IN THE MATTER OF AN APPLICATION TO REGISTER

LAND AT "BARNET WOOD, BROMLEY"

AS A NEW TOWN OR VILLAGE GREEN

REPORT OF MR PAUL WILMSHURST

24 MAY 2024

INTRODUCTION

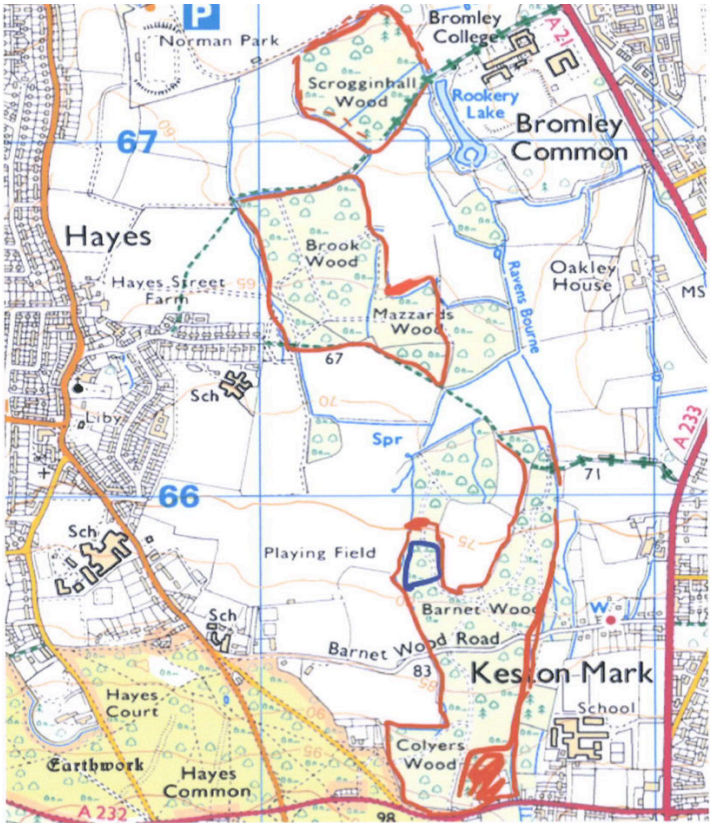
1. On 16 January 2020, the London Borough of Bromley, in its capacity as commons registration authority ("the registration authority"), received an application from Ms [redacted] ("the Applicant"). It sought to register land described as "*Barnet wood- formerly known as The Bishops Wood, (lying south of Barnet wood road sometimes part of known as Colyers or Coliers wood), Mazzards wood, Brook Wood, Scrogginghall Wood.*" ("the application land" or "the woods") as a new town or village green pursuant to s.15(3) of the Commons Act 2006 ("CA 2006"). I was appointed as Inspector by the registration authority, and I held a non-statutory public inquiry in order to hear oral evidence and submissions from the Applicant and objectors to the application. I gave Directions to facilitate this.

2. The application land is described as follows in a justification statement contained within the application form:

   "*The woodlands lie and form a contiguous and continuous line directly linking Hayes Common, Ravensboume and Forest lodge public space and the Croydon road to the South, creating a safe off road route until reaching Norman Park,-a public open space/park in the North. They provide very popular safe links for fresh air and exercise in, around and between these areas for the local community. Historically these woods formed a direct contiguous and continuation swathe of wooded and heath land now registered as common or Public open spaces, that of Padmil, which directly links Keston Common, Hayes, directly linked with Wickham common, and to the north to what os now Elmfield < Littie brooks and Norman Park, all public common space, and which can all be shown through archive evidence - some of which is attached - to have been unenclosed common land., which should therefore have been registered as such under the 1965 Act*."

   "*This village green is used for a wide range of activities from general rambling and dog walking/horse and cycle riding, Jogging and running, nature walks, School studies, scout groups, Bird watching, metal detecting, children building dens and dams, swings over brooks,, Picnicing, Mountain Bike trailing, Blackberry and chestnut gathering, all of which has been conducted openly- without force, secrecy or permission for living memory and beyond. A well used cycle circuit is clearly visible in Barnet wood North and south. (see photographs) with jumps banks and tracks creating three interlinked routes and all the wooded areas are served by wide well worn tracks criss crossed with a network of smaller paths clearly identifiable from air and ground (see Google Maps historical, photographic imagery and heat map Strava)*."

3. The actual application plan is a very large document which is difficult to scan into a computer, but for <u>general identification purposes only,</u> I include here another map that was attached to the application:



As can be seen from the green dotted line on this base OS Map, there are public rights of way crossing through the land.

4. At the inquiry there were two Objectors appearing. Firstly, the [redacted] ("the Estate") who is the freehold owner of the application land, although it has been let up to [redacted] since 1986 (albeit the lease permits the Estate access to maintain fences and for shooting). Secondly, Mr [redacted] who is a registered proprietor of the freehold in title number [redacted]. The [redacted] owns Colyers Wood, which surrounds [redacted] to the west and the south. In June 2023, a boundary agreement was made between [redacted] and the owners of [redacted] There appears to have been some historical uncertainty as to the position of the boundary. Mr [redacted] has now erected a large fence along its agreed position.

5. At the public inquiry, the Applicant submitted that there was no desire to continue the application with respect to the small area in the ownership of Mr [redacted] An Applicant has no absolute right to withdraw an application once it is made. It seems that the Applicant may have faced the problem encountered by so many who seek to define the land they

are interested in by reference to a plan, and that is that it does not always tally with what is on the ground. The matter had become excessively complicated by the time of the public inquiry, and the parties appeared to be focused on ownership (which, of course, is not a matter that I can determine). However, having heard submissions on the matter, I concluded that there was no compelling reason or public interest in continuing to hear evidence and submissions regarding this land. I was assisted by having by that time held a site view at which, at best very marginal significance of this land became apparent. As a result of this, I will simply refer to the [redacted] as "*the Objector*."

The Commons Act 2006

6. Throughout this report, I will refer to a number of court cases. Usually, these cases are well-known "village green cases", and where that is the case, I will refer to them by the short-hand name they are commonly referred by. In **Appendix 1** of this report, there is a table with the full relevant citations.

7. At common law, a green could only be created by custom. Parliament first intervened with The Commons Registration Act 1965 ("the 1965 Act"), which introduced statutory registration. An applicant had to show that the alleged green was:

> *"land…on which the inhabitants of any locality have indulged in [lawful] sports and pastimes as of right for not less than twenty years."*

8. The statutory requirements for registration of a green were relaxed by s. 98 of the Countryside and Rights of Way Act 2000 ("the 2000 Act"). The new definition (that came into force on 30/01/2001) was[1]:

> *"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."*

[1] Parliament never made any provision as to (b).

This legislation was replaced by the CA 2006. The relevant provisions came into force on 06/04/2007 and were subsequently amended by the Growth and Infrastructure Act 2014. Section 15 CA 2006 (as amended) reads (insofar as is relevant) as follows:

> ***"15 Registration of greens***
>
> *(1) Any person may apply to the commons registration authority to register land to which this Part applies 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*
>
> *(c) the application is made within [the relevant period]*
>
> *(3A) In subsection (3), "the relevant period" means—*
>
> *(a) in the case of an application relating to land in England, the period of one year beginning with the cessation mentioned in subsection (3)(b);*
>
> *(b) in the case of an application relating to land in Wales, the period of two years beginning with that cessation..*

9. The House of Lords held in ***Trap Grounds*** at [61] that the registration authority has no investigative duty in relation to town or village green applications, which requires it to find evidence or reformulate the Applicant's case. However, my view is that if the

application made under s.15(3) ought to succeed under s.15(2), then I would not be constrained to advise rejection.

10. It appears to me that the onus of proof lies with the Applicant and that each qualifying element of an application under s.15 CA 2006 must be "*properly and strictly proved*": ***Steed*** at p. 111 per Pill LJ; cited with approval in ***Beresford*** at [2] *per* Lord Bingham. To my mind, this does not denote a standard of proof other than the normal civil standard of proof: on the balance of probabilities. This is the standard that I have applied where required in this case.

THE EVIDENCE

11. As is usually the case with inquiries of this sort, a great mass of evidence was produced at the public inquiry. I need to mention that the registration authority created a bundle that contained the application form as received, together with supporting evidence, including questionnaires submitted by claimed users. This bundle of documentation ran to some 542 pages. Further written documentation was produced by the Applicant at the inquiry. I reviewed all this information and was assisted in this by the production of a helpful spreadsheet.

12. I also heard oral evidence from a number of witnesses on both sides. The summary of that evidence that I set out below is not intended, nor should it be considered, a transcript of the evidence but rather only a summary of what seemed to me to be the most important and relevant points arising from the evidence of each witness. I should also add that the Applicant's witnesses also created annotated plans showing the areas of the application land where they walked, and these were very useful.

THE APPLICANT'S WITNESSES

[redacted]

13. Mr [redacted] lives at [redacted]. The objector says that any qualifying use which can be ascribed to Mr [redacted] began in 2002 when he moved to his current address. That appears to be correct. Mr [redacted] was employed by Bromley Borough Council between 1985 and 2019. He had overall responsibility for highways and rights of way but had no professional dealings with the objector. He did not know who owned the

application land, but he knew it wasn't his employer. He did know that there were rights of way over the land.

14. Mr [redacted] produced an annotated map. Mr [redacted] added that he has always been a keen sportsman and has participated in triathlon since the mid-1990s. He's incorporated the lands into his regular running routes, and occasional mountain biking has been enjoyed. He said, "*the running would have been the occasional (perhaps once every two months) from approximately 1995, before I moved my current address. Then since 2002 is been much more often and up to weekly in dry weather*." He stated that the main access points he is used to gain access to the land from Oakley Road (along the access road to the cricket club) and Barnet Wood roads, although on occasion from Norman Park. In oral evidence, Mr [redacted] described further that his running has been weekly and dog walking from 2008 has been up to 2 or three times a week. He was also clear that he had used defined routes to go from his house in a circular type fashion, arriving back at his home. His runs had involved similar paths being used. He told me he told me that he would vary his routes. He confirmed that this was consistent with his evidence questionnaire and that his use had been linear or circular or point-to-point activity.

15. Mr [redacted] recalls entering the lands at one point and going past a sign that says "*Private land. No right of way*." This sign did not have any effect on him. Mr [redacted] had not encountered the sheets or coppicing. He was unable to tell me when he saw the private sign, although he said it was up towards Mazzard's Wood area. Mr [redacted] had heard gunshots in the woods, but he didn't know where they were exactly from. He did not hear gunshots in the woods for a long time.

16. I found Mr [redacted] to be an honest witness, and I have no reason to disbelieve his evidence. It is clear, however, that Mr [redacted] did walk circular routes to find tracks across the land for the purposes of the activities enjoyed. He did not generally stray or go off the defined routes.

[redacted]

17. [redacted] lives at [redacted] Mr [redacted] is retired. He used to be a policeman. He has resided in Bromley since the mid-1990s and moved to his present address in 1998. He stated in a written statement that he had enjoyed the local woodlands

at various times, mainly on foot and occasionally by bicycle. He said that since 2014, he has been walking there almost daily with his dog. He has used the land with his two youngest children, cycling around it during their teenage years. He had never been prevented, so he told me from using the wood. In oral evidence, he confirmed that he considered his use of the wood to be recreational. He said, "*I see many people every day in the woods. I can be up early in the morning or something up late before it gets dark. I see joggers, horseback, classes from the local school. It is a normal occurrence to see many other people.*"

18. Mr [redacted] has been on good terms with Mr [redacted] and his wife. He had come across Mr [redacted] in the woods and stopped to chat for up to 20 minutes at a time. He was never asked to leave the application land. In addition to that, he would regularly communicate with Mr [redacted] on WhatsApp, for example, if there was fly-tipping. He explained that he had seen a number of signs over the years which had said that there was no right of way. One such sign was at the entrance to Mazzards Wood, and another was on a tree towards Bromley College in the early 2000s.

19. In cross-examination, he said that his walks took him all over the land and that they generally took him around two hours. He said there are many established footpaths that have been walked upon for decades. He knew some of the people that he saw using the land by sight, but he did not know others. He described his relationship with Mr [redacted] as mutually beneficial. He was aware that shooting was taking place, and on one occasion, he was walking the lands when the guns were near the saucepan field. He thought that the guns were a little bit too close for comfort. He said that the shooting was infrequent, but he did recall signs warning that it was taking place. Indeed, he once asked Mr [redacted] whether he could come along to shoot. Mr [redacted] was happy to have him there, but Mr [redacted] didn't take up the offer in the end. He was aware that some sections of the wood had been but found it difficult to describe exactly where.

20. Like other witnesses, Mr [redacted] drew up a plan showing the routes that he has used through the woods. I have had regard to this plan when assessing the evidence of Mr [redacted] It is clear that the plan is consistent with what he is telling me as to the nature of his use throughout the years. I find that Mr [redacted] was a reliable witness, and I have no reason to disbelieve his evidence. As Mr [redacted] is a very regular user, it may well be that

his use of the woods has been more extensive in area than others, but nevertheless, in the main, he stuck, it seemed to me to defined routes. The objector contended that Mr [redacted] was used with express or implied permission from Mr [redacted] I am not so sure that this would readily be the inference to be drawn from the relevant circumstances. There doesn't seem to have ever been an express conversation where permission was granted by Mr [redacted] and, in circumstances where the land is being used by a great many people, it would seem a little odd to deduce from friendly relations between near neighbours Mr [redacted] and Mr [redacted] that there was a permission being implicitly granted to use a very large area of land for which Mr [redacted] had professional responsibility. However, I do not think that individual cases of people who know Mr [redacted] are capable of being determinative of the application. Mr [redacted] evidence is much more useful to me as it gives an impression of the sort of use that he was making of the land, and if I am to believe that there are many people using the land as the Applicant contends, then it will be potentially instructive to me as to how they use the land.

[redacted]

21. Mrs [redacted] lived in [redacted] until 2002, then [redacted] from 2002-2004 and then [redacted]. Since 1999, Mrs [redacted] as had two young children attending nursery. She would walk through the woods to and from the nursery, and although there was some "*meandering*" on the way home in general, she said she stopped accessible paths that people had walked on before, especially because she had a pushchair. On one occasion, albeit on the Saucepan Field, she encountered "*an old gruff man*" shooting vermin who shouted at them to "get away." She was, in general, aware that shooting was going on the application land.

22. Further evidence was given about the walking of dogs during the last 15 years, although it appears that such walking was not just restricted to the application land and was enjoyed on other sites as well. She was aware of a sign which was on the land saying "*Do not Enter*" but assumed it related to cars.

23. In oral evidence, it was explained that her family had never referred to the particular names of the various woods; they had simply referred to "the woods." She said that she uses the woods every day and is never seen coppicing. She confirmed that she was aware of the shooting but would simply keep away from it if she heard it. Her neighbours would

also warn her if shooting was going on. She was not aware of any areas being fenced off for shooting.

24. She said that she would not always stick to the paths as she had children and dogs. She explained that there were areas of the woods where it was quite accessible and others where it was not. When she took her children, she had a foldable pram. She said that she had used every inch of the land. She produced a plan like many of the other witnesses, although I was unable to really deduce much of use from this plan since it simply consisted of large sections of the land.

25. My general impression of Mr [redacted] was that she was an honest witness doing her best to assist the inquiry. However, I did have some difficulty accepting the proposition that she'd used every inch of the land. While I can see that there would have been some "*meandering,*" it seems to me that this does not extend to using every inch of the land, which seems an improbable proposition simply applying common sense. I therefore approach the evidence of this witness with some caution albeit I accept that each individual's use of the land will be distinct to them. The question I am really trying to answer in this case is one of impression user as a whole, and of course, I will have to consider Mrs [redacted] evidence when I come to do that.

[redacted]

26. Mr [redacted] has lived in [redacted] since 2007, When he was 10 years old. He used various entrances, although [redacted] is closest to home and is, therefore, the most practical. He would use the Norman Park entrance as well if he was going into Bromley. As a child, he remembers running around the area, playing games, and walking dogs. He would see deer and needs in the water. Cycled over the land. He claimed that there was "*no person alive who knew the land better than him.*" He still sees some of his old childhood friends on the land on occasion when he is walking his dogs.

27. Mr [redacted] is a professional dog walker. People pay him to walk their dogs. To the extent that this has taken place in the application land, it cannot be a lawful sport and pastime since it is in the nature of work. Mr [redacted] used the land for dog walking, but it appears that some of this has been as part of a dog walking business, albeit for the last seven years. However, Mr [redacted] claims that he would be walking the land 6 to 7 hours a week for

personal use. He said that about 10% of its use would be to use the words as a shortcut to go to Bromley or to a pub that he frequents in Keston.

28. In his written evidence, he stated that "*the only time we avoided certain areas, with seeing signs informing the public that there would be shooting ongoing on a given date*."

29. Mr [redacted] gave evidence that he was aware of the sign on the gate of Mazzards Wood that read "*Private Land. No Right of Way*." He said he did not take it seriously and thought it was meant to deter outsiders rather than regular users of the woodland. He said, "*I have seen a sign on the gate for Mazzards Wood - Private - No Right of Way - I've always seen that sign. Since 2007."*

30. He also saw signs warning of shooting occasionally, which he said were signed by the [redacted]. When he encountered these signs, he would avoid entering the land or change his route. He also avoided the land when he saw people with guns and said he had been told to leave if he came across shooting activities. He recalled one incident where a woman was turned back from a public right of way by the shooters. He confirmed that he kept his dog on a lead when he used the land.

31. Mr [redacted] like the other witnesses, produced an annotated map showing the routes that he used over the application land. I found this extremely useful to get an idea about the extent and nature of these. Mr [redacted] is made of the land, particularly since he has been an adult and is using the land to walk dogs. I accept Mr [redacted] evidence.

[redacted]

32. Ms [redacted] has resided in [redacted] since 2012. Ms [redacted] stated that she has used the application land for various recreational activities, such as dog walking, running (since 2015), and cycling. She said that the land was popular among local dog owners, especially those with large dogs and that they could walk freely on any of the paths without interference. She also said that she had never been challenged or told to keep to the footpaths by anyone on the land.

33. She usually accessed the land from the public footpath from George Lane and did not notice any difference between the public footpaths and the other paths she used. She marked on the map the routes she took on the land and indicated that some of them extended beyond the application land to other fields and George Lane.

34. She marked the areas of the land that she has used, with orange indicating dog walking (generally) by her husband and green use with bikes. Ms [redacted] took part in the Midsummer Running Event, which she assumed was held with permission, but she did not know generally whether running clubs using the land had permission. When running on the land, she used the same tracks as those used for cycling. If she could hear shooting on the land, then she would not have taken the dog.

35. Ms [redacted] said that she had seen small white signs in Brook Woods saying something like *"keep your dogs under control."* She said these were there for a while on George Lane and by the School. She said these signs were there when she first started using the land. She believed, therefore, that she was allowed to keep to the paths in the land.

36. I found Ms [redacted] to be a reliable witness who was doing her best to assist the inquiry. My impression, however, was that she very much kept to the defined routes and established paths over the land, which she subjectively believed she was entitled to use. She was also clear that she would avoid areas which were being used for shooting.

[redacted]

37. Mr [redacted] has lived in [redacted], since 1984. He produced a plan showing the areas of land that he used, and he was keen to tell me that it wasn't everything that he had used; it couldn't show every route. Mr [redacted] is a retired solicitor, having ceased his practice in 2015. In his statement, he made it very clear that he had been using paths. He said in his written statements, which I found to be very helpful and detailed, that "I have been walking (and in the 1980s sometimes running along) the paths…" He said that the use of the paths had been "exclusively recreational."

38. When he was working, he would walk in the woods 4 to 6 times a year; as part of this, he would go even further out into the countryside. In 1985 or 1986, he began running for fun through the works, but in the early 2000s, he injured his knee. He also enjoyed some walking in the woods; he didn't have a dog, but this was not all that frequent until 2020 (4-6 times a year).

39. Mr [redacted] gave evidence about the use of a number of routes or paths that he had used, which he referred to as paths A to F. Part E is part of a registered footpath. These paths

were in Scrogginhall Wood and Brook Wood. He did not remember walking through Mazzards Wood, Barnet Wood or Colyers Wood before 2020.

40. He never knew the particular names of the individual woods that he was using. When he was out using the land, he would see other people walking or dog walking. He thought that he would typically meet about three or four people during his trips to the works. He mentioned that some new signage appeared in 2020 when he started walking more extensively again. However, the signage was very high up a tree and could easily be missed. He had never heard shooting and never seen it. He described a number of signs which had appeared in various areas of the application land.

41. I found Mr [redacted] to be an honest witness who was doing his best to assist the inquiry. His evidence was reliable and detailed, and his background as a solicitor no doubt assisted him in producing a detailed and helpful witness statement. It seems to me that his evidence was clear that his use of the land was restricted to defined routes, which he clearly explained to me. It appears that until 2020, Mr [redacted] use of the land became rather occasional, despite having historically used it to a greater extent. Furthermore, the use was restricted to only certain areas. I have bear this in mind when assessing how useful Mr [redacted] evidence is when it comes to considering the totality of the area and qualifying period.

[redacted]

42. Mrs [redacted] has lived in [redacted] since 1971. When they moved to [redacted], Mrs [redacted] and her husband had two young children. She told me that she had regularly walked with her family over the land and had used a circular route, which she described to me in some detail. She also annotated a plan, as many of the other witnesses did. She did also add that her boys had gone off of the tracks and discovered what she described as the "assault course." She recalled that her boys would pick up chestnuts from the ground.

43. When they moved to Barnet Wood Rd, [redacted] and her husband had two young children. She told me that she had regularly walked with her family over the land and had used a circular route, which she described to me in some detail. She only used a very small

part of the application land, a circular walk along a “clear path” to and from her house along a path in Colyers Wood.

44. In 1975 and again in 1987, the family purchased a boxer dog, and this needed to be walked daily. By 1999 she didn't have a dog. After this period and until the advent of COVID-19, she used the land once a month. She produced a plan again that I found to be helpful, and she explained that she mainly saw dog walkers on the pink path. She

45. In the main, Mrs [redacted] and her family, in my judgement have used tracks and, in particular, circular route that she described to me in some detail. I accept that Mrs [redacted] was an honest and reliable witness who was doing her very best to assist the public inquiry.

[redacted]

46. [redacted] lives in [redacted] and has done so throughout the relevant qualifying period. He lived in Hayes for 58 years and remembers using the land as long ago as the early 1970s with the family dog. He described to me his favourite walks that he would take when he was a youngster. He said that as he grew a bit older, he would cycle through the woods with his brother. The last 20 years have seen either running or cycling through the woods and the associated farmland every day. They had walked their dog in the rain, snow and sun all over the land. He said that their dog loved going in the stream and ponds. He described his "*usual walk*" going from George Lane towards the fishing lake just as he did as a youngster. So, they would regularly see other families using the land in the same way with children and dogs. He said the only time that we "felt unwelcome on the land was when they had a shoot."

47. He elaborated on oral evidence that his dog did not like the shooting. He would see signs up if there was going to be a shoot. He clarified that he had been walking a dog between 2003 and 2015. After that he would be running and cycling only because he didn't have a dog. He confirmed that whether he was walking his dog, running or cycling in general, he would be using the paths. He had never noticed any areas that have been fenced off, but if there had been shooting, he would have avoided the application land. He was clear that he didn't use land when there was a she going on. He produced a plan which he marked up to show the routes that he had taken. I found this to be helpful as an indication of

those routes through the application land that he had enjoyed in the manner he discussed.

48. In re-examination, he was asked about the paths, and he said that there were hundreds of little paths and that if the dog got a sense for something, then it would go off. He couldn't mark all of the little paths on the map because there were too many.

49. I found Mr [redacted] to be a reliable and honest witness. It is quite clear from his evidence that he was using routes on paths through the application land. Although I accept as evidence that the dog might have got a hint of something and veered off in general, I find that Mr [redacted] would be sticking to the routes that he described rather than generally meandering through hundreds of little tracks which may well not have been established as routes but which he's dog took a liking to.

[redacted]

50. Mr [redacted] lives in [redacted] and has done so since 2015. He previously lived in the area as a child but had moved away. Mr [redacted] described in some detail the use that he made as a young child. For example, he said that he would regularly go into the woods and, from the age of 7, with his friends to explore, build camps, play in the streams and build dams and bridges. This use continues into his teenage years. He has memories of using a bike through the land. His parents owned two labradors and would walk them twice a day. He would join them, particularly at weekends. Mr [redacted] occupation is described as chief audit officer. Since 2018, he owned a dog, which meant that he wanted to go on daily walks. Mr [redacted] produced an annotated plan, which shows a number of paths over the land. It is fair to say that this indicates a much broader use of the land than some of the other witnesses.

51. Mr [redacted] and his wife have four children, and before they moved back to the area, they visited their grandparents. He had never seen any signage which indicated that the land was private and said that he had only come to understand the woods were, in fact, privately owned by the object in the last four years.

52. He described the main entrances that he'd used to gain access to the land, namely those entrances nearest the residential part of Barnet's Woods Road and Collyers Wood.

53. Although Mr [redacted] said that he had seen coppicing twice in the past, he had never been unable to use the land because of coppicing. He said that he had seen signs which warned him of coppicing, which had been carried out. In 2019, he was unable to access a footpath when a large mound of earth was moved to prevent access to Barnet Wood.

54. He said that he first came to know [redacted] sometime after 2015. He said that Mr [redacted] puts his head down and does not speak to him, although his wife sometimes says hello. He denied that he would turn around. He said that he had no personal dealings with the objector, although it appears that, in fact, there was a dispute between Mr [redacted] and the objector regarding his property. Although it is not relevant to the current facts of this dispute, it is pertinent to note that it first appeared to raise its head in about 2017. He said that he knows [redacted] well and agreed it is an understatement that [redacted] and [redacted] do not get on. He said that both he and his wife are friendly with [redacted], so people might assume Mr [redacted] is not friendly with [redacted]. He said he has never spoken to [redacted].

55. He said he didn't know whether local schoolchildren have been given permission to use land. He has been heavily involved in the preparation of the Applicant's case.

56. The Objector's case is that Mr [redacted] use of the land is contentious because he effectively runs away from Mr [redacted] whenever he sees him on the land. I wasn't terribly convinced by this, and the seems to be some animosity between Mr [redacted] and Mr [redacted] Although it is clear from the evidence (including a number of e-mails that I was taken to) that Mr [redacted] must have known about the true ownership of the application land sometime before the time he stated, I do not think this generally undermines his evidence. It's clear that there has never actually been any kind of confrontation on the land. In any event, the poor personal relations of two individuals or associated persons cannot possibly give me the answer to whether the land should be registered as a village green, which is a matter that requires consideration of a much broader nature. I have some concerns about the plan that he put forward, and although it shows a number of defined routes, I am not satisfied that he has generally wandered all over the land and off of the main tracks. I find that Mr [redacted] evidence was otherwise generally reliable and that he was doing his best to assist me.

[redacted]

57. Mr [redacted] has lived in [redacted], since 2003. Mr [redacted] said that his family likes to exercise locally, and he started running around 2013. He devised a "regular circular running route around Hayes farm and the surrounding estate." Said that he ran these routes twice or even three times a week most months of the year. He said he still runs around the area once a week. He described other routes that years taken and these include the application land as well as other areas. He ran as part of an organised 10k run (the "[redacted]), which involved up to 500 people, albeit it was an event that was organised with the permission of the land owner. He also used the words as part of his route to the London Southeast College.

58. He said that he had seen many people on the land, including dog walkers, runners, walkers, cyclists, and horse riders. He said, "*all the paths I have ever used have been well trodden and were obviously been used by many people regularly*." He never knew the names of the individual woods, although he has recently come to know them. He confirmed that an area of Mazzards Wood was fenced off and inaccessible.

59. In general, I found Mr [redacted] to be an honest and reliable witness. The objector has submitted that his use of the land was limited to running along well-defined, clear paths as part of a region encompassing paths outside the application land. In my view, this is an accurate description of Mr [redacted] evidence, which I have already said I accept.

[redacted]

60. Ms [redacted] lived at [redacted] from the start of the qualifying period until around 2018 and then at [redacted].

61. She has rented stables and grazing on Oakley Road, halfway up, next to the school field since 1993. She confirmed this is “Charlie Cookman’s yard.” In her statement, she said that she did not know who owned the land despite having ridden there for 30 years. Ms [redacted] is not currently riding because she has suffered a stroke. I was given an extensive description of the routes that she took when she was riding. Mr [redacted] said that she understood from Mr [redacted] that she had permission to ride in the woods. She described to me the route that she would take to gain access to the woods.

62. She was aware of the shooting on the land but said that it was not an issue for the horses. She said that she would be a very regular rider over the land, especially in good weather. She said that she very frequently saw other people using the land. The land could be quite busy. People would walk through it with dogs. She had never seen a sign up saying that it was private. She was aware of the coppicing that had taken place.

63. I have no reason to think that Ms [redacted] was anything other than a reliable and honest witness.

[redacted]

64. Mrs [redacted] has lived in [redacted]. She submitted only an evidence questionnaire to the inquiry. It appears that during the early part of the qualifying period, she used the land as part of a route to and from her children's school.

65. After school, the children would play and go off the paths, pick up blackberries, and do things like looking at the bluebells. Mrs [redacted] walked her dog, and she used some of the routes in the woods. She made it clear to me that she always was on what she described as well-trodden paths. This was despite the way that she had coloured in all of the annotated plan she had been given. She would also go into the saucepan field. She returned to want to avoid the horse riders. She couldn't remember seeing any signs apart from in Mazzards Wood which she would wish she would avoid because there was a sign saying "*Private Land. No Right of Way*." She would meet friends on the land, and she knew some people who came as far as West Wycombe. She has been out walking on the land for up to 2 hours a day in recent years. She has always seen other dog walkers and, at weekends, sees even more people.

66. I found Mrs [redacted] to be honest and reliable. I accept her evidence.

[redacted]

67. Ms [redacted] has lived at her (now deceased) parents' house in [redacted] since 2007, but she has spent time at the house she owns in Downe, where her son goes to school. She explained that three generations of her family have used the woods around Norman Park for over 60 years. She set out details about her own childhood in the 1970s, which, of course, falls outside of the relevant period.

68. She would walk through the woods with her mother, who was suffering from dementia. She would also go with her son. She said that her son would run through the woods, climb over fallen trees and things like that. Before he could walk, she would take her son in his pushchair following the footpaths. She also explained that she had used cycling routes through the land. She would vary her routes.

69. Although she indicated that she would use the land off of the paths, my impression was that the majority of her use was on the defined routes that she set out in her annotated plan – for such things as pushing the pushchair, cycling or walking with her elderly mother.

70. I accept Ms [redacted] evidence and find her to be a reliable and honest witness.

[redacted]

71. Ms [redacted] lives in Petts Wood, which is not within any of the localities claimed by the Applicant. She described the woods as beautiful to walk in. This has been the attraction to her. She has walked her dog over the land and mentions foraging for blackberries.

72. She has ridden over the land, having had a horse stabled at a yard owned by [redacted], and then subsequently borrowed one from a man who was referred to at the inquiry as "*Cowboy Dave*." I accept Ms [redacted] evidence, although as a non-qualifying user, it is of limited usefulness.

[redacted]

73. [redacted] lived on [redacted], but her regular use only started in 2014 when her mother bought her a puppy for her 50th birthday. She would walk him through Barnet Wood to fields in order to train him. Ms [redacted] thought the land belonged to the local Council until 2015.

74. She recounted an incident when she was walking from the woods to the Saucepan Field and encountered people preparing for a shoot. She approached one of those concerned and inquired if she could pass that way (indicating an exit behind the group), and the shooter told her to return the way she had come – an instruction she complied with. She also mentioned that she had heard shooting from her house, and if she had heard this, then she would not have entered the woods. She never saw a sign referring to the shoot.

75. She has had some social interaction with [redacted] and his wife, and she was clear that nobody had ever given her permission to use the land. [redacted] knew

she was using the land and that she had a new dog. Sometimes, she would see [redacted] in the woods with his wife, and they would stop and have a chat. I have had regard to Ms [redacted] annotated plan showing the way that she has used the land, which gives me the primary impression of using routes around the various parts of the application land

76. The Objector has submitted that Ms [redacted] is an honest witness notwithstanding there is a difference in recollection between her and Mr [redacted] about whether she was granted express permission to walk her dog. I also consider Ms [redacted] to be an honest witness, but on balance, I think that had she been granted express permission to walk her dog; she would have been able to remember it: she had a good recollection of her interactions with the [redacted] I accept Ms [redacted] evidence.

[redacted]

77. Mr [redacted] has lived in [redacted] since late 2005/early 2006. He provided an annotated map showing what he said were the main paths that he had used. It does not show what he said were the minor ones.

78. He has had some interaction with [redacted] and his wife (including a Christmas party in 2006) and has met the latter when out walking over the land. He understood that [redacted] was managing the woodland. Mr [redacted] wife has occasionally had coffee with [redacted]' wife.

79. When it was put to him, he said he was not aware of a conversation between Mr and Mrs [redacted] and his wife where Mr [redacted] says his wife expressly said to take the dog into the woods as it was very boisterous, and Mrs [redacted] was being almost pulled over by it on the recreational ground. Mr [redacted] was aware of the shooting going on the land but never saw any signs.

80. The Objector submitted that Mr [redacted] was an honest and reliable witness. I agree. I accept his evidence. Having heard all the evidence, I should record that I find that if an express conversation had taken place whereby permission to use the woods had been granted to use the woods, then I think this would have been recalled as notable.

[redacted]

81. Ms [redacted] has lived in [redacted] since 2010. She is a teacher. When she moved to the area with her husband, they had a newborn son of 11 months. She explained

that "*the local area with common land and the farm and woods which lead onto Norman Park were one the main reasons we chose the area to live."* They now have three children. She further recorded in his written statement:

> "*In 2010, with a small baby I would walk with him in a baby rucsac through the fields and woods from George Lane through Brook wood and Scrogginhall wood 2010 until present times. My husband and parents would join us. We had a daughter in 2014 and another son in 2015. They have all enjoyed the woods and surrounding fields, taking picnics, walks, building dens and collecting sticks. There is a small stream in Brook woods which has a fallen tree over it, all of my children still to this day like to climb over it or play in the stream. All my children as babies, toddlers, young children and my eldest now being a teenager have loved going into the woods. We also liked observing the bee hives that were on the edge of Brook woods, these are no longer there*."

She further explained that both her sons have been part of local cycling clubs who have cycled through the woods. They have enjoyed blackberry picking. Ms [redacted] herself has been a keen runner and a member of clubs. She used the application land as part of her training and described the route to me. She took place in the 2018 [redacted] run which was organised over the land. Since March 2023, the family has had a dog. Sometimes, she would repeat activities that her children had done with organised groups like the Scouts.

82. In oral evidence, she said that she mainly used the trails and paths in Brook Wood and Scrogginhall Wood with her three children, who were born between 2009 and 2015. She said that she often walked with them in an off-road buggy, about 2 or 3 times a week, and sometimes went to Norman Park, where there was a play area. She said that they also enjoyed playing in the stream and on the fallen tree in Brook Wood. She said that once a month, they would have a picnic either in the park or in the woods. She marked the routes that she used on a plan. She said was like this because she used "*all of the land*." I accept Ms [redacted] evidence.

[redacted]

83. Ms [redacted] has lived in [redacted] She has lived opposite [redacted] her entire life. She has fond childhood memories of going to the woods.

84. She said that she felt that the woods were an incredibly popular area and that she hardly ever went there without seeing someone that she did not know.

85. Ms [redacted] said that she had made friends with people who had met over there and that they often walked together. She said that the whole area meant so much to her and that it was like an extension of her back garden. He explained in her written statement:

> "*In early 1996 we got our second dog, Psyche, she was a brindle Lurcher, my Mum was over the moon, however a few months later my mother unexpectedly passed away and so began many hours of walking Psyche, retracing the walks I had done with my mother. I found being over the farm, especially in the woods, therapeutic and healing, Psyche loved the woods, she loved squirrel chasing and like Daisy would always have a stick in her mouth, this led us to explore more and venture into Barnet Wood and onto Hayes/Keston Common and back. Our favourite wander would take us through the farmyard, say hi to the girls who kept their horses there, and Kerry who had his chickens there, on into Brook Wook, out through Mazzards Wood, into Barnet Wood, via the Saucepan Field and onto Hayes or Keston Common, depending, and returning taking alternative woodland ways*."

She had a dog, but it died in 2010.

86. Ms [redacted] further set out:

> "*Of all my time spent on Hayes Street Farm over the years, I have met many other Ramblers, Dog Walkers, Horse Riders and Bike Riders, I've seen many children playing and chatted to countless people about their dogs and horses, I have never been told I shouldn't be there, occasionally there would be signs up warning of a 'shoot' and for as long as I remember there have only ever been two No Right of Way, Keep Out signs on gates, the first into a field, off FP131 and the second, I would say, if you're entering into Mazzards Wood, near to FP135.*
>
> *Up until I submitted my first DMMO in March 2019, I had never met the Estate Manager, but after which, I noticed his regular presence in the farmyard and once passed each other, whilst walking near to Barnet Wood. I also noted two new signs appearing, printed on paper and in a plastic cover, incredibly high up in the trees, one*

asking dogs to be kept on leads, the other saying private property, no public access- but it wasn't clear as to where it was referring to."

87. Ms [redacted] submitted a Definitive Maps Modification Order application in March 2019 in relation to a claimed footpath over the Hayes Street Farm farmyard. She said that she has subsequently submitted a total of 8 applications for footpaths, some of which relate to the application land. She said that there are so many paths in the woods "*criss-crossy bits*", that it would be impossible to put down everything single one. I have been provided with materials connected to these DMMO applications.

88. Ms [redacted] said that she became aware of the village green process in 2019 as she was concerned about gates and other obstructions appearing in response to footpath applications. She was worried about continuing access to the land.

89. She said that she had heard the shoots and – if she heard them – she would avoid the area. She remembers signs saying "*Caution Shooting*" but nothing else. She could not recall when the shooting started.

90. I found to Ms [redacted] to be an entirely straightforward witness, honest and reliable. I accept her evidence. It is apparent that she has a genuine passion for the land, and this has led her to make both the DMMO applications and this village green application.

[redacted]

91. Ms [redacted] has lived in [redacted], since 2002 and, prior to that, lived at [redacted] in Bromley. None of these addresses are within the claimed localities, and as such, she is not a qualifying user. Ms [redacted] gave an account of how

92. Ms [redacted] kept a horse at Bromley Common Liveries from the late 1990s. She paid them money for livery services but could not remember having a written contract. She agreed that a unique selling point of Bromley Common Liveries was the access to extensive hacking, which gave it an advantage over other yards, and this was attractive to her. However, she said that she never sought permission to ride over the application land. She agreed that increasing amounts of land were fenced off for the shoot. When the shooting was happening, she would not go out on her horse.

93. I accepted Ms [redacted] evidence. I find her evidence to be reliable and honest.

[redacted]

94. Mr [redacted] is the twin brother of [redacted]. Sadly, they are estranged, and it is clear they have an unhappy relationship. [redacted] lives at [redacted], [redacted]. He states that he started riding out over the application land in around 1992 and was involved in the Bromley Common Liveries. He walked his dog on the land at least twice a week and encountered many other dog walkers, cyclists and horse riders.

95. He said that he considered that, as he had horse stabled on the Estate, permission to use the land was implied but the majority of people he met when out walking or riding were not clients of the livery yard. He said that any gates that had been installed over the years were to prevent travellers, and a wide gap for pedestrians and horses was always left. He was never told by the Estate that he had to stop people walking on the land.

96. [redacted] was involved in the management of the farm, grazing land and grazing tenancies for the Estate between 2004 and 2011 although he states in terms that he did not have responsibility for the woodland. He says that was managed by [redacted] who coppiced the woods on a rotating basis to allow regrowth. He did not believe that there was a conflict between the coppicing and the recreational use of the land and thought that there had been, during the last 20 – 25 years, only 3 lots of coppicing. He thought that the use of the application by users had increased since 2011, if anything.

97. When asked, he said that the shoot started off with about 4-5 guns and, at most was 10 guns. He left the shoot in 2004, although he acted as a beater on a few occasions after that.

98. He confirmed that his grazing tenancy was terminated in 2015, and he vacated the office he shared with his brother. I accept Mr [redacted]' evidence and found him to be reliable and honest. He seems to me to be doing his best to assist the inquiry. Whatever the reason, it is apparent to me that he knows that he is not welcome on the application land (albeit he would have every right to use the public footpaths).

THE OBJECTOR'S EVIDENCE

99. The Objector also called a number of witnesses. I will set out below what appeared to be the important parts of their evidence.

[redacted]

100. Mr [redacted] is the tenant of the application land under a lease [redacted] He manages the land as coppiced woodland. However, he does not live nearby and has delegated management of the woodland to [redacted], which runs it through [redacted]. Mr [redacted] said his interest in the woods was as "*a working wood*."

101. Mr [redacted] evidence set out details of the coppicing that has taken place and I was helpfully referred to a plan setting which shows the locations of the "*compartments*" referred to (see OB pp. 119 – 122).

> "*Barnet Wood*
>
> *14. Coppicing was undertaken by contractors engaged by me during the winter season in the compartments (CPT) and years below:*
>
> *(a) CPT 7: 2001-2*
>
> *(b) CPT 1: 2001-2,2002-3*
>
> *(c) CPT 4: 2004-5*
>
> *(d) CPT 6:2004-5*
>
> *(e) CPT 12:2006-7*
>
> *Colvers wood*
>
> *15. Coppicing was undertaken by contractors engaged by me during the winter season in the CPTs and years below:*
>
> *(a) CPT 14: 2001-2*
>
> *(b) CPT 15:2001-2, 2002-3,2003-4,2004-5, 2005-6*
>
> *(c) CPT 16:2004-5*"

102. One of the points that emerged from Mr [redacted] evidence was that the coppicing practices have changed significantly over time. He explained that the current rotation periods are much longer than before, ranging from 30 to 90 years and that the term felling would be more accurate to describe the cutting of the trees. He also described the process of felling an acre of woodland, which would take one person about two weeks. He said that the contractors who bought the wood from the Applicant had their own schedules and methods and that they would cut the felled trees into suitable lengths and leave them on the ground until a crane came to collect them. This could mean that they were left for significant periods of time. The logging tracks or "*rides*" would be impassable for cyclists, walkers and horse riders at the felling of the trees would create a huge tangle. He said that the rides present through the Site exist through the extended use of the woods lor coppicing over a very long period of time having been used for access and extracting wood by tractor.

103. During the felling operations Mr [redacted] said that there would be signs erected by the contractors to the effect of "*Danger! Keep Out!*" There are no records of these signs. When he visited the land, Mr [redacted] did not meet many people. His recollection was that there were very few people there in general. His visits were not all that frequent, but when he did visit, it would be to witness the felling of the trees. During these visits he would wander around the application land generally. He told me he would visit during the week and in the afternoon as he was visiting for work. However, sometimes he would extend the trip to see his brother and that might be at weekends.

104. Mr [redacted] said that he had given the Estate permission to allow their livery tenants to use the rides. He said that he had been to the shoot but only 3 or 4 times in 20 years. He did understand that the Estate required fencing off in connection with the shoot.

105. I found Mr [redacted] to be an honest and helpful witness. His evidence was not undermined in cross-examination. However, I think that his impression about the number of people using the application land may have been affected by the fact that his relatively infrequent visits were during the working week in the main and were focused on the felling operations going on. It seemed to me that this was his principal focus, and as such, it is not surprising that he does not recall seeing many people out using the land.

[redacted]

106. Mr [redacted], who goes by the name [redacted], was first involved with the [redacted] Estate in 1992. Ever since then, he has helped with the Estate in numerous ways and has reported to [redacted].

107. Mr [redacted] confirmed Mr [redacted]s evidence about how the Estate shoot recommenced in 1999. Mr [redacted] was heavily involved in that as the gamekeeper and assisted with looking after the birds. He received no payment for this work.

108. The shoot had 400 birds, and then it got as high as 800. Mr [redacted] described to be a very high level of dedication to the shoot and the vast number of hours that he spent attending to the birds. He would be there most mornings and as early as 5:30 am. He built up the infrastructure: pheasant release pens, additional ponds for ducks, clearing routes for access and putting up a lot of fencing to cut down on predators' access. He would be there at least 2 hours in the morning and up to 5 hours in the evening.

109. Mr [redacted] described to me how the shooting would start mid to late October. He saw it as important to control access to shoot locations. There were marshals to prevent anyone from straying into the drives. They would turn anyone back who was not on a public footpath. The marshals would restrict access on a drive-by-drive basis: the woods were too large to close all of it off. Mr [redacted] explained how signage was also erected and confirmed Mr [redacted] evidence on this. I was presented with a number of plans showing the features of the shoots, including the locations of the signs, fencing and gun lines. I was presented with a list of all of the shoots that had taken place since 2000.

110. Mr [redacted] said that if someone was spotted during the shoot, he would break the gun, approach them and tell them to go away. Most of the time, the people would wait (up to 40 mins) or turn back.

111. Duck drives would be about lunchtime and last about 1 hour. There were also vermin shoots to keep foxes and other pests under control throughout the application land. Mr [redacted] said that if he saw people during these shoots, he would tell them that they should not be there. He would tell them they were on private land.

112. In general, he wouldn't have recognised all the horse riders by sight, but there was never a day when he didn't see one. Mr [redacted] gave evidence to the effect that he rarely

saw people in the woods themselves as they would only be on the public footpath. He said that he had seen dog walkers in the woods more frequently from 2018.

113. Signs would go up in numerous places (as explained by Mr [redacted] in places that people would see. These signs were, after a short while, laminated.

114. After 2015, he was keeping an eye on the person who had taken over (whom he did not think was much good).

115. Mr [redacted] was a very engaging witness who clearly had a devotion to his voluntary responsibilities as gamekeeper for the shoot. I accept his evidence save that with respect of the numbers of people using the woods. It may well be that Mr [redacted] was distracted by his duties or was not policing the woods with a view to finding as many members of the public as possible. I think Mr [redacted] focus was on the shoot, and I accept that if people were potentially interfering with anything related to that, he would have told them to remove themselves. In my judgement the users were not typically inferring with Mr [redacted] because he would have been away from the regular and well-used routes. But if, in general, the woods were effectively always empty, there would have been no need for the elaborate marshalling exercise to be deployed on the days of the shoot.

[redacted]

116. [redacted] was the [redacted] for the [redacted] from April 1994 until March 2016. After his retirement, he worked as a consultant "*with responsibility for the management of the company land at Bromley Common and Hayes Street Farm."* He has also held the position of [redacted]). During the relevant period, he lived in [redacted], but in 2023 moved to Arundel.

117. He explained how [redacted] Liveries was established in 1992. It was jointly owned by the Estate and himself, his brother and others. It operated on Estate land. It closed down in 2017 because the stables (of which there were up to 80) were demolished, and houses were built there. He managed [redacted] Liveries between 1992 – 2004. His twin brother [redacted] managed it between 2004 – 2011 before he took over again between 2011 – 2017. A tenant farmer called [redacted] [redacted] had stables (with up to 200 horses), and [redacted] [redacted] ran this in June 2020.

118. Mr [redacted] explained to me that the unique selling point for those who wished to stable their horses on Estate land was access to a network of rides which did not involve crossing any roads. He said that early on, there was a permit system with tags attached to the saddles. I was presented with an example of a livery agreement that would have been signed (and similar was deployed at [redacted] but Mr [redacted] also set out that there was in the livery office a large A1 ride map on a notice board. It was produced by Mr [redacted], and when it faded, it was replaced.

119. He said that the use "*went insane*" during the COVID-19 emergency. The use was so great that some areas of the land that were beautiful before had been destroyed by heavy use. He placed the in increase in use to 2018. He said that he would walk around the woods, sometimes with his dogs, and barely see anyone there. On an average walk, you'd see 2 people in the woods. His regular dog walk is about 1.5hrs - every day. Sometimes, he'd do it twice. He also said that there were 2 footpaths on the Estate, and this is where there is a problem that some people were walking in the woods. The main problem with dog walkers is the interference with the shoot. For example, a couple of dogs arriving 30 minutes before the shoot was irritating. Mr [redacted] rode horses over the application land 3 or 4 times a week until 2003.

120. Mr [redacted] explained to me that there was a very long history of shooting on the Estate.

121. Mr [redacted] statement also set out:

> "*I am unable to accept* [redacted] *declaration that he was not instructed by the owners to prevent people from using the farm for dog walking, cycling or horse riding. I reported directly to the board and attended all board and management meetings as* [redacted] *and then* [redacted] *His instructions came from me in my role as* [redacted] *of* [redacted] *and my instructions were very clear in this regard*."

122. Mr [redacted] provided quite a bit of evidence about particular individuals to whom he gave permission to use the land. I have dealt with this above. It seems to me that the number is so small that it could not have any effect on the outcome of this case. However, whereas the written evidence indicated express and unambiguous permission, it appeared that something less was in the end, being asserted. Whilst important to the

individuals concerned, it is also the case that the falling out with his twin brother in 2015 and revocation of permission or even Mr [redacted] being told that he was not welcome could have no effect on the overall outcome of this case. I was also told about specific permissions that have been granted to clubs and the like to use the land:

- Bromley Bees Running Academy: Scrogginhall and Brook Wood since March 2011
- Big Foot Go Bide Cycle Club: Scrogginhall and Brook Wood Access via Footpath '131 since March 2014
- Kings College Hospital Trust: sponsored walk via footpath 135. Last several years.

123. It was said that various signs were erected several signs in the woodland over the years. Some of them read: "*Private Woodland. Dogs must be kept under close control. Do not let your dogs chase the horses*" and had the Rookery Estate's name and address on them. Mr [redacted] explained that these signs were intended for those who had permission to walk their dogs, to remind them to be careful and not to interfere with the riders who also had permission. Some of these signs were torn down. Another sign on the gate of Mazzards Wood said: "*No Right of Way Keep Out.*" This was in addition to the various shooting signs already mentioned. There was also permanent fencing around Mazzards Wood to protect the birds from dogs and fencing around Spring Wood for shooting and dog signs. I was presented with plans showing the positions of this. Mr [redacted] continued to explain that the boundary with Norman Park was fenced, but the fence was poorly maintained in some places. It was Bromley Council's responsibility to maintain it. The Estate tried to stop the gaps in the fence and used barriers like pallets when shoots were ongoing. The pallet was in 2003 and disappeared. Mr [redacted] also put forward a "*Report and presentation of Evidence Relating to Breaks in the Fenceline on the Northern Boundary between Scrogginhall Wood and Norman Park"* which was co-authored by him and [redacted] MRICS (the current Estate Manager). This involved surveys in 2023, after the relevant period under consideration in this case. It identifies that were 7 openings along the boundary with Norman Park that users could walk through. It is apparent that for many years it has been the case that there has been access along this boundary.

124. I accept Mr [redacted] evidence with some caveats. First, as to the individual cases of alleged permission that I have already referred to (which I do not think are material to the

application in any event). I do find, however, that those who stabled their horses on Estate land would clearly have understood that they were permitted to hack out over the application land. Further, I do not accept that the use of the land dramatically increased in 2018. Perception is, of course, subjective and changes depending on the circumstances and the awareness of something being a potential issue. I do accept that Mr [redacted] tried to distinguish between the different woods, but in general, I prefer the weight of evidence from the Applicant's witnesses, which speaks to the extent of the use being made of the land coming as it does from a great many people with experience of using the land. While there were some attempts to prevent use, which was objectionable to the Estate, I find myself unable to accept that Mr [redacted] was giving "very clear" instructions to his brother to prevent dog walking, cycling, or horse riding, which was not authorised. Had that been the case, I would expect to see much more evidence of an intention to prevent access.

ANALYSIS AND CONCLUSIONS

125. I will now set out my analysis and conclusions below with respect to the evidence, setting out the law where necessary.

126. In addressing the matters below, I have mainly approached the matter in the way that it was put to me. In particular, the Objector's counsel set out in her closing argument a list of headline points:

> "*(1) The claimed BR2 postcode area is not a qualifying locality. Only one locality may be relied on and it must therefore be either the Hayes and Coney Hall electoral ward or the Bromley Common and Keston ward (not both). There have been changes in the ward boundaries during the relevant period. Whichever ward is chosen will have the effect of dramatically reducing the number of potentially qualifying users.*
>
> *(2) The vast majority of activities carried out on the land have been of a linear nature (walking, cycling, running, horse riding). Many users have been legitimately using the public rights of way: footpaths Nos. 131 and 135. Where they have gone elsewhere, it has been on defined paths (created not by them but by the Estate as logging tracks kept clear for the Estate livery tenants and coppicing machinery) and these have the corresponding character of use akin to public rights of way. A reasonable landowner*

would therefore view any public use of the land as the assertion of a PROW right or rights, rather than a TVG right across the land as a whole.

(3) Furthermore, the landowner carried out regular organized shooting on the land throughout the relevant period (over 180 days with 20-30 guns and others). This was a major sporting operation involving extensive preparation throughout the year, formal notification to the police on the day, and warning to the public via signs and marshals specifically directed to keep users of the public rights of way safe. Local inhabitants would be aware of shooting (they could hear it) and would invariably avoid the land, especially with dogs or horses, on those days. Where they did go on the land, if they came into contact with the shoot, they would be turned away and the public did as advised. The shoot moved around in drives throughout the whole area, displacing any members of the public from that area as it went. This was not a case of the co-existence of the landowner's activities and the public's. The effect of the landowner's activities was to deny the public any ability to assert their own right over the land during these times. This amounts to a complete failure to establish a TVG right throughout the relevant period.

(4) The landowner was not in this case an acquiescent one. [redacted] *Estate, via Mr* [redacted] *Mr* [redacted] *and (previously) via Mr* [redacted] *asserted control over who could and could not use the application land. They were benevolent to many, giving them express or implied permission to ride or walk their dogs in the woods, and should not be criticised for that. They were supporters of the local community using this precious natural resource for organized events in what is otherwise an urban area. There was a general understanding, brought about by all the circumstances, that was sufficiently overt to communicate to many in the area that they could use the application land so long as they were respectful (e.g. keeping dogs on the lead so that they did not chase horses), but their use could be brought to an end if circumstances changed or if the Estate needed the land for its own purposes e.g. for shooting. The Estate also took action against undesirables and those who were not, or no longer, a friend to the Estate. This is not a simplistic case of everyone being prohibited from using the land or everyone permitted. Rather, as is often the case, there was a system of dynamic action taken by the landowner to control the way in which the public used*

(or did not use) the application land. This is the complete opposite of tolerance or acquiescence in the assertion of a TVG right.

(5) Significant parts of the application land were inaccessible to the public for much of the relevant period. This includes Spring Wood which was fenced around its perimeter for bird protection, as was the northern part of Mazzards Wood. It also includes the coppiced compartments in Barnet Wood and Colyers Wood. These areas are, in and of themselves, incapable of being registered because there has not been qualifying use of them throughout the relevant period. The coppiced compartments are of an extent that they encompass the whole of Barnet and Colyers Woods. This is in addition to the more general points about lack of assertion of a TVG right over the whole of the land.

(6) Even if there were any residual qualifying user throughout the relevant period of the remaining areas by residents of the chosen electoral ward, it could under no circumstances be considered by a significant number of people, particularly prior to 2018, such that a reasonable landowner ought to have been on notice that he should have taken further action than he did."

"a significant number"

127. The term "*significant number*" has never been defined, but in ***McAlpine Homes,*** Sullivan J said at [64] that "*significant*" did not mean a considerable or a substantial number. He further stated that what is important:

"… 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."

128. It was also said that the conclusion under this head is a "*matter of impression*" for the inspector at inquiry rather than being some kind of mathematical exercise. However, a number of factors were said to be evidentially, and I have categorised them as follows:

- Evidence of earlier periods can be relevant to findings about later periods if there is nothing to suggest that there has been a material change of circumstances (e.g. gates locked or a change in the physical state of the land).

- The written evidence of those not cross-examined where it is consistent with and supportive of oral evidence given to the inquiry.
- The accessibility of the green (e.g. the distance to the centre of town or whether there are footpaths leading to it).
- All the surrounding circumstances that can reasonably be used to support the conclusion reached: realising that the evidence will often be a patchwork that needs to be fitted together.

129. In addition, in ***Redcar*** in the Supreme Court at [75], it was said that recreational use must be "*reasonably be regarded as being the assertion of a public right*." If the use is less than the assertion of a public right, then it will not be of such a sufficient quantity or quality to put a landowner on notice that rights are being asserted over the land. The user must not be trivial or sporadic; otherwise, it would not signify to a reasonable owner that there was a reason to object.

130. My general impression is that the application land has been very heavily used by members of the public throughout any potential qualifying period. I reach this conclusion because there is a really very significant body of evidence that has been produced by the Applicant to that effect. I take into account also the evidence in written form which has not been tested at public inquiry. I note that the Objector has submitted that nearly every witness whom the Applicant called was reliable and honest. If that is so, and I accept and find that it is (as I have set out above), then would seem to me to be a rather odd conclusion that there was, in fact hardly anyone using this land apart from the occasional trespasser. In coming to this finding, I have taken into account what has been said about each of the different woods and the different areas, but I am unable to see much difference as to the intensity of use, and my general impression is that the land was heavily used.

131. There are certain categories (as opposed to odd individuals) of user that I should exclude from consideration. I refer to these elsewhere, but they notably include organised events or clubs, horse riders who stabled their horses on Estate land (whose use was clearly permissive), those involved in unlawful activities (e.g. building BMX bike tracks), those involved in paid activities (e.g. professional dog walking) and indeed those users

who might only be using the public footpaths. However, it seems to me that even if I exclude these users, then I will make the same finding as the number of people using the application land. I do not accept the Objector's submissions that there is very little left after these users are discounted.

132. Having regard to the evidence and submissions before me, I find that a significant number of people who live in either (a) Bromley Common and Keston ward or (b) Hayes and Coney Hall ward have used the application land for the relevant period. This finding is based on the reasons I have given above, especially the impressive amount and quality of the Applicant's evidence, which shows that the land was subject to heavy use. I am assisted in forming my impression on this by the spreadsheet and table provided to me, which indicate the relevant locality for each of the alleged users: **Appendix 2**. As is usually the way, it comes as no surprise to find that those who live close to the land use it, but I have not ignored the fact there will have been a degree of general public use. I will address the nature and quality of the use below.

<u>"of the inhabitants of any locality"</u>

133. In my view, it is now settled by the Court of Appeal's judgments in ***Leeds*** and ***Paddico*** (see [28]) that s.15(2) of the 2006 Act should be read so as to require an applicant to show the requisite use by users of *the inhabitants of any [single] locality or any neighbourhood [or neighbourhoods] within a locality [or localities]* (see also ***Paddico*** at first instance at [91]).

134. This is not a case concerning a neighbourhood. The Applicant, in this case, puts forward three localities in the alternative: (a) Bromley Common and Keston ward, (b) Hayes and Coney Hall ward, or (c) the BR2 postcode area.

135. A locality must be an area that can be identified as having legally significant boundaries. An ecclesiastical parish, a borough or a manor can be a locality: ***Laing Homes*** at [133] *per* Sullivan J. In ***Paddico*** at [51], Carnwath LJ cited Halsbury's Laws 4th edn, Vol.12(1), "*Custom and Usage*" at [616] (edited by Professor Baker) as to what amounted to a locality:

> *"A custom must be certain in respect of the locality where it is alleged to exist… This area must be defined by reference to the limits of some legally recognised*

administrative division, as for instance a county, a hundred, a forest, a region of marshland, a city, a town or borough, a parish, a township within a parish, a villa, a hamlet, a liberty, a barony, an honour, or a manor."

136. Although there was some uncertainty, it is now clear that an electoral ward is a qualifying locality: It has been held that an electoral ward is a locality: ***Lancashire***. However, it seems to me that a postcode is not a qualifying locality. I agree with the Objector's submissions that such areas do not have legally recognised boundaries as they are devised only for the purpose of direct post. I note here that in ***Paddico*** in the Court of Appeal, it was held, at [29] and [62], that a Conservation Area was not a qualifying locality as it lacked a "*community interest on the part of the inhabitants*." In my opinion, the same reasoning applies here. I will, therefore, not consider the postcode locality put forward by the Applicant any further.

137. In ***Lancashire,*** the Court of Appeal addressed the issue of changes to the relevant locality. This is referred to Gadsden on Greens at [15-41] – [15-42]:

"*The Court of Appeal seemed to accept that substantial boundary changes for a locality during the relevant 20-year period could prevent registration. It asked itself whether there was a continuous, identifiable locality in existence throughout the relevant 20-year period, notwithstanding the boundary changes. It was said that it was enough if the locality had existed in some clearly identifiable form throughout the relevant 20-year period as a coherent and continuous locality. In that case, the electoral ward was in existence throughout the 20-year period and was subject to only one relatively minor change, which did not alter the identifiable community of the ward. The court concluded that this was a matter of fact and degree for the inspector. It is apparent from the Court of Appeal's consideration of the issue, however, that boundary changes could be substantial enough to prevent a locality from being relied upon for the purposes of s.15 of the 2006 Act. The community in question must not have changed substantially over the relevant 20-year period*."

138. As to the electoral wards, I was forwarded what I was told were the relevant boundaries of during the qualifying period. It is said that there were some changes to these boundaries in 2001/2. The Objector submits that "*this raises the question of whether they were continuously identifiable localities throughout the relevant period*."

This was not elaborated on further. It appears to me that although there were changes, these did not remove the core urban or populated area of either locality, and that has continued to exist in a clearly identifiable form. I have no reason to think that the "*community of interest"* has done anything other than continued throughout.

139. However, I am not entirely satisfied with the quality of the maps that have been provided to me. I expect that the problem may well be the size of the maps, which makes copying difficult. If this matter were to prove important, I would want to review the original copies of the maps provided to me before making a final recommendation. However, I will proceed on the basis that both localities are qualifying for the purposes of the CA 2006.

"as of right"

140. The requirement for the users to enjoy the land *as of right* has been the subject of significant debate in the jurisprudence. The term is familiar to those dealing with rights of way and easements: for an example of the cross-over of village green jurisprudence and easements, see ***London Tara Hotel Ltd v Kensington Close Hotel Ltd*** **[2011] EWCA Civ 1356.** It is well established that user, *as of right,* will satisfy the tripartite test in that such users will have been present on the land *nec vi, nec clam, nec precario* (without force, secrecy or permission). In ***Redcar*** at [87], Lord Rodger thought that the sense was better captured by putting things positively: "*the user must be peaceable, open and not based on any licence from the owner of the land*."

141. In ***Beresford***, Lord Walker said at [72] that the *as of right* requirement is better understood to mean "*as if of right."* Also, in ***Beresford,*** Lord Bingham opined at [3] that user *as of right* does not mean that the inhabitants should have a legal right since the question is whether a party who lacks a legal right has acquired one by using the land for the stipulated period. Since ***Sunningwell,*** it has been settled that the subjective belief of the users as to whether they had a right to be on the land is irrelevant.

142. In ***Barkas*** at [61], Lord Carnwath set out:

61 Lord Scott's analysis shows that the tripartite test cannot be applied in the abstract. It needs to be seen in the statutory and factual context of the particular case. It is not a distinct test, but rather a means to arrive at the appropriate inference to be drawn

> *from the circumstances of the case as a whole. This includes consideration of what Lord Hope of Craighead DPSC has called "the quality of the user", that is whether "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..."*

Lord Carnwath cited himself in ***Newhaven*** in the context of what he saw might be circumstances of ambiguity. However, it seems to me that in most cases, the tripartite test will be all the decision maker needs to have regard to: see ***Powell v Secretary of State for Environment, Food and Rural Affairs*** **[2014] EWHC 4009 (Admin).**

Permissive use

143. One way of granting permission is to put up signs that explicitly allow local people to use the land. In some cases, signage erected by the landowner or actions taken by the landowner can give rise to implied permission, but this cannot be inferred from mere passivity or encouragement by the landowner. There are cases such as the ***Mann*** case, where the partial use of the land by the landowner during the 20-year period has given rise to an implied permission. However, I did not understand any such general argument to be presented by the Objector. The argument was focused instead on particular groups of users or even certain individuals. These arguments do not, it seems to me, give rise to an issue of legal principle relating to when one can imply permission.

144. First, the Objector has submitted that some specific people were permitted to do so either expressly or impliedly by Mr [redacted] This appears to be based on their personal interaction with Mr [redacted] Mr [redacted] is not the owner of the application land and, in light of what I have found to be the heavy use of the land by members of the public, it would not have been a reasonable inference to draw from the personal interactions with near neighbours that permission was being granted. Where it was specifically alleged that there was an express permission, I have preferred the evidence of the witnesses who could not recall such a conversation. I think that such a conversation would have been considered odd if it had occurred against the factual background of mass use of the land and, therefore, would have been remembered. Indeed, the fact that Mr [redacted] appeared to be clutching at straws a little in advancing these allegations gave a reason to pause long and hard when considering his other evidence. But in any case, as I have alluded to above, when one considers the number of

users and the size of the application land, then the fate of this village green application cannot rest upon what Mr [redacted] may or may not have said to a handful of people.

145. I accept that permission was also given to a number of organisations, such as those holding the [redacted] (or the Scout and local schools). However, I do not think the majority of people using the land would have known about that.

146. Second, I find that there is very clear evidence that people who had horses that were stabled on Estate land were using the application land with permission. I have had regard to the livery contracts in place as I have set out above, the permit system and the map which was, as I accept, displayed showing the various routes that could be taken. I accept that James Norman, the tenant of the application land, expressly allowed the Estate to give permission to their livery tenants to use the "*rides*" in the woodland, which was a unique selling point of [redacted]

147. In my view, all of this clearly amounts to a form of permissive use. The alternative would be that the horse riders were trespassers against the Estate which would be an absurd inference to draw in my view.

148. Third, I should also add that the public has a right to use the official public footpaths (Nos. 131 and 135), which run through the application land. The use of these routes is an existing public entitlement and ought not, in my view, form part of the total quantity of use which I assess against the statutory criteria.

Contentious user

149. As explained in ***Betterment,*** "*force*" does not just mean physical force. Use is by force in law if it involves climbing fences or gates or if it is contentious or under protest. If use is forcible, the landowner is not acquiescing in the use. The Court of Appeal made clear that the landowner is not required to do the impossible, but rather, the response must be commensurate with the scale of the problem he is faced with: reasonable notice must be given in the circumstances of the case. It is clear from ***Betterment*** that a landowner can fail to do enough by, for example, failing to put up enough signs in the right places and with a clear enough message.

150. In ***Warneford Meadow*** at [22], it was held (in summary):

- A sign has to be read in a common sense and not legalistic way,
- The issue is what the sign would mean to an ordinary reasonable reader of the sign,
- The intention of the landowner in putting up the sign does not determine the meaning of the sign, and
- The sign has to be construed in its factual context

151. First, the Objector submits that the use of the land against the directions of shoot marshals would have been contentious. However, it is pointed out that there is no evidence of any widespread or, in fact, any use of the land in defiance of such instructions. I think this is a complete answer to the point. In my view, it seems more of a pertinent question to ask whether the shooting over sections of the wood gave rise to an interruption of the 20-year period of qualifying user.

152. Second, there was various evidence about signage, although the point was not pressed by the Objector in closing and paragraph 207 of the written closing is the limit of it. I have accepted the Objector's evidence on signage that was erected during the qualifying period and in particular, as to the sign at the Mazzards Wood that said "*No Right of Way. Keep Out.*" In my view, any user going past this sign cannot have been under an illusion that the owner was opposing their use of the land. But what is not clear from that sign is the extent of opposition over what is a very large area. In my view, a single sign of this nature is insufficient to render the use of the entire application land contentious. It would not have come to the attention of users who did not make more extensive use of the application land, for example. The proper approach to an issue like this is actually more complicated, in my view, than it first appears, or at least is in the context of this particular case. The issue has been raised, and the registration authority has a duty to consider the matter (if necessary), but if I were to consider it further here, I would inevitably embark on a review of the jurisprudence which was not canvassed during the inquiry. In addition, I am not satisfied that the issue has been sufficiently ventilated – if indeed the Objector intends to press it. If the issue needs to be determined I will give directions for further submissions on the point.

153. Third, again, although not really pressed (but mentioned in paragraph 207 of the written closing), the fencing at Norman Park and the way in which it has been pulled to one side is said to be evidence of a landowner taking steps but being frustrated by criminal actions of a few. However, the fencing is the responsibility of Bromley Council, and I did not receive evidence which would allow me to find that the fencing would be continually torn down. It is apparent to me that there have at all times been numerous ways through from Norman Park onto the application land and that there have never been any effective steps taken to curtail this, although I accept that some limited efforts were made as set out in Mr [redacted] evidence in connection with the shooting. I do not think that it can be said that enough was being done commensurate with the problem, and indeed, as I have said, I am unable to make a finding that the fencing was torn down during the qualifying period.

154. Fourth, as with permissive user, there are a handful of people whom it is claimed were banned from the land. For example, [redacted]. I cannot think whether they were makes any difference to my overall analysis, but in the case of Mr [redacted] I do not think it was made plain to him that he was not welcome.

"lawful sports and pastimes"

155. The question of whether the users of the application land were engaged in lawful sports and pastimes is a matter which I have had cause to pause long and hard about.

156. In ***Sunningwell*** at pp. 356F - 357E, it was held in effect that "lawful sports and pastimes" is a composite class that includes a wide range of activities that could reasonably fall within the embrace of these words. In the present case, the real dispute is about whether such use has been more in the manner of a public right of way rather than a village green type use.

157. In ***Trap Grounds*** at [103], Lightman J held that in some cases, the use of tracks would sometimes be: Category (1) - referable to use as a footpath only *or* Category (2) - referable to use for recreational activities only *or* Category (3) - referable to use *both* for recreational activities *and* as footpaths. Where the use of such tracks indicates to a reasonable landowner that a recreational right is being asserted over the rest of his land, it will assist an applicant in making out their village green claim. Lightman J further held that "*it necessary to look at 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." In the case of ambiguity, it was said at [102] that the lesser right (i.e. a right of way) would be preferred. Lightman J gives examples at [101] – [105] of the judgment.

158. In ***Laing Homes*** at [102] - [110], Sullivan J (as then was) said that a useful approach was to ascertain the total use of the land and then to discount use that is incapable of being lawful sports and pastimes. The land had been used to take an annual hay crop for half of the qualifying period, and there were tracks around the edge. I do, however, note that the decision itself was said to have been finely balanced by Lord Walker in ***Redcar*** at [28].

159. When the ***Trap Grounds*** went to the House of Lords, Lord Hoffmann held at [68] that what had been said at first instance by Lightman J and by Sullivan J in ***Laing Homes*** was useful guidance, but as each case turned on its own facts, he would not opine with a "*degree of particularity which Parliament has avoided."*

160. A more recent application of the above principles is to be found in the judgment of Patterson J in ***Allaway*** [54], where it was held that if pedestrian use is such as to indicate an emergent right of way or the use of an actual right of way, then it had to be discounted from being a lawful sport and pastime for village green purposes. This does not reveal any new principle and is merely an application of the principles set out in earlier cases and endorsed by Lord Hoffmann.

161. The Objector has drawn my attention also to the case of ***Dyfed CC v SoS for Wales*** **(1990) 59 P & CR 275,** which demonstrates that a) a public right of way can be circular and does not necessarily have to go from A to B and b) that purely recreational walking can give rise to a public right of way.

162. In the present case, I was very keen to ensure that the DMMO applications that have been made were circulated to enable submissions to be made on them. This proved a little more difficult to achieve than might have been expected. But in summary, 7 applications have been made, which the Objector has labelled as follows:

"1 Claimed bridleway from Barnet Wood Road to George Lane

2 Claimed bridleway from George Lane to Brook Wood

3 Upgrading footpath 131 to a bridleway

4 Barnet Wood paths 5, 5b, 6 and 7

5 Upgrading FP135 to a bridleway

6 Adding a bridleway to FP131 to brooker Wood

7 Claimed footpath FP135 along the southern edge of Brook Wood"

163. I have also been provided with two tables which seeks to demonstrate the overlap with the evidence in this village green application in respect of witness evidence. This has been undertaken in respect of witnesses who were called and those who were not. There does appear to be a great deal of overlap.

164. This reinforces my view of the Applicant's witnesses (as I have set out above), which was that, in general, they were using the main routes around the land, often those routes which may have been created through the extraction of wood with machines. I had the benefit of a site view and a walk through the woods, which was invaluable in comprehending the annotated plans submitted by the witnesses and their oral evidence. There were many witnesses who spoke in clear terms (evidence which I have accepted) of using routes around the land and *through* the woods. To name just a few examples, Mr [redacted] spoke of the circular routes that he would use, and [redacted] also walked a circular route. I could list many more such examples which I have recorded under the heading "Evidence" above. The [redacted] race included a plan around the land using the main routes. I was presented with this plan, and I think it reinforces my conclusion that there is a certain way to walk around the land (which so many people enjoyed).

165. This does not mean that some users would not stick to the main routes around the land, for example, [redacted] who said she meandered somewhat. I have also considered the evidence of some witnesses that there were little tracks off the main paths. But in general, I am not convinced that *the majority of users* would have been attracted to general wandering around the wood, where it was accessible. A dog might divert a person (e.g. as explained by Mr [redacted] but this sort of thing is not tantamount to an assertion of a right across the whole of the land, in my view. There are certain sorts of activities which are ill-suited to anything other than following the main established route – for example, cycling or even running. The nature of the land did not lend itself to

off-path activity such that the use of the routes might fall to be considered part of the totality of the use (i.e. ***Trap Grounds*** category 3 type use). Indeed, only by sticking to the routes through the land (as shown in the annotated plans) would it have been possible for some of the outings around the totality of the land to have been completed in one trip. The question is not whether anybody ever walked off a path but whether it was being done with sufficient intensity and frequency to assert a village green right over the whole of the woods such that it not simply referrable to a public right of way. To my mind, having considered the totality of the evidence and the guidance given by the Judges in the cases I have cited above, the answer to that question is "No." Conversely, the extent of the use of these routes (as detailed in the annotated maps) was so high I do not think that any landowner could have failed to realise that public right of way use was being asserted.

<u>"on the land'</u>

166. The Registration Authority has the power to register any portion of the application land: ***Trap Grounds*** at [61]. In ***Trap Grounds*** at first instance, Lightman J, at [92] to [95], under the heading "*Registrability as a green of land of which only part is accessible*", said (citing from what was said by Sullivan J in the ***Cheltenham Builders*** at [29]) that:

> *"the onus is on the applicant to prove on the balance of probability that the land in question has become a green and thus that the whole, and not merely a part or parts, had been used for lawful sports and pastimes for not less than 20 years."*

167. Lightman J then went on to cite the following passage from ***Cheltenham Builders***:

> *"A common sense approach is required when considering whether the whole of the site was so used. A registration authority would not expect to see evidence of use of every square foot of a site, but it would have to be persuaded that for all practical purposes it could sensibly be said that the whole of the site had been so used for 20 years."*

168. I note the particular facts of ***Trap Grounds*** as being particularly striking in that their Lordships upheld the registration of the whole of the land even though only around 25% of it was accessible. Lord Hoffmann, in so upholding, drew an analogy with a public garden being used for recreational activities as a whole in circumstances where 75% of the

surface consisted of flower beds, borders and shrubberies on which the public could not walk.

169. In the present case, I have no doubt that people visited the woods because they were attractive and a nice place to be. However, as I have explained above, I do think that a reasonable landowner would conclude that a recreational right is being asserted over the whole of the land, given the fact that the majority of users were using only the main routes around the land as shown on the annotated plans. Given that, in my view, this does not amount to the assertion of a village green right, I cannot conclude that there was an assertion of a right across the whole of the application land.

"for a period of at least twenty years"

170. In the case of an application under s.15(2) of the CA 2006, the relevant period of 20 years is the period immediately preceding the application, with the final day of the period being the day on which the application is received by the registration authority.

171. In ***Hollins v Verney*** **(1884) 13 QBD 304,** it was said that use has to be continuous throughout the 20-year period. It has to be shown that a right is being asserted and must be more than sporadic intrusion onto the land. It must be use that suggests that rights of a continuous nature were being asserted. It is submitted that the test is one of fact and degree. Clearly, use cannot take place 24/7/365, but it must be sufficient to indicate to a reasonable landowner that a continuous right is being asserted over his land.

172. The Court of Appeal in ***Betterment Properties*** upheld the decision of Morgan J that there had been an interruption in circumstances where works had taken place on one part of the land for a period of 4 months: see [70] – [71]. In ***Newhaven,*** it was held by the Court of Appeal that a beach could be registered as a village green, notwithstanding that it was wholly covered by water for 40% of the day and only wholly uncovered by water for a few minutes each day.

173. In ***Naylor,*** the court agreed with the Inspector that, on the particular facts found, a 3-month period of substantial work amounted to an interruption in user. However, this case, it is suggested does not set down any new principle.

174. Considering what I have set out above, there does not appear to be an event which caused the qualifying users of the application land (i.e. after suitable deductions had been made in respect of non-qualifying users) to cease to be present on the land *as of right*. Accordingly, the application would fall to be considered under s.15(2) of the CA 2006, and the 20-year period would be immediately before the registration authority received the application on 16 January 2020.

175. The bigger issue here is the submission that the Objector makes that the shooting and the coppicing interrupted the 20-year period of use. I have accepted Mr [redacted] and Mr [redacted]' evidence about the shooting, the extent of the land used and the way it was used to facilitate the shooting. It is also true to say that it is not being alleged that the landowner was using all of the application land at the same time for the shoot.

176. The Objector contends that I should view the shooting over the land as the "*exclusion of the public from the shooting areas as an interruption in the accrual of any rights on a regularly occurring basis, albeit for a relatively limited temporal duration*." The list of shooting days that I was presented with shows that there were 180 days of shooting during the period 2000 – 2020. It is apparent that this came to the attention of user of the land who stayed away from the land when they heard gunfire and those that did use the land would have seen the marshals on the ground and the signage excluding them from certain areas of the land. The shooting did not cover the entirety of the land application land and Mr [redacted] explained that it would be impractical to have shut the whole thing off. But with regard to the map indicating the general areas that the shoots took place it is apparent that large areas of the land were effectively rendered out of bounds for those seeking to use the woods for recreational activity. Since, as I have found, the main use of the woods was for recreational walking as part of a route it appears to me that the shooting over portions of the land would have had the effect of stopping most use of the land for lawful sports and pastimes. I think this was certainly an assertion of landowner control over the woods and a persistent interruption to otherwise qualifying users use of the woods. The Applicant's witnesses did not say that use carried on regardless. In my view, 180 days of interruption over the qualifying period would be sufficient to prevent the assertion a village green right over the land and I so find.

177. Finally, the Objector also makes a submission that the coppicing prevented use of the land and acted as an interruption. I have accepted the Objector's evidence about the coppicing that occurred during the qualifying period. Again, the Applicant's witnesses did not seek to contend that the areas subjected to the felling were accessible. They *could* of course use the remainder of the land that was not being coppiced.

178. The areas referred to in OB 119-122 and the compartments set out in the evidence of the Objector relate to significant areas. These would have been unavailable both during the coppicing itself but also for an extended period after when trees were laying on the floor. I have accepted the evidence that the felled trees would not immediately be removed and may have remained for some time until removed by the contractors. It seems to me in these circumstances, that the areas identified by the Objector were simply unavailable for use for substantial periods of time during the 20 year period and it is not possible to find that these area were subjected to an assertion of any sort of right across the 20 year period. As there are other matters which give rise, in my view, to a rejection of the application it is not necessary to attempt to more closely define these areas for the reason of adding only a portion of the land to the village green register.

RECOMMENDATION

179. Accordingly, considering my findings above, I recommend that the application be rejected. The reasons given should be "*the reasons set out in the Inspector's Report."* In summary, this is because a) the Applicant has not demonstrated that users were enjoying lawful sports and pastimes since the use was in the nature of a public right of way and b) there have been material interruptions during the relevant 20-year period.

180. In making this recommendation, I acknowledge the very significant use that has been made of some portions of the application land by members of the public. However, it appears to me that that use has, in the main, been more in the nature of public rights of way. I recommend that this report together with a copy of all the evidence and submissions tendered to the inquiry, be sent to the officers of the London Borough of Bromley Council who are responsible for Definitive Map Modification Orders for their consideration. I say this because the highway authority has an investigative duty and may well need to decide its approach to the evidence and matters that have arisen from

this public inquiry. In recommending this, I do not pass any comment on the merits of any DMMO, which will have to be addressed as appropriate in due course.

Paul Wilmshurst

New Square Chambers

12 New Square

Lincoln's Inn, London

WC2A 3SW

24 May 2024

Appendix 1 – List of "village green cases" referred to with citation.

Case Name	Commonly called	Judge / Court	Citation
R v Suffolk CC exp Steed	Steed	Carnwath J	(1995) 70 P&CR 487
R v Suffolk CC exp Steed	Steed	Court of Appeal	(1996) 75 P&CR 102
R v Oxfordshire CC exp Sunningwell PC	Sunningwell	House of Lords	(2000) 1 AC 335
R (McAlpine) v Staffordshire CC	McAlpine Homes	Sullivan J	(2002) EWHC 76
R (Laing Homes Ltd) v Bucks CC	Laing Homes	Sullivan J	(2004) 1 P. & C.R. 36
R (Cheltenham Builders Ltd) v S Gloucestershire DC	Cheltenham Builders	Sullivan J	(2004) 1 EGLR 85
R (Beresford) v Sunderland CC	Beresford	House of Lords	(2004) 1 AC 889
Oxfordshire CC v Oxford CC	Trap Grounds	Lightman J	(2004) EWHC 12
R (Whitmey) v Commons Commissioners	Whitmey	Court of Appeal	(2004) QB 282
Oxfordshire CC v Oxford CC	Trap Grounds	Court of Appeal	(2006) Ch 253
Oxfordshire CC v Oxford CC	Trap Grounds	House of Lords	(2006) 2 AC 674

R (Lewis) v Redcar and Cleveland BC	Redcar	Supreme Court	(2010) AC 70
R (Oxfordshire & Bucks Mental Health Trust) v Oxfordshire CC	Warneford Meadow	HHJ Waksman DHCJ	(2010) 2 E.G.L.R. 171
Leeds Group PLC v Leeds City Council	Leeds	HHJ Behrens DHCJ	(2010) EWHC 810 (Ch)
Leeds Group PLC v Leeds City Council	Leeds (No1)	Court of Appeal	(2011) Ch 363
Paddico Ltd v Kirklees Metropolitan Council	Paddico	Vos J	(2011) EWHC 1606 (Ch)
Leeds Group PLC v Leeds City Council	Leeds (No2)	Court of Appeal	(2012) 1 W.L.R. 1561
Paddico Ltd v Kirklees Metropolitan Council	Paddico	Court of Appeal	(2012) EWCA Civ 262
Betterment Properties (Weymouth) Ltd v Dorset CC	Betterment	Court of Appeal	(2012) P. & C.R. 3
R (Mann) v Somerset CC	Mann	HHJ Owen DHCJ	(2012) EWHC B14 (Admin)
R (Malpass) v Durham CC	Malpass	HHJ Kaye DHCJ	(2012) EWHC 1934 (Admin)
R (Newhaven Port & Properties Ltd) v East Sussex County Council	Newhaven	Court of Appeal	(2014) QB 186 & 282
R (Barkas) v North Yorkshire CC	Barkas	Supreme Court	(2014) UKSC 31
R (on the application of Newhaven Port and Properties Ltd) v East Sussex CC	Newhaven	Supreme Court	(2015) A.C. 1547
R (on the application of Goodman) v Secretary of State for Environment, Food and Rural Affairs	Goodman	Dove J	(2016) 2 All E.R. 701
Lancashire CC v Secretary of State for the	Lancashire	Ouseley J	(2016) EWHC 1238 (Admin)

Environment, Food and Rural Affairs			
R (on the application of NHS Property Services Ltd) v Surrey CC	NHS Property Services	Gilbart J	(2016) 4 W.L.R. 130
R (on the application of Allaway) v Oxfordshire CC	Allaway	Patterson J	(2016) EWHC 2677 (Admin)
R. (on the application of the Saint John the Evangelist College in the University of Cambridge) v Cambridgeshire CC	St John's case	Sir Ross Cranston	[2017] EWHC 1753 (Admin)
R. (on the application of Cotham School) v Bristol City Council	Cotham	Deputy Judge	[2018] EWHC 1022 (Admin)
R. (on the application of Lancashire CC) v Secretary of State for Environment, Food and Rural Affairs R. (on the application of NHS Property Services Ltd) v Jones	Lancashire in the Court of Appeal	Court of Appeal	
Wiltshire Council v Cooper Estates Strategic Land Ltd	Cooper Estates	Court of Appeal	[2019] EWCA Civ 840

Appendix 2

Table showing the wards inhabited by the Applicant's called witnesses for the periods 1998-2002 and 2002-2021

The Objector has identified the wards from checking the addresses provided in the Applicant's bundle with the images of the ward maps provided by the Applicant in the email dated 6.12.23.

	Called Witnesses	Address	1998-2002 ward	2002-2021 ward
1	[redacted]	[redacted]	n/a moved to the area in 2010	Hayes and Coney Hall Ward
2	[redacted]	[redacted]	Hayes Ward	Hayes and Coney Hall Ward
3	[redacted]	[redacted]	n/a moved to the area in 2007	Bromley Town Ward
4	[redacted]	[redacted]	Bromley Common and Keston Ward	Bromley Common and Keston Ward
5	[redacted]	[redacted]	Petts Wood and Knoll Ward[1]	Petts Wood and Knoll Ward
6	[redacted]	[redacted]	Hayes Ward	Hayes and Coney Hall Ward
7	[redacted]	[redacted]	Hayes Ward	Bromley Town Ward
8	[redacted]	[redacted]	Hayes Ward	Hayes and Coney Hall
9	[redacted]	[redacted]	West Wickham South Ward[2]	Hayes and Coney Hall Ward
		[redacted]	Bromley Common and Keston Ward	Bromley Common and Keston Ward
10	[redacted]	[redacted]	n/a moved to the area in 2003	Hayes and Coney Hall Ward
11	[redacted]	[redacted]	Hayes Ward	Hayes and Coney Hall Ward
12	[redacted]	[redacted]	n/a moved to the area in 2012	Hayes and Coney Hall Ward
13	[redacted]	[redacted]	Hayes Ward	Hayes and Coney Hall Ward
14	[redacted]	[redacted]	n/a moved to the area in 2002	Bromley Common and Keston Ward

[1] The ward boundaries of Petts Wood and Knoll Ward are not shown on the images of the ward maps provided but we believe this is the correct ward

[2] The ward map for 1998-2002 provided by the Applicant does not clearly show the name of this ward but from the image it looks like this is correct name