

Central  
Bedfordshire  
Council  
Priory House  
Monks Walk  
Chicksands,  
Shefford SG17 5TQ



**TO EACH MEMBER OF THE  
DEVELOPMENT MANAGEMENT COMMITTEE**

22 March 2011

Dear Councillor

**DEVELOPMENT MANAGEMENT COMMITTEE - Wednesday 30 March 2011**

Further to the Agenda and papers for the above meeting, previously circulated, please find attached the following additional report(s) which the Chairman has agreed to take as an urgent item of business:-

- 8. An application to register land described in the Application as The Old Village Hall Site, Pembroke Road, Houghton Conquest as a Town or Village Green**

Please find attached the report and supporting appendices a – i for the above application.

- 13. Planning Application No. CB/11/00087/OUT**

Please find attached the report from the Secretary of State which was omitted from the original agenda pack.

Should you have any queries regarding the above please contact Democratic Services on Tel: 0300 300 4040.

Yours sincerely

Helen Bell,  
Committee Services Officer  
email: [helen.bell@centralbedfordshire.gov.uk](mailto:helen.bell@centralbedfordshire.gov.uk)

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**Meeting:** Development Management Committee  
**Date:** 30 March 2011  
**Subject:** An application to register land described in the Application as “The Old Village Hall Site”, Pembroke Road, Houghton Conquest as a Town or Village Green  
**Report of:** Director of Sustainable Communities  
**Summary:** This report proposes that the Council will notify the Applicant that for the reasons stated in the Inspector’s Report the application to register the land described in the Application as The Old Village Hall Site, Pembroke Road, Houghton Conquest as a Village Green has been rejected, following the Non-Statutory Public Inquiry held on 9 March 2011.

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**Contact Officer:** Chris Heard – Orders & Commons Registration Officer - 0300 300 6249 Extn: 76249  
chris.heard@centralbedfordshire.gov.uk  
**Public/Exempt:** Public  
**Wards Affected:** Maulden & Houghton Conquest – Cllrs Angela Barker and Howard Lockey  
**Function of:** Council

#### **CORPORATE IMPLICATIONS**

**Council Priorities:**

Promoting Healthier Lifestyles - by protecting and promoting access to areas of public recreation and leisure.

**Financial:**

The Council is currently unable to charge a fee for processing applications to register land as a town or village green at the present time under Section 15 of the Commons Act 2006.

**Legal:**

The Law relating to Village Greens is set out in this report and where relevant is covered by the Inspector’s Report.

**Risk Management:**

No risk management issues have been identified by the author.

**Staffing (including Trades Unions):**

No staffing issues have been identified by the author.

**Equalities/Human Rights:**

No equalities/HR issues have been identified by the author

**Community Safety:**

No community safety issues have been identified by the author.

**Sustainability:**

No sustainability issues have been identified by the author.

**RECOMMENDATION(S):**

**For the reasons set out in this report and as stated in the Inspector's Report that the Council notify the Applicant that his application to register the land described in the Application as The Old Village Hall Site, Pembroke Road, Houghton Conquest as a Town or Village Green has been rejected.**

**Introduction**

1. The Commons Act 2006 ("the Act") makes provision for the registration of common land and of town or village greens. Commons Registration Authorities were created to maintain two registers, one for common land and the other for town/village greens. Central Bedfordshire Council ("the Council") is the relevant Registration Authority for this location in Bedfordshire. Section 15 of the Act came into force on 6 April 2007 and made changes to the criteria for the registration of a Village Green.

**The Application**

2. The Council has received an application dated 30 June 2010 to register land described in the Application as the Old Village Hall Site, Pembroke Road, Houghton Conquest as a Village Green from a local resident, Mr R ("the Applicant"). The Application included 21 evidence questionnaires in support and was allocated the application number 1/2010. A copy of the application form is attached at Appendix B.
3. The Application has been made under Section 15(1) of the Act and is subject to the qualifying criterion under Section 15(2) of the Act which applies where land has been used "as of right" for lawful sports and pastimes for 20 years or more before the application is made, and this use continues at the date the application is submitted.

**Location of Application Land**

4. The land which is the subject of the Application ("the Application Land") is described by the Applicant as the Old Village Hall Site, Pembroke Road, Houghton Conquest and is located off the High Street and Rectory Lane at the northern end of Pembroke Road. A plan of the land is shown at Appendix C to this report and photographs of the land can be found at Appendix D.

## Relevant Law

5. The law is set out in Section 15 of the Act. An extract of this Section of the Act is at Appendix A). The statutory criteria/tests are, where relevant addressed in the Inspector's Report (Appendix I). In summary the Applicant must prove that the land has been used by a significant number of local inhabitants for lawful sports and pastimes "as of right" for a period of twenty years.
6. The Commons (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007 ("the Regulations") apply to all applications made under the 2006 Act and govern how village green applications should be processed by registration authorities,
7. In dealing with an application to register a new Village Green the Council must consider the following criteria:
  - (i) Whether use of the land has been by a significant number of inhabitants
  - (ii) Whether use of the land has been from a particular locality, neighbourhood or a neighbourhood within a locality?
  - (iii) Whether use of the land has been for the purposes of lawful sports and pastimes.
  - (iv) Whether use of the land has been "as of right"?
  - (v) Whether use has taken place on the land identified in the application.
  - (vi) Whether use has taken place over twenty years or more and when the use ended.

Each of the above criteria is considered under the heading "The Evidence and Determination" below.

## Relevant Planning History of the Application Land and vicinity

8.
  - (a) MB/85/00571 – Adjacent 21 Pembroke Road, Houghton Conquest
  - (b) MB/85/00615 - 15 Pembroke Road, Houghton Conquest
  - (c) MB/86/00782 - 11 Pembroke Road, Houghton Conquest
  - (d) MB/88/01311 – Land at the rear of 19 Pembroke Road, Houghton Conquest
  - (e) MB/88/01820 - Land to the rear of 19 Pembroke Road, Houghton Conquest
  - (f) MB/93/00486 - 15 Pembroke Road, Houghton Conquest
  - (g) MB/TPO/05/0012 - Pembroke Road, Houghton Conquest
  - (h) MB/05/00456 – Land off Pembroke Road, Houghton Conquest
  - (i) MB/07/01702 – Land off Pembroke Road, Houghton Conquest
  - (j) MB/08/00240 – Land adjacent to 21 Pembroke Road, Houghton Conquest
  - (k) CB/09/06454 - Land adjacent to 21 Pembroke Road, Houghton Conquest

## Consultation and Publicity

9. The Council considered that under Paragraph 3 of the Regulations the Application had been “duly made” and published the statutory notice in accordance with the Regulations. The Notice of Application (Appendix E) was placed in the Bedfordshire On Sunday newspaper on 8 August 2010 and displayed on the Application Land itself. It was also served on the landowner and the Houghton Conquest Parish Council with a request to place the Notice of Application on the parish notice boards.

## Statement of Objection and Representations

10. The Application Land is in the private ownership of Mr and Mrs C whose Solicitors, EMW Law sent a Statement of Objection dated 1st October 2010, which is at Appendix F. Houghton Conquest Parish Council did not reply during the objection period.
11. In accordance with the Regulations, the Council sent copies of the Statement of Objection to the Applicant on 15 October 2010. The Applicant was invited to comment on the Statement of Objection and a number of issues were raised (copy of registration authority’s letter is at Appendix G). A copy of the Applicant’s reply is at Appendix H).
12. The Council considered that the Applicant had made out a prima facie case in support of registration and therefore there was no reason in law why the Council should reject the Application ab initio however due to the significant amount of conflicting evidence between the Applicant and the Objectors and the fact that the Applicant had not clarified the question of use by a significant number of the inhabitants of a qualifying locality or any neighbourhood within a locality the Council decided to hold a non-statutory public inquiry at which the Application and evidence could be appropriately tested.
13. This procedure has been used on a regular basis by registration authorities and is considered appropriate for contested or difficult cases. An Inquiry provides the opportunity for an Inspector to hear all the evidence and cross examination and to report to the registration authority. Following consultations as detailed in paragraphs 5 to 8 of the Inspector’s Report, the Public Inquiry took place at the Houghton Conquest Village Hall on 9 March 2011.

## The Public Inquiry and Inspector’s Report

14. The Inspector’s Report deals in detail with the evidential matters including the information given to the Inquiry by the witnesses and the relevant legal tests for the determination of the Application. These are set out in paragraphs 22 to 58 of the Inspector’s Report and the Committee is invited to read and concur with the Inspector’s assessment and conclusions.
15. The Inspector’s Report records that the Applicant did not appear at the Inquiry nor did any of the supporters who completed evidence questionnaires or any local residents. The Objectors Barrister called a number of witnesses to give oral evidence.

16. The Inspector deals with his findings of the fact based on the evidence concluding that the Applicant had failed to demonstrate that the Application Land had been used for sports and pastimes during the relevant period and that the use of the land had been carried out by a significant number of the inhabitants of the locality or neighbourhood within the locality
17. Therefore, the Inspector recommends to the Council that the Application be rejected.

## **The Evidence and Determination**

### **(i) Significant Number of Inhabitants**

18. The Application was supported by 21 evidence questionnaires. The Inspectors assessment is contained in paragraph 44 of his Report.

### **(ii) Locality, or neighbourhood within a locality**

19. The Inspector deals with this issue in paragraph 39 et seq of his Report.

### **(iii) Lawful sports and pastimes**

20. The Applicant and the evidence questionnaires refer to football, cricket, rounders, various children's games, team games (not organised) bird watching, kite flying, cycle and bicycle riding, bonfire parties, dog walking, drawing & painting, bonfire parties, community celebrations, berry picking, people walking, bicycle riding and carol singing, as activities that have taken place on the Application Land.
21. The Inspector's assessment of this issue and in particular the weight of evidence he attributes to the witnesses is considered in paragraph 45 et seq of the Report.

### **(iv) As of Right**

22. To meet this criteria/test the Applicant needs to demonstrate that the use of the Application Land has been without force, without secrecy and without permission. The Inspectors records in paragraph 38 of his Report that the Objectors agreed that if any sports or pastimes had taken place on the land then these had taken place as of right.

### **(v) Land**

23. The Applicant clearly identified the Application Land on the plan marked "A" submitted with his Application form.

### **(vi) For a period of twenty years**

24. The Applicant claims a period from 1976 to June 2010. The relevant period to substantiate use of the land as a Village Green commenced in this case runs from 1 July 1990 to 1 July 2010. Paragraph 20 of the Inspectors Report addresses this matter.

### **The Inspector's Recommendation**

25. The Inspector's report was received on 17 March 2011 and a copy is at Appendix I. Paragraph 59 contains the Inspector's conclusions and recommendation.
26. This Committee, to which Central Bedfordshire Council's functions on commons registration matters have been delegated, have to decide whether to accept or reject the application. It is clearly not for the Committee to reconsider the evidence, which was dealt with at the Public Inquiry. However, the Committee does have to consider whether the legal criteria for registration as a village green under Section 15(2) of the Act have been satisfied, bearing in the mind the evidence and the law as set out in the Inspector's Report.

### **Conclusion**

27. The Inspector's Report has been considered carefully and officers are able to confirm support for the Inspector's conclusions and recommendation that the application to register land described in the Application as The Old Village Hall Site, Pembroke Road, Houghton Conquest as a Village Green should be rejected for the reasons stated.

### **Appendices:**

Appendix A – Extract from the Commons Act 2006 – Section 15  
Appendix B – Application to register land as a Town or Village Green  
Appendix C – Plan of Application Land  
Appendix D – Photographs of Application Land  
Appendix E – Notice of Application  
Appendix F – Statement of Objection  
Appendix G – Letter to Applicant with Statement of Objection  
Appendix H – Applicant's comments on Statement of Objection  
Appendix I – Inspector's Report

### **Background Papers:** (open to public inspection)

(i) Supporting documents submitted with Application to register land as a Town or Village Green....

**Location of papers:** Priory House, Chicksands



APPENDIX A

**Extract from the Commons Act 2006**

**Section 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, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and
  - (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 period of two years beginning with the cessation referred to in paragraph (b).
- (4) This subsection applies (subject to subsection (5)) 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 ceased to do so before the commencement of this section; and
  - (c) the application is made within the period of five years beginning with the cessation referred to in paragraph (b).
- (5) Subsection (4) does not apply in relation to any land where-
  - (a) planning permission was granted before 23 June 2006 in respect of the land;
  - (b) construction works were commenced before that dated in accordance with that planning permission on the land or any other land in respect of which the permission was granted; and
  - (c) the land-
    - (i) has by reason of any works carried out in accordance with that planning permission become permanently unusable by members of the public for the purposes of lawful sports and pastimes; or
    - (ii) will by reason of any works proposed to be carried out in accordance with that planning permission become permanently unusable by members of the public for those purposes.
- (6) In determining the period of 20 years referred to in subsections (2)(a), (3)(a), (4) (a), there is to be disregarded any period during which access to the land was prohibited to members of the public by reason of any enactment.
- (7) For the purposes of subsection (2)(b) in a case where the condition in subsection (2)(a) is satisfied-
  - (a) where persons indulge as of right in lawful sports and pastimes immediately before access to the land is prohibited as specified in subsection (6), those persons are to be regarded as continuing so to indulge; and
  - (b) where the permission is granted in respect of use of the land for the purposes of lawful sports and pastimes, the permission is to be disregarded in determining

whether persons continue to indulge in lawful sports and pastimes on the land "as of right".

- (8) The owner of any land may apply to the Commons Registration Authority to register the land as a village green.
- (9) An application under subsection (8) may only be made with the consent of any relevant leaseholder of, and the proprietor of any relevant charge over, the land.
- (10) In subsection (9)-
  - "relevant charge" means-
    - (a) in relation to land which is registered in the register of title, a registered charge within the meaning of the Land Registration Act 2002 (c.9);
    - (b) in relation to land not so registered-
      - (i) a charge registered under the Land Charges Act 1972 (c.61); or
      - (ii) a legal mortgage, within the meaning of the Law of Property Act 1925 (c.20), which is not registered under the Land Charges Act 1972;
  - "relevant leaseholder" means a leaseholder under a lease for a term of more than seven years from the date on which the lease was granted.

APPENDIX B

Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:

**COMMONS ACT 2006  
CENTRAL BEDFORDSHIRE COUNCIL  
REGISTRATION AUTHORITY**  
  
DATE 1st July 2010

Application number: 1/2010

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1-6 and 10-11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7-8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

**Note 1**  
Insert name of registration authority.

1. Registration Authority

To the

CENTRAL BEDFORDSHIRE COUNCIL

**Note 2**

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

**Note 3**

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

**2. Name and address of the applicant**

Name:

Full postal address:

Postcode

Telephone number:   
(incl. national dialling code)

Fax number:   
(incl. national dialling code)

E-mail address:

**3. Name and address of solicitor, if any**

Name:

Firm:

Full postal address:

Post code

Telephone number:   
(incl. national dialling code)

Fax number:   
(incl. national dialling code)

E-mail address:

**Note 4**

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

\* Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.

**4. Basis of application for registration and qualifying criteria**

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under section 15(8):

If the application is made under section 15(1) of the Act, please tick one of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If section 15(3) or (4) applies please indicate the date on which you consider that use as of right ended.

If section 15(6)\* applies please indicate the period of statutory closure (if any) which needs to be disregarded.

7. Justification for application to register the land as a town or village green

**Note 7**

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

Indulgence by a significant number of residents of Houghton Conquest as of right in lawful sports and pastimes for a period of at least 20 years under Section 15(2) of the Commons Act of 2006 as witnessed by the enclosed statements showing use for activities including football, cricket, rounders, childrens games, bird-watching, kite-flying, cycle and bicycle riding, bonfire parties, cord-singing and others, by most of the villagers over a period extending from 1976 to 30th June 2010.

**5. Description and particulars of the area of land in respect of which application for registration is made**

Name by which usually known:

THE OLD VILLAGE HALL SITE

Location:

SEE MAP A. AND MAP B

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) \*

**6. Locality or neighbourhood within a locality in respect of which the application is made**

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

HOUGHTON CONQUEST PARISH  
(THE VILLAGE OF HOUGHTON  
CONQUEST)

Tick here if map attached:

(MAPS C + D)

**Note 5**

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable it to be clearly identified.

\* Only complete if the land is already registered as common land.

**Note 6**

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

**Note 8**

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

NOT KNOWN BUT BELIEVED TO BE  
ARAGON HOUSING ASSOCIATION.  
(OWNERS).  
NO TENANTS OR OCCUPIERS ON  
LAND SINCE 1976.

**Note 9**

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

N/A.

**Note 10**

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

10. Supporting documentation

MAP A.  
MAP B.  
20+ WITNESS STATEMENTS.



**Note 11**

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

**11. Any other information relating to the application**

PLANNING PERMISSION WAS GRANTED ON 7TH JANUARY 2008 FOR HOUSING BY WOODS-MARLOW LTD. REF: MB/07/01702. THIS IS NOT CONTINUING AS DEVELOPER HAS DECIDED NOT VIABLE.

**Note 12**

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date: 30th JUNE 2010.

Signatures: A. [Signature]

**REMINDER TO APPLICANT**

You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

**Data Protection Act 1998**

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.

# Statutory Declaration in Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

ADRIAN  
ROWAN

<sup>1</sup> Insert full name (and address if not given in the application form).

I, Richard Rowan,<sup>1</sup> solemnly and sincerely declare as follows:—

<sup>2</sup> Delete and adapt as necessary.

1.<sup>2</sup> I am ((the person ~~(one of the persons)~~ who (has) (have) signed the foregoing application)) ((~~the solicitor to (the applicant)~~ (<sup>3</sup> ~~one of the applicants~~)).

<sup>3</sup> Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

(MAP A)

<sup>4</sup> Complete only in the case of voluntary registration (strike through if this is not relevant)

~~4.<sup>4</sup> I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:~~

- ~~(i) a declaration of ownership of the land;~~
- ~~(ii) a declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have~~


Cont/

\* Continued

been received and are exhibited with this declaration; or  
(iii) where no such consents are required, a declaration to that effect.

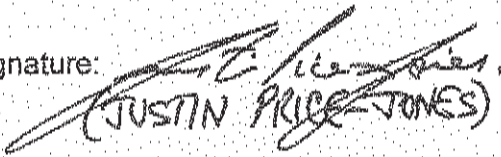
And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said ~~\_\_\_\_\_~~ ~~\_\_\_\_\_~~ )  
~~\_\_\_\_\_~~ )  
at DIXON HOUSE, 77-77 HARPUR ST, )  
BEDFORD MK40 2SY )  
this 1<sup>st</sup> day of JULY 2010 )



Signature of Declarant

Before me \*

Signature:   
(JUSTIN PRICE JONES)

Address: BORNEOS SOLICITORS  
DIXON HOUSE  
77/77 HARPUR STREET  
BEDFORD MK40 2SY

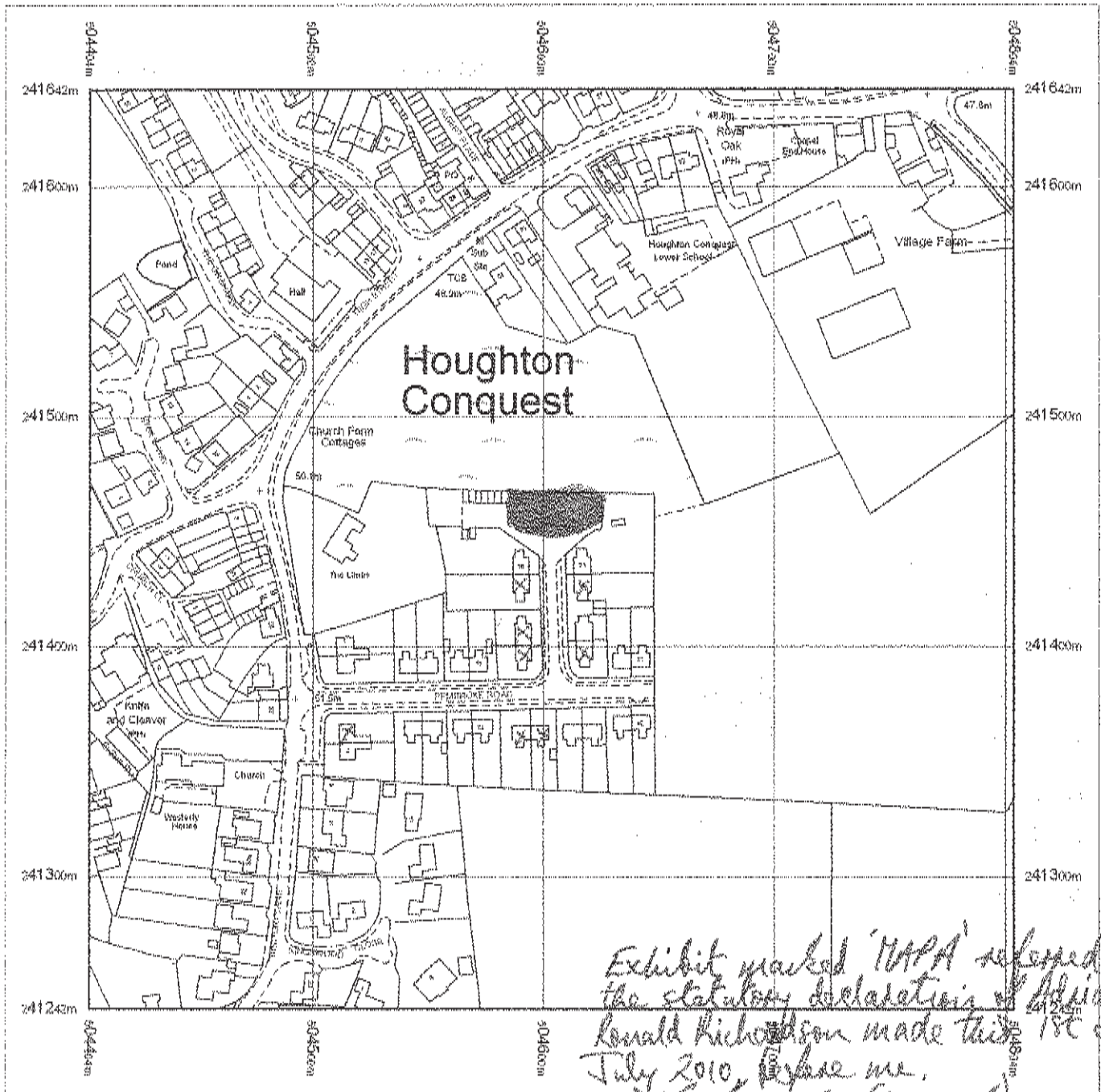
Qualification: SOLICITOR

\* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

**REMINDER TO OFFICER TAKING DECLARATION:**

*Please initial all alterations and mark any map as an exhibit*



*Exhibit marked 'MAP A' referred to in the statutory declaration of Julian Ronald Richardson made this 18<sup>th</sup> day of July 2010, please see.*  
*J.R. Richardson (Solicitor)*  
*(JUSTIN PROFF-JONES)*

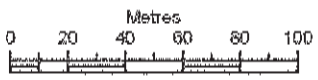
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The representation of a road, track or path is no evidence of a right of way.

The representation of features as lines is no evidence of a property boundary.

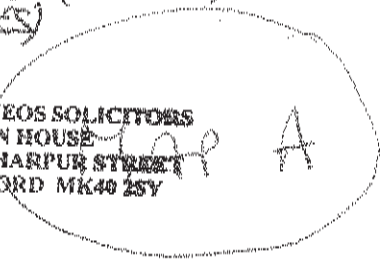


Scale 1:2500

Supplied by: Service Point UK (M Key)  
Serial number: 00006000  
Centre coordinates: 504603.5 241442.25

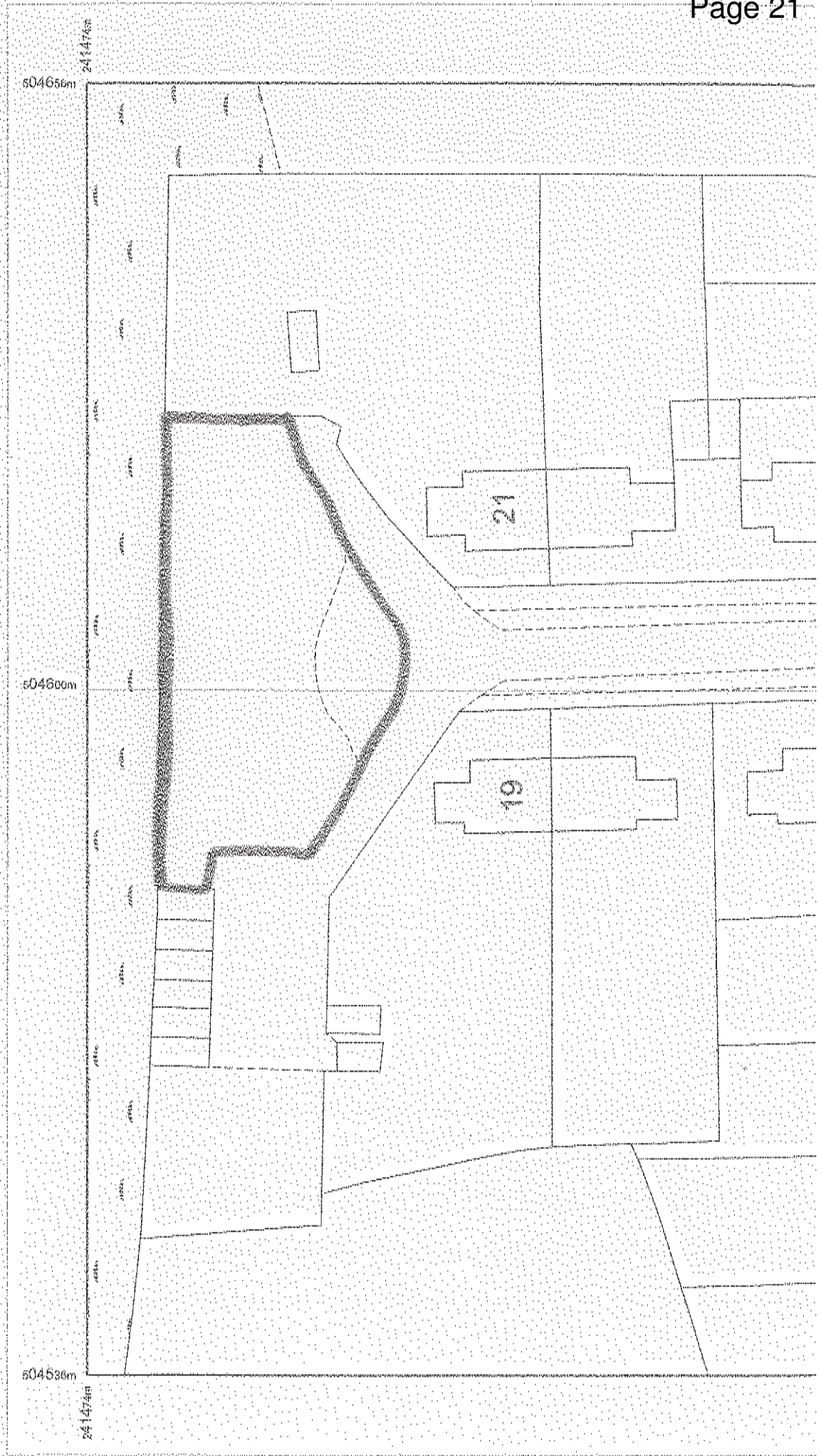
Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey web site:  
[www.ordnancesurvey.co.uk](http://www.ordnancesurvey.co.uk)

**BORNEOS SOLICITORS  
DIXON HOUSE  
77/97 HARPUR STREET  
BEDFORD MK40 2SY**





Plot 5



Justification for application to register the land as a town or village green: Full statement.

HISTORY OF THE LAND

The land was an open field until the local authority (then believed to be Ampthill Rural District Council) decided to build council houses to form Pembroke Road the site along with a Village Hall for the local residents. This house building and the building of the Houghton Conquest Village Hall began in 1950 and all were completed by May 1951.

The area of land (marked in Red on Map A) was the site of that Village Hall and a surrounding grassed area from approximately 1950 till 1976 when the building was taken down and removed from the land. For the quarter-century that the Village Hall stood there the front, sides and rear land were used for recreation by local village people for playing, dog-walking and the various games and recreations stated by local people in various Witness Questionnaires attached. There was no fencing or other boundary markers or signs to prevent this. It was not maintained other than by local villagers cutting grass on the front as needed and the sides and rear were allowed to grow wild.

After the building was removed the land was fully abandoned and remains so to this day. It consists of a concrete strip (the Village Hall floor base, now almost grown over) surrounded by grass with a couple of sapling trees and various bushes. It has always been slightly scruffy but local villagers (my father, now sadly passed away) included have done the work required to keep it clear of becoming fully overgrown by cutting back brambles and light mowing of the grass as they would like to. Over very recent years it has deteriorated on the front (south) part through vehicles turning on it. This is not a necessary manoeuvre by drivers as there is ample turning head in the road; it is simply easy to do. When the green is registered vehicles must be prevented from going onto the land and destroying the grass, to restore it to pedestrian only use.

EVIDENCE

This is easily confirmed by many residents of the village, some of whom have been living here for over sixty (and more!) years. These local residents confirm that the area around the Old Village Hall, when the hall was in use, was used as they have described in their various Witness Statements and that there was no fencing or signage to prevent them from doing so. They and others further confirm that when the Old Village Hall was removed no fences were erected and no signs were placed informing people not to use the land. It was simply left as it was and people made use of it all from that day to this. Access has always been simple and straightforward as the land has no fences, no raised kerbstones or signage and was and is almost tempting to walk onto, being a small green space at the end of a tree lined road.

OWNERSHIP

I believe that the land was possibly owned by a local council; probably Ampthill Rural District Council then Mid - Bedfordshire Council and then passed on to Aragon Housing Association but I am not sure if they still own it. Whoever owned or owns it has made no attempt to make use of it or stop local residents using it at any time in the sixty years; nor during that time have they given permission for use to be made of the land. A developer once obtained full planning permission on the land but he has now abandoned this.

USE OF THE LAND

The land surrounding the Old Village Hall was used for many recreational purposes from 1951; a period of fifty-nine years.

Since the removal of the Village Hall (a new one was completed in the High Street that same year, 1976) this land has been known (quite logically) by villagers as "The Old Village Hall Site". It has

been used by villagers, mainly the inhabitants of Pembroke Road and their village friends, for recreation ever since, an unbroken period of thirty-four years.

This recreation was in the form of impromptu games by children of all ages: rounder's, cricket, football, flying kites, playing with tricycles, bicycles, home made wooden karts, toy cars (small ones to push, bigger ones to ride in), cowboys and indians, roller-skating, hopscotch (and many other games that only children know!), even splashing in puddles in wet times and these have been enjoyed all these years. Adults have walked dogs, played with their children and enjoyed seasonal communal events such as the big bonfires and fireworks on Guy Fawkes Night and New Year's Eve and carol-singing in the days before Christmas. The huge bonfires are now not done as there are larger organized events to travel to but parents in the road still use the land for small firework displays for younger children. These they feel they can control easily, both in terms of scale of display and their children. They also feel that the bigger displays can frighten young children. Local artistic-minded people have used the land to paint and draw both the land and views to the hills behind.

When the land was first used around the Village Hall there were frogs, toads and newts to be found in the drains around the site and these were a great source of fun and learning for people young and old. The drying of the area due to development and drainage has meant that these have largely gone (I think!) but frogs are still to be found in damp weather. The bushes mean that many species of birds are seen regularly and in the late summer blackberries abound and many villagers pick them to make jams and pies. It is quite a race for people as to see who can get their share with some villagers getting up with the sun to pick first! The blackberries are prized as extremely good as there is very little traffic dust and fumes to spoil the fruit.

#### HISTORY OF THE USE OF THE LAND

Villagers have used and still use the land today for many of the same recreations. In the 1950's and 1960's in Houghton Conquest it was possible, as a child, to wander in any direction across fields and through woods and you were not stopped and it was safe to do so. Parents felt no fear for their children and actively encouraged them to do so, to 'get out in the fresh air'. The parents too, walked for exercise and pleasure. This changed gradually as farmers required their fields to be fully productive and so fenced them off. The nature of society also changed until parents were almost filled with paranoia about their children playing out alone. In Houghton Conquest there is a playing field for more organised team games at the rear of the current Village Hall and a children's playground area at the far end of the village. The latter is used predominantly by parents taking very young (pre-school) children and babies in an organized fashion to the playground. However this is not practical for the whims of children who want to play 'now'. This is when children of around five years start to become more independent and want to play and socialize with others of their own age. So since 1976 they have used the Old Village Hall Site land (and it was a timely arrival as the historical comments just above show). The parents are happy to let them as they are safe within sight or earshot. It is children "getting fresh air" so they are not continually playing computer games indoors but getting exercise and learning to play together, aiding their full development. Further, it is easy and quick to walk the dog or join the children at play. When in season the blackberries are as sweet as ever, the fireworks are enjoyed on 5<sup>th</sup> November, on birthdays and New Year's Eve and the land continues to be used by villagers and in particular the residents of Pembroke Road.

#### FUTURE USE

The activities described here have been enjoyed for about three generations. There are villagers here who have enjoyed the use of the land since 1950 and their children and their grandchildren have enjoyed it since and are still doing so today. As residents have moved on or passed away so new families have moved in and they too are enjoying the land. As this is written two nearby houses have become empty and two new families are about to move in increasing the population of the area once more. This "Old Village Hall" village green has helped three generations to grow and live together in real harmony. Without it there would have been no place to have recreation

and play and so the quality of all lives would have been much reduced. It is essential with the pressures of modern life increasing to continue to have this vital green space for people to relax and have fun and enjoyment in relative peace.

The fact that this piece of land is relatively small does not preclude it from being a Village Green; in fact it is the very smallness that makes it such a safe and secure environment for children in particular. It is of a size that small children are not hidden away from their parents and both quite obviously feel safe. It has been and continues to be a small oasis where local people can be untroubled by traffic and passers-by. Being at the end of a road, dog-walkers are not troubled by traffic and the blackberries are untainted by traffic pollution. This space has been, is and will continue to be an understated but very valuable Village Green that gives local people some public room to play, grow and be safe. It is slightly scruffy and has suffered more recently as vehicles are able to drive over it and these have roughed up around half of the land (the south side). This can be rectified to make the land more user-friendly quite easily and there is commitment amongst the residents of Pembroke Road in particular and the rest of the village generally to amend this when the Village Green status is confirmed.

As this is being written there is a development taking place in the field directly behind "The Old Village Hall Site" land. There has always been a fence separating that field from "The Old Village Hall Site" land and a new wooden fence has been erected that reinforces that no entrance can be made from that direction thereby making the green even safer and more secure. It has been an ideal green for sixty years, has been in its' current state of use for thirty-four years to this day and it should remain so!

A R



APPENDIX C

Houghton Conquest  
Lower School

HIGH STREET

TCB  
48.9m

Houghton  
Conquest

15

Church Farm  
Cottages

1m

The Limes

14

51.5m

PEMBROKE ROAD

**LAND SUBJECT TO A VILLAGE GREEN  
APPLICATION AT PEMBROKE ROAD  
HOUGHTON CONQUEST**

Land known as 'The Old Village Hall' site

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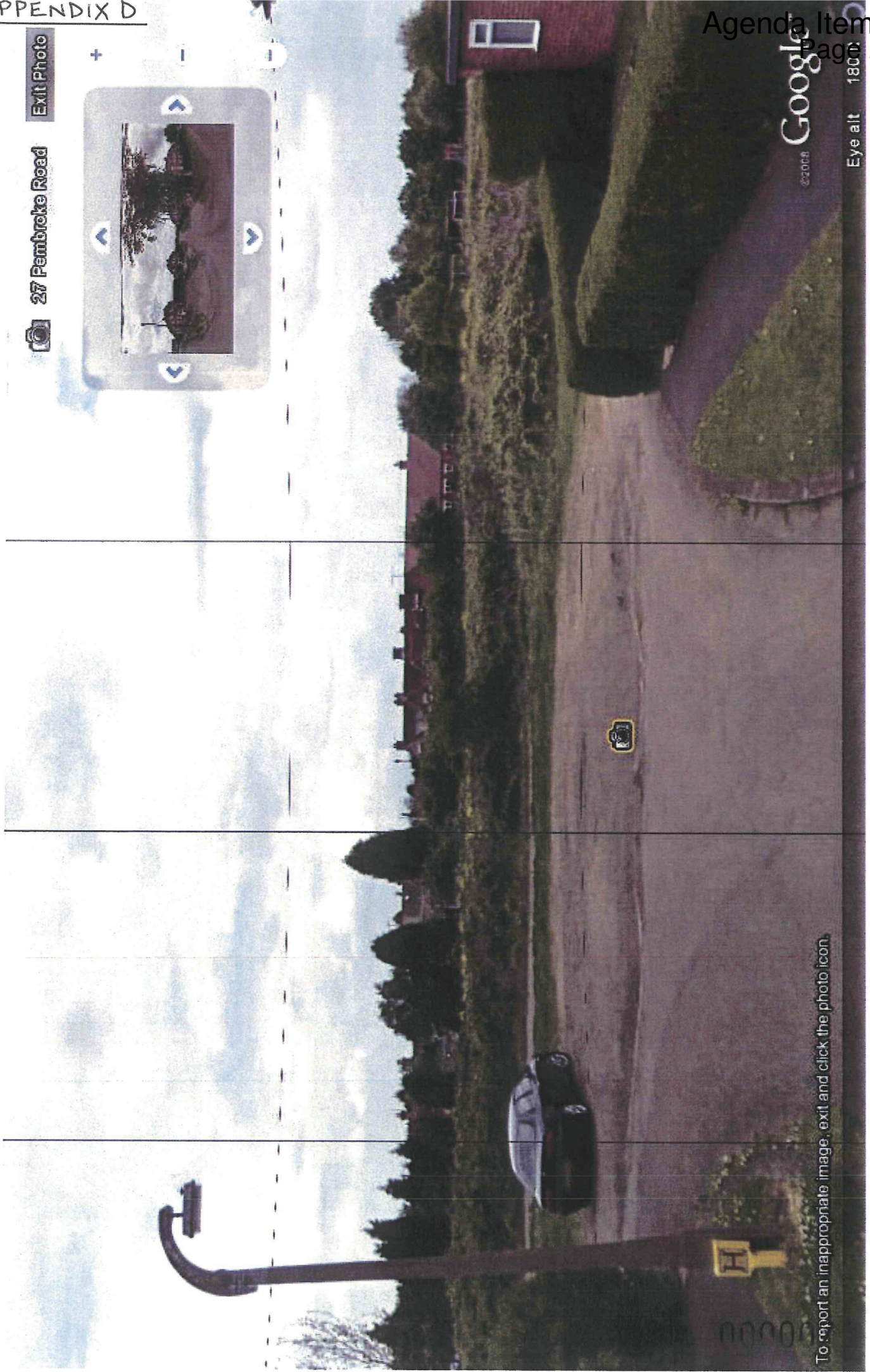


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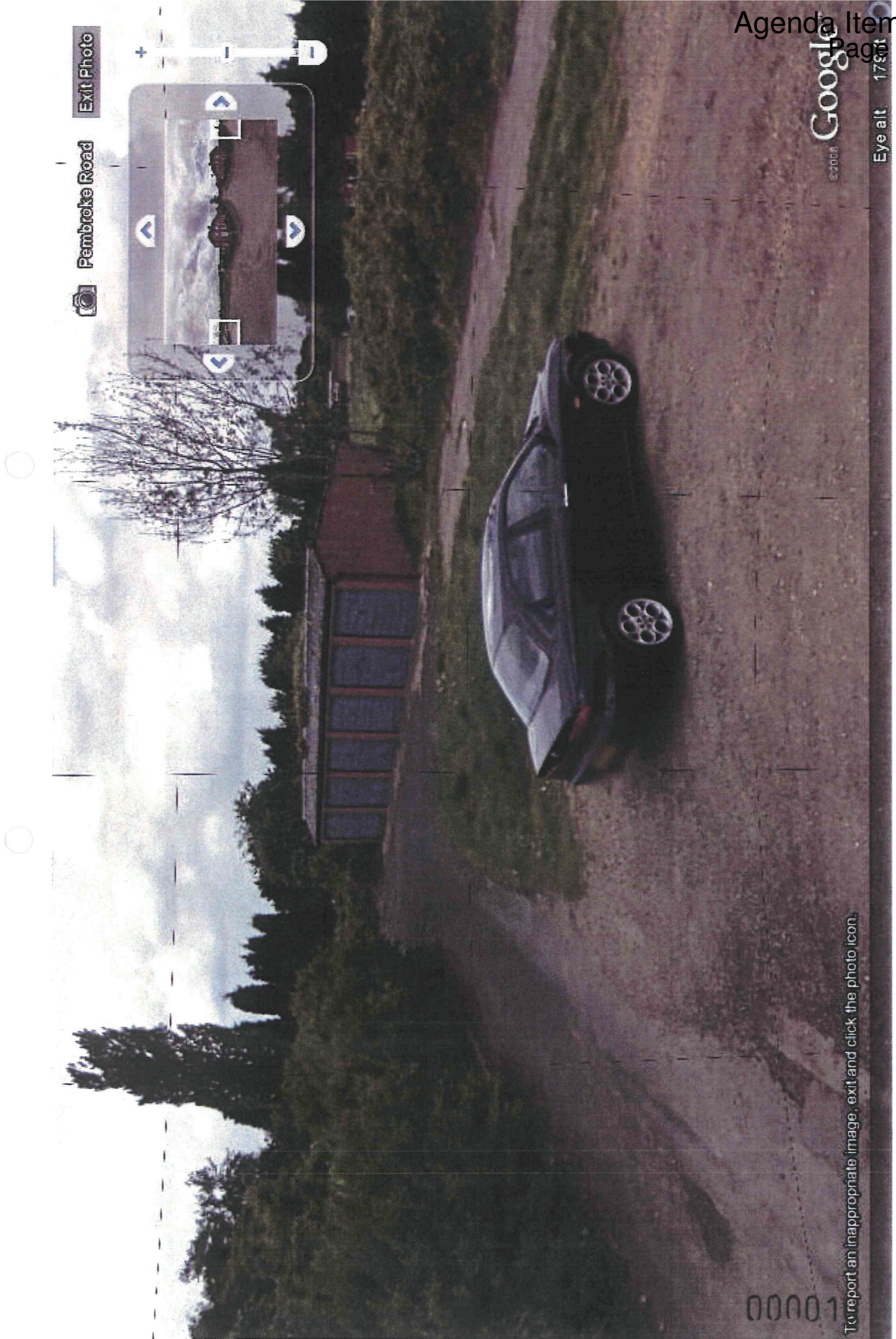
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Exit Photo

Pembroke Road



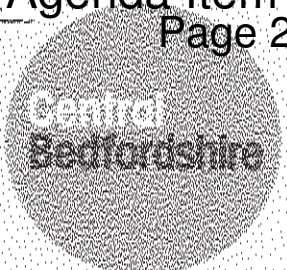
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## COMMONS ACT 2006 – SECTION 15

**NOTICE OF AN APPLICATION FOR THE REGISTRATION OF LAND AS  
A TOWN OR VILLAGE GREEN**

To every reputed owner, lessee, tenant or occupier of any part of the land described below, and to all others whom it may concern.

Application has been made to the Registration Authority, Central Bedfordshire Council, by Mr A Richardson under section 15(1) and 15(2) of the Commons Act 2006 and in accordance with the Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 for the inclusion in the Register of Town or Village Greens of the land described in the Schedule below, which it is claimed to have qualified for registration as a Town or Village Green by virtue of the use of the land for the purposes of lawful sports and pastimes "as of right" and without challenge by the landowner for a period of over 20 years.

The application, which includes a plan of the land proposed for registration, may be inspected at the offices of Central Bedfordshire Council at the address below by appointment. Please contact the Orders & Commons Registration Officer on 0300 300 6249 to make an appointment prior to visiting to ensure that a member of staff is available to assist you. Copies of the application and plan may also be inspected during normal opening hours at Ampthill Library, 1 Dunstable Street, Ampthill.

If the Registration Authority is satisfied that the land described in the Schedule below qualifies for registration as a Town or Village Green, it will so register the land.

Any person wishing to object to the registration of the land as a town or village green should send a written and signed statement of the facts on which the objection is based to the Orders & Commons Registration Officer, Countryside Access, Central Bedfordshire Council, Technology House, 239 Ampthill Road, Bedford MK42 9QQ so as to arrive not later than **4th October 2010**.

Any representations that are to be taken into account by the Authority in reaching a decision on the application cannot be treated as confidential and will be copied to the applicant for comment and may be disclosed to other interested parties, and dealt with in accordance with the Regulations.

Date: 8th August 2010

Technology House  
239 Ampthill Road  
Bedford MK42 9QQ

David Leverington  
Rights of Way Team Leader

**Schedule****Description of the land claimed to have qualified for registration as a Town or Village Green**

Land known locally as "The Old Village Hall Site", Pembroke Road, Houghton Conquest comprising of approximately 749 square metres (0.185 acres) or thereabouts, the Ordnance Survey Grid Reference of which is centred on TL 504603 241458, situated at the northern end of Pembroke Road.

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Seebeck House  
1 Seebeck Place  
Knowhill  
Milton Keynes  
MK5 8FR  
United Kingdom

Mr. Ernest Sutton  
Central Bedfordshire Council  
DX 153440  
SHEFFORD

DX 151620 Milton Keynes 18  
Telephone: 0845 070 6000

Your Ref: EJS/15079C  
Our Ref: P2 MM.cw 6024.45  
Date: 01 October 2010

Dear Ernest

**APPLICATION TO REGISTER LAND AT PEMBROKE ROAD AS A VILLAGE GREEN**

Further to my e-mail today timed at 12:13 p.m. together with attachment, please find enclosed a hard copy of our Objection Statement.

Please acknowledge safe receipt.

Yours sincerely



Marco Mauro  
Solicitor

Telephone: 0845 074 2440  
Mobile: 0772 596 0488  
Fax: 0845 074 2422  
Email: marco.mauro@emwlp.com

International  
Telephone: +44 20 7405 4440  
Fax: +44 20 7405 4222

Cc Chris Heard ✓

www.emwlp.com  
London • Milton Keynes

STATEMENT OF OBJECTION

**STATEMENT OF OBJECTION ON BEHALF OF JOHN GERARD COLEMAN AND GILLIAN DIANNA COLEMAN RELATING TO AN APPLICATION SUBMITTED BY ADRIAN RICHARDSON ON 1 JULY 2010 TO REGISTER LAND AT PEMBROKE ROAD AS A VILLAGE GREEN**

We wish to object to the above application on behalf of John Gerard Coleman and Gillian Dianna Coleman who together own the land to which this application relates.

1. The Registration Authority (RA) must determine this matter under Section 15(2) of the Commons Act 2006 (the Act). In this regard, the RA is reminded of the comments of Lord Bingham in R (Beresford) v Sunderland City Council (2003) UKHL:-

*"It is accordingly necessary that all ingredients of this definition should be met before land is registered, and decision makers consider whether the land in question has been used by the inhabitants of a locality for indulgence in what are properly to be regarded as lawful sports and pastimes and whether the temporal limits of 20 years' indulgence or more is met".*

Whilst the above case pre-dates the Act, the onus is still on an applicant to prove that all of the tests under Section 15(2) of the Act are met.

2. The decision of the RA is subject to judicial review and when determining this matter, the RA must act in accordance with "Wednesbury" principles and have full regard to the Human Rights Act 1998, in particular Protocol 1 (right to protection of property) and Article 6 (right to a fair trial). The RA will also be aware of the comments of Pill LJ in R v Suffolk County Council, ex parte Steed (1996) where he stated that,

*"It is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town or village green".*

3. The background and history in this matter is such that it would be right and proper for the RA to proceed with **considerable** caution when making findings in this case.
4. Since 2004 there have been a number of planning applications, which will be clear from the extensive planning history. It will also be clear from the planning documentation that residents have been strongly opposed to the land being developed for residential purposes, which the objector believes is driven by the fact that there will be an element of social housing. Whilst objections were made by residents in connection with vehicular traffic, visual impact (overlooking and noise), and drainage, no objections were raised alleging loss of any recreational space, which would have been the case if this land was being used as alleged in the applicant's statement.

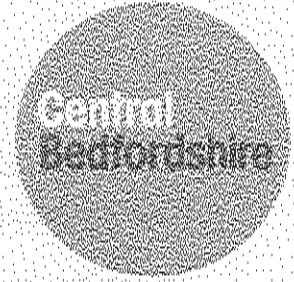


5. The objector does not accept that all of the tests in Section 15(2) of the Act can be met. The objector does not accept the allegations made in connection with the application. The objector considers that the application has been made in another attempt to frustrate the proposed development, which is the subject of the latest planning application, which has been submitted in connection with this land.
6. Whilst the objector considers that there might have been some occasional use, it does not accept that the land has been used on a continuous basis for a period of 20 years in such a character and degree of frequency over the whole of the 20 year period to indicate an assertion that there has been a continuous right under the Act.
7. The objector makes no admission about the locality and whether a significant number of users come from that locality.
8. The objector does not accept that the land has been used as alleged in the applicant's statement. The burden of proof is on the applicant to satisfy the RA that all of the ingredients under Section 15 (2) are met.
9. If the RA is not minded at this stage to dismiss the application then it must provide the objector with an opportunity to cross examine the applicant in respect of its statement and any other interested parties and in this regard the objector will also produce evidence to show that all of the elements under Section 15(2) of the Act can not be met and accordingly reserves its position in this regard.

**Dated 1 October 2010**

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APPENDIX G



Mr A Richardson  
17 Pembroke Road  
Houghton Conquest  
Bedford  
MK45 3LE

Your ref:

Our ref:

Date:

CH / VG

Application No

01/2010

15 October 2010

Dear Mr Richardson

**Commons Act 2006: Section 15**

**Application for the registration of land as a Town or Village Green -  
Houghton Conquest, Bedfordshire ("The Old Village Hall Site")**

I refer to my e-mail dated 5 October 2010 and confirm that Central Bedfordshire Council has received one Statement of Objection to your application to register the above land as a Village Green.

Under paragraph 6(4) of The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007 (2007 Regulations) the Council must send you a copy of every objection statement received and any other matter which appears to afford possible grounds for rejecting the application.

Therefore, I now enclose a copy of the Statement of Objection on behalf of John Gerard Coleman and Gillian Dianna Coleman and you now have the opportunity of dealing with the issues contained in the Statement and subsequent matters as detailed below.

Central Bedfordshire Council needs to know please precisely which allegations in the Statement of Objection you accept and which you propose to challenge. Where the objector alleges that the application or supporting evidence is inadequate or ambiguous, you now have the opportunity to remedy any inadequacy or clarify any ambiguity.

Without prejudice to the requirement for you to deal with every point made in the Statement of Objection, Central Bedfordshire Council, as the registration authority, has to be satisfied that the application meets the required criteria as follows:

- (i) a significant number of
- (ii) the inhabitants of any locality, or of any neighbourhood within a locality
- (iii) have indulged... in lawful sports and pastimes
- (iv) as of right

(v) on the land

(vi) for a period of at least 20 years

And they continue to do so at the time of the application.

You will appreciate that the criteria requirements have raised complex legal issues and, therefore, you may wish to obtain your own legal advice.

One of the issues the Council would be grateful if you could clarify please is the locality or any neighbourhood within a locality in respect of which the application is made, therefore, can you please describe in detail the area you are relying upon, or by reference to a map.

If appropriate the Council will send you further relevant information in compliance with the 2007 Regulations.

I should be grateful if you will please submit your written comments on the Statement of Objection together with any further evidence by Friday 12th November 2010. Central Bedfordshire Council will then give further consideration to the application and objection.

Yours sincerely

**Chris Heard**

Orders & Commons Registration Officer

**Direct telephone** 0300 300 6249

**Email** [chris.heard@centralbedfordshire.gov.uk](mailto:chris.heard@centralbedfordshire.gov.uk)

**Please reply to:**

Countryside Access Team

Central Bedfordshire Council

Technology House

239 Ampthill Road

Bedford MK42 9QQ

APPENDIX H

Countryside Access Team  
(For attention of Mr Chris Heard  
Orders & Commons Registration Officer)  
Central Bedfordshire Council  
Technology House  
239 Ampthill Road  
Bedford MK42 9QQ

11<sup>th</sup> November 2010

Your Ref: CH/VG Application No 01/2010

Dear Mr Heard

Thank you for your letter of 15<sup>th</sup> October 2010. I respond here with comments to the Statement Of Objection you have provided. I see that this is a lone Objection and is from a potential developer of the land in question.

In your letter you list the requirements that must be satisfied, which I am aware of and know that some of these are open to interpretation. I believe all these are satisfied but can confirm the following points.

- (i) a significant number of (the inhabitants).

I have supplied twenty Witness Statements. These are from people that have both used the land for lawful sports and pastimes and have witnessed others doing similar. I do not know if this is viewed as a significant number but I can confirm that I have further Witness Statements should you require them to make this number acceptable to you.

- (ii) the inhabitants of a locality, or any neighbourhood within a locality.

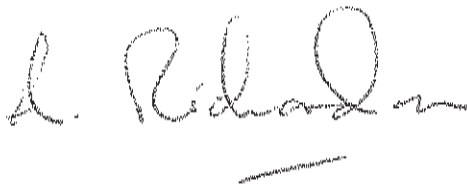
The land has been used by inhabitants of the village and Parish of Houghton Conquest in general and with visiting friends from elsewhere but is more generally used by inhabitants of Pembroke Road and Rectory Lane in particular, simply because of the location. This applies to dog-walkers, children playing, etc., but blackberry-pickers have come from further in the village and children have friends visiting. On the attached map these areas are clearly seen but if further clarification is required I will provide it.

The other points, (iii, iv, v and vi) are satisfied by the Witness Statements.

I enclose my comments on a separate sheet.

I must add that if you are minded to grant the application now then obviously no further action is needed by anyone. However I seen something that needs investigating regarding the ownership of the land and its' passing over to other authorities in the past. I have only received this information from Mr Sutton, Central Beds Council Solicitor, in the last few days so have had no time to digest and take legal advice. If you are not minded to grant the application now I would like to have time to investigate this. As time is not of the essence here I am sure you can allow this. Please let me know? Many thanks for all your help.

Yours sincerely



Adrian Richardson

COMMENTS ON THE STATEMENT OF OBJECTION

1. I believe these points are proven.

2. I accept and agree wholeheartedly with the statement given by The Objectors from the case stated:

*"It is no trivial matter for a landowner to have land, whether in public or private ownership, registered as a town or village green".*

I maintain that the land has been publicly owned since 1947 and the very recent ownership by The Objectors is simply a speculation for profit by them. Whilst that is their prerogative it should be recognised that speculation sometimes does not achieve the intended result. In this case it should be possible for the Objectors to make a profit from their purchase of the garden areas of No's 19 & 21 Pembroke Road and the garage area and the part of the land to the western end of the garages still owned by Central Bedfordshire Council, (should that authority wish to sell). Any development of these combined areas would be enhanced by the Village Green.

According to papers just received from Mr Sutton (Central Beds Council Solicitor) in this case the land was purchased in 1947 by Ampthill Rural District Council (ARDC) using public funds, including rates paid by the inhabitants of Houghton Conguest. So from that date on it was in public ownership. The Village Hall was erected in 1951 on part of the land. The land was vested in Mid Bedfordshire District Council when reorganisation of Local Government took place in 1974, so public ownership continued. In 1976 the Village Hall was demolished and the this part of the land became known colloquially as "The Old Village Hall Site" (TOVHS) and is still known by that name to villagers today. As the land was effectively abandoned then it was at this point that it came into general use by villagers for pastimes and recreation. In 1994 it now appears that some or all of the land was freely passed over to Mid Beds Housing Association Limited. This, at some point not known, was passed again to Aragon Housing Association Limited, a not-for-profit organisation. So it has been in public ownership from 1947 or of use by ratepayers/ council tax payers since then. Using the facts supplied by Mr Ernest Sutton (Solicitor on behalf of Central Beds Council) I cannot find a date for the sale of land from Aragon to Mr & Mrs Coleman (The Objectors) but assume it to be 29-09-2009 when they purchased part of the garden of 19 Pembroke Road?

Finally it is clear from the "Draft No.1: Large scale Voluntary Transfer Of Housing Stock To The Mid-Beds Housing Association" that the land here (TOVHS) was not included in the transfer and with your indulgence I would like to make further enquiries into the actual ownership of this land as it is the very nub of the matter. It is my contention that the land has always been publicly owned and as the criteria are satisfied it should be confirmed as A Village Green. Mr Sutton confirms that the land was not maintained to any degree; not enclosed or signs erected to stop encroachment by villagers and so our case is made from that side.

3. I hope and believe that the RA would always act with caution in all cases.

4. The allegation that residents are opposed to any development is simply not true. I cannot speak for all other residents obviously but having spoken to many of them it is clear that some development of the area to either side of TOVHS would be acceptable if fitting in with the road generally. The very offensive allegation made by the Objectors concerning "an element of social housing" is lamentable. Do they not realise that the whole estate is a mixture of owner-occupier and social housing occupiers? The road began life as 'all social housing' and most of the people who have carried out the right-to-buy are still in those houses and so this statement is very offensive to me and many others if not all and should be withdrawn.

The fact that any proposed development on TOVHS has not been challenged on the grounds of being a Village Green is simply that residents were not aware of their rights. The law that applies came into being in 2006 and received very little publicity. Since the residents have become aware they are now exercising them, as is right and proper for them to do. There was one objection to the proposed latest development that does relate to "loss of recreational space" and I enclose a copy of that letter dated 18<sup>th</sup> May 2010. Various other concerns raised by inhabitants relate directly to loss of amenity.

5. I believe that all the tests in Section 15(2) are met. This is not a simple attempt to frustrate development but is to retain the rights we already have.

6. The land has been used by residents for thirty-four years in a manner that meets the requirements and still is used to this day in similar manner.

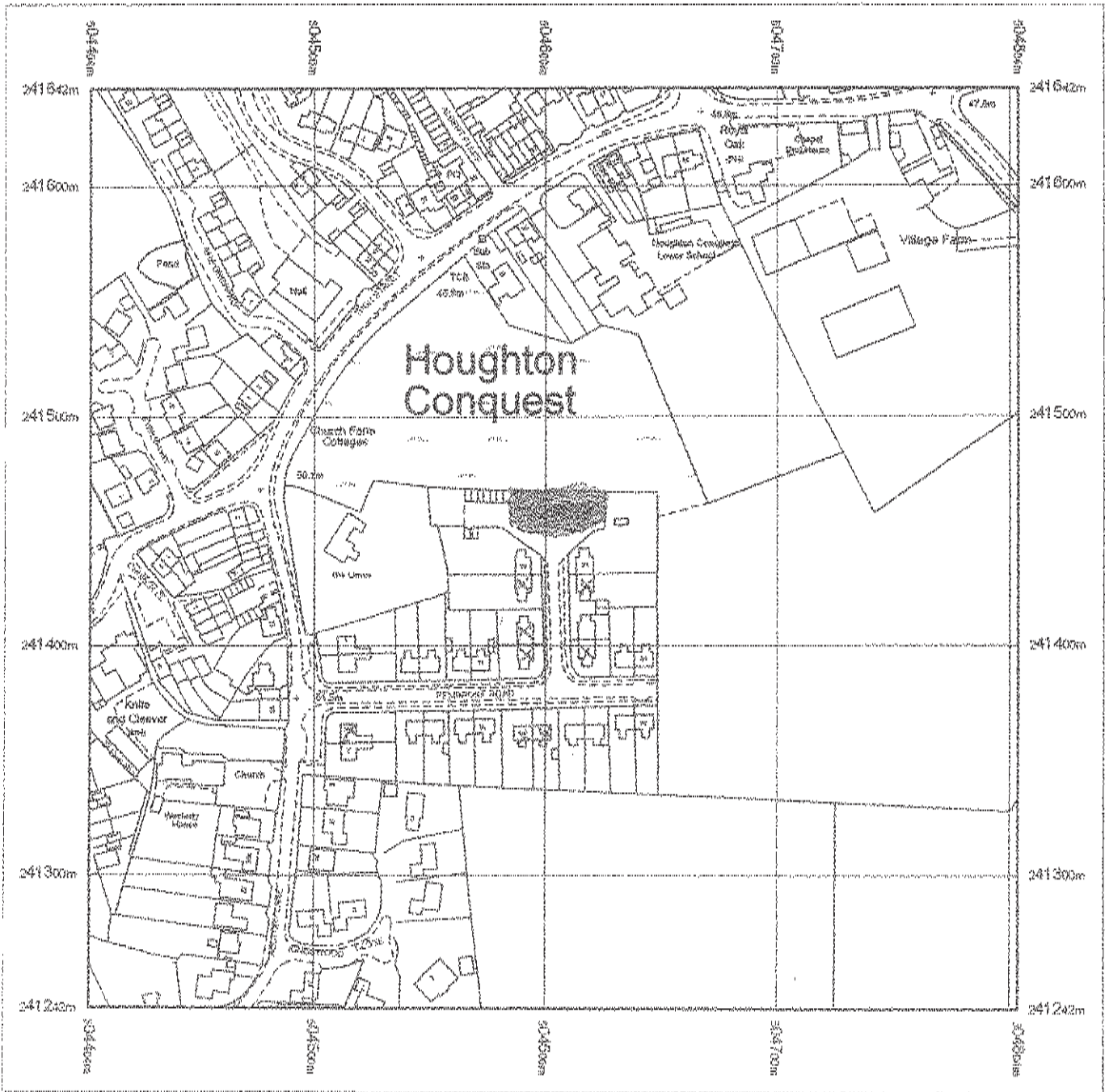
7. The locality is given and a significant number of users come from this locality.

8. The ingredients required in Section 15(2) are satisfied.

9. The RA can now agree the application. The Objectors are not able to provide any evidence to show that all the elements under Section 15(2) cannot be met as they have no knowledge of the TOVHS land until very recently.

If the RA is happy to agree the application then we obviously need to go no further. Should this not be the case I would ask you to agree to more time for me to investigate the ownership of the land in question. I am happy to do anything required by the RA to conclude the application and confirm our Village Green.

**Dated 11<sup>th</sup> November 2010**



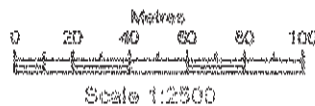
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The representation of features as lines is no evidence of a property boundary.



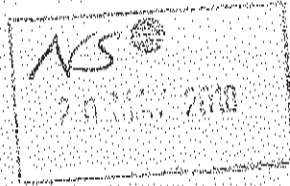
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Further information can be found on the OS Sitemap Information leaflet or the Ordnance Survey web site: [www.ordnancesurvey.co.uk](http://www.ordnancesurvey.co.uk)

MAP A  
(1)



17 Pembroke Road  
Houghton Conquest  
Bedford MK45 3LE



Central Bedfordshire Council  
Mr Gary Worth: Assistant Director - Development Management  
Priory House  
Monks Walk  
Chicksands  
Shefford  
Beds SG17 5TQ

Your Ref: Application No: CB/09/06454/FULL

Contact: Nicola Stevens

18<sup>th</sup> May 2010

Dear Mr Worth

Thank you for your letter of 29<sup>th</sup> April regarding the amendments to the above application. I would like the following comments to be considered.

Although a lot of incredibly ridiculous points have been changed there are still some that prove that the author of the Planning And Access Design Statement has probably never seen the village of Houghton Conquest. The first point demonstrates this.

#### 1.3 SITE HISTORY:

*"Standing opposite a pasture, is a row of 17<sup>th</sup> century brick almshouses, to which additions to the back and renovations were made during the last century".*

They were also pulled down in that century, around the late sixties having been uninhabitable for some years.

#### 2.4 BUILT ENVIRONMENT: *"The 10 unit development brings life to a disused site containing a number of derelict garages"*

This lie is repeated here and should not go unchallenged. The six garages were and are perfectly sound and were functioning until the tenants were ordered to vacate very recently. This was doubtless to make possession easier to gain if planning was approved. The buildings are sound and weatherproof but to this end the site vegetation has been left to overgrow to give an appearance of neglect. Simple pruning and the garages are there for use again.

*"The increase in number of vehicles to the area will not have a noticeable effect on the existing infrastructure."*

The loss of amenity of these garages has already led to heightened tension among neighbours trying to park a further six cars in already overcrowded Pembroke Road and should be reversed immediately. 43 more people will bring at least twenty more cars so "a noticeable effect" is certain!

**POLICY BE1:** (iii) The proposed development makes a mockery of this point as to "density, massing and layout" and (v) "Any additional traffic expected to arise from the development, either in relation to highway capacity or general disturbance, and provision made for car parking."

The population of Pembroke Road is currently 60 (sixty) people. The development plans show that the proposed development would add 43 (forty-three) more people to the road. This huge increase in a tiny area is madness. We are not an inner city but a small village and the quality of life and amenity would be severely compromised with this potential development. Where would children play? Where are all the additional vehicles going to park or even pass each other? That is not quality of life; it is simply creating problems for neighbours to coexist happily. With no space to develop children either turn to mischief that can get out of hand or move further into the village causing problems there.

**4.0 ACCESS STATEMENT:** The sections 4.1, 4.2, and 4.3 simply reiterate the Pedestrian Access, Vehicular Access and Parking and Public Transport problems again with their claims being untrue as I have pointed out above.

**4.5 EMERGENCY ACCESS:** "The site is fully accessible to all emergency vehicles." This is only true if there are no parked vehicles on the very narrow road. There have recently been problems for nurses and an ambulance being unable to reach the house they needed to and this can only get worse with more vehicles in the road.

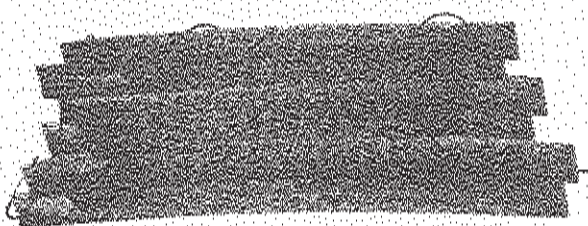
**5.0 SUMMARY:** "The proposed residential development is of great benefit to the local area by developing a derelict unattractive domestic garage site in the middle of a residential area into an attractive usable residential addition to the area."

The lie is again repeated; the garages are fine and have a long term future if left and are useful for removing cars from parking on the road. The design of the houses may be attractive but that is not enough. There are too many houses/bungalows for such a tiny plot and this will cause immediate and future problems of tension and overcrowding. Pembroke Road is fine and is being reborn with new young families and should be allowed to develop that way. Possibly one or two houses or bungalows could be accommodated but not this colossal amount of housing and people.

The centre part of the site is known as the 'Old Village Hall' and is where that building stood until 1976. Since then that area has been used by local people for recreation and play. It is now proposed to be taken away and built upon, which reduces the recreational area and increases the people; completely crazy. To this end a Form 44: Application for the registration of land as a Town or Village Green (Commons Act 2006: Section 15) has been submitted to make that area a Village Green for the local people to continue their enjoyment of it. This is a much more sensible use of the site and perhaps the developer could build some houses or bungalows to each side, leaving the garages of course, as an essential part of the road overall.

I hope you will accept that the loss of amenity (the play area), privacy (more people in a smaller area) and access (through increased vehicle numbers) with the increased noise and traffic will lead to loss of quality of life which can be avoided by refusing this proposed plan.

Yours sincerely

A large rectangular area of the document is completely redacted with black ink, obscuring the signature and any text that might have been present.A smaller rectangular area at the bottom left of the page is redacted with black ink, likely covering the sender's address.

APPLICATION BY MR [REDACTED] R [REDACTED] TO REGISTER  
LAND AT PEMBROKE ROAD, HOUGHTON CONQUEST  
AS A TOWN OR VILLAGE GREEN

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INSPECTOR'S REPORT

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Preliminary

Introduction

1. I am instructed by Central Bedfordshire Council ('the Council') to advise it in its capacity as registration authority, regarding determination of the application dated 1<sup>st</sup> July 2010 ('the Application') submitted by Mr A [REDACTED] R [REDACTED] ('the Applicant') seeking the registration of land at Pembroke Road, Houghton Conquest ('the Land') as a town or village green pursuant to section 15(2) of the Commons Act 2006 ('the 2006 Act').
2. The Application is the subject of an objection by the landowners, Mr [REDACTED] C [REDACTED] and Mrs [REDACTED] C [REDACTED]. An objection dated 1<sup>st</sup> October 2010 was lodged on behalf of Mr and Mrs C [REDACTED], who are referred to collectively for the purposes of this Report as 'the Objectors'.
3. I held a public inquiry ('the Inquiry') which sat for one day on 9 March 2011 at Houghton Conquest Village Hall. At the Inquiry, the Applicant did not appear, whilst the Objectors were represented by Mr Douglas Edwards QC, of counsel.
4. Prior to the opening of the Inquiry, I conducted an unaccompanied site visit. There was no request from any party that I conduct an accompanied site visit, and I did not consider it necessary to undertake one.

**The Applicant & the Application**

5. This case is somewhat unusual, insofar as on 24<sup>th</sup> January 2011 the Applicant contacted the Council and indicated that he wished to withdraw the Application. The 2006 Act does not

contain any provision which expressly allows for the withdrawal of an application to register land as a town or village green, and accordingly the Council contacted the Objectors' representatives and invited them to make representations before reaching a decision in respect of the Applicant's request. The Objectors indicated that they wished the Application to be determined.

6. Having considered the representations of both parties, the Council decided to proceed to determine the Application. Accordingly I issued directions on 2 February 2011 which provided, inter alia, a timetable for all parties to submit the documentary evidence on which they proposed to rely. The Applicant initially indicated that he would pursue the Application, but subsequently indicated that he would not appear at the Inquiry<sup>1</sup>.
7. In order that the residents of Houghton Conquest should not be prejudiced by the Applicant's actions, the Council notified all those persons who had submitted written evidence in support of the Application regarding the Applicant's request to withdraw, by letter dated 2 February 2011. The letter expressly indicated that should the recipient wish to support the Application, he/she could attend the Inquiry.
8. In the event, no person attended the Inquiry in support of the Application.

#### Without Prejudice Correspondence

9. On 8<sup>th</sup> March 2011 the Applicant submitted three documents to the Council, in purported response to the witness statement of Mr C [REDACTED]. These documents, which comprised a draft deed of settlement between Mr C [REDACTED] and the Applicant (A1), an undated letter to the Council containing submissions (A2) and a further letter dated 8<sup>th</sup> February 2011 from the Objectors' solicitors to the Applicant's solicitor (A3). The significance of these documents was insofar as they apparently related to an attempt by the parties to negotiate a settlement in relation to the Application.

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<sup>1</sup> The Applicant requested that the Inquiry be delayed, but the Council declined to postpone it. The Applicant also indicated that he would be unable to comply with the timescale for submission of evidence contained in my directions. The Council wrote to the Applicant indicating that it was prepared to relax the terms of the directions, so as to provide him with a further period to submit his evidence, but the Applicant indicated he would still be unable to comply.

10. The Objectors did not object to the late submission of evidence by the Applicant, but contended, through their counsel Mr Edwards, that the matters and documents which the Applicant sought to raise had all been discussed/prepared in the course of 'without prejudice' correspondence. In relying on the documentation, the Applicant had, they asserted, waived his right to privilege in respect of that correspondence. Accordingly, they sought permission to adduce a witness statement from Mr Mauro, the Objectors' solicitor, to which was exhibited a bundle of further documentation which I was informed comprised the full extent of the 'without prejudice' correspondence between the parties.
11. I granted that application, but made a direction that the witness statement and exhibit of Mr Mauro ('O1') should be provided to the Applicant, with provision for him to make representations in respect of it within 7 days, should he so wish. The Applicant subsequently provided a response to Mr Mauro's statement; I have given the reference 'A4'. Document A4 was provided to the Objectors, and the latter have indicated that they do not wish to add anything to the representations made on their behalf at the Inquiry.
12. Before turning to the substance of the Application, I consider it appropriate to make certain observations regarding documents A1, A2, A3, A4 and O1.
13. I do not consider that this documentation provides me with any material assistance in making my recommendation to the Council.
14. It is apparent that in the course of the last six months or so, the parties have discussed the possibility of the Applicant withdrawing the Application, on payment of a sum of money by the Objectors. However, I make no finding as to whether either party ever intended to go through with the proposed transaction; I do not consider that I need to do so, since the question of whether either or both parties genuinely sought to reach settlement has no significant bearing on the matters which I need to resolve.
15. In particular, I do not consider the fact that they were prepared to pay the Applicant to withdraw the Application represents any acknowledgement or recognition on the part of the Objectors that the Application was in any way well-founded.

16. In this context I note the statement in Mr Mauro's email of 11 August 2010<sup>2</sup> (which enclosed a copy of a draft deed of settlement) to the effect that:

*"I should also make it clear that my client does not accept that this land has been used as alleged in Mr R██████████'s application and we strongly refute the application".*

However, even in the absence of such a caveat, I would not regard such attempt at settlement as necessarily amounting to any sort of concession. Rather, it is my view that a decision by a landowner to negotiate in this way may be nothing more than a commercial decision to attempt to bring prompt resolution to a potentially problematic situation.

17. Similarly, and although his course of conduct as asserted in document A4 strikes me as peculiar, I do not see that the decision by the Applicant to entertain settlement discussions relating to the withdrawal of the Application necessarily demonstrates any bad faith on his part, or indeed a lack of conviction as to the merits of the Application.

### The Application

#### The Legislation

18. The Relevant legislation for the purposes of the Application is, as already noted, to be found in the Commons Act 2006. Insofar as is relevant section 15 of that Act provides:

*(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.*

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<sup>2</sup> Contained in the exhibit to O1.

### **The Land**

19. The Land comprises a broadly rectangular shaped area located at the northern end of Pembroke Road. To the south lie no.s 19 and 21 Pembroke Road, located either side of the public highway. To the west are situated six garages, which appear to be accessed by a road running along the south west of the Land. The Land is bounded to the north by brambles and a hedge, whilst to the east there are more brambles. Part of the Land is mud and grass but the northern portion comprises hard standing. I understand that the hard standing represents the remains of the old village hall, which once stood there.

### **The 20 Year Period**

20. The Application was made pursuant to section 15(2) of the 2006 Act. As such the relevant period within which the Applicant must show that the Land has been used in the requisite manner in order to satisfy the statutory requirements of the 2006 Act is the 20 year period 1<sup>st</sup> July 1990 and the 1<sup>st</sup> July 2010 ('the Relevant Period').

### **Neighbourhood & Locality**

21. The Application is made in reliance on the use of the Land for sports and pastimes by the inhabitants of "Houghton Conquest Parish (The village of Houghton Conquest)". It is unclear whether reliance is placed on use by members of the parish – it being a 'locality' for the purposes of the 2006 Act – or on the use by inhabitants of the village, it being a 'neighbourhood' within the locality of the parish.

### **Applicant's Evidence**

22. As already indicated, no person attended the Inquiry in support of the Application. However, the latter included evidence as to the use of the Land by local people, in the form of 21 evidence questionnaires. These had been completed by persons who either live or, at some point during the Relevant Period, lived at one of 10 addresses in Houghton Conquest. Of these addresses, 8 of them are located in Pembroke Road<sup>3</sup>, one is located in Victoria Drive<sup>4</sup>, and one is in Church Close<sup>5</sup>.

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<sup>3</sup> No.s 4, 13, 14, 15, 16, 17, 23 and 27 Pembroke Road

<sup>4</sup> No. 20 Victoria Drive

<sup>5</sup> No.2 Church Close.

23. The signatories of the questionnaires<sup>6</sup> all state that they have used the Land for various activities during the Relevant Period. The activities in question include pastimes such as dog-walking, cricket and football, as well as more sedentary pursuits such as painting and bird watching.
24. Further, 14 of those who have signed the questionnaires claim to have used the Land throughout the entirety of the Relevant Period. Of the remainder, a further 5 people appear to have used the Land whilst a resident of Houghton Conquest for a portion of the Relevant Period, whilst 2<sup>7</sup> do not claim to have used the Land during the Relevant Period, other than when living elsewhere than Houghton Conquest.
25. In addition to the questionnaires, the Applicant has also provided a statutory declaration in support of the Application.

#### Objectors' Evidence

26. Aside from document O1, the evidence submitted by the Objectors comprised statutory declarations from 5 individuals, namely Mr C [REDACTED], Mr Stephen French, Mr John Hargreaves, Mr Paul Hooley and Mr Krzysztof Reiter<sup>8</sup>.
27. In the following paragraphs, I summarise the evidence given by those of the Objectors' witnesses who appeared before me at the Inquiry. This section of my Report is not a precise minute of each witness's evidence, but rather a general record of what I considered to be the thrust of their testimony (both written and oral), insofar as it was relevant to the matters to which I must have regard in making my recommendation.

Mr C [REDACTED]

28. Mr C [REDACTED] had acquired a contractual interest in the Land in 2005, and subsequently acquired the freehold title in 2009. He had only ever known it to be scruffy and overgrown. He considered that he had visited the Land on approximately 100 occasions, and had never once seen any use of it for lawful sports or pastimes. He indicated that he had seen children

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<sup>6</sup> One of the questionnaires, that of Mr Adam Dickinson, is signed by the Applicant 'for' Mr Dickinson. Mr R [REDACTED] has also signed a questionnaire himself.

<sup>7</sup> Tony Speers and Mr D Speers

<sup>8</sup> Mr Reiter's declaration was provided after the Objectors' bundles were submitted in accordance with my directions. Accordingly I gave that document a reference number, 'O2'.



playing on Pembroke Road on about half a dozen occasions, but the area of play had been significantly to the south of the Land, at the point where that part of the road which runs 'north-south' joins the 'east-west' limb of Pembroke Road. He had provided a written record of certain site inspections he had undertaken, which indicated that he had only ever seen the Land used for parking cars.

29. He had spoken with certain local people, notably the inhabitants of no.s 19 and 21 Pembroke Road, who had indicated that they wished to see the Land 'cleaned up'.
30. Mr C [REDACTED] had pursued various development options on the Land in the period 2005-2010. In 2007 he had succeeded in obtaining planning permission for a development which would have required him to acquire and demolish the Applicant's property at no.17 Pembroke Road. However, he had elected not to pursue this scheme since he no longer regarded it as viable. He suspected that the Applicant's motivation in submitting the Application was disappointment that Mr C [REDACTED] was no longer proposing to acquire his property to effect his development on Pembroke Road.

*Mr French*

31. Mr French is the director of a company known as Taylor French Developments. He has entered into an arrangement with Mr C [REDACTED] which entitles him to purchase the Land. A planning application was submitted on his behalf in 2009, which sought consent to develop an area which includes the Land, for 10 residential units.
32. Mr French considered that he had visited the Land on roughly 20 occasions, and had never seen it in use for lawful sports and pastimes. He had twice seen children playing in the area, but they had not been playing on the Land. Rather, they had been cycling on that part of Pembroke Road which runs 'east-west' towards Rectory Lane.
33. He had never seen the Land looking other than its current state, which he described as scruffy and unmaintained. He had made inquiries of the landowner previous to Mr C [REDACTED], Aragon Housing Association, which indicated that the land had never been formally maintained whilst it had been in their ownership. Like Mr C [REDACTED], he had also spoken to the inhabitants of no.s 19 and 21 Pembroke Road, who had expressed a desire to see the condition of the Land improved.

*Mr Hargreaves*

34. Mr Hargreaves is a director of Woods Hardwick Planning Ltd. His involvement with the site began in 2005, when he assisted Mr C [REDACTED] in bringing a planning application for residential development of an area which included the Land. He subsequently pursued a planning appeal to the Secretary of State on Mr C [REDACTED]'s behalf in respect of that planning application (in 2006), and later succeeded in obtaining development consent in 2007. He was not responsible for the most recent planning application, submitted on behalf of Mr French.

35. He had visited the Land on roughly 3 occasions, and had never seen it in use for sports and pastimes. He felt the current appearance of the Land was indicative of how it had appeared throughout the period 2005-2010.

Discussion and Conclusions

36. In order for registration of land to be justified, an applicant must demonstrate on the balance of probabilities<sup>9</sup> that it has been used for lawful sports and pastimes by a significant number of the inhabitants of a neighbourhood or locality during a relevant 20 year period, such use being as of right.

37. In the following paragraphs, I consider the extent to which the Applicant in the present case has satisfied each of the elements of the statutory 'test'.

*'As of Right'*

38. In making his closing submissions Mr Edwards indicated that, for the purposes of the Application only, the Objectors were prepared to concede that such use of the Land for lawful sports and pastimes as had taken place, had been carried on as of right.

*'Neighbourhood and Locality'*

39. Mr Edwards accepted on behalf of the Objectors that the parish of Houghton Conquest was a 'locality' for the purposes of the 2006 Act. However he contended that such evidence of

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<sup>9</sup> In having regard to the burden of proof, I note the comments of Lord Bingham at paragraph 2 of the decision in R (on the application of Beresford) v Sunderland City Council [2004] 1 AC 889, citing with approval Steed LJ in R v Suffolk County Council ex parte Steed (1996) 75 P&CR 102.

user as was before the Inquiry did not support the case that the Land had been used by the inhabitants of that locality, since there was an insufficient 'spread' of users throughout the extent of the locality.

40. In answer to a proposition which I put to him, Mr Edwards indicated that, were I to interpret the Application as having been made on the basis of the use of the Land having been undertaken by the inhabitants of the village of Houghton Conquest, that being a neighbourhood within the locality of the parish of Houghton Conquest, his position would be the same – namely that there was insufficient spread throughout the geographical area relied upon<sup>10</sup>.

41. I consider that Mr Edwards ground of objection is well founded. I am not aware that there is any settled authority of the courts which conclusively addresses this question of 'spread and fit'. However, it is my view that in order for it to be demonstrated that use of land has been carried on by the inhabitants of a particular neighbourhood or locality, it is necessary that an applicant must show that use has been carried out by the population of that area as a whole, and not simply by those living in a particular corner of it. Of course, it will not be necessary to demonstrate use by an inhabitant of every street – still less every property. Further, I recognise that in very many cases there will be a concentration of users in the properties which are situated closest to the alleged town or village green. However, there should in my view be something approaching a 'scattering' of users throughout the area relied upon – or at least throughout large parts of it. I am aware that various other inspectors have reached similar conclusions, and indeed Mr Edwards provided me with various reports in this regard<sup>11</sup>.

42. As already noted above, those persons who have claimed to have used the Land throughout the Relevant Period hail overwhelmingly from a particular street in its immediate vicinity – namely Pembroke Road.

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<sup>10</sup> I accept the proposition of Mr Edwards that in order for an area to comprise a neighbourhood it must possess a 'degree of cohesiveness', as indicated by Sullivan J in R (on the application of Cheltenham Builders Ltd) v South Gloucestershire District Council [2003] 4 PLR 95. I recognise that I heard no evidence as to whether Houghton Conquest is capable of comprising a neighbourhood; however I consider it highly likely that the settlement would comprise a neighbourhood. Having regard to the Applicant's answer to question 7 in the Application form, it is my view that it is at least possible that the Applicant intended to rely on the village of Houghton Conquest as a neighbourhood or locality, and so have considered this possibility in drafting my Report.

<sup>11</sup> See the Objectors' Authorities' Bundle, Tabs 13 – 16.

43. Accordingly, insofar as there has been use of the Land for lawful sports and pastimes during the Relevant Period, I do not consider that use has been carried on by the inhabitants either of the locality of Houghton Conquest parish, or the neighbourhood of Houghton Conquest within Houghton Conquest Parish, but rather by the residents of certain properties in the immediate vicinity of the Land.

*'Significant Number'*

44. Mr Edwards on behalf of the Objector contended that the Applicant had not demonstrated use of the Land by a significant number of the inhabitants of either the parish or the village of Houghton Conquest had made use of the Land. Given my conclusions as to the degree to which the Land was used for lawful sports and pastimes (see the following section of this Report), it follows that I accept that the Land has not been used for the requisite sports and pastimes by a significant number of the inhabitants of a neighbourhood or locality.

*'Use of Land for lawful sports and pastimes'*

45. It is well-recognised that in the context of an application to register land as a town or village green, the burden of proof falls on the applicant<sup>12</sup>.

46. In the present case, having regard to the comments of Lord Hoffman in R v Oxfordshire County Council ex parte Sunningwell Parish Council (2000) 1 AC 335, I accept that the various activities described in the evidence questionnaires are such as would comprise lawful sports and pastimes for the purposes of the 2006 Act. Further, I note that a substantial number of the signatories of those questionnaires claim to have used the Land for sports and pastimes throughout the Relevant Period.

47. However, neither the Applicant nor any of his witnesses attended the Inquiry to give oral evidence. As such, it was not open to Mr Edwards to cross-examine them, nor was I able to put questions of my own. In circumstances such as these, where the evidence is entirely untested, I do not consider I can attach anything more than limited weight to it.

48. In addition, I consider that the Applicant's position in this regard is further weakened by the various representations which the Objectors provided to me, which had been written by

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<sup>12</sup> In having regard to the burden of proof, I note the comments of Lord Bingham at paragraph 2 of the decision in R (on the application of Beresford) v Sunderland City Council [2004] 1 AC 889, citing with approval Steed LJ in R v Suffolk County Council ex parte Steed (1996) 75 P&CR 102.

local people to the Council in the context of the various planning applications which had been submitted in recent years in respect of the Land. These representations, the vast majority of which were opposed to the development proposed, mentioned various reasons why planning permission should not be granted to develop the Land. However, none of them (save one by the Applicant, which I consider in paragraph \*\*) stated in terms that permission to develop should be refused, owing to the use of the Land made by local people for recreation, and the loss of 'recreational space' that would result in the event that development were to take place.

49. In circumstances where a local community is opposed to development I would expect an issue such as this to be raised as a ground of objection. I consider its omission to be strongly indicative that such use of the Land as did take place for lawful sports and pastimes was very limited, and certainly not such as to suggest to the notional landowner that local people were asserting village green rights over his Land<sup>13</sup>.
50. The only reference to recreational activity in the context of these objection letters (again, saving that of the Applicant), is to children 'playing in the road'<sup>14</sup>. However, such statements do not justify my concluding that activity was taking place on the Land, as opposed to elsewhere. Indeed, in this context I note that both Mr French and Mr C [REDACTED] witnessed children playing in the road – namely Pembroke Road – as opposed to on the Site.
51. The exception is, as I have already indicated, the objection letter written by the occupant of 17 Pembroke Road dated 18 May 2010<sup>15</sup>. In that letter the Applicant refers to the use of the Land as an "*impromptu play area for children*", claiming also that since 1976 the Land "*has been used by local people for recreation and play*".
52. Such statement might, in ordinary circumstances be a weighty consideration in favour of the Application. However, in having regard to the letter of 18 May 2010 I must also have regard to previous letters written by the Applicant in support of previous development proposals

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<sup>13</sup> See *R v Oxfordshire County Council ex parte Sunningwell Parish Council* (2000) 1 AC 335 at 352H where Lord Hoffman confirmed that, when considering whether the manner/nature of use of land is such as to justify registration as a town or village green, the question for the court to consider is "*how the matter would have appeared to the owner of the land*" during the Relevant Period

<sup>14</sup> See for example the letters of Mr and Mrs Rose of 5 Pembroke Road, dated 12 and 21 April 2005. This issue was picked up by officers in their report in respect of the planning application – see Objector's Bundle, page 124C.

<sup>15</sup> Objector's Bundle, page 207. Although the author's name is blacked out, the address is that of the Applicant. Given that the Applicant apparently continues to reside at 17 Pembroke Road, I see no reason to conclude other than that the Applicant wrote the letter in question.

on the Land. For example, I note that in a letter received by the Council on 16 May 2005<sup>16</sup> the Applicant described the Land in the following terms, namely as a:

*“rough area at the end of the road [which] has been an eyesore since 1975 when the old Village Hall was knocked down. Since then it has been untended and gets the odd car dumped on it and is overgrown and spoils the end of the road completely”*

I also note the comment in a subsequent undated letter that the area is a *“derelict waste piece of land”*<sup>17</sup>.

53. Significantly, these earlier letters were written in respect of proposals which entailed the developer purchasing the Applicant's property, no. 17 Pembroke Road. I note the representation of 18 May 2010 was written in respect of a proposal which did *not* entail use of any of his property.
54. Taking this correspondence in the round, I do not see that I can attach any significant weight to the untested assertions by the Applicant as to the use of the Land for recreation as contained in the letter of 18 May 2010. It must be appropriate for me to approach this written evidence with particular caution in circumstances where the Applicant's various statements are clearly inconsistent, especially where these statements appear to have been made with a view to emphasising or minimising the importance of the Land, depending on whether or not the development proposal in question required use of the Applicant's Land.
55. Further, as against the Applicant's evidence, I must consider the materials relied upon by the Objector. The evidence of all of the Objectors' witnesses was wholly consistent, and painted a picture of land which has not been put to any material use for sports and pastimes. In addition, 3 witnesses appeared before me to give oral evidence, and I have no reason to disbelieve their testimony. All of them appeared credible and convincing in terms of their demeanour when giving evidence.
56. Their account of what they had witnessed on the Land, - or rather the lack of it - was consistent with my own appraisal of the Land. Certainly there was nothing about the Land which I saw on the occasion of my site visit, to suggest that the area was habitually used by local people for recreation of any sort. Rather, it appeared to be a piece of unkempt scrub land, part covered by brambles and part covered by broken concrete

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<sup>16</sup> Supra, pages 108-9.

<sup>17</sup> Supra, pages 139-140.

57. As regards my conclusions on this issue, I have already indicated that I consider the key question to be that of how matters would have appeared to a notional landowner during the Relevant Period. On the basis of the evidence before me, and having particular regard to the weight which I can attach to that evidence in light of the total absence of any oral testimony in support of the Application, it is my view that the Applicant has failed to demonstrate on the balance of probability, that the Land was used for sports and pastimes throughout the Relevant Period.

58. In reaching this conclusion I have had particular regard to the evidence of Mr C [REDACTED]. It seems to me that, albeit he has only formally been the freehold owner of the Land for some 2 years, he has visited it in a role similar to that of a landowner some 100 times in the last five years. I accept his evidence that he did not see any use of the area such as could have alerted him to the fact that local people were asserting rights of village green over the Land. In these circumstances, and having regard to the test identified by Lord Hoffman in Sunningwell regarding the import of how matters would have appeared to the notional landowner, it is my view that the use of the Land for sports and pastimes – to the extent that it has taken place at all – was not sufficient to justify registration of the Land as town or village green.

#### Conclusion & Recommendation

59. Accordingly, having regard to the evidence and arguments presented to me, it is my recommendation to the Council that it reject the Application on the basis that the Applicant has failed to demonstrate that:

- (i) The Land has been used for sports and pastimes during the Relevant Period; and that
- (ii) Use of the Land has been carried on by a significant number of the inhabitants for locality, or neighbourhood within a locality.

Alexander Booth

17 March 2011

Chambers of Robin Purchas QC

Francis Taylor Building

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Our Ref: APP/J0215/V/05/1175510  
Your Ref: NSO/MH/ST BE549

31 August 2006

Dear Sir,

**TOWN & COUNTRY PLANNING ACT 1990 - SECTION 77  
APPLICATION BY THE SAUNDERS STEAM & MECHANICAL ORGAN COLLECTION  
(MESSRS J&T SAUNDERS) - LAND AT WRAYFIELDS, STOTFOLD, BEDFORDSHIRE  
APPLICATION REFERENCE - 04/00416**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Geoff Salter BA MRTPI, who held an Inquiry between 9 and 11 May 2006 into your clients' application dated 4 March 2004. The application is for outline planning permission for the erection of a building to house the Saunders Steam and Mechanical Organ Collection, together with associated access arrangements, on arable farmland at Wrayfields, Stotfold, Bedfordshire.
2. On 18 February 2005, in pursuance of section 77 of the Town and Country Planning Act 1990, the application was called in by the Secretary of State for decision instead of being dealt with by the local planning authority, Mid Bedfordshire District Council.

**Inspector's Recommendation**

3. The Inspector recommended that the application be refused. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and with his recommendation. A copy of the Inspector's Report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Policy Considerations**

4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case, the development plan consists of the Milton Keynes & South Midlands Sub-Regional Strategy (MKSM), adopted in 2005, the 1997 Bedfordshire Structure Plan (BSP), and the Mid Bedfordshire Local Plan First Review (MBLP) adopted in 2005. The Secretary of State agrees with the Inspector that the policies most relevant to the application are those identified at IR4.1 and 4.2.

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5. Other material considerations which the Secretary of State has taken into account include Planning Policy Statement 1 (PPS1): *Delivering Sustainable Development*; Planning Policy Statement 7 (PPS7): *Sustainable Development in Rural Areas*; Planning Policy Guidance 13 (PPG13): *Transport*; and Planning Policy Guidance 21 (PPG21): *Tourism*.

### Main Issues

6. The Secretary of State agrees with the Inspector that the main considerations in determining the proposal are those identified in the call in letter and set out at the front of the Inspector's report, namely the development plan, sustainable development in rural areas, transport and tourism. The Secretary of State has considered these issues below.

### Development Plan

7. The Secretary of State agrees with the Inspector that, at face value, the development of a large building at a location outside any defined urban area clearly conflicts with those development plan policies that direct such major developments to town centre locations. She accepts that there are policies within the development plan to promote the expansion of tourist development, subject to environmental safeguards, but agrees with the Inspector that, as the scheme is essentially a leisure use of significant size, it is contrary to BSP policies (IR9.2).
8. The Secretary of State agrees with the Inspector that, although the issue about classification of the site with regard to agricultural quality is of little importance in policy terms, the loss of best and most versatile agricultural land to permanent development or hard surfacing would conflict with the broad policy thrust of policy CS9 of the MBLP, which seeks to retain such resources (IR9.3).
9. The Secretary of State agrees with the Inspector's conclusion that the proposal does not comply with the broad thrust of development plan policy to keep the countryside open and to direct new development to urban locations well served by a variety of transport modes (IR9.4). She has therefore considered whether there are material considerations of sufficient weight to allow this application to be determined other than in accordance with the Development Plan.

### Rural Development

10. The Secretary of State agrees with the Inspector that the greenfield site lies outside the established boundary of Stoffold and would not meet the broad policy thrust of PPS7 to restrain new development in the countryside (IR9.5). Furthermore, whilst acknowledging that rural economies can be supported by certain forms of sustainable tourist development, for the reasons given in IR9.6-9.10, the Secretary of State agrees with the Inspector that the proposal would not meet the key objective of promoting more sustainable patterns of rural development.

### Transport

11. The Secretary of State agrees with the Inspector (IR9.3 and 9.6) that the proposed development is not served by any public transport services at present. She also agrees with the Inspector that, for the reasons set out in IR9.7-8 and IR9.11-12, the development would be very likely to lead to an increase in unsustainable travel patterns and many more journeys by private car.
12. The Secretary of State agrees with the Inspector that the proposed improvements to the junction of the A1 with Wrayfields are accepted by the highway authority and the Highways Agency as meeting the required standard to allow safe egress and access to the trunk road by all vehicles (IR9.13). She also agrees with the Inspector that the residents' concerns about extra traffic using local lanes could be overcome by imposing appropriate planning obligations and conditions (IR9.14), and that the proposal would not prejudice highway safety on the A1 or local roads surrounding the site through drivers being distracted by noise, lighting and smoke from the activities on the site (IR9.15).

### Tourism

13. The Secretary of State agrees with the Inspector that, although the development would bring some economic benefits to the area, when considered within the general economic context of the wider area, there is no strong need for the scheme on employment grounds (IR 9.16). She also agrees that there would be some adverse effect on the character and appearance of the rural area within which the development would be set (IR9.17).

### Other Material Considerations

14. The Secretary of State agrees with the Inspector (IR9.20) that the nature of the collection and the proposed use of the site, serving a national customer base, does not justify a location at Stotfold. The Secretary of State notes your clients' argument that there is no other suitable site for the proposed development. However, for the reasons given in IR9.21, she agrees with the Inspector that it is unrealistic to expect to find a suitable site for such a substantial new development within such narrow parameters.

### Conclusion

15. The Secretary of State concludes that the proposed development conflicts with development plan policies for transport, tourism, and development in the countryside. The building proposed would detract from the character and appearance of the surrounding countryside and result in a loss of valuable agricultural land. The proposal would also be heavily dependent on travelling by car.
16. The Secretary agrees that your clients own an important collection of steam-powered equipment, and that the collection is of national value. However, the harm to the appearance and landscape character of the countryside, the loss of good quality arable farmland and the likely increase in private car use outweigh the benefits of the proposed development. Despite your clients' local connections, the Secretary of State

does not accept that an exception should be made in this case. She does not therefore consider that there are any material considerations to cause her to determine the application other than in accordance with the development plan.

**Formal decision**

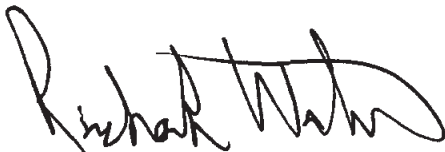
17. For the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby refuses your clients' application for planning permission for the erection of a building to house the Saunders Steam and Mechanical Organ Collection, together with associated access arrangements, on arable farmland at Wrayfields, Stotfold, Bedfordshire in accordance with application reference 04/00416 dated 4 March 2004.

**Right to challenge the decision**

18. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

19. A copy of this letter has been sent to Mid Bedfordshire District Council, to all those who appeared at the inquiry and asked to see a copy of the decision letter.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Richard Watson', written in a cursive style.

**Richard Watson**

Authorised by the Secretary of State to sign in that behalf

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**Report to the Secretary of State for  
Communities and Local Government**

The Planning Inspectorate  
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2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ GTN 1371 8000

**by Geoff Salter BA MRTPI**

**an Inspector appointed by the Secretary of State for  
Communities and Local Government**

Date 16 June 2006

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Town and Country Planning Act 1990

Mid Beds District Council

The Saunders Steam & Mechanical Organ Collection (Messrs J & T Saunders)

Inquiry held between 9-11 May 2006

Land at Wrayfields, Stotfold, Bedfordshire

File Ref: APP/J0215/V/05/1175510

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The following abbreviations are used in the report:

BCC	Bedfordshire County Council
BSP	Bedfordshire Structure Plan
EIA	Environmental Impact Assessment
EN	English Nature
ES	Environmental Statement
HA	Highways Agency
LPA	Local Planning Authority
LP	Local Plan
MBDC	Mid Beds District Council
MBLP	Mid Beds Local Plan
PPG	Planning Policy Guidance note
SoS	Secretary of State for Communities & Local Government

#	paragraph
p	page
vph	vehicles per hour
XX	cross examination

**File Ref: APP/J0215/V/05/1175510**

**Land at Wrayfields, Stotfold, Bedfordshire**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 18 February 2005.
- The application is made by **The Saunders Steam & Mechanical Organ Collection (Messrs J & T Saunders)** to **Mid Bedfordshire** District Council.
- The application Ref 04/00416 is dated 4 March 2004.
- The development proposed is a building to house the Saunders steam and mechanical organ collection.
- The reason given for making the direction was that the proposals may conflict with national policies on important matters.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of her consideration of the application:
  - (i) The extent to which the proposed development is in accordance with approved and emerging development plan policies
  - (ii) The extent to which the proposed development is consistent with policy advice in PPS7, in particular with regard to promoting more sustainable patterns of development.
  - (iii) The extent to which the proposed development is consistent with the advice in PPG13, in particular:
    - a) on the need to locate development in a way which helps to:
      - promote more sustainable transport choices;
      - promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling; and,
      - reduce the need to travel, especially by car.
    - b) to ensure safe access to the development.
  - (iv) The extent to which the proposed development is consistent with Government policies on tourism set out in:
    - PPG21, and in particular the impact on the environment and local amenity, and,
    - PPG13, and in particular whether the proposal needs to be in the proposed location or has a meaningful link with it.
  - (v) Whether any permission granted for the proposed development should be subject to any conditions and, if so, the form these should take, having regard to the advice in DOE Circular 11/95, and in particular the tests in paragraph 14 of the Annex.
  - (vi) Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable
  - (vii) Any other matters that I consider relevant.

**Summary of Recommendation: The application be refused.**

**1 Procedural Matters**

- 1.1 The inquiry sat for 3 days, during which I viewed the site and other sites in Stotfold, including the Applicants' yard where much of the steam equipment the subject of the application is stored. After the accompanied site visits I made unaccompanied visits to look at other sites suggested by the parties.
- 1.2 The report contains a description of the application site and its surroundings, the gist of the representations made at the inquiry, and my conclusions and recommendations. Lists of appearances, documents (referred to in brackets), and plans are attached



## 2 Background facts

### *The Site and Surroundings*

- 2.1 The site comprises an arable field of about 3.55 ha located immediately west of the A1 and north of Wrayfields. The Agricultural Land Classification Map for England and Wales shows the site within an area classed as Grade 2, although a letter from MAFF dated 1981 states that this particular field is site is classified as Grade 3A. (3.1-2)
- 2.2 The north, south and east boundaries are demarked by mature deciduous hedgerows, with some gaps; there is a fence along the western edge. The site slopes gently down from south to the north towards the Rivel Ivel valley floor. A public footpath runs along the northern boundary, connecting Wrayfields and Stotfold village with the hamlet of Caldecote about 1km east of the A1 via a pedestrian crossing point at level. (3.1)
- 2.3 The site is surrounded by agricultural land, although there are some commercial premises including two petrol filling stations, a public house and a motel on either side of the A1 about 600m to the north. The edge of the built up area of Stotfold lies some 500m to the west. There is a group of farm buildings, including a house, close to the western boundary and another dwelling, Wrayfields, located between the site and the village. About 70m north of the site is an agricultural worker's dwelling associated with the Skylark nursery, a substantial area of glasshouses.(8C, Site Context Plan)
- 2.4 Wrayfields is a lane 4.5m wide alongside the site, without footways or lighting. It carries between 16 and 18 vehicles in the pm peak hour (1700- 1800 hours). The junction with the A1 lies about 500m north of the end of the motorway section A1M. Alongside the site the A1 is a dual carriageway road with two lanes in each direction, but access to and from the A1 from Wrayfields is left turn only. The northbound traffic peaks at around 2900 vehicles per hour. (3.7, 11A, App 5). The nearest accessible public transport facilities are bus services in Stotfold, the nearest railway station is at Arlesley, about 4km away.

### *Planning History*

- 2.5 Three previous applications for a breakdown and recovery vehicle depot on the site have been refused, one following an appeal and one after call in by the then Secretary of State for the Environment.(3.3)

### 3 The Proposal

- 3.1 The application was submitted in outline form with all matters except means of access reserved for future consideration. The access proposals show details of the junction with Wrayfields and improvements to the junction of Wrayfields with the A1, incorporating widened and lengthened deceleration and acceleration lanes.
- 3.2 The Applicants produced additional illustrative material for inquiry to show the type of building and layout that was intended, although the Council has not considered these drawings formally (3.5.3-4). The material shows the intention for a single building with an approximate footprint of 4,475 sq m, and approximate dimensions of 92m by 58m to a height of 12m. Internally, the main elements would be:
- Display areas of about 2,000 sq m, plus foyer, for a variety of steam-powered equipment owned by the applicants, including organs, fairground rides and traction engines
  - A restaurant/bar seating area of about 600 sq m
  - Dance floor of 324 sq m
  - Stage areas of about 700 sq m
  - Shop of about 130 sq m
  - Kitchen, bars, staff areas including offices, and public amenities.
- 3.3 The other main elements of the scheme would comprise a car park with 76 spaces, 20 parking spaces for coaches, a service yard and vehicle access and manoeuvring areas.
- 3.4 Photographs of much of the Applicants' collection are contained in Document 9C.1. The intention is to provide both a showpiece for the collection and to set up an entertainment venue similar to that previously run by Turners in Northampton. The building would cater for organised trips and the general public attending Old Time Musical nights, tea dances, parties and educational events. About 180 daytime and 50 evening events are envisaged (10A, inc table appended).
- 3.5 The proposals are accompanied by a Section 106 planning obligation which provides for measures to secure the implementation of highway works to Wrayfields and the A1 and a signage scheme. The obligation commits the Applicants not to tow or run a steam vehicle under its own power on the A1 and restricts the number of steam engines in power on the site to a maximum of 15 at any one time.

#### 4 Planning Policy

##### *The Development Plan*

- 4.1 The Development Plan comprises the 1997 Bedfordshire Structure Plan (BSP), the Mid Bedfordshire Local Plan First Review, adopted in December 2005 (MBLP) and the Milton Keynes Sub Regional Study, March 2005. Policy 1 of the BSP sets out the general planning framework to achieve sustainable levels, locations and forms of development in the county. Clause (iv) seeks to restrain new development in the open countryside. Clause (xi) seeks to reduce the need to travel, particularly by private car; Policy 20 elaborates on this theme, requiring travel intensive uses to be concentrated in areas well served by public transport. Policy 8 sets out general criteria for new development, which will be expected to be sensitive to the character of the surrounding area, protect trees and hedgerows and incorporate high standards of landscaping. Policy 30 welcomes proposals for the expansion of the tourist industry, subject to environmental safeguards and the accessibility of public transport, where appropriate. Policy 54 encourages major new leisure, cultural and recreation uses to locate in town centres. (5)
- 4.2 A similar policy context is provided by the MBLP. Policy CS19 of the plan seeks to restrain development in the countryside, although Policy EMP9 states that in addition to having particular regard to CS19, the Council will balance environmental, traffic and other planning considerations against the potential benefits of the proposals in terms of employment and contribution to the local economy. Policy CS9 seeks to protect the best and most versatile agricultural land (defined as Grades 1, 2 and 3a of the MAFF classification). Other particularly relevant Local Plan policies are DPS5 - standard of development; DPS19 – accessibility; TP1 – Submission of travel assessments. (6)

## 5 The Case for Saunders Brothers

### *Introduction*

5.1 In this case the Applicants and the LPA are in almost complete unanimity. There is no objection from, amongst others, the Environmental Health Authority, the Highway Authority, the HA, or the Environment Agency. There is also a considerable groundswell of support for the proposal locally, including from the Stotfold Town Council; support from that latter body is particularly important. Any decision to refuse permission would necessarily involve rejecting, to whatever extent, the views of these bodies and individuals. The grounds of the few persons who have objected go not to the overall desirability of what the Saunders brothers propose but are rather limited to matters of location and associated impact. Even if these points had merit, which the Applicants dispute, they are not in substance objections in principle but rather assertions which can be appropriately dealt with by way of condition.

5.2 The following relevant matters are substantially agreed matters of common ground with most parties.

- The collection is of at least national importance and is a significant part of our heritage that is worthy of retention and in need of a permanent home, as the LPA agree (17, #7.9). None of the objectors appear to take a different view.
- As the LPA accepts, the collection the subject of this application would be more appropriately located in a remote rural location, as is the case here. The LPA considers that the development proposed has exceptional merit in terms of its contribution to the British engineering heritage (17, App3).
- Even assuming the land here is Grade 2, the LPA is satisfied that its loss is not detrimental in terms of the application of development plan policies (17, App3). The use of the land would not undermine any farm holding or make any agricultural unit unviable. The tenant farmer is planning retirement and does not consider retention of the land central to his holding (17, #7.31). There is clear evidence that in fact the specific quality of the site itself is grade 3a. Any loss of agricultural land is insufficient to found or contribute to any reason for refusal.

5.3 The LPA further acknowledges:

- The proposal would have material educational benefits (17, #7.13)
- The collection has a local connection and an association with the rural landscape (17, #7.14 and 7.53)
- The collection is in private ownership and the Saunders brothers are acting benevolently (17, #7.16)
- There are no other more suitable sites within the District. The need to purchase urban land would significantly undermine the delivery of housing. Employment land is needed to provide for the District's employment needs. The cost of urban land would probably make display of the collection unviable. (17, #7.17 and 7.18).
- In terms of locating tourist development, proposals such as this need not be unacceptable in the countryside, subject to environmental and amenity considerations.

In other words the proposal here advanced is capable in principle, and subject to detailed design in due course, of complying with development plan and other policy. The context of the proposed building includes the Motorola Industrial Buildings, the A1 service facilities and the small workshop units. The proposed building will sit in the local landscape and, subject to appropriate landscaping, is capable of being successfully assimilated into the local landscape. (17, #7.23 and 7.24)

- The development has sustainability benefits in terms of its location (17, #28). It is sustainably located (17, #7.39 to 7.49 and 7.57)
- The site is within the Eastern Strategic Corridor defined in the development plan as the focus for economic growth in the county (17, #7.29).
- The proposal affords material tourism benefits (17, #7.33 to 7.38). It is compliant with policy and consistent with PPG 21.

*Accordance with approved and emerging development plan policies*

5.4 Here the dominant theme of the development plan can be distilled from policies EMP9 and CS19 of the Local Plan. Policy EMP9 expressly refers to policy CS19. Any reasonable reading of the two policies makes clear that it is perfectly possible for tourist-related development to come forward sustainably in the countryside. Having regard to the whole factual matrix, the proposal accords with the relevant dominant policy theme (8A 3). The LPA takes a slightly different view and suggests the proposal should be allowed as an exception to policy. Notwithstanding the general importance of the question of accord with the development plan, the slight difference of approach here is effectively academic. The various material considerations are common ground with several parties, including the LPA, and militate decisively in favour of the development proceeding.

*Consistency with PPS7, particularly regarding more sustainable patterns of development*

5.5 What is sustainable in the context of any given development proposal depends crucially on the precise nature and characteristics of that development proposal. No one seriously disputes that a significant proportion of traffic to/from the site will be by coach. As Mr Osborn, Mr Rees, Mr Norman and Mr Hughes all noted, in terms of sustainability there is no material difference between coaches and other elements of what is commonly referred to as public transport (a term which includes, for instance, privately owned taxis).

5.6 In circumstances where travel to and from the site will be from all over the country, and where such travel will be, substantially, by coach, a key element of securing an appropriate site is ready access to and from the strategic road network. Not only does this proposal achieve this to and from the A1, its central location in this part of the country increases its accessibility and acceptability from throughout the UK. The Highway Authority identifies '*the ideal location of the site in relation to the strategic highway network*' (11A, App1). The Council identifies the potential for sustainability benefits (17, # 7.43). Mr Norman spoke in similar terms when giving oral testimony.

5.7 It could be said that the essence of any form of tourism always involves *unnecessary* journeys. However, government and other policy still supports the creation and development of tourism opportunities, notwithstanding any resulting policy tension, illustrating the policy balance and pragmatism which must be brought to bear. Were it otherwise, no tourism proposal could ever come forward consistently with PPG 13. Also, it is remarkable that the various statutory and other bodies all agree that the present proposal,

notwithstanding its tourist nature, still achieves a very high level of sustainability. This is entirely in accord with policy.

*Consistency with PPG13: sustainable transport choices; safe access*

- 5.8 All the relevant expert planning and highway views are that what is here proposed is appropriately sustainable. The Council for instance acknowledges that far from being unsustainable, .. *a location close to the A1 could have sustainability benefits .... I do not consider the pattern of usage to be incompatible with sustainable transport objectives.* One feature of this inquiry has been the objectors' reference references to alternatives. The Applicants, have carried out a sequential assessment and considered the question of alternatives (8A, 6 5-11, App5). The conclusion was that no alternatives existed. That view was shared by the LPA (17, #7.17-18). The objectors have themselves failed to suggest any realistic alternatives. The only conclusion is that no preferable or alternative site exists. If this nationally important proposal is to come forward it is necessarily here or nowhere. And if the proposal is not brought forward here by the Saunders family, there is no one else to do it. Not only is there no sequentially preferable site in terms of sustainability, the only conclusion on the evidence is that there is no other realistic site at all.
- 5.9 Regarding highway safety, the three sets of expert highway evidence provided to the inquiry, from Mr Rees, the County Highway Authority and the HA, concluded unanimously that this site can be accessed safely. There is no relevant qualified highway evidence the other way; indeed the only points raised in opposition are unsubstantiated assertion. In such circumstances there is no evidential or other basis for deciding against this development on highway grounds.
- 5.10 Additionally, the proposal carries with it material, collateral benefits. Mr Norman speaks to the fact that the highway proposals *'would significantly improve the existing [A1/Wrayfields] junction'* (consultation response from HA of 1.11.04 – OPP/01).
- 5.11 Concerns about the routing of coaches from the site are misconceived. Again the highway authorities are satisfied. Even if there would be a material increase in traffic on a local road, that is what the road is for; if the traffic generation through Stotfold were an order of magnitude greater than that predicted, there is no question of infringing link, junction or environmental capacities on any part of the relevant road network. These roads carry no more than a fraction of their capacity. Turning to environmental impact, even a doubling of the traffic on the roads would produce only a 3 dBA increase in noise levels. As the Glossary to PPG24 confirms, a change of 3 dBA is the minimum perceptible change. To achieve a doubling of perceived loudness would require an increase of 10 dBA. Even if contrary to the expert evidence, all the traffic to and from the site were to route through Stotfold, it would not amount to a doubling of vehicle numbers and thus would be imperceptible in noise terms. Similarly any change in air quality would be minimal. All environmental effects fall moreover to be weighed against the dominant background of the existing A1. Finally, although it is not necessary, Mr Rees has identified how a small physical addition to the site egress could inhibit vehicles, particularly coaches, from turning right. The objectors' fears are unfounded.
- 5.12 Whilst Mr Smallhorn raised issues of driver distraction, there is no substance in them. It is inconceivable that there would be any site-noise audible to traffic on the A1 and, even were something heard, it is nonsense to suggest that it, of all the other noise audible, would constitute a distraction. As regards lighting on the site, Mr Smallhorn's point is of even less

materiality. He advanced no substantiated case, had not looked at the conditions, did not seem to understand basic lighting technology (eg flat-glass cut-offs) and had not troubled to check the conditions. As regards smoke from external steaming of engines, the point is again misconceived. The HA has expressly considered the steaming of engines on the site and imposed a limit on the numbers in steam. There is also proposed a condition covering external operation of equipment. This is not therefore a point which has gone by default; rather the relevant highway authority has considered the point and dealt with it. It is perfectly possible at present to steam engines (eg agricultural tractors such as those owned by the Applicants) on the land which forms the site. Finally, there is no objection in principle since matters can be addressed by condition, if necessary.

*Government policy on tourism set out in (a) PPG 21, in particular the impact on the environment and local amenity; (b) PPG 13, and in particular whether the proposal needs to be in the proposed location or has a meaningful link with it*

5.13 As regards environmental impacts, the only qualified or competent evidence on noise is compelling; no sustainable objection exists. This is endorsed by the conclusion of the environmental health officers of the Council. Similarly, there can be no sustainable air quality objection; again the absence of objection from the Council's Environmental Health department is telling. In terms of both noise and air quality, the proposed conditions reinforce the level of comfort attainable by controlling hours of opening and the external use of museum equipment. There is additionally control under a separate statutory code (the Licensing Act 2003); as the letter from the Council's licensing manager makes clear, such control extends to embrace matters such as venue capacity, hours of operation and type and frequency of permitted activities; considerations under that statutory code include prevention of public nuisance (8C 2).

5.14 As regards whether there is a meaningful link between the proposal and its location, there can be no doubt but that such a link exists, as the Council acknowledges (17, #7.14). Perhaps most telling on this issue is the evidence of the Town Council whose representative spoke in clear terms of the strong nexus between the collection and the location and the sense of 'ownership' which the local community already feels.

*Any other matters considered relevant by the Inspector*

5.15 The question has arisen of the funding of the scheme. The evidence clearly establishes that the Saunders brothers are businessmen of substance, well able to fund not only their expensive passion but also this application and promotion of their case at this inquiry. They are not aiming for the moon and realistically accept that, at best, the museum would break even. They recognize that it may well run at a loss, albeit still contributing something to the running costs and repair of a collection which, at present they fund entirely from the profits of their other business interests. There is no basis for concluding other than that, on balance of probability at the very least, this scheme is capable of being funded, implemented and maintained.

5.16 There is the matter of buildings in the open countryside. Policy rightly recognizes that the countryside should be protected for its own sake. That does not, however, translate into a truism that any building in the countryside is necessarily adverse in its effects. It is also important to distinguish between, for instance, green belt policy and countryside policy. This site is not green belt.

*Conclusion*

5.17 In all the circumstances, this proposal should come forward and can do so on the basis that it accords with the dominant theme of both development plan and other policy. In any event, as others such as the LPA identify, so compelling are the other material considerations, including as they do matters of national importance, that the planning balance falls decisively in favour of grant permission, whether on the basis of accord with policy or as an appropriate exception (8A, 3.9).



## 6 The Case for Mid Beds District Council

### *Introduction*

6.1 The site falls outside any settlement envelope for Stotfold, and therefore lies in the open countryside. The Council also accepts that the erection of buildings on, and the change of use of, such land would normally be contrary to policy, and that is very much the starting point. However, the positive contribution of the proposal, and the exceptional circumstances, which include the national importance of this collection, warrant a departure from policy in this particular case. The Council leaves the questions posed by the Secretary of State in her call-in letter to be answered by the Applicants, with the aid of their experts. The Council's evidence to the inquiry explains the reasons why members took the view to support the proposal, contrary to officer advice.

### *Extent to Which Proposal Accords with Policy*

6.2 Contrary to the view taken by the Applicants, the Council takes the view that the proposal is contrary to policy. Policy CS9 provides as follows: "*Other than on land allocated for development within the Local Plan, development that would result in the permanent loss of the best and most versatile agricultural land (defined as Grades 1, 2 and 3a of the MAFF classification) will be refused, unless it can be shown that no suitable site of lower agricultural quality is available or other sustainability considerations suggest otherwise and there is an over-riding need for the development*". (17, 7.19)

6.3 Further, CS19 provides as follows: "*Other than when provided for in the Local Plan, development will be permitted only exceptionally in the countryside*". The Council therefore takes the view that the starting point with each of these policies is that the proposed development is contrary to policy, as it would (a) result in the loss of the best and most versatile agricultural land; and (b) is located in the countryside.

6.4 The Council also accepts that a building of the size envisaged will remain visible and somewhat prominent in the landscape, despite there being other large buildings in the vicinity which set a context for the proposed building.

### *Material Considerations*

6.5 There are exceptional circumstances which warrant the grant of planning permission in the present case.

### *Importance of Collection*

6.6 No-one appearing at the inquiry contested the fact that the collection is a high quality, nationally important one, which is an important part of our heritage. The Applicants' collection contains many unique pieces which cannot be seen anywhere else in the world. Everyone agreed that the display of this collection would be of benefit to all generations. Further, no-one disputed the fact that there is a lack of any permanent facility to display elements of the collection and the temporary storage arrangements are unsatisfactory. (17.9)

*Educational Benefits*

6.7 Again, no one at the inquiry disputed the educational benefits of having such a collection on display. The Collection will clearly assist in the understanding of the chronology and evolution of such machinery and its part in our agricultural, leisure and industrial heritage.

*Tourism Benefits*

6.8 The siting of the collection on this site presents a unique opportunity to bring a tourist attraction of this kind to mid-Bedfordshire. The proposed activity would assist in promoting the seasonal spread of tourist activities over the whole year.

6.9 Although the site is not located accessible to public transport, the evidence produced by the Applicants shows that most events will be pre-booked, and as such, a significant proportion of visitors would arrive by coach or minibus, thus contributing towards the objective of reducing reliance on the private motor car, and avoiding single or low occupancy car trips. The Council also asks the Inspector to note that the site is very well located for the A1, and direct access to it.

6.10 Further, the Council notes that all maintenance and restoration work is undertaken at an existing facility at Arlesey Road in Stotfold and from that perspective the site is well located to reduce the length of trips between the two facilities.

6.11 An important component of the Council's decision to permit the proposed development was the provision of a Green Travel Plan, which seeks to investigate ways of increasing the accessibility of the site to means of transport other than the private motor car.(15.8)

*Highways and Access Considerations*

6.12 While noting the concerns of local residents regarding highway safety the Council relies on the views of the County Council and the HA. These bodies have no objection to the proposed development, which is acceptable in highways and access terms.

*The Sequential Test*

6.13 There is no sequentially preferable site for the collection. The Council has noted in the past that the display of the Collection would become unviable if it were to be located on anything other than a greenfield site. In any event, brownfield sites in the Council's area are either allocated for employment use – for which there is a continuing need – or for housing development, and it is accepted that historically there has been a shortfall in this area.

6.14 The Applicants submitted that the collection needs to be located in Stotfold or the immediately surrounding area, otherwise (1) as the family live in the area, they would be unwilling to locate elsewhere and the Collection may not be displayed at all; or (2) even if they were willing to locate it elsewhere, the number of vehicle movements created by moving between the maintenance site and any proposed site for the Collection would be very high.

*Conclusions*

6.15 The Council, having carried out the relevant balancing exercise, are satisfied that the benefits of the proposal outweigh any harm to the countryside.

## 7 The Cases for Other Parties

### *Supporters*

#### *Mr Cooper for Stotfold Town Council*

- 7.1 The Town Council had voted to support the scheme after a well attended meeting at which the public had been able to speak; the debate was recorded in the Council's letter of 15 March (3, Stotfold TC). The location of the proposal outside the settlement was preferable to one within the town boundaries, which might cause a larger problem. There was no reason to prevent the scheme because of the high agricultural land quality, since the A1 had been built on similar land. There was no objection, subject to adequate landscaping around all site boundaries.
- 7.2 Mr Cooper's personal view was that people were proud of the Saunders brothers' local connections. The employment the attraction would provide would be welcome, as would the type of events, which would be targeted at mature age groups, who would be sedate, not rowdy, customers. There would be no highway safety problem; the fatal accident on the A1 just north of Wrayfields had had nothing to do with the junction of the road with the A1 itself.

#### *Mr Collier*

- 7.3 As one of three District Councillors for Stotfold and a member of the Planning Committee, Mr Collier argued that in layman's terms, the site was not part of the open countryside. It was bounded by two roads and had buildings along the third (west). The tourism value of the project outweighed any policy objections. While the Council was not actively seeking a third major tourist attraction, the grouping of the proposed museum/entertainment facility near the Tudor inn and the Travelodge on the A1 may well encourage visitors to stop over in Mid Beds and visit other venues

### *Neutral*

#### *The Highways Agency*

- 7.4 The HA had no objection to the proposal and were satisfied with the access arrangements. The standards for junctions to trunk roads, which the proposal would meet, had been designed to allow for all types of vehicles, however slow moving. The fatal accident on the A1 north of Wrayfields had involved a slow-moving vehicle in the inside lane of the A1; from the police report it had been unrelated to the junction itself.

### *Opponents*

#### *Mr Rickwood*

- 7.5 There are no material reasons why this application should be judged as an exception to normal planning policies, no meaningful link between the Applicants' collection and the particular location, and no overriding need for the development that might justify a major departure from the Local Plan, relative to its intention to restrain development in the open countryside. The objections are set out in detail in Document 20
- 7.6 The site is not close to the rail network and no other forms of public transport would reduce the levels of traffic it would generate. As the HA note, the site is remote from

Stotfold, is difficult to reach other than by car and is not a sustainable location (17.2). There is no meaningful link with its location

- 7.7 This huge, unashamedly modern development would bring about adverse, irreversible changes in the character of this rural area. The resultant loss of both residential and public amenity due to its realisation should not be underestimated.
- 7.8 The traffic generated by the site would have an unacceptable impact on local roads and a serious adverse effect on the environment in terms of pollution and noise pollution. The increased risk to highway safety that it presents to this stretch of the A1 is potentially disastrous and should not be permitted. Slow moving traffic would emerge onto the A1 close to the end of the motorway section, causing a serious hazard.
- 7.9 There would be no great economic boost to the area from this proposal. While unemployment in Stotfold is almost non-existent, the proposed development could become an extremely profitable business for the Applicants. The focus on its entertainments programme would ensure that any educational value attached to it would be secondary. Intensification of operations on the proposed site remains a major concern.
- 7.10 If this is, indeed, a British engineering collection of national importance, then, surely, it could be established almost anywhere in the British Isles, existing planning policies permitting. Furthermore, it remains evident that the necessity to locate a sustainable site for this proposal - on 'brownfield' land, close to public transport services, particularly the rail network - is of far greater material value than any desire to see it based in the vicinity of Stotfold. Relative to this, the lack of evidence to demonstrate that a thorough Sequential Test has been applied to this matter is disappointing to say the least.
- 7.11 Residents do hope that a permanent home is found for the Applicants' collection, but would urge them to widen the area of their search for a sustainable site into Hertfordshire and beyond. No exception to normal policies should be made relative to this application and that it should therefore be refused.

*Mr Pelter*

- 7.12 The proposal would lead to highway safety problems. Although the junction of Wrayfields with the A1 would be improved to an acceptable standard, the cumulative effect of more traffic using one of many junctions on the trunk road within a short distance of the end of the A1(M) motorway section would create additional safety problems. Within approximately 1800 metres, there would be 6 right-angled junctions to the fast road. Large vehicles had been observed stopping on the main carriageway as they negotiated a sharp corner. The cumulative effect of the junctions causes chaos in the area. There had been many accidents, including one fatality, along this short stretch of the A1.
- 7.13 Traffic from the site travelling westwards may use unsuitable narrow lanes that are very dangerous. Mr Pelter's satellite navigation system directed him north up the A1 and then left into Taylor's Road, which has blind bends and a narrow carriageway, and is completely unsuitable for major traffic flows and large vehicles such as coaches. Many HGVs ignore the sign saying the road is unsuitable for large vehicles. The route to the Arlesley roundabout is shorter and takes slightly less time than returning south on the A1 to the turn right onto the A507.

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7.14 The proposal would intrude into an attractive area of countryside, where there is one of the few public footpaths along a beautiful river valley. It is unacceptable and should be refused.

*Mr Smallhorn*

7.15 The idea for a building to house the Saunders' collection is a good one but this scheme is in the wrong place. The scheme is unacceptable for the same reasons as the earlier proposals for a depot were refused in the 1980s. First, the main access would be to and from a small road immediately after the end of the A1(M). Second, noise, smoke and the general appearance of the scheme would be a distraction to traffic on the A1, on a section where there has been many accidents.

*Mr Sams*

7.16 There has been a considerable increase in traffic over the last two years. Traffic to and from the west visiting the scheme will use Stotfold village roads, to the detriment of highway safety. There are no footpaths along Mill Lane or Malthouse Lane, which have blind corners, are narrow and unlit. The entertainment side of the facility is worrying; visitors will spill out from the attraction into Stotfold, worsening the quality of life.

*Written Representations*

7.17 Letters of support and objection to the proposal are contained in Document 2. These cover broadly the same issues as those raised at the inquiry in the evidence of the HA, the Town Council and interested persons.

## **8 Conditions and Obligation**

8.1 Document 3.8 is a list of conditions, discussed during the inquiry. Document 4 is a Section 106 planning obligation signed by the applicants in favour of the Council. It provides for the improvements to the Wrayfields/A1 junction and a system of directional and tourist advisory signs.

## 9 Conclusions

9.1 On the evidence put forward, and my inspection of the site and its surroundings, I have come to the following conclusions. This section of the report is structured to cover the matters set out in the call-in letter in the same order. Numbers in brackets refer to paragraph numbers in the report.

### *Development Plan and emerging plan policy*

9.2 The policies of the Development Plan have to be read together and an overall view taken where they pull in different directions. At face value, the development of a large building at a location outside any defined urban area clearly conflicts with Policy 1(iv) of the BSP and policy CS19 of the MBLP, unless there is an overriding need. However, Policy EMP9 of the MBLP introduces the concept of balance between environmental, traffic and other considerations against economic benefits, reflecting Policy 30 of the BSP which promotes the expansion of tourist development, subject to environmental safeguards. While the BSP sets out a general strategy to promote and concentrate development along the A1 corridor, this is to be read in combination with other policies to protect the countryside and encourage sustainable travel patterns. The scheme is essentially a leisure use of significant size, intended to attract customers from the whole country. I consider it would be in conflict with policy 54 of the BSP, which directs such major developments to town centre locations [2.3, 4.1, 5.4]

9.3 In broad terms the proposal is not served by established public transport services by rail or bus and could be said to conflict with Policies 1(xi) and 20 of the BSP and Policy DPS19 of the MBLP. The issue about the classification of the site with regard to agricultural quality is of little importance in policy terms. However, I see no reason to question the specific 1981 ministerial finding that the site is graded 3A. While the field is not of particular agricultural significance, the loss of most of the area to permanent development or hard surfacing would conflict with the broad thrust of Policy CS9 of the MBLP, which seeks to retain such resources. [2.1, 2.4, 3.1, 2.2, 5.2]

9.4 I deal with these aspects of Development Plan policy and analyse any conflicting strands of policy more fully below. In general terms I concur with the Council that the proposal does not comply with the broad thrust of Development Plan policy to keep the countryside open and to direct new development to urban locations well served by a variety of transport modes.[6.1-4]

### *PPS7 – Sustainable patterns of development*

9.5 The greenfield site lies outside the established settlement boundary of Stotfold and would not meet the broad policy thrust of PPS7 to restrain new development in the countryside. The Inspector who reported on the proposal for a depot in 1983 noted, *'the proposal would result in the establishment of sporadic commercial development...which would be detrimental to the character and appearance of the rural area.'* I consider the likely scale and urban appearance of the scheme leads to a similar conclusion in this case.

9.6 Paragraph 34 of PPS7 indicates that sustainable tourist development can help to support rural economies. However this support is qualified by requirements that such development should enrich the character of the countryside and that any large-scale leisure developments should be subject to close assessment in terms of sustainable development objectives, with particular regard to policy in PPG13 where high traffic volumes are projected. The proposal does not involve the reconstruction of any important local

buildings. The site is not served by any public transport services at present. The nearest bus service in Stotfold itself is well beyond normal walking distance to encourage use. The railway station at the neighbouring village of Arlesley is further, some 4km away. [2.4]

- 9.7 I note the Applicants' intentions to market the facility towards customers who are likely to arrive by coach, which is a mode of travel directly comparable in sustainability terms to a bus service. I deal with this in more detail below. Nevertheless, a substantial number of customers would arrive by car, having no real alternative. Although staff would be recruited locally and those living in Stotfold would be within cycling or possibly walking distance, many from further afield would be likely to drive. In essence, I believe the proposal would not meet one of the key objectives of PPS7, to promote more sustainable patterns of development. It would fail to focus development in or next to towns or villages, fail to prevent urban sprawl along the A1 and would not discourage the development of greenfield land. [5.5, 6.9, 7.6]
- 9.8 The Applicants' Transport Assessment sets out the framework for a Travel Plan, involving the appointment of a Co-ordinator and possible measures such as provision of showers and facilities for cyclists, a staff minibus service. However, no full details are provided and I have very strong reservations that the measures would be sufficient to significantly affect the travel patterns of those visiting or working at the site. I consider the travel plan would be insufficient to compensate for the deficiencies of a poorly located greenfield site outside an urban area, well away from established public transport services. [6.11]
- 9.9 The site is an open field lying on the north-facing slope of the ridge which is an integral part of the rolling chalkland landscape identified in the County Landscape Character Assessment (Doc 13A.5.2). The landscape is characterised as having moderate strength of character. It is nonetheless a pleasant area, valued by local residents, particularly in the vicinity of the site which lies close to the River Ivel valley floor. While there is clearly scope to improve the appearance of some areas along the A1 corridor, the site does not fall into such a category. It is separated from the cluster of commercial buildings on both sides of the road to the north by a clear break of open land. I acknowledge that the building could be of high quality, subject to any costs constraints and the functional requirements for a substantial internal space of warehouse dimensions. Although the scheme would provide for improved landscaping around the boundaries, I consider the introduction of urban features, including a large building and hard-surfaced parking areas, onto what is an open field would not be compatible with the landscape character at this location. Despite its position at the lower end of the site, the large structure would be readily visible above the hedgerows around the site. I fail to see how the proposal could lead to an overall improvement in the landscape as recommended by the County strategy.[6.4]
- 9.10 PPS7 states that the presence of best and most versatile agricultural land should be taken into account with other sustainability considerations. In this case I do not accept the Applicants' contention that the development of this high quality land is unavoidable, for the reasons given below. The Grade 3A land could easily be farmed by another tenant or in association with a neighbouring farm. The loss of most of the field to roads, parking areas and a building would conflict with the advice in #28 of PPS7. [6.3]

*PPG13 - Transport*

*Sustainable transport choices*

9.11 Much of the Applicants' case on sustainability rests on the proposed marketing of the venture to customers likely to arrive in large groups by coach. Using projections based on the former Turners premises, located within the urban area of Northampton, the Applicants estimate that about 80% of a maximum of 670 customers attending any single event would arrive by coach. Subject to routeing conditions, transportation of these visitors by coach to a site located close to the A1 could be considered sustainable, as the HA acknowledge. However, this optimum level of transport by coach may not occur at all times, and a substantial number of visitors would necessarily be forced to arrive by car, in the absence of any other forms of public transport. In response to my question, Mrs Haslett-Saunders, estimated that up to 100 staff could be required on busy days. Some, but by no means all of the staff may travel from Stotfold, although I consider they would be deterred from walking or cycling along the unlit lanes to the site during the evenings, particularly in December, the busiest month for events. As the suggested provision of 76 parking spaces indicates, car usage would not be minimal.[5.5-6, Doc 10A]

9.12 The sustainability arguments also depend on the continuation of a specific business use. The Applicants run a successful haulage and roadside rescue business which has funded what so far has been a hobby, an amateur passion. There is no guarantee that the proposed business, a substantial undertaking, would be successful. In response to my question, Mrs Haslett-Saunders said a full business plan had not been completed, although the building itself was expected to cost about £2 million. Apparently the Turners enterprise closed because Mr Turner retired and no other family members wished to take the business on. Whatever the intentions and good faith of the current Applicants, there is no financial information to show that the proposed use would be soundly based in financial terms. If it did not succeed commercially, it may be difficult to resist the re-use of the premises for another leisure venture with an entirely different clientele and travel patterns. In that event, I consider the location of the site is highly likely to lead to an increase in unsustainable travel patterns and many more journeys by private car.

*Safe access*

9.13 The proposal includes a new site access to Wrayfields which meets the requirements of the BCC as Highway Authority and the HA. The HA accepts that the proposed improvements to the junction of the A1 with Wrayfields would meet the required standard to allow safe egress and access to the trunk road by all vehicles, including coaches and slow moving cars. The provision of improved acceleration and deceleration lanes would minimise the risk of vehicles joining or leaving the A1 impeding the fast flowing traffic from the motorway section to the south.[5.9, 6.12, 7 4]

9.14 I can appreciate residents' concerns about extra traffic using routes such as Taylor's Lane to travel between the site and destinations to the west. These lanes have several hazards and best avoided for safety reasons, especially by large vehicles. However, the Section 106 planning obligation would provide for a signage scheme for diverting coaches, which would in my opinion be very likely to return south along the A1 and then to travel west along the A507. It would be possible to impose a condition requiring a minor amendment to the access junction with Wrayfelds to include a traffic island preventing vehicles with a long wheelbase exiting to the right.[7 11, 5.11, Doc 4]



9.15 As to the claims about highway dangers arising from distractions through noise, lighting and smoke from the activities of steaming engines on the site, I agree with the Applicants and the HA that these would not be of any real significance. A limit on the number of engines in steam at any one time is put forward in the Section 106 obligation and could be achieved by a condition. Similarly, lighting distractions could also be prevented through a condition. The HA is unconcerned about noise from the site and I find it very hard to believe that even the loudest steam organ played within a building would be any hazard to drivers in the noisy, busy trunk road environment of the A1. Looking at all this evidence, I have concluded that there is no sound reason to suppose that the proposal would prejudice highway safety on the A1 or the local roads surrounding the site. [2.4, 5.9, 5.11-12, 7.4, 8.1]

### ***PPG21 - Tourism***

#### *Environmental effects*

9.16 While PPG21 sets out a general policy to encourage tourism to benefit local economies, the guidance is tempered by several references to the need for such development to be undertaken in a sustainable manner. I have dealt with this issue in the preceding paragraphs. The 'Good Practice Guide on Planning for Tourism' continues these themes but publication occurred after the inquiry and the document was not considered by the participants. There was no dispute that the scheme would bring some economic benefits by drawing customers from the whole country to Mid Bedfordshire. However, the value of the scheme to the local economy has to be considered in the general economic context in an area where unemployment rates at about 1%, are very low, well below the national average. The District has two established major tourist attractions and a third has recently been granted planning permission. There is no strong need for the scheme on employment grounds, therefore.[7.7]

9.17 As already discussed, I believe there would be some adverse effect on the character and appearance of the rural area within which the development would be set.

9.18 I do not consider residents' concerns about the noise and fumes from additional cars driving through Stotfold to be well founded. As the Applicants' unchallenged technical evidence on noise issues pointed out, in the unlikely event of an event attracting large numbers of car drivers from the west, increases in noise levels in the village would be imperceptible. A condition regarding the hours of operation could be imposed to ensure the use did not cause any disruption at very late hours. One of the properties likely to be affected by any noise, Wrayfields, lies some 250m from the site and would be shielded from the noise source by neighbouring buildings to the north-east and its own garden wall. The steam engines operating at normal (as opposed to start up) temperature during the site visit were creating very little pollution, and certainly much less smoke than is shown on a DVD of the Stotfold May Fair submitted by Mr Rickwood. [5.13]

#### *Need to be at Stotfold*

9.19 The Applicants have strong local connections and the collection of steam powered machinery was started by their father in the 1960s when he ran a garage business in Stotfold. The maintenance of the equipment would continue to take place at the Applicants' premises not far away at Arlesley Road, Stotfold, as at present, which would help to reduce travel. These factors would no doubt be advantageous to the Applicants, as would ownership of the field which comprises the application site. All parties were agreed that the Applicants' collection is of great importance nationally. It includes some rare

pieces, including a Wurlitzer organ and one of the earliest steam powered rides [5.2, 5.14 6.10, 7.2]

9.20 However, the nature of the collection and the proposed use of the site, serving a national customer base, do not justify a location at Stotfold. Most of the engines and other fairground rides are peripatetic in nature and have no particular local associations, unlike some other collections quoted by the Applicants. The enterprise is modelled on the former Turners business which operated from an urban site in Northampton. The evening events would be based around organ recitals and the provision of meals and drinks, like many other urban entertainments. [6.10, 7.8]

9.21 The Applicants' argument that there is no other suitable site for the scheme was also accepted by the Council. However, in reality the search area considered by the Applicants was limited to sites in or on the edge of Stotfold, because they would be unwilling to relocate elsewhere. Clearly, there is a need to retain existing housing and employment allocation sites, to meet strategic planning requirements. The Council accepts that if the development is to take place within its District, it would not be viable unless a greenfield site were available. I have no reason to doubt that statement although no real financial evidence was provided at the inquiry. Nevertheless, I consider it unrealistic to expect to find a suitable site for such a substantial new development within such narrow parameters. [5.2, 6.13-14]

***Conditions and agreements***

9.22 The conditions contained in Section 8 of the SCG were discussed at the inquiry in open session. I have appended a list of suggested conditions should the SoS wish to allow the scheme. I have deleted from my list some unnecessary conditions concerning detailed plans and design of the building, implementation of landscaping, insulation, wheel cleaning, drainage and disabled access, which would be dealt with by other legislation or would flow from issues considered at reserved matters stage. The suggested revised condition limiting noise levels from the building would be appropriate, in combination with a reasonable limitation on the opening hours, to safeguard the occupants of nearest residential properties from disturbance. I therefore consider there would be no real to restrict the number of evening events. However, the suggestion to require an amended access to Wrayfields incorporating an obstruction to right turns by coaches would seem appropriate on grounds of highway safety and amenity. Other conditions, consolidated and revised to accord with the advice in Circular 11/95, would be appropriate for the reasons stated in the schedule.

9.23 The copy of the Section 106 planning obligation that I requested to be signed has not been dated, although I have no doubt that this was an oversight on behalf of the Applicants and that a proper copy is available. The necessary measures contained in the document requiring the completion of the access and improvements to the A1 could be included as conditions, as could the requirement not to operate more than 15 steam engines at any one time.

***Other matters***

9.24 Despite local fears, there was no evidence from the EA of any flooding at the lower, northern end of the site.

9.25 I have dealt with issues concerning the funding and costs of the scheme, which I raised during the inquiry, in the discussion above.

*Overall conclusions*

9.26 I acknowledge that the Applicants own an important collection of steam-powered equipment which is of national value. A development which would allow the collection to be housed in a sound building and open to visitors would bring educational and economic benefits through tourism to the district and surrounding areas. However, what is proposed is essentially a tourist business, primarily an entertainment venue night club, intended to draw customers from all over the country. I consider the extent of the benefits arising from this particular proposal would be substantially outweighed by the harm from a number of factors. The scheme would not improve the appearance and landscape character of the countryside in which it would be set. It would result in the loss of some best and most versatile agricultural land. Its location outside of any urban area would generate a substantial number of separate journeys by private car. It would fail to allow for linked trips by a choice of more sustainable transport modes. In these circumstances, although I found no material problems with regard to highway safety and environmental impact, I consider the scheme should be refused.

**10 Recommendation**

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10.1 I recommend that the application be refused.

Geoff Salter

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FOR THE APPLICANTS

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Instructed by Neil Osborn

He called

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**DOCUMENTS**

**GENERAL INQUIRY DOCUMENTS**

Document	1	List of persons present at the inquiry
Document	2	Letters from interested persons
Document	3	Statement of Common Ground, inc List of Suggested Conditions
Document	4	Section 106 Planning Obligation
Document	5	Extracts from the Bedfordshire Structure Plan
Document	6	Mid Bedfordshire District Local Plan, 2003, inc Proposals Map Inset for Stotfold

**APPLICANTS' DOCUMENTS**

Document	8A-C	Mr Osborn's Proof, Summary and Appendices
Document	9A-C	Mr Worbey's Proof, Summary and Appendices, inc videotape of Turner's
Document	10A-B	Mrs Haslett-Saunders's Proof and Summary
Document	11A-B	Mr Rees' Proof and Summary
Document	12A-B	Mr Eyton-Williams's Proof and Summary
Document	13A-B	Mr Cottage's Proof and Summary
Document	14A-B	Mr Hine's Proof and Summary
Document	15	Transport Assessment & Interim Travel Plan
Document	16	Closing submissions by Mr Newcombe

**OTHER DOCUMENTS**

Document	17	Mr Hughes' Proof and Appendices
Document	18	Closing submissions by Miss Patry
Document	19	Mr Normans' Proof
Document	20	Mr Rickwood's Proof, Summary and Appendices, inc DVD of Stotfold fair

**PLANS**

Plan	A.1-3	Application Plans
	B1-3	Illustrative drawings

List of suggested conditions

- 1) Approval of the details of the siting, design and external appearance of the building and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained in writing from the local planning authority before any development begins.
- 2) Plans and particulars of the reserved matters referred to in condition 1 above, relating to the siting, design and external appearance of any buildings to be erected and the landscaping of the site, shall be submitted to and approved in writing by the local planning authority and shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 4) The building shall not be occupied until areas for the manoeuvring, parking and turning of vehicles have been constructed, drained and surfaced in accordance with details to be submitted to and approved in writing by the local planning authority, and those areas shall not thereafter be used for any purpose other than the parking of vehicles.
- 5) The existing hedges along the boundaries of the site shall be retained and enhanced in accordance with a scheme of boundary planting that shall be submitted to and approved by the local planning authority before development commences, such planting to be carried out in accordance with the approved details not later than the first planting season after the development hereby permitted.
- 6) Construction work shall not begin until a scheme for controlling the noise emanating from the building on the site has been submitted to and approved in writing by the local planning authority, all works which form part of the scheme shall be completed before any part of the development is occupied.
- 7) The level of noise emitted from the building, expressed as LAeq (5 min), shall not exceed the prevailing background conditions, expressed as LA90 (5 min), at any time, as measured 3m from the nearest noise sensitive window.
- 8) Before development starts, details of the proposed slab levels of the building in relation to the existing and proposed ground levels on the whole site shall be submitted to and approved by the local planning authority and the development shall be completed in accordance with the approved levels.
- 9) Details of all external lighting shall be submitted to and approved in writing by the local planning authority before the building is occupied. The development shall be carried out in accordance with the approved details.
- 10) No equipment, goods, waste or other materials shall be stored in the open outside the building on the site.
- 11) Before development starts, details of an amendment to the access junction with Wrayfields incorporating a traffic island to prevent the right turn of buses, coaches and large delivery vehicles, shall be submitted to and approved by the local planning authority; the development shall be completed in accordance with the approved details.
- 12) No more than 15 vehicles or pieces of equipment shall be in steam outside the building at any one time.

- 13) The premises shall not be open for customers outside the hours of 0900 – 2330 on any day.
- 14) The premises shall be used for the display and operation of steam-powered equipment and the provision of entertainment, including food and drink, and for no other purpose (including any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 15) Before development starts, a Green Travel Plan shall be submitted to and approved in writing by the local planning authority before the building is occupied. The Plan shall specify the measures to be used to discourage the use of private motor transport and to encourage those travelling to the site to use public transport, to share cars, to cycle or to walk. The Plan shall be implemented in accordance with the agreed details before the development is operational.



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

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