters his route if he wants to keep his dogs off the lead and away from other people. It is better to keep them off the lead. He repeated that there are a number of people he sees on the field but who he does not know by name. There was a person who walked a black Labrador who was definitely not from the village, for example. However the vast majority of people are from the village; occasionally people do come by car to the fields to walk their dogs.
- 7.8.369. In the vicinity of the dilapidated barn, he did see Mrs Graves and her husband come in that way. He had also seen bikes on the land near the pond – BMX bikes that is. One can see bike tracks on the land. At one

time people put half lemonade bottles submerged under water, as if they were pond dipping. He did not know if it had been done by the Brownies or the youth club or the school, as some sort of experiment to see what is in the pond.

- 7.8.370. As for the Brownies, his daughters were in the Brownies, and they did use the field, but he did not know how long for. As for the “Happy Hedgehogs” he had not seen them in the field because that would be at the wrong time of the day for him. It would be very unusual for him to be there after 8.15am, or before 4.30pm. He now has two grandchildren aged 4 and 7 months. He had taken his 4 year old granddaughter onto the field numerous times.
- 7.8.371. If there is snow about then there are more obvious signs of people being in the field. He as a child had not used the slope in this field during snow, because there is a bigger slope in Austrey.
- 7.8.372. As for blackberry picking, that was something that took place around the pond, and along the hedge on the north-western edge of the field. He had seen animals on the land, with plenty of sheep and horses there in the past, and also cattle. A couple of quite large bull calves which had been chemically castrated were on the field at one time. They were very quiet, but quite imposing animals. The sheep kept on the field are some of the quietest he had ever known, and very friendly. Some of them would come over and butt the dogs for example.
- 7.8.373. On the field it would be very rare to see people with dogs on the lead. He had seen the odd dog chase sheep, and when that happened he had taken the owners to task. He had not seen any drawing or painting going on there. He knew his wife had put that down on the questionnaire form because her mother was a keen artist. He had seen people walking on the land who were not on the public footpath. He was aware that there were some public footpaths in the field. However there are other paths, for example pretty much where he walks around the north-western edge of the field, and around the pond, and also there are sheep paths. There are lots of paths on the field. For example, coming part way down the public footpath from the northern gate there is then a path that crosses diagonally to the western gate of the field.
- 7.8.374. In the past he had walked all the way around the southern part of the field. As for the new fencing in the field, the posts had gone in before the fencing was put up. He thought the fencing had only been there for some six, possibly nine months. The posts had been put in the summer before.
- 7.8.375. He did recall hay being made in the field, but it was poor hay. There was hay left in the field, and the bales had broken or disintegrated. It is definitely not the best field for hay, and anyway the haymaking did not stop use of the field. If there ever was a tenant farmer in the field, he (Mr Passey) was never approached or spoken to by anyone. There was one lad from Ibstock who he had spoken to, and to whom he had said “*give me*

*your number*” and he (Mr Passey) would call if there were any problems, for example sheep getting caught in the briars. There are indeed the remains of a sheep on the land that had been caught in the briars. That Ibstock person had been a couple of years or so ago. Animals had been off the land since the latter part of the last year he thought. He had never been told not to be on the land.

- 7.8.376. *In cross-examination* Mr Passey said that he had been at his current address from about 1990. He had been familiar with the field however from a much earlier age, for example from going to the youth club which was then held in the church hall in Appleby. When he was a youth he did go onto this field with that youth club even though he lived in Austrey.
- 7.8.377. Before he married he had lived in Measham. However he had always socialised in Appleby and used the pubs in the village. He had lived in the village for the entire 1993 – 2013 period relevant to the application. He had been in the application field twice a day for the whole period.
- 7.8.378. In winter when he is in there at about 7.30am it is fairly dark. He sees the same people there practically every day. He works for himself and spends a lot of time working in the village.
- 7.8.379. Although he has two dogs himself he sometimes walks five dogs. Those dogs are off the lead even when there are sheep in the field, and that never causes a problem. 99 times out of 100 he enters the field via the northern gate, then he typically goes around the side of the field, around the pond and then back up the middle of the field to the northern gate. That is what he does twice a day. On an average day he sees 3 or 4 people there in the morning and another 3 or 4 people at night. At weekends it would be more people. The majority are the same people that he sees regularly.
- 7.8.380. As for blackberry picking, that is of course when blackberries are in season. He sometimes takes his granddaughter to see the ducks around the pond, but that is as and when, not every day. He had not seen the playschool on the land.
- 7.8.381. His recollection of village bonfires there dated back to the 1980s, and had been just to the north-west of the gate near the church. It had happened once a year and he had probably seen it about 5 times he thought.
- 7.8.382. He did not see children playing when he was walking early in the morning. However he lives in the village, and passes by and does see children playing there at other times. Also his daughters and their friends had played in the field. He had seen children with kites in the field, but obviously that depended on the weather. He thought he had seen that several times a year.
- 7.8.383. He acknowledged that this field is not the best football pitch, and only informal kick-about would take place there. He saw that every now and again. This field would probably be closer for many people than the

recreation ground. He did not know how long children would typically play there. He and his family had played rounders in the northern part of the field, in order to avoid going down to the recreation ground. That was even though it is not a good pitch for either football or rounders.

- 7.8.384. The people he sees walking dogs on the field are not people who he otherwise socialises with particularly. He has never been on the Parish Council, and is not a member of Appleby Environment. He had completed his evidence questionnaire on the 15<sup>th</sup> August 2013, with his wife. He had just become aware of the village green application but did not remember who gave him the form. He might have asked for it.
- 7.8.385. *In re-examination* Mr Passey said that he himself had had no knowledge of how to apply for a town or village green. His own children had played on the field around the age of 8 to 10. They would let them go there and also walk the dogs on the field on their own.
- 7.8.386. **Dr Barbara Lowesmith** lives at 5 Bowleys Lane, Appleby Magna. She had lived there almost exactly 20 years.
- 7.8.387. She had walked in this field almost every day for the last 20 years, enjoying the open space and particularly the flora and fauna associated with the small natural pond. She nearly always meets other villagers doing the same, showing that it is widely used. In the winter when it has snowed, she has seen children sledging on one of the few small slopes in this area. This is a valuable natural open space for the benefit of villagers.
- 7.8.388. She is not a member of Appleby Environment. She usually gets into the field via the gate near the church and goes out of it via the western gate. She wanders from the path which crosses between those gates, and down around the pond. She does meet villagers while she is walking there. She cannot name them. She did not have any children and so she did not get to learn names.
- 7.8.389. She said that one does tend to see the same people in the field with the same dogs. One knows them by sight. It is a well-used field. She had seen children playing and sledging in the field, generally in the middle area and around the pond.
- 7.8.390. She had seen sheep and cattle in the field, all over it. They do not impede her use. She also sees those animals from Bowleys Lane. Indeed they sometimes get out onto Bowleys Lane. On one occasion they had managed to round the sheep up into Mrs Ashfield's front garden which had gates.
- 7.8.391. She used to work full-time herself, but does not do so now. For the last 3 years she had been freelance. When she was working full-time she generally went onto the field in the evening, but in the morning at weekends. She saw various people, especially when she walked at

different times. This field was always the best bit of the walk for her dogs. She has always had at least one dog.

- 7.8.392. *In cross-examination* Dr Lowesmith said that one nearly always sees someone else on this field enjoying themselves with dogs or with children. She did not know the route of the recognised public footpath southwards from the northern gate. Most people entering from the northern gate would tend to walk down the western edge of the field where there is an obvious path. The field itself is very ridgy. On her walks she tends to walk a circuit around the village. However this field is where she spends a bit more time as her dogs can be let off the lead.
- 7.8.393. Quite often she would see children in the field in the early evening in summer, messing about. She does also see people in the field from her kitchen as well. She just likes being in the field.
- 7.8.394. She does not know the names of the people she sees there; she just says “hello”. She knows where some of them live in the village, but she generally knows that the people she sees do live in the village.
- 7.8.395. **Mrs Clare Marsh**, who made the application on behalf of Appleby Environment, lives with her family at Church Barn, Church Street, Appleby Magna. Initially she and her husband had owned half of their present house. They moved in in June 1993. Thus they have lived in the village for over 20 years. During that time their two children, who were 3¾ years old and 17 months old when they moved in, have grown up and left home. While they lived at home they were involved in various groups and activities in the village which involved the field behind the church hall. This field was variously called by the villagers Parker’s field, Dormer’s Hall field and Church Hall field. Her daughter Sophie, who is now aged nearly 24, joined the “Happy Hedgehogs” playgroup when they moved into the village, before starting school. The playgroup is based in the church hall, and they used the field for a lot of different activities such as teddy bears’ picnics, nature trails, blackberry picking. When she was a little older she became a member of the Brownies, who also meet in the church hall and use the field for various play and learning activities. Her son Ben had also been a member of “Happy Hedgehogs” and when he was older frequently used the field to play with his friends.
- 7.8.396. As a family they had always had dogs, and used the field on a daily basis to walk the dogs. This is a field used by a lot of the villagers with and without dogs, and provides an opportunity to meet up and chat as well as walk the dogs.
- 7.8.397. Having spent time collecting information from the residents of the village, she had discovered a variety of things about the field that she had previously been unaware of. It was used for riding lessons 30 or so years ago. Before that village children used to play and roll down the hills, catch tadpoles and generally play in a safe environment away from traffic. As far as she could tell it has within living memory always been used on a

daily basis by the villagers. It is an intrinsic part of village life and important to a great many villagers.

- 7.8.398. As well as making a statement, Mrs Marsh had completed one of the evidence questionnaires which supported the application. She explained that she is a member of Appleby Environment, and that there were three such members. There had been a group in the village in earlier times called 'AHEM', but they then did not have any involvement with them for many years until she re-joined a couple of years ago. Her husband is not a member. By way of explaining the town and village green application, a friend had come over to her house for a drink in May 2013, and that friend said "*why don't you register this land as a town or village green?*". Mrs Marsh had had no knowledge of this possibility before that. She had thereupon emailed an appropriate official at Leicestershire County Council. She had a meeting with an officer of the County Council in June 2013, and submitted the application on 13<sup>th</sup> June 2013.
- 7.8.399. She had wanted to concentrate on how long people had used the field, and not on possible housing developments on the land. When they bought their own house some land came with it which constitutes a plot which sticks out into the application field. Then they acquired another piece of land with the second converted barn, off some people called Haslam.
- 7.8.400. When they go into the field they go in through the gate near the church, and all the way around the field. They often meet people and go round again. They have always had dogs as a family, usually 2 or 3 of them. Their children, especially her son, had played in the area around the pond, and children every summer play in the old barn, and fire air-rifles for example. The local Scouts or Cubs have in the past used the field, and she thought they might have set a telescope up there at one time. Her daughter had used the field with the Brownies, and also the "Happy Hedgehogs". Her children have now left home. Her son in particular returns home frequently and uses the field to take out their 3 dogs.
- 7.8.401. They have a view of the whole field from their land. That is so particularly when she is in the top part of their land. She sees a group of women who congregate in the field and who walk around it. She does not know all their names. She has however found out a lot of people's names through this town or village green application. She had made a list of the names of some of the people who she had seen on the field, but it is not exhaustive, it is merely the tip of the iceberg. That list contained at least 40 names.
- 7.8.402. She had not known of the town or village green legislation until 2013. There are regularly animals on the field, and indeed they as a family are approached if the animals get out. For example there were cattle in the field last summer and they got out into the churchyard. There are often animals in the field, usually between March and September but sometimes less. They enhance the enjoyment of the field, especially for her children. Some photographs of animals in the field had been produced with the

statement of her husband, Mr Tim Marsh. The last lot of animals had been in the field when the stock fence mysteriously appeared in the middle of the field. The posts were put up in 2012, although a lot of them disappeared and then more posts were put in. The fencing was put on those posts in about June 2013. There had never been any such fencing before.

- 7.8.403. When animals strayed from the field very few people knew who owned or farmed the field. She herself phoned Mr Mike Fallowell, the letting agent, three or four times. She had asked for the name of the owner but had been told that he could not give it to her. However she had been told that she could fix the fences herself. She had sent a letter to the owner via Mr Fallowell. Someone called Ben Fox did come around and fix the fences a bit.
- 7.8.404. She had found out later from Mrs Graves that the owner of the field was called Ottewell, and that possibly the field had more than one owner.
- 7.8.405. She explained that she had used the Graves's gate into the field through their fence. It had been there for about 10 years or so and was not in any way hidden or disguised.
- 7.8.406. In summer children were in the field for most of the day. She had often seen children flying kites in the field, and her own children had done that. She had seen a Mrs Edwards having a picnic with her children there. The use of the field by children with BMX bikes is also very popular. If it is very cold the water freezes in the dips in the field and children slide on it. The field is in constant use. It is rare that there would not be someone in the field, either an adult or a child.
- 7.8.407. There are people who walk regularly in the field with their dogs. Even people who live next to the recreation ground use this field. The recreation ground is used for a lot of the time for formal sports, and there is a feeling that others are unwelcome there.
- 7.8.408. As for the questionnaires, initially her group had copied 50 questionnaires, but there was a great response and so they distributed another 150. In total they received 91 back. She had heard from a lot of people who were disappointed that there were no evening sessions of the Inquiry. There were even a few people who said that they would not come to give oral evidence. Nevertheless there are a lot of people who use the field. They use different parts of the field. The part of the field around the pond is of interest to many. The south-east corner is less used, but the whole field is used nevertheless. She recalled Mr Nigel Smith's son who played there with a rugby ball. The whole field is used, apart from the less used south-eastern area. She had seen Mrs Laura Graves walk in the field many times.
- 7.8.409. *In cross-examination* Mrs Marsh said that her first involvement with the application had been on 31<sup>st</sup> May 2013 when she emailed an official of the

County Council. She had never come across town or village green applications before, or the idea of making them. The application had been sworn by the 12<sup>th</sup> June in front of a solicitor, so it had been done in a period of less than 2 weeks. She had heard about town or village green applications from a friend about a week or so before she spoke to the County Council official. That friend of hers had not been a lawyer. She had then had a quick look at various websites including the Defra website, and contacted the County Council's legal department.

- 7.8.410. She had submitted this application on behalf of Appleby Environment. Her husband had read it through. It was her understanding that if the application succeeded the landowner could still continue to use the field as now, and could still raise stock on the field. Nevertheless she accepted that the registration of land as a town or village green is not a trivial matter, and indeed the application had not been undertaken trivially.
- 7.8.411. Appleby Environment does not have a set membership. It has a secretary, a treasurer and a chairman. Her own role is as secretary. It is very informal, but they do have a formal constitution. However she is not the person to ask about it. Appleby Environment is not a group which had been very active lately, but they do have a constitution. She herself had taken on the role as secretary about 18 months ago. She does not have a list of members, and indeed there is not a list of members. However they do have a bank account. Mr Michael Dyer is treasurer. Meetings are held irregularly. They do have agendas for meetings, and they have minutes, but she did not have them with her at the Inquiry. She had taken over as secretary in the summer of 2013. Mrs Sonia Liff is the chair. Since she had joined the organisation there had not been any elections.
- 7.8.412. She had been in the village for 20 years but was not involved with the Parish Council, nor with the preparation of the Village Design Statement. She had been to parish council meetings as a member of the public, probably about 7 or 8 times in all. She had been in her early days in the village, and again more recently.
- 7.8.413. Her home overlooks the application land. She acknowledged that she does have an interest in protecting this land. They had in May of 2013 heard rumours of potential development in the village. She explained that members of Appleby Environment had not been on the parish, district or county council. This field she understood was one of four pieces of land around Appleby being rumoured for development.
- 7.8.414. She reiterated that she had become aware of the application procedure by the end of May 2013. She had consulted with the County Council's legal department and had the process explained to her, and also the criteria which need to be met. No comments had been made on the merits of the application. She had taken the application in to speak to the County Council's legal department, and was told that if she would like to she could submit the application there and then. A solicitor had come to her to take her statutory declaration. That solicitor is a resident in the village.

She Mrs Marsh had submitted the application when she had gone in to see the County Council legal department, and the evidence at the time had been contained in the application itself and the supporting documents.

- 7.8.415. Mrs Marsh said that she had joined the Open Spaces Society and spoke to a barrister there, who suggested that their evidence forms would be a useful way of dealing with the application. The officer of Leicestershire County Council had said that letters from potential witnesses would be sufficient. No-one from the County Council said that the registration authority required further evidence. Everything else followed that. Mr Ottewell held a presentation in the church hall. She Mrs Marsh had been approached by a lady called Shipley after the application, to book the hall for a presentation by the would-be developer. She Mrs Marsh deals with bookings for the church hall.
- 7.8.416. Mrs Marsh believed that they had had the Open Spaces Society forms by that time, and she distributed them. She knew that a lot of the people she contacted do regularly use the field, although undoubtedly some of the people she spoke to were not interested in the prospect of an application being made.
- 7.8.417. Her own son had prepared the standard map to attach to the form. She confirmed that they had had 91 responses to the 150 questionnaires distributed. Her husband or she had spoken to most or all of these people. She had asked them how they regarded the field. She took round with her a copy of the application. Many of the people wanted to see it, but not all of them. The application is now available on Appleby Environment's website but was not so at first. The application was filled out before the questionnaires were completed.
- 7.8.418. As for the Village Design Statement, she had read it a long time ago. When it was produced in the year 2000 it acknowledged that there was no village green as such in Appleby Magna. However it does refer to significant and valuable fields and open areas in the village. The plan in the middle of the Village Design Statement shows this land as paddocks and pasture. She said that living here people take for granted an open green area that has always been here. They do not see it as a village green but as common land, or they thought it was land belonging to the church. Prior to the application being made she had known nothing of town or village green law, and nor did most of the villagers.
- 7.8.419. She said that she was aware that parliament had changed the law relating to village greens in 2013. She understood that that had been done to prevent false claims. However this present application is not a false claim. People in the village did not know about the legislation. Her own house has a plot of land between her and the field.
- 7.8.420. She referred to the objection which had been lodged by Freeth Cartwright on behalf of the Objectors. Everything the Applicants had produced since represented their attempts to meet the objection.

- 7.8.421. She confirmed that she had moved to the village in June 1993. She did not work from then until June 2003, because of her two small children. Back in those days one did not tend to go around with a camera, nor with mobile phones incorporating cameras. Therefore she does not have any photographs of her children with toboggans or the like on the field. However she did not think there was a lack of photographic evidence. There had been photographs submitted of people and their children in the snow on the field. She and the Applicant did not have any other photographs than the ones that had been submitted.
- 7.8.422. She accepted that the extract from the book "*A Son of the Rectory – Appleby Magna at the Dawn of the 20<sup>th</sup> Century*" had made no explicit reference to these fields being used for town or village green-type activities. There is no written evidence about this type of use in the book. However villagers have stated that they have used the field. She herself did not remember the field being out of action during the foot and mouth epidemic. It is very difficult to remember back 12 or 13 years.
- 7.8.423. **Mr Timothy Marsh**, the husband of Mrs Clare Marsh, also lives at Church Barn, Church Street, Appleby Magna, and has done so since June 1993. He had completed one of the questionnaires supporting the application, and also produced a statement accompanied by a number of photographs. He wished to make clear that since moving to the village their address had changed slightly, in that they originally occupied one part of their present property which was then called No.3 Church Farm. They then bought No.2 and called that Church Barn. Now the combined property is known as Church Barn.
- 7.8.424. During the time his family has lived in the village with the members of his young and now grown family he confirmed that they had indulged as of right in access to the application site field. During that time there had never been any notices denying access or claiming the land as private. Indeed access had been via three public footpath kissing-gates, and over a gate between the field and Bowleys Lane. He had observed villagers roaming in the field, taking the air, walking dogs, blackberry picking, pond dipping, tobogganing on an uninterrupted basis for all of this time. There had over the years been occasional intermittent grazing on the land by horses, cows and sheep. However that activity had not stopped the villagers' access to the field.
- 7.8.425. He himself had not used the field every day during the period of his residence in the village, as he is sometimes away from home. However he uses it almost every day when he is at home. In 1993 he was a commercial airline pilot with a charter airline based at Birmingham. Nowadays he is with British Airways based at Heathrow.
- 7.8.426. Back in 1993 he was always at home every night with his young family. He was occasionally away working nights, but then he would be home in the morning.

- 7.8.427. They as a family had had many animals which needed walking. One of his pictures showed the two dogs that they used to have at the time. The family used the field regularly because his wife was not working when the children were young. He himself was working hard in the summer months. His work was essentially shift work which might arise at all sorts of times. However in the winter months he would only work once or twice a week, and then he walked the dogs a lot.
- 7.8.428. In their early days they did not own the piece of land in their present plot which sticks out to the west into the application field. The people in the other barn, the Haslams, owned it. The Haslams' dogs had been unused to going further than this field ever.
- 7.8.429. While the Marsh children were younger they used to throw balls for the dogs on this field, and also play Frisbee. They also made an elastic driven model aircraft which they played with there.
- 7.8.430. As a family they had also gone blackberry picking in the field. Later on Mr Marsh had bought a telescope for their son and he did some stargazing there. In fact they had an evening session with the local Cubs stargazing in that field. He had an old wet film camera which was heavy and he did not tend to lug it around. Thus it was not part of their nature to go around taking pictures of everything. He did not normally have a camera with him. Nor is he a great 'twitcher'; however he had seen a song thrush in the field on the very morning when he gave evidence. References he had made to fishing or pond dipping were to unofficial activities with his children. They had also played rounders on the field, and the terrain adds to the fun.
- 7.8.431. As for bonfires in the field, when the Haslams were next door they had all been invited to an unofficial party in their land which they now own. Then they went to the application field in the area just to the north of the east/west public footpath and set off some fireworks.
- 7.8.432. The extra plot of land they had bought to the west is a wildlife area with a hedge around it. When they bought it in 2003 they trimmed down the hedge around the extra piece of land. Mr Marsh had borrowed some scaffolding, and what he had cut from the hedge fell into the field. He then cleared up those cuttings and had some bonfires in the field. When he had collected up the dead wood in the field he spent a couple of days trying to burn it. Mr Fox came into the field to tend his sheep and offered Mr Marsh some advice on how to light the fire.
- 7.8.433. He Mr Marsh had seen the mothers of local children meet in that field. Indeed he had been part of that group himself, as occasionally are some other fathers. He had had a quick look at the list his wife had produced of people he had seen in the field. That list represented only some of those who had been seen there over the years. He himself had seen people all over the field. He used to have a lot of spare time, for example he would

be at home on a standby basis. Right through from spring to autumn he would see a lot of activity in the field.

- 7.8.434. There had also been many animals in the field. He had often been in touch with Ben Fox about animals getting out.
- 7.8.435. He himself was not involved with the Village Design Statement. Prior to this application he did not believe he had ever met any member of the Ottewell family. Also until the day of the Inquiry he did not know who Mr Fallowell was.
- 7.8.436. The barn on the field is in a poor state. He sometimes hears sheep around there; however there are broken tiles and he has heard children smashing tiles. Overall it is very rare to be in that field and not see anyone else. Their own children went into the field from about the age of 6. They would go in there with sticks, bats, balls etc. Boys and girls would go into the field together.
- 7.8.437. *In cross-examination* Mr Marsh said that they had bought their first property in Appleby in 1993, and then the extra bit in 2003, with the patch of land he had referred to. In the early stages the hedge was very low around the patch they bought. There was fencing but animals had knocked a lot of it down. He did not believe that the public had strayed onto what became their part before they bought it. It was distinct from the rest of the field.
- 7.8.438. He had been based at Birmingham Airport until 1996. Since then he had been at Heathrow with British Airways. He is not a long haul pilot. He is typically away from 2 to occasionally 4 or 5 days at a time. He is not at home these days as much as he was. But in a typical month he would have sporadic days off, perhaps 12 to 14 of them in total, and then an extra week or 10 days in lieu of public holidays each six months.
- 7.8.439. In terms of his use of the field, more often than not he gets in through the gate near the church. Occasionally he accesses through his own hedge, but usually it is on the footpath routes.
- 7.8.440. As for the bonfire he had had in the field, that was about 2 years ago, but he had had several fires in that field over the years. His conversation with Mr Ben Fox had been about how to light fires, and they also had a conversation about who had stolen his fence posts.
- 7.8.441. He himself had taken a lot of the evidence questionnaire forms around to people in the village, as well as his wife. That had been done in August 2013. Prior to the application going in he did read a bit about the law involved, and much of it he had found rather confusing.

8. **The Submissions for the Applicant**

- 8.1. In submissions produced on paper prior to the start of the Inquiry the Applicant pointed out the criteria under *Section 15(2)* of the *Commons Act 2006* which had to be met in order for registration of land as a town or village green to take place. The requirement for a significant number of inhabitants to have used the land had been introduced into the predecessor of *Section 15* from January 2001. As to the meaning of the word *significant* it is clear that it does not require a considerable or substantial number of inhabitants *per se*, but the number must be significant in relation to the population of the relevant locality. If that test is satisfied it matters not that other users may come from outside. The identification of the locality is not contentious in this case. It is the Parish of Appleby Magna.
- 8.2. The number of witness statements and questionnaires in support was referred to. All of these were from existing or past inhabitants of the Parish. Insofar as the statements and questionnaires support the claim evidentially, it is submitted that they clearly constitute a significant number in proportion to the total number of the inhabitants. It is a reasonable assumption that if all the households in the village had been canvassed the evidential support for the application would have been even higher.
- 8.3. Because of the proximity and nature of use by pedestrians of the land in question, it is reasonable to infer that users were inhabitants of the locality. There had been no substantial challenge to this aspect of the test.
- 8.4. It is clear that lawful sports and pastimes have been indulged in by local people on this land; it had never been suggested that any of the activities were not lawful. It is accepted that the use to be proved must not be too sporadic. It is also clear that informal recreation of the kind indulged in in modern life, such as dog walking and playing with children, may well be the main kind of informal recreation indulged in on a village green.
- 8.5. The principal factual issues to be decided therefore are the extent of the user of the land as a whole for lawful sports and pastimes, and also the extent of its use separately from the use of the public rights of way over the land. The Applicants submit that the evidence shows that the recreational activities relied on did substantially take place away from the established public footpaths, as well as upon them. Some of the activities, in particular those connected with the enjoyment of the pond, blackberry and mushroom picking, and sledging, must have taken place off the footpaths. Photographs to some extent support this. The aerial and other photographs corroborate the use of the land as a whole, not confined to the footpaths. The Applicants dispute the Objectors' contention that the tracks must have been caused by the graziers' livestock. The alleged trespass off the footpaths was certainly not trivial or sporadic.

- 8.6. The contention made by the Objectors' witnesses that they had not observed people using the land other than on the footpaths should carry little weight. Mr Ottewell is an absentee landlord not living within the vicinity of the village. Mr Chastney was an occasional visitor only after 2011. Mr Fallowell appears to have visited the land only from time to time from about 1975 to 1995, which is a long time ago to remember who else was visiting the land, and for what purpose. Mr Lees only visited the land once every one to two years from 2003. Mr Farley did not visit the land before November 2012. The graziers were intermittent, and the stocking does not appear to have been extensive. In any event, the use of the land for what can be described as low level agriculture was in no way inconsistent with or conflicting with the lawful sports and pastimes undertaken by the inhabitants.
- 8.7. It is significant that the north end of the field retains the ridge and furrow feature which must have dated from prior to the Inclosure Acts in the 18<sup>th</sup> century. This demonstrates that the field has always been used for only low level agricultural activity. There seems to have been remarkably little conflict between dog walkers and stock owners. No-one on behalf of the Objectors ever appears to have objected to the use of the land by local people. Nor did anyone object when a private access was constructed onto the land in about 2004.
- 8.8. As for the Village Design Statement report of 2000, it is true that it referred to the existence of the recreation ground. That had been created in the 1920s, and had never been registered as a village green. It is principally used as a sports ground and is not suitable for many of the pastimes carried out on the application land, including dog walking, which is a principal and constant activity, and blackberry picking in season. There is no pond and the land is flat. In any event it is not a relevant objection to a village green application to suggest that the village green is not necessary because another recreation facility exists.
- 8.9. It is true that the application land was not claimed as a village green or common land, or as a public space, in the Village Design Statement of 2000. The public footpaths were however mentioned in that statement. This omission is not of significance. At the time the land concerned was not under any threat of development. There is no evidence that anyone had applied their mind at that time to the question whether the land might qualify as a village green. The law of village greens was hardly a matter of common knowledge among the general public. The body of evidence is substantial in this case. It is unsurprising that users of this field should not have sought to maintain their established rights until a time arose when they were perceived to be under threat. It is irrelevant that a small part of this land at the bottom end might have been for part of the time overgrown with nettles. Caselaw establishes that not every part of a claimed village green must be physically accessible.
- 8.10. For the claim to be successful use needs to have been "*as of right*". It is irrelevant whether the users believe that they were entitled to use the land

in the way they did. The use only needs to have been sufficient to indicate an assertion of a continuous right. The establishment of the right does not confer unrestricted rights over the use of land. Hence the significance of the nature of the agricultural use of the land by the landowner. Low level agricultural use is less likely to be incompatible with village green status. The granting of village green status will not interfere with the landowner's existing use of his land. It should be noted that the agricultural use here throughout the relevant period had been minimal and is not inconsistent with any of the uses by the inhabitants. Insofar as local people may have put their dogs on leads during lambing, that was merely a matter of give and take of the kind discussed in the *Redcar* case. It is of considerable significance that the rights, if they were exercised as described by the witnesses, were never challenged, either face to face or by notices which could easily have been placed at the access points to indicate that use other than of the rights of way was not permitted. There was no suggestion that the use of this land here had been by force or by stealth. Nor was there any evidence that limited permission had been given for use.

- 8.11. In further submissions at the Inquiry, it was argued that the fundamental issue to be decided is not whether the application was made by Mrs Marsh in June 2013 in bad faith, solely in order to stifle a planning application, but whether the evidence given by a significant number of residents of the now agreed locality of Appleby Magna, is substantially accurate and proves on the balance of probabilities the requirements for registration. It is notable that counsel for the Objectors had not to any extent put in cross-examination that the witnesses for the Applicant had been lying about their use of the land, or their knowledge of the use of the land by others, in particular outside the rights of way. It was reiterated that the need to demonstrate use by a significant number of inhabitants does not require a large number.
- 8.12. Several of the witnesses to the Inquiry, in addition to their own oral evidence and previously submitted questionnaires etc., had produced lists of other resident users of the land who they remembered having seen there. All of this amounted to credible and impressive evidence of use by a significant number of residents. The witnesses had said that the regular users of the field changed over the years but remained similar in number.
- 8.13. Many of the 91 questionnaires which had been returned had been endorsed by more than one person in the relevant household. According to the Community Plan of 2011/2012 Appleby Magna had 454 households and 1,077 inhabitants. A circulation of almost exactly one third of the households had produced a favourable response from 61% of them. 24 witnesses gave live evidence in support, all of whom had returned questionnaires and/or statements, and considerably expanded upon their questionnaires in evidence. The remaining questionnaires of those who did not give oral evidence are also admissible as evidence, notwithstanding that their makers had not been called. Some potential witnesses had been dispensed with because of timing issues relating to the Inquiry.

- 8.14. A number of specific points need to be made in relation to the evidence. First was that there had been corroboration by a number of witnesses of dog walkers going in at the northern gate, then turning right and going along the hedgerows around the northwest part of the field, away from the line of the public footpath, then going around the pond and returning and exiting again through the northern gate, and not using the land therefore as a right of way. A number of witnesses had said that this was their normal use of the land.
- 8.15. Many of the witnesses had talked about themselves and others going to the pond and being particularly interested in it, especially the children. The pond is not often dried out. There had been photographs showing activity in the vicinity of the pond, and it is clear that there was activity below and to the south of the east/west public footpath, including the slope which is used in snowy periods.
- 8.16. The use of the land by children had generally included activities such as football, rugby football, rounders, BMX cycling, sledging, and taking advantage of the particular feature of the ridge and furrow.
- 8.17. The use of the southern end of the land, well away from the official footpaths, had also been shown and included access via the south western gateway and, the gate from the Graves's land, installed neither secretly nor by permission. Findings of fact are required in relation to these matters. One should compare the Objectors' evidence with that of the people who actually put the gate in.
- 8.18. Use of the land earlier than the critical period of 20 years is also of relevance as showing use as of right within the 20 years, just as the evidence from Mr Farley for the Objectors of the alleged non-use of the land after the date of the application is capable of being relevant, even though it is in the Applicant's view unconvincing. The quality of the Objectors' evidence overall demonstrates that it is much more difficult to prove a negative than a positive. Mr Farley's visits had been short. Mr Chastney did not see cows on his July visit, when clearly Mr Fox had given evidence that the cows were there.
- 8.19. It is not surprising or sinister that an application to register had been made only when a planning application was anticipated over the land in question. That had happened in a number of other reported cases. In this case the application had been made by Mrs Marsh in some urgency in June 2013, anticipating that an application for planning permission might imminently be made. At that early stage the evidence she submitted was limited to 16 letters of support. Having taken advice from a barrister, the substantial further written evidence now relied upon, including the completed questionnaires obtained from the Open Spaces Society, was submitted to the County Council in three tranches in late July and then August and November 2013. This had effectively been a litigant in person doing her best.

- 8.20. None of the Objectors' witnesses had been seen regularly on the land. As for the foot and mouth epidemic, *Section 15(6)* of the *Commons Act 2006* discounts periods of statutory suspension of rights of access. This is a non-point, as the Objector has now conceded. The Objectors' points about the application being defective were of no merit.
- 8.21. The use of the land here was not just occasional or sporadic. The fact that a single individual may use the land only once a month, or seasonally for blackberry picking or sledging, might be only sporadic use, but where a significant number of the inhabitants of a locality might so use the land it would make the use continuous rather than sporadic. In any event some witnesses described their use of the land as being daily, or even up to three times a day for dog walking.
- 8.22. Mrs Marsh had been criticised, and it had been suggested that she had been the main agitator here. However one has to look at the way in which she gave her evidence, and her reasons for doing it. There had been rumours of development, and Mrs Marsh had looked into the law. There was nothing suspicious in this at all. Indeed there had been a great deal of salient evidence in support of the application.
- 8.23. Mrs Christine Denson had been an impressive witness. She was a farmer's wife, who was plain talking, and her evidence carried a lot of weight. She had been in the village since 1976 and had no other recollection except that there had been an absentee landlord of this land. She could clearly see the field from her house, and gave very good evidence in relation to her vantage point and the history of the land. She talked about the animals which had been in the field and how they got out. Also she explained that they did not deter the use of the field, and their presence co-existed with the use of the field by local people. Indeed photographs show dogs in the field with sheep. Mrs Denson had said that the gate in the south west corner had only been locked recently. She told of the incidents where the police or the RSPCA had been called. Only she as a witness had talked of the foot and mouth period, and the effect of that on the land. This is a farmer's wife who would recall things such as that. She also talked of the hay being taken off the field, but said that the land appeared to have been used as common land. She said that some people do stick to the public footpaths, but not many.
- 8.24. Mrs Christine Wedgbury had given evidence about the "Happy Hedgehogs" and their activities. The field had been used weekly if not twice a week in term times, in accordance with Ofsted requirements. This group had moved around, and had had picnics on the land, and Mrs Wedgbury had shown photographs. She thought that the whole field had been used, and referred to blackberry picking. Up to 28 children had been taken onto the field once or twice a week.
- 8.25. Mr Richard Wood had been in the village since about 1996, in various properties. He had been able to identify his daughter's horse on the land in one of the pictures. That horse had been on this field for some 8 to 10

weeks without the Objectors noticing it. The horse had only been removed because of the amount of pedestrian traffic in the field. Mr Wood had had no knowledge of the owner of the field.

- 8.26. As for the Village Design Statement, it had been prepared in an entirely appropriate way in order to model what the village did have at the time it was produced. It is important to bear in mind the remit of the Village Design Statement. Clearly at that time the village did not have an official town or village green. It may well be that local people could have applied for a town or village green earlier, but the villagers did not know how to.
- 8.27. In general the level of support for this application has been wide-reaching. Villagers gave evidence that they had entered this field at different points, and sometimes exited at the same point, and that they used the whole field. For example a group of local ladies regularly met in the bottom end of the field, and there had been reference to people picking up sticks in the bottom part of the field. Mrs Graves had said that she regularly accessed the field through the gate from her own garden.
- 8.28. The bulk of the evidence from the Applicant's witnesses and the questionnaires showed that use has been off the footpaths. There is no denying that the footpaths on the field were used, but their use did not represent the majority of use of the field. There had been a multiplicity of pastimes and sports at various times by inhabitants of the village, including children, and there had been a multiplicity of witnesses. The witnesses had been asked about tracks on the land, and said that there were a multiplicity of them. Mr Mark Ottewell did not know where the paths were on the land.
- 8.29. The Applicant's evidence had been that the whole field had been used. The presence of sheep or cows did not hinder the use, indeed it enhanced the use. Mr Fox had had no problem with people crossing or using the land. There had been a lot of give and take in this village.
- 8.30. As for any question of only partial use of the land having been demonstrated, it is open to the registration authority to apportion the land, but one needs to have regard to the *Trap Grounds* case which showed that it is not necessary to demonstrate the use of the entirety of the surface of a claimed area.
- 8.31. It is accepted that the Applicant has to prove her case. However the Inquiry had only heard evidence from Ben Fox, out of all the tenant farmers who had existed, and he had confirmed some of what Mrs Marsh's evidence said. He himself had blown out of the water the evidence which had been given by Mr Chastney.
- 8.32. A lot of the Objectors' witnesses had produced very similar statements, and there were lots of inaccuracies in their statements. That could be seen as calling into question the truthfulness of the accounts given by those

witnesses. Mr Fox had conceded that some of the paths on the land had been made by people rather than animals.

- 8.33. He knew that people had been seen near the pond; he had known of the gate made into the Graves's garden, but not when it was put in. He had acknowledged that the use by local people was compatible with animals being in the field. However he had not gone to the field in winter, and so had seen none of the sledging activities. It was clear also that Mr Fox had interests in his other land for the bulk of the time that is being considered in this case. In general the visits to the land of the Objectors' witnesses had been very very brief. The accuracy of the evidence called for the Objectors was strongly called into question. Mr Ottewell could not recall where the footpaths on the site were. Clearly such agricultural use as had been made of the field was of a low level character, and compatible with use by the villagers. The Objectors' evidence was altogether unconvincing, or indeed in some instances supported the Applicant's case. The criteria required for registration as a town or village green had been made out.

9. **THE CASE FOR THE OBJECTOR – Evidence**

- 9.1. *Mr Michael Fallowell* is a chartered surveyor and an RICS registered valuer, being a partner in the firm of Newton Fallowell of Coalville, Leicestershire. He is not resident in Appleby Magna. However he is familiar with the claimed land as he has worked for the landowners since about 1975 or 1976.
- 9.2. In 1975 he was a partner in the firm of Stevenson & Barratt who were surveyors and land agents. At that time the claimed land was owned by Ernest Arthur Ottewell, Edwin Gordon Ottewell and Luis Vittoria Spyer. Mr Fallowell acted for those three landowners in negotiations to sell some land and buildings for development. That was the land where there are now the barn conversions where the Marsh family live. They also tried to get planning permission on a brick building at the bottom end of the claimed land, but they could not. Mr Fallowell was involved in other projects, including a barn conversion which was eventually sold to the Haslams who themselves sold it on to the Marshes.
- 9.3. Mr Fallowell used to do a lot of work with Ernest Ottewell, and he would call round from time to time. He used to come over perhaps once every two years to see what the land looked like. From about 1967 to about 1995 the site was occupied by Mr Beaumont, a grazier under a grass-keep licence, and Mr Fallowell remembered seeing some huge cattle on the land. He recalled later a farmer in Appleby called Fowkes, of Glebe Farm. In the early days Mr Fallowell thought that Mr Fowkes was the farmer with cows on the land. Then Mr Beaumont came and had a grass-keep licence. These licences were renewed every year.

- 9.4. When Mr Gordon Ottewell died in 1995 Mr Fallowell had done a probate valuation for the land. Mr Gordon Ottewell had been a one-third share owner. By that time Mr Fallowell had set up and was a partner in the firm of Newton Fallowell.
- 9.5. Mr Beaumont came off the land in about September 1998, and it was not grazed off for a year. Mr Fallowell had advised James Ottewell to get someone on there, at a low rental figure if necessary, to get it tidied up. He had said they needed someone to look after it, to treat it as their own. So, from 1999 to 2003 Graham Barney had the land. Mr Barney was a butcher. A tenancy agreement was prepared but Mr Fallowell did not think it was ever signed. As well as being a butcher Mr Barney was a grazier. He kept sheep on the site, and when he started on the land in 1998 Mr Fallowell could remember him putting sheep netting up around the field boundary.
- 9.6. Mr Fallowell had continued to visit the site from time to time until Paul Lees, one of the surveyors at Newton Fallowell, took over as letting agent in about 2003. As far as he was aware the land was grazed continually through the grazing season.
- 9.7. The land is rough grassland with continuous stock-proof fencing and hedging around the boundaries. It is crossed by two public footpaths and there are three access points, where the public footpaths enter the land. At all three points access is by kissing-gate. There is also a field gate off Bowleys Lane, which the graziers use for getting animals on and off the field, but it is kept locked when not in use by them. He had not seen or heard reports of anyone climbing over the field gate.
- 9.8. There are some other clearly visible tracks on the land, but they are sheep tracks and too narrow to have been made by people. He had never seen anyone using those tracks. When he had been on site he had seen people walking their dogs, but they were on the public footpath as far as he could tell. He normally used to go to the bottom end of the field by the gate in the south-west corner. He had never seen any of the activities claimed in support of the village green application, other than the dog walking on the footpaths which he had described.
- 9.9. *In cross-examination* Mr Fallowell said that he did not go onto the land after Mr Lees took over the work in 2003. He acknowledged that this field has not been ploughed. The planning application which had been made in relation to the dilapidated barn had failed because it was considered to be outside the boundary of the settlement of Appleby Magna.
- 9.10. He had only gone onto the field about once every two years in his period of involvement with it. He may have made notes contemporaneously, but he thought that they would have been destroyed by now. His recollection was that Mr Beaumont had had a licence to use the field from about the mid-1980s to 1995. Then in 1996 the land was let to Mr Barney. Mr Fallowell thought that Mr Beaumont was dead. When Mr Barney was on

the land his interest was mainly in sheep. In contrast Mr Fowkes had larger cattle.

- 9.11. Mr Fallowell had carried on visiting from time to time until 2003. His notes when he visits would be destroyed after 7 years.
- 9.12. He would not call grazing a low-level agricultural use. If he had gone onto the land and there had been anything untoward he would have noted it, but there was never any problem. He had never given evidence at a town or village green inquiry before, but he had at other public inquiries and in the courts. As to whether he was on a retainer from the Ottewells, he would typically be paid a few hundred pounds for a tenancy agreement, and if he sold land for them he would get a sale fee; he would be paid for what he did.
- 9.13. Mr Luis Vittoria Spyer is a Spaniard who lives in Malaga; there is nothing mysterious about him. Mr Gordon Ottewell had owned Old Park Farm near Ashby de la Zouch, which is about 10 miles or so away, possibly only 6 miles. The Appleby Magna field was not part of that farm. He himself had never spoken to Clare Marsh the Applicant. If he had been asked for addresses for the Ottewells or Mr Spyer, he would not have given them because that was not in his brief.
- 9.14. Mr James Ottewell was living around here in 1995, Mr Fallowell thought in Breedon, but he was not sure. He had never met James Ottewell on the land, only when he did the probate. He did not think he had ever spoken to Clare Marsh; he thought she had spoken to Mr Lees.
- 9.15. **Mr Paul Lees**, is a surveyor employed by Newton Fallowell, of Coalville, Leicestershire. He does not live in Appleby Magna. He knows the application land because Newton Fallowell is the letting agent for the site.
- 9.16. He joined Newton Fallowell in 2003, and more or less immediately took on the role of letting agent for the application land. From 2003 to 2008 the land was let to Ben Fox, a grazier, on a farm business tenancy. From 2008 to 2010, when Ben went to New Zealand, the land was occupied by David Andrews of Packington, who kept cattle, sheep and two horses on there. In 2010 Ben Fox took the land again on a farming business tenancy for two years, and then on a grazing licence. Mr Lees recalled that he bought from David Andrews some cattle that David had left on the land.
- 9.17. Since 2003 Mr Lees had visited the site perhaps once every year to two years. This would generally have been when they were doing a new tenancy. The land is rough grassland, surrounded on all sides by stock-proof fencing. It is also surrounded by a hedge which is quite dense for most of its length. The land can be accessed at three points. The access points are kissing-gates, which had been provided where two public footpaths enter the site.

- 9.18. There is also a field gate on Bowleys Lane which is used by the graziers to get their animals on and off the field. It is kept locked when they are not using it. He had never heard reports of anyone climbing over the gate. He had never seen any of the activities claimed in support of the village green application taking place on the land. On his visits he had seen the field being grazed with sheep, cattle and/or horses, depending on who the tenant was at the time. He had also seen the occasional dog walker using the public footpaths, or very occasionally on the perimeter of the field, around the edge of the north-western part.
- 9.19. When he first became involved in 2003, the bottom part of the field was very overgrown. It was so high with nettles that no-one could have got on there if they wanted to. He was referring in particular to the south-eastern part of the field, to the south of where the Marsh and Graves families now live. There is a derelict brick building in this area. In his experience features such as derelict buildings tend to attract people, but he noted that there is no sign of anyone having used this area, such as graffiti on the bricks or rubbish on the floor.
- 9.20. Mr Lees had visited the site on 25<sup>th</sup> October 2013 for the purposes of this application, and noticed for the first time a small wooden gate in this formerly very overgrown part of the field. The gate is in the boundary fence where the field adjoins the garden of a property on Church Street. Mr Lees had never seen this gate before. It follows that he had never seen anyone use it. And nor had he ever seen anyone in this part of the field, which as he had said had been inaccessible anyway when he was first involved in the site.
- 9.21. In wet weather there tends to be a lot of water lying in furrows on the land, and in the area around the pond, which floods. He had been told by Mr Fox the grazier that the pond dries out in the summer.
- 9.22. *In cross-examination* Mr Lees acknowledged that he had seen occasional dog walking on the land, and that sometimes this had been away from the public footpaths, on the perimeter around the north-west. He accepted that the gate could be jumped over in the south western corner of the field, and agreed that that gate is not in good order.
- 9.23. It was in 2003 that he took over the administration of the field, but he had not seen the domestic gate from the Graves's property until 2013. That part of the field had been quite inaccessible for much of the time. Also he was not looking for that gate. It is a little bit hidden, and he would not be looking into every nook and cranny. He was interested in the field in general, and the main hedgerows onto the highways. The times of his visits would normally be on Mondays to Fridays, sometime between 8.30am and 5.30pm, and would not be at any particular time of year. He would usually be looking for something specific, for example particular problems. His estimate is that he was there every year or two, but that was a conservative estimate.

- 9.24. There had been problems over time with the fencing around the land, and he had spoken to the tenants of the land about that. Stock-proof fencing regularly becomes non-stock proof over time, and he tries to get the tenants to make it stock-proof. Sheep have a habit of getting through gaps that one would not notice, or indeed cows can crash through a fence or hedge. Fences need renewing from time to time. He had only spoken to the tenant on maybe 4 or 5 occasions in the period 2003 to 2013, to say that cattle were getting out. He had known about the police being called at the time when Mr David Andrews was the tenant, and also he thought about the RSPCA having been called on one occasion. All land will have problems from time to time.
- 9.25. The derelict building on the land got slightly more derelict over time, but not hugely so. He repeated that his visits would have been in normal working hours, but they were unlikely to have been first thing in the morning such as at 8.30am. They could have taken place in the summer holiday period, but he had no notes to say on what dates he had gone. He would usually have visited at the start or end of a tenancy year, so probably in March or October. Alternatively he would have visited when there was a hedge or fence problem.
- 9.26. **Mr Tim Farley** is a planning consultant with the firm of Copesticks, whose address is in Birmingham. He knows the application land and its recent history as he is the planning consultant for the landowners, and the agent for a planning application that has been submitted for development on the land. The application is for planning permission to develop the site for housing, including affordable housing.
- 9.27. On 9<sup>th</sup> May 2013 he attended a pre-application meeting with the local planning authority, North West Leicestershire District Council. Attending on behalf of the authority were its planning officer and its urban designer. Mr Farley had attended the meeting with Mr James Ottewell and Jonathan Chastney, and also he thought the developer's architect. There had already been one informal meeting with the planning officer prior to that.
- 9.28. In the pre-application discussions they discussed the principle of development of the site. The Council took a strong stance against development because they saw the area as open countryside and therefore unsuitable for residential development. However there was no suggestion that this was public open space, or that it had any recreational use.
- 9.29. Following that pre-application meeting in May 2013, he had made initial contact with the Parish Council to see if he could open a dialogue about the application. They said they did not want to talk to Mr Farley, and he subsequently learned from the District Council's planning officer that the Parish Council had asked him to attend their meeting on 13<sup>th</sup> June 2013. When Mr Farley had made initial contact with the Parish Council, that council did not claim that the site was used for recreational activities.

- 9.30. The town or village green application went in on 13<sup>th</sup> June 2013, the same day as the Parish Council meeting. Until that application was made, Mr Farley had not been aware at all that anyone claimed to use the site for recreation. He had been aware that there were some public footpaths across the site, but that is not unusual for a development site.
- 9.31. Mr Farley did subsequently attend two Parish Council meetings, in August and September 2013. By that time the town or village green application had already been made. At the August meeting it had been acknowledged that the village green application had been made.
- 9.32. Mr Farley had visited the site several times, the first of which was in about 2012. He had never seen anyone undertaking any of the activities claimed in support of the town or village green application. The second time he visited the site he remembered particularly clearly, as he had taken his mother with him. They were on their way to the nearby zoo with his son, and they stopped at the site in order to show his mother what he was doing. It was about a week after Easter 2013 and was a nice sunny day, but there was no-one on the site. He had been about another 3 times since then.
- 9.33. At about 9.30am on 4<sup>th</sup> July 2013 he attended a site meeting there with the East Midlands Design Review Panel. The meeting lasted about half an hour, and he did not remember seeing anyone on the site. On Sunday 7<sup>th</sup> July 2013 he went to the site at about mid-day to take photographs for the website they had created for the development to keep local people informed. Again it was a nice sunny day, but he did not see anyone on site. The town or village green application had been made then, so he took photographs to show that there was no-one on site. He produced copies of those two photographs.
- 9.34. On Friday 26<sup>th</sup> July 2013 a public consultation exercise had been held, which was a drop-in event at the village hall next to the site. This was not a site visit as such, but Mr Farley did drop in on the site at about 1pm, and did not see anyone using it. That visit was during the school summer holidays.
- 9.35. Mr Farley confirmed that the bottles that had been seen in the pond were almost certainly put there by their ecological consultant leaving bottle traps for great crested newts. Those consultants had been on the site 36 times. He also said that he had looked at the Village Design Statement and had read it. There had also been an Open Spaces consultation by Leicestershire County Council in relation to the government's Natural Environment White Paper produced in June 2011. Mr Farley produced an email exchange in relation to this.
- 9.36. *In cross-examination* Mr Farley confirmed that he was a planning consultant, and had been instructed in September 2012. This had been in relation to a large planning application for two sites in Appleby Magna, the other one being in Measham Road for 73 dwellings. The application on the present application site had been for 26 dwellings, but subsequently

reduced to 25. He had not prior to that visited this land, other than passing through Appleby in connection with a similar proposal in Measham. He accepted that only two of his visits to the land had been in the relevant 20 year period.

- 9.37. He had first been asked to recall these events when he had been asked to be a witness at the current Inquiry. That was about a month before November 2013. He did not have any notes in relation to his visits, but he did have the photographs which he had produced.
- 9.38. He confirmed that he had not seen any activities on the land of the kind claimed in support of the village green application. The list of activities had been read out to him, and he confirmed that he had not seen any of the activities taking place.
- 9.39. When he visited the land on 4<sup>th</sup> July 2013 he had been on site for at least half an hour. On 7<sup>th</sup> July 2013 he had also gone round the land; it was very sunny, he had taken about a hundred photographs of which he had presented two. This was at mid-day in the middle of summer, and he saw no-one on the land. He did not walk around the perimeter of the land. He had started at the southern gateway and then went by car around to the northern gateway, and into the field at that end. He had not noticed many tracks on the field. He had gone down the principal track. There were some cows in the field. He had not been looking for tracks; he had gone onto the field to take photographs for the website.
- 9.40. He did not on 7<sup>th</sup> July go to the gate near the church; however he had done so on 4<sup>th</sup> July.
- 9.41. He had attended three Parish Council meetings over the summer of 2013.
- 9.42. As for his other visits, that in mid-April 2013 would have been at a weekend, probably first thing in the morning around 9.30am – 10.00am on site. On that occasion he was at the northern gate for about 2 minutes, and then drove to the southern gate and was there for about another 2 minutes. In November 2012 he had passed the site en route to Measham, and spent a few minutes near some of the gates. He had a child in the car at the time.
- 9.43. He knew that the recreation ground in the village tends to be used for formal sports, although there is also a playground there. He himself is not a dog walker.
- 9.44. *In re-examination* Mr Farley said that he was not aware how booked up the recreation ground would be for formal sporting activities.
- 9.45. **Mr Mark Ottewell** gave his address in Markfield, Leicestershire. This is not within Appleby Magna parish. He is one of the joint owners of the claimed land.

- 9.46. From about 1963 to 1995 the claimed land was owned by his father Edwin Gordon Ottewell, his brother (Mark Ottewell's uncle) Ernest Arthur Ottewell, and Luis Vittoria Spyer. They owned one third each. In July 1995 Edwin Gordon Ottewell died and left his one-third share to Mark Ottewell and his sister Sarah. Mr Ernest Ottewell's share has since passed to Westinghouse Investments Limited, so the land is currently owned by Mark Ottewell and his sister (one-sixth each), Luis Vittoria Spyer and Westinghouse Investments Limited (one-third each).
- 9.47. From about 1980 to 2000 Mr Mark Ottewell said he lived in Ashby, not far from Appleby Magna. He moved to New Zealand in 2000, but has been back in England for the last 5 years on and off. He has always been around the Appleby area, until 2000 and since he has been back from New Zealand. He used to drink in the Crown, opposite the claimed land, and still drinks there now.
- 9.48. He has often walked across the claimed land. He would go and have a look at the old brick barn, as he thought it would be nice to have a house on the land himself. The land is just grazing land, and he generally sees sheep or cattle on there. He has never seen many people on there. Most of the time there is no-one. If he sees anyone, which is rarely, it would be just one or two people. The people he does see are just walking across the land. He understands that there are two public footpaths crossing the land.
- 9.49. Other than people walking across the field in the way he had described, he had never seen anyone undertaking any of the other activities on the site which had been claimed on behalf of the Applicant.
- 9.50. *In cross-examination* Mr Mark Ottewell said that he was down in Spain in November 2013, but not with Mr Spyer who lives in Malaga. Other than that, he did not know what the reason was why a statement was not taken from him in November 2013.
- 9.51. He said that when he lived in Ashby he was farming cereals. He used to have a farm there called Old Parks Farm. He said he was currently aged 50, and his cousin James is younger.
- 9.52. Mr Mark Ottewell said he moved to New Zealand in 2000; his mother was in New Zealand, and he has always had connections with New Zealand. Between 1972 and 1980 he had been at school there after his mother got divorced. Also for 9 years he was in New Zealand farming out there. He had bought a place out there, having sold up in Ashby.
- 9.53. He had not known Mr Ben Fox until the previous day in connection with the Inquiry.
- 9.54. While out in New Zealand he came back, probably once or twice a year after getting divorced in New Zealand 5 or so years ago. The previous day had been his first day back in the UK on this current trip.

- 9.55. Up until 2000 he used to go to the claimed land quite regularly. Also between 1995 and 2000 he used to go to the Crown pub in Appleby once or twice a week. He does know some people in the village, not least because he used to go to the Crown so regularly.
- 9.56. He had known that there was a public footpath across the field, but had had no idea where it was. He had not put any money himself into the planning application which was being made on the land. However if it succeeded he would receive money.
- 9.57. Every time he had seen the land he had seen a couple of people walking dogs there, but nothing more than that. He has also often driven round the land and seen it. In addition he had walked on the land himself, and clearly he knew where the land was.
- 9.58. He reiterated that he had seen people dog walking on the land. When he had seen that he was on the edge of the field, looking from outside the front of the Crown pub. From the pub in fact what one sees is the footpath leading to the field, not the field itself. However he had been on the field on a number of occasions.
- 9.59. **Mr Jonathan Chastney** said that he was 48 years old and a company director of a number of development companies, including Jupiter Strategic Land Limited. His home address is in Sibson, Warwickshire. Together with his co-director at Jupiter, James Ottewell, he had been a regular visitor to Appleby Magna in the last few years in connection with preparation of development proposals for two parcels of land there. His direct knowledge of the application land at Appleby dates back to October 2011, although he had been aware of it for many years through James Ottewell.
- 9.60. He is familiar with the claimed land through his recent visits and inspections of it in connection with Jupiter's development proposals. He has records of when he went to the site. The claimed land is one of the parcels of land in Appleby Magna in respect of which Jupiter proposes development. Jupiter's approach had been to consult with the community, including the Parish Council of Appleby Magna, in advance of formal submission of a planning application.
- 9.61. On 9<sup>th</sup> May 2013 he attended a pre-application meeting with the local planning authority North West Leicestershire District Council, together with Mr Tim Farley of Copesticks, who are Jupiter's planning consultants for the project. Following that meeting Mr Farley made contact with the Parish Council.
- 9.62. The application to register the claimed land as a town or village green was made the following month. However no-one before that application was made had ever suggested to himself or any other director or agent of Jupiter that any part of the claimed land was used by local people for recreation, except walkers on the public footpaths.

- 9.63. Over the previous two years since he first saw the land in 2011, Mr Chastney had visited the land or passed it on a number of occasions. When he had been on the claimed land or passing it, he had only once seen anyone on the land, and that person was clearly walking on the footpath with a dog. Other than seeing that person, he had never seen anyone on the land indulging in any of the other activities which had been claimed in support of the application. He had however witnessed a number of those activities taking place on the pre-existing recreation ground area to the south of Bowleys Lane. On that recreation ground he had seen activities including cricket, and children playing in the play area. There is a properly equipped children's play area there, he said.
- 9.64. *In cross-examination* Mr Chastney said that the company Jupiter had been formed in February 2012. The land of the application site was in fact the second of three parcels of land that James Ottewell had had an interest in. In April 2012 they had started to formulate some ideas for the land. However the company was not formed for that purpose.
- 9.65. The other sites Jupiter had been interested in were ones they had an option on. One of those other sites was the Measham Road site further north. That site had been put into play at the same time, and had the same landowner.
- 9.66. Mr Chastney said that it was in October 2011 that he first saw the land, although he did not make a note of the date. James Ottewell and he had been looking together at land in ownership which might be suitable for development. That was why they formed the company Jupiter. He had been talking to a fund in London.
- 9.67. Mr Chastney had made perhaps 6, 7 or 8 visits to the land with architects or consultants during the last year. Also there had been 36 visits by ecologists, with him being there on a couple of those occasions.
- 9.68. In 2013 he had visited on the 25<sup>th</sup> February at 4.30pm for half an hour. His diary said Appleby site visit. His recollection was that it was not particularly dark. They had had a look at the land from two or three different angles, both from the northern end and in the south eastern part. However they were not in the field at the south-eastern end, but on Bowleys Lane outside the site. What his eye was looking at on that occasion was the matter of road visibility splays, and whether there might be a need to plateau the land, and so forth. On that occasion he did not see the gate in the south-western corner.
- 9.69. He had also made a visit on the 9<sup>th</sup> April 2013 at 3pm. That was just himself. He was at the northern gate into the field, looking particularly at the ridge and furrow in the field. Then he did walk into the northern part of the field; he had been wanting to look at an archaeological feature, the track running along the line of the public footpath; at least there is

something which looks like a track along that line, where there is a drop in level of about three quarters of a metre.

- 9.70. It was his understanding that the ridge and furrow land formation in this site is not in the highest level quality of three levels of quality by which ridge and furrow landform is apparently assessed.
- 9.71. On 9<sup>th</sup> May 2013 Mr Chastney went to the land at 2pm; he had been at the south-western gateway into the land, although his diary did not record that. He was there for about 15 minutes, standing at the gate, but he did not go into the field.
- 9.72. Then on 25<sup>th</sup> June 2013 he had been there at 10am for a short visit. He had been there because they had been discussing drainage as an issue with the parish. He looked at the site when passing. He personally lives 5 or 6 miles south of Appleby, in Sibson. He had been particularly looking for signs of flooding on that occasion.
- 9.73. On 4<sup>th</sup> July 2013 he had paid a visit at 9am, and walked all over the site with the Design Review Panel for the Midlands. They had all climbed over at the gate in the south-west corner. They walked all over the field for about half an hour. However he did not notice the gate into Mr and Mrs Graves's garden. On that occasion he did not see anyone else on the site. Sheep were on the field then, but not cows.
- 9.74. On 26<sup>th</sup> July 2013 he had been there for 5 hours, in the church hall, and went out occasionally to the back to catch five minutes of fresh air, just at the kissing gate into the field.
- 9.75. Then on 1<sup>st</sup> August 2013 he had been there for 15 minutes before a Parish Council meeting at the Sir John Moore School. He did not go into the field on that occasion, he just drove to the south-west gate as the easiest point to see through. He saw no-one at all on the site. He could not remember what animals were on the field on that occasion.
- 9.76. On 3<sup>rd</sup> October 2013 he visited the field at 1.30pm. That meant that there had been 8 visits in 2013 recorded in his diary.
- 9.77. He had been interested in the site from a planning and technical perspective. Only once did he see one person on a footpath on the land.
- 9.78. *In re-examination* Mr Chastney said that he had not been at the Inquiry on the previous day, when Mrs Marsh was giving evidence.
- 9.79. The first discussion which had taken place with the Parish Council had been about the possibility of developing the land. He had spoken to the Parish Council chairman. His recollection was that that had been something on his 'to do list' on the 4<sup>th</sup> June 2013. He had left a voicemail for the Parish Council chairman, and on 13<sup>th</sup> June 2013 that gentleman had called back. No-one from the Parish Council had suggested that a town or

village green application would be made. No-one mentioned a town or village green application.

- 9.80. The Parish Council would not meet Mr Chastney or his colleagues individually. They had met the Parish Council at one of their meetings which was on 1<sup>st</sup> August 2013.
- 9.81. He noted that some time in April or May 2013 someone on the Appleby Forum website had published that there was a development possibility. Something about this possibility had been published by the fund he had spoken to in London, rather annoyingly.
- 9.82. **Mr Ben Fox** lives at Barn Farm, Ravenstone, Leicestershire, which is about 6 miles north-east of Appleby Magna. He said that from 2003 to 2008 he had a farming business tenancy on the claimed land. From 2008 to 2010 he had been in New Zealand, but when he returned he took the land again, this time on a grazing licence. He has held a grazing licence there from 2010 to the present day.
- 9.83. From 2003 to 2008, and then from 2010 onwards, he had used the land to graze dairy herd replacements, or sheep. In that time he had kept his animals on the land continuously throughout the grazing season, which is roughly April to November for cattle, but can be up until Christmas time for sheep, depending on the grass.
- 9.84. The land is basically a rough grass field. It is fenced all the way round with stock-proof fencing. It also has a thick hedge more or less all the way around. There are 3 accesses to the land, all through kissing gates where the two public footpaths enter the land. There is also the field gate onto Bowleys Lane, which he uses for getting the animals on and off the field. That gate is locked all the time though, even in winter when there are no animals there. Mr Fox has the key, and anyone who wanted to use it would have to ask him.
- 9.85. As well as the public footpaths there are some clearly visible narrow tracks on the land, but those are paths created by sheep. They are too narrow to have been created by people, and he had never seen anyone on them.
- 9.86. During the grazing season he comes onto the land once a day. He normally sees one or two people walking their dogs. It is always the same people he sees. They watch the sheep for him, and have occasionally called him if they thought there was something wrong. When he sees them they are mainly on one of the two public footpaths that cross the land. Perhaps once a month he might also see the odd person walking around the field boundary around the perimeter of the north-western part of the land.
- 9.87. He often sees dog muck on the field, but it is always within a few feet of the footpath. If it was further into the field he would notice and be concerned about it, because it could affect his animals.

- 9.88. This year he had put some sheep fencing across the land so that he could rotate the grazing. Even before he put that fencing in he never saw anyone in the southern part of the field, i.e. from where the new fencing now is to the field boundary along Bowleys Lane.
- 9.89. There is a pond on the land, but it dries out altogether in dry weather. This last year it was reduced to just mud and a small puddle. The ducks were struggling with their young on there. Because of the way it dries out, there would not be fish in there. He supposed there could be tadpoles, but he had never seen anyone around the pond. The pond floods in wet weather, and there would also be a lot of water lying in ridges or low-lying parts of the land.
- 9.90. Other than people walking their dogs in the way he had described, he had not seen people on the land indulging in any of the other activities which had been claimed in support of the application. He does not come onto the land in the winter when the animals are not there, so he has not seen it in the snow, but the land is not on a slope, so he struggled to see how anyone could go sledging there.
- 9.91. He had seen the odd person blackberrying on the land on occasions. However in the 10 years he had been there he had never seen anyone around the pond. He had seen the occasional bits of junk on the land, e.g. an old plastic scooter. He had never seen anyone in the bottom end of the field walking.
- 9.92. When he visits the field he is usually there towards the middle part of the day. Occasionally he sees people there on those occasions.
- 9.93. He recalled seeing Mr Marsh in the field with two piles of cuttings which he was trying to burn in a bonfire. Mr Fox had told him to get straw and dry paper. Mr Marsh had done that, and Mr Fox left him to it.
- 9.94. The churchyard hedge had been a lot thicker until a couple of years ago. Sheep had damaged the previous wire. They like to eat leaves. There had also been an issue with two black and white steers the previous summer which got out into the churchyard to eat the flowers.
- 9.95. Mr Marsh would phone him; the Marshes had his telephone number.
- 9.96. A dog from out of the village did attack some of his sheep a few years ago, and that is why the police became involved on an occasion. The RSPCA had come because of a claim which had been made about hay bales around the field, but he had put none there, he said.
- 9.97. *In cross-examination* Mr Fox said that he recalled that it was the morning of the Ashby Show on 20<sup>th</sup> July that was the day when the steers got out. There had been 16 in the field with the sheep. When he goes to the field to look at the cattle in there he sees the whole field.

- 9.98. He does know some of the villagers, such as Mr and Mrs Marsh, but he does not know everyone else by name. He had recognised Mr Passey as someone he had seen on the field, but he had never seen him with 5 dogs. The most dogs he had ever seen with anyone was 3.
- 9.99. He had been a dairy farmer between 1993 and October 2008, at Ibstock. His son wanted to join the Army so they gave up the farm, and he took a job in the south island of New Zealand. However that did not work out and they returned to the UK, first to Norfolk as a dairy manager, then they returned to this area in November 2010 and he started relief milking, tractor driving and generally helping out around the area. Then he was offered and took this land again, and bought some steers which the previous occupier had had on the land.
- 9.100. He had in fact only been out in New Zealand for 6½ weeks, and his written statement had been wrong in that respect.
- 9.101. Animals certainly had got out of the application land through the fences or hedges. It is not always easy to see where sheep manage to get out of the field.
- 9.102. He was very aware of the public footpaths on the field. There are also a lot of other tracks on the land. However one can tell which are the footpaths, as they tend to be wider than sheep tracks. In his view one could not see human tracks around the pond area.
- 9.103. In his view there was not a great volume of people who come onto the field. He disagrees with the claimed volume of people said to use the field. He and/or his family would be on the land over the weekend just as much as during the week. They would be there for example to weigh lambs, which was usually done at the loading facility at the south-western gate.
- 9.104. He had not noticed the gate which the Graves family had put in; to see that one has to be very close to it. Indeed he had never seen the Graveses before this Inquiry. He had not known who lived in their house. It had been quite a revelation to hear what they said. He had never seen them around the field.
- 9.105. In the previous year, 2013, they had grazed the field off and then removed the sheep. It was in connection with that that they had put the fence up. They ran the land as two blocks for a few weeks. Then they left it all together in the end. They had had about 120 ewes and 170 lambs at the time. Half of the lambs came off at the end of July. The grass had not been too bad last year; lambs do not like grass to be too lush.
- 9.106. He agreed that the gate in the south-west corner needs renewing. One rail has become un-welded after someone stood on it. He had met Mrs Denson, sitting in her husband's car, on a previous occasion, but that he did not know her; he knows her husband reasonably well however. He

could recall the evidence Mrs Denson had given. What she had said was not the case at the times he, Mr Fox, had been on the land. At the most he had only ever seen two or three children in the field.

- 9.107. They had cut the ground in the field on two occasions. Once was in 2007 for grass silage. The other was in 2008, after selling the dairy herd. On that occasion he had made round bale hay out of it and sold it.
- 9.108. The toy he had seen in the area of the pond had been made of plastic, but he was not really sure exactly what that toy was.
- 9.109. There used to be a lot of nettles on the land near Mr and Mrs Graves's property, until he went round with a knapsack sprayer some two years ago. He agreed that there would be some sticks around the hedge line.
- 9.110. Cows had been in the field in 2013 until July. He confirmed that he had seen a couple of children on the footpath, but was not sure when. He had never seen anyone south of the east/west public footpath, apart from Mr Marsh with his bonfire around the edge of his garden.
- 9.111. When Mr Fox visits the site he could go in at any time from 6.30am to 10.00pm in the summer. He thought Mr Marsh had cut his hedge from the inside. He had told him how to get his fire going, and that advice was successful.
- 9.112. People in the locality had generally been helpful when animals have got out. He has no objection to people walking the paths on the land. He has other pieces of land where people are more active than they are in this field. He had never seen Mr Terry Grice on this field, and did not know who he was. Mr Fox said his visits to the land would be for a minimum of 10 minutes, perhaps up to 15 or 20 minutes, mostly when he had got stock on the land.
- 9.113. The pond on the land had been big in 2012 when it was very wet. However it had not been like that for the whole summer of 2012. Sheep will not walk through water. The pond itself was rather a smelly, horrible pond, but the overflow area when there was flooding was clean water.
- 9.114. Mr Fox confirmed that he did have other areas of land. For example he had given up 26 acres in Measham at the end of February 2013; that was land which had a bridleway through it, some 3½ miles away from the current application site, and Mr Fox had visited that land every day as well.
- 9.115. Also they graze two fields at Ravenstone Hall, where his buildings are. He has sheep on that land all year round; he has grazed that land for 3 years. He also has occasional grazing at Longmoor Farm for 2 or 3 months each summer. He would graze anything he could get his hands on. He also used to farm 100 acres of Leicestershire County Council land at Ibstock

with 170 dairy cows, that was from 1993 to October 2008. That work was 24/7, apart from nipping off to check livestock in other places.

- 9.116. When one is responsible for land one has to go round and check the fences etc. He personally is quite happy to go on to the application site field in the dark. They as a family have 4 dogs themselves. He would not walk all round the field in the dark though.
- 9.117. In his experience children would not want to go and play on a field in parts where sheep or cattle muck was on the grass. He had never seen anyone in the area of the old barn or shed on the land. That is surrounded by nettles for most of the summer.
- 9.118. He had not seen the lemonade bottle survey of the pond. He had known it was going to happen, but he did not see them, even though they had been there for some weeks. He had himself seen crested newts, but not on this land. He had never seen riding lessons taking place on this land.
- 9.119. He had not gone onto this field in the snow because he had no livestock there at such times; his stock would come off in November, or earlier if the field had run out of grass.
- 9.120. He acknowledged that he had seen people walk around the boundary of the field, not on the public footpath. He had also seen people blackberrying around the hedges of that north-western section. He had never seen people flying kites in the field.
- 9.121. Then previous summer the pond had stunk. It had almost dried up, and there were not many gallons of water in it. In summer the pond shrinks back very much. Normally the pond is in existence whether it is dry or not.
- 9.122. *In re-examination* Mr Fox said that the hedge along Bowleys Lane was quite a tall hawthorn hedge. There would be a limited view through it in the summer. It was not stock-proof, hence there was wire inside. Also on the corner there is a steep bank. He had never seen anyone else walking in the field in the dark.
- 9.123. *To me* Mr Fox explained that when he had on various occasions referred to “we” doing various things in the field, it could be himself and his wife, or himself and his daughter. Typically his wife or his daughter go to the field less frequently than he does himself. Perhaps they would go with him  $\frac{1}{3}$  to  $\frac{1}{2}$  of the occasions. All three of them might be there on occasion, for example when they were weighing the animals.
- 9.124. **Mr James Ottewell** gave an address in Melbourne, Derbyshire. He is a chartered surveyor. He said that he knows the application land and its recent history, as it has been in his family since about 1963.

- 9.125. From about 1963 to 1995 the claimed land had been owned by his father Ernest Arthur Ottewell, his uncle known as Gordon Ottewell, and Luis Vittoria Spyer. They had owned one third each as joint tenants in common. In July 1995 his uncle had died and left his one third share to James Ottewell's cousins Mark Ottewell and Sarah Holt. In September 1995 James Ottewell's father Ernest died. His one third interest had already passed to Yeates Investments Limited, and then onto Westinghouse Investments Limited. In about 2008 Luis transferred his one third into his daughter's name, Begona Vittoria Bianchi, but it was transferred back again to Luis in March 2013. Therefore the land is currently owned by Westinghouse Investments Limited, a company his father had a relationship with (one third), Luis Vittoria Spyer (one third), and Mark Ottewell and Sarah Holt (one sixth each).
- 9.126. Mr James Ottewell said he was first involved in the claimed land in about 1990, when he came to see it with his cousin Mark, and his father. They were interested in potentially converting a barn on the land, doing it up and selling it. They were basically looking at the land and seeing if there was anything that could be done with it. During the whole time they were always working on the planning of this site, albeit in a low-key way.
- 9.127. The land was let to Peter Fowkes for agricultural purposes until he gave up the tenancy in September 1989. It was then occupied by Mr Beaumont, a grazier, under a grass-keep licence until about September 1998. They had struggled at first to find anyone to replace Mr Beaumont. They were not particularly bothered about the rent, but wanted to get someone on there to look after the land. He had eventually found another grazier, Graham Barney, who went onto the land in about 1999, and grazed sheep on the site until 2003.
- 9.128. In 2003 the land was let to Ben Fox under a farm business tenancy. He grazed animals on the land until 2008, when it was taken over by David Andrews who kept cattle, sheep and two horses there. Ben took the land again in 2010, under a farm business tenancy for two years, and then under a grazing licence. Mr Fox has continued to use the land for this purpose to date. Graham Barney had been introduced by chartered surveyors. It was Mr Fallowell who had introduced Mr Fox to Mr Ottewell.
- 9.129. As the land is used for grazing throughout the grazing season, stock-proof fencing is maintained around the boundaries. There are also dense hedges around most of the boundary. Access and egress for the land is via kissing gates, of which there are three at points where public footpaths enter the site. As far as Mr Ottewell is aware those are the only public points at which anyone accesses the land. In most places the hedges are too thick for anyone to get through if they wanted to, and the fence is not broken down anywhere. Even where the hedge thins out there is barbed wire which would stop anyone getting through. There is a field gate on Bowleys Lane which is used by the graziers for getting their animals on and off the field. The rest of the time it is locked shut, and Mr Ottewell

has never seen anyone else use it to access the field, for example by climbing over it.

- 9.130. Mr Ottewell is aware that there is another small wooden gate in the boundary of the field where it adjoins one of the properties on Church Street. He had not noticed this before he visited the site for the purposes of completing his statement for the Inquiry. He had noticed that none of the Applicant's witnesses had referred to using that gate, even including Mrs Graves who lives in the property concerned. He had never seen anyone using that gate, or the field in the vicinity of that gate. He had not objected to it because he had never seen it before. Unless his father or his uncle had given permission for it, it was unauthorised and should not be there. He did remember there having been a broken down fence in that vicinity beforehand.
- 9.131. Mr Ottewell produced some photographs of the boundary hedging and fencing in various places. Other photographs showed the footpath access points.
- 9.132. Mr Ottewell said that when he first became involved with the claimed land in 1990 they were looking to see what if anything could be done with it. In 1990 they had instructed solicitors on the granting of an option to David Wilson Homes, but that was not completed. They were then looking at granting an option to Landmark Wadsworth Limited, but his father died in 1995, and they were having difficulties with the planning position as the planning officers wanted some areas of the land protected. During that time many people would have looked at the land, including family members, and their architect, who was promoting the site to the local planning authority, planning officers and potential developers. No-one had ever said to Mr Ottewell that they had seen people on the site, or made mention of any recreational use of the site. North West Leicestershire Council never said that they saw it as anything other than an agricultural field.
- 9.133. Mr Ottewell said that unless there was a specific reason to visit, such as a meeting with their architect, since 1995 he had inspected the land roughly 6 to 8 times a year, including at the request of the Parish Council to check that the hedgerows were being properly maintained.
- 9.134. Approximately 8 years ago Mr Ottewell's company was approached by East Midlands Housing Association to develop a rural housing scheme in the village. As part of the construction exercise they considered relocating some sub-soil from foundation excavation to this field, in order to re-grade some of the levels. A great deal of time was invested in that plan, which was eventually aborted. At that time they regularly inspected the claimed field with architects, engineers, contractors and his cousin Mark who was a farmer and could assist. At no time did anyone express concern at the use of the field.

- 9.135. Over the last 2 years he would say that he has been roughly once a fortnight to the field, because of the work they were doing in relation to the planning application. Sometimes he would go extremely regularly, and at other times only every 3 weeks or so. He has rarely seen anyone on the site, and until a visit on 25<sup>th</sup> October 2013 for the purposes of this application he has not spoken to anyone. He has seen people walking their dogs along the routes of the public footpaths, which are well trodden. Some dog owners appear to let their dogs off the leads, but they are still within the vicinity of the prescribed public footpaths. He has often seen dog muck in line with the footpaths, but not particularly anywhere else on the field. He had met a lady called Celia Smith on the field near the northern gateway into it.
- 9.136. He had also occasionally seen people going around the field boundary of the northern part of the field, around the north-western perimeter, but he had not seen people using any wider area of the field.
- 9.137. The only exception to that was that on 25<sup>th</sup> October 2013 he visited the site in connection with this present application, and while he was there he saw Mr Tim Marsh walking his dog on the site, and he was off the footpath. Mr Ottewell spoke to him, asking him to keep to the public footpath. That was the first and only time he had seen anyone off the footpath, other than on the field boundary as he had just described. When he spoke to Mr Marsh he got the impression that Mr Marsh had deliberately strayed off the footpath to be mischievous, as if to make a point.
- 9.138. Other than dog walkers and ramblers on the footpaths as he had described, Mr Ottewell had never seen anyone undertaking any of the other activities on the land which had been claimed in support of the application. Given that he had been on the site about 20 – 30 times in each of the last two years, he would have expected to see people if they undertook those activities anything more than sporadically. Having seen the pond in particular, he could not understand why anyone would pond-dip in it, and it is too small for any number of people to have skated on it. There is also no slope on the site long enough or steep enough for sledging. Pulling a small child on a sledge in the vicinity of the footpath is quite different from sledging, in his view.
- 9.139. Suggestions of horse riding on the site are nonsense in his view. There may have been horse riding on the fields if they had been let as a pony paddock, but only by the tenants, or people given permission by a tenant to ride one of their ponies. He believed that Peter Fowkes, who was on the land until about 1989, may have used the field for horses. He had been told by Paul Lees that David Andrews had two horses on the field between 2008 and 2010 also.
- 9.140. None of the graziers had ever complained to him about people using the field straying off the footpaths. That is in contrast to other grass paddocks, where people have complained that they cannot graze the land, for

example because there is dog muck on the field. Animals will not graze where there is dog muck, and it causes problems with flies and disease.

- 9.141. Over the years he had had regular correspondence with the firm of Newton Fallowell about letting the land, and with the council about things like boundary treatment, such as cutting the hedges etc., to keep them clear of the roads. In all of that correspondence he had never had any reports of people using the land for recreation.
- 9.142. He and his family were not 'absentee landlords'. The Parish Council had written to them, asking for permission to go on the land. In about 1996 the Parish Council wanted to plant a new hedge on the north-eastern boundary. There had been communication with a lady called Deana Morris (or Bamford). The Ottewells had given the permission, and the work was done. A copy fax from 1996 in relation to this was produced.
- 9.143. Mr Graham Barney, who grazed the land from 1999 to 2003, was introduced to Mr Ottewell by David Merton, a chartered surveyor and partner of Fisher German, who are national agricultural agents. At no time did Mr Merton express any concern that the field was being used for any purpose other than grazing, and walking on the public footpaths.
- 9.144. The landowners have over the years received a number of approaches in writing from neighbours wanting to buy parts of the field to extend their land. In September 1998 an approach was received from Mr and Mrs Graves of Church Farm House, Church Street, to buy some of the land adjoining their home. They had offered £10,000. That was followed up by Deana Morris acting on their behalf, in June 2000 saying that they would like to buy some of the field. Mr Ottewell produced copy letters in relation to this. Those offers were all refused by the landowners. No mention had been made by Mr and Mrs Graves or Mrs Morris of using the land for recreation.
- 9.145. Mr Ottewell said that he had looked carefully at the photographs produced by Mr Tim Marsh and others, in support of the application. It seemed to Mr Ottewell that in all but one of the photographs the people shown were on or very close to the line of the public footpath. The only photograph that appeared to be any distance from the footpath was one of a small child holding a ball.
- 9.146. He pointed out that there is an existing recreation ground in Appleby Magna with children's play facilities.
- 9.147. As for proposals for development of the land, from 2008 to 2010 the firm Pegasus Planning Group were promoting the land to the District Council for development. That led to the land being included in the Council's Strategic Housing Land Availability Assessment. It was also the case that back in 1963 Mr Ottewell's father with others had submitted an application for 100 houses on the land, which was turned down.

- 9.148. Jupiter Strategic Land Limited has an option over the claimed land, dated June 2012, and has submitted an application for planning permission to develop the land for housing, including affordable housing, a sustainable urban drainage system, and public open land. Jupiter is a company that Mr Ottewell set up with Mr Chastney.
- 9.149. In about May 2013 they had pre-application discussion with the local planning authority. The planning officer Mr Carpenter then went to the Parish Council to discuss the application, and agreed to go back again in August 2013 for a public forum. Shortly after Mr Carpenter had contacted the Parish Council for the first time, the town and village green application was made. Nevertheless they had continued to engage with the local community, carrying out public consultation and trying to find a scheme they would be happy with, before they put in the application. They held a public meeting in the village hall, and they had a good turnout with some 100 people there. The village green application had already been made by that time though. The proposed development has always included an area of public open space. The planning application was submitted in October 2013.
- 9.150. By way of further information Mr Ottewell pointed out that the planning refusal back in 1963/1964 on the land had involved the county planning officer's decision describing the land as agricultural. He also clarified that Mr and Mrs Graves's attempt to buy a part of the land related to land near their house, but which now forms part of the town or village green application. He confirmed that he had had correspondence with the Parish Council, and with various individuals involved with the Parish Council, relating to hedges and maintenance on the land. The hedges had grown to some considerable height, and were seen by some to be causing a nuisance. The Parish Council had written to him about it in June 1999. In Mr Ottewell's view the Parish Council knew very well who owned the land. There had been about 30 letters in total during that period. There had also been correspondence with Leicestershire County Council, the Highway Authority.
- 9.151. *In cross-examination* Mr Ottewell said the field had been let for grazing, and also some hay had been taken from it. Mr Ottewell was happy to accept what Mr Fallowell had said - it was a field in normal agricultural use.
- 9.152. In preparing evidence for the Objectors, Mr Ottewell had not contacted Mr Graham Barney. He had not actually met Mr Barney, who had been there in the past on a grazing licence. As for Mr Fox, Mr Ottewell was aware that he had farmed other land in the area.
- 9.153. Mr Ottewell confirmed that he had been told that the stock-proof fencing has from time to time broken down. He had heard the evidence of Mr Fox and accepted it. He was not aware however that cows had got out into the graveyard. It would be normal for people to contact the occupier.

- 9.154. He had been contacted both by Mr and Mrs Graves directly, and by Deana Bamford on their behalf, in relation to their desire to buy part of the land. There were two attempts to buy land from him. The boundary fence gate that Mr and Mrs Graves had put in in 2004 was quite subtle, he said. Historically he could remember there was a broken down fence which looked rather like a stile. It would not in fact have surprised him if there had been an old gate there, because it looked like a gap.
- 9.155. In relation to the gate on Bowleys Lane, Mr Ottewell on reflection would not say that people never climb over the gate, but just that he has never seen it. He is not saying that those people are lying, simply that he has never seen it being done.
- 9.156. His own view is that the pond on the land is in the proximity of the footpath, but he accepted that it was off it. When he has seen people on the land, the majority of times he has seen people on the footpath, and also seen people around the north western boundary of the land. He freely admitted to that.
- 9.157. Prior to 1995 he did not really need to go to this land. His uncle had the relationship with the tenant farmer. His father and his uncle died within 10 weeks of each other, and it was difficult to get on top of their affairs. They had owned two fields in Appleby of some 10 acres each. He thought his own visits thereafter varied a bit in frequency but averaged at about once a fortnight.
- 9.158. For the period 1998 to 2001 he did not have notes of his visits. He was relying on memory really.
- 9.159. Mark Ottewell had been in New Zealand between 2000 and 2008. Many years ago they had helped in relation to the building of the by-pass round Ashby, including re-grading. He James Ottewell had spoken to Mark about relocating some of the sub-soil to this site, but nothing came of it.
- 9.160. More recently his regular visits had been to understand Appleby and the constraints that were applicable. He could understand that where fields come in close to the village people do care about the situation. He had always been mildly interested in agriculture.
- 9.161. He readily accepted that he would not have been in the field at the same time as the early morning dog walkers. He reiterated that he had seen people on the footpaths on the field, and indeed on some other paths, but not anywhere near where Mr and Mrs Graves live, or indeed anywhere on the southern part of the land. Where there are footpaths the grass is all very short.
- 9.162. He may have seen Mr Passey on the land. Definitely he had seen people on an unofficial path around the north-western boundary of the field, but not over the field generally, or on the southern part at all.

- 9.163. He did not disagree that there may have been some sledging or blackberrying on the field. As far as dog walking was concerned, he had never seen that over the majority of the field, but he had quite regularly seen it up the north-western boundary. In his own view there was no slope on the site really suitable for sledging, although there might be a small slope where small children might sledge, with adults accompanying them. Therefore he accepted that parents might take their small children there. However he had not seen that sledging.
- 9.164. He accepted that there was not an overlap between Appleby Environment and the Parish Council, and also that people do not necessarily know everyone else's name. He accepted that there were people in the village who would not recognise him as the owner of the land.
- 9.165. He accepted that the recreation ground was rather more for formal sports; and that Brownies went across the application field, but he got the impression that they mainly just crossed the field.
- 9.166. The firm Jupiter was set up to promote this site and at least three others for development. They do have other areas outside Appleby Magna where they plan developments. At the moment Jupiter was working on three projects. This field at Appleby Magna is of significant interest to him and the company. If they got planning permission here it would be his intention to build on the land.
- 9.167. He had visited the land in earlier stages because he looked after the land for his family members. Then Mr Farley was instructed in September 2012 on this current project. The council would not have been aware particularly until late 2012 of this suggested development, although he thought that rumours had started earlier, in 2011. In 2012, in December there had been an Appleby chat forum which Clare Marsh is part of he thought.
- 9.168. In general he had had very little contact with any villagers. He had spoken to a Mr Michael Dyer in relation to a possible land purchase. He had asked Mr Dyer whether some of the claims were exaggerated. If he recalled the conversation correctly, Mr Dyer was mildly surprised that he had asked him about it, as he (Mr Dyer) was one of the objectors to the planning proposals.
- 9.169. He had never asked Celia Smith to give evidence. He knew a Mr David Jones because he had approached Mr Ottewell about promoting his land on Measham Road for development. He had asked him for some local knowledge. However Mr Jones had told him that he had something of a conflict, because he had been asked by Clare Marsh too.
- 9.170. Mr Ottewell denied that he had ever threatened anyone with a costs application in relation to this town and village green application. However there had been some heated meetings in the village.

9.171. He confirmed that he accepted that blackberry picking had taken place around the boundaries of the field, and also that sledging had taken place just off the public footpath crossing the field.

## 10. **The Submissions for the Objectors**

10.1. The original objection on behalf of the Objectors contained substantial argument and submissions. However it does not seem either necessary or appropriate to reiterate all of those arguments and submissions in the text of this Report.

10.2. In further submissions made at the Inquiry it was pointed out that it is well established by judicial authority that registration as a town or village green is no trivial matter for the affected landowner. Indeed courts as high as the Supreme Court have recognised the role and importance of town or village green inquiries, which effectively determine whether a landowner's right to use their land is to be severely curtailed or not. The Applicants in this present case seem to have shown complete disregard for the landowner's rights. This is unacceptable in itself, but the position is compounded by the fact that the principal applicant lives next to the claimed fields, and stands to be most affected by any development on the land. In effect the Applicant is using this town or village green application to protect her own property rights. This can easily be inferred from the circumstances behind the present application.

10.3. With regard to the live evidence of witnesses, and all the untested written statements, it is crucial to recall the need for a cautious approach to the evidence, as had been set out by Morgan J in the *Betterment Properties* case. There it was pointed out that in circumstances where local people believe that a failure to register land would result in undesirable development taking place, that degree of commitment to a cause can unconsciously distort people's recollections.

10.4. One notable feature of this current application is that it is hardly surprising that people would have been in the claimed fields. They are crossed by two important, highly visible, well signposted and well used public footpaths. Not only must any use of the footpaths for that purpose, including dog walking and incidental uses such as observing wildlife etc., stopping to chat with fellow walkers etc., be disregarded, but the Applicant had completely failed to address this issue. The burden of proof rests with the Applicant.

10.5. A very damning piece of evidence in this case is the Village Design Statement which had been produced. That document was produced over a three year period beginning in 1998, with considerable involvement of the village, and notably the Parish Council. It describes the claimed fields as pasture and paddock land. The recreation ground was clearly shown as public space, as is the verge along Rectory Lane outside the site. It is inconceivable that such an important document would not have shown, or

even contained any reference to, the claimed fields as public space or having some public recreational value, if that had been the case. The document does not contain any such reference. Allied to that is the fact that in the document it is specifically recognised that Appleby has no village green as such. The document also notes, in the section dealing with the natural environment, that the ridge and furrow fields around Appleby are very old pasture land, and should be particularly valued and retained in their present state. There is no mention of any recreational use of the ridge and furrows on the claimed fields. Also the plan in the Village Design Statement again shows the footpaths crossing the claimed fields, and the one by the recreation ground, without any suggestion of the present site being any kind of public space, quite distinct from the recreation ground and the verges in Rectory Lane.

- 10.6. The Applicant has totally failed to address this point, despite it being raised in the objection. This is not surprising because she cannot. This document provides compelling evidence that in the middle of the claimed period there was no suggestion whatsoever that the claimed fields had any recreational use, other than as a route of two designated footpaths. Thus this objective, official and thoroughly researched document fatally undermines the assertions of the Applicant and her witnesses.
- 10.7. There is another more recent official exercise from 2011 that similarly and fatally undermines the case for registration. That is the Leicestershire County Council Open Spaces Study which Mr Farley discussed. This is a publicly available document which had substantial input from the local community. It fails to accord any mention of any recreational use on the claimed fields.
- 10.8. The importance of the Village Design Statement and the 2011 study is that they are truly independent and objective, because they were prepared at a time when no-one was contemplating a town or village green application on the claimed fields. That is to be contrasted with nearly all of the Applicant's evidence, which was obtained two months after the town or village green application had been made, and at a time when potential development on the claimed fields had become public knowledge in the village. It needs to be asked whether commitment to the cause had unconsciously distorted recollection. It is suggested that it has done so.
- 10.9. In contrast there is a complete absence of any independent documentary evidence that supports the case for registration. The two documents produced as part of the application contain no reference to any recreational use of the land, even the extracts from the book "A Son of the Rectory" make just a passing reference to the footpath on the claimed fields.
- 10.10. Similarly there is a telling lack of photographic evidence of use by local inhabitants of the land. There have only been a handful of photographs of sledging (which is of course weather-dependent and therefore an irregular if not trivial or sporadic use), a couple of photographs of the "Happy Hedgehogs" (which may well have been on the footpaths), and a few of

sheep and dogs. All of those photographs could well relate to incidental use of the footpaths as footpaths.

- 10.11. It was strange that no-one recalled the field and footpaths being closed down during the foot and mouth crisis. That extremely controversial event was national news on a daily basis at the time. The only person who recalled it, and was that only when it was put to her in cross-examination, was Mrs Denson, herself a farmer's wife. That tends to demonstrate the unconsciously selective nature of witnesses' recollections.
- 10.12. There are a number of questions to be asked about the application in this case. First, who is Appleby Environment, the named Applicant? It appears to be a loose local group of a few locals who have taken it upon themselves to involve themselves in a variety of non-specific environmental activities. These, to judge by its website, appear to consist of resisting any proposed development in the village of Appleby Magna.
- 10.13. All the Inquiry has been told is that it is a properly constituted organisation, but the Applicant has produced no evidence of its constitution, membership, objectives, officers, meetings (such as minutes and agendas), or its status as an incorporated or unincorporated body. The Objectors therefore submit that the Applicant has failed to establish that it has any legal status to make the town or village green application.
- 10.14. It has been found out from Mrs Marsh that Appleby Environment has the grand total of three members. It is therefore not representative of, and cannot claim to represent, the residents or inhabitants of Appleby Magna. Its main activist is Mrs Marsh, who lives next door to the claimed fields.
- 10.15. The application in this case was formulated by Mrs Marsh against the background of development proposals on the land near to her. Apparently someone at the end of May 2013 suggested to Mrs Marsh the possibility of a village green application on the claimed fields. She then emailed an officer at Leicestershire County Council on 31<sup>st</sup> May 2013, seeking advice on how to make such an application. She received a neutral response on 3<sup>rd</sup> June, and on 13<sup>th</sup> June 2013, only 10 days later submitted the application. That application did not contain any evidence questionnaires.
- 10.16. Subsequently Mrs Marsh contacted the Open Spaces Society and sought advice. She got the forms, and she and her husband then went round to 150 houses, seeking support by telling people about the town or village green application. The forms also included a pre-prepared map. All of that was long after the application had been submitted, and therefore it must be viewed in that light, with any adverse inferences that might generate.
- 10.17. It is repeated that the burden of proof in terms of the evidence is on the Applicant; she therefore must establish each and every ingredient, otherwise the application must fail.

- 10.18. There are other notable features of this case. One is that the Parish Council have in the past sought the permission of the landowners to enter onto this land, as can be seen from the exchanges with Deana Bamford. Also the Parish Council was involved in the preparation of the Village Design Statement for Appleby Magna. And the Parish Council itself never sought to claim any recreational or quasi-town or village green use of this land, let alone make any formal application. Thus the village's representative body has known all along who owned this land, and that permission was needed to go on it. It had sought that permission and obtained it. That casts a long shadow over the Applicant's evidence.
- 10.19. At no stage during the claimed period has the Parish Council sought to register the land as a town or village green. Throughout the claimed period there has been no effort by anyone else to do this, until the Applicant's hasty and ill-advised application in June 2013.
- 10.20. In weighing up the evidence on this application, it is important to bear in mind that it is not the quantity of witnesses that matters, but the quality of the evidence that they give. Also of course any written evidence that is not subjected to cross-examination must be treated with more than a degree of circumspection.
- 10.21. In considering those who did give oral evidence it is important to recall Morgan J's warning about commitment to the cause unconsciously distorting recollection. This point is reinforced by the fact that the Open Spaces Society's evidence questionnaires are by virtue of the questions they ask nearly always suggestive of the answers that they seek. Furthermore it is important to remember that the presence of people on the land is by no means unusual in this case, because of the two footpaths; their usage as footpaths must be discounted. What matters is the degree if any of any trespass off the defined routes of the footpaths. If any occurred it must be more than trivial and sporadic. It is not for the Objectors to establish this. It is for the Applicant to prove with evidence that a significant number of inhabitants frequently and deliberately strayed off the footpath to indulge in lawful sports and pastimes. The Applicant has failed to prove this.
- 10.22. There are a number of reasons why the assertion that there has been regular recreational use of the land for town or village green uses off the footpath cannot be sustained. Neither the Village Design Statement nor the 2011 LCC Survey report any recreational use of the land. There is an absence of well-trodden footpaths, as opposed to animal tracks, other than on the designated footpaths. There is a dearth of photographic or documentary evidence to demonstrate such use, for example bonfire or barbecue 'flyers'. Further, there is the presence on the field of cow and sheep muck, as had been referred to by the grazier Mr Fox. Then there had been the evidence about the poor or variable state of the pond and the quality of the water within it.

- 10.23. The gate that appeared in the Graves's fence in 2004 is also telling. First it appears that it was used to gain a shortcut to the football club. Therefore any such use was purely as a route, and not consistent with town or village green use. Furthermore, if town or village green activities had been well established, why would the Graves family twice offer £10,000 to buy some of the land? It is simply inconsistent with any town or village green use of the land. While we are only concerned with 1993 to 2013, some witnesses claimed that town or village green use had gone on much earlier. Thus it could be said that the Applicant's own witnesses undermined the case for registration.
- 10.24. Questions needed to be asked about the number of inhabitants claimed to be using the land. How many did actually use it for town or village green uses? The Applicant has failed to separate out those who used the land for walking or dog walking, and incidental uses associated with the footpath, from those who went to the claimed fields purely for town or village green recreational use. That is a failure in the Applicant's case that is fatal to registration.
- 10.25. Apart from Mrs Marsh's last minute list, when asked to name the people seen on the land the various witnesses tended to come up with the same dozen or so names. Many of these were dog walkers, and they would meet at regular times albeit they were mere passing acquaintances, and many of those were known only by their dog or by sight. These have to be discounted as the Applicant cannot show that they are inhabitants of the locality.
- 10.26. Nocturnal dog walking or usage of the claimed field must also be discounted, as that amounts to use with secrecy. How can any landowner be expected to challenge anyone using their land, if it is being done after dark or before it is light in the morning?
- 10.27. There is another problem with the incidental users. How can it be shown that the witnesses were not talking about the same person? There is a very real risk that this could lead to double or triple counting, thus distorting the true level of usage. This could distort the figures by a factor of 4 or 5.
- 10.28. Such an example of distortion came in the evidence of Mrs Ashfield. When asked how many in the locality used the field, she said 60%. However it had not been put to her what the population of the locality was. It is in fact 1,084, but how could she estimate 60% of an unknown figure? If one were to do the calculation, then 650 villagers must regularly use the land for town or village green purposes. Such a suggestion is patently absurd.
- 10.29. Mrs Marsh had not challenged all the points made in the objection as originally lodged on behalf of the Objectors. The following points remain highly relevant. The first is that the general character and use of the claimed field is as pasture and paddock. It is very undulating and boggy ground. Secondly there is the scale of this site. It is some 4.2 hectares,

and there is clearly no need in the village for a space of this size. Those who claim to use the land only really to claim to use it around the pond area.

- 10.30. Further there is the available alternative, the officially recognised recreational land very close by. It is claimed that matches on the recreation ground put others off, but they are not taking place the whole time.
- 10.31. The application field comes right into the centre of Appleby Magna, and of course is located right next to Mrs Marsh's house. It is also right next to the graveyard belonging to the church. Footpaths cut across the site longitudinally and latitudinally.
- 10.32. As mentioned previously, the Village Design Statement did not support town or village green use on this land. There is a general lack of any documentary historical reference to recreational use on the claimed fields. Caution is clearly necessary in assessing the Applicant's case in an instance such as this.
- 10.33. The site had been described in the Strategic Housing Land Assessment as being agricultural or pasture.
- 10.34. There is simply no evidential basis for saying it has been used throughout the claimed period by a significant number of the inhabitants. This must not be just a simple numerical exercise based on impression. One cannot discount the important neutrally produced documents, none of which supports the Applicant's claim.
- 10.35. Of the evidence accompanying the application, only 8 people claimed to have used the land during the whole of the claimed period. Further, all of the evidence questionnaires post-date the application by about 2 months.
- 10.36. Usage associated in any way with the footpaths must be discounted. It is for the Applicant to distinguish any other claimed use from use associated with the footpaths. This has not been done, therefore there is no reliable evidential basis for town or village green usage that can support the application.
- 10.37. Further, there is no evidence that large parts of the claimed field have been regularly used at all, in any way, for lawful sports or pastimes. The absence of evidence such as tracks, plus the presence of sheep and cattle in the whole of the claimed field, further supports this. Also the presence of sheep and cow muck over the field, but the absence of dog mess which Mr Ottewell had referred to, reinforces this point.
- 10.38. This should not be regarded as a case of dual use such as happened in the *Redcar* case, with two types of use taking place with give and take as between them. Agricultural use has taken place on this site for the

majority of the year. It is not really a situation where the *Redcar* type of question falls to be addressed.

- 10.39. In conclusion, there is no evidence that could justify the registration of the claimed fields as a town or village green, and the Registration Authority is requested to reject the application.

***Post-Inquiry correspondence***

- 10.40. I should mention that in correspondence which came after the close of the Inquiry, it was sought on behalf of the Objectors to raise, by reference to minutes of the Appleby Parish Council, the argument that it must have been possible for the Applicant, Mrs Marsh, through her association with Appleby Environment, or the previous group Appleby Heritage and Environment Movement (AHM), to have found out or indeed to have known the identity of the owners of the claimed fields. A reply to this correspondence was received by the Registration Authority from Mrs Marsh the Applicant. I have seen both of these items, and in my view nothing is raised in them which in fact goes to or assists the determination one way or other of the application in this case. This case is concerned with the criteria under **Section 15(2)** of the **Commons Act 2006**. The post-inquiry exchange I have just referred to does not seem to me to be relevant to those criteria, and I say no more about it.

**11. DISCUSSION AND RECOMMENDATION**

- 11.1. The application in this case was made under **Subsection (2)** of **Section 15** of the **Commons Act 2006**. That section applies where:

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

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

The application was dated 12<sup>th</sup> June 2013, and stamped as received by the Council as Registration Authority on the following day, 13<sup>th</sup> June 2013. The latter date therefore is the 'time of the application', from which the relevant 20 year period needs to be measured (backwards)

- 11.2. I should note that at the Inquiry, on 6<sup>th</sup> March 2014, and by agreement of all the parties present, Mrs Clare Marsh the Applicant made amendments by way of deletion (and consequent clarification) to Paragraph 1 of her Statutory Declaration in support of the Application which had been dated

12<sup>th</sup> June 2013. Following that amendment Paragraph 1 of the Declaration made it clear that she (Mrs Marsh) was ‘the person who has signed the foregoing application’. That minor amendment seemed to reflect the reality of the situation, and not to cause any potential prejudice to any party (and in any event the Objectors accepted it).

### **The Facts**

- 11.3. In this case there was considerable dispute in relation to some of the underlying factual background as to the history of the use of this site over the years. The Objectors correctly took the point that the law in this field puts the onus on an applicant to prove and therefore justify his/her case that the various aspects of the statutory criteria set out in *Section 15(2)* have in reality been met on the piece of land concerned.
- 11.4. To the extent that any of the facts were in dispute in this case, it is necessary to reach a judgment as to the disputed aspects of the evidence given, insofar as that evidence was relevant to the determination whether those statutory criteria for registration have been met or not.
- 11.5. Where there were any material differences, or questions over points of fact, the legal position is quite clear that they must be resolved by myself and the Registration Authority on the balance of probabilities from the totality of the evidence available. In doing this one must also bear in mind the point, canvassed briefly at the Inquiry itself (and mentioned by me earlier in this Report) that more weight will (in principle) generally be accorded to evidence given in person by witnesses who have been subjected to cross-examination, and questioning by me, than would necessarily be the case for written statements, questionnaires and the like, which have not been subjected to any such opportunity of challenge.
- 11.6. I do not think that the nature of the evidence given to me in this case necessitates my setting out in my Report, in a formal, preliminary way, a series of ‘findings of fact’. Rather, what I propose to do, before explaining my overall conclusions, is to consider individually the various particular aspects of the statutory test under *Section 15(2)* of the *2006 Act*, and to assess how my conclusions (on the balance of probabilities) on the facts of this case relate to those aspects. It should not however be assumed that any facts I mention under one heading are only relevant to that heading. I have taken into account the totality of the underlying facts in reaching my conclusions under all the headings, and (of course) in reaching my overall conclusions as well.

### ***“Locality” or “Neighbourhood within a locality”***

- 11.7. The application in this case was framed on the basis of the relevant locality being the Parish of Appleby Magna. This is a recognised civil parish, and entirely fits all the criteria pronounced upon by the courts as to what might properly constitute a ‘locality’ for these purposes. It also seems

appropriate from the evidence, and my perception of the area from my visits, that this should be the ‘locality’ to be considered, and this was not a matter of dispute between the parties. I therefore advise the Registration Authority that the relevant ‘locality’ in this case is the civil parish of Appleby Magna.

***“A significant number of the inhabitants”***

- 11.8. The law is clear in this context that ‘significant’ does not necessarily mean or imply a large number, or some fixed proportion of the inhabitants of the relevant locality: see, notably, ***R (Alfred McAlpine Homes Ltd) v Staffordshire County Council*** [2002] EWHC 76, [2002] 2 PLR 1. As was said by Sullivan J (as he then was) in that case, “*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.*”
- 11.9. These are helpful observations, but do not in themselves deal with the further complication which arises when the relevant land is crossed by public footpaths, or even unrecorded, ‘unofficial’ footpaths which follow a definite route, and which are in actual use by members of the (local or general) public. In such circumstances other caselaw establishes that particularly careful scrutiny is required to distinguish between, on the one hand, uses which are in reality use of the public footpath [or ‘unofficial’ path on a defined route], and activities incidental to such footpath use, and on the other hand, use of the wider surface of the land in general, in such a way as would signify to a reasonably observant landowner that a general right to use the land as a whole was being claimed.
- 11.10. This very important distinction is a matter which I discuss in later paragraphs of this section of my report, under the sub-heading “*Lawful sports and pastimes on the land*”.
- 11.11. I was not persuaded by some suggestions from the Objectors’ side that only a trivial number of local people ever came, sporadically, onto the land of the application site. On balance the evidence was convincing, it seems to me, that significant numbers of the inhabitants of Appleby Magna have regularly come into the fields of the application site for recreational activities which have consisted mainly, but not exclusively, of walking, with or without dogs.
- 11.12. Evidence had, it seemed to me, been brought together by the Applicant, in the form of written and oral statements, completed evidence questionnaires etc., which, was in my view persuasive that what can sensibly be seen as a significant number of the inhabitants of the village have indulged in or seen some form of recreational activity on the fields with reasonable regularity over a long period. I do not attach significance to the point that only a minority of the total number of inhabitants of Appleby Magna (apparently somewhat over 1000) had provided any form of evidence

about recreational activity on this land. If the evidence about the nature and location of that activity otherwise met the criteria of *Section 15* of the *Commons Act 2006*, I would have no difficulty in accepting that the Applicant had collected evidence showing use by ‘a significant number’ of the local inhabitants.

- 11.13. However the key question in this particular case is, it seems to me, the one I address under my next subheading. Were local people in general indulging in “*lawful sports and pastimes on the land*”, in the manner required for a successful claim under *Section 15(2)*?

***Lawful sports and pastimes on the land***

- 11.14. The application site is a substantial field of (I am told) somewhat more than four hectares. There are two officially designated public footpaths crossing the land. One of these runs approximately east-west from a ‘kissing gate’ to the west of the parish church, across the site to another kissing gate out through the western boundary of the site, leading to the wider footpath network beyond, on other land. The other public footpath runs just west of southwards from another kissing gate in the northern boundary, on Rectory Lane, to meet the east-west footpath approximately at right angles, a little to the west of the kissing gate near the church hall. Both of the public footpaths gave the appearance of being well used – particularly the east-west one – at the time of my site visits, which inevitably was outside the 20 year period principally under consideration. However the evidence overall strongly suggested to me that these paths had been well used during the whole of that 20 year period as well.
- 11.15. There are no officially recognised footpaths in the southern half of the application site, i.e. to the south of the main east-west footpath, and no others to the north of that line, apart from the one mentioned in the preceding paragraph. Yet it was clearly apparent, both from my site visits and from the evidence given to me from both ‘sides’ of this dispute, that there are certain other paths on this land which have also been quite well used. The most obvious, and one which was referred to in the evidence of many of the Applicant’s witnesses, and several for the Objectors, is a route approximately following the north-western and then northern boundaries of the land from the western kissing gate to the northern one onto Rectory Lane.
- 11.16. At the time of my site visits it was possible to discern a number of other trodden tracks elsewhere on the land as well, although it was by no means easy in several instances to form a view as to whether (as some of the Objectors’ witnesses had suggested) they were just narrow tracks trodden by sheep, or whether human use had also had a significant part in their formation. Visually (at the time of the site visits) I gained a strong impression that humans might have walked reasonably regularly from the east-west path southwards to the area around the pond on the site, particularly the more open north/western side of that pond. It also seemed, purely from visual inspection, to be quite credible that people (and not just

sheep) might have walked a route from the south-western (locked) farm gate up to the area of the pond.

- 11.17. There were also some visible tracks, apart from the ones I have mentioned above, in the northern half of the site. It is worth noting that it is this northern part in particular that is most affected by the pattern of 'ridge and furrow' or 'lonts' that contours the surface. The ridges and furrows run predominantly in a north-south direction. While this gives the field an attractive appearance, it does not make for particularly easy walking on any line which is at an angle to, or crosses, the 'grain' of the ridge and furrow pattern.
- 11.18. Nevertheless, as I have noted, there were some other tracks visible in the northern half which had clearly been walked by animals and/or humans. In terms of the actual evidence given by witnesses as to use during the claim period, by way of example, one favoured route which a number of witnesses mentioned deviated westward from the 'north-south' public footpath a little to the south of the northern kissing gate, to cross the field somewhat 'on the diagonal' to the western gate.
- 11.19. A great deal of the evidence given for the Applicant in reality consisted of evidence of regular walking of one or more of those routes, or a few others, very often with dogs, whether on or off the lead. It is true that a number of the witnesses stressed that they did not stick to the public footpaths, and wandered more generally than that, but a combination of the nature of the land here, and the totality of the evidence given (even if one confined consideration to the witnesses for the Applicant) convinced me, on balance, that the overwhelming preponderance of the recreational walking in these fields had been on more or less fixed routes. These routes were not limited to the two public footpaths, but have included other routes too, most notably a route following the north-western boundary between the western and northern kissing gates, and a diversion southward from the east-west path to visit the area at the edge of the pond.
- 11.20. I came to the view, on the balance of the evidence produced, that by far the main recreational activity by local people on the application land had consisted of people walking on, or approximately on, fixed or identified path routes of the kind I have been discussing. On my understanding of the law, use of that kind would not warrant registration under the *Commons Act*, for which a more general, regular use of the whole usable surface of the land would be required.
- 11.21. I have no doubt that some local people who were using these routes, or their dogs, will have strayed from time to time from the paths they were predominantly following. However I do not, on the balance of the evidence, believe that the extent of that would justify a successful claim to have been using the surface of the land as a whole, as required for the purposes of *Section 15* of the *Commons Act*.
- 11.22. I accept, from the evidence, that from time to time there will have been individuals, or even small groups of individuals, who will have wandered onto parts of the land not affected by the more obvious paths or tracks

which I have referred to above. My conclusion on the balance of the evidence is that such use, when it occurred, was in reality no more than fairly trivial or sporadic trespass, and very far indeed from the kind of significant, openly apparent use needed to establish a claimed right to use the land as a whole.

- 11.23. Indeed there were large parts of the overall site where, on my assessment of the evidence, the claims of any significant level of use by local people at all, beyond the trivial and sporadic, were extremely unconvincing. This applies to most of the southern half of the land, apart from an area next to the pond, and possibly a route southwards to the south-western farm gate. Even in the more heavily visited northern part of the site, i.e. from approximately the main east-west path northwards, the evidence seemed to me overwhelmingly to support the view that there had been some walking routes within the field, rather than a general, regular wandering over substantially the whole surface for recreational ‘sports and pastimes’ purposes.
- 11.24. I am aware that one of the implications of the view I have formed is that there might in principle be the possibility that successful claims could be made that other public rights of way had become established through long usage, beyond the two officially recorded on the County Council’s Definitive Map of public footpaths. From the evidence I heard, perhaps the most obvious of these routes would be the one around the north-western boundary, to which witnesses from both sides referred. However the assessment of potential claims that public footpath rights have become established is entirely outside the scope of the inquiry which I have held under the *Commons Act*, and any such claim(s) would need to be pursued through separate proceedings under the highways legislation.
- 11.25. Thus far I have mainly concentrated my attention on the substantial amount of evidence which was given about people walking on the application site, with or without their dogs. I acknowledge that the evidence given by the witnesses and statements for the Applicant went beyond that. The evidence statements as a whole claimed a considerable variety of activities, but the ones most frequently referred to, and which were given the most emphasis by the parties (including the Applicant) at the Inquiry were sledging, tobogganing and snowballing etc in the snow, activities around the edge of the pond, and blackberrying. There was also a moderate amount of reference to BMX-type bike riding, kite flying, picnics, and the activities of the Brownies, Cub Scouts, and the ‘Happy Hedgehogs’ playgroup. There were also a number of references to activities such as painting/drawing, bird watching and stargazing/astronomy.
- 11.26. The Objectors did question whether those activities had in reality taken place to any significant or sufficient extent during the qualifying period. However, even taking the Applicant’s claims at face value, it seemed to me that, properly assessed, they fell well short of justifying a case for registration of this large site under the *Commons Act*. The evidence concerning activities in times of snow appeared to be almost entirely

related to a small strip of sloping ground almost immediately to the south of the main east-west footpath. It seemed to me to be quite convincingly arguable that these activities, when they took place, were in reality incidental to the fact that there is a public right of way in a field, but close to the centre of the village, which happens to have some sloping ground next to it. It is difficult to see how claimed activity of this kind, more or less adjacent to the footpath route, could possibly justify a claim that this large piece of agricultural land (some 4.2 hectares) should be registered as 'town or village green'. Neither is there any sensible basis on which this small, sloping part of the site, which no-one sought to define in terms of boundaries, could properly be treated as a new, very much reduced, 'application site' and registered separately.

- 11.27. More or less the same considerations apply, in my judgment, to the claims of activity (including some picnics) around the edge of the pond, particularly its north-western edge. The pond is not immediately adjacent to one of the footpaths on the definitive map, but as I have noted above, there was evidence of a *de facto* walking route leaving the main east-west path and going to the north-western edge of the pond. It seems to me that activities such as pond-dipping, picnics etc., at that location might well be seen most appropriately as adjuncts or incidents to the (arguable) establishment of a walking route (i.e. a path) in that part of the site. They certainly do not in my view, even if taken at face value, justify registration of the large application site claimed here, and once again there is no evidential basis (nor one to be derived in any way from the parties' submissions) for it to be appropriate, or possible, to seek to define and consider some very small new, hypothetical 'application site' along the edge of the pond.
- 11.28. The evidence about blackberrying on the land, as I understand it, almost entirely related to the north-western perimeter adjacent to what the evidence showed to be a *de facto* (even if not officially registered) footpath route, or to the area just west of the pond. Even there it seemed to me to be adjacent to what appeared to be a *de facto* path route. In both of these cases I therefore conclude that such blackberrying as has taken place has been as an adjunct or incident to the (arguable) establishment of walking routes on the land, rather than the establishment of a 'lawful sports and pastimes' use of the application site more widely. Even if this point is less clear-cut in the area near the pond than along the 'north-western perimeter' route, there is no basis on which any identifiable small part of the large current application site could sensibly or properly be considered for registration.
- 11.29. To the extent that any blackberrying might have taken place anywhere else on the overall application site than the locations I have just been considering, it seems to me from the evidence that it could only have been trivial or sporadic.

- 11.30. As for other claimed activities such as BMX-type bike riding, kite flying, any picnicking other than next to the pond, or indeed people taking rugby balls with them when they walked on the site, I do not doubt that some activities of these kinds might have taken place from time to time over the years. However, in my judgment there was nothing in the evidence to convince me or the Registration Authority that these things, when they took place, were anything other than activities on or incidental to the use of the footpaths on the land, or in the alternative trivial and sporadic. There was nothing which convincingly suggested that activities of that kind extended over the land area as a whole, still less that they did so on anything other than a sporadic basis.
- 11.31. I found the evidence convincing that the local Brownie group (and also possibly the Cubs) and the “Happy Hedgehogs” playgroup were taken onto or across the land of the application site from time to time. However, once again the evidence in my view, on the balance of probabilities, did not really support the conclusion that anything more had regularly taken place than the use of the public footpaths on the land (and possibly other *de facto* paths, notably the one round the north-western perimeter), combined with other activities which are perfectly normal incidents or adjuncts of taking children for a walk along a footpath in the English countryside. There was nothing about these activities, on my view of the evidence, which justified the view that a right to use the entire surface of this large agricultural field was being claimed by the local inhabitants.
- 11.32. This same basic conclusion on my part applies even more strongly to such evidence as there was about activities such as painting/drawing, photography, bird watching and stargazing/astronomy on the land. There was to my understanding nothing at all about the evidence concerning activities of this kind to suggest that it was anything other than the incidental activity of people who were essentially using the footpaths crossing the land.
- 11.33. I believe I have now mentioned the claimed activities to which most attention was given by the parties at the Inquiry, but I have considered the totality of the evidence, written as well as oral, produced for the Applicant, and nothing about it causes me to form a different overall view from that which I have been expressing above.
- 11.34. I ought to mention that, in reaching this view which I have expressed, I have kept very much in mind the views expressed by the House of Lords in the well-known ‘*Trap Grounds*’ case (*Oxfordshire County Council v Oxford City Council* [2006] UKHL 25), to the effect that an applicant need not show that every single part of the surface of a claimed site has been used for ‘lawful sports and pastimes’. It is sufficient that the extent of use by local people shows a general intention and practice of using the land as a whole, given its physical state. That particular case had concerned an area of scrubland where impenetrable thickets of bushes etc. prevented anyone accessing a substantial proportion of the land, but use by the local inhabitants had extended fully over the parts which were realistically accessible.

- 11.35. It seems to me that the present application site is not like the ‘Trap Grounds’ site. It does not, save to a small degree, contain anything analogous to the impenetrable thickets of scrub. It is essentially a large agricultural pasture field, with a number of footpaths on it, some of them definitive publicly recorded ones, others not. My findings here are essentially that such recreational use (mostly walking) as has taken place in this field has not been extensive over the whole surface of it, or over such a high proportion of it as effectively to represent a claim to use the whole. Rather it has tended to be confined to the footpaths, either as routes for walking, with or without dogs, or for other incidental activities most reasonably to be regarded as adjuncts or in some way ancillary to use of the paths as such. In such circumstances, in my view, a reasonably observant landowner, even one more regularly observant than the landowners were here, would not sensibly have been expected to appreciate that a claim was being asserted to use the surface of the field generally ‘as of right’ for lawful sports and pastimes.
- 11.36. In my view the considerations I have just been addressing represent a fundamental difficulty for the Applicant in this case, meaning that the application must inevitably fail. Nevertheless I go on (briefly) to consider the remaining aspects of the statutory criteria under *Section 15(2)* of the *2006 Act*.

***“For a period of at least 20 years; and continue to do so”***

- 11.37. The evidence was reasonably persuasive on behalf of the Applicant that much the same sort of recreational activities (i.e. mainly walking on the paths, but with some incidental other activities) had been undertaken by local people within the land on the application site over the entire relevant period of 20 years from 1993 to 2013, and more. Indeed it seems possible on the evidence that in the more distant past some other activities, such as the holding of an annual bonfire on at least a number of occasions, might have taken place in the field.
- 11.38. However these conclusions do not overcome the fundamental difficulty for the Applicant in relation to the evidence of activities in this field during the relevant 20 year period, as discussed extensively above.

***“As of right”***

- 11.39. This aspect of the statutory criteria is often one of the most contentious ones. However in this instance there is essentially very little dispute that local people (and indeed possibly others) have been doing some things on the land ‘as though they had the right to do so’ during the relevant years. It is just that, in my view of the evidence, what they have been doing is using footpaths on the land as such, and doing certain other things which are most reasonably to be regarded as incidental to such footpath use. Some of those footpaths are already officially recognised and recorded as such. It is possible that some other routes might in principle be capable of recognition as public footpaths.

11.40. What there has not been, in my opinion, is persuasive evidence that the land here as a whole, beyond the footpath routes, has been used ‘as of right’ to any significant or material extent for ‘lawful sports and pastimes’.

12. **CONCLUSION**

12.1. It follows that my conclusion is that the Applicant here has not made out her case for registration under *Section 15* of the *Commons Act*.

12.2. My recommendation to the County Council as Registration Authority therefore is that **no part** of the land to which this application relates should be added to the Register of Town or Village Greens, because on the evidence it does not meet the statutory criteria required for such registration, for the reasons explained in this Report.

**ALUN ALESBURY**

20<sup>th</sup> June 2014

Cornerstone Barristers  
2-3 Gray's Inn Square  
London  
WC1R 5JH

## APPENDIX I

### LIST OF APPEARANCES AT THE INQUIRY

#### FOR THE APPLICANT:

Ms Fiona McCrae - of Counsel,  
instructed by Direct Access, pro bono

She called:

Mr Peter Selby, of 36 St Michael's Drive, Appleby Magna  
Mr William Arthur Gothard, of 33A Church Street, Appleby Magna  
Mr Clive Jayne, of Adelaide House, 32 Church Street, Appleby Magna  
Mr David Gray, of 2 Moore Close, Appleby Magna  
Mr Duncan Saunders, of 22 Botts Lane, Appleby Magna  
Mrs Maria Lewis, of 1 Duck Lane, Appleby Magna  
Mrs Dulcie Hincks, of 53 Church Street, Appleby Magna  
Mr Richard Wood, of 16 St Michael's Drive, Appleby Magna  
Mr Andrew Saunders, of Stockton Heath, Cheshire  
Mrs Wendy Stark, of 42 Top Street, Appleby Magna  
Mrs Celia Smith, of 3 Didcott Way, Appleby Magna  
Mr Paul Cooper, of 5 Garton Close, Appleby Magna  
Mrs Christine Wedgbury, of 55A Church Street, Appleby Magna  
Mr Peter Graves, of Church Farm House, 22 Church St, Appleby Magna  
Mrs Laura Graves, of the same address  
Ms Sarah Daft, of 13 Blackhorse Hill, Appleby Magna  
Mrs Paula Ashfield, of 3 Bowleys Lane, Appleby Magna  
Mr Terry Grice, of 13 Bowleys Lane, Appleby Magna  
Mrs Sue Taylor, of The Eaves, Mawbys Lane, Appleby Magna  
Mrs Christine Denson, of 11 Bowleys Lane, Appleby Magna  
Mr John Passey, of 15 St Michael's Drive, Appleby Magna  
Dr Barbara Lowesmith, of 5 Bowleys Lane, Appleby Magna  
Mrs Clare Marsh (Appleby Environment), Applicant, of Church Barn,  
Church Street, Appleby Magna  
Mr Timothy Marsh, of the same address

**FOR THE OBJECTORS:**

Mr Martin Edwards - of counsel  
- Instructed by Freeth Cartwright LLP  
1 Colton Square, Leicester, LE1 1QH

He called:

Mr Michael Fallowell, Chartered Surveyor, of Newton Fallowell,  
Coalville, Leics

Mr Paul Lees, Surveyor, of Newton Fallowell, Coalville, Leics

Mr Tim Farley, planning consultant, of Copesticks, Birmingham

Mr Mark Ottewell, of Markfield, Leics

Mr Jonathan Chastney, of Sibson, Warwickshire

Mr Ben Fox, of Barn Farm, Ravenstone, Leics

Mr James Ottewell, Chartered Surveyor, of Melbourne, Derbyshire

## **APPENDIX II**

### **LIST OF NEW DOCUMENTS PRODUCED TO THE INQUIRY**

N.B. This (intentionally brief) list does not include the original application and supporting documentation, the original objection, or any material submitted by the parties or others prior to the issue of Directions for the Inquiry. It also excludes the material contained in the prepared bundles of documents produced for the purposes of the Inquiry on behalf of the Applicant and the Objectors, and provided to the Registration Authority (and me) as complete bundles.

#### **FOR THE APPLICANT**

List of Witness Statements

List of completed Evidence Questionnaires

‘Schedule of Use, Church Hall Field’

Suggested Inquiry Schedule

Appleby Magna & Appleby Parva Village Design Statement

Mrs P Ashfield’s list of people seen using the field etc.

Mrs S Taylor’s list of people seen on the land

Mrs C Denson’s list of people/activities seen etc.

Mrs C Marsh’s list of people seen on the land

‘Additional Submissions on behalf of the Applicant’

Response (22<sup>nd</sup> April 2014 – *post-Inquiry*) to Freeth Cartwright letter of 16<sup>th</sup> April 2014

#### **FOR THE OBJECTORS**

Email of 4<sup>th</sup> March 2014, produced by Mr T Farley

Appleby Magna Parish Council letter, 17<sup>th</sup> June 1999 (produced by Mr J Ottewell)

Fax (15/3/96) from Ms Deana Bamford to James Ottewell

Written note of Objectors’ Closing Submissions

Letter, 16<sup>th</sup> April 2014 [*post-Inquiry*] from Messrs Freeth Cartwright, with enclosure.