IN THE MATTER OF TWO APPLICATIONS

BY [redacted] AND [redacted]

FOR THE REGISTRATION AS A TOWN OR VILLAGE GREEN

OF LAND AT ASHTON VALE FIELDS, BRISTOL

INSPECTOR'S REPORT

A. The legislative framework

1. The Commons Registration Act 1965 ("the 1965 Act") made provision for the establishment and maintenance of registers of common land and town or village greens, including (by section 13) provision for the amendment of those registers "*where ... (b) any land becomes common land or a town or village green*". Procedural provisions for the addition of land to the registers by the local authorities responsible for their maintenance were enacted in the Commons Registration (New Land) Regulations 1969 ("the 1969 Regulations"). Any person could apply for the addition of land as a new town or village green: regulation 3(4).

2. The original definition of "town or village green" in section 22(1) of the 1965 Act was as follows:[1]

> *"land* [a] *which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or* [b] *on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or* [c] *on which the inhabitants of any locality have indulged in such sports and pastimes as of right for not less than twenty years."*

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[1] The letters [a], [b], and [c] did not appear in the statute itself, but have been interpolated by me to reflect the common practice of referring to the three distinct categories of land registered under the 1965 Act as, respectively, "class a", "class b" and "class c" greens.

3. The definition was amended by section 98 of the Countryside and Rights of Way Act 2000 with effect from 30 January 2001. As amended, it read:

> *"land* [a] *which has been allotted by or under any Act for the exercise or recreation of the inhabitants of any locality or* [b] *on which the inhabitants of any locality have a customary right to indulge in lawful sports and pastimes or* [c] *which falls within subsection (1A) of this section".*

Land fell within section 22(1A) if it was

> *"land on which for not less than twenty years a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged in lawful sports and pastimes as of right, and either*
>
> *(a) continue to do so, or*
>
> *(b) have ceased to do so for not more than such period as may be prescribed, or determined in accordance with prescribed provisions."*

No regulations were ever made for the purposes of the subsection.

4. Applications for the registration of land as a town or village green made before 6 April 2007 continue to be governed by the 1965 Act and 1969 Regulations. However, all subsequently made applications are governed instead by section 15 of the Commons Act 2006 ("the 2006 Act").[2] Section 15[3] lays down criteria for the

[2] See the Commons Act 2006 (Commencement No 2, Transitional Provisions and Savings) (England) Order 2007 for the relevant commencement and saving provisions.

registration of new greens which are similar, although not identical, to those in section 22(1A) of the 1965 Act. It follows that familiarity with the terms of the section 22(1) definition of "town or village green", both as originally enacted and as amended in 2001, is essential, because much of the case law relating to those provisions applies or may apply by analogy to section 15.

5. Insofar as presently material, section 15 provides that:

> *"(1) Any person may apply to the commons registration authority to register land to which this Part applies*[4] *as a town or village green in a case where subsection (2), (3) or (4) applies.*
>
> *(2) This subsection applies where –*
>
> *(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, 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.*
>
> *(3) This subsection applies where –*
>
> *(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years;*
>
> *(b) they ceased to do so before the time of the application but after the commencement of this section; and*

[3] In the remainder of this Report I shall refer to section 15 of the 2006 Act simply as "section 15".
[4] Part 1 of the 2006 Act applies to all land in England and Wales except the New Forest, Epping Forest, and the Forest of Dean: section 5.

(c) the application is made within the period of two years beginning with the cessation referred to in paragraph (b).

(4) This subsection applies (subject to subsection (5))[5] *where –*

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

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

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

6. "Land" is defined in section 61 of the 2006 Act as follows:

" 'Land' includes land covered by water".

7. Applications made under section 15 in respect of land in England are currently governed by the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 ("the 2007 Regulations").[6] Their provisions are similar, but not identical, to those of the 1969 Regulations. In each case, the application has to be in the prescribed form and supported by a statutory declaration made by the applicant.[7] A registration authority receiving such an application is required (if satisfied that it is duly made) to notify the affected landowners and other potential objectors and take other steps to publicise the

[5] The section 15(5) exception only applies where planning permission had been granted in respect of the land, and its implementation had begun, before 23 June 2006 (not the case here).
[6] Save in the seven "pilot areas" specified in Schedule 1 to the Commons Registration (England) Regulations 2008, which do not include Bristol.
[7] 1969 Regulations, regulation 3(7); 2007 Regulations, regulation 3(2)-(3).

application.[8] The authority is then to proceed to further consideration of the application and any statements in objection.[9] Anyone can object to the application, whether or not interested in the relevant land.

8. Neither set of Regulations contains any provision for an oral hearing to be held before the authority "disposes" of an application by "accepting" ("granting", in the 2007 Regulations) or "rejecting" it.[10] However, determining applications on paper would in many cases be unsatisfactory, especially where there are material disputes of fact which can only fairly be resolved by hearing oral evidence which is tested in cross-examination. A practice has accordingly developed among registration authorities of appointing an independent inspector to conduct a non-statutory[11] inquiry and report back to the authority on the evidence and the law, with a recommendation as to how it should determine the application. That practice has received express judicial endorsement in several cases,[12] and been impliedly approved by the House of Lords in *R v Oxfordshire County Council, ex p Sunningwell Parish Council* [2000] 1 AC 335 (*"Sunningwell"*) and *Oxfordshire County Council v Oxford City Council* [2006] 2 AC 674 (*"Oxfordshire"*). The decision, however, remains the registration authority's to make. The duty to determine the application is not delegable to anyone outside the authority and it is the duty of the authority to assess the submitted evidence and consider the arguments on both sides for itself when performing the duty to determine the application.[13] It is not, however, under any *"investigative duty which requires it to find evidence or reformulate the applicant's case. It is entitled to deal with the application and the evidence as presented by the parties"*: per Lord Hoffmann in *Oxfordshire* at paragraph 61.

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[8] 1969 Regulations, regulation 5(4); 2007 Regulations, regulation 5(1).
[9] 1969 Regulations, regulation 6; 2007 Regulations, regulation 6.
[10] 1969 Regulations, regulations 7, 8; 2007 Regulations, regulations 8, 9.
[11] The inquiry is "non-statutory" not in the sense that the authority has no power to hold it (for section 111 of the Local Government Act 1972 confers power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions, including determining a section 15 application), but in the sense that there is no provision for it in the particular legislation specifically governing such applications.
[12] *R v Suffolk County Council ex p Steed* (*"ex p Steed"*) (1995) 70 P&CR 487, pp 500-501; *R (Cheltenham Builders Ltd) v South Gloucestershire Council* [2004] JPL 975 (*"Cheltenham Builders"*), paragraphs 34-40; *R(Whitmey) v Commons Commissioners* [2005] QB 282, paragraphs 28-30, 62.
[13] *ex p Steed* in the Court of Appeal (1996) 75 P&CR 102, pp.115-116.

9. The House of Lords held in *Oxfordshire* that in response to an application for registration of land as a green made under the 1965 Act and 1969 Regulations, the registration authority was entitled, without any amendment of the application, to register only that part of the land the subject of the application which the applicant had proved to have been used in the requisite manner for the necessary period. There was no rule that the lesser area should be substantially the same as, or bear any particular relationship to, the whole area originally claimed. See in particular Lord Hoffmann's speech, at paragraph 62. At first instance, Lightman J had declared the jurisdiction to exist subject to the qualification that its exercise would "*occasion no irremediable prejudice*" to anyone. The appeal against that declaration was dismissed by the Court of Appeal and the House of Lords, so that the "irremediable prejudice" test stood. However, Lord Hoffmann said that "*it is hard to see how [registration of part] could cause prejudice to anyone*". I can think of no reason why the courts would adopt a different approach to applications under the 2006 Act and 2007 Regulations, and at the inquiry conducted by me in relation to the applications with which this Report is concerned, counsel for the parties concurred with my view.

10. Other procedural questions which arose in *Oxfordshire* were whether registration authorities had power to allow amendments to 1965 Act applications, and whether they had power (without any amendment) to treat such applications as if a different date had been specified in Part 4 of the application form as the date on which the land became a town or village green. Both questions were answered in the affirmative. The context in which the questions arose was this. The applicant, Miss Robinson, had specified 1 August 1990. The inspector took the view that she had made a mistake, because the "continuance" requirement under the 1965 Act as amended in 2001[14] precluded land's satisfying the definition of "town or village green" on a date preceding the application, and the date of the application was the only correct answer to the Part 4 question. However, he also took the view that the registration authority could treat the application as if that was the answer Miss Robinson had given. The inspector's approach was upheld by Lightman J, the Court of Appeal, and the House of Lords, and Lightman J made a declaration accordingly which was left undisturbed on appeal.

[14] See paragraph 3 above.

11. At paragraph 61 Lord Hoffmann made the general observations that

> *"It is clear from the [1969] Regulations that the procedure for registration was intended to be relatively simple and informal. The persons interested in the land and the inhabitants at large had to be given notice of the application and the applicant had to be given fair notice of any objections (whether from the land owner, third parties or the registration authority itself) and the opportunity to deal with them. Against this background, it seems to me that the registration authority should be guided by the general principle of being fair to the parties."*

Baroness Hale said[15]

> *"I... entirely agree [with Lord Hoffmann] that the registration authority may allow amendments or deal with an application in accordance with the evidence before them, provided always that they have given every person who might wish to object (or who otherwise has a legitimate interest in the process) a fair opportunity to consider what is proposed and make representations about it."*

12. I can think of no reason why the courts would adopt a different approach to the issue of allowing amendments to applications made under the 2006 Act and the 2007 Regulations. Different considerations might apply to - in Baroness Hale's words - dealing with applications in accordance with the evidence before them, without any formal amendments being made. As to that, counsel for the parties disagreed, and I shall return to the matter below.[16]

13. The burden of proof that the applicable criteria are satisfied rests on the applicant for registration. It has been said that it is "no trivial matter"[17] for a landowner to have land registered as a green, having regard to the consequences. As confirmed in

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[15] *Oxfordshire*, paragraph 144.
[16] At paragraph 551.
[17] *ex p. Steed* (1996) 75 P&CR 102, at p.111 per Pill LJ, approved by Lord Bingham in *R (Beresford) v. Sunderland City Council (Beresford)* [2004] 1 AC 889 at paragraph 2.

Oxfordshire by the House of Lords, registration gives rise to rights for the relevant local inhabitants to indulge in lawful sports and pastimes on the land, and attracts the protection of section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876 ("the 19th century legislation") which make it a criminal offence to build or do anything on the land which interferes with local inhabitants' enjoyment of their rights.[18] It was also said that all the ingredients of the 1965 Act definition had to be "properly and strictly proved", and careful consideration had to be given by the decision-maker to whether that was the case.[19] However, there was no suggestion that the standard of proof was anything other than the usual civil standard, ie. the balance of probabilities.

14. There is an already considerable, and growing, body of case law bearing on the interpretation and application of the provisions in the 1965 and 2006 Acts for registration of land as a town or village green. I shall refer to authorities which address the substantive (as opposed to procedural) legal issues arising in Section H of this Report (paragraphs 410-461 below).

15. It is important to note that a section 15 application can only succeed if (or to the extent that) the land the subject of the application is proved to satisfy the criteria set out in section 15(2), 15(3) or 15(4). Conversely, if those criteria are met, the application must be granted. No regard can be had to considerations of the desirability of the land's being registered as a green on the one hand, or of its being developed or put to other uses on the other hand. All such considerations are wholly irrelevant to the statutory question which the registration authority has to decide, namely whether the land (or any part of it) is land which satisfies the specified criteria for registrability.

16. The only context in which it is legitimate to have regard to a subsisting planning permission or proposal for development of the land the subject of an application is in assessing the credibility of witness evidence. That is because of the possibility that

[18] Those rights may, however. be qualified so as to permit the landowner to continue activities carried on by him before registration: *R (Lewis) v Redcar and Cleveland Borough Council* [2010] 2 WLR 653 ("*Lewis*"). See further paragraphs 429-430 below.

[19] See the references at footnote 17 above, and also *Beresford* paragraph 92 per Lord Walker.

witnesses might be motivated to exaggerate or even fabricate evidence, or their recollections might be subconsciously coloured, by their support for, or opposition to, the proposed development.

B. The Applications

17. The two applications with which this Report is concerned ("the Applications") were both made under section 15 and fall to be determined in accordance with its provisions. They were made by [redacted] and [redacted] ("the Applicants") and dated respectively 26 October 2009 and 22 October 2009. Each of the Applications[20] was made in the form prescribed by the 2007 Regulations, Form 44, and accompanied by the requisite statutory declaration.[21] They were submitted to Bristol City Council in its capacity as registration authority for the purposes of the 2006 Act ("the Registration Authority").

18. Both Applications were for registration as a new town or village green of one and the same area of land, described in part 5 of the forms as being "*Ashton Vale Fields/The Fields*" (with the addition in [redacted] case of the words "*Ashton Marsh*") and located "*adjoining North Somerset boundary between Ashton Drive cul-de-sac and the Park and Ride*". The land ("the Application Land") comprises six intercommunicating fields, totalling approximately 24.7 hectares (42.2 acres) in area, which are described in more detail in Section C of this Report (paragraphs 25-40 below). Both Applications were expressed to be made under section 15(2), that is on the basis that qualifying use was continuing at the time of the application.[22] The justification for the Applications was stated in part 7 of the two forms in more or less identical terms:

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[20] There is a copy of [redacted]'s application at pp 3-18 of the Applicants' Inquiry Bundle and a copy of [redacted] application at pp 19-34. Throughout the remainder of this Report, references in the form "A [no]" are references to pages in the Applicants' Inquiry Bundle. References in the form "O [no]" are references to pages in the Objectors' Inquiry Bundle.

[21] As initially submitted, they did not fully comply with the 2007 Regulations in that they were not accompanied by an ordnance map on a scale of not less than 1:2,500 identifying the Application Land (regulation 10). That was put right in December 2009.

[22] See paragraph 5 above.

"indulgence by a significant number of inhabitants of super output area of Ashton Vale as of right in lawful sports and pastimes for a period of at least 20 years..."

19. In response to the request in part 6 of Form 44 to identify the locality or neighbourhood within a locality to which the claimed green related, the Applicants each wrote: *"Bedminster - Super Output Area E01014501/Ashton Vale/DSN Name Bristol 041A"*. At a pre-inquiry meeting held on 8 February 2010, the Applicants made an unopposed application (which was granted) to amend those answers by adding the words "Ashton Vale Village" as an alternative description of the same geographical area, which was shown edged red on the small-scale maps attached to the Applications. A copy of those maps is for convenience appended to this Report as Appendix A.[23] However, reference should be made to the large-scale map at A34(b) for the full picture.

20. The Applications were simultaneously lodged with the Registration Authority on 28 October 2009. They were accompanied by 39 evidence questionnaires in standard Open Spaces Society format, 38 of which had been completed by the individuals listed in Appendix B to [redacted] Application[24] and the other had been completed by [redacted]; and a list of 32 activities headed *"lawful sports and pastimes declared in witness statements"* (Appendix A to the Applications).[25]

21. The Registration Authority gave notice of the Applications, as required by the 2007 Regulations. One written objection was received, dated 24 December 2009.[26] It was made by [redacted] and [redacted] ("the Objectors"), the joint registered proprietors of the Application Land under title nos. [redacted] and [redacted]. The grounds of their objection, briefly summarised, were that:

- public use of the Application Land had been largely confined to use of official and *de facto* public footpaths, and otherwise too trivial and sporadic to appear

[23] The Application Land was also edged red on those maps but was not included in the claimed locality/ neighbourhood.

[24] [redacted].

[25] [redacted].

[26] [redacted].

to a reasonable landowner to amount to the assertion of a general right of recreation;

- there had not been user by a significant number of the inhabitants of the selected "locality";

- the Bedminster Super Output Area was not a locality within the meaning of section 15;

- such recreational use of the Application Land as there had been had not been "as of right" because the users had deferred to various activities carried on by or with the authority of the landowners; further, some use had been admittedly permissive and some users had gained access to the land by force;

- use of the *de facto* footpath, and walking around the perimeter of the fields, did not amount to lawful sports and pastimes for the purposes of section 15.

22. I was instructed by the Registration Authority to conduct a non-statutory public inquiry and to report thereafter with my recommendations as to whether the Applications should be granted or rejected. The inquiry took place at the Council House in Bristol over ten days (17, 18, 24, 25, 26, 27 and 28 May and 1, 2 and 3 June 2010). I held a formal site visit accompanied by [redacted], counsel for the Applicants, other supporters of the Applications, and legal and lay representatives of the Objectors, on the afternoon of 2 June. The Applicants were represented by [redacted] of Counsel and the Objectors by [redacted], instructed by [redacted]. I am grateful for their assistance and for the administrative support provided by the Registration Authority's officers [redacted] and [redacted]

23. The directions issued by me for conduct of the inquiry included a requirement for the Applicants to include in their inquiry bundle large scale OS maps showing, respectively, the boundaries of the Application Land and the boundaries of any area

relied upon as a "locality" or "neighbourhood" for the purposes of the Applications. Those maps are in their inquiry bundle at pp34(a) and 34(b). At p34(c) is an additional copy of the large scale map on which the Applicants helpfully marked the houses of the persons who gave oral or written user evidence in support of the Applications.

24. As will be apparent from the above account, the Applications were materially indistinguishable. They were submitted to the Registration Authority together and supported by the same body of evidence questionnaires. The Applicants instructed [redacted] to represent them jointly, their preparations for the inquiry were collaborative, and they relied on the same evidence and advanced a single case at the inquiry. It follows that the Applications must stand or fall together. Either both are granted in respect of all, or identical part(s), of the Application Land, or both are rejected.

C. The Application Land and surrounding area

25. As already mentioned, the Application Land comprises six intercommunicating fields, which for ease of reference the Objectors in their statement of objection named Field 1, Field 2, Field 3, Field 4, Field 5 and Field 6. That terminology was generally adopted as a matter of convenience at the inquiry, and I shall adhere to it in this Report. At Appendix B to this Report is a copy of the plan prepared by [redacted] & [redacted] the land agents for the Objectors and their predecessors in title, showing the positions of Fields 1-6.[27]

26. At my request, the Objectors produced another plan to show the areas of Fields 1-6.[28] According to that document (with which the Applicants did not take issue):

- Field 1 is 8.11 hectares (20.03 acres)
- Field 2 is 1.18 hectares (2.90 acres)

[27] Exhibit "[redacted]", at [redacted].
[28] [redacted]

- Fields 3 and 4 together are 2.64 hectares (6.53 acres)

- Field 5 is 1.11 hectares (2.74 acres)

- Field 6 is 4.05 hectares (10.02 acres).

There is a discrepancy between the two plans in respect of the position of the boundary between Fields 1 and 2, but not one which would be likely to make a significant difference to the figures. The total of those figures is 17.09 hectares, or 42.22 acres.

27. Field 1, the largest and most northerly of the fields, was used as a waste tip for a period in the late 1980s before being restored for grazing use. It is sometimes referred to as "the landfill site" or "the landfill field" for that reason. In a habitat map prepared by [redacted] in July 2009,[29] it is categorised as improved grassland. It is bounded to the north-east by a trading estate, separated from the land by a steel palisade fence and (further east) by post and wire mesh fencing and vegetation. A small section of mesh fencing next to the palisade fence has been broken down.[30] To the east, it is bounded by a length of hedge and fence beyond which lies FP 422 (see paragraph 33 below),[31] then (moving south) by Colliter's Brook and (further south still) by the northern part of Field 2. To the south, it adjoins Field 3 (west) and Field 4 (east). To the west, it is bounded by Longmoor Brook and (moving south) by Colliter's Brook New Cut, which was created in the 1970s to alleviate flooding and joins Longmoor Brook at a point part way along the western boundary of Field 1. The boundary between the City of Bristol and North Somerset follows the same line. On the other side of Longmoor Brook is the David Lloyd Leisure Centre, which was built during the early 1990s. On the other side of Colliter's Brook New Cut are fields used for grazing and beyond that, on the far side of Longmoor Brook, is a Park and Ride area.

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[29] A1221A.
[30] See photograph at [redacted].
[31] See photographs at [redacted], A9 which show an opened gate leading onto FP 422.

28. Field 1 is elevated above Fields 3 and 4 (in consequence of the landfill) and separated from them by a wet ditch with low post and wire fencing on each side.[32] Towards the eastern end of the southern edge of Field 1 is a patch of dense brambles. The landfilling of Field 1 was designed to create a "domed profile"; the highest point is roughly in the middle and it slopes down in all directions from there. By the western boundary, there is no difference in level between Fields 1 and 3. The ditch between them is culverted and surfaced there. At the date of the site visit a wooden gate was tied to a post by the boundary hedge between Fields 1 and 3. Another wooden post to which the other end of the gate could be tied stood on the opposite side of the track and was joined in a makeshift manner to the fence alongside the ditch.[33] Most of the western boundary of the Application Land south of the David Lloyd Centre is screened by trees/bushes from the fields on the opposite side of the brook but here there is a gap where a view across can be gained.

29. Field 3 is bounded by Field 1 to the north, Field 4 to the east, Field 6 to the south and Colliter's Brook New Cut to the west. There is a wet ditch between Fields 3 and 4, fenced on the Field 4 side, but at the southern end next to Field 6 it is culverted and surfaced and there is open access between the two fields. There is a galvanised cattle bridge from Field 3 across Colliter's Brook New Cut, which leads to footpath LA 12/14 (see paragraph 34 below) and the fields on the other side. A length of baler twine was tied across the far end of the bridge at the time of the site visit.[34] On the habitat map, Field 3 is categorised as semi-improved neutral grassland (as also are Fields 2, 4 and 6).

30. Between Fields 3 and 6, by the western boundary, is another culverted and surfaced gateway, but no gate. A wet ditch curves round between Fields 3 and 4 (to the north) and Fields 6 and 5 (to the south). Between Fields 4 and 5 are an unfenced section and a culvert by the junction of Fields 4, 5 and 2. Field 6 is the second largest of the fields. Bounded by Colliter's Brook New Cut to the west, and Fields 3 and 4 to the north, it is separated from an industrial estate to the south by a small wooded area, and to the east, abuts Field 5 (in its northern part) and (in its southern part) the rear

[32] See photograph at [redacted].
[33] See photograph at [redacted].
[34] See photograph at [redacted].

gardens of 269-299 (odd nos) Ashton Drive. As originally developed, Ashton Drive ran east-west but in the early 1960s it was extended by the construction of a cul-de-sac running north-south between Colliter's Brook and the Application Land. There are three oak trees in Field 6, about halfway down by the western boundary, and two small ponds near the south-western corner of Field 5. Along the southern boundary of Field 6 is a post and barbed wire fence; the grass is worn in two places, indicating access to and/or egress from the field across the fenceline. One is in the south-western corner of Field 6, from where footpath LA 12/14 can be reached (by the storm relief tunnel) but (at the date of the site visit) only by exiting over a telegraph pole laid just above ground level and under a strand of barbed wire.[35] The other is further east, and leads through the wooded area to the car park of the industrial estate.[36]

31. Field 4 is (as previously described) bounded by Field 1 to the north, Field 3 to the west and Fields 6 and 5 to the south. It is approximately triangular in shape, the southern and longest side curving northwards to meet Field 2 at the north-eastern corner of Field 5. It has a short eastern boundary to Field 2. Field 5 is a rectangular field bounded to the west by Field 6, to the north by Field 4, to the south by (in part) Field 6 and (in part) the rear garden of 299 Ashton Drive, and to the east by Field 2 (in part) and (in part) the rear gardens of 242-258 (even nos) and 301-305 (odd nos) Ashton Drive. It is divided into two categories on the habitat map. The northern half is categorised as unimproved neutral grassland; the southern half, as swamp. There is sedge growing in the southern half of Field 5. On the date of the site visit, that area was soft underfoot but not covered in water. (There was no surface water on the Application Land on that day and even the ditches between Fields 4 and 5, 5 and 6 and 3 and 6 were fairly dry. It has to be borne in mind that the visit followed a protracted dry spell.) Between Fields 5 and 6 there is a ditch with low post and wire fencing that has a gap in it, at which point a plank has been placed across the ditch as a crossing place.

[35] See photograph at [redacted].
[36] See photograph at [redacted].

32. Field 2 is a long narrow field which tapers towards its southern end. It is bounded by Field 1 along its northern edge, Fields 1, 4 and 5 along its western edge, and along its eastern edge, by Colliter's Brook (on the far side of which are the rear gardens of 17-43 (odd nos) Silbury Road), and (further south) by the rear gardens of 234-240 (even nos) Ashton Drive. The grass in Field 2 is long and unkempt (the grass in the other fields had been cut for silage shortly before the site visit). There are heaps of vegetation which was cut down in September 2008 in controversial circumstances. Some of the vegetation was bramble and scrub which it is common ground was growing around the perimeter of Field 2, but there is an ongoing investigation into whether some of it constituted hedgerow within the meaning of the Hedgerow Regulations 1997 and breaches of those Regulations might have been committed. It is not the function of the Registration Authority in determining these Applications to form any view on those issues. I am in no position to make any findings on those issues, and do not do so. I shall refer to the events of September 2008 as "the 2008 clearance" and no use of the word "hedgerow" (or "hedge") in this Report is to be taken as intended to bear any particular technical or legal meaning. There are some bushes and trees remaining around the edge of Field 2 but they do not form a continuous barrier and access to Field 5 is easily gained. Between Fields 1 and 2 there is now a wide opening;[37] the rest of the boundary is fenced but set into the fencing close to the brook is a structure consisting of three horizontal metal bars, above a beaten path leading into Field 2 along the edge of the brook.[38]

33. The Application Land is traversed by two public footpaths which are recorded as FP 207 and FP 424 on the definitive map and statement of public rights of way maintained by Bristol City Council pursuant to Part III of the Wildlife and Countryside Act 1981. The starting point of both footpaths is on the eastern boundary of Field 1 by Colliter's Brook. It is reached from Silbury Road by means of a track and a bridge over the Brook. A third footpath, FP 422, starts from the same point but runs away from the Application Land in a north-easterly direction along the north-west bank of the Brook. FP 424 turns south-west to run through Fields 1, 4 and 5 alongside the western boundary of Field 2. At the southern tip of Field 2 it turns east

[37] See photograph at [redacted]E (top).
[38] See photograph at [redacted] (bottom).

to terminate - according to the definitive statement - between 3 and 5 Silbury Road. Although the relevant date of the definitive map and statement is 1966, they do not reflect the fact that (according to the evidence I heard at the inquiry) the Ashton Drive cul-de-sac houses had already been built and occupied in the early 1960s, so that the path passes between nos 246 and 248 and effectively terminates at Ashton Drive.[39] It is not currently possible to walk unobstructed along the whole route of FP 424 because of the change in level between Fields 1 and 4 and fenced ditch at the foot of the drop.

34. The route of FP 207 is described in the definitive statement as it was in 1966: *"runs north-westwards over tipped land defined then across water-logged field"* to *"City boundary SE of Kennel Farm"*, from which it continued as a public footpath shown on the Somerset definitive map as no. LA 12/37. It crosses Field 1 along a route which is, broadly speaking, parallel to the north-eastern boundary of the Application Land. By the County Council of Avon (Footpath Nos. 207 and LA 12/37 Longmoor Brook, Ashton Vale, Bristol) Public Path Diversion Order 1978, made on 9 November 1978 and confirmed unopposed on 13 December 1978, the route of the two paths was diverted so that instead of crossing the City boundary into Somerset, it ran inside Field 1, along the bank of Longmoor Brook and Colliter's Brook New Cut, until it reached a new access bridge, which it crossed to connect with public footpath no. LA 12/14. That remains the legal position today. Footpath no. LA 12/14 runs down the western bank of Colliter's Brook New Cut, opposite the western boundary of the Application Land (Fields 1, 3 and 6) and beyond towards Hanging Hill Wood.

35. There is no visible track along the route of FP 207 where it crosses Field 1, or along the route of FP 424. There are no footpath signs at the Silbury Road entrance or elsewhere on the Application Land. There is, however, a beaten track across Field 1[40] running directly between the Silbury Road entrance and the bridge where FP 207 exits the Application Land (which is the only vehicular access to the Application Land).[41] Following that route leads to Long Ashton. There is also a worn track around the

[39] There is a photograph at [redacted] (top).
[40] An aerial photograph taken in April 2007 is helpful in showing its route: O13.
[41] See photograph at [redacted].

perimeter of Field 1. Boulders have been placed at the Silbury Road entrance to prevent all but pedestrian access.[42]

36. Access along FP 424 into Field 5 used to be through a wooden stile in post and wire fencing but the stile is now overgrown and has deteriorated. Instead, people walk along a surfaced path which serves the rear of nine houses (240-256 (even nos) Ashton Drive) and is separated from Field 5 by a close-boarded wooden fence until they reach a gate of the same material.[43] A substantial number of other houses in Ashton Drive (236, 260, 264, 269, 271, 285, 299 and 301) and Silbury Road (21, 25, 27, 29) have rear accesses directly to Field 2, Field 5 or (in the case of Silbury Road) Colliter's Brook.[44] They mainly take the form of gates but the garden of 29 Silbury Road is completely open (with a wooden plank bridging the brook to Field 2).

37. The Application Land is currently surrounded by low black plastic fencing, set in a short distance from the external boundary (except in the vicinity of the vehicular access, where it extends outside the Application Land). It was designed with gaps at the Silbury Road entrance, the gate leading to FP 424, and the south-west corner of Field 6. It has been trampled down by the access from the industrial estate car park and crushed under the gate between Fields 1 and 3.[45] The purpose of the fencing is to assist in the translocation of reptiles from the Application Land by preventing their return.[46] In 2008 and 2009, boreholes were drilled in Fields 1 and (in much smaller numbers) 3, 4 and 6 for geo-environmental and ground investigation purposes.

38. The aspect of the Application Land is generally very open (with the exception of Field 2) and there are views across it of Long Ashton Church, Ashton Court and the Clifton Suspension Bridge. However, due to the "domed profile" of Field 1 (see paragraph 28 above), it is not possible to see the Application Land beyond the middle of Field 1 from the north of Field 1 (or vice versa); views of the remainder of the Application Land from the west of Field 1 (and vice versa) are also very restricted.

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[42] [redacted].
[43] See photograph at A1319B (bottom).
[44] For examples see photographs at A1319C, D, H, I and J.
[45] See photographs at [redacted].
[46] See paragraph 328 below.

39. As previously mentioned, the Application Land adjoins the North Somerset border to the west, trading estates to the north-east, an industrial estate to the south and housing to the east. The industrial estate is built around Brookgate and goes down towards a railway line which runs in an easterly direction (parallel to South Liberty Lane and separated from it by Ashton Vale Trading Estate) and then divides into two branches, one continuing eastwards, the other heading north and past the eastern side of the area of housing and the trading estates which lie north-east of the Application Land. The railway line running northwards is carried by bridges across South Liberty Lane and Ashton Drive. Between that railway line, the Application Land, and South Liberty Lane is a roughly triangular area of housing. Silbury Road joins the north side of Ashton Drive at each end (with a spur leading to the Application Land) and in the inverted U-shaped area between them lie Avebury Road and Ashton Vale Primary School. Between Silbury Road and the railway line are allotments known as Aldermans Moore. Between Ashton Drive and South Liberty Lane are two groups of residential roads: one comprising Risdale Road, Langley Crescent, Atyeo Close, Trevenna Road and Tregarth Road, the other comprising Swiss Road, Swiss Drive and Swiss Close. Ashton Vale Church and Ashton Vale Community Centre are on Risdale Road. Surrounded by Ashton Drive, Langley Crescent, South Liberty Lane and Brookgate is a municipal playing field and (at its southern end) an indoor Bowls Club. At the Objectors' request, the playing field was viewed as part of the site visit. It can be reached by a lane from Ashton Drive or by a vehicular access from South Liberty Lane which is locked at night. There is no barrier to access from the lane. The field is well-maintained and slopes gently upwards towards the Bowls Club. There are two pitches, but no permanent goalposts; they are kept locked up except when in use. It is that area of housing, together with the allotments and playing field, which make up the Applicants' claimed locality/neighbourhood.

40. There is a short section of Ashton Drive to the east of the railway bridge arch, on which there are some houses and some small shops. A large Sainsburys store lies to its south and factory premises to its north. At its eastern end Ashton Drive connects with Winterstoke Road (the A3029). On the opposite side lie Gore's Marsh Recreation Ground, South Bristol Retail Park and a densely populated residential area.

D. The history of the Application Land: documentary evidence

41. Ownership of the Application Land was divided for most of the 20 year period preceding the Applications. The land now comprised in title no. BL79214, consisting of Field 5 and a small rectangular area in Field 6, projecting inwards from the western boundary close to but not adjoining the southern boundary, used to belong to [redacted]. Some small part of it was gifted by him in 1992 to [redacted] and [redacted]. All of it came into the ownership of [redacted] and [redacted] when they were registered as first proprietors in April 2004. The Objectors were registered as proprietors in April 2008. They were registered as proprietors of the remainder of the Application Land under title no. ST210941 at the same time. It would appear that their predecessor in title to that land was [redacted]. According to the Objectors' objection statement,[47] it came into the ownership of [redacted] and [redacted] in 1992 but I do not see how that could be correct, as The [redacted] continued to grant grazing licences or tenancies as if it owned the land up to 2007.

42. Mr [redacted] entered into a series of agreements with [redacted] to take the grass keep from land at Kennel Farm, Long Ashton which I was told by the Objectors' land agent [redacted] included all or some of those parts of the Application Land that he did not own. Copies of such agreements were produced for each of the years from 1973 to 1989 inclusive except 1974 and 1987.[48] No plan was attached to any of those copy agreements and the acreages specified varied from 58½ acres (1973) to 46 acres (1975-1976) to 50 acres (1977-1981) to 55 acres (1982-1983) to 42½ acres (1984-1985) to 31 acres (1986) to 34 acres (1988-1989). There were also produced copies of the front pages only of contracts for the sale of grass keep at Kennel Farm, Long Ashton from The [redacted] to [redacted] of [redacted] for the periods 11 April 1990 - 31 December 1990 (34 acres), 11 April 1991 - 31 December 1991 (34 acres), 11 April 1992 - 31 December 1992 (34

[47] [redacted][8].
[48] [redacted]2 (in reverse order).

acres), 29 March 1993 - 31 December 1993 (34 acres)[49] and to [redacted] and [redacted] for the period 31 March 1994 - 31 December 1994 (42 acres).[50] There was also produced a copy of the front page of a farm business tenancy agreement between [redacted] and [redacted] and [redacted] for 17.36 ha (42.90 acres) of land at Kennel Farm, Long Ashton for the period 1 July 1996 to 30 November 1996 (with cattle) and to 31 December 1996 (with sheep).[51] This document described the land as follows:

> *"Land at: The Smythe Arms - 1.65 ha (4.08 acres) £432*
>
> *Kennel Farm (dry land) - 2.47 ha (6.11 acres) £324*
>
> *Kennel Farm (tipping land) - 10.77 ha (26.61 acres) No rent*
>
> *Kennel Farm (underwater land) - 2.47 ha (6.10 acres) No rent"*

43. The holding was similarly defined (except that the word "wet" was substituted for "underwater") in a series of subsequent farm business tenancy agreements between [redacted] and [redacted] for the years 1997-2004 inclusive, the front pages of which were produced.[52] In each case the period ran to 30 November for cattle (sheep only to 31 December). The dates from which the period ran varied: 1 May, 22 May, 15 April, 22 March, 21 March, 20 March, 31 March, 2 April. Copies of separate agreements with [redacted] were produced for 1998 and 1999 only.[53] These ran from 29 April to 30 November (sheep only to 31 December), and were expressed to relate to 1.13 ha (2.8 acres), which corresponds to the area of Field 5. Separate agreements with the executors of the estate of [redacted] for 1998 and 1999 relating to 0.22 ha (0.546 acre) ("The

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[49] [redacted] (in reverse order).
[50] [redacted].
[51] [redacted].
[52] [redacted] (in reverse order).
[53] [redacted].

Dibbles") were also produced.[54] I take them to relate to the rectangular area in Field 6.

44. A full copy of a tenancy agreement between [redacted] and [redacted] for each of the periods 1 March 2006 - 31 December 2006 and 1 March 2007 - 31 December 2007 was produced.[55] The stated total acreage was the same but there was no detailed description of the land. Clause 3(e) restricted use to growing, mowing and feeding grass for the tenant's agricultural trade or business only. Clause 3(g) restricted stock to cattle (other than bulls) and/or sheep only. Clause 3(h) required the tenant to turn out cattle no earlier than 1 April and remove all cattle by 30 November and all sheep by 31 December. Clause 3(r) provided that the tenant should not

> *"obstruct any public or private right of way or any access by any other party to any other land belonging to the landlord nor ... cause a nuisance to the landlord or any other person".*

Tenancy agreements were entered into between the Objectors and [redacted] in 2008 and 2009[56] in similar terms but with the following material differences. First, the acreage was lower (38.75 acres or 15.68 hectares). I infer that was due to the removal of the Smythe Arms land. Secondly, the commencement date was later (1 May) and the termination date was later (28 February of the following year). The requirement was to remove all cattle by 30 November and all sheep by 28 February.

45. I have not been able to reconcile the acreage figures in the grazing licences and tenancies with the acreages of Fields 1-6 supplied by [redacted] (paragraph 26 above) in an altogether satisfactory manner. In particular I have been unable to work out what land was included in and excluded from the agreements between 1986 and 1993, and which parts of the Application Land were described between 1996 and 2004 as "dry", "tipping" and "wet". [redacted] of [redacted]

[54] [redacted]6.
[55] [redacted].
[56] [redacted].

[redacted] and [redacted] tried to assist, but could not (see paragraphs 333, 345 below). The only plan[57] to be found among the grazing licences, between the 1993 and 1994 documents, did not help much either.

46. One inference that can, I think, be drawn from other documentary and oral evidence is that the "tipping land" comprised not only Field 1 which was used for landfill operations, but also Fields 3 and 4 which were at one stage intended to be so used although, in the event, they were not. It is helpful to look at a sketch plan produced by one of the Objectors' witnesses, [redacted][58] to show the six planned phases of landfill: a copy is appended to this Report as Appendix C. Phases 1 and 2 covered what later became the Park and Ride area and the David Lloyd Centre. Phase 3 covered the northern (and greater) part of Field 1 and phase 4 its southern (and smaller) part. Phase 5 covered both Fields 3 and 4.

47. In 1985, [redacted] applied to Avon County Council for planning permission to proceed with phases 3 and 4. An officer's report to the Planning, Highways and Transport Committee meeting on 3 September 1985[59] described the proposed development as "*to raise ground levels with infilling in order to improve drainage and return to agricultural use*". The recommendation was that the proposals constituted engineering operations requisite for the use of land for the purposes of agriculture and were therefore permitted development under Class VI of the Town and Country Planning General Development Order 1977, so the application was unnecessary and could be withdrawn. The aspect of the report to which the parties referred at the inquiry was the description of the proposed methodology:

> "*Screening mounds from the topsoil on the site are proposed to be formed alongside the Industrial Estate and the southern-most boundary of Phase 3. The mounds would be grassed and be 3 metres high near Colliter's Brook and 4 metres high adjacent to the Industrial Estate.*

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[57] [redacted].
[58] See paragraphs 365-376 below.
[59] Exhibit "[redacted]" at [redacted].

Filling would take place from Longmoor Brook towards Silbury Road and no work would take place on Phase 3 until Phase 2 had been topsoiled. Phase 3 would be topsoiled as the work proceeds. It is proposed that this should be accomplished in two operations and work would not begin on Phase 4 until Phase 3 was complete. It is stated that Phase 3 would take approximately 2/3 years to complete and Phase 4 a further 2 years. The Ministry of Agriculture have been advised by the applicant that each phase of the site could be returned to agricultural use after 3 years.

On completion, the whole site would have a domed profile with a depth of 4.6 metres at its deepest point. New tree planting is also proposed to the southern boundary of Phase 3. Footpaths on site would need to be diverted."

48. The officer's report also recommended approval of "*the application for the diversion of the footpath crossing the site*" and the giving of authority to the Director of Administration and County Solicitor to make the necessary order. No minutes of the meeting were produced in evidence. Over a year elapsed before, on 4 November 1986, Avon County Council made an order under section 210(2)(a) of the Town and Country Planning Act 1971[60] which would, if confirmed, have had the effect of stopping up almost all of existing FP 207. A new footpath would have been created, running north-westerly from FP 424 in the approximate position of the current ditch between Field 1 and Fields 3 and 4 to the western boundary of the Application Land, and then turning northwards along the bank of Colliter's Brook New Cut to rejoin the only surviving section of existing FP 207 i.e. that crossing the bridge. The reason given in the order was to enable development to be carried out in accordance with a planning permission, which was unspecified. The order map is dated "Oct '85" and despite the delay the order can reasonably be inferred to have been authorised at the 3 September 1985 meeting. However, the Registration Authority supplied the inquiry with an undated copy of a notice stating that the County Council had decided not to confirm the order "*consequent upon the withdrawal of the application for the diversion*".

[60] The County Council of Avon (Kennel Farm, Ashton Vale, Bristol) (Footpath 207) Stopping-up with Provision of Alternative Route Order 1986.

49. A series of drawings dated 30 May 1985, prepared by [redacted] for The [redacted] for the purposes of its planning application, were produced by the Objectors. Drawing no. KF/2A (*"plan of finished landfill"*)[61] showed phases 3 and 4 only, and FP 207 re-routed consistently with the 1986 diversion order. It indicated that temporary grassed soil mounds would be positioned along the north-eastern and eastern boundaries of the phase 3 area *"as screen during operation"* (4m and 3m high respectively). FP 424 was to be retained along the eastern boundary. The existing ditch between the phase 3 and 4 areas was to be sealed at each end and used as a "leach out" ditch (i.e. to collect polluted rainwater running off the phase 3 area) during the phase 3 fill. The existing ditch between the phase 4 and phase 5 areas was to be sealed off and used as a leach out ditch during phase 4. Alongside that ditch the words *"New ditch to be constructed by completion of Phase 4"* were written. A note read

> *"Soil mounds to be produced from site strip and spread and levelled over fill to a depth of 900-1000 mm as the work proceeds. Any shortfall to be imported. Site to be filled progressively from Longmoor Brook towards Silbury Road and as each one third of the site is completed it shall be covered with soil."*

50. Drawing no. KF/2C[62] was identical save that it also depicted phase 5. Both drawings featured a dashed line leading directly from FP 424 (by the north-west corner of Field 2) to the bridge across Colliter's Brook New Cut, marked *"proposed footpath on completion of phase 5."* Neither of these drawings depicted or made any reference to fencing.

51. Drawing no. KF/1[63] was a site plan showing contours. It indicated that there was already a raised area adjacent to the north-eastern boundary of the phase 3 area, extending sufficiently far into the land to carry FP 207. The differential between the heights of that area and of the adjoining land was more marked towards the eastern (Silbury Road) side.

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[61] Exhibit "[redacted]".
[62] Exhibit "[redacted]".
[63] [redacted]E.

52. By a deed dated 3 January 1986,[64] [redacted] granted to [redacted] an exclusive licence to tip on phase 3 until 31 May 1988 and on phase 4 until 31 December 1989. It was expressed to be supplemental to 1981 and 1983 agreements relating to phases 1 and 2. It recited that Avon County Council had determined there was no necessity for planning permission. It granted ancillary rights of vehicular access and to maintain a site compound by the access road on the far side of Longmoor Brook. By clause 2, [redacted] covenanted (among other things) to carry out to the reasonable satisfaction of the grantor the works referred to in the schedule to the deed and in the waste disposal licence dated 13 November 1985 relating to the site; to comply with the conditions of that licence; and to permit the tenants and licensees of the grantor's adjoining land to have access thereto for agricultural purposes. The works specified in the schedule included:

> *"3) Provide and erect temporary stake and wire fencing around the perimeter of the working area on the site to protect the adjoining land for grazing purposes.*
>
> *4) Re-position the fencing on completion along the boundaries of the site in positions to be agreed for phases 3 and 4".*

53. No copy of that waste disposal licence was available, but [redacted] produced a copy of a waste disposal licence granted by Avon County Council to [redacted] on 10 April 1987.[65] That document was expressed to supersede a previous licence issued on 13 November 1986; I infer that "1986" was inserted by typographical error instead of "1985". It noted that the original licence had been modified to require insect and vermin control arrangements. Condition 1 provided that (except as otherwise directed by the licence) operations should proceed "*as proposed in the statement of intent and operational plan (drawing no. KF2A revision A and KF3)*". (No copies of those drawings were produced to the inquiry.) Any changes were to be approved in writing in advance by the Council.

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[64] Exhibit "[redacted]": [redacted].
[65] Exhibit "[redacted]": [redacted].

54. In 1987, an application for planning permission to carry out phase 5 of the landfill was made to Avon County Council. An officer's report to the Planning, Highways and Transport (Development Control) Sub-Committee for its meeting on 6 November 1987[66] recorded that changes to the planning legislation[67] meant that it could not now be regarded as permitted development, and the planning merits of the proposals would have to be considered for the first time. The applicant had stated that this would be the final phase of the land reclamation project and take 18 months to complete (paragraph 1.1). There is nothing in the report to indicate what drawings were submitted in connection with the application other than a reference to cross-section K5/5. The County Planning Officer thought it clear that the location was one where tipping would not normally be considered by virtue of its proximity to housing and that it was highly unlikely that permission would have been granted for phases 3 and 4 had it been required (paragraph 4.8). The recommendation was to refuse permission. The report was referred to at the inquiry for any light it might cast on the progress of the existing works. It referred to phase 3 as "*already completed*" in paragraph 1.2, but the County Waste Disposal Officer's comments (paragraph 3.4) included the sentence "*Currently phase 3 is undergoing restoration whilst landfilling of wastes has moved to phase 4*". The County Planning Officer's observations included the passage (paragraph 4.3):

> *"The work currently taking place on site did not require express planning permission ... It is understood that this phase would be nearing completion in the spring of 1988 some eighteen months earlier than expected."*

55. Avon Wildlife Trust had commented (paragraph 3.6) that

> *"It[68] is one of the last remaining areas of wetland in this part of the county and contains some important wetland plants ... and unusual sedges and rushes. Local people have also reported that this area is important for migratory birds, but we cannot confirm this at present..."*

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[66] Exhibit "[redacted]": [redacted].
[67] Made by the Town and Country Planning General Development (Amendment)(No. 2) Order 1985.
[68] In paragraph 4.2 it was stated that the application site affected about one third of the area identified by Avon Wildlife Trust as important for wildlife.

The report recorded the receipt of 77 objection letters from local residents and listed complaints that had been received about the current operation (paragraph 3.8).

56. On 6 April 1988, [redacted] granted another company, [redacted] ("[redacted]"), a tipping licence relating to phase 4.[69] It recited the surrender by [redacted] of its rights under the 3 January 1986 licence[70] in respect of phase 4, and granted [redacted] the exclusive right to import and deposit industrial and commercial waste soils and materials authorised to be deposited by the waste disposal licence on the land edged red on the plan annexed to the 3 January 1986 licence[71], and the right of exclusive occupation of that site, until 31 December 1989. Clause 3.1.8 provided that prior to the determination of the licence, [redacted] should at its own expense consolidate all deposited materials on or in the site and spread soil over it so that the site should be suitable for agricultural cultivations in accordance with the terms of the planning consent. Clause 3.1.10 provided that Haul-Waste should permit the owner's tenants and licensees access to the owner's adjoining land for agricultural purposes. Clause 5.1.3 provided that if [redacted] completed use and restoration of the site before the end of the term, it should give notice to the owner, and the licence would be determined. Clause 5.1.2 gave Haul-Waste an option to take a licence in respect of phase 5 if it obtained all necessary consents.

57. On 18 April 1988, Avon County Council re-issued the waste disposal licence to [redacted].[72] See further paragraph 365 below.

58. Fields 3, 4, 5 and 6 are included in Bristol City Council's register of sites of nature conservation interest ("SNCI") under the site name "Ashton Vale Fields".[73] The description of the land in the register reads as follows:

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[69] Exhibit "[redacted]": [redacted]

[70] Paragraph 52 above.

[71] No copy of the plan annexed to the 3 January 1986 deed was produced in evidence. It was described in the text of the deed as being Drawing no. KF/1 (see paragraph 51 above), but colouring must have been added to the black and white version produced to the inquiry (O368E). That drawing showed only phases 3 and 4 and I infer that the red edging would have comprised those two areas (i.e. Field 1). The text of the deed equated phase 3 to "the portion of the site hatched blue" and phase 4 to "the portion of the site hatched green".

[72] Exhibit "[redacted]": [redacted].

"Ashton Vale Fields are an area of semi-natural marshy grassland along Colliter's Brook in south-west Bristol, adjacent to the North Somerset boundary. Part of the site is permanently inundated with water. The site's mosaic of wet grassland, open water, ditches, hedgerows and scrub is particularly important for wintering and breeding wildfowl and waders, such as lapwing and snipe. Common water crowfoot grows in the ditches with pink water speedwell, ragged robin and many species of sedges and rushes. Less common species of dragonfly occur..."

This designation was inherited from Avon County Council, but the date of the original designation as a county wildlife site is unknown other than that it was before 1993.[74]

E. The Applicants' evidence

59. The following is a summary of the oral evidence given on behalf of the Applicants, in the order in which they called their witnesses. Except where otherwise stated, I accept their evidence.

[redacted]

60. [redacted][75] currently resides at [redacted] (which is on the older section of [redacted], not adjacent to the Application Land). He moved there when he retired in about [redacted]. Prior to that he lived in [redacted], [redacted] for eight or nine years; from [redacted] until the early 1990s he lived at [redacted] address in [redacted]. He has travelled a good deal, but always had relatives in the area to visit. He said that Ashton Vale was like a different world, not part of Bristol, once you went under the railway arch. The stretch of Ashton Drive to the east of the arch was just outside Ashton Vale, leading to it like a driveway to a house. In answering Q.11 in the questionnaire ("*What recognisable facilities are available to the local inhabitants of your locality*?"), what he had in mind when putting a tick in the box

[73] See [redacted].
[74] See the Bristol City Council email at [redacted].
[75] [redacted] statement and evidence questionnaire are at A76a-76h.

next to "central feature" was the Ashton Vale Community Centre and the Application Land. He did not know who played football on the pitches by the Bowls Club; he did not play football or take the dog there as he would not want it to foul the pitches. The area policeman came regularly to hold a surgery at the Community Centre, but had not done so for as long as 20 years to [redacted] knowledge.

61. For the past four years he has been going to the Application Land about five times a week, often with a dog. From 1986 to 2006 (with the exception of 2003) he was going there perhaps five or six times a year when visiting people in Ashton Vale. Between 1980 and 1986 he would visit his cousin there and they would walk dogs together on the Application Land. He had known and used the land from childhood. It was where he learned to fish, as well as playing games, riding a bike, and hunting rabbits. He walked across it to school. He picked berries and mushrooms there. He used Field 1 during the landfill to walk across as a means of access to the other fields. He could not really recollect the sequence of operations. There were various mounds of topsoil about but not huge ones. There was no problem walking around the works. He could not specifically remember a time when the land was being regenerated. He could see that stockproof fencing would have been needed around any restored areas where cattle were being kept while tipping continued; he "*might*" occasionally have had to go over a fence.

62. [redacted] usual entrance point was from Silbury Road. It was possible to get into Field 2 before 2008 despite it being quite overgrown if one wanted to; [redacted] had seen children play hide and seek there and gone in himself after the dog a couple of times. However he had not himself turned left into Field 2 from the Silbury Road entrance and could not say if that was possible. It was not the case that before the 2003 ditch clearance works Fields 3 and 4 were too wet for sports and pastimes. They were wet, but only seasonally. He very often went into those fields; he did not stay in Field 1. There was not always a gate between Fields 1 and 3 and it was never locked. He did not call baler twine locking. Sometimes he got into Field 4 from Field 1 by crossing the small fences and ditch, which was easy if the water level was low. He sometimes did the same between Fields 4 and 6. Field 5 was more marshy in part but he used it for walking; it was not too wet to walk across. Nor was most of Field 6 too

wet to walk through, one way or another; it got wet at the southern end and up the eastern side. Sometimes he would go into the fields across Colliter's Brook New Cut as well as the Application Land. Sometimes he gained access to Field 6 from the industrial estate (by the car park); there were only the remains of a barbed wire fence there.

63. There has always been a track on the ground between Silbury Road and the Park and Ride area since Field 1 was restored. Now there is a circular path around Field 1. It was not his experience that the main public use of the Application Land was as a short cut between Silbury Road and the Long Ashton direction. He did not use the land for that purpose and he saw other people all over the land. When he saw others walking around they were not always on any particular footpath. He thought that there was more use of the outside of the field, for dog walking, than of the short cut route across. It was not correct in his experience that apart from use of the short cut and circular routes in Field 1, there was very little use of the Application Land. He was not influenced in his evidence by a desire to prevent the development; he was a Bristol City supporter. The only exaggeration he could see was by the Objectors in relation to use of the short cut route. [redacted] has often seen (and been seen by) people using quad bikes to herd the cattle. He could not recall ever seeing as many as 120 cows all in the same place on the land: perhaps 20 to 40. They were never only in one field; they used to wander around. He could recall speaking to [redacted], but not on the Application Land itself. He has had a joke with the man who spread the manure, and a chat with the man drilling boreholes who gave his dog a drink from their water bags, and spoken to a man collecting reptiles. No one has ever told him to get off the Application Land, or given him permission to go on it. He remembered the 2008 clearance and had not intervened. It made no difference to how he accessed or used the land, although there was less wildlife afterwards. He went wherever he and the dog wanted to go. He had no particular route: he went where he fancied going. It depended on the time of year, weather conditions, and where the wildlife were. He enjoyed the wildlife; he has seen rabbits, deer, badgers, foxes and various birds, including kingfishers.

64. I think that [redacted], in common with others of the Applicants' witnesses, underestimated the number of cattle that have been on the Application Land in past years. That might be because (as [redacted] suggested in evidence) they were thinking about the time that cattle were most recently on the land, in winter 2008, when there was a small beef herd, rather than the 120 dairy cows turned out in previous summers. It may also be because the 120 cows used to be spread out over the land, and because the Applicants' witnesses had no reason to count the cows or take note of and memorise how many there were. Nor do I think that [redacted] had any actual recollection of whether there were cattle or fencing on the restored parts of Field 1 while the landfill operation was in progress. Subject to those qualifications, I accept [redacted] evidence.

[redacted]

65. [redacted][76] has lived at [redacted] for about [redacted] years. Before coming to Ashton Vale he lived in [redacted] and prior to that, in [redacted]. He regards Ashton Vale as starting where Ashton Drive and South Liberty Lane pass under the railway line.

66. He has known the land since [redacted]. Before the landfill there was no barrier between what he called "the two marshes." While he was living in [redacted] he walked to the Application Land about twice a week with his border terriers. He could remember the land being bulldozed out prior to tipping. While that was going on it was not possible to cross Field 1 but it was possible to walk round the perimeter. He recalled the tipping taking place in stages and a long line of soil by the Silbury Road entrance. It was possible to walk around the earth mound, or on top of it. He thought that by the time he moved to Ashton Vale it was all grassed over. He recalled the grass being short and patchy: whether because it was badly seeded or because it was wet he could not say. He walked across it. They used a mixture of rye and meadow grass which grows quickly and strongly; walking on it would do it no harm. Cattle would have done more damage than people. He could not remember seeing wire fences to keep cattle off the operative parts of the tip.

[76] [redacted] statement and questionnaire are at [redacted].

67. While living in Ashton Vale, he has gone on to the Application Land (especially at weekends) once or twice a week. His main access is from Silbury Road. He was not aware of any public footpaths on the land until recently. Once or twice he went in from the Ashton Drive entrance. Most of the time he would walk down through and around the edge of Field 1. He was interested in ornithology and wildlife and therefore in the hedgerows. Whatever opportunities he had to go into all the fields to observe nature, he would take. He would only avoid going into a field if there was a large number of cattle and he had his dog with him. His access route into Field 2 was in the corner by the brook, having turned left from the Silbury Road entrance. It was originally a farm gateway, and was not impenetrable before 2008. He used Field 2 for nature observation. Fields 3 and 4 were not too wet for use for nature observation before 2003. He had often gone into those fields by going down the embankment from Field 1 and crossing the low barbed wire fences and ditch. He had gone into Field 6 by various means, occasionally over the barbed wire fence by the industrial estate. He had also come in over the brook by the cattle bridge.

68. There were various walkways across the Application Land, including a path from Silbury Road towards Long Ashton, but he did not restrict himself to paths. He has had dogs for 16 years, which he took with him; but he has also walked there by himself. He has seen many ramblers and walkers without dogs going in and around the land. He has seen local people walking "*willy nilly*" around the fields, not just using them as a short cut to Long Ashton. He has seen people picking blackberries in various of the fields. Last year he saw someone he did not know setting up an easel on Field 4 or 5. But most people he saw would be walking, with or without dogs and with or without family members. He admitted that he was very keen on preserving the marshland for its flora and fauna but denied that he had as a result exaggerated his evidence of general use of the land.

69. No one had ever told him to get off the Application Land or stick to paths, or given him permission to go there. He had passed the farmer gathering silage; there was no discussion. He continued to use the land during the period when the boreholes were being dug; he inspected the holes. He had no knowledge of any site compound or

signage on the access by the David Lloyd Centre. He had no dealings with the reptile collectors.

[redacted]

70. [redacted][77] was [redacted] at the date of the inquiry. He has [redacted], who were respectively [redacted] and [redacted] years of age. He has lived at [redacted] since [redacted]. During that time, he has walked his dogs on the Application Land at least five times during the week and at weekends. Much of the time he has taken his [redacted] with him. They have gone after school, including in the winter time, with a torch if necessary. His [redacted] lives in [redacted] and used to take him walking through the Application Land from Hancocks Wood when he was a child. He has got great pleasure from the land and wanted it kept as it was but would not tell lies to keep it going.

71. He could not remember much about the landfill but did recall walking there to catch rats. He could remember no barriers or security men. Since 2002, he has used all the fields, not just one field. He has even gone into the lower fields [2-6] at night to make the most of a walk. He hunted rabbits and there was nothing unusual for him about going out at night with dogs and a lamp. He never had any problems getting from field to field. There was a little gap in the hedge around Field 2 by the brook before the 2008 clearance. There was a wide entrance into Field 3 by the hedge. He has never come across a closed gate there. Field 4 was always quite wet when he first came to Ashton Vale but he found it suitable for walking dogs. He has been into Field 5, but not in the dark, and would say he used the other fields more frequently. He was not aware of any entrance from Ashton Drive. He has used the playing field by the Bowls Club, but did not like to take the dogs there in case he failed to clear up after them properly and preferred taking the children to the Application Land because he liked to look at wildlife. If one field was too wet to use he would move on to the next one. Where he could walk was not restricted; there was free rein. There were no marked footpaths. He has never seen 120 cows: 40 at most. The farmer has watched him with his dogs and children running around a few times and never said anything;

[77] [redacted] written statement is at [redacted].

he had no reason to believe he should not go in there. He exchanged pleasantries with the men doing the borehole drilling and was not stopped from entering the field. He saw no signs or enclosure. He had a conversation with a man collecting reptiles in Field 3. He did not intervene in 2008 when some scrub was torn out; from a selfish point of view it made his life easier as it gave him more room to walk his dogs.

72. So far as he was concerned, Ashton Vale was bounded by the railway track. The eastern end of Ashton Drive was part of Ashton.

73. I do not think it likely that [redacted] (any more than the Applicants' other witnesses) used to count the cows on the Application Land. I would also be surprised if he never found the gate between Fields 1 and 3 closed. Subject to those reservations, I accept his evidence.

[redacted]

74. [redacted][78] was born in [redacted] and has always lived at [redacted] (which is the [redacted] of the [redacted] abutting the Application Land, at the southern end of Field 2). She said that she played in Fields 2, 1, 3, 4, 5 and sometimes 6, with her brother and friends. They built dens and most days they took her dog out for a walk. When it was windy she flew a kite. In summer she picked blackberries with her mother and grandmother for jam and pie making. She liked to look in the streams for tadpoles and small fish. It could sometimes be very wet but she loved it when it rained and the fields filled up with water because swans and other water birds came. She was very sad when the 2008 clearance took place and her deckchair was removed from her den. She had two dens, one near the north of Field 2 and the other in the hedge between Fields 2 and 5 at the southern tip of Field 2. Her bedroom overlooked the fields and every morning she looked out to see what she could see. [redacted] was not cross-examined because of her age.

[78] [redacted] written statement is at [redacted].

75. I think that she must have had parental guidance as to what subject-matter to cover, if not the wording to use (paragraph 76 below). However her evidence is credible and consistent with other people's evidence and I accept it.

[redacted]

76. [redacted][79] is [redacted]. In cross-examination she said that all but the introductory sentence of her daughter's statement was drafted by [redacted] herself, without help. She had just typed it out.

77. [redacted] said that she had lived at [redacted] since [redacted]. Up to 2000, they were too busy to use the Application Land, but since they got a dog they have used it every day. Her [redacted] (aged [redacted] at the date of the inquiry) spent a lot of time on the land with their friends making dens and looking in the brooks and streams around the fields. Last year they flew a kite out there now and again. Sometimes she ran around the fields.

78. There is a photograph of [redacted] house at [redacted] (top), showing an (opened) gate in the back fence giving directly on to Field 2. [redacted] said that when they first moved in there was already a gate there, in an old fence. They replaced the dilapidated fence after she found cows in the garden; the lap panel replacement fence itself blew down later on and was replaced with the present close boarded fence. The farmer put up a barbed wire fence outside to keep the cows out while they replaced their own fence. It rotted and fell down, she could not remember when. It was possible to climb through it. No one ever told her they could not have a gate in the fence. From Field 2 it was possible to get to Field 1 by following the brook edge and climbing over some metal posts. Field 2 was not so overgrown at the bottom of her garden that it was not possible to get out, whatever the aerial photographs at A1199-1200 might suggest. It was possible to get through the hedgerow from Field 2 into Field 5; she would not have walked through brambles to get there, she was not mad. The hedges looked thick on top but underneath there were "*massive holes*" that cows

[79] [redacted] written statement and questionnaire are at [redacted]. At [redacted] is a statement [redacted] made in connection with the 2008 clearance.

got through. It was through Field 2 that the cows got into her garden. There was a culvert (into Field 4) that she could walk over and did, nearly every day. However she did not go into Fields 3 and 4 before the ditching work in 2003. The lower half of Field 5 still got wet; you could lose wellington boots there. But it was not too wet all year round for recreational use. If it had been, her daughter would not have had a den there. She had had one den in Field 5 and one in Field 2. Some days she would suggest to the children that it was too sludgy to play in Field 5. They used Field 6 where the oak trees were; the eastern side could be very wet some days, although it was not like that all the time. From Field 4 she would go to Field 3 and down to Field 6 but sometimes the gateway between Fields 3 and 6 filled up with water due to the tractor wheels and then she would cross the cattle bridge, go down the footpath on the other side of the brook and back in through the barbed wire in the corner of Field 6.

79. From the patio at the back of her house she could look down into Fields 3, 4, 5 and 6 and see some of Field 1. From her [redacted] bedroom the whole of Field 1 was visible. She recalled the boreholes, but no exclusion zone round them. She did not use Field 1 then; she did not use Field 1 a lot. She used Fields 2, 3, 4 and 6 mainly. She saw and spoke to the reptile collectors; her children chatted to them and went round with them at least twice. She saw people using the fields every day for walking. Before the hedgerows were ripped out she saw children playing in dens. She saw dogs being walked in Field 1, and (increasingly over the last few years) in Fields 3 and 4. She saw children scrambling on motor cycles in Field 1, and balloons landing, but predominantly she saw dog walking - not just cutting across but coming down and around the perimeter of the field. There was a lot of short cut use during the balloon fiesta. It was not the sort of land for team games. She has seen children playing, fishing, blackberry picking and bird watching. Last year there were fireworks in Field 2. She denied exaggerating her evidence of use of the land.

80. Fields 2 and 5 have only been maintained twice since 1993. The other fields were cut for silage but that was their only maintenance. She could not remember seeing more than 30 cattle. She has seen sheep wandering between the fields. She did not walk her dogs when there were sheep there but it was some years since there had been sheep there.

81. Ashton Vale was to the west of the railway arch, which was like a porthole. She knew people who lived at the eastern end of Ashton Drive; they called it Ashton.

82. I do not think that [redacted]'s recollection of the number of cattle is correct overall, but bear in mind that she did not often use Field 1 where the stock mainly were. Subject to that point, I accept her evidence.

[redacted]

83. [redacted][80] has recently (in [redacted]) bought a house at [redacted], but from [redacted] (when she was born) to about 2000 she lived in [redacted], and then moved to [redacted] with her parents. When she was a child she would meet up with friends by the Boys' Club and go on the Application Land by the Silbury Road entrance to play and look at the animals. She could also get on the land over her parents' back garden fence as [redacted] abuts Field 6. On a few occasions (perhaps three) she played camp with her friends overnight in Field 6, just over the fence. They used to have a bonfire for family and friends. She did not know if permission had been sought from the farmer. There were two ways on to the Application Land from Ashton Drive but she hardly ever used either. She and her friends used to play on the playing fields by the Bowls Club as well. She used to walk her grandfather's dog across Field 1 to Ashton Court. Lots of people used Field 1 to get to Ashton Court. It was also used as a route to Ashton Park School. She walked across to the David Lloyd Centre when she was a member. She saw a lot of people walking dogs right round the field. She did not know whether it was possible to make one's way through Field 2 before 2008; she never tried. She could not remember if she went in Fields 3 and 4 and did not think that she ever went in Field 5. She ice-skated on the Application Land a few years ago, perhaps eight. She could not remember the 2003 ditching works, the 2008 clearance or the borehole drilling. No one ever told her not to use the land. To her, Ashton Vale meant the area between the railway arch, Silbury Road and South Liberty Lane. Outside the railway arch was Ashton.

[80] [redacted] witness statement is at [redacted].

[redacted]

84. [redacted][81] has lived at [redacted] since [redacted]. From 1967 to 1988 he and his family[82] used the Application Land for dog walking and playing. During that time the neighbours joined in annual Bonfire Night parties, and barbecues with a marquee and a band for dancing. The local Queen's Silver Jubilee party was held in the fields. All these celebrations took place more than 20 years ago. The farmer was asked for permission by [redacted]; she would telephone and ask if it would be all right for them to have the field for a party or bonfire, and be told that it was so long as they cleared up afterwards. From 1988 to 2009 he did not use the land, but in 2009 he resumed use of it to walk his son's dog every day, three times a day. He gained access from Ashton Drive by the public footpath.

85. He did not go on Field 1 during the landfill but used the other fields. He could see the landfill in progress after 1988; his house backs on to [redacted] and he has a 180 degree view of the fields. He could not really remember the phasing sequence or the reseeding. He could not remember any fencing between different parts of the landfill. Field 2 was not so densely overgrown with scrub and brambles that you could not get in; it was possible to walk in from Field 5. The best blackberries in Ashton came from there. There used to be hedgerows between Fields 2 and 5, 4 and 5 and 5 and 6 before the 2008 clearance; he had taken photographs from a hot air balloon.[83] He could remember ditching work in 2003 but it was not major, just clearing them out. Fields 2 to 6 had been quite dry before the landfill. He saw no restricted area around the boreholes. Someone had said that there was a 'keep out' notice by the David Lloyd Centre but when he walked over to look, there was nothing there. He had regarded the reptile fencing as an attempt to discourage use. There had been no gate between Fields 1 and 3 all last year, nor until the week before the inquiry. He had not seen cows being taken for milking from the fields for some time; he had seen 30 or 40 bullocks there. He had contacted the farmer last year about finding a cow in a ditch; they had been pleased with the assistance. The farmer and her son were aware that

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[81] There is an evidence questionnaire signed by him at [redacted]g, and a statement signed by him and his wife [redacted] at [redacted] (but see paragraph 408 below).
[82] There is an email from his son [redacted] at [redacted]: see paragraph 260 below.
[83] [redacted] (bottom left).

people walked round the land. They had never told [redacted]s to get off the land. He walked all round through Fields 2, 1, 3, 6 and back to 5, or through 4, 3, 6 and 5. He saw people walking on the land all the time. He had seen rounders in Field 5 two or three times in the school holidays. He had only seen the [redacted] flying a kite. The last picnic he had seen was 3 or 4 weeks ago in Field 5; he could not remember the last one he saw before that.

[redacted]

86. [redacted].[84] has lived at [redacted]e (which abuts [redacted]) since [redacted] He grew up in Ashton Gate. He discovered the Application Land as a child in about 1950 when visiting the family who rented Kennel Farmhouse from [redacted]s (who lived elsewhere). The farmhouse was built on land which is now occupied by the David Lloyd Centre. He played games on the Application Land such as cowboys and indians and cricket and tried skating in wintertime. One of his secondary school teachers introduced him to field studies on the land, and he used to ride his bicycle across from Silbury Road to the Smythe Arms when doing a paper round. While courting in the early 1960s he used to walk there. He subsequently used the land for family walks, looking at wildlife and collecting butterflies. His children played on it. When they were revising for exams, they would be given the incentive of a walk to the Smythe Arms or the Angel in Long Ashton, taking frisbees and balls to play with on the way through the Application Land; they did not always make it to the pub. Up to 1964 he had only used Field 1 but after that he used other fields as well.

87. Community activity developed on the Application Land and for a number of years Bonfire Night parties were held on the Application Land. These were separate from the bonfire parties held at the other end of the Ashton Drive cul-de-sac and there was rivalry between them. [redacted] telephoned the farmer to ask if he would be happy to move his cattle out of the field; it was his perception that that was effectively a request for permission to use the land for that purpose. In 1964 there was a three-strand barbed wire fence along the boundary of Field 6 and [redacted] constructed a

[84] [redacted] written statement and questionnaire are at [redacted]5.

wooden stile to enable his family to cross it without doing any damage. No one told him to remove the stile; he let it degenerate for security reasons.

88. Since his children grew up and left home in the early 1990s [redacted] has only used the Application Land for occasional walking and to take the grandchildren (who do not live in Bristol) to "*let off steam*". He tried to hit golf balls in Field 6 on a few occasions during the last 20 years but the grass was not cut for a while and he gave up. He was not familiar with Fields 2 and 5; the family's activities were focused on Fields 6, 3 and 1, mainly the western side. From the back of his house he could see all but Field 2 and some parts of Fields 1 and 5. It was unusual not to notice someone using the land for walking or dog walking. He has seen people with younger children enjoying themselves and running around doing much the same activities as he used to do. In his questionnaire he listed walking, dog walking, children playing, picking blackberries, bird watching, fishing, picnicking, kite flying, flying remote control planes and falconry as activities he had seen there. Challenged in cross-examination he insisted that he had seen kites flown on the land, albeit only very occasionally. He did not see people walking just across and around the edge of Field 1. He regularly saw people walking in Field 6 and Field 3. There was a well worn path across Field 1 but no clear indications of any footpaths elsewhere. He did not restrict himself to any path or feel that he had to, although he would show the cattle respect (especially when calving). From what he perceived he could easily concur with other people's evidence of use. He did not need to exaggerate general recreational use; it was there to see. "*An awful lot*" of people used the land.

89. He saw the landfill as a temporary interruption to the general pattern of agricultural use. The landfill was poorly managed; he attended protest meetings and meetings with local authority officers about it. He heard the local authority inspector admit that 17 out of 34 conditions had been breached. He was not working in Bristol between 1979 and 1989 and was not around to witness the daytime operation of the tip. However, he was aware that his children went over to explore and came back impressed with what they had found, and his next door neighbour had a metal detector and would say "*you should see the stuff over there.*" He did not remember seeing the landfill site fenced off, only bunds which were not insurmountable. It was not like

Bedminster tip which had steel fencing. People could still get on to Field 1 during the landfill. It interrupted use for other purposes but once the land was restored people went back to using it as before. He did not know, but could not dispute, whether the land was reseeded. From a distance he could see it gradually returning to a green area as opposed to a brown and bunded site.

90. He recalled the excavation of Colliter's Brook New Cut in the 1970s, following the 1968 flood. He could not say it made any difference to the Application Land; they still put animals in once a year and people still used it year by year. The 1968 flood had made the land a reservoir but otherwise it was usable and used. No new ditches were dug in 2003 as far as he was aware; they were just cleared. He disagreed that before 2003 the lower fields were too wet to use.

91. He only saw cows on Field 6 six to ten times a year. A few years ago there were sheep. He would have agreed with 120 cattle 20 years ago, but not today. Now they looked like stock cattle rather than dairy cattle. He occasionally saw the farmers from the back window on their quad bike but had not met them on the Application Land or spoken to them. He recalled seeing the boreholes being drilled from his house and the reptile collectors in Field 6 but had no contact with anyone involved. He went past the David Lloyd Centre several times a week and saw no "keep out" signage there.

92. The map attached to his questionnaire showing the locality/neighbourhood was not drawn by him but he concurred with it. The eastern end of Ashton Drive outside the railway arch was not in Ashton Vale according to his understanding. The Sainsburys store was called "the Ashton store". He was not sure how Ashton should be defined geographically.

[redacted]

93. [redacted][85] has lived at [redacted] and used the Application Land since [redacted]. He has [redacted] who "*used the field*

[85] [redacted]s written statement and questionnaire are at [redacted].

as a playground", making dens, catching tadpoles, blackberrying, bird watching, having picnics and even ice-skating on the ponds. They had a dog for 15 years from 1988 to 2003 and used to take it over to the Application Land except when there were cattle there. He and his wife were keen walkers and he watched birds in the fields. They attended bonfire parties, barbecues and Jubilee celebrations for which permission had been sought from the farmer. His use became occasional four or five years ago. Access was gained by the footpath between 246 and 248 Ashton Drive; there was a stile at the bottom but it became overgrown and has been superseded by a gate. He did not know who installed the gate. It was questionable whether the route of FP 424 could be walked; he could not be sure. "*Once in the fields you can go where you like; it is that sort of area*". There was a lot of wildlife in the hedgerows around Field 2 and some of the best blackberries in Bristol in Field 2. It was enclosed by dense growth but there was access through gaps in the hedges. He had not personally walked between Field 2 and Field 1 before 2008; he always went into Field 2 from Field 5. Field 2 was "*a haven, cut off from everywhere else*". He was sure children were in there all the time. He had been on Fields 3 and 4 and used them in summer when they were less wet. It was mainly Field 5 where he took the dog and children and where they had the barbecues and bonfires. Before the landfill the lower fields were perfectly dry; no sedge grew in Field 5 until after that. Since then it has got very wet in winter but progressively drier in summer; cattle have grazed there. Field 6 was dry all over in summer.

94. The landfill was not fenced off; it was possible to get in and walk around (not over) the tip, without any problem. He went up there out of curiosity, but not much because he was working long hours at the time - perhaps once a month. He took no interest in the sequence of work. He recalled large piles of earth put to one side. He had no recollection of any fencing on Field 1 during the landfill. He remembered seeing from his house a barren landscape which as time progressed became covered in grass. His house abuts Field [redacted] and before the 2008 clearance he could not see to the north (except for Field 1 which was elevated) but could see to the south. He went up to see the borehole drilling out of curiosity; there was no exclusion zone, nor signs to say people should not go there. He spoke from his garden to a young man collecting reptiles. He could not recall seeing as many as 120 cattle all at once. He only saw

sheep for the first time in Field 6 three or four years ago; they fertilised the field to put them in. He used to encounter the farmer more when the children were younger; he would say "good day" but not tell them to get off the land or stick to paths. He has not recently encountered the farmer on the land, and has seen him over in Field 6 or Field 4 rather than Field 5. Permission was not sought for any activity other than bonfires and barbecues; that was to safeguard the cattle.

95. He has seen people with dogs, walking and training them, and children playing especially in summer. It was not the case that the only real use of the Application Land consisted of cutting across and doing a circuit round Field 1. There was a marked footpath across, but people roamed freely with dogs and children played there. No one told him to keep to paths.

96. What part of Bristol was inhabited by the residents of the eastern end of Ashton Drive was "*a good question*". They probably felt as if they lived in Ashton Vale as well. He probably would feel that way if he lived there. But when he went under the railway arch he felt as if he was in a different area.

97. I think that [redacted] may well be wrong about the fields being perfectly dry and there being no sedge in Field 5 before the landfill, in light of Avon Wildlife Trust's comments on the 1987 phase 5 planning application.[86] Apart from that, I accept [redacted] evidence.

[redacted]

98. [redacted][87] has lived at [redacted] (which does not adjoin the Application Land) for two years and for twenty years before that, in [redacted]. She started to use the Application Land when living at [redacted] in about 1990. She has had dogs ever since moving to the area and used it for dog walking about twice a week. She has also taken her grandchildren and sister's grandchildren (aged between two and eleven at the date of the inquiry) at weekends and in school

[86] Paragraph 55 above.
[87] [redacted] written statement and questionnaire are at [redacted].

holidays. When the cows were there she left the dogs behind and just took the children. She would give them a nature lesson without their even realising it: identifying plants, butterflies and moths and so on. They could get in Field 2 through the hedges. The children liked the water; so did the dogs. No one ever told her to keep to paths; there were "*loads of paths, like trails*". She met lots of other people with dogs and children. The 2003 ditching work had not changed the use of the land at all. In her questionnaire she ticked walking, dog walking, children playing, blackberry picking, fishing, bird watching, picnicking, kite flying and bonfire parties as activities she had seen on the land, and added playing in the water and running by the Bristol Harriers. She had gone on to the land from Silbury Road about twice; the rest of the time she approached from the south. She remembered the boreholes stinking, but had not gone up to that end of the land although access to it was not restricted at that time. She never met the reptile collectors.

99. She had not come across the expression "Ashton Vale village" but said Ashton Vale was a small tight community. She thought it extended to Winterstoke Road. Many different activities took place at the Community Centre including bingo, dancing, and pensioner and toddler groups. The grandchildren played on the playing fields quite often and she met other people with dogs and children there too.

100. [redacted] had difficulty putting into words the route by which she got on to the Application Land. However, I do not doubt that she has used the Application Land and accept her evidence concerning its use by herself and others. I think that she must have entered Field 6 at the south west corner.

[redacted]

101. [redacted][88] has lived at [redacted] (which abuts [redacted] at its [redacted] corner) since [redacted]. Her main reason for purchasing that property was that she had spent a lot of her childhood playing on the Application Land with a school friend who lived in Silbury Road. They spent holidays and weekends there in the 1960s making dens, fishing for tadpoles and tiddlers and doing other activities. She agreed

[88] [redacted] written statements, exhibits and questionnaire are at [redacted].

with the boundaries of Ashton Vale as drawn on the map attached to her questionnaire (although she had not drawn them herself). She felt it was a "*kind of reasonable area*". She thought Winterstoke Road was in Ashton and the railway arch was like "*a natural boundary*".

102. [redacted] has gained access to the Application Land from the bottom of her garden, via the lane at the rear of the houses and through the wooden gate in the wooden fence, which she herself caused to be constructed.[89] She did not ask anyone for permission to construct it and no one told her to take it down. The gate is about a metre away from the stile, which is more difficult to use. She wanted a more direct access to the fields. She knew there was a public footpath passing the back of her house from the deeds and would chat to ramblers coming down. When she first moved in, the path was used all the time. There were a lot of younger families and children. As they grew up, there was a lull. Now it seemed that a lot more children had moved in, and grandchildren were coming. Use had gone up again in the last five years. It was quite a stable community; people did not move much.

103. The landfill did not stop people using the fields to walk, play and make dens. It had a huge impact on their lives because of the noise but people got used to it. [redacted] use of Field 1 changed in that she went from walking through it to photographing what was put in the tip. When the tipping stopped, she went back to walking through and over it. A lot of children went up and played on the landfill and brought all sorts of things back. In August 1988 she found a kitten, which lived to be 21 years old. There was fly tipping going on. She and other people stood on parts which were already grassed over to get a good view of the balloon fiesta, including on the day Concorde went over. She remembered a mound of earth by Silbury Road, but could not recall there being cows and was "*really surprised*" at the suggestion there was fencing around the restored areas. She got to the land north of the active tipping area either by Silbury Road and over the mound (if taking photographs) or through Fields 4 and 3 (if just going for a walk). She made a point of going up there with companions to take photographs during tipping hours as well as at other times so that the contractors knew there was someone keeping an eye on them. No one told her not

[89] See paragraph 36 above and photographs at [redacted] and [redacted] (bottom).

to go. She had no reason to think that the dates put to her in cross-examination for restoration (with final reseeding in autumn 1989) were not right. It was still very much a working tip when they found the kitten in August 1988.

104. Throughout the time she has lived in [redacted], [redacted] has walked round the fields several times a week and more often in spring and summer. She walked around all the fields. In summer she often walked there before going to work and in the evenings when she got back. She has taken a black bag and picked up litter, collected soil from molehills for her garden, taken photographs, watched wildlife, and walked to relieve stress. She enjoys the fields most in the early morning or early evening and on Sunday mornings when she talks to other walkers. Some parts of the fields flooded in the winter or after heavy rain; that attracted swans, ducks, herons and other kinds of birds and one could get very close to them. She took her niece and nephew to the fields; if they wanted swings and roundabouts they went to the nearest formal play area, Gore's Marsh (not the playing fields, which were leased out for matches), but the fields offered a different kind of experience. Shown photographs of people in Greville Smyth Park and photographs of Field 1 taken on the same day in April 2010 (a Saturday) with no people in shot,[90] she said that the catchment area for the Park was much larger - the whole of Bedminster, Ashton and Ashton Gate. If you wanted a picnic and swings you would probably go to a manicured park but the Application Land was used for different reasons: you could walk freely and feel you were in the countryside. She has taken part in communal Bonfire Night parties, barbecues and the Jubilee party but they were all more than 20 years ago. There were fetes with wheelbarrow racing, rounders, cricket, coconut shies and other activities. Her understanding was that they were asking the farmer not to put his cows in the field, rather than asking permission to have the events, but she had not herself participated in those conversations. She has spoken to the farmers on the telephone when there was a problem such as an injured cow, and met them in the fields. Nothing has been said about access to or use of the Application Land.

105. [redacted] agreed in cross-examination that there are a beaten track across Field 1 which is used as a short cut to Ashton Court, Ashton Park School, the Angel Inn and

[90] O337-363.

the Dovecote, and a track around the perimeter of Field 1. She said more people used the field for dog walking and walking than as a short cut. Dog walkers went down into Fields 3 and 6 as well as round the edge or to Long Ashton. There were always children creating dens and hideaways. Ashton Vale Primary School has used the land for field trips. She has seen them there occasionally, the last time in March 2010: there were about 20 children in Fields 2 and 4. She spoke to the playground helpers who said that they had come over with the children before. There was always a way through Field 2 into Field 1; the diggers just made the gap much wider in 2008. There was a hole in the bushes beside the stile; you did not have to climb over. She had used the exit in the south-west corner of Field 6 and never noticed a barbed wire fence. The gate between Fields 1 and 3 was normally open.

106. [redacted] produced a number of photographs. One was a photograph[91] which had been given to her in the 1990s by [redacted].[92] He had taken it when enjoying a hot air balloon flight given to him as a present. It shows the southern part of Field 5 and the adjoining parts of Ashton Drive and Fields 6 and 2. [redacted] said that it was possible to get into Field 2, including from [redacted] house. There was a line suggesting a track made by animals or people running diagonally across Field 5 but that was not the way she tended to go (which was to turn right rather than left). She paid a gardener to cut back some scrub and bush at the bottom of Field 2. Some of the photographs[93] were ones she had taken of external and internal access points to the fields. Two were of a road sign reading "Ashton Vale" which is by the Robins pub at the eastern end of Ashton Drive, pointing in the direction of the railway bridge and also bearing a height restriction warning in relation to the arch.[94] Some[95] were of an event called "walk the line" arranged shortly after the 2008 clearance to draw local people's attention to what had happened and "*galvanise support*". It was a "*symbolic walk*" along the line where the hedgerow had been taken out. It was, she thought, in early November after very heavy overnight rainfall (one photograph shows a flooded area). The community event in March 2009[96] was not set up as an evidence-gathering

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[91] [redacted].
[92] See paragraphs 84-85 above.
[93] [redacted].
[94] [redacted].
[95] [redacted], [redacted]
[96] [redacted].

exercise for the Applications. It was organised by the Young People's Club in conjunction with [redacted] of Bristol City Council and involved the local police and various exhibitions. The Bristol Harriers (who run regularly across the fields) staged a night-time photo-opportunity on their own initiative to show their opposition (by giving the thumbs-down sign) to building on the green belt.[97] Other photographs were taken by her to show that people did use the fields for walking, children's play and so on.[98] She denied that people made a point of walking in the fields after the Applications were made. She took the photographs when she saw someone out there.

[redacted]

107. [redacted][99] has lived at [redacted] since he was born in [redacted] He considered the eastern part of Ashton Drive to be within Ashton Vale. He played regularly on the Application Land with his brothers, fishing in the brook, making dens in Field 2 and catching butterflies in Field 5. As an adult he has used it for walking and dog walking. In his questionnaire (dated July 2009) he said that he used it once or twice a day but in his statement (dated January 2010) he said three or four times a day. He explained this in cross-examination by saying that his dog needed extra exercise. He was also challenged about stating in his questionnaire that he had used the land "*all my life every day*". He agreed that he had not used the land when on holiday, but said that his mother had taken him there when he was small and denied that he was exaggerating otherwise. He said he could walk freely from field to field and described a sample walk as beginning at Silbury Road, continuing around the edge of Field 1, through the gateway into Field 3, down to the gateway into Field 6, down around the edge of Field 6 and through the stile in Field 5 (presumably onto FP 424 up to Ashton Drive). He thought he had seen footpath signs near the Silbury Road entrance and between Fields 3 and 6. He had always walked along both sides of Colliter's Brook New Cut. He had walked all over the fields and nobody had ever stopped him or told him not to go anywhere or to keep to paths. He had spoken to the farmer about such matters as sick and missing cows and boys throwing bottles and "*general chit chat*". He had never seen 120 cows on the Application Land. The

[97] [redacted].
[98] [redacted], [redacted], [redacted], [redacted].
[99] [redacted] written statement and questionnaire are at [redacted].

presence of cows did not stop him using the land; he steered clear of them. He had used the land during the borehole drilling and seen no exclusion zone or signs. During the landfill the tip had not been fenced to exclude access. He could still go round it and go to the other fields. He could remember it being worked on, lots of mess and noise, soil being moved around and eventually it being flattened and grass growing on it. He could not say if the dates put to him in cross-examination for final restoration were right or wrong; but he did not go on and around land until he considered it settled.

108. Before the landfill there was a big pond or lake in Field 1 near the south-western corner; he produced a photograph of swans on it. It was not his experience that the land became too wet to use; he went out in all weathers on it. The bottom of Field 5 got wet but it was always dry up north. Field 6 sometimes got wet at the bottom but it was not too bad at all; he had walked quite a lot in that field. Field 2 was not inaccessible before the 2008 clearance. Children used to go and fish in the brook. The cows used to go through a gap in the trees between Fields 5 and 2 and people would follow them. Lots of children made dens in there when he was small and they still did in what was left of the hedgerow. Between Fields 1 and 2 there used to be a gate which was the main entrance; it was made into a stile. He thought there was a step on the stile at one time. It was possible to walk all the way down through Field 2.

109. [redacted] got into a muddle about the location of public footpath signs, perhaps because he walks round a wider area than just the Application Land. I think he probably underestimated the number of cows on the land because he was steering clear of them rather than counting them. "*All my life every day*" was a self-evident overstatement. But he came across as a genuine long-term and frequent user of the Application Land and I accept the rest of his evidence.

[redacted]

110. [redacted][100] has lived at [redacted] since November 1995. It used to be his parents-in-law's house and his wife has lived there since the early 1950s. From then until 2002 he used sometimes to walk across Field 1 from Silbury Road to Ashton Court for the balloon festival or the Dovecote public house. In 2002 he was made redundant and took up a paper round. One early spring morning, while crossing Field 1 on his way to deliver papers, he was surprised to see deer. From then on he has walked round all the fields looking for wildlife. For that he needed to go around the edges looking in the hedgerows and ditches, but he could go wherever he wanted to so long as he had the appropriate walking boots for the time of year. He very often walked into Field 2 to see the kingfishers by the brook. There were lots of hawthorn bushes, brambles and stinging nettles in there but it was the sort of place you went if you were interested in birds. He took no notice of scratches and stings. His other favourite sights included buzzards soaring above the fields, an occasional sighting of a peregrine falcon, and watching the snipe in Field 5 which is often flooded and very marshy. He has never come across the farmer or her son when engaged in this pursuit; no one has told him not to use the land or to keep to specific paths. The cows did not bother him, but he could not remember seeing more than 50. He did not meet the reptile collectors. He recalled the boreholes; there was no exclusion zone and it did not stop him from using the land. He was not there when the actual drilling was taking place. He did not go anywhere near the boreholes but no one told him not to.

111. He came across other people on the Application Land, mainly dog walkers but some doing various other things. He has seen remains of barbecue coals on the ground in Field 1, in the south-western corner. He has seen blackberry picking in various locations, particularly in Field 1 on the western and southern boundaries. Other people crossed Field 1 just as he had done before 2002 but people walked round it too. There was no footpath sign; "*you could walk wherever you wanted to*". Dogs were walked around the edge, but there were no boundaries; he had seen dog walkers all over the field. He would see people anywhere on the Application Land.

[100] [redacted] written statement is at [redacted].

112. In his opinion the railway arch was the boundary of Ashton Vale. It was like going into a different world, leaving the hustle and bustle of everyday life behind. Ashton Vale was a quiet social area, a different community altogether.

[redacted]

113. [redacted][101] has lived in [redacted], [redacted] of them at [redacted]. In her opinion, Ashton Vale began at the railway arch. As a child she played on the Application Land, making dens, exploring, riding her bike, fishing in Longmoor or Colliter's Brook, looking for birds' nests in the hedges, picking blackberries, wading in the water when the fields flooded and ice skating in the winter. Her [redacted] (born in [redacted]) enjoyed all the same activities on the land up to her early teenage years. [redacted] has continued to walk her dog on the Application Land daily, watch wildlife and pick blackberries in season. She has also taken her niece's son to play there when he visited.

114. Access was gained from Silbury Road across the bridge. Prior to the landfill Field 1 had a raised part but the western side would flood. Since the landfill flooding occurs more on the lower fields. During the landfill period Field 1 remained accessible; it was possible to walk round the area where tipping was taking place. She could not recall any internal fences; nor could she specifically recall cattle on the restored sections. The bund was not that big. She produced stills from a DVD showing herself, her daughter and her niece up on the bund on 16 August 1987 watching the balloon fiesta,[102] and a view from the bund looking across an operational tipping area towards Long Ashton. She did not know the date when the landfill was completed, but would be surprised if it went on long after that occasion.

115. There was no set pattern to her dog walking, apart from always coming in and out through Field 1. Normally she would go down into Fields 3 and 4, and sometimes into Field 6. From Field 4 she would return to Field 1 by crossing into Field 5 from the corner of Field 4 and up through Field 2. She encountered a lot of dog walkers,

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[101] [redacted] written statement and questionnaire are at [redacted].
[102] [redacted].

walkers and children playing, including children with fishing nets. It was not her impression that people only really used Field 1. Some people probably did, but the majority used all of the fields. The fields were *"all popular really"*. Where people lived made a difference; as a Silbury Road resident she did not always go down into Fields 5 and 6. She agreed that some people crossed Field 1 to go to the balloon fiesta and the David Lloyd Centre, and that there was a perimeter track that was popular with dog walkers, but would not agree that apart from those routes use of Field 1 was sporadic. From where she lives she could see across Field 1 towards Ashton Court and would not say that the majority of users went around the edge or straight across. The lower fields were not too wet to use all the time before the 2003 drainage works. She was always able to walk on them. Their being wet was all part of the fun. The water enhanced the fields by bringing a variety of water birds including ducks, herons, swans and even geese.

116. The cattle never restricted her use of the land. She could not remember large numbers of cows all together. She had telephoned the farmer when cattle or sheep were in distress or escaped, and no one had challenged her being on the land. She had met the farmer and her son there when dog walking and they had said nothing to her. No one gave her permission to go on the land. Until recently she had been unaware that there were any public footpaths across it. [redacted] produced a photograph showing a (completely unfenced) borehole drilling rig.[103] There was no exclusion zone round it and no one told her not to approach. She spoke to some of the operators and asked what they were doing. They did not tell her to leave the field.

[103] [redacted].

[redacted]

117. [redacted][104] has lived at [redacted] since [redacted] or [redacted]. Her house abuts [redacted], and is on one side of the public footpath leading down on to [redacted].[105] That is the means by which she went on to the Application Land. Her [redacted] was [redacted] years old when they moved in and played in the fields with local children, making dens, tadpoling in the ponds and picking blackberries. When they first moved in there used to be bonfires with the farmer's permission. The family also exercised their dogs on the land, which [redacted] continues to do. She has also taken her granddaughters to play there. She described walking her dog from the footpath entrance through Fields 4 and 3, and from there into Field 6 or more often into Field 1. No one ever told her she could not walk on the land or to keep to paths. She has only had one conversation with the farmer, when he came round the back of her house and put up some barbed wire which, he told her, was to stop cattle coming up over the old stile and into the road. She spoke to one of the reptile collectors, who told her he had not collected much. She remembered the boreholes being dug and walked round the edge when they were being dug; none of the men told her not to and she saw no signs.

118. Waste was still being tipped when she moved to Ashton Drive. She could not remember any more fencing during the landfill period than there is now. She could not remember cows on Field 1 until after it was all grassed over. She did not dispute the date of autumn 1989 for reseeding of the last section when put to her in cross-examination.

119. She said in cross-examination that she had never tried to follow the official route of FP 424. It was possible before the 2008 clearance to walk through Field 2, but it was necessary to squeeze in between trees and bushes and she had not done so. She

[104] Her written statement is at [redacted].
[105] As shown on the photographs at [redacted].

agreed that more people were passing her back wall since the 2008 clearance opened up Field 2 than ever before. She agreed that there was a short cut route to Long Ashton across Field 1 which people did use and she had used (although she would not use it to go to the Dovecote, because the ground was uneven and she would be wearing unsuitable footwear), and also a beaten track around the edge which was popular with dog walkers. Asked if those made up the predominant use of Field 1 she replied "*I'd say yes but a lot of others go for walks*". She said she had seen people walking round in Fields 3, 4, 5 and 6 all the time since she had lived there, especially in early mornings and evenings. She could see Fields 5 and 6 from her back window, and all of the land from her back garden. Ashton Vale began under the railway arch in [redacted] opinion.

[redacted]

120. [redacted][106] has lived at [redacted] since [redacted], when he was [redacted] years of age. In his opinion, the railway arch on Ashton Drive marks the boundary of Ashton Vale. He has [redacted] children, born in [redacted]. His back garden adjoins [redacted] on one side and Colliter's Brook on another. His children had "*a wonderful childhood*" playing in the fields, making dens, fishing, blackberrying, bird watching, paddling when the fields were wet, having bonfires and even ice-skating on the ponds in winter. His grandchildren (aged [redacted] and [redacted] at the date of the inquiry) now do similar things when they visit at weekends and in school holidays. He is a keen bird watcher and has seen many species in the fields including skylarks, pied wagtails, thrushes, fieldfares, redstarts, green woodpeckers, kingfishers, herons and buzzards. He is also a keen walker and regularly walks around the fields and beyond to Long Ashton, Ashton Court and Hanging Hill Wood.

121. When they first moved in there was a small wicker fence around the garden. [redacted] erected a stile so that the family could get over it into the field. The farmer attached his barbed wire fence to the stile in such a way that it could continue to be used. The stile eventually rotted. When his elder grandchild began to walk, he put up a high fence around his garden to prevent the child from falling into the brook. He

[106] [redacted] written statement is at [redacted]. He is married to [redacted] ([redacted]).

has had no discussion with the farmer about the stile or any other matter at any time. He was not personally involved in any discussions about the bonfires; his role was to help with lighting the fire and fireworks on the day. After entry from the garden ceased to be possible, [redacted] entered the Application Land from the Ashton Drive footpath entrance or Silbury Road. He would walk from field to field, not keeping to any specific route or to marked paths. He never found the fields too wet or the grass too long to use. Field 2 was not inaccessible; he could get into it from his back garden or from Field 1. When he carried on to Hanging Hill Wood he would exit Field 6 by climbing through the barbed wire fencing in the south-west corner. He agreed it was obvious that the public were not allowed in or out at that point. Alternatively he would cross the cattle bridge and go down the public footpath on the other side of the brook.

122. During the landfill [redacted] had walked up to see what was going on. He was able to walk through past the tipping. He had no detailed recollection of the operation and said that he had no reason to doubt the dates of June 1989 for levelling and autumn 1989 for reseeding the last section to be restored which were put to him in cross-examination. He could not recall cattle or fencing or security guards. He could recall the fire brigade coming to put out a fire there. He could not understand why that land was used for that purpose; it was done in so anti-social a way as to be unbelievable. He agreed that when he wrote a letter of objection to the phase 5 planning application, he meant to refer to phases 3 and 4 on Field 1 when he said that the points he was making (about flooding in the lower fields, dust, vermin, noise and pollution of brooks) were "*already proven by the last operation*".[107] But he and his family were not deterred from going around and on Field 1 during or after the operation. He had never met the borehole drill operators but had used the land during the drilling period. There was no restricted zone. No one told him not to go there. He had seen but never spoken to the reptile collectors.

123. From his landing window he can see most of Fields 1, 3, 4, 5 and 6 and from the back of his property he can see round to Clifton Suspension Bridge. He has seen a lot of dog walkers on the Application Land; also ramblers, children playing, bird watchers,

[107] O301.

kite fliers, birds of prey being flown and dogs being trained. He accepted that after the landfill there developed an obvious track across Field 1 which was used to cut across to Long Ashton and that a track used by dog walkers has developed around the perimeter but denied that that was the only real use of the Application Land. When it was put to him in cross-examination that there was no significant recreational use of Fields 2-6, he said it depended what was meant by recreation. Those fields were never used for football or cricket. They were not like College Green.[108] But they were used by many people.

[redacted]

124. [redacted][109] moved to [redacted] in [redacted]. [redacted] had grown up there and used the Application Land for various activities and it was on the edge of the countryside. During the summer months he took his children ([redacted]) through the fields and let them paddle in Colliter's Brook New Cut by the cattle bridge before going on to Hancock's Wood. He went across Field 1 on his way to go running towards Long Ashton. [redacted] ago he bought a [redacted] and has taken it flying every Sunday and sometimes during the week on the Application Land. A year later he bought a [redacted] and has taken it walking across the fields every day. He mainly used Fields 1, 3 and 6 although his dog went into Fields 4 and 5 as well. He only used Field 2 to cut through into Field 1, and only used Field 5 (which was always flooded) when he got access to the Application Land by the [redacted] house. Other ways in he used were from Silbury Road, across the cattle bridge and through the barbed wire fence into Field 6. He kept to the path along the western side of the Application Land and assumed that was a public right of way. No one ever told him to leave or that he was trespassing. He had used the fields when boreholes were being drilled and spoken to the workers. There was no exclusion zone or signage and no one told him to keep away. He had only seen the reptile collectors from a distance when walking his dog, which he does at around 4pm. The largest number of cows he had seen was 40-50, but he did not stop to count them. There was a cut through across Field 1 but he had seen people in

[108] The grassed area in front of the Council House in Bristol, where the inquiry was being held.
[109] [redacted] written statement and questionnaire are at [redacted].

all the fields: dog walkers and a few children out playing. It was "*not overly crowded but you do see people*". He thought that Ashton Vale was bounded by the railway lines and Colliter's Brook and did not include the eastern end of Ashton Drive.

[redacted]

125. [redacted][110] was born in [redacted] and has lived all her life at [redacted], which adjoins the [redacted] corner of [redacted]. Her [redacted]) played there as a child and walked there with [redacted] when they were courting. When they moved in [redacted] years ago ([redacted]) there was no rear boundary fence and the garden ran into the fields. Her [redacted] later built a retaining wall and short fence. She played on the Application Land as a child. During her teenage years she took up cross-country running and she ran or jogged on the Application Land until she had children. Her partner (now husband) jogged with her once or twice a week. They did not stick to any specific route; if it was wet they would stick to field edges, if not they would not. It was too rough to jog on Field 5 so they walked there. In [redacted] she had a [redacted] and gave up work to look after him; in [redacted] she had another [redacted]. She has often taken her children to the Application Land to explore the fields and wildlife; her elder son enjoys running in the long grass and collecting bugs and watching tadpoles. She has never restricted her use of the land to paths or been told to do so. There was an area around the junction of Fields 3, 4 and 6 where it tended to flood in winter and people ice-skated. It could get wet at the bottom of Field 6, but the whole of Field 6 did not flood. Field 2 was quite dry now. It was the water which attracted wildlife and made the area what it was. People fished mainly between Fields 4 and 5/6, in Colliter's Brook by Field 2 and in Colliter's Brook New Cut by Field 3. As a child she raced rafts (polystyrene dishes) down Colliter's Brook New Cut but it was more overgrown now than it used to be. She picnicked by the three oak trees in Field 6 when she was young and had seen other picnics there and in Field 1, but not many. There had been Tarzan swings on those trees and the oak tree at the bottom of Field 6 but she had not seen any in the last 20 years. There were always dens in the bushes between Fields 1 and 2, and 5 and 6. It was probably more than 20 years since any communal

[110] [redacted] written statement and questionnaire are at [redacted].

celebrations had taken place. She had been too young to know about the organisation of those events.

126. The landfill was a novelty for her and the other local children. They would still run up and play on the areas that were not being tipped on, and access the other fields through Field 1. She never saw any supervisor; there would be no one round except when the machinery was working. There should have been barriers there, but there were none. There was a mound of earth set into the field at the bottom of Silbury Road - perhaps 2 metres high - that they used to walk round or run up. There was a line up the mound where people used to walk. One could turn left into Field 2 or go across to Field 3. She could not recall any stock fencing. She could not recall walking on soft soil or land where no grass was growing.

127. [redacted] agreed in cross-examination that there was a popular short cut across Field 1 from Silbury Road towards Long Ashton, but said that people had done the same before the landfill as well as afterwards. People walked their dogs round Field 1 and used it to access the other fields. She had seen people moving from one field to another; she had never divided them up in her head. The local community had always used Fields 2 to 6. The bottom part of Field 5 where the sedge beds are was permanently wet. The sedge had been there as long as she could remember; it was only cut about once before 2008. It was now getting back to the same height as it used to be before it was cut.

128. [redacted] said that she had not known there was a public footpath from Ashton Drive into Field 5 until recently. There used to be a little lane further down Ashton Drive which led to a stile into Field 6 that she used to use, but had not been used for a long time. It had always been possible to get through the south-western corner of Field 6. There had been barbed wire across it sometimes but at other times not. The telegraph pole had not always been there. Before the 2008 clearance she could walk between Fields 4 or 5 and 2 through gaps in the hedgerow, and from Field 1 to Field 2 over a wooden stile (before it was changed to a metal fence)[111] or by a little path through the bramble bushes. She had not met a farmer on the fields since she was a

[111] [redacted]

child, and even then not been spoken to by them. She had seen cows and recently sheep on the fields; as far as she could see they had wandered from field to field and across the cattle bridge. There had been a gate between Fields 1 and 3 on and off but it was always able to be opened or walked through.

129. After the 2008 clearance, a group of residents came together and formed [redacted]. They collected signatures for a petition which they submitted to Bristol City Council in April 2009 asking for the Application Land to be purchased compulsorily and designated a wildlife reserve.[112] [redacted] petitioners, together with [redacted] and [redacted][113] and [redacted].[114] In December 2008, they submitted representations in response to an invitation by the Council to make proposals for sites, proposing that the Application Land should be a nature reserve.[115] In late 2008 they became aware of the town or village green registration process through an internet search which led them to the Open Spaces Society website. [redacted]t produced some photographs which she had taken of people recreating on the Application Land[116] which, she agreed, were mostly taken after that. She said that people had always used the land, but not needed to take photographs before to prove it. She would not have wanted to photograph people before. Two one-off events had been held in the same period: the "Colliter's Fun Day", litter-picking and clearing the Brook, and the "Christmas at Colliter's" event in December 2009 when carols were sung by the brook after a procession with lanterns made at the school.[117] However the Colliter's Brook trek had taken place two or three times. It was designed and promoted as part of the South Bristol Riverscapes Project, a Bristol City Council led project to encourage people out into the countryside. The route was designed to follow public footpaths including FP 424.[118] [redacted] had e-mailed [redacted] of Avon Wildlife Trust to ask if they would support the Applications and received a reply dated 14 April 2010[119] from the [redacted] containing the passage "*The Trust has worked closely with the Ashton*

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[112] [redacted].
[113] Paragraphs 76-82, 101-106 above.
[114] Paragraph 276 below.
[115] [redacted].
[116] [redacted], [redacted]-[redacted], [redacted]-[redacted], [redacted]-[redacted].
[117] [redacted].
[118] [redacted].
[119] [redacted].

Vale Heritage Group to oppose this application as we are aware that the local community has used the fields for informal use and wildlife observation/activity including bird watching, wildlife walks and other recreational purposes over generations." She did not know where the writer had got that information from. She had never spoken to him.

130. Ashton Court was a mansion house and estate about 40 minutes' walk from the Application Land which was open to the public every day. The balloon fiesta had been held for 30 years or more. It was one of Bristol's biggest events, held over a weekend which also involved a concert and fireworks. The balloons took off from Ashton Court; some landed in Field 1 and local people helped pack them up. There was open access to the playing field, but it was not easily found or signposted. It was used for football during evenings and weekends and was a managed area unlike the fields, with a different kind of use.

131. As [redacted] saw it, the railway arch marked the boundary of Ashton Vale. Polling district A in Bedminster electoral ward (polling station at Ashton Vale Community Centre) had its boundary in that place.[120] She had not researched the question of whether the boundary had changed. She had only recently known about there being an area policeman; he held surgeries at the Community Centre. She had tried to find out about the school catchment area and been told by a governor that it was a 2 mile radius, but people from outside the area could apply for places. Most of her [redacted]s came from Ashton Vale, some from Southfield.

[redacted]

132. [redacted][121] has lived at [redacted] (which adjoins [redacted] and [redacted]) for [redacted] and at [redacted] (which is on the far side of [redacted]) for [redacted] years before that. She has known the Application Land since 1972 as [redacted]. When she lived at [redacted] she thought that she

[120] The map at [redacted] is dated 2009.
[121] Her written statement and questionnaire are at [redacted]. A statement written by [redacted] in 2008 in connection with the complaint about the 2008 clearance is at [redacted].

lived in Ashton Vale. Her children (born in [redacted]) went to school there and she used to vote in the community centre in Risdale Road. She knew that people from that end of Ashton Drive used the Application Land.

133. Over the years she has gained access to the Application Land by three different means. When she lived at [redacted] she gained access from Silbury Road. She said that she did not use the Application Land regularly during that period, and she could not remember much about the landfill operations or what the land had looked like at that time. She said it was a long time ago. She thought that the family went there when the tip was operational, but nowhere near the actual tipping area; rather, around the outskirts to access other fields. She had a vague recollection of heaped earth and the land being covered over and grassed in sections. She could not recollect any fencing; she could not be sure there was none, but the landfill had not stopped them walking over there. She could not remember the dates of reseeding or walking over bare reseeded soil. What she could be certain of was that it was all finished by the time the family moved house in [redacted].

134. From [redacted] the family has gained access to the Application Land [redacted].[122] That part of Field 5 drains very easily. She knew there was a public footpath between nos. [redacted]. There was no footpath sign in Ashton Drive but people still walked through it. Quite a lot of people came down there, but the reptile fencing had put people off. Her normal means of access since [redacted] was over the back wall but she had entered Field 6 in the south-west corner. There had not always been barbed wire there; she did not know if it had been cut. From 1992 she and her husband had walked the fields and her children had built dens in the hedges around Fields 2 and 5, had birthday parties, and played with friends. Their garden was only small. They still went for walks as a family at weekends and had started to take her [redacted] (aged [redacted] at the date of the inquiry). She and her husband used to go for walks after tea as they both worked. Where they would go depended on the time of year; it got wet at the bottom of Field 5, and there was an area that became a lake in winter and sometimes in summer around the junction of Fields 3, 4 and 6, but apart from that they would walk

[122] Photograph at [redacted].

"*wherever*". She could see from [redacted] which areas were really wet and they avoided those areas. There were always areas that could be walked. There had been three or four small scale bonfire parties on Field 5, attended by them and their immediate neighbours, over the years. The "lake" was used for spotting swans and other birds and had been used as an ice-skating rink in cold winters. The wet part of Field 5 attracted reed buntings.

135. The family had never asked permission to use the Application Land. They had met the farmer when fishing for tadpoles or walking down the western side of Field 6. They had passed the time of day and not been told they should not be there or to stick to paths. They had met and spoken to the reptile collectors and not been told they should not be there. Before the borehole drilling work they received a letter notifying them that it was going to take place. There was no exclusion zone. Her husband and grandson went over to see what was going on but she chose not to. The view of the fields from her house was really good. If the weather was bad she would not see so many people but it was very rare that she did not see someone out there. It was not only Field 1 that was used; Fields 2 to 6 were used as well. Field 2 was not inaccessible before the 2008 clearance. The cows would push the bushes to one side and there had always been a way in at the top from Field 1. Field 1 was used regularly during the balloon festival to watch the balloons and help them land; people took picnics over there to make it a special event. The soil testing had made a mess of Field 1; it was unsafe to walk when dark. She was sure that people did take a short cut across to Ashton Court but from [redacted] she saw people working their way from Field 1 into Fields 3 and 6 and up to the black bridge (i.e. out of the south-west corner) or back to Fields 5 and 2. The Application Land was not just used by dog walkers; a lot of people rambled there. A lot of children used Fields 2 and 5. The schools used those fields. She had watched them come down by her house. She produced some photographs[123] that she had taken in September and December 2009 and March-April 2010 of people on various parts of the Application Land, including children and dog walkers and a [redacted].[124] In cross-examination she accepted that they were all taken after the idea of applying for registration as a green was conceived

[123] [redacted].
[124] Not [redacted] (paragraph 124 above).

and that she was active in the campaign to achieve registration. She said that they felt no need to photograph people before that, but after that, they felt it helped their cause. She also produced copies of photographs showing Fields 2 and 5 which had been taken by [redacted] from a balloon in June 2008.[125]

[125] [redacted].

[redacted]

136. [redacted][126] is one of the Applicants. She has lived in [redacted]e all her life (almost [redacted]), and for the last [redacted] years at [redacted]e (which adjoins Field [redacted]). She, her [redacted],[127] and their [redacted]s (born in [redacted]) have gained access to the Application Land from [redacted]n and the [redacted] and [redacted] throughout that period. As a child she lived in [redacted]y [redacted], and spent many weekends and school holidays playing in the fields around Ashton Vale. Her own children played on the Application Land making dens, fishing in the pond in the north-west corner of Field 5, and ice-skating on Field 3 in cold winters. Her [redacted]n have fished along Colliter's Brook and her [redacted]n have fished at the junction of Fields 3, 4 and 6. [redacted]s to move in to that part of Ashton Drive. They joined in the Bonfire Night and other parties in the 1970s. In chief she said that the farmer had been "*politely informed*" that they were going to have an event, but in cross-examination she accepted that "*he [the farmer] could have said no but he didn't*" and seemed to incline to the view that permission was, after all, obtained. During the past 20 years they had bonfires with a couple of neighbours without permission.

137. Local people always used Field 1 even during the landfilling. The northern part was already filled in before they began. As far back as she could remember, that part of the land next to the fence by the trading estate had been higher than the rest. She produced a photograph[128] taken by her in [redacted] showing her children jumping down from that bank into snow beneath. During the landfill it was always possible to walk round on that bank, which was untouched; they just raised the rest to the same level. The rest was filled in and grassed over in stages. She had walked round to see what was being done. The bund was not huge; it was flat on top and grassed and you could walk over or round it. It was possible to walk round the back and down the side

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[126] [redacted]: written statement and questionnaire are at [redacted].
[127] [redacted]: see paragraphs 120-123 above.
[128] [redacted].

to Field 3. She thought she had seen some people walk on the lorry track. She could not remember seeing any fencing anywhere. The part actually being tipped was not in general recreational use but the rest was; children used to play on the grassed areas around it and clamber over the tip itself. She produced a photograph[129] taken by her in 1988 showing an area in the course of being tipped, with the Silbury Road houses and Primary School in the background, and said it illustrated how the tipping area was left unprotected. She was sure people would have walked round on the freshly reseeded area to see what it was like. They would have been so pleased it was finished. She had done so (but could not remember seeing anyone else). She had gone to the highest part when it was newly restored for the view of the other fields. In her questionnaire she had answered "yes" to Q.10 ("*During the time you have used the land, has the general pattern of use remained basically the same?*") because the land was put back as it was; it was changed for a while, but when it was grassed they put the cows back and people used it again.

138. In 1989 she was transferred to work at the [redacted], and used to walk to work sometimes from her [redacted], joining up with FP 422 at the bridge from Silbury Road. The landfill was finished then. If it was wet weather, she would go via Ashton Drive. However, she continued to walk that route to work until her job was relocated in 1992, and to visit her mother until 1993. Her mother used to walk the route the other way to visit her house from 1970 to 1993. There was a path by the side of the stream and a way through the trees at the north end. It was never so overgrown as to be impossible to get through into Field 1. There was also a wooden stile, which rotted, which was replaced recently by the metal structure which is there now.[130] Field 2 was the driest field of all. Children played there, including her own. There were two rows of hedge and children made dens between them. Cows made tunnels through into Field 2; she produced a photograph taken from her house after the landfill was completed, showing a hole in the hedge between Fields 2 and 5.[131] Only latterly before the 2008 clearance was it not possible to get through into [redacted] because of undergrowth. After that they walked around the footpath and went into Field 2 through the hedge

[129] [redacted] (top left).
[130] As shown in [redacted] photograph at [redacted].
[131] [redacted]4, bottom right.

from Field 5. On [redacted] 2008 she looked out of her [redacted] and saw the hedges, trees and bushes being torn out by diggers and tractors. She telephoned the *Bristol Evening Post* and the City Council to complain, and was told that others had already done the same thing and that it had to stop. The next day she saw the contractor pulling out hedges at the bottom of her garden and asked what he was doing. He replied "*clearing up*". The police were called and the work was stopped.[132]

139. [redacted] was not aware of there ever having been any footpath signs around the Application Land. She agreed in cross-examination that it had not been possible to follow the route of FP 424 since the landfill. However, she said, people did not know it was a footpath anyway. It should have been re-routed. People used Field 2 instead. It was possible to cross the culvert from Field 5 to Field 4 but not between Fields 4 and 1. There had been a gate between Fields 1 and 3 "*on and off*" over the years, but not very often. The cows had used to wander through from field to field. The gate in the top photograph on A1319F (taken by her) had only been put there in the last couple of weeks. [redacted] produced some photographs, taken recently by her, showing rear accesses of various kinds from houses in Silbury Road and Ashton Drive.[133] She had never come close to the present farmer or her son; she had only seen them from her window on their quad bike fetching the cows. She used to walk on the Application Land in the afternoons, after she finished work at 12.30pm, not at the times when the farmers came over. The cows had not deterred her family from using the fields. In the past few years there had also been sheep there. She had been away on holiday for two weeks during the ground investigation works in early 2009. She had not gone over to the site compound or looked for any notices there. There were no notices "*on our side*". She could not remember more than one borehole drilling rig running at once. There was no fencing around them at all. She referred to the photograph at A1268. While the workers were there she had kept away; she did not want to interfere. She went over at weekends when they were not working. People used to walk around and talk to them. At a planning meeting one of their staff had said people should feel welcome to go and talk to them anytime.

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[132] A statement made by [redacted] for the purposes of the investigation is at [redacted].
[133] [redacted].

140. Fields 2 to 6 only began to get wet after the landfill "*pushed the water our way*". When they got wet it was possible to walk around the wet areas, or through them in boots. Field 3 was where it froze over in extreme weather; there had been ice-skating in winter 2008-09. She had skated there herself. Field 5 could be muddy at the lower end. The whole of the Application Land was used for recreation. Children played in the streams, fishing and making bridges across them; played in Field 2; and rode bikes in Field 1. She has seen children kicking footballs around (but no cricket), and picnics during the balloon festival. Some she recognised as neighbours' children; others she did not. People picked blackberries; there were blackberries around the edges of Field 1, between Fields 6 and 5, and down the western side of Fields 2 and 6. She has seen bird watching around the hedges between Fields 2 and 5 and 5 and 6, and dog training in different patterns all over Field 6. She has flown kites with her children in Field 2; her next door neighbour has flown kites and she has occasionally seen kites flown from the highest point on Field 1. People used Field 1 "*for all sorts*". She can see most of the Application Land from her [redacted]. She has seen people walking over all the fields. In cross-examination she agreed that there was a short-cut route across Field 1 to Long Ashton, but said that people did the same before the landfill; she was not sure it had increased since. She also agreed that a practice of walking dogs around the edge of Field 1 had grown up since the landfill. A lot of retired people with dogs walked round the edge. People did that because it was the longest possible route. She walked round the edge herself, but not as often as the dog walkers because she had no dog. She went over in all weathers to walk on the Application Land; she loved it as if it was her own. She did not want it ripped up and developed, but she had not exaggerated her evidence of use. Use by local people was not sporadic and trivial, although the big events had ceased. She would not have taken photographs of other people using the land in the past; it was not an appropriate thing to do.

141. She has seen children from the Primary School over on the Application Land quite often during school hours. She telephoned and asked [redacted] if they used the land. [redacted] said that they did, and she would have a word with the [redacted] about providing a statement. [redacted], [redacted], sent her

an email, which she typed out, and [redacted] signed the typed version.[134] It reads:

> *"We have used the fields to support our local area geography studies. We have also used them to support art as the children used natural resources to complete a map of the local area. Children have taken a lead in showing us what they consider to be important areas of Ashton Vale and the fields was an important area to all of them. I hope this helps."*

142. [redacted] had not drawn the boundary of the claimed locality/neighbourhood on the map accompanying the Applications; [redacted] had done that, but she agreed with it. It represented "*what everyone thought was Ashton Vale*". When going in under the railway arch, people "*felt they were coming home*". Even as a child, she had thought the arch marked the boundary. She went to Ashton Vale Primary School and children on the other side went to another school in Duckmoor Road, Ashton. She did not know if the catchment area had changed. Some people from the section of Ashton Drive east of the arch used the Application Land, but then so did some people from Long Ashton. When gathering evidence, a team of four ([redacted], [redacted], [redacted] and [redacted]) had asked people they saw on the Application Land if they walked the fields and if they said "yes", had given them a questionnaire to fill in. They had also knocked on doors and asked if the householder used the fields; if the answer was "yes", they would leave a questionnaire and return to collect it. If by word of mouth they heard of someone who used the Application Land, they would let that person have a questionnaire. They had not knocked on doors in the eastern part of Ashton Drive, but had visited houses there to collect questionnaires that had been obtained by other means.

143. [redacted] produced a number of documents in support of her contention that Ashton Vale is a locality/neighbourhood. She produced photographs[135] of Ashton Vale Community Association's centre in Risdale Road and Ashton Vale Church next door (where Ashton Vale Pre-school is based and the local Brownies and Rainbows, with

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[134] The email is at [redacted] and the typed version at [redacted].
[135] [redacted]

whom [redacted] is involved, meet). [redacted] said that a playgroup and pensioners' groups met at the community centre; dances and private functions were held there as well as community events. That was where the fortnightly police surgeries were held. She produced a copy of the fourth issue of "*Vale Voices*" ("*A community newsletter for everyone in Ashton Vale*") dated spring 2008,[136] which contained details of weekly events at the community centre and church. She produced photographs of the no.24 bus which terminates at Ashton Vale, in Langley Crescent, and Ashton Vale Primary School, and Ashton Vale Club for Young People (formerly Ashton Vale Boys' Club) in Silbury Road.[137] Copy Ofsted reports for the Primary School and Pre-school are at A1333D and 1333H. Downloaded extracts from the Bristol South Labour Party website ("*Mark Bradshaw and Colin Smith are working hard for Bedminster, Ashton and Ashton Vale*") and Wikipedia ("*Ashton Vale is an area of Bristol, which lies in the Bedminster council ward. Housing is centred on Ashton Drive and South Liberty Lane and is served by Ashton Vale Primary School... The northern part of the area, adjacent to the Portishead Railway line is mixed light industrial and retail outlets*") are at [redacted] and [redacted]. Downloaded extracts from www.trade-it.co.uk ("*Ashton Vale Property Guide-Introduction: Ashton Vale property is part of a small community at South Bristol's edges, within Bedminster...*") and the website of Durham Mining Museum (giving the history of Ashton Vale Iron Co Ltd, starting with ownership of Ashton Vale mine in 1896) are at A1333F-1333G. There is an even earlier reference to Ashton Vale pit at Ashton Vale existing in the 1820s at A1257. [redacted] also produced a photograph of a bus shelter at the eastern end of Ashton Drive labelled "The Robins, Ashton".[138]

144. I am not sure why [redacted] said that the 2009 borehole drilling rigs were completely unfenced; possibly she may have mixed them up with the 2008 borehole drilling rigs (as shown in the A[redacted]8 photograph) or not noticed the fencing around them because she was keeping away when the work was in progress. Apart from that, I accept her evidence.

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136 [redacted].
137 [redacted].
138 [redacted]

[redacted]

145. [redacted][139] has been living at [redacted] and using the Application Land since [redacted]. He remembers the date because it was shortly after his [redacted] birthday, [redacted] and began to take for regular walks on the Application Land. Since then he has always had dogs and walked them on the Application Land. He has also practised golf, played football with his friend's children, and flown kites there. He has principally used Field 1 but not exclusively; he has walked all the fields. [redacted]. He had a friend ([redacted]) living [redacted] by the corner of [redacted] and would sometimes gain access to the Application Land from his garden [redacted]; he had another friend ([redacted]) living in [redacted] and would sometimes gain access via [redacted] from the bottom of his garden. On those occasions he would walk up through Field 2 to Field 1. He had no problems getting out of Field 2. Other Silbury Road residents also had planks across the stream. Usually, however, he would bring his dogs in the car, park by the Silbury Road garages and go in that way. Until [redacted] he was working, [redacted] and [redacted]; he would use the fields on his days off and after tea on working days. Since retirement he has gone at [redacted], [redacted] and after tea; [redacted] need a lot of exercise.

146. He has never been told that he should not be on the Application Land or to keep to specific paths. He could not recall any footpath signs. However, when he first started using the fields he thought there was a public footpath across Field 1; he was not sure of the area and that was what other people showed him. He produced five photographs taken in different parts of Field 1 at different dates. The first,[140] taken in [redacted], showed [redacted] near the north-eastern boundary of the field, probably [redacted]

[139] [redacted] written statement, questionnaire and photographs are at [redacted].
[140] [redacted]) top.

[redacted] agreed in cross-examination) on or about the route of FP 207. The fifth,[141] taken in about 1982, showed [redacted]n and [redacted] with [redacted]s in the south-western corner of Field 1 with the Long Ashton bypass in the background. [redacted]n said that at that time it was a nice field but not a place to walk in the dark because it dipped up and down. The second and third[142] were taken across Field 1 looking towards Long Ashton in April 1985. They showed a shallow excavation filled with water. He had thought that was at an early stage of the landfill; when it was put to him that phase 3 did not begin until 1986, he suggested it might have been a trial excavation. The fourth photograph[143] showed Field 1 after the landfill restoration and the David Lloyd Centre under construction; it was taken in 1994. During the landfill he continued walking around the edges of Field 1 skirting the tipping areas. He could remember the lorry road but his recollection was of bunds running east-west rather than north-south. He could not remember any fencing or stock grazing before completion or security guards. After work stopped for the night, there was nobody there. He could not remember seeing the land being reseeded but said he had no reason to disagree with the chronology put to him in cross-examination.

147. He agreed that the land had been used for grazing cattle and sheep over the years. He had had no problem using the fields when they were there. The most he had seen was about 40. He agreed that the gate between Fields 1 and 3 was sometimes shut to stop cattle wandering. The farmer did not always come across from the other side of the bridge to escort the cattle; [redacted]n had watched them make their own way in both directions. He had spoken to the farmer seven or eight times in the last 15 years, never on the Application Land, about matters such as dead cattle or people shooting in the fields. He did not see a lot of the farmer on the Application Land, only his mother on her quad bike. He "*of course*" used the land when the boreholes were being drilled. There were no fences around the rigs. He spoke to the operators who did not tell him to move away or wear protective equipment. The maximum number of rigs he saw was two. He used to walk across Field 1 until they tore it up; now he walks around it. He did not meet the reptile collectors.

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[141] A164(c).
[142] A164(a) bottom, A164(b) top.
[143] A164(b) bottom.

148. The fields were only too wet to use after a downpour; the majority of the time they were dry. There used before the 2003 drainage works to be a water-covered area around the centre point of Fields 3, 4 and 6 which he would walk around. After the 2003 works it dried up. He encountered lots of people on the Application Land: dog walkers, bicycle riders, children on motorbikes, pensioners, groups of people walking around, bird watchers, kite fliers. He had not taken note at the time but they did not only use Field 1. He agreed in cross-examination that there was short-cut use from Silbury Road to Long Ashton and a well-used less beaten track around the edge, but did not agree that those were the predominant uses: "*we used all the field until they tore it up and made it uneven*".

149. I think [redacted] is mistaken in his estimate of the number of cows and in recalling no fencing around any borehole drilling rigs. Otherwise I accept his evidence.

[redacted]*rs*

150. [redacted]s is, of course, the other Applicant.[144] He has lived at [redacted] (abutting the south-eastern corner of [redacted]) since [redacted]. He, his [redacted], and their [redacted]n have all accessed the Application Land from [redacted] and (if [redacted] was too wet) from the public right of way between [redacted]. [redacted] and [redacted] in [redacted]n. [redacted]. From his house he can see all of the Application Land except for [redacted], the eastern part of [redacted]1, and the southern part of [redacted].

151. From 1975-1988, he used to climb over the back wall with his [redacted] and walk up through Field [redacted] to get to Winterstoke Road and Ashton Gate to watch Bristol City. Field 2 was not inaccessible. He did not go to Field 1 during the landfill; he did not want to walk round rubbish and preferred Fields 3, 4, 5 and 6. He could see from his house that there were no fences round it. His son used the tip as a shortcut to school;

[144] [redacted] witness statement and questionnaire are at [redacted].

so did many other boys in the area. It amazed him that [redacted] never got caught or told off. What he enjoyed most was looking at wildlife in Field 5 such as snipe and reed buntings. He would exercise and do nature walks and things with the children in Field 6. They flew kites and played football and rugby and camped. He has seen lots of children camping in the fields. His son fished in the ponds and rode his mountain bike alongside Colliter's Brook New Cut. The Application Land was like a big adventure playground. [redacted] went ice skating in Fields 3 and 4. From [redacted] did not use the Application Land himself, for [redacted] reasons. Latterly he has crossed from Field 5 to Field 6 though the gap in the fencing, over the ditch where it has been bridged with wood, through into Field 3, into Field 1, and back the same way. A gate arrived between Fields 1 and 3 shortly before the inquiry; there had been one there previously, but not for some years. He could not remember ever opening that gate. Fields 3 and 4 got flooded after torrential rain but dried out quite quickly. [redacted]

152. When he looked out of his window he saw children playing, and fishing, and flying kites, and people with dogs, and people generally "*meandering and chilling*" like he has done. A lot of children played in the reed beds and got muddy. Different families organised bonfire parties in Fields 5 and 6. A lot of people who did not live in Ashton Vale used Field 1 as a short cut; when there was an event at Ashton Court, up to 200 people a day walked across. He believes that local people mainly used Field 1 but he personally used Fields 3, 4, 5 and 6 mostly. He has seen other people in Fields 3 to 6, especially Field 3. He is not familiar with the north part of Field 1; he has walked along the southern boundary. Asked whether a practice of walking around Field 1 with a dog has grown up in the last ten years, he said "*different people do different things*". When he has been in Field 1 he has met people walking in the bottom half of Field 1. What happens at the top of Field 1 is not in his eye line. He did not believe that his and other people's evidence of recreational use was exaggerated.

153. During the past 20 years he has seen the farmer at various times, mostly on [redacted] across the brook, and said "good morning". They have not had a conversation. [redacted] could remember cows in Field 2. There used to be more cows in the past; recently, he would agree with the figure of about 40. The cattle did not stop him

going on the land. He did not use Field 1 during the drilling works, but stayed in Field 6. He was concerned about what might be in the tip. No one had told him to stay away, not even in the flyer that came through the door advising them in advance about the works. He could not say if the drills were fenced.

154. Ashton Vale in his opinion starts at the railway arch and is bounded by the railway and the Bristol/North Somerset border. The houses in his part of Ashton Drive were built in the early 1960s. The Ashton Drive prefabs and Silbury Road houses were built just after the war. Most of the Ashton Drive prefabs have been replaced with modern bungalows now. Swiss Drive was built in the 1930s.

Written evidence

155. The Applicants also relied on a considerable volume of written evidence of user in a variety of formats: much of it consisted of standard form Open Spaces Society questionnaires, but there were also quite a number of statements and letters, some handwritten. In this section of the Report I summarise the content of that evidence. Questions of what weight can be given to it, and what can be drawn from it, are discussed below. The following general points should be noted at this stage.

156. I have focused on what the documents have to say about four matters: personal and family usage of the Application Land, observations of usage of the Application Land by others, the route by which access was gained to the Application Land, and the existence of public footpaths crossing the Application Land. That is not to say that all of the documents address all of those matters; in the main, the second, third and fourth are only addressed in the questionnaires. Furthermore, even the questionnaires do not provide the level of detail on these matters for which one would wish. That is not the fault of the signatories; the questionnaires are not designed to elicit more than a generalised picture. Of particular significance in this case:

- The questionnaire makes no distinction between different parts of the area of land with which it is concerned in terms of either personal usage or usage by others, which is not very helpful where the area is large or divided into several

parts or possesses diverse characteristics (all of which factors are present here).

- Q.12 ("*To your knowledge are there any public paths crossing the land?*") is not followed up by the other questions which arise if an affirmative answer is given: how many public paths does the signatory believe there to be, and along what route(s)? Not only would that be potentially valuable information for the purposes of assessing what the general local understanding was in those respects, and whether it was as a matter of law accurate or mistaken; it would also assist in interpreting the answers given to Q.15 ("*How often do/did you use the land (apart from the public paths)?*") Self-evidently, a person who is unaware of the existence of any public paths may in answering the question refer without knowing it to use of the routes of public paths which do exist. But so may a signatory who believes there to be public paths, but is mistaken about their routes; and there is the converse possibility of excluding from the answer to Q.15 land which is not a public path at all. The term "public path" is not defined, and could be understood in two different senses: a highway which everyone has a right to use, and a route of which the public in practice make use. Where in the following summary a signatory to a questionnaire is recorded as having stated that there were public paths crossing the Application Land, all that means is that he (or she) gave an affirmative answer to Q.12. It does not mean that the signatory necessarily believed there to be multiple public paths crossing the Application Land; in light of the way in which Q.12 is phrased an affirmative answer is equally consistent with a belief in the existence of a single public path. Only a handful of the many signatories specified a number and/or a route in answering Q.12: [redacted] ("*quite a few*"); [redacted] (between the entrance and the Park and Ride); Mr [redacted] (one, crossing the landfill site); [redacted] ("*several*"); [redacted] (one path "*through the middle*"); [redacted] ("*several*"); [redacted] (one path crossing the land).

- Although Q.15 asks "*How often do/did you use the land (apart from the public paths)?*", neither the phraseology of the question nor the space provided for

the answer encourages the provision of anything other than the most generalised of responses, which may well disguise wide variations in patterns of user over the years.

- Q.23 (or Q.25, depending on which of two slightly differing editions of the questionnaire was completed) asks the signatory to "*tick all the activities that you have seen taking place on the land*". There is, however, no scope for indicating the frequency of such observations or the period(s) of time over which they occurred. A signatory who has ticked (say) the "rounders" box might have seen just one game in 20 years for all one can tell. Conversely, he might have seen it every day. The question does not expressly exclude uses by the signatory's own family, so the answers might overlap with the answers to the earlier question about such uses.

157. The standard form questionnaires of course contain questions on a variety of other topics. Q.10 asks "*During the time you have used the land, has the general pattern of use remained basically the same*?" Almost all the signatories answered in the affirmative; the exceptions are noted below. The value of those answers is, however, diminished by the ambiguities in the question. A signatory could reasonably interpret it as being directed to his (or her) personal use, or to recreational use generally, or to use generally including landowner activities. "General pattern" is a broad phrase, and not inconsistent with significant but temporary deviations - the more so the longer the period of use in question. So, for example, I do not think that it follows from a signatory's omitting to mention the landfill interlude that he or she is an unreliable witness.

158. The questionnaire asks whether the signatory knows who "is" the owner and who "is" the occupier of the land, whether the owner or occupier has seen the signatory on the land and if so, what he or she said. Most of the signatories said that they did not know the identity of the owner or occupier, or whether they had been seen on the land. A number said that the land was occupied by a farmer, or words to that effect. Where a signatory said that he (or she) had been seen by, or engaged in conversation with, an owner/occupier, I mention it below. The questionnaire also asks whether the

signatory ever sought, or was given, permission to go on the land. Almost all the answers to those questions were in the negative; exceptions are noted below. Answers to the question "*Has any attempt ever been made by notice or fencing or by any other means to prevent or discourage the use being made of the land by the local inhabitants*?" were also almost universally negative.

159. I have not summarised any of the responses to the questions directed at locality/neighbourhood issues. None of the signatories disagreed with the boundaries of the locality/neighbourhood as defined by the Applicants, or said that they did not consider themselves to be "*a local inhabitant in respect of the land*". (That, too, is a question capable of being understood in more than one way: it can easily be interpreted as asking if the person lives near the land, rather than in any technical sense.) In answer to Q.11 ("*What recognisable facilities are available to the local inhabitants of your locality*?") most of the signatories ticked a majority of the available boxes.

[redacted]

160. [redacted][145] wrote that she was [redacted] and lived at [redacted]. She had lived in [redacted] all her life. She went to the fields about twice a week or more; what she liked about them was being surrounded by nature and seeing wild animals and plants she did not get to see every day. Children learned about nature there. She and her friends played games such as hide and seek, and looked for insects, slow worms, deer and toads.

[redacted]

161. [redacted][146] gave two addresses and two periods of user of the Application Land. I infer that the user period [redacted] related to his present address, [redacted], and the user period [redacted] related to his former address, [redacted]. He gained access "*across the bridge*". He went between two and four times a month to

[145] [redacted] statement is at [redacted].
[146] [redacted] questionnaire is at [redacted].

use the land (other than the (unspecified) public path(s) of which he was aware) for bird watching, photography, dog walking and blackberry picking. His immediate family used it for dog walking and blackberry picking. He had seen walking, dog walking, children playing, bird watching, blackberry picking, fishing, football, cricket, picnicking, kite flying, bicycle riding and bonfire parties. The occupier of the land had seen him on the land and said "*good morning*".

[redacted]

162. [redacted] sent an email[147] to [redacted], in which she recalled spending days on the land as a teenager, playing and picnicking with groups of other teenagers, and using the land as a short cut to Hancock's Wood and Ashton Court. After marrying, she lived in two houses which overlooked the fields. The family picked berries from the hedgerows and mushrooms. "*Whole weekends of activities*" were arranged for everyone living nearby, involving marquees, barbecues and sports for the children. [redacted] gave no address (past or present), no clue as to her age, and no dates other than a reference to the Queen's Silver Jubilee in 1977. It is not clear whether any of her recollections relate to the 20 year period preceding the Applications.

[redacted]

163. [redacted] said in his questionnaire[148] that he had lived at [redacted] and used the Application Land since [redacted]. He had gained access via Silbury Road to walk dogs and children and go to Ashton Court. He had also taken part in jogging, tennis and football. The activities he claimed to have seen were walking, dog walking, children playing, blackberry picking, bird watching, football, cricket, rounders, team games, kite flying, picnicking, bicycle riding and drawing/painting. He knew of no public paths crossing the land.

147 [redacted].
148 [redacted].

[redacted]

164. A statement[149] signed by [redacted] and their [redacted], addressed [redacted]e, referred to memories of picnics, ball games, kite flying, bird watching, reptile viewing, and rambling across the fields. The writer (either [redacted]) claimed to have lived alongside the Application Land for [redacted] and stated that "*many other residences, supporting the feel of a strong community have also shared the [above] activities*". Reference was also made to a marquee tent erected in the late 1970s to host a community fair enjoyed by some 200 people. Accompanying the statement was a photograph dated [redacted] of [redacted]l and [redacted]s walking in Field [redacted] with another group of adults and children in the background.

[redacted]

165. According to [redacted]s questionnaire,[150] he has lived at [redacted] and used the Application Land since 1987.[151] He has gone on to the land from Silbury Road several times a month (more often in summer) to walk his dog and enjoy the countryside. He has seen other people walking, dog walking, children playing, bird watching, blackberry picking, fishing, and bicycle riding. He is not aware of any public paths.

[redacted]

166. In a statement[152] giving her address as [redacted], [redacted] wrote that she had lived in [redacted] for [redacted] years. It was a lovely, friendly place to live. [redacted], [redacted], [redacted] and [redacted] had lived there too, and her [redacted]

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149 [redacted].
150 [redacted].
151 Although in answer to Q.36 he wrote that he had carried on the activities referred to for [redacted] years without anyone trying to stop him.
152 [redacted].

[redacted] still did. [redacted] had played in "*the fields*" throughout their childhood, playing in dens and climbing trees. Now she took her [redacted] (the [redacted]t of whom was [redacted]) across the fields; they enjoyed seeing the sheep, cows, and wildlife including deer, and playing in the brook. It was possible to "*do a lovely circular walk*" and they often met other people out walking, with and without dogs.

[redacted]

167. [redacted]r said in her questionnaire[153] that she had lived at [redacted] and used the Application Land all her life, from [redacted]e [redacted]. She gained access "*across the bridge*". She had played there as a child, picked blackberries, walked the dog and watched the balloon festival. She and her family used the land "*all the time*"; it was a safe and beautiful place and there was so much wildlife to see. [redacted] was taken over at least twice a week to see cows and dogs being walked. Fund raising activities (sponsored walks, football matches, picnics, and barbecues) had taken place there over a nine-month period to raise £5,000 to finance a local school football team's trip to Holland to play in a tournament. She had seen walking, dog walking, children playing, blackberry picking, bird watching, football, team games, kite flying, picnicking, and bicycle riding.

[redacted]

168. In a brief statement headed [redacted],[154] [redacted] stated that she had lived at [redacted] with [redacted]s for [redacted] years, during which she had "*enjoyed the wildlife and countryside*" with her family and groups of school children from the local primary school.

[redacted]

153 [redacted].
154 [redacted]

169. [redacted]'s questionnaire[155] gave her period of use as [redacted], for some unspecified period of which she had lived at [redacted] (on the far side of [redacted]) before moving to her current address [redacted]. She gained access "*from lane along Brook and Silbury Road*". She used the land (apart from the (unspecified) public path(s) of which she was aware) once or twice a week for playing, exercise and dog walking. Her immediate family also used it for exercise and dog walking. She was unaware of any community activities, but had seen people walking, dog walking, children playing, blackberry picking, bird watching, picnicking and people meeting friends.

[redacted]

170. [redacted][156] said she had used the land from [redacted] while living at [redacted]. She entered from [redacted] by the public footpath. In her younger days she played [redacted] and other games with friends and crossed the land to get to and from school. As she got older, she used to walk her dogs there a couple of times a week. She still used the fields to get across to the Dovecote and the balloon fiesta. She also liked to pick the blackberries, or just walk around the perimeter for exercise. Her immediate family used the land for the same purposes; their [redacted] liked to play and watch the wildlife and cows. She had taken part in Bonfire Night celebrations when she was younger. She believed that the local school took the children over for nature lessons. She had seen people walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, cricket, rounders, team games, kite flying, picnicking, bicycle riding, and drawing/painting. The farmer had said "*hello*" to her. She had never sought permission to use the land but "*guessed*" that the farmer had given permission; "*he never stopped us*". She added that "*You could clearly see the paths people used. Unfortunately they have been ploughed to try stop (sic) people using it as a public footpath*".

[redacted]

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[155] [redacted].

[156] Her questionnaire and covering letter are at [redacted].

171. According to [redacted] questionnaire,[157] he had lived at [redacted] and used the Application Land since [redacted]. He gained access from [redacted]; there had been a [redacted] at the [redacted] of [redacted] when the houses were built in 1963 but it had not been renewed since. He went on to the land to walk to the local church. He used it (apart from the (unspecified) public path(s) of which he was aware) very often. He watched birds and wildlife. He had seen walking, dog walking, blackberry picking, bird watching, kite flying, and picnicking. Bonfire parties had taken place over several years, but not recently.

[redacted]

172. [redacted] wrote a short statement[158] stating that she was born in [redacted] and had wonderful memories of using it during her childhood for walking, picnics and seeing wildlife. Even when there was a landfill site access could still be gained to the area. She had married and moved back to [redacted] and used the fields for walking. She attached six photographs dated [redacted] of which at least some and possibly all appear to have been taken in Field [redacted] during the balloon festival. I assume the family group featured is her family although the letter does not say so. There is one other person (a child) in the background.

[redacted]

173. [redacted] wrote[159] that she had lived in [redacted] for six years and walked her dog in the Ashton Vale fields several times a week, accompanied by her [redacted] at weekends and in the school holidays.

[redacted]

174. According to [redacted] questionnaire,[160] she had lived at [redacted] and used the land from [redacted] to date. She went to the Application Land weekly with her

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[157] [redacted].
[158] [redacted].
[159] In the statement at [redacted]

children to walk, play and explore nature. Her immediate family also used it for dog walking and to exercise and relieve stress. School nature trails had taken place there. She had seen walking, dog walking, children playing, bird watching, fishing, football, rounders, team games, kite flying, picnicking, bicycle riding and drawing/painting.

[redacted]

175. [redacted]n (of [redacted]t) wrote[161] of having lived in Ashton Vale for [redacted] and used Ashton Vale Fields "*for many years both man and boy watching the wildlife mostly the birds*". He wrote of seeing wildlife when the fields were in flood, and of migratory flocks visiting in spring and autumn. The day before he wrote his letter, he had seen a large flock of fieldfares feeding on "*the landfill site*" with a few redwings. A sheet of photographs of birds, butterflies and other insects, deer, mushrooms and the like immediately followed the letter in the bundle, but they were not explicitly identified in [redacted]s letter as having been taken by him or taken on the Application Land.

[redacted]

176. [redacted] said in her questionnaire[162] that she had lived at [redacted] and used the Application Land since [redacted]. She gained access by "*footpath via Silbury Road*" and did not know if there were any public paths crossing the land. She went there daily; she used it for rambling, walking the dog and picking blackberries (as did her immediate family) and as access to Ashton Court. She had seen people walking, dog walking, children playing, blackberry picking, football, picnicking and bicycle riding there, and had participated in the "fun day".

[redacted]

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160 [redacted].
161 In the letter at [redacted].
162 [redacted].

177. [redacted] questionnaire[163] said they had lived at [redacted] and known the Application Land for [redacted] years, and still used it (whether they had used it for all or part of the [redacted] years is unclear). They gained access over Colliter's Brook, two or three times a day, to walk. Their immediate family walked there too. They were aware of (unspecified) public paths crossing the land and their answer to Q.29 ("*Did anyone ever give you permission to go onto the land?*") was "*Public path. Don't need permission.*" They had seen other people walking, dog walking, children playing, blackberry picking, bird watching, football, cricket, rounders, kite flying, picnicking, bicycle riding, drawing/painting and community celebrations.

[redacted]

178. [redacted]in claimed[164] [redacted]years' and ongoing use of the Application Land while living at [redacted] Access was gained over the bridge from Silbury Road, weekly in the summer months, for walking on the land (apart from the (unspecified) public path(s) of which he/she was aware). [redacted]n family also used it for walking. He (or she) had seen people walking, dog walking, children playing, bird watching, football, kite flying and bicycle riding, but was unaware of any community activities. The land was occupied by a local farmer.

[redacted]

179. [redacted]l sent [redacted] an email[165] in which they said that they had lived at [redacted]e since the houses were built in 1964. They used "*the field at the back*"[166] extensively over the years. For years they organised a fireworks display and bonfire party with the farmer's permission for over 150 people. Fireworks were purchased with money collected from neighbours and their families and friends. Neighbours provided food and there was a barbecue, and live music. The parties went on from afternoon until after midnight. As their children were growing up they organised birthday parties with games in the fields (weather permitting). They flew

[163] [redacted].
[164] In a questionnaire at [redacted].
[165] [redacted]
[166] Their house adjoins [redacted].

kites and radio controlled gliders in the field and the children fished in the streams. They walked their dogs there regularly. Ashton Park School also used the fields regularly for nature walks in the past.

[redacted]

180. According to [redacted] questionnaire,[167] he had used the Application Land from [redacted] to [redacted] while living at [redacted] with his parents, to play and walk to school. Among his activities were dog walking, fishing, ice skating and football. He had left his parents' home at the age [redacted], but visited frequently up to 2010. However, he said he had not used the land since moving, implying that the activities he listed as having seen on the land (walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, cricket, kite flying, picnicking, bicycle riding) and the school group nature walks which he mentioned all occurred before 1962 (save if and to the extent that they could be seen from the rear of the property).

[redacted]

181. [redacted] said[168] he had used the Application Land since [redacted], while living at [redacted] (in [redacted]) and then [redacted]. He gained access by "*Silbury Road/through lane behind Brunel Ford*". He was unsure if there were any public paths across the land. He went most evenings and weekends to exercise the dog, admire the view of Ashton Court and Long Ashton Church, and observe wildlife. His immediate family used it for recreation; he had played football with his son. He had seen people walking, dog walking, children playing, blackberry picking, bird watching, football, bicycle riding and drawing/painting.

[redacted]

[167] [redacted].
[168] In a questionnaire at [redacted].

182. [redacted] said[169] she had used the Application Land since [redacted]. It is not altogether clear whether she was living at the same address ([redacted]d) for the whole of that period. She gained access through Silbury Road and was not aware of any public paths across the land. She used the land twice weekly for rambling with her children and dog walking, and "*also through school activities*" (whether in a professional capacity or as a parent she did not say). The local school and the Brownies used the land for activities. She had seen people walking, dog walking, children playing, bird watching, fishing, football, rounders, team games, kite flying and bicycle riding.

[redacted]

183. [redacted] said[170] that she had known the Application Land intimately since moving to [redacted]e in [redacted]. There were "*quite a few*" public paths crossing it. In answer to Q.13 ("*How do/did you gain access to the land?*") she replied "*My property lies adjacent to the land*". She had used the land quite regularly, weather permitting, but "*being prone to flooding, the terrain [was] damp*". She used it for walking, blackberry picking, wildflower study, and watching birds and other wildlife such as deer, foxes, herons and swans. In the past her family and friends had enjoyed the land too. She had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, rounders, kite flying, picnicking, bonfire parties, and wildlife studies by children, adults and societies. She wrote "*Myself and other inhabitants have always used the land without prohibitions*".

[redacted]

184. According to [redacted]'s questionnaire,[171] he had used the Application Land since [redacted], while living at [redacted]. He gained access by the bridge over the stream. There were well worn foot tracks across the grass between the entrance and the Park and Ride area; he was unsure whether they were official. He used the land twice a week, to walk to the Park and Ride or the David Lloyd Centre, and for family

[169] In a questionnaire at [redacted].
[170] In a questionnaire at [redacted].
[171] [redacted].

activities with his sons (aged 9, 13 and 14 at the date of the questionnaire), including walking, bird watching, football, kite flying, frisbee throwing, and cycling. He had seen other people walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, team games, kite flying, picnicking, bicycle riding, motorcross bikes, and trips by the local school. Cattle had grazed the land over the years.

[redacted]

185. In a short statement,[172] [redacted] of [redacted] stated that he had used the Application Land for the past [redacted] years to walk the dog twice a day, accompanied by [redacted] for [redacted] of those years. He still walked round the site during the landfill; at no time was it fenced off to the general public. The fields had always flooded in parts, and the land before the landfill was often quite deep [in water], but you could still walk round the outside.

[redacted]

186. [redacted] said in his questionnaire[173] that he had lived at [redacted] and used the Application Land since [redacted]. He gained access from Winterstoke Road or Silbury Road. The land was crossed by public paths. He used it (apart from the paths) five days a week for dog walking and walks with his family. He had seen other people walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, kite flying and bicycle riding. The land was occupied by Parsonage Farm. He helped the farmer aud had been given permission for dog walking "*plus checking some cattle as part of walk*". He answered Q.10 ("*During the time you have used the land has the general pattern of use remained basically the same*?") "*No*", but did not elaborate.

[redacted]

172 [redacted].
173 [redacted]

187. [redacted]s claimed[174] to have used the Application Land for recreation for [redacted] years, while living at [redacted], but only occasionally. He (or she) had gained access over the bridge and was not aware of any public paths crossing the land. Activities seen on the land were people walking, dog walking, children playing, blackberry picking, kite flying and picnicking.

[redacted]

188. [redacted]s said[175] she had lived at [redacted]e and used the Application Land since [redacted]. She used the Silbury Road entrance and did not know if any public paths crossed the land. She used the land most days, particularly in fine weather, for dog walking and general exercise. It was a safe space to let her child run around. She and her immediate family had taken part in football and picnics. The only thing that had prevented her from using the land was cows; they scared her. She had seen people walking, dog walking, children playing, blackberry picking, bird watching, football, team games, kite flying, picnicking and bicycle riding.

[redacted]

189. [redacted]s filled in a questionnaire[176] giving a user period of [redacted] to date and two addresses, [redacted]) and [redacted]. Access was gained by walking "*across the fields*". Personal uses were playing as a child, walking to school, dog walking and going to the sports centre. He (or she) ticked all the boxes in the list of activities at Q.23 except for bonfire parties and fetes.

[redacted]

190. In her questionnaire,[177] [redacted]s said she had used the Application Land since [redacted]. She gave two addresses in [redacted] and [redacted] She was aware of public paths crossing the land. She gained access "*from one field to*

[174] In a questionnaire at [redacted].
[175] In a questionnaire at [redacted].
[176] [redacted].
[177] [redacted].

another". She went there every day to walk her dogs, accompanied at weekends by other family members. She had seen people walking, dog walking, children playing, blackberry picking, bird watching, kite flying, picnicking and bicycle riding. She believed [redacted] to be tenants of the land; they had seen her regularly and passed the time of day. She wrote "*I have always understood it was permissive land, the farmers are happy so long as you treat fields with respect, closing gates etc.*"

[redacted]

191. In a brief (undated) statement,[178] [redacted]r said that he had lived at [redacted] for [redacted] years and in Ashton Vale for [redacted] years. He took his children for picnics and to play on the Application Land when they were small. During the last nine years he had walked his dog there and watched wildlife, especially the birds.

[redacted]

192. [redacted]s questionnaire[179] gave a user period of [redacted] to [redacted], while living at [redacted]. Access was gained via Silbury Road; use of the land (other than the (unspecified) public path(s)) was occasional, for walking. His (or her) immediate family used it for recreation/walks. Activities seen were walking, dog walking, children playing, blackberry picking, football and picnicking.

[redacted]

193. In a handwritten letter,[180] [redacted], of [redacted]e, wrote that he had lived in Ashton Vale for [redacted] years and appreciated "*the almost village way of life*". He wrote that the surrounding fields and countryside were ideal for people like him who enjoyed walking and wildlife, but did not say in terms that he had used the Application Land.

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178 [redacted].
179 [redacted].
180 [redacted].

194. [redacted] said[181] she had lived at [redacted] and used the Application Land since [redacted]. She gained access from Silbury Road. She went there three or four times a year, for footpath use and "community gatherings": barbecues, games and watching the [balloon] fiesta in August. Her grandchildren played on the land. She had seen people walking, dog walking, children playing, blackberry picking, bird watching, football, rounders, team games, kite flying, bicycle riding and community celebrations.

195. In a joint questionnaire,[182] [redacted] claimed to have used the Application Land as children ([redacted]) and then from [redacted] to [redacted]. Their current address was given as [redacted]; it is implicit that they lived there from [redacted] onwards.[183] As adults they gained access from Ashton Drive. They had used the land for fishing, courting, walking and observing wildlife. Their immediate family used it for recreation and wildlife observation. They used the paths and fields and were not aware of them being public paths. They took part in community bonfire parties in about 1977/78; some neighbours had continued to have bonfires and fireworks in the fields. They had seen other people walking, dog walking, children playing, blackberry and mushroom picking, bird watching, fishing, picnicking and bicycle riding.

[181] In a questionnaire at [redacted].
[182] [redacted].
[183] As confirmed in the oral evidence of [redacted] (paragraphs 125-131 above).

196. [redacted]s supplied a statement and questionnaire.[184] She had lived at [redacted] since [redacted]. She gained access from Silbury Road and was aware of public paths. She went to the Application Land every day to walk her dog. She picked blackberries in late summer and took [redacted] to watch the balloon fiesta; they took a picnic and made an afternoon/evening of it. Her granddaughter enjoyed watching the birds, cows, sheep, deer and wildlife. She also used the land as a short cut to Long Ashton and Ashton Court. [redacted] had used it for playing, meeting friends and going to Ashton Park School. She enjoyed the social experience of meeting other people there every day. She had seen walking, dog walking, children playing, blackberry picking, bird watching, kite flying, picnicking, bonfire parties (but no community activities), and motor-bike riding. There were not many other recreational facilities in Ashton Vale.

[redacted]

197. [redacted]e of [redacted] submitted a brief statement[185] dated [redacted] to the effect that she had used "*the fields at the back of Silbury Road*" regularly for the past [redacted] years. She took her grandchildren for walks and to see the balloon festival; they enjoyed looking at cows, lambs and birds.

[redacted]

198. In his questionnaire[186] [redacted], of [redacted], said that he had used the Application Land in 2009 every day for dog walking and as somewhere for the children to play. He had seen other people walking, dog walking, children playing and blackberry picking.

[redacted]

184 [redacted].
185 [redacted].
186 [redacted]5.

199. [redacted], of [redacted], said[187] that he had known the Application Land since [redacted]. He entered over the bridge and used it two or three times a week: for riding bikes and pitching tents there as a child, taking his nephew to play ball and see the cows, and accessing Ashton Court and the David Lloyd Centre. He had seen people walking, dog walking, children playing, blackberry picking, fishing, football, rounders, picnicking and bicycle riding.

[redacted]

200. [redacted]r said[188] that she had lived at [redacted] and used the Application Land since the [redacted]. She gained access over the bridge from Silbury Road and was unaware of any public paths across the land. She walked her dog there several times a week. She knew of no community activities but had seen walking (rambling), dog walking, children playing, blackberry picking, bird watching, fishing, football, kite flying, and ice skating. Local schools used it. She had seen deer, mallards, and herons.

[redacted]

201. [redacted] said[189] that she had used the Application Land since [redacted], from her current address at [redacted] and when she was living with [redacted]. She gained access over [redacted] and [redacted]. When she was younger she used the land for making dens, playing with friends, watching the wildlife for school projects, bonfire nights and birthday parties; now she took her son to watch wildlife, play football etc. Her immediate family used it for walking (with and without dogs), bike riding, watching wildlife and to go to events at Ashton Court. Ashton Vale School used the land. She ticked all the boxes in Q.23 (activities seen) except fetes and carol singing. Parts of the land were occupied by cattle; the farmer had seen her on the land and said nothing.

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[187] In a questionnaire at [redacted].
[188] In a questionnaire at [redacted].
[189] In a questionnaire at [redacted].

[redacted]

202. In his questionnaire[190] [redacted] said he had lived at [redacted] and used the Application Land since [redacted]. He entered from Silbury Road. There was one public path, crossing the landfill site. He used the land (apart from the path) two or three times a week to exercise his dog. He had taken [redacted] children for walks there, and observed nature. He had seen people walking, dog walking, children playing, blackberry picking, bird watching, fishing, kite flying, picnicking, bicycle riding and people observing the balloons. The school used it for nature walks. He had participated in barbecues and bonfire night activities.

[redacted]

203. [redacted] supplied a statement dated [redacted] and a questionnaire dated [redacted].[191] She said she had used the Application Land "*on and off*" since the [redacted]s to walk and train her dogs. At present she lived at [redacted]e and walked her two dogs over the fields most days. She had used them earlier when living at [redacted]. There had always been access from Silbury Road and Ashton Drive, giving access right through all the fields as far as Yanley Lane and Long Ashton. She had seen people walking, dog walking, children playing, blackberry picking, bird watching, and fishing. The farmer had seen her on the land and said nothing.

[redacted]

204. [redacted]t[192] had lived at [redacted]l and used the Application Land since [redacted], about once a week in winter and twice a week in summer, for walking. Access was gained "*through the back of Ashton Vale*". He (or she) had seen people walking, dog walking, children playing, and bird watching.

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[190] [redacted]6.
[191] [redacted]5.
[192] Questionnaire at [redacted].

[redacted]

205. [redacted] supplied a statement and a questionnaire.[193] She had lived in Ashton Vale since 1972 and used the Application Land since [redacted] while living at [redacted]. It was known as "*the landfill*". (I infer she was only intending to refer to Field 1.) Access was gained through Silbury Road; she was not sure about public paths. While her children were growing up they used "*this field*" extensively, and the family still used it for walking. When it was a landfill site it was not fenced off and remained accessible. She had seen walking, dog walking, children playing, blackberry picking and bird watching.

[redacted]

206. [redacted] also provided a short statement in addition to a questionnaire.[194] He was born in [redacted] and had lived in Ashton Vale all his life (whether always at his present address of [redacted] is unclear). He had used the Application Land every day since [redacted]. For 35 years he had walked his own dogs; before that, he had accompanied his father and his police dog, with permission from the farmer. He had enjoyed family activities including picnics, bike riding and kite flying with his children; his grandchildren had played there. Access was across the bridge; there were public paths crossing the land. The general pattern of use had remained the same "*except when they landfilled it*". He had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, cricket, kite flying, picnicking, bicycle riding and bonfire parties.

[redacted]

207. In his questionnaire,[195] [redacted] said that he had lived at [redacted] and used the Application Land since [redacted], but not recently. Access was via a bridge. There were public paths over the land. He had gone on the land to cross over to Ashton

[193] [redacted].
[194] [redacted].
[195] [redacted].

Court. He had used the land other than the paths when walking dogs. He had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, cricket, rounders, picnicking, and drawing/painting. Balloons frequently landed there during the fiesta.

[redacted]

208. In her questionnaire,[196] [redacted]e said she had lived at [redacted]e and used the Application Land since [redacted]. She gained access over the bridge from Silbury Road; she was aware of public paths crossing the land. She used the land (apart from the paths) twice a day to walk the dogs. She had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing and kite flying. The occupier of the land had seen her there and said nothing.

[redacted]

209. In a handwritten letter,[197] [redacted] wrote that she had lived in [redacted] with her parents and played on "*the green*" with friends. Later, she had taken her [redacted] there. [redacted] provided no dates and the letter was written from [redacted].

[redacted]

210. In [redacted]'s questionnaire,[198] she said that she had lived at [redacted]e and used the Application Land since [redacted]. Access was gained from Ashton Drive, Silbury Road and Ashton Vale Trading Estate. She used the land (apart from the paths) every day for walking and bird watching. Her immediate family walked, walked dogs and watched wildlife there. Ashton Park School used it for school projects. She had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, kite flying, picnicking, bicycle riding, drawing/painting, and

196 [redacted].
197 [redacted]
198 [redacted].

bonfire parties. The owner/occupier had seen her on the land and said a "*friendly good morning/evening*". In answer to Q.28 ("*Was permission ever sought by you for activities on the land*?" she wrote "*Not walking or general play*"; and in answer to Q.29 ("*Did anyone ever give you permission to go onto the land*?") she wrote "*public right of way*".

[redacted]

211. It was not clear from [redacted]'s questionnaire[199] whether he was claiming to have lived at [redacted] and used the Application Land from [redacted] or from [redacted]. He went on the land from Silbury Road to walk his dog and use the footpath across to Ashton Court. He used the land (apart from public paths) three or four times a week. His immediate family used it for leisure walking and dog exercise. He had participated in local community nature walks (Friends of Colliter's Brook). He had seen walking, dog walking, blackberry picking and bird watching. He had spoken to the farmer attending cows.

[redacted]

212. [redacted] wrote in an e-mail[200] to [redacted]e that he and his girlfriend had used the Application Land many times over the past couple of years since moving to the area ([redacted]). They mainly used it for walking, and accessing other parts of Bristol such as Yanley, Long Ashton and Hanging Hill Wood.

[redacted]

213. In a handwritten letter,[201] [redacted]e of [redacted], who has lived in the district for [redacted] years and grew up in Ashton Gate, recalled picnics and rambles in Ashton Fields and Hancock's Woods as a child. Ashton Fields was a water meadow; in the winter it used to flood and freeze over. Locals and people from

199 [redacted]3.
200 [redacted].
201 [redacted].

surrounding districts including Clifton came to skate on it. "*Ashton Fields has always been a community facility to the residents.*"

[redacted]

214. [redacted] supplied a handwritten statement and a questionnaire.[202] He said that he had been [redacted] "*all over these particular fields*" for the last [redacted] years. He gave [redacted] addresses relating to his period of use: [redacted] and (before that) [redacted]. He gained access by public footpaths and was aware of public paths crossing the land. He used the land (apart from the paths) daily playing with his dogs and watching and videoing the wildlife. His immediate family used it for exercise and dog walking. He had seen walking, dog walking, children playing, blackberry picking, bird watching, cricket, team games and fetes. I think that [redacted] must have had a larger (or even different) area in mind than the Application Land, because of references in his questionnaire to "cricket in field off Yanley Lane" and caravans using land at Yanley Lane for the balloon festival. He mentioned having chats with "the various farmers", but the only name he gave was [redacted] who was not mentioned as having a connection with the Application Land anywhere else in the evidence.

[redacted]

215. [redacted] also provided a statement and questionnaire.[203] He had lived in Ashton Vale for [redacted] years, and used the Application Land since [redacted] As a child he lived at [redacted] and loved playing in the fields with his friends. At some unspecified date he moved to [redacted]. He took his [redacted] when they were young, to play in the long grass, go fishing and "*generally let off steam*", and [redacted]. In his questionnaire he also mentioned kite flying, blackberry picking and watching the balloons. He walked his two dogs there daily. Access was over the bridge from Silbury Road; he was aware of public paths crossing the land. There was never a time when the landfilling prevented access to the fields; people could walk

202 [redacted].
203 [redacted].

around as it was never fenced off and only a section was filled in at a time. He had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, kite flying, picnicking and bicycle riding. Years ago there were bonfire parties in which he had participated. The occupier of the land had seen him there and said nothing.

[redacted]

216. [redacted] questionnaire[204] was filled in and signed on his behalf by [redacted]. He was [redacted] and had used the Application Land since [redacted] while living at [redacted], [redacted] and [redacted]. He gained access from Silbury Road across the bridge and was aware of public paths crossing the land. He went on the land for walking the dog and looking at wildlife. His immediate family used it. He had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, cricket, rounders, team games, kite flying, picnicking, bicycle riding and drawing/painting. The (unidentified) owner or occupier had seen him on the land and said nothing.

[redacted]

217. [redacted] had completed a questionnaire,[205] in which he said he lived at [redacted] and had used the Application Land since [redacted]. He gained access via South Liberty Lane, Silbury Road and Ashton Drive. He was aware of public paths crossing the land. He and his immediate family used the land (apart from the paths) three times a week on average, to walk the dog, jog, look at wildlife with his son, view the balloon fiesta and have picnics in summer, and for bonfires and fireworks. He has seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, kite flying, picnicking, bicycle riding, bonfire parties and community celebrations. The land was used by Ashton Vale School for nature walks and by Harriers Running Club. The farmer had seen him on the land and engaged in general

204 [redacted]
205 [redacted]

conversation, including about the cows and his dog. The reptile fencing had made moving between fields difficult.

[redacted]

218. In her questionnaire,[206] [redacted] (whom I take to be [redacted]) gave her address as [redacted] but said that she had also used the land when living at [redacted]. She had used it since [redacted]. She used to play there as a child; now she walked the dog and [redacted] to play and look at cows, deer and wildlife. She referred to participation in blackberry picking, fishing, making dens and bonfire nights (whether in childhood or adulthood or both is unclear). She had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, rounders, team games, kite flying, bicycle riding and bonfire parties. There were community nature walks. She gained access via Silbury Road; there were public paths across the land. She would engage in polite conversation with the farmer if she saw him, but did not know his name.

[redacted]

219. In a brief statement,[207] [redacted] of [redacted] said that he had lived in Ashton Vale for [redacted] years and used the fields for [redacted] years. He walked [redacted] there three or four times a week.

[redacted]

220. [redacted] said[208] she lived at [redacted] and had used the Application Land from [redacted] to [redacted]. She gained access by "*footpath through Silbury Road*" and was aware of public paths crossing the land. She used the land (apart from the paths) often, for bird watching. She had seen walking, dog walking, children playing, blackberry picking and bird watching.

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[206] [redacted].

[207] [redacted]

[208] In a questionnaire at [redacted].

[redacted]

221. [redacted] questionnaire[209] was difficult to interpret in respect of when her user period began, although she said she was still using it in 2010. She gave her address as [redacted] but said she had known the land since [redacted] and known it to be used by the local inhabitants while living at [redacted]. Access was gained from Silbury Road. She went three or four times a week, to walk the dogs, [redacted], pick blackberries, and walk to the balloon festival. Her immediate family rode bikes and played ball games. She had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, kite flying and picnicking. Ashton Vale School activities took place there.

[redacted]

222. [redacted] lived at [redacted] and had used the Application Land (which he knew as "The Swamps") from [redacted] to [redacted] and from [redacted] to [redacted].[210] He gained access across the bridge from Silbury Road. Between [redacted] and [redacted] (presumably as a child) he used it almost daily for shooting, flying model aeroplanes and birds-nesting. Now he walked there for old times' sake. He had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, bicycle riding and people watching balloon festivals. He had participated in community walks along the stream. He thought the land was occupied by Farmer [redacted] and had kept out of his way.

[redacted]

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[209] [redacted]

[210] According to his questionnaire at [redacted] (map at [redacted]).

223. [redacted] said[211] that he (or she) had lived at [redacted] and used the Application Land since [redacted]. Access was gained from Silbury Road; there were public paths across the land. He (or she) went every day when younger and three to six times a week now, to take children to play and walk the dog. Activities seen were walking, dog walking, children playing, bird watching and drawing/painting.

[redacted]

224. In a short statement[212] [redacted] wrote that she had lived at [redacted] for [redacted] years. She and [redacted] had taken summer walks in these fields, and picked blackberries. He had spent his childhood in the area and played there. [redacted] walked her dogs there nearly every day and took [redacted] to play.

[redacted]

225. [redacted] wrote in her questionnaire[213] that she had used the Application Land from [redacted] to date, while living at [redacted]. Her means of access was "*path way*" and she was unsure about public paths crossing the land. She went daily to play and walk dogs; her family used it for walking, rambling, blackberry picking and as access to Ashton Court. She had joined in a family fun day, and had seen walking, dog walking, children playing, blackberry picking, football, picnicking and bicycle riding.

[redacted]

226. [redacted] also lives at [redacted] and would appear to be a relative of [redacted]. He said in his questionnaire[214] that he had used the Application Land from [redacted], daily, for walking with and without dogs. He gained access from the small bridge and did not know about public paths crossing the land. He too mentioned the

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[211] In the questionnaire at [redacted].
[212] [redacted].
[213] [redacted].
[214] [redacted].

family fun day, and said that he had seen the same activities as [redacted] except football and with the addition of bird watching.

[redacted]

227. [redacted]s said in her questionnaire[215] that she had lived at [redacted] and used the Application Land since [redacted]. She gained access from Silbury Road and near the Park and Ride area. There were public paths crossing the land. She used it (apart from the paths) weekly. Her (and her family's) uses of the land were walking, mountain biking, fruit picking, picnics, and as a short cut to the sports centre. She had also taken part in bonfire parties and fetes in the past. The Brownies used the land for nature observation. She had seen walking, dog walking, children playing, blackberry picking, bird watching, kite flying, picnicking, bicycle riding, drawing/painting, and bonfire parties, fetes and community celebrations. The land was rented by a local farmer, with whom she had had no personal contact.

[redacted]

228. [redacted]r[216] largely consisted of an objection to development, but contained a paragraph stating that she had lived at [redacted] for [redacted] years with her family and used the fields for over [redacted] years for long evening walks with their dog, walks with [redacted] looking at flowers and wildlife, and watching the balloon fiesta.

[redacted]

229. [redacted]s completed a questionnaire[217] in which he said that he had lived at [redacted] and used the Application Land since [redacted]. His means of access was Ashton Drive. He was aware of public paths crossing the land. He went to walk his dogs and used the land (apart from the paths) two or three times a week. He had seen walking, dog walking, children playing, blackberry picking and bird watching.

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215 [redacted].
216 [redacted]
217 [redacted].

Page blank.

[redacted]

230. [redacted][218] said that she and her family had used the Application Land since [redacted] while residing in [redacted]. Entry was over a bridge; there was "*a walk way but not a proper path*" across the land. They had walked through the land, walked dogs, picked blackberries and played. She had seen walking, dog walking, children playing, blackberry picking, bird watching, kite flying, picnicking and bicycle riding. She thought the land was for public use.

[redacted]

231. [redacted] jointly completed a questionnaire[219] according to which they had used the Application Land from [redacted] to [redacted] and then from [redacted] to [redacted]. They too knew it as "The Swamps". They gave two addresses from which they had used it, [redacted] and previously [redacted]. I infer that the latter was the childhood home of either [redacted] from the answer to Q.19a, "[redacted] *School used this land when I went there between* [redacted]". The questionnaire also contains references to playing with friends and being given permission by the school to go there for running and training. On an unspecified occasion the farmer had given permission to use the land. Other past uses of the land were walking and bird watching; the [redacted] had played there. They had crossed the land to go to the Park and Ride area. The land had been a swamp which used to ice over before it was filled in with rubbish and people had skated on it. In answer to Q.23 (activities seen) they ticked walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, cricket, team games, kite flying, picnicking, bicycle riding and drawing/painting.

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[218] In her questionnaire she requested that her name and address should not be made public.
[219] [redacted].

[redacted]

232. [redacted] of [redacted] wrote[220] of having used the Application Land on a regular basis with [redacted] for walking since moving to Ashton in early [redacted].

[redacted]

233. In his questionnaire and covering letter,[221] [redacted] said that he had used the Application Land from [redacted] to [redacted] while living at [redacted]. He recalled summer and winter walks with his [redacted] and [redacted] dog, [redacted]. The children had skated on the ice and fished in the stream. Frequency of use was formerly twice, now once, a week. Access was across a bridge; he was not sure about public paths. He had seen walking, dog walking, children playing, bird watching, fishing and kite flying. He knew of no community activities.

[redacted]

234. In his questionnaire[222] [redacted] claimed use of the Application Land since [redacted] while living at [redacted] and [redacted]. His means of access were Silbury Road bridge, Brookgate and the Park and Ride. He was aware of public paths crossing the land. He had used it for dog walking "*all the time*", cycling, photography and picnics, and access to Ashton Court, Long Ashton, Ashton Park School, Colliter's Brook and Hancock Woods. His family used it for walking and as a thoroughfare to Ashton Court. He knew of and had participated in Bonfire Night activities, barbecues and balloon landings. He had also seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, team games, kite flying,

[220] In the letter at [redacted].
[221] [redacted].
[222] [redacted].

picnicking, bicycle riding and drawing/painting. The farmer had seen him and said nothing.

[redacted]

235. [redacted] filled in a questionnaire[223] in both names. She gave two user periods, [redacted] and [redacted], and two addresses from which use had taken place, [redacted] and [redacted]. Access was gained through Silbury Road; there were public paths crossing the land. They and their family used the land for walking, once a week. They had seen walking, dog walking, children playing, blackberry picking, football, picnicking and bicycle riding.

[redacted]

236. In her questionnaire,[224] [redacted] said that she had used the Application Land while living in [redacted], from [redacted] to [redacted]. Access was over the bridge. She and her family used it a couple of times a month for walking, dog walking, playing and blackberry picking. She had seen walking, dog walking, children playing, blackberry picking, bird watching, kite flying, picnicking, bicycle riding and drawing/painting.

[redacted]

237. In a short statement,[225] [redacted] of [redacted] said that she had lived in Ashton Vale for many years and used the fields in the past for walking, dog walking and playing by her children.

[redacted]

238. [redacted] supplied a joint questionnaire[226] according to which they had lived at [redacted] and used the Application Land from [redacted] to [redacted]. They were

223 [redacted].
224 [redacted].
225 [redacted].

aware of public paths crossing the land. They used the land for walking to Long Ashton and Ashton Court. They had seen walking, dog walking, children playing, blackberry picking, fishing and bicycle riding.

[redacted]

239. [redacted], of [redacted], said in a questionnaire[227] that she had used the Application Land since [redacted]. She gained access by a path or road and gateway. She knew of no public paths on the land. She used it every weekend for walking, running about and playing ball games with her children. She had seen walking, dog walking, children playing, bird watching, football, rounders, team games, kite flying, picnicking, bicycle riding, bonfire parties, carol singing and fetes. A running club used the land.

[redacted]

240. [redacted] of [redacted], chiefly focused in his letter[228] on the effects of development, but wrote that the Ashton Vale fields had been used by the community for years exercising dogs, walking, and bird and wildlife watching. He himself used to walk dogs there for many years. When he was a child it was a way home from [redacted] if not flooded. He had grown up and lived for nearly [redacted] years in Ashton Vale. Ashton Vale was a small community like a village on the edge of Bristol.

[redacted]

241. [redacted][229] submitted a written statement and questionnaire[230] according to which he has lived at [redacted] for [redacted] years and at [redacted] for [redacted] years before that. He has resided in Ashton Vale for [redacted] years and known the Application Land

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226 [redacted].
227 [redacted].
228 [redacted]
229 The [redacted] of [redacted] (see paragraph 132 above).
230 [redacted].

since [redacted]. He got on the land from [redacted] and sometimes through Silbury Road. He used it for recreation with his two daughters (birthday parties, blackberry picking, den making, wildlife watching, kite flying and taking part in bonfire night celebrations) and recently with his [redacted] for walking and looking at animals. In [redacted] The family have been to help balloons land in [redacted] during the fiesta. The land has also been used by other people for walking dogs, jogging, rambling, motocross, children playing, fishing for frogspawn, blackberry picking, bird watching, picnicking, kite flying, bicycle riding, hawk flying and training. It was a good place for people to meet and socialise. Ashton Vale school have used it for nature study and a woodcraft club which used to be held in the school has used it. The general pattern of use remained basically the same but the tips and very recent test boring caused problems.

[redacted]

242. [redacted] stated in her questionnaire[231] that she had used the Application Land since November [redacted] while living at [redacted]. She went for nature walks with children and dogs several times a year. In answer to Q.13 (means of access) she replied "*Colliter's Brook*", and to Q.12 (public paths) she answered "*assumed all public in areas used*". She had seen walking, dog walking, children playing, bird watching, kite flying, picnicking and running.

[redacted]

243. [redacted]s said in his questionnaire[232] that he had used the Application Land from [redacted] to [redacted] while living at [redacted]. He gained access from several access points and was aware of several public paths crossing the land. He went to cycle and walk the dog every day; his family cycled and walked there. He had seen walking, dog walking, children playing, blackberry picking, bird watching and bicycle

[231] A669-676.
[232] A677-683.

riding. Attempts to discourage use had been made in about May 2010 by putting metal barriers, rocks and manure at the entrances.

[redacted]

244. [redacted] supplied a handwritten statement and questionnaire.[233] He wrote that he had lived in Ashton Vale for [redacted] years, man and boy. The addresses given were [redacted] and [redacted]. As a boy in the [redacted] he played in all the Ashton Vale fields (by which he seems to mean a wider area than just the Application Land) with friends from [redacted] Road, [redacted] Road and [redacted] Road. From the [redacted] onwards he went on long nature walks one to three times a week with his dogs; on his walks he picked nuts and berries in season and watched birds and other wild animals. He also saw children playing games including football, kite flying, riding bicycles and having picnics as he had done 40 years previously. As long as he could remember, the fields had been used by the people of Ashton Vale for social activities, games, nature walks, picnics and watching balloon festivals. Other activities ticked in the Q.23 list were dog walking, cricket, blackberry picking, bird watching, and bonfire parties. He gained access by public footpath and was aware of public paths crossing the land. The owner or occupier had seen him on the land and said nothing.

[redacted]

245. [redacted]s used the Application Land from [redacted] to [redacted] while resident at [redacted].[234] She gained access over the bridge and was not aware of any public paths on the land. In the past she had used it several times a week to walk the dog, watch the balloons and go to Ashton. Her [redacted] walked dogs and played there. A school used it for sports or pastimes. She had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, kite flying, picnicking and bicycle riding.

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[233] [redacted]

[234] According to her questionnaire at [redacted]

[redacted]

246. In a questionnaire[235] [redacted] of [redacted] recalled use of the Application Land (or "the Swamps") between [redacted] and [redacted] as a short cut from Ashton Park School.

[redacted]

247. [redacted] stated in his questionnaire[236] that he had used the Application Land since [redacted] while living at [redacted], [redacted] and [redacted]. He gained access through Ashton Drive and knew of no public paths crossing the land. He walked there once a week. He had seen walking, dog walking, children playing, blackberry picking, and bird watching.

[redacted]

248. [redacted] gave her address as [redacted]. She said in a letter dated [redacted][237] that her family and dog used the Application Land most days. In her questionnaire,[238] she gave user periods of [redacted] and [redacted]. Access was "*through a path*" and there were public paths crossing the land. She went there for dog walking and nature trails with her children, also "*for work purposes when at David Lloyds*". She had taken part in "*decorating with twigs and singing with lanterns at the start of walkway*". (I assume that means the 2009 "Christmas at Colliter's" event). Activities seen were walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, team games, kite flying, picnicking, bicycle riding, drawing/painting, carol singing, community celebrations and fetes.

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235 [redacted].
236 [redacted].
237 [redacted]
238 [redacted].

[redacted]

249. [redacted] supplied a joint statement in addition to their questionnaire.[239] They wrote that they came to Ashton Vale in [redacted] and bought their first house [redacted] Their address is [redacted]. Their children used the open fields on a regular basis with others living on the estate. There were "*community fun weekends*". Whenever local residents needed to get together for a large celebration, such as Bonfire Night parties, the farmer gave permission. Every winter there was a large lake on the field behind the houses and they would keep an eye out for the arrival of the herons. The farmer put in several drainage ditches in an attempt to stop flooding. They believed tipping began in 1985; it was done in several stages and they could not remember at any time not having access to the land. They used it regularly for a circular walk of the area and to get to Ashton Court. Twice a week they cycled from Silbury Road to Winterstoke Road using the path alongside Colliter's Brook. They entered the land "*by public footpath*". There were public paths crossing the land and "*people from other areas*" used them. They had seen walking, dog walking, children playing, blackberry picking, football, kite flying, bicycle riding, bonfire parties and community celebrations.

[redacted]

250. [redacted] submitted a questionnaire[240] according to which he had used the Application Land since [redacted] while resident at [redacted]. Access was from Silbury Road; he knew of no public paths on the land. He went four times a week to walk the dog and enjoy the countryside. His immediate family did the same. He had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, kite flying, picnicking and bicycle riding.

239 [redacted].
240 [redacted].

[redacted]

251. [redacted] had completed a questionnaire[241] in which he gave his current address as [redacted], and his former address as [redacted]. He wrote that he had used the Application Land "*all the time*" since [redacted] "*to have fun*". Current usage was four times a week. He had seen walking, dog walking, children playing, blackberry picking, bird watching, rounders, bicycle riding and bonfire parties.

[redacted]

252. [redacted] stated in his questionnaire[242] that he had used the Application Land since [redacted] while resident at [redacted]. He gained access from Silbury Road and was aware of public paths crossing the land. He used the land (apart from the paths) a lot, for walking. Activities seen on the land were walking, dog walking, children playing, blackberry picking, bird watching, football, cricket, kite flying, picnicking, drawing/painting, bonfire parties - and farming.

[redacted]

253. [redacted], of [redacted], completed a questionnaire[243] referring to monthly use of the Application Land from June 2008 to April 2010, for running and "*festival*" (presumably the balloon fiesta), and unspecified family use. Activities seen were walking, dog walking, children playing, football, team games, kite flying, picnicking, and bicycle riding.

[redacted]

241 [redacted].
242 [redacted].
243 [redacted].

254. Their questionnaire[244] stated that they had used the Application Land from [redacted] to [redacted] when living at [redacted]. They gained access "*by* [redacted] *and from entrance on Ashton Drive*". They went once a week, maybe more in good weather, to walk and teach their grandchildren about nature. Their son flew his birds of prey and walked his dog. They had seen walking, dog walking, children playing, blackberry picking, bird watching and kite flying.

[redacted]

255. According to [redacted][245] she had used the Application Land from [redacted] to [redacted], while living at [redacted], for walking and dog walking. She walked over a bridge on to the land. She went daily, to have fun. Her family walked dogs there. She had seen walking, dog walking, children playing, blackberry picking, bird watching, picnicking, bicycle riding, drawing/painting and (unspecified) "other" activities.

[redacted]

256. [redacted] also lived at [redacted] and is, I infer, related to [redacted] (perhaps [redacted]). He said in his questionnaire[246] that he had lived there and used the Application Land (which he called "the cow fields") since [redacted]. He went to the Application Land every day of the year, to take his children for a walk and play games and exercise his dogs. They watched wildlife. Activities seen were walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, team games, kite flying, picnicking, and bicycle riding. Access was "*from the cul-de-sac and neighbour's garden*". There was a public path "*through the middle*".

[redacted]

244 [redacted]
245 [redacted]
246 [redacted]

257. [redacted] said[247] he had used the Application Land from [redacted] to [redacted] and [redacted] to [redacted] giving as the addresses from which he had used it [redacted] and [redacted] He gained access "*by footpath through gates*" and was aware of public paths crossing the land. He used the land (apart from the paths) two or three times a week in the past, now once or twice a month to walk and watch wildlife. He had seen walking, dog walking, children playing, blackberry picking, bird watching, picnicking and bicycle riding.

[redacted]

258. [redacted] wrote a letter[248] from [redacted] saying that her family used the Application Land three or four times a month to walk the dog and enjoy the space and looking at wildlife (including deer). They also used it to walk to Ashton Court and the children sometimes used it to walk home from school. In 2009 Ashton Vale Primary School reception class had a field trip there.

[redacted]

259. [redacted] supplied a questionnaire,[249] stating that he and his family had used the Application Land since [redacted] while living at [redacted] to walk dogs and go to Ashton Court. Access was gained over the footbridge from Silbury Road; there were public paths across the land. He used the land (apart from the paths) weekly. He had seen walking, dog walking, children playing, blackberry picking, bird watching, picnicking and bicycle riding.

[redacted]

260. [redacted] wrote in an email[250] of his childhood memories of making dens, playing cowboys and indians, hiding in the long grass and hedges, playing "ice hockey" with branches one very cold winter, the Silver Jubilee, Bonfire Nights and

[247] In the questionnaire at [redacted].
[248] [redacted].
[249] [redacted].
[250] [redacted].

barbecues. No dates are given, nor an address, but it emerged at the inquiry that he was [redacted] of [redacted] of [redacted] both of whom gave oral evidence (paragraphs 84 above and 408 below).

[redacted]

261. [redacted] submitted a questionnaire[251] stating that she had used the Application Land since [redacted] while living at [redacted]. She gained access from South Liberty Lane or Silbury Road; she thought there were public paths crossing it. The children played there when they were younger; now she used it for walking the dog or cutting through to Ashton Court. She walked, ran, and cycled on the land. Activities seen were walking, dog walking and bicycle riding.

[redacted]

262. In a joint questionnaire,[252] [redacted] stated that they had used the Application Land from [redacted] while living at [redacted] Access was from Silbury Road; they did not know of any public paths. They went about once a month (more in summer) to walk the dog, and watch the balloons. They had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, picnicking and bicycle riding.

[redacted]

263. [redacted] said in a joint questionnaire[253] that they had lived at [redacted] and used the Application Land since [redacted]. They gained access from Silbury Road and were not aware of any public paths. They and their family went there for countryside walks once a week in the summer months. They had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing and football. A school used the land.

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251 [redacted].
252 [redacted]
253 [redacted].

[redacted]

264. [redacted] also supplied a joint questionnaire.[254] They stated they had used the Application Land from [redacted] while living at [redacted]. They gained access across the bridge from Silbury Road; there were public paths crossing the land. They often went to play with their children between 1965 and 1980; subsequently they used it for walking. Activities seen were walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, and bicycle riding.

[redacted]

265. [redacted] stated in a questionnaire[255] that [redacted] had used the Application Land while resident at [redacted], from [redacted] to [redacted] and [redacted] to [redacted]. Access was from "[redacted]". There were public paths crossing the land. Use was regular when the children were young; they flew kites and fished. There was also use for dog walking. [redacted] now played there. Bonfire parties had taken place years ago when the children were young. Other activities seen were walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, kite flying and community celebrations.

[redacted]

266. [redacted] wrote a letter[256] of support for the Applications from an address elsewhere in Bristol, in which he recalled childhood games in the fields. He wrote that his parents (one of whom I infer may be the [redacted] just mentioned) still lived in Ashton Vale and often had his [redacted] to stay.

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254 [redacted].
255 [redacted].
256 [redacted]

[redacted]

267. [redacted] signed a joint statement[257] saying that as residents of Ashton Vale for [redacted] years they had had "unrestricted access" to the Application Land. Their children (now grown up) had enjoyed many happy hours playing games, ice skating on frozen fields, walking, blackberry picking and watching the wildlife in the area.

[redacted]

268. [redacted] filled in a questionnaire[258] stating that she had used the Application Land since [redacted] while living at [redacted] and [redacted]. She gained access from Silbury Road and did not know if there were any public paths across the land. She went weekly, to walk the dog and see wildlife. Her family used it for recreation and watching wildlife. Activities seen were walking, dog walking, children playing, blackberry picking, bird watching, kite flying, picnicking and bonfire parties.

[redacted]

269. [redacted] submitted a questionnaire[259] saying that he had lived at [redacted] and used the Application Land from [redacted]. Access was from Silbury Road; there were public paths crossing the land. He went several times most years, to walk and see views of the countryside. His immediate family used the land for the same reasons and to get to Ashton Court. He had only seen walking and dog walking and knew of no community activities. He attached photographs of the 2008 and 2009 balloon fiestas; two showed people in Field 1 helping a balloon to land in 2008.

257 [redacted].
258 [redacted].
259 [redacted].

[redacted]

270. [redacted] said in a questionnaire[260] that he had used the Application Land from [redacted] to [redacted] and from [redacted] to [redacted] while resident at [redacted]. He had used it for playing as a child and dog walking in latter years. His family used it for dog walking. His means of access was "*Colliter's Brook*" and there were public paths crossing the land. His use of the land apart from the paths was occasional. Activities seen were walking, dog walking, children playing, blackberry picking, fishing, football, kite flying and bicycle riding.

[redacted]

271. [redacted] completed a questionnaire dated [redacted][261] saying that she had lived at [redacted] and used the Application Land ("*the cow fields*") since [redacted]. [redacted]. One of the reasons she gave for going on the land was to walk to school. The others were to play, exercise, get to the gym and get to Ashton Court. She had used the land for jogging, hide and seek, walking, dog walking, bike riding and football, as had her immediate family. She gained access through her back garden and the path. The farmer had seen her on the land and said she was allowed on there so long as she did not vandalise it. She had been given permission to play football while cows were there. She had seen walking, dog walking, children playing, blackberry picking, bird watching, football, cricket, picnicking, bicycle riding and drawing/painting. In answer to Q.10 ("*During the time you have used the land has the general pattern of use remained basically the same*?") she wrote "*No it's on and off.*" The farmer had put big rocks in the way of the footpath to prevent or discourage use of the land. [redacted] had already filled in a questionnaire in March 2010.[262] In that questionnaire she gave 2004 as the starting date of use. She answered Q.10 "*different reasons*", which suggests that she

260 [redacted]
261 [redacted]
262 [redacted]

interpreted the question as directed to personal, rather than communal, usage. There was a public path crossing the land to get to Ashton Court. Her garden had no back fence. She claimed more frequent use (every day, as opposed to two to four times a week) and mentioned additional games (rounders, baseball, tag, rugby and manhunt). Schools used the land for cross-country running. She knew of no community activities. According to this questionnaire the farmer had asked her not to go on the land while the cows were there and she had asked for permission to go on her friend's scrambler bike.

[redacted]

272. [redacted] wrote a letter[263] in support of the Applications saying that she had visited [redacted] in [redacted] during the [redacted] and [redacted]. The family used to cross the fields to get to Ashton Court; many times they were chased by the cows. Since [redacted] she had lived at [redacted]. She did not say that she had used the Application Land during that period.

[redacted]

273. [redacted] wrote a letter and filled in a questionnaire.[264] He was born and raised in Ashton Vale. As a child, from [redacted], he explored wildlife on the Application Land. He brought his children up in Ashton Vale from the early [redacted] to [redacted] and they played there too. When they attended [redacted] he used to arrange [redacted] to the Application Land which the whole school used to enjoy. The addresses he gave were [redacted] and [redacted]. He now lived in [redacted] in [redacted], but still visited with [redacted] to look for birds and water voles. Access was from Silbury Road. There were public paths across the land. He had seen walking, dog walking, children playing, blackberry picking, bird watching, kite flying and drawing/painting. Ice skating had taken place in the past.

263 [redacted].
264 [redacted].

[redacted]

274. [redacted] had filled in a questionnaire[265] on behalf of herself and her husband. They had lived at [redacted] and used the Application Land for weekend walks and wildlife spotting since [redacted]. They gained access via footpaths and there were public footpaths crossing the land. She had seen walking, dog walking, children playing, bird watching, and bicycle riding. She thought Bristol City Council owned and occupied the land.

[redacted]

275. [redacted] now lives in [redacted] but wrote a statement[266] about using the Application Land while living with his parents.[267] He chased butterflies in the fields. He was taken by [redacted] from [redacted] to pick mushrooms, exercise [redacted] dog, and collect metals from the landfill site. After the landfill was complete and landscaped, he went on to that area with his elder brother to hit golf balls and fly kites. Their neighbour's son flew a radio controlled plane from the landfill area. He remembered Bonfire Nights and fireworks in the fields, and long family walks across the fields and Kennel Farm with a frisbee, tennis ball or football.

[redacted]

276. [redacted] filled in a questionnaire[268] in [redacted]. She said she had lived at [redacted] and used the Application Land since [redacted]. Access was "*via public paths*" and there were public paths crossing the land. She went to walk to Ashton Court, Long Ashton village, the nursery and sports centre. She also went to play with

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265 [redacted].
266 [redacted]
267 I infer that he is [redacted] (see paragraph 86 above).
268 [redacted].

her young daughter and pick blackberries. She used the land apart from the paths weekly. Her family used it for walking, cycling and nature trails. She had seen walking, dog walking, children playing, blackberry picking, bird watching, picnicking and bicycle riding and was aware of waterway preservation groups and voluntary litter picking. The landowner had obstructed public access routes, she thought to prevent access by motor vehicles and bikers.

[redacted]

277. [redacted] of [redacted] wrote a short statement[269] saying that he was [redacted] years old and had lived in Ashton Vale all his life. He played in the fields as a child (fishing in the ponds, skating on the ice, flying a kite, dog walking and riding his bike). Nowadays he visited with his [redacted] who especially enjoyed nature walks, kite flying and snowman building.

[redacted]

278. [redacted] of [redacted] submitted a statement[270] saying that he had lived in Ashton Vale for over [redacted] years and used the Application Land as a boy, for courting, for dog walking and for teaching his sons about nature. In a questionnaire[271] he gave his periods of use as [redacted] and [redacted]. He used the land most days. His means of access was the bridge. The farmer had seen him and said nothing. He had seen walking, dog walking, children playing, blackberry picking, bird watching, kite flying and picnicking.

[redacted]

279. [redacted] of [redacted] submitted a statement[272] saying she had lived in Ashton Vale for [redacted] years and used the Application Land to walk her dog three times a

269 [redacted].
270 [redacted].
271 [redacted].
272 [redacted]

week. Her children [redacted] played there at weekends and in school holidays chasing the dog, fishing, picking blackberries and watching the balloon festival.

[redacted]

280. According to [redacted] questionnaire[273] he had used the Application Land since [redacted] while resident at [redacted]. He entered via Silbury Road. There were public paths crossing the land. He used the land apart from the paths two or three times a week to walk the dog or for a countryside walk, occasionally accompanied by visiting family members. He had seen people walking, dog walking, bird watching, kite flying, bicycle riding and falconry. He ticked "children playing" but added the rider "*simply walking with parents-nowhere to actually play*".

[redacted]

281. [redacted] of [redacted] submitted a statement.[274] She had lived in Ashton Vale "*on and off*" for [redacted] years and used the Application Land for recreation many times. She had walked in the fields and stopped to watch wildlife with her parents, children and grandchildren. She had also walked through the fields to Long Ashton and Ashton Court.

[redacted]

282. [redacted] submitted a handwritten letter and a questionnaire.[275] She had lived at [redacted] since [redacted] and used the Application Land "*numerous times*", mostly for walks with her family. They gained access via the industrial estate on South Liberty Lane. They went once a month at least. The local school studied Colliter's Brook. She had seen walking, dog walking, children playing, blackberry picking, bird watching, football, picnicking, drawing/painting, and families doing school projects (as hers had).

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273 [redacted].
274 [redacted].
275 [redacted]

[redacted]

283. [redacted] stated in his questionnaire[276] that he had lived at [redacted] and used the Application Land ("*the cow field*") since he was about [redacted] in [redacted], with the exception of [redacted]. There were several public footpaths crossing the land. He entered from Silbury Road over the bridge. When they had a dog, he had gone daily. He also went for walks with his family "*along streams and footpaths*", and picked berries. He had seen walking, dog walking, children playing, blackberry picking, bird watching and picnicking.

[redacted]

284. [redacted] of [redacted] submitted a questionnaire[277] claiming to have used the Application Land when living at [redacted] between [redacted] and [redacted]. He (or she) went for bonfire parties and to watch the balloon festival, play and picnic with the children. The family used the land for walks. Activities seen were walking, dog walking, children playing, blackberry picking, bird watching, kite flying, picnicking and bonfire parties. Ashton Vale School used the land.

[redacted]

285. [redacted] of [redacted] said in her statement[278] that she was [redacted] and had lived in Ashton Vale all her life. She went to the fields with her mates about twice a week to play games like hide and seek and look for insects and animals.

[redacted]

276 [redacted].
277 [redacted].
278 [redacted].

286. [redacted] of [redacted] submitted a letter[279] saying that she, [redacted] and [redacted] had lived there for [redacted] years and often took a walk over the fields on Sundays. She had been brought up in the same street and played in the fields as a child.

[redacted]

287. [redacted] said in her questionnaire[280] that she had used the Application Land since [redacted] while living at [redacted]. She had entered from Silbury Road. There were public paths crossing the land. She used the land (apart from the paths) three times a month, more in the summer (five times a week), for dog walking. She had seen walking, dog walking, children playing, blackberry picking, bird watching and bicycle riding.

[redacted]

288. In a handwritten letter,[281] [redacted] wrote that he had lived at [redacted] for about [redacted] years. He used "*the fields around my area*" for walking with his dogs at least twice a day most days. His family sometimes accompanied him. There was an incredible amount of wildlife in the fields. The landfill site was a bit of an eyesore at one point but was now being landscaped and would in time look very natural.

[redacted]

289. [redacted] submitted a questionnaire[282] stating that he had used the Application Land from [redacted] to [redacted] and [redacted] to [redacted] when living at [redacted] and [redacted]. He entered from Silbury Road. There were public paths crossing the land. He went there for walks to Ashton Court, ball games with the children, and blackberrying. His family walked dogs there. He had seen walking, dog walking,

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279 [redacted].
280 [redacted].
281 [redacted].
282 [redacted].

children playing, blackberry picking, bird watching, football, cricket, kite flying and bicycle riding.

[redacted]

290. [redacted] said in her questionnaire[283] that she had lived at [redacted] and used the Application Land since [redacted]. She gained access by following public footpath signs from the end of South Liberty Lane. There were public paths crossing the land. She went there, initially weekly, to walk dogs and take children for walks. The children had been there on school outings at least once per term; [redacted] had gone. She had seen walking, dog walking, children playing, blackberry picking, bird watching, kite flying and bicycle riding.

[redacted]

291. [redacted] said in his questionnaire[284] that he had used the Application Land from [redacted] to [redacted] while resident at [redacted]. He entered from Silbury Road; there were public paths crossing the land. He used the land (apart from the paths) once a week to walk dogs. His family walked dogs there too. He had only seen walkers and dog walkers.

[redacted]

292. [redacted] submitted a questionnaire[285] in which she said that she had used the Application Land since [redacted], while living at [redacted]. Access was gained from Silbury Road bridge, Brookgate, the black bridge, the Park and Ride, and South Liberty Road tunnels. There were public paths crossing the land. She and her family went there for walks and access to Ashton Court; she also mentioned other past activities - dog walking, blackberry picking, rounders and pond fishing, bonfires and

283 [redacted]
284 [redacted]
285 [redacted]

barbecues. She said that she had seen all those activities on the land and also children playing, football, cricket, bird watching, picnicking and kite flying.

[redacted]

293. A statement[286] signed by [redacted] of [redacted] asserted that she and [redacted] had lived for over [redacted] years in Ashton Vale. The fields were their play area when young; "*all the local children enjoyed the freedom of the fields*". They moved away when first married but came back to give their sons the same country life; when their grandsons visited they went blackberry picking and nature watching. They walked their dogs and chatted with other dog walkers, and monitored the ducks when nesting.

[redacted]

294. [redacted] provided a questionnaire[287] stating that he had used the Application Land since [redacted] while living at [redacted]. He entered by public footpath and there were public paths across the land. He used the land apart from the paths regularly for walking, football and kiting with the children. He had seen walking, dog walking, children playing, blackberry picking, bird watching, kite flying, bonfire parties and community celebrations. Dog training took place there. At some unspecified date(s) the farmer had given him permission for "*seasonal activities*".

[redacted]

295. [redacted] said in a questionnaire[288] that she had used the Application Land from [redacted] to the present day while living at [redacted]. She gained access from Ashton Drive and Silbury Road; she knew of no public paths across the land. Her children and grandchildren had frequently played there, making dens, fishing, ice skating, etc. She had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, picnicking, bicycle riding and bonfire parties.

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[286] A993.
[287] A994-1001.
[288] A1002-1007.

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[redacted]

296. A questionnaire[289] claimed use of the Application Land since [redacted] while living at [redacted] Access was gained from Silbury Road; there were public paths across the land. He (or she) went there (as did the family) to walk the dog in the fields and to go to Ashton Court. Use of the land apart from the paths was regular. Activities seen were walking, dog walking, children playing, and blackberry picking.

[redacted]

297. [redacted] provided a handwritten letter and a questionnaire.[290] She stated that she and her family had lived at [redacted] and used the Application Land regularly since [redacted]. They had entered across the bridge over Colliter's Brook. There was a public right of way across the land. It was used by hundreds of members of the public during the Ashton Court festival. They used the Application Land to access Ashton Court, the David Lloyd Centre, Long Ashton and the Clifton Suspension Bridge and for enjoyment of the wildlife and greenery. They used the land apart from the paths twice a week (more in the summer); they had flown kites, jogged, picnicked when watching the balloon fiesta, flown remote control aeroplanes, searched for bugs, fished, cycled, and walked dogs on it. She ticked all the "activities seen" boxes in answer to Q.25 except for drawing/painting, cricket and community celebrations, and added golf.

[redacted]

298. A short statement[291] by [redacted] said that he had lived in Ashton Vale for over [redacted] years and always used the fields for walking dogs and riding his [redacted] and [redacted] (even while the landfill site was in operation; it was

289 [redacted].
290 [redacted].
291 [redacted]

never partitioned off and only filled in a section at a time). He took his [redacted] there to enjoy the fields and access Ashton Court.

[redacted]

299. [redacted] supplied a questionnaire[292] in which he said he had used the Application Land since [redacted] while living at [redacted]. Access was gained from Silbury Road; there were public paths crossing the land. He went there to walk and watch birds and used the land apart from the paths often. He had seen walking, dog walking, children playing, blackberry picking, bird watching, kite flying, picnicking, and bonfire parties.

[redacted]

300. In his questionnaire,[293] [redacted] said that he had lived at [redacted] and used the land to walk and observe wildlife every day since [redacted], although in a short statement[294] he said he had lived in Ashton Vale for [redacted] years and walked his dogs on the whole twice or three times a week. He said in his questionnaire that he had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, kite flying, picnicking, drawing/painting and bonfire parties. He had spoken to the farmer about such matters as the weather. In his statement he said that even during the landfill, parts of the field were easily accessible for walking as the grass had grown over.

[redacted]

301. This questionnaire[295] is an unreliable document which looks as if it was filled in by several people, gives two different Christian names and an unspecified user period.

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292 [redacted].
293 [redacted].
294 [redacted].
295 [redacted].

[redacted]

302. [redacted] provided a statement[296] according to which he was brought up in [redacted] and used to frequent Ashton Vale fields with his mates when he was a boy; they felt safe there. The fields were part of the community. He still enjoys walking over them. No dates were given.

[redacted]

303. [redacted][297] that she was [redacted] years old. She grew up in [redacted], where she lived for [redacted] years. The Application Land was "*at the heart of our community*". She spent much time out there with other young children building dens, fishing in the river and ponds and forging lasting friendships. When she got married, [redacted]. They moved into [redacted] and were still living there [redacted].

[redacted]

304. [redacted] of [redacted] submitted a questionnaire[298] in which he said that he had known the Application Land since [redacted] and used it (exactly when is unclear) for going to Ashton Court; bird watching; and taking grandchildren for walks, having picnics and playing football with them. Access was across the bridge from Silbury Road; there were public paths crossing the land. He had seen walking, dog walking, children playing, blackberry picking, bird watching, fishing, football, cricket and picnicking.

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296 [redacted].
297 In a letter at [redacted].
298 [redacted]

[redacted]

305. [redacted] said in a handwritten letter[299] that she had lived at [redacted] since [redacted] and her partner [redacted] had lived in Ashton Vale for [redacted] years. They used the fields regularly to walk, walk their dog, let their children play and fly kites.

[redacted]

306. A short statement[300] by [redacted] of [redacted] said that she had lived in Ashton Vale for [redacted] years. Her children played in Ashton Vale fields, fishing and playing hide and seek. She still enjoyed the fields, walking her dog with her family at weekends and in the summer walking with her grandchildren, picking blackberries and looking at the cows and sheep.

[redacted]

307. [redacted][301] that she had lived at [redacted], backing on to the Application Land, for [redacted] years and walked the fields many, many times. She used to take her children and friends over the back fence with a ball, a picnic and basins for the blackberries. She would walk over the fields to pick elderberries and rosehips, or to Hanging Hill Woods or Ashton Court. They had watched calves being born in the field at the bottom of the garden.

[redacted]

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299 [redacted].

300 [redacted].

301 In a statement also made on behalf of her family and (I assume) [redacted].

308. [redacted] wrote in a letter[302] that his [redacted] had bought [redacted] over [redacted] years ago. In turn his [redacted], and he and [redacted], had moved in to live there. He remembered playing with his friends on bikes in Field 1. [redacted] played there with their friends. It was used as a short cut to Ashton Court by hundreds during the balloon festival. Last year (2009) he went over to the field for the festival [redacted]

[redacted]

309. [redacted] of [redacted] wrote[303] that he had lived in Ashton Vale for [redacted] years and played on the Application Land as a child, making dens in the hedges and fishing. He still enjoyed walking his dog in the fields with his family at weekends.

[redacted]

310. [redacted] of [redacted] wrote in a statement[304] that the fields at Ashton Vale had been used by generations of her family. Her [redacted] had enjoyed them as a child; she and her sister had played there except when the fields were flooded, which happened a lot then; and now she walked her dogs there most days, and her father took them when she was at work.

[redacted]

311. According to a questionnaire[305] [redacted] has lived at [redacted] and used the Application Land since [redacted]. Access was gained over Colliter's Brook; there are public paths over the land. He (or she) now went there to walk; other past activities were bonfire parties, football, blackberry picking and bird watching. Frequency of use was three times per year. Activities seen were walking, dog walking, children playing, blackberry picking, bird watching, football, kite flying, bicycle riding, drawing/painting and bonfire parties.

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302 [redacted].
303 In a statement at [redacted].
304 [redacted].
305 [redacted].

Page blank

[redacted]

312. [redacted] also stated[306] that she had lived at [redacted] and used the Application Land since [redacted]. I infer that she is married to [redacted]. She also gained access over Colliter's Brook and assessed frequency of use at three times a year, but the range of activities was more restricted: walking, and bonfire parties 20 years ago. Her current usage was walking to Ashton Court. There was one public path crossing the land. Activities seen were walking, dog walking, blackberry picking, bird watching and bonfire parties. In answer to Q.31 ("*Has any attempt ever been made by notice or fencing or by any other means to prevent or discourage the use being made of the land by the local inhabitants*?") she replied "*Yes the cows have been put in the field by the farmer*".

[redacted]

313. [redacted]t submitted a questionnaire[307] in which she stated that she had lived at [redacted], and used the Application Land since [redacted]. She gained access via Silbury Road and did not know if there were public paths across the land. She went to walk and enjoy wildlife and family picnics during school holidays and at weekends. She had seen walking, dog walking, children playing, blackberry picking, fishing and picnicking. There had been school use of the land.

[redacted]

314. In a brief handwritten letter,[308] [redacted] of [redacted] stated that she and her family had lived in Ashton Vale for [redacted] years and her husband and son went for regular walks on the fields.

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[306] In the questionnaire at [redacted].
[307] [redacted].
[308] [redacted]

[redacted]

315. [redacted] wrote a letter[309] from a [redacted] address to say that he had often visited his [redacted] and used the fields in Silbury Road with his cousins to picnic and play football. His mother had told him that she used to go stream-jumping when she was little.

[redacted]

316. [redacted] wrote a similar letter[310] from the same address according to which he and his brother (who I take to be [redacted]) often played cricket and football in the fields in Silbury Road on visits to their [redacted]. No dates were specified in either letter.

[redacted]

317. [redacted][311] from an address elsewhere in Bristol saying that he (or she) married someone from [redacted] years ago and often took their children to "*the village green in Silbury Road*" to kick a ball or play cricket.

[redacted]

318. [redacted] wrote a letter[312] c/o [redacted] saying that she grew up in Silbury Road and lived there for [redacted] years. It was a close community. She regularly visited the fields behind for entertainment including stream jumping and walking and sitting in the sun. Later on she regularly took her children to play in the fields. I infer she may be the mother of [redacted] and [redacted].

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309 [redacted].
310 [redacted].
311 Letter at [redacted].
312 [redacted]

Page blank

[redacted]

319. [redacted] of [redacted] wrote[313] simply that her son loved playing "*over the fields*" with his friends during the summer holidays and sometimes at weekends.

[redacted]

320. [redacted] submitted a questionnaire[314] in which she stated that she had lived at [redacted] and used the Application Land since [redacted]. Access was gained over the bridge from Silbury Road and there were public paths crossing the land. Current uses were walking and access to Ashton Court. She used the land (apart from the paths) often; she "*grew up playing in the fields*". Past activities were walking, fishing and playing in dens. She had seen walking, dog walking, children playing, blackberry picking, fishing, football, cricket, team games, kite flying and bicycle riding.

[redacted]

321. [redacted] stated in a questionnaire[315] that he (or she) had used the Application Land since [redacted] while living at [redacted]. Access was over Colliter's Brook via a bridge; there were public paths crossing the land. The reasons for going there were to go to work, to walk the dog and to run. Bird watching was mentioned as a previous activity. Frequency of use of the land apart from the public paths was seven days a week. His (or her) immediate family used the land for walking, running and bird/wildlife watching. Running clubs used the land. All the boxes in the "activities seen" list in Q.23 were ticked except for team games, fetes and carol singing. The answer to Q.29 ("*Did anyone ever give you permission to go onto the land*?") was "*Yes the farmer who used to own the land*" and the answer to Q.29a ("*If yes, when and the reason*") was *"Years ago, farmer always let us use the land*".

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[313] A1089.
[314] A1090-1096.
[315] A1097-1104.

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[redacted]

322. [redacted] supplied a questionnaire[316] in which she listed five local addresses from which she said she had used the Application Land between [redacted] and [redacted]; [redacted], [redacted] and [redacted]. She gained access over the bridge in Silbury Road and there were public paths crossing the land. She went on to the land to walk to Ashton Court, Long Ashton, and the Angel Inn. Her family did very much the same. She had helped the farmer get cows and sheep back to the field and been thanked for doing so. She had seen walking, dog walking, children playing, blackberry picking, bird watching, football, cricket, rounders, team games, kite flying, picnicking, drawing/painting and bicycle riding.

[redacted]

323. In a handwritten letter[317] sent from a [redacted] address, [redacted] said that her [redacted] lived in [redacted] (house number unspecified) and she had spent most of her school holidays playing on fields by their house, often meeting up with friends. Her own children had played in the field when visiting their great-grandparents.

[redacted]

324. According to [redacted] questionnaire,[318] he had used the Application Land since [redacted], while resident at [redacted]. He gained access over the bridge in Silbury Road and there were public paths crossing the land. He went there to walk the dog, and had picked blackberries. He used the land (apart from the paths) approximately five times a day, every day. His immediate family used the land for dog walking, blackberry picking, bird watching, fishing, picnicking, kite flying and balloon

316 [redacted]
317 [redacted]
318 [redacted].

watching. Those, along with walking and children playing, were the activities which he said he had seen on the land; he was unaware of any community activities. The owner/occupier of the land had seen him there and said nothing to him.

[redacted]

325. [redacted] completed a questionnaire[319] in both names according to which they had used the Application Land from [redacted] to [redacted] while living at [redacted]. In answer to Q.13 ("*How do/did you gain access to the land*?" he wrote "*Black bridge Colliter's waterfall under railway bridge to cornfields rear of Ashton Drive*". There were public paths crossing the land. Use of the land apart from the paths was approximately three times a week: the purposes of going there were walking and dog walking. Their immediate family also walked on the land. Activities seen on the land over the past 30 years were walking, dog walking, children playing, bird watching, bicycle riding, bonfire parties, train spotting, photography and farming (cow grazing).

[redacted]

326. [redacted], of [redacted], wrote a letter[320] stating that she had moved to Ashton Vale [redacted] years ago after retiring and had walked in Ashton Vale fields several times a week with her daughter and grandchildren (except while recovering from a hip operation). She loved to see the birds and other wildlife; in the winter the fields were often flooded and that brought lots of birds to the fields. She came from a family of farmers and enjoyed seeing cows in the field; in recent years there had been sheep grazing as well.

F. The Objectors' evidence

327. The following is a summary of the oral evidence given on behalf of the Objectors, in the order in which they called their witnesses. Except where otherwise stated, I accept their evidence.

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319 [redacted].

320 [redacted]

328. [redacted][321] is the managing director of [redacted] a provider of ecological consultancy services including wildlife surveys and impact assessments. Between May 2008 and September 2009 he visited the Application Land and surrounding area on 25 occasions in connection with the provision of such services to [redacted] as agent for Bristol City Football Club. He produced a schedule (marked "[redacted]") of his visits, compiled from contemporaneous field notes and time records. On 13 May 2008 he carried out a survey of what he called "*the whole site*", comprising the Application Land, the former allotments (Alderman Moores) and a strip of land on the other side of Longmoor Brook and Colliter's Brook New Cut. This was to map habitats and look for evidence of protected species. On 21 May, 17 June and 3 July 2008 he carried out morning surveys (beginning at dawn) of breeding birds, which involved walking all over the whole site using binoculars to plot the positions of breeding birds. On the evening of 15 September 2008 he and other surveyors conducted a bat survey focused on the three oak trees in Field 6. On 15 October, 14 November and 16 December 2008 he carried out morning surveys of wintering birds over the whole site. Later on 16 December 2008 he walked over the whole site with ecologists from Bristol City Council and North Somerset Council. On the mornings of 16 January, 12 February and 13 March 2009 he conducted further wintering bird surveys, and during the evening of 12 February 2009 did an associated roost count. A badger survey was conducted on the morning of 30 January 2009 in the allotments and at the northern end of Field 1. A further badger survey was done on the morning of 1 June 2009 in the allotments. On 11 March 2009 he walked over the whole site with Environment Agency personnel. On 8 July 2009 a general survey of the northern half of the whole site was carried out in the morning. He spent 6 August 2009 laying reptile shelters over the whole site to attract reptiles and enable them to be collected and translocated. A reptile fence made of black plastic sheeting was installed around the whole site to keep them from returning; [redacted] went to brief the installers on the morning of 7 August 2009 and returned to meet with them on 11 August (morning), probably to check their work. On 24 and 28 August 2009 he met cattle fence installers away from the Application Land. On the mornings of 12

[321] His written statement, dated [redacted], and attached schedule are at [redacted].

and 15 September 2009, he attended in connection with reptile fence repairs. Finally, for two hours in the early afternoon of 21 September 2009 he attended a site visit with the project team.

329. In chief, [redacted] said that he did not systematically record the numbers, locations, or activities of people on site, as that was not an objective of his visits, but he could provide some "*general observations*" from memory. He estimated that he observed people using the Application Land on at least 50% of occasions (he offered 50-60% in cross-examination). He saw no activities other than walking (with or without dogs), by individuals or occasionally pairs. The route straight across Field 1 from Silbury Road to the Park and Ride area was frequently used, although only by one or two people at a time. The same applied to a route hugging the perimeter of Field 1. The route down the western side of Fields 1 and 3 was occasionally used to access the footpath on the other side of Colliter's Brook New Cut. No one used FP 424; fences and wet ditches made it difficult to follow. FP 207 was used occasionally. He saw no difference in pattern during the school summer holidays.

330. In cross-examination he agreed that his visits took place during the working week. He could not see all of the Application Land on each visit; for example, the Application Land cannot be seen from the allotments and Field 1 cannot be seen from Field 6. He might have missed people walking, but when making observations, e.g. of birds or bats, he would be looking round and notice people too. He saw no children, including in Fields 2 and 5. Field 5 was very boggy and Field 2 was half wet. He could not recall anyone in Field 6. He noticed gates at the rear of houses but did not see anyone using them to access the Application Land. Asked how he could tell that people were using FP 207, he said from their position in Field 1. He did not follow people's progress, but would see them heading in a particular direction and about half the time would get repeated observations. He might see someone on a particular route just once or multiple times. The people he saw were walking dogs or strolling. They did not act suspiciously or look as if they were not supposed to be there.

331. When installing a reptile fence, it is necessary to leave a gap or gaps for access. Standard practice is to bend the fencing back on the outer side to divert returning reptiles. In this case, Just Ecology Limited prepared a plan of the fence line with suggested locations for gaps, to which the client agreed. There were gaps at the Silbury Road entrance to Field 1, two on the other side of the brook to the north west of the Application Land and one in the south-west corner of Field 6 as shown on the photograph at A1319F. It was their practice to leave gaps where there was obviously use for access, whether a public right of way or not, or else the fencing would just get kicked in. Another gap was left at the rear of the Ashton Drive houses by the gate in the wooden fence (as shown in the bottom photograph on A1319B), where there was obvious use for access and egress. There was no gate in the gateway between Fields 1 and 3 when the fence was installed; it had been repositioned subsequently. He could not remember seeing a gate there at all. He had never seen grazing animals in Fields 2-6, but had seen cattle and sheep in Field 1. He had had no qualms about striding over fences between Fields 1 and 4 and 5 (although it was unnecessary to do so as there was a route through Field 2). He entered Field 6 either from Field 3 by the western boundary or from the south-west corner of Field 5 over the ditch. He thought he had been on site on one occasion when boreholes were being drilled but could not clearly remember whether the equipment was fenced or not.

332. I have doubts as to whether [redacted] casual observations and subsequent recollections of walkers on the Application Land could have been sufficiently precise to enable him to offer such categorical evidence about their numbers and locations. Subject to that, I accept his evidence.

[redacted]

333. [redacted][322] is a [redacted] and a designated member of [redacted]. From [redacted] to [redacted] he was a partner in [redacted] and before that he assisted the senior partner, [redacted]. That firm have been agricultural land agents for the Application Land since [redacted]. Before that, [redacted] managed the land while working for [redacted] and [redacted]. His

[322] His witness statement and exhibits are at [redacted]A.

predecessor was [redacted] of, successively, [redacted] and [redacted]. [redacted] has had access to files relating to the land going back to 1973, but has only been personally involved with it since [redacted]. [redacted] referred to the grazing agreements (paragraphs 42-45 above) and said that so far as he was aware, the Application Land was let during the years for which no copy agreement could be found on similar terms to other years (save that in 2005, [redacted] paid no rent in consideration of carrying out extensive fencing work at her own expense). He attributed the fall in acreage let between 1985 and 1986 to the landfill operation. He could not explain why the figure did not rise again to 42 acres until 1994, several years after reinstatement of the land, other than to suggest that the stated acreages were only approximate. [redacted] did not graze Field 1 during the landfill operation and he did not think that [redacted] did either, but it was before his time. He said there was "*a degree of flexibility*" with regard to the dates specified in the agreements for putting stock on the land. It could be quite intimidating to walk through a field where a number of cattle were grazing.

334. He produced a number of documents relating to the landfill operations, including those referred to above at paragraphs 47, 49-54. He said that the temporary soil mounds and the fencing which was erected around the site would have prevented public access during those operations. The existence of fencing was an inference drawn from the provisions of the 3 January 1986 grant of tipping rights (paragraph 52 above). In answer to [redacted] he said "*Neither of us will ever know if there was fencing*". Later he said that the lower land would need to have been fenced. He pointed out that the grounds of objection from local residents to the two planning applications referred to in paragraphs 47, 54 above, as recorded in the relevant reports, made no reference to recreational user of the land. He also produced the following documents:

- A letter dated 6 August 1985 from [redacted] to Avon County Council[323] enclosing copies of "*the final drawings*" for phases 3 and 4 and continuing:

[323] Exhibit "[redacted]": [redacted].

"With regard to the phasing of infilling, this will be done in 4 sections. The first section will be half of phase 3, followed by the second half, with the soil from the second half being used for reinstatement of the first section. The soil from the first section of phase 3 being used to create the mound on the boundary at Silbury Road; phase 4 to follow in the same way. The subsoil from the embankment on the NE end of the site will be spread over the phases as required with back filling of the area as necessary. At any one time no more than approximately 50% of either phase will be stripped of soil and sub soil. We enclose a copy of a letter outlining these facts which [redacted] has sent to your Planning Department. We hope these facts will enable you to proceed with the licence."

- A letter dated 19 May 1988 from [redacted] to [redacted] of [redacted] (the then agricultural land agents)[324] which referred to lodging an appeal against the refusal of planning permission for phase 5 and continued:

  "I understand from [redacted] today that the grass on most of phase 3 and part of phase 4 is now getting quite long and should be grazed or cut for hay in order to keep the site as tidy as possible. I am sure it would also benefit the land, especially grazing. Perhaps you could have a word with your brother[325] to see whether he would like the grazing at no charge this season, but obviously he will have to put up some electric fencing to control the cattle. I look forward to hearing from you in due course."

- A copy of a report from the *Bristol Evening Post* dated 29 September 1987.[326] The headline read "*Tip families call council of war*" and it was accompanied by a photograph captioned "*The rubbish dump in Ashton Vale.*" The context

[324] Exhibit "[redacted]": [redacted].
[325] [redacted]s (see paragraphs 41-43 above).
[326] Exhibit "[redacted]": [redacted].

of the report was the application for planning permission for phase 5, and a meeting to be held at the Ashton Vale Community Centre that evening to set up a protest committee. The photograph would appear to be of the phase 4 area with the Silbury Road houses in the background.

335. In chief [redacted] said that Drawing KF/2C[327] showed that Field 2 was completely inaccessible from Field 1 as it was surrounded by overgrown scrub, which accorded with his own knowledge after 1995. In cross-examination he agreed that the continuous double squiggly lines marked "*Ex Hedge to be retained and thickened where necessary*" drawn around the edge of Field 2 where it abutted Fields 1 and 4 was "*in a sense a proposal.*" He declined to comment on whether the April 1988 and June 1989 aerial photographs of the area[328] showed there to be a continuous hedge around Field 2.

336. [redacted] gave evidence of having commissioned various works to try to improve the drainage in the lower fields, which had got worse after the landfill. In September 2003 he instructed [redacted] to clear out the ditches between, respectively, Fields 1 and 3/4, Fields 3 and 4, Fields 3 and 6, Fields 4 and 6/5/2, and Fields 6 and 5. He also instructed them to re-pipe and stone the gateways between, respectively, Fields 1 and 3, 3 and 6, and 3 and 4. It was intended to create a piped and stoned gateway between Fields 5 and 6 later on, when it dried out, but that was never done. However, a gap was left in the fencing along that ditch. The purpose was to encourage cattle to go into Field 5 and graze it. That did not prove successful because the grass was tough and bog-like due to the wet conditions. The gap has however remained to the present day. He referred to an out-of-date OS map extract on which the works carried out by the contractors had been described.[329] [redacted] were instructed at the same time to cut back the reeds and other coarse vegetation in Fields 3, 4, and 6 to encourage the natural regeneration of grass and improve the grazing. [redacted] produced a copy of a note[330] of a meeting with [redacted] on 17 September 2003, before the works were carried out. The meeting

[327] See [redacted] and paragraph 50 above.
[328] See [redacted].
[329] Exhibit "[redacted]": [redacted]. It is the same document as [redacted] of [redacted] exhibited: see paragraph 400 below and [redacted].
[330] Exhibit "[redacted]": [redacted].

was also attended by [redacted] of The [redacted], who gave authority for the works to proceed (point 1.6). The remainder of the note, headed "*Ashton Vale*", read as follows:

> *"1.1 [redacted] and [redacted] met the [redacted] manager, [redacted], to look at the need for topping the pasture and carry out some drainage works to enable grazing to continue by [redacted]. Without the topping [redacted] did not think it would be much help to them.*
>
> *1.2 In addition it was agreed that a tracked vehicle/JCB should be brought in to deal with the basic drainage west of OS 41.*[331] *OS 41 will be left with its hedging to act as a screen from the housing estate to the east.*
>
> *1.3 [redacted] had previously mentioned that the Estate is being privatised and some of the more vociferous occupiers had left and there may not be quite the same objections to the work proposed.*
>
> *1.4 All the hedges on the east side of Colliter's Brook are to be trimmed where they overhang our boundary but [redacted] confirmed that the water authority normally come in the Autumn to maintain these water courses which are very overgrown although there was no sign of activity at the moment.*
>
> *1.5 The boundaries of the land were looked at adjoining the Council Estate and it was agreed that notices should be erected asking the general public to keep to footpaths and keep dogs on leads. [redacted] thought it might be worth getting a price to fence the footpath which crosses the tip. In this way no one could wander over the land which [redacted]*[332] *had previously indicated should be seen to be farmed rather than allowing general access."*

337. [redacted] said in chief that the hedge trimming was kept to a minimum to provide screening for the residents and a windbreak for the animals and to deter

[331] Field 5 (See [redacted]).
[332] [redacted]ell could not recall who [redacted]r was.

unauthorised access to the land. In the end, it was decided not to fence the footpath across Field 1 because it would have made it difficult to farm the land in any sensible way.

338. [redacted] instructed [redacted] to carry out a second phase of drainage work in November 2003, as evidenced by a letter dated 14 November from [redacted] to [redacted].[333] This comprised re-ditching between Field 6 and the back of the Ashton Drive houses, and between Fields 1 and 2; re-seeding spoils ditch cleaning area; and hedge trimming along the western boundary of Fields 3 and 6. [redacted] wrote in a letter to [redacted] dated 18 November "*Certainly the work has transformed the land and I hope* [redacted] *will be able to graze this land fairly soon under the normal grazing licence.*"[334] However, The [redacted] decided against re-opening the ditch between Fields 1 and 2 in case it caused Colliter's Brook to flood.[335]

339. On 7 November 2003, [redacted] sent [redacted] the [redacted] invoice relating to the first tranche of works and a set of photographs of the site, with a request for authority to proceed with the second tranche. His letter[336] contained the following:

> *"Having inspected on site I/J,[337] there is no apparent ditch and secondly it is overgrown with trees and thirdly by cutting back, could encourage trespass, so in my opinion, it should be left as is, albeit it intrudes into the field by some 5-6 metres and a number of trees are fallen ... The purpose of re-ditching G/J[338] would again limit trespass, whilst encouraging drainage from the southern part of the land and any surface drainage from the urban dwellings..."*

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[333] Exhibit "[redacted]": [redacted].
[334] [redacted].
[335] [redacted].
[336] [redacted].
[337] I/J was a reference to the southern boundary of Field 6: see plan on [redacted].
[338] G/J was a reference to the boundary between Field 6 and the rear of Ashton Drive houses; ibid.

340. [redacted] produced copies of photographs taken in 2003 after the drainage works.[339] He drew particular attention to the photograph numbered 20,[340] which he said showed dense bramble scrub growing in Field 2. In cross-examination he did not comment on whether passage between Fields 1 and 2 was possible before 2008. As to the photograph on A195A he agreed it was of Field 5, but queried the date when it was taken and said that the line across could have been a badger or cattle run or deer track. There had always been a ditch between Fields 5 and 6; it was just covered over by growth at the date of that photograph.

341. Further topping work was carried out in 2004. However, the grazing continued to be of poor quality. Following soil analysis, [redacted] instructed [redacted] to cut, rake and collect the grass and weed growth and direct drill into Fields 3, 4 and 6 Fortress grass seed (a variety particularly suited to wet conditions). [redacted] carried out extensive fencing work that year. The wet nature of the land continued to be a problem and further ditch clearance work was carried out in March 2006 and August 2007. [redacted] produced copies of more photographs[341] taken by him after ditching works in 2006 and/or 2007, he was not sure which. He instructed [redacted] to apply fertiliser to Fields 3, 4 and 6 in April and June 2008, and then to carry out more ditch clearing and topping of reeds and scrub. That was done on 28 August and 2-4 September 2008 and included removing vegetation from the edges of ditches and clearance of much of the bramble and scrub that had been allowed to grow up along the boundaries of Fields 2 and 5 to provide screening for local residents and deter trespass on the land. Prior to that Field 2 could not be accessed at all. [redacted] produced some photographs[342] which he said were taken on 3 and 12 September 2008 and showed the aftermath of those works. On legal advice he declined to answer questions about those operations.[343]

342. [redacted] said in chief that he had formally walked the Application Land at least once a year from 1995 onwards. He had also visited to inspect Alvis

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[339] Exhibit "[redacted]": [redacted].
[340] [redacted]A.
[341] Exhibit "[redacted]": [redacted].
[342] Exhibit "[redacted]": [redacted].
[343] That was on the footing that there were ongoing investigations into whether breaches of the Hedgerow Regulations 1997 might have been committed. See paragraph 32 above.

Contracting's work, and to attend site meetings with them, with [redacted] or with representatives of the landowner, as the need arose. When he first came to the Application Land in 1995 there was a walked pathway across the field that seemed to him to be commonly used. During his visits he had only observed occasional dog walkers, all within Field 1, either walking along the pathway across it or more recently around the edge. He had not seen members of the public in any other field. Asked in cross-examination why, if people had only been seen on paths in Field 1, point 1.5 of the note of the meeting with [redacted] on 17 September 2003 (paragraph 336 above) had been phrased in the way it had, he first replied that the reference was to gates at the bottom and encroachment. He then said that they did know that people were wandering over Field 1, but there was confusion about what was footpath, what was being walked, and what was the best way to manage it. Asked in cross-examination why concern was expressed in the 7 November 2003 letter (paragraph 339 above) about limiting trespass in Field 6 if people were only walking on Field 1, [redacted] said that people crossing Field 1 was one concern. He was aware of some rear gates, but others had been hidden behind scrub while some led to FP 424 or the brook. There was concern about encroachment and the position of the boundary; there was also concern about the gates, but the Application Land changed hands before anything was done about it.

343. He did not accept that dogs had been walked all over the Application Land. He accepted that Field 1 was walked around, that a footpath was used into Field 5 and that fences were broken down between Fields 5 and 6. He accepted that there was wildlife in the valley. He could not comment on dens or fishing for tadpoles and had seen no hawks. He had not seen the balloon fiesta. He had never seen anyone going in and out of the rear gates, or bicycling, kite flying, picnicking, bird watching, football, cricket, blackberrying or children playing on the Application Land.

344. [redacted] was reluctant to make any concessions in cross-examination, for example in relation to the alleged impenetrability of Field 2 and the implications of the documentary references to "wandering" and trespass. However, except as regards the alleged impenetrability of Field 2, I accept his evidence of fact.

[redacted]

345. [redacted][344] lives at [redacted], which is in [redacted] on the other side of the bypass from the Application Land and well out of sight of the Application Land. The Application Land was at one time part of Kennel Farm and occupied by her father. The tenancy of Kennel Farm then passed to others. In 1990 she began farming the Application Land in partnership with [redacted], [redacted]. This continued until 1997 when she became sole licensee. She has farmed the land with the help of [redacted].[345] She exhibited the grazing licences and tenancy agreements, which I discussed above at paragraphs 42-45. There was a parcel of land which belonged to the previous tenant of Kennel Farm; that was paid for independently of the rest. They rented a bit of orchard-type land by the Smythe Arms (now called the Dovecote). She guessed that of the descriptions in the tenancy agreements, "dry land" meant Fields 3 and 4, "tipping land" meant Field 1, and "underwater land" meant Field 5/6/2. The landfill operation had been completed on Field 1 and the land re-seeded before the first agreement was entered into on 24 April 1990. Field 1 has not been re-seeded since then. [redacted] grazed Field 1 before the landfill; no one grazed Field 1 during the landfill so far as she was aware. Possibly some grass was taken from Fields 2-6 during the landfill.

346. The Application Land accounts for about a third of her total grazing land and is grazed in rotation with her other fields. The pattern of farming Field 1 remained the same from 1990 to 2008, but the ground investigation works churned it up too much to be suitable for grazing in 2009. The grass was cut for silage in late May or early June and then the cows were turned out to graze. She would use the quad bike to take the cows up to Parsonage Farm for milking in the morning and bring them back, and repeat the process in the afternoon. The stocking density was always about 120 milkers. Sometimes in winter they put younger cattle on the fields, which might be

[344] Her written statement and exhibits are at [redacted].
[345] See paragraphs 353-360 below for his evidence. In this Report, I use the term [redacted]" to include [redacted] as well as [redacted].

where people got the number of 30 or 40 from. There were two ways across from [redacted]: the main one was the vehicular one between the David Lloyd Centre and the Park and Ride area, but there was another bridge lower down in Field 3. The use of Field 1 was rotated with the lower fields, starting in Field 1 and gradually moving the animals on, but until 2003 the cows tended to stay on the western side of Fields 3 and 6 because the remainder of Fields 3 and 6 and Fields 4 and 5 were very wet and the grazing was poor. In chief [redacted] said that there was a dry strip of land in Field 2 along Colliter's Brook but the cows could not get to it until 2008 because the access from Field 1 was completely blocked by scrub. In 2003 there were extensive drainage works which were followed by cutting of reeds and grass and direct drilling of grass seed into Fields 3, 4 and 6. This greatly improved the grazing and enabled an annual silage crop to be taken off these fields. Following the ditching works [redacted] fenced the ditches to keep the cows out of them. The cows still did not go into Fields 2 and 5 much because they were so wet. The cows would be taken in in October, or perhaps November. In past years the Bloyces regularly put up to 100 store lambs or ewes in Field 1 for part of the winter.

347. [redacted] had told her that when he had the tenancy, he used to charge people to ice-skate on the flooded fields in winter, but she had never seen anyone ice-skating on the land. She had no knowledge of community celebrations on the Application Land. She said in chief that the main use by the public has always since 1990 been for dog walking on the footpath across Field 1 or (more recently) around the perimeter of Field 1. They had talked about fencing the footpath across it but thought it would make farming too difficult. She saw no more than 5 or 6 dog walkers a day. She had not seen anyone walk FP 424 because of the fenced ditch across its route and no one could have walked along Colliter's Brook through Fields 2 and 5 because it was blocked by scrub until 2008. She had occasionally found dens in Field 1 near the Silbury Road houses and evidence of small fires, in a similar area. In a number of places they had to mend barbed wire fencing regularly, particularly in the south-west corner of Field 6. They had placed boulders at each end of the footpath across Field 1 to deter gypsies and motorbikes. A teacher from the primary school had once asked her for permission to visit the land; she had told them to ask the landowner.

348. In cross-examination [redacted] said that she was aware of people using gates at the rear of their houses to gain access to and walk across Fields 5 and 6. There had been a lot of gates there since March 1990. She had not noticed any new ones but had not checked for them; it did not mean there were none. She had not spoken to the householders about it or taken any steps to stop it. She had heard the previous landowner mention that they should not really be doing that, but had never heard anyone tell the people who lived there. She agreed that people turned left from the Silbury Road entrance into Field 2. There used to be wooden rails but [redacted] had replaced them with the metal stile. It was not designed to keep people out, but to let them through. There might have been a small gap between Fields 1 and 2 where the digger went through in 2008; you could walk alongside the brook. It was more open between Fields 5 and 2. Cows might have got into Field 2 before the 2008 clearance; cows will get through anywhere if they want to. It would have been her husband who put a temporary fence round [redacted] garden. There was less scrub on Fields 2 and 5 at the time of the photograph at A195A than there had been more recently. She agreed that it was possible to walk round the backs of the houses there. [redacted]s had not called for the removal of the scrub; it was not her idea and no one had ever told her it was done to allow her cows through. That was an assumption on her part. No one had asked her permission to do it. There had been several gates between Fields 1 and 3 over the years. In the past they had been hinged but they would be undone and put in the ditch. [redacted] were always happy for people to walk through there; perhaps they should not have been. People walking through could be very helpful if they saw something wrong. The fences along the ditches were to keep the cattle out, not people. It was not a problem if people climbed over the fences so long as they did not break them. She was well aware of people coming in and out at the south-west corner of Field 6. When they put the cows out in the spring they would go round and put fences up to keep the cows in. If people respected the fences she did not have too much of a problem with it. The wear on the grass was most likely due to human feet; it was not her cattle. The wire at the back of the industrial estate car park got cut regularly; lots of outsiders came through there, mostly bikers. They "*did not get aggro from Ashton Vale people*".

349. She did not have much contact with the householders who lived next to the Application Land. She always spoke to people walking dogs; they were "*genuine people*". She had no problems with anybody. She would go down to Fields 2 and 5 when bringing the cows up in summer. The cows knew their own way over to the fields but they did not all come back up; some were keen, others were less keen. Sometimes she used to do a quick spin round on her quad bike to round them up. She had no reason to disbelieve residents who said that their children came out to play in Fields 2, 5 and 6, but had not seen lots of children's parties. They might walk with their parents, pick blackberries and watch birds. It was not up to her to tell them differently if they were doing no harm; she was there to graze cattle and cut the grass, not interfere with other people. There was a "*right to roam*" now. It was better to be in harmony than discord with neighbours. She had not herself noticed an abundance of birds but had no reason to doubt witnesses who said there were. She did not go to Fields 2 and 5 very often. She might have noticed children's dens there if she had had to look for a lost bullock or sheep. She would not be able to contradict people who said that there were some. It was not to her advantage to contradict them. She was not on anyone's side. She saw what she saw. She saw people anywhere - all over, not just in Field 1. She was not there all the time in any case. There was no reason for relations with local residents not to be cordial; they were not harming her family and her family were not harming them. They had their use and her family had its use. That had been the case throughout [redacted]' time there. Her father used to say it was better to keep good relations with neighbours as they tell you when things go wrong. People would get out of the way when her family was spreading muck. They did not try to block or disturb them.

350. She agreed that before 2003 a large area of water used to form around the junction of Fields 3, 4 and 6, which no longer happened. She had not heard it called a "lake". To her, it was an area cows could not graze. She expected it was good for wetland birds. She had seen herons and ducks but not swans. People would go and look at the birds; she had sometimes seen them do it. She had only seen a tent in Field 1. She had not seen anyone with a hawk or children fishing for tadpoles and frogs. She had seen families rather than children playing alone. Some of the photographs at A1273 and following pages looked staged to her; some looked natural. She expected people did

gather in Field 1 during the balloon festival; they gathered at every possible vantage point. She might have seen a ball kicked around in Field 1 near Silbury Road. The activities shown in the photographs would not surprise her but were more than she had seen. Mainly she saw dog walkers. She could well believe that the school used the land but had never seen it happen. People would keep to the edges of the fields when machinery was being used as a matter of common sense, not because they were told to do so.

351. In re-examination [redacted] said that the gate between Fields 1 and 3 was left open when the cows were grazing; it was often closed if there were sheep there, to keep them in Field 1 or the lower fields. There had never been a gate in the gateway between Fields 3 and 6. The south-west corner of Field 6 had not been as beaten as it is now all the time; she was not sure what it was like in 1990. She had seen bicycling across Field 1 but not in Fields 2-6. She had seen evidence of fires in Field 1 but no bonfire parties or community celebrations. She had possibly seen kites flown once or twice in the middle of Field 1. She had "*not specifically*" seen bird watching. She had seen no picnics, football, cricket, rounders or team games. She had not seen fishing, although she had seen people crossing Field 1 with equipment. She had seen no blackberry picking, or drawing/painting. She had seen children with their parents walking across Field 1. She had seen plenty of dog walkers in Field 1; some went straight across, others circled the field. She had seen dog walkers all over Fields 2-6, going in different directions. She would see one or two at a time. She would not see many walkers without dogs in Fields 2-6; she might see them in Field 1 going somewhere (the David Lloyd Centre, Ashton Court, the Park and Ride, the Dovecote, the bus stops). Things had not really changed since 1990.

352. I accept [redacted] evidence as modified and developed orally.

[redacted]

353. [redacted][346] is [redacted] son and has spent all his life living and working at [redacted] They farm about 500 acres in total; they keep cattle and sheep and grow arable crops. Their other grazing land is on the other side of the brook and over towards Long Ashton. He has been involved in farming the Application Land since 1990. Prior to that date, it was grazed by the [redacted] family. [redacted] recalled visiting Field 1 when it was a landfill site to tip farm waste. He recalled re-seeding taking place. He did not remember any grazing on Field 1 during the landfill period. [redacted] was grazing cattle in the lower fields at that time.

354. The overall pattern of farming Field 1 had been unchanged since 1990, although there was no exact blueprint they followed. Every year was a bit different. At any time between October and March a mixture of farmyard manure and slurry would be spread using a tractor and manure spreader. [redacted] would apply a nitrogen fertilizer using a tractor and spreader in late March or early April. The field would be "shut down" for about two months between the winter and summer grazing periods. Then in late May or early June a grass silage crop would be taken off the field by [redacted] or an agricultural contractor. The grass would be left to lie for 24 hours before being raked into rows, picked up by a self-propelled forage harvester and blown into trailers being towed by tractors and taken back to the farm. Two or three weeks after that, the dairy cows would be let into the field. His family have always had about 120 dairy cows, predominantly Holstein Friesian crosses. They are black and white, and weigh on average about 600 kilos. They were kept together day and night, being taken back to Parsonage Farm twice a day for milking. The rotation system meant that the cows would graze the field for three weeks before being moved elsewhere on the farm for four weeks, then brought back for a week before being moved again. The length of grazing and rest periods would vary from year to year but typically the cows would spend three periods of grazing in Field 1 before being taken indoors in October/November. The only exception to this was 2009, when the cows did not like the grazing because of unevenness and rubbish left by the ground investigation works. Between November and March a small beef herd (20-50 in number), or (with the exception of the last two winters) a flock of up to 100 sheep, would be grazed in Field 1.

[346] His written statement and exhibit are at [redacted].

355. Prior to the 2003 drainage works Fields 2-6 were used for rough grazing. The cows were free to find their own way through the fields, but tended to graze only the western side of Fields 3 and 6 because the rest of the fields were very wet and full of reeds and sedge. Occasionally, if there had been a very dry spring and early summer, they managed to take a grass silage or hay crop off parts of Fields 3 and 6. After these works and the cutting down of the reeds/sedge and re-seeding, Fields 3, 4 and 6 were able to be used in the same way as Field 1 and the same fertilising and mowing regime was applied to them. They have not been manured. Fields 2 and 5 remained wet, although there was a strip of higher, drier ground along the side of Colliter's Brook.

356. During the two-month period when the grass was growing, [redacted] would only visit to check on the Application Land weekly. While the dairy herd was there, [redacted] would go to collect them for milking; [redacted] did the milking. The herd were all pregnant and someone would go down to check on those about to calve. The cows would be got up for milking around 6am and be back by 9am. He would go down around 10-10.30am. The cows would be collected again at 3pm and come back at 5-6pm. Any thought to be calving would be checked between 6 and 7pm. The stock grazing during the winter were looked at at least once a day. If the animals were all in Field 1 there was no need to go into Fields 2-6 at all. He had not needed to go into Fields 2-6 often prior to 2003, especially 2, 5 and the bottom of 6. However, most of the lower fields could be seen from Field 1.

357. Following the 2003 drainage works [redacted] fenced the ditches to prevent their animals getting into them. They left gaps between Fields 3 and 4, 3 and 6, and 6 and 5 to allow the cows and young stock to move between the fields. None of those gaps has ever been gated. Fields 2-6 have been treated as a single field. There has been a gate between Fields 3 and 1, but it has never been locked and was only shut when [redacted] wanted to keep the cows or other stock in Field 1 and not have all the grazing in one go. They had no need to shut it in wintertime. The gate was recently reinstated in order to confirm the position of the field boundary for the purposes of the inquiry, not for farming reasons.

358. [redacted] was aware of a lot of gates opening on to the Application Land. He had had no discussions about them with the inhabitants. He assumed they would be used to gain access to the land but had never seen anyone go in or out. He assumed people would not use them if they saw him there. There had been no problems with that boundary. Between Fields 1 and 2 (where the three-barred metal structure is now) there used to be an overgrown rickety old post and rail fence. There was no doubting that people used to climb over it, but it became overgrown to the point that you would not go down there wearing good clothes. When it became really broken down, the cows got out one day and [redacted] replaced it with a structure people could climb over or through (knowing if they did not, whatever they put up would be likely to be pulled down). He guessed that was about 2003. Cows occasionally went into Field 2 before the 2008 clearance work. There was a very old hedgerow consisting of trees which looked like a continuous line from above but had gaps at ground level big enough for persons as well as cows to go through. After the 2008 clearance, he could not recall putting anything in the wide opening created between Fields 1 and 2 to stop the cows going from Field 1 to Field 2, although they had not gone there. The well-worn track in the south-west corner of Field 6 had not always been there. After the drainage works in 2003 he had erected a fence which remained intact in that corner until two or three years ago. Then it became a problem. He has repaired it three times this winter. It would be a struggle to climb in and out without breaking the fence. He had never seen anyone coming through from the industrial estate car park; he assumed the workers there had found a short cut through. He had a problem with people messing with fences if it allowed the animals to stray. He had had words with a motorbike rider but said nothing to walkers. The previous landlord had spoken about taking householders with gates to task but [redacted] had not done so.

359. He was not aware that Fields 3-6 had SNCI status, and would not know a snipe or reed bunting if he saw one, but thought it would be a place to go to see wetland birds. There used to be ducks and herons. He had not seen anyone going to look at them. He had never seen anyone ice-skating on the land and doubted if the winters had been cold enough for it. He agreed that people gathered on Field 1 to watch the balloons and sometimes helped them land there. He met a family tadpoling a year or two ago and would not be surprised if that was a regular seasonal activity. He had

occasionally seen children running around with sticks near the drainage ditches and had found dens constructed in the corner of Field 6 near the Ashton Drive houses. He would not have thought Field 6 suitable for cycling. He had once found a small tent, in Field 1, in 2009. From time to time he had found evidence of bonfires near the Silbury Road entrance which he assumed teenagers had lit at night and sat around, drinking. He had also occasionally found evidence of small fires at the backs of houses where people had burned garden waste or used barbecues.

360. Lots of people walked their dogs on the land. The main use he saw was crossing Field 1 and going around the circumference of Field 1. He saw dog walkers in all weathers. He would not think that they had been deterred by the boreholes or the reptile fencing. He frequently saw dogs off leads. Some people put their dogs on leads when he came in the field on his quad bike or tractor. Possibly they moved to the edges of the field. No one ever got in his way. He had no problem with people walking anywhere. People found distressed calves when walking the land and called [redacted]; that happened perhaps twice a year.

[redacted]

361. [redacted][347] has been employed by [redacted] as a [redacted] consultant for three years. [redacted] were engaged by the Objectors in connection with the preparation of an environmental assessment for planning application purposes. [redacted] visited the Application Land for about 15 minutes on 4 May 2008 (a Bank Holiday Monday) to identify noise sources and noise sensitive receptors. He parked on the Park and Ride area and walked to the centre of Field 1, from where he could see most of the Application Land. He could not remember seeing anyone else on the land. He took three photographs[348] in Field 1: one looking towards the eastern boundary, one looking towards the north-eastern boundary, and the third looking towards the David Lloyd Centre. No people can be seen in any of the photographs. They were timed at 14.20 hours. He produced a plan[349] showing "*the approximate location*" from which the photographs were taken. The point marked was in line with the Silbury Road

[347] His written statement, dated [redacted]; and exhibits are at [redacted].
[348] See Exhibits "[redacted]"-"[redacted]" at [redacted].
[349] Exhibit "[redacted]" at [redacted].

entrance. In cross-examination it was suggested to him that he was in fact standing further to the north and west. He said that they were not all taken from the same spot. It was put to him that he might have missed seeing people in Fields 3 and 4 and was unlikely to have seen people in Fields 2 and 5. He said that he had not heard anyone, either; he would not have heard individual walkers but he would have heard a dog if it barked, or children playing, or a group of people. He might have missed the odd dog walker; it was quite a fleeting visit and his focus was on the industrial site to the north of the Application Land.

362. On Saturday 16 August 2008 he revisited the Application Land to set up noise monitoring equipment. He parked in Silbury Road and spent about 20 minutes in Field 1 at around 10.30am. He fixed one sound level meter to the fence along the north-eastern boundary of Field 1, and another to the metal stile between Field 1 and Field 2 by Colliter's Brook, as shown in the photograph at A1319D. He climbed over to lock the meter on to the Field 2 side of the stile. It was relatively easy to climb. There was denser undergrowth around it than at the date of the photograph. He did not recall seeing anyone on the Application Land on that visit, although he spent the majority of it focusing on attaching the equipment. On 19 August 2008 he revisited the Application Land at about 2pm to collect the meters. He did not recall seeing anyone on the land, although he may have spoken to a resident in Silbury Road. It only took a couple of minutes to unfix the equipment.

363. On 21 August 2008 he revisited the Application Land around 12.15pm and set up two sound level meters on the western boundary of Field 3, by the boundary with Field 6, and on a large tree set a few metres in from the southern boundary of Field 6. This took about 30 minutes. He had a very vague recollection of meeting and greeting one, or maybe two, dog walker(s) coming the other way as he walked back to the car through Field 1. He did not turn round to check where they went, but when he saw them they seemed to him to be heading in the direction of the exit between the David Lloyd Centre and the Park and Ride area. In cross-examination he said that he had looked for rear accesses from the Ashton Drive houses (out of concern for the security of his equipment) but could not recall seeing any. He also said that he had not noticed either of the accesses on the southern boundary of Field 6 (as shown on the

photographs at the bottom of A1319F and A1319G), although in re-examination he said he had misunderstood the question and had explored the exit in the south-western corner, which was more overgrown and less worn at that time than now. He did not think he saw any cows on that visit.

364. On 22 August 2008 he returned with a colleague to move those meters back to the two previous locations in Fields 1/2. He did not recall seeing anyone else on the Application Land. On 25 August 2008 (a Bank Holiday Monday) he visited for about 15 minutes at around 4.30pm to collect the meters. He did not recall seeing anyone on the Application Land, although there were some teenagers hanging around outside the Silbury Road entrance. On 23 March 2009 he set up some noise surveying equipment on the allotments (Alderman Moores) on the other side of Colliter's Brook from the Application Land. The following day he returned to collect it. On one of those visits he saw a party of schoolchildren standing on the public footpath looking into the brook. They were close to the Application Land, and could have gone on to enter it or gone back the other way; he did not know where they went.

[redacted]

365. [redacted][350] is currently employed by [redacted] as an [redacted], but between 1988 and 1998 he was employed by [redacted] ("[redacted]"). In April 1988 [redacted] acquired the landfill operations of [redacted] at Long Ashton, including their depot at St Gabriel's Road, where [redacted] was employed as [redacted]. In that capacity he was responsible for sending lorries to the landfill operations at Ashton Vale, and visited them every two or three weeks. His first involvement with the operations was in April 1988. He produced a sketch plan marked "GW1" showing the various phases, numbered 1 to 6. A copy is appended to this Report as Appendix C. He had no knowledge of phases 1 and 2, which were completed before [redacted] became involved. In April 1988, phase 3 (the northern and larger part of Field 1) was nearly completed and phase 4 (the remainder of Field 1) was almost half filled. [redacted] produced copies of the 6 April 1988 tipping licence granted by [redacted] to

[350] His written statement and exhibits are at [redacted].

[redacted][351] and a copy of the waste disposal licence re-issued to [redacted] by Avon County Council on 18 April 1988.[352] The inquiry's attention was drawn to certain of the conditions of that licence. Condition 6 prohibited disposal operations (without the Council's prior written permission) outside the hours of 7.30 to 16.15 (Monday to Friday) and 7.30-13.00 (Saturday). [redacted] said that they would have "*pushed the hours quite hard*". Condition 8 required the provision of a suitable hard site road from the B3128. [redacted] said there was one already in place in April 1988. It was not very high above the field, perhaps 0.5 metre. There were gates at the site entrance on the far side of Longmoor Brook which were kept locked whom the site was unattended to exclude unauthorised vehicles in compliance with condition 12. There was a hut beside the gates which constituted the site control office required by condition 10. It was run as a single man operation; the operative opened up in the morning, got into a bulldozer and drove up on to the landfill site where he spent most of his time, checking that lorries tipped where they were supposed to and did not get stuck and taking tickets from the drivers.

366. [redacted] described the normal operation of a landfill site at that time as follows. The operator would want to conserve as much topsoil as possible and would push it to one side; the same applied to any good subsoil. Waste would then be deposited on the exposed ground and covered with subsoil and finally topsoil, imported if necessary. Waste had to be deposited in shallow layers and mechanically compacted (conditions 19-20). Subsoil was replaced in layers and ripped mechanically (condition 36) to ensure better cover, and rolled in. Topsoil was also broken down mechanically so that the grass would bed in properly.

367. [redacted] said that he was only interested in the working part of the landfill site. He did not know whether there was an area at the northern end of Field 1 which had already been tipped before the licence to [redacted]. He had no idea whether there was an embankment there which remained intact (complete with the route of FP 207) throughout phase 3. He had no knowledge of any footpath diversion

[351] Exhibit "[redacted]": [redacted]. See paragraph 56 above.
[352] Exhibit "[redacted]": [redacted]. See paragraph 57 above.

or of any footpath being created as part of restoration works. All he could say was that "[redacted] *would not have done anything that cost any money*".

368. [redacted] produced an extract from an enlarged copy of an aerial photograph of the area taken on 10 April 1988.[353] His interpretation in chief was as follows. Most of phase 3 had been grassed (the eastern half more recently than the western half) but there was a triangular area on the eastern side and an adjoining rectangular area on the southern side of the eastern half which were still being worked on. Wheel tracks suggested that subsoils were still being brought in as cover. An elongated mound of topsoil (and/or subsoil) could be seen along the eastern edge of phase 3. The eastern half of phase 4 was in the process of being covered with soils taken from the area to the west, save for a circular area still being tipped on the northern side. To the west was an excavated area with a visible tipping face. A double ditch could be seen along the southern side of phase 4 as far as the excavated area, and up the western side of that area. The inner ditch collected polluted rainwater (leachate) and the outer ditch was for monitoring purposes to ensure that the polluted water was being contained by the clay barrier between them.

369. [redacted] said in his written statement (which he read in chief) that tipping on phase 4 finished in approximately February 1989; the area was restored to its final land form in mid 1989 and seeded during autumn 1989. The grass would have taken six months to establish itself and no grazing would have been permitted until spring 1990; the land would also have been soft for several months after reseeding, and difficult to walk on. He produced an extract from an enlarged copy of an aerial photograph taken on 18 June 1989[354] which according to his written statement showed that phase 3 had been completely finished but phase 4 was awaiting re-seeding. The soil mound along the eastern boundary had been removed and there were no track marks but both ditches could still be seen. However, on being asked in oral evidence in chief to comment on the photograph, he offered the following interpretation of the difference in coloration (the central part of phase 4 and two other smaller areas appearing darker than the rest of Field 1): that the darker colour denoted fresh grass

[353] Exhibit "[redacted]": [redacted].
[354] Exhibit "[redacted]": [redacted].

recently seeded and not cut. He noted that there were only a few skips left in the bin park by the hut and said that he had been told by [redacted] not to vacate the site completely.

370. In his written statement (read in chief) [redacted] said that fences were erected between phases 3 and 4 and between the two parts of phase 3 to allow [redacted] to graze cattle on phase 3 without their straying on to the landfill. This fencing could be seen on the 1988 aerial photograph. It was also company policy to put post and wire cattle fencing around landfill sites which would have been left in place when the licence came to an end. It would have been around the outside of the double ditches, he said in cross-examination. It also emerged in cross-examination that he had no personal recollection of grazing on Field 1 prior to April 1990. He referred to mentions of cattle in the monitoring reports at Exhibit "[redacted]" (paragraph 372 below), but conceded that they postdated March 1990 and related to phase 6.

371. In February 1990 [redacted]s plc ([redacted]'s parent company) applied for planning permission for phase 6. It was decided not to proceed with phase 5 (Fields 3 and 4). Planning permission was granted on appeal, but letters of objection from local residents complained about the waterlogged state of the adjoining fields caused by phases 3 and 4. [redacted] produced[355] copies of such letters from [redacted][356], Mr [redacted] and [redacted] of [redacted][357] [redacted] and [redacted] of [redacted] of [redacted] and [redacted] of [redacted].

372. [redacted] said in chief that [redacted] installed gas monitoring equipment on 15 November 1988 in six positions agreed with Avon County Council (four around the north-eastern and eastern boundaries of Field 1 and two in Field 2 next to the boundary with Field 1).[358] It carried out monitoring for several years after that. He produced monitoring reports from April 1992 to November 2003,[359] which covered

[355] Exhibit "[redacted]": [redacted].
[356] See paragraphs 120-123 above for his evidence.
[357] See paragraphs 311-312 above.
[358] As shown on the plan at Exhibit "[redacted]": [redacted]
[359] Exhibit "[redacted]": [redacted]

both "old phase" and "new phase" and contained references to surface flooding which could in some cases be identified as relating to the "old phase" (8 December 1992, 16 January 1993, 10 February 1993, 12 November 1993). There were also references to damage to the monitoring boreholes by local children (e.g. 13 April 1992) and trespass by motorcyclists.

373. [redacted] surrendered its waste disposal licence for phases 3 and 4 to Avon County Council on 3 November 1992,[360] although it indicated that it would continue to monitor them as part of its "Aftercare Programme". [redacted] said in his written statement (read in chief) that it was [redacted]'s policy not to permit public access to a site until a site licence was surrendered. He did not recall seeing any members of the public on the site.

374. In cross-examination [redacted] challenged [redacted]'s interpretation of the April 1988 and June 1989 aerial photographs by reference to the larger and clearer prints at O321 and O325. He put to him that the 19 May 1988 letter from The [redacted] to [redacted][361] showed that matters were more advanced at April 1988 than [redacted] allowed, but there had been no grazing and there was no fencing at that date, with its reference to "*the grass on most of phase 3 and part of phase 4 ... now getting quite long*" and the suggestion that [redacted]'s brother might like the grazing at no charge "*but obviously [would] have to put up some electric fencing to control the cattle*". [redacted] refused to concede that there was any new grass on phase 4 or on part of phase 3 as at April 1988. However, he accepted that there were no fences to be seen on that photograph; and that the June 1989 photograph showed the whole of phases 3 and 4 already in their final restored condition, fully seeded and grassed over. Only the outer ditch remained; the inner one had been recently filled in. The soil should have been sufficiently well compacted before grassing for the tractor and seed spreader to drive over without sinking in. Once grassed, it should have been firm enough for people to walk across. The farmer had to be given back something he could use. Tipping probably did not extend much further west than the area shown as being worked on the April 1988 photograph. The

[360] Exhibit "[redacted]".
[361] [redacted].

concern would have been to keep leachate away from Colliter's Brook New Cut. Any problems would have prejudiced the planning application for phase 6. He thought there was one more "gouge-out". Although in applying for planning permission for phase 5 it had been indicated that phases 3 and 4 would be "*nearing completion in the spring of 1988*"[362] [redacted] deliberately dragged it out as long as they could. [redacted] received instructions to keep it open and admit only a few lorries a day. [redacted] "*bought a pup*" when they took the site on.

375. [redacted] accepted that the mound of earth along the eastern boundary could be walked around or over if people so chose. He did not dispute that [redacted] and her children were photographed on the mound.[363] There was no attempt to block the footpath entrances at Silbury Road and by Colliter's Brook New Cut. There was nothing to stop access into and from Field 2 to the landfill site. The operative would only have stopped people whom he saw around the working area, and out of operational hours there was no one there to do even that. He agreed that such places attracted children and said that things would be very different now.

376. There were significant and unexplained differences between [redacted]'s written statement and his evidence as it ultimately emerged at the inquiry. His oral evidence became increasingly frank and to a large extent spontaneous as it went along, and was, I think, much to be preferred to his written statement insofar as they were in conflict. As so modified, I accept [redacted]'s evidence.

[redacted]

377. [redacted][364] has been employed as an [redacted] by [redacted] for over four years. [redacted] were engaged by the Objectors to design infrastructure works for their proposed development. He visited the site with a colleague on 9 September 2009 and spent the day (9.30 am to 4.30pm approximately) in the area. They were concerned with the new highway access to the development and concentrated mainly on how it could be

[362] In the planning officer's report at [redacted].
[363] A1276.
[364] His written statement, dated [redacted], is at [redacted].

tied into existing junctions off the Application Land. They had also to look at Bristol Water apparatus on the Application Land and spent around an hour on Field 1, looking for two manholes close to the Silbury Road entrance one of which was very hard to find. They spent about half an hour in Field 6. They got there by jumping over some wire fences and returned via Fields 5 and 2. He recalled Field 6 as overgrown and Field 5 as marshy, with no obvious paths to take. His next visit was on 26 October 2009 to meet Bristol Water representatives, to identify the required locations of two trial holes to ascertain the depth of their apparatus and to take the levels of the pipe. Both holes were outside the Application Land. He attended from about 8.30-9.30am and again in the afternoon for 1-1½ hours. On each visit he observed one or two members of the public walking dogs on Field 1, near the Silbury Road entrance or on the path which could be seen across the land. He did not follow their routes to see where they went next. He saw no other members of the public.

[redacted]

378. [redacted][365] is a [redacted]r who has been employed for over four years as an associate by [redacted] were engaged by the Objectors to design infrastructure works for their proposed development. He first visited the Application Land on 17 June 2009 with a [redacted] colleague to meet two Environment Agency officers. They spent about two hours walking along Ashton[366] Brook and Colliter's Brook New Cut. They walked down the eastern side of Colliter's Brook New Cut, and walked along the ditch courses between Fields 1 and 3 and Fields 3 and 6. They looked at Field 6 but did not enter it. On 3 September 2009 he had a site meeting with a WSP associate to brief him and discuss the design of the bridges needed to carry the highway access across Ashton Brook and Colliter's Brook New Cut. Their visit lasted about 1½ hours and was focused on the western third of Field 1. His final visit was for a design co-ordination meeting with six other people on 21 September 2009, which lasted 2-2½ hours the majority of which was spent on the Application Land. They walked in an anticlockwise direction around the perimeter, starting at the vehicular access, and cutting across Field 6 diagonally from the north-west corner to the south-east corner.

[365] His written statement, dated [redacted], is at [redacted]
[366] I think he meant Longmoor Brook.

He was aware of some accesses on to Field 6 from the rear of Ashton Drive houses but saw no one using them. He saw no one else on the Application Land on that occasion. On each of his first two visits he saw a small number of people (one or two) walking dogs on Field 1. They were coming out of the Silbury Road entrance and going round Field 1 close to the boundary. He could not say if they were on the line of FP 207. He did not follow their paths and for all he knew they could have gone on into Field 3 or Field 2. In cross-examination he said it was possible that there were other people behind him or elsewhere on the Application Land out of sight.

[redacted]

379. [redacted][367] has been employed by [redacted] as a [redacted] for over three years. [redacted] were engaged by the Objectors to provide a transport assessment and travel plan for planning application purposes. He first visited the Application Land on 18 February 2008 to familiarise himself with the area. He spent about five minutes near the junction of the David Lloyd Centre access and the Park and Ride access road. From there he took a couple of photographs[368] over Field 1. Dusk was approaching. It was about 5.50pm. He saw no member of the public on Field 1 on that occasion. He visited again during working hours, between about 12 and 1pm, on 15 April 2008 with two colleagues to look at access points. They walked across Field 1 from the Park and Ride access road to Silbury Road. They drove to the end of Ashton Drive and a colleague looked at potential access points between houses. They looked at South Liberty Lane and Brookgate. He took two more photographs looking over Field 1 from the other side of the vehicular access bridge and two from inside Field 1 looking towards the north-eastern boundary.[369] There was no one to be seen in those parts of Field 1 visible in the photographs and he did not notice anyone while in Field 1. On 16 September 2009 he visited again at around 3.30 to 4pm. On this occasion, he spent about five minutes around the Park and Ride access road. Looking over towards Field 1, he saw no members of the public. In cross-examination he confirmed that there were only two ways into Ashton Vale by vehicle: under the railway arch along Ashton Drive, and along South Liberty Lane and through the

[367] His written statement, dated [redacted], and exhibits are at [redacted].
[368] Se Exhibit "[redacted]": [redacted]
[369] See Exhibit "[redacted]2": [redacted].

industrial estate. Asked where he would go if he wanted to walk a dog in Ashton Vale, he replied "*the landfill site*".

[redacted]

380. [redacted][370] has lived at [redacted] for [redacted] years and before that in [redacted]. She described her occupation [redacted]. It was her opinion that the section of Ashton Drive between the railway arch and Winterstoke Road was part of Ashton Vale. She knew people who thought that Hardy Road, Nelson Street and Trafalgar Terrace[371] were part of it, but she did not. She did not use the Application Land herself, but (in the words of her statement, which constituted her evidence in chief) "*being a local resident of many years standing, [she was] aware of any regular use that [was] made of the land*". On 4 June 2009 she attempted to take a neighbour's guide dog for a walk on Field 1 but could not get on to the land; the grass was waist-high and she was afraid of losing the dog. She could remember the date because it was the day of the European elections. She did not see anyone else attempting to walk a dog there on that occasion. Her last visit to the Application Land was about 12 years ago when her daughter was aged nine. Her recollection was that they walked there to look at the wildlife although her memory was hazy. From her observations, she would say that the playing field by the Bowls Club on South Liberty Lane was much more heavily used for dog walking than the Application Land. It would be common to see at least half a dozen people walking around the playing field with dogs at any one time. She did not have a dog of her own; she had walked her neighbour's dog on the playing field on several occasions, but not that often. She did not do a lot in Ashton Vale nowadays as she worked full time. She was not aware of any community activities on the Application Land. Community events were advertised in the chip shop opposite the Robins pub and in the newsagent's and she had never seen anything on the Application Land advertised. Bonfire parties or similar activities tended to take place at the school or at the back of the social club.

381. In cross-examination she said she was surprised that [redacted] people had given witness statements saying they had used the Application Land. [redacted] had told her

[370] Her written statement (dated [redacted]) is at [redacted]
[371] These are roads off the south side of South Liberty Lane, close to its junction with Winterstoke Road.

only the previous week that she and a friend walked across it as a short cut to Ashton Court. She was asked what opportunities she had had for viewing the Application Land. First she said that she used to walk up there to take her children to [redacted] School ([redacted] was now nearly [redacted] and [redacted] was [redacted] the following week). Then she said that on her way back from the school, she would visit a friend in Silbury Road. She had [redacted] in [redacted], one of whom lived at [redacted] and the other on the access path to the Application Land by the garages. In answer to a question from me, she identified the latter as [redacted][372] When it was pointed out to her by [redacted] that [redacted] had filled in an evidence questionnaire stating that she had used the Application Land since [redacted], [redacted] said that she was taken by surprise. She had not seen [redacted] for ages. When looking at the Applicants' inquiry bundle after being directed to [redacted] questionnaire she came across another which she said was her [redacted] (but she did not name him). [redacted] left the inquiry in a disconcerted, and somewhat disgruntled, manner, uttering words to the effect that she wished she had not come.

382. With respect to [redacted], I do not think that her evidence was of any real assistance to the Registration Authority. She was not in a position to make an informed assessment of recreational use of the Application Land, or an informed comparison between that and recreational use of the playing field, from her observations as she purported to do, on the basis of a single visit to the Application Land about 12 years ago. She could not have seen what was happening on the Application Land on journeys to the Primary School or visits to [redacted] or [redacted]. She did not appear to be in touch with uses of the Application Land by her own family and friends, let alone by other inhabitants of Ashton Vale. It was common ground that during the past 23 years, there have been very few community events on the Application Land; the Applicants relied on individual and family pastimes which would not have been advertised anywhere. Her evidence about aborting an attempt to walk a dog on the land in June 2009 was odd, to say the least. She offered no explanation for taking her neighbour's dog there on that particular occasion when her normal practice was to take it to the playing field; and I consider it

[372] Of [redacted] See [redacted] and paragraph 320 above.

far-fetched to say that she could not even get on to Field 1 (with its well worn beaten track leading from the Silbury Road entrance) because of the height of the grass.

[redacted]

383. [redacted][373] is a [redacted] who works for [redacted]. He produced a schedule (marked "[redacted]") of 22 visits to the Application Land or thereabouts between May 2008 and September 2009, compiled from contemporaneous records. On 20 May 2008, he spent the day carrying out two tasks: first, putting reptile shelters (50cm square pieces of roofing felt) on the ground in the middle of Field 2, down the east side of Field 5, along the Park and Ride side of Longmoor Brook and down the western side of Colliter's Brook New Cut; and second, doing a water vole survey, which entailed two people walking in and alongside Colliter's Brook, Colliter's Brook New Cut and Longmoor Brook/Ashton Brook. On 29 May 2008, 10 July 2008, 6 August 2008 and 3 September 2008 he carried out reptile surveys (checking the reptile shelters to see what was under them). These visits were listed in the schedule as having lasted a "half day", but in cross-examination [redacted] said that could mean between one and three hours. He could not recall any diggers on the land on 3 September 2008.[374] On 10 July he also carried out a crayfish survey (in similar manner to the water vole survey). On 1 June 2009 he carried out a badger survey on the allotments (Alderman Moores) and "*might possibly*" have looked at Fields 1 to 6 from FP 422. On 8 July 2009 he walked round the footpaths on the other side of Longmoor Brook to the north-west of Field 1, and did not go on the Application Land at all.

384. On 6 August 2009 he spent the day putting more reptile shelters all over the Application Land for translocation purposes. There were 700 distributed over the land, in groups of ten: 200 in Field 1 and 100 in each of the other fields. On 13 August 2009 he walked over the Application Land to check the shelters were all correctly positioned. On 18, 19, 20, 24, and 25 August he took part in the translocation of reptiles from under the shelters to the west of the Application Land,

[373] His written statement, dated [redacted], and attached schedule are at [redacted].
[374] See the summary of the written evidence of [redacted] (paragraph 401 below).

carrying them across the brook by the quickest route so as not to distress them. These were all "half day" visits, except for 20 August, which was a whole day. On 5, 8, 12, 15, 19, and 22 September 2009 he made "half day" visits to check that the black plastic reptile fence put round the Application Land to stop the reptiles from returning was intact. He spent 28 September 2009 collecting the reptile shelters.

385. In cross-examination, [redacted] at first said that he did not notice accesses on to the Application Land from the rear of houses, but when the photographs at A1319C, 1319D, 1319H and 1319I were put to him he said that he recognised two (the open garden at 1319D and the decking at 1319H). He recalled leaving a gap in the reptile fencing at the presumed access in the south-west corner of Field 6 to avoid damage to the fencing. There was nothing to stop him getting round the Application Land; it was accessible if you had wellingtons and were prepared to get a bit wet.

386. In his written statement, [redacted] said that he did not systematically record the numbers, locations, or activities of people on the Application Land as that was not an objective of his visits, but could provide some "*general observations*" from memory. He estimated that he had observed people using the land on at least 75% of his visits. (In cross-examination he said it was between 75% and 80%.) The majority of observations were of people walking, with or without dogs, alone or occasionally in pairs. He saw occasional use of FP 207; frequent use of the route straight across from the Silbury Road entrance to the Park and Ride area; frequent use of the perimeter of Field 1; occasional use of the route down the western side of Fields 1, 3 and 6 to access the footpath on the other side of Colliter's Brook New Cut; and on one occasion, use of a route from the southern end of FP 422 along the line of Colliter's Brook, then heading west across the southern fields to follow the east side of Colliter's Brook New Cut heading north. He noticed no difference in pattern during the school holidays. In cross-examination he agreed that FP 207 could not be seen on site and said it was not used except along the perimeter section. He said that he could tell what routes people took from seeing them at different points around the land. There were hedges obscuring the view in places and it was possible that there were people elsewhere on the land that he did not see, or that there were people he could not recall seeing after two years. He was first asked about his recollections towards

the end of 2009. It was quite an open site; he would see people out of the corner of his eye but could not rule out the possibility he had not seen them further away.

387. He had spoken to people on the Application Land, some with dogs, some without. They did not act as if they were not supposed to be there and he got the impression that they walked there regularly. He himself had not taken any children round with him, but some sub-contractors had assisted in the work. As to where on the land he spoke to people, he said first "*It occurred all over the place - people would come across - it could be anywhere*"; then "*mainly around the perimeter of the former landfill*" [Field 1]; then "*people spoke to me all over the place where they were*"; finally (in re-examination) "*around the access points in Field 1*".

388. I am afraid that I cannot think of an attractive explanation for the variations in [redacted] evidence about where on the Application Land he spoke to people. It is difficult to resist the inference that the broader answers ("*all over the place - could be anywhere*") were the truthful ones, and the narrower answers ("*around the perimeter of the former landfill*", "*around the access points in Field 1*") were answers which on reflection he thought he ought to have given to fit the Objectors' case. I do not doubt that [redacted] carried out the tasks which he said he did on the days when he said he did. But I think that his evidence about observations of people on the Application Land has to be regarded with considerable caution.

[redacted]

389. [redacted][375] has been employed as an [redacted] by [redacted] ("[redacted]") for six years. [redacted] were commissioned by the Objectors to carry out geo-environmental investigations on the Application Land for planning application purposes. This involved creating boreholes and installing ground gas monitoring wells at eight locations distributed across the Application Land: four in Field 1, one in each of Fields 3 and 4 near to the northern boundary, and two in Field 6 (one close to the northern boundary and the other about halfway between the oak trees and the southern boundary). Their positions are shown on the plan marked

[375] Her written statement (dated [redacted]) and exhibit are at [redacted].

"[redacted]" produced by [redacted][376] She was not personally involved in the drilling operations. She believed them to have been carried out in about June/July 2008 in Fields 1, 3 and 4 and in about October 2008 in Field 6, but could not be sure. It was not WSP's practice to fence around the machinery; the engineers would have told people to go away from it for health and safety reasons, but would not have stopped them entering the fields. The unfenced drill in the photograph at A1268 probably belonged to [redacted]. The drilling would have taken about a day in each location. The boreholes were protected by lockable metal cylindrical covers raised out of the ground by 0.2-0.5 metres. [redacted] attended to visit each monitoring point and take measurements of methane, carbon dioxide, oxygen, gas flow rates and atmospheric pressure on six occasions: 19 November 2008 and 21 January, 20 August, and 8, 13 and 21 October 2009. Each visit would take two or three hours, with 10-15 minutes spent at each location. The visits would have started at 8am or 2pm. Groundwater levels and weather conditions were recorded on each visit.

390. [redacted] said that her overall impression was that the site was used frequently by dog walkers, although she saw no more than two or three on any one occasion, and more sporadically by walkers. Her written statement contained the sentence "*The people I observed were predominately present within the northern landfilled field*". However, in chief she said that there was no one on site except in Field 1. Later in her oral evidence she said that she did not really remember seeing anyone in Fields 3, 4 and 6, but that did not mean they were not there. By "*predominately*" she meant they were predominately in the landfilled field but could have been elsewhere. She never had any call to go into Fields 2 and 5. She was first asked for her recollections of whom she had seen on the Application Land after her visits were concluded. That had not been part of what she was there for and she had not written it down. She had only a general recollection. In cross-examination, she agreed that while at each monitoring point, she was concentrating on obtaining the measurements and not looking over her shoulder for dog walkers.

391. I am puzzled as to why an intelligent and conscientious professional person, such as [redacted] evidently is, should have misused the word "predominately". If she really

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376 [redacted]

meant that the observations she could recall were exclusively of people in Field 1, it is strange that she did not say so in her statement. I do not think that she can have been confident that was the case. She was clearly anxious not to be taken to be ruling out the possibility that there were people around in the lower fields, and not to overstate the quality of her observations and recollections. In that I think she was more realistic than some of the Objectors' other witnesses. Apart from my reservation about her attempt to explain away the word "predominately", I see no reason to doubt her evidence.

[redacted]

392. [redacted][377] is an [redacted] employed by [redacted]. [redacted] were engaged by Bristol City Football Club to carry out ground investigation works on the Application Land prior to the submission of a planning application. Two kinds of borehole were dug. Ten soil boreholes were drilled to a depth of 8-10 metres, primarily to investigate the nature of the landfill. 13 rotary boreholes were drilled to a greater depth and by a different technique to investigate the underlying rock strata. In addition, 16 trial pits were dug using an excavator rather than a borehole rig. These were shallow trenches about 4 metres deep, 1.2 metres wide and 2.5-3.5 metres long. [redacted] produced a plan (marked [redacted]") showing their distribution.[378] All but two boreholes and one of the trial pits were in Field 1; there was a soil borehole in each of Fields 3 and 4 and a trial pit in Field 3 (all much closer to the northern boundary of Fields 3 and 4 than to the southern boundary). [redacted] also produced a photograph[379] showing a rotary borehole drilling rig in the background, surrounded by Heras fencing on three sides. The fencing was moved between borehole locations and taken off site every night. A block of wood or concrete would be placed over any open hole and weighted down to prevent people falling in. In the foreground of the photograph was a heap of landfill materials excavated from a trial pit which would have been about a couple of cubic metres in volume and 2.5 metres high. The trial pits took 20-30 minutes to excavate; samples of excavated material would be taken before backfilling. They were all dug

[377] His written statement (dated [redacted]) and exhibits are at [redacted]
[378] O85.
[379] O85A.

and refilled within a 2-3 day period towards the beginning of the second week on site. It took 1-1½ days to excavate, backfill and reinstate a soil borehole. Each rotary borehole could take between 3 and 5 days. At the end of each day a small piece of casing would be left sticking out of the ground; all other equipment would be taken back to the compound, and had to be brought out again the next day. The maximum number of drilling rigs on site at any time was three - two digging rotary and one digging soil boreholes. The maximum number of boreholes open at any time was three.

393. [redacted] attended the site on 9, 12, 13, 25, 26 and 27 February and 6 and 10 March 2009 to supervise the borehole drilling. The typical duration of each visit was between 9.30am and 1pm. On each visit he viewed the operational borehole works, checked on the completion of the previous borehole works and discussed the setting out of the next proposed drilling works with the contractor; this meant that on most occasions the entire work site (which he defined as Field 1 and the top edge of Fields 3 and 4) was viewed. He also attended the site on 12 August 2009 to carry out groundwater and gas monitoring, visiting four monitoring installations located across the work site. (These were at three of the rotary borehole locations towards the centre of Field 1, and a [redacted] borehole location in Field 3 near the gateway into Field 1: see paragraph 389 above). On two visits, he saw a single person walking a dog around the perimeter of Field 1 from Silbury Road towards the vehicular access point. He assumed that they were either following a path or giving the operations a wide berth. They were walking with purpose; it was not the weather to linger. He could not recall seeing anyone or any activity in any of the other fields, but his primary focus was elsewhere, on the safety and protection of the works. Views of those fields from the northern half of Field 1 were restricted by the rise in the land.

394. In cross-examination, [redacted] agreed that the drilling work was relatively noisy and that the rigs could be seen from a distance. The material excavated from the trial pits was malodorous. People could have been put off their walks. His visits in February and March were during weekdays when most people would be at work or school; the weather was fairly harsh during those two months. He was not asked until later in the year, perhaps September or October, to recall whom he had seen. His

interest in the general public was to ensure their safety and that they did not interrupt the work. When he was in Field 1 he would not be bothered about people in the lower fields unless they were impacting on the works. He could not categorically say that he would have remembered everyone he saw. None of the other engineers reported any interaction with the public, which reinforced his impression that no one was on site. However, he agreed that people would have been likely to keep off the work site, and the remainder of the Application Land was of no interest to him. Flyers had been sent out to forewarn people of the works. [redacted] were aware of two public crossings across the work site; that was one of the reasons why they used the Heras fencing. They had no issue with people on site, but if they saw someone exiting via the vehicular access they would watch to make sure that he carried on his way because of concerns about the security of the site compound. If someone went on into Field 3, their attention would lessen.

[redacted]

395. [redacted][380] has been employed by [redacted] as an agricultural contractor for [redacted] years. In that capacity, he has carried out agricultural operations on the Application Land. First, over two eight-hour days in 2006 (6 and 12 March), he dug out and re-piped the drainage ditches at the gateways between Fields 1 and 3, 3 and 6, and 3 and 4, respectively, as they had become blocked, and installed a new pipe in the ditch between Fields 5 and 6. New concrete pipes were placed in the ditches, which were then backfilled with stone, and scalpings (crushed limestone or granite) were spread over the surface. These operations involved use of a Terex 960 wheeled digger; they would not have taken up the whole of the fields but a large area around the machine would have been inaccessible to the public. Secondly, on 29, 30 and 31 August 2007, he used a Daewoo 130 LC-V excavator to clean out the drainage ditches between Fields 1 and 3/4, Fields 3 and 4, Fields 3/4 and 6/5, and Fields 5 and 6, respectively. It would not have been safe for members of the public to be on the land while these operations were being carried out and if he had seen anyone he would have asked them to leave for health and safety reasons. However, he did not see anyone in any of Fields 2, 3, 4, 5 or 6 when he was working on the land; and in all the

[380] His written statement, dated [redacted], and exhibits are at [redacted].

time he was there, he only saw 4 or 5 people in Field 1, either walking around the edge or along the footpath across the top.

396. In cross-examination, he agreed that the Daewoo excavator was visible from a distance; the elbow reached about 18 feet into the air. The Terex digger extended about 12 feet into the air.[381] He also agreed that while he was repiping the gateways, that prevented people from passing from Field 1 into the lower fields except through Field 2. He could not remember whether there were dense hedgerows round Field 2 and did not notice whether any houses had rear accesses onto the Application Land. He was aware of what was going on within a 50 yard radius of his machinery; he would occasionally look up and see what was going on further away. Asked if his presence was a disincentive to children or dog walkers, he said that people liked their children to come and watch, but that did not happen here. He could not remember when he had first been asked for his recollections as to how many people he had seen on the Application Land.

397. I found [redacted] remark about people liking their children to come and watch rather strange, in the light of his evidence that it would not have been safe for members of the public to be on the land during the operations. That would suggest that sensible parents would keep their children well away from such operations. Subject to that caveat, I accept [redacted]s evidence. However, his observations of the Application Land were obviously extremely limited.

Written evidence

398. The following is a summary of the written evidence on which the Objectors also relied.

[redacted]

[381] There is a photograph of the excavator (which is orange) on [redacted], together with a picture of a machine which is similar to the Terex digger, but yellow rather than white.

399. [redacted] made a written statement in [redacted].[382] He had been employed by [redacted] for [redacted] and in that capacity had carried out several agricultural operations on the Application Land. On 21 August 2005 he used a 165 horsepower Fendt 716 four-wheel drive tractor, with silage trailer attached, to collect mown grass from Field 6 and transport it to be burned. The operation would have taken up the whole of the field for most of the day, up to 12 hours. On 6 and 12 March 2006 he used a similar tractor, with a Herbst dump trailer attached, to transport recycled stone and scalpings to the Application Land and tip them in the gateways between the fields following repiping of the drainage ditches.[383] This operation would have taken up a large area around the ditches. It took two eight-hour days. On 13 April 2008 he used a similar tractor, with a fertiliser spreader attached,[384] to spread granulated fertiliser in a snaking pattern on Fields 1, 3, 4 and 6. That would have taken two hours. It would not have been suitable for members of the public to be on the land during these operations. Had [redacted] seen anyone, he would have asked them to leave. He did not see anyone in Fields 2, 3, 4, 5 and 6 when carrying them out (save that some residents complained about the smoke from the burning grass). He occasionally saw a dog walker in Field 1 walking along "*the footpath across the top*" or around the edge of the field.

[redacted]

400. [redacted] made a written statement on 1 April 2010.[385] He had been employed by [redacted][386] ("[redacted]") as an agricultural contractor for 21 years and managing director since 2002. He was first instructed by [redacted] on behalf of [redacted] to carry out drainage works to the Application Land in September 2003. Fields 2-6 at that time were in a very wet condition to the point that most vehicles would sink if they drove on it and "*you would often sink into it in your wellies above your ankles*". [redacted] was not personally involved in any of that work and did not visit the Application Land until 18

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[382] [redacted].
[383] Compare [redacted]'s evidence: paragraphs 395-396 above.
[384] Photographs of machinery similar to that used on all three occasions were exhibited marked "[redacted]": [redacted].
[385] [redacted].
[386] The fax cover sheet dated 16 October 2003 ([redacted]) indicates that [redacted]g was the name of a partnership between [redacted] and [redacted].

November 2003. He produced a plan which he had sent to [redacted] by fax on 16 October 2003 showing the ditches which had been cleaned out and the gateways which had been piped and stoned. The ditches between Fields 3 and 4 and between 3/4 and 6 had been heavily overgrown and were silted up. The fax message and plan noted that they were collecting huge amounts of water. The works took 74.5 hours spread over 10 days. The gateways would have been blocked so no one could get through them. [redacted] also carried out topping works in Fields 3, 4 and 6, involving cutting down to stubble overgrown grass and reeds that had grown so much as a result of the wet conditions that the land could not be grazed. [redacted] first visited the Application Land when he went to price a job following instructions sent on 14 November to re-ditch and clear the ditches along the boundary between Fields 1 and 2 north of Field 4 and along the boundary between Field 6 and the rear of the Ashton Drive houses. That was done in December 2003.

401. At the end of 2004, [redacted] carried out further grass topping works in the same areas. The grasses and reeds had re-grown because the land had not been sufficiently grazed to keep them down. He understood that it was not grazed because it was still waterlogged, although better than it had been. He next visited the land in January 2005 to price a job. On 10 July and 21 August 2005, [redacted] "direct-drilled" grass seed into the land with no previous cultivation work, using a type of seed designed to cope with a high water table and wet conditions. In February 2006 he visited again to price up ditching work which was carried out on 6, 12 and 19 March 2006.[387] He was present to supervise the work on 6 and 12 March. That involved clearing the ditches, excavating a new gateway and replacing a culvert pipe with a larger one. He visited again in August 2007 to price up further drainage clearance works, which were done on 29, 30 and 31 August. He attended on 30 August to supervise. [redacted] were contracted to spread granulated fertiliser on Fields 1, 3, 4 and 6 on 13 April 2008 and 8 June 2008. On 28 August and 2, 3 and 4 September 2008 [redacted] carried out ditching and scrub clearance in Fields 2 and 5 using a Daewoo 130 LC-V excavator, and a John Deere 6830 tractor with a heavy duty flail topper to cut back the grasses and reeds. The tractor got stuck due to the waterlogged conditions in Field 5 and had to

[387] Compare the evidence of [redacted] (paragraphs 395-396 above) and [redacted] (paragraph 399 above).

be pushed out by the excavator. This was despite using "caterpillar tracks" and/or extra wide tyres, and timing visits to follow dry spells.

402. He did not see anyone in Fields 2, 3, 4, 5 or 6 when supervising works (except when local residents complained about smoke from burning grass and intervened in the scrub clearance). If he had seen anyone, they would have been asked to leave as it would not have been safe for them to be there during these operations. He occasionally saw a dog walker in Field 1. Without exception, they were walking along "*the footpath across the top*" or around the edge of the field.

403. I accept that the works were carried out by Alvis; there is some contemporaneous documentary evidence of that and [redacted] and [redacted] gave corroborative oral evidence which was not challenged by the Applicants. However, as [redacted] was not called to give oral evidence and be cross-examined, little weight can be given to the rest of his evidence. In particular, I do not see how he could comment on the condition of the land in September 2003 when he had no previous knowledge of it and had not even been there. I am also very doubtful that he would have had any genuine recollection of observations of users of the Application Land going back over a period of more than six years.

[redacted]

404. [redacted] made a written statement in April 2010.[388] He had been employed as an [redacted] by [redacted] ("[redacted]") for a little over two years. [redacted] were contracted by [redacted] on behalf of the Objectors to carry out site investigations on the Application Land prior to the submission of a planning application. He first visited the site on 9 February 2009. A secure site compound was set up adjacent to the Park and Ride area. Signage was placed at the vehicular entrance to the Application Land (i.e. by the David Lloyd Centre), stating that unauthorised access was not allowed and any authorised visitors were required to have the appropriate personal protective equipment ("PPE") (which included safety boots, a high visibility jacket/vest, a safety helmet and ear defenders).

[388] O315-316.

The client made clear to him that no persons were to be permitted within 10-15 metres of any works without a full safety induction and appropriate PPE; that [redacted] was not to obstruct the public footpath crossing the site; and that [redacted] was not expected to secure the multiple pedestrian access points to the site.

405. Between 9 February and 11 March 2009, [redacted] drilled approximately 23 boreholes and 16 machine dug pits on the Application Land. A plan showing their locations[389] was appended to [redacted] statement. At any one time, three drilling rigs were running. Drilling at each location took two to three days. During that period, an area around the rig of approximately two car lengths by one car width was securely fenced.

406. [redacted] was on site daily between approximately 8am and 5pm each weekday during the operation. He had plenty of opportunity to observe the use of the land by local residents. This comprised occasional use by dog walkers, of whom there were at most six per day. They either walked across the footpath linking the vehicular access to the Silbury Road entrance, or walked around the edge of the former landfill site, keeping well away from the working areas.

[redacted]

407. The Objectors relied on an extract[390] from a witness statement made by [redacted] employed as a [redacted] by [redacted], for the purposes of the inquiry into its planning appeal in relation to landfill phase 6.[391] It referred to phase 3 being *"virtually complete"* and phase 4 *"under preparation"* when [redacted] took over in April 1988, and stated that *"filling of phase 4 continued until early 1989, the final cover and surface was installed mid 1989 and the area reseeded in the autumn."*

G. Contributions from members of the public

[389] [redacted]. It is a copy of the plan produced by [redacted]
[390] [redacted]
[391] See paragraph 371 above.

408. Only one member of the public gave evidence to (or indeed addressed) the inquiry other than as a witness called by one of the parties. That was [redacted], of [redacted].[392] Her principal reason for giving evidence was to put the record straight, as she saw it, in relation to the question of whether permission was sought from the farmer before the holding of bonfire parties, the Queen's Silver Jubilee party, or similar events. She reiterated what she had written in a letter to the Registration Authority,[393] namely that those were the only activities of which any notification was given to the farmer, and that was only out of courtesy, to enable him to keep his livestock away. She had personally telephoned to give such notification; she had usually spoken to a lady, whom she thought but could not be sure was [redacted]. There was never any question of the farmer saying that the celebration could not go ahead. No notification of walking, dog walking, blackberry picking, den building, etc was given as it was not considered necessary. [redacted] added that she had lived at [redacted] for [redacted] years. Her personal use of the Application Land was primarily of Field 5, as it was nearest to her house. Occasionally, she went into Field 2. Her children's activities were more widespread. She used to walk her dog there regularly, twice a day; now she did the same with her son's dog. She concluded by saying "*We all love it [the Application Land] and don't want it to change. It is used such a lot by local people from Ashton Vale*".

409. I accept that [redacted] honestly stated her subjective perception of her dealings with the farmer as she recalled them. However, objectively viewed, I think that the other witnesses (including her husband) who thought that permission was sought were probably right. I see no reason to doubt the remainder of her evidence.

H. The law

410. In addition to the requirement that qualifying use must have been continuing at the time of the application, section 15(2) contains the following criteria that must be met if it is to apply to land:

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[392] The [redacted] who earlier gave oral evidence for the Applicants (paragraphs 84-85 above), and the [redacted], who had provided a written statement on which they relied (paragraph 260 above).
[393] A803.

- a significant number of
- the inhabitants of any locality, or any neighbourhood within a locality
- indulged ... in lawful sports and pastimes
- as of right
- on the land
- for a period of at least twenty years.

411. That said, sight should not be lost of the fact that - as Lord Hoffmann put it in *Oxfordshire* at paragraph 68 - there is a (single) clear statutory question which has to be answered in each case on its own particular facts: have a significant number of the inhabitants of a locality or neighbourhood indulged in [sc. lawful] sports and pastimes [sc. as of right] on the relevant land for the requisite period? In *ex p Steed,* at p.501, Carnwath J had said in relation to the original statutory definition that it was a single test, and the individual elements took colour from each other and from the 1965 Act as a whole. Past judicial decisions have tended to focus on particular aspects of the statutory wording, rather than taking a holistic view and considering how the elements fit together; but fit together into a coherent whole they must.

"a significant number"

412. The meaning of "a significant number of the inhabitants" was addressed by Sullivan J in *R(Alfred McAlpine Homes Ltd) v Staffordshire County Council (McAlpine Homes)*[394], as part of the *ratio decidendi* of that decision. He said that it did not mean a considerable or substantial number.

[394] [2002] 2 PLR 1, at paragraph 71.

> *"...whether the evidence showed that a significant number of the inhabitants of any locality or of any neighbourhood within a locality had used the meadow for informal recreation was very much a matter of impression. It is necessary to ask the question: significant for what purpose? In my judgment the correct answer is ...: that what matters is that the number of people using the land in question has to be sufficient to indicate that their use of the land signifies that it is in general use by the local community for informal recreation, rather than occasional use by individuals as trespassers."*

413. In *Sunningwell,* it was argued on behalf of the landowner that land would not qualify for registration as a green under the original 1965 Act definition[395] if it had been used by people who were not inhabitants of the relevant locality, relying on caselaw about customary (class b) greens. Lord Hoffmann said that he was willing to assume, without deciding, that the user required to establish a new (class c) green should be similar to that which would have established a custom; but held that even on that assumption, use did not have to have been exclusively by inhabitants of the village of Sunningwell, saying "*I think it is sufficient that the land is used predominantly by inhabitants of the village*".[396] The question whether a predominant user requirement was to be read into the amended version of section 22 of the 1965 Act arose for decision in *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council* [2010] EWHC 530 (Admin). The decision is applicable by analogy to section 15. The High Court held that there was no implicit requirement for most of the users to have lived in the relevant locality or neighbourhood. The provision was clear in its terms: so long as a significant number of the inhabitants of the locality or neighbourhood were among the recreational users of the land, it did not matter that many or even most users came from elsewhere.

"the inhabitants of any locality, or of any neighbourhood within a locality"

Locality

[395] See paragraph 2 above.
[396] See pp.357E-358B.

414. There is a body of authority to the effect that "locality" in the 1965 Act meant a legally recognised administrative area, such as a civil parish or an ecclesiastical parish. The High Court so held in *Ministry of Defence v Wiltshire County Council* [1995] 4 All ER 931, 937. Sullivan J agreed in *Cheltenham Builders*[397] although he made clear[398] that his views on the subject were obiter. In *R (Laing Homes Ltd) v Buckinghamshire County Council* [2004] 1 P&CR 573 (*Laing Homes*) he confirmed that an ecclesiastical parish qualified as a "locality" (but in passing cast doubt on whether an electoral ward did so). Lord Hoffmann in *Oxfordshire*[399] referred to "*the insistence of the old law* [meaning, presumably, section 22 of the 1965 Act as originally enacted] *upon a locality defined by legally significant boundaries*". There would seem to be no reason for "locality" in section 15 to be interpreted any differently.

Neighbourhood

415. The concept of a "neighbourhood" is more flexible than that of a "locality", and has no connotation of legally recognised boundaries. This was confirmed by Lord Hoffmann in *Oxfordshire.*[400] Sullivan J made the following remarks in *Cheltenham Builders* (which he classified as obiter):[401]

> *"It is common ground that a neighbourhood need not be a recognised administrative unit. A housing estate might well be described in ordinary language as a neighbourhood. For the reasons set out above under 'locality', I do not accept the defendants' submission that a neighbourhood is any area of land that an applicant for registration chooses to delineate upon a plan. The registration authority has to be satisfied that the area alleged to be a neighbourhood has a sufficient degree of cohesiveness, otherwise the word 'neighbourhood' would be stripped of any real meaning. If Parliament had wished to enable the inhabitants of <u>any</u> area (as defined on a plan*

[397] At paragraphs 72-84.
[398] In a short subsequent judgment dealing with relief [2004] EWHC 2392 (Admin).
[399] At paragraph 27.
[400] At paragraph 27.
[401] At paragraph 85.

accompanying the application) to apply to register land as a village green, it would have said so."

416. What the judge had said earlier about "locality"[402] (before going on to conclude that it meant a legally recognised administrative area) was that *"... at the very least, Parliament required the users of the land to be the inhabitants of somewhere that could sensibly be described as a 'locality' ... there has to be, in my judgment, a sufficiently cohesive entity that is capable of definition*". He went on to quote Carnwath LJ saying in *ex p. Steed* "*... it should connote something more than a place or geographical area – rather, a distinct and identifiable community, such as might reasonably lay claim to a town or village green ...*". In that case, the "locality" claimed by the applicants had been defined by a red line on a plan which the judge described as *"for the most part arbitrary in topographical terms*", bisecting individual houses and gardens and cutting across streets and an area of open space. There was no suggestion that the area so delineated was a distinct and identifiable community; it seemed to have been defined solely upon the basis that it should be drawn so as to include the user witnesses' homes. The defendant registration authority's acceptance of it as a "locality" was a fatal flaw in its decision to register the claimed green.

417. A neighbourhood does not need to have legally defined boundaries but it does need to have defined boundaries. An argument to the contrary was rejected in *R(Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council*. The judge said that to qualify as a neighbourhood, an area must be capable of meaningful description and must have "pre-existing" cohesiveness.[403] According to the court in *Leeds Group plc v Leeds City Council*,[404] the cohesiveness issue should be approached in the light of "neighbourhood" being an ordinary English word, and of judicial dicta to the effect that Parliament's intention in introducing the "neighbourhood" alternative was clearly to avoid technicalities and make registration of new greens easier.

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[402] At paragraphs 43-47.
[403] At paragraph 79.
[404] [2010] EWHC 810 (Ch) at paragraph 103.

418. In *Cheltenham Builders*, Sullivan J said (obiter) that "neighbourhood within a locality" meant a neighbourhood lying wholly within a single locality. In *Oxfordshire*,[405] Lord Hoffmann (also obiter) disagreed with him, saying that such an interpretation would introduce the kind of technicality which the amendment to section 22 of the 1965 Act was clearly intended to abolish, and there was nothing in the context to preclude the phrase being construed as meaning "neighbourhood within a locality or localities".[406] The point was not argued before the Judicial Committee, but Lord Hoffmann's dictum might be considered to carry more weight. The High Court held in *Leeds Group plc v Leeds City Council*[407] that "neighbourhood" could be read as meaning "neighbourhood or neighbourhoods", and that the challenged registration had been justified by evidence of qualifying use by a significant number of the inhabitants of each of two separate neighbourhoods adjoining the claimed green. Both neighbourhoods lay within a single locality in the opinion of the court, so the question whether section 6(c) of the Interpretation Act applied to the expression "within a locality" did not directly arise for decision. However, a preference for Lord Hoffmann's approach seems to have been implicit in the court's reasoning. Further, in considering whether the two neighbourhoods were "within a locality", the court rejected an argument that a "locality" in that context is limited in size to an area which is not too big for the claimed green to have served as a recreational facility for a broad spread of its inhabitants.[408]

The registration authority's role

419. The question arose in *Laing Homes* whether the applicants could put forward a candidate locality for the first time at the inquiry itself. The non-statutory inspector had taken the view that the form prescribed by the 1969 Regulations (Form 30) did not require an applicant to identify the locality relied upon, and the judge agreed.[409] He subsequently quoted from the inspector's report as follows:

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[405] At paragraph 27.
[406] Applying section 6(c) of the Interpretation Act 1978, which provides that in any statute, the singular includes the plural unless the contrary intention appears.
[407] At paragraph 96. That decision is the subject of a pending appeal to the Court of Appeal.
[408] At paragraph 90.
[409] At paragraphs 136-137.

> *"It is clear from the scheme of the Act and the Regulations that the question of what is the relevant 'locality' (or if appropriate 'neighbourhood within a locality') in the section 22 sense is a matter of fact for the registration authority to determine (albeit in accord with correct legal principles) in the light of all the evidence, which may indeed contain a number of conflicting views on the topic ..."*

The judge expressed agreement with that passage also.[410] He said that:

> *"Form 30 is not to be treated as though it is a pleading in private litigation. A right under section 22(1) is being claimed on behalf of a section of the public. The registration authority should, subject to considerations of fairness towards the applicant and any objector to, or supporter of, the application, be able to determine the extent of the locality whose inhabitants are entitled to exercise the right in the light of all the available evidence."*

420. However, an applicant for registration under section 15(1) and the 2007 Regulations *is* required to identify, by description or by reference to a map, the area relied upon as the "locality" or "neighbourhood within a locality" a significant number of the inhabitants of which have used the land for recreation (see part 6 of the prescribed form, Form 44). It is an unresolved question whether the registration authority can, without formal amendment of the application in that regard, register land under section 15 on the basis of a different locality or neighbourhood from that specified by the applicant.

"indulged in lawful sports and pastimes"

421. "Lawful sports and pastimes" is a composite class which includes any activity that can properly be called a sport or pastime: *Sunningwell,* at pp 356-357. There is no requirement for organised sports or communal activities to have taken place; solitary and informal kinds of recreation, such as dog walking and children playing (whether by themselves or with adults), will suffice. Lord Hoffmann expressly agreed with

[410] At paragraphs 142-143.

what Carnwath J had said in *ex p. Steed* about dog walking and playing with children being, in modern life, the kind of informal recreation which may be the main function of a village green. Nor is it necessary for local inhabitants to have participated in a range of diverse sports and pastimes. The majority of the House of Lords in *Oxfordshire* held that the rights to which registration as a town or village green gives rise are rights to indulge in all kinds of lawful sports and pastimes, however limited the number of activities proved to have taken place during the period of user leading to registration. However, it does not follow that one-off activities such as an annual Bonfire Night or May Day celebration would justify registration. In *Lewis*,[411] Lord Walker rejected the possibility of land qualifying for registration on the basis of a bonfire every Guy Fawkes Day; that, he said, would be far too sporadic to amount to continuous use for lawful sports and pastimes.

422. In *R(Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council*[412] the court interpreted the word "lawful" as meant to exclude any activity which would be illegal in the sense of amounting to a criminal offence, such as joy-riding in stolen vehicles or recreational use of proscribed drugs. A submission that all tortious activities were also excluded was rejected, on the basis that if that were so, no land would qualify for registration since all "as of right" use is trespassory in character, and that could not have been the legislative intention. It may be that sports and pastimes which are likely to cause injury or damage to the landowner's property do not count as "lawful", whether or not they involve the commission of a criminal offence: see the obiter dictum of Lord Hope in *Lewis,* at paragraph 67. However, the case he cited in support of that proposition was *Fitch v Fitch,*[413] where the court held that a customary right to play at lawful games and pastimes in a field did not entitle local people to trample down the grass, throw the hay about, and mix gravel through it so as to render it of no value - conduct which would amount to the modern day offence of criminal damage.

"as of right"

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[411] At paragraph 47.
[412] At paragraph 90.
[413] (1797) 2 Esp 543.

423. Indulgence in lawful sports and pastimes on the land which is the subject of the application must have been "as of right" throughout the period of user relied on. In *Sunningwell* it was held that use is not "as of right" unless it is *nec vi, nec clam, nec precario*, translated by Lord Hoffmann[414] as meaning not by force, nor stealth, nor the licence of the owner; and that it is irrelevant whether the users believe themselves to be entitled to do what they are doing, or know that they are not, or are indifferent to which is the case. Lord Hoffmann said that:

> *"The unifying element in these three vitiating circumstances* [i.e. *vi, clam,* and *precario] was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right - in the first case, because rights should not be acquired by the use of force, in the second, because the owner would not have known of the user and in the third, because he had consented to the user, but for a limited period."*

424. He then referred to *Dalton v Angus & Co* (1881) 6 App Cas 740, 773 where Fry J had rationalised the law of prescription (the acquisition of rights by user) as resting upon acquiescence. At pp.352H-353A he said that the English theory of prescription is concerned with "*how the matter would have appeared to the owner of the land*". At p.357D he said that user might be "*so trivial and sporadic as not to carry the outward appearance of user as of right.*"

Nec vi

425. The core meaning of "*vi*" is by physical force. But there is a line of authority, starting in private easement cases, to the effect that use does not have to involve force to be *vi;* it is enough for it to be contentious. In *Dalton v Angus & Co,* Bowen J suggested that the peaceable character of user could be destroyed by "*continuous and unmistakeable protests*" on the landowner's part. The proposition that user could be rendered *vi* by the landowner's objecting to it, without necessarily physically interrupting it, was accepted and applied in *Newnham v Willison* (1987) 56 P&CR 8, *Smith v Brudenell-Bruce* [2002] 2 P&CR 4 and *Cheltenham Builders*. Lord Rodger endorsed the

[414] At p350.

principle in *Lewis*[415] (albeit obiter), observing that in Roman law (where the expression originated) "*it was enough if the person concerned had done something which he was not entitled to do after the owner had told him not to do it*". If use continues despite the landowner's protests and attempts to interrupt it, it is treated as *vi*. One method of communicating a prohibition on use would be the erection and maintenance of suitably worded notices in prominent positions. The efficacy of notices was considered in *Lewis* at first instance[416] and in *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust) v Oxfordshire County Council,* where the court set out[417] a number of principles relevant to the efficacy of notices for this purpose. In summary, the fundamental question is what the notice would have conveyed to a reasonable user: would a reasonable user have known that the landowner was objecting to and contesting his use of the land? Evidence as to what the owner subjectively intended to achieve by the notice is strictly irrelevant in ascertaining its objective meaning.

Nec precario

426. Permission can be express (in writing or oral), or it can be implied from the landowner's overt conduct. In *Beresford*, the House of Lords refused to rule out the possibility of an implied licence to use land for lawful sports and pastimes as a matter of law. Lord Bingham said at paragraph 5:

> *"I can see no objection in principle to the implication of a licence where the facts warrant such an implication. To deny this possibility would, I think, be unduly old-fashioned, formalistic and restrictive. A landowner may so conduct himself as to make clear, even in the absence of any express statement, notice, or record, that the inhabitants' use of the land is pursuant to his permission. This may be done, for example, by excluding the inhabitants when the landowner wishes to use the land for his own purposes, or by excluding the inhabitants on occasional days: the landowner in this way*

[415] At paragraphs 88-90.
[416] [2008] EWHC 1813 (Admin). There was no appeal against this aspect of the High Court's judgment.
[417] At paragraph 22.

asserts his right to exclude, and so makes plain that the inhabitants' use on other occasions occurs because he does not choose on those occasions to exercise his right to exclude and so permits such use."

Lord Rodger at paragraph 59 said

"I see no reason in principle why, in an appropriate case, the implied grant of such a revocable licence or permission could not be established by inference from the relevant circumstances".

Lord Walker said at paragraph 83

"In the Court of Appeal Dyson LJ considered that implied permission could defeat a claim to user as of right, as Smith J had held at first instance. I can agree with that as a general proposition, provided that the permission is implied by (or inferred from) overt conduct of the landowner, such as making a charge for admission, or asserting his title by the occasional closure of the land to all comers. Such actions have an impact on members of the public and demonstrate that their access to the land, when they do have access, depends on the landowner's permission."

427. The House of Lords stressed, however, that permission cannot be implied from mere inaction on the part of a landowner with knowledge of the use to which his land is being put; that is acquiescence or tolerance which will not prevent the use being as of right.[418] There must be "*a communication by some overt act which is intended to be understood, and is understood, as permission to do something which would otherwise be an act of trespass*" (per Lord Walker at paragraph 75). Acts by which a landowner facilitates use (such as mowing grass, or leaving in place seating which spectators can use - the facts of *Beresford* itself) are not sufficient.

Pre-existing right

428. Land is not used "as of right" for sports and pastimes if the users already have a statutory or other legal right to use it for those purposes.[419] In such a case their use is referable to their existing right, not the acquisition of another one. It is "by right", or "of right".

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[418] See paragraph 6 per Lord Bingham, paragraph 59 per Lord Rodger and paragraph 79 per Lord Walker.
[419] *Beresford* at paragraphs 3, 9.

Concurrent user by landowner

429. In *Laing Homes,* the claimed green had been used for growing a hay crop by a licensee of the landowner in more than half of the 20 years relied on. Sullivan J held that the land did not qualify for registration because the recreational users had always given way to the licensee when carrying out his agricultural activities, and so had not used the land in such a manner as to suggest to a reasonable landowner that they were exercising or asserting a right to use it for lawful sports and pastimes.[420] "*From the landowner's point of view, so long as the local inhabitants' recreational activities do not interfere with the way in which he has chosen to use his land – provided they always make way for his car park, campers or caravans, or teams playing on the reserve field, there will be no suggestion to him that they are exercising or asserting a public right to use his land for lawful sports and pastimes*". He took a similar approach to the second issue in *Lewis*, which was whether the inspector had been wrong to advise that recreational users who had "*overwhelmingly deferred*" to golfers using the land claimed as a green - a former golf course - had not used it as of right. The Court of Appeal[421] endorsed his decision to reject this ground of challenge to the inspector's reasoning, holding that it was not sufficient for use to be *nec vi, nec clam, nec precario;* it must also be such - both in amount and in manner - as to give the outward appearance to the reasonable landowner that the local inhabitants were asserting a right to use the land for sports and pastimes. If they adjusted their behaviour to accommodate the landowner's competing activities, they would give the impression that they were not asserting any such right.

430. The Supreme Court unanimously allowed Mr Lewis's appeal, and held that the former golf course ought to be registered as a green. They overcame what the Court of Appeal had perceived to be an insuperable obstacle to registration in such a situation, namely that it would confer on local inhabitants a priority over the landowner's own use of the land which they had not asserted or enjoyed during the 20 year period, by

[420] Paragraphs 82-86.
[421] [2009] 1 WLR 1461.

holding that the rights of recreation which the local inhabitants would acquire would be restricted.[422] Following registration:

> *"To the extent that the owner's own previous use of the land prevented their [local inhabitants'] indulgence in such activities in the past, they remain restricted in their future use of the land"* (per Lord Brown at paragraph 101);
> *"the owner remains entitled to continue his use of the land as before. If, of course, as in Oxfordshire, he has done nothing with his land, he cannot complain that upon registration the locals gain full and unqualified recreational rights over it."* (per Lord Brown at paragraph 105);
>
> *"... where it is feasible, co-operative, mutually respecting uses will endure after the registration of the green. Where the lands have been used by both the inhabitants and the owner over the pre-registration period, the breadth of the historical user will be, if not exactly equivalent to, at least approximate to that which will accrue after registration"* (per Lord Kerr at paragraph 115).

431. It followed that the conduct of local inhabitants in abstaining from interference with the owner's activities was not inconsistent with their using the land in the way in which they would use it if they already had the rights which registration as a green would confer. See, in particular, paragraph 76 where Lord Hope said

> *"it would be wrong to assume, as the inspector did in this case, that deference to the owner's activities, even if it is as he put it overwhelming, is inconsistent with the assertion by the public to use of the land as of right for lawful sports and pastimes. It is simply attributable to an acceptance that where two or more rights co-exist over the same land there may be occasions when they cannot practically be enjoyed simultaneously."*

Deference can be attributed to courtesy, civility and common sense rather than to an acknowledgement that the local inhabitants have no rights and will acquire none.[423]

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[422] See, in particular, paragraphs 70-75 per Lord Hope, 99-105 per Lord Brown and 114-115 per Lord Kerr.

432. This approach, which the Supreme Court considered not to be inconsistent with anything said on the subject of rights in *Oxfordshire,* enabled the land to be registered without infringing the basic prescriptive principle of equivalence described by Lord Hope at paragraphs 71-72 in these words:

> *"... the theme that runs right through all of the law on private and public rights of way and other similar rights is that of an equivalence between the user that is relied on to establish the right on the one hand and the way the right may be exercised once it has been established on the other. In Dalton v Angus & Co Fry J, having stated at p 773 that the whole law of prescription rests upon acquiescence, said that it involved among other things the abstinence by the owner from any interference with the act relied on 'for such a length of time as renders it reasonable for the courts to say that he shall not afterwards interfere to stop the act being done' (my emphasis). In other words, one looks to the acts that have been acquiesced in. It is those acts, and not their enlargement in a way that makes them more intrusive and objectionable, that he afterwards cannot interfere to stop. This is the basis for the familiar rule that a person who has established by prescriptive use a right to use a way as a footpath cannot, without more, use it as a bridleway or for the passage of vehicles.*
>
> *In White v Taylor (No 2) [1969] 1 Ch 160, 192 Buckley LJ said that the user must be shown to have been 'of such a character, degree and frequency as to indicate an assertion by the claimant of a continuous right, and of a right of the measure of the right claimed' (again, my emphasis). That was a case in which it was claimed, among other things, that sheep rights had been established by prescription at common law. But I think that this observation is consistent with the approach that is taken to prescriptive rights generally."*

[423] Paragraphs 36, 77, 94-96, 106.

433. The first issue formulated by the parties for the decision of the Supreme Court was put as follows:[424]

> *"Where land has been extensively used for lawful sports and pastimes nec vi, nec clam, nec precario for 20 years by the local inhabitants,*[425] *is it necessary under section 15(4) of the 2006 Act to ask the further question whether it would have appeared to a reasonable landowner that users were asserting a right to use the land for the lawful sports and pastimes in which they were indulging?"*

434. Lord Hope's answer was "no" (paragraph 67), given in light of the following analysis of the structure of section 15(4) (which would be equally applicable to section 15(2) or 15(3), because it focuses on the 20 year period).

> *"The first question to be addressed is the quality of the user during the 20-year period. It must have been by a significant number of the inhabitants. They must have been indulging in lawful sports and pastimes on the land. The word 'lawful' indicates that they must not be such as will be likely to cause injury or damage to the owner's property: see Fitch v Fitch (1797) 2 Esp 543. And they must have been doing so 'as of right' that is to say, openly and in the manner that a person rightfully entitled would have used it. If the user for at least 20 years was of such amount and in such manner as would reasonably be regarded as being the assertion of a public right (see Beresford paras 6, 77), the owner will be taken to have acquiesced in it - unless he can claim that one of the three vitiating circumstances applied in his case. If he does, the second question is whether that claim can be made out. Once the second question is out of the way - either because it has not been asked, or because it has been answered against the owner - that is an end of the matter. There is no third question".*

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[424] See paragraph 53.

[425] It was phrased in that way because the inspector had found as a matter of fact that the land had been "extensively used by non-golfers for informal recreation such as dog walking and children's play": paragraph 10.

435. His "three vitiating circumstances" were *vi, clam* and *precario*; the expression was derived from Lord Hoffmann's speech in *Sunningwell.*[426] *"Nec vi, nec clam, nec precario"* is referred to elsewhere in *Lewis* as "the tripartite test". At paragraph 20 Lord Walker said:

> *"The proposition that 'as of right' is sufficiently described by the tripartite test nec vi, nec clam, nec precario ... is established by high authority."*

At paragraph 116, Lord Kerr said:

> *"no overarching requirement concerning the outward appearance of the manner in which the local inhabitants used the land is to be imported into the tripartite test".*

And at paragraph 107, Lord Brown said:

> *"I see no good reason whatever to superimpose upon the conventional tripartite test for the registration of land which has been extensively used by local inhabitants for recreational purposes a further requirement that it would appear to a reasonable landowner that the users were asserting a right to use the land for the lawful sports and pastimes in which they were indulging. As Lord Walker has explained, there is nothing in the extensive jurisprudence on this subject to compel the imposition of any such additional test. Rather, as Lord Hope, Lord Walker and Lord Kerr make plain, the focus must always be on the way the land has been used by the locals and, above all, the quality of that user."*

436. Properly to understand what Lord Hope was saying in paragraph 67 requires reference back to *Beresford,* paragraphs 6 and 77. That reveals that he was in effect reiterating what he had himself said in *Cumbernauld and Kilsyth District Council v Dollar Land (Cumbernauld) Ltd* 1992 SLT 1035, 1043:

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[426] See paragraph 65.

> *"Where the user is of such amount and in such manner as would reasonably be regarded as being the assertion of a public right, the owner cannot stand by and ask that his inaction be ascribed to his good nature or to tolerance."*[427]

That passage was quoted with approval by Lord Bingham and Lord Walker in *Beresford* in those paragraphs. In paragraph 6, Lord Bingham also quoted from the speech of Parker LJ in *Mills v Silver* [1991] Ch 271 (a case concerning a prescriptive claim to a private easement) at p. 290:

> *"The true approach is to determine the character of the acts of user or enjoyment relied on. If they are sufficient to amount to an assertion of a continuous right, continue for the requisite period, are actually or presumptively known to the owner of the servient tenement and such owner does nothing that is sufficient..."*

437. In *Lewis,* Lord Walker at paragraphs 30-36 looked at some of the earlier authorities relied on by the respondents, and concluded that he had

> *"no difficulty in accepting that Lord Hoffmann was absolutely right in Sunningwell to say that the English theory of prescription is concerned with 'how the matter would have appeared to the owner of the land' (or if there was an absentee owner, to a reasonable owner who was on the spot)."*

438. One authority mentioned was *Bright v Walker* (1834) 1 Cr M & R 211, 219 where Parke B spoke of use of a way "*openly and in the manner that a person rightfully entitled would have used it.*" Lord Walker read the reference to the manner of use as "*emphasising the importance of open use*". Another was *Hollins v Verney* (1884) 13 QBD 304, where Lindley LJ said (in a passage on which the Court of Appeal had set considerable store in *Lewis*):

[427] In the law of Scotland "tolerance" is used as a synonym for "permission": *Beresford*, paragraph 6.

"No user can be sufficient which does not raise a reasonable inference of such a continuous enjoyment. Moreover, as the enjoyment which is pointed out by the statute is an enjoyment which is open as well as of right, it seems to follow that no actual user can be sufficient to satisfy the statute, unless during the whole of the statutory term (whether acts of user be proved in each year or not) the user is enough at any rate to carry to the mind of a reasonable person who is in possession of the servient tenement the fact that a continuous right to enjoyment is being asserted, and ought to be resisted if such right is not recognised, and if resistance to it is intended. Can a user which is confined to the rare occasions on which the alleged right is supposed in this instance to have been exercised, satisfy even this test? It seems to us that it cannot: that it is not, and could not reasonably be treated as the assertion of a continuous right to enjoy; and where there is no assertion by conduct of a continuous right to enjoy, it appears to us that there cannot be an actual enjoyment within the meaning of the statute."

439. Lord Walker's analysis of that passage, in the context of the facts of that case, was that:

"the passage as a whole seems to be emphasising that the use must be openly (or obviously) continuous (the latter word being used three more times in the passage). The emphasis on continuity is understandable since the weight of the evidence was that the way was not used between 1853 and 1866, or between 1868 and 1881."

And what Lord Walker had to say about the passage from Lord Hope's judgment in the *Cumbernauld* case was:

"Lord Hope's reference to the manner of use must, I think, be related to the unusual facts of the case (set out in detail at pp 1037-1038). The issue was whether there was a public right of way over an extensive walkway in a new town, designed to separate pedestrian from vehicular traffic. It gave access to the town centre where there were numerous shops (whose tenants no doubt

had private rights of way for themselves and their customers). But the walk was also used for access to public places such as the railway station, the church, a health centre and a swimming pool. It was held that the use of the way had the character of general public use of a town centre pedestrian thoroughfare."

440. *Laing Homes* was not said by the Supreme Court in *Lewis* to have been wrongly decided. Lord Rodger, Lord Brown and Lord Kerr did not mention it at all. However, the indications in the speeches of Lord Walker and Lord Hope were that insofar as the decision turned on the "deference" issue, they disapproved of it; and Lord Rodger agreed with Lord Walker's judgment (paragraph 79), while at paragraph 109, Lord Kerr agreed with the reasons given by Lord Hope and Lord Walker (as well as Lord Rodger and Lord Brown).

441. At paragraph 63, Lord Hope said:

"Sullivan J was approaching the case on the assumption that registration was inconsistent with the continued use of the land by Mr Pennington for taking the annual hay crop. In other words, registration would bring non-interference to an end. The public right to use the fields for recreational purposes would make it impossible for them to be used for growing hay. His approach has also been taken as indicating that in cases where the land has been used by a significant number of inhabitants for 20 years for recreational purposes nec vi, nec clam, nec precario, there is an additional question that must be addressed: would it have appeared to a reasonable landowner that the inhabitants were asserting a right to use the land for the recreational activities in which they were indulging? I am not sure that Sullivan J was really saying that there was an additional question that had to be addressed. But if he was, I would respectfully disagree with him on both points."

442. The implication is that Lord Hope did not see either Mr Pennington's hay cropping activities, or the reaction to them of the local inhabitants, as an impediment to the claim, because upon registration, the right to indulge in sports and pastimes that the

latter would acquire could and would be qualified. They would have to continue to defer to hay cropping activities. So there was no inconsistency between their doing so during the pre-registration 20 year period of user, and the land becoming registrable. During that period, they gave the appearance of asserting a right, albeit of a qualified nature. A reasonable landowner would have appreciated that was the case, and resisted the user, if he did not want any rights to accrue. Paragraphs 73-75 would seem to confirm that this was indeed Lord Hope's thinking, influenced by *Fitch v Fitch* (1797) 2 Esp 543 which the Supreme Court interpreted as authority for the proposition that a customary right to indulge in lawful games and pastimes could co-exist with a right of the landowner to grow grass for hay without interference: cf paragraph 29 per Lord Walker.

443. Lord Walker addressed *Laing Homes* at paragraphs 22-28, in conjunction with the elliptical remarks on the subject of that decision made by Lord Hoffmann in *Oxfordshire* at paragraph 57 (*"No doubt the use of the land by the owner may be relevant to the question of whether he would have regarded persons using it for sports and pastimes as doing so 'as of right'. But, with respect to the judge, I do not agree that the low-level agricultural activities must be regarded as having been inconsistent with use for sports and pastimes for the purposes of section 22 [of the 1965 Act] if in practice they were not."*). Lord Walker thought that what Lord Hoffmann had in mind when composing the first sentence was

> *"not concurrent competing uses of a piece of land, but successive periods during which recreational users are first excluded and then tolerated as the owner decides. An example would be a fenced field used for intensive grazing for nine months of the year, but left open for three months when the animals were indoors for the worst of the winter".*

444. He continued:

> *"Whether that is correct or not, I see great force in the second sentence of the passage quoted. Taking a single hay crop from a meadow is a low-level agricultural activity compatible with recreational use for the late summer and*

from then until next spring. Fitch v Fitch is venerable authority for that. That is not to say that Laing Homes was wrongly decided, although I see it as finely-balanced. The residents of Widmer End had gone to battle on two fronts, with the village green inquiry in 2001 following a footpaths inquiry two or three years earlier, and some of the evidence about their intensive use of the footpaths seems to have weakened their case as to sufficient use of the rest of the application area."

445. There was no other mention of grazing in *Lewis*. It was, however, the case in *Sunningwell* that there had been low level grazing on the application land (by a handful of horses according to the inspector's report).

"on the land"

446. The House of Lords held in *Oxfordshire*[428] that there is no requirement for land to be grassed or conform to the traditional image of a town or village green in order to qualify for registration. Any land can be registered as such provided that it has been used in the appropriate manner for a sufficient period.

447. Lord Walker[429] expressed a sense of unease about the prospect of recognition as a town or village green of what he described as "*an overgrown, rubble-strewn, semi-submerged area, sandwiched between the canal and the railway in north-west Oxford*" but felt that the legislation left no alternative. He pointed out that while Parliament had not seen fit when enacting section 98 of the Countryside and Rights of Way Act 2000 to narrow the scope of the statutory definition of a town or village green by reference to the area or character of the land in question, it would have the opportunity if it thought fit to revisit the topic in the Commons Bill. Parliament did not think fit to make any change in this respect when enacting section 15.

[428] Paragraphs 37-39, 115, 124-128 (Lord Scott dissenting at paragraphs 71-83).
[429] At paragraphs 125-128.

448. The land which was the subject of the application for registration under consideration in *Oxfordshire* had been described in the inspector's report (quoted by Lord Hoffmann at paragraph 1 of his speech) as follows:

> *"About one third... is permanently under water ... This part ... is usually called 'the reed beds'. [They] are inaccessible to ordinary walkers since access would require wading equipment. The other two thirds ('the scrubland') ... are much drier and consist of some mature trees, numerous semi-mature trees and a great deal of high scrubby undergrowth, much of which is impenetrable by the hardiest walker ... The scrubland is noticeably less overgrown at the southern end and there is a pond and wet areas in the central eastern part of the scrubland. Throughout the dry parts of the scrubland there are piles of builders' rubble, up to about a yard high, which are mostly covered in moss and undergrowth. The [land is] approached from the east by a bridge ... over the canal. From the bridge a track ... leads along the northern edge of the reed beds and gives access to a circular path around the scrubland. Off this circular path there are numerous small paths through the undergrowth. Some peter out after a few yards. Some lead to small glades and clearings. I estimate that a total of about 25% of the surface area of the scrubland is reasonably accessible to the hardy walker."*

449. At the non-statutory inquiry, the applicant for registration sought to amend the application to exclude the reed beds, but the inspector decided that the landowner was entitled to a determination of the status of all the land. He found that the scrubland had been proved to have been used for lawful sports and pastimes but that the reed beds had not.[430] The registration authority asked the High Court for guidance on whether land could have become a green even though by reason of impenetrable growth only 25% of it was accessible for walkers. Lightman J refused to do any more than give guidance "*of the broadest kind*". He said[431]:

[430] Paragraphs 30-32.
[431] [2004] Ch 253, at paragraph 95.

"There is no mathematical test to be applied to decide whether the inaccessibility of part of the land precludes the whole being a green. The existence of inaccessible areas e.g. ponds does not preclude an area being held to be a green. It is to be borne in mind that section 22 of the 1965 Act for the purposes of the Act defines 'land' as including 'land covered by water'.[432] *Greens frequently include ponds. They may form part of the scenic attraction and provide recreation in the form of e.g. feeding the ducks or sailing model boats. Further overgrown and inaccessible areas may be essential habitat for birds and wildlife, which are the attractions for bird watchers and others. In my view in a case such as the present the registration authority must first decide on a common sense approach whether the whole of the land the subject of the application was used for the 20-year period for the required recreational purposes. For this purpose it is necessary to have in mind the physical condition of the land during the relevant period. The physical condition can change. If the land was clear during the periods of qualifying user, the fact that it later became heavily overgrown is irrelevant. If any substantial part of the land by reason of its physical character has not been so used, then that part may not have become a green or part of a green and consequently the whole of the land may not be so registered. In such a situation the second question arises whether the remainder of the land satisfies the requirement and, if it does, the remainder is registrable. If the whole of the application land is not a green, it is still open to the registration authority to find that part or parts are a green. The availability of this alternative may save the registration authority from any temptation to strain its finding of fact on the first question to safeguard the existence of a green."*

450. When the case reached the Court of Appeal, Carnwath LJ quoted from that paragraph without comment.[433] What Lord Hoffmann said was that he for his part would be very reluctant to express a view on the inspector's conclusions without inspecting or at least seeing photographs of the site.[434] He continued:

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[432] Cf section 61 of the 2006 Act: see paragraph 6 above.
[433] [2006] Ch 43, at paragraph 114.
[434] Paragraph 67.

"If the area is in fact intersected with paths and clearings, the fact that these occupy only 25% of the land area would not in my view be inconsistent with a finding that there was recreational use of the scrubland as a whole. For example, the whole of a public garden may be used for recreational activities even though 75% of the surface consists of flowerbeds, borders and shrubberies on which the public may not walk".

"for a period of at least twenty years"

451. There must be evidence of qualifying use for a period of at least twenty years. That does not mean that any particular individuals must have used the land for the full period of twenty years. Guidance as to how to approach the evidence of witnesses who can only claim shorter periods of use is to be found in *McAlpine Homes.*[435] In a case where relevant circumstances have changed during the twenty years (such as ownership of the land, or its physical condition, or where gates have been locked, or fences erected) more caution will have to be exercised in taking account of recreational use during one part of that period when considering what was happening at other times. Sullivan J went on to say that while the written evidence had to be treated with caution because it was not subject to cross-examination, the inspector was entitled to conclude, having looked at the totality of it, that it was largely consistent with and supportive of the oral evidence given by the applicant's witnesses to the effect that many local people had been using the land for informal recreation for more than 20 years without permission or objection. In addition, the inspector was entitled in assessing the quantum of recreational use of the land over the 20 year period to have regard to other factors listed in his report which were consistent with the applicant's witness evidence: an absentee landowner; land of little agricultural value; an agricultural licensee with limited interest in the land under a succession of seasonal grazing licences; the situation of the land close to the town of Leek on the edge of a residential estate beside a popular local attraction; inviting access over what looked like a stile for public use; and the absence of signs or any other action to dissuade entry.

[435] Paragraphs 73-74.

Highway-type use

452. In *Laing Homes*[436] Sullivan J held that there was another ground for quashing the decision to register the land as a green. The land in question comprised three adjacent fields totalling 38 acres. In 2000, a couple of months before the village green registration application, an inspector appointed by the Secretary of State had confirmed modification orders made in 1999 adding to the definitive map of public rights of way maintained under Part III of the Wildlife and Countryside Act 1981 a number of footpaths three of which ran around the edges of the three fields. That was on the basis that there was sufficient evidence of user of the routes, which were discernible on the ground, over a period of 20 years or more prior to 1998, to satisfy section 31 of the Highways Act 1980. That section provides:

> *"(1) Where a way over any land, other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years, the way is to be deemed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it."*

453. Sullivan J said:

> *"102... For obvious reasons, the presence of footpaths or bridleways is often highly relevant in applications under s22(1) of the [1965] Act: land is more likely to be used for recreational purposes by local inhabitants if there is easy access to it. But it is important to distinguish between use which would suggest to a reasonable landowner that the users believed they were exercising a public right of way - to walk, with or without dogs, around the perimeter of his fields - and use which would suggest to such a landowner that the users believed that they were exercising a right to indulge in lawful sports and pastimes across the whole of his fields."*

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[436] Paragraphs 90-110.

"107... the Inspector considered whether the whole, and not merely the perimeter of the fields was being used, but he did not deal with the issue raised in the claimant's analysis: how extensive was the use of the fields if the use of the footpaths around their boundaries for walking and dog walking was discounted, such use being referable to the exercise of public rights of way, and not a right to indulge in informal recreation across the whole of the fields.

108 I accept that the two rights are not necessarily mutually exclusive. A right of way along a defined path around a field may be exercised in order to gain access to a suitable location for informal recreation within the field. But from the landowner's point of view it may be very important to distinguish between the two rights. He may be content that local inhabitants should cross his land along a defined route, around the edge of his fields, but would vigorously resist if it appeared to him that a right to roam across the whole of his fields was being asserted."

"110... the Inspector ... does appear to have relied upon the extensive use of the perimeter footpaths as such, for general and dog walking, in reaching his conclusion that there was abundant evidence of the use of the whole of the fields for lawful sports and pastimes for the 20-year period. To Laings, as a reasonably vigilant, and not an absentee, landowner those walkers would have appeared to be exercising public rights of way, not indulging in lawful sports and pastimes as of right."

454. Those passages were expressed in terms sufficiently wide to cover highway-type use where no rights had been established, and in *Oxfordshire* Lightman J certainly embraced the approach of discounting pedestrian recreational use of a track traversing a claimed green which would have appeared to a reasonable landowner to be referable to use as a public highway to cases where no public right of way had yet accrued or might ever accrue.[437] He went so far as to make declarations on the subject (his declarations (ix) and (x)). He said this:

[437] See paragraphs 102-105 of his judgment.

"102. The issue raised is whether user of a track or tracks situated on or traversing the land claimed as a green for pedestrian recreational purposes will qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green. If the track or tracks is or are of such a character that user of it or them cannot give rise to a presumption of dedication at common law as a highway, user of such a track or tracks for pedestrian recreational purposes may readily qualify as user for a lawful pastime for the purposes of a claim to the acquisition of rights to use as a green. The answer is more complicated where the track or tracks is or are of such a character that use of it or them can give rise to such a presumption. The answer must depend how the matter would have appeared to the owner of the land: see Lord Hoffmann in Sunningwell at pages 352H-353A and 354F-G, cited by Sullivan J in Laing at paras 78-81. Recreational walking upon a defined track may or may not appear to the owner as referable to the exercise of a public right of way or a right to enjoy a lawful sport or pastime depending upon the context in which the exercise takes place, which includes the character of the land and the season of the year. Use of a track merely as an access to a potential green will ordinarily be referable only to exercise of a public right of way to the green. But walking a dog, jogging or pushing a pram on a defined track which is situated on or traverses the potential green may be recreational use of land as a green and part of the total such recreational use, if the use in all the circumstances is such as to suggest to a reasonable landowner the exercise of a right to indulge in lawful sports and pastimes across the whole of his land. If the position is ambiguous, the inference should generally be drawn of exercise of the less onerous right (the public right of way) rather than the more onerous (the right to use as a green).

103. Three different scenarios require separate consideration. The first scenario is where the user may be a qualifying user for either a claim to dedication as a public highway or for a prescriptive claim to a green or for both. The critical question must be how the matter would have appeared to a reasonable landowner observing the user made of his land, and in particular whether the user of tracks would have appeared to be referable to use as a

public footpath, user for recreational activities or both. Where the track has two distinct access points and the track leads from one to the other and the users merely use the track to get from one of the points to the other or where there is a track to a cul-de-sac leading to (e.g.) an attractive view point, user confined to the track may readily be regarded as referable to user as a public highway alone. The situation is different if the users of the track e.g. fly kites or veer off the track and play, or meander leisurely over and enjoy the land on either side. Such user is more particularly referable to use as a green. In summary it is necessary to look at the user as a whole and decide adopting a common-sense approach to what (if any claim) it is referable and whether it is sufficiently substantial and long standing to give rise to such right or rights.

104. The second scenario is where the track is already a public highway and the question arises whether the user of the track counts towards acquisition of a green. In this situation, the starting point must be to view the user as referable to the exercise (and occasional excessive exercise) of the established right of way, and only as referable to exercise as of right of the rights incident to a green if clearly referable to such a claim and not reasonably explicable as referable to the existence of the public right of way."

455. The third scenario (paragraph 105) was where a way was presumed dedicated after 20 years' use before the expiry of the 20 year period relevant to the green claim. Lightman J said that it would be inappropriate retrospectively to view the user before the presumed dedication as taking place against the background of the existence of a public right of way.

456. At paragraph 101, Lightman J interpreted the words in section 31(1) of the Highways Act 1980 "other than a way of such a character that use of it by the public could not give rise at common law to any presumption of dedication" as meaning that

"the user must be as a right of passage over a more or less defined route and not a mere indefinite passing over land. It is not possible to have a public right indefinitely to stray or meander over land or go where you like. If there

is no made up or definite enduring track but merely a temporary or transitory track, that is evidence against a public right of way: see Pratt & Mackenzie's Law of Highways, 21st ed (1967), pp 37-38 which cites the relevant authorities."

He went on to refer to the Court of Appeal's decision in *Dyfed County Council v Secretary of State for Wales*[438] where the Court of Appeal held that a circular walk around a lake might become a public footpath. They drew a distinction between "pure walking" (which was capable of founding a claim to deemed dedication of a highway notwithstanding the recreational as opposed to "business" purposes) and use of the route as a mere "incident of" or "ancillary to" activities such as sunbathing, swimming, fishing and picnicking (which was not).

457. In *Oxfordshire,* in the Court of Appeal, Carnwath LJ expressed reservations about the appropriateness of the courts' commenting on such matters, as involving evaluation of evidence – issues of fact and degree for the decision maker – rather than questions of principle. However, he did not "*question the common sense*" of many of the points made by Lightman J on this subject, and agreed that the question was "*how a reasonable landowner would have interpreted the user made of the land*".[439]

458. The House of Lords set aside Lightman J's declarations (ix) and (x) and declined to express any view on the issues they concerned. Oxford City Council's attempt to persuade them to declare that all recreational pedestrian use of tracks traversing a claimed green should be discounted in assessing the amount of use for lawful sports and pastimes of the land was unsuccessful. Lord Hoffmann said this, at paragraph 68:[440]

"Lightman J made a number of sensible suggestions about how such evidence might be evaluated and the judgments of Sullivan J likewise contain useful common sense observations; for example, on the significance of the activities

[438] (1989) 59 P&CR 275.
[439] See paragraphs 116-117 of his judgment.
[440] See also paragraphs 102, 112, 147.

of walkers and their dogs (R (Laing Homes Ltd) v Buckinghamshire County Council [2004] 1 P & CR 573, 598-599). But any guidance offered by your Lordships will inevitably be construed as if it were a supplementary statute. There is a clear statutory question: have a significant number of the inhabitants of a locality or neighbourhood indulged in sports and pastimes on the relevant land for the requisite period? Every case depends upon its own facts and I think that it would be inappropriate for this House in effect to legislate to a degree of particularity which Parliament has avoided."

Other potentially relevant aspects of highway law

Creation of highways

459. A highway may be created by statutory process (e.g. a creation order under section 26 of the Highways Act 1980) or by dedication and acceptance. At common law, as Lord Hoffmann explained in *Sunningwell,* a finding of actual dedication had to be made as a matter of fact; it could be inferred from long uninterrupted public user as of right but did not have to be, because there had to be inferred an intention to dedicate on the landowner's part and the user could be ascribed to toleration rather than such an intention. The Rights of Way Act 1932, the statutory precursor of section 31 of the Highways Act 1980 (see paragraph 452 above), introduced a statutory presumption of dedication from tolerated user and placed the burden on the landowner to show that he had done something during that 20 year period to communicate to the public that he had no intention of dedication if he wanted to rebut the presumption.[441] A minimum of 20 years' as of right public use is required for a statutorily deemed dedication, but at common law there is no minimum period.

Extinguishment and diversion of highways

460. The public right of passage over a highway is only lost if the land crossed by the highway physically ceases to exist (e.g. if it falls into the sea) or if a statutorily

[441] See *Sunningwell* at pp. 350H-353E, 358F-G; *Folkestone Cpn v Brockman* [1914] AC 338; *R (Godmanchester Town Council) v Secretary of State for Environment, Food and Rural Affairs* [2008] 1 AC 221.

prescribed process for extinguishing (or "stopping up") the right is duly followed. Otherwise the maxim "once a highway always a highway" applies. The right is not lost through mere non-user, over howsoever long a period.[442] Equally, a diversion can only be accomplished in law by statutorily prescribed process. If the public follow a different route between the same termini for a sufficiently long time then they may acquire a second right of way in addition to the first, but it will not be in substitution for it because nothing will have happened to extinguish the original.

Right of deviation

461. "*If there is a public way over a man's field, and he puts an obstruction upon it, then the public ... are entitled to go round a reasonable distance into his field by the side of the way, and use that as a temporary way until he removes the obstruction*": per Willes J in *R v Oldreeve* (1868) 32 JP 271. In *Dawes v Hawkins* the use of an alternative route for a period approaching 50 years was held to be referable to the public's right to deviate onto adjoining land in the event of unlawful obstruction, rather than the dedication of a new highway. Erle CJ said

> *"The parties who passed intended to use the original highway, and probably deviated without knowing it. If they knew the true line, and deviated by reason of the obstruction, the user of the line of deviation over the adjoining land by reason of a wilful obstruction, is no more the user of a highway as of right than the user of a deviation over the adjoining land by reason of the highway being foundrous".*

I The case for the Objectors

462. [redacted] submitted on behalf of the Objectors that the core factual issue to have emerged at the inquiry was the intensity of qualifying recreational use of the Application Land by local people over the relevant 20 year period (October 1989-October 2009).

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[442] See e.g. *Dawes v Hawkins* (1861) 8 CB (NS) 848, *Harvey v Truro RDC* [1913] 2 Ch 638.

463. The statutory trigger for registrability is use by a "significant number" of local inhabitants. The comments of Sullivan J in *McAlpine Homes*[443] have not been doubted in any subsequent reported case. He drew a distinction between "*general use by the local community for recreation*" and "*occasional use by individuals as trespassers*". However, neither expression is precise and this test gives only the most general guidance as to where on the scale of intensity of use the "significant number" line is to be drawn. Some guidance on the correct approach can be found in the "*properly and strictly proved*" remark of Pill LJ in *ex p Steed*, approved in *Beresford.*[444] The consequences to the landowner of registration are so serious in practical and financial terms that the applicant must prove user of sufficient intensity properly and strictly to demonstrate that the application land is and has for 20 years been in general recreational use by the local community.

464. Although the statutory creation of a new green by 20 years' use does not depend on the inference or presumption of a grant or dedication, the expression "as of right" echoes the requirements of prescription in relation to easements and public rights of way. In both cases, qualifying user must be "as of right" because the inference/presumption of a grant/dedication depends fundamentally upon the long acquiescence of the landowner in the exercise of the right claimed (*Dalton v Angus & Co,* cited in *Sunningwell* p. 351B and *Beresford* paragraph 76). The landowner cannot be regarded as acquiescing unless the use would appear to the reasonable landowner to be an assertion of the right claimed. The subjective intentions of the users are irrelevant (*Sunningwell*). Use is therefore "as of right" if it would appear to the reasonable landowner to be the assertion of the legal right claimed.

465. In the light of the Supreme Court's analysis in *Lewis* paragraphs 67, 114 (citing *Beresford* paragraphs 6, 77),[445] determination of the question whether use is "as of right" is a two-stage process. First it is necessary to focus on the quality of user during the 20 year period. The user must be of such amount and in such manner as would reasonably be regarded as being the assertion of a public right. Second, it is necessary to ask whether one of the three vitiating factors applies. The intensity of

[443] See paragraph 412 above.
[444] See paragraph 13 above.
[445] See paragraph 434 above.

recreational user must be high on the scale of intensity of user to carry the appearance of the exercise of a public right.

466. The Applicants must prove that the reasonable landowner would have been aware throughout the 20 year period that its land was in general recreational use by the local community in such manner as would reasonably be regarded as the assertion of a public right. It is the perception of the reasonable landowner and not of the local people that counts: *Sunningwell* p.352H, *Lewis* paragraph 36. It does not assist the applicants to argue that local people would have kept out of the owner's sight; that would have affected the landowner's perception (and their use would have been *clam*). It was put to the Objectors' witnesses that they were present on the land for specific purposes, not to observe public use. But the hypothetical reasonable landowner is not patrolling his land day and night looking for trespassers; the question is whether the reasonable landowner going about his own activities on the land would have perceived that the land was in general recreational use by the local community in such manner as would reasonably be regarded as the assertion of a public right.

467. In assessing the perception of the reasonable landowner it is of considerable importance that the land is crossed by unfenced public footpaths. It is necessary to distinguish between user which suggests to a reasonable landowner user (or excessive use) of a right of way and user which suggests the assertion of a right to use the whole of the land for recreation: *Laing Homes* paragraphs 102-111, *Oxfordshire* at first instance paragraphs 96-105 (especially 102, 104).[446] The expression "lawful sports and pastimes" does not include walking of such a character as would give rise to a presumption of dedication as a public right of way such as use of the *de facto* route across Field 1 or walking a dog around the perimeter of one or more fields. The remarks of Sullivan J and Lightman J remain good law. They were approved by Lord Hoffmann in *Oxfordshire* and there is nothing in *Lewis* to cast doubt on them. *Lewis* does not address the point at all.

468. Recreational use of the public footpaths has been by right, not as of right. Nor would exercise of the public's right to deviate from the route of an obstructed right of way

[446] See paragraphs 452-458 above.

amount to general recreational use of the Application Land. People walking north from the Ashton Drive footpath entrance who could not follow the route of FP 424 were entitled to use an alternative route to the Silbury Road entrance. People whose use of FP 207 was obstructed by the landfill and its restoration were entitled to deviate around the landfill site.

469. The Objectors have adduced overwhelming evidence that it would not have been the perception of a reasonable landowner that the Application Land was in general recreational use by the local community in such manner as would reasonably be regarded as the assertion of a public right. It was not the perception of the Bloyces that the Application Land was used generally for public recreation, and they visited regularly and frequently when stock were on the land, including during school summer holidays, on Bank Holidays and at weekends. [redacted] evidence was important as being that of a long-term local resident who did not perceive the Application Land as being used by local people as a general recreational resource. As land agent, [redacted] could be expected to be particularly alert to evidence of trespass. Messrs [redacted] and [redacted] and [redacted] had seen very limited public usage of the land and that was almost all on the shortcut or perimeter paths in Field 1. [redacted] had seen no one. Some of them had limited experience of the site, but collectively they covered the bulk of the 20 year period, all times of day and weekends and school holidays.

470. The clear purpose of the Applications is to prevent the proposed development of the Application Land. This motivation means that the evidence in support of the Applications must be tested and assessed very carefully by the Registration Authority. The evidence adduced by the Applicants greatly exaggerated the recreational use of the Application Land by local people over the 20 year period and included irrelevant evidence (e.g. of public footpaths during the Colliter's Brook trek) and considerable imprecision as to where use took place. The Applicants were unable to secure the attendance at the inquiry of any independent witnesses. Virtually no photographs were produced of recreational use between October 1989 and autumn 2008 when the

scrub clearance prompted consideration of applying for registration as a green. Many of the photographs produced were obviously posed and self-serving.

471. So far as concerns the landfill, [redacted] failed to come up to proof on three issues: the date of the final grassing over, the existence of fencing and the presence of livestock. However, [redacted]'s evidence[447] supports [redacted]'s original evidence and [redacted] is no aerial photographic expert. The Registration Authority has to take its own view as to what the aerial photograph on 0325 shows was the position in June 1989.

472. In any case, the landfill was a major event in the history of the Application Land which would have had a very significant effect on public recreational use. There is a serious question mark over the evidence of witnesses who failed to mention it in their questionnaires despite claiming to have used the Application Land in the late 1980s.

473. Even if the landfill was restored before the start of the 20 year period, and (as Drawings KF/1 and KF/2A[448] seem to suggest) there was no tipping at the north end of Field 1, the restoration work extended to the northern boundary. There is no track on the official route of FP 207 or the short cut route on the 1993 aerial photograph. Use of the short cut developed only tentatively after the landfill and use of the perimeter for dog walking was developed even later. The Applicants cannot establish 20 years' user even for these footpath purposes of Field 1.

474. There were only three legitimate public accesses to the Application Land during the 20 year period: from Ashton Drive via FP 424, from Silbury Road on to FP 207 and FP 424, and from the Long Ashton direction to FP 207. The entrances to Field 6 are fenced with barbed wire and entry by those renders user *vi* and not as of right. The cattle bridge across Colliter's Brook New Cut was sometimes closed with baler twine and the gate between Fields 1 and 3 was sometimes tied shut. The landowner could not prevent neighbours putting gates in their fences but such gates do not provide access for the general community.

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[447] Paragraph 407 above.
[448] See O130A, 368E and paragraphs 49, 51 above.

475. Access within the Application Land was severely restricted by the wetness of the ground and the ditches and fences between the fields. People climbing over fences and ditches would not give the appearance of exercising a right. Half of Field 5 was permanently under water. Before the 2003 drainage works, substantial areas of Fields 3, 4 and 5 were prone to flooding.

476. There was considerable evidence of seeking permission to use the Application Land, especially in relation to events before October 1989. If local people felt the need to ask for permission in the 1970s and 1980s, it is unlikely that the land was in general recreational use without permission by 1989.

477. The extensive borehole drilling and trial pit digging works in February and March 2009 constituted a material interruption to recreational use of Field 1. [redacted] evidence of a sign forbidding unauthorised access at the western entrance to Field 1 was supported by [redacted] evidence.

478. The sheer size of the Application Land made it unrealistic to regard it all as in general recreational use by the local community.

479. Most of the claimed recreational activities were better suited to the very large recreation ground to the rear of Ashton Drive. The Applicants' witnesses downplayed its use.

480. A super output area is an invention of the Office for National Statistics, not a division of the county known to the law and therefore not a locality. Nor is Ashton Vale village a division of the county known to the law. Although Ashton Vale is a name used locally, it does not have clear defensible boundaries, which a "neighbourhood" needs (so that the class of right-holders can be ascertained). There was no objective evidence supporting the exclusion of the east end of Ashton Drive and some witnesses thought it should be included. The claimed neighbourhood does not coincide with the super output area or the polling district. The Registration Authority has no power to adjust the boundaries without a formal application to amend the Applications. If

Ashton Vale is a "neighbourhood", it is accepted (given the authorities) that it is "within a locality" (Bristol or Bedminster).

J. The case for the Applicants

481. [redacted] submitted on behalf of the Applicants that it was the policy and purpose of the 1965 and 2006 Acts to protect open spaces used for recreation from development, as recognised by Lord Hoffmann in *Sunningwell* (p 359D) and Lord Walker in *Lewis* (paragraph 48). The courts have rejected a succession of technical arguments devised to defeat applications. The legislation should be interpreted and applied simply and in support of its intended purpose. The Objectors are trying to stiffen the burden of proof and come up with new extra-statutory tests (or rework discredited ones). If the Applicants' witnesses' evidence is accepted as true, the case is a straightforward one.

482. "Significant number" does not mean "considerable or substantial number". The Applicants have submitted 188 statements detailing extensive and varied use of the Application Land over 50-60 years, many describing use by several generations over time (including the Applicant [redacted]). The witnesses are spread across the locality/neighbourhood (see the map at A34c). Dog walking continues all year round unabated and there is widespread other use except in very wet and cold weather. There is abundant evidence of informal recreation other than walking and dog walking: dog training, watching the balloon fiesta, children's play (dens, football, kite flying, cycling, camping, general running around); use by the Boys'/Young People's Club; fishing and tadpoling; watching birds and other wildlife, particularly in Fields 2-6; flying birds of prey; exercising and running; schoolchildren's trips/projects; ice-skating/sliding; informal Bonfire Night parties; hitting golf balls; raft racing.

483. The local residents whose houses overlook the Application Land (e.g. [redacted] and [redacted]) gave evidence of seeing people all over the land, at all times of day and every day. These people give the best evidence of use. They are on the spot and see what a landowner on the spot would see.

484. There is no reason to disbelieve the Applicants' oral or written evidence. Imprecision as to where they went on the Application Land is attributable to their having gone all over it. Standing back, it seems obvious that the land is extensively used by local inhabitants for informal recreation. There is unrestricted access to the land 24 hours a day. There is nowhere else for them to go, especially to walk dogs. The playing field contains a large indoor bowling club and two formal football pitches that are hired to teams from outside the area at weekends and in evenings when local people would go there. Dog walkers do not want to foul the pitches. It lacks the views the Application Land has. It is not particularly accessible. Alternative open spaces are a distance away and getting there requires walking uphill (Ashton Court) or crossing major roads (Greville Smyth Park). It is not one of the statutory criteria to show a need for the application land and a lack of alternative open space, but as it happens the Application Land is the best option.

485. The Application Land has been undivided, in the sense that one could walk freely from field to field. The purpose of the internal fencing was to keep cattle out of the ditches. Documentary and photographic evidence and the Objectors' witness evidence showed that the Applicants' witnesses were telling the truth about the absence of fences on the landfill, the bund not being a barrier to access, the route around the north side of the landfill, the access into Field 2 from Field 1 and the access into Field 2 from Field 5.

486. The presence of water and scrub is no obstacle to registration: *Oxfordshire*. Some of the Application Land is wet at some times of year. Some of Field 5 is permanently wet. None of it is permanently under water (a different thing) - except for the drainage ditches (and they dry up in summer). Features described by the Objectors as barriers to use of the land are in fact attractions. The scrub was used by children to build dens, and was a haven for wildlife. Many local inhabitants use the land for watching birds and other wildlife. The wetland areas too attracted wildlife.

487. There was no conflict between the landowner's use and recreational use of the Application Land. Agricultural use was limited to grazing for part of the time and gathering hay/silage, and compatible with recreational use. Other activities by the

landowner were *de minimis* and transient, taking up only a tiny proportion of the land. Small interruptions to use (such as individual boreholes) do not defeat an application. The Objectors would need to show that the whole of the land was shut off, or that notice of licence to enter was given: *Beresford.* The ground investigations did not interrupt use (as [redacted]s evidence showed) but if they had, the Registration Authority could register the land under section 15(3)[449] without any amendment to the Applications.

488. The landfill was finished by June 1989, more than 20 years before the Applications (and people walked around it and children played on it anyway). That was what the Applicants' witnesses said, despite being cross-examined on the basis of small scale poor quality photographs and evidence from which [redacted] later backtracked. Following the viewing of the large scale aerial photographs, additional maps/plans and the oral evidence of [redacted], it is now clear that:

- the access to Field 1 from Silbury Road and from Fields 3 and 2 remained open at all times;
- there was no fencing;
- there was no grazing between 1985-1990;
- the earth bund was no barrier;
- there remained an embankment at the north of Field 1 which was never tipped;
- the waste tips were covered with earth and grass in stages such that (taking account of the embankment and the area too close to brooks to be tipped) less than a sixth of Field 1 was subject to tipping at any one time;

[449] See paragraph 5 above.

- the covered parts of the tip were compacted such that they could safely be walked on;

- the landfill was largely completed by April 1988 and expected to be finished by then;

- by May 1988 the grass on phase 3 and part of phase 4 was getting long;

- phase 4 was not extended beyond the stage visible in the 1988 aerial photograph;

- by June 1989 at the very latest (probably late 1988 or early 1989) the last section was covered, compacted and grassed and the whole of Field 1 was available for public recreation.

489. The photographs put in evidence by the Applicants were largely taken after and because of the Applications. They were indicative of the kinds of things that were done in the past. Most were taken from a distance. People do not take cameras out when dog walking or playing with children (especially before the days of digital cameras). The method by which questionnaires were obtained from people whom the Applicants did not know shows that there is no collective fraud.

490. [redacted] recognised that all the land was used by local people. She was happy for them to do so. She also recognised that her presence was transitory compared to theirs. She was aware of the rear accesses and activities other than dog walking. [redacted] did not often need to go beyond Field 1 but he acknowledged use of the other fields. The grazing tenancies contained references to local people's use of the land (clause 3(r)).[450]

491. [redacted] was rarely present on the land. However, his evidence demonstrated knowledge of the rear accesses, trespass around Field 1 in 2003 (O172), trespass to

[450] See paragraph 44 above.

Fields 2 and 5 in 2008 (O123 paragraph 30), and trespass to Fields 5 and 6 in 2003 (O181) although in cross-examination he denied it.

492. The Objectors' contractor witnesses were:

- transitory occasional visitors to the land, often during work/school hours;
- often present only on Field 1 or off the Application Land altogether (and from the north of Field 1 only part of Field 1 and none of Fields 2-6 can be seen);
- there to concentrate on their own work and equipment;
- often carrying out activities which would discourage recreational use;
- not asked until after the event to recall use of land by others, which they had no need to notice at the time and no reason to memorise; their memories must be reconstructed. Even so, they all gave evidence of seeing dog walkers (although they sought to extrapolate routes taken from single sightings, and claimed to be able to distinguish between different routes on Field 1 which would not have been possible). It is unsurprising that their memories are mainly of people entering and exiting through the Silbury Road entrance, which was close to where they were working and the place where people converge.

493. There can be no doubt that the numbers of people using the Application Land for recreation has been more than sufficient to indicate that their use signifies general use by the local community for informal recreation, rather than occasional use.

494. Their use was as of right - without force, secrecy or permission. There were no fences, barriers or other impediments to use for recreation. Anyone climbing a fence was taking a short cut; they were not entering the land with force or secretly as there was no need to do so. The fence in the south-west corner of Field 6 was to keep cattle

in; [redacted] (whose fence it was) had no problem with people coming through it if they did no damage. The existence of back garden gates was physical evidence of the assertion of a right to use the Application Land. No local person was ever told not to do anything on the land by anyone. The local people respected the farmers and acted with civility towards them, as [redacted] acknowledge.

495. There was no stealth. The land was used openly and freely in the daytime. If the landowner had been on the spot it would have been aware of the daily use.

496. There was no permission. The farmer's being told about bonfires so he could ensure his cows were out of the way was another example of civility. The fact that notice of major events was given but notice of everyday use was not is good evidence of the assertion of a right to recreate on the land.

497. If use was without force, secrecy or permission as a matter of fact, then it was as of right. There is no additional test of appearance to a reasonable landowner: see *Lewis,* especially at paragraphs 63, 107, 116. The only relevance of how the matter would have appeared to a reasonable owner is if the land was used secretly (and then, the reasonable owner is taken to have been omnipresent - "on the spot" in Lord Walker's words, *Lewis* paragraph 36). In any event, the documentary evidence suggests that the landowner had actual knowledge, through [redacted], and considered acting in respect of the rear accesses and trespass originating from public access points - but acquiesced instead.

498. What Lord Hope was saying in *Lewis* at paragraph 67 was that if use by a significant number of local inhabitants was proved, and none of the three vitiating circumstances applied, that was all that was required. Use by a "significant number" is use of such amount and in such manner as appears to be the assertion of a public right. There cannot be an additional test that could apply differently from the "significant number" test (and there is no point in having one which would apply in the same way).

499. Much was made by the Objectors of the use of rights of way and informal paths to cross the Application Land. That was to be expected given that there were rights of

way over the land. Rights of way and rights of recreation are not mutually exclusive. "Transit use", e.g. to go to Ashton Court or go to school, was to be left out of account. Walking across the land and back could, however, be recreational if that was the motive of the walker (walking for fun rather than to get from A to B). Walking around the perimeter was recreational; the walker was not going anywhere. If all that had happened was that a significant number of local people had walked round the edge, the land would be registrable. Dog walkers walk in straight lines or circuits; they do not zigzag around. If dog walkers were disqualified for walking in straight lines or circuits (because it would appear to a reasonable landowner to be the exercise of a right of way), dog walking would never count - but it is one of the main bases of registration. The "appearance to the landowner" test has gone: *Lewis.* The question is: what were people actually doing on the land? If a landowner sees local people walking round with dogs, he must do something about it. See *Lewis* paragraph 85, where Lord Rodger said:

> "*since ... Sunningwell it has been settled law that dog walking and playing with children count as lawful sports and pastimes. Since both activities can and do take place on almost any and every open space near centres of population, the scope for applying to register land as a village green is correspondingly wide. Owners of land are taken to be aware of this chapter of the law and of the need to take appropriate preventative steps if they see a risk of circumstances arising in which an application could be made and their land become registered as a green. If they fail to do so, they are treated as having acquiesced in the inhabitants indulging in sports and pastimes as of right.*"

500. However, in this case the land was used all over and for all sorts of activities.

501. The Applicants no longer rely on the super output area as a locality. However, Ashton Vale is either a locality in its own right ("a distinct and identifiable local community"; *Cheltenham Builders,* paragraph 45) or a neighbourhood within the locality of Bristol or Bedminster. "Neighbourhood" is a fluid concept and connotes an area which may be much smaller than a locality. It must simply be capable of

meaningful description in some way. There is no necessity to show that the users of the Application Land are predominantly from Ashton Vale but they clearly are.

502. It is difficult to imagine a more clearly defined area in a modern urban environment. It is bounded by industrial estates on three sides, and on the fourth, the Application Land and beyond that the North Somerset border. The railway line acts as a further boundary which can only be crossed at a limited number of points (Ashton Drive, South Liberty Lane via the industrial estate and by foot along Colliter's Brook). The railway arch across Ashton Drive acts as a gateway to the locality. The "Ashton Vale" sign on Ashton Drive and the "Ashton" sign on the bus shelter[451] confirm that is where Ashton Vale starts. The residential sector of the locality corresponds to the residents' parking zone on the Objectors' stadium masterplan.[452]

503. The existence of Ashton Vale as a locality or neighbourhood, and the requisite degree of cohesiveness, are further evidenced by:

- maps with "Ashton Vale" printed over the area;
- use of the name "Ashton Vale" since at least 1896 (when it was used to describe the company owning the mine there);
- the no. 24 bus bearing "Ashton Vale" as its destination;
- Ashton Vale Community Centre, Ashton Vale Community Association, Ashton Vale Toddler Group, Ashton Vale Church and pre-school, Ashton Vale Primary School, Ashton Vale Club for Young People, Ashton Vale police surgery;
- use of "Ashton Vale" by estate agents;

[451] A1267, 1333R.
[452] A1217.

- the "Vale Voices" community newsletter;

- the designation of the SNCI site under the name "Ashton Vale Fields" (cf the South Bristol Riverscape Project);

- the Bristol South Labour Party literature;

- the Wikipedia entry;

- the Objectors' title deeds describing the land as being at Ashton Vale and their predecessor in title's name "Ashton Vale Land Limited".

504. Nothing in the area bears any other name.

505. The minor controversy about the stretch of Ashton Drive between the railway arch and Winterstoke Road is an insufficient reason to reject Ashton Vale as a locality/neighbourhood. It is unlikely that everyone will agree on the boundaries of a locality/neighbourhood unless fixed by law. The polling district map and road signs suggest this stretch is outside Ashton Vale. The majority of the Applicants' witnesses agree. But it is open to the Registration Authority to adjust the boundary line if it thinks it appropriate on the evidence, without any amendment of the Applications. It cannot be the legislative intention that if all the other criteria are satisfied, the application must fail because a handful of Ashton Drive houses have been left out of the locality/neighbourhood.

K. Findings and conclusions

506. On the basis of the totality of the oral and written evidence tendered to the inquiry (but giving little weight to the written statements and questionnaires of witnesses who did not attend for cross-examination), I make the following findings of fact.

The pre-landfill period

507. I find that by the time the landfill operations on Field 1 began in 1986, and hence before the commencement in October 1989 of the 20-year period immediately preceding the making of the Applications, the Application Land already had an established use and reputation as a place for informal recreation by local people, in particular for walking, dog walking, children's play, bird watching and other nature observation and blackberry picking. The inquiry heard evidence from [redacted] about such uses by themselves, their families and many others from the 1950s onwards. That evidence was corroborated by a large number of the written statements and questionnaires relied upon by the Applicants,[453] and uncontradicted by any witness called by the Objectors.

508. I do not consider that to be at all surprising; on the contrary, it is exactly what one would expect to find where there is a large area of inviting open space, crossed by unfenced public footpaths, immediately adjacent to a residential area, and not intensively used by its owners. As Lord Rodger put it in *Lewis* in the passage relied on by [redacted],[454] dog walking and playing with children in particular can and do take place on almost any and every open space near centres of population. The Application Land was an especially attractive such open space, given the views and the wealth of wildlife. Coincidentally, the Application Land shared several of the features which Sullivan J held in *McAlpine Homes*[455] had properly been taken into account as bolstering the credibility of the applicant's witness evidence. There were absentee landowners: even [redacted] had moved away and rented out Kennel

[453] Evidence of user going back beyond 1986 was given by [redacted] and [redacted] & [redacted].

[454] Paragraph 499 above.

[455] Paragraph 451 above.

Farmhouse.[456] The land was of little agricultural value, taking into account its tendency to wetness and even flooding. It was used only seasonally, for grazing and for the most part under successive yearly licences. It was situated on the fringe of an urban area (in this case, a city rather than a town), on the edge of a residential estate. It invited access even more than did the land in that case, in that it was crossed by two unfenced public footpaths, without gates or stiles in the case of FP 207. There were never any signs or other action taken to prohibit or deter people from departing from the footpaths to wander and recreate elsewhere in the fields.

509. I find that the pre-1986 recreational use was over all of the fields, not limited to Field 1, and not limited to FP 207 and FP 424. The consensus among the witnesses was that the landfill increased the tendency to wetness of Fields 3 to 6, while obviating it in Field 1. Local people became used to recreating in Fields 3 to 6 when they were drier than they subsequently became. General recreational use of the fields co-existed with use of Field 1 as a short cut to Long Ashton, Ashton Park School, Ashton Court and to other destinations. Whether people always used the official route of FP 207 for those purposes is another matter. [redacted] and [redacted] both said that before the landfill, people had walked straight across from the Silbury Road entrance to the bridge as they do now rather than taking the more circuitous official route. After the 1978 diversion and erection of that bridge,[457] that must have been very tempting, weather and ground conditions permitting; the elevation of FP 207[458] could have been advantageous in certain conditions.

510. During the 1970s and early 1980s, there was a period when residents of the Ashton Drive cul-de-sac clubbed together to organise Bonfire Night parties, barbecues, dances, and other communal activities for themselves and their friends on the Application Land, in Fields 5 and 6. The Queen's Silver Jubilee was celebrated there. There was some difference of opinion among the Applicants' witnesses as to whether "the farmer" (I presume that was a reference to [redacted], who owned Field 5 and a segment of Field 6 and had a grazing licence of the other fields at that time) was merely given advance notice of, or was asked for permission to hold, those events.

[456] Paragraph 86 above.
[457] Paragraph 34 above.
[458] Paragraph 51 above.

The majority perception was that the exchanges constituted the seeking and giving of permission. In substance, I think that was the case; the activities were consensual. No doubt there was an expectation, engendered of good relations and experience, that no objection would be raised, and the conversations did not involve formalised requests for and grants of permission; but there was a tacit understanding that, as [redacted] put it, the farmer "*could have said no but he didn't*". In contrast, however, no permission was sought or given for any of the other recreational activities indulged in by individuals and small groups of family or friends.

511. I find that the principal point of entry to the Application Land was the Silbury Road entrance, and that there was comparatively little use of the Ashton Drive entrance (much of that by Ashton Drive residents). I reach that conclusion on the oral evidence, but it is strongly corroborated by the Applicants' written evidence. The overwhelming majority of the witnesses who filled in questionnaires gave the Silbury Road entrance (or a description which could be identified as referring to the Silbury Road entrance) as their means of access. The Ashton Drive entrance was more tucked away, especially after the building of the cul-de-sac houses in the early 1960s. I find that there were no footpath signs at either entrance (nor at any other entrance to, or anywhere else on, the Application Land). Local awareness of FP 424 was less than that of FP 207, and the same applies to usage.

512. I find that a number of the houses in Silbury Road and Ashton Drive which back on to the Application Land already had rear accesses on to the Application Land before the landfill period: [redacted], [redacted] and [redacted] all gave unchallenged evidence to that effect.

513. Although it is of course the case that no amount of pre-October 1989 recreational user will avail the Applicants in their section 15(2) claim if the statutory criteria were not met throughout the 20 year period immediately preceding the making of the Applications in October 2009, it is in my opinion important because it sets the context for, and bolsters the credibility of, the evidence of recreational user during and after the landfill period.

The landfill

514. It is common ground between the parties that Field 1 was used for the tipping of waste for a period in the late 1980s, and there is a body of documentary evidence to that effect.[459] There were disputes of fact as to the accessibility of Field 1 during that period, whether there was any grazing on Field 1 during that period, what use members of the public made of Field 1 during that period, and when restoration of Field 1 was completed.

515. It is unclear when [redacted] began work on site, other than that it must have been later than 3 January 1986 when it was granted tipping rights by the landowner. Nor can it be assumed that work proceeded exactly in accordance with the proposals summarised in the 3 September 1985 report to the Planning Committee[460] or in accordance with the May 1985 Drawings KF/2A and KF/2C.[461] The obligation imposed on [redacted] by the 10 April 1987 waste disposal licence was to proceed as proposed in the statement of intent and operational plan (drawing no KF/2A *revision A* and KF3) neither of which was before the inquiry. Whether the original (13 November 1985) waste disposal licence referred to Drawing KF/2A or the revised version is unknown. However, there is one respect in which the 1985 proposals were clearly changed; the proposed diversion of FP 207 was abandoned.[462] The only inference that can reasonably be drawn is that it was considered to be unnecessary because the route of FP 207 was not going to be excavated and filled. That would be consistent with the evidence of the Applicants' witnesses to the effect that it was at all times during the landfill possible to walk around the outside of the tipping areas from Silbury Road and down into Field 3. It would also be consistent with the evidence of [redacted] that there was already before the landfill a raised embankment along the north-eastern side of Field 1 which

[459] See paragraphs 47-57, 365 above.
[460] O132: see paragraph 47 above.
[461] O130A, O165A: see paragraphs 49-50 above.
[462] See paragraph 48 above.

remained untouched throughout the landfill,[463] and with the contours on Drawing KF/1.[464]

516. The purpose of the temporary grassed topsoil mound proposed on Drawing KF/2A near the Silbury Road entrance was screening the operation, not preventing access. FP 424 was to remain open throughout phases 3 and 4. The April 1988 aerial photograph[465] shows that the mound which was created was set in from the boundary and there was ample space to walk around either end of it. [redacted] accepted in cross-examination that people could walk round - or over - it, and that there was no attempt to block the Silbury Road entrance while [redacted] were operating the site. [redacted]'s evidence was that [redacted] did not excavate anywhere near Colliter's Brook New Cut for fear of polluting it and probably did not tip much further west than the working area shown on the April 1988 aerial photograph. It is also to be noted that both [redacted] and [redacted] covenanted with The [redacted] to allow the tenants and licensees of its "adjoining land" to have access to it for agricultural purposes.[466] I interpret "adjoining land" as referring to Fields 2, 3, 4 and 6, of which [redacted] had a grazing licence during the landfill period,[467] and the clause as intended to preserve his access across the bridge and down through Field 1 into Field 3.

517. I find that there was an embankment along the north-eastern side of Field 1 before the landfill; that neither it nor the western edge of Field 1 adjacent to Longmoor Brook and Colliter's Brook New Cut were excavated or filled; and that it did remain possible throughout the landfill for members of the public freely to enter Field 1 from Silbury Road and from FP LA 12/14, and to walk round those areas and down into Field 3. I also find that there was no grazing of Field 1 during the landfill period. No witness for either party gave evidence that there was. [redacted] and [redacted] could recall none, and [redacted] did not think that there was any. Nor by the end of the inquiry was any witness maintaining that fencing was erected between different parts of phase 3, or between phases 3 and 4, to facilitate grazing of restored

[463] See paragraph 137 above.
[464] O368E: see paragraph 51 above.
[465] O321.
[466] See paragraphs 52, 56 above.
[467] See paragraph 42 above.

parts of Field 1 before the landfill was completed, or that any fencing could be seen on the 1988 aerial photograph. There would have been no need for such fencing if there was no grazing on Field 1; and I find that there was none. The 19 May 1988 letter from The [redacted] to [redacted][468] clearly contemplated that if [redacted] did want to take up that offer of grazing on parts of Field 1 it would be his responsibility to put up electric fencing. The deed granting tipping rights to [redacted] imposed no fencing obligation at all; nor did the waste disposal licences. [redacted] only recollection as from April 1988 was of fences around the outside of the double ditches; but they would not have impeded access from Field 1 into Field 3 as the double ditches never extended as far as the western boundary. Nor would they have impeded access to the restored areas, or to the working area itself from other directions. There was no evidence of any other fencing on or around the landfill site. Common sense suggests that some additional measures must have been taken to keep [redacted] cattle out of Field 1 if he was grazing the lower fields during the landfill, but no evidence was adduced as to what (if any) they might have been. I find that there was no impediment to public access to the restored areas of Field 1 and that (surprising as it may seem) it was possible for members of the public to gain access to the working areas themselves. There was no one to stop them outside working hours, and even during working hours they would only have been challenged if they went on to the working areas themselves. Moreover, there was nothing to stop people going on to the areas which had yet to be worked or were never worked at all. I also find that there was access between Fields 1 and 2 during the landfill period. The April 1988 aerial photograph and [redacted] evidence about the installation of gas monitoring points in Field 2 confirms the Applicants' witness evidence in this respect.

518. So far as concerns the progress of the operation, the original proposals were for the work to be divided into two phases (3 and 4), to be worked and restored sequentially, and for each phase to be progressively worked and restored. [redacted] evidence was that infilling and grassing over were done in stages and that it was all finished by the time in 1989 when she was transferred to the [redacted] on the [redacted] (although she did not give an exact starting date). The documentary and

[468] [redacted] see paragraph 334 above.

photographic evidence and [redacted]'s evidence as modified in cross-examination are supportive of that. The 6 November 1987 report to Committee on the phase 5 planning application[469] records that landfilling had moved to phase 4. The 29 September 1987 *Bristol Evening Post* cutting[470] is evidence of active tipping on phase 4 at that time. Phase 3 was variously described in the report as "*already completed*" and "*undergoing restoration*" by different officers, which indicates that no more landfilling was going to be done in phase 3 but there was some - probably not much - restorative work remaining to be carried out. The reference in that report to "*this phase*" nearing completion in spring 1988 must, I think, be read in context as a reference to phase 4. The taking of the 10 April 1988 aerial photograph[471] coincided with [redacted]'s taking over control of the operation from [redacted].[472] Neither the Applicants nor the Objectors called an aerial photographic expert to assist the inquiry. As [redacted] pointed out, [redacted] is not such an expert. Neither am I. However, [redacted] had the advantage of having been a regular visitor to the site and involved in its management at the material time. I see no reason to disagree with his interpretation that a small proportion of phase 3 (a triangular area behind the mound and a rectangular area adjoining phase 4) were still being covered with soils; that (with the exception of a small circular area on its northern side) the eastern section (approximately half) of phase 4 had been landfilled and was in the process of being covered with soils; and that next to it there was an excavated area with a visible tipping face (which I estimate to have been very roughly 20% of phase 4). I agree with [redacted] that that photograph cannot be interpreted as showing that any of the landfilled parts of phase 4 had been regrassed by then, and think that the reference in the 19 May 1988 letter to [redacted][473] to grass getting long on part of phase 4 must have been referring to that part of phase 4 between the excavated area and Colliter's Brook New Cut that had not yet been, and most (if not all) of which never was, excavated for landfill purposes. Phase 4 was not, therefore, completed (even in the sense of landfilling) by April 1988; but how much longer did it take? [redacted] evidence under cross-examination was that there was not much remaining

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[469] [redacted]: see paragraph 54 above.
[470] [redacted]: see paragraph 334 above.
[471] [redacted].
[472] See paragraph 365 above.
[473] [redacted]: see paragraph 334 above.

to be done, and tipping did not extend much if at all further towards the brook, but [redacted] dragged it out.

519. The Objectors' case as put to the Applicants' witnesses in cross-examination was based on the chronology for completion of the restoration set out in [redacted] written statement: namely that the phase 4 area was restored to its final land form in mid-1989, seeded during autumn 1989, and soft and difficult to walk on for several months after that. If correct, that evidence would have been very damaging to the Applications insofar as they related to the phase 4 area, because it would not all have been suitable for sports and pastimes for a full period of 20 years preceding their making in October 2009. The Applicants' witnesses had no precise recollections of the dates in question and said they could not dispute [redacted] timetable. However, in oral evidence he resiled from it and said instead that by the date of the June 1989 aerial photograph,[474] the whole landfill site had been completely restored, was covered in grass and was firm enough for people to walk on.

520. I do not think that there is any proper basis for rejecting [redacted] oral evidence on those points. After looking at the large version of the photograph at inquiry he made no attempt to justify or adhere to the interpretation in his written statement, namely that it showed phase 4 awaiting reseeding. [redacted] was interpreting the photograph with the benefit of his involvement in the management of the site, his experience of landfill operations in general and his knowledge of [redacted] practices in particular, and having regard to the implications of other aspects of the then state of the site, including the fact that infilling of the inner ditch was complete (contrary to what was said in his statement) and the presence of just a few skips in the bin park. It would be mere speculation on my part to interpret the difference in coloration as signifying that the darker areas were covered in topsoil awaiting reseeding. There is no discernible difference between the shade of those areas and of other surrounding fields including Fields 2 to 6, which no one has suggested were not grassed at that time. As a matter of common sense, there is no obvious reason for a delay of several months between topsoiling and reseeding; as [redacted] suggested in closing submissions, that would have been a recipe for weed invasion. [redacted]

474 [redacted].

invited me to have regard to the extract from [redacted]'s statement for the phase 6 planning inquiry, according to which reseeding of phase 4 was done in the autumn of 1989.[475] But not only did [redacted] not attend to give oral evidence and be cross-examined, I do not think that much credence can be given to the chronology in that statement in any event, for this reason. It described phase 4 as *"under preparation"* when [redacted] took over the operation in April 1988. That is a far from apt description of the then condition of phase 4, which was already being actively tipped in 1987 and about half of which had been filled and was being covered with soil in April 1988.

521. I accordingly find that by June 1989, restoration of the whole of Field 1 was completed; it was grassed and firm enough for people to walk across. It follows that the whole of Field 1 was available for sports and pastimes at and from that time, being more than 20 years before the making of the Applications.

522. In the ordinary way, one would not expect to find people indulging in sports and pastimes anywhere near a landfill site. But this was no ordinary landfill site. As recognised by the local planning authority,[476] because of its proximity to housing it was not a location where tipping would have been allowed had ordinary planning controls applied. Local residents still needed to walk their dogs and local children still wanted somewhere to play. Given those factors and the background of previous recreational user, I find it credible that during the landfill period people did continue to walk round and play on the untouched and restored parts of Field 1 and in the other fields. I also find it entirely credible that as soon as Field 1 was fully restored and grassed, recreational use of the whole of it was resumed. I can see no reason why it would not have been. Indeed, there are several factors which support the probability of that having been the case. There was no use of the land by the landowner or any lessee or licensee of the land until the grazing licence to [redacted] commenced on 11 April 1990; local people had it all to themselves during that time. Field 1 was now higher and drier than the lower fields. From the centre, it commanded views of the lower fields and surrounding area. There would have been a novelty element at first.

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[475] [redacted]: see paragraph 407 above.
[476] [redacted]: see paragraph 54 above.

There were no obvious beaten tracks visible on the land at that time so far as one can see from the April 1988 and June 1989 aerial photographs; that might have been because the route of FP 207 had been grassed over as part and parcel of the restoration of phase 3, or because people did not all follow exactly the same route. I find that general recreational use of the whole of Field 1 did resume before October 1989.

October 1989-October 2009

523. I find that the whole of the Application Land was extensively used throughout the critical 20 year period by local people for informal recreation. I base that finding primarily on the oral evidence of the 22 witnesses called by the Applicants, who all appeared to me to be honest witnesses. They did not give me the impression of exaggerating their personal use of the Application Land. Some claimed no or very little personal use of the land at times during the 20 year period, such as [redacted], [redacted] and [redacted]. Nor do I think that they exaggerated their observations of others' use. I agree with [redacted]'s submission that there is no reason to disbelieve their evidence of seeing lots of people all over the land engaging in various activities. The Applicants' written evidence is consistent with and supportive of that evidence; and what is more, I do not see any direct conflict between the evidence of the Applicants' witnesses and the Objectors' witnesses on the matter of user. The Objectors' witnesses were simply not there most of the time. The inherent probability of the situation is to my mind on the Applicants' side rather than the Objectors'. The Application Land was patently an attractive place for recreation. It was open, peaceful and for the majority of the time unoccupied, allowing local residents - in [redacted]'s expression - "*free rein*". It offered variety: open elevated grassland for e.g. walking, flying kites, kicking a football around, flying remote control aeroplanes, or hitting golf balls; vegetation which provided e.g. shelter for wildlife to spot, opportunities for den-making and playing hide and seek, and blackberries to pick; brooks, ditches, ponds and at times a "lake" to e.g. fish or look for tadpoles in, watch birds on, or (very occasionally) ice-skate on.

524. I am mindful that I visited the Application Land after a protracted dry spell and that there have been times since the landfill when parts of Fields 3, 4, 5 and 6 have been very wet or covered in water, in particular the southern half of Field 5. At such times the opportunities for walking on those fields would have been limited. I also have well in mind that the tendency to wetness of those fields was greater before

substantial ditch clearance works were carried out in 2003, followed by cutting of reeds and grass and direct drilling of grass seed in Fields 3, 4 and 6, and that there were some further ditch clearance and topping operations in following years.[477] However, I accept the Applicants' evidence that even before the 2003 ditch clearance works no part of the Application Land was permanently under water; that it was always possible to find a way round flooded areas; that with appropriate footwear, the fields being wet was not a problem for reasonably hardy walkers and dog walkers and adventurous children; and that the wetness itself provided recreational opportunities, in particular for looking at birds, and as [redacted] put it, "*was all part of the fun*". Opportunities for activities such as picnics, bicycle riding and football would have been much reduced, and young children would have to have been carefully supervised. But I have no hesitation in rejecting the Objectors' contention that use of Fields 3 to 6 after the landfill was trivial and sporadic. I find that local people adapted their usage of the land and made the most of it all year round despite the increase in the water level. These fields were included in the grazing agreements with [redacted] and [redacted], so they were evidently not considered to be so waterlogged as to have no grazing potential (still less to be unwalkable), and it was the evidence of [redacted] and [redacted] that they did let their cows in to these fields every year, although prior to 2003 the cows tended to stay on the western side of Fields 3 and 6 where the grazing was better. They even managed to take some hay or grass silage crops off parts of Fields 3 and 6 before the 2003 ditch clearance works, and since the 2003 ditch clearance, topping and re-seeding works Fields 3, 4 and 6 have been used in the same way as Field 1. The seasonal "lake" around the junction of Fields 3, 4 and 6 has ceased to form.

525. Of the witnesses called by the Objectors, [redacted] and [redacted] had been the most regular visitors to the Application Land over the 20-year period in question. Overall, I regard their evidence - in particular that of [redacted] - not only as not inconsistent with the Applicants' evidence, but as positively supportive of it, in that they did not seek to maintain that there were no, or hardly any, recreational users to be seen in Fields 2-6 (see paragraphs 348-351, 358-359 above). It was of course [redacted] who visited the Application Land most frequently of all the Objectors' witnesses, for

[477] See paragraphs 336-341 above.

it was she (not [redacted]) who went to collect the cattle for milking and had to round up any stragglers; and she admitted to having seen people all over all the fields, including but not limited to dog walkers going in different directions. [redacted] had clearly been aware that other recreational activities such as bird watching, blackberry picking, kite flying and kicking around of footballs went on, and Mr Bloyce had seen evidence of it too. [redacted]'s reference to the "right to roam" was, I think, revealing so far as the factual situation was concerned (although as a matter of law it was misplaced).[478]

526. So far as Field 1 is concerned, it was common ground that there is a well-used route running directly between the Silbury Road entrance and the bridge, which is used as a short cut to Long Ashton, Ashton Court, Ashton Park School, the David Lloyd Centre, and various other destinations including the Angel Inn and the Dovecote public house, and that this has been the case since the post-landfill restoration. I find that there has been little, if any, use of the official route of FP 207 as a means of crossing Field 1 to those destinations since that time. There is no physical or photographic evidence of such use; there have been no signs or any other markers on the ground to direct people along that route; and since the remainder of the field was raised to the same level as the embankment which formerly carried that route, there has been no practical reason for going by any but the most direct way between those two points (save perhaps to avoid interfering with some agricultural or landowner-driven activity). However, there has been no physical obstruction of the official route. It was also common ground that over the years a practice has grown up of walking dogs around the perimeter of Field 1 (which takes in a section of the official route of FP 207). There was, however, a factual dispute between the parties as to whether those were the only, or the predominant, uses of Field 1, and indeed of the entire Application Land, during the 20 year period in question.

527. As to that, I find the Applicants' case much more convincing, and (if and to the extent there is any conflict between their witness evidence and that of the Objectors) I prefer the Applicants' evidence. In my view their oral witness evidence of people walking

[478] The right conferred by Part 1 of the Countryside and Rights of Way Act 2000 only applies to land mapped as open country or common land under its provisions.

all over the land and not sticking to any particular pathways (roaming freely, as [redacted] put it) accords with the inherent probability of the situation. Leaving aside the boreholes for now (see paragraphs 541-544 below), there has been no physical impediment to wandering anywhere on Field 1 and its open, largely even, grassed nature has positively invited it. While walkers and dog walkers could in theory have confined themselves to the short cut route and the perimeter, there is no reason why they would, or would always, have done so and to my mind it is probable that many did not, but took advantage of the whole open space. Other activities which according to the Applicants' witnesses took place on Field 1 (such as children playing and riding bikes, kite flying, kicking around of footballs, hitting golf balls and flying remote controlled aeroplanes) could not or were most unlikely to have been so confined. Watching the balloon fiesta (with or without a picnic) obviously was not. While people picking blackberries and looking at wildlife might have gravitated towards the edges because that was where the blackberries or wildlife were more likely to be found, I see no reason why they would have stuck rigidly to the perimeter of the field to get to and from their targets.

528. However, I find that as a matter of common sense and civility, users did modify their use of Field 1 (and of the other fields) so as not to get too close to the cows (or sheep), or to get in the way of [redacted] going about their farming activities, or to get in the way of agricultural contractors such as [redacted], [redacted], and [redacted]. I think that [redacted] was probably right to suggest that people moved to the edge of Field 1 when he came in on his quad bike or tractor. [redacted] recognised that people would keep to the edges of the fields when machinery was being used as a matter of common sense. I do not think that any inferences adverse to the Applicants can be drawn from their having done so (or from their having kept out of the fields altogether during [redacted] works, bearing in mind the evidence of [redacted], [redacted] and [redacted] to the effect that it would not have been safe or suitable for members of the public to be on the land while those operations were being carried out).[479]

[479] Paragraph 395, 399, 402 above.

529. I take account also of the 17 September 2003 note of the meeting between [redacted], [redacted] and [redacted].[480] I do not think that there is any other way of reading point 1.5 than as evidencing knowledge on the part of landowner and land agent that the general public were not keeping to footpaths and were instead "*wandering*" over the land and enjoying "*general access*". The land over which they were wandering must have included Field 1, because of the proposal to fence "*the footpath which crosses the tip*" (i.e. FP 207) as well as putting up notices asking the general public to keep to footpaths and keep dogs on leads. [redacted] admitted as much. If that was happening in 2003, I see no reason for it not to have been happening at any other stage in the 20 year period under consideration. There had been no relevant change in circumstances to cause a change in the pattern of user. [redacted] had been farming Field 1 in more or less the same way since 1990,[481] and there had been no other landowner activity taking place. There had been no alteration in the means of access to the land; the Silbury Road entrance and the bridge at the other end of FP 207 had at all material times been ungated. There had been no sudden influx of new residents to the district. The only thing that had changed, so far as I can see, is that the landowner and land agent had taken more interest in the land than before because of the proposed ditch clearance and other works - and realised what was happening.

530. It was not disputed by the Applicants that some informal recreational use of the playing field by the Bowls Club was made by local people; [redacted], [redacted], and [redacted] gave evidence of using it for dog walking and playing. However, having viewed the playing field, I accept the evidence of the Applicants' witnesses that the Application Land attracted users because it had attributes which the playing field did not. It was available when the playing field was hired out for matches or practices (including at weekends and in evenings when there would be demand for informal recreational space), which - allowing for spectators - would take up most of the playing field. People would be less inhibited about using the Application Land than the pitches, especially with dogs. The playing field was also more cramped and less interesting than the Application Land. I note that on the

[480] O172: see paragraph 336 above.
[481] Paragraphs 346, 354 above.

afternoon of the site visit, albeit that the weather was sunny and it was a half-term holiday, the playing field was totally deserted. I also bear in mind the response of [redacted] (one of the Objector's witnesses) to [redacted]'s question where he would walk a dog in Ashton Vale: "*the landfill site*".[482]

531. I had the benefit of hearing oral evidence from fifteen individuals who had known, used and observed the Application Land for periods exceeding (in some cases, substantially) the 20 years immediately prior to the making of the Applications: [redacted] and [redacted]. Their evidence of user by themselves and others of the Application Land was credible, consistent, and corroborated by the oral evidence of the other witnesses called by the Applicants who had known and used the land for lesser periods. It was also consistent with and supported by the written evidence summarised above in paragraphs 160-326; although for the reasons discussed above in paragraph 156 no weight can be given to that evidence on questions of where exactly on the land activities took place, I think it can be given some limited weight on the question of whether they took place on the land at all, and over what period, and to what extent.

532. I accept the picture painted by the oral evidence of those individuals rather than the scenario constructed by the Objectors with the help of snapshot evidence from people who visited the Application Land for a matter of hours or minutes. The points made by [redacted][483] in relation to what he called the Objectors' "contractor witnesses" ([redacted]) seem to me to be well made and were to a large extent accepted as valid by the witnesses themselves in cross-examination. [redacted] evidence cannot be preferred to the Applicants' witness evidence for the reasons I give at paragraph 382 above and [redacted]'s evidence taken as a whole was not unhelpful to the Applicants (paragraphs 387-388 above). [redacted]'s personal involvement with the land only began in 1995, and was thereafter limited to formally walking the land at least once a year (presumably during working hours) and to

[482] Paragraph 379 above.
[483] Paragraph 492 above.

inspecting [redacted]'s work or meeting them, [redacted] or representatives of the landowner on site "*as the need arose*" (paragraph 342 above). But there was no evidence of [redacted]'s having done any works on the land before September 2003, or of any site meetings before that time; at which time, of course, it was realised that people were "wandering" on the land (paragraph 336 above). [redacted] themselves were more or less absent from the land for substantial parts of the year: during the periods between grazing licences, which varied from three to six months,[484] and during the periods when their dairy cattle were grazing elsewhere on the rotation system (which, on the basis that the Application Land was only about a third of their total grazing land, would be for about two-thirds of the grazing seasons).[485] Even on days when cattle (or sheep) were being grazed on the Application Land it did not follow that either [redacted] would have to go all over the Application Land.[486]

533. I find that the principal point of entry to the Application Land throughout the period October 1989-October 2009 continued to be the Silbury Road entrance. Of the witnesses who gave oral evidence for the Applicants, the only ones to have used the unsignposted FP 424 entrance were people living in the Ashton Drive cul-de-sac, sometimes only in the alternative to their own rear accesses. There seems to have been, as [redacted] said, a general lack of awareness of FP 424 among the general public. That is borne out by the Applicants' written evidence, in which Silbury Road was by far the most frequently identified point of entry. I think it can be inferred that what many if not most of the witnesses who answered "*yes*" to the question "*To your knowledge are there any public paths crossing the land*?" are likely to have had in mind is the short cut route between the Silbury Road entrance and the bridge at the other end of FP 207.

534. I find that only a small minority of local residents have used the access in the south-west corner of Field 6 and still fewer the access by the industrial estate car park, and for most of those people these served as exits from the land or occasional means of entry rather than as their usual entry point. The earliest evidence of a barbed wire (or

[484] Paragraphs 42-44 above.
[485] Paragraphs 346,354 above.
[486] Paragraphs 346, 349, 356 above.

any) fence along that boundary was given by [redacted] who said he erected one after the 2003 ditch clearance works. After that date, I find that [redacted] has regularly found it damaged and has repaired it as and when necessary to contain cattle or sheep in the field. Up until then, reliance was placed on the overgrown trees to keep trespassers out (see [redacted]'s letter to [redacted] of 7 November 2003),[487] but I accept the evidence of the Applicant's witnesses that it was possible to get through at the south-west corner. Much of the damage to the fence, especially by the industrial estate car park, has been done by - according to [redacted] - outsiders, mostly bikers, not Ashton Vale people. The inquiry heard no evidence of anyone gaining access by the broken-down fencing on the north-eastern boundary of Field 1 or from FP 422.[488]

535. Access to the Application Land was also possible during the 20-year period in question by crossing the cattle bridge between Field 3 and the land on the opposite side of Colliter's Brook New Cut where footpath LA 12/14 runs, which has not been obstructed by anything more solid than a piece of baler twine tied across which can easily be ducked under;[489] and from the rear gardens of a number of houses in Ashton Drive and Silbury Road. The current position is set out in paragraph 36 above. [redacted], and more particularly [redacted] vouched for the position having been more or less the same since 1990. The previous landowner, according to them and to [redacted], was aware of it and concerned about the potential for trespass, but did nothing about it before selling on the land. I find that the rear accesses were in regular use to gain access to the Application Land for recreational purposes in accordance with the Applicants' witness evidence.

536. I find that at no time during the 20-year period under consideration was it impossible to gain access to Field 2 due to impenetrable scrub, as initially contended by the Objectors. I accept the evidence of the Applicants' witnesses (supported by [redacted]) that prior to the 2008 clearance, there were gaps at ground level between the trees/bushes around Field 2 which were large enough for cows and people to go through and gave ready access to and from Field 5; and that between Fields 1 and 2

[487] Paragraph 339 above.
[488] Paragraph 27 above.
[489] See the photograph at [redacted].

there was a small gap in the bushes and also a post and rail fence (replaced by [redacted] with the present three-barred metal structure) over which people climbed. Although the margins of Field 2 (particularly the north and south ends) became increasingly overgrown with brambles, hawthorn bushes and stinging nettles (as described by [redacted]) I find that it was comparatively dry and attractive to and popular among children, bird watchers, and blackberry pickers as well as being used for walking in and through. I do not think that the majority of people walking through Field 2 were intending to use it as a substitute for FP 424, but it incidentally served that function following the landfill. (The April 1988 aerial photograph suggests that despite the original plan having been to retain FP 424 throughout the landfill, the phase 4 excavation and double ditch went close to the Field 2 boundary and people would have been well advised - even if they could walk along its route - to walk through Field 2 instead).

537. I find that there was no necessity for people to climb over fences to get from field to field and that most users did not do so, although the fences put up by [redacted] in 2004 could with care be climbed, stridden or jumped over by adults of suitable physique (such as [redacted], [redacted], [redacted] and [redacted]). The most commonly used route between fields was down the western side between Fields 1, 3 and 6. There was at no time during the 20 years in question any impediment to passage between Fields 3 and 6 at that point, and never a locked gate between Fields 1 and 3, although [redacted] now and then closed a gate at that point to keep stock on one side or the other. They treated Fields 2 to 6 as a single unit, and both before and after the 2003 ditch clearance works and 2004 fencing works cattle were allowed to move freely between them (meaning that people could do likewise).[490]

538. There was no suggestion (leaving aside the boreholes) that any steps had been taken by the landowners, their agents or anyone else to prohibit, restrict or discourage recreational use of the Application Land. There was no evidence of permission being sought or granted for any recreational activity during this 20 year period (with the isolated exception of [redacted]'s questionnaires;[491] I do not regard her as a

[490] See paragraphs 355, 357 above.
[491] Paragraph 271 above.

particularly reliable witness given the inconsistencies between them). On the contrary, the evidence of [redacted] and [redacted] showed acquiescence. (I interpose here that I do not agree with [redacted]'s suggested interpretation of clause 3(r) of the grazing tenancy agreements for 2006-2009,[492] which required [redacted] not to obstruct any public or private right of way or access by any other party to *any other land belonging to the landlord*, and said nothing about not obstructing general public access to the Application Land itself.) Two of the Applicants' uncalled witnesses refer to permission when what they really seem to mean is acquiescence: [redacted] ("*[the farmer] never stopped us*"), [redacted] ("*the farmers are happy so long as you treat fields with respect, closing gates etc*").[493] I do not agree with [redacted]'s submission that people's having sought permission for pre-October 1989 events made it unlikely that the land was in general recreational use by that date. The Bonfire Night and other large scale events were of an altogether different order from casual dog walking or children's play. They effectively involved taking temporary possession of the land, putting up marquees, bringing in bands, and so on (sometimes for whole weekends at a time). Those activities had potential to interfere with the farmer's use of the land which everyday individual and family pursuits did not. I see no inconsistency between checking with the farmer before embarking on those ambitious projects, and just going ahead with ordinary recreational activity.

539. Of the sports and pastimes referred to in the Applicants' witness evidence and listed in Appendix A to the Applications,[494] I find that walking (or rambling), dog walking, bird watching, observing wildlife and farm animals, children playing and (in season) blackberry picking were by far the most popular activities, and were often carried on in combination as well as singly. (I do not think that "access to countryside" adds anything; it is a different way of referring to the same things.) Den making, fishing in the brooks and ditches, bike riding and camping took place as part and parcel of children's play. The inquiry heard oral evidence of kite flying, flying remote control aeroplanes, kicking footballs, rounders, hitting golf balls, jogging, hawk flying, ice skating and family bonfires and barbecues, and I accept that all of those activities

[492] Paragraphs 44, 490 above.
[493] Paragraphs 170, 190 above.
[494] A32.

have taken place on the Application Land during the last 20 years, but on a comparatively small scale. Local people went to the Application Land (in particular Field 1) each August during the balloon fiesta to watch the balloons and sometimes to help them land. There was a well-established use of the Field 1 short-cut route to go to Ashton Court, particularly at that but also at other times, but that does not count for the purposes of the Applications (see paragraph 556 below). I find that picnics were associated with that annual event, but there was very little evidence of picnics at other times during the 20 years preceding the Applications. [redacted] referred to Tarzan swings and raft racing, but again not within the last 20 years.

540. Cricket (and rounders) were associated with the large scale events of the 1970s/early 1980s (according to [redacted]'s evidence). There does not seem to have been much photography, or any drawing/painting to speak of. (I should make clear that in reaching my findings, I have taken no account of post-Application photographs, as having no probative value whatsoever.) I do not find there to have been any community celebrations during the 20 years before the Applications; the "Christmas at Colliter's" event (which I take to explain the references in some of the written evidence to carol singing) post-dated the Applications. Brook clearing (and "walk the line") were one-off events which I am doubtful would count as sports or pastimes in any case, and the Colliter's Brook treks were intended to follow FP 424. Those I disregard. As for school uses, I accept the eye-witness evidence of [redacted] and [redacted] (corroborated by the [redacted] statement[495] and by numbers of the other written statements and questionnaires relied on by the Applicants) that they have regularly seen children from the Primary School on the Application Land, in particular Fields 2 and 5, during school hours. If that use had been by permission of the landowner, I would have expected to have heard evidence from the Objectors (whether in the person of [redacted] or otherwise) to that effect; none was given, and I have no basis for finding that use to have been permissive. However, I do not think an educational visit is a pastime in the ordinary meaning of the word, and it is most certainly not a sport. Finally, the inquiry also heard evidence about the Bristol Harriers running regularly across the Application Land, but I do not place any weight

[495] [redacted].

on that as no evidence was given about the route taken - which could easily have been the short-cut route.

The borehole drilling

541. There were two distinct episodes of borehole drilling on the Application Land, carried out by different contractors with different modes of operation. The first was carried out by [redacted] in 2008. Four boreholes were drilled in Field 1 and one in each of Fields 3 and 4 in about June or July, and two in Field 6 in about October.[496] The drilling would have taken about a day in each location and no fencing was erected around the drill.[497] Following the drilling, a lockable metal cylindrical cover raised out of the ground by 0.2-0.5 metres was left in each hole. I find that those short-lived works affected only a tiny fraction of the surface of the Application Land and did not restrict recreational use of the Application Land.

542. The second episode was carried out by [redacted] as sub-contractors for [redacted] between 9 February and 11 March 2009. 21 boreholes were drilled in Field 1 and one in each of Fields 3 and 4. 10 of the boreholes (including those in Fields 3 and 4) were soil boreholes which would each be dug and reinstated within 1-1½ days. The others were rotary boreholes which could take between 3 and 5 days from start to finish. The maximum number of drilling rigs on the Application Land at any one time was three and the maximum number of boreholes open at any time was three. Heras fencing was placed around three sides of each drilling rig while drilling was in progress during the daytime[498] but the rigs and the fencing were taken off the Application Land outside working hours.[499] Additionally there was a two to three day period in mid-February during which 16 trial pits were dug, 15 in Field 1 and one in Field 3. They only took at most 30 minutes to excavate and were backfilled after samples had been taken. No fencing was erected other than immediately around individual drilling rigs and no measures were taken to keep people off the remainder of the Application Land, although I think it is probable that

[496] As shown on [redacted]'s plan at [redacted]
[497] See the photograph at A1268.
[498] See the photograph at [redacted]
[499] See the evidence of [redacted] at paragraphs 392-394 above.

while the actual drilling and excavating works were going on, most members of the public as a matter of choice gave the operations - in [redacted] words - a wide berth. Given that only a small number of locations were being worked on at any one time although they were distributed all over Field 1,[500] there was ample room within the Application Land generally and Field 1 itself for them to do so, as well as plenty of time outside working hours.

543. There was no evidence of any member of the public being told not to go on the Application Land during the operations and [redacted] evidence[501] was that the client's instructions were not to obstruct the public footpath or secure the multiple pedestrian access points. Both [redacted] and [redacted] gave evidence of having seen members of the public in Field 1 and did not claim to have challenged them or sought to ensure that they were on the official route of FP 207. The Objectors did not contend that a notice prohibiting or restricting access or use was put up at the Silbury Road entrance to Field 1, which is where the vast majority of Ashton Vale inhabitants enter the Application Land, or at the Ashton Drive entrance. I am not satisfied on the balance of probabilities that any notice prohibiting or restricting pedestrian access to all or any part of the Application Land and/or indulgence in lawful sports and pastimes on it was erected at or near any entrance to the land. If one was erected, its presence was so fleeting as not to come to the attention of local people generally. [redacted] did not attend to give oral evidence and no other witness (including - significantly - [redacted] of [redacted], the principal contractor with responsibility for the works, who supervised them and did attend to give evidence) gave evidence of the existence of any such notice. [redacted]'s evidence was to the opposite effect - that there was nothing there.[502] It would seem to have been pointless to put one by the David Lloyd Centre and not at any other of the multiple pedestrian access points which were being left open. [redacted] evidence was that URS had no issue with people on site.

544. I accept the Applicants' evidence and find that recreational use of the Application Land including the whole of Field 1 could and did continue throughout the period of

[500] See the plan at [redacted]
[501] See paragraph 404 above.
[502] Paragraph 85 above.

the URS/CCGI operations, although no user interfered with the workers or with the boreholes or trial pits; and continued afterwards, although the operations left behind some unevenness which particularly upset [redacted].[503] There was no material interruption to recreational use of Field 1 or the Application Land generally.

The neighbourhood

545. I do not find "Ashton Vale village" to be a term in common currency. However, I am satisfied on the oral and documentary evidence adduced by the Applicants that the area edged red on the map attached to their Applications (see Appendix A to this Report) does constitute a neighbourhood, which some of its inhabitants think of as being like a village. It is a distinct self-contained socially cohesive residential area, with a strong sense of identity and community, and of separateness from the urban sprawl of Bristol - which is hardly surprising given that it is virtually isolated from other residential areas. Although as a matter of law it is not necessary for a neighbourhood to have any particular, or indeed any, communal facilities, this area does, in the shape of the Church, the Primary School, the Community Association's centre and the Club for Young People, at all of which community activities take place. There have been no material changes in its composition since before 1989 and the above factors all pertained before and throughout the 20 year period preceding the Applications. Its boundaries are geographically clear and rational: it embodies the residential part, if not the whole, of the area known as Ashton Vale. It is clear from looking at any map of the area that there is a district on the south-western fringe of Bristol which is known by that name; and the name is of long standing, and widely used.[504] I do not think that the Applicants are to be criticised for leaving out the peripheral industrial estate to the south of the Application Land and of South Liberty Lane and trading estates to the north-east of the Application Land, even though those estates are included in the same polling district of Bedminster council ward[505] and are (in the former case) called Ashton Vale Trading Estate and (in the latter case) situated off Ashton Vale Road. They are not "inhabited" by anyone, or part of the same community. The Objectors called no evidence to the effect that the industrial/trading

[503] Paragraphs 147-148 above.
[504] See paragraphs 143, 503 above.
[505] A1333M.

estates were properly to be regarded as falling within the area known as Ashton Vale, nor did they put that point to the Applicants' witnesses in cross-examination.

546. The Objectors did however fasten on the difference of opinion between the Applicants' witnesses as to whether the eastern end of Ashton Drive should have been excluded from the neighbourhood to found an argument that the area does not have clear defensible boundaries. With respect to [redacted], [redacted] and [redacted], I prefer the view taken by the Applicants and the majority of their witnesses. In my opinion the railway line provides a clear and defensible boundary (which coincides with that of the polling district). The Applicants' view is strongly supported by the "Ashton Vale" road sign on that stretch of Ashton Drive which points towards the railway bridge arch,[506] implying that it is not itself within Ashton Vale, and the bus stop on the same stretch which proclaims itself to be in Ashton.[507] No one contradicted the evidence of [redacted] that the adjacent Sainsburys store is known as the Ashton store. The evidence of [redacted] that people living at that end of Ashton Drive believed they lived in Ashton is corroborated by the written evidence of people who live there, [redacted]'s successor in title to [redacted],[508] and [redacted].[509] ([redacted]'s husband also described himself as having lived "*in Ashton Vale*" for [redacted] years, which includes the [redacted] years at [redacted].)[510]

547. I do not think that it is a legitimate criticism of the boundary chosen by the Applicants that it does not correspond with the boundary of the super output area,[511] which can only be described as eccentric in the way in which it bisects the trading estate, South Liberty Lane, Swiss Road and Swiss Drive.

548. The Applicants' evidence of user (and for this purpose I think it is legitimate to have regard to their written evidence as well as their oral evidence) was drawn from all over the neighbourhood, and predominantly (indeed almost entirely) from the neighbourhood. Given the geographical proximity of the Application Land and the

[506] A1267.
[507] A1333R.
[508] A385.
[509] A1078.
[510] A87-95.
[511] A1140.

neighbourhood, and the distance of the Application Land from other residential areas, I think that accords with what one would reasonably expect.

Applying the statutory criteria

549. I turn now to consider the section 15(2) criteria for registration and their application to this case. For ease of exposition they are dealt with in a slightly different order from that in which they appear in the subsection.

"the inhabitants of any locality, or of any neighbourhood within a locality"

550. The Applicants' abandonment of the "super output area" as a claimed locality was in my view well-advised. The Bristol City Council briefing note on what constitutes "super output areas"[512] supports the Objectors' contention that they are not legally recognised divisions of the county but an administrative construct devised by the Office for National Statistics to assist in the analysis of statistical data. The area edged red on the plan at A34(b) is not a "locality" within the meaning of section 15 either, as it is not a legally recognised administrative area (paragraph 414 above). However, on my findings (paragraph 545 above), I take the view that it is a "neighbourhood" within the meaning of the section. If that is the case, the Objectors concede that it is "within a locality" (either the City of Bristol or Bedminster council ward, both of which are legally recognised entities). The case law on "neighbourhood" is discussed at paragraphs 415-418 above. For the reasons given in paragraphs 545-546 above, the area identified by the Applicants in my judgment had the requisite quality of cohesiveness before and throughout the 20 year period preceding the making of the Applications, and its boundaries are clear and defensible.

551. On that footing, there is no need for the Registration Authority to consider adjusting the boundaries (e.g. to take in the eastern end of Ashton Drive outside the railway bridge) or address the question whether it has power to do so (paragraphs 419-420 above). If it were necessary to address that question, I am inclined to agree with Mr

[512] O15-16.

[redacted] that for the reasons Sullivan J gave in *Laing Homes* in respect of 1965 Act applications (paragraph 419 above) - the likelihood of conflicting views on the topic of where neighbourhood boundaries lie, and the quasi-public interest element in town or village green applications - and in light of the relaxed attitude taken by the House of Lords in *Oxfordshire* to procedural aspects of such applications (paragraphs 9-11 above), the Registration Authority probably would have power to adjust the boundaries without amendment of the Applications provided that all parties had a fair opportunity to make representations about the subject-matter of the adjustment.

"indulged in lawful sports and pastimes"

552. The various activities listed in paragraph 539 above all in my opinion constitute "lawful sports and pastimes" within the meaning of section 15 as construed by the courts: paragraphs 421-422 above. The Objectors did not contend otherwise, save insofar as there was walking (with or without dogs) of such a character as would give rise to a presumption of dedication as a public right of way (as to which see paragraphs 556-557 below).

"on the land"

553. The Application Land is clearly defined on the large-scale plan at A34a, and is plainly all "land" within the meaning of section 15 (paragraphs 446-447 above) even though some of it (the southern half of Field 5) is permanently wet and parts of it were during (and before) the 20 years preceding the Applications prone to flooding. If "land" is defined to include "land covered by water" (paragraph 6 above), it must include land which is only sometimes covered by water depending on the season and the weather. I do not think that if part of an area of land is periodically covered by water and ceases at those times to be walkable, that part of the land - let alone the whole - is disqualified from registration, so long as it is walked and played on at other times. Moreover, as Lightman J pointed out in *Oxfordshire*, the existence of inaccessible areas such as ponds does not preclude the whole becoming a green. There were a pond and wet areas in the scrubland which achieved registration in the *Oxfordshire* application. What is true of a permanent pond must be true of a temporary one. And

as Lightman J also pointed out, ponds may form part of the scenic attraction and provide recreational opportunities. So, here, the wetness (especially the so-called "lake" which used to form around the junction of Fields 3, 4 and 6) brought wildlife and in particular birds such as swans, ducks and herons, and - in extreme weather - an occasional opportunity for ice-skating. The ditches between the fields occupied only a small proportion of the total area of the Application Land and provided opportunities for nature observation and fishing for tadpoles etc. The southern half of Field 5 too offered opportunities for nature observation and bird watching (see the SNCI register extract at paragraph 58 above), and (in contrast to the reed beds which were not registered in the *Oxfordshire* application) has not been permanently under water and accessible only with wading equipment as the evidence (confirmed by the site inspection) showed.

554. Even before the 2008 clearance, only a small proportion of the surface area of the Application Land was covered with trees, hedges, scrub and brambles. That can be seen from the aerial photographs of June 1989, March 1993, April 2007 and June 2008.[513] Field 2 never became impenetrable or so overgrown as not to be usable and used for children's play, nature observation and blackberry picking as well as walking (paragraph 536 above).

555. Accordingly, whether the Application Land is viewed on a field-by-field basis or as a whole, I do not think there was anything about its character or condition which precluded eligibility for registration. On a common sense approach, having regard to what Lightman J and Lord Hoffmann said in *Oxfordshire* (paragraphs 448-450 above), I consider that the whole of the Application Land (and of each Field) was used for the 20 year period for informal recreational purposes.

Highway-type use

556. It was common ground that what [redacted] called "transit use" (e.g. crossing Field 1 by the short-cut route from Silbury Road to go to Ashton Court or to Ashton Park School) was to be left out of account. If people making such journeys had walked

[513] [redacted], [redacted], [redacted] and [redacted]

along the official route of FP 207 then they would have been exercising their public right of passage over the highway and their use would have been *of* right or *by* right rather than *as of* right (paragraph 428 above). I have found that such use did not happen to any material extent (paragraph 526 above). People used the straight short-cut route instead, not necessarily in the knowledge that they were diverging from the official footpath or even that there was an official footpath across there. That use could not have been an exercise of the public's right to deviate (paragraph 461 above) because the official route was not obstructed. If anything (and I make no findings in this regard) it might have led to the creation of a second right of way between the same termini (paragraph 460 above). However, I do not think that such use counts towards a town or village green claim. Whether as a matter of statutory construction that is because walking straight along a defined track across a piece of land to get from one side to the other is not a "pastime", or does not constitute "indulging in a pastime on the land", within the meaning of the legislation is unclear from Lightman J's treatment of the subject in *Oxfordshire* (paragraph 454 above), but it is implicit that it must be one or the other.

557. I agree with [redacted]'s submission that the Supreme Court in *Lewis* did not address this issue or say expressly or impliedly that Lightman J's approach, or that of Sullivan J in *Laing Homes* to the perimeter footpaths issue, was wrong. Indeed, those judges' reasoning (that a landowner who acquiesces in people walking on a defined track across or around the edge of his land in a manner which would give rise to a public right of way should not as a result find the whole of his land burdened with rights of general recreation) would seem to be entirely consistent with the Supreme Court's acceptance of the principle of equivalence. See, in particular, the passage from Lord Hope's speech quoted in paragraph 432 above. If the acts that the landowner has acquiesced in would give rise and give rise only to a public right of way over a defined route then that is the measure of the right they should acquire as a result. I do not accept [redacted]'s submission that Field 1 could become registrable as a green even if all that had happened was that a significant number of local people had walked around the edge, despite the purpose of their use being recreational. That purpose does not prevent a public right of way being acquired: see the *Dyfed County Council* case (paragraph 456 above). Besides, in that scenario there would not have

been any recreational activity "on" the majority of the land the subject of the application.

558. However, I do not as a matter of fact and evidence accept the Objectors' contention that walking along the short-cut route across Field 1 and around the perimeter of Field 1 were the only, or predominant, uses of Field 1 and of the entire Application Land during the 20 year period preceding the Applications (paragraphs 523-527 above). I have found that there was extensive use for a variety of lawful sports and pastimes spread over the whole of the Application Land.

559. In closing, the Objectors submitted that there had not even been 20 years' user for footpath purposes of those routes, use of the short cut developing only tentatively after the landfill and use of the perimeter for dog walking developing even later. They relied for those propositions on the absence from the 1993 aerial photograph[514] (contrasted with the 2007 aerial photograph)[515] of evidence of concentrated use along either route. But that is equally consistent with people having made more generalised use of the land as with their having made no use of it at all, and the former seems to me the more probable given its history, situation, and accessibility. The version of events which the Registration Authority is being asked by the Objectors to accept involves almost complete abstinence from any recreational use of the land by local residents for several years after completion of the landfill, followed (without any suggested explanation for the change) by a commencement of recreational use restricted to walking dogs around the perimeter of Field 1. I do not regard that as a likely scenario.

560. I have found that general awareness of the existence of FP 424 was low during the material period (paragraph 533 above), and there was little evidence of people seeking out an alternative means of passing between its termini in exercise of their right to deviate following the landfill. Usage of its actual route (insofar as not obstructed) was not use of its route as a whole but only in part: as a means of getting on to or off the Application Land, at either end, or in between, by coincidence rather than design.

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[514] O329.
[515] O13.

Concurrent user by landowner

561. Before the Supreme Court's reversal of the lower courts' decisions in *Lewis*, the Objectors could have invoked *Laing Homes* and relied on the agricultural uses of the Application Land (cattle and sheep grazing, hay and silage cropping, manuring, fertilising, seeding) and local residents' deference to those activities to defeat the Applications - as in their objection statement they did.[516] That defence is no longer available to them (paragraphs 429-431 above). The uses made of the Application Land by the [redacted] were compatible with informal recreational use provided that the recreational users showed respect for the [redacted] activities, which they did. The Application Land was not intensively farmed; it was not used for growing arable crops or in the manner envisaged by Lord Walker in *Lewis* (paragraph 443 above) (i.e. as fenced fields used for intensive grazing for nine months of the year when recreational users were excluded and then left open for three months when the animals were indoors). On the contrary, this seems to have been an example of "*co-operative mutually respecting uses*" which could endure after registration as a green (paragraph 430 above). Harmonious co-existence with Ashton Vale people was a theme of the evidence given by [redacted] (paragraphs 348-349, 360 above). As [redacted] put it, local residents had their use and her family had its use. They did not harm each other.

"as of right"

562. On the basis that "as of right" means "*nec vi, nec clam, nec precario*", no more, no less (the "tripartite test"), I conclude that the overwhelming majority of use for lawful sports and pastimes by Ashton Vale inhabitants of the Application Land during the 20 year period preceding the Applications satisfied that test.

[516] Paragraphs [25]-[26]: 07.

Nec vi

563. The only suggestion of a notice prohibiting entry to the Application Land was made in relation to the URS/CCGI borehole drilling works (paragraphs 404, 543 above). In my view there is insufficient evidence to substantiate a finding that any such notice was erected at all, let alone one the terms of which purported or would have been effective to communicate to the inhabitants of Ashton Vale that indulgence in sports and pastimes by them on all or any part of the Application Land was forbidden. A notice by the David Lloyd Centre would not have been effective to communicate its message to users of the Application Land in any event; Ashton Vale inhabitants for the most part approached from and left in the opposite direction.

564. I have found that most users of the Application Land entered through what [redacted] described in his closing submissions as the three legitimate public accesses (from Ashton Drive via FP 424, at the Silbury Road entrance to FP 207 and FP 424, and from the Long Ashton direction to FP 207) and that the majority of them entered from Silbury Road. Residents of adjoining properties who used their rear accesses to get on to the land were not entering forcibly or in defiance of any prohibition. I do not think that anyone ducking under the baler twine to cross the cattle bridge could reasonably be regarded as making a contentious entry, or that there was anything contentious about going through the gate between Fields 1 and 3 even at the times when tied shut with baler twine. [redacted] and [redacted] and [redacted] seem to have shared the perception of [redacted] and [redacted] that climbing, striding or jumping over the low fences alongside the ditches was nothing untoward, provided that no damage was done to them; their purpose was to keep cattle out of the ditches. [redacted] looked on the post and rail and replacement metal structures between Fields 1 and 2 as a stile to be climbed over rather than a barrier to human access, as did the Applicants' witnesses. Clearly, those are common local perceptions. The only access to the Application Land which I consider to have been gained *vi* is that which was gained by entry through the barbed wire fence along the southern boundary of Field 6 after its erection in 2003/2004 by [redacted]. After that time it

was repeatedly vandalised and repaired, and taking an objective view I think M[redacted] was right to agree in cross-examination that it was obvious that the public were not allowed in or out at that point. However, that only taints a small proportion of user (paragraph 534 above), and only in the period after that fence was erected, and does not alter my overall conclusion.

Nec clam

565. I do not consider that recreational use of any part of the Application Land at any time during (or before) the 20 year period preceding the Applications was by stealth. In my judgment, a reasonable landowner who was on the spot (Lord Walker's words in *Lewis* - paragraph 437 above) would have been aware of it. I do not think that the Applicants were arguing that local people kept out of the landowners' sight (paragraph 466 above), but rather that they kept out of their way in the sense that they did not interfere with (as [redacted] put it, did not block or disturb) the activities of [redacted] or their or the landowners' contractors. To hold that against users would be to undermine the Supreme Court's approach in *Lewis* to concurrent uses and its rejection of the 'deference' doctrine. The hypothetical reasonable landowner may not be expected to patrol his land day *and night* looking for trespassers, but must surely be expected to look at it on days and at times when he and his tenants/licensees/contractors are not conducting their own activities as well as when they are, and to look at the whole of it and not just those parts of it where he has his own business to conduct. A reasonable landowner on the spot would have seen people going in and out of Field 2 through the gaps in the hedges, and the remainder of the Application Land was open although the aerial photographs[517] show there was vegetation along parts of the boundary between Fields 5 and 6 before the 2008 clearance.

Nec precario

566. There was no suggestion that the landowners expressly or impliedly gave permission to local people to indulge in sports and pastimes on any part of the Application Land

[517] A195A, 1199, 1200.

at any time during the 20 year period preceding the Applications. The permissions given in the 1970s/early 1980s had been for specific large-scale events, were long since spent, and had had no relevance to or implications for general informal recreation either contemporaneously or subsequently.

The correct approach

567. I do not agree with [redacted]'s submission that determination of the question whether use is "as of right" is a two-stage process (paragraph 465 above). I read the speeches in *Lewis* as unequivocally affirming that what "as of right" means is *nec vi, nec clam, nec precario* - no more, no less. See the quotations in paragraph 435 above.

568. As I read Lord Hope's speech at paragraph 67, where he was saying that the "assertion of a public right" came in was at an earlier stage, going to the "quality of the user" ("the first question"), before getting on to the separate question ("the second question") whether use was "as of right". Reading paragraph 67 together with paragraph 63,[518] I am disposed to agree with [redacted] that what Lord Hope really had in mind was quantity of user and that he was not intending to construe section 15 as implying an additional hurdle for applicants to overcome, in addition to the "significant number" criterion.

569. To repeat the latter part of paragraph 63:

> *"[Sullivan J's] approach [in Laing Homes] has also been taken as indicating that in cases where the land has been used by a significant number of inhabitants for 20 years for recreational purposes nec vi, nec clam, nec precario, there is an additional question that must be addressed: would it have appeared to a reasonable landowner that the inhabitants were asserting a right to use the land for the recreational activities in which they were indulging? I am not sure that Sullivan J was really saying that there was an*

[518] Quoted at paragraphs 434 and 441 above.

additional question that had to be addressed. But if he was, I would respectfully disagree with him ..."

"a significant number of"

570. Whether, and if so how, Lord Hope's interpretation of that expression (informed by the approach that to establish a prescriptive right, the acts of user should be sufficient to amount to the assertion of a continuous right: see paragraphs 436-439 above) would have differed from the test enunciated by Sullivan J in *McAlpine Homes* (paragraph 412 above) is a matter of speculation. *McAlpine Homes* was not even cited to, let alone considered by, the Supreme Court in *Lewis*. It was not a case about the meaning of "significant number"; it was about the meaning of "as of right", the effect of deference, and the extent of the rights which registration confers. Anything said expressly or impliedly about "significant number" was obiter. None of Lords Walker, Rodger, Brown and Kerr said anything about it. There was no issue as to the satisfaction of that criterion and no necessity for them to say anything about it. It seems to me that the *McAlpine Homes* interpretation of the expression (paragraph 412 above), which was part of the ratio of that decision as I see it, has not been disapproved or overruled, but stands, and is the test which the Registration Authority is bound to apply.

571. That said, I do not perceive general use by the local community for informal recreation to be in practice a lower test than the appearance of the assertion of a right to indulge in informal recreation by the local community. It is by general use (not otherwise) that the appearance of the assertion of a right will be given. (The assertion of a "public" right cannot be requisite, because it is not a public right which registration as a green confers, only a right for inhabitants of the relevant locality or neighbourhood.)

572. I do not think that Pill LJ's "properly and strictly proved" remark in *ex p Steed*[519] was intended to say anything about the quantum of use required to found a successful registration application.

573. It is my impression on the totality of the evidence that there were throughout the relevant 20 year period a sufficient number of Ashton Vale inhabitants using the Application Land for lawful sports and pastimes to signify that the land was in general use by their community for that purpose, and to give the appearance to a reasonable landowner on the spot that a continuous right for members of their community to enjoy sports and pastimes on the land was being asserted; and I so find. That is so even after discounting use of the short cut route across Field 1 and the Field 1 perimeter dog-walking circuit, some walking through Field 2 (as attributable to the exercise of the right to deviate from the route of FP 424) and use by persons climbing through the barbed wire fence along the southern boundary of Field 6. In forming that impression I have had regard to the 2008 ONS statistics for the Ashton Vale super output area produced by the Objectors,[520] which (omitting about 100 households in Swiss Drive, Swiss Road and South Liberty Lane) give figures of 717 for dwellings and 1,539 estimated population. The size of the population of the relevant community seems to me to bear on the issue of whether enough of its members used land to signify general use (or the assertion of a right).

"for a period of at least twenty years"

574. I have found that by June 1989 at the latest, the post-landfill restoration of Field 1 was complete; it was usable all over for sports and pastimes; and user of the whole for sports and pastimes by Ashton Vale inhabitants had resumed (paragraphs 521-522 above). I have also found that neither of the borehole drilling episodes in 2008 and 2009 respectively constituted a material interruption to recreational use of Field 1 or the Application Land generally (paragraphs 541-544 above). In my view the periodic flooding of parts of the other fields did not prevent the continuation of user of those fields or of the land as a whole (paragraphs 524, 553 above).

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[519] Paragraphs 13 and 463 above.
[520] O368G.

575. I am satisfied that there was use of the Application Land for lawful sports and pastimes by a significant number of Ashton Vale inhabitants as of right throughout a period of at least 20 years preceding the Applications and that such use was continuing at the time of the Applications.

L. Recommendation

576. My overall conclusion on the totality of the evidence presented at the inquiry is that the Applicants [redacted]s and [redacted] have proved their case under each of the two Applications, and the totality of the Application Land qualifies for registration as a town or village green under section 15(2) of the Commons Act 2006, as being land on which a significant number of the inhabitants of a neighbourhood within a locality indulged in lawful sports and pastimes as of right for a period of at least twenty years, and continued to do so at the time of the Applications.

577. My recommendation is that the Registration Authority should grant both Applications and register the Application Land as a town or village green.

578. As mentioned above, the Registration Authority must make its own decision and is in law free to follow or not follow my recommendation as it thinks right, applying the correct legal principles and after due consideration of the evidence. It must, of course, leave out of account, as being wholly irrelevant to the statutory question which it has to decide (namely, whether the Application Land or any part of it is land which satisfies the criteria for registrability laid down in section 15(2) of the 2006 Act), all considerations of the desirability of the land's being registered as a green or being developed or put to other uses.

Ross Crail
New Square Chambers
Lincoln's Inn
26 August 2010

IN THE MATTER OF TWO APPLICATIONS

[redacted]

FOR THE REGISTRATION AS A TOWN OR VILLAGE GREEN

OF LAND AT ASHTON VALE FIELDS, BRISTOL

INSPECTOR'S REPORT

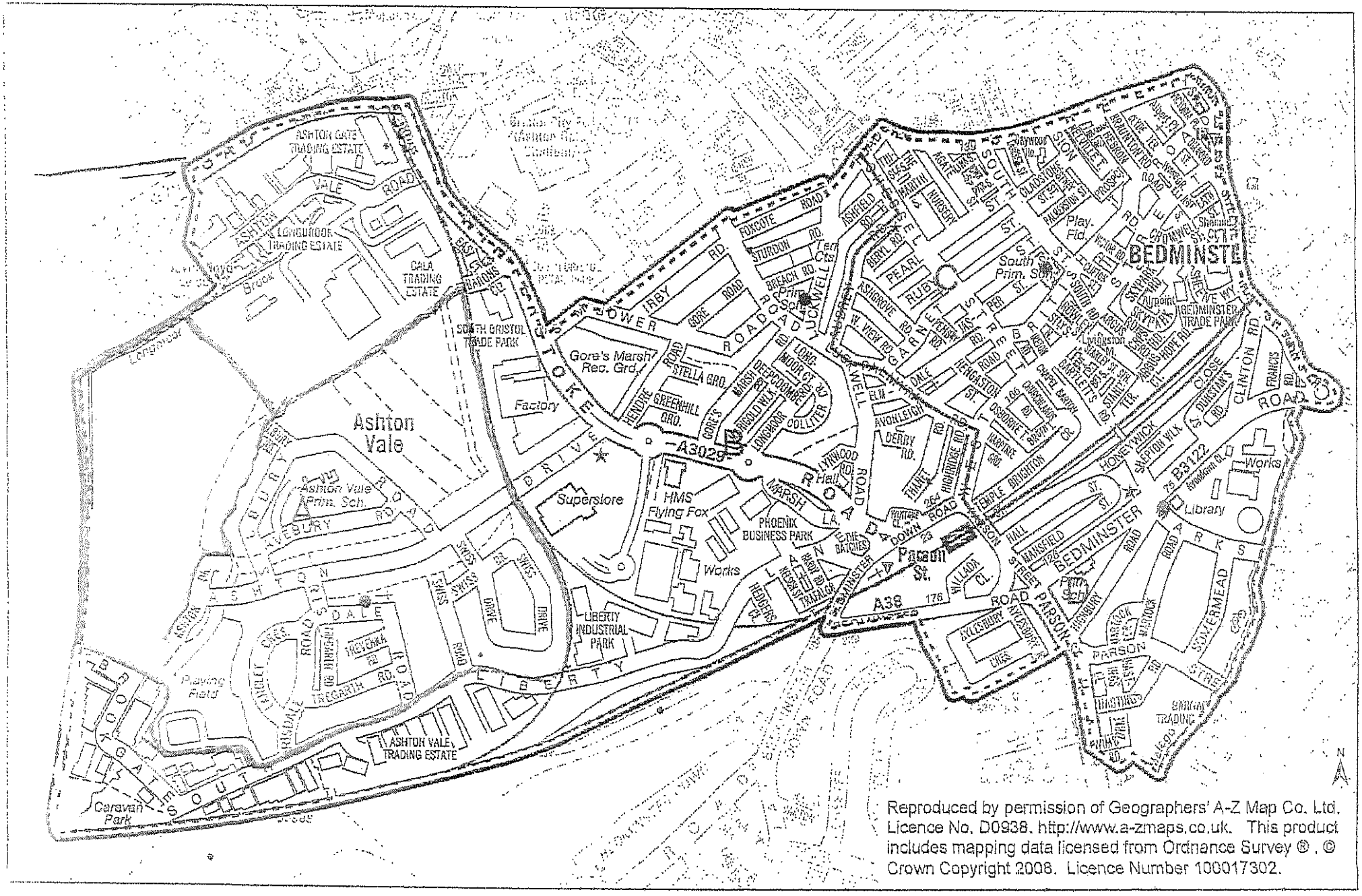
Appendices

A	Copy of small scale map attached to Applications showing Application Land and claimed locality/neighbourhood
B	Copy of plan prepared by [redacted] with Fields 1-6 marked
C	Copy of sketch plan showing landfill phases 1-6

Exhibit . 1P JL1

Bedminster Polling Districts

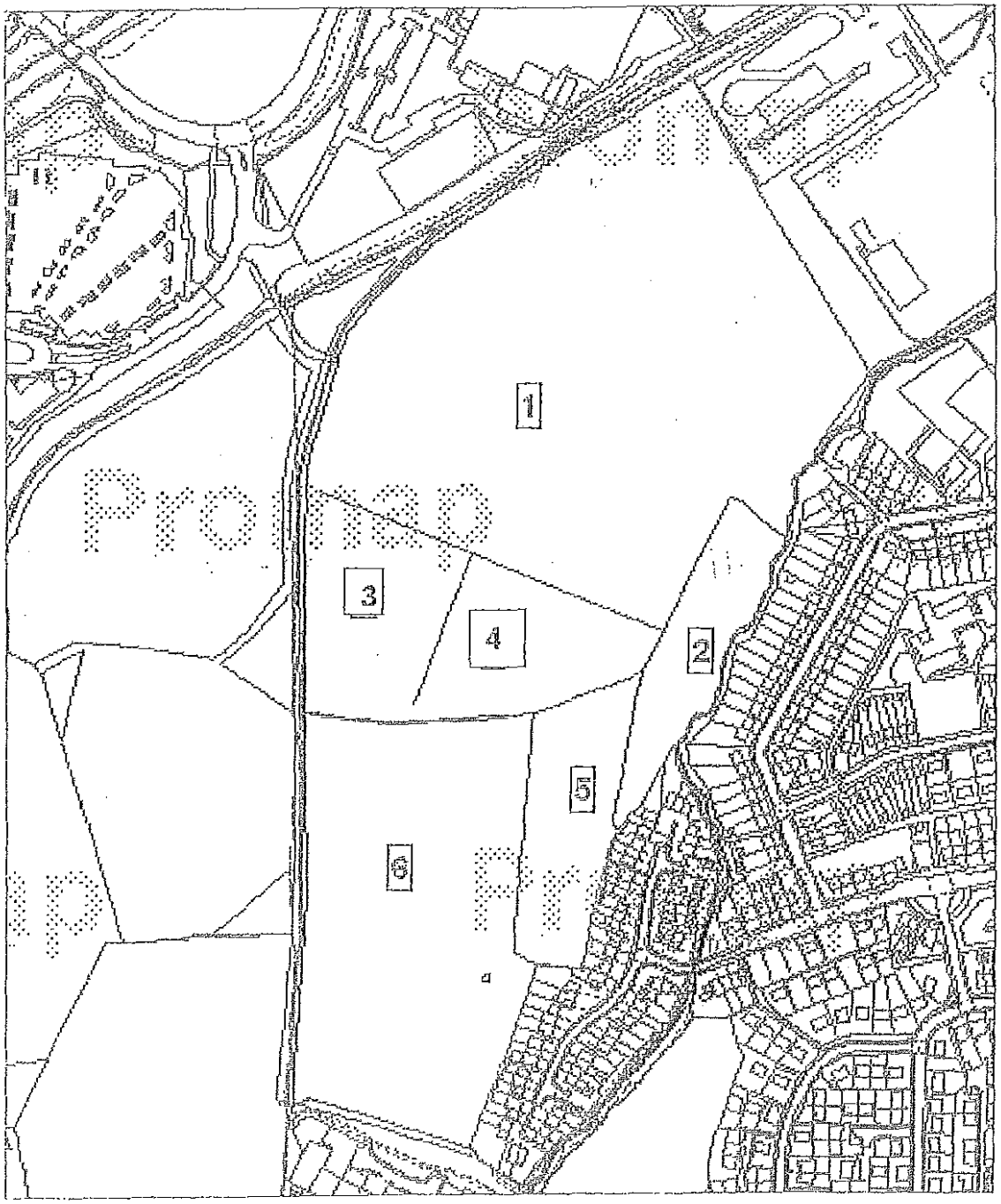
0 100 200 400 600 800 Meters



APPENDIX A

APPENDIX B

FIELD PLAN



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APPENDIX C

PLAN 3