APPENDIX G

Town Farm Court and rear garden of Town Farm House, 51 High Street, Henlow

Application to Register as a Village Green (4/2011)

Key Points of Objection

1) This is the second Application to register part of our property as a Village Green; the first Application was designated 2/2010 and was refused by the CBC Development Management Committee.

2) The subject area of 2/2010 (part of our garden) forms 80% of this Application. Town Farm Court (TFC), our private driveway, forms the remainder.
For clarity, we will call our **garden Area G** and the **driveway, Area D** (see map overleaf).
The previous Application was for area **G**.

3) We believe the only reason this Application was accepted is that it covers a different area from the first Application. The difference is that area **D** has been added. The Applicants claim that by virtue of colouring both areas the same on a map, this makes them an entity. They offer no justification or logical grounds for combining them.

4) We submit that these two areas have no logical linkage and nothing in common.
   a) They have always been separated by a locked gate
   b) They are physically different - 80% (**G**) is our garden and 20% (**D**) is a tarmaced driveway, which is also our property, leading to our back yard and rear garden
   c) They are separate legal entities (separate land registrations)
   d) The pattern of use is totally different (area **G**: private use by owners/family/invited friends and others with permission or by invitation, vs area **D**: regular vehicular/foot access to TFC properties)
   e) Rights of way are different: no ROWs exist over area **G** whereas easements (legal rights) exist for residents to pass over the driveway - area **D**.

5) **Three reasons for refusal of 2/2010**
   a) It failed the criteria/test for a neighbourhood. **(The neighbourhood cited in this Application is the same)**
   b) It failed to prove that a significant number of inhabitants used the area
   c) It failed to prove that access to area **G** was 'as of right'

   We submit that on these same points, this Application is also fatally flawed.

6) **Submission under Section 15(3) of The Act**

   2/2010 (covering area **G**) and this Application have both been submitted under Section 15(3), which is predicated on the cessation of access to an area previously available to a neighbourhood. We proved in our Objection to 2/2010 that only one household was subject to the restriction, i.e. the Applicants'. The situation pertaining to the remainder (5 out of the 6 properties) of the defined neighbourhood in respect of Area **G** was and is unchanged. As the Officers were aware of this (from our Objections to 2/2010), we believe this Application should not have been accepted because area **G** clearly does not qualify under Section 15(3).

   Furthermore, as we have placed no restrictions on the use of area **D**, this area does not qualify either.

7) **Driveway rights**

a) The Applicants now attempt to prove that a (non-compliant) neighbourhood has earned prescriptive access rights over area **D** and then appear to argue that these rights extend into area **G**. We maintain that access rights over area **D** have not been earned but are legal rights, i.e. 'with permission', by virtue of easements which attach to their properties. Case law *(Laing Homes)* clarifies that 'by right' or 'of right' does not constitute 'as of right'. On this point alone, the Application fails to meet the requirements of Section 15(3) of The Act with respect to area **D**.

b) There is no logic for claiming that 'rights' can be arbitrarily extended from one area to another simply because the Applicants draw a line around the greater area.
As the previous Application covering area **G** has already been refused, we believe that for several reasons, this Application fails in its entirety.

c) The above points notwithstanding, we submit that to register a private driveway as a Village Green is not only stretching the intentions of The Act beyond what a reasonable person would think was its intention, but would cause major problems to residents by effectively opening it to allcomers.

8) **No mandate**

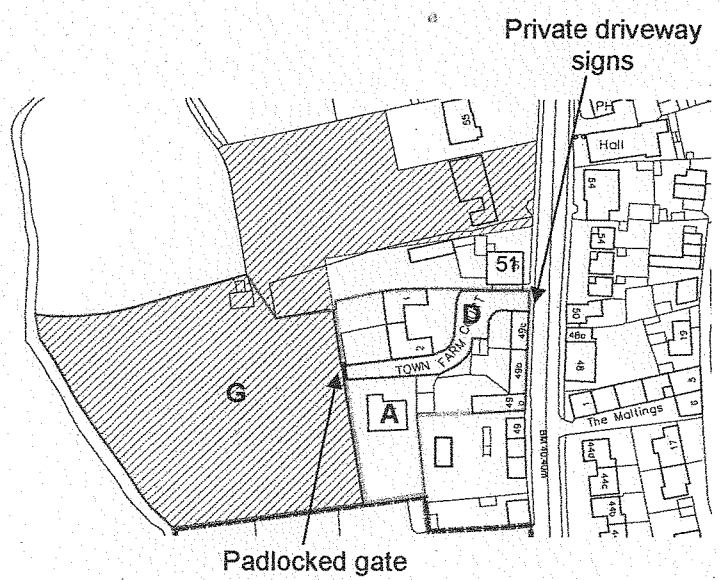
The Applicants had no mandate from the neighbourhood to make the previous Application; they have no mandate to make this one. They make it solely for their own ends and no independent evidence has been submitted in support of their claims.

9) **Consequences & purpose**

The consequences of approval are so much at variance with the Applicants' obvious sensitivity to usage and maintenance costs of area **D** that we believe they expect this Application to fail, thus supporting our belief that their sole purpose is to delay or otherwise frustrate the approved development adjacent to their property.

John & Margaret Handscombe

4th July 2011



The Application covers our rear garden and our driveway

G is our garden (red boundary)

D is our driveway (red boundary)

'Neighbourhood' is defined as properties within green boundary

A is where the Applicants live

Planning approval
CB/09/06626/FULL
applies to shaded area